

9

**STANDING COMMITTEE ON
INFORMATION TECHNOLOGY
(2019-20)**

SEVENTEENTH LOK SABHA

MINISTRY OF INFORMATION AND BROADCASTING

THE CINEMATOGRAF (AMENDMENT) BILL, 2019

NINTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2020/ Phalguna, 1941 (Saka)

NINTH REPORT

**STANDING COMMITTEE ON
INFORMATION TECHNOLOGY
(2019-20)**

(SEVENTEENTH LOK SABHA)

MINISTRY OF INFORMATION AND BROADCASTING

THE CINEMATOGRAPH (AMENDMENT) BILL, 2019

*Presented to Lok Sabha on 16.03.2020
Laid in Rajya Sabha on 16.03.2020*



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2020/ Phalguna, 1941 (Saka)

CONTENTS		
		Page
COMPOSITION OF THE COMMITTEE		(ii)
INTRODUCTION		(iii)
REPORT		
PART I		
I.	Introductory	1
II.	Insertion of new section 6AA after section 6A of the Cinematograph act 1952 and amendment to section 7 of the principal act	5
III.	Existing provisions deal with Film Piracy	10
IV.	'Fair Use' Provision	14
V.	Expert Committees on Film Certification	17
VI.	Online/Digital Piracy	18
VII.	Publicity/Campaigns/Preparedness for new legislation	21
OBSERVATIONS/ RECOMMENDATIONS		22-32
APPENDICES		
I.	List of Stakeholders/Organisations/Individuals from whom Memoranda were received in response to the Press Communique	33
II.	List of Non-Official Witnesses who tendered Evidence on 'The Cinematograph (Amendment) Bill, 2019'	34
III.	Section 51 of the Copy Right Act	35
IV.	Anti-camcording provisions in the United States, South Korea and Phillippines	36
V.	The Cinematograph (Amendment) Bill, 2019	41
ANNEXURES		
I.	Minutes of the 12th sitting of the Standing Committee on Information Technology (2018-19) held on 06.03.2019	45
II.	Minutes of the 7th sitting of the Standing Committee on Information Technology (2019-20) held on 30.10.2019	48
III.	Minutes of the 13th sitting of the Standing Committee on Information Technology (2019-20) held on 06.02.2020	52
IV.	Minutes of the 19th sitting of the Standing Committee on Information Technology (2019-20) held on 13.03.2020	54

**COMPOSITION OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY
(2019-20)**

Dr. Shashi Tharoor - Chairperson

Lok Sabha

2. Smt. Locket Chatterjee
3. Shri Karti P. Chidambaram
4. Shri Sunny Deol
5. Dr. Nishikant Dubey
6. Shri Vijay Kumar Dubey
7. Choudhary Mehboob Ali Kaiser
8. Smt. Raksha Nikhil Khadse
9. Dr. Sukanta Majumdar
10. Shri Dhairyasheel Sambhajirao Mane
11. Ms. Mahua Moitra
12. Shri P. R. Natarajan
13. Shri Santosh Pandey
14. Shri Nisith Pramanik
15. Col. Rajyavardhan Singh Rathore
16. Dr. Gaddam Ranjith Reddy
17. Shri M V V Satyanarayana
18. Shri Sanjay Seth
19. Shri L.S. Tejasvi Surya
20. Dr. T. Sumathy (A) Thamizhachi Thangapandian
21. Shri Bhanu Pratap Singh Verma

Rajya Sabha

22. Dr. Anil Agrawal
23. Dr. Subhash Chandra
24. Shri Y. S. Chowdary
25. Shri Suresh Gopi
26. Shri Md. Nadimul Haque
27. Shri Syed Nasir Hussain
28. Dr. Narendra Jadhav
29. Shri D. Kupendra Reddy
30. Shri Ronald Sapa Tlau
31. Shri Beni Prasad Verma

Secretariat

- | | | | |
|----|--------------------|---|-----------------------------|
| 1. | Shri Ganapati Bhat | - | Additional Secretary |
| 2. | Shri Y.M. Kandpal | - | Director |
| 3. | Smt. Geeta Parmar | - | Additional Director |
| 4. | Smt. Rinky Singh | - | Assistant Executive Officer |

INTRODUCTION

I, the Chairperson, Standing Committee on Information Technology (2019-20), having been authorized by the Committee to submit the Report on their behalf, present this Ninth Report on 'The Cinematograph (Amendment) Bill, 2019' of the Ministry of Information and Broadcasting.

2. The Cinematograph (Amendment) Bill, 2019 as introduced in Rajya Sabha on 12.02.2019 was referred by the Hon'ble Speaker (16th Lok Sabha) to the *erstwhile* Standing Committee on Information Technology on 22.02.2019 for examination and Report within a period of two months. The Committee, after hearing the views of the Ministry of Information and Broadcasting on the proposed amendment at their sitting held on 6 March, 2019 and considering wide ramifications of the proposed amendment Bill on the film industry across the country and public at large felt the need to have an in-depth examination of the Bill and to seek views/suggestions of experts/ associations/ bodies/ stakeholders/ General Public. However, due to paucity of time, owing to the declaration on General Elections, the Standing Committee on Information Technology (2018-19) left the matter of the examination of the Bill to the succeeding Committee in the new Lok Sabha.

3. During the 17th Lok Sabha, the Bill was again referred by the Hon'ble Speaker (17th Lok Sabha) to the Standing Committee on Information Technology (2019-20) on 04.10.2019 for examination and report within two months. Since the Committee remained occupied with the time bound exercise of examination of the Demands for Grants (2019-20 and 2020-21) related to the four Ministries/Departments they sought extension of time up to second week of March, 2020 for examination and Report on 'The Cinematograph (Amendment) Bill, 2019'.

4. In the process of examination of Bill, Committee invited the views/suggestions from experts, stakeholders, organisations, public at large on the proposed amendment through a press communiqué issued and received around Thirteen (13) views/suggestions. The Committee took oral evidence of the representatives of the Ministry of Information and Broadcasting on 30 October, 2019 and 6 February, 2020, besides obtaining written clarifications from them on the proposed amendment. The Committee also took oral evidence of the Film and Television Producers Guild of India Limited, The Viacom 18 Motion Pictures, The Motion Picture Distributors Association India Pvt. Limited and Eros International Media Limited at their sitting held on 30 October, 2019.

5. The Report was considered and adopted by the Committee at their sitting held 13 March, 2020.

6. The Committee wish to express their thanks to the representatives of the Ministry of Information and Broadcasting for appearing before the Committee and for furnishing the information in connection with examination of the Bill. The Committee also wish to express their thanks to experts/individuals/organisations/stakeholders for their valuable inputs and public at large who furnished written information/views for consideration of the Committee as well as to the non-official witnesses for appearing before them and furnishing valuable suggestions on the proposed amendment.

7. The Committee would also like to place on record their deep sense of appreciation of the valuable assistance rendered to them by the officials of Lok Sabha Secretariat attached to the Committee.

8. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold in Part-II of the Report.

**New Delhi;
13 March, 2020
23 Phalguna, 1941 (Saka)**

**DR. SHASHI THAROOR,
Chairperson,
Standing Committee on
Information Technology.**

REPORT

PART-I

I. Introductory

Cinema is an artistic expression of ideas, stories and often opinions. There are few other mediums of communication that can claim rival levels of pervasive influence and presence in our daily lives. In 1913, Dadasaheb Phalke made and released India's first indigenous feature film 'Raja Harishchandra' and thereafter a flurry of films followed rapidly all across our country. India is one of the largest producers of films in the world and the film sector in India provides employment opportunities to millions.

2. The first Indian Cinematograph Act was enacted in 1918 whereby Censor Boards (as they were called then) were placed under Police Chiefs in the cities of Madras, Bombay, Calcutta, Lahore and Rangoon. These regional censors were independent. After Independence, the autonomy of regional censors was abolished when the Bombay Board of Film Censors was established. Sanctioning of cinematograph films for exhibition has been included in Entry 60 of the Union List (List-I) of the Seventh Schedule of the Constitution of India. However, Cinemas subject to the provisions of Entry 60 of List-I is included in Entry 33 of the State List (List-II). Therefore, as per the Constitutional provisions, the Union Government is empowered to legislate in matters pertaining to sanctioning (also called certification) of films for exhibition in India and the State Legislatures are empowered to make laws for regulating the licensing and other matters related to exhibition of Cinema.

3. In respect of Union territories, the power to make laws for regulating exhibition also vests with the Parliament. In exercise of its power, the Parliament had enacted the Cinematograph Act, 1952 (37 of 1952) on 21 March, 1952 to make provisions for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs. The medium of cinema *viz.* tools and technology associated with it and its audience has undergone radical changes over a period of time. After the enactment in 1952, the Act has been amended eight times, details of which are as under:

- (i) The Cinematograph Act, 1953 (19 of 1953)
- (ii) The Cinematograph Act, 1957 (36 of 1957)
- (iii) The Cinematograph Act, 1959 (3 of 1959)
- (iv) The Cinematograph Act, 1960 (58 of 1960)
- (v) The Cinematograph Act, 1973 (25 of 1973)

- (vi) The Cinematograph Act, 1981 (49 of 1981)
- (vii) The Cinematograph Act, 1984 (56 of 1984)
- (viii) The Cinematograph Act, 2017 (7 of 2017)

4. Some of the major amendments in the Act were made in 1981 whereby the number of members of the Board was increased, new categories of certification namely 'UA' and 'S' were introduced, an independent Appellate Tribunal was created, offences for violations under the Act were made cognizable and enhanced punishments/fines were provided. Last amendment was made in 2017 where by the qualifications, terms and conditions of service of the Chairman and Members of the Appellate Tribunal was inserted by the Finance Act, 2017 (7 of 2017) in section 5E of the principal Act. Cinematograph (Certification) Rules, 1983 came into effect from 09.05.1983 and it lays down terms and conditions of tenure of Board and Tribunal members and procedures for certification etc.

5. The Cinematograph Act, 1952 is now proposed to be amended so as to provide that no person shall, without the written authorisation of the author, be permitted to use any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof. Also, the persons who contravenes the provisions of section 6AA may be punished for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both.

6. According to the Ministry of Information and Broadcasting, film piracy, particularly, release of pirated version of films on internet, causes huge losses to the film industry and the government exchequer. In most cases illegal duplication in cinema halls is the originating point of piracy. At present, there are no enabling provisions to check film piracy, either in the Cinematograph Act, 1952 or in the Cinematograph (Certification) Rules, 1983.

7. The Ministry of I & B have added that the Department for Promotion of Industry and Internal Trade under Ministry of Commerce and Industry, which oversees implementation of the National IPR Policy, allotted the following Action Point to the M/o I&B:

"3.7 – Indian Cinematograph Act, 1952 may be suitably amended to provide for penal provisions for illegal duplication of films".

8. The Ministry have also constituted the Committee of Experts headed by Justice Mukul Mudgal,

Retd. Chief Justice of High Court of Punjab and Haryana to examine issues of certification under the Cinematograph Act, 1952, which in its report dated 28th September, 2013 inter-alia recommended strict penalty for unauthorised duplication of a film etc. Para 27 of the Report and Section 40 of the Draft Cinematograph Bill are reproduced as under:-

Para 27 – Treatment of piracy and other offences, Immunity etc.:

“The Committee strongly feels that piracy, illegal and unauthorized duplication of certified film is to be treated in the strictest form possible and therefore recommend that such act be made sustentative non-bailable offences. Such actions are nothing sort of fraud and theft and ought to be treated by law as such. In the draft proposed bill the Committee has suggested structuring of an entire chapter on Offences and Penalties recommending a fine which may extend from Rs.5 Lacs to Rs.25 Lacs and an imprisonment which may extend upto 3 years.”

Section 40 – Penalty for unauthorized duplication of a Film etc.:

- “(1) No person who undertakes the processing of a film, analogue or digital or in any other form using any technology, shall,*
- (a) issue any negative or copy of the film to any person except one copy of the first married print of the film to the person applying for a certificate under sub-section (1) of section 18 until a certificate is granted under section 22; or*
 - (b) make or cause to be made an unauthorized duplicate print or a copy of the film in any form using any technology.*
- (2) Any person, who contravenes the provisions contained in sub-section (1) above, shall be punishable with a fine of not less than five lakh rupees which may extend to twenty-five lakh rupees or imprisonment of not less than one year which may extend upto three years, or both.”*

9. The Ministry has informed that the proposal for amendment in the Cinematograph Act, 1952 was circulated by the Ministry of Information and Broadcasting to the Ministry of Home Affairs, Ministry of Electronics and Information Technology, Ministry of Culture, Ministry of Human Resource Development, Department of Industrial policy and Promotion and Department of Telecommunications. The proposed amendment was published on the Ministry’s website on 03.01.2019 and a press release was posted on 08.01.2019 by Press Information Bureau (PIB) inviting comments.

