



Corporatization and  
Institutionalization of the Media and  
Entertainment Industry In India

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## Executive Summary

In the last few years Indian entertainment and media (E&M) has emerged as one of the fastest growing sectors in India to that extent that it has out-performed the Indian economy. This has brought about change in not only the method of conducting business but has also led to further developments of the related laws. The acquisition and control of underlying rights is vital to these dynamic sectors. We have in this article provided the overview of some important laws governing the E&M Industry.

## Entertainment and Media Law – Overview

Entertainment and media law encompasses multiple areas of law which work together to serve the entertainment and media industries. No one area or topic of law dominates the field of entertainment and media law. Accordingly, the definition of entertainment and media law continues to develop as the industries grow and evolve.

The entertainment industry includes the fields of theater, film, fine art, design fields, dance, opera, music, sports, multimedia, visual arts, literary publishing, television and radio.

These fields share a common mission of selling or otherwise profiting from creative works or services provided by writers, songwriters, musicians, and other artists. Each field has its own distinct trade unions, practices, statutes and case law.

Entertainment law is often associated with media law. Media law is typically divided into telecommunications and print media, such as newspapers and magazines. Media law also encompasses the internet and computer technology. The federal government primarily regulates media. First Amendment issues, along with questions of copyright, licensing and advertising dominate the field of media law.

## Foreign Direct Investments in Entertainment and Media Industry

International media giants are all vying for a stake of the segment. In the last three years, US\$ 88 million FDI has flowed into this sector and in 2006, 13 FDI proposals were approved by the Government. The Government allows 20 per cent FDI in FM radio and recommended shifting to revenue sharing regime from the current license fee structure. The Government changed its media policy in 2002 and relaxed foreign ownership restrictions in the newspaper category. Today, 26 per cent foreign

equity holding in news-related print media is allowed, though editorial management must remain Indian.

Subsequent to the policies being put in place, the media industry is seeing a slew of IPOs (Initial Public Offering). Eighteen media companies will float public issues drawing about US\$ 678.7 million in 2007 marking a six-fold increase over the previous year. Global Broadcast News (CNN-IBN) and Cinemax India have recently gone to public. Others in the pipeline are Sony SET, DQ Entertainment, Indian Express Newspapers, Brahma Interactive, Broadcast Initiatives, Raj Television Network, SRS Entertainment and 12 others which are awaiting SEBI approval.

## Scope of Entertainment Industry

### i. The Indian Motion Picture Industry

From the days of shaky pictures and poor sound quality, the domestic film industry has gone on to become highly sophisticated in terms of infrastructure and product offerings. Furthermore, the domestic film industry is the largest in the world, producing over 800 films per annum, across 52 different languages. The industry generates employment

opportunities to nearly 2.5 million people. By the year 2005, this is projected to increase to over 4.0 million. Currently, the industry is witnessing a period of rising pre and post-production costs.

### ii. The Changing Television Industry

The television industry in India is currently at its prime. It has over 350 channels and is today the third largest television market in the world. It reaches over 119 million television households, which is almost the same size as the entire US market, but covers only about 60 per cent of the total households in the country. Of these, about 50 million receive cable television services. The low penetration promises a huge untapped potential for growth in this industry.

### iii. Music Industry

The Indian music industry in the past was completely dominated by film music, which was an integral part of Indian films and music rights brought in as much as 15 per cent of a film's earnings. That has changed now, and music videos and non-film albums are driving growth. The music sector is estimated to be about US\$ 193 million and is pegged to grow at 4 per cent over the next five years.

#### iv. **Sports Industry**

The sports industry can be divided into amateur, professional and international sports. Professional athletes are compensated for their contributions while amateur athletes typically play for their own recreation and enjoyment. While sports law generally encompasses tort, antitrust and contract law, each level of the sports industry has its own distinct issues and concerns.

#### v. **Radio**

Radio is the main source of news and entertainment for most of India - reaching out to 99 per cent of the population. While All India Radio, the public service broadcaster, hogs the top tier in coverage, private FM has become the second tier and recently, the Government has opened up the third tier - community radio, thus providing the sector a further impetus to grow.

### **Safeguarding the Interest of the Entertainment Industry**

#### i. **Contracts**

The entertainment industry exists in a state of economic

uncertainty. Entertainment companies continually form, merge, re-form, and dissolve. Furthermore, consumer tastes in artistic products can change quickly, thrusting certain artists or artistic movements to the heights of popularity and reducing others to obscurity. Because of this instability, the entertainment industry relies on complex contracts, which usually are drafted to protect entertainment companies against economic risk.

#### ii. **Personal Service Agreements**

The personal service agreement is a primary legal instrument in the entertainment industry. This agreement is negotiated between an artist and a company that manufactures, promotes, and distributes the artist's goods or services. The agreement often binds the artist to produce for one company for a certain period of time. Personal service agreements are often governed by statutes, and are often the subject of litigation because they restrict the rights of artists to perform or create for any entity except the company with whom they have contracted.

