

COPYRIGHT AND ITS RELEVANCE IN THE ENTERTAINMENT SECTOR: AN EXHAUSTIVE STUDY

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Abstract

In addition to maintaining its position as the country that produces the most films in the world, India's film industry has a long-standing reputation for being among the most successful in the world. The home demand for films appears to be decreasing, just as it has been in a number of sophisticated nations that have created film industries. This is despite the fact that the domestic demand for films has been diminishing. This econometric research that is featured in this chapter arrives at a very ideal moment because of the reasons stated above. As the number of people attending films in Indian cinemas continues to decrease, it is of the utmost importance to identify the factors that contribute to the interest that viewers in India have in films. For this purpose, we make use of a one-of-a-kind dataset that includes information on each and every Bollywood film that was released in India between the years 2011 and 2015. By employing the generalised method of moments approach, the possible endogeneity that exists between the variables is taken into consideration. This is done in order to arrive at a conclusion. These findings are used to highlight how the Indian film industry may continue to have a major and beneficial influence on the economy of India in the years to come. In this debate, appropriate film production firm techniques and government policy responses are discussed. These are the issues that need to be addressed in order to assure the continued success of the Indian film industry, both within the country and in the global market, which is becoming increasingly competitive. Additionally, the debate emphasises the significance of making certain that the Indian film industry continues to enjoy a high level of success. In addition, a global perspective was presented, and instances relevant to the modern world of over-the-top (OTT) media were also investigated, albeit in a more abbreviated manner.

Keywords: Copyright, Government Policy, Bollywood, OTT Media and Global market.

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1. Introduction

Entertainment investments help accredited investors diversify. Film investors are active or passive. Active investors have industry connections and actively participate in film production. Passive investors fund the production and take a share of the profits. If you want to invest in the entertainment industry without the legwork, contact reputable film investment companies and investment consultants. Investing in movies is motivated by the hope of a high return on investment (ROI). Work with seasoned investment consultants to make smart bets and limit losses in the film industry. Accredited investors can find many investment opportunities in the film industry and streaming services.¹

While considering China, it is found that as China's film industry grows, so does its film market, and foreign capital continues to enter with varying quotas. Wanda, Alibaba, Beijing Tourism and other leading companies have long promoted the Chinese film industry and reaped huge market dividends. Copyright investments are similar to stock purchases. When the company is unlisted, the first shares are bought. The company's listing price is inflated, so we get a price difference. Public can subscribe to the film's income copyright while it is still in production. We will get a percentage of the investment if the subscription succeeds. After the film's release, box office and copyright income will be split proportionally.² Yu Yuang, a 20-year-old Zhejiang investor, successfully bought film copyrights. Because 'Tai' was so large, he invested in 3 million shares, or 13.3% of the copyright. Yu Yuang earned \$70 million after his success. Copyright investment brings together co-producers from across the country and promotes the film. More participants and wider promotion boost box office. The box office benefits copyright holders and the earnings are higher.³

With an annual growth rate that is anticipated to be close to twenty percent, the Indian film industry is characterised as being on the verge of emerging as a significant market internationally. The film business is the one that generates the most films of any

¹ Qiao Li, Yanqiu Guan and Hong Lu (eds.) *Development of the Global Film Industry: Industrial Competition and Cooperation* 46 (Routledge, New York, 2020).

² Lu Yu, Shanyue Jin, *et.al.*, "China's New Mainstream Blockbusters' Characteristics and Trends from the Perspective of Film Industry Aesthetics in the Post-Industrial Era" 6(6) *Asia-pacific Journal of Convergent Research Interchange* 84 (2020).

³ Q Liu, "The Building and Thinking for Chinese New Mainstream Blockbusters' Film Industry Aesthetics" 36(1) *Journal of Shanghai University* 55 (2019).

other industry, and it is considered to be on the edge of becoming a significant market. In an effort to keep up with the rapid speed of the sector, it is rapidly increasing its regulatory and legal procedures. Since it was awarded "industry" status in 2001, the film industry has been able to move towards a more professional approach to funding, production, and other connected activities. This has helped the industry grow forward.⁴

