5-7-2007

Bollywood is coming! Copyright and Film Industry Issues Regarding International Film Co-Productions Involving India

Timm Neu
Ph.D candidate at Humboldt Universität zu Berlin, timmneu@yahoo.de

Bollywood is coming![*]

Copyright and Film Industry Issues regarding International Film Co-Productions involving India

by Timm Neu[1]

A. Introduction

The Indian film industry produces more movies than any other and is characterized as being on the threshold of emerging as a big market internationally with an expected growth rate of close to 20% per year. Its regulatory and legal mechanisms are developing rapidly to keep pace. In 2001, the film industry was granted "industry" status, which has helped to move it to more professionally approach financing, production and other allied activities[2].

Indian "Bollywood" cinema with its romantic plots, energizing music, state of the art apparel (in contrast to the other Indian film centres Tolly-, Solly- and Nollywood) and colourful costumes and panoply has made its way into western markets. In those with large Indian ex patriot populations, such as the U.K., the U.S. and Canada, Bollywood cinema has naturally had its (niche) position for a long time. Consequently, there have been a number of international (co-)productions examining the situation of the Indian diaspora such as "My Beautiful Laundrette" (1984), "Sammy and Rosie Get Laid" (1987), "Mississippi Masala" (1991), "Salaam Bombay" (1988) or "Bhaji on the Beach" (1993)[3]. Lately, more mainstream foreign (co-)productions with Indian themes such as "Monsoon Wedding" (2001) or "The Guru" (2002) excelled internationally and triggered even broader audience interest for India and Bollywood.

This now also becomes true for countries of continental Europe. Generally, there is a growing interest among broadcasters and distributors to look at Indian content (films and television shows). In Germany, a country with a comparably marginal Indian emigrant

---

* This article, in a slightly abbreviated version, was first published in the San Diego International Law Review, Volume 8 – No.1 – Fall 2006 – page 123; Please, see Table of Contents at the end of the article.

1 Timm Neu, J.D. (Humboldt), LL.M. (Cornell), is a PhD Candidate at Humboldt Universität zu Berlin, Germany. This article is based on a paper submitted to Cornell University, Ithaca, NY in 2006. The author would like to thank Prof. Pottage for his supervision as well as Prof. Germain, Pat Court, Parveet Singh Gandoak and Badri Narayanan for their advice and assistance.

2 http://www.unescobkk.org/fileadmin/user_upload/culture/Cultural_Industries/Singapore_Feb_05/Trends_in_AV_Markets.pdf

3 Bollywood Cinema, p.241, Indian Popular Cinema, pp.114, 115

population, Bollywood films had practically been unknown to television audiences until mid 2005. It was only on film festivals where interested movie buffs and a few Indian spectators got to see it. Then, a private television broadcaster (RTL II) successfully had the 2001 Bollywood family drama “Kabhi Khushi Kabhie Gham” (“Sometimes Happiness, Sometimes Sorrow”/“Happiness and Tears”/“Sometimes Happy, Sometimes Sad”) dubbed and broadcasted. Shortly after, other Bollywood movies followed. By the end of 2005, many German video stores already had profitable “Bollywood sections” featuring exclusively movies that had already been broadcasted on free television. Currently, German dubbing studios work on the synchronization of even more Indian mainstream movies and the trend has gained momentum.

But it is not only purely Indian cinematographic products which interest western movie industries and their affiliates. With over 15% of the world’s population and one of the fastest economic growth rates (8,1%) in the world, India is a primary emerging market for the international entertainment industry. Also, although Indian cinema was born to form an opposition to Hollywood mainstream[4], not only are Indian audiences interested in U.S. films, but the Indian film industry peeks at foreign funds and runaway productions.

These developments and mutual correlating interests underscore what cannot be called a minor trend anymore: The rising number of international co-productions and cinematographic co-operations with India. Still, the practice of movie making in India differs in many ways from industry structures in the US or Germany, which herein shall be analysed as potential origins of co-production partners. Contractual relations, industry regulations, involved parties and the legal rules are so distinct, that a comparative view from a producer’s perspective shall bring light into the frameworks and copyright issues of international film co-productions involving India.

4 Bollywood Film Studio, p.21

B. Cooperation Constellations

The film industry and the content it provides is generally framed by the influences of three major factors: The arts, the law or governments and private investment.

I. Art and Government-Funded Film

Indian art cinema is known as "New Indian Cinema" or "the Indian New Wave". From the 1960s through the 1980s, art film was usually government-supported cinema. Today, independent films might be the future of art cinema in India, which has to a great extent lost its government patronage. Here, foreign co-production partners, especially with their financial potential, could come into play. The German independent cinema production “Schatten der Zeit” (“Shadows of Time”) by Florian Gallenberger, for example, was a Bollywood-style film shot in Calcutta in 2003[5], featured an all-Indian cast and could easily have had an Indian co-producer. Adoor Gopalakrishnan’s film “Nizhalkkuthu” (2002) (“Shadow Kill”) had a long list of European co-producers, such as the French Artcam International with the support of several French government institutions, the Dutch Hubert Bals Fund and several Swiss contributors[6].

With the growing importance of India as a global economic player, western interest in social realities and developments in India will increase. Foreign themes represent the classical content of documentaries and art films and are consequently predestined to be subject to co-productions not only with government funded agencies and maverick independent producers, but, due to a broadening market for Indian cultural content, also mid-size and big commercial production companies. A hurdle for these potentially “free-minded” independent productions in India is that their scripts must be cleared by the Ministry of External Affairs in advance[7].

5 http://www.german-cinema.de/magazine/2002/04/germprod/fanes.html

6 http://www.cinemaya.net/europe.asp

7 http://www.ramojifilmcity.com/html/film/filmmakers_guide/essentials.html?h=5

II. Commercial Motion Pictures and Television

India's extensive and well-equipped movie industry, low prices, cheap labor and specialists' technological as well as multimedia know-how make it a real alternative to high-priced California or Canadian and European government-sponsored studios to which many U.S. production companies have lately outsourced shootings of movies such as "Chicago" (Toronto), "Gangs of New York" (Rome) or "Resident Evil" (Berlin)[8]. Especially animation work is being done by companies such as Crest Animation Studios or UTV Toonz in India. The financial advantages are obvious. A typical half-hour 3-D animation TV episode costs between $70,000 and $100,000 to produce in India, compared to $170,000-$250,000 in the United States[9]. The runaway productions phenomenon[10] has already been the case for the post-production of films like "Spiderman" (2002), "Gladiator" (2000), "Titanic" (1997), "Independence Day" (1996) or "Men in Black"(1997). But Indian production partners are increasingly aware of their crucial role and do not only function as "FX adjuncts". Emmy-winning Crest, for example, has facilities in Bolly- and Hollywood and has recently entered into a deal with Lions Gate Family Entertainment to co-produce three major features. Nowadays, Bollywood in general has adopted Hollywood's long lasting love affair with special effects as well as state of the art equipment to please its cable-pampered domestic and increasingly western audiences. The recent Bollywood boom, without a doubt, is largely due to the films' modern western look, which increasingly makes Indian producers interesting partners for commercial co-productions[11].

C. National Film Industries Peering Abroad

8 Contracting out Hollywood, pp.2, 3

9 http://www.variety.com/article/VR1117934815?categoryid=1279&cs=1

10 http://economictimes.indiatimes.com/articleshow/40201059.cms

11 see Introduction

The customs and commercial structure of the national film industries in India, the United States and Germany vary immensely. When co-productions are agreed upon and contracts are entered into, these cultures inevitably clash. A look at the different motion pictures production cultures shall provide the basis for a solution-finding process.

I. India

Until the end of the 1990s, the Indian film industry received a lot of its finances from shady sources and criminal circles. Still in 2002, it was described as bearing "a striking resemblance to the Hollywood of the 1930's, when big-shot producers, financed by shady Las Vegas businessmen, made star-driven tearjerker extravaganzas for an audience seeking temporary diversion from a life of grinding poverty"[12]. Investment into a film was and still is risky. In 1999, only 11% of the films released made good business; and the number is only up to 23% now. Lately, the granting of industry status has made financing much more accessible to producers and the ambivalent financiers have nearly disappeared. This "commercialization" and Bollywood's increasing financial transparency is one fundament for international cooperation[13].

The Mumbai film industry (Bollywood) is star-centric and actors like Amitabh Bachchan are worshiped like half-gods by their numerous fans. This is why, although they are the largest stakeholders in film production, producers do not dictate terms. Most contractual agreements are verbal, and those which are on paper are rarely enforceable. Even when stars sign up for films, it does not imply anything beyond a loose commitment, which very often they do not stick to[14]. Also, the cost structure of Indian movies is hard to estimate, since the majority of the commercial dealings are cash transactions. Stars also often work on several sets during the same period of time, which can cause delays. Disciplinary efforts by the producers come to naught,

12 http://www.capitalideasonline.com/articles/index.php?id=707&PHPSESSID=d8b680b6e4cff7355872748c8a41eb32

13 http://www.ukfilmcouncil.org.uk/filmindustry/india/

14 Entertainment Law, p.169

and because of the absence of insurance models, completion guarantors and gap financing systems, they have to bear all the financial risks[15].

II. United States

The United States' film industry is the most influential film industry in the world and a multi-billion dollar business. Internationally, U.S. producers are often in a strong position. Their monetary supply from the private sector (studios, film funds, etc.) and market reach is unparalleled[16]. The U.S. film industry is also the most "commercialized" industry of its sort in the world. A film simply has to make money and is considered a flop if it does not earn quite as much as expected. This is a high standard for international co-productions, which often only address limited audiences. However, the growing number of potential English-speaking consumers represents an immense potential market which could easily be targeted with market-specific, and comparatively low-cost productions in the future.

Since Hollywood studios have acted upon the commercial rationale of outsourcing labour and employing less expensive personal, numerous interest groups try to prevent runaway productions and consequently or/and indirectly impair potential for international co-productions. Ironically, the U.S. Writers, Directors and Screen Actors Guilds (WGA, DGA, SGA), who try to protect local talent from exploitation through large production majors, are the ones discouraging majors to give work to financially much more disadvantaged individuals within the framework of international co-productions through their exclusivity requirements; a classical globalization dilemma. The exclusivity requirements basically provide that Members of the guilds may only work for companies signing with the guilds ("guild signatories") and guild signatories may only employ guild Members. They are broadly construed so as to include independent contractors[17].

15 Entertainment Law, p.170

16 Contracting out Hollywood, p.15

17 Entertainment Law Siegel, p.253

However, many guild signatories escape guild jurisdiction by entering into production, finance and distribution agreements ("PFD agreements") with "unrelated" production companies (typically owned by the individual producer), in which the production is not subject to guild agreements because the guild signatory does not own the production company[18]. The Film and Television Action Committee (FTAC), at the forefront of the runaway productions opposition, has taken up most forcefully the struggle to keep Hollywood in Hollywood. Supported by the SGA, it filed a 301(a) petition with the International Trade Commission and the United States Trade Administration in November 2003, claiming workers in the American film and television production industry have been "substantially harmed" by, in this case, Canadian government film policies "which have unfairly removed good paying jobs from our shores". They also called for a boycott of the TV series "Rudy", which was the story of the former New York mayor Rudy Giuliani shot in Toronto. In this context it was argued that "…this is about patriotism. This is about one of America's darkest hours 9/11 [sic]. This about the American Spirit…"[19]. So emotions are flying high. The FTAC also engages in other forms of protest in this respect. It was supported by the, at the time, actor Arnold Schwarzenegger as well as the SAG's Global One Rule, which insists that its Members work under a SAG contract, rather than a local guild contract when they are working in another English-speaking country, such as India. This creates the likelihood of jurisdictional conflicts (between U.S. and potential Indian unions) and, at the same time, decreases the cost advantages of offshore productions. The California Film First Program of 2000 also supported U.S. film (in California)[20].

Despite these attempts to preserve U.S. jobs, the tendency towards decentralization of the three major production phases, development and pre-production (1), production and actual

18 Entertainment Law Siegel, p.254

19 Contracting out Hollywood, p.5

20 Contracting out Hollywood, p.6

shooting of the film (2) and post-production (3), will not be stopped by these initiatives. In an entertainment culture where the mighty dollar is the measure of all things, lower costs in India, at the end of the day, will make the race; and some even suggest that this process could reinforce Hollywood's global dominance, because Indians will increasingly profit from its success and will thus be less likely to politically oppose its box office dominance[21].

