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## COPYRIGHT IN THE AGE OF CELEBRITY BIOPICS: A DOCTRINAL AND JURISDICTIONAL ANALYSIS OF THE DHANUSH V. NAYANTHARA DISPUTE

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### ABSTRACT

The fast proliferation of OTT streaming services has fuelled better legal tussles relating to the ownership and use of audiovisual content especially in the celebrity-led documentaries. The article focuses on the copyright case between Wunderbar Films Pvt. Ltd. that linked with the actor-producer Dhanush and actress Nayanthara over the purported use of a three-second behind-the-scenes (BTS) clip of the 2015 Tamil film Naanum Rowdy Dhaan in the Netflix documentary Nayanthara: Beyond the Fairy Tale. The controversy revolves around the question of whether this kind of use amounts to infringement of a cinematograph film as contained in the Copyright Act, 1957 and whether the prior Artist Agreement transferring rights pertaining to performances forever divides performer autonomy. The paper finds and discusses fundamental legal issues of authorship and first ownership in Sections 2(d) (v), 2(f), and 17, the performer in Sections 38 and 38A, the relevance of fair dealing in Section 52, the de minimis doctrine, and territorial jurisdiction in Section 62 and Clause 12 of the Letters Patent. Using a doctrinal and analytical approach, the paper evaluates competing claims of producer control and performer expression on the basis of statutory provisions, judicial precedents and comparative jurisprudence. The paper states that even though the legal framework is structurally biased in favor of producer ownership, proportionality principles, including de minimis and contextual analysis under fair dealing, continue to play an important role in digital-era controversies. It adds to the copyright jurisprudence through illustrating the necessity to redefine the balance between propriety and autobiography within a changing streaming ecosystem.

**KEYWORDS:** Copyright Cinematograph Film Performer-Rights Fair Dealing OTT Platforms.

## INTRODUCTION

The most notable development of online streaming is that it has dramatically altered the boundaries of the copyright law especially when it concerns cinematography movies and content that revolves around celebrities. The emergence of over-the-top (OTT) service providers like Netflix has amplified the commercial importance of archival content, behind-the-scene (BTS) video and biography narrative content. In this dynamic digital environment, the conflict between actor- director Dhanush production company, Wunderbar Films Pvt. Ltd and actress Nayanthara has emerged as a major trend in the Indian copyright law. It is essentially a small, but legally crucial issue of whether the use of a three-second BTS clip as part of a commercial documentary amounts to a copyright violation.

The scandal dates back to 2015 when Tamil film Naanum Rowdy Dhaan was produced by Wunderbar Films and directed by Vignesh Shivan, and Nayanthara is the main character of the film. In November 2024, Netflix published a biographical documentary called Nayanthara: Beyond the Fairy Tale, which tells the personal and career story of the actress. As Wunderbar claimed, the documentary has used a three-second BTS clip of the film without permission, which violated its exclusive rights in the cinematograph work. After Wunderbar had received a legal notice requesting the deletion of the clip, a civil suit was initiated by Wunderbar at the Madras High Court, seeking a permanent injunction and Rs. 10 crore damages.

The Indian subsidiary of Netflix appealed the Court on grounds of its territorial jurisdiction and held under Section 12A of the Commercial Courts Act, 2015 that pre-suit mediation was compulsory. The Madras High Court denied such objections and determined that greater portion of the cause of action was occurring in Chennai and that urgency warranted the avoidance of mediation.

The heart of the conflict is the Artist Agreement of 2014 that allegedly transferred the rights associated with performance to the producer. The defence argues that the tape was made on a personal device and this puts an issue on the area of contract and performer rights. This paper discusses whether the use of such use constitutes infringement under Indian law and whether performance assignment under contract eliminates performer autonomy.

## **FACTUAL MATRIX AND PROCEDURAL HISTORY**

The controversy is a result of the Tamil film *Naanum Rowdy Dhaan* (2015), a film produced by Wunderbar Films Pvt. Ltd., associated with actor-producer Dhanush, and directed by Vignesh Shivan, and starring Nayanthara. It was a successful commercial and personally meaningful project because this was the start of the relationship between Nayanthara and Vignesh Shivan.

Before the production, in 2014 Nayanthara signed an Artist Agreement with Wunderbar Films. The agreement purportedly transferred to the producer, placed before the Court, and said to have been the one assigning all rights in connection with her performance, appearance, likeness, and voice in relation to the film, stated it to have been perpetual. Later the area of this assignment became the focus of the argument.

Netflix issued the documentary *Nayanthara: Beyond the Fairy Tale* in November 2024. After the release of the trailer on 9 November 2024, Wunderbar claimed that a three-second behind-the-scenes (BTS) film clip belonging to the movie had been repackaged on 31 October 2024 with no permission given. A lawsuit was filed in which they wanted the clip and Rs. 10 crore damages removed. The Netflix was published on 18 November 2024, even though Netflix itself refuses to own the footage and claims that it was personal.

Wunderbar petitioned before the Madras High Court on 24 November 2024 under the Copyright Act, 1957, Sections 55 and 62, with Clause 12 of the Letters Patent, for injunction and damages, on a commercial suit. Netflix appealed territorial jurisdiction and referred to the Section 12A of the Commercial Courts Act, 2015. The Court overruled such objections on 28 January 2025 and found itself to have jurisdiction properly and permitted the suit to continue on merits.

