International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2026 – ISSN 3048-7501
Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham

The Director's Copyright in Cinematograph Films: An Analysis under the Copyright Act 1957

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Received 30 April 2026; Accepted 30 May 2026; Published 03 June 2026

This paper examines the position of Directors under the Copyright Act, 1957, which recognised producers as the sole authors and first owners of copyright in cinematograph films. It analyses statutory provisions, precedents, international frameworks, comparative law and parliamentary debates to evaluate the imbalance between creative contribution and financial investment. The study argues that directors play a significant intellectual role and should be recognised as co-authors alongside producers through amendments introducing joint authorship. Filmmaking is a complicated phenomenon that needs a team of artists. It includes numerous layers of rights connected to different parts of a production, like the screenplay, the music, the direction, and the performances.[1] In the world of cinema, besides the actors and actresses, there are numerous artists involved in the background and behind-the-scenes work that contribute to the making of a film. The Producer who looks after the core management and finances, the Script writer curates the film in words, the director who turns the script into reality, the music composers, the technical team, the costume designers, the makeup team, and many more. In spite of these persons, the role of the director is of utmost importance as it is he who perceives it after reading the script and delivers it to the audience. However, the Copyright Act does not give ownership of copyright to him.

[1] Cathy Jewell, 'From Script to Screen : What Role for Intellectual Property?' (*WIPO*) <http : //www.wipo.int/ip-outreach/en/ipday/2014/ip_and_film.html> accessed 25 April 2016

Keywords: *directors, copyright, cinematograph, filmmaking.*

INTRODUCTION: IS IT SUITABLE TO RECOGNISE THE DIRECTOR OF A CINEMATOGRAPHIC FILM AS AN AUTHOR WHEN SECTION 17 DESIGNATES OWNERSHIP TO THE PRODUCER?

The Copyright Act 1957 protects the copyrights of intellectual property whenever the author puts an idea into a tangible form, i.e, being perceived by the senses. The Cinematograph works are protected under the Copyright Act 1957. Section 2(d)(v) of the Act states that, in terms of a cinematograph film, the author is the Producer.[2] Moreover, Section 2(uu) defines 'producer', in relation to a cinematograph film or sound recording, as a person who takes the initiative and responsibility for making the work.[3] In terms of interpretation, the word "means" is mentioned in both definitions, which specifies that both are restrictive definitions. The legislature intended to apply a limitation to the definition.

On the contrary, Section 17(b)[4] states "…. a cinematograph film made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein." Thus, when a Producer commissions a musician, director, or artist for a work in return for consideration or rewards, he becomes the first owner of the copyright. No copyright subsists in the above artists unless a contract is entered into on the contrary between the director and the producer.

Section 17(c)[5] further strengthens the above provision. It states, "in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein." Consequently, if the director is hired or employed by the producer under a contract of service or apprenticeship, then he automatically loses his copyright if there is no contract entered into the contrary because the employer, i.e, the producer, becomes the first owner of the copyright.

[2] The Copyright Act 1957, s 2(d)(v)
[3] The Copyright Act 1957, s 2(uu)
[4] The Copyright Act 1957, s 17(b)
[5] The Copyright Act 1957, s 17(c)

Precedents: One of the first cases in which the interpretation of Section 17 was taken was the case of Ramesh Sippy v Shaan Ranjeet Uttamsingh.[6] It was vehemently stated that, "Though the director of a film is expected to be involved at every stage in the creation of the film, he does not put in financial investment for the making of the film, but it is the producer who either finances the film himself or arranges for the finance, and it is the producer who takes the sole risk of suffering losses if the film is a flop. The director is paid his fee and bears no liability whatsoever if the film is not commercially successful." Thus, this interpretation reinforced that economic participation and risk-bearing capability formed the basis of copyright ownership.

In Eastern India Motion Pictures Association and Ors v Indian Performing Right Society Ltd.,[7] the Calcutta High Court decided, "In our opinion, therefore, when a composer of a lyric or music composes for the first time for valuable consideration for purposes of a cinematograph film, the owner of the film at whose instance the composition is made, becomes the first owner of the copyright in the composition. The composer acquires no copyright at all, either in respect of the film or its soundtrack, which he is capable of assigning. In these circumstances, assignment, if any, of the copyright in any future work is of no effect. The composer can claim a copyright only based on an express agreement reserving his copyright between him and the owner of the cinematograph film."