10. The Ministry has stated to have received repeated representations from various film industry bodies, viz. Motion Pictures Dist. Association, The South Indian Film Chamber of Commerce, The Film & Television Producers Guild of India Ltd., FICCI, Producers Guild of India, etc. recommending the introduction of strict penal provisions in the Cinematograph Bill. The proposal regarding amendment in

the Cinematograph Act, 1952 and introduction of 'The Cinematograph (Amendment) Bill, 2019' was approved by the Union Cabinet in its meeting held on 06.02.2019.

11. Accordingly, the Ministry of I & B introduced in Rajya Sabha on 12.02.2019, The Cinematograph (Amendment) Bill, 2019 to further amend the Cinematograph Act, 1952. The Bill was referred to the erstwhile Standing Committee on Information Technology on 22.02.2019 by the Hon'ble Speaker (16th Lok Sabha), for examination and Report within a period of two months. However, due to the paucity of time in view of the General Elections in the months of April and May, 2019, the Standing Committee on Information Technology (2018-19) could not examine the Bill and left the matter to the succeeding Committee in the new Lok Sabha.

12. During the 17th Lok Sabha, the Bill was again referred by the Hon'ble Speaker to the Standing Committee on Information Technology (2019-20) on 04.10.2019 for examination and report.

13. In the process of the examination of the Bill, the Committee issued a Press Communique on 22 December, 2019 inviting views/suggestions from Experts/Stakeholders/Organisations/Public at large on the proposed amendments contained in the Bill. In response to that several Memoranda were received and scrutinised by the Committee. A list of Stakeholders/Organisations/Individuals from whom Memoranda were received in response to the above said Press Communique is at **Appendix-I**.

14. Gist of the important/relevant points raised in the above cited memoranda is as under:

- (i) A minimum quantum of punishment should be included for a first time offender under the proposed Section 7(1A).
- (ii) Enhanced penalties should be imposed for 'Habitual and subsequent offenders' on the lines of section 63A of the Copyright Act, 1957 with an imprisonment and a fine.
- (iii) In clause 2 of the Bill, '6AA. Notwithstanding any law for the time being in force, no person shall, without the written authorisation of the author', the word 'author' be replaced with 'owner'. Although the Copyright Act, 1957 clarifies under Section 2(d)(v) that 'author' in relation to a Cinematograph Film shall mean its producer, nevertheless, there may be circumstances where the economic rights / ownership of the Copyright in the Cinematograph Film may have been assigned to a third party (such as towards financing film production, etc). Therefore, in such cases, seeking consent of the author may not be relevant (or even proper) and consent of the owner of the Copyright may be sought.
- (iv) Provision be made for quick and timely action against wrongdoers by the police upon receipt of complaint disclosing occurrence of an offence under proposed clause 6AA, without having to approach a court to get orders which often results in delay that proves to be critical in such matters.

- (v) Provision should be included to make the offence cognizable and non-bailable.
- (vi) Provision should be made for exceptions to infringement of Copyright such as provisions regarding non-commercial uses such as for review/critique, for educational purposes, etc.
- (vii) Section 7(1B) should be included as under:

“Enhanced penalty on subsequent convictions-Whoever having been convicted of an offence under sub section 7(1A) is convicted of a subsequent offence under section 6AA shall be punishable for every such subsequent offence, with imprisonment of a term which shall not be less than three years but which may extend upto seven years and with a fine which shall not be less than ten lakh rupees but which may extend upto twenty lakhs rupees.”

15. The Committee also took oral evidence of various stakeholders on 30.10.2019. A list of the non-official witnesses who tendered evidence is shown at **Appendix-II**.

16. The Committee obtained Background note, Written Replies, Post Evidence Information/Clarifications from the Ministry of Information and Broadcasting. The Committee took oral evidence of the Ministry on 6 March, 2019, 30 October, 2019 and 6 February, 2020. The representatives of the concerned Ministries/Departments remained present in all the sittings of the Committee.

17. Thus, based on the written and oral depositions of both official and non-official witnesses and inputs received from the Memoranda received from other sources, the Committee examined the Bill thoroughly and given their observations/recommendations as enumerated in the succeeding paragraphs.

II. INSERTION OF NEW SECTION 6AA AFTER SECTION 6A OF THE CINEMATOGRAPH ACT 1952 AND AMENDMENT TO SECTION 7 OF THE PRINCIPAL ACT

18. The Cinematograph(Amendment) Bill, 2019 proposes that after section 6A, the following section shall be inserted, namely:-

6AA. "Notwithstanding any law for the time being in force, no person shall, without the written authorisation of the author, be permitted to use any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof."

Explanation—For the purposes of this section, the expression “author” shall have the same meaning as assigned to it in clause (d) of section 2 of the Copyright Act, 1957.’

19. As per clause(d) of section 2 of the Copyright Act, 1957, the expression "author" means,-
(i) in relation to a literary or dramatic work, the author of the work;
(ii) in relation to a musical work, the composer;
(iii) in relation to an artistic work other than a photograph, the artist;
(iv) in relation to a photograph, the person taking the photograph;
[(v)* in relation to a cinematograph film or sound recording, the producer; and (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;]

20. The Government further propose that in section 7 of the Principle Act, after sub-section (1), the following sub-section shall be inserted:-

"(1A). If any person contravenes the provisions of section 6AA, he shall be punishable with an imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both."

21. It has been stated that the new amendment intends to reduce piracy, thereby leading to increased Industry revenues, boost job creation and fulfill important objectives of India's National Intellectual Property Rights policy (NIPRP).

22. Piracy in the context of the proposed legislation is the unauthorised duplication of films. There is a constant threat of piracy of films. Film Industry has been facing huge losses due to advent of new technology, decline of number of people visiting the cinema theatres, increase in piracy, particularly release of pirated version of films on the internet, copyright violations, etc. According to the film industry associations, the films are available online within few hours of release, causing huge monetary loss to the industry as well as to the Government exchequer.

23. When the Committee enquired about the estimated revenue loss due to film piracy, the Ministry submitted as under:

"As per a report of FICCI, the film and TV is constantly battling with the threats of online piracy. In a study of over thousand pirated websites in India, it was estimated that large pirated networks can generate between \$2-4 million per annum, and medium and small pirate website can generate up to \$ 2 million annually.

As per Cinematograph (Certification) Rules 1983, fees are collected from film producers in the form of Examining fees for examination of films and screening fees for screening of films by

* **Subs. by Act 38 of 1994, s. 2, for sub-clauses (v) and (vi) (w.e.f. 10-5-1995)**

Central Board of Film Certification. The revenue earned by Government on account of certification will be affected by piracy of films.

According to a report by FICCI-EY in 2018 on India's M&E Sector, the Indian film industry loses \$2.8 billion of its annual revenue to piracy."

24. Film piracy is done in various forms ranging from producing Compact Discs (CDs) through camcording during the exhibition of movies at theatres to downloading movies and sharing files with each other without the permission of author from unauthorized sites. Piracy is done in many ways like video piracy, cable piracy, DVD/CD piracy and online piracy.

25. When asked for the details of various modes of piracy, the Ministry have informed as under:

(a) Video piracy takes place when a film is produced in the form of a videocassette without proper authorization from the right holder, i.e. the producer. Often, film producers sell video rights to another party (generally after six weeks or more of release in theatres), which makes video cassettes for selling, or lending. The videocassettes on sale are meant for home viewing only.

(b) Cable piracy refers to unauthorized transmission of films through the cable network. Very often, films, especially the new releases, are shown through cable without permission from the rights holder.

(c) DVD/VCD piracy of Indian films happens in the international markets when the prints sent for overseas screening of the film are pirated.

(d) Online Piracy refers to illegally copying or distributing films over the internet. Online piracy is rampant in India and all over the world replacing piracy through CDs and DVDs as downloading pirated content from different Torrent websites is much simpler and cheaper. It has been brought out that the films are available online within few hours of release and the content feeds are often from overseas."

26. Elaborating on piracy of films, the Ministry has further informed that like most other film industries across the world, the Indian film industry relies extensively on media and industry sponsored studies for arguing that online piracy is substantial in India. One such study, which projects the views of the Indian film industry on online piracy, is India: Internet Piracy Landscape Audit, conducted by Envisional and the Motion pictures Association (MPA). This study claims that online piracy of film content is significant in India. According to this report, one of the Bollywood movies was downloaded more than 350,000 times on Bit Torrent and two third of downloads could be traced to location within India .

27. The Indian Broadcasting Federation (IBF), Federation of Indian Chambers of Commerce and Industry (FICCI) and Producers Guild of India in their memoranda have suggested to redefine section 6AA so as to include word 'owner' along with the word 'author'. While another stakeholder expressed that the word 'author' be replaced with 'owner'. Further, the Copyright Act, 1957 clarifies under Section 2(d) (v) defines 'author' in relation to a cinematograph film as its producer, nevertheless, there may be circumstances where the economic rights/ownership of the Copyright in the cinematograph film may have been assigned to a third party (such as towards financing film production, etc). Therefore, in such cases, seeking consent of the author may not be relevant and in that case, consent of the owner of the Copyright may be sought.

28. The Ministry of I & B in response to the above suggestions have stated that according to the Department for Promotion of Industry and Internal Trade, the Copyright Act, 1957 confers certain rights, moral as well as economic, to the creator/author of a work. These rights are granted to an author by virtue of them being the first owner in accordance with Section 17 of the Act. Hence, in order to maintain uniformity and to avoid any uncertainty, it is opined that, the above suggestion may not be considered.

29. The Committee pointed out that the Bill in the present form deals with only one form of film piracy that happens in cinema halls though there are a range of online piracy which need to be urgently dealt. It was desired that the Government should take a comprehensive view to address piracy issues by bringing amendments in the Cinematograph Act of 1952 which is very old and has become obsolete in view of the dramatic transformation of the information and cinematography landscape. In this regard, the Committee wanted to know that how soon the Ministry would be taking up all those issues of compelling interests of the public. To this, the Ministry has replied as under:

" At present, there are no enabling provisions to check film piracy, either in the Cinematograph Act, 1952 or in the Cinematograph (Certification) Rules, 1983. It is a matter of fact that film piracy, particularly release of pirated version of films on internet, causes huge losses to the film industry and the government exchequer and that in most cases, illegal duplication in cinema halls is the originating point of piracy. This Ministry also received repeated representations from various film industry bodies, viz. Motion Pictures Dist. Association, The South Indian Film Chamber of Commerce, The Film & Television Producers Guild of India Ltd., FICCI, Producers Guild of India, etc. recommending the introduction of strict penal provisions in the Cinematograph Bill. Accordingly, it was proposed by the Ministry to amend the Cinematograph Act to make unauthorized duplication of films a punishable offence. Amending the Cinematograph Act will also give a strong signal globally on India's resolve to strengthen the IP regime."

30. To a similar query, the Secretary, I & B, during the course of evidence before the Committee submitted as under:

".....the Act is quite old and in fact the major amendments which were made were also about two decades old. It does require an overhaul but the two issues of certification and piracy, our feeling or rather my recommendation to the Committee is that two issues could be segregated. At the moment, we have the amendment to the piracy now and we have the other part relating to certification because there are a lot of differences between the industry as far as the Shyam Benegal Committee is concerned...So, may be my submission would be that the hon. Committee may examine this Bill, and the other part, I would submit before the Committee. We will also try to synchronise the other part but as of now, the amendment relating to piracy could be taken up now and the entire gamut relating to the film certification because that is a much wider issue, that can be taken up subsequently."

31. In this context, one of the stakeholders, during their evidence before the Committee stated as under:

"This is not a new law which is only getting introduced in India. There are mature markets in the world including UK, Australia and USA. They have similar kinds of laws which protect recordings and then get uploaded. If we take a view from the industry perspective or the business perspective, then we have no protection. If anyone is free to do whatever he wants, then the investment in this business will be of no use. Whether we should take the cinema owner or the consumer or the website owner to court is more a legal point of view which is debatable. The question is to create a fear amongst people that this is illegal and it should not be allowed. And you will see a dramatic change once the law is in place."

32. The Committee were of the view that the word 'Knowingly' should be well defined in the proposed amendment as some one may get punished because of inadvertent use. The Secretary, I & B submitted as under:

" Sir, by the term 'knowingly', I meant is that there should be mens rea because all criminal offences require it..... Sir, to qualify as a criminal offence, we need to have mens rea except in the Corruption Act in which mens rea was removed by the Parliament for some purpose. Genuinely, in a criminal offence, mens rea is a necessary ingredient and it has to be there. So, what I mean was that mens rea has to be there..... I will send the United States Code also in writing. It says that any person who without the authorisation of the copy right owner knowingly uses or attempts to use an audio-visual recording device to transmit or make a copy of a motion picture or other audio visual work protected under Title 17 – this is their section – that will be considered an offence. We have similar provisions in UK and in several other countries."

