

## Copyright assignments and implications of technology

There have been varying opinions by different High Courts in India on the issue whether a right based on a technology that was not in contemplation at the time of a copyright assignment could be read into the assignment after such technology has come into existence. This issue assumes tremendous significance for India which has the largest movie industry in the world and which made its first movie as far back as 1913. The term of copyright for a film under the Indian copyright law is 60 years from the date of publication. During the latter part of the last century, when satellite technology and digital technology were not in contemplation, a lot of agreements were entered into in respect of their distribution and marketing.

A Division Bench of the High Court of Delhi recently had an occasion to review the legal position in respect of one such agreement vis-à-vis the existing technologies today in *International Film Distributors v. Rishi Raj*. The facts of this case revolved around the Hindi film 'Kohinoor' produced in the year 1960. The producer of the film was later declared as insolvent and all the assets of the producer, including the negative rights in the film, the sole and exclusive commercial and non-commercial video rights in all formats including CVD, DVD, satellite and television rights (both terrestrial and extra terrestrial), cable TV, pay TV rights and the available theatrical rights for all India and overseas territories, were taken over by the official assignee of the High Court of Bombay.

In August 2000, the plaintiff, Rishi Raj, bought the said rights from the official assignee by offering the highest bid and an agreement assigning the said rights to the plaintiff was executed by the official assignee. Subsequent to the said assignment, the defendant, International Film Distributors, contacted the plaintiff and staked a claim that by virtue of an assignment between the defendant and the producer entered into in October 1961, the defendant held certain rights in the film in India, Burma, Pakistan, Ceylon, Aden, Continent Africa, Complete Middle East, West Indies, Fiji UK and Greece. The defendant contended that the assignment to the plaintiff by the official assignee was subject to the rights already granted to the defendant in 1961. One of the main arguments of the plaintiff was that in 1961, there were no satellite rights or video rights and, hence, the defendant could not stake a claim to the said rights.

On a review of the judicial precedents from the High Courts of Bombay and Madras and the facts and documents placed on record, the Division Bench was of the view that no restriction could be imposed on the enjoyment of copyright which was vested with the earlier exclusive owner, on the ground that the exhibition of the film on DVD and satellites had not been invented at the time when the agreement was entered into. Court pointed out that it was common knowledge that with the passage of time television rights had become important and whenever an agreement had been arrived at, the intention of the parties must be looked at to decide what exactly was agreed and intended to be performed. Accordingly, the Division Bench modified the order of the Single Judge and allowed the defendant to exploit, distribute and exhibit commercially as well as non-commercially in respect of the said film in 35 mm as well as in reduced sizes including the right of television and all other rights attached to such distribution, exploitation and exhibition of the same in the aforesaid contracted territories.