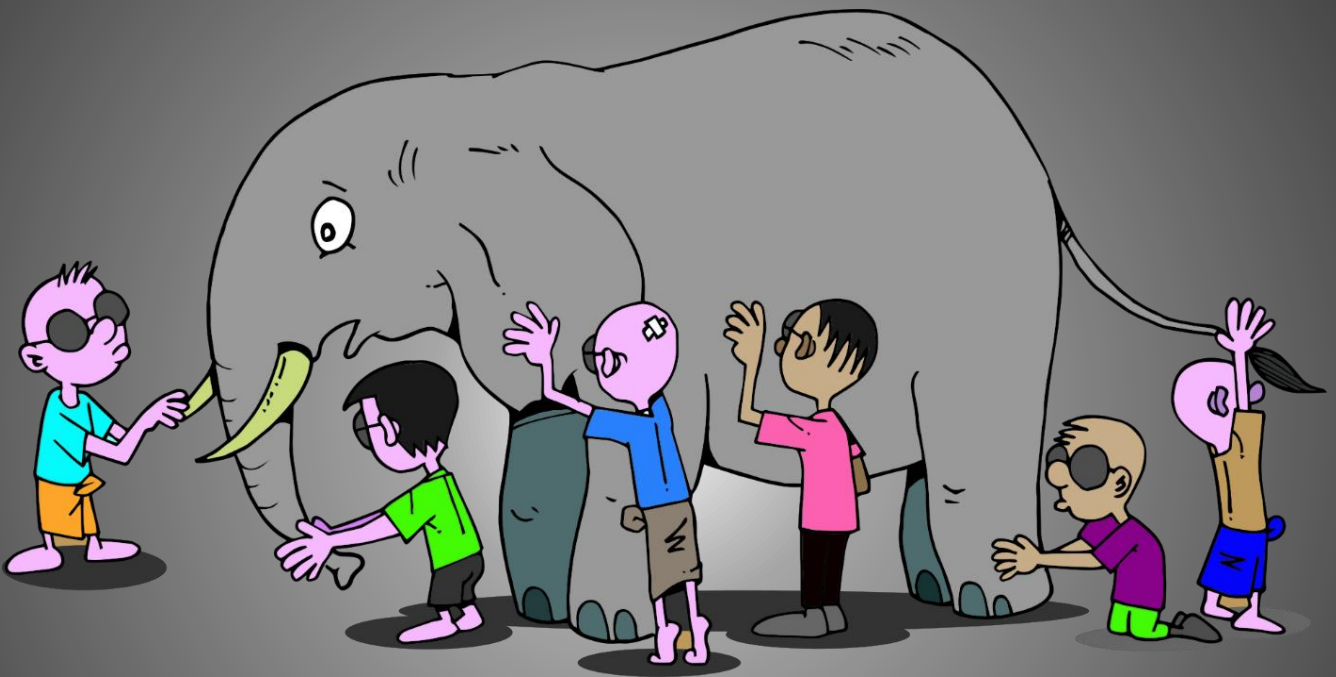


December 2021

TRAILBLAZER
ADVOCATES



Animation Industry: Tryst with Law

Analyzing Rights Management, Usage of Characters,
Contractual disputes and more.

About our Animation & Media Law Practice

At *TrailBlazer Advocates*, we help businesses in the acquisition, protection, enforcement and exploitation of their IP rights. We undertake entire scope of IP & Media Law services in a detailed and expansive manner to provide tailor-made and cost-effective solutions to fulfil our clients' strategic and commercial needs at its best.

We advise clients on a wide range of legal and business issues in the entertainment & media industry (including television, films, OTT etc.). We assist in drafting, reviewing & negotiating all kinds of media-related contracts & agreements (*like Talent agreements, Production agreements, Licensing agreements, Assignment agreements, Distribution agreements, Music License agreements, Work Made for Hire agreements, Celebrity agreements, Influencer agreements, NDAs, etc.*). Further, we assist in drafting various important policies like privacy policies, end-user license agreements. We also assist in managing and protecting content on the internet.