The Indian film industry known as "Bollywood" has found its way into western markets, bringing with it its romantic narrative, energising music, state-of-the-art clothes (in contrast to the other Indian cinema centres like as Tolly, Solly and Nollywood), as well as bright costumes and panoply. India's film industry has naturally retained its (niche) position for a lengthy amount of time in nations such as the United Kingdom, the United States of America, and Canada, all of which have major populations of Indians living outside of India. As a direct consequence of this, there have been a number of co-productions from other countries that examine the plight of the Indian diaspora. Some examples of these films include "My Beautiful Laundrette" (1984), "Sammy and Rosie Get Laid" (1987), "Salaam Bombay" (1988), "Mississippi Masala" (1991) and "Bhaji on the Beach" (1993). Recently, more mainstream foreign co-productions with Indian themes like "Monsoon Wedding" (2001)⁵ or "The Guru" (2002) have excelled internationally and triggered even broader audience interest for India and Bollywood. Examples include "Monsoon Wedding" (2001) and "The Guru" (2002).

This is now also the case for the countries that are located on mainland Europe. Broadcasters and distributors are showing an increased interest in Indian material (including films and television shows), in general. Up until the middle of 2005, television audiences in Germany, a country with a population of Indian immigrants that is very small compared to other countries, had virtually little exposure to Bollywood films. It was only shown at film festivals, where a small number of Indian spectators and interested movie fans were able to watch it. 'Kabhi Khushi Kabhie Gham' ("Sometimes Happiness, Sometimes Sorrow"/ "Happiness and Tears"/ "Sometimes Happy, Sometimes Sad"),⁶ a Bollywood family drama that was released in 2001, was successfully dubbed and shown

⁴ Hans van Kranenburg and Annelies Hogenbirk, "Multimedia, Entertainment, and Business Software Copyright Piracy: A Cross-National Study" 18(2) *Journal of Media Economics* (2005).

⁵ Mita Banerjee, "Traveling Barbies' and rolling blackouts Images of mobility in Mira Nair's Monsoon Wedding" 1(4) *Comparative American Studies: An International Journal* 449 (2013).

⁶ Ajay Gehlawat, "Having it both ways: The Janus Like Career of Kareena Kapoor" 89 (2020).

by a private television broadcaster known as RTL II. Shortly after that, further Bollywood films were made available to the public. By the end of the year 2005, a number of video stores located in Germany had already established successful “Bollywood sections” that stocked only films that had previously been shown for free on public television. As of right now, German dubbing studios are working on the synchronisation of even more Indian major movies, which is a trend that has been picking up steam.

However, western movie industries and the businesses that are affiliated with them are interested in more than just purely Indian cinematic products. India is a main emerging market for the international entertainment industry because the country is home to more than 15% of the world’s population and has one of the highest economic growth rates (8.1%) among all countries in the globe. Not only are Indian consumers interested in American films, but the Indian film industry also takes a look to foreign money and runaway productions. This is despite the fact that Indian cinema was initially conceived as a reaction against the mainstream cinema of Hollywood.⁷

As a consequence of these developments and the mutually linked interests that exist between the two countries, the growing number of international co-productions and cinematographic collaborations with India can no longer be regarded as a minor trend. Nevertheless, the process of creating films in India is considerably different from the industry structures in the United States and Germany, both of which will be investigated in this article as prospective sources of co-production partners. Both of these countries will be evaluated in this article. Taking a comparative look from the perspective of a producer would shed light on the frameworks and copyright challenges of international film co-productions that incorporate India. This is due to the major disparities in contractual contacts, industry rules, interested parties, and legal standards that exist between the two countries.

⁷ Kate Darling, “IP without IP: A Study of the Online Adult Entertainment Industry” 17 *Standard Technology Law Review* 709 (2013).

2. Monetising Films with IP Rights

Copyright is the most important aspect of the filmmaking business.⁸ It forbids other people from utilising the works of creators without their authorised consent. In order for the producer to be able to claim ownership of the film, collect the required funding to make it, and licence⁹ distribution rights in order to ensure that it is seen by the greatest number of people possible, each of these rights must be licenced, transferred and recorded.

Film producers launch project and without their vision and enthusiasm, a film project won't be made. Producers negotiate multiple agreements that define how IP rights from creative contributors will be used and compensated. Copyright and contract law underpin chain of title agreements.¹⁰

Funds

The most significant assets that a producer possesses in order to get finance for a film are intellectual property rights that are supported by clear chain of title documents. If a film does not have a distinct title, it may be difficult or even impossible to market it. The finance for the film's production and distribution¹¹ might be increased by the signing of a contract with a well-known screenwriter, actor, or director. It is also the responsibility of the producer to locate and negotiate with the film's director. The director may be recognised as an author and joint owner of a film with rights, as an employee who is given a wage, or as both of these things, depending on the jurisdiction in which the investigation is being conducted. Additionally, directors are entitled to royalties from the distribution of films, and in certain countries, such as France, they may be able to negotiate a "final cut" clause as part of their moral rights.

