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DECODING BOLLYWOOD’S ROYALTY-SHARING CONUNDRUM

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India’s film making community and business got ‘industry’ status only in 2011. However, unlike major industries such as telecom and pharmaceutical, the film industry (popularly known as “Bollywood”) is characterised by a major lack of legal rules and institutions to administer them, the problem being most acute in respect of artists. Consequently, the industry is governed completely by market forces whose successful players wield nearly all the bargaining power. It’s almost baffling that a film industry which is currently worlds second in terms of revenue is so thinly regulated.

Unlike American and “World Cinema”, Indian films are massively dependent on song sequences for their commercial success. So central is music to Bollywood films that music albums are usually released few weeks before the film, helping to create hype and drive audiences to theatres. Despite rampant piracy, sale of film’s soundtracks remains a significant revenue source for producers. According to the Federation of Indian Chambers of Commerce and Industry, Bollywood will reach an astounding USD 20.03 billion mark by 2015, up from USD 13.2 billion in 2013¹

Despite the sheer size and scale of the industry, and its dependence on songs for much of its revenue generation, the treatment of musicians is grossly unfair and inconsistent at best. This note examines the current revenue sharing models between film producers and musicians i.e. music composers and lyricists, and proposes a revenue-cum-royalty-sharing model. Cognizant of crippling free market forces such as bargaining power, the model seeks to give musicians their fair due and incentivise their output.

Before an amendment in 2012, the Indian Copyright Act, 1957 (“Act”) permitted film producers to engage musicians on “work-for-hire” basis whereby the copyright in their work vested entirely with the producers, including their right to receive royalties. All revenues generated from songs of films went straight to producers. After substantial lobbying by high-profile musicians the Act was amended. It accorded musicians the right to receive an equal share in profits made by producers on utilization of their works in films by way of royalty.

Although the amendment makes musicians the copyright owner of their works and entitles them to receive royalties, it does not detail methods to either calculate or administer royalties. Consequently, producers adopt arbitrary methods to dispense royalties, whereby musicians are eligible to receive a discretionary amount of money as royalty, only once net profits from the film’s soundtrack surpass a predefined amount. This amount is usually set unreasonably high, thereby permitting producers to follow the law in letter only and deprive musicians of fair dues.

To correct shortcomings of the current royalty system, further changes should be effected to the legislation and its implementation. First, a statutorily defined minimum compensation should be split evenly; half up-front when musicians are enlisted to compose songs and half deferred to when the film releases. The up-front compensation could be computed as a fixed percentage of the film’s budget. Usually producers allot 5-7% of their films budget to music, so a similar value can be set as a benchmark for the up-front compensation. This ensures an equitable baseline payment for all musicians. Once the film releases, producers should pay musicians the deferred compensation as royalties, basis success of the film (i.e., out of net profits). This deferred compensation should be formulated into percentage structures correlating royalties payable with net profits of the film and can fall into a sliding scale, such that more profitable the film, the higher the percentage of royalty accorded to the musicians.
This way, the down side to producers is controlled while musicians are invested in the film, as their compensation is both directly tied to its success and theoretically unlimited.

Second, existing copyright societies should act as intermediaries to administer royalties. These societies are already equipped with an administrative understanding of issuing licenses. They can help codify and monitor the compensation process to ensure transparency and effective execution for both producers and musicians. Several musicians are already part of these societies. Collaborative efforts with them to formulate statutory codes pertaining to administration like designating boards drawn from these copyright societies to settle any disputes and approve negotiated contracts or offer legal counsel will help strengthen the negotiating power of musicians. Without such an authority to administer royalties, musicians rights remain at risk.

Non-compliance with laws to some extent will presumably continue, so punitive and legal consequences for disregarding the law, or negotiated agreement, remain important. Specifically, producers who fail to compensate their musicians in accordance with this law must be subject to penalty payments of at least twice the minimum compensation and legal probationary consequences, as well as any suit musicians choose to pursue. Implementing these changes as described will improve compliance of copyright law and provide effective compensation rates for musicians. And more importantly, doing so would strengthen a vital voice for a thriving industry.