***Disclaimer:** The information contained herein should not be construed as legal advice. Analysis or explanation on this topic requires assistance from an expert. This publication is not a solicitation for legal work under the laws of any jurisdiction.*



Contents

Animation Industry in India	1
Animation & Filmmaking: An 'Art' and a 'Business'	2
Animation Industry and the Law	3
Copyrights	4
Rights Management	7
Defamatory Portrayal of Characters	10
Legality of content by children and young viewers	13
Public Sentiments	16
Contractual Disputes	19
Employment Issues	22
Conclusion	25



Animation Industry in India

The world of animation is an artistic expression of a magical world that the human mind conceives. Through animation, storytellers create stories in a special manner that sparks the imagination of the audiences transporting them to a magical realm of fantasy, irrespective of their age.

As per a 2020 report by the Boston Consulting Group (BCG) and Confederation of Indian Industry (CII) titled 'Lights, Camera, Action.....The Show Goes On' India has almost 10% of the global market share in VFX and Animation and has the potential to capture a 20-25% share by 2025. According to another report by Statista Research Department, India's animation and VFX, industry was valued at around 53 billion Indian rupees in 2020, with estimates of growth up to 129 billion rupees by 2023.

The consumption of animated cartoons in the Indian market has seen an upward rise especially with the advent of new technology.

The first Indian IP 'Chhota Bheem' gave birth to the most popular Netflix property in the preschool space and Motu Patlu became the first animated pop culture avatars that got waxed at Madame Tussauds.

The animation industry as a whole is evolving from being 'child-centric cartoons' to an 'art form defined by adult perspective'. The Indian animation industry is churning back-to-back hits, like Chhota Bheem and the Throne of Bali, Mighty Little Bheem, The Little Singham, Jumbo, The Legend of Hanuman, Arjun: The Warrior Prince, The Blue Elephant etc., and is constantly competing and creating an identity of its own in the international market. The first Indian IP Chhota Bheem gave birth to the most popular Netflix property in the preschool space and Motu Patlu became the first animated pop culture avatars that got waxed at Madame Tussauds.¹

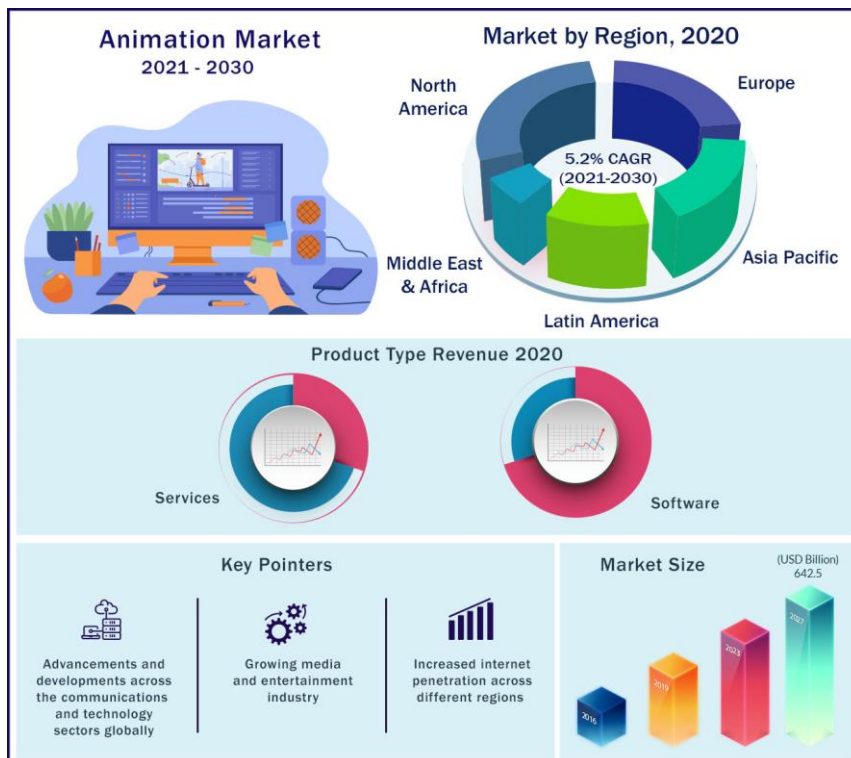
Hence, it is more than ever important to discuss the legal aspect of the industry.