33. In a written submission furnished to the Committee later on, it has been informed that the term 'knowingly' has also been used in Section 63 of the Copyright Act, without being defined in the said Act. Under Section 63 of the Copyright Act, any person who knowingly infringes or abets the infringement of

the copyright in a work shall be punishable with imprisonment for a term which shall not be less than six months but which may be extended to three years and with fine which shall not be less than fifty thousand rupees but which may be extended to two lakh rupees.

34. On this issue, one of the stakeholders during evidence submitted as under:

“The only one point that we would like to highlight is the proposed Section 6AA already uses the word ‘knowingly’. So, that is the protection normally a person will have in case of any inadvertent recording or general recording that may accidentally happen, may be a kid playing with a mobile phone. Courts do have inherent powers where these kinds of things would be looked at. But in case there is a specific recording which is being made by camera or a phone kept on a tripod and then recordings happen or otherwise, those are the things which we need to address and therefore we feel that the word ‘knowingly’, because anybody who knowingly uses an audiovisual device to make a recording is when the offence gets committed. So, there seems to be sufficient protection already in place. Any further protection will only dilute the proposed Section. It may actually become counter-productive because it may actually give a leeway to unscrupulous people to go ahead.”

35. The Committee desired to know whether there is a need to define some of the words used in the proposed section 6AA viz. ‘any audiovisual recording device’, ‘in a place’, ‘transmission’. In a written reply furnished to the Committee. The Ministry in their reply has stated that due to advancement in technology and availability of different types of audiovisual recording equipment and it is felt that there is no need to define the term Audiovisual recording device under Cinematograph Act, 1952 and Cinematograph (Certification) Rules, 1983. Further, the following expressions defined under Section 2 of the Cinematograph Act, 1952 are given as under:

"Section 2(c): 'cinematograph' includes any apparatus for the representation of moving pictures or series of pictures;
Section 2(dd): 'film' means a cinematograph film;
Section 2(e): 'place' includes a house, building, tent and any description of transport, whether by sea, land or air;
Section 2(f) 'prescribed' means prescribed by rules made under this Act"

III. Existing provisions deal with Film Piracy

36. Asked about the existing provisions for tackling film piracy, the Ministry in their reply has stated that the following provisions exist in the Copyright Act, 1957 and the Information Technology Act, 2000:

(i) Copyright Act, 1957

The Copyright Act, 1957 as amended in 2012, provides civil remedies [Chapter XII (Section 54-62)] as well as criminal remedies [Chapter XIII (Section 63-70)] to the copyright holder. Clause (c)

of subsection (1) of Section 52 of the Copyright Act, 1957 read with Rules 75 of the Copyright Rules, 2013 are the provisions to deal with piracy of films.

Under Section 63 of the Copyright Act, infringement of the copyright in a work is a cognizable offence and the offender shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. Making a copy of a film on any medium by any means, including recording of films in a theatre, is a punishable offence under the Copyright Act.

(ii) The Information Technology Act, 2000:

Section 79(2)(c) of the IT Act, 2000, indicates, “the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf”. Thus, provision exists under the IT Act to make guidelines and direct the intermediaries or Internet Service Providers (ISPs) to block the content.

The Information Technology (Intermediaries guidelines) Rules, 2011 provide a due diligence framework to be observed by intermediary while discharging his duties under Rule 3. Sub-rule (2) of Rule 3 indicates not to host, display, upload, modify, publish, transmit, update or share certain information, including infringement of copyright. Sub-rule (4) of Rule 3 provides that the intermediary upon obtaining knowledge by itself or been brought to actual knowledge by an affected person about any such information as mentioned in sub-rule (2) of Rule 3, shall act within thirty six hours to disable such information that is in contravention of sub-rule (2).

37. The Committee was also informed that the Copyright Amendment Act, 2012 also introduced provisions related to Digital Rights Management (DRM), which relates to protection of Technological Measures (TPM) (Section 65A) and protection of Rights Management Information (RMI) (Section 653). The Technological Protection Measures encompass technologies used to block or limit access to a work, or certain actions with respect to the work (e.g. copying). The TRM makes circumvention of an effective technological measure applied for the purpose of protecting any of the rights conferred by the Copyright Act, with the intention of infringing such rights, punishable with imprisonment which may extend to two years and shall also be liable to fine. The RMI includes information identifying the author of a work, and the terms and conditions relating to its use. It is used by authors of digital works to identify their works or provide information about the copyright work. The implementation of the provisions related to DRM has to be ensured by Copyright owners.

38. To a specific query as to how the provisions in the Copyright Act are different from the proposed amendment in the Cinematograph Act 1952, it has been stated that according to the Department for Promotion of Industry and Internal Trade, the Copyright Act has general provisions classifying the events at when a copyright is infringed under section 51 of the Act (**Appendix-III**). However, the objective of The Cinematograph (Amendment) Bill, 2019 is to tackle film piracy by

including stringent penal provisions for unauthorised camcording and duplication of films. The Bill, 2019, whilst specifically prohibiting a person from using a recording device to make a copy or transmit a film, without written authorisation from the author of the film, makes it a punishable offence, with imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both, thereby increasing the pecuniary limit of the fine imposed. Hence, the proposed amendment is specific to offences of piracy in the area of cinematography.

40. In this context, Secretary, I&B during evidence, submitted as under:

“We had a discussion with the Registrar of Copyrights especially because there is a view that the Copyright Act deals with this and so, why we should bring this change here. Now, the issue is that what we discussed with the Registrar of Copyrights is that the Copyright Act is enforced when a copy of the film is made. Here, we are not just talking about making a copy but also of unauthorised recording and so on so forth. I would like to say that several other countries also have similar provisions apart from copy right.....As far as the film industry is concerned, there are specific and separate provisions in their Acts because film is a very big industry and we have to protect the IPR of the film industry. As you must have been told, FICCI has said that Indian film industry loses about 2.8 billion dollars due to film piracy. So, a specific provision will help both the law enforcing agency, that is the police, the investigating agency as well as the judiciary in arriving at an early conclusion. If we use provisions of other Acts there may be some confusion and the investigating agencies and the judiciary or the deciding authority would take time. So, putting a specific provision, I think, would help in the early disposal of such cases.”

41. In a written information subsequently furnished to the Committee, it has been elaborated that in most countries around the world, a film is granted protection by copyright. Generally, anyone who infringes the exclusive rights of the copyright owner, shall be liable under the copyright law of that country. However, even with this protection, the rapid growth of illegal camcording still interferes with the film industry. The amount of illegal camcording in movie theatres globally is increasing and threatens the film industry around the world. Every country suffers from the impact of illegal camcording, which is considered a primary cause of movie piracy. This implies that copyright law alone may be insufficient to tackle this problem and that it may have some gaps that prevent enforcing the law against such piracy. Therefore, the Governments of the suffering countries have paid a lot of attention to this matter and made great efforts to provide a new legal solution to quickly tackle this problem. Amongst the measures taken against illegal camcording in movie theaters, Anti-Camcording legislation seems to be the most effective in stopping the rapid increase of camcording piracy. The United States of America, Canada, the Czech Republic, Germany, Hong Kong, Italy, Japan, and the Philippines now have Anti-Camcording law and some others are actively considering legislation. A copy

each of the anti-camcording provisions in the United States, South Korea and Phillipines, is placed at **Appendix-IV.**

41. The Committee categorically asked whether the proposed Bill, after enactment, will override provisions/clauses/sections of any other existing Acts in the country. To this, the Ministry replied in negative. It was added that an inter-ministerial consultation with Department for Promotion of Industry and Internal Trade who are administering Copyright Act and Ministry of Electronics and Information Technology who administers the Information Technology Act, was made before finalizing the Cinematograph (Amendment) Bill, 2019. They are of the opinion that there is no legal or constitutional objection to the proposal made in the Cinematograph Bill.

42. Reacting to a query as to whether all the other Acts having provisions relating to film piracy should be mutually consistent, the Secretary, I & B stated as under:

“The first question that you raised was about how it is in consonance with other Acts. There are six or seven Acts which have some provisions relating to copyright. We have examined them, circulated our draft to all the concerned Ministries and taken their views while drafting this Bill. So, we expect that since the other Ministries have seen this, who are the administrative Ministries for those Acts, there should be no problem or conflict with other Acts..... We had sent our provisions to the concerned administrative Ministry, and they have said that there is no inconsistency. We had also sent it to the Department of Legal Affairs.”

43. When the Committee sought the views of stakeholders on the need for having reconciliation of the Bill which is relating to film piracy with Copyright Act, 1957 and IT Act, 2000, they have submitted as under:

“We totally agree with you that all the Acts should be consistent and they should be streamlined with each other. Otherwise, there is a dissonance. Which Act becomes primary and which becomes secondary become a problem. We felt that in the past. So, we are totally in agreement with you.”

44. The Committee have observed that minimum period for imprisonment and also the minimum fine have not been specified in the penal provision of the proposed amendment to punish the persons contravening provisions of the proposed Section 6AA. When asked about the reasons for the same, it has been stated that as per the proposed amendment, the person who contravenes the provisions of Section 6AA can be punished for a term which may extend to three years or with fine which may extend to ten lakh rupees or both. The quantum of punishment may be decided by the Hon’ble Courts.

45. It may further be seen that the offence has not been clearly spelt in the proposed amendment. In this regard, the Ministry clarified that as informed by the Legislative Department, Ministry of Law and Justice, it is not necessary to specify the nature of the offence in the Bill as the nature of the offence, like it is cognizable or non-cognizable, bailable or non-bailable, etc. shall be as per the entries specified in Part I of the First Schedule to the Code of Criminal Procedure, 1973.

IV. 'Fair Use' Provision

46. In its most general sense, a fair use is any copying of copyrighted material done for a limited purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner. In other words, fair use is a defense against a claim of copyright infringement. If someone's usage qualifies as a fair use, then it would not be considered an infringement.

47. To a suggestion of the Committee to include a provision for exception clause for 'Fair Use' in the proposed amendment, the Ministry in a written submission has stated that as informed by the Department for Promotion of Industry and Internal Trade, Doctrine of Fair Use is a law recognized under the United States Copyright Law, wherein limited use of copyrighted material is permitted without having to first acquire permission from the copyright holder. Fair use is termed as one of the limitations to copyright, whose intention is to balance the interests of right holders with the general public interest, allowing Fair Use as a defense to copyright infringement claims to certain limited uses that might otherwise be considered infringement.

48. Asked about the existing provisions which take care of 'Fair use' related to Intellectual Property Rights, the Ministry has informed that the Copyright Act, 1957 recognizes the concept of fair dealing under clause (1) of Section 52, which is as under:

“The following acts shall not constitute an infringement of copyright, namely. -

(a) A fair dealing with any work, not being a computer programme, for the purposes of –

i) private or personal use, including research;

ii) criticism or review, whether of that work or of any other work;

iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.”

49. It has been added that the Copyright Act allows fair dealing as a defense for specific acts that would not be deemed as infringement. The Act only allows fair dealing with the work and not the

reproduction of the work. Accordingly, reproduction of the whole work or substantial part of it will not be permitted; only use of extracts from a work will be permissible, and may be determined on a case to case basis. Further, there is stated to be no provision related to 'Fair Use' in the Cinematograph Act, 1952.

50. To a similar query, the Ministry further supplemented that 'Fair Use' permits limited use of copyrighted material without having to first acquire permission from the copyright holder. The proposed amendment aims to check piracy at source, that is, origination from illegal duplication in the cinema halls, by imposing strict penalty on a person who, without the written authorization of the author, uses any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof.

51. To another suggestion to add proviso similar to Section 52 of the Copyright Act, 1957, which sets out a number of exceptions to infringement of Copyright, the Ministry of I & B clarified that as informed by the Department for Promotion of Industry and Internal Trade, the aforementioned suggested provision intends to incorporate a safe harbor for the persons who have not made a copy of a film for a commercial gain. In this regard, it is recommended that, incorporating such a provision would defeat the purpose of having an absolute anti-camcording provision. The intention of incorporating such a provision in the Act is to create 'making a copy of a film' an offence. By making such a provision a conditional one may result into uncertainty in principle itself.

52. As regards the use of cinematograph works for purposes such as review or critique, as mentioned under Section 52(1)(a), it is stated that, making copies of the work in no way contributes towards creating a narration or events in consequence. Further, in order to have access to cinematograph works for educational purpose, making infringing copies is not the only option, access to works can be obtained by legalized channels as well, such as purchasing a DVD, etc.