In drawing relations with the Director's position, if there is no contract and the work is an assignment, then a copyright cannot be claimed. Consequently, Justice Sankar Prasad Mitra opined that "…assignee cannot have a right higher than the right of an assignor."

This position was reiterated in the case of Shree Venkatesh Films Pvt. Ltd. v Vipul Amrutlal Shah & Ors.,[8] where it was held that, "By operation of law or by contract or assignment, the producer of the film may be vested with copyrights in the above works. For example, the producer may employ a storywriter or a screenplay writer, or a singer under a contract of employment. In that case, the employer, subject to contract, is the first owner of the copyright. Otherwise, the author of the work may retain his individual copyright."

[6] *Ramesh Sippy v Shaan Ranjeet Uttamsingh & Ors* (2013) 55 PTC 95
[7] *Indian Performing Right Society Ltd v Eastern Indian Motion Pictures Association* (1977) 2 SCC 820
[8] *Shree Venkatesh Films Pvt Ltd v Vipul Amrutlal Shah & Ors* (2009) SCC OnLine Cal 2113

The Indian courts have mainly followed the Literal Rule of Interpretation when addressing issues of authorship and ownership of copyright in cinematograph films. In Ramesh Sippy v Shaan Ranjeet Uttamsingh, the court based its decision on the clear and literal wording of Section 17 of the Copyright Act. It stated that the producer, who initiates the film and takes the financial risk, is the first owner of copyright. Similarly, in Eastern India Motion Pictures Association v IPRS, the Calcutta High Court interpreted Section 17(b) literally. The court concluded that when a composer creates a work for payment at the producer's request, the producer automatically becomes the first owner unless there is a different contract. This same approach was confirmed in Shree Venkatesh Films v Vipul Amrutlal Shah, where the court interpreted the terms "employment" and "first ownership" literally. The judiciary avoided relying on external factors or the mischief rule. Instead, it chose to adhere closely to the clear intent shown in the statute's language.

It is evident that the Indian Copyright Act, 1957, has an inclination towards the Producer based on financial interests and undermines the creative skills of the Director and other artists. The section about this, specifically 2(d)(v), 2(u)(u), 17(b), and 17(c), needs amendments with the inclusion of the Director with a specific definition of who the author is, to avoid any ambiguity.

IS THERE A NEED FOR AN AMENDMENT TO THE COPYRIGHT ACT IN LIGHT OF INTERNATIONAL LEGISLATION?

The Berne Convention (1886): Initially, the Berne Convention did not provide exclusive protection for cinematographic works. However, it was only in the Brussels Convention (1948) that cinematographic works were expressly recognised as protected works. Importantly, the Stockholm Revision was a turning point. Under Article 14 bis, cinematographic works were recognised as original works. The copyright owner could enjoy the same rights as the author of the original work. However, the contentious question of who shall be considered as the "author" and "owner" was left to the domestic regulations to decide and incorporate into their laws.

Article 14(2)(b) stipulates that the authors who have contributed to the making of a cinematographic work are presumed to be allowed the reproduction, distribution, and other like usage of the work.[9] But this shall apply only to those countries which "include among the owners

[9] Guide to Berne Convention 1978

of copyright in a cinematographic work authors who have brought contributions to the making of the work.[10] The purpose of this was stipulated by WIPO, which is as follows,

"The purpose behind Article 14(2)(b) is clear enough: to facilitate the exploitation of the cinematographic work as a whole, and to ensure that this is not restricted or inhibited by objections from co-authors whose contributions to the overall work may be regarded as comparatively minor."[11]

Article 15 provides for persons who have the right to enforce the protected rights and attempts to hint at who could be the author of a cinematographic work and provides that "the person or body corporate whose name appears on a cinematographic work in the usual manner, shall, in the absence of proof to the contrary, be presumed to be the maker of the said work."[12]

The Universal Copyright Convention (1952) safeguarded films but did not cover authorship and moral rights. The TRIPS Agreement (1994) upheld the standards from Berne and indirectly covered cinematographic works, leaving the determination of authorship to national legislation. The WIPO Copyright Treaty (1996) modernised copyright law for the digital era and introduced additional rights, such as commercial rental. Nonetheless, similar to previous agreements, it did not create a uniform rule for authorship or ownership.