#### iii. **Contract for Rights**

Another primary contract in the entertainment industry is the

contract for rights. This contract often involves a transfer of copyright ownership or a license to use certain creative property (e.g., a song or photo). Many times, a contract for rights is combined with a personal service agreement.

A license is a contract through which the artist or copyright holder grants certain rights to another party. For instance, a novelist might grant a license to a film studio to create a screenplay based on a novel. A license specifies the fee or royalty to be paid to the artist, the exact scope of use of the copyrighted material, and the time period for which the company may use the material, as well as any other conditions the parties agree to attach to the license.

iv. **Anti-Piracy law in India**

The legislation which can be invoked to counter film piracy in India is the Copyright Act, 1994 (the Act). India is also a signatory to the two major copyright conventions, i.e. the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention.

## Unique Aspects of Entertainment Industry Contracts

i. **Complex Royalty and Payment Provisions**

Because some entertainment companies often risk large losses, the contracts they use often contain clauses that artists may consider unnecessarily complex or one-sided. Record companies also use complex contractual formulas to determine royalty payments to their artists. Companies typically offer seemingly large royalty percentages to artists. Various clauses in the recording agreements then are used to reduce the royalty percentages, reduce the number of units on which royalties are paid, and delay payment for many months. Although a few small record companies have made some effort to simplify the structure of recording agreements, the major record companies and their smaller affiliates have uniformly fought to maintain the more complex, formula-based agreements.

ii. **Advances**

Many entertainment contracts are structured with advances. Advances are payments made to an artist before any actual income is received by the company manufacturing or delivering the artist's products or services. For example, an author might receive an advance of \$50,000 when the author's manuscript is approved by the publisher. This advance is normally nonrefundable, even if the publisher never earns money from the publication of the author's work. However, the publisher will keep any royalties that would have been payable to the author, until the author's advance and other expenses have been recouped by the publisher.

iii. **Contracts with Minors**

Contract law in many states requires that specific steps be taken in or clauses added to a contract with a minor, to ensure that the contract is valid. Often, companies will require that the minor's parents execute a valid release, under which the parents guarantee the services of the child and agree to be held liable for damages if the child fails to perform under the terms of the contract.

iv. **Contracts with Intermediaries**

Successful artists are surrounded by many individuals responsible for enhancing and protecting their career. Unknown artists use the services of such intermediaries to help them become known to more powerful figures in the entertainment industry. Intermediaries have various names and functions, but all serve to promote an artist's visibility and success in the industry. For this service, they generally take a percentage of an artist's earnings or a portion of the artist's property rights in the artist's creations.

v. **Attorneys**

Attorneys in the entertainment industry perform many standard legal functions such as conducting litigation, giving business advice, protecting intellectual property, and negotiating contracts. Entertainment attorneys also serve as industry intermediaries, promoting their clients in order to procure contracts for the artists' products and services. For these services, entertainment attorneys are paid either an hourly fee or a percentage of an artist's income.

Entertainment attorneys often face difficult conflicts of interest. For example, an attorney who has represented a record company is often pursued by a

recording artist to shop the artist's material to that company. The artist knows that the company will often trust the attorney's opinion of the artist's marketability, which gives the artist a better chance of obtaining a recording contract. The attorney, however, is often privy to confidential information about the record company, or still represents the company in related negotiations. Attorneys and artists have been involved in several high-profile disputes because of such conflicts of interest.

### Intellectual Property

The entertainment industry's primary product is intellectual property, protected by copyrights and trademarks. A majority of the terms in entertainment contracts deal with the ownership and use of this property. Songs, plays, films, works of fine art, books, and even some choreographed works are copyrightable. The contractual terms that define the ownership and use of these works are often negotiated for months, with both the artist and the entertainment company vying for as much control of the intellectual property as possible.

### Personal Rights

A successful artist's name and image can become valuable commodities. Use of the artist's name and likeness by another party can impinge on rights held by the artist. The legitimacy of such uses is often unclear and is based on several areas of law that overlaps and sometimes contradicts one another, such as right to privacy, right to publicity, unfair competition and defamation.

### Final Outlook

The Indian entertainment industry is on a high growth path. Domestic majors are finding better earnings potential in the huge overseas markets. At the same time, corporatization is finally starting to emerge in this highly unorganized industry. This is likely to instill a greater discipline in the functioning of the industry and lead to greater consolidation in the future. The domestic consumer will opt for more sophisticated technology in the near future. Consequently, domestic majors will have to redefine their product offerings.

With literacy levels forecasted to increase in the future, the publishing industry will continue to witness growth. Advent of new technologies



such as e-book etc will take a longer time to have an impact on the domestic market when compared to the global markets. While piracy levels are declining slowly, better copyright laws and the rapid implementation of the same are imperative to preserve the creative talent in this industry. The government needs to implement the same in order to facilitate the high growth in this industry.