



Copyright Meets Competition: Why It Matters for the Media and Entertainment Industry

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ISIL Occasional Paper

The Media and Entertainment (M & E) industry of India is the fastest-growing sector of the economy and has recorded an explosive growth in the last few years. While the slowdown effects of the second half of 2019 were experienced by our economy, however, the growth of the M&E segment continued at an accelerating rate more than India's GDP, largely because of escalations in the subscription revenues. ¹ According to the data provided in the "EY and FICCI, *Shape the Future: Indian Media and Entertainment is Scripting a New Story*", India's Media & Entertainment sector grew 8% in 2023 to ₹ 2.3 trillion and is projected to reach ₹ 2.7 trillion in 2025, driven mainly by the rapid rise of digital media, which now leads the industry. Digital advertising alone grew 17% in 2024, while other segments like live events and OOH media also showed strong growth despite challenges in gaming and film. ²

Conventionally, the M&E sector is creativity-driven industry in tandem with technological developments and dependent on the demand of the consumers. Due to globalization and interaction of various economies, the inherent nature of the industry being reliant on culture and language has been aided to accommodate international segments as well, thus surpassing this cultural barrier. As a practice, creator of the content was in a position to decide what to supply in the market however, the demand is now completely consumer-driven. This demand is not only limited to what the consumer appreciates

but also extends to the format of the content, which the consumer demands both nationally and internationally.

The Indian M&E sector is thus believed to be the fastest emerging segment of the Indian Economy, which is making a clear headway. Its potency is evident on the global platform also, as many international media companies are making their productions in regional languages of India to increase their consumer base, as banking on the cultural market leads to the growth of both domestic and international media companies. The consumption of this sector has thus cut across all demographics with its various divisions like films, music, online gaming, radio, print, digital media, animation and VFX, out of home media, live events.

The Indian film industry is one of the largest cinema hotspots of the world which is celebrated because of its glamour and drama. The largest sector in the Indian film industry is the Hindi language film industry, popularly known as *Bollywood*, dominating this multibillion-dollar industry in terms of net worth. Equally important is the regional cinema of India comprising Tamil, Kannada, Telugu, Marathi, Bhojpuri, Bengali etc. film industries.

The Indian film industry attained the status of industry in the year 2000 and is getting highly corporatized in its structure and working. Foreign

direct investment in all the allied activities of film industry be it production, distribution or exhibition etc. is allowed up to 100% for all companies under the automatic route. This has led to visible advancements in the film industry in relation to finances, exhibitions, technology, distribution etc.³

In 2024, India's Media & Entertainment industry grew by 3.3%, reaching ₹2.5 trillion, with digital media driving much of this growth despite sectoral challenges.⁴ India has therefore been on a moderate growth trajectory with regard to the production and distribution of a number of feature films produced in a year. The advent of streaming platforms, along with contemporary multiplexes and traditional single-screen theatres, has provided easy access to films, leading to an increased consumer base. Also, one of the crucial parts of the film industry is the music segment, which has a major share in revenue generation. At the global level, Indian music is gaining popularity due to the efforts of music distributors like T Series, Sony Music India, Zee Music, etc., leading to an increase in views and subscriptions via various music streaming platforms like YouTube, Spotify, and many more.⁵

WORKING OF THE INDIAN FILM INDUSTRY

Whenever a producer announces a film, it is backed by a particular star cast and storyline. Acquiring funds to produce the film is dependent on the actors, director, music director etc. In the initial years, finance was obtained from private financiers at a very high rate of interest as banking and financial institutions lacked confidence due to the risky nature of the film industry. At some instances, the distributors also provided the funds that in turn they used to get it from exhibitors of single-screen theatres. By contributing finance, the distributor gained the right to exploit the film for a certain period. The distributor further distributes the film to the exhibitors in a specified zone of its operation out of the twelve zones in which the country is divided.⁶

However, with the corporatization of the film production houses, producers are themselves getting into the business of distribution and are directly releasing the films. They are also directly entering into agreements with the multiplex companies for distribution deals, apart from the single-screen theatres which are managed by individual distributors only. This way, the producers have become in charge of the surplus earned from the distribution cycle and are heading towards the amalgamation of all the essentials like production and distribution of the film industry's value chain.⁷

The film industry in general has also formed various associations in order to self-regulate itself. These associations operate on the basis of their bylaws and act as dispute resolution agents in case of any dispute between stakeholders of the industry, like the producer, distributor, exhibitors, or various artists. To avoid any dispute with the exhibitor, films are registered before the release with one of these associations so that the situation involving two films having the same release date can be averted.⁸

Also, the agreement entered into by the producer with the distributor for a specific zone needs to be registered by an association, so that in order to attract more funds, the producer might not sell the film to any other distributor in the same zone.