1. <https://www.financialexpress.com/brandwagon/writers-alley/how-indian-animation-industry-is-making-its-mark-in-the-global-market-with-original-indian-ips/2123028/>.

Animation & Filmmaking: An 'Art' and a 'Business'



Animation is one of the most widely consumed, largely celebrated, and highly regarded art forms in the world. It is important to acknowledge and appreciate the business of animation which is both, an art, and a business. As Walt Disney, a pioneer in the world of animation, once said " *We don't make movies to make more money, we make money to make more movies*".



<https://www.precedenceresearch.com/animation-market>

(A report from Precedence Research)

Animation Industry & the Law



Just like any other business, legal awareness and compliance with the law can go a long way in hedging an animation production against several risks. With that said, legal awareness and compliances are not only relevant for production houses, but also for all the other stakeholders i.e. the artists, director, script-writer, singer, composer, distributors, and practically every single person involved in the supply chain that makes an animation product available to the public.

Animated Products have several legal issues to be taken care of. Right from the conceptual stage of creating the characters to the stage of broadcasting animated content in theatres and/or televisions and later when different aspects are commercialized, there are a lot of legalities involved. Such legalities, if not taken care of, might prove to be highly destructive, both financially, and morally.

Let us look at certain prevalent legal issues in the animation industry and offer pointers for stakeholders in the industry to help them protect themselves against possible risks.

Animation Industry & the Law

Copyrights

Protection

Copyrights is governed by the Copyright Act, 1957 ("**Act**") in India. The Act protects the Animation industry in several ways:

Animation as a whole An animation film is considered as a "cinematograph film" under section 2(f). As per the official cinematograph manual available on the website of the copyright office, a cinematograph film includes any visual recording such as videos, short films, movies, animated movies, documentaries, recordings of a video game, animations, etc.

Story, Pictures & Sketches Protected as a literary work.

Characters Protected as an artistic work.

Music Musical works like a music score, on-screen tracks etc. can be protected as a sound recording or a musical work.

Broadcasting Broadcasting rights, Character rights are also protected.



Issues & Disputes

Copyright Protection is an integral part of the animation film industry and also an area that has seen several disputes. In this background, here are the following issues that may arise with respect to copyrights in an animation film:

Licensing

Copyright Licensing: The right to commercially exploit a copyrighted content exists with the copyright owner. So, if any person or entity apart from the copyright owner wishes to commercially exploit such content, he/she/it requires a copyright license from the copyright owner. In the absence of proper copyright licenses, it is illegal to use another person's content with a view to receive commercial gains from such usage. There might also be instances where copyright licenses have expired and the licensee is not aware of such expiry. The licensee would then be subject to claims of copyright infringement, not to mention the huge financial losses that may result out of such claims.

Assignment

Copyright Assignment: In the absence or lack of proper assignment of copyrights in the underlying work to the producer of the animated film, there are possibilities of endless disputes regarding copyrights in the underlying work, royalties payable for the underlying work, commercial exploitation of the underlying work, ownership claims of the underlying work, etc. Here, underlying work means the work that exists within the animation film such as the script, the music, the lyrics, the dialogues, the screenplay, etc.