53. On being asked whether forwarding of film clips/short extract of movies as memes, jokes etc., for commercial gains would qualify for fair use, the Ministry has stated that as informed by the Department for Promotion of Industry and Internal Trade, whenever any work is used for commercial purpose, it is no more considered as an exception under "fair dealing. As "fair dealing" only protects the works which are used for purposes such as private, educational or review or critique or reporting of current events."

54. Further, with regard to film clips/short extract of movies as memes, jokes etc., being forwarded for non-commercial gains, the Ministry has submitted that the decision for lodging a complaint is entirely up to the author or the copyright holder of the film when it comes to film clips, short extracts of movies, etc. being used/ forwarded as Memes, Jokes, etc. for non-commercial gains.

55. The Committee expressed their concern that as per the provision in the Bill, anyone would be criminalized for forwarding film clips, short extract of movies, etc. as memes, Jokes etc. even for non-commercial gains. To this, the Secretary, during evidence, submitted as under:

“You have raised the issue of fair use and what happens if a kid is taking a trophy shot of the screen and how do you deal with that. The dilemma is this. The reverse case is that if you allow them to do that, then they will take small parts of it and stitch it outside.....Even today, Sir, some of it will come as an offence under the IT Act. But no action is generally taken because the authority who is required to take action, examines it. He has to see what misery is to be done.”

56. Responding to a query related to ‘Fair Use’, the Secretary, during evidence, submitted as under:

“We do not know whether a small part of five or three minutes is really not going to be a dangerous way of stitching smaller pieces which can be recorded. There are evidences in the past that it is difficult for anyone to record the entire two hour long film but a film can be recorded by 50 different people, part of that group for 10 minutes each and they stitch the film. They are told that you record from this time to this time, then it shifts to the next person.”

57. To a suggestion of putting a cap of few minutes in context of ‘Fair Use’, the Secretary, during evidence, submitted as under:

“Fair Use’ for certain purposes is allowed under the Copyright Act. But there it is much easier to take into account by the Courts or by the law settled till now as to what is the ‘Fair Use’. Here, if the climax of the film starts circulating on WhatsApp, I think there is a need to stop it. Otherwise, if the entire climax of the film is known to everybody, people may not watch the film at all..... I would again submit that in a song, if somebody copies the tune and uses it as a ringtone, even that can lead to huge loss of revenue for the person who created that tune. It could only be for thirty seconds. But if you provide a definition that up to one minute you can copy, then the most important song or the tune will get copied and it could be a real loss to the creative person who has made it. That is why we are saying. But if it is copied with the permission of the author, then there is no offence which is made. But if go to cinema hall and just copy the song which is there be a very important song or the tune could be very important or the climax scene would be very important to the film. More so, in the studios, before a film is released, if somebody copies the climax, it is not fair.”

58. On the issue of having an exception clause for 'Fair Use' in the Bill, one of the stakeholders was of the view that any such exception can be used as a rule. Another witness submitted that the Cinematograph Act, 1952 is not intended to give another layer of 'Fair Use' because it is already addressed under a separate legislation.

59. In response to a suggestion for specifying the duration for 'Fair Use', another stakeholder during evidence as under:

“Even a one minute, as an exception can be used as a rule. It will be very difficult for a cinema owner to implement and check the duration because he can keep saying that he has taken one minute fifty times, which becomes fifty minutes. If you prescribe it in law, he will say that he is not going beyond a minute but law will not say that you cannot do more than once. Then it can be fifty times or hundred times and how do we control that..... From the 'Fair Use' point of view, if there was a need to put a cap of few minutes or a few seconds, the law would have anyway done it. The Copyright Act has 'fair use' exceptions for years now. The fair use law is well settled by a legislation and judicial intervention.”

60. On the issue of taking a one minute or half a minute film clip and circulating the same, one of the stakeholders submitted as under:

“That opens up the possibility of stitching with smaller clips and creating a commercially useable content online.”

V. Expert Committees on Film Certification

61. In the background note furnished to the Committee, it has been mentioned that the medium of cinema, the tools the technology associated with it and even its audience have undergone radical changes over a period of time and the certification process for public exhibition needs to be contemporized in order to make the process in tune with the changed time.

62. In this process, the Committee have observed that an expert committee under the Chairmanship of Justice Mukul Mudgal (retired Chief Justice of High Court of Punjab and Haryana) was constituted by the Government of India on 04.02.2013, in order to examine the issues of certification under the Cinematograph Act, 1952 and this committee submitted its Report on 8.09.2013 along with draft Cinematograph Bill. The committee strongly felt that piracy, illegal and unauthorized duplication of certified film should be treated in the strictest form possible and therefore recommended that such Act be made substantive non-bailable offence. The Committee suggested structuring of an entire chapter on Offences and Penalties recommending a fine which may extend from Rs. 5 lacs upto Rs. 25 lacs and an imprisonment which may extend upto 3 years.

63. Also, a Committee of experts headed by Shri Shyam Benegal was constituted on 01.01.2016, to evolve broad guidelines/procedures for certification of films within the ambit of Cinematograph Act, 1952 and the Cinematograph (Certification) Rules, 1983. This Committee submitted report in June, 2016.

64. As regards the status with regard to implementation of the recommendations of these two Committees, it has been informed that the Ministry examined the reports of both the Committee of Experts clause wise. The two Committees have given different recommendations on important issues relating to constitution of Board and Advisory Panel Members of the CBFC, classification and sanctioning of films, excisions and modification in film etc. It was felt that implementation of the recommendations especially those requiring important amendments in the Act/Rules be done after further consultations. A consultation meeting between Hon'ble Minister of Information and Broadcasting, Minister of Law and Justice, Minister of Finance and Minister of Human Resources Development was held on 16th March, 2017 to deliberate on the issue of repeal/amendment of the Cinematograph Act. Another round of consultation in this regard by Hon'ble Minister with Hon'ble Chief Minister of Maharashtra and the representatives of Film Industries was held on 6th June, 2017 at Mumbai. However, a consensus could not be arrived at in respect of many of the recommendations made by the Committees.

VI. Online/Digital Piracy

65. With the growing global reach of Indian film industry and the growth of Indian diaspora abroad, international piracy of Indian content has emerged as a key challenge. Earlier, the origin of pirated copies emerged from prints sent to overseas markets, which made their way into the Indian markets shortly after the film release. This has changed in recent times due to advancement in technology and hosting of pirated content on servers outside India.

66. Asked about the measures taken to address piracy occurring over Internet, the Ministry has stated that as informed by Ministry of Electronics and Information Technology, ISPs provide Internet Connectivity for accessing any Website or application on Internet. They are not authorised to monitor the content transmitted on their network and hence they are like a dumb pipe providing transmission of data and information over the Internet and are not aware of any IPR infringing content or the website of their own. ISPs are Intermediaries within the definition of IT Act and are exempted from any

punishment as they are not aware of any unlawful content flowing over their network unless they are made aware of it.

67. It was added that ISPs, however, can block access of websites (complete website and its domain) and hence access of information/ content within India. That means a website hosted from outside can be blocked in India through ISPs. There are however technical challenges as technologies like Virtual Private Network (VPN) etc. can be used to bypass the blocking. Further, ISPs work under the licence agreement with Department of Telecommunication (DoT) and do block pirated sites as and when ordered by Courts in India. DoT being the licensor can ensure the compliance of these orders. In fact, a number of High Court orders have been passed in last two three years directing ISPs to block infringing websites.”

68. Considering the limitation of Territorial Jurisdiction of Indian law, the Committee desired to know the effectiveness of the proposed amendments having its sources abroad. In response, the Ministry has stated to have observed that pirated sites immediately change their domain name/ website address and hence become available again. So the Agencies monitoring the pirated sites continue to find any such websites and ISPs can be continually informed/ ordered to block such sites. Speed of identification, communication and action by DoT/ ISPs is therefore of essence. Blocking at ISP level only partially effective because of multiple channels/ options through which such pirated material can be made available. However, this is a common method practiced in the world besides other multiple actions including the one proposed in the proposed amendment.

69. Highlighting the issues and concerns associated with Online/Digital piracy, a representative of the Department for Promotion of Industry and Internal trade (DPIIT), during evidence, submitted as under:

“Digital piracy is a very serious matter. These are problem creating services as you may see regarding youtube. Even, if there is any infringement material on youtube, the site may not be blocked. There are the websites on which 60 to 80 per cent material may be infringement of copyright but they are open to anyone. As per our existing provision we have to get order from the court. These are the websites about which we do not know anything. Who is controlling such websites? It may be that they are driven by any other countries. We make some efforts in this regard and these sites were identified and this work was entrusted to a cyber cell in Maharashtra. These were vetted. NIXI is a body and under that there are many domain register in India. We provided data to them and asked to block the sites not meeting the KYC norms. On the basis of KYC such 235 websites were got blocked. Sir, you will be surprised that these websites were taking 186 million hits in a month. There are a large number of websites that are required to be blocked.

As you said there are cloudflare like services in U.S., operating their functions from there, but they also are unable to stop them. Regarding this our efforts are to induct search engine services also in this field so that they may be asked to check figuring of such websites at initial four to five pages. They have provisions and we are liaison with them. Regarding I.S.P.-Internet Service providers, I have to say that we are trying to induct them voluntarily but it is not in the law. They may be asked to block any external signals at the very much of its initial figuring stage. There are the websites about which we know that they are problem creator and supply only infringing material. It is possible to adopt judicial process in the case of one or two movies but it is not practical to go to court in every case. Thus with the help of industry stakeholders efforts is being made to identify these websites and after identification they may be blocked administratively with joint efforts or may be blocked voluntarily with the help of the industry.”

70. On the issue of piracy happening from across border, one of the stakeholders, during evidence, submitted as under:

“I come from Bengal and Bengal share a very long border with Bangladesh. We release our film on Friday and on Saturday, through Bangladesh, it is on the YouTube. Since we do not have any international law or something like that, we cannot do anything. In this Bill, the cinema halls should also be taken into account. This is a biggest challenge. I am a producer. Due to piracy, we are very badly hit. Our revenues are very badly hit. Every new film that releases on Friday, it is there on the YouTube on Saturday through Bangladesh, not from India. All Hindi films and Bengali films are affected due to this. Since it is uploaded from Bangladesh, we cannot do anything.”

71. On the need to negotiate with the neighboring countries, the Secretary, during evidence, submitted as under:

“Actually, in this digital world, the problem can be solved only when we have agreements with other countries. Our law cannot be enforced in Singapore, Dubai or any other place where counterfeiting is taking place. But for that arrangement or any other agreement to take place, we should have a national law. My submission is, without a national law, we cannot negotiate at the international level.”

72. When asked about the present status with regard to international obligations and anti-counterfeiting trade agreements with foreign countries, the Ministry has informed that the Anti-Counterfeiting Trade Agreement (ACTA) was a proposed multilateral treaty for the purpose of establishing international standards for intellectual property rights enforcement. The agreement aims to establish an international legal framework for targeting counterfeit goods, generic medicines and copyright infringement on the Internet, and would create a new governing body outside existing forums, such as the World Trade Organization, the World Intellectual Property Organization, and the United Nations.

73. It has further been informed that the agreement was signed in October 2011 by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea, and the United States. In 2012, Mexico, the European Union and 22 countries that are member states of the European Union signed as well. One signatory (Japan) has ratified (formally approved) the agreement, which would come into force in countries that ratified it after ratification by six countries. The ACTA was rejected in 2012 by the European Parliament.”

74. To a specific query, the Committee have been informed that India is not a signatory to the Anti-Counterfeiting Trade Agreement. Thus, obligations from the agreement would not have a bearing on the terms of the Cinematograph (Amendment) Bill 2019.

VII. Publicity/Campaigns/Preparedness for new legislation

75. The Committee wanted to know the preparedness of the Ministry to deal with the grievances that might emerge, when the Bill becomes an Act. In reply, the Ministry has stated that there is already a Grievance Redressal mechanism in place whereby any aggrieved person can lodge a complaint. Any grievance which might emerge post implementation of the Bill would be adequately addressed in the Ministry.

76. It has further been informed that the Government of India approved an anti-piracy initiative in the audio-visual sector in the Development, Communication and Dissemination of Filmic Content (DCDFC) scheme. For creating awareness about the enforcement of the proposed legislation and to spread the message of anti-piracy to the masses, in addition to spelling out the said penalties for illegal camcording to discourage potential copyright violators, major activities including campaign on piracy through audio-visual, internet and print media; training programmes and workshops to sensitize the police, judicial, administrative officials, multiplex and cinema hall owners; production of a film/documentary, etc. are envisaged. In this regard, the Motion Pictures Distributor Association, during evidence have informed that they have trained their first-line of defence in the cinema halls. Through a make-a-difference programme, they have trained about 8000 halls to detect piracy.

