



Smooth Sailing: Why the Indian Film Industry Remains Extremely Successful in the Face of Massive Piracy

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I. INTRODUCTION

In the summer of 2006,¹ Bollywood superstar Shah Rukh Khan and director Anubhav Sinha set out on “an audacious dream.”² As one of the top film stars in India for the better part of two decades,³ Khan could have stayed in his “comfort zone, mak[ing] two films a year, hyp[ing] them because I’ve signed them as a star, mak[ing] them cheap and they [would have] be[en] big hits.”⁴ Instead, he invested five years of time and much of his fortune in a film that he hoped would revolutionize the Indian film industry.⁵ Specifically, Khan and Sinha sought to make the first Indian science fiction superhero movie, a genre that, because of its high costs, “ha[d] until now been pure Hollywood.”⁶ The vehicle for this endeavor was *Ra.One*, which stars Khan and tells the story of a video-game villain who escapes into the real world and must be stopped by the game-maker’s son.⁷ In order to make *Ra.One* as “clean, nice, [and] as good as . . . an international film,” Khan and Sinha contracted 5,000 crewmembers, utilized 3D technology,

¹ See Chandrima Pal, *Ra.One Challenges Shah Rukh Khan, the Star*, TIMES OF INDIA (Sept. 25, 2011, 10:43 AM IST), http://articles.timesofindia.indiatimes.com/2011-09-25/news-interviews/30200118_1_srks-red-chillies-shah-rukh-khan-anubhav-sinha, archived at <http://perma.law.harvard.edu/03NzXrm4pjf>.

² *The Best Special Effects of Ra.One Happened at Mannat*, REDIFF MOVIES (Oct. 13, 2011, 5:49 PM IST), <http://www.rediff.com/movies/slide-show/slide-show-1-anubhav-sinha-on-ra-one/20111013.htm#4>, archived at <http://perma.law.harvard.edu/0L5EPB6D1u5> (quoting Sinha).

³ See *Shabrukh Khan Biography*, ONE INDIA ENTERTAINMENT, <http://entertainment.oneindia.in/celebs/shahrukh-khan/biography.html> (last visited Mar. 22, 2013), archived at <http://perma.law.harvard.edu/0L5EPB6D1u5>.

⁴ Shilpa Jamkhandikar, *A Minute with: Shah Rukh Khan*, REUTERS (Oct. 13, 2011, 5:19 PM IST), <http://in.reuters.com/article/2011/10/13/idINIndia-59860120111013>, archived at <http://perma.law.harvard.edu/0W9rLoTftky> (quoting Khan).

⁵ David Sillito, *Ra.One: Can Bollywood Take on Hollywood*, BBC (Oct. 25, 2011), <http://www.bbc.co.uk/news/entertainment-arts-15455987>, archived at <http://perma.law.harvard.edu/0ss81TDLQ5z>.

⁶ *Id.*

⁷ Tamara Baluja, *Ra.One: Bollywood Superhero Epic’s Secret Weakness? Plot*, GLOBE AND MAIL, Oct. 28, 2011, archived at <http://perma.law.harvard.edu/0cKJqdEyk6i>.

and allegedly employed more special effects than *Avatar*.⁸ In taking this “quantum leap” ahead of anything that the Indian film industry had previously produced,⁹ the filmmakers shattered Bollywood budget records.¹⁰ Khan provided most of the funding himself,¹¹ hosting an unpopular game show to earn part of the funds¹² and promising distributors that he would work for them for free if the film did not turn a profit.¹³

After one of the longest and most extensive marketing campaigns in Indian history,¹⁴ trade analysts predicted that *Ra.One* would break previous box office records, allowing Khan and Sinha to recover their substantial investment.¹⁵ Nonetheless, the specter of piracy appeared to threaten the entire venture. Months before the film’s release, pirates gained access to, and posted online, *Ra.One*’s centerpiece song, *Chammak Challo*.¹⁶ A few months

⁸ Tom Brook, *Ra.One: Bollywood’s ‘Quantum Leap’*, BBC (Oct. 25, 2011, 9:01 AM GMT), http://news.bbc.co.uk/today/hi/today/newsid_9623000/9623515.stm, archived at <http://perma.law.harvard.edu/02znL3bXqpm> (quoting Khan).

⁹ *Id.*

¹⁰ See Rachel Saltz, *Computer Nerd Creates Superhero Showdown*, N.Y. TIMES, Oct. 27, 2011, at C2, archived at <http://perma.law.harvard.edu/0Axj9CPdYFz> (noting that *Ra.One* was the “most expensive Bollywood movie ever made”); see also *Ra.One Costs 150 Crores?*, HINDIFILMNEWS.COM (Apr. 12, 2011, 7:28 PM), http://www.hindifilmnews.com/bollywood_buzz/bollywood-actors/shahrukh-khan-bollywood-actors/ra-one-costs-150-crores/, archived at <http://perma.law.harvard.edu/0Jz9r9MPbpc> (noting that *Ra.One* likely cost more than the most expensive Indian films made up to that time).

¹¹ Bharti Dubey, *Today, a Steven Spielberg Is Looking for Investment from Us*, TIMES OF INDIA, (Sep. 26, 2011, 12:00 AM IST), http://articles.timesofindia.indiatimes.com/2011-09-26/edit-page/30201105_1_raone-film-special-effects, archived at <http://perma.law.harvard.edu/0GH1RDn4tXf>.

¹² *Shah Rukh Khan Won’t Do Zor Ka Jhaka 2*, TIMES OF INDIA (Nov. 21, 2011, 12:19 PM IST), http://articles.timesofindia.indiatimes.com/2011-11-21/tv/30425474_1_zor-ka-jhatka-game-show-shah-rukh-khan, archived at <http://perma.law.harvard.edu/0D8FB5PhYwR>

¹³ Dubey, *supra* note 11.

¹⁴ See *Ra.One to Have Bollywood’s Longest Promotion*, SIFY MOVIES, <http://www.sify.com/movies/ra-one-to-have-bollywood-s-longest-promotion-news-bollywood-ljvknXcgjcb.html> (Sept. 21, 2011, 10:13 AM), archived at <http://perma.law.harvard.edu/0fi4nUMJQw4>; *Ra.One Gets Rs 52-Cr Promotional Push*, CNN IBN (Oct. 14, 2011, 7:10 PM), <http://ibnlive.in.com/generalnewsfeed/news/raone-gets-rs-52cr-promotional-push/861677.html>, archived at <http://perma.law.harvard.edu/0fi4nUMJQw4>.

¹⁵ Rachana Dubey, *Ra.One Will Make ? 100 Crore in a Week*, HINDUSTAN TIMES (Oct. 21, 2011, 11:13 AM IST) <http://www.hindustantimes.com/Entertainment/Bollywood/RA-One-will-make-Rs-100-crore-in-a-week/Article1-759816.aspx>, archived at <http://perma.law.harvard.edu/0zfXAuZ1KgR>.

¹⁶ *Bollywood Movie: ‘Ra.One’ Team’s Fight Against Piracy*, SUPERGOODMOVIES.COM, <http://www.supergoodmovies.com/27200/bollywood/bollywood-movie-ra->

later, pirates posted the full musical album online right before its official rollout, infuriating the producers.¹⁷ And within hours of *Ra.One*'s Indian theatrical premiere, pirated versions of the entire film became available not only on all of the prominent file-sharing websites, but also on YouTube.¹⁸

Amid so much piracy, one may have readily expected it to be difficult for a film that had broken prior Bollywood budget records to recover its investment. Nonetheless, *Ra.One* had substantial financial success, even though "Indian critics largely panned" it.¹⁹ The movie "shatter[ed] regional, national and international box office record after record,"²⁰ and was ultimately the second highest grossing Indian film of all time.²¹ In terms of profitability, the exact financial figures for the film are disputed. Khan has stated that the film cost 1.25 billion INR (approximately \$23.0 million) to produce, "plus Rs 10 crore [\$1.8 million] for prints and advertising."²² A number of others, however, estimated the film's production cost at 1.5 billion INR (\$27.6 million),²³ and valued the marketing campaign at 520 mil-

one-team-s-fight-against-piracy-news-details/, archived at <http://perma.law.harvard.edu/0u5Kp7Fico1> (last updated on Sep. 12, 2011).

¹⁷ Bindu Suresh Rai, *SRK's 'Ra.One' Falls Victim to Piracy Again: Superstar's Sci-Fi Flick's Music Leaked Online*, EMIRATES 24/7 (Sept. 13, 2011), <http://www.emirates247.com/entertainment/films-music/srk-s-ra-one-falls-victim-to-piracy-again-2011-09-13-1.418085>, archived at <http://perma.law.harvard.edu/0TWib8ZNI1f1>.

¹⁸ BOC Editorial, *Shah Rukh Khan's RA.One Succumbs to Piracy*, BUS. OF CINEMA (Oct. 27, 2011), <http://businessofcinema.com/bollywood-news/shah-rukh-khans-raone-succumbs-to-piracy/34337>, archived at <http://perma.law.harvard.edu/0QBdr7RThGV>.

¹⁹ Anupama Chopra, *The Ra.One Marketing Mania*, *India Ink*, N.Y. TIMES (Nov. 1, 2011, 3:54 AM), <http://india.blogs.nytimes.com/2011/11/01/the-ra-one-marketing-mania/>, archived at <http://perma.law.harvard.edu/09khPmywHE6>.

²⁰ BollySpice Editors, *Ra.One Breaks all Box Office Records: Weekend Collections of Rs. 170 Crore Worldwide*, BOLLY SPICE (Oct. 31, 2011), <http://bollyspice.com/31435/ra-one-breaks-all-box-office-records-weekend-collections-of-rs-170-crore-worldwide>, archived at <http://perma.law.harvard.edu/0nKNNgg9GDU>.

²¹ See *About 40-45% of Our Revenue Comes from Box Office: Eros International*, ECON. TIMES, (Dec. 8, 2011, 4:31 PM IST), http://articles.economictimes.indiatimes.com/2011-12-08/news/30490618_1_three-films-eros-international-cinema, archived at <http://perma.law.harvard.edu/0gNN82hb1Us> [hereinafter *Our Revenue*].

²² See Avijit Ghosh, *It Took Me 20 Years to Be an Overnight Success: Shah Rukh Khan*, TIMES OF INDIA (Nov. 6, 2011, 7:14 AM IST), http://articles.timesofindia.indiatimes.com/2011-11-06/special-report/30366066_1_ke-liye-shah-rukh-khan-big-stars, archived at <http://perma.law.harvard.edu/0ZWnibBEX6L>.

²³ Nandini Raghavendra, *Indian Cinema Must Evolve; Ra.One Not Urban Centric: Shabrukh Khan*, ECON. TIMES (Sept. 13, 2011, 5:47 AM IST), http://articles.economictimes.indiatimes.com/2011-09-13/news/30149445_1_indian-cinema-raone-film, archived at <http://perma.law.harvard.edu/07HxHzJo8wf>.

lion INR (\$9.6 million).²⁴ Either way, the film produced a substantial profit, grossing 2.4 billion INR (\$44.2 million), at least \$7 million more than its cost.²⁵

Ra.One is exemplary of the apparent paradox in the Indian film industry: On the one hand, India suffers from some of the worst film piracy in the world. Accounting firm PricewaterhouseCoopers (PwC), for instance, writes that “India is among the top five countries in the world, in terms of piracy.”²⁶ The Motion Picture Association (MPA), an American film trade organization, similarly reports that India is “the fourth-largest downloader [of pirated films] behind the US, Great Britain and Canada” and that, “[r]elative to the number of broadband subscribers, India ha[s] the highest level of film piracy of any English-speaking country.”²⁷ Even India’s own government has conceded that “video piracy [is] quite rampant here.”²⁸

On the other hand, India’s film industry is experiencing substantial success, with growth in recent years outpacing that of the overall economy. In 2011, for instance, India’s overall economy grew at an estimated annual rate of 6.8%,²⁹ while the film industry registered a growth rate of 9.4% over the same period.³⁰ Likewise, although India’s overall economic situation appears to be declining in the near-term,³¹ with growth for 2012 estimated to be a disappointing 6.5%,³² the film industry is expected to continue its robust growth. According to a recent report prepared by PwC and the Con-

²⁴ *Ra.One Gets Rs 52-Cr Promotional Push*, *supra* note 14.

²⁵ *Our Revenue*, *supra* note 21.

²⁶ PRICEWATERHOUSECOOPERS, INDIA ENTERTAINMENT AND MEDIA OUTLOOK 2011 68 (2011), *archived at* <http://perma.law.harvard.edu/0vojJzQs9Av>.