III. Germany

The German film industry has a typically European structure. One the one hand, there are several big commercial film production companies. On the other hand, there are state- and tax-funded public television stations, which at times also fund cinema productions. Like in most European countries, Germany for a long time had a television and radio sector that was reserved to public stations. This and the mission of the public television stations to educate the public are the main reasons for the extensive culture of public film funding. All German states have own film boards which subsidize and there are national and European funds, such as the MEDIA Plus Programme[22] or Euroimages[23]. Overall, there are more than two dozens sources of funding[24].

While recent German cinema is successful on festivals, it underperforms at German as well as foreign box offices. To increase the popularity of German film, Germany's minister of culture, in 2001, announced that one of the primary goals during his term would be to encourage international co-productions with German participation[25]. Nevertheless, it was then when tax advantages for investment in international productions (more than $ 2 billion of "stupid German money" per year) were severely reduced by regulation, the Medienerlass of February 23, 2001,

21 Contracting out Hollywood, p.15

22 http://europa.eu.int/comm/avpolicy/media/index_en.html

23 http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/

24 http://www.medienmaerkte.de/artikel/kino/040502_film_foerderung.html

25 http://www.german-cinema.de/magazine/2001/02/focus/nidaruemelin.html

and entirely disabled in 2005[26]. However, until July 1, 2006 the new government seeks to increase the German film and co-production investment incentives again[27].

In sum, due to the attractiveness of certain regions of Germany, such as the Bavarian Alps, as shooting locations for Indian films, the support of German politicians and the public funds available to producers who cooperate with German partners, it appears that the door stands wide open for Indo-German film co-productions. Also, it is likely that not all the "stupid German money" will be invested otherwise; and where there is money for film, film will be made.

D. International Legal Environment

International copyright treaties and institutions lay the groundwork for the entire realm of film-production-related transactions such as licensing, assignment and ownership of rights.

I. The Berne Convention

India, Germany and the United States are direct signatories to the Berne Convention. The WTO's TRIPS agreement, which now binds 145 countries, provides that WTO Member States shall comply with the substantive provisions, except those covering moral rights, of the Berne Convention as well as the Appendix of the Paris Act of the Convention[28]. Authors, who are nationals of Berne Union countries or who have published their work first or simultaneously in a Berne Union country, and their literary and artistic works, such as motion pictures, are protected by the Convention[29]. Briefly lined out, the core principles for films are:

1. *Art. 5(1) Berne Convention*: In Berne Union countries, foreign authors shall enjoy the rights which the laws of the country the rights are claimed in now or in the future grant to their nationals ("national treatment")[30].

26 http://www.dreharbeiten.de/archiv/print.cfm?id=1186; http://de.wikipedia.org/wiki/Medienfonds

27 http://de.wikipedia.org/wiki/Medienfonds

28 World Copyright Law, p.602

29 World Copyright Law, pp.603-605

30 World Copyright Law, p.605

2. *Art. 5(1) Berne Convention*: In Berne Union countries other than the country of origin of the work, these authors shall in addition enjoy the rights specifically granted by the Berne Convention[31].

3. *Art. 6bis(1) Berne Convention*: In Berne Union countries, the author has the right to claim authorship for his work ("paternity right or "attribution right")[32].

4. *Art. 6bis(1) Berne Convention*: In the Berne Union countries, the author has the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work, which would be prejudicial to his honour or reputation ("integrity right")[33].

5. The right referred to under 3. and 4. remains with the author after he has licensed or assigned the economic rights[34].

6. *Art. 9(1) Berne Convention*: The author has the right to authorize the reproduction of his work.

7. *Art. 12 Berne Convention*: The author has the right to authorize adaptation, arrangements and other alterations of his work.

8. *Art. 14(1)(i) Berne Convention*: The author has the right to authorize the cinematographic adaptation and reproduction of his work, and the distribution of the work thus adapted or reproduced[35].

9. *Art. 11, 11bis and 14 Berne Convention*: These Articles grant the right to authorize the communication of a work to the public by means such as broadcasting, wireless, wired or cable retransmission to the author of the work.

31 World Copyright Law, p.605,606

32 World Copyright Law, p.615

33 World Copyright Law, p.615

34 World Copyright Law, p.616

35 World Copyright Law, p.620

Matters of public order and censorship are left to the governments by provision of Art.17 Berne Convention[36]. This is why, in the context of co-productions, questions of censorship and national content limitations are discussed later. India availed itself twice of the faculties provided for in Articles II and III of the Appendix to the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised in Paris on July 24, 1971 (Paris Act, 1971) which make it possible for developing countries to grant the right to translations and reproductions, under certain additional circumstances. The term of this exception however has elapsed in 1994[37].

II. The Universal Copyright Convention

The Universal Copyright Convention (UCC) was drafted as an alternative to the Berne Convention and today has nearly 100 Members. It will however probably not be developed further[38]. As India, Germany and the United States are obligated to comply with the Berne Convention (see above), which has a higher standard of protection than the UCC[39], there is no true relevance of the UCC in the context addressed herein.

III. The Rome Convention

India and Germany, in accordance with Art.24 Rome Convention, are parties to it. Whereas earlier copyright law, including international agreements like the 1886 Berne Convention, had originally been written to regulate the circulation of printed materials, the Rome Convention of 1961 responded to the new circumstance of ideas variously represented in easily reproduced units by covering performers under copyright, referring especially to the economic rights dimensions[40]. Under it, performers (actors, singers, musicians, dancers and other persons

36 World Copyright Law, p.629

37 http://www.wipo.int/edocs/notdocs/en/berne/treaty_berne_110.html

38 World Copyright Law, p.634

39 World Copyright Law, p.644

40 World Copyright Law, p.660; http://en.wikipedia.org/wiki/Rome_Convention

who perform literary or artistic works) are protected against certain acts they have not consented to. Such acts are: the broadcasting and the communication to the public of their live performance; the fixation of their live performance; the reproduction of such a fixation if the original fixation was made without their consent or if the reproduction is made for purposes different from those for which they gave their consent[41]. The Rome Convention allows the following exceptions in national laws to the above-mentioned rights: Private use, use of short excerpts in connection with the reporting of current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases, except for compulsory licenses that would be incompatible with the Berne Convention, where the national law provides exceptions to copyright in literary and artistic works[42].

Art.14 Rome Convention provides that the term of protection lasts 20 years from the date of the performance or broadcast. Member states are obligated to provide the above mentioned rights to the protected groups and, as under the Berne Convention, apply "national treatment" to them[43]. Furthermore, once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application[44]. This, as will be shown, is nearly exclusively the case in regard to actors in motion pictures.

IV. The TRIPS Agreement

As stated above, WTO Member states are, through TRIPS, obligated to comply with the Berne Convention. The TRIPS moral rights exceptions are not applicable to India, Germany and the United States, because all are signatories to the Berne Convention. In addition to requiring compliance with the basic standards of the Berne Convention and imposing an obligation of

41 World Copyright Law, p.661; http://en.wikipedia.org/wiki/Rome_Convention

42 World Copyright Law,p.666; http://en.wikipedia.org/wiki/Rome_Convention

43 World Copyright Law, p.651

44 http://en.wikipedia.org/wiki/Rome_Convention

"most-favored-nation treatment," under which advantages accorded by a WTO Member to the nationals of any other country must also be accorded to the nationals of all WTO Members[45], the TRIPS Agreement clarifies and adds certain specific points[46]. Performers can be in the position to prevent the unauthorized reproduction of fixations of their performance (Art.14(1)), which in the case of motion pictures they mostly are not. Art.14(6) provides that any Member may, in relation to the protection of performers, producers of phonograms and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, copyright must be granted automatically, and may not be based upon any "formality", such as registrations or systems of renewal[47]. Art.11 provides that authors shall, in certain circumstances, have the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. With respect to cinematographic works, the exclusive rental right is subject to the so-called impairment test: A Member is excepted from the obligation unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred on authors and their successors in title[48]. While widespread copyright infringements in India might lead to such a right of the author, this would not make a difference, as the author of the film in India is the producer, who generally is interested in having his film rented out and distributed by video stores. Generally, the TRIPS agreement provides a broad basis for the international exploitation of cinematographic works, which in regard to intellectual property rights (including trademarks), by its means, are protected in all WTO Member countries. Co-productions which address an international audience through their potentially universally understandable or popular content, thus profit from TRIPS.

45 http://www.wipo.int/treaties/en/ip/berne/summary_berne.html

46 http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#copyright

47 http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

48 http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

V. The World Intellectual Property Organization

Apart from providing additional protections deemed necessary due to advances in information technology since the formation of previous copyright treaties, the WIPO Copyright Treaty provides authors of works with control over their rental and distribution rights in Art.6 to 8, which they may not have under the Berne Convention alone[49]. Also, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite of 1974 could be mentioned at this point. However, India is not a party to these treaties, which is why they shall not be discussed in further detail here[50].

VI. Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties

Germany and the U.S. did not sign this convention, which obligates its Members to legislatively pursue the goal pointed out in its title[51]. It will be shown that the producers are often the beneficiaries of copyright royalties. It would thus be in the interest of international co-producers, if Germany and the United States became signatories to the convention, too.

VII. Co-Production Treaties and Government Initiatives

Western productions are not the only ones interested in foreign locations and production venues. Bollywood has a long tradition of setting scenes, musical clips and substantial parts of the movies' plots in foreign locations such as the Austrian Alps, which appeal to Indian audiences because of their exoticness and exclusivity. Due to these reciprocal entrepreneurial and artistic interests, much "bilateral" interest in the (co-)production market has been displayed. Consequently, India has entered into film co-production agreements with Britain (2005), Italy

49 http://en.wikipedia.org/wiki/WIPO_Copyright_Treaty

50 http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=16

51 http://www.unesco.org/culture/laws/doubletax/html_eng/page1.shtml

(2005) and France (1985). While some treaties still have to be ratified before they enter into force, India also engages in negotiations with further countries over co-production treaties.

Generally, international co-production treaties between two countries bring several major financial, human-resources-related and organizational benefits to the co-production partners:

1. The film can be treated as a national film in each country for the purposes of any benefits and subsidies afforded in that country to national films,
2. participants and workers involved in the production of the film are allowed to work and remain in the country where the film is produced for the time the production lasts and
3. the equipment used in an approved co-production may be temporarily imported and exported freely and merely exclusively tax-free.

In 2006, as part of efforts to refresh the relationship with India in the field of cinema, the French Government sponsored a tour for ten producers to theme locations in France and will set up a French Film Office in Mumbai in September 2006[52]. Across the border, a €50-million-fund has been set up to support Indian co-productions with German production companies or shots in locations in the state of Hessen in Germany[53].

E. Key Factors for International Co-Productions

I. Parallel Imports

Realistically, the primary danger in regard to parallel imports is that legally produced copies of the, potentially popular, co-production distributed in India at much lower prices than in the United States or Germany, could be imported as "grey imports" into the United States or Germany. This, of course, could discourage producers from producing films attractive to both Indian and foreign audiences. Art.5(2) Berne Convention declares the law of the country of import applicable to decide whether the imported copy infringes a copyright.

52 http://www.thehindu.com/2006/02/26/stories/2006022600221300.htm

53 http://economictimes.indiatimes.com/cms.dll/articleshow?msid=226887

In Germany, the Bundesgerichtshof has held that the doctrine of international exhaustion of copyrights, which mirrors the U.S. first sale doctrine, governs parallel importation[54]. The European Union allows the doctrine of international exhaustion to exist only between member states, but not outside the EU[55]. To import copyrighted material in the above mentioned way into Germany, is thus against European law and German copyright law (Urheberrechtsgesetz).

The legal situation in the United States has not been entirely clarified, yet. Generally, parallel importation is prohibited, and the United States Trade Representative lobbies other governments to prevent parallel importation in their respective jurisdictions[56].