## **PERFORMERS AND PRODUCER RIGHTS**

The conflict between the rights of the performer and the producer is one of the most complicated lines of fault in the copyright legislation of a cinematograph film. Although the Copyright Act, 1957 organically vests in the producer under the Sections 2(d) (v) and 17 of the Act the status of the first owner of a cinematograph film, it also acknowledges the independent right of performers under the Sections 38 and 38A. The current controversy

demands a close study on the manner in which these rights relate, touch each other as well as possibly wipe each other out by contractual means.

The rights of performers were implemented in order to remember original expressive contributions of actors, singers, dancers, and other performers. Section 2(qq) is used to define an actor as a performer and section 38(1) provides the performer with exclusive rights in the recording, reproduction as well as communication of their performance. This framework was reinforced by the 2012 Amendment, which added Section 38A giving exclusive economic rights akin to copyright that had a duration of fifty years under Section 38(2). Section 38A(2) however gives express permission to assign these rights at will, through agreement, and this is indicative of the acceptance of contractual assignment of these rights as a means of consolidation of rights in film production by the legislature.

Assignments are also governed by section 18 and 19 where it must be written and signed. In the case of unspecified assignment, although it is considered to have a term of five years, contracts that explicitly provide the granting of rights in perpetuity are largely enforceable unless they are against the statutory provisions or against the public policy. Section 17 serves to strengthen producer control in cinematograph films, and artist broad Agreements assigning all rights of every kind can arguably place both copyright and performer rights in both producer.

However, autonomy of performers is not automatically incorporated by enforceability. The interpretation of the contract is a decisive point: in case the agreement refers to all the records made at the time of production, the producer has more significant grounds in case only the finished film, the rest of the rights can be left over. Even though the primary safeguards of moral rights in Section 57 are the protection of the authors, there is still an indication of personality interests in creative expression. Although performers do not enjoy as strong statutory moral rights, the conceptualisation of personality theory makes it difficult to understand performance as purely transactional and poses questions about where the assignment of a personality can be limited to.

## **THE QUESTION OF LAW: IS A PERFORMER UNDER A CONTRACTUAL SILENCE?**

The main normative issue is whether a performer having delegated rights under Sections 38A, and 18 of the Copyright Act, 1957 can be contractually barred against the use of footage in relation to her own life experience when producing the film. This should be construed literally though in the event that the performance was filmed as part of a cinematograph-film and was properly assigned, then the producer may exercise the exclusive rights under Section 14(d).

But nowadays, on the digital plane, the line between professional acting and personal storytelling is unclear. A biographical documentary is not only a commercial derivative work but also a self-representation. In the case when all the footage produced in the course of production is subsumed under the ownership of producers, performers might be deprived of visual access to the formative stages in their careers.

The Indian copyright law currently solves this tension towards the clarity of contract instead of autonomy of the performers per se. Although in Section 38 and 38A the rights of performers are identified, the Act still allows assigning them without the protection of their rights as it is provided to lyricists and composers post the 2012 Amendment.

Therefore, a performer can in theory be barred against the use of performance related footage, based on the nature of assignment under Sections 18 and 19, whether the footage is contained within Section 2(f), and an exception contained in Section 52. The case indicates that there was a structural imbalance which can be subject to more judicial and legislative review.

### **A. SECTION 52 ANALYSIS**

Subsection 52(1) (a) contains that a fair dealing making use of a copyrighted work, which is not a computer programme, on the ground of a private or personal use, criticism, review, or reporting on current affairs is not a violation of copyright infringement. The statutory wording is more restrictive than the open-ended American doctrine of fair use and the Indian courts have been known to interpret these categories with restraint.

#### **(i) Criticism and Review**

The first question relates to the interpretation of whether a biographical documentary amounts to both criticism and review in the sense proposed in the meaning of Section

52(1)(a). Indian courts have accepted that criticism and review must not be confined to literary commentary as they can also be applied to audiovisual work and visual quotations. Nonetheless, the application should be closely related to assessive commentary.

A biographical documentary tends to place the previous films in the career path of an actor. In case, the impugned clip is employed to demonstrate the role of a given film in influencing the personal or professional life of the actress, one can make an argument that the clip constitutes a reflective story. However, the language of the statute implies that the dealing should be actually critical/analytical. Illustration or nostalgic memory may not be enough to meet the threshold.

Therefore, the defence of criticism or review can be subject to doctrinal restrictions, unless the documentary makes an express evaluation commentary in respect to the movie Naanum Rowdy Dhaan.

It is required that currently occurring events be reported through the use of explicit expressions.

### **(ii) Reporting of Current Events**

It is a requirement that presently occurring events must be reported using explicit expressions. The defence of reporting in Section 52(1)(a)(ii) is unlikely to work, because a biographical documentary about past life events does not usually amount to reporting current affairs. The statutory clause reflects on news reports and not on reflexive histories.

### **(iii) Biographical Documentation: A Statutory Loophole?**

A less obvious question is whether biographical documentation is the subject matter of the conceptuality of criticism or review. The Indian law does not explicitly define a separate exception of biographical use. Nevertheless, the purposive interpretation has been applied in some occasions by courts that admit that fair dealing should be evaluated within a context.

A documentary, which traces the life of a performer, could possibly include the commentary of the cultural and professional conditions of previous works. However, without express critical use this use can be described as commercial reproduction instead of fair dealing.