²⁷ *Online Piracy a Genuine Threat to the Indian Film & Television Industry*, MOTION PICTURE ASS’N (Dec. 15, 2009), http://mpa-i.org/index.php/news/online_piracy_a_genuine_threat_to_the_indian_film_television_industry/%20http://copyright.gov.in/Documents/STUDY%20ON%20COPYRIGHT%20PIRACY%20IN%20INDIA.pdf, *archived at* <http://perma.law.harvard.edu/0g9EzWQXVvL>.

²⁸ GOV’T OF INDIA, MINISTRY OF HUMAN RES. DEV., STUDY ON COPYRIGHT PIRACY IN INDIA 14 (1999), *archived at* <http://perma.law.harvard.edu/0pH6D8GvCsA>.

²⁹ See Cent. Intel. Agency, *India*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/in.html>, *archived at* <http://perma.law.harvard.edu/0SHwix9CXi5> (last updated Mar. 15, 2013).

³⁰ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, INDIA ENTERTAINMENT AND MEDIA OUTLOOK 2012, at 31 (2012), *archived at* <http://perma.law.harvard.edu/0N5Ru19Pt2w>.

³¹ See, e.g., *IMF Lowers India’s Growth Forecast to 6.1% for 2012*, HINDUSTAN TIMES (July 16, 2012, 8:49 PM IST), <http://www.hindustantimes.com/business-news/WorldEconomy/IMF-lowers-India-s-growth-forecast-to-6-1-for-2012/Article1-890055.aspx>, *archived at* <http://perma.law.harvard.edu/0qKWtg8Fyrz>.

³² Cent. Intel. Agency, *supra* note 29.

federation of Indian Industry (CII), “The Indian [film] industry is expected to grow from 95.8 billion INR [about \$1.8 billion] in 2011 to 153.6 billion INR [about \$2.8 billion] in 2016 showing a CAGR [compound annual growth rate] of 9.9% for the next five years.”³³

Box office growth has been especially robust. The *Economic Times*, for instance, has noted that “[b]ox office revenues have nearly quadrupled in India since 2000. If 2010 was good, 2011 great, 2012 was a smashing year for the industry.”³⁴ And such growth is expected to continue. According to the PwC/CII report, the domestic box office is expected to “grow from the current size of 68.0 billion INR [\$1.25 billion] in 2011 to 112.0 billion INR [\$2.06 billion] in 2016,” while “[o]verseas collections are expected to grow from 8.5 billion INR [\$157 million] in 2011 to 13.8 billion INR [\$254 million] in 2016.”³⁵ At these rates, “[t]he Indian box office is among the fastest growing markets in the world next only to China among markets greater than 15 billion INR [\$276 million].”³⁶ “It is expected,” moreover, “that in the next few years, the Indian [box office] market will surpass the UK market [as well as that of Australia] and will be the fifth largest market in the world by 2016.”³⁷

This massive growth in the face of so much piracy is especially surprising considering the Indian film industry is by no means in its incipiency. Indians have been producing their own feature films for as long as Americans. Indeed, the first indigenous Indian feature film, *Raja Harishchandra*, actually antedates by two years D.W. Griffith’s *Birth of a Nation*,³⁸ which many consider the first modern American feature.³⁹ Moreover, the “Indian Film Industry has been in the forefront of total production since 1960 till

³³ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, *supra* note 30.

³⁴ Binoy Prabhakar, *Bollywood No Longer Talks of Piracy; But Ignoring Dangers of Online Can Be Costly*, ECON. TIMES (Feb. 3, 2013, 11:03 AM IST), http://articles.economictimes.indiatimes.com/2013-02-03/news/36704530_1_piracy-box-office-alliance-against-copyright-theft archived at <http://perma.law.harvard.edu/0S8xsLNh7Df>.

³⁵ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, *supra* note 30.

³⁶ *Id.*

³⁷ *Id.*

³⁸ See *Raja Harishchandra* (1913), N.Y. TIMES, <http://movies.nytimes.com/movie/249829/Raja-Harishchandra/overview>, archived at <http://perma.law.harvard.edu/0oHQFvVWaPp> (last visited Mar. 23, 2013).

³⁹ See, e.g., Richard Brody, *The Worst Thing About “Birth of a Nation” Is How Good It Is*, NEW YORKER (Feb. 6, 2013) <http://www.newyorker.com/online/blogs/movies/2013/02/birth-of-a-nation-revisited.html>, archived at <http://perma.law.harvard.edu/08YYcAd68C1> (describing *Birth of a Nation* as “the founding work of cinematic realism”); *Feb 8, 1915: Birth of a Nation Opens, This Day in History*, HISTORY, <http://www.history.com/this-day-in-history/birth-of-a-nation-opens>, archived at <http://>

date,”⁴⁰ producing in recent years double the number of Hollywood films.⁴¹ As a result, the Indian film industry’s rapid growth cannot be attributed to a temporary spike in demand in response to a new product,⁴² but something more fundamental.

Notwithstanding this rapid growth amid so much piracy, some in the film industry do not believe that Bollywood and the regional cinemas⁴³ have reached their full potential. For instance, Kulmeet Makkar, the Chief Executive Officer of the Film & Television Producers Guild of India, bemoans the fact that, while India produces far more films per year than Hollywood, “two large Hollywood blockbusters in a year will deliver box office numbers which are more than the numbers of the entire Indian film industry.”⁴⁴ Though he recognizes that India will achieve robust growth in the years to come, he argues that such growth is insufficient. Considering the size of India, its young population, and its strong middle class, he believes the film industry should generate \$20 billion per year instead of \$2 billion.⁴⁵

Irrespective of how much money the industry “should” generate, the experience of *Ra.One* demonstrates that piracy, despite its pervasiveness, does not pose a substantial impediment to growth or innovation. A creative team like Sinha and Khan can experiment with unexplored genres, employ state-of-the-art special effects, and risk record-breaking sums of money without serious concern that piracy will prevent them from recouping their investment. Though pirates will certainly copy and post such a film, the movie can still be a financial success. This is not the case for other film industries

perma.law.harvard.edu/0FAqXD83DeF (last visited Mar. 23, 2013) (noting that *Birth of a Nation* was “America’s first feature-length motion picture”).

⁴⁰ See M.M.K. Sardana, *Bollywood on the Wings of Technology and Its Contribution to Economy: Hundredth Year of Indian Cinema*, INST. FOR STUDIES IN INDUST. DEV., Mar. 2012, at 7, *archived at* <http://perma.law.harvard.edu/0ky4j6cJaLU>.

⁴¹ *Id.* at 7–8.

⁴² Cf. *Lights, Camera, Africa*, ECONOMIST, Dec. 16, 2010, *archived at* <http://perma.law.harvard.edu/0JVSdXxcJCe> (noting that, while Nigeria’s film industry has experienced very rapid growth, it is barely twenty years old).

⁴³ It is a common misconception that the term Bollywood refers to the entire Indian film industry. Bollywood, the Mumbai-based Hindi film industry, is just one of a host of vibrant cinemas in India. A number of states, most notably Tamil Nadu, Andhra Pradesh, Karnataka, and Kerala, have their own regional cinemas. See generally ONE INDIA ENTERTAINMENT, <http://entertainment.oneindia.in>, *archived at* <http://perma.law.harvard.edu/0Hb6Qn2gtua> (last visited Mar. 25, 2013) (providing different sections for Bollywood, Hollywood, Tamil, Telugu, Malayalam, and Kan-nada cinemas).

⁴⁴ Interview with Kulmeet Makkar, Chief Exec. Officer, The Film & Television Producers Guild of India, in Mumbai, India (Jan. 22, 2013).

⁴⁵ *Id.*

plagued by piracy. In Nigeria, for instance, piracy has so devastatingly interfered with the ability of producers to generate revenues that filmmakers are frequently unable to make the high-quality and innovative productions they may envision.⁴⁶ Indeed, piracy has become such a problem that producers “have taken to cutting production costs . . . [and] compromis[ing] production values” in order to avoid losing money.⁴⁷

This paper explores why “[n]obody is talking about piracy anymore” in India,⁴⁸ and why the massive amount of piracy in India has not frustrated the ability of filmmakers to innovate and make the films that they want to produce. PARTS II and III examine the degree to which the law may be responsible. The former assesses the extent to which India’s copyright regime as written provides not only protection to films, but also remedies in the event of infringement. Those in the industry generally agree that Indian law provides both the requisite statutory protection and ample remedies. In order for most laws to be effective, however, they must be enforced. PART III, therefore, assesses the degree to which rights holders, police officers, and the courts have been able or willing to utilize the law in order to reduce or ameliorate piracy. According to those in the industry, copyright enforcement in India suffers from an array of serious problems, including an inefficient judiciary that frequently refuses to follow black letter law; a vast array of unconnected enforcement officials who are often unwilling to respond to infringement claims; and an international lack of cooperation that makes it difficult to prevent the importation of pirated films. For many in the industry, these problems are so severe as to render the robust copyright law practically nugatory.

As a result, filmmakers have had to pursue alternative strategies to prevent piracy from sapping their revenues. Some of these strategies seek to work within the legal and enforcement machinery, while others endeavor to reduce piracy without relying upon state assistance. PART IV explores the former, specifically examining the strategies that filmmakers have employed to improve the enforcement of the copyright regime. These measures include the hiring of private enforcement agencies to monitor illegal activities and liaise with the police, as well as the development of innovative legal orders that do not suffer from the problems of traditional injunctions. While some of these efforts may diminish piracy over the long term, their present success appears too limited to explain the resilience of the industry. PART V

⁴⁶ See Uzoma Esonwanne, *Interviews with Amaka Igwe, Tunde Kelani, and Kenneth Nnebue*, RESEARCH AFR. LITS., Winter 2008, at 24, 38, *archived at* <http://perma.law.harvard.edu/0vG5pXQtUxZ> (quoting Nigerian filmmaker Amaka Igwe).

⁴⁷ *Id.*

⁴⁸ Prabhakar, *supra* note 34.

examines the non-legal strategies that filmmakers have pursued. These measures include increasing distribution, interfering with the piracy supply chain, and leveraging the star power of actors to dissuade consumers from purchasing or downloading pirated works. Though statistically significant empirical data is unavailable, these strategies offer a plausible explanation for the continued resilience of the film industry because their effectiveness, unlike that of the measures explored in PART IV, is consistent with the widespread piracy that exists in India.

Nonetheless, it is always possible that the reason for the Indian film industry's resilience has nothing to do with any of these efforts. There may instead be something unique about Indian entertainment culture that makes pirated versions of films less attractive to consumers. PART VI explores this possibility. It examines whether, as some in the industry have suggested, going to the movie theater is such a fundamental aspect of Indian cinematic culture that consumers will continue to buy tickets, even if that means foregoing the chance to purchase or download a less expensive version of the same content.

Ultimately, it is likely not possible to pin down one reason for the resilience of the Indian film industry. Nonetheless, by exploring various explanations, my hope is to provide insights into how those in film and entertainment industries of other countries can diminish the effects of piracy on their capacity to grow and innovate.

II. INDIA'S ROBUST COPYRIGHT REGIME

The first possible explanation for the resilience of India's film industry is the strength of the country's copyright regime. Indeed, in the opinion of scholars, practitioners, and those involved in the industry, India provides not only ample copyright protection, but also a vast array of remedies to deter, ameliorate, and prevent piracy.⁴⁹

⁴⁹ See, e.g., Interview with Zaheer Khan, Chairman, Enforcers of Intellectual Prop. Rights (India) Ltd., in Mumbai, India (Jan. 15, 2013) (noting that India's copyright regime is sufficiently robust to allow him and his company to pursue those who infringe his clients' works); Nirmal John, *FORTUNE*, Oct. 2012, at 123 (on file with author) (noting that "Ameet Datta, a lawyer specialising in intellectual property at Delhi-based law firm Saikirshna & Associates, says the copyright protection law is quite strong in India, as is the punishment for those breaking the law"); ALKA CHAWLA, *COPYRIGHT AND RELATED RIGHTS: NATIONAL & INTERNATIONAL PERSPECTIVES* 178 (2007) (describing India's Copyright Act as "very progressive").

A. Ample Protection

The current governing statute in India is the Copyright Act, 1957 (“Copyright Act” or “Act”), which has been amended on six instances over the last five decades, most recently in 2012.⁵⁰ As amended and interpreted, the Copyright Act provides protection to films, in terms of both coverage and rights, that is largely comparable to that afforded by many highly developed countries. With respect to coverage, Section 13 of the Act, like the U.S. Copyright Act,⁵¹ provides explicitly that “copyright shall subsist throughout India . . . in cinematograph films.”⁵² Though other provisions of the Act restrict such protection to films produced in Berne member countries or by entities from such countries,⁵³ this limitation is largely consistent with those contained in the U.S. Copyright Act⁵⁴ and the copyright provisions of other developed states.⁵⁵ The Copyright Act does, however, diverge from other statutes in its definitional provision. Section 2(f) of the Act provides that “cinematograph film” means “any work of visual recording [including] a sound recording accompanying such visual recording” and that “‘cinematograph’ shall be construed as including any work produced by any process analogous to cinematography including video films.”⁵⁶ The U.S. Copyright Act, by contrast, defines “motion pictures” as “audiovisual works consisting of a series of related images, which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.”⁵⁷ This difference does not seem to be overly significant, however, since

⁵⁰ CHAWLA, *supra* note 49, at 29-33; *Full Text: The Copyright (Amendment) Bill, 2012*, CNN IBN (May 22, 2012, 5:52pm IST), <http://ibnlive.in.com/news/full-text-the-copyright-amendment-bill-2012/260333-53.html>, *archived at* <http://perma.law.harvard.edu/04Y7mCyQfAy> [hereinafter *Full Text*] (providing the text to the recent amendment).