United Kingdom: In the early 20th Century, films in the United Kingdom ("UK") received indirect protection either as a series of photographs or as dramatic works. With the passing of the Copyright Act in 1956, cinematograph films were placed under the protection of Section 13. Subsequently, the Copyright, Designs and Patents Act ("CDPA") of 1988 recognised films as a distinct category of copyright. Regarding authorship, Section 9 (2) (ab) states, "...in the case of a film, the producer and the principal director."[13]

This inclusion was enforced by the 94th Amendment under the European Union Duration Directive. Previously, the law said that the person by whom the necessary arrangements were made or the making of films was the author, implying the Producer as the sole author, as he is

[10] The Berne Convention 1886, art 14(2)(b)
[11] Sam Ricketson, 'WIPO STUDY ON LIMITATIONS AND EXCEPTIONS OF COPYRIGHT AND RELATED RIGHTS IN THE DIGITAL ENVIRONMENT' (*WIPO,* 05 April 2003) <https://www.wipo.int/edocs/mdocs/copyright/en/sccr_9/sccr_9_7.pdf> accessed 25 April 2016
[12] The Berne Convention 1886, art 15(2)
[13] Copyright, Designs and Patents Act 1988

the person who undertakes the lead of arrangements. Nevertheless, the amendment put forward the principle of joint ownership.

It is important to note that the UK didn't wholly adopt the standards established by the European Union. Article 2.1 states that, "The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. The Member States shall be free to designate any co-authors." In contrast, Article 3 stipulates, "The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made." These provisions indicate that there was a deliberate aim to differentiate between the producer and the director of the film by attributing authorship in the cinematographic domain to the director, while the producer is meant to hold authorship over the fixation aspect of the film. However, the CDPA appears to have overlooked this distinction entirely.

United States of America: The evolution of the United States of America ("US"). The copyright law commenced with the enactment of the Copyright Act of 1790. This act initially covered only a limited number of categories of work. Throughout the 19th century, successive amendments gradually expanded the scope of protection to include prints, musical compositions, dramatic works, photographs, and paintings. Following the 1912 amendment, the Copyright Act of 1909 recognised motion pictures as a copyrightable category. However, the modern foundation was set by the 1976 Act, which aligned with the US. law with international standards from the Berne Convention (1886) and the Universal Copyright Convention (1952–71).

After initial reluctance, the US ratified the Berne Convention in 1989 following legislative reforms like the Visual Artists' Rights Act, even though motion pictures were left out of its moral rights framework. The Copyright Act of 1976 characterised motion pictures as audiovisual works that need originality and fixation, but it left the issue of authorship unclear. In practice, motion pictures are treated as 'works made for hire.' This means producers or studios, usually Hollywood entities, are recognised as authors and copyright owners instead of directors, scriptwriters, or other artists involved. This approach demonstrates a strong tilt towards commercial interests, ensuring that copyright ownership stays with producers or sponsors rather than individual creators.

In conclusion, the global institutions and conventions have left the determination of copyright ownership in cinematographic works to domestic legal systems. Among these approaches, the European Union Directive has taken significant steps by mandating joint ownership, which can be seen in the UK legislation. In contrast, the US remains producer-centric, following the "work made for hire" promoting to commercial exploitation rather than creative authorship. In order to align with the best practices, India should consider following the model of Joint Authorship, striking a balance between creativity and commerce.

WHAT EFFECT DOES THE OMISSION OF DIRECTORS FROM AUTHORSHIP HAVE ON THE BALANCE BETWEEN CREATIVE CONTRIBUTIONS AND FINANCIAL SUPPORT IN CINEMATOGRAPHIC FILMS?

Parliamentary Standing Committee and 2012 Amendment: The Copyright (Amendment) Bill, 2010, was introduced to amend the Copyright Act, 1957, in accordance with the World Intellectual Property Organisation (WIPO), WIPO Copyright Treaty (WCT), 1996, and WIPO Performance and Phonograms Treaty (WPPT), 1996, to remove operational challenges and address issues arising from digital technologies and the Internet. The debate addressed the issues and opinions from various guilds and organisations associated with the film industry.