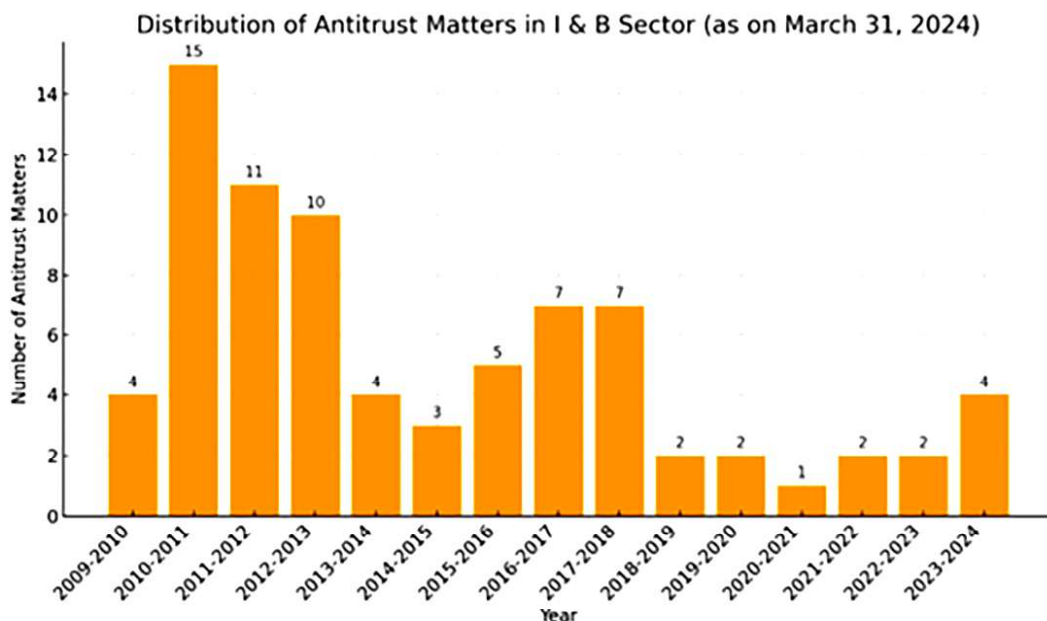
However, these associations lack penal powers and statutory authority, so the only power they exert is the authority to boycott. Thus, failure to comply with the contractual obligations of the association results in a boycott by the members and the association in general, leading to a denial of market access.

The work of these associations in the smooth functioning of the industry cannot be denied. However, over time, working without any statutory authority and exercising regulation in the form of boycotting and denying market access leads to anti-competitive behaviour which is in contravention with the provisions of the Competition Act.

EVOLVING JURISPRUDENCE

This paper is extremely relevant in the given time scenario as the jurisprudence with regards to the Competition Law is still evolving and the Copyright law-governed entertainment industry is one area in which the application of Competition law is very essential. This is because the entertainment industry, being the major driver of the Indian economy, requires a setup in which all the stakeholders in the industry are working fairly with an equal playing field for each player. Various studies have been undertaken individually on the copyright issues in the film industry or anti-competitive practices in general, but not many

in the area of the interface between copyright and competition law in the Indian entertainment industry. Specifically with regards to the film industry, despite of various cases adjudged by the CCI, no clear guidelines have been set up with regards to the applicability of competition law to copyright-based film industry. This is evident from the number of cases as noted by the Competition Commission in the I&B sector and is reflected in the fluctuations in the graph. These fluctuations indicate the rise and fall of cases which may be due to the unavailability of any specific directives, as mostly issues of a similar nature crop up in front of the Commission.



Source: Annual Reports, Competition Commission of India

RELATIONSHIP BETWEEN IP AND COMPETITION LAW

The interaction between IP and Competition Law is not new and has been on the agenda for discussion at various global platforms. The 1948 *Havana Charter for the International Trade Organisation* contained provisions relating to General Policy towards Restrictive Business practices: *“Each Member shall take appropriate measures and shall co-operate with the Organization to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which*

restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives set forth in Article 1.”