⁵¹ See 17 U.S.C. § 102(a)(6).

⁵² The Copyright Act, No. 14, Acts of Parliament, 1957 (India) *available with all subsequent amendments excluding the 2012 one in* V K AHUJA, *LAW OF COPYRIGHT AND NEIGHBORING RIGHTS: NATIONAL AND INTERNATIONAL PERSPECTIVES* app. 1 at 345 (2007) [hereinafter *Copyright Act, 1957*].

⁵³ See CHAWLA, *supra* note 49, at 70.

⁵⁴ See 17 U.S.C. § 104(b) (2012).

⁵⁵ See, e.g., Canada Copyright Act, R.S.C. 1985, c. C-42, § 5, *archived at* <http://perma.law.harvard.edu/0kHh6APQx3z>.

⁵⁶ See The Copyright (Amendment) Act, 2012, No. 27, Acts of Parliament, 2012 (India), *quoted in Full Text, supra* note 50 [hereinafter *Copyright (Amendment) Act, 2012*]; *Copyright Act, 1957, supra* note 52.

⁵⁷ 17 U.S.C. § 101 (2012).

many countries define films dissimilarly in their copyright statutes.⁵⁸ Indeed, a number of states do not even provide a definition of what constitutes a “cinematograph.” Australia, for instance, simply defines “cinematograph film” as “the complete and final version of a cinematograph film in which copyright subsists.”⁵⁹ The Indian judiciary, moreover, has been willing to define “cinematograph” in other contexts in accordance with common understandings of what constitutes a film,⁶⁰ and neither academics nor those involved in the industry have indicated that Section 2(f) has had any significant impact on the rights of filmmakers.

In terms of rights, Section 14(d) of the Copyright Act provides the holder of a film copyright with the exclusive right:

- (i) to make a copy of the film, including—
 - (A) a photograph of any image forming part thereof; or
 - (B) storing of it in any medium by electronic or other means;
- (ii) to sell or give on commercial rental or offer for sale such rental, any copy of the film; [and]
- (iii) to communicate the film to the public [including by means of satellite or cable].⁶¹

With one possible exception, these rights largely parallel those accorded copyright holders in the U.S.⁶² and the UK.⁶³ As in most countries,⁶⁴ moreover, copyright protection is automatic, though India does provide a proce-

⁵⁸ See, e.g., Canada Copyright Act, R.S.C. 1985, c. C-43, § 2, *archived at* <http://perma.law.harvard.edu/0pVhWe5Cz5> (defining “cinematographic work” as “any work expressed by any process analogous to cinematography, whether or not accompanied by a soundtrack”); Copyright, Designs and Patents Act, 1988, c. 48, § 5B(1) (U.K.), *archived at* <http://perma.law.harvard.edu/0i5GjGvFgYn> (defining “film” as a “recording on any medium from which a moving image may by any means be produced”).

⁵⁹ *Copyright Act 1968* s 189 (Austl.), *archived at* <http://perma.law.harvard.edu/0aNuFvK9xZA>.

⁶⁰ See CHAWLA, *supra* note 49, at 69–70 n.140.

⁶¹ Copyright Act, 1957, *supra* note 52; Copyright (Amendment) Act, 2012, *supra* note 56.

⁶² See 17 U.S.C. § 106 (2012).

⁶³ See Copyright, Designs and Patents Act, 1988, c. 48, § 16 (U.K.), *archived at* <http://perma.law.harvard.edu/0gasbQUGCAN>. In terms of the exception, Section 14 fails to provide explicitly a right to adaptation, which both the UK and U.S. protect. See *id.* at § 16(1)(e); 17 U.S.C. § 106(2) (2012). Nonetheless, the Indian judiciary’s receptiveness to actions by American studios claiming that Indian films are illegal adaptations of their works, as discussed pages 163–65 *infra*, indicates that the courts largely have read this protection into the statute. Moreover, since piracy does not consist in the production of adaptations or derivative works, this omission is largely irrelevant to the degree to which India protects piracy.

whereby rights holders can voluntarily register their works.⁶⁵ In the event of litigation, such registration “serves as *prima facie* evidence of . . . ownership.”⁶⁶ It is not, however, statutorily required in order to obtain protection.⁶⁷

Despite providing coverage and rights comparable to those afforded by many developed nations, the Copyright Act does contain one exception that could, in theory, make it difficult for many Indian filmmakers to obtain protection. Somewhat similar to the UK Copyright, Designs, and Patents Act,⁶⁸ Section 13(3)(a) of the Copyright Act provides that “[c]opyright does not subsist in . . . any cinematograph film, if a substantial part of the film is an infringement of the copyright in any other work.”⁶⁹ This exception could present a problem for many in the Indian film industry since many Indian producers have been known to “borrow” concepts from Hollywood, “rang[ing] from melodies for background scores to entire plot summaries and even translated dialogues.”⁷⁰ Until the last decade, as the Indian film industry remained small and isolated, few outside India took cognizance of this “borrowing.”⁷¹ But as Bollywood and the regional cinemas have become more global and profitable in recent years, Hollywood producers have not only gained awareness of the infringing activity, but also “started going

⁶⁴ See, e.g., *Copyright*, CANADIAN INTELLECTUAL PROP. OFFICE, http://www.opic.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr00003.html, archived at <http://perma.law.harvard.edu/081mAHyARop> (last visited Mar. 24, 2013) (“Although copyright in a work exists automatically when an original work is created, a certificate of registration is evidence that your creation is protected by copyright and that you, the person registered, are the owner. It can be used in court as evidence of ownership”).

⁶⁵ See NISHITH DESAI ASSOCS., *INDIAN FILM INDUSTRY: TACKLING LITIGATIONS* 7 (2012), archived at <http://perma.law.harvard.edu/0RtAfw7exHj>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See Copyright, Designs and Patents Act, 1988, c. 48, § 5B(4) (U.K.), archived at <http://perma.law.harvard.edu/09kmHRL6W5s> (providing that “Copyright does not subsist in a film which is, or to the extent that it is, a copy taken from a previous film”).

⁶⁹ Copyright Act, 1957, *supra* note 52.

⁷⁰ Suman Tatpudy, *Bollywood & Hollywood: Opportunity for Collaboration Through Reform of Policies Governing Copyright and Plagiarism*, MICH. TELECOMM. & TECH. L. REV. BLOG (Mar. 20, 2012, 2:54 PM), <http://www.mttlrblog.org/2012/03/20/bollywood-hollywood-opportunity-for-collaboration-through-reform-of-policies-governing-copyright-and-plagiarism/>, archived at <http://perma.law.harvard.edu/0ur5WPwodcD>.

⁷¹ Elizabeth Flock, *Who Will Be the Copycat*, FORBES INDIA, Jul. 31, 2009, archived at <http://perma.law.harvard.edu/0mKvgWd7GCQ>.

after the copycats.”⁷² In the summer of 2009, for instance, 20th Century Fox sought to enjoin the release of *Banda Yeb Bindaas Hai*, which the American studio claimed was “a remake of their Oscar Award-winning film *My Cousin Vinny*.”⁷³ Likewise, in 2007, the producers of *Hitch* sued Indian production house K Sera Sera claiming that the latter’s *Partner* was a complete Hindi copy of the Will Smith blockbuster.⁷⁴ There were even allegations that Shah Rukh Khan and Anubhav Sinha engaged in plagiarism when they produced *Ra.One*.⁷⁵

Considering that the Indian judiciary has been receptive to these suits,⁷⁶ it seems possible that claims of this sort could threaten the protection the Copyright Act grants to Indian filmmakers by providing pirates with an affirmative defense, in either civil or criminal litigation. Nonetheless, those in the industry with whom I spoke neither indicated that this had ever occurred nor expressed any concern about such a possibility. And journalists and scholars who discuss piracy have largely ignored the issue. As such, it does not appear that the Section 13(3)(a) exception diminishes in any serious way the coverage and rights that the rest of the Copyright Act affords.

B. *A Host of Remedies*

In addition to offering protection similar to that afforded by many developed states, the Copyright Act provides filmmakers with a vast array of civil, criminal, and administrative remedies in order to deter, remedy, and prevent infringement. Civilly, Section 55(1) of the Act provides that, in the event of infringement, “the owner of the copyright shall . . . be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.”⁷⁷ Though the Act does not provide greater specificity than this, background principles of Indian law provide copyright holders with the ability to pursue compen-

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *SRK’s Ra.One Faces Plagiarism Lawsuit*, HINDUSTAN TIMES (Oct. 21, 2011, 1:30 AM IST), <http://www.hindustantimes.com/Entertainment/Bollywood/SRK-s-RA-One-faces-plagiarism-lawsuit/Article1-759724.aspx>, archived at <http://perma.law.harvard.edu/0Tr3ExnFb7S>.

⁷⁶ See, e.g., Flock, *supra* note 71 (noting that, in response to 20th Century Fox’s petition, “the Bombay High Court stayed the release of BR Films’ *Banda Yeb Bindaas Hai*”).

⁷⁷ Copyright Act, 1957, *supra* note 52, at 299.

satory damages, punitive damages, an account of profits, and four distinct kinds of equitable orders in the event of infringement.

With respect to damages, University of Delhi Professor V K Ahuja has noted that, because “[c]opyright infringement is a tort” under Indian law, “the overriding principle . . . is that damages should be compensatory.”⁷⁸ As such, courts generally look to “the fair fee or royalty which the defendant would have paid had he got the licence from the copyright owner” and sometimes also consider the “diminution of the sales of [the] copyright owner’s work, or the loss of profit which he might otherwise have made” as well as the reputational cost of the infringement.⁷⁹

In some instances, there may not be enough evidence to make such calculations.⁸⁰ And even when there is sufficient documentation, the resulting figure may be too low to do justice in the case of a repeat offender.⁸¹ Indian law, therefore, provides plaintiffs with other measures. First, as an alternative to damages, “[a] plaintiff is entitled to opt . . . for an account of profits.”⁸² In such an instance, the court will require the defendant to pay the plaintiff “the profits made by him by infringing the plaintiff’s copyright.”⁸³ Second, although “there is no provision in the Copyright Act for the award of additional damages in special circumstances, such as flagrancy of the infringement,” the tortious character of copyright infringement means that courts may award punitive and exemplary damages in order to send a message to pirates that violation of the law “may spell financial disaster.”⁸⁴

Although Indian law thus provides a wide range of damages, such measures are frequently not the most efficient means of resolving infringement. Rather, since “[a] copyright owner normally wants speedy and effective relief to prevent further infringements of his copyright and damage to his business,” injunctions are “the most important remedy against copyright

⁷⁸ V K AHUJA, *LAW OF COPYRIGHT AND NEIGHBOURING RIGHTS: NATIONAL AND INTERNATIONAL PERSPECTIVES* 224 (2007).

⁷⁹ *Id.* at 224–25.

⁸⁰ *See, e.g.,* CHAWLA, *supra* note 49, at 239 (“A difficulty often encountered in obtaining a satisfactory judgement [sic] in damages is the production of evidence as to the extent of sales which have taken place and thus the extent of damage which has been caused to the plaintiff’s copyright”).

⁸¹ *See, e.g., id.* at 240 (quoting a case in which the Delhi High Court noted that compensatory damages were insufficient on their own to “deter a wrongdoer and the like minded from indulging in such unlawful activities”).

⁸² AHUJA, *supra* note 78, at 229.