The proposals aimed to acknowledge the intellectual role of the principal director in films by introducing joint authorship with the producer. Clause 2(d)(v) designates both as authors, while clause 2(z) clarifies that films are considered works of joint authorship unless the producer and director are the same. Section 17 was proposed to be changed to treat them together as the first owners of copyright after the amendment. For films made before this change, the director holds copyright for ten years after it expires, with a 70-year term under a proviso in Section 26.

The Committee noted that the principal director currently receives a fee but does not have a share in the rights, despite making a significant intellectual contribution. Unlike in the US, where unions manage royalty distribution, European Directives acknowledge joint authorship in films by including directors, scriptwriters, dialogue writers, and composers. The producer acts only as the initiator. The proposed changes match international agreements like Berne, Rome, and TRIPS. It was highlighted that clear contracts between producers and directors could effectively manage jointly owned rights and help avoid future disputes over film exploitation.

Various stakeholders opposed these proposals. The Film and Television Producers Guild of India held that, "The proposed co-ownership of the principal director was absolutely unfair and unjustified, as it was the producer who faced the potential risk of loss, as compared to a principal director charging an upfront fee for his services. It was the producer who was entrusted with the task of making a film, organising finance, employing artists, technicians, story writer, music director, lyric writer, distributor, exhibitor, etc., and taking all their liabilities/responsibilities. In such a scenario, making the director a co-owner/ partner was totally unjustified.[14]

The committee noted that the director can sell or assign his rights to a third party rather than to the producer, which could lead to conflicts with the producer's business strategies. The presence of a fair competitive environment in the film industry for both parties was also mentioned as a reason against the need for such a proposal. Supporting the perspective of the Film and Television Producers' Guild, the Indian Motion Picture Producers Association argued that only the producer bears the financial losses if a film does not succeed, while the director receives their payment upfront. Conversely, the financial risk associated with producing a film is entirely borne by the producer. When a film becomes successful, all parties, including the director, share in the profits.

A significant opposition was made by the Indian Broadcasting Foundation by stating that, "The proposal would affect the broadcasting organisations in terms of both buying the movies and producing television content. For buying movies, broadcasters would now need to negotiate assignment/licensing contracts with both the producer and principal director of such a movie, thereby making such procurement cumbersome and a costly affair."

A practical question was raised by Dr Bharatkumar Raut in this assembly, "Now, if there are singers, music directors, or writers who go from one producer to another, from one music director to another, and say, 'don't pay us', or 'pay us a little, but use our songs and give us a chance', what will he do? Later, this could prove to be a loophole in this business, because if you say that it is provided for in this Bill, it would not be voluntarily accepted; it would be done out of compulsion. Therefore, my request to the Hon'ble Minister is, now that you have brought this Bill, just fill in those lacunae, and it would serve the purpose."[15]

[14] Two Hundred Twenty-Seventh Report on the Copyright (Amendment) Bill 2010
[15] The Copyright (Amendment) Bill 2010

While the Committee acknowledged the director's creative role, it stressed that the producer takes on the financial risk, responsibility, and initiative for the film. Directors already earn substantial fees and negotiate rights through contracts. The lack of a clear definition of "principal director" adds to the confusion since the film industry commonly uses the term "director" without making such a distinction. The Committee cautioned that joint ownership could disrupt current practices, discourage producers from hiring directors, and limit chances for new talent. It concluded that the proposal is unfair and recommended dropping the amendment.

FIVE PRINCIPLES OF AUTHORSHIP

Professor Jane C. Ginsburg outlines five principles that determine authorship under copyright law.[16]

Principle 1: Authorship Places Mind over Muscle: In filmmaking, a director is not just following orders; he is the creative force behind the artistic vision. A director's intellectual work, namely framing the story, guiding actors, shaping scenes, and managing the creative process, shows he is more than just a hired hand. His intellectual contribution establishes his authorship.