Infringement

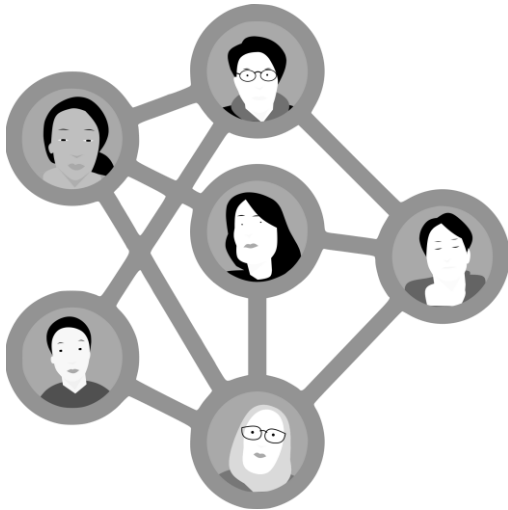
Copyright Infringement: Creative work is not easy and it is neither legal nor moral to plagiarize the creative work of others. Every year there are numerous cases worldwide where a person claims that another person has infringed his copyright in a work. Copyright claims are among the most expensive claims and the defending party will more often than not, lose a huge chunk of his/her/its bank balance in defending such claims. To quote an instance, in 2009 Screenwriter Yolanda Buggs sued Dreamworks and Paramount Pictures for copyright infringement over the script of the movie "Flushed Away" being copied from a screenplay that she wrote while she was a student of the American Film Institute.²

2. <https://www.iptrademarkattorney.com/copyright-attorney-movie-script-flushed-away-animated-dreamworks-buggs/>.

Take-Aways to Avoid Disputes – the Solution

- Give Credits** Always confer credits to the copyright owners when their work is used.
- Execute Licensing Agreements** In the case of Licensing, execute Copyright Licensing Agreements every time another person's copyrighted work is being commercially utilized. Clearly mention the duration of the license, and lay down the process for renewal of such license (if required).
- Acquire Ownership** If one seeks to acquire the ownership of a copyrighted work, it is advisable to get the work assigned in one's name.
- Execute Assignment Agreements** Execute detailed Copyright Assignment Agreements whereby the authors of underlying work unequivocally assign the copyrights to their work to the producer. Alternatively, one can also execute a detailed Work-for-Hire Agreement whereby authors are hired by the producer to create work on the producer's behalf under an employer-employee relationship.
- Fix Royalties** Precisely provide in writing the royalties payable to the authors of underlying work, and who will make such payments.
- Keep up-to-date record of Licenses** Licensors and Licensees should maintain an up-to-date database of all the copyrights licensed by/to them.

Rights Management



Protection

Intellectual Property Rights management is extremely hard in the digital age today. Millions of contents are being shared over the internet every day. In such light, keeping track of how a work protected by intellectual property is being used by others is a challenge. This is where IP rights management becomes relevant. By having an IP rights management system in place, businesses are better placed to check how their content is used by others and retrace it back to the commercial benefits back to the businesses in respect of such usage. It also helps to track any misuse of rights by any third party. Such a system is also relevant if the business is commercially exploiting or using the work of any other third party.

Animation Industry & the Law Rights Management

Issues & Disputes

Absence of a system for IP rights management can cause problems like:



Inadequate or no Royalties for commercial utilization of work

Piracy & Plagiarism



Improper tracking of granted IP licenses

Improper licenses received for the usage of copyrighted work of others



For instance, Napster was a peer-to-peer (P2P) file-sharing platform that enabled sharing of digitally encoded music in mp3 format. At its peak, there were around 2 billion file transfers per month being conducted on Napster. It took a very public copyright infringement suit being filed by the famous rock band Metallica years later for the platform to be shut down. However, by the time Napster was shut down, the damage had already been done and so many music files had already been shared illegally without due permission from and royalties being paid to the owners and creators of the music.

Animation Industry & the Law Rights Management

Take-Aways to Avoid Disputes – the Solution

Rights Management System

Establish a robust IP Rights Management system that keeps track of the usage of the work.

Consult IP Expert

Consult an IP expert before using the work or a part of the work of another person. One might be overpaying for such usage, especially when only a part of a protected work is being used.

Record of Ownership

Always document the rights so that the ownership of the protected work is always clearly defined.