As such, Section 52, in its doctrinal form, does not obviously fit biographical story-telling unless the application thereof can be to serve a purpose of critique, analysis or transformative comment.

## **B. COMMERCIAL NATURE TEST**

The Indian courts which are a closed-list exception model have still taken into account factors similar to those applied in the common law jurisdictions in determining fairness. These are the intention of use, the type of work, the quantity utilized and the market impact.

### **(i) Market Substitution**

Among the most crucial would be the impugned use replacing the original work or damaging its possible market. Section 14(d) gives the producer exclusive rights of communication to the populace. In case the documentary uses a brief clip that lowers the licensing worth of the movie or replaces approved snippets, harm in the market can be assumed.

In the current scenario, a three-second film will not pose a threat to the requirement of the full length movie. Such minimal use of the narrative substance of the film cannot be consumed by the viewers. Thus, considering substitution, the documentary does not have a direct competition with the cinematograph film.

Nonetheless, the derivative licensing markets are also under the copyright law. In case producers habitually sell BTS material independently, unauthorised inclusion can purportedly have an impact on that secondary exploitation. The burden of proving such harm would however lie on the plaintiff.

### **(ii) Transformative Use**

Even though the Indian law does not specifically use the term transformative use, courts have indirectly considered the question of whether the secondary work is adding some new meaning or context. When the clip is not utilized in the same manner as it was utilized initially as a form of entertainment but instead to place the personal story of the actress in relation to her career path then the intention is not the same as the original film.

It is a transformation, but not change of the footage, but recontextualisation. The clip itself is historical evidence in the context of a documentary as opposed to a fictional storyline. It is

still unclear whether or not the fact of mere contextual transformation is merely sufficient in the doctrine of fair dealing that is applicable in India.

### **(iii) Public Interest**

There have been instances that courts have applied public interest grounds especially when expression has informational or cultural purposes. A biographical documentary adds cultural discourse because it records artistic journeys. However, the interest of the people cannot work against express rights of statutory rights unless the employment is squarely under Section 52.

Therefore, although commercial character does not necessarily imply the absence of fairness, the profit-driven character of a Netflix documentary makes it difficult to depend on fair dealing. Indian jurisprudence has taken a general approach of commercial exploitation to prefer fairness, but not necessarily determine them.

## **C. COMPARATIVE APPROACH**

The contrasting lens explains the difference between the Indian and American law in terms of doctrines. The US four-factor fair use doctrine (under 17 U.S.C. SS107) takes a flexible test, which expressly incorporates transformative purpose as its main enquiry. The courts have supported the documentary uses of copyrighted material when the secondary work offers some new expression, meaning or message.

In cases such as Campbell case, the US Supreme Court stressed the importance of transformation instead of commerciality in *Acuff-Rose Music*. This wider interpretation method has been the advantage of documentary filmmaking in the United States, especially when it comes to historical or critical purposes of the use of footage.

The UK, in its turn, has a fair dealing system more resembling the one in India, but the courts have sometimes interpreted the criticism and review in a broader way.

Section 52 of the statutory structure in India is relatively closed-ended. Whereas there is the interpretational flexibility, there are listed categories that have to be adhered to by the courts. Hence, without a legislative change, transformative recontextualisation is not always enough unless it is in accordance with accepted intents like the intent to criticize or to review.

## THE DOCTRINAL ANALYSIS OF THE CURRENT QUESTIONS

### Is it biopic documentation critique or criticism?

It might be qualifiable when documentary critically criticises or analyses the effect of the film. In case the clip is simply a demonstration of personal memory without any evaluative participation, it can be out of Section 52(1)(a).

Does the documentary compete with the original film?

Under the substitution perspective, the film is not replaced by a three-second clip. Nevertheless, the possibility of influence on the ancillary licensing markets can not be excluded completely.

### Is three seconds market bad?

Claims of economic harm are undermined by quantitatively minimal use. Qualitative significance can still be claimed, though, when the clip is recording something unique or of commercial value.

Finally, fair dealing defence will be successful when it can be shown that its use is within the statutory purposes section of Section 52, that the use does not substantially interfere with rights of Section 14(d) and that its transformative or contextual nature does not outweigh its commercial nature.

## THE INDIAN COPYRIGHT LAW DOCTRINE OF DE MINIMIS

Beyond statutory exemptions in Section 52 of the Copyright Act, 1957 Indian copyright jurisprudence is aware of the common law exception of de minimis non curat lex--the law does not bother with trifles. This doctrine is a judicial sieve, with only the trivial or insignificant infringers not having to face any liability under Section 51, despite the possibility of technical infringement being established. The doctrine becomes especially important in a conflict that concerns short audiovisual excerpts.

**Court of Law Recognition:** *India TV v. Yash Raj Films: India TV Independent News Service Pvt. Ltd. v. Yash Raj Films Pvt. Ltd. (2012)* is the most important case on de minimis in Indian copyright law. In that regard, short messages of copyrighted music were utilized in a television show without permission. The Delhi High Court was of the opinion that not all

unauthorised use should be subject to liability trivial or nominal use can be within the range of a de minimis.

The Court expressed a five-factor test that is structured to answer whether the doctrine is applied or not:

- i. The magnitude and nature of the damage done.
- ii. The cost of adjudication
- iii. The intention of the breach of the law.
- iv. The impact on the legal rights of the plaintiff.
- v. The intent of the defendant

The test ascertained an element of analytical rigour into the Indian copyright law, in taking the inquiry further, beyond the duration of use, to the contextual harm and purpose.