Rights of Actors for protection

Producers mediate contracts between performers and actors. These can be delicate and complicated since they touch on both intellectual property and working

⁸ Ming Chen, "Valuation Adjustment Mechanism in the Film Capitalization - A Case Study of the Movie Lost in Russia" 11 *Beijing Law Review* 203 (2020).

⁹ Jacob Victor, "Reconceptualizing Compulsory Copyright Licenses" 72 *Stanford Law Review* 916 (2020).

¹⁰ Cathy Jewell, "From Script to Screen: What Role for Intellectual Property?", available at: https://www.wipo.int/pressroom/en/stories/ip_and_film.html (last visited on August 21, 2023).

¹¹ John W. Cones, *The Feature Film Distribution Deal* (Southern Illinois University Press: 1997).

conditions. Each country has its own laws regarding actors. Related rights are granted by several nations to actors.¹²

Deals regarding distribution

A manufacturer can only enter into agreements with distributors if the chain of ownership is transparent. Producers and distributors get into agreements about payment and the distribution of important markets. There is no typical distribution agreement. With the help of an integrated firm, a producer may sell their picture at film festivals, have it shown in local theatres, and distribute it on videocassette or DVD. On the other hand, he could need to get individual licences for video and movie distributors. In most cases, the distributor has the right to alter the film before distributing it. Title modifications, censorship edits, dubbing, subtitling and so forth fall under this category. Promoting a picture is an expense that every distributor has to bear. In order to market the picture, the producer will approach the distributor. Additionally, they can ask for the opportunity to weigh in on the advertising push. While making a film, a plethora of Intellectual Property agreements might pop up as because there are a lot of moving parts and rights to resolve, filmmakers typically invest in errors and omissions (E&O) insurance.¹³

The Bollywood example is something which cannot be avoided in this parlance. Over decades, Bollywood has reproduced copyrighted Hollywood films for the Indian market without being concerned about legal ramifications. The ‘concept’ of remaking Hollywood films into Bollywood storylines has been discussed for years, but Hollywood recently accused Indian filmmakers of copyright infringement and other IP violations. The US and India signed the 1866 Berne Convention for the Protection of Literary and Artistic Works and the 1971 Paris Convention. As WTO members, India and the U.S. must follow the 1994 TRIPS agreement. But then why do investors prefer Hollywood over Bollywood? Indus Media Capital and Bend It Media are investing heavily in Hollywood. 100-year-old Hollywood system reduces investment risk. A financier, completion services company, and producer sign a tripartite agreement in this system. If the producer can't finish the film, the completion services company underwrites the financier's risk and finishes it. “Due to producers’ reluctance to have their films adapted,

¹² Rachana Desai, “Copyright Infringement in the Indian Film Industry” 7 *Vanderbilt Journal of Entertainment and Technology Law* 259 (2005).

¹³ Sayantan Ghosh and Caroline Elliott, “The Indian Film Industry in a Changing International Market” 44 *Journal of Cultural Economics* 98 (2020).

such partnerships are highly improbable in India”. Hollywood’s best practises, like the completion bond every filmmaker must sign, increase efficiency. In contrast to the 150–200 days required to shoot an Indian film; a Spielberg film typically takes 60 days. An Indian film preps for two weeks before and during the shoot. In Hollywood, a 40-day shoot requires 80 days of preparation “*less you orchestrate the shoot, so it is just executing what you’ve planned*”. Bollywood is far from matching Hollywood’s professionalism. Bollywood filmmakers have spent decades recreating Hollywood films without official rights and Hollywood studios are now suing or threatening to sue them to protect their Intellectual Property Rights.¹⁴ Many Bollywood filmmakers believe their remakes should be treated as original goods because of the creative labour required to *Indianise* them. They do not consider their practise of reproducing foreign works a violation of Intellectual Property Rights.¹⁵

3. Indian Position on Censorship

The danger of censorship exists inside the censorship jurisdiction because it competes with the economic exploitation of motion pictures. Although a film's depiction of violent or sexually explicit scenes or religious themes may be crucial to its box office success in another country, they may be illegal in the one where the censorship policy is in place. Even if versioning could be a solution in these kinds of situations, there is a risk that the artistic work will be significantly defaced and stripped of its basic artistic worth and character. This is in addition to the moral rights and copyright concerns that could arise as a result. When viewed from the point of view of a commercial exploiter, censorship of any kind is therefore undesirable.