Also, the United Nations General Assembly, at its thirty-fifth session in its resolution 35/63 of 5 December 1980, adopted the “Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices approved by the United Nations Conference on Restrictive Business Practices. Since the adoption of the Set in

1980, four United Nations Conferences to Review All Aspects of the Set have taken place under the auspices of UNCTAD in 1985, 1990, 1995 and 2000 respectively. A report on *“Competition Policy and the Exercise of Intellectual Property Rights”*¹⁰ was also prepared by the UNCTAD Secretariat on the request of the Group of Experts for consideration by the Fourth Review Conference in the year 2000. The report dealt with the role of competition policy in the exercise of IPRs and presented a comparative analysis of jurisdictions with extensive enforcement practice in relation to competition policy principles and rules relating to IP Rights contained in the legislation, case law or enforcement guidelines.¹¹

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) also contains certain provisions that offer a wide discretion to Members states in their application of competition law in respect of the acquisition and exercise of IP rights. Article 8.2 of the Agreement relates to requirement of appropriate measures for preventing the abuse of IPRs by right holders. Article 31 gives detailed conditions for the granting of compulsory licences aimed at protecting the legitimate interests of rights holders. Article 31(k) specifically validates the right of Members to use such licences as anti-competitive remedies with the condition that such anti-competitive practice needs to have been determined through a judicial or administrative process.

Article 40 of the TRIPS Agreement recognise *“licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology”* and permits Members to specify anti-competitive practices constituting abuses of IP Rights and to adopt measures to prevent or control such practices (Article 40.2). Such practices may include exclusive grant backs, clauses preventing validity challenges and coercive package licensing. Thus Member-states have considerable discretion under the TRIPS Agreement in the advancement and application of competition law to the

operation of IP Law.

In this regard, it is pertinent to mention the *“Anti-Competitive Guidelines for Licensing of Intellectual Property”*¹² issued by the U.S. Department of Justice and the Federal Trade Commission which incorporates three general principles *“(a) for the purpose of antitrust analysis, the Agencies apply the same analysis to conduct involving intellectual property as to conduct involving other forms of property, taking into account the specific characteristics of a particular property right; (b) the Agencies do not presume that intellectual property creates market power in the antitrust context; and (c) the Agencies recognize that intellectual property licensing allows firms to combine complementary factors of production and is generally pro-competitive.”*

Thus, it can be seen that the interaction between IP and Competition Law has been a subject of discussion at various national and international forums. In light of these developments involving emergence of advanced and innovative technologies, it becomes imperative and timely to analyse the relationship of IP Rights and Competition Law and discuss their multifaceted interplay.

The intention behind this section is to clearly specify the basic concepts of IP Rights and Competition Law and further examine whether there exists a conflict between the two or whether in essence, they perform complimentary roles of maximising consumer welfare. Then is it right to say that instead of being in contradiction with each other, they choose diverse paths to reach the same objective of augmenting the welfare of consumers? If this is true, can we safely presume that there exists a fair balance between Competition and IPRs?

Historically, Competition Law and IP Law have emerged as different and unique practices of law but there is a significant concurrence in the goals and objectives of the two as they both focus on furthering innovation leading to economic growth. IPRs are exclusive bundle of legal rights which allows the creators to benefit from their

own creations whereas competition law provides an anatomy of competitive practices providing thrust to efficiency and productivity with the ultimate objective of consumer welfare by prohibiting anti-competitive conduct. Simply put, IP protects individual interest and creates monopolies to some extent while the competition protects the market and battles monopolies. There also exist various domains addressing the interface between IP and Competition which may arise while granting the IP protection or at the time of use in the form of misuse of licensing provisions, tying in arrangements etc. or also on the enforcement front by way of facing anti-competitive litigation.¹³

The Raghavan Committee Report on Competition Law in India observes as: “*All forms of Intellectual Property have the potential to raise Competition Policy/Law problems. Intellectual Property provides exclusive rights to the holders to perform a productive or commercial activity, but this does not include the right to exert restrictive or monopoly power in a market or society. Undoubtedly, it is desirable that in the interest of human creativity, which needs to be encouraged and rewarded, Intellectual Property Right needs to be provided. This right enables the holder (creator) to prevent others from using his/her inventions, designs or other creations. But at the same time, there is a need to curb and prevent anti-competition behaviour that may surface in the exercise of the Intellectual Property Rights.*”¹⁴