### **QUANTITATIVE VS QUALITATIVE IMPORTANCE**

One of the concerns about the application of de minimis is whether it should be quantitative (duration/extent) or qualitative (importance of the portion used).

Quantitatively, a three-second clip is facially small especially when it comes to a full length feature film that spans a series of hours. The excerpt is a statistically insignificant portion of the entirety, in numerical terms. Jurisdictions have accepted that brevity favours triviality.

Nevertheless, Indian courts have warned that brevity is not a determinant factor. Even a short passage can be qualitatively important in case it gets to the heart or the most distinctive part of the work. The Delhi high court in India TV pointed out that triviality is to be determined with respect to content and significance of the work.

In deciding whether three seconds is substantial, therefore, the question is:

Does the clip have any pivotal or iconic scene?

Does it reproduce individual expression of creativity that is at the heart of the film?

Is it commercially or promotional independent?

In a case when the clip simply involves a briefly shot behind-the-scene situation, with neither story nor commercial substance, it can fall below the qualitative threshold of substantiality.

### **APPLICATION TO THE CURRENT SITUATION**

Doctrinally, the use of the five-factor test would be:

### **(1) Size and Type of Harm**

The damage to the economy seems constrained in the event that the clip does not replace the film or it does not reduce the film worth in license under Section 14(d). Being featured in a documentary, even during a three-second inclusion, is unlikely to have any impact on the box-office revenues or streaming demand. Nevertheless, when producers tacitly utilize BTS shots as a commercial entity, they can argue harm as it applies to that collateral market.

### **(2) Cost of Adjudication**

The financial resources allocated to judge the liability in three seconds can seem inappropriate. The doctrine is used to ensure that the law is not used in minor conflicts. However, when a claim of Rs. 10 crores is a claim being put forward the litigation point of view can not be considered trivial.

### **(3) Nominal Object of the Legal Obligation**

The copyright law safeguards economic interests and creativity rights. Strict enforcement might seem extreme in case the use does not substantially hamper these objectives. Nonetheless, the intention to circumvent licensing regulations could destroy contractual discipline within the industry.

### **(4) Impact on the Plaintiff on Legal Rights**

The infringement might be trivial should the exclusive rights of the producer in Section 14(d) be still in business. On the other hand, the interests of the plaintiff in the control of the clip can be significantly influenced in case there is a larger tendency of unauthorised usage.

### **(5) Intent of the Defendant**

Will presupposes importance. In case the defendants possessed knowledge of the clip they were using even after a refusal of No Objection Certificate (NOC), the act may not be treated as an innocent and accidental act. In cases where infringement is intentional, the courts have been not willing to apply de minimis.

### **Is Emotional Significance Important?**

The question that is emerging is whether the de minimis analysis should be based on emotional or symbolic value of the clip. As an example, when the clip catches a moment of the start of a personal relationship that is the focus of the narrative of the documentary, then the emotional intensity might be more than the temporal insignificance.

Copyright law however does not safeguard sentiment but expression. Emotional appeal does not necessarily enhance economic substantiveness. Emotional significance alone might not prevail over the de minimis defence, unless the clip constitutes some form of special creative expression which is safeguarded by Section 14(d).

### **Does Pre-emption of NOC Abrogate De Minimis?**

The previous denial of permission is a complication. In the event that the plaintiff did specifically refuse authorisation and the defendants went ahead anyway, the aspect of intentional infringement is really high. Although de minimis looks at triviality of harm, when rights are deliberately ignored, just sympathy may be undermined.

However, the doctrine is not suppressed only due to refusal of permission. The legal question is whether it was the use which is legally trivial in effect, rather than whether it was authorised by the contract. The courts have to draw the line between wilful and inconsequential infringement the former could get more severe remedies despite its limited time.

### **ANALYTICAL ASSESSMENT**

The reason as to whether three seconds is substantial or not, all depends on the qualitative assessment and provable harm. A plausible case is that in the event that the clip is incidental, non-central, and non-substitutive, it is within the de minimis limits. Nonetheless, when used purposefully when the NOC has been declined, it could shift the judicial discretion against trivialisation.

It follows that the doctrine acts as a restraint mechanism: it will not allow excessive copying of copyright in trivial instances, but it does not shield the wilful misuse of copyrighted material. Its use in this conflict would entail judicial discretion of a fine balance between quantitative and qualitative insignificance as applied to Section 51 and Section 14(d).

### **CONTROVERSY JURISDICTION CLAUSE 12 AND SECTION 62**

The substantive copyright issues are not as important as the procedural aspect of the conflict. The defendants especially the Indian branch of Netflix attacked the sustainability of the suit on the basis of territory and procedure before the Madras High Court. The dispute necessitated the judicial redress of the Copyright Act 1957, Clause 12 of the Letters Patent

and Clause 12A of the Commercial Courts Act 2015 as well as the principles of composite cause of action in intellectual property litigation.