In 1998 in Quality King Distributors Inc., vs. L'anza Research International Inc., a case involving distribution of hair care products bearing a copyrighted label, the Supreme Court unanimously found that the first sale doctrine, which allows the purchaser to transfer a particular, legally acquired copy of a protected work without permission once it has been obtained, does apply to importation into the U.S. of copyrighted works (the labels) which were originally made in the US and then exported[57]. The importation of goods first manufactured outside the U.S. under the copyright laws of other countries was specifically excluded from that decision, leaving undecided whether goods "lawfully made" under the Copyright Act outside the United States also benefit from the first sale doctrine. Until this is decided, copyright holders are free to take action against foreign distributors who sell products made in their country into the U.S. market[58]. Consistent with this, in Columbia Broadcasting Sys., Inc. vs. Scorpio Music Distributors the court reasoned that the first sale doctrine applies only to copies made and sold within the United

54 http://en.wikipedia.org/wiki/Parallel_importation#Germany

55 Art.7 directive 89/104/EEC,

56 http://en.wikipedia.org/wiki/Parallel_importation#United_States_2

57 Quality King Distributors, Inc. vs. L'Anza Research International, Inc. 523 U.S. 135 (1998)

58 http://en.wikipedia.org/wiki/First_sale_doctrine, world Copyright Law p.134

States because Section 109(a)'s language refers to a copy "lawfully made under this title"[59]. Also, in U2 Home Entertainment vs. Lai Ying Music and Video Trading the court found that the importers admitted that their imported copies of films had not been lawfully obtained for resale in the United States, and that the importers' argument that the Copyright Act did not apply because the imported copies were manufactured by a foreign copyright holder was manifestly contrary to 17 U.S.C. Section 602(a)[60]. The import was thus deemed illegal. Thus, as long as the lawful copies of the motion picture (for example as DVDs) sold in India are produced outside of their respective territories, the import into the United States and the EU can legally be prohibited. Naturally, this is reassuring for non-Indian co-producers, who entirely own the exploitation rights for their respective markets.

II. Term of Copyright

The terms of protection of intellectual property granted by national governments and international treaties still vary significantly throughout the world. It is thus essential to determine what term is applicable in a specific case before a given court.

1. India

Section 26 of the Indian Copyright Act provides that the copyright in a cinematograph film subsists until 60 years from the beginning of the calendar year following the year in which the film was published[61].

2. United States

According to 17 U.S.C. Section 302, for works "made for hire" created after January 1, 1978 the duration of copyright is 95 years from publication or 120 years from its creation,

59 Columbia Broadcasting Sys., Inc. vs. Scorpio Music Distribs., Inc., 569 F. Supp. 47 (E.D. Pa. 1983), aff'd mem., 738 F.2d 424 (3d Cir. 1984); BMG Music v. Perez, 952 F.2d 318 (9th Cir. 1991), cert. denied, 505 U.S. 1206 (1992); Parfums Givenchy, Inc. v. Drug Emporium, Inc., 38 F.3d 477 (9th Cir. 1994), cert. denied, 115 S. Ct. 1315 (1995)

60 U2 Home Entertainment, Inc. vs. Lai Ying Music & Video Trading, Inc. and Wei Ping Yuan, No. 04 Civ. 1233 (DLC), 2005 U.S. Dist. LEXIS 9853 (S.D.N.Y. May 25, 2005)

61 Law relating to Patents, Trade Marks, Copyright, Designs and Geographical Indications, p.333

whichever is shorter[62]. 17 U.S.C. Section 101 defines works "made for hire" as including a "work specially ordered or commissioned for use as a part of a motion picture", which makes the motion picture itself a work "made for hire".

3. Germany

According to Section 65 Clause 2 Urheberrechtsgesetz, the copyright in a cinematographic work seizes 70 years after the death of the longest-living of the following persons: The main director, the screenplay author, the dialogue author or the composer of the music composed for the film. The term, according to Section 69 of the Urheberrechtsgesetz, begins to run with the end of the calendar year in which the copyright in the film came into existence, which is when it was completed.

4. International Treaties

The Berne Convention and Art.12 TRIPS, in different terms and with differing specifications, basically both provide cinematographic works to be protected for a minimum of the life of the author plus 50 years or for 50 years after authorized publication or the year of completion of the work[63]. India, the United States and Germany thus comply with their treaty obligations. In Art.7 Clause 8 of the Berne Convention it is provided that "…the term shall be governed by the legislation applicable in the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.". The laws of the United States, Germany and India do not contain "otherwise providing" provisions. In the classical situation, the origin of a film is the country of either of the co-producers. Thus, if a co-producer is sued in his country, the court there will apply its law to determine whether the film originates in this country. If it does not,

62 http://www.copyright.gov/circs/circ1.html#hlc

63 see World Copyright Law, p.626

mostly the term specified in the laws of the country of the other co-producer (plaintiff) will be the measure. The following definitions are applied regarding the national origin of a film:

a) Indian Film

In Chapter I Section 2(l) Indian Copyright Act an Indian work is considered as such if its author is Indian (1), it was first published in India (2) or, in case it is unpublished, if the author, when she made the work, was Indian (3).

b) United States Film

17 U.S. Copyright Act Section 101 provides that the "country of origin" of a Berne Convention work, is the United States if the work is first published in the United States (1) or simultaneously in the United States and another nation or nations adhering to the Berne Convention, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States (2) or simultaneously in the United States and a foreign nation that does not adhere to the Berne Convention (3) or in a foreign nation that does not adhere to the Berne Convention, and all of the authors of the work are nationals, domiciliaries, or legal entities with headquarters in the United States(4).

c) German Film

In Germany, essential steps have been taken towards the goal of European integration. Thus, the term “German film” has been replaced by “film deserving subsidies”. If a film was not produced within the framework of a bilateral treaty, which would be the case for a Indo-German co-production, for the film to be considered “German or as deserving subsidies”, the financial contribution of the German producer must be substantial (1). 30% of the artistic as well as the technical contributors must be from an EU Member state, Norway, Liechtenstein or Iceland. Of these, at least one has to be a protagonist and another has to be a supporting actor or, if this is not possible, two must have important parts (2). In case of a majority contribution, the film must be

in German or must have been presented as a German contribution at a Category-A-film-festival (Cannes, Berlin, etc.) (3). Finally, the German producer must have produced, within five years before the application, a motion picture in an EU Member state, Norway, Liechtenstein or Iceland (exceptions are made) and must contribute at least 30% of the production costs (4).

d) Conclusion

In India and the U.S. the producers are the authors of the film[64]. In Germany the bar to consider a film co-produced by a German producer is also not very high. Due to the fact that all the national laws would relatively easily assume that a co-production is of "national" origin, they will mostly apply their national copyright terms without looking to another country's law. In the cases of India and the United States, a simultaneous worldwide release of the film for example, would automatically lead to the exclusive application of national law. If the German co-producer does not fulfil the requirement set forth by German law, the term of copyright protection will be ten years shorter than the one provided for by German law. Thus, the mentioned requirements should be met.

III. Moral Rights

Moral rights are a crucial issue for producers when it comes to securing exploitation without the danger of interference by creative contributors.

1. India

India protects the right of paternity, the right of integrity and the right to publish a work. Moral rights in India are inalienable and perpetual[65]. Instead of treating moral rights as a hard-to-enforce and primarily contractual matter, as it is the case in the United States[66], the courts in India have been very cautious and sensitive in moral rights violation cases. They repeatedly

64 see below

65 Intellectual Property in Global Markets, p.384

66 see below

protected the moral rights of authors. The facts of Mannu Bhandari vs. Kala Vikas Pictures Ltd. revolve around the motion picture “Samay Ki Dhara” (1986), which the defendant had produced under an assignment of rights in the plaintiff’s novel “Aap Ka Bunty”. The plaintiff had an objection to the screening of the motion picture on the grounds that the picture was a distorted version of her novel that would undermine her reputation before students, research scholars and the literary world if it was allowed to be presented in its present form. The author objected to the change in name, modifications/alterations in character and dialogues, and the climax of the movie which according to the plaintiff had been changed. Providing due respect to the moral rights of the author, even after the economic rights were duly assigned, the court held that the dialogues which had been deleted from the film could not be described as necessary variations for the change in the medium i.e., from literary to audio-visual. The court also held that the name “Aap Ka Bunty” should find a place in the title of the film[67].

However, moral rights are not granted to actors in movies[68].

2. United States

During the passage of the Berne Convention Implementation Act, the U.S. Congress, while focusing on paternity and integrity rights, specifically stated in 1988 (Senate Report 100-352) that rights equivalent to moral rights of authors were recognized under the common law of misrepresentation and unfair competition, Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a)(1)(A), which prohibits “false designation of origin, false or misleading description of fact” that is “likely to cause confusion, ... mistake,” or deception about "the affiliation, connection, or association" of a person with any product or service as well as defamation (libel) law. Additionally, legal authors have attempted to locate moral rights in the “derivative work” provision of the Copyright Act and the rights of privacy and publicity. Therefore, Congress

67 http://www.iprights.com/publications/articles/article.asp?articleID=295

68 http://www-personal.k-state.edu/~tummala/regcorpt.rtf

asserted that the law in the United States complied with 6bis in the Berne Convention without any additions or changes to copyright law in the United States. Interestingly however, in 1990, U.S. Congress passed the Visual Artists Rights Act that specifically gave authors of visual art rights of attribution and integrity and excludes works "made for hire", such as motion pictures[69].

While not as prominent as in many European jurisdictions[70], moral rights in the field of motion pictures have actually been affirmed by courts in the United States. In Gilliam vs. American Broadcasting Cos., the court, in favour Monty Python as the screenplay owners, found a violation of Section 43(a) of the Lanham Act because ABC edited approximately 27% of the content of the original works to insert commercials and delete allegedly obscene or offensive matter. However, even in case of a grant of right a claim for false attribution might still arise. Other claims to prevent motion picture editing for television have only been successful to the extent that the editing would "adversely affect or emasculate the artistic or pictorial quality of the film, or destroy or distort materially or substantially the mood, the effect or the continuity of the film"[71]. In Smith vs. Montoro the court held that the removal of an actor's name and the substitution of another actor's name in the credits constituted a violation of Section 43(a) of the Lanham Act. Also, when only licensed and not otherwise connected to or approved by the author, a film may not be advertised as the author's film, but at the most as "based upon" his licensed work[72]. Generally however, motion pictures are considered works "made for hire" under United States copyright, which makes the producer or commissioner the author and initial copyright owner[73]; and usually the only rights that the DGA and the WGA secure for their members concern credits and the mentioning of their names or pseudonyms. Contractual

69 http://cyber.law.harvard.edu/metaschool/fisher/integrity/Links/Articles/fielkow.html#anchor8306170

70 see http://www.loc.gov/today/pr/1996/96-045.html

71 Moral rights, pp.168, 174

72 King vs. Allied Vision, Ltd., 976 F.2d 824 (2nd. Cir. 1992)

73 Moral rights, p.176

provisions granting moral rights to the creative contributors are basically the sole, highly unusual way to come to a more "European" power of the creative mind in regard to the end product. Due to the inequality of bargaining power, only the most prominent directors, like Woody Allen or Steven Spielberg, are in the position to preserve their moral rights. WGA Members working for guild signatories, if they are "professional writers" and their work was entirely original material, are under the "separation of rights" provisions of the WGA agreement only entitled to preview the films on which they worked. This however does not guarantee that their work will be used without changes. Some productions are also simply produced outside of union jurisdiction ("PFD agreements"). Thus, the financing owner of the film usually retains all essential moral rights[74].

3. Germany

While not as broad as the "droit morale" in France, the protection of moral rights in Germany displays very well the different facets of moral rights, of which only the most relevant shall be outlined here. An assignment of copyrights is impossible in Germany. This is also the case for moral rights, which, in contrast to copyrights, cannot even be licensed. They only pass on to another person (the heir) in case of the author's death[75]. However, the term of the post mortem moral right varies and depends on the case at hand[76]. The permission of the author is in Germany not only required to publish but already to produce a motion picture which represents an adaptation of a work by the author[77]. Also, authors in Germany are granted the right to publish the work and the right of attribution[78]. If a work is adapted for a motion picture, the protection of the integrity of the work only comes into effect in case of gross derogation of the work (Section 93 Urheberrechtsgesetz), once the author has agreed to the adaptation for a motion

74 Moral rights, pp.179-182

75 Sections 28 and 29 Urheberrechtsgesetz

76 Collection of the Decisions of the Bundesgerichtshof in Civil Matters, Volume 107, Page 384 (BGHZ 107, 384)

77 Section 23 Urheberrechtsgesetz

78 Sections 12 and 13 Urheberrechtsgesetz

picture[79]. Gross derogation is only given, if the sense or essential parts of the work or the film, against the author's intention, are significantly defaced[80]. This is not the case, if the author knew and approved the screenplay or if the derogations agreed upon have been defined in sufficient detail beforehand[81]. Despite these legal barriers, in practice, the above mentioned approval requirements have been "commercialized" to a great extent in the fields of advertisement and film exploitation of music as well as other areas[82]. Thus, although a factor which may not be neglected, in most cases a financial agreement with the author can be reached.