77. As regards the measures/steps being taken to educate the masses on copyright laws, the Ministry has stated that the Cell for IPR promotion and Management (CIPAM) assists in simplifying and streamlining of IP processes, in addition to undertaking steps for furthering IPR awareness, commercialization and enforcement. Further, scheme for Pedagogy and Research in IPR's for Holistic Education and Academia is a Central Scheme for intellectual property education, research, and public outreach, under Which IPR Chairs are set up to encourage the study of IPR's in recognized educational institutions.

PART-II
OBSERVATIONS/RECOMMENDATIONS OF THE COMMITTEE

Introductory

1. The Committee note that the Government proposes to insert a new section 6AA after section 6A of the Cinematograph Act, 1952 so as to provide that no person shall, without the written authorisation of the author, be permitted to use any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof. It is further proposed to amend section 7 of the Principal Act so as to punish the persons who contravenes the provisions of section 6AA for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both. The Government has brought the Bill in question while considering the fact that film piracy, particularly release of pirated version of films on internet, causes huge losses to the film industry and government exchequer. And, in most cases, illegal duplication in cinema halls is the originating point of piracy. Hence, it is proposed to make unauthorized duplication of films, a punishable offence.

The Committee however, observed that the Bill in its present form is not ambitious enough to cover wide range of issues concerning the general public and the dramatic transformation of the information and cinematography landscape in the present time. Addressing the concern of the committee that there is an urgent need to deal with these issues in the Principal Act which has become very old and obsolete, the Ministry admitted that the Act does require an overhaul. However, the Ministry justified the proposed amendments by stating that they are taking up the issue of piracy now and the entire gamut of issues relating to the film certification as it is a much wider issue would be taken up subsequently. The Committee trust that the Ministry would keep its promise with all seriousness so that issues like film certification and piracy can be synchronized by amending the Principal Act.

2. The Committee observe that the Government had constituted two expert Committees; one under the Chairmanship of Justice Mukul Mudgal, to examine the issues of certification under the Principal Act and other, the Shyam Benegal committee, to evolve broad guidelines/procedures for certification of films within the ambit of Act. The Committee are constrained to observe that though these Committees had submitted their reports in September, 2013 and June, 2016, respectively, no consensus has so far been made till date in respect of their recommendations. Taking into consideration Ministry's own submission that the medium of cinema, the tools the technology associated with it and even its audience have undergone radical changes over a period of time and the certification process for public exhibition needs to be contemporized in order to make the process in tune with the changed time and also assurance given by the Secretary, I & B to take up film certification issues subsequently, the Committee are hopeful that the Ministry would make continuous efforts to build a consensus with the stakeholders in respect of the recommendations of the above said expert Committees to resolve spectrum of issues relating to film certification without further delay.

Existing provisions to deal with Film Piracy

3. The Committee observe that making a copy of a film on any medium by any means, including recording of films in a theatre, is a punishable offence under the Copyright Act. The Ministry's attention was drawn to the Copyright Act, 1957 as amended in 2012, which provides civil remedies as well as criminal remedies to the copyright holder. Clause (c) of subsection (1) of Section 52 of the Copyright Act, 1957 read with Rules 75 of the Copyright Rules, 2013 are the provisions to deal with piracy of films. Also, under Section 63 of the Copyright Act, infringement of the copyright in a work is a cognizable offence and the offender shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three

years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. However, the Ministry has justified the proposed amendment by stating that the Copyright Act has general provisions classifying the events when a copyright is infringed under section 51 of the Act, whereas the proposed amendment is specific to offences of piracy in the area of cinematography. The Ministry has pleaded that the objective of the Bill is to tackle film piracy by including stringent penal provisions for unauthorised camcording and duplication of films, with imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both, thereby increasing the pecuniary limit of the fine imposed. The Committee, however, are not convinced with the reasons cited for bringing the proposed amendment when there already exists stringent penal provision in the Copyright Act, 1957, for imprisonment for a term which shall not be less than six months but which may extend to three years.

4. The Committee take note of the submission of the Ministry that the copyright law alone has proved to be insufficient in tackling the menace of film piracy as the amount of illegal camcording in movie theatres globally, which is considered a primary cause of movie piracy, is increasing and threatens the film industry around the world. Rather, the Committee feel that the related provisions in the Copyright Act have proved to be ineffective as they have not been implemented with the seriousness they deserve. The Committee also note that the United States of America, Canada, the Czech Republic, Germany, Hong Kong, Italy, Japan, and the Philippines now have Anti-Camcording law and some others are actively considering similar legislation in this regard as it seems to be most effective in stopping the rapid increase of camcording piracy. While expressing concern over the inefficacy of the existing provisions of the Copyright law in tackling film piracy, the Committee would desire the Ministry to give serious consideration to the

implementation aspect with regard to the provisions in the Bill after it becomes an Act, by closely monitoring the implementation machinery which would function at the State level, for getting the desired results. Bottlenecks in this regard would have to be identified and removed.

5. The Committee take cognizance of the assurance given by the Ministry of I & B that the proposed amendment in the Principal Act would not override the provisions relating to copyright in the other Acts. Further, there is no legal or constitutional objection to the Bill as before the Cinematograph (Amendment) Bill, 2019 was finalised, the Ministry had inter-ministerial consultation with Department for Promotion of Industry and Internal Trade who are administering Copyright Act and Ministry of Electronics and Information Technology who administers the Information Technology Act and it was also sent to the Department of Legal Affairs. Nevertheless, the Committee are of the considered view that there should be consistency in provisions of the existing Acts dealing with copyright infringement and film piracy. The Committee, therefore, desire that the likely contradictions/overlapping/uncertainty with regard to the provisions of the Bill vis-a-vis similar provisions in the other Acts ought to be looked into and addressed appropriately to avoid any dissonance before placing the Bill for its passage by the Parliament,

Proposed Amendments

6. The Committee note that the proposed section 1A in section 7 of the Principal Act prescribes that a person who contravenes the provisions of section 6AA shall be punishable with an imprisonment for a term which may extend to three year or with fine which may extend to ten lakh rupees or with both. However, the Committee find to their surprise that there is no mention of the minimum period for imprisonment and the minimum fine. The plea that the quantum of punishment may be decided by the Hon'ble Courts, is not convincing. The Committee note that in

the Copyright Act, 1957, provisions to deal with piracy of films do mention the minimum period for imprisonment and also the minimum fine to punish the offenders. The Committee firmly believe that once the offence is established, then a minimum period of imprisonment or a minimum fine would surely act as a deterrent. Otherwise, it leaves the scope for the offenders getting away scot-free. Therefore, the Committee recommend to the Ministry to act accordingly.

7. The Committee also note that the proposed section 1A in section 7 of the Principal Act does not mention the nature of the offence. In this context, Justice Mukul Mudgal committee constituted to examine issues of certification under the Cinematograph Act, 1952, in its report had strongly felt that piracy, illegal and unauthorized duplication of certified film should be treated in the strictest form possible and recommended that such an Act be made substantive non-bailable offence. However, the Ministry has stated that the Legislative Department, Ministry of Law and Justice has informed that it is not necessary to specify the nature of the offence in the Bill as it shall be as per the entries specified in Part I of the First Schedule to the Code of Criminal Procedure, 1973. The Committee are of the opinion that to avoid any ambiguity in the new legislation, the Ministry should examine in right earnest the need to mention the nature of the offence to bring clarity in the proposed penal provision in the Bill and take the required steps.

8. The Committee find it a matter of great concern that the Indian film industry loses \$2.8 billion of its annual revenue due to piracy as per the FICCI-EY report in 2018 on India's M&E Sector. In such circumstances, the Committee find that the maximum fine of Rs. 10 lakh proposed to punish the offenders, in Bill is insignificant and may not act as a deterrent for the pirates particularly when they make huge sum money out of this. In this context, even Justice Mukul Mudgal committee in their report to review film certification issues has recommended a fine which may extend from Rs. 5 lakhs to Rs. 25 lakhs. Taking into account the considerable loss to

the Indian film industry due to film piracy, the Committee would suggest to the Ministry to consider enhancing the maximum limit for fine in the proposed legislation suitably, such as a range of 5 to 10 % of the audited gross production costs.

9. The Committee expressed their view that the word ‘Knowingly’ in the Bill needs to be well defined in the proposed amendment in the same manner, that the word ‘author’ has been defined else someone may get punished because of inadvertent use. The Ministry has, however, explained that in a criminal offence, mensrea is a necessary ingredient and it has to be there. Moreover, USA, UK and several other countries have similar provisions. The Ministry’s clarification that the term ‘knowingly’ has also been used in Section 63 of the Copyright Act, without being defined in the said Act, do not address the concern of the Committee. The Committee, therefore desire that word ‘knowingly’ should be given a more detailed explanation like “author” in section 6 AA in order to save the innocent public from being wrongly criminalised.

Inclusion of ‘Fair Use’ Provision

10. ‘Fair Use’ permits limited use of copyrighted material without having to first acquire permission from the copyright holder. Fair Use is termed as one of the limitations to copyright, whose intention is to balance the interests of right holders with the general public interest, allowing Fair Use as a defense to copyright infringement claims to certain limited uses that might otherwise be considered infringement. The Committee note that the Copyright Act, 1957 have a provision for fair dealing under clause (1) of Section 52, which says that fair dealing with any work, not being a computer programme shall not constitute an infringement of copyright for the acts viz. private or personal use, including research; criticism or review, whether of that work or

of any other work, the reporting of current events and current affairs, including the reporting of a lecture delivered in public. The Committee also note that Copyright(Amendment) Act of 2012 has extended the 'fair dealing' provision to all works and "work" as defined in the Copyright Act is inter-alia, a cinematograph film. Further, there is no specific provision related to 'Fair Use' in the Cinematograph Act, 1952. In view of the foregoing, the Committee feel that Contradictions will have to be reconciled and recommend that urgent suitable steps need to be taken accordingly.

11. The Committee observe that the Cinematograph(Amendment) Bill, 2019 as introduced in Rajya Sabha does not have a provision for 'Fair Use'. Thus, apprehensions were raised that in the absence of the 'Fair Use' provision in the Bill, there is no protection provided in the Bill to someone who forwards a film clip/short extract of movies as memes, jokes etc., for non-commercial purposes. The Ministry of I & B contended that incorporating such a provision would defeat the purpose of having an absolute anti-camcording provision with intention to create 'making a copy of a film', an offence. By making such a provision a conditional one may result into uncertainty in principle itself. Even one minute as an exception would create the possibility of stitching of smaller clips and creating a commercially useable content online and that there are evidences in this regard. Further, making copies of the work, in no way, contributes towards creating a narration or events in consequence. According to the Ministry, access to cinematograph works for educational purpose can be obtained by legalized channels as well, such as purchasing a DVD, etc. and for that making infringing copies is not the only option.

The Committee do not dispute the veracity of the above facts. However, there is no denying the fact that everyday more and more people in India get online. The number of persons with access to mobile internet is also increasing day by day. Therefore, in the present era when a large Chunk of population is active on social media, the Committee would like the Ministry to

ensure that unreasonable restrictions are not imposed on them. Therefore, the committee urge the Ministry of I & B to revisit the Bill and consider inclusion of 'Fair Use' provision to provide adequate safeguards to the innocent viewers lest it should lead to confusion and misuse of the proposed provision in the Bill and related harassment of the innocent people for using film clip for non-commercial and other such purposes. The Bill should not inadvertently make criminals out of ordinary citizens.

Mechanism to tackle Film Piracy within India and from across border

12. The Committee learn that at present there is no fool proof mechanism to tackle online/digital Film Piracy. Internet Service Providers (ISPs) are intermediaries and are not authorised to monitor the content transmitted on their network and therefore they are not aware of any IPR infringing content flowing over their network unless they are made aware of it. ISPs can block a website hosted from outside and hence access of information/content within India, however, there are multiple channels/ options through which such pirated material can be made available. As informed, this is a common method practiced in the world besides other multiple actions including the one proposed in the proposed amendment.

It is a matter of serious concern that the Government is finding it difficult to be able to block many websites on you tubes containing 60 to 80 per cent materials of infringement of copyright. There are many websites whose driving source is not known. DPIIT finally entrusted the work for identification of these sites to a cyber cell in Maharashtra and these sites were vetted. National Internet Exchange of India(NIXI) was asked to block the sites not meeting the KYC norm and as a result, 235 websites, which were taking 186 million hits in a month, were blocked. Further, there are websites which supply only infringing materials. As stated, it is possible to adopt judicial process in the case of one or two movies, it is not

practical to go to court in every case. Efforts are being made with the help of industry stakeholders to identify such websites and thereafter, they may be blocked administratively with joint efforts or may be blocked voluntarily with the help of the industry. In this context, the Committee are of the view that Ministry of Electronics and Information Technology(Meity) and DoT who have a larger role to play may come out with innovative technologies to curb online/digital piracy and hence Ministry of I & B should work closely and vigorously with Meity and DoT and take suitable corrective measures, wherever warranted. The Committee further desire that the Ministry may also study the copy right directives/national laws of other countries in this regard particularly of developed democracies to find a solution.