⁸³ *Id.*

⁸⁴ *Id.* at 227–28.

infringement.”⁸⁵ The most important of these is the interim or interlocutory injunction. Such orders enjoin the defendant from engaging in the infringing activity “during the period before a full trial of an infringement action takes place, thus preventing an irreparable damage from occurring to the plaintiff’s rights.”⁸⁶ Under Indian law, litigants can typically obtain interim injunctions within 24 or 48 hours “if a *prima facie* case, urgency, balance of convenience and comparative hardship can be established in favor of the plaintiff.”⁸⁷ Though not as useful, Indian law also provides for permanent injunctions for the term of the copyright “[i]f the plaintiff succeeds at the trial” and can show “that there is a probability of damage, that the defendant is likely to continue his infringement, and that this is not simply trivial.”⁸⁸

In addition to the two traditional injunctions, Indian law allows plaintiffs to seek two other orders that aim to increase the ability of the plaintiff both to preserve evidence and recover damages. The Mareva injunction serves predominantly the latter goal. Often issued *ex parte*, a Mareva injunction “restrains the defendant from disposing of assets which may be required to satisfy the plaintiff’s claim or removing them from the jurisdiction of the court.”⁸⁹ In doing so, the order seeks to ensure that a rights holder will not win at trial only to find the defendant completely judgment proof.⁹⁰ The Anton Piller Order, meanwhile, allows a plaintiff and his attorney to engage in an “inspection of premises on which it is believed that some activity which infringes the copyright of the plaintiff is being carried on.”⁹¹ While the subject of the order may refuse to allow the rights holder and his attorney to enter, she will face contempt of court as a result.⁹² The goal of this order is to allow the copyright holder to discover and preserve not only evidence of infringement that will be useful at trial, but also information about “the source of supply of pirated works,” so that the plaintiff can track down who is ultimately responsible.⁹³ Because such an order constitutes a rather extreme invasion of a defendant’s privacy and is furnished *ex parte*, a court will only issue it if the plaintiff can demonstrate “that he has an ex-

⁸⁵ *Id.* at 213.

⁸⁶ CHAWLA, *supra* note 49, at 236.

⁸⁷ NISHITH DESAI ASSOCS., *supra* note 65, at 19.

⁸⁸ AHUJA, *supra* note 78, at 222.

⁸⁹ CHAWLA, *supra* note 49, at 235.

⁹⁰ See AHUJA, *supra* note 78, at 215 (noting that the purpose of the Mareva injunction is to preserve assets to “satisfy the plaintiff’s claim”).

⁹¹ CHAWLA, *supra* note 49, at 234.

⁹² AHUJA, *supra* note 78, at 223.

⁹³ CHAWLA, *supra* note 49, at 235.

tremely strong prima facie case,” that he has or will suffer “very serious and irreparable damage if an order is not made,” that the defendant has incriminating documents, and that “there is a real possibility of [such documents] being destroyed.”⁹⁴

In addition to this bevy of civil remedies, the Copyright Act also provides rights holders with a jurisdictional advantage. As in other common law countries,⁹⁵ “choice of jurisdiction” under India’s normal rules of civil procedure is “primarily . . . governed by the convenience of the defendant.”⁹⁶ Section 62 of the Act, however, provides that rights holders may bring civil copyright suits in any court having jurisdiction over the territory in which one plaintiff “resides or carries on business.”⁹⁷ As scholars and courts have observed, this provision is designed to “expose the transgressor / pirate with inconvenience rather than compelling the sufferer to chase after the former.”⁹⁸

Complementing this robust array of civil measures is a criminal regime that not only punishes infringers, but also makes it easier for rights holders and enforcement officials to locate, prosecute, and imprison pirates. Section 63 is the primary criminal provision of the Copyright Act and provides that anyone “who knowingly infringes or abets the infringement of” copyright “shall be punishable with imprisonment for a term” of between six months and three years and a fine of up to 200,000 INR (\$3684).⁹⁹ Section 63A further provides that, in the case of a repeat offender, the minimum term of imprisonment must be one year, and the fine no less than 100,000 INR (\$1842).¹⁰⁰ Though these sentences are potentially lower than some provided for under U.S. law,¹⁰¹ the Copyright Act contains other provisions that arguably make it substantially easier to find and prosecute offenders. Section 64, for instance, provides that “[a]ny police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under section

⁹⁴ AHUJA, *supra* note 78, at 224.

⁹⁵ *See, e.g., Int’l Shoe Co. v. Office of Unemp’t Comp. & Placement*, 326 U.S. 310, 316 (1945) (“[I]n order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he [must] have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”) (internal quotation marks omitted).

⁹⁶ CHAWLA, *supra* note 49, at 234.

⁹⁷ Copyright Act, 1957, *supra* note 52.

⁹⁸ *See, e.g., CHAWLA, supra* note 49, at 234.

⁹⁹ Copyright Act, 1957, *supra* note 52.

¹⁰⁰ *Id.*

¹⁰¹ *See* 18 U.S.C. § 2319 (2012) (providing that infringers, depending on their actions, may be imprisoned for up to ten years).

63 . . . has been, is being, or is likely to be, committed, seize without warrant” all infringing copies as well as all materials used to make such copies.¹⁰² Section 65, meanwhile, provides that anyone who knowingly possesses materials “for the purpose of making infringing copies” may be punished with “imprisonment which may extend to two years,” even if the person is not found with any infringing works.¹⁰³

In addition to these provisions, various states within India have enacted statutes that permit “preventive detentions” of copyright infringers. For instance, Maharashtra, the state of which Mumbai is a part, has a statute that “allows the police to place offenders or potential offenders in detention for as long as 3 months without bail, and up to a maximum of 12 months.”¹⁰⁴ Other states have similarly provided that pirates may be charged under their “Goonda Acts,” harsh laws designed to deter and punish drug dealers and members of organized crime.¹⁰⁵ Such laws generally provide for preventive detentions of up to a year,¹⁰⁶ and in some cases, permit police to shoot those covered on site.¹⁰⁷

Finally, unlike in the United States where prosecutorial discretion reigns supreme,¹⁰⁸ in India “[t]he owner of [a] copyright can take criminal proceedings against [an] infringer.”¹⁰⁹ Though such rights holders do not have the capacity to “charge” defendants, they are entitled to file a First Information Report.¹¹⁰ Once such a report is filed, the police are required “to report the case to a magistrate, investigate the crime, and proceed with other police work, such as making arrests and preparing the case for prosecu-

¹⁰² Copyright Act, 1957, *supra* note 52.

¹⁰³ *Id.*

¹⁰⁴ NISHITH DESAI ASSOCS., *supra* note 65, at 20.

¹⁰⁵ *Id.*

¹⁰⁶ See Jaideep Shenoy, *It's Not Easy to Invoke Goondas Act, Say Cops*, TIMES OF INDIA (Aug. 3, 2012, 12:02 PM IST) http://articles.timesofindia.indiatimes.com/2012-08-03/mangalore/33019310_1_goondas-act-immoral-traffic-offenders-habitual-offenders, archived at <http://perma.law.harvard.edu/0tVB5J7kQ1Q> (noting “that the Goondas Act prescribes a one-year preventive detention with no bail”).

¹⁰⁷ See *Kerala Goonda Act Minus Shoot-at-Sight Clause*, FINANCIAL EXPRESS (June 29, 2004, 10:40 PM IST), <http://www.financialexpress.com/news/kerala-goonda-act-minus-shootatsight-clause/109024/0>, archived at <http://perma.law.harvard.edu/0sGiXZjpwBU> (noting that most Goonda Acts permit the police to shoot on sight).

¹⁰⁸ See, e.g., William T. Pizzi, *Understanding Prosecutorial Discretion in the United States: The Limits of Comparative Criminal Procedure as an Instrument of Reform*, 54 OHIO ST. L.J. 1325, 1337 (1993) (conceding that American “prosecutors have tremendous discretion”).

¹⁰⁹ AHUJA, *supra* note 78, at 239.

¹¹⁰ See Interview with Uday Singh, Managing Director, Motion Picture Ass’n, in Mumbai, India (Jan. 9, 2013).

tion”¹¹¹ Though the police are not absolutely required to file charges, if they decide “to close a case, they must give their reasons to the court and inform the complainant, who can challenge the closure before the court.”¹¹²

Though the Copyright Act thus provides rights holders with myriad tools to prevent, punish, and recover funds lost due to domestic piracy, these measures arguably do little to impede the importation of pirated goods from abroad, which, as discussed in PART III.C, *infra*, has been substantial over the past few years. To address this concern, the Act provides an administrative means by which rights holders may petition officials to halt the importation of infringing goods. Section 53 of the Act provides that a copyright holder may alert the Commissioner of Customs that infringing copies of her goods are expected to arrive in India at a given place and time and request that the Commissioner disallow the importation of such good for up to one year.¹¹³ If the Commissioner is satisfied with the sufficiency of the evidence proffered by the rights holder, he is directed to prevent the goods’ importation into the country.¹¹⁴

Lastly, through the Information Technology Act (“IT Act”), India provides rights holders with a means to handle the proliferation of pirated content over the Internet. Section 79 of the IT Act, as amended in 2008, provides that Internet service providers and other “intermediaries” will not be liable for infringing content hosted over their networks, unless, “upon receiving actual knowledge . . . that any information, data or communication link residing or connected to a computer resource controlled by the intermediary is being used to commit [an] unlawful act, the intermediary fails to expeditiously remove or disable access to the material on that resource.”¹¹⁵ Though this provision is written as a limitation of liability, it functions to provide rights holders with a “notice and takedown” remedy similar to that prescribed by the U.S. Digital Millennium Copyright Act.¹¹⁶ Under this procedure, a rights holder can alert an ISP or other intermediary that infringing material is available over its network. In doing so, the rights holder conscripts the intermediary to take down the infringing content

¹¹¹ IMMIGRATION AND REFUGEE BD. OF CAN., INDIA: FIRST INFORMATION REPORTS (FIRS), INCLUDING PROCEDURES AND TIME FRAMES FOLLOWED BY POLICE TO INFORM COMPLAINANTS THAT AN INVESTIGATION WILL NOT BE CONDUCTED (2011), *archived at* <http://perma.law.harvard.edu/0xbDA1cumC3>.

¹¹² *Id.*

¹¹³ Copyright (Amendment) Act, 2012, *supra* note 56.

¹¹⁴ *Id.*

¹¹⁵ The Information Technology Act, 2008, *archived at* <http://perma.law.harvard.edu/0J1SoNoCdKD>; *see also* HARISH CHANDER, CYBER LAWS AND IT PROTECTION, 194–196 (2012) (providing Section 79 in its present form).

¹¹⁶ *See* 17 U.S.C. § 512(c) (2012).

within 36 hours.¹¹⁷ If the intermediary fails to take down the material, “it can be dragged to the court as a co-accused.”¹¹⁸

C. *Concerns About the Regime*

As a result of such a vast array of remedies, many in the film industry believe that India’s copyright regime is quite robust. “Ameet Datta, a lawyer specialising in intellectual property at Delhi-based law firm Saikrishna & Associates,” for instance, “says the copyright protection law is quite strong in India, as is the punishment for those breaking the law.”¹¹⁹ Some, however, have complained that, while the law provides strong overall protection, there are a handful of holes. A number of individuals have argued, for instance, that, unlike the United States and a number of developing countries, India lacks specific anti-camcording legislation.¹²⁰ Such legislation would make “it unlawful to use an audiovisual recording device . . . to make (or attempt to make) a copy, in whole or in part, of a motion picture while inside a theater, and . . . prohibit the unlawful onward distribution or transmission (e.g., wireless upload to the Internet) of the camcorded copy.”¹²¹ Others, meanwhile, have noted that, while the IT Act provides a notice and takedown procedure, India lacks legislation prohibiting the circumvention of digital rights management (“DRM”) technologies.¹²² Lastly, one individual with whom I spoke complained that India does not have a law governing the circumstances in which courts may block access to websites containing infringing content.¹²³

By and large, these concerns seem largely unfounded. With respect to the anti-camcording legislation, it seems hard to understand why the absence of such a law presents any significant impediment to the prevention of

¹¹⁷ See Alaya Legal, *India: Intermediaries Under The Information Technology (Amendment) Act 2008*, MONDAQ (Mar. 6, 2013), <http://www.mondaq.com/india/x/225328/Telecommunications+Mobile+Cable+Communications/Intermediaries+Under+The+Information+Technology+Amendment+Act+2008>, archived at <http://perma.law.harvard.edu/0msbJcoj7S2>.

¹¹⁸ *Id.*

¹¹⁹ John, *supra* note 49, at 123.

¹²⁰ See, e.g., Interview with Uday Singh, *supra* note 110; Interview with Kulmeet Makkar, *supra* note 44; INT’L INTELLECTUAL PROP. ALLIANCE, INDIA: INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE 2012 SPECIAL 103 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 74, archived at <http://perma.law.harvard.edu/0nrGnV1Uqh2>.

¹²¹ INT’L INTELLECTUAL PROP. ALLIANCE, *supra* note 120.

¹²² Interview with Uday Singh, *supra* note 110.