#### **A. Sec. 62 of the Copyright Act, 1957**

In section 62(1) it is stated that any suit or civil proceeding, which occurs under the Act, should be initiated in the district court with jurisdiction over the matter. More importantly, the section 62(2) establishes another forum convenience which, by allowing the plaintiff to commence proceedings in the district court in which the plaintiff resides or conducts business voluntarily and actually, provides such a court with jurisdiction to provide a more convenient forum. This is contrary to the general rule in a case as provided by Section 20 Code of Civil Procedure 1908, ordinarily attaching the personal jurisdiction to the whereabouts of the defendant or to the place of occurrence of the cause of action.

In *Indian Performing Rights Society Ltd. v. Sanjay Dalia*, the Supreme Court explained that the Section 62 did not establish unlimited forum shopping, but an additional forum on which they were subject to a real connection. The lawmaking purpose was to lighten the load on copyright owners as opposed to enable them to invoke foreign jurisdiction at will.

In the case at hand, Wunderbar Films was conducting its business in Chennai, and it is there that the movie Naanum Rowdy Dhaan was produced and released. Section 62(2) therefore provided a legal point of reference to invoke the jurisdiction of the Madras High Court.

#### **B. Clause 12 of Letters Patent**

Besides Section 62, the plaintiff also made appeal to Clause 12 of the Letters Patent of the Madras High Court that regulates the original civil jurisdiction of the Court. Clauses 12 allow the High Court to take suits in which the cause of action is entirely or in part within its territorial jurisdiction. Where a part of the cause of action originates within the area of jurisdiction and part without, permission of the Court to implead defendants located beyond the territorial limits of the Court is necessary.

The entity of Netflix, Los Gatos Production Services India LLP with its registered office in Mumbai argued that the High Court had no jurisdiction and requested to be revoked of leave given under Clause 12. Nevertheless, the Court scrutinized the existence of a substantial portion of the cause of action that was committed in Chennai.

The Madras High Court retained jurisdiction on the account that:

- a. It was signed in Chennai in the Artist Agreement
- b. The movie was created and premiered at Chennai
- c. The purported copyrighted thing came into being there
- d. The impugned documentary was published and watched in Chennai
- e. The plaintiff was in business in the territorial boundaries.

All these factors led to an adequate jurisdictional nexus. The Court therefore affirmed that the Clause 12 when coupled with Section 62 actually permitted it to hear the suit even though the registered office of the defendant was in a different place.

### **C. DOCTRINE OF ELECTION**

Another defense adopted by the defendants was the doctrine of election which stated that the plaintiff could not at the same time invoke Section 62 of the Copyright Act and Clause 12 of the Letters Patent. The doctrine of election tends to prevent a party to take inconsistent remedies which are as a result of the same cause of action.

Nevertheless, courts have always maintained that statutory remedies and jurisdictional provisions are not mutually exclusive and could exist together. Section 62 vests another forum Clause 12 controls the High Court territorial jurisdiction. The invocation of the two is not equal to seeking remedies that are not consistent but one that is cumulatively based on jurisdiction.

The Madras High Court based on the precedents of an intellectual property suit dismissed the plaintiff on the grounds that he was bifurcating causes of action. Invocation of dual basis of jurisdiction did not contravene the doctrine of election since one composite suit was filed.

### **D. PRE-SUIT MEDIATION IN SECTION 12A OF COMMERCIAL COURTS ACT**

Another procedural objection was also made pursuant to Section 12A of the Commercial Courts Act, 2015, which requires pre-institution mediation on commercial disputes of a certain value unless immediate interim relief is applied. The defendants argued that the plaintiff had never taken the compulsory mediation before initiating the suit.

Section 12A(1) provides that in case of no urgent interim relief contemplated, mediation is obligatory. The statutory exception is therefore based on urgency. Courts, in intellectual

property cases, have acknowledged that continued infringement, especially the digital arena, could require urgent judicial action.

The Madras High Court ruled that the so called unauthorised streaming of copyrighted footage amounted to ongoing violation under Section 51, hence warranting urgent relief. OTT streaming is real-time, cross-boundary, and has the potential to generate a viral spread in minutes. Under these conditions, a mediation that may take a long time may render injunctive relief useless.

Therefore, the Court granted the applicability of the urgency exception and the lack of the pre-suit mediation did not make the suit barren.

### **OTT STREAMING AND TERRITORIAL CAUSE OF ACTION**

Jurisdictional analysis is complicated by the digital dimension. OTT streaming also erodes the geographical boundaries because at the same time, the content is available in multiple jurisdictions. It has become more accepted by the courts that where infringement material is available and commercially used in a given territory, a portion of the cause of action exists in that territory.

Accessibility and commercial impact in Chennai under Clause 12 and Section 62 was good enough to prove jurisdiction. The rationale developed by the Court represents a course of a changing attitude to the territoriality of the digital age taking into account the fact that streaming sites and services create cause of action wherever the content is accessible and watched.

### **CONCLUSION ON JURISDICTION**

The Madras high Court allowed itself to maintain the jurisdiction by interpreting harmoniously Section 62 of the Copyright Act, Clause 12 of the Letters Patent and Section 12A of the Commercial Courts Act. It discovered a large territorial nexus, rebuffed the doctrine of election argument, and was aware of the urgency of continuing digital infringement.

The case on jurisdiction highlights a significant change in doctrine: in the era of OTT streaming, the physical location of production no longer forms the basis of the cause of action of territories, but the accessibility of video on the Internet and its commercial availability.