In 1918, the Indian Cinematographic Act was passed under British colonial rule to ensure the safety of moviegoers and strengthen the authority of the colonial administration. The Act has been upheld by the post-Independence Indian government. Censorship, which had previously been carried out at the provincial level, is now administered by the CBF; the word “Censors” has been replaced with the less contentious “Certification” in recent years. The CBFC must approve all films before they can be shown in theatres in India. The CBFC typically either censors certain portions,

¹⁴ Hariqbal Basi, “Indianizing Hollywood: The Debate Over Copyright Infringement by Bollywood”, *UCLA Entertainment Law Review*, 18, 33-74 (2011).

¹⁵ Moti Gokulsing and Wimal Dissanayake (eds.), *Routledge Handbook of Indian Cinemas* (Routledge: New York, 2018).

forcing the filmmakers to make edits, or outright bans the movie from being shown in its territory. Censorship at the national level originated from a place of extreme nationalism and state idealisation. The film “Parash Pathar” (“The Philosopher’s Stone”) from 1957 was banned for depicting a corrupt police officer or a figure who looked like a member of Congress drinking alcohol. This, like the previous outlawing of on-screen kissing, is no longer the case in today’s media. In addition, censorship is mounted against unrestrained public display by hoarding of soon-to-be-released films and the removal of posters, commercials, and video clips from television channels.

The influence of the government is one of the primary factors that might lead to a film being censored by the CBFC. If a film or its content violates Indian sovereignty and integrity, national security, friendly relations with other states, public morality, public order, decency, or court orders, or if it is likely to encourage criminal activity, then the public viewing of the film may be restricted. As a result of the fact that the board functions as an appendage of the party that is now in power, its expansive authority is regularly utilised for the purpose of settling scores between political and ideological adversaries. This typically leads in the judiciary, as was sought at the time, overriding the decision of the board and granting approval for the photograph. A recent and controversial example of such interference by the government is the administration that was headed by Prime Minister Vajpayee and was led by the Bhartiya Janata Party (BJP). It was a requirement that every Indian entry to the Mumbai International Documentary Film Festival be accompanied by a censor certificate, which resulted in a substantial amount of criticism. In addition, it restricted the production of certain films and recordings that depicted violent incidents that occurred between Hindus and Muslims in Gujarat between the years 2000 and 2003.¹⁶

In addition to these broad points, the Indian Cinematograph Act of 1952 [Section 5B (2)] places severe limitations on the portrayal and use of a number of different subjects in cinema, including but not limited to: smoking, alcohol consumption, drug use, specific double meanings that clearly appeal to ‘basic instincts’, religion, race, criminal technique, intimacy and violence. In fact, the Cinematograph Act specifically requests that films be of acceptable visual quality and cinematic standard, in addition to being

¹⁶ Devashish Gosain and Anshika Agarwal, *et.al.*, “Mending Wall: On the Implementation of Censorship in India” 238 *International Conference on Security and Privacy in Communication Systems* 419 (2017).

clean and healthy entertainment. Furthermore, the Act stipulates that the film must possess commendable creative value. Looking at contemporary Indian film, it is not always easy to see where the censors have set the limit on depictions of or references to the aforementioned topics. *“For a film to be successful, it needs to display either sex or Shahrukh Khan”*. This is an intriguing and generally recognised modern adage in India. Bollywood films would never approve of the graphic levels of sensuality, violence, and intimacy seen in Hollywood films made in Europe and the US. On the other hand, the artistic sensibilities of the Indian Supreme Court upheld the certification for public exhibition of *“Bandit Queen”* (1994). The court reasoned that the film’s theme—the criminalisation of a young girl brutally hurt by society—needed the depiction of rape and the frontal nudity of women. We did this because seeing women’s naked faces was integral to the film’s plot.

The films for which the CBFC decides whether or not to provide a censor certificate are organised into categories. On the other hand, the Indian police force hardly ever bothers to ensure that citizens comply with the ratings that are presented here -

U: universal - suitable for all ages.

U/A: suited for those above the age of 12 with the supervision of an adult or parent.

A: adult - can only be viewed by people over the age of 18.