“*There is, in some cases, a dichotomy between Intellectual Property Rights and Competition Policy/Law. The former endangers competition while the latter engenders competition. There is a need to appreciate the distinction between the existence of a right and its exercise. During the exercise of a right, if any anti-competitive trade practice or conduct is visible to the detriment of consumer interest or public interest, it ought to be assailed under the Competition Policy/Law.*”¹⁵

Since these two branches do converge or diverge at some point, leads to an immediate inference of their overlap and the need for IP Law to be interpreted in the light of the doctrine of freedom of competition in the market and envisage their probable conflict

and complementary role. The dichotomy and similarity between IP and competition invariably exists in the application of these laws, and requires their analysis on various grounds where this interface exists so as to effectively face the contemporary challenges that this phenomenon has brought to the trade system.¹⁶

GENERAL EXEMPTIONS OF IP FROM COMPETITION LAW

Many jurisdictions around the world expressly or implicitly reserve the application of Competition Law on the exclusive rights granted under the IP Law protection. Some jurisdictions have no mention of IP Laws in their Competition legislation, while others contain statutory provisions exempting IP from Competition Law application. This has resulted into considerable problems, especially by the younger jurisdictions with exemption provisions that live under erroneous belief that competition law should never be applied to IP-related cases as opposed to the experienced jurisdiction that uses much-matured theories to map the precise scope of application.¹⁷ These exemption clauses should ensure that there is enough room for competition authorities to vigilantly implement a rule of reason approach on an individual case basis so that the IPR's objective of fostering innovation does not lead to practices that are in violation of the competition laws. Therefore, in situations where there is an abuse of IP by the IPR holder in terms of unreasonable restrictive practices, the affected parties can claim relief under the Competition Act.¹⁸

Considering the case of India, Section 3(5) of the Competition Act on restrictive agreements exempts conduct relating to the protection of IPRs. Section 3(5) reads as follows: “*Nothing contained in this section shall restrict— (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under— (a) the Copyright Act, 1957 (14 of 1957); (b) the Patents Act, 1970 (39 of 1970); (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or*

the Trade Marks Act, 1999 (47 of 1999); (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999); (e) the Designs Act, 2000 (16 of 2000); (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000)”¹⁹

In the case of *Shamsher Kataria v Honda Sael Cars Ltd and others* ²⁰(Automobile Spare Parts case), the Competition Commission of India dealt with the claim of IPR exemption under section 3(5)(i) of the Act. In this case, agreements were entered between original equipment manufacturers (OEM), i.e., car manufacturers) and original equipment suppliers (OES) for procurement of components and spare parts by OEMs. The design, drawing, technical specification, technology, knowhow, toolings (which are essentially large machines required for the manufacture of the spare parts), quality parameters etc., are provided by the OEMs to the OES for some of the spare parts and the OESs were required to manufacture and supply such spare parts according to the specified parameters. It was observed that the OES were required to get prior consent from the OEM to supply spare parts in the aftermarket, which was specified under the agreement entered between them. It was argued that the restriction placed on OESs by the OEMs would fall within the ambit of reasonable conditions to prevent infringements of their IPRs as provided under section 3(5) of the Act.

The CCI noted: “*The Commission is of the opinion under section 3(5)(i) allows an IPR holder to impose reasonable restrictions to protect his rights which have been or may be conferred upon him under the specified IPR statutes mentioned therein. The statute is clear in its requirement that an IPR must have been conferred (or may be conferred) upon the IPR holder prior to the exception under section 3(5)(i) being available.*”²¹

“*The Commission is not the competent authority to decide, for example, if a patent/trademark that is validly registered under the applicable laws of another country fulfills the legal and technical requirement or is capable of being registered under the Indian IPR statutes, specified under section 3(5)*

of the Competition Act. Such a mandate would lie with the IPR enforcement agencies of India. For the Commission to appreciate a party’s validly foreign registered IPR, in the context of section 3(5) of the Act, satisfactory documentary evidence needs to be adduced to establish that, the appropriate Indian agency administering the IPR statutes, mentioned under section 3(5)(i) have: (a) validly recognized such foreign registered IPRs under the applicable Indian statutes, especially where such IPR statutes prescribe a registration process, or (b) where such process has been commended under the provisions of the applicable Indian IPR statutes and the grant/recognition from the Indian IPR agency is imminent.”²²

Apart from the *Automobile Spare Parts case*, there have been numerous landmark judgments in India concerning the conflict between IPR and the Competition Law and *Aamir Khan Production v Union of India*²³ was the first case in this matter. In this case, the Bombay High Court held that Competition Commission of India has the jurisdiction to deal with matters relating to IPR when it is directly in contravention of the provisions of the Competition Act. In *Kingfisher v. Competition Commission of India*²⁴, the Court reiterated the competency of CCI to deal with all the issues that come before the Copyright Board.