¹²³ *Id.*

piracy. The proposed law merely prohibits what the Copyright Act already proscribes, namely the copying and distribution of a copyrighted film. It does not make theaters liable for recordings that happen on their premises or make it easier to demonstrate that someone has engaged in infringement. Though the proposed law also prohibits “attempted” recordings, there do not appear to be any cases in which suspected camcorders have avoided punishment by claiming that they were only attempting to copy a film. Moreover, the private enforcement agencies, who have sought to prevent and prosecute the camcording of films,¹²⁴ have not said that the absence of a specific anti-camcording law poses an impediment to their efforts. Rather, those with whom I spoke said that the regime as it exists is “very enforceable.”¹²⁵

As for the absence of anti-DRM-circumvention legislation, it does not seem all that necessary considering that the vast majority of pirated films are the product of camcording rather than the circumvention of DRM.¹²⁶ Moreover, India has recently amended the Copyright Act in order to resolve this concern. The Copyright Act (Amendment), 2012 makes it an offense to “circumvent[] an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights.”¹²⁷ Finally, access control legislation also does not appear necessary, since, as discussed in PART IV.B, *infra*, the courts have been quite willing to block access to a host of websites, much to the consternation of site owners, internet users, and ISPs.

The robustness of India’s law could thus present an explanation for the resiliency of India’s film industry. In addition to extending protection that is comparable to that of advanced nations, the Copyright Act, as amended and interpreted, provides a cornucopia of remedies, including compensatory and punitive damages, four types of injunctions, the ability to initiate criminal proceedings, preventive detention, a notice and takedown procedure, and administrative means of interdicting the importation of pirated goods. While some have advocated the addition of other provisions to protect rights holders further, the absence of these measures does not seem to provide a significant loophole for pirates to exploit.

¹²⁴ See *infra* PART IV.A.

¹²⁵ Interview with Zaheer Khan, *supra* note 49.

¹²⁶ Interview with Uday Singh, *supra* note 110.

¹²⁷ Copyright (Amendment) Act, 2012, *supra* note 56.

III. LACK OF ENFORCEMENT

Notwithstanding this broad array of civil, criminal, and administrative remedies, the immense difficulty filmmakers face in enforcing their rights roundly rebuts the contention that the law is responsible for the continued growth of the Indian film industry. Indeed, the inefficiency and uncooperativeness of India's judiciary, the police's lack of sensitization to the problem of piracy, and the unwillingness of foreign states to lend assistance present such massive impediments to enforcement that many of the Copyright Act's provisions have become little more valuable to filmmakers than words on paper.¹²⁸

A. *The Ineffectiveness of Judicial Proceedings*

As discussed in PART II.B *supra*, Indian law provides not only for compensatory damages, but also punitive damages and accounts of profits in cases of infringement. Nonetheless, to obtain such remedies, litigation must reach a final hearing.¹²⁹ Because of the inefficiencies plaguing India's judicial system, it can "take twelve to sixteen years to reach" this point.¹³⁰ For most individuals in the industry, such delays are not only extremely time consuming, but also prohibitively expensive.¹³¹ Indeed, the inefficiencies are so pronounced that the individuals with whom I spoke did not even raise the possibility of pursuing civil damages; it was as though the law did not even provide such a remedy.¹³²

Nor do individuals within the industry seriously consider using injunctions. When asked about these measures, Uday Singh of the MPA responded, "What purpose [sic] will you do with an injunction? What are you going to do with it?"¹³³ Elaborating, Singh noted that injunctions frequently do little to keep pirates off the streets: "You go there [to court], you fight the guy, and then what happens? Eventually . . . in three or four days'

¹²⁸ See, e.g., Interview with Uday Singh, *supra* note 110.

¹²⁹ See, e.g., AHUJA, *supra* note 78, at 211 (noting implicitly that the law provides interim relief because other forms of relief, like damages, require a full trial); NISHITH DESAI ASSOCS., *supra* note 65, at 20 (noting that because of how long it can take normal trials to proceed, "it becomes crucial for the aggrieved IP holder to obtain some temporary relief").

¹³⁰ NISHITH DESAI ASSOCS., *supra* note 65, at 20.

¹³¹ See, e.g., Interview with Uday Singh, *supra* note 110; Interview with Kulmeet Makkar, *supra* note 44.

¹³² Interview with Kulmeet Makkar, *supra* note 44; Interview with Zaheer Khan, *supra* note 49.

¹³³ Interview with Uday Singh, *supra* note 110.

time . . . he's back out there."¹³⁴ The Mareva and Anton Piller orders, which as discussed in PART II.B, *supra*, are designed to help plaintiffs ensure the availability of assets and discover evidence, are no more useful. As Satya Banerji of the MPA explains, the "syndicates" responsible for recording and distributing pirated materials tend to be the same groups involved in "[n]arcotics or other more notorious" activities.¹³⁵ These groups generally recruit poor, middle school dropouts to conduct the camcording activities.¹³⁶ To pay these agents, the syndicates utilize Hawala,¹³⁷ an ancient South Asian remittance system that relies on "the extensive use of connections such as family relationships or regional affiliations" instead of "negotiable instruments."¹³⁸ Because Hawala operators deliberately avoid keeping any records of their transactions, "the source and destination [of the funds are] almost untraceable."¹³⁹ As a result, very little can be achieved by freezing assets or raiding the premises of an operative. Thus, for those in the industry, the Anton Piller and Mareva orders simply "don[']t work."¹⁴⁰

In light of these difficulties, filmmakers who have taken on piracy have relied predominantly on the criminal justice system. It too, though, has proved largely ineffective. First, although the criminal justice system is somewhat more expedient than its civil counterpart, pursuing criminal sanctions is still both costly and time-consuming. As Singh notes, these cases "drag[] on for 8, 10 years," during which time the plaintiff needs to pay an enforcement agency to be present at all the hearings.¹⁴¹ Moreover, as the trial proceeds, the alleged infringer remains at large. As Singh describes the situation: "If I take a street guy out here, a street vendor . . . I file an FIR against him, [and] I put him behind bars. [But] then he's out in three days because he gets bail, he moves two states away and starts the same thing again. . . . It's not an efficient way to get things done."¹⁴²

¹³⁴ *Id.*

¹³⁵ Email from Satya Banerji, Country Manager—Legal, Legislative, Content Protection & Operations, Motion Picture Ass'n (India), to author (Jan. 23, 2013, 6:48am EST) (on file with author).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Patrick M. Jost & Harjit Singh Sandhu, *The Hawala Alternative Remittance System and Its Role in Money Laundering*, INTERPOL (Jan. 2000), <https://secure.interpol.int/Public/FinancialCrime/MoneyLaundering/hawala/default.asp>, archived at <http://perma.law.harvard.edu/0RU8vYFfX>.

¹³⁹ Email from Satya Banerji, *supra* note 135.

¹⁴⁰ *Id.*

¹⁴¹ Interview with Uday Singh, *supra* note 110.

¹⁴² *Id.*

Even when trials make it all the way to judgment, rights holders find that many courts, especially those in rural areas, are frequently very unfamiliar with copyright law and concepts.¹⁴³ As such, they are often unreceptive to rights-holder claims when the copyright is not registered, even though the Copyright Act, as discussed in Part II.A *supra*, specifically does not require registration.¹⁴⁴ Those courts that are familiar with the copyright regime, moreover, generally “do not view criminal prosecution for infringement of copyright with due seriousness” and frequently stretch the law in order to dismiss cases against infringers.¹⁴⁵ University of Delhi Professor Alka Chawla, for instance, recounts how two of the most highly regarded courts in India completely misconstrued the law in order to dismiss cases against copyright criminal defendants. In the first such case, the defendants moved the Delhi High Court for dismissal of the charges against them on the ground that a related civil suit had settled.¹⁴⁶ It is black-letter Indian law that “[a] criminal complaint cannot be dismissed on the ground that the dispute is civil in character” and “[t]he pendency of a civil suit does not justify the stay of criminal proceedings.”¹⁴⁷ Nonetheless, the court agreed to quash the criminal complaint, stating that “no useful purpose would be served by permitting the above complaint and proceedings to continue.”¹⁴⁸ Likewise, in a proceeding before the Bombay High Court, the defendant “filed petition for quashing of the process on the ground that the copyright was not registered and a civil suit was pending.”¹⁴⁹ Although, as mentioned *supra*, the Copyright Act specifically provides that registration is not a condition precedent for protection, the court dismissed the complaint “since the copyright was not registered and the civil suit was pending and . . . there was delay in filing the criminal case.”¹⁵⁰

The extent of the judiciary’s unwillingness to enforce the criminal provisions of the Copyright Act is perhaps best demonstrated by a comment made by Zaheer Khan, the chairman of an enforcement agency that aids rights holders in prosecuting infringement. Unlike Singh and others who lament the delays in the Indian criminal courts, Khan believes it is a good

¹⁴³ See, e.g., ERNST & YOUNG, THE EFFECTS OF COUNTERFEITING AND PIRACY ON INDIA’S ENTERTAINMENT INDUSTRY 9 (Mar. 2008) (on file with author).

¹⁴⁴ See NISHITH DESAI ASSOCS., *supra* note 65, at 21-22.

¹⁴⁵ CHAWLA, *supra* note 49, at 244.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 242.

¹⁴⁸ *Id.* at 244.

¹⁴⁹ *Id.* at 245.

¹⁵⁰ *Id.*

thing that criminal proceedings can take eight to ten years to prosecute.¹⁵¹ Because the cases last so long, he says, criminal defendants have to deal with the nuisance of regularly coming into court.¹⁵² And since this is probably the only punishment such individuals will ultimately receive, the greater the nuisance, the more onerous the punishment.¹⁵³

B. Lack of Police Cooperation

An even greater impediment to the enforcement of copyright law than the courts' inefficiencies and unwillingness to apply black letter law is the lack of effective police assistance. As lawyers from Nishith Desai Associates note, "some police cells are not well equipped nor properly trained to handle counterfeiting cases as they are not adequately educated on the laws governing IP."¹⁵⁴ As such, they have been known to require rights holders to produce proof of registration before taking action, even though the law unequivocally makes such registration optional.¹⁵⁵ In addition to not understanding the law, the police are sometimes unfamiliar with the technology used to make infringing copies. To demonstrate the depth of this lack of sensitization, Kulmeet Makkar of the Producers Guild tells the story of a police raid on a facility that used computers to store or make infringing copies.¹⁵⁶ During the course of the raid, he says, the police seized the computer monitors, but not the towers because they believed that the key information was stored inside the screens.¹⁵⁷

Compounding the lack of proper training, police frequently suffer from a severe shortage of manpower. Shri D. Sivanandhan, a former police commissioner who now heads an enforcement agency, notes that the police are often short-staffed and tasked with a host of very pressing problems ranging from terrorism to organized crime.¹⁵⁸ As such, police generally view intellectual property matters as "luxury litigation"¹⁵⁹ and are frequently unwilling

¹⁵¹ Interview with Zaheer Khan, *supra* note 49.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ NISHITH DESAI ASSOCS., *supra* note 65, at 21.

¹⁵⁵ *Id.* at 22.

¹⁵⁶ Interview with Kulmeet Makkar, *supra* note 44.

¹⁵⁷ *Id.*

¹⁵⁸ Interview with Shri D. Sivanandhan, Chairman, Securus First India Pvt. Ltd., in Mumbai, India (Jan. 22, 2013).

¹⁵⁹ John, *supra* note 49, at 124.

to take action even when presented with a duly filed First Information Report.¹⁶⁰

If there were a centralized enforcement organization, akin to the U.S. Federal Bureau of Investigation, some of these problems could potentially be ameliorated through education campaigns sponsored by the film industry or by creating one special cell to handle intellectual property crimes. Under India's federal structure, however, "policing . . . is a state subject."¹⁶¹ As such, there is no centralized enforcement force in India.¹⁶² Rather, each state, and frequently each locality, has its own, completely independent police force.¹⁶³ While some, like Zaheer Khan, see this situation as conducive to intellectual property enforcement because piracy syndicates cannot bribe one top official,¹⁶⁴ many others find it quite frustrating because it is costly for rights holders to have to establish relationships with a host of different groups and individuals, many of whom speak different languages.¹⁶⁵

C. *Lack of International Cooperation*

Finally, the administrative scheme to prevent the importation of pirated goods does not appear to be particularly effective. According to Nirmal John, a journalist who has written about piracy, after most films are illegally recorded, "prints are sent to centres in Sri Lanka, Bangladesh and Pakistan, where they are copied on to cheap DVDs," after which they are shipped back to India for distribution.¹⁶⁶ Though Section 53 provides a means by which rights holders can block the importation of such goods into India, doing so requires knowledge of a shipment's place and time.¹⁶⁷ Rights holders are normally unlikely to have such information, but they sometimes do know information about specific distribution networks.¹⁶⁸ Nonetheless, they have found that the officials of the countries in which the foreign syndicates reside are frequently unwilling to take action. John notes, for instance, that one of the biggest producers and distributors of infringing copies in the 1990s and early 2000s was "Pakistan-based Sadaf Trading

¹⁶⁰ Interview with Pavan Duggal, Principal, Pavan Duggal Associates, in Mumbai, India (Jan. 14, 2013).