Sexuality and interpersonal closeness are perennially contentious topics. One example of a subjective topic is the act of kissing. In the past, films that showed kisses were given an A rating; today, however, such films receive a U classification as long as the kiss is neither sexually suggestive nor overly drawn out. A dancing scene that focuses on a lady and is shot in close-up will receive an A rating, however the identical scene that is shot in wider shot will receive a U rating.

These limitations significantly diminish the desirability of collaborating with an Indian partner on the production of a commercial film with the intention of marketing and selling the finished product in both India and western countries. If the picture has a character that is too extreme, sends conflicting messages, or promotes sexual morality that is too liberal, it will be susceptible to restriction on the Indian market, which would typically result in lower box office sales. On the other hand, if you adopt a “too soft” or

superficial approach when dealing with social, religious, or political issues, you run the danger of boring western audiences. It is considered sensitive business information by the producers, particularly those who are involved in major Hollywood films, that their screenplays and information relating to the project are confidential. Additionally, prior to the screenplay being utilised, it must be authorised by the Ministry of Information and Broadcasting. Furthermore, the script must be re-approved in the event that any significant modifications or deviations from the script that was approved are regarded to be essential. The procedure is made more complicated by the inclusion of this new layer of complexity.¹⁷

The severely limited amount of commercial cinematic co-productions with foreign and particularly western partners is likely due, in part, to censorship on the Indian market as well as cultural constraints, obligatory elements (song-and-dance scenes, marriage, happy ending, etc.), and the structure of Bollywood films. Despite the fact that the CBFC's excessive involvement in the film business has been heavily criticised, the Indian legislative branch shows no signs of wanting to loosen its grip on film content. This persists even though there are no de facto censorship laws governing India's local cable TV stations. Given that a significant section of India's voting population still does not own a television, this might prove to be more politically powerful than what many "film people" anticipate. But there's hope that, in the not-too-distant future, enough people will have access to uncensored media due to technological improvements and India's growing quality of living. Because of this, film censorship will be far less used because it is ineffectual, unnecessary and might hurt the economy.

3.1. Few cases to consider

Countless successful film crews have been the targets of copyright infringement lawsuits. The wronged parties claim that the films' scripts are so identical to their own that the only way to explain it is that one picture is merely rehashing the other.

3.1.1. The Matrix

The Matrix was widely praised upon its 1999 debut for its innovative storyline and fusion of genres. Accusing the Wachowskis of ripping from his comic book series

¹⁷ Parveen Pannu, "Films in India as an Effective Educational Tool: A Look at Advantages and Challenges" 4(3) *The National Life Skills, Value Education & School Wellness Program* 9 (2018).

The Invisibles for a large portion of the story, Grant Morrison questions the script's originality. Morrison has pointed out tale parallels but has never sued Warner Bros. or the Wachowskis. One cannot copyright mind-bending adventures that question reality, so these accusations might appear implausible at first.

3.1.2. *Alien*

Alien changed the horror genre in 1979. Scott's claustrophobic sci-fi thriller, based on Dan O'Bannon's cerebral screenplay, inspired many imitators. According to aspiring screenwriter Jack Hammer, *Alien* was based on his own work. Hammer sued O'Bannon for plagiarising his unproduced screenplay *Black Space*. O'Bannon convinced the court that he had written *Alien* before Hammer, and the case was thrown out.

3.1.3. *The Island*

Parts: The Clonus Horror filmmakers settled out of court over similarities to Michael Bay's 2005 sci-fi thriller *The Island*. Robert S. Fiveson and Myrl A. Schreibman sued DreamWorks for copyright infringement, but the studio tried in vain to stop the trial.

DreamWorks decided to settle the case rather than risk bad publicity and a court ruling in favour of Fiveson and Schreibman (think seven figures). Michael Marshall Smith has noted similarities between *The Island* and *Spares*, but he hasn't sought compensation (owing to the costs involved with hiring legal counsel).

3.1.4. *An American Tail*

While some claims of copyright infringement against filmmakers are easily debunked, others hold up under closer examination. *Maus*, the graphic novel that Art Spiegelman won the Pulitzer Prize for, is reminiscent to *An American Tail*. Despite the fact that *An American Tail* came out years before *Maus*, both the film by Don Bluth and the comic book by Spiegelman have Jewish characters who are anthropomorphised mice and their oppressors who are cats. This emblem was taken from Spiegelman's award-winning tale by Bluth and Steven Spielberg, creator of Amblin Entertainment. Before the film's debut, the cartoonist published the first collected edition of *Maus* to avoid expensive legal actions.