These judgments show an attempt by various Indian Courts in addressing the emerging case laws of competition law involving IPR. In *Aamir Khan Case*, the Court stated that “*every tribunal has the jurisdiction to determine the existence or otherwise of the jurisdictional fact, unless the statute establishing the tribunal provides otherwise. On a bare reading of the provisions of the Competition Act, it is clear that CCI has the jurisdiction to determine whether the preliminary state of facts exists.*”²⁵

Based on the above discussion regarding the applicability of Section 3(5), it has to be observed that the scope of non-obstante clause in Section 3(5) of the Act is not absolute which is evident from the terminology employed therein and it exempts the right holder from the stringency of competition law only for the purpose of protecting his rights from infringement and further enabling

the right holder to impose reasonable conditions, as may be necessary for protecting such rights.²⁶

INTERFACE BETWEEN COPYRIGHT AND COMPETITION LAW

Copyright Law grants the author of creative work the exclusive rights over their creations in the form of rights to reproduction, distribution, publicly perform or display their works, digitally transmit sound recordings, create derivative works etc. However, the existence of these rights varies from country to country, but the utmost role is motivating the author to create and disseminate of creative works, while the proximate goal is to reward the copyright owners for their investment. In the US Supreme Court judgment of *Twentieth Century Music Corp. v. Aiken*²⁷, it was declared that “the immediate effect of our copyright law is to secure a fair return for an author’s creative labour. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good.”

To maintain an appropriate balance between the exclusive rights of the copyright owner and public access, given the protection granted to wide variety of rights, the copyright framework includes various instilled safeguards like the originality requirement, the idea-expression dichotomy, durational limits of copyright, the fair dealing or fair use privilege, the exhaustion of rights or first sale doctrine, the parody defence, and the de minimis use exception. These safeguards lead to the inference that the copyright system to some extent, accommodates the societal interest. Therefore, the question arises as to whether the inbuilt safeguards under copyright law are adequate, or is there any necessity for the courts to intervene by using legal doctrines outside the copyright system.²⁸

With the growth of creative and cultural industries in independent individual countries or the high level of concentration in rather isolated small national markets, various agencies have stressed the relevance of competition law enforcement in the copyright area.²⁹

The relationship between Copyright and Competition Law also have to be understood in

the same light of advancing complementary goals. However, at the stage of application, conflicts may arise between these two areas when reliance is placed on the competition law to limit the exclusivity of the copyright. Therefore, based on the scope of application of competition law in the copyright area, the question is not “whether” competition law should be applied but “how” it should be applied, which calls for a balancing technique taking into consideration both pro and anticompetitive effects of the copyright on competition in the market.³⁰

At its core, the copyright law performs a pro-competitive role in the larger market of ideas and not in specific markets of films, books etc. Exclusive right is afforded to the author in the expression of his idea for supply of a „commodity“ to be sold in the larger market. This will ultimately lead to competition in the larger market of underlying idea between author’s expression and the expression created by others. Inferring the possible role of competition law in the outcome of copyright suit. There can be some situations where competition can be destroyed or restricted in the market of ideas where the copyright owner abuses his dominant position or undertakes certain acts to protect its rights. Therefore, under appropriate circumstances, competition law may intervene to safeguard some degree of competition in these other markets.³¹

Therefore, in situations where the copyright owner uses his exclusive right in an improper way and perform certain acts to his advantage and to the detriment of others, creates an instance of copyright abuse. Copyright abuse is alleged in the cases of — (1) the use of copyright to exact concessions from the licensee; (2) restriction of the licensee’s ability to deal with the copyright owner’s competitors; (3) dealings that limit another’s ability to compete; and (4) the anticompetitive use of the judicial system.³²

Exactng Concessions from the Licensee: In its dealings with prospective licensees, the copyright owner usually enjoys an advantageous bargaining power during the grant of the license. Considering the economics of grant of a license, if the demand for copyrighted work is high, the copyright owner will be in a favourable position to extract concessions, including non-price concessions

concerning the use of copyrighted work from the licensee. These concessions may include charging a high price for the use of copyrighted work, a license for only non-commercial use, preventing reverse engineering, and concessions not directly related to the copyrighted work but beneficial to the owner. All of these concessions present peculiar policy concerns when seen in the light of competition law.