4. International Treaties

The text of the Berne Convention indicates a broad scope of works which are covered by moral rights, although it also contains language which gives member countries the discretion to narrow the works covered by moral rights. Art.6bis, for example, does not address whether moral rights are alienable and/or waivable. Although specific language addressing these issues is absent, commentators have interpreted Art.6bis moral rights as inalienable and nonwaivable. Others have suggested that the silence in Art.6bis indicates an intention that issues of alienability should be left to the discretion of each member country[83]. This however is as inconsistent with moral rights theory as the treatment of moral rights aspects in the United States. It is the protection of the creator's personal expression and spiritual embodiment within her work which constitute her moral rights. They can thus not simply be assigned to a financier. Moral rights exist independently from economic rights. An artist's status as an independent contractor, as opposed to an employee, under a work "made for hire" determination can therefore not be crucial

79 GRUR 96, 254, 257

80 Oberlandesgericht Munich in Gewerblicher Rechtsschutz und Urheberrecht of 1986, Pages 460, 461 (OLG München GRUR 1986, 460, 461)

81 Oberlandesgericht Munich in Gewerblicher Rechtsschutz und Urheberrecht of 1986, Page 461 (OLG München GRUR 1986, 461)

82 http://www.urheberpersoenlichkeitsrecht.de/#_ftn260

83 http://cyber.law.harvard.edu/metaschool/fisher/integrity/Links/Articles/fielkow.html

to recognizing and protecting her moral rights[84]. However, the, above mentioned, broad interpretation of Art.6bis of the Berne Convention allows the de facto neglect of moral rights in the Untied States' motion picture industry under international law.

IV. Neighbouring Rights

India, the United States and Germany, in essence, all recognize the existence of neighbouring rights, such as broadcasting and public performance rights. Again, the major difference is that in India and the United States the works "made for hire" doctrine attributes these rights to the employer by law. In contrast, in Germany, the artists or potential copyright holders have to license their respective rights to the producer of the film. However, Section 89 Clause 1 of the Urheberrechtsgesetz provides that in case of doubt, the producer shall have the exclusive right to modify, translate and exploit the film, including the performances in it. Section 94 Clause 1 of the Urheberrechtsgesetz also provides her with the exclusive right to reproduce and disseminate the original copy of the film as well as to publish it. Here the copyright and the authors' right system are quite different structurally, but in practice the differences are routinely equalized, because performers in German routinely grant all their rights to the producers in their work contract.

V. Exploitation and Versioning

In the area of international co-productions, exploitation of the film in different markets and media goes hand in hand with editing the motion picture to fit the target audiences' and media's desires and needs. The above mentioned German Bollywood-style production "Schatten der Zeit", for example, satisfied all but one requirement of the Indian film market. It excluded song-and-dance scenes. Had those been inserted, the movie could have been a success in India.

84 http://cyber.law.harvard.edu/metaschool/fisher/integrity/Links/Articles/fielkow.html

Without them, films do not become box office successes in India [85]. As shown above, moral rights of creative contributors, if exercised, can limit the editing possibilities available to broadcasting companies. This is the case in India, the United States and Germany even after the industry player interested in editing the work has acquired the necessary license from the copyright owner. Thus, due to different moral rights standards and censorship provisions, it is not only essential to foresee and contractually provide the possibility for substantial alterations in the co-production's final product, but it might also make sense to produce alternative footage to fill in gaps left after editing. Another way to make a film suitable for a more restrictive market, such as India, would be defused dubbing or subtitling, as it, for example, has been implemented in the case of the German dubbing version of the U.S. movie "Starship Troopers" (1997) because of the dialogues, which partially cite Nazi rhetoric[86].

VI. Censorship

Censorship represents a threat to the commercial exploitation of motion pictures in the censoring jurisdiction. Censoring stipulated by the laws of one country can limit the display of certain cinematographic elements, such as violence, sex or religious acts, which may be a crucial factor to the success of the film in its genre in another country. While versioning could be a solution in such cases, there is the danger of substantially defacing the artistic work and stripping it of its essential artistic value and character, not to mention the moral rights and copyright issues involved. Censorship of any kind thus, from an exploiter's commercial perspective, is negative.

1. India

Already under the British colonial regime, in 1918, the Indian Cinematographic Act introduced mandatory licensing of cinema houses to insure the audiences' safety and colonial

85 Filmland Indien, p.40

86 http://de.wikipedia.org/wiki/Starship_Troopers_%28Film%29

government's grip on power[87]. The Act was preserved by the national Indian government established in 1947. The beforehand localized censorship was centralized and now executed by the Central Board of Film Censors (CBFC)[88], whereby the word "Censors" has later simply been replaced by the less controversial term "Certification". In India, films can only be publicly exhibited after certification by the CBFC[89]. The CBFC primarily either censors certain scenes, which then have to be cut, or prohibits the exhibition of the motion picture in its entity. The roots of independent national censorship were drastically nationalistic and idealized the state. It was for example not allowed to show a policeman taking bribes or a character that remotely reminded of a Congressman drinking alcohol, as it was the case in "Parash Pathar" ("The Philosopher's Stone", 1957), on screen. This, just as the complete ban of on-screen kissing, has changed in modern days[90]. Also, censoring is mounted against unrestricted public exhibition through wall posters, advertisements in newspapers, video clippings in television channels and hoarding of to-be-released films before they are censored.

An essential facet of the CBFC's motivations to censor a film is government influence. Restrictions can be imposed on public exhibition of a film if it or any part of it is against the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, involves defamation or contempt of court or is likely to incite the commission of any offence. Often, this broad power is exploited to settle scores between political and ideological opponents, as the board functions as an appendage of the ruling party. This frequently causes the then called upon judiciary to supersede the board and pass the film. A recent controversial example of such government interference involved the BJP government led by Prime Minister Vajpayee. It banned several films and videos involving the

87 Behind the Scenes of Hindi Cinema, p.37

88 see http://www.cbfcindia.tn.nic.in/default.htm

89 Entertainment Law, p.172

90 Behind the Scenes of Hindi Cinema, p.38

violent incidents between Muslims and Hindus in Gujarat 2000-2003 and also required every Indian submission to the Mumbai International Documentary Film Festival to have a censor certificate, which caused widespread protest[91].

Apart from these general observations, Section 5B(2) Indian Cinematograph Act of 1952 severely regulates the display and cinematographic use of smoking, drinking, drug usage, certain dual meanings as obviously cater to "baser instincts", religion, race, the modus operandi of criminals, intimacy, violence as well as other topics. The Cinematograph Act actually explicitly calls for clean and healthy entertainment as well as that the film is of aesthetic value and cinematically of a good standard. When watching modern Indian cinema, it is often hard to tell where exactly the censors draw the line regarding the cinematographic use and references to many of the mentioned issues. Interestingly, a recent popular Indian dictum says: "For a film to be successful, it needs to display either sex or Shahrukh Khan."[92]. A lot of extremes of intimacy, sexuality and violence that are frequently present in American and European movies certainly do not pass Indian muster. However, in the "Bandit Queen" (1994) case, the Indian Supreme Court, with a sense for artistic value, upheld the certification for public exhibition on the grounds that the frontal nudity of woman and depiction of rape were necessary parts of the theme of the film justifying the criminalisation of a young girl who was brutally hurt by the cruelty of society[93].

The CBFC classifies the films to which it grants a censor certificate by categories. However, the compliance with these following ratings is basically never enforced by the Indian police force.

U: universal - suitable for all ages.

U/A: universal with adult/parent guidance - unsuitable for those under 12.

91 Behind the Scenes of Hindi Cinema, p.38

92 Shahrukh Khan is a popular Indian film star appealing especially to younger audiences.

93 Bobby Art International vs. Om Pal Singh Hoon & Ors (1996) ICHRL 29 (May, 1 1996)

A: adult - can be viewed only by those above 18.

Sexuality and intimacy are frequent issues. Kissing, for example, is a subjective theme. In the past, films displaying kisses used to get an A rating, nowadays they get an U certification as long as the kiss is not prolonged and erotic. A dance sequence with a close up on a woman will get an A rating, but if the same scene is shot from afar, it gets a U rating[94].

These restrictions severely affect the attractiveness of co-producing a commercial film with an Indian partner with the goal of exploiting the work in India as well as western countries. A too extreme character, a mixed message or a too liberal sexual morale will make the film subject to censorship on the Indian market and often decrease box office revenues. However, a "too soft" or superficial approach to social, religious or political tensions risks to bore western audiences. In addition, the requirement to get the script approved by the Ministry of Information and Broadcasting beforehand and again having to seek approval if it is felt that any material changes or deviations from the approved script are necessary[95], imposes a significant burden on producers, who, in the case of large Hollywood productions for example, treat their scripts and project-related information like trade secrets.

Thus, apart from the cultural restraints, obligatory elements (song-and-dance-scenes, marriage, happy end, etc.) as well as structure of Bollywood films, censorship on the Indian market is possibly one major reason for the considerably small number of commercial cinematographic co-productions with foreign and especially western partners. Although there has been broad protest against the strong influence of the CBFC[96], there is no indication that the Indian legislative plans to loosen its grip on the content of motion pictures that are shown, despite the fact that local cable television channels broadcast without any de facto restrictions in

94 http://en.wikipedia.org/wiki/Indian_film_censor_ratings

95 http://www.ramojifilmcity.com/html/film/filmmakers_guide/essentials.html?h=5

96 Behind the Scenes of Hindi Cinema, p.38

India[97]. As a considerable part of the voting population in India still has no television, this might politically actually be more effective than some “film people” suspect. However, with the technology boom and the rising living standard in India, there is hope that at a point not too far in the future, enough people will have access to uncensored media to make motion picture censorship so ineffective, obsolete and potentially economically harmful that it will be substantially reduced.

2. United States

The first amendment to the U.S. Bill of Rights explicitly forbids the government to censor advocacy of religious ideas or practices and guarantees the rights of citizens to speak and to publish freely. The freedom of speech is very broadly construed in the United States. The courts have even ruled that the first amendment protects "indecent" pornography from regulation, however not "obscene" pornography[98]. Due to the restrictive legal and cultural environment in India, it is highly unlikely that pornography will be subject to a co-production, which is why it shall not be further addressed here. The broad conception of free speech also protects acts which in many countries constitute a crime, sedition or subversion, such as (symbolically) burning the US flag[99].

The major barrier to complete passive free speech in films is the MPAA film rating system. It is used in the United States and territories and is instituted by the Motion Picture Association of America (MPAA) to rate a movie based on its content and to help patrons decide which films may be appropriate for children and/or adolescents. In the United States, it is the most recognized system for classifying potentially offensive content, but it is usually not used

97 see below

98 Brandenburg vs. Ohio, 395 US 444 (1969); United States vs. Eichmann, 496 US 310 (1990)

99 Texas vs. Johnson, 491 US 397 (1989)

outside of the film industry because the MPAA has trademarks on each individual rating[100]. The current MPAA motion picture ratings consist of:

If a film has not been submitted for a rating, the label "NR" (Not Rated) is often used; however, NR is not an official MPAA classification. While the MPAA does not publish an official list of all the exact words, actions, and exposed body parts used to determine a film's rating, some guidelines can be derived based on the MPAA's actual rating decisions[101].