¹⁶¹ Interview with Uday Singh, *supra* note 110.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Interview with Zaheer Khan, *supra* note 49.

¹⁶⁵ Interview with Uday Singh, *supra* note 110.

¹⁶⁶ John, *supra* note 49, at 119.

¹⁶⁷ Copyright (Amendment) Act, 2012, *supra* note 56, at 298.

¹⁶⁸ John, *supra* note 49, at 119–20.

Company,” the front used by organized crime syndicate D-Company.¹⁶⁹ While “Indian authorities had been aware of D-Company’s film operations in Pakistan since the 1990s[, they] were practically powerless to intervene” because Pakistan was unwilling to cooperate.¹⁷⁰ According to a Rand Report, it was “[o]nly after 2005, when U.S. Customs seized a large shipment of SADAF-branded counterfeit discs in Virginia, [that] Pakistani authorities, under threat of trade sanctions beg[an] raiding D-Company’s duplicating facilities in Karachi.”¹⁷¹

Thus, “[w]hile Indian laws certainly provide for adequate protection, the challenge really lies with its enforcement.”¹⁷² In the face of the inefficiency of the court system, the difficulty of achieving police assistance, and international non-cooperation, many of the seemingly robust measures provided by the Copyright Act are mostly ineffectual in the fight against piracy. As a result, it is unlikely that India’s copyright regime can explain the film industry’s continued success. In response to the enforcement difficulties, however, filmmakers in India have begun to employ an array of alternative strategies. Some of these seek to overcome the problems with the enforcement regime, in the hope of still relying on state action to suppress the production and distribution of pirated films. These measures, and the degree to which they may explain the resilience of the film industry, are discussed in PART IV.

IV. ENFORCEMENT-BASED STRATEGIES

In order to resolve the problems with the enforcement regime, filmmakers within India have employed two major tactics. First, they have hired private enforcement agencies to fill the gaps left by police inaction and to liaise with officials in order to encourage them to take piracy seriously. Second, they have pursued novel legal orders that do not suffer from the pitfalls of the four traditional injunctions discussed in PARTS II and III, *supra*. While some of the enforcement agencies’ efforts, like police liaising, may produce benefits in the long-term, in the near-term these entities’ actions do not appear to have significantly reduced the incidence of piracy. Though some reports suggest that the novel legal orders have been more successful,

¹⁶⁹ *Id.*

¹⁷⁰ GREGORY F. TREVERTON ET AL., RAND CORP., FILM PIRACY, ORGANIZED CRIME, AND TERRORISM 92 (2009), *archived at* <http://perma.law.harvard.edu/OzPVEsSyY5J>.

¹⁷¹ *Id.*

¹⁷² NISHITH DESAI ASSOCS., *supra* note 65, at 21.

these contentions are disputed. Moreover, the recentness and scarcity of these orders belie their explanatory force.

A. *Enforcement Agencies*

In order to fill the holes left by police inaction, filmmakers have hired private enforcement agencies.¹⁷³ These agencies generally conduct the investigations that the police are either unwilling or unable to do and, after presenting enough evidence to officials, monitor prosecutions to their conclusions. Enforcers of Intellectual Property Rights (India), Ltd, is the largest such agency in the country, with seven offices throughout India and one in Bangladesh.¹⁷⁴ According to Zaheer Khan, the agency's Chairman, individual producers usually approach the firm shortly before the release of their films.¹⁷⁵ The agency then utilizes the intelligence it has previously gathered on the locations of piracy distribution centers, conducts surveillance of those areas, and, upon determining a given group or person is distributing illegal copies of the client's film, contacts the police to make arrests or conduct a raid.¹⁷⁶

Securus First, another enforcement agency, takes a somewhat different approach. Hired by the MPA, Securus does not pursue individuals who pirate one or two specific films, but employs a team of former police officers who gather intelligence on larger piracy syndicates, and then contacts the police to conduct raids and seize the infringing materials.¹⁷⁷ In addition, Securus seeks to go directly after camcording. To do this, the firm deploys former officers during the first few days of a film's release at movie theaters the MPA knows to have the highest rates of camcording.¹⁷⁸ While there, the officers monitor the theaters and, in the event they catch someone camcording, initiate criminal proceedings.¹⁷⁹

Though private enforcement agencies can take on some of the functions of police, conducting raids and turning a First Information Report into a prosecution still require police action and cooperation. As such, filmmakers, through their enforcement agencies, have sought to liaise with the police in

¹⁷³ See, e.g., John, *supra* note 49, at 119.

¹⁷⁴ *Introduction*, EIPR (INDIA) LTD., <http://www.antipiracy-india.com/copro.html> (last visited Mar. 24, 2013), *archived at* <http://perma.law.harvard.edu/0M1F4MqMEPt>.

¹⁷⁵ Interview with Zaheer Khan, *supra* note 49.

¹⁷⁶ *Id.*

¹⁷⁷ Interview with Shri D. Sivanandhan, *supra* note 158.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

order to encourage them to take piracy more seriously. One method of doing this has consisted of hiring prominent former police officials who can leverage their strong reputations. For instance, Shri D. Sivanandhan, the chairman of Securus First, is the former police commissioner of Mumbai with a reputation as “one of the most successful police officers in Maharashtra when it comes to dealing with the underworld in Mumbai.”¹⁸⁰ Likewise, a number of filmmakers have hired A.A. Khan & Associates,¹⁸¹ an enforcement agency that is run by a former Deputy Inspector of Police who was “[o]nce Mumbai’s most feared cop.”¹⁸² According to those in the industry, the police are generally much more responsive to filmmakers when they speak through individuals with such reputations. As Sivanandhan, noted candidly, “When people like me are involved, obviously the police [are] very cooperative.”¹⁸³

A second method of liaising with the police has been to explain to them the consequences of piracy. As Zaheer Khan of EIPR notes:

[What] everybody is doing now is sensitizing the police to understand that piracy is a crime and revenues generated from piracy move into organized crime. It may not look like a priority, but by the amount of money that piracy generates and sends back into the criminal system, it is a priority. When a policeman understand[s] that money generated from piracy goes into drugs, goes into weapon purchases and far more serious things like that, he will take it seriously.¹⁸⁴

B. *John Doe Orders*

In addition to employing enforcement agencies to resolve some of the problems frustrating the Copyright Act’s criminal provisions, filmmakers have sought to increase the available civil remedies. Most notably, as the well-established injunctive measures have proven largely ineffective, some filmmakers have begun seeking preemptive John Doe, or “Ashok Kumar,”

¹⁸⁰ Vineeta Pandey, *National Security System in for a Major Makeover*, DNA (July 12, 2011, 4:22 AM IST), http://www.dnaindia.com/india/report_national-security-system-in-for-a-major-makeover_1564825, archived at <http://perma.law.harvard.edu/06hdaqCPy9a>.

¹⁸¹ See, e.g., *14 Mumbai Film Festival Fights Piracy with AA Khan*, INDIAGLITZ.COM (Oct. 17, 2012), <http://www.indiaglitz.com/channels/hindi/article/87315.html>, archived at <http://perma.law.harvard.edu/0ByHZy61kWG>.

¹⁸² John, *supra* note 49, at 118–19.

¹⁸³ Interview with Shri D. Sivanandhan, *supra* note 158.

¹⁸⁴ Interview with Zaheer Khan, *supra* note 49.

orders.¹⁸⁵ These orders “are *ex parte* injunctions [issued] against unknown persons,” enjoining them from engaging in the infringing activity.¹⁸⁶ Generally, they offer two primary advantages. First, they allow for immediate action. As lawyers from Nishith Desai explain, “When a John Doe/Ashok Kumar order is passed, the plaintiff can serve a copy of the same on the party which is violating the order and seek adherence to the order. Failure to comply with the order may result in initiation of contempt proceedings.”¹⁸⁷ As a result, filmmakers need not initiate a new suit or go through any burdensome procedures, all while pirates continue to sell infringing copies.¹⁸⁸ Rather, they can simply “serve the notice and take action at the same time against anyone who is found infringing the copyright.”¹⁸⁹

Second and more importantly, such orders frequently cover more than just the alleged infringers. As the *Deccan Herald* notes, John Doe orders are typically drafted to “appl[y] to all those websites which allow their users/customers to download/stream films without proper licence from the film’s copyright owner and also to ISPs which make their platform available to their customers to download/stream films without proper licence.”¹⁹⁰ As a result, though the orders may not clearly require such drastic action,¹⁹¹ rights holders are frequently able to use them to pressure ISPs to completely

¹⁸⁵ See Lawrence Liang, *Meet Ashok Kumar the John Doe of India; or the Pirate Autobiography of an Unknown Indian*, KAFILA (May 18, 2012), <http://kafila.org/2012/05/18/meet-ashok-kumar-the-john-doe-of-india-or-the-pirate-autobiography-of-an-unknown-indian/>, archived at <http://perma.law.harvard.edu/0tYU2NpFGcj>.

¹⁸⁶ *Id.*

¹⁸⁷ NISHITH DESAI ASSOCS., *supra* note 65, at 21.

¹⁸⁸ See *Want to Combat Piracy? Go for John Doe Order*, DECCAN HERALD (May 25, 2012), <http://www.deccanherald.com/content/252129/F>, archived at <http://perma.law.harvard.edu/0XbjGREUTHr> [hereinafter *Want to Combat Piracy?*] (quoting a film producer as noting, “If we approach the court for copyright infringement, it takes a lot of time because it requires filing court papers . . . and by that time the owner of the copyright has already incurred huge losses”).

¹⁸⁹ Kunal M Shah, *Singham on Piracy Alert*, TIMES OF INDIA (July 24, 2011, 12:00 AM IST), http://articles.timesofindia.indiatimes.com/2011-07-24/news-interviews/29807206_1_singham-unidentified-prospective-infringers-reliance-entertainment, archived at <http://perma.law.harvard.edu/0KtAUGgEtT2>.

¹⁹⁰ *Want to Combat Piracy?*, *supra* note 188.

¹⁹¹ See, e.g., Vasudha Venugopal, *Internet Users Enraged over Blocking of File-Sharing Sites*, THE HINDU, May 18, 2012, archived at <http://perma.law.harvard.edu/0PsqWVbEHSM> (“Harish Ram, CEO, Copyright Labs, hired by producers of the movie 3, R K Productions Private Limited, for the online anti-piracy management of the movie, said that the ISPs had misinterpreted the order. ‘Instead of blocking specific URLs that were screening the movie, they blocked the whole sites,’ he said.”).

block access to a host of popular websites on which pirated videos sometimes appear, including Vimeo, Daily Motion, and The Pirate Bay.¹⁹²

C. Limited Success

Though individuals at the enforcement agencies readily tout their successes,¹⁹³ the available evidence indicates that overall they have done little to stop piracy; a number of sources have noted that it remains quite easy to obtain illegal versions of the most coveted films throughout India. As an example of the ease with which consumers can obtain pirated goods, Nirmal John recounts his experience during the release of *Barfi*, India's 2011 submission to the Academy Awards for Best Foreign Language Film.¹⁹⁴ On the "very day" of the film's release, John reports, "file-sharing sites were crammed with purportedly great rips of the movie. A day after, I went to watch it at a Delhi multiplex, paying over Rs 350 [approximately \$7] for a ticket. A short distance from the multiplex, 20-year-old Praveen Kumar [was] selling *Barfi* DVDs for Rs 30 [about 60¢]."¹⁹⁵

My personal encounter with piracy distributors during my time in India similarly demonstrates the limited degree to which the enforcement agencies have had any impact. If the agencies' efforts had been even remotely successful, one would expect distributors of pirated films to engage in some effort to avoid detection. One would expect distributors to, *inter alia*, maintain the capacity to collect their products and flee rapidly in the event of a raid or police action, keep some sort of lockout, or at least hold business in a somewhat secluded area so as to avoid detection. Nonetheless, the pirate shop I visited was the exact opposite. Set up in downtown Mumbai, the shop functioned like any other store in the area. There were no lookouts, the pirated DVDs were displayed in a manner that would likely not lend itself to any sort of rapid-getaway, and the shop was in a crowded area near a very popular food stand. The distributors even had business cards.

Such open-air distribution may be consistent with effective enforcement if the enforcement is focused on the production, rather than the distribution of pirated DVDs. In that case, however, one would expect the distributors to have a relatively limited supply of the most popular movies.

¹⁹² See, e.g., Nikhil Pawa, *No More John Doe Orders? Indian ISPs Get Court Order for Specificity in URL Blocks*, MEDIANAMA (June 20, 2012), <http://www.medianama.com/2012/06/223-no-more-john-doe-orders-indian-isps-get-court-order-for-specificity-in-urls/>, archived at <http://perma.law.harvard.edu/0YeAGDL37zL>.

¹⁹³ See, e.g., Interview with Zaheer Khan, *supra* note 49.