Limiting the Licensee's Ability to Deal with Competitors:

The Owner of copyrighted works will look to ensure that the licensee can buy only from the owner. Such an arrangement will work towards the economic benefit of the owner. Owners of the copyrighted work undertake various agreements in order to limit the ability of the licensee to negotiate on reasonable terms with competitors. For instance, in "tying arrangement", the licensee's right to acquire the license of a copyrighted work is based on his agreement to procure the second product in the same transaction leading to linking a competitor's ability to compete in the market for that other product, leading to unfair advantage to the competitors.

Limiting Another's Ability to Compete: There may be instances where the competitor is a probable licensee. In such an eventuality, the copyright owner may not be willing to deal with the competitor, leading to a situation of refusal to deal. A peculiar case is one where the copyright owner for competing in the market for the sale of that work or even in some other market may refuse to sell or license copies of the work to a competitor. Also, there may be situations where the competitor enters into an agreement to pool their assets or divide the market among themselves, generating serious anticompetitive concerns. This can lead to increased market concentration, which will eventually come under the purview of the law of monopolies.

Anticompetitive Use of the Judicial System:

Owners of copyright are entitled to certain procedural benefits and considerable damages to the defendants in a copyright lawsuit, which the

owners use as a tool to govern their behaviour. It is usually alleged by the defendants the motive behind instituting such suits is not to protect the legitimate interest but to safeguard conduct that is unrelated or only incidentally related to the copyright, even though the defendant's conduct may technically infringe the copyright. Infringement suits in these types of cases are also directed against a probable licensee or competitors to limit competition in some other market or increase sales of the copyrighted product.

APPLICABILITY OF COPYRIGHT LAW AND COMPETITION LAW TO THE INDIAN FILM INDUSTRY

Under the Indian Copyright Act, 1957 as amended, copyright is a bundle of exclusive rights conferred upon the owner of the copyright by virtue of Section 14 of the Act. According to Section 13 of the Act, copyright protection subsists in (1) original literary works, dramatic works, musical works, artistic works (2) cinematograph films and (3) sound recording. A cinematograph film is a subject matter of copyright law and copyright in a cinematograph film is vested only when the visual as well as the audio components are synchronized.³³

A Cinematograph Film is a joint effort of various subjects like the producer, director, actors, music composer, lyricist, choreographer, art director, spot boys, and various other artists. The copyright in case of a cinematograph film vests with the producer or the production house, as the producer is at the helm of affairs and takes the responsibility of making the film, arranging the finances, and safeguarding the work.

Under the traditional contractual practice of the industry, the lyricists and the music composers for a one-time lump-sum payment, assigned all rights in the work to the producer of the film. The result of which was that the lyricists and the music composers had no right to royalty accruing from their work, even in situations where the work was utilized in media other than a cinematograph

film. However, after the 2012 amendments to the Copyright Act, the lyricists and musicians can claim copyrights for their creations and continue to receive royalties despite the fact that they may have assigned the copyright in those works.

The copyright law gives the owner exclusive rights over their work and case of a film, the producer being the owner of the whole film has the power to set the prices and this power can also lead to setting of higher prices of the work. Provisions of competition law will be applicable when being in a position of market dominance due to the protection granted under copyright law there is abuse by the producer.

In the *FICCI - Multiplex Association of India vs. United Producers/Distributors Forum* (UPDF)³⁴ case, it was contended by UPDF that a film producer being a copyright owner has the exclusive right to ascertain the manner in which the film can be communicated to the public including the commercial terms accompanying it. Also, in *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association*³⁵ it was held that each feature film is nothing but a bundle of copyrights. The main point of contention therefore which arises is that to what extent the copyright holder can derive benefit of his right under the Copyright Act when the ultimate effect is on the competition in the market. In the FICCI case, the Competition Commission of India (CCI) held that a joint and coordinated action of the UPDF of not releasing the films to the multiplexes and fixing the revenue sharing ratio with the multiplex owners resulted in limiting the supplies of goods and services and fixing the prices. This conduct was found to be in contravention with the provisions of Competition Act.

