

3 Idiots: Not yet the last word....

[By Latha R Nair - Published in SpicyIP on January 16, 2010]

<http://spicyipindia.blogspot.in/2010/01/latha-nair-on-3-idiots-and-contractual.html>

Being an ardent fan of Chetan Bhagat, I have been following the blogs on SpicyIP on the controversy surrounding '3 Idiots' and have been eager to blog on the same but for my preoccupation with certain personal and professional commitments.

Having settled down a bit and watched the movie (and of course, read the book 'Five Point Someone'), the first thing that came to my mind was a comment made by Charles Dickens regarding certain law suits he had to pursue in asserting his rights as an author of his own works. I quote him as follows:

"My feeling is the feeling common, I suppose to three-fourths of the reflecting part of the community in our happiest of all possible countries, and that is, that it is better to suffer a great wrong than to have recourse to the much greater wrong of the law. I shall not easily forget the expense and anxiety, and horrible injustice of the Carol case, wherein, in asserting the plainest right on earth, I was really treated as if I were the robber, instead of the robbed".

But for Bhagat's story, characters and the theme revolving around today's education and grading systems beautifully depicted in the book, 'Five Point Someone', the movie, '3 Idiots', would not have been a roaring success as it has been today. Yet, Bhagat was accused of hankering after cheap publicity when he asserted his rights for credits and was treated by the producers as if he were "the robber instead of the robbed". Well, shall we then say that he is in the company of great people like Charles Dickens in more than one way!

Bhagat may have put the controversy behind him and may have moved on. However, one important aspect that authors like Bhagat and producers like Rajkumar Hirani may examine to steer clear of controversies such as this one is the manner in which copyright agreements are concluded in Bollywood. I am compelled to say that these agreements, besides often stepping beyond the four corners of the Copyright Act, 1957, also lack a basic fairness that they ought to reflect in favour of the owner/ author of the copyright.

No assignment or license could be concluded wherein rights beyond what is available to the owner of a copyrighted work under Section 14 of the Act can be assigned or licensed by an owner to an assignee. I had a difficult time relating Clause 2 of the agreement Bhagat signed with Vinod Chopra Films Limited (VCFL) to Section 14 (a) of the Act that deals with the rights of copyright owners in respect of literary works. To begin with, the agreement seems to grant everything under the sun when it says that "*the rights shall mean and include to read, refer, interpret, adapt, title, create and produce the novel in any way or manner whatsoever....*". Could Bhagat really have granted to VCFL more rights than what he had under Section 14(a) of the Act in respect of *Five Point Someone*? The rights granted under Section 14(a) to a copyright owner in respect of a literary work are as follows:

- (i) to reproduce the work in any material form including storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do in relation to a translation or an adaptation of the work, any of the above acts specified in relation to the work

Under Section 19 of the Act, the assignment of copyright in any work shall identify the work and shall specify the rights assigned. If Bhagat had assigned only the rights to make an adaptation of the book in the form of a script or screen play and to make a cinematograph film based on the book to VCFL, the language of clause 2 does not seem to have captured it well except for the word ‘adapt’. Ideally, the rights should have been specified as per the language under Section 14(a). To add to the confusion, clause 5 of the agreement unqualifiedly states that Bhagat shall continue to be the sole exclusive and perpetual owner and holder of any or all copyrights, intellectual property rights and ownership rights in the novel!

It is also debatable whether VCFL could really have enforced those rights granted under clause (2) of the Agreement (namely, read, refer, interpret, title, create and produce the novel) which find no mention under Section 14(a). I am compelled to conclude that Bhagat unsuspectingly and without adequate legal advice walked into this deal and put himself in a vulnerable position much to the advantage of VCFL.

As for the consideration paid to Bhagat under clause 3, I only wonder if it was adequate?! If Salman Rushdie or Vikram Seth were to sign a similar agreement with VCFL, would VCFL have dared to offer them the same amount as was offered to Bhagat? VCFL chose to make a movie out of *Five Point Someone* because they believed that it would sell. In my opinion, VCFL could have been a little more of generous to Bhagat.

Moving on to clause 4 of the Agreement which deals with the credits, there is nothing in there that binds VCFL to grant credits to Bhagat in the title sequence. If I were to draft that clause, I would use the following language:

“In accordance with Section 57 of the Copyright Act, the Assignor shall have the right of integrity and the right to claim paternity of the work being assigned. The Assignee, therefore, undertakes to give appropriate credit to the Assignor on the screen through appropriate display of the words

‘Based on the Novel

“FIVE POINT SOMEONE”

By

Chetan Bhagat’.

Such display on the screen shall be on a single card in the main title sequence of the film and the font and style of such display shall be no less favorable than the display used for other information on the main title sequence.”

I would draft it so irrespective of whether I am representing the assignor or the assignee as I would not want the assignor to later raise a controversy on the credits to the detriment of the assignee nor would I want the assignor to be deprived of his moral rights which the assignee is obliged to respect under the Act. Also, as the author of the work, in my opinion, Bhagat had right to see the final script / screenplay to ensure that his right of integrity in the work (a right against mutilation of the work) granted under Section 57 of the Act was not violated. Having not ensured that such a clause was inserted in the contract, it is futile to lament now that he was never shown the final script.

Also, I am baffled as to how Bhagat agreed to a general warranty like the one under Clause 10(d)? It does not even refer to the work in question. Even assuming that the clause was referring to the novel, could anyone give a general warranty in an agreement that he would not be sued by third parties in future? How could such a clause be enforced in the event of a breach caused by an unanticipated law suit filed by an unknown entity against Bhagat?

By clause 10(e) of the agreement, VCFL binds Bhagat not to alter or change the novel without informing VCFL. Leaving aside the absurdity of that clause (that Bhagat might alter or change an already published book), why did Bhagat not insist on a reciprocal clause vis-à-vis the script/ screenplay that any deviation from the book in the script would be made only after informing him? After watching the movie, I could sympathise with Bhagat because I did get the ‘unmistakable impression’ that the movie was indeed a copy of the book! The concluded poll on Spicy IP is also a testimony to this. While the sub-plots by way of the speech and other bits were thrown in by the script writer, it is nothing but a white lie to say that the movie only has 2-3% of the book. Was there any need for clause 10(e) if the producer meant to take only 2-3% of the book?

Bhagat should have also negotiated a clause to include him in the publicity and promotion of the film which could have ensured that he was not kept out of the picture by the producers. After all, the movie is based on his work! The rest of the clauses also seem to be pro-producer and have not been of much help to Bhagat.

I also feel that the agreement could have been more explicit about the provisions of Section 19 of the Act regarding the term of the assignment and the territory of the assignment, which, incidentally is missing and has to be, therefore, presumed to extend only to the whole of India!

Even from a producer’s angle, it pays to look more closely at the legal issues involved in assignment of copyright in the underlying works used in films while entering into such contracts because there is a recent trend to file law suits against producers on the eve of the release of a movie. Very often huge sums are paid to compromise these controversies to ensure that the movie gets released on time. To avoid such last minute controversies, it would be helpful to scrutinize and make sure that the contractual clauses concerning the assignment of the underlying works are unambiguous and in conformity with the Copyright Act, 1957.

I don't believe that this is the last word on the controversy. But I do hope that Mr. Bhagat would not be as innocent as he has been while parting with the rights in respect of his prized creations in the future.