13. The Committee are given to understand that the problem of digital piracy from across the border can be solved only when India has anti-counterfeiting trade agreements with other countries. As has been informed, India is not a signatory to the Anti-Counterfeiting Trade Agreement and hence obligations from the agreement would not have a bearing on the terms of the Cinematograph (Amendment) Bill 2019. While acknowledging the Ministry's stand that there should be a national law for negotiating at the international level, the Committee feel that the Ministry need to give a serious thought to this issue with the support of Ministry of E and IT to formulate a national law on the lines of similar laws/acts e.g. Digital Economy Act adopted by a few developed countries like UK, USA etc. which would inter alia deal with all such issues and also can be used to negotiate with foreign countries. They feel that combating online piracy originating outside the country has a significant role in addressing the issue of film piracy holistically and therefore matter needs to be dealt with all seriousness.

Publicity/Campaigns/Preparedness for new legislation

14. The Committee note that there exists a Grievance Redressal mechanism in the Ministry of I & B where a complainant can lodge their complaint. The Committee hope that as assured, any complaint received, after passing of the Bill in Parliament, would be fully addressed in the Ministry, which currently appears not to be the case.

15. The Committee appreciate that the Ministry has approved an anti-piracy initiative in the audio-visual sector under the Development, Communication and Dissemination of Filmic Content (DCDFC) scheme. Further, the Ministry has envisaged major activities including campaign on piracy through audio-visual, internet and print media; training programmes and workshops to sensitize the police, judicial, administrative officials, multiplex and cinema hall owners; production of a film/documentary, etc. The Committee are of the considered opinion that each of the areas/activities outlined above is a prerequisite for implementation of the proposed amendments in the Bill, in a true manner and therefore recommend for a strategic planning in this direction. The Committee trust that the Ministry would ensure sufficient allocation of funds for a meaningful exercise.

16. The Committee also note that the Motion Pictures Distributors Association has informed to have trained about 8000 halls to detect piracy as their first-line of defence in the cinema halls. The Committee hope that the legislation would continue to get support of the Film Industry stakeholders in a similar manner in future also.

17. The Committee have been informed that the proposed amendment aims to check piracy at source, that is, originating from illegal duplication in the cinema halls. "Camcording" in the cinemas is one of the major sources of the leakage as over 90% of new release titles originate from cinema theatres. However, going by the phrase "Charity begins at home", the Committee sound a word of

caution that without having adequate 'in house' safeguards to plug the loopholes from all possible sources, including the production house and the CBFC itself, the very purpose of bringing this amendment would be defeated. They therefore desire that the Ministry need to first ensure 'in house' sanitisation while preview screening as well as in the supply chain from lab to theatre before screening with no copying or collusion.

18. With these comments and recommendations for change the Committee recommend that this Bill be proceeded with for enactment.

New Delhi;
13 March , 2020
23 Phalguna, 1941(Saka)

DR. SHASHI THAROOR,
Chairperson,
Standing Committee on
Information Technology.

A list of Stakeholders/Organisations/Individuals from whom Memoranda were received in response to the Press Communiqué

1. Riya Dutta Ghosh
2. Mayank Shekhar,
Advocate cum Content-writer,
Bhagalpur, Bihar
3. Sony Pictures Networks India Private Limited
Interface, Building No. 7, 4th Floor,
Off Malad Link Road, Malad (West)
Mumbai 400 064
4. R. Ramamurthy, M.Sc, B.Ed,
Retired Science Teacher,
No. 77/1, Vanniar Street, Kavanthandalam village, Magoral S.O., Kanchipuram district, Tamil Nadu
5. Indian Broadcasting Foundation (IBF)
b-304, ansal plaza, third floor, khelgaon marg, New Delhi-110049,
6. Leena Jaisani,
Assistant Secretary General
Federation of Indian Chambers of Commerce and Industry,
Federation House, 1, Tansen Marg, New Delhi 110001
7. Ankit Sahni, Principal,
Ajay Sahni & Associates,
177, Lawyers' Chambers, Delhi High Court, New Delhi - 110503
8. Motion Pictures Association (MPA) Asia Pacific
9. Kulmeet Makkar, CEO, Producers Guild of India
1003-04, 10th Floor, Sri Krishna,, Fun Republic Lane, New Link Road, Andheri (West),
Mumbai -400053
10. Aman Konark Modi
Pavitra Nagar Panna, Bundelkhand, Vindhyachal, Madhya Pradesh.
Pin code 488001
11. Gaurav Bhardwaj
SHIMLA (H.P)
12. muthumuthu225@gmail.com
13. Cdr Dinesh Swain, Retd,
Bhubaneswar, Odisha

List of Non-Official Witnesses who tendered Evidence on "The Cinematograph(Amendment) Bill, 2019

Sl. No.	Names (Mr./Ms.)	Organisation
1.	Shri Kulmeet Makkar	Chief Executive officer, The Film & Television Producers Guild of India Ltd
2.	Shri Ravi Kottarakara	General Secretary, Film Federation of India
3.	Shri Firdausul Hassan	President, Film Federation of India
4.	Shri Gagan Sareen	Vice President-Legal, Viacom 18 Motion Pictures
5.	Shri Uday Singh	Country Representative, Motion Picture Distributors Association India Pvt. Ltd.
6.	Shri Aamod Gupte	Group General Counsel, Eros International Media Ltd.

Section 51 of the Copyright Act, 1957

Section 51 of the Copyright Act, 1957 states that:

“Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

- i. does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or
- ii. permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

- i. makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- ii. distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- iii. by way of trade exhibits in public, or
- iv. imports into India, “any infringing copies of the work: [Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work, for the private and domestic use of the importer.

Explanation –For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

Anti – Camcording Provisions

A. South Korea’s Anti-Camcording Provision

Article 104-6 (Prohibition of Recording, etc. of Cinematographic Works)

No person shall record cinematographic works protected by copyright at a movie theater, etc. screening such works with a recording device without consent of the holder of author's economic right, or publicly transmit such works.

<This Article Newly Inserted by Act No. 11110, Dec. 2, 2011>

Article 137 (Penalty Provisions)

(1) Any person who falls under any of the following subparagraphs shall be punished by imprisonment with labor up to one year or by a fine up to ten million won:

<Amended by Act No. 9625, Apr. 22, 2009; Act No. 11110, Dec. 2, 2011>

1. 1. A person who makes a work public under the real name or pseudonym of a person other than the author;
2. 2. A person who publicly performs or publicly transmits a performance, or distributes copies of performance under the real name or pseudonym of a person other than the performer;
3. 3. A person who violates Article 14 (2);
3-2. A person who conducts an act falling under subparagraph 3 of Article 104-4;
3-3. A person who violates Article 104-6;
4. 4. A person who operates copyright trust service without obtaining permission pursuant to Article 105 (1);
5. 5. A person who commits an act deemed an infringement pursuant to Article 124 (2);
6. 6. A person who obstructs the business of an online service provider by making a demand by intention for the suspension or resumption of a reproduction or interactive transmission under Article 103 (1) or (3), upon knowing that he/she had no legitimate authority;
7. 7. A person who violates Article 55-2 (including cases applied mutatis mutandis pursuant to Articles 90 and 98).

(2) A person who attempts to commit a crime under paragraph (1) 3-3 shall be punished.

<Newly Inserted by Act No. 11110, Dec. 2, 2011>

B. The United State’s Anti-Camcording Provision

18 U.S. Code Section 2319B

(a) Offense.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

(1) be imprisoned for not more than 3 years, fined under this title, or both; or

(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

(b) Forfeiture and Destruction of Property; Restitution.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(c) Authorized Activities.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

(d) Immunity for Theaters.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

- (1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and
- (2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

(e) Victim Impact Statement.—

(1) In general.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Contents.—A victim impact statement submitted under this subsection shall include—

- (A) producers and sellers of legitimate works affected by conduct involved in the offense;
- (B) holders of intellectual property rights in the works described in subparagraph (A); and
- (C) the legal representatives of such producers, sellers, and holders.

(f) State Law Not Preempted.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

(g) Definitions.—In this section, the following definitions shall apply:

(1) Title 17 definitions.—The terms “audiovisual work”, “copy”, “copyright owner”, “motion picture”, “motion picture exhibition facility”, and “transmit” have, respectively, the meanings given those terms in section 101 of title 17 .

(2) Audiovisual recording device.—The term “audiovisual recording device” means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(Added Pub. L. 109–9, title I, §102(a), Apr. 27, 2005, 119 Stat. 218; amended Pub. L. 110–403, title II, §204, Oct. 13, 2008, 122 Stat. 4261.)

C. The Philippines’ Anti-Camcording Provision

Republic of the Philippines CONGRESS OF THE PHILIPPINES

Metro Manila

Fourteenth Congress Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

REPUBLIC ACT NO. 10088

AN ACT TO PROHIBIT AND PENALIZE THE UNAUTHORIZED USE, POSSESSION AND/OR CONTROL OF AUDIOVISUAL RECORDING DEVICES FOR THE UNAUTHORIZED RECORDING OF CINEMATOGRAPHIC FILMS AND OTHER AUDIOVISUAL WORKS AND/OR THEIR SOUNDTRACKS IN AN EXHIBITION FACILITY, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Short Title. - This Act shall be known as the "Anti-Camcording Act of 2010".

Section 2. Definition of Terms. - For purposes of this Act:

(a)"Audiovisual work" means a work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

(b)"Audiovisual recording device" means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a cinematographic film or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(c)"Authorized person" means the members of the Philippine National Police (PNP) and the National Bureau of Investigation (NBI) and/or any other person duly authorized by the same to exercise powers conferred upon by this Act.

(d)"Camcording" means any of the unlawful acts enumerated under Section 3 of this Act.

(e)"Cinematographic film" means any audiovisual work consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(f)"Copy" means any article or thing in which the visual images or sounds comprised in any cinematographic film or audiovisual work are embodied, and includes the making of a copy which is in electronic format or transient or incidental to some other use thereof.

(g)"Copyright owner" means any one who has the exclusive rights comprised in a copyright as provided under Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines and related international treaties, conventions or agreements to which the Republic of the Philippines is a party.

(h)"Exclusive licensee" means a licensee who is authorized in writing and who, on behalf of the owner or prospective owner of copyright, to the exclusion of all other persons, is authorized to do an act within the Philippines that, by virtue of this Act, the owner of the copyright would, but for the license, have the exclusive right to do or to perform.

(i)"Exhibition facility" means any cinema, film theater, screening room, projection room or other venue that is used for the public exhibition of a cinematographic film or audiovisual work, whether or not a fee is chargeable.

(j)"Operator of an exhibition facility" means any person or entity who holds or is required to hold a license by the Securities and Exchange Commission CSEC, for companies and partnerships), the Department of Trade and Industry ('DTI', for sole proprietorships), the Movie and Television Review and Classification Board (MTRCB) or any and all other relevant government offices that have, or will have jurisdiction over exhibition facilities to operate the exhibition facility.

(k)"Relevant authority" means the officers, members and responsible personnel of law enforcement agencies such as the PNP and their adjuncts and the NBI.

(l)"Transmit" means to convey by any means, whether over a path or a combination of paths, provided by a material substance or by wireless means or otherwise, and whether or not in response to a request made.

Section 3. Acts Constituting Unauthorized Possession, Use and/or Control of Audiovisual Recording Devices. - It shall be unlawful for any person, at a time when copyright subsists in a cinematographic film or other audiovisual work or its soundtrack and without the authorization of the copyright owner or exclusive licensee thereof, to:

(a)use or attempt to use an audiovisual recording device to transmit or make a copy of any performance in an exhibition facility of such cinematographic film or other audiovisual work or its soundtrack, or any part thereof;

(b)have in his/her possession, an audiovisual recording device in an exhibition facility, with the intent of using or attempts to use the audiovisual recording device to transmit or make a copy of any performance in the exhibition facility of such cinematographic film or other audiovisual work or its soundtrack, or any part thereof; or

(c)aid, abet or connive in the commission of the acts prohibited under this section.

Section 4. Penalties. - A person who will be found guilty of violating the provisions of Section 3 shall be subject to a fine of Fifty thousand pesos (Php50,000.00) but not exceeding Seven hundred fifty thousand pesos (Php750,000.00) and imprisonment of six (6) months and one (1) day to six (6) years and one (1) day.