¹⁹⁴ John, *supra* note 49, at 118.

¹⁹⁵ *Id.*

The pirate shop I visited, however, had not only an extremely wide selection of products, but also some of the most sought after American and Hindi titles. Their selection included films like *Les Misérables* and *Zero Dark Thirty*, which had yet to even premiere in India, as well as *Dabangg 2*, the most popular film in India at the time.¹⁹⁶ Under such circumstances, it seems difficult to argue that the enforcement agencies have had any meaningful success.

The situation seems to be somewhat different for the John Doe orders. According to a number of individuals in the industry, the orders have successfully reduced the rate of illegal downloading. Madhu Gadodia, whose law firm has been one of the leaders in obtaining such orders, has said, for instance, that her “clients have realised that the rate of piracy has gone down after John Doe orders.”¹⁹⁷ Likewise, Pavan Duggal, a lawyer specializing in Internet technology, noted that *Singham*, *Bodyguard*, and *3*, three of the biggest films to be covered by John Doe orders, each experienced lower piracy as a result.¹⁹⁸ These opinions are somewhat controverted, however. Nirmal John, for instance, notes that, despite an outstanding John Doe order, “illegal copies of *3* were up on most file sharing sites” on the day of the film’s release.¹⁹⁹

Moreover, to the extent these orders have limited piracy, such success is unlikely to be sustainable, as courts have begun responding to numerous outcries that the injunctions unduly limit free speech.²⁰⁰ Last summer, for instance, the Madras High Court responded to a petition from ISPs to amend a broad John Doe order it had issued.²⁰¹ The amended order noted that “the interim injunction is granted only in respect of a particular URL where the infringing movie is kept and not in respect of the entire website. Further, the applicant is directed to inform about the particulars of URL where the interim movie is kept within 48 hours” (emphasis removed).²⁰²

¹⁹⁶ See Raksha Kumar, *What Made ‘Dabangg 2’ a Hit?*, *India Ink*, N.Y. TIMES (Jan. 24, 2013, 3:11 AM), <http://india.blogs.nytimes.com/2013/01/24/why-was-salman-khans-dabangg-2-a-hit-when-it-bombed-with-critics/>, archived at <http://perma.law.harvard.edu/0ctCMNriBbG>.

¹⁹⁷ Kian Ganz, *Bombay HC Passes First Anti-Piracy John Doe Order, as Law Firms Commoditise the New Vertical*, LEGALLY INDIA (June 15, 2012, 7:45 PM), <http://www.legallyindia.com/201206152894/Litigation/bombay-hc-passes-first-anti-piracy-john-doe-order-as-law-firms-commoditise-the-new-vertical>, archived at <http://perma.law.harvard.edu/0wgv4xtrQEW>.

¹⁹⁸ Interview with Pavan Duggal, *supra* note 160.

¹⁹⁹ John, *supra* note 49, at 117.

²⁰⁰ See Pawa, *supra* note 192.

²⁰¹ *Id.*

²⁰² *Id.*

Demonstrating that such limited orders are likely to be the way of the future, the same court issued an order containing similar limitations later the same year.²⁰³ Though the other high courts do not appear to have followed suit just yet, such seems inevitable considering the immense burden that broad John Doe orders place on expression and the willingness of the ISPs to challenge such measures.

The John Doe orders also lack explanatory force because they are a very recent and sporadic phenomenon. The first such order was only issued in the summer of 2011,²⁰⁴ and *Ra.One* was not even subject to one. As such, these orders are likely not the reason for the growth of the entire Indian film industry, and certainly cannot explain why *Ra.One* was able to make a substantial profit in the face of massive piracy.

Thus, notwithstanding the claimed successes of the John Doe orders and the enforcement agencies, it appears that neither of these mechanisms explains the resilience of the Indian film industry. Considering the continued prevalence throughout India of pirated DVDs and VCDs of the most coveted films, it seems difficult to claim that the enforcement agencies have successfully impeded piracy. Though some have argued that John Doe orders have successfully limited the capacity of consumers to access pirated copies, these accounts are subject to dispute, and the emergence of such orders is too recent and limited to explain the sustained growth of an entire industry. Moreover, to the extent John Doe orders have achieved success, that success is likely to be short lived since courts are beginning to narrowly tailor them. As such, it becomes necessary to explore the non-legal measures that producers have taken.

V. NON-LEGAL STRATEGIES

In addition to trying to rectify the problems with the enforcement regime, Indian filmmakers have begun to employ measures that seek to reduce the impact of piracy without relying upon state assistance. These “non-le-

²⁰³ *Court Issues Order Restraining Online Piracy of Suriya Film*, TIMES OF INDIA (Oct. 13, 2012, 5:46 AM IST), http://articles.timesofindia.indiatimes.com/2012-10-13/chennai/34431089_1_online-piracy-court-issues-order-tamil-film, archived at <http://perma.law.harvard.edu/03TGogf8HEa> (noting that the Madras High Court injunction “clarified that the order pertained to the specific universal resource locator (URL), a specific character string that constitutes a reference to an internet resource, and not the entire website”).

²⁰⁴ See Anant Rangaswami, *Singham Anti-Piracy Order Shows Law is an Ass Without Meaning to Be*, FIRSTPOST (July 23, 2011), <http://www.firstpost.com/business/singham-anti-piracy-order-shows-law-is-an-ass-without-meaning-to-be-46817.html>, archived at <http://perma.law.harvard.edu/0kYWPA6Fkcf>.

gal” measures include increasing the availability of legitimate copies, attacking the piracy supply chain, and leveraging India’s star system to encourage consumers to refrain from watching illegal copies. Through these efforts, filmmakers have managed to both diminish consumers’ demand for pirated prints and increase the appeal of legitimate copies. As a result, these measures may be at least partially responsible for the continued resilience of the Indian film industry.

A. *Increased Distribution*

One of the most prominent strategies that Indian filmmakers have pursued in recent years is to increase the distribution of their films, in terms of location, time, and media.²⁰⁵ The idea behind this effort is to “cut[] off one of the main reasons why people seek out infringing copies.”²⁰⁶ As Rajesh Mishra, the CEO of UFO Films explains, many Indian consumers have historically purchased pirated products simply because legitimate copies were unavailable. “Films,” he says, “are promoted heavily [in India] through every possible medium, reaching every possible person, down to the smallest village. But [filmmakers in years past] end[ed] up releasing in only a few centres. So you create[d] a hunger but d[id]n’t give the food to everyone.”²⁰⁷ Although legitimate copies would ultimately reach these smaller centers in three to six months, this was too late to satisfy demand because by this point “[p]irates [had already] gleefully filled [the] vacuum by bombarding consumers with cheap optical discs.”²⁰⁸

The advent of digitization has allowed Indian filmmakers to close this distribution gap. As the PwC/CII report notes, digitization “enabl[es] film producers to simultaneously release their films across” India.²⁰⁹ The 2012 blockbuster *Ek Tha Tiger*, for example, “released in nearly 3,300 screens,” a feat that was “unheard of four or five years ago, when . . . a big budget film

²⁰⁵ See, e.g., Prabhakar, *supra* note 34.

²⁰⁶ Mike Masnick, *Bollywood No Longer Worrying About Piracy as Studios Keep Setting New Records at the Box Office*, TECHDIRT (Feb. 18, 2013, 10:08 AM), <http://www.techdirt.com/articles/20130218/03033922013/bollywood-no-longer-worrying-about-piracy-as-studios-keep-setting-new-records-box-office.shtml>, archived at <http://perma.law.harvard.edu/0E1UekJUcPR>.

²⁰⁷ John, *supra* note 49, at, 122.

²⁰⁸ Prabhakar, *supra* note 34.

²⁰⁹ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, *supra* note 30, at 28; see also Prabhakar, *supra* note 34 (noting that “[d]igital prints, which cost one-fifth of analog prints, have facilitated the swift reach of movies across the country.”).

would release in around 1000 screens.”²¹⁰ *Dabangg 2* recently topped this figure, releasing on 3,700 screens just before Christmas 2012.²¹¹ This greater distribution is not limited to blockbusters. Rather, “most movie releases in 2011 were shown on about double the number of movies [sic] screens as similar movies just the year before.”²¹²

In addition to expanding the number of locations that their movies reach, Indian producers and studios have increased the amount of time during which their films are available. To do this, filmmakers have drastically reduced their theater-to-television release windows. These windows were designed to create a time lag between a film’s theatrical release and its television premiere, in the hope that such stratification would “prevent different media . . . from cannibalising each other.”²¹³ Nonetheless, by creating sustained periods of time in which there was no legitimate version of a given film available, producers gave rise to a situation in which consumers wanted a product but pirates were the only ones offering it.²¹⁴ In India this problem was especially acute because release windows averaged sixth months, thereby giving pirates what amounted to a half-year monopoly.²¹⁵ In recent years, numerous Indian producers have filled this gap by reducing their release windows.²¹⁶ Last year’s *Son of Sardaar*, for instance, had its television premiere a mere two months after its theatrical release.²¹⁷

Lastly, Indian filmmakers have sought to increase the number of media they reach. As the PwC/CII report notes, “There is an increasing trend of films being viewed on personal devices (mobile phones and tablets), internet platforms such as YouTube and [the] DTH [direct-to-home] PPV [pay-per-view] model.”²¹⁸ Filmmakers have recently sought to meet this demand by pre-selling (i.e. selling before a film’s release) rights to these alternative me-

²¹⁰ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, *supra* note 30, at 28.

²¹¹ *Dabangg 2 Stands at 155 Crores at the Domestic Box Office*, BOLLYHQ (Jan. 11, 2013), <http://bollyhq.com/bollywood/dabangg-2-stands-at-155-crores-at-the-domestic-box-office/>, archived at <http://perma.law.harvard.edu/0cZ2DwH3w2U>.

²¹² Masnick, *supra* note 206 (emphasis in original).

²¹³ Frederic Filloux, *Different Release Times of Films and TV Shows Boost Global Piracy*, GUARDIAN (Nov. 26, 2012, 10:09 AM EST), <http://www.guardian.co.uk/technology/2012/nov/26/films-tvs-global-piracy>, archived at <http://perma.law.harvard.edu/08BfuNN9Vth>.

²¹⁴ *See id.*

²¹⁵ *Id.*

²¹⁶ Prabhakar, *supra* note 34.

²¹⁷ *Id.*

²¹⁸ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, *supra* note 30, at 28.

dia.²¹⁹ Some companies have even “started offering apps and websites that allow viewers to rent or stream films.”²²⁰

Shortening release windows, expanding the number of screens a film reaches, and increasing the number of media on which viewers can watch a product do not take pirated prints off the market. Nonetheless, by increasing the availability of legitimate copies, producers reduce the desire of customers to purchase pirated versions by offering them an alternative that many viewers consider to be both of better quality²²¹ and safer.²²² Moreover, by increasing distribution to different places and media, producers can diversify their revenue streams.²²³

B. *Interference with the Piracy Supply Chain*

In addition to increasing the availability of legitimate products, Indian filmmakers have sought to make pirated copies less attractive by interfering with the piracy supply chain. Part of this effort has focused on the consumer. Specifically, filmmakers and private enforcement agencies have sought to reduce the ease of obtaining pirated prints. Private enforcement agency Republique Media, for instance, has purchased “software that scans for and helps take down illegal content” so as to make it more time-consuming and arduous for potential consumers to find illegal copies online.²²⁴ Republique has also engaged in “spoofing.”²²⁵ As Nirmal John explains:

²¹⁹ Interview with Pavan Duggal, *supra* note 160.

²²⁰ CONFED. OF INDIAN INDUS. & PRICEWATERHOUSECOOPERS, *supra* note 30, at 28.

²²¹ See Prabhakar, *supra* note 34 (“[T]he better-off who earlier paid to have high-quality cinema systems at home are no longer interested in poor quality (pirated) copies.”).

²²² See Filloux, *supra* note 213 (noting that many consumers prefer avoiding “the painstaking task of finding the right torrent file, hoping that it is not bogus, corrupted, or worse, infected by a virus”).

²²³ Interview with Pavan Duggal, *supra* note 160; see also Nirmal Bang, *The Dynamics of Indian Film Production Have Changed a Great Deal*, STOCK MARKETS REVIEW (Oct. 1, 2011, 7:18 AM GMT), http://www.stockmarketsreview.com/extras/the_dynamics_of_indian_film_production_have_changed_a_great_deal_20111001_170678/, archived at <http://perma.law.harvard.edu/0KHj8D154uA> (“There are many aspects of filmmaking today that ensure that the money that is invested is recovered even before a film is released. Syndicate deals such as music rights, television and satellite rights, overseas rights and, quite recently, two new concepts: part-production and post-production sharing of money are being signed.”).

²²⁴ John, *supra* note 49, at 124.