Defamatory Portrayal of Characters



Protection

Animated content is mostly surrounded by a character or a group of characters. More often than not, the characters are originally developed. However, there may be instances where one or many characters are based on real-life personas, or the characters used in the content have a persona of their own. In such a case, it becomes extremely important for creators to ensure that these personas are presented in a manner that may turn out to be defamatory in nature.

Animation Industry & the Law Defamatory portrayal of Characters

Issues & Disputes

In case a character is presented in a bad light in animated representation, it might prove to be a huge loss for the business and may also result in it being shutting down. Further, depending on the facts and circumstances of the case and the intent behind the representation, the creator and/or publisher of such representation may even be criminally liable under the Indian Penal Code, 1860.

For instance, an online game called “Selmon Bhoi” based on Salman Khan’s hit-and-run case depicted the actor in a bad light. Accordingly, Salman Khan moved to the Court, and eventually, the game has been temporarily barred from public access.³ In this case, The court granted interim relief to the actor observing his “image will be damaged” and restrained the company which made the ‘hit-and-run’ game from creating, launching and disseminating a game or any other content related to the actor.⁴



A screenshot from the game 'Selmon Bhoi'

3. <https://indianexpress.com/article/cities/mumbai/selmon-bhoi-online-game-based-on-salman-khans-hit-and-run-case-temporarily-blocked-by-court-7496075/>.

4. Ibid.

Animation Industry & the Law

Defamatory portrayal of Characters

Take-Aways to Avoid Disputes – the Solution

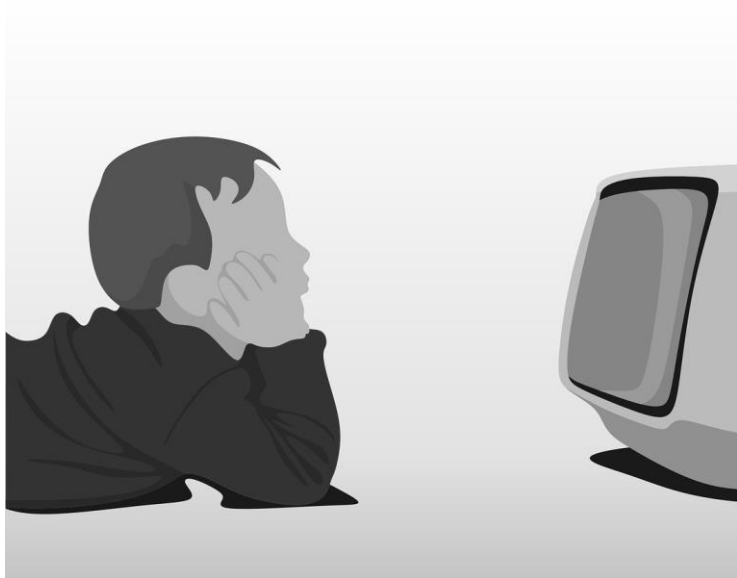
Third-Party Permission If the animated work requires the presence of a character based on a real person or owned by a third party, due permission should be sought from such person for the usage of the character or certain traits in the animation.

Record of Permission Such permission should always be duly documented, and an IP expert should always be consulted during the process.

Avoid Defamatory Portrayal Always stay away from depicting any characters in a bad or defamatory manner.

Vetting of Character Portrayal In case a character is portrayed in a manner that is different from its original persona, it is always advisable to get the content vetted by an expert to make sure that the portrayal is not attracting any kind of legal trouble like an infringement suit or a defamatory suit.

Legality of Content consumed By Audience at a young Age



Protection

More often than not, animated content is made for consumption by children. Therefore, the creators of such content must be extremely careful regarding the legality and even the morality of the nature and specifics of the content.

Animation Industry & the Law Legality of Content consumed by Audience at a young Age

Issues & Disputes



Children are very impressionable and can be influenced by the content they consume. In this digital era, where children are constantly exposed to content from several devices, it becomes extremely important to ensure that no sort of illegal or immoral content is made available to kids.