If a film uses "one of the harsher sexually-derived words" (such as “fuck”) once, it is routine today for the film to receive a PG-13 rating, provided that the word is used as an expletive and not with a sexual meaning. Mostly, PG-13 movies are allowed two or three uses (Examples are: “As Good As It Gets”, “Rent” and “Elizabethtown”). Exceptions may be allowed "by a special vote of the ratings board" where the board feels such an exception would better reflect the sensibilities of American parents. A reference to drugs, such as marijuana, usually gets a movie a PG-13 rating at a minimum. A well-known example of an otherwise “PG movie” getting a PG-13 for a drug reference is “Whale Rider”. The film contained only mild profanity, but received a PG-13 because of a scene where drug paraphernalia was briefly visible. A “graphic” or “explicit” scene of illegal drug use typically earns a film an R rating at the

100 http://en.wikipedia.org/wiki/MPAA_film_rating_system

101 http://en.wikipedia.org/wiki/MPAA_film_rating_system

minimum. If a film contains strong sexual content, it usually receives an R rating. The film "Lost in Translation" had a scene in a strip club that had brief topless nudity and a song in the background that repeated the phrase "sucking on my titties". The scene was brief and the rest of the film had PG-13-level content, but the film still received an R rating. Legally, the rating system is entirely voluntary, so some movie theatres enforce it and some do not. In contrast to Germany, minors generally are allowed to see any film as long as they are accompanied by their parents. Still, signatory Members of the MPAA (major Hollywood studios) have agreed to submit all of their theatrical releases for rating, and few mainstream producers (outside the pornography niche) are willing to bypass the rating system due to potential effects on revenues. Therefore, it can be argued that the system has a de facto compulsory status in the industry[102].

Generally, it can be said that the United States' legally voluntary rating system and its broad interpretation of the notion of free speech leave the most freedom to film producers. Thus, as the analysis of German law will show, U.S. law is least likely to limit content and creative expression in a film co-production.

3. Germany

Censorship is prohibited by Art.5 Clause 1 Sentence 3 of the German Constitution (Deutsches Grundgesetz), but Art.1 declares the dignity of men to be untouchable. Thus, there are certain limitations to the Art.5 principle. Primarily, this is the case if a criminal law or one that aims at protecting minors (Jugendschutzgesetz) is violated. Before a film is released, the "Voluntary Self-Control of the Film Business" (FSK), which was installed after WWII and based on the outdated U.S. Hays Code (1934-1967), classifies films into one of the following categories, which are scrupulously enforced at the box office:

no age limit: for all ages.

102 http://en.wikipedia.org/wiki/MPAA_film_rating_system

6: no one under 6 years admitted.

12: people 12 or older admitted, children between 6 and 11 only, when accompanied by parent or legal guardian.

16: people 16 or older admitted.

18: only adults (18 or older) admitted.

All films not submitted to the FSK are automatically treated as only admitted for adults and may additionally be put on the German "list of youth-endangering media" if considered endangering to minors by the Federal Department for Media Harmful to Young Persons (Bundesprüfstelle für jugendgefährdende Medien, BPjM)[103]. This means a ban on all advertising, import, export, or mailing of such material. Section 131 of the Penal Code (Strafgesetzbuch, StGB) forbids the glorifying display of inhumane or cruel violence or the belittlement thereof. Approximately 300 extremely violent films, such as the first and the second part of Tobe Hooper's "Texas Chainsaw Massacre" or Sam Raimi's "The Evil Dead", have been confiscated from dealers and distributors. However, all copies of such confiscated versions owned for personal use are legal to possess for adults. Movies may be re-edited to achieve lower ratings, if a lower rating is preferred by the distributor. At times, due to excessive violence, even movies that are only available to adults may be cut. However, FSK rated movies are exempt from all blacklisting measures of the government[104]. If a motion picture is in violation of German criminal laws (StGB), no measures by the Federal Department for Media Harmful to Young Persons are necessary, but the district attorney will take appropriate legal measures. There are a number of criminal laws which can become relevant in the context of motion pictures: Sections 86, 86a StGB declare it illegal to show and divulge propaganda materiel of unconstitutional and thus forbidden organizations (such as the Nazi Party) in a positive context. These materials can

103 http://www.bundespruefstelle.de/bpjm/Die-Bundespruefstelle/aufgaben.html

104 http://en.wikipedia.org/wiki/Motion_picture_rating_system#Germany

only be displayed in movies if they are a piece of art as defined in Section 2 Section 1 Number 5 of the Urheberrechtsgesetz (UrhG). If the movie propagates unconstitutional organizations, it is in itself propaganda materiel. Section 130 StGB forbids sedition. In Clause 3 it especially declares the public support, denial or belittlement of acts committed under the Nazi regime that are able to disturb public peace illegal. Further, Section 166 StGB protects religious commitments of believers and Section 184 forbids certain kinds of porn and regulates porn divulgation. German law is insofar "European"[105], as that it proactively protects minors and, historically aware and "self-cautiously" forbids certain unconstitutional organizations and propaganda materiel.

F. Co-Production Contracts

The contract concluded between the co-producers is the central document in regard to the co-production. In its core, it determines the contributions of the parties and the sharing of rights and eventually profits or losses[106]. In an international context, most importantly, it provides for the law which is to apply to the contract. The legal nature of a co-production may vary considerably and take on different forms at successive stages of the production process[107]. Additionally, depending on the legal culture, provisions in co-production contracts are sometimes characteristically framed. However, as international co-productions need a contractual framework which, ideally, builds up upon common artistic and business conceptions, a number of central issues are routinely addressed. Often, the producers' primarily economic perspective, does not leave much room for cultural specificities in contract drafting.

105 see, for example, the French „Droit des Médias"

106 http://www.obs.coe.int/online_publication/reports/00001259.html

107 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

I. Prior Documents

In the course of negotiations between the parties, it is usual to come to an agreement in principle on the basic elements of the future co-production agreement. To give substance to the agreement, documents called, for example, deal memo, M.O.U. (memorandum of understanding) or letter of intent should be signed. These may have one of two very different consequences:

1. They may constitute mere proposals or rough drafts and not be binding, being subject to the negotiation and signature of a contract in which the definitive conditions are set out, or
2. they may be binding, although the details are to be set out in the subsequent contract.

Especially, considering the culture of oral contracts in the Indian film business, it is essential for the harmony between the Indian and the U.S. or German producers to determine whether such an agreement shall be binding or not. Also, to avoid the possibility of confusion, the contract should indicate that it constitutes the final agreement of the parties and replaces any earlier document[108].

II. Parties to the Contract

Not all the parties to the co-production contract need to be producers; they may be television channels, distributors, banks, private investors, etc.. In any international contract, particularly in those in which one of the parties is a multinational company with subsidiaries established in a number of countries, it is particularly important to specify and ensure which contracting party will assume the obligations of the contract. A very solvent parent company may have a subsidiary which does not have the same solvency and may well not be equally reliable[109].

108 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

109 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.de

III. Background

This clause explains the parties' activities and what they hope to achieve through the contract. Although this background information does not constitute rights and obligations, it can be of help in interpreting any obscurely worded sections of the contract[110]. It is a part of the contract, which is routinely neglected by lawyers, although one can only win by adding to it.

IV. Object of the Contract

This clause should mention the objects of the co-production contract, which are:

1. To define the audiovisual work exactly, including details that are normally set out in a detailed appendix,
2. to list the various tasks, responsibilities, contributions and investments on the part of the co-producers and third parties in the three phases of production[111] of the film,
3. to apportion the quotas of ownership of all the elements of the audiovisual work, including the intellectual property rights in respect to the work,
4. to specify how exploitation of the audiovisual work is to be achieved and
5. to lay down the rules for the sharing of profits or losses from the exploitation.

V. Definition of the Work

A detailed definition of the work's "key elements" (content, author(-s) and technical points) specifying the nationality of each contributor to be able check for the existence of the quotas necessary for obtaining the benefit of international co-production agreements, that India might enter into, is crucial. For obvious reasons, as in many modern standard contracts, there should also be a clause indicating that no changes may be made without the unanimous agreement of the co-producers[112].

110 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

111 see above

112 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

VI. Intellectual Property Rights

1. Acquisition of Rights and Permissions

The use of any pre-existing work in the film may require the transfer of rights held by its rights-holders. If the image of a person is used (face, physical representation, name, voice, etc.), the person's consent, depending on the applicable law, may be required.

2. Rights of the Authors and Performers

The definition of who the authors of the film are will depend on the applicable law[113]. The co-producers may want to specify in the contract who they consider to be the author(-s), and give details of the chain of title. If one of the co-producers signed a transfer of rights, this, with a guarantee that the rights have been duly acquired ("chain of title") and that the co-production will profit from the acquisition, should be stated in the contract. Whether the performers license or assign their copyrights to the producers should also be mentioned[114]. Whether there are any provisions concerning versioning or editing in the artist agreements or not, there should, if possible, be a provision which deals with the hypothetical case when a contributor exercises her moral rights against the interests of the producers. In such a case, the producers could, for example, agree to jointly oppose the claim or separately take responsibility for the claims arising in the territories in which each independently exploits the work.

VII. Assignment of Responsibilities

Decisions need to be made on the identity and scope of responsibility of the executive producer (with the possibility of requiring assurance of completion from the other co-producers), the power to sign contracts with third parties or staff and insure the latter, artistic responsibilities, technical tasks, commercialisation, etc. [115].

113 see above

114 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

115 Filmrecht – Die Verträge, pp.123-125

VIII. Contributions

The contributions of co-producers may be (non-)monetary, goods, rights, production or commercialisation services. In case one of the parties should fail to make its promised contribution, the contract should enable the co-producer(s) meeting their obligations to continue with the production and replace the defaulting party[116]. Also, as in national co-productions, it is important to contractually foresee what will happen if the production were to exceed its budget.

IX. Co-ownership of Copyright and Essential Elements of the Film

A key element to a co-production contract is that the co-producers become co-owners of the producer's copyrights as well as all the integral elements of the motion picture in proportion to their respective contributions. This community of goods will be governed by the parties' agreements and, subsidiarily, by the rules governing the community of goods in the law applicable to the contract[117]. The contract should also contain clauses protecting the co-producers from action that could enable creditors to instigate proceedings against a single co-producer with a view to taking over ownership of the motion picture (purchase option rights)[118].

X. Method for Reaching Agreements

The contract should state the method for adopting mutual agreements. Most importantly, it is to be provided how to decide upon the definitive version ("final cut") of the film[119].

XI. Accounting and Documentation

If one of the co-producers keeps the accounts of the co-production, she should be required under the contract to keep them clear as well as separate from the rest of her accounts. In international co-productions it is important to verify whether accounting practices and rules in the country of the co-producer keeping the accounts are different or to agree on a common

116 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

117 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

118 Filmrecht – Die Verträge, p.117

119 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

practice. It should also be stated how the types of exchange are to be calculated. Co-producers preferably should use a separate bank account, designate an auditor for the co-production, inform the other co-producers and provide them with the necessary documentation, especially where one co-producer acted as an agent, and allow the accounts to be checked by the other co-producers[120].

XII. Division of Revenue

Once the costs of the film have been recouped, the income is shared. It should be defined which expenses may be deducted from the gross revenue before any division is carried out[121].

XIII. Attribution of Specific Rights

Given that each co-producer knows her own market best, it is usual for the exploitation rights within the respective market to be reserved to the respective co-producer exclusively. Apart from this, usually, rights are divided up grouped by the categories of "territory", "country" and "mode of exploitation"[122]. Due to the historical role of Indian cinema in the countries of the former Soviet Union and Iran[123] as well as India's geographical proximity to Asia, the exploitation rights for these territories could go to the Indian co-producer. It is also necessary to set up "hold-backs" (which may provide, for example, that the U.S. DVD exploitation does not begin before the motion picture has been in theatres in India for a year)[124].

XIV. Communication

The form of transmitting information and the intervals in which the parties are to meet in the course of the co-production should be set down[125].

120 Filmrecht – Die Verträge, pp.122-125

121 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

122 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

123 Behind the Scenes of Hindi cinema, pp.137-141

124 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

125 Filmrecht – Die Verträge, p.125

XV. Deposit and Access

The co-owners should designate by mutual agreement where the work is to be deposited and may be accessed, either jointly or separately, in the form provided for by the contract[126].

XVI. Credits

The credits of the film are laid down in the contract, and may be different in each country involved. For example, the same movie could be called Indo-German in India and German-Indian in Germany.