## **COPYRIGHT PROTECTION: THEORETICAL JUSTIFICATION**

In addition to the interpretation of the Copyright Act, 1957, in terms of its doctrinal beliefs, the ongoing conflict encourages the interaction with the normative basis of the copyright protection. The producer/ performer conflict of control and autonomy is not simply contractual but also indicative of more intricate philosophical arguments about labour, personality, economic incentives and public access. The theoretical aspects of analyzing the controversy allow a more sophisticated perspective on the fact that absolute proprietary control even over the smallest footage is not in line with the intentions of the copyright law.

### **A. Lockean Labour Theory**

According to the Lockean theory of labour, a person becomes a property owner, when he combines labour and resources. In cinematograph films, producers are putting their financial resources, organisational expertise, and entrepreneurship risk. In Section 2(d)(v) and Section 17, the producer is declared author and first owner of the cinematic film which is a labour-investment reasoning.

In this sense, the assertion by the producer of BTS footage is valid since all the production environment in terms of sets, costumes, crews, and logistics were produced under the labour and capital of the producer. Although the clip is short, it is a product of a well-organized ecosystem that was financed and planned by the producer. The transfer of rights under an Artist Agreement in the Section 18 and Section 19 are, therefore, a contractual conglomeration of labour-reliant ownership.

Lockean theory however, goes to fit the claim by the performer as well. The work of an actor is a creative one in the rendition of a role. When the controversial footage contains expressive performance recorded separately, it can be said that the performer has injected her own labour into that recording. The Lockean model is therefore not unambiguously biased towards producer dominance, but the system of investment into labour is exhibited to be overlapping.

### **B. Utilitarian Theory**

The utilitarian theory, commonly understood as economic justification of the copyright, considers protection as a tool of incentive to ensure creativity and innovation. Section 14(d)

is exclusive and grants producers the ability to recover investment and make returns, thus motivating them to produce more films.

Their control over ancillary content like BTS footage is out of their ownership, so the argument goes, their capacity to monetise intellectual property may suffer. Such protection can be considered needed in those industries where financial risk is high to maintain output.

However, social welfare and benefit to the population is also taken into consideration by utilitarianism. Biographical documentaries serve a purpose in cultural dialogue, in recording the artistic journeys. Banning any incidental filming will deter documentary narratives and history. Utilitarian interests can be compromised instead of being achieved in the event the application of exclusive rights under Section 51 silences narratives of cultural value at the cost of insignificant harm to the economy.

Therefore, the utilitarian analysis entails striking a balance between incentives of producers and access to the culture history by people.

### **C. Theory of Personality (Hegelian View)**

The Hegelian-founded personality theory of property calls on the personality and identity of the people who create their works of art and design as creative art. The protection of a copyright therefore does not protect only economic interests but personal expression.

In Indian law, the right to integrity and attribution is well represented in moral rights in Section 57 which safeguards the right of the author despite the assignment. Even though the rights of performers in Section 38A are largely economic, the philosophical rationale of the personality theory is much more reminiscent in the conflict regarding biographical documentation.

The performances are interwoven in the life and artist development of a performer. A filming on a set can be more than a commercial one it can be a constituent of her personal story. Complete proprietorship on the side of producers will lead to the diminishing of expressive identity to contractual commodity.

Contractual silencing, in the personality-theory perspective, of a performer on account of their never mentioning of the influential work experiences of their initial professional years,

may be incompatible with expressive freedom of creative labour. Although Section 18 allows assignment, the personality theory warns that such assignment should not be taken in the broad sense of eliminating the individuality in the performance.

#### **D. Economic Incentive Theory**

Economic incentive theory, which is closely connected with utilitarianism, is more market-oriented, which is why it focuses more on the rights being distributed to that party that is in the best position to utilize them and handle them effectively. The rights are usually packaged by producers to facilitate easy licensing, prevent fragmentation and transaction costs.

Commercial exploitation, distribution and enforcement is made easy with the centralised ownership under Section 17. In this perspective, the identification of fragmented rights in the ancillary footage may lead to more litigation and uncertainty hence hampering the economic efficiency.

Nonetheless, digital technology has decreased the cost of transaction, and alternative forms of licensing have been made possible. Documentaries may not disfigure producer revenue streams as they use short excerpts. The theory of economics thus endorses proportionality: punishment must be equal to quantifiable damages.

#### **PRODUCER CONTROL VS PUBLIC ACCESS CRITICAL EVALUATION**

The conflict ends up capturing an imbalance in structure. The Indian copyright law closely favors the control of the producer by statutory authorship and assignment. This model prevents overreach of property when it is used to protect trivial or historically contextual applications, although it might cause overreach.

The biographical film is a form of cultural documentation and has a public role to play. Extreme measures of enforcing proprietary rights will convert copyright into a kind of cultural censorship and not a creative incentive.

On the other side, producer rights can be weakened, which will discourage investment and the interconnected character of film production. The issue is to adjust exclusivity in order to avoid undeserved personal or incidental monopolisation of expression.

## **CULTURAL DOCUMENTATION OR PROPRIETARY MONOPOLY?**

The digital age makes it harder to distinguish between proprietary audiovisual media and personal memory of archives. A three-second film, possibly a safeguarded visual document at the signing of Section 2(f), may also be a bit of lived artistic history.

According to the theoretical frameworks, copyright should not solidify itself into proprietary monopoly of absolute quality, without regard to its grounds of justification. Protection is supported by Lockean labour, utilitarian welfare, the expression of personality, and economic efficiency but none requires unqualified exclusivity in situations where the harm is low and the expressive value is high.