If the purpose of the commission of the abovementioned acts is the sale, rental or other commercial distribution of a copy of the cinematographic or audiovisual work or its soundtrack, or any part thereof, the penalty shall be imposed in the maximum.

If the offender is an alien, said person shall immediately be deported after payment of the fine and after serving his/her sentence. He/She shall thereafter be refused entry into the Philippines.

If the offender is a government official or employee, the penalty shall include perpetual disqualification from public office and forfeiture of his/her right to vote and participate in any public election for a period of five (5) years.

Section 5. Presumptions as to the Subsistence of Copyright and/or Ownership of Copyright. - For purposes of Section 3, copyright shall be presumed to subsist in the subject cinematographic film or other audiovisual work or its soundtrack if the accused does not put in issue the question as to whether copyright subsists therein. However:

(a) where the accused puts such question in issue but does not satisfy the court that he/she does so in good faith, the presumption as to the subsistence of copyright herein shall apply, notwithstanding that the accused puts that question in issue;

(b) where the name of a person appears on copies of the subject cinematographic film or other audiovisual work or its soundtrack as made available to the public in such a way as to imply that the person was the maker thereof and, in the case of a person other than a body corporate, that name was his/her true name or a name by which he/she was commonly known, that person shall be presumed to be the maker thereof and the copyright owner thereof, unless the contrary is established; and/or

(c) where the accused puts in issue the question of whether copyright subsists in the subject cinematographic film or other audiovisual work or its soundtrack, or the ownership of the copyright therein, an affidavit made in behalf of the copyright owner in which he/she makes assertions of facts relevant to showing that: (1) copyright subsists in the work or other subject matter; and/or, as the case may be, (2) he/she is the owner of the copyright, shall be admitted in evidence and shall be *prima facie* proof of the matters stated therein until the contrary is proved, unless the court requires that oral/testimonial evidence be adduced to prove those matters.

Section 6. No Defense on Account of Use for Private or Domestic Purposes. - It shall not be a defense that the transmission or making of the copy of the cinematographic film or other audiovisual work or its soundtrack, or any part thereof, was for private or domestic purposes or in connection with a fair use deal.

Section 7. Requirement for Posting of Notices in an Exhibition Facility on the Prohibition Against the Bringing into Said Exhibition Facility of Audiovisual Recording Devices and the Like. - All exhibition facilities, cinemas or theaters shall be required to conspicuously post in at least two (2) areas in the exhibition facility including, but not limited to, the areas where tickets are sold and the entrances of the exhibition facilities, notices or signages warning against the bringing of audiovisual recording devices into the cinematographic film/audiovisual screening/exhibition area, with a reservation that the management/operator of the exhibition facility will take into preventive and temporary custody such audiovisual recording device/s until the film/movie theater patron leaves the screening/exhibition area/facility.

Failure of the management/operator of the exhibition facility to comply with the foregoing requirement will subject said management/operator liable to pay a fine of Fifty thousand pesos (Php50,000.00).

Nothing in this Act shall prevent the management from performing such other precautionary measures so as to prevent the commission of the acts punishable herein.

Section 8. Powers of Authorized Persons to Enter an Exhibition Facility and Search the Same. - An authorized person, without a warrant and without payment of any admission fee or other charge, may enter and search any exhibition facility if the authorized person has reasonable ground to believe that any violation of this Act has been or is being committed and, due to the delay necessary to obtain a warrant could result in the loss or destruction of evidence, or for any other reason it would not be reasonably practicable to obtain a warrant.

Section 9. Other Powers of Authorized Persons. - An authorized person who has reasonable ground to believe that a violation under this Act has been or is being committed may:

(a) search any person if the person subject of the search has in his/her actual possession, any audiovisual recording device, in respect of which an offense under this Act has been or is being committed;

(b) seize, remove or detain any audiovisual recording device or other object which appears to contain, or likely to contain

evidence of an offense committed under this Act;

(c) use reasonable force to remove any person or object obstructing the authorized person in the exercise of any power conferred upon him/her by this Act;

(d) detain any person, within a reasonable time not exceeding eighteen (18) hours, found in any place which the authorized person is empowered to enter and search if, after inquiry made, said authorized person has reasonable ground to believe that the person subject of the search is connected with the subject matter of the search and it is considered necessary to detain the person subject of the search to be able to adequately perform the search; and

(e) require the operator of an exhibition facility or any other person who appears to be at the time responsible for the control or management of the exhibition facility to give information or render assistance that may be necessary to enable the authorized person to carry out the functions under this Act.

Section 10. Forfeiture and Disposal of Unauthorized Copy of Cinematographic Film or Other Audiovisual Work /Audiovisual Recording Devices Used in the Commission of the Acts Penalized Under this Act. - The court before which a person charged with an offense in violation/contravention of this Act, whether or not said person charged is convicted of the offense, may order that any copy of a cinematographic film or other audiovisual work in which copyright subsists, or parts thereof which appears to the court to be an unauthorized copy, and any audiovisual recording device or other equipment in the possession of the alleged offender or the court, be destroyed or delivered to the owner or the exclusive licensee of the copyright owner concerned or otherwise dealt with in such a manner as the court deems fit.

In the event that the court retains representative samples of the unauthorized copy of a cinematographic film or other audiovisual work, or audiovisual recording devices or other equipment for evidentiary purposes in the prosecution of the offense for which an accused is charged, the retained samples shall remain in *custodia legis* until the final resolution of the court proceedings thereon.

Section 11. Enforcement. - The PNP, in coordination with the NBI, the Optical Media Board (OMB), operators of the cinemas, theaters or exhibition facilities and owners of the cinematographic films or audiovisual works and other soundtracks, shall enforce the provisions of this Act. The PNP may deputize, for a defined period, the heads or personnel of such agencies and instrumentalities of government or private sector representatives or stakeholders of rights over cinematographic films/audiovisual works and their soundtracks, to perform, the enforcement functions required under this Act.

Section 12. Separability Clause. - If any provision of this Act is declared invalid, the other parts or provisions hereof not affected thereby shall remain and continue to be in full force and effect.

Section 13. Repealing Clause. - All laws, decrees, ordinances or rules and regulations which are inconsistent with or contrary to the provisions of this Act are hereby amended or repealed.

Section 14. Effectivity. - This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of national circulation.

Approved,

(Sgd.) **PROSPERO C. NOGRALES**
Speaker of the House of Representatives

(Sgd.) **JUAN PONCE ENRILE**
President of the Senate

This Act which is a consolidation of Senate Bill No. 3529 and House Bill No. 5699 was finally passed by the Senate and the House of Representatives on January 18, 2010 and January 27, 2010, respectively.

(Sgd.) **EMMA LIRIO-REYES**
Secretary of Senate

(Sgd.) **MARILYN B. BARUA-YAP**
Secretary General
House of Representatives

Approved: **MAY 13 2010**

(Sgd.) **GLORIA MACAPAGAL-ARROYO**
President of the Philippines

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XI of 2019

THE CINEMATOGRAH (AMENDMENT) BILL, 2019

A
BILL

further to amend the Cinematograph Act, 1952.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:-

1. (1) This Act may be called the Cinematograph (Amendment) Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

37 of 1952 2. After section 6A of the Cinematograph Act, 1952 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:- Insertion of new section 6AA.

'6AA. Notwithstanding any law for the time being in force, no person shall, without the written authorization of the author, be permitted to use any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a Prohibition of unauthorized recording.

part thereof.

Explanation.- For the purposes of this sub-section, the expression “author” shall have the same meaning as assigned to it in clause (d) of section 2 of the Copyright Act, 1957.’ 14 of 1957

3. In section 7 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:- Amendment of section 7.

“(1A) If any person contravenes the provisions of section 6AA, he shall be punishable with an imprisonment for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both.”.

STATEMENT OF OBJECTS AND REASONS

The Cinematograph Act, 1952 (the Act) was enacted with a view to make provisions for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs.

2. Section 3 of the Act provides for the constitution of a Board of Film Certification which certifies the films for public exhibition. The medium of cinema, the tools, the technology associated with it and its audience have undergone radical changes over a period of time and the certification process for public exhibition needs to be contemporised in order to make the process in tune with the changed time. There have also been many changes in the field of cinema with the proliferation of Television channels and cable network throughout the country. Further, the film industry is facing huge losses due to the advent of new digital technology, decline in number of the people visiting cinema theatres, increase in piracy, particularly release of pirated version of the films on internet, copyright violation, etc. which in turn causes loss to the government exchequer.

3. With a view to overcome the aforesaid difficulties and to prohibit the unauthorised recording of films, it is proposed to amend the Cinematograph Act, 1952 by a Bill, namely, the Cinematograph (Amendment) Bill, 2019, which provides for—

- (i) insertion of a new section 6AA in the Act so as to provide that no person shall, without the written authorisation of the author, be permitted to use any audiovisual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof; and
- (ii) to amend section 7 of the Act so as to punish the persons who contravenes the provisions of section 6AA for a term which may extend to three years or with fine which may extend to ten lakh rupees or with both.

4. The Bill seeks to achieve the above objectives.

Col. RAJYAVARDHAN RATHORE (Retd.)

New Delhi

The 8th February, 2019.

FINANCIAL MEMORANDUM

The Bill, if enacted would not involve any financial expenditure either recurring or non-recurring from the Consolidated Fund of India.

STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2018-19)

MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE

The Committee sat on Wednesday, the 06 March, 2019 from 1345 hours to 1410 hours in Committee Room No. B, Parliament House Annexe, New Delhi.

PRESENT

Shri Anurag Singh Thakur - Chairperson

MEMBERS

Lok Sabha

2. Shri Lal Krishna Advani
3. Shri Shyama Charan Gupta
4. Dr. Sunil Baliram Gaikwad
5. Dr. Anupam Hazra
6. Shri Virender Kashyap
7. Shri Harinder Singh Khalsa
8. Shri. Abhishek Singh

Rajya Sabha

9. Shri Santiuse Kujur
10. Dr. Vinay P. Sahasrabuddhe
11. Shri. Binoy Viswam

SECRETARIAT

- | | | | |
|----|----------------------------|---|---------------------|
| 1. | Smt. Abha Singh Yaduvanshi | - | Joint Secretary |
| 2. | Shri Y.M. Kandpal | - | Director |
| 3. | Dr. Sagarika Dash | - | Additional Director |
| 4. | Smt. Geeta Parmar | - | Additional Director |
| 5. | Shri. Shangreiso Zimik | - | Deputy Secretary |

LIST OF WITNESSES

Ministry of Information and Broadcasting		
Sl. No.	Name of the Officer/Official	Designation
1.	Shri Amit Khare	Secretary, I&B
2.	Shri Ashok R Parmar	Joint Secretary (Films)
3.	Shri G.C. Aron	Director (Films)
Central Board of Film Certification (CBFC)		
4.	Shri Prasoon Joshi	Chairperson, CBFC
Ministry of Electronics and Information Technology		
5.	Shri Rakesh Maheswar	Scientist and Group Coordinator
Department for Promotion of Industry and Internal Trade		
6.	Shri Rajiv Aggarwal	Joint Secretary

2. At the outset, the Chairperson welcomed the representatives of the Ministry of Information and Broadcasting (MIB) and other Departments to the sitting of the Committee convened for briefing on the Cinematograph (Amendment) Bill, 2019 as introduced in the Rajya Sabha on 12.02.2019 and referred to the Committee on 22.02.2019, for examination and Report within a period of two months.

3. Thereafter, the Secretary, Ministry of Information and Broadcasting (MIB) made a PowerPoint presentation on the Bill under examination inter alia highlighting the issues of piracy and consequential losses to the film industry and to the Government exchequer, constitutional provisions for sanctioning of "Cinematograph films for exhibition", regulation of licensing and exhibition of cinemas, Cinematographs Act 1952, Certification Rules 1983 and guidelines, recommendations of Justice Mukul Mudgal Committee with regard to prevention of piracy, objectives and provisions of the Cinematographic (Amendment) Bill 2019. The Committee were informed that the Bill in question which provides for insertion of a new Section 6AA in the Cinematographic Act, 1952 and amendment of Section 7 of the Act would go a long way in preventing piracy of the films.

4. The Chairperson, Central Board of Film Certification (CBFC) while briefing the Committee on various digital and technical aspects related to the piracy felt the need to seek cooperation and support of technical experts also besides stakeholders to deal with this menace in view of the changing technology. The representatives from Department of Promotion of Industry and Internal Trade

(DPIIT) brought to the notice of the Committee about several websites uploading materials by copyright infringement which are working from outside the country which need to be identified and blocked administratively as well as collectively with the help of the film industry .

5. The representatives of MIB, CBFC, MeitY and DPIIT replied to the queries raised by Members. The representatives also assured the Committee that the detailed views/suggestions on the Bill would be furnished, in writing, to the Secretariat. The Chairperson then thanked the witnesses for appearing before the Committee and putting forthwith their views points on the Cinematograph (Amendment) Bill, 2019.