²²⁵ *Id.*

To coincide with a movie launch, it floods file-sharing sites with fake files of roughly the size of a full-length movie with authentic sounding file names. The idea is to frustrate users; few have the patience, to say nothing of bandwidth, to download multiple torrents to check if even one is the actual movie.²²⁶

The other part of this effort focuses on the supplier. Specifically, Indian filmmakers have employed watermarking in order to trace and cut off the source of pirated goods. As Nirmal John explains, in addition to facilitating greater distribution, digitization has enabled filmmakers to embed their movies with “invisible forensic watermarks When pirated DVDs [of films that have been so embedded] are analysed in the studio, the[se] watermarks become visible, providing all sorts of data including the name of the theatre it was shown in and the time of the show.”²²⁷ Though producers can use this information as the basis for legal action,²²⁸ more frequently they simply threaten to withhold future releases from theaters where the camcording occurred.²²⁹ As John notes, “Often, the mere threat of withholding future films is enough to make movie hall owners more vigilant.”²³⁰ By increasing the vigilance of movie theaters, filmmakers are able to make pirated prints more difficult to obtain, and resultantly more expensive to purchase or distribute.

C. Education Campaigns

Lastly, in recognition of the fact that it will likely be impossible to eradicate piracy completely, Indian filmmakers have decided to appeal directly to consumers. According to a recent report prepared by accounting firm Ernst & Young, there is a substantial “lack of consumer awareness about [the] implications of copyright infringement” within India.²³¹ To rectify this unawareness, filmmakers have sought to engage in education campaigns that leverage the massive star power of India’s biggest actors.²³² Shortly after learning that the *Ra.One* musical album had been posted to the internet, for instance, Shah Rukh Khan and others who had worked on the

²²⁶ *Id.*

²²⁷ *Id.* at 122.

²²⁸ See, e.g., Prabhakar, *supra* note 34 (“In 2008, a pirated DVD of the film Tashan was traced back to an April 25 show at a single-screen theatre in Bilimora, a small town in Gujarat The theatre was raided and the camcorder racket busted.”).

²²⁹ Interview with Pavan Duggal, *supra* note 160.

²³⁰ John, *supra* note 49, at 122.

²³¹ ERNST & YOUNG, *supra* note 143, at 9.

²³² Interview with Pavan Duggal, *supra* note 160.

film “[took] to micro blogging site Twitter and appeal[ed] to his millions of fans to obtain the album through legal means.”²³³ Aamir Khan, another Bollywood megastar, recently took to the airwaves as well, asking his fans “not to succumb to piracy” and explaining that profits from illegal sales end up funding other “nefarious activities.”²³⁴ Stars from the regional cinemas have engaged in similar campaigns. For instance, after the Tamil film *Jaggubhai* was posted online before it was even released in theaters, a number of Bollywood actors who were not even in the film, including megastar Rajinikanth, got together to condemn the piracy and call on viewers to take action.²³⁵

Although these campaigns are relatively recent, it appears that they have had some success. Not only have reports emerged of consumers refusing to purchase or download illegal copies in response to the pleas by stars,²³⁶ but it also appears that the education campaigns may have even mobilized fans to take direct action against camcorders. As John reports, in Tamil Nadu:

It’s almost impossible [that] a Rajinikanth movie will be copied illegally in the first 10 days of its release in the state. Dilli Rajini president of the Rajinikanth Fan Club in Chennai, says that on the day of the release, the fan club asks the city commissioner of police for extra security inside movie halls. If that does not deter pirates, the fans themselves step in and stop anyone from using recording devices.²³⁷

Despite anecdotal successes of this sort, there is no empirical evidence to support the proposition that these non-legal strategies are the reason why the industry is growing in the face of massive piracy. Nonetheless, the success of these strategies is consistent with the situation on the ground. Unlike the measures discussed in PART IV and the provisions of the Copyright Act, the non-legal efforts by and large do not seek to eradicate piracy, but simply draw consumers away from infringing copies. As such, the existence of widespread piracy does not demonstrate that these strategies have been ineffective. Rather, the continued success of the film industry and the simultaneous existence of pervasive piracy may indicate the precise opposite.

²³³ Rai, *supra* note 17.

²³⁴ *Handsome Aamir Khan Speaks About Piracy*, YOUTUBE (Feb.16, 2011), <http://www.youtube.com/watch?v=sTdW4opoMiU>, archived at <http://perma.law.harvard.edu/0bCnbkY7HS5>.

²³⁵ *Sara-Radbika in Tears: Stars Support*, INDIAGLITZ.COM (Jan. 5, 2010), <http://www.indiaglitz.com/channels/tamil/article/53274.html>, archived at <http://perma.law.harvard.edu/0x5LvdPN3Dv>.

²³⁶ See, e.g., *Bollywood Movie: ‘Ra.One’ Team’s Fight Against Piracy*, *supra* note 16.

²³⁷ John, *supra* note 49, at 121.

VI. AN ALTERNATIVE EXPLANATION: INDIA'S THEATRICAL CULTURE

Nonetheless, there is no clear proof that these non-legal measures have been successful. Some within the industry, moreover, have suggested that the continued growth of the Indian film industry in the face of piracy has nothing to do with anything that Indian filmmakers have done.²³⁸ Rather, these individuals say, the resilience of the Indian film industry is due to something unique about Indian film culture.²³⁹ Specifically, they argue that watching an Indian film in an Indian movie theater is a fundamental cultural experience that pirated VCDs or DVDs simply cannot replicate.²⁴⁰

The notion that there is something irreplaceable about the Indian theater-going experience has found support in academic literature. Lakshmi Srinivas, a professor of Sociology at University of Massachusetts Boston, has observed that film watching in much of India is often not about seeing a specific movie. Many Indian consumers actually find Bollywood and regional movies to be “‘silly’, ‘stupid’, [and] ‘all the same.’”²⁴¹ Rather, viewing films for many Indian consumers is about having the theatrical experience.²⁴² As Srinivas explains, the experience of watching an Indian film in an Indian theater “is very different from the emotional experience which contemporary Western audiences of Hollywood films encounter and expect.”²⁴³ Instead of silently watching a movie to its conclusion, Indian “theater habituées [sic] expect to interact with their fellow viewers.”²⁴⁴ They go into the theater planning to “[exchange] views, discuss[] the film and the stars, or simply hav[e] everyday conversations in the theater.”²⁴⁵ In addition, filmgoers expect to interact “with on-screen events.”²⁴⁶ Alongside fellow fans, viewers will applaud the star’s dramatic entrance, loudly caution the main characters to run faster during chase scenes, sing along during performances of songs, and throw coins at the screen to express approval of certain actions.²⁴⁷ The interactive nature of the theatrical experience is so

²³⁸ Interview with Uday Singh, *supra* note 110.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Lakshmi Srinivas, *Active Viewing: An Ethnography of the Indian Film Audience*, 11 VISUAL ANTHROPOLOGY 323, 328 (1998), archived at <http://perma.law.harvard.edu/0Jpfaa5xJ7o>.

²⁴² *Id.* at 330.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 336-37, 341.

pronounced that Srinivas describes it as more akin “to watching folk performances of myths” than to viewing a movie in a Western cinema.²⁴⁸

It goes without saying that social and interactive experiences of this sort cannot easily be replicated by watching a VCD or DVD at home. There is, moreover, some empirical evidence to support the view that the irreplaceability of the Indian theatrical experience may be responsible for the continued resilience of the film industry. First, although Indian filmmakers have explored alternative media, box office receipts remain a massive portion of film revenues. As journalist Binoy Prabhakar has noted, the “box office contribut[es] up to 80% of a movie’s gross collections in recent times.”²⁴⁹ This statistic seems to confirm Srinivas’s contention that film watching for many Indian consumers is inextricably tied to the theatrical experience.

Second, foreign films make up a much larger part of the pirated market than the legal one. As an Ernst & Young report notes:

The film entertainment market in India is dominated by the regional film market The share of foreign films in the legal market is only 3%. However, in the pirated market, the share of regional films is only 62% while the balance is shared between foreign films (23%) and other films (15%).²⁵⁰

These figures suggest that viewers are much less interested in buying pirated versions of Indian content than they are of foreign content. This is consistent with the idea that the theatrical experience plays a role in the industry’s continued success because most Western movies do not contain the aspects of Indian films, such as pre-released songs and structured intermissions, that facilitate interactive and communal viewing.²⁵¹ As such, their entertainment values are likely not as tied to theatrical viewing as those of Indian films. Indeed, when I mentioned to my host in India the possibility of purchasing *Dabangg 2* at the pirate store, he indicated that doing so would be foolish because we could watch the film in the theater.

Finally, the music and gaming industries have suffered more from piracy than the film industry in recent years. As the Ernst & Young report notes, “Music is one of the worse hit industries due to piracy with 64% of the market estimated to be pirated.”²⁵² The same report notes that “[t]he gaming industry in India is a currently a [sic] very small market; however, it

²⁴⁸ *Id.* at 336.

²⁴⁹ Prabhakar, *supra* note 34.

²⁵⁰ ERNST & YOUNG, *supra* note 143, at 10.

²⁵¹ *See, e.g.*, Srinivas, *supra* note 241, at 327-28.

²⁵² ERNST & YOUNG, *supra* note 143, at 12.

is one of the worst hit due to rampant optical disc piracy.”²⁵³ Though there could be other explanations, a potential reason why these industries may be suffering from piracy while the film industry remains strong is that they are not tied to theaters the way that Indian movies are. Thus, it may be the case that the continued resilience of the Indian film industry has nothing to do with filmmakers’ specific efforts, but is due to the unique place of the movie theater within Indian society and the inability of pirated films to replicate the theatrical experience.

VII. CONCLUSION

In May 2012, Shah Rukh Khan confirmed circulating rumors that he would make a sequel to *Ra.One*.²⁵⁴ Khan has said that he hopes the sequel will be “[b]igger and better” than the original.²⁵⁵ While some commentators have insinuated that this effort may be risky considering the negative reviews faced by the original, no one has seriously contended that piracy will threaten the film’s success.²⁵⁶

This paper has sought to explore why Shah Rukh Khan and other Indian filmmakers do not need to worry about piracy, and why they can make the innovative films they envision without serious concern that copyright infringement will prevent them from recouping their costs and turning a profit. Although the robustness of India’s copyright regime initially seems like a plausible explanation, the law’s utter lack of enforcement discredits this possibility. And while Indian filmmakers have sought to rectify the enforcement problems by hiring private agencies and pursuing innovative John Doe orders, these efforts do not appear to be sufficiently successful, recent, or widespread enough to offer much explanatory force. The most likely explanation for the continued success of the industry may therefore be that the non-legal measures that filmmakers have employed have managed

²⁵³ *Id.* at 16.

²⁵⁴ Sonali Joshi, *SRK’s Second Shot at the Box Office with Ra.One Sequel*, DAILY MAIL (May 15, 2012, 2:39 PM EST), <http://www.dailymail.co.uk/indiahome/indianews/article-2144922/SRK-s-second-shot-BO-Ra-One-sequel.html> archived at <http://perma.law.harvard.edu/0XzYohLWJUZ>.

²⁵⁵ Roshmila Bhattacharya, *Shah Rukh Khan Game for Ra.One Sequel*, HINDUSTAN TIMES (Mar. 10, 2012), <http://www.hindustantimes.com/Entertainment/Bollywood/Shah-Rukh-Khan-game-for-RA-One-sequel/Article1-823234.aspx>, archived at <http://perma.law.harvard.edu/0K21Tc5A5za>.

²⁵⁶ See, e.g., *Shahrukh Khan Confirms Ra.One Sequel*, ONE INDIA ENTERTAINMENT (May 14, 2012, 10:07 AM IST), <http://entertainment.oneindia.in/bollywood/news/2012/shahrukh-khan-ra-one-sequel-095640.html>, archived at <http://perma.law.harvard.edu/082QXwgvMYW>.

both to diminish the demand for pirated copies and increase the appeal of legitimate versions. It is equally possible, though, that the industry's resilience has nothing to do with these efforts. Instead, the continued growth of the industry may be due to the unique place of theater going in Indian cinematic culture and the inability of pirated prints to replicate the theatrical experience.

Whichever the explanation, this paper has sought to offer some possible lessons for those grappling with piracy in other contexts. First, the Indian experience demonstrates that strict intellectual property laws do not automatically reduce piracy. The law is often only as effective as the enforcement regime supporting it. Second, efforts to improve the enforcement machinery of a given state may not be the most efficient, cost-effective, or societally beneficial way of diminishing the impact of piracy. Rather, the most effective way of dealing with piracy may be by increasing distribution, appealing to consumers, attacking the piracy supply chain, or engaging in other efforts that make legitimate products more attractive. Lastly, a society's cinematic culture should not be ignored. Those hoping to ameliorate piracy in various markets must understand why individuals in those markets watch movies and consider possible means of offering those features in ways that pirates cannot duplicate.