The current debacle therefore reveals the sensitivity of doctrines: the copyright must obtain incentives and investment without preempting the lawful cultural narration. The theoretical underpinnings of these aspects need to be balanced to ensure the survival of the creative markets as well as creative expressiveness of these contemporary audiovisual ecosystems.

## **POLICY REFORM ANALYSIS AND RECOMMENDATIONS**

The current debacle reveals the structural uncertainties of the Indian copyright legislation on ancillary footage, autonomy of performers and exploitation in digital format. Although the Copyright Act, 1957 offers an in-depth framework of the laws in 2(f), 14(d), 17, 38 and 38A, it does not clearly stipulate behind-the-scene (BTS) recordings, or the growing overlap between cinematograph feature films and biographical recording in the OTT age. The conflict consequently presents a chance to pay attention to specific reforms.

### **A. Unambiguous Statutory Treatment of BTS Footage**

Section 2(f) of the Act now describes a cinematograph film in a very broad way as an item of visual recording, and makes no differentiation between final edited material and ancillary material. This breadth creates confusion in its ability to establish that the contents of BTS will automatically become a part of the copyright of the producer. The clarification than can be carried out by legislation would clarify whether the raw, incidental, or personal recording made in the production would be presumingly a part of the cinematograph film or separate works based on the authorship and control. An explanatory statute protruding under Section 2(f) or Section 17 might minimise the interpretation ambiguity and eliminate future the lawsuits.

## **B. Clarification of the Rights of Performer**

Although Sections 38 and 38A are acknowledging the rights of performer, Section 18 of the statute allows unlimited assignment. The performers do not have similar protections as the lyricists and the composers who have statutory royalty protection after the 2012 amendment. One possible reform would be a non-waivable right, limited to a few excerpts of their own performance, to use such excerpts for autobiographical or archival purposes, on reasonable conditions. Such a proviso would not expropriate producer ownership in Section 14(d) but would only maintain a skinny expressive autonomy.

## **C. De Minimis Statutory Codification**

The doctrine of de minimis currently works based on judicial precedent instead of text. Empowering some form of clear wording to explain that trivial or insubstantial use is not infringement under Section 51 may help to foster predictability. Enforcement would be appropriate to proportionality when a codified threshold, perhaps based on provable harm to the market, is applied to such litigation, and frivolous litigation on trivial excerpts would be reduced.

## **D. Carve out Biographical Limited Works**

Considering the emergence of documentary storytelling, Parliament might seek to embody a very limited exception in Section 52 that allows reasonable use of short snippets of copyrighted material in bona fide biographical or historical works, but does not materially impact on the rights owner. Other jurisdictions have similar solutions in form of flexible fair use. Such change would balance proprietary protection with the culture recording.

## **E. Balanced licensing Frameworks**

Statutory reform may be enhanced by industry solutions. Transactions Standardised licensing systems of short archival clips, in particular those to be used in documentaries, may lessen transactional friction. The collective management or micro-licensing approaches would enable the producers to commercialise excerpts without hindering the creative projects.

Finally, reform should strike the right balance between protection of investments and expressive freedom. The clearance of statutory ambiguities would maintain the economic incentive and at the same time guarantee the development of the copyright law in tandem with the digital narration of stories, as opposed to holding them in bondage.

## CONCLUSION

The case study discussed in this paper is at the boundary of statutory interpretation, contractual division, and emerging digital realities. It involves the reconciliation of three fundamental elements of the Copyright Act, 1957, the authorship and ownership of the cinematograph films by the producer under Section 2(d)(v), 2(f), 14(d) and 17 the assignability and recognition of the rights of performers under Section 38 and 38A and the working of statutory and common law limits, including Section 52 (fair dealing) and, the doctrine of de minimis.

The legal system highly favors producer control. The wide scope of the definition of a cinematograph film as any piece of work of visual recording under Section 2(f) in conjunction with the fact that the producer is the first owner under Section 17 give substantial grounds on the claim to footage created during production. Under the provisions of Section 18 and 19 where an Artist Agreement lawfully transfers the right in performance in perpetuity, the standing of the producer seems to be doctrinally safe. According to this interpretation, BTS footage can be part of the copyrighted work of the producer.

The defence however does not give up force. The doctrine of de minimis which was expressed in *India TV v Yash Raj Films* brings about proportion in infringement analysis. A three second video that does not replace and does not cause any harm to the market can be considered insubstantial. Also, Section 52 begs the analysis of purpose and context documentary production is not the same as entertainment reproduction.

Although the arguments used by the producer seem to be more convincing based on the current framework, de minimis and contextual transformation defences can also have an effect on liability and relief in cases of minimal economic damages. After all, the controversy highlights a larger issue, namely the manner of copyright law to address emerging narrative forms in an era where individual history, commercial cinema and streaming around the world are in even greater flux.

## REFERENCES

1. Aplin, T., & Davis, J. (2017). *Intellectual property law: Text, cases, and materials* (3rd ed.). Oxford University Press.

