

## Caught in the act

Should the investor, as a risk taker, be the sole owner of all intellectual property rights or should creators be co-owners The industry and the government think differently, says Nandini Raghavendra

HEN a movie turns out to be a blockbuster , the immediate correlation is: the filmmaker must now be a very rich man. Similarly, when someone like AR Rahman wins the Oscars, Golden Globe and the Grammys, the mind drifts to the riches the gifted musician must have beheld. Or, when a classic like Mughal-e-Azam is re-released in full colour after four decades to packed houses, the layperson assumes K Asifs great-grandson or daughter must have raked in a lot of money.

The truth, however, is very different: Creators of films or music or your favourite tunes are not always the sole commercial benefactors of their work. All of this is wrapped in minute legal language that goes into who should get what to the last detail, from script to show. Whatever lies in between comes under the Indian Copyright Act 1957.

Inspired by the British, the Act has seen many amendments. The latest is a draft whose impact will be known only when the final legislation is made public, but from what is available to us, the clear indication is that the changes would work out to change the dynamics of the film and music industry forever.

Two weeks from now, the draft is expected to be tabled in Parliament during the Budget session. For it to come into force, Parliament needs to pass it and the President needs to give her assent. Once this is done, it will be published in the official gazette and become a law.

But in the near-six weeks that the contours of the proposed changes have been known (through the HRD ministry website), the industry has been in a tizzy. Representations of industry hotshots like Yash Chopra have made trips to the Capital to meet HRD minister Kapil Sibal and voice their concerns. Yes, they did meet me, but we have consulted the industry before these amendments were drafted. And if they have any queries, they can always bring them to the standing committee, Sibal told ET.

## RIGHT OR WRONG

There is no right or wrong here, just differing views. The government on its part is trying to keep in step with global practices and feels there should be a more equitable distribution of wealth gained from more than one persons creation. Also, with technology giving rise to new revenue streams, there should be a re-think on this. Besides, some producers may have been exploiting small composers for too long.

However, the usually vocal industry, which aired its views a few weeks ago, has now gone quiet. In spite of a closed-door meeting at the Sun-Sand hotel in Mumbai, venue to many a Bollywood deal, no one was willing to go on record as to what decisions the filmmakers had arrived at in the meeting.

Among the big changes proposed is one that makes directors co-owners of rights. This spells good news for a lot of small-time directors who do not have the investment power to become co-producers . Moreover, if a film clicks at the box office, they can reap rich rewards too.

Under the current regime in India, the producer of the film is the first owner of the copyright in a cinematographic film. Making the principal director a joint copyright holder will certainly give them a better negotiating power. If the producer wishes to acquire 100% ownership of the film, it can be done contractually by obtaining an assignment from the director, of his part of the right. Typically, the director does assign all the rights to the producer. But in the light of this amendment, one needs to wait and watch whether the industry practice changes, says Gowree Gokhale, partner, media and entertainment, Nishith Desai Associates.

Directors like Raju Hirani welcome the amendment in spirit but put in a word of caution on how it will eventually work. It must not be

exploitative in practice. For example, in the advertising world, in the case of voice overs, every time you do a different version, the voice-over artistes ask for a share. This is fine if its included in the overall budget, or else the poor director ends up paying; sometimes in lakhs, says Hirani.

As for global practice, in the UK as well as in some other countries, the producer and the principal director of a film are by law the joint first owners of the films copyright, although in practice, the director often assigns his interest in the copyright to the production company or financiers, says Anand Desai, managing partner, DSK Legal.

Desai says it is the HRD ministry which has made it clear that the amendments are being made to bring the act in conformity with the World Intellectual Property Organisation (WIPO) Internet Treaties, namely the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty which have set the international standards in these spheres.

The producers, of course, have just one question: If they are the ones taking all the risks, is it fair that the beneficiaries should be more

## TAKE-II

The amendment to extend the term of copyright in films to 70 years from the current 60 years is seen by the owners of movie rights as a welcome move as they now have a decade more to monetise their rights.

## OUT OF TUNE

The last amendment, seeking to empower composers and lyricists with more rights, is what can really have a game-changing effect on the industry.

It could take music acquisitions prices down by as much as 50-75 %, says an industry veteran who did not wish to be named.

Till date, the music company that was buying the rights paid and held the rights for their exploitation across platforms, mostly for perpetuity.

Now, they will forfeit a lot of the rights to composers and lyricists. Moreover, the new composers not the big or known names will not have the requisite infrastructure to monetise their rights.

The hitherto denied and wrongfully exploited by the producers and music companies people as the draft chooses to call them are now, at least in principle , taken up for. However, they need a framework for making the most of whats on offer.

Even if they form an association or society, they will have to go to the music companies for administration . Whats unclear is what happens if they are unable to generate the revenues. Many in the music industry feel strongly that the government did not take a large part of the industry into confidence when the draft was made. There has to be a transition to a new ecosystem and that takes time, said a music industry veteran.

In fact, as Desai adds, with changing technology, the means for exploitation of certain rights have undergone significant changes, for instance, there are now ringtones based on film songs. The question then is: who has the right to exploit these the film producer, music director or composer Also, with digital distribution, the distribution cost is minimal, compared to physical distribution of music.

Earlier, distribution of physical records, cassettes and included the cost of manufacture, labelling, packing , physical transport to sales outlets and retailers costs. Distribution can now be done through the internet and mobile devices, virtually free of cost.

In such a scenario, the ratio between the copyright owner and licensee will change. Also, will the authors of literary and musical works get full value for all the revenue streams that the producer can now avail of So many questions, which only the bill can answer.



**GOWREE GOKHALE Partner (M&E) , Nishith Desai Associates**

*It seems the amendment seeks to secure the economic rights of authors, lyricists & musicians. Clarifications are needed on issues like percentage of royalty*