XVII. Aid, Subsidies and Taxes

If there ever are co-production treaties binding the United States or Germany and India and the parties benefit from national subsidies under it, the contract should state if this type of revenue belongs to all the co-producers jointly or only to the producer of the state from in which it is obtained and whether the contract is conditional upon the grant of subsidies[127]. In Germany, foreign co-producers also have to be made aware of the 25% tax that applies (Section 50a Einkommenssteuergestz)[128].

XVIII. Publicity and Promotion at Markets and Festivals

The parties should agree on the forms of promotion, with the possibility of the co-producers each carrying out such actions, at their expense, in the markets assigned to them[129].

XIX. Insurance and Completion Guarantees

The co-producers should insure the production of the audiovisual work and the negative against the usual risks of loss and civil liability. Anglo-Saxon distributors and broadcasters often demand the subscription of an “errors and omissions” insurance or of a “completion bond” [130].

126 Fernseh- und Filmproduktionen Rechtshandbuch, p.265

127 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

128 Filmrecht – Die Verträge, p.117

129 see Filmrecht – Die Verträge, p.130

130 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

The latter guarantees, that the film will be completed in a timely fashion and within the budget. While the concept of completion guarantors is relatively new in Bollywood and also Germany, these contacts are commonly found in Hollywood. It is a "must" to get bank financing in India[131]. German producers are often reluctant to provide for completion guarantees, because they are fairly expensive and for the money they cost a lot of film can be produced[132]. However, their introduction may have a positive, security-providing influence on the Indian market.

XX. Sharing with or Transferring Rights to Third Parties

A co-producer may share or transfer her part of the co-production and it is necessary to state in the contract if this requires authorisation from the other co-producers. It could be provided that the said co-producer remains responsible for her original contractual obligations vis-à-vis the other co-producers[133].

XXI. Duration of Copyright Term

As stated above, the duration of the term is a crucial factor in regard to the exploitation of the film and the longest applicable national term represents the minimum duration of the co-production contract. The contract may contain conditions allowing for early termination in the cases of mutual agreement, failure to perform the obligations set out in the contract or one of the parties suspending payments[134].

XXII. Other Agreements

The following points should also be addressed in the contract due to its international character: Declarations and guarantees by each of the parties, force majeure, notifications,

131 http://www.nishithdesai.com/hollywood-bollywood/media-chap-5-D.htm

132 Filmrecht – Die Verträge, p.113

133 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

134 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.de

protection of personal data, confidentiality and the authoritative version in the event of the contract(-s) being translated or unclear[135].

XXIII. Product Placement

Companies usually enter into advertising agreements with producers for subtly advertising their products or services in the film. While such agreements are additional sources of revenue, it is important to lay down an understanding as to the extent of the advertising[136].

XXIV. Competent Jurisdiction, Mediation and Arbitration

An a priori neutral formula is advisable. The matter should be submitted to the jurisdiction of the court of the place of domicile of the defendant party. This way, proceedings will not need to be brought in two countries, once for the main dispute and subsequently, in the defendant's country, for enforcement. Also, mediation before a trusted "tiebreaker" and arbitration before the ICC (International Chamber of Commerce), the IFTA (International Film and Television Alliance) or the AFMA (American Film Market Association) should be considered.

XXV. Applicable Law

There can be no contract without law, and contracts are binding because there is a law under which they are born and which lays down the conditions for their formation, conclusion, nullity, grounds for termination, etc.. This is the chosen law. Of course, the more detailed the contract, the less decisive it can be which laws are applicable. Normally, the law of the country of the principal producer is chosen as the applicable law[137].

135 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.de

136 http://www.nishithdesai.com/hollywood-bollywood/media-chap-5-D.htm

137 http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

G. National Copyright Regimes

The law chosen to be applicable to the contract is independent of the law applicable to the motion picture in a given country. In regard to the jurisdictions addressed, the most relevant and/or unique parts of their copyright regimes, which could not be found among the "Key Copyright Factors for International Co-Productions", as well as the question of which law applies to a given copyrights conflict shall be explored hereunder.

I. Choice of Law

In the context of intellectual property rights, the first central legal question for co-producers is which country's law applies to the intellectual property issues. The consequences of the answer to this question are drastic, as can be deduced from the above outlined "Key Copyright Factors for International Co-Productions".

The "Schutzlandprinzip"[138] or "lex protectionis" has come to dominate the issue of applicable law in international copyright and related rights. Exclusivity of a right, its duration, the copyright holder and the scope of the rights, according to it, are determined by the law of the country for which protection is claimed[139].

1. India

Indian courts must apply the "lex protectionis" as set forth in the Berne Convention[140].

2. United States

The United States Supreme Court for example, in Feist Publications, Inc. vs. Rural Telephone Service Co., in 1991, made it clear that the originality of a work is a constitutional requirement, thus implying that U.S. courts will not be able to apply the more lenient originality

138 http://www.kefk.net/Wissen/Wikipedia/Recht/Urheberrecht/Anwendbares.Recht/index.asp

139 http://www.uni-muenster.de/Jura.itm/hoeren/INHALTE/publikationen/IPR234.pdf

140 http://dipp.nic.in/ipr.htm

standard of a foreign country in any copyright case[141]. Then, the ownership issue was addressed in Itar-Tass Russian News Agency vs. Russian Kurier, Inc.[142]. In this case, several Russian journalists sued a New York-based Russian newspaper for allegedly infringing upon the copyright in their newspaper and magazine articles which were originally published in Russia. Here, the U.S. Court of Appeals for the Second Circuit held that national treatment is not a choice-of-law provision. According to the Second Circuit, the applicable law is the law of the state that has the most significant relationship to the copyrighted work and the parties involved, in this case Russian law. Generally, the case law is ambivalent[143]. It has been recommended to consider pleading both U.S. and foreign laws, sometimes in the alternative, in some cross-border cases. Such pleading has to be appropriate and artful for various reasons however, most notably to forestall any motion to dismiss for forum non conveniens[144].

A number of commentators have argued that new choice-of-law rules may be needed to provide more effective international copyright protection. Courts have to consider choice-of-law questions on a case-by-case basis. Among the factors considered are those stated in the Second Restatement of Conflict of Laws:

1. The needs of the interstate and international systems,
2. the relevant policies of the forum,
3. the relevant policies of other interested states and the relative interests of those states in
4. the determination of the particular issue,
5. the protection of justified expectations,
6. the basic policies underlying the particular field of law,

141 see Bridgeman Art Library, Ltd. vs. Corel Corp., 25 F. Supp. 2d 421 (SDNY 1998), Feist Publications, Inc. vs. Rural Telephone Service Co., 499 US 340 (1991)

142 Itar-Tass Russian News Agency v. Russian Kurier, Inc., 153 F.3d 82, 84 (2d Cir. 1998)

143 http://www-rcf.usc.edu/~pgeller/xborder.htm

144 http://www-rcf.usc.edu/~pgeller/xborder.htm

7. certainty, predictability and uniformity of result and

8. ease in the determination and application of the law to be applied.

3. Germany

German courts apply the "lex protectionis" as Germany's international private law includes no further provisions addressing international IP conflicts[145].

4. International Scholarship

In international legal scholarship, after the analysis of allocation principles such as party autonomy, the favour principle, functional allocation and closest connection, different proposals have been made to find a solution to the dilemma of co-producers' rights in different countries:

1. The law of the residence of the primary initiator,

2. the law of the residence of the majority of co-producers,

3. the law of the country of origin of the work[146],

4. the law of the principal place of creation and

5. the law of the country where the work was first published.

The global problem with the current "national treatment" is that a co-producer may be regarded as initial co-owner or as entitled to protection in one country, but not in the next. This is also true for the presumed transfer of economic rights[147]. This causes uncertainty, problems with tracing back the chain-of-title as well as possibly as many applicable laws as there are countries[148].

II. Indian Copyright Law

The protection of cinematographic works under Indian copyright law is broad and favours the producer(s).

145 http://www.uni-muenster.de/Jura.itm/hoeren/INHALTE/publikationen/IPR234.pdf

146 Choice of Law and International Copyright, p.430

147 Choice of Law and International Copyright, p.429

148 Choice of Law in Copyright and Related Rights, pp.188, 189

1. Ownership and Transfer of Copyrights

Ordinarily, the author is the first owner of copyright in a work, which, in the case of a cinematograph film, is the producer (works "made for hire" doctrine). This includes the soundtrack to the film, if the producer has acquired the copyrights of the verse and song writers[149]. Once a performer (actor, musician, dancer, etc.) has consented to the incorporation of her performance in a cinematograph film, she has no performer's rights to that performance (Section 38 Clause 4 Indian Copyright Act) anymore[150].

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may license and, in accordance with Section 18 Indian Copyright Act, assign the copyright in a timely and substantially whole or partial manner. An assignee, in contrast to a licensee, becomes the new owner of the copyright. This is a great advantage for producers, who may wish to attain certain rights in relation to the film forever. Section 19 Indian Copyright Act provides that any assignment must be in writing, signed, identify the specific works, specify the rights assigned and the duration and territorial extent of the assignment, specify the amount of royalty payable, if any, to the author or his heirs during the currency of the assignment and be subject to revision, extension or termination on terms mutually agreed upon by the parties. If the rights are not exercised within a period of one year from the date of assignment, it is deemed to have lapsed, unless otherwise specified. If the period or territorial extent of the assignment is not stated, it shall be deemed to be five years for the whole of India.

2. Compulsory Licensing

The Indian Copyright Board has the power to grant compulsory licences in certain circumstances on suitable terms and conditions, mainly if the copyright holders do not

149 Law of Copyright and Industrial Designs, pp.74, 75

150 The Law of Intellectual Property Rights, pp.287, 288

communicate the Indian work to the public[151]. Since film producers have a primary interest in the commercial exploitation of their products, this will hardly be an area of conflict in the context addressed herein. Compulsory licences can also be granted to make the translation, reproduction and publication of non-Indian works at a reasonable price possible. However, if an Indian co-producer, as the movie's producer, is the author of the film, the work will be considered Indian[152]. The said licences are only granted under very narrow circumstances and timely restrictions, for example, if the translation is required for the purposes of teaching, scholarship or research or if copies of the work are not made available at a reasonable, normal price[153]. Especially if the revenues from the Indian market are shared among the co-producers, there should be contractual provisions on which dubbing versions are going to be produced and exploited in India, to prevent compulsory licences and conflicts between the parties.

3. Scope of Copyright

In the case of a cinematograph film, the copyright in it includes the following rights (Section 14(d) of the Indian Copyright Act):

1. Copying of the film including copying a photograph of any image forming a part thereof,
2. selling and lending out the film and
3. making the film accessible to the public (communication). This includes the right to license the wireless and wire-bound (re-)broadcasting rights[154].

Also, the copyright in cinematographic works covers:

4. Translating the work (for example in form of a dubbing version) and
5. adapting the film in the sense that another film is made out of substantial parts of the original film[155].

151 Law of Copyright and Industrial Designs, p.131

152 http://www.education.nic.in/copyright.asp

153 Law of Copyright and Industrial Designs, pp.133-35

154 Law of Copyright and Industrial Designs, pp.104, 105

4. Fair Dealing

Section 39 Indian Copyright Act declares certain acts to be "fair dealing", or "fair use" by U.S. terminology, and thus not copyright-infringing. These are:

1. The making of any sound recording or visual recording for private use of the person making such recording, or solely for purposes of bona fide teaching or research,
2. the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research or
3. such order acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under Section 52 (which enumerates the usual non-infringing uses of copyrighted materials).

5. Legal Action

A producer can take legal action against any person who infringes the copyright in the film. She is entitled to remedies by way of injunctions, damages and accounts[156].

III. United States Copyright Law

The copyright regime of the United States does, due to the common common law tradition, not significantly differ from the system in India.