2. Balganes, S. (2013). The normativity of copying in copyright law. *Duke Law Journal*, 62, 2035.
3. Bently, L., & Sherman, B. (2018). *Intellectual property law* (5th ed.). Oxford University Press.
4. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).
5. CaseMine Editorial Team. (2025, January 29). *Jurisdictional reach under clause 12 of the letters patent in copyright disputes*. CaseMine. <https://www.casemine.com/commentary/in/jurisdictional-reach-under-clause-12-of-the-letters-patent-in-copyright-disputes/view>
6. CaseMine Editorial Team. (n.d.). *Jurisdictional reach under clause 12 of the letters patent in copyright disputes*. CaseMine. <https://www.casemine.com/commentary/in/jurisdictional-reach-under-clause-12-of-the-letters-patent-in-copyright-disputes/view>
7. Code of Civil Procedure 1908, s 20
8. Commercial Courts Act 2015, s 12A.
9. Commercial Courts Act 2015, s 12A.
10. Copinger and Skone James, *Copinger and Skone James on Copyright* (18th edn, Sweet & Maxwell 2022).
11. Copyright Act 1957, s 14(d).
12. Copyright Act 1957, s 17.
13. Copyright Act 1957, s 2(d)(v).
14. Copyright Act 1957, s 2(f).
15. Copyright Act 1957, s 52(1)(a).
16. Copyright Act 1957, s 57.
17. Craig, P. (2005). Theory, “pure theory” and values in public law. *Public Law*, 440.
18. Gordon, W. J. (1982). Fair use as market failure: A structural and economic analysis. *Columbia Law Review*, 82, 1600.
19. Hughes, J. (1988). The philosophy of intellectual property. *Georgetown Law Journal*, 77, 287.
20. *India TV Independent News Service Pvt. Ltd. v. Yash Raj Films Pvt. Ltd.*, 2012 (53) PTC 547 (Del).
21. *Indian Performing Rights Society Ltd. v. Sanjay Dalia*, (2015) 10 SCC 161.

22. IPLF. (2025, March 19). *Copyright laws and fair dealing: Analysing the ongoing dispute between Dhanush and Nayanthara*. IP and Legal Filings. <https://www.ipandlegalfilings.com/copyright-laws-and-fair-dealing-analysing-the-ongoing-dispute-between-dhanush-and-nayanthara/>
23. Kotni, R., Pandey, S., & Arora, I. (2025). *Case analysis: Dhanush v. Nayanthara – Legal perspectives and implications*. LEXPORT. [https://www.lexport.in/images/1741078573\\_Article%20ICASE%20ANALYSIS%20DHANUSH%20V.%20NAYANTHARA%20%E2%80%93%20LEGAL%20PERSPECTIVES%20AND%20IMPLICATIONS.pdf](https://www.lexport.in/images/1741078573_Article%20ICASE%20ANALYSIS%20DHANUSH%20V.%20NAYANTHARA%20%E2%80%93%20LEGAL%20PERSPECTIVES%20AND%20IMPLICATIONS.pdf)
24. Makaria, S., Sharma, S., & Nair, N. A. (2024, December 17). *The price of a moment: Nayanthara & Dhanush's legal feud*. LiveLaw. <https://www.livelaw.in/law-firms/law-firm-articles-/nayanthara-dhanush-naanum-rowdy-dhaan-netflix-wunderbar-films-copyright-act-278557>
25. Merges, R. P. (2011). *Justifying intellectual property*. Harvard University Press.
26. Nair, A. S. (2025, February 26). *Madras High Court rejects Netflix's jurisdiction challenge in Dhanush's Wunderbar Films copyright case*. Suns Legal. <https://sunslegal.com/2025/02/26/madras-high-court-rejects-netflixs-jurisdiction-challenge-in-dhanushs-wunderbar-films-copyright-case/>
27. Nair, N. A. S. (2025, February 26). *Madras High Court rejects Netflix's jurisdiction challenge in Dhanush's Wunderbar Films copyright case*. Suns Legal. <https://sunslegal.com/2025/02/26/madras-high-court-rejects-netflixs-jurisdiction-challenge-in-dhanushs-wunderbar-films-copyright-case/>
28. Narayanan, P. (2017). *Copyright and industrial designs* (4th ed.). Eastern Law House.
29. Ramakrishnan, B., & Vashist, D. (2025, January 6). *Nayanthara and Dhanush copyright controversy: De minimis rule to the rescue?* SpicyIP. <https://spicyip.com/2025/01/nayanthara-and-dhanush-copyright-controversy-de-minimis-rule-to-the-rescue.html>
30. Ramakrishnan, B., & Vashist, D. (2025, January). *Nayanthara and Dhanush copyright controversy: De minimis rule to the rescue?* SpicyIP. <https://spicyip.com/2025/01/nayanthara-and-dhanush-copyright-controversy-de-minimis-rule-to-the-rescue.html>
31. Scaria, A. G. (2014). Copyright and creativity in the Indian film industry. *Journal of Intellectual Property Rights*, 6, 321.

32. Scaria, A. G. (2024, November 29). *The Dhanush-Nayanthara dispute and copyright law*. The Hindu. <https://www.nls.ac.in/publications/the-dhanush-nayanthara-dispute-and-copyright-law/>
33. Sivakumar, R. (2025, January 28). *Madras HC rejects Netflix's plea to dismiss Dhanush's copyright lawsuit over Nayanthara documentary*. The New Indian Express. <https://www.newindianexpress.com/cities/chennai/2025/Jan/28/madras-hc-rejects-netflixs-plea-to-dismiss-dhanushs-copyright-lawsuit-over-nayanthara-documentary>