Principle 2: Authorship Prioritises Human Intellect Over Technology: When it comes to using advanced equipment, cameras, editing software, and digital technologies in filmmaking, the director makes the subjective decisions. Instead of undermining the director's authorship, the use of machines in filmmaking emphasises his role in converting mechanical recording into a creative work.

Principle 3: Authorship and Originality are Interchangeable: Through decisions about narrative structure, cinematography, emotional tone, and script interpretation, a director contributes to the uniqueness. A director creates a distinctive artistic impression even when working with pre-existing narratives or producer instructions. Beyond just technical or monetary contributions, this uniqueness bolsters his claim to authorship alongside the producer.

Principle 4: Intent to be an Author: A director's role includes a clear intention to create. His choices in casting, delivery, music, and visual storytelling show his active authorship. Even

[16] Jane C Ginsburg, 'The Concept of Authorship in COmparative Copyright law' (2003) 52(4) DePaul Law Review <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1527&context=law-review> accessed 25 April 2016

if the law has not historically recognised his authorship, the nature of directing expresses his intention to be a co-author of the film.

Principle 5: Money Talks; maybe it also Writes, Composes, Paints, etc.: Traditionally, producers have held authorship because they provide funding and take on financial risks. However, recognising directors as co-authors changes this by valuing creativity, not just financial input. While money is crucial for making a film, it is the director's creative contributions that turn it into a meaningful, copyrightable work.

In conclusion, the Parliamentary Standing Committee has extensively deliberated on the issue and acknowledged the importance of the Director's contribution; however recommended against the joint ownership due to contractual conflicts and financial burdens. Applying Ginsburg's principles shows that directors act with originality, intention, and creative judgment. This makes them more than just hired contributors. By overlooking their authorship, the law gives an unfair advantage to financial investment and overlooks intellectual work. This marginalises creative stakeholders and disrupts a fair balance between commerce and creativity.

RECENT DEVELOPMENTS

In the recent case of Ranjhanaa, the AI turned a sad ending into a happy one, leaving the lead actor and the director in a state of despair. The event raises two pertinent questions, one of a recent origin, i.e., the advent of Artificial Technology, and the other of ownership of copyright in a film by the Producer.[17] Some producers have seconded this issue, stating that this is not new; the producers have been reediting the film when sent for international premiere for years. However, with AI, the task has been easier, and it can cater to the contentment of the audience who were left in sadness after the movie finished.

The second aspect is of artists writing over the copyright. Section 17 of the Copyright Act, 1957 states that the producer shall be the first owner of the copyright, unless there is a contract entered into on the contrary. In reality, these contracts, even if giving a chance to the artists or

[17] 'Dhanush condemns AI-altered 'Raanjhanaa' ending; claims 'concerned parties went ahead despite my clear objection' *Times of India* (06 August 2025) <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/dhanush-condemns-ai-altered-raanjhanaa-ending-claims-concerned-parties-went-ahead-despite-my-clear-objection/articleshow/123080589.cms> accessed 25 April 2016

directors, are so complex to decipher. Precedents also support the state of affairs that, as a Producer has financial stakes in the copyright, he should be considered the owner. The director enjoys his part of fame after the release of the film, subject, of course, to popularity. If the film flops, it is the producer who has to suffer.

CONCLUSION

Nandita Saikia has comprehensively carved out the main issue that our copyright act is facing. "Common Law countries, such as India, did not evolve in a way that even gave the illusion that the person whose intellectual effort was pivotal in creating the film was its author. There was no copyright which vested in persons such as directors, whose roles would have been critical in the conceptualisation and development of the film, and whom it may have been possible to consider to have been the authors with reference to their creative input. Instead, the copyright in a film immediately vested in the financier-producer who was considered to be the author of the film."[18]

Thus, these principles clearly elucidate that the intellectual output weighed more than financial interests, as without a director, a film can be understood as a blackboard without chalk, as you have put all your finances to buy it, but you don't have anyone to write on it. There is a dire need for an amendment to the Copyright Act 1957. There should be a provision in the Joint Ownership of Copyright Act, where the producer as well as the director should be considered as the author.

[18] Nandita Saikia, 'The Bollywood Amendments: Film, Music and Indian Copyright Law (2010 to 2012)' (2013) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1566350> accessed 25 April 2016