1. Ownership and Transfer

The Untied States' producer's copyright rewards the producer's risk-taking and investment, and thus grants him a broad copyright. It is usual that the producer contractually agrees with the creative contributors to the film that it shall be a work "made for hire"[157]. It is clear that a work created within the scope of a regular, salaried employee's job is a work "made for hire". Whether a contributor is an employee, is determined by looking at the control exerted

155 http://www.education.nic.in/copyright.asp

156 http://www.education.nic.in/copyright.asp

157 Intellectual Property in Global Markets, p.66

by the employer over the employee, the work process and schedule, the supplying of equipment for the employee's use as well as the payment of benefits and the withholding of taxes. If a film is created by an independent contractor, that is, someone who is not an employee, the film may still be a work "made for hire". That is the case, if, in addition to the above mentioned requirements, the film has been especially ordered or commissioned[158].

Like in India, express licenses, assignments and outright (all of the copyrights in the film) assignments of copyrights are possible in the United States. A transfer of one of these rights may be made on an exclusive or nonexclusive basis. The transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed. Works "made for hire" are not subject to the author's termination of transfer right under the Copyright Act[159].

2. Implied Licenses

An implied license is a license created by law in the absence of an actual agreement between the parties. It arises when the conduct of the parties indicates that some license is to be extended between the copyright owner and the licensee, but no explicit license exists. The implied license allows the licensee some right to use the copyrighted work, but only to the extent that the copyright owner would have allowed, had the parties negotiated an agreement. Generally, the custom and practice of the community are used to determine the scope of the implied license.

Implied licenses have been used to grant licenses in situations where a copyrighted work was created by one party at the request of another. In one case, a special effects company was hired to create a specific effect for a film. The contract did neither assign the copyright in the effect nor provide for a license for the effect to be used in the movie. The court ruled that the effect could be used in the film through an implied license, since the effect was created with the intent that it

158 http://www.bitlaw.com/copyright/scope.html

159 http://www.bitlaw.com/copyright/scope.html

be used in and distributed as a part of the film[160]. This then entitled the special FX company to fair consideration within the framework of the implied-in-fact contract[161]. While relying upon implied licences is theoretically possible, it is highly discouraged, mainly because the producer might find that she has insufficient rights to alter, update, or transform the work for which she paid and the price might be higher than if it had been negotiated.

3. Fair Use

Without going into the depth of the issue, it shall not be omitted here, that not all copying in the United States is banned, particularly in socially important endeavours such as criticism, news reporting, teaching, and research (17 U.S.C. Section 107). The doctrine of fair use is now set forth in the Copyright Act, according to which four non-exclusive factors are to be considered in order to determine whether a specific action is to be considered a "fair use":

1. The purpose and character of the use, including whether the use is of commercial nature,
2. the nature of the copyrighted work,
3. the amount and substantiality of the portion used in relation to the whole work and
4. the effect of the use upon the potential market or value of the copyrighted work[162].

Fair use can be advantageous for the producers, for example if they produce a parody which incorporates some elements (but not all) of the work being parodied[163]. However, it can also prove to be disadvantageous to the co-producers, if their work is used by an outsider.

4. Compulsory Licenses

Compulsory licenses allow third parties to copy, perform, or distribute certain types of works without the copyright owner's permission, in exchange for which the third parties must pay a predetermined royalty amount. These compulsory licenses are extremely limited and there

160 http://www.bitlaw.com/copyright/scope.html

161 Entertainment Law Siegel, p.293

162 Intellectual Property in Global Markets, pp.68, 69

163 see Campbell vs. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)

is no case law or other quantifiable legal trend indicating a severe threat to the film producers' exploitation revenues. Generally, due to the strong belief in the free market theory in the U.S., the implementation of a wide-spread compulsory licensing system, as it has recently been proposed in regard to file-sharing on the internet[164], appears highly improbable.

5. Scope of Copyright

Again, as the producers are considered as the authors of the film, generally they will enjoy the full range of copyrights recognized as such by the U.S. judiciary. The Copyright Act grants five rights to a copyright owner, which include all the aforementioned rights:

1. The right to reproduce the copyrighted work,
2: the right to prepare derivative works based upon the work,
3. the right to distribute copies of the work to the public,
4. the right to perform the copyrighted work publicly and
5. the right to display the copyrighted work publicly[165].

Still, as in India, film producers are obligated to separately acquire copyrights to the musical score employed in their films from the respective copyright holders. This especially is relevant in the context of Bollywood-style films, which incorporate soundtracks that often make up for a large percentage of the film-related revenues. With the advent of new media platforms, such as CD-ROM, DVD and CD-I, and the immense speed of technological development, the major studios, for example, are requesting language for rights "in any and all media, whether now known or hereafter developed", without paying additional fees to music publishers and suggesting that who does not grant these rights will not have their music used in films anymore.

164 http://www.solyrich.com/compulsory-license.asp

165 http://www.bitlaw.com/copyright/scope.html

6. Legal Action

If the co-producers pursue legal action for infringement of their copyrights they can attain damages, the profits gained by the infringement and/or relief through injunction[166].

IV. Germany

Section 2 Clause 1 Number 6 German Copyright Act, the "Urheberrechtsgesetz", includes motion pictures and similarly made works in the list of protected works. Different than the Indian and the U.S. models, the German Copyright Act is based on the "creator doctrine", the so called "Schöpferprinzip", which does not view the author's right as a completely transferable asset. This essentially influences a number of copyright issues.

1. Ownership and Transfer

The authorship of a motion picture in Germany depends on the specific case. Whoever contributes creatively to the specific atmosphere, dramaturgy, content and visual aesthetics of the film, will be one of the authors. Usually, the author of the screenplay, the director, the cameraman, the illuminator, the set designer, the decorator, the costume designer, the sound engineer, the cutter and the composer of the music specifically composed for the film are considered to be the authors. Some also consider the authors of the exposé and the treatment authors. The author's "copyrights", in contrast to Indian and United States law, are inalienable and non-assignable. However, for all imaginable uses, the authors can and usually do grant exploitation licenses. This is routinely done by contract ("buyout") before the film is produced. Here, it is essential to specifically mention the grant of every single use. Otherwise, some exploitation rights may be assumed to fall back to the author earlier than intended[167]. Thus, when working with a German co-producer, requiring her by contract (see above) to acquire all rights needed for an extensive exploitation of the film is of utmost importance. Finally, the producer

166 Intellectual Property in Global Markets, p.70

167 http://www.virtuelle-kanzlei.com/200104.htm

and the performers are granted rights for their “performances”. Just like in the case of copyrights, the producer will routinely acquire the rights from the performers.

2. Implied Licenses

In cases of insufficient or non-mentioning of uses, the doctrine of intended purpose, the “Zweckübertragungslehre”, determines that all rights for known uses will be assumed to have been granted (Section 89 Clause 1 German Copyright Act). Additionally, on March 22, 2006 the German government has decided in favour of a further reform of the Copyright Act which now also assumes that the rights for all yet unknown uses have been granted to the producers[168].

3. Scope of copyright

The author of a film has the following rights under German law:

1. The right to reproduce the film (Section 16 German Copyright Act),
2. the right of distribution (Section 17 German Copyright Act),
3. the right of display (Section 18 German Copyright Act),
4. the right of modification (Section 23 German Copyright Act),
5. the right of publication (Section 12 German Copyright Act) and
6. a number of exploitation and other rights related to or deduced from the above mentioned rights (Sections 19 to 27 German Copyright Act).

As mentioned beforehand, the rights to the possible uses, which are based on these rights, are to be acquired by the film producers. Also, the rights to music that has been used in the film and has existed before need to be acquired from the collection society GEMA or, now that the EU is aiming for the free competition between collection societies by the directive of June 21, 2004, another European collection society.

168 http://www.bmj.bund.de/enid/j6.html

4. Fair Use

Comparable to India and the United States, a number of mostly non-commercial uses are considered fair use in Germany (Sections 44a to 63a German Copyright Act). Those however, do not substantially diminish the financial incentives to engage in film production in Germany.

5. Remuneration

The remuneration of authors in Germany is regulated by law. This is due to the consideration that routinely creative workers find themselves in weak bargaining positions in contractual negotiations with (corporate) producers. Sections 32, 36 and 79 Clause 2 German Copyright Act thus provide that remunerations of authors and performers, even if their amount is contractually provided for, have to be appropriate. The amount is appropriate if it is fair and represents what usually is paid in a comparable situation or is set forth in a collective labour agreement. Also, if the author has licensed his rights and the film becomes an immense success and suddenly the remuneration is in a striking imbalance with the financial success of the motion picture, the author has a right to a change of the contract and consequently to additional payments, unless the situation is provided for in a collective labour agreement (Section 32a German Copyright Act). Most importantly, Section 32b German Copyright Act, a one-sided collision norm, provides that these laws are also applicable if there has been no choice of law and German law would be applicable or as far as substantial uses within territory under German jurisdiction are the subject matter of the contract in conflict. Thus, Section 32 could even apply if Indian law is applicable to the contract and the film is considered Indian[169]. This, from a producer's view, is a potentially painful limitation of the liberty of contract, because, since a film co-produced by a German producer will certainly be exploited in Germany, Section 32b German Copyright Act will apply. In this context, it has been argued that now foreign authors would also

169 see http://www.dfjv.de/dfjv/artikelpool/pdf/96--waldhauser_urheberrecht.pdf

have a claim against German right exploiters[170]. Other commentators, against the wording of Section 79 Clause 2 German Copyright Act, claim that Section 32b German Copyright Act is not applicable to performers as well as that the "lex protectionis" is not applicable in the performer context[171]. This question has not been resolved, yet. If Indian performers and supporting actors could rely on these laws, cheap labour possibly would not be so cheap anymore and the "performer's rights of Bombay Dreams" would be exported from Germany. Because, even if low remunerations might be usual in, for example, India, the fairness requirement remains. In practice however, the protections provided by these laws are rarely invoked[172] and will most probably not discourage co-productions with Germany.

6. Legal Action

If the co-producers pursue civil action for infringement of their copyrights, like in India and the United States, they can attain damages, the profits gained by the infringement and/or relief through injunction. Also, they can demand the unlawful copies to be destroyed or left to them against appropriate payments (Section 98 German Copyright Act).

H. Current Film Industry Issues in India

I. Enforcement

The enforcement of India's copyright laws is de facto not taking place. TRIPS and other international agreements have in this context been criticized for their insufficient requirements in regard to the distribution of resources. But even when the United States imposed "Special 301" trade sanctions and India amended its 1957 Copyright Act in 1994, nothing really changed[173]. The copyright infringements mainly occur through unauthorised reproduction of films (videos, DVDs) and the display of these films on local cable networks. Without a regulatory body, it

170 Wandtke, pp.386-389

171 http://www.ory.de/uvr/UrhVertR050.html#top

172 http://www.jere-mias.de/biwi/urheb1.html

173 Desai, p.263

proves impossible to control over 10,000 cable operators by the standards of the Television Networks (Regulation) Amendment Bill of 2000, which made it mandatory for cable operators to secure copyrights of the films they telecast. The primary reason for the high level of piracy is that the general public and enforcement agencies are neither fully aware of copyright laws nor related issues[174]. Convictions and, possible, deterrent punishments are thus rare.

But lacking enforcement of copyright laws in India also represents a chance for co-producers. Almost 80% of recent Bollywood were "inspired" by one or more Hollywood film scripts[175]. Some screenplay writers are so adept at plagiarizing that they can have a cultural copy of a Hollywood movie ready by the same day that film is first released. Examples are "Mere Yaar Ki Shaadi" (2002) which is said to be a cultural copy of "My Best Friend's Wedding" (1997), "Rafoo Chakkar" (1974) which copied "Some Like it Hot" (1959), "Dil Hain Ke Manta Nahin" (1992) which copied "It Happened One Night" (1934) or "Kaante" (2002) which according to the New York Times, the Sydney Morning Herald and the Los Angeles Times "indianized" "Reservoir Dogs" (1992). Indian courts have held that a work "inspired" by another copyrighted work is not an infringement as long as the theme of the "inspired" work is treated differently from its inspiration, which according to some, is always the case if "you take an idea and route it through the Indian heart"[176]. Due to this vague legal standard as well as the obstacle of the time-consuming judicial system[177], it has not been and will probably not soon be the case that Hollywood studios try to mount copyright infringement cases in India[178]. Also, no cases of injunctions against the distribution of such films outside in India are reported. For a U.S. or German co-producer this de facto represents the ambivalent but unique opportunity to "borrow"

174 Doshi, pp.312,313

175 http://www.rediff.com/movies/2003/may/19copy.htm

176 http://www.cbsnews.com/stories/2003/06/04/entertainment/main557012.shtml

177 http://www.pucl.org/Topics/Law/2003/corruption.htm

178 http://www.cbsnews.com/stories/2003/06/04/entertainment/main557012.shtml

from international motion picture scripts at will for her projects. Although India is taking measures to remedy the situation, it is still far from achieving a western standard of copyright enforcement and having an effectively working court system[179].