For instance, “Spongebob Squarepants” was taken off-air in 120 countries for depicting inappropriate content for kids such as foul language, violence, and suicide.⁵ Further, “Shinchan” was banned from being aired in India for a while due to the inappropriate language used by the title character Shinchan in the show.

5. <https://www.theyouth.in/2021/06/30/10-popular-cartoons-that-were-banned-in-these-countries-for-some-reasons/>.

Animation Industry & the Law Defamatory portrayal of Characters

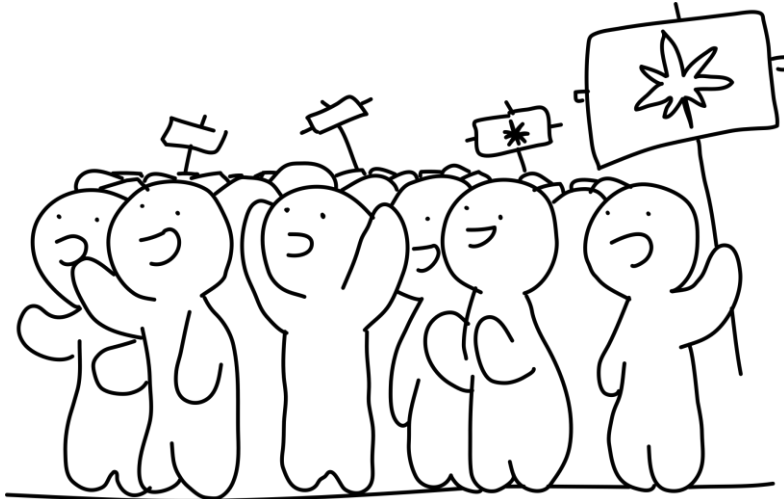
Take-Aways to Avoid Disputes – the Solution

Appropriate Content for Kids If the content is for kids, ensure that it does not involve inappropriate language, violence, glorified illegal acts, and sexual references.

Consult Expert If the content is made available in several jurisdictions, it is advisable to take an expert opinion on the content to make sure it meets the societal and legal standards for young children of all the jurisdictions.

Conduct Focus Group Studies Always conduct focus group studies before making the content available to the masses. This will help the creator understand the “moral” shortcomings of the content.

Public Sentiments



Protection

Any content made available to the public for consumption is subject to public opinion. Considering the animated works are created for consumption by the masses, how a particular content affects the public sentiments will determine the eventual commercial success of the content.

Animation Industry & the Law Public Sentiments

Issues & Disputes

Public sentiments are extremely valuable in the entertainment industry. It is ultimately the public that determines the commercial success of a work, be it a song, a film, a series, a game, etc. The more the people like it, the more revenue the content is going to generate. Therefore, creators must ensure that there is no room for any negative public sentiments around their content. They also need to understand that what works in one society, may not work well in another.

For instance, the animated show “Family Guy” is a comedy show made for adults and enjoys massive commercial success in the USA. However, the content of the show was found to be too offensive for several countries due to its light-hearted take on sensitive issues such as terrorism, domestic violence, rape, and religion. The show is banned in several nations.⁶

In another instance, the movie *Mulan* suffered losses in China as it was against the sentiments of the audiences. *Mulan* star Liu Yifei’s comments supporting Hong Kong police sparked criticism of the film, which quickly led to a call for boycotts among Hong Kong pro-democracy protestors, as well as Thai and Taiwanese activists, among others. The film also drew ire for filming in Xinjiang, a region of China where Uighur Muslims have been detained in mass internment camps.⁷



6. <https://www.cheatsheet.com/entertainment/family-guy-controversial-banned-in-several-nations.html/>.

7. <https://www.vogue.com/article/mulan-reboot-controversy-explained>

Animation Industry & the Law Public Sentiments

Take-Aways to Avoid Disputes – the Solution

Conduct Focus Group Studies

Conduct focus group studies and evaluate how the public may react to the content.

Contemplate Public Sentiment

Always create the content keeping in mind the sentiments of the audience not just during the creation of the work but also during the broadcasting of the work.