The applicability of the most crucial provision, Section 3(5) of the Indian Competition Act, 2002 was also discussed in this case. Section 3(5) clearly implies that provisions of competition law will not be applicable with respect to the anti-competitive agreements which impose reasonable conditions to safeguard the rights or restrain infringement of the rights granted under intellectual property (IP)

laws. CCI in this case held that copyright is not an absolute right but is a statutory right subjected to the provisions of Copyright Act, 1957. It further observed that *“the intellectual property laws do not have any absolute overriding effect on the competition law. The extent of non obstante clause in section 3(5) of the Act is not absolute as is clear from the language used therein and it exempts the right holder from the rigours of competition law only to protect his rights from infringement. It further enables the right holder to impose reasonable conditions, as may be necessary for protecting such rights”*.

The Indian Film industry is often under the radar of the competition agencies as copyright issues are always entangled with anti-competitive activities prevalent in the industry. The film industry has therefore witnessed a considerable number of antitrust cases in India. Also, this sector saw one of the first substantive decisions of the Supreme Court of India on merits in the case of *CCI vs. Coordination Committee of Artists and Technicians of West Bengal Film and Television & Ors*^{36, 37}.

Most of the cases in this sector arise from the control exercised by trade associations/bodies in the industry comprising of all the stakeholders like associations of producers, distributors, exhibitors or artists as discussed above. These associations exercise a great hold on the working of the industry by imposing stringent rules, especially with regards to dealing with non-members leading to coordinated activities against the third parties being anti-competitive in nature.

Therefore, it is pertinent for the CCI while dealing with the cases of competition law in a copyright-based industry to analyze that the owner or author of the work is only enjoying the fruits of his labour and not deriving any extra advantage which can lead to the abuse of his dominance.

Also, it is important for the Commission to look into the intention of the producer of the film because if the intention is to restrict the supply of movies or tie and sell movies together, then, on the facts and circumstances of each case, these activities will be tested on the grounds of competition law.

Thus, if the producer, rather than safeguarding his own interests under the Copyright Act, indulges in activities which are considered anti-competitive under the Competition Act, then Competition Law can be applied in the cases of copyright-based industry.

SUMMARIZING THE RELATIONSHIP BETWEEN COPYRIGHT AND COMPETITION LAW

From the above discussions it can be inferred that competition law can be a sword but not an efficient shield. Victim of copyright abuse gets some authority to challenge the acts of copyright owner in order to obtain damages for the same but the larger problem of abuse of IP gets unnoticed in the entire process. Competition Law violation is not a defense of copyright law and the same cannot be used by the victim to declare the copyright protection invalid. It is at the discretion of the parties to invoke the competition law involving huge penalties or find solutions internally within the copyright legislation like cancellation or suspension of the copyright or a defence to an infringement claim while the abuse continues.³⁸

CONCLUSION

The possible conflict between IP and Competition Law arises from the goals they seek to promote, where the IP owner is incentivized by giving monopoly rights for a limited period and Competition Law goes against this principle by curtailing abusive monopolies and enhancing market conditions by increasing choices and fair competition in the market. From the viewpoint of Competition Law, IP, like any other form of property, is not inherently detrimental to competition, and a well-structured IP regime is meant to advance innovation and promote dynamic competition in the market. Therefore, the interface between both IP Law and Competition Law is not inherently conflicting but is compatible with each other. Conflicts can arise only in situations where promoting the underlying objective of both IP and Competition Law, which is the protection of the supreme interest of consumers and fair competition in the market

that the intervention of competition law may be required, which can be abused at the hands of the IP right holder.

Also, the entertainment industry of any country is dependent on culture and language and India is no exception. The Competition Commission of India can often face cultural and linguistic disputes which would require the formulation of clear guidelines based on diligent examination as to the application of Competition Law to the disputes related to the entertainment industry. Otherwise, the Commission may find itself stuck in political linguistic disputes requiring adjudicating beyond its mandate. Therefore, the need of the hour is to frame lucid and inclusive competition policy in the cases concerning cultural and creative content which is prima facie beyond its mandate.

Endnotes

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