II. Entertainment Tax

In India, state entertainment taxes are very high. Their nature and extent varies widely across the different Indian states, ranging from 14% to 167%. This is still the case although the national government had decided to fix the upper limit at 60% in 2001. Additionally, municipal show taxes, new releases taxes and property taxes of between 1% and 2% are levied by most state governments, municipal authorities or local bodies. Finally, for foreign film publicity materials, posters, sample T-shirts and electronic press kits there is an import penalty of 100% of the value of the materials[180].

I. Conclusion

The harmonization of the copyright-related characteristics of the civil and common law systems within the Berne Convention and TRIPS goes quite far. In practice however, it does not provide the co-producers with sufficient security regarding the legal extent of their copyrights, since every court will, in most cases, apply its national copyright law to the motion picture. In fact, only a unified global copyright law could provide this. Additional burdens are created by exceptional legislation, such as Germany's Section 32b Urheberrechtsgesetz possibly obliging producers to fairly remunerate creative contributors wherever they may be from and working (see above). For issues such as moral rights in the context of versioning, the remuneration of authors and licensing, specific contractual provisions and permissions will need to be drafted. Due to the different industry cultures and geographical distances, international co-production

179 http://www.indianembassy.org/press_release/2003/mar/04.htm.

180 http://www.hwwa.de/Forschung/Publikationen/Report/2003/Report227.pdf

contracts should be drafted with much attention to details but also an emphasis on and flexibility in mutual agreement.

The fact that the enforcement of rights is insufficient in India, should not keep foreign producers from setting up cooperation projects. The rights for the Indian market will most probably go to the Indian co-producer, making it primarily her financial risk. Also, any foreign film, co-produced or not, will be pirated in India anyway, if there is money to be made.

Generally, the Indian film industry needs to be prepared, for in other countries' film industries, written contracts are the rule and especially the choice of law can make a fundamental difference, when it comes to a complete long-time exploitation of a film. Indian producers can also learn a lot in terms of profitability and international marketing from their German and U.S. counterparts. Eventually, a sustainable development towards a corporate film culture might be Bollywood's near future. That this would actually make Bollywood films any better is doubtful. But it would most probably increase the Indian producer's and their partner's profit margins.

Considering the crucial aspect of a profitable exploitation worldwide, Indian censorship restrictions are a big issue. While western societies tend to have a high tolerance for sexuality and violence, this is not true for large parts of the Indian society. While this may very well change in the future, such development will take a long time. The actual co-productions aimed at both western and eastern markets would thus have to be rather inoffensive, meaning G or PG by U.S. standards. While a co-production treaty between the United States and India seems unlikely due to the above mentioned opposition, Germany should enter into such a treaty on a national level to boost its regions as shooting locations and satisfy consumer fascination by promoting co-productions set in India.

Soon, the numerous financial, target-audience-oriented and creative incentives to co-produce in and with India will certainly motivate a further rise in co-productions and hopefully

lead to reduced entertainment taxation in India as well as increased availability of subsidies in India and Europe. Politically, India used to isolate itself and if the national film industry would become too international a similar unproductive reaction is possible. Indian producers thus need to be alert to one the one hand profit from the new co-production opportunities and on the other retain the characteristics of Bollywood cinema. For them high times are approaching and they should try to stick with Indira Gandhi's advice and "learn to be still in the midst of activity and to be vibrantly alive in response"[181], because "what happens when Hollywood and Bombay meet, Shiva only knows"[182].

181 http://www.quotationspage.com/quotes/Indira_Gandhi

182 Contracting out Hollywood, p.92

Table of Contents

Bibliography

Books

Behind the Scenes of Hindi Cinema - A visual journey through the heart of Bollywood
by Johan Manschot and Marijke de Vos
KIT Publishers, Amsterdam, 2005
cited as: Behind the Scenes of Hindi Cinema

Bollywood Cinema – Temples of desire
by Vijay Mishra
Routledge, NY and London, 2002
cited as: Bollywood Cinema

Bollywood Film Studio – ou comment les films se font à Bombay
by Emanuel Grimaud
CNRS Editions, Paris 2003
cited as: Bollywood Film Studio

Choice of Law in Copyright and Related Rights
by Mireille van Eechoud
Kluwer Law International, The Hague, 2003
cited as: Choice of Law in Copyright and Related Rights

Contracting out Hollywood
by Greg Elmer and Mike Gasher
Rowman and Littlefield Publishers, Inc. Lanham, 2005
cited as: Contracting out Hollywood

Entertainment Law
by Howard Siegel (Editor)
NY State Bar Association, New York, 2004
cited as: Entertainment Law Siegel

Entertainment Law - The Comparative Yearbook of International Business
by Dennis Campbell and Susan Meek (Editors)
Kluwer Law International, The Hague, 2001
cited as: Entertainment Law

Fernseh- und Filmproduktionen Rechtshandbuch
by Butz Peters
Nomos Verlag, Baden-Baden, 2003
cited as: Fernseh- und Filmproduktionen Rechtshandbuch

Filmland Indien
by diverse authors (here Nandkishor Muley)
Freunde der deutschen Kinemathek e.V./Haus der Kulturen der Welt, Berlin,1991
cited as: Filmland Indien

Filmrecht – Die Verträge
by Patrick Jacobshagen
PPV Printmedien, Bergkirchen, 2005
cited as: Filmrecht – Die Verträge

Indian Popular Cinema – A narrative of cultural change
by K. Moti Gokelsing and Wimal Dissanayake
Trentham Books, Oakhill 1998
cited as: Indian Popular Cinema

Intellectual Property in Global Markets
by Allan S. Gutterman and Bentley J. Anderson
Kluwer Law International, London, 1997
cited as: Intellectual Property in Global Markets

The Law of Intellectual Property Rights
by Shiv Sahai Singh
Deep and Deep Publications, New Dehli, 2003
cited as: The Law of Intellectual Property Rights

Law of Copyright and Industrial Designs
by P.Narayanan
Eastern Law House, New Dehli, 2002
cited as: Law of Copyright and Industrial Designs

Law relating to Patents, Trade Marks, Copyright, Designs and Geographical Indications
by B.L. Wadehre
Universal Law Publishing Company, Dehli, 2000
cited as: Law relating to Patents, Trade Marks, Copyright, Designs and Geographical Indications

Moral Rights
by Cees van Rij
Maklu Publishers, Apeldorn, Netherlands, 1995
cited as: Moral Rights

Praxiskommentar zum Urheberrecht
by Ulrich Bock; Arthur-Axel Wandtke and Winfried Bullinger (Editors)
Beck Verlag, Munich, 2002
cited as: Wandtke

World Copyright Law
by J.A.L. Sterling
London, Sweet & Maxwell, 2003
cited as: World Copyright Law

Articles and Journals

Choice of Law and International Copyright
by William Patry
in: The American Journal of Comparative Law
Vol.48, No.3, Summer 2000
cited as: Choice of Law and International Copyright

Copyright Infringement in the Indian Film Industry
by Rachana Desai
in: Vanderbilt Journal of Entertainment Law & Practice
Spring 2005
cited as: Desai

Copyright Problems in India affecting Hollywood and Bollywood
by Priti H. Doshi
in: Suffolk Transnational Law Review
Vol. XXVI, Summer 2003 No.2
cited as: Doshi

Multimedia und das Filmbearbeitungsrecht
by J. Kreile and D. Westphal
in: Gewerblicher Rechtsschutz und Urheberrecht
1996, Page 257
cited as: GRUR 96, 254, 257

Internet Websites
All of the here enumerated websites were last accessed on April 17, 2006.

http://www.bitlaw.com/copyright/scope.html

http://www.bmj.bund.de/enid/j6.html

http://www.bundespruefstelle.de/bpjm/Die-Bundespruefstelle/aufgaben.html

http://www.capitalideasonline.com/articles/index.php?id=707&PHPSESSID=d8b680b6e4cff7355872748c8a41eb32

http://www.cbsnews.com/stories/2003/06/04/entertainment/main557012.shtml (June 4, 2003)

http://www.cinemaya.net/europe.asp

http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/

http://www.copyright.gov/circs/circ1.html#hlc

http://cyber.law.harvard.edu/metaschool/fisher/integrity/Links/Articles/fielkow.html

http://cyber.law.harvard.edu/metaschool/fisher/integrity/Links/Articles/fielkow.html#anchor8306170

http://www.dfjv.de/dfjv/artikelpool/pdf/96--waldhauser_urheberrecht.pdf

http://dipp.nic.in/ipr.htm

http://www.dreharbeiten.de/archiv/print.cfm?id=1186,

http://economictimes.indiatimes.com/articleshow/40201059.cms

http://economictimes.indiatimes.com/cms.dll/articleshow?msid=226887

http://www.education.nic.in/copyright.asp

http://europa.eu.int/comm/avpolicy/media/index_en.html

http://www.german-cinema.de/magazine/2002/04/germprod/fanes.html

http://www.german-cinema.de/magazine/2001/02/focus/nidaruemelin.html

http://www.iprights.com/publications/articles/article.asp?articleID=295

http://www.jere-mias.de/biwi/urheb1.html

http://www-personal.k-state.edu/~tummala/regcorpt.rtf

http://www.kefk.net/Wissen/Wikipedia/Recht/Urheberrecht/Anwendbares.Recht/index.asp

http://www.loc.gov/today/pr/1996/96-045.html

http://www.medienmaerkte.de/artikel/kino/040502_film_foerderung.html

http://www.nishithdesai.com/hollywood-bollywood/media-chap-5-D.htm

http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.de

http://www.obs.coe.int/online_publication/expert/coproduccion_aspectos-juridicos.pdf.en

http://www.obs.coe.int/online_publication/reports/00001259.html

http://www.ory.de/uvr/UrhVertR050.html#top

http://www.pucl.org/Topics/Law/2003/corruption.htm (July 2003).

http://www.ramojifilmcity.com/html/film/filmmakers_guide/essentials.html?h=5

http://www.rediff.com/movies/2003/may/19copy.htm (May 19, 2003)

http://www.solyrich.com/compulsory-license.asp

http://www.thehindu.com/2006/02/26/stories/2006022600221300.htm

http://www.ukfilmcouncil.org.uk/filmindustry/india/

http://www.unesco.org/culture/laws/doubletax/html_eng/page1.shtml

http://www.unescobkk.org/fileadmin/user_upload/culture/Cultural_Industries/Singapore_Feb_05/Trends_in_AV_Markets.pdf

http://www.uni-muenster.de/Jura.itm/hoeren/INHALTE/publikationen/IPR234.pdf

http://www.urheberpersoenlichkeitsrecht.de/#_ftn260

http://www-rcf.usc.edu/~pgeller/xborder.htm

http://www.variety.com/article/VR1117934815?categoryid=1279&cs=1

http://www.virtuelle-kanzlei.com/200104.htm

http://en.wikipedia.org/wiki/First_sale_doctrine

http://en.wikipedia.org/wiki/Indian_film_censor_ratings

http://en.wikipedia.org/wiki/List_of_Indian_languages_by_total_speakers

http://de.wikipedia.org/wiki/Medienfonds

http://en.wikipedia.org/wiki/Motion_picture_rating_system#Germany

http://en.wikipedia.org/wiki/MPAA_film_rating_system

http://en.wikipedia.org/wiki/Parallel_importation#Germany

http://en.wikipedia.org/wiki/Parallel_importation#United_States_2

http://en.wikipedia.org/wiki/Rome_Convention

http://de.wikipedia.org/wiki/Starship_Troopers_%28Film%29

http://en.wikipedia.org/wiki/WIPO_Copyright_Treaty

http://www.wipo.int/edocs/notdocs/en/berne/treaty_berne_110.html

http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=16

http://www.wipo.int/treaties/en/ip/berne/summary_berne.html

http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm#copyright