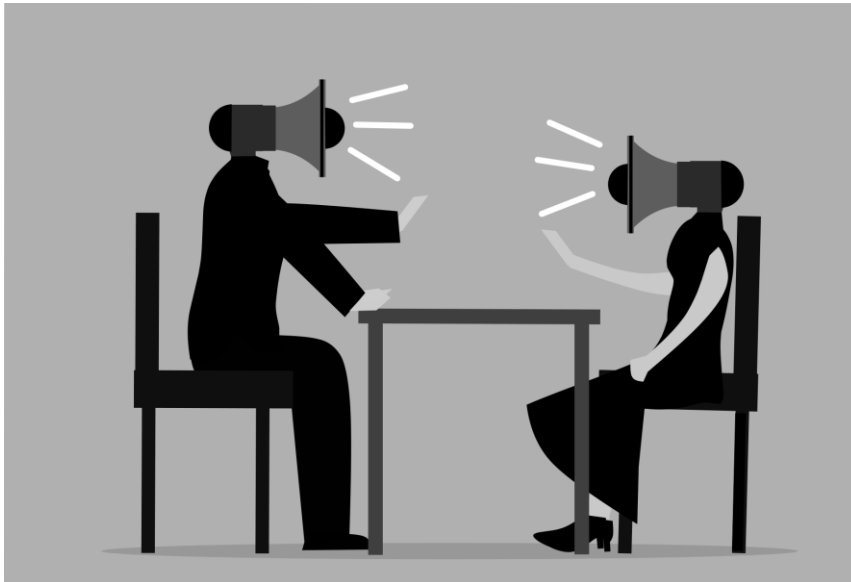
Avoid Controversial Subjects

It is advisable that the content does not indulge in controversial subjects or issue in a non-neutral manner.

Respect Moral Standards

It is advisable to take into consideration the moral standards of the society in which the animated work will be broadcasted. Subjects that might fall under the category of obscenity, indecent representation of women, glorification of illegal and immoral acts should be avoided. Having said that if the story demands the portrayal of any such content, then it should be dealt with sensitivity and with utmost care.

Contractual Disputes



Protection

Contracts are an integral part of the animation industry. There are several contracts that need to be executed for every project in the industry. Contracts lay down the relationship between the parties and clearly speak about the rights and liabilities of the parties involved in an animation project and when a dispute arises, more often than not, contracts are the sole document that parties rely upon to establish their case.

Animation Industry & the Law Contractual Disputes

Issues & Disputes



In several scenarios, contracts are either loosely drafted, or never drafted, and parties merely depend on a handshake deal. However, there are huge downsides to such practices as one never knows where, when, and how disputes may arise, especially in the entertainment industry. This becomes all the more relevant while dealing with third-party service providers and the animation industry engages third-party service providers in several areas.

On such contractual dispute arose in 2021. Actress Scarlett Johansson sued Disney over the latter allegedly disregarding its promise regarding the contractually agreed share in the profits of the movie "Black Widow". The dispute was around the immediate release of the movie on Disney's OTT platform, sooner than the usual 90 days waiting period between a movie's theatre release and OTT release. This allegedly affected Scarlett Johansson's profit share which was only based on the theatre ticket sales. The dispute was settled out of court and though the details of the settlement were not disclosed, as per certain reports Disney had to pay a hefty amount of compensation to the actress.

Animation Industry & the Law Contractual Disputes

Take-Aways to Avoid Disputes – the Solution

Execute Agreements

Always draft and execute contracts and agreements for all the services availed.

Well Drafted Contracts

Ensure that the contracts are air-tight and leave no room for misinterpretations or multiple interpretations.