The witnesses, then withdrew.

6. The Committee after considering all aspects of the Bill in question felt the need to seek the views and suggestions of various associations/bodies, experts and stakeholders also both from the print and electronic media in order to have an in-depth and objective examination and to get a better insight. They however, wondered that the two months time granted to the Committee for the same would not be suffice in view of the forthcoming General Elections and inability of Members to attend the Committee's sittings. The Committee, therefore, decided to leave the matter of examination of the Bill in question to their succeeding Committee in the 17th Lok Sabha and bring it to the kind notice of the Hon'ble Speaker, Lok Sabha and concerned Branch accordingly.

The Committee, then, adjourned.

A copy of verbatim record of the proceedings was kept on record.

ANNEXURE-II

MINUTES OF THE SEVENTH SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2019-20)

The Committee sat on Wednesday, the 30 October, 2019 from 1115 hours to 1220 hours in Committee Room C, Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Dr. Shashi Tharoor - Chairperson

MEMBERS

Lok Sabha

2. Smt. Locket Chatterjee
3. Shri Karti P. Chidambaram
4. Dr. Nishikant Dubey
5. Choudhary Mehboob Ali Kaiser
6. Shri P. R. Natarajan
7. Shri Santosh Pandey
8. Col. Rajyavardhan Singh Rathore
9. Shri L.S. Tejasvi Surya

Rajya Sabha

10. Dr. Anil Agrawal
11. Shri Suresh Gopi
12. Shri Syed Nasir Hussain
13. Shri D. Kupendra Reddy

SECRETARIAT

- | | | | |
|----|-----------------------|---|----------------------|
| 1. | Shri Ganapati Bhat | - | Additional Secretary |
| 2. | Shri Y.M. Kandpal | - | Director |
| 3. | Smt. Geeta Parmar | - | Additional Director |
| 4. | Shri Shangreiso Zimik | - | Deputy Secretary |

LIST OF WITNESSES

MINISTRY OF INFORMATION AND BROADCASTING

- | | | |
|----|----------------------------|----------------------|
| 1. | Shri Amit Khare | Secretary |
| 2. | Ms. T.C.A. Kalyani | JS(EW&B-I) & MD:NFDC |
| 3. | Shri Ashok Kumar R. Parmar | JS(Films) |

EXPERTS ON THE SUBJECT

- | | |
|---------------------------|---|
| 4. Shri Prasoon Joshi | Chairperson, Central Board of Film Certification(CBFC) |
| 5. Shri Rakesh Maheshwari | Scientist and Group Coordinator, Ministry of Electronics and Information Technology(Meity) |
| 6. Ms. Surabhi Sharma | Deputy Secretary, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry(DPIIT) |

LIST OF NON-OFFICIAL WITNESSES

- | | |
|--------------------------|---|
| 1. Shri Kulmeet Makkar | Chief Executive officer, The Film & Television Producers Guild of India Ltd |
| 2. Shri Ravi Kottarakara | General Secretary, Film Federation of India |
| 3. Shri Firdausul Hassan | President, Film Federation of India |
| 4. Shri Gagan Sareen | Vice President-Legal, Viacom 18 Motion Pictures |
| 5. Shri Uday Singh | Country Representative, Motion Picture Distributors Association India Pvt. Ltd. |
| 6. Shri Aamod Gupte | Group General Counsel, Eros International Media Ltd. |

2. At the outset, the Chairperson welcomed the representatives from all the Departments to the sitting of the Committee convened to have a briefing on Cinematograph (Amendment) Bill, 2019 as referred to the Committee for examination of Report.

3. Thereafter, the Secretary, Ministry of Information and Broadcasting made a PowerPoint presentation highlighting the constitutional provisions to legislate in the matters pertaining to the sanctioning of films, enactments of Cinematograph Act in 1952, notification of Cinematograph (Certification) Rules, 1983 and guidelines for certification of films which came into effect from 6 December, 1991, Justice Mukul Mudgal Committee Report, etc. He also elaborated on the provisions of the Bill to tackle the piracy and the benefits film industry is going to derive after the same comes into force.

4. The Committee then sought clarifications on various issues pertaining to the Bill with particular reference to the "fair use", need to have reconciliation of the Bill with other related Acts e.g. IT Act and the Copyright Act to avoid any inconsistency, non-implementation of recommendations of Mukul Mudgal Committee and Shyam Benegal

Committee, need to revisit the Copyright Act, 1957, measures taken by the Ministry to block rogue websites, anti-counterfeiting trade agreement with foreign countries, etc. The Committee wondered if the Bill in the present form covers the whole gamut of issues related to digital and other forms of piracy and if the Ministry have taken a comprehensive view in the matter to address piracy issue in totality .

5. The representatives of the Ministry of Information and Broadcasting, CBFC and MeitY replied to the various queries of the Members.

The witnesses then withdrew

6. The Committee then reassembled after a tea break to hear the views of non-official witnesses on the Bill. After welcoming them, the Chairperson brought to their attention the confidentiality clause regarding the deliberations in the Committee and requested them to put their views/suggestions on the provisions of the Bill with particular reference to the absence of the provision of “fair use” in the bill.

7. The Committee then heard the views of the non-official witnesses one by one on the Bill. The witnesses were unanimous in their views that the proposed amendment is absolutely critical to tap the source of piracy . They informed the Committee that though in most of the cases the piracy takes place through the third party i.e. Cinema Hall yet despite having watermarking facility to check the source of piracy they are unable to catch the culprits in the absence of stringent laws. They were also of the opinion that the bill is just a beginning and will bring accountability in the value chain with the stakeholders. The Chairperson desired to know if the absence of any exception clause in the bill would amount to criminalizing hundreds of millions of Indians who forward little clips on their WhatsApp. On this issue the witnesses were of the view that any such exception can be used as a rule. On the issue of piracy which takes place through neighboring countries, the Committee expressed their concern over the same and felt the need to have negotiations with them in this matter. It was also brought to the notice of the Committee that the real piracy happens on a group called ‘Telegram’ which is anonymous and not encrypted. The Committee also sought the views of stakeholders on various other issues such as; need for having reconciliation of the provisions of this bill with Copyright Act and IT Act, save the interests of innocent public, need to check and block rogue sites active in piracy in the country etc. which were responded to by the witnesses.

During the discussion on the Bill, the Committee wondered if the intent of the

expression in the word 'knowingly' can be given a much detailed expression like the word 'Author' as defined in section 6AA in the Bill so that the legislative safeguards can be protected.

8. The Chairperson thanked the witnesses for appearing before the Committee and putting forth their valuable view points and desired that they may submit additional points to the Committee in writing, if any.

A verbatim recording of the sitting of the Committee has been kept.

The witnesses then withdrew.

The Committee then adjourned.

ANNEXURE-III

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING COMMITTEE ON INFORMATION TECHNOLOGY (2019-20) HELD ON 6th FEBRUARY, 2020

The Committee sat on Thursday, the 6th February, 2020 from 1630 hours to 1730 hours in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Dr. Shashi Tharoor - Chairperson

MEMBERS

Lok Sabha

2. Dr. Nishikant Dubey
3. Dr. Sukanta Majumdar
4. Shri Dhairyasheel Sambhajirao Mane
5. Ms. Mahua Moitra
6. Shri Santosh Pandey
7. Col. Rajyavardhan Singh Rathore
8. Dr. Gaddam Ranjith Reddy
9. Shri MVV Satyanarayana
10. Shri Sanjay Seth
11. Dr. T. Sumathy (A) Thamizhachi Thangapandian
12. Shri Bhanu Pratap Singh Verma

Rajya Sabha

13. Dr. Subhash Chandra
14. Shri Md. Nadimul Haque
15. Shri Syed Nasir Hussain

SECRETARIAT

- | | | |
|--------------------------|---|----------------------|
| 1. Shri Ganapati Bhat | - | Additional Secretary |
| 2. Shri Y.M. Kandpal | - | Director |
| 3. Smt. Geeta Parmar | - | Additional Director |
| 4. Shri Shangreiso Zimik | - | Deputy Secretary |

LIST OF WITNESSES

MINISTRY OF INFORMATION AND BROADCASTING

Sl. No.	Names	Designation
1.	Shri Ravi Mital	Secretary, I&B
2.	Shri Atul Kumar Tiwari	Additional Secretary
3.	Ms. T.C.A. Kalyani	Joint Secretary(Film)
4.	Shri P.K. Abdul Kareem	Economic Advisor

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened to take oral evidence of the representatives of the Ministry of Information and Broadcasting (MIB) in connection with the examination of 'The Cinematograph (Amendment) Bill, 2019' for examination and Report.

(The witnesses were then called in)

3. Thereafter, the Chairperson welcomed the representatives of the Ministry of Information and Broadcasting. While drawing attention of the representative to the provisions of the Bill viz-a-viz other existing provisions and acts, the Chairperson observed that the Bill was not ambitious enough to cover the entire gamut of issues. He felt the need of amending the obsolete Cinematograph Act 1952 in the light of dramatic transformation of information and cinematography landscape and the recommendations of the Mukul Mudgal Committee and Shyam Benegal Committee on film certification issues. The members of the Committee raised concern on various issues related to the Bill which *inter alia* included provisions of fair use, need to have consistency with other related acts such as IT Act, Copyright Act, Telegraph Act, etc. The Committee also observed that certain terms in the draft Amendment Bill such as exhibition facility, etc. are unclear and undefined and there is a need to give clear explanation of these terms in the Bill. The members were also of the view that the inadequate penalty provisions in the Bill need to be reviewed as the same are inconsistent with the huge investments made in making of a film and may not deter the pirates because of the benefits they derive through piracy. The Committee also wondered if the proposed amendment would also adequately address the issue of piracy which takes place inside the Censor Board and during the award screening of the films, etc. and desired to address the same with suitable punitive arrangements.

The Committee also deliberated on other issues related to the Bill such as blocking of rogue websites, Anti-counterfeiting Trade Agreements with foreign countries, doctrine of fair use and need for enhancing penalties for the repeat offenders, etc.

The Secretary, MIB replied to the queries raised by the Chairperson. He informed the Committee that the Bill is in consonance with the National Intellectual Property Rights Policy of 2016 and the Copyright Act as it takes a wider perspective on the possibility of unauthorized recording also. He justified the introduction of the provisions of the Bill by submitting that several countries had similar legal provisions apart from Copyright Act wherein unauthorized audio-visual recording was punishable. The Ministry also clarified that blocking rogue websites falls under the IT Act and it is under the purview of the Ministry of Electronics and IT. The MIB also replied to the other queries of the Committee viz. high rates of GST on cinema tickets, inadequacy of penal provisions, consistency with the Telegraph Act, amending of the provisions for certification of films, piracy of films through Censor Board and Film Awards, etc.

4. The Chairperson, then, thanked the representatives of Ministry of Information and Broadcasting for deposing before the Committee and desired that written replies to the queries of the Committee which remained unanswered may be submitted to them at the earliest.

The witnesses, then withdrew.

A copy of verbatim record of the proceedings was kept on record.

The Committee, then, adjourned.

**STANDING COMMITTEE ON INFORMATION TECHNOLOGY
(2019-20)**

MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE

The Committee sat on Friday, the 13 March, 2020 from 1000 hours to 1030 hours in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Dr. Shashi Tharoor -Chairperson

MEMBERS

Lok Sabha

2. Smt. Locket Chatterjee
3. Shri Karti P. Chidambaram
4. Dr. Nishikant Dubey
5. Smt. Raksha Nikhil Khadse
6. Dr. Sukanta Majumdar
7. Ms. Mahua Moitra
8. Shri P. R. Natarajan
9. Shri Santosh Pandey
10. Shri Sanjay Seth
11. Dr. T. Sumathy (A) Thamizhachi Thangapandian
12. Shri Bhanu Pratap Singh Verma

Rajya Sabha

13. Shri Md. Nadimul Haque
14. Shri Syed Nasir Hussain

Secretariat

- | | | |
|-----------------------|---|----------------------|
| 1. Shri Ganapati Bhat | - | Additional Secretary |
| 2. Shri Y.M. Kandpal | - | Director |
| 3. Smt. Geeta Parmar | - | Additional Director |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee convened to consider and adopt Draft Report on 'The Cinematograph (Amendment) Bill, 2019' relating to the Ministry of Information and Broadcasting.
3. The Committee, then, took up the draft Report for consideration and adoption.
4. The Committee, thereafter, adopted the above Report with some modifications.
5. The Committee authorized the Chairperson to finalize the draft Report arising out of factual verification, if any, and present the Report to the House during the current Session of Parliament.

The Committee, then, adjourned.