3.1.5. Zootopia

Among its numerous accolades, Zootopia (2016) was named Best Animated Feature by the Academy. In certain foreign regions, the film was titled Zootropolis. Eventually, the studio was hit with a copyright infringement case. Using two pitches from 2000 and 2009, Gary L. Goldman claimed that Disney had stolen his idea for Zootopia and filed a lawsuit against the company in March 2017. A socially awkward animator named "Zootopia" was the protagonist of the live-action film Looney. It would appear that none of that had anything to do with the Disney picture, which featured anthropomorphic animals in an animated buddy cop story. According to Goldman, Disney used his concept as the basis for Zootopia and copied its name, location, themes, and character archetypes. He drew concept drawings that looked like the actors in the movie. District Judge Michael W. Fitzgerald dismissed the complaint after rejecting Goldman's assertions and describing his efforts to link Zootopia and Looney as 'strained'.¹⁸

4. Digital Platforms: An insight into Netflix story

The transition from celluloid to digital has greatly impacted the film industry as a whole, raising standards while simultaneously decreasing production time and costs and removing previously insurmountable barriers to entry for low-budget and amateur filmmakers. Growing interest in science fiction and fantasy films can be attributed in part to the vast special effects opportunities made possible by digital technology. Filmmakers now have the resources, courtesy of digital technology, to visually depict the fantastical realms in which their characters adventure.¹⁹

One of the earliest examples of computer-generated imagery was in the 1973 science fiction picture *Westworld*. In 1995, Pixar published *Toy Story*, the first computer-animated feature film. By 2009, *Slumdog Millionaire* had won the Academy Award for Best Cinematography, making it the first picture filmed nearly completely digitally. Another groundbreaking picture that year was *Avatar*, directed by James Cameron and starring a combination of live-action and computer-generated imagery

¹⁸ Erik Pederson, "Judge Throws Out 'Zootopia' Copyright Suit Against Disney", available at: <https://deadline.com/2017/07/zootopia-copyright-suit-dismissed-disney-gary-l-goldman-1202126800/> (last visited on August 25, 2023).

¹⁹ SG Edward Altman, "A digital media asset ecosystem for the global film industry" *Journal of Digital Asset Management*, 2(1), 6 (2018).

(CGI) thanks to its groundbreaking use of motion capture and “stereoscopic 3D” cinematography.

The Internet and other digital technologies are having a significant impact on the film industry, changing not only how movies are watched but also how they are sold, rented, and downloaded. Our shared love of cinema has only grown stronger in the digital age.

4.1. The Unique Case of Netflix²⁰

Netflix has committed to investing €40 million in French and European films over the next three years, as per a deal with the French film guilds. As a part of a French legislation that came out of the Audiovisual Media Services Directive (Avms), Netflix inked a deal with the French broadcasting authorities to invest 20% of their yearly income on French series and films.

According to Elsa,²¹ with a minimum investment of €30 million in French-language films, Netflix will allocate 4% of its yearly French earnings towards French and European films. Fifteen months after their Netflix launch, these films will have their French theatrical debut. These films are exclusive to Netflix for seven months. Budget films are permitted per the agreement. For French-language films with budgets under \$4 million, Netflix must allocate at least 17% of the \$40 million. Ten films must be invested in by the streamer prior to principal filming. Netflix: “With this arrangement, we are taking another positive step towards being an integral part of the special French film industry. It reflects our constructive AVMS negotiation contribution”.

Netflix is the first and only streaming service to sign this agreement with French film orgs BLIC, BLOC, and ARP. France is the only European country with a Netflix deal. Within three years, the streaming service aims to reduce the existing 15-month gap for French-released films, which was formerly 36 months. It was stated that the streaming service will “promote an earlier window to reflect the viewing habits of consumers”.

²⁰ John Mixon, “Netflix and Not-So-Chill: The Legality of Sharing Passwords for Netflix & Other Streaming Services” 101 *Journal of Patents and Trademark Office Society* 336 (2021).

²¹ Elsa Keslassy, “Netflix to Invest \$45 Million Annually in French, European Movies”, *available at*: <https://variety.com/2022/film/global/netflix-investment-french-movies-1235187142/> (last visited on August 26, 2023).