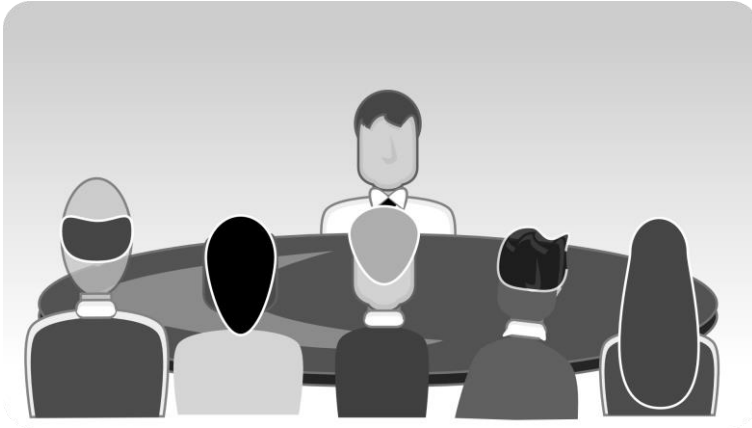
Important Clauses

Pay special attention to clauses such as salary payments, profit sharing, indemnity, while executing contracts. Make sure one is not exposed to unforeseen risks and liabilities.

Seek Professional help

Always seek professional help to draft and execute contracts. Do not rely solely on templates as every situation is different and requires tailor-made document.

Employment Issues



Protection

Jeffrey Katzenberg, the CEO of DreamWorks Animation once said “What I love most about animation is, it’s a team sport, and everything we do is about pure imagination.” Animation is indeed a team sport and the end-product that we see on screen is a symbiosis of the work of several people. In such light, employees and employer-employee relationship is a very important aspect of the animation industry.

Animation Industry & the Law Employment Issues

Issues & Disputes



Employees are part of the creative process in an animation project and during the term of their employment, they create several works and the intellectual property rights to such works, in the absence of any contract, would be attributable to them. Further, during the process employees are exposed to confidential information, trade secrets and technical know-how that are

exclusive to the employer company and gives them a competitive advantage. The confidentiality of such information is extremely sensitive and any breach of such confidentiality may result in the eventual failure of the employer company itself. Furthermore, compliance with labor laws is absolutely indispensable and failure to do so will result in hefty fines and even imprisonment in some cases.

For instance, in 2014, in the USA, there was a class-action lawsuit filed by Robert Nitsch, who worked as a character effects artist at DreamWorks from 2007 to 2011 alleging that the management of DreamWorks illegally conspired to suppress workers' wages. DreamWorks had to settle the lawsuit outside court by paying \$50 million as a settlement.⁸

8. <https://arstechnica.com/tech-policy/2016/10/dreamworks-agrees-to-pay-50-million-to-end-no-poach-lawsuit/>.

Animation Industry & the Law Employment Issues

Take-Aways to Avoid Disputes – the Solution

Execute Contracts

Execute well-drafted and detailed employment/consultancy contracts with employees.

Well Drafted Contracts

Specify in the employment contracts that all the work performed/developed by the employees are on a work-for-hire basis and demarcate the intellectual property rights that belong to the employer and the one that belongs to the employee.

Execute NDAs

Along with the employment/consultancy contract, execute separate Non-Disclosure Agreements (NDAs) with employees regarding confidential agreements shared with them.

Compliance with Laws

Ensure compliance with the Central and State labor laws.

Robust Security System

Establish and maintain a robust systems-and-document security system to ensure that there is no information leak or information loss.

Handbook of Company Policies

Establish and maintain a comprehensive handbook of company policies to ensure that a healthy and creative work environment is maintained.

Conclusion

Businessman Eli Broad once said “Civilizations are not remembered by their business people, their bankers or lawyers. They're remembered by the arts.” However true that might be, art is part of an industry and industries are regulated by laws and rampant with issues that require lawyers' assistance.

Stakeholders of the animation industry, as discussed above, have several issues that they need to deal with in their day-to-day functioning. Legal awareness and professional help will be a great tool to hedge risks against unforeseen risks and losses.

To all the Scriptwriters, screenwriters, music composers, lyric writers, animators, producers, broadcasters, voice artists, actors, or any other person in whatsoever capacity you are employed/engaged in the animation industry, it is advisable to seek professional legal advice before indulging in any transaction in the industry. It might cost you a dime, but save you millions.



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