Netflix is unable to exhibit its films at the Cannes Film Festival as competitive submissions because the festival requires a theatrical bow in France.²²

Other countries like Sweden are planning to take tax from Netflix in a way of investment.²³ Swiss voters will decide if Netflix should support the country's film industry. "Lex Netflix" requires the streaming giant to invest 4% of its Swiss revenue in Swiss films and TV. Switzerland requires all national distributors to reinvest the same percentage. National and regional distributors must produce half of their content in Switzerland or Europe. Netflix must pay the investment tax if the law passes or face a fine or being blocked from Swiss customers. The Netflix tax will apply to Amazon Prime, Disney+, and HBO. The law could bring the Swiss film industry between CHF18 and 30 million annually. This is a significant increase for an industry that receives CHF105 (€101.8) million annually. Look at France's deal with Netflix to see why the Swiss might want to follow suit. In France, films must first be released in theatres before being streamed 15 months later. The famed Cannes picture Festival has stringent requirements, such that a picture must be exhibited in a theatre before being considered for the festival, thus this is an opportunity for French cinemas to keep their audience and follow the rules. A lot of films did not get into Cannes since they were released on Netflix right away. With Europe's strongest film industry, France should protect its cinemas. 340 French films were produced in 2021, the pre-pandemic rate.

5. Conclusion

In conclusion, it is essential to stress the fact that in the existing copyright regime in India, the tilt appears to be on the side of the producer, as opposed to the rights of the director, playwright, composer, etc. When compared to other aspects of copyright, the argument that it is the producer who assumes the risk of the film and therefore should be awarded the right over it is shown to be invalid. A book publisher, for instance, is exposed to a comparable level of risk, but the law does not recognise the publisher as the

²² Elizabeth H. Jones, Ademar Bechtold, *et.al.*, "HBO NOW: Watch Out, Netflix!" 35(2) *Journal of Case Studies* (2017), available at: <https://go.gale.com/ps/i.do?p=AONE&u=googlescholar&id=GALE%7CA528468554&v=2.1&it=r&a sid=7c8b99a1> (last visited on September 01, 2023).

²³ Jonny Walfisz, "How European countries are taxing Netflix to Invest in Cinema", available at: <https://www.euronews.com/culture/2022/04/01/how-european-countries-are-taxing-netflix-to-invest-in-cinema> (last visited on September 01, 2023).

author of the work or the owner of the copyright. Consequently, the apparent partiality shown only towards film producers raises some concerns. On the other hand, the people who created the underlying work and who played an important role in the production of the movie are relegated to the background. One of the most compelling pieces of evidence of this may be seen in the situation of the chief director, who is not accorded any status under the law. The 2012 revisions have been criticised as a missed opportunity by some of India's most prominent academics.

Despite our laws drawing heavily from the UK Copyright Act of 1988, the standing committee decided against granting principal directors any rights when it came to adopting the concept of a principal director because it believed that director-friendly provisions would hurt the industry. The committee's observation that extending such rights to directors will have an effect on the sector has led to a condition of mental confusion in our group. Why, if giving due rights to filmmakers does not have a negative impact on the film business in other countries, do we anticipate that it will have a negative impact on the film industry in India? This position needs to be revised, and the courts need to impose restrictions on the rights of the producers.²⁴

An important consideration in any dispute that may arise between producers and other contributors, such as composers and screenwriters, is the nature and terms of the contract. It is essential to keep in mind that the status of the scriptwriter and composer, in addition to their ability to negotiate, have a significant role in the formation of the contract. One notable musician, A. R. Rahman, is said to have protected his copyright. Although this is not always true of all composers, it might be stated of Ilayaraja as well. If the legal rights of lesser-known composers and screenwriters are to be protected, a liberal reading of the relevant statutes is necessary. The prominent Mumbai production company Yash Raj Films (YRF) was the target of a recent First Information Report (FIR). The notice was filed in accordance with the copyright Act's section 63 and the Indian Penal Code, 1860's sections 409 and 34. According to the First Information Report (FIR), YRF stole 100 crores of royalties belonging to IPRS members, committing a criminal breach of trust (CBT) and violating the copyright Act. According to the FIR, YRF

²⁴ "How Do We Protect Film Director Rights in India?", *available at*: <https://thepalaw.com/copyright/how-do-we-protect-film-director-rights-in-india/> (last visited on September 01, 2023).

exploited its leverage to force musicians to sign contracts that prevented them from receiving royalties that were legally theirs. We learned this from the reports.

This means that even after the modifications to copyright laws in 2012, it is possible that unethical behaviour of this kind may still persist. It has been asserted that YRF's response was to argue that the revenue it receives is in the capacity of copyright owners, rather than in the position of an agent or assignee. It seems likely that YRF wishes to convey the message that the proviso to section 18(1) is only applicable if the writers continue to hold the copyright to their work.

A person loses their right to receive royalties as well as any other rights that they may have had under section 14 once that has been transferred to a third party. However, in that scenario, the argument will be invalid. It is true that the proviso to section 18(1) does not preclude the transfer of copyright in and of itself; nevertheless, it does envision a separate right to receive royalty on an equal basis, and this right can only be assigned to legal heirs or collecting societies. According to section 18, the author, and not the copyright owner, is the rightful owner of the royalties (1). Differentiating between the creator and the owner of the work is crucial here. The author is eternally linked to the work and is not deemed part of the concept of "owner" but the copyright to the work might be transferred to another entity. Because of this, it doesn't matter if YRF were to prove ownership of the works for which they collect royalties; they still would not have the same position as the author when it came to receiving royalties. If such is the case, the amendment's intended purpose will be defeated.

In the subject of composers' rights in India, two observations made by the court in the *Ilayaraja v. Agi Music* case²⁵ significantly reduced the rights of the composers. Firstly, the court said that the changes adopted in 2012 nowhere talks of retention of ownership rights of the songwriters. Secondly, the court said that the amendments brought in 2012 severely restricted the rights of the composers. It only assures that royalties are paid to the composers of musical works and their descendants after their deaths. Second, it stipulates that if a musical composition is given expression in the form of a sound recording in a film, then no other sound recordings based on that musical piece are allowed to be recorded. This view diminishes the rights of the composer even further in

²⁵ *Ilayaraja v. Agi Music*, 2019 SCC Online Mad 1960.

the already skewed film industry. The court paid little attention to the newly-added provision in section 17 of the copyright Act, in conjunction with section 13(4), which states that an author's original copyright, as protected by section 13 of the copyright Act, is not lost just because their work is included in a film. Instead, the court concentrated entirely on the amendment of section 18, which grants royalty rights to creators of works. It seems that this assumption was the basis for the court's decision.

Regarding the rights of scriptwriters in relation to producers, even though it is stated in the *Thiagarajan Kumaraja's* case²⁶ that scriptwriters will still retain their rights in the event that films are remade (even though it was controversially decided in that case that dubbing is not remaking), the *Salim Khan* case does not guarantee the rights of scriptwriters. In the case involving *Salim Khan*, the court decided to believe the evidence that was presented by the producers rather than the scriptwriters and declared that the script for "Zanjeer" was a commissioned production. The court said nothing about the proviso to section 17, which said that the rights of the author of any work that is incorporated into a film in no way shall be affected by the provisions of section 13(4) of the Copyright Act. The court chose to ignore this provision. It will be interesting to see how this provision is interpreted in the future by the courts; for example, will it declare that remaking rights even of commissioned work will lie with the scriptwriters (as they should), or will it declare that the amendments only give them rights to royalty (like in the case of *Ilayaraja* in context to composer's rights)? If the latter, it will be an interesting development to observe.

International film has a market value in the billions. Worldwide, ticket sales hit a record \$42 billion in 2019, accounting for approximately 33% of the \$136 billion spent on film production and distribution. The PWC-published *Global Entertainment & Media Outlook 2020–2024* estimates that revenues fell 66% in 2020 as a result of the coronavirus pandemic. Since black-and-white prints the film industry has evolved greatly. In the past, box office sales drove film profits. Now, a movie's profit is not just box office. This prospect has been significantly enlarged because to the proliferation of DVDs, streaming services, subscriptions, downloads, distributors, and Video on Demand, among other things "the way U.S. studios reach their customers is changing", the research stated, citing the pandemic as the cause of this change. The majority of them have developed their very

²⁶ *Thiagarajan Kumaraja v. Capital Film Works and Anor*, 2013 (2) LW 115.

own streaming services, which amplifies the rivalry. Hollywood is experiencing its “biggest shift” ever. With digital platforms on the rise, the issues of Copyright have become the limelight and keeping an eye on it has also become an easier task. This industry is also not an exception of Globalisation and the factors of Globalisation has fairly affected the film industry and many investors have also benefitted from the same.