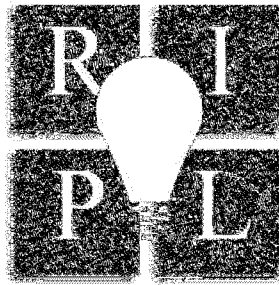


# THE JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW



## THE NEED FOR ORIGINALITY: MUSIC INFRINGEMENT IN INDIA

HARINI GANESH

### ABSTRACT

For decades, the Indian film industry has copied tunes from Western copyrighted works and created unauthorized derivatives. As the music and motion picture industries in the United States started taking notice of this copyright infringement, so too did Indian music directors as domestic infringers profited from copying. Despite the existence of an enacted copyright statute in India, and the nation's membership with various international intellectual property treaties and conventions, enforcement continues to be poor. This lack of protection allows high-profile music directors in the Indian film industry to get away with copyright infringement. This comment proposes that India must improve its copyright enforcement regime, reprimand infringers, and work with the United States to understand how it should create a better, more protective environment for domestic and foreign copyrighted works.

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# THE NEED FOR ORIGINALITY: MUSIC INFRINGEMENT IN INDIA

HARINI GANESH

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## THE NEED FOR ORIGINALITY: MUSIC INFRINGEMENT IN INDIA

HARINI GANESH\*

## INTRODUCTION

In January 2010, renowned Indian film music director Ilaiyaraja, who penned most of the musical hits for the South Indian film industry in the 1970s and 1980s, warned other players in the Indian film music industry to stop using his songs without prior permission and expressed his desire for stronger copyright laws.<sup>1</sup> He made it clear that advertising agencies, television channels, and TV show producers should all obtain permission from his licensing agency, Agi Music, before using his songs in any other productions.<sup>2</sup>

Copyright infringement in the form of unauthorized derivative works and reproductions of copyrighted musical works occurs frequently in India.<sup>3</sup> Despite scrutiny of high-profile names in the Indian film and music industries partaking in such violations,<sup>4</sup> the problem of infringement continues without too much interference from the Indian legal system.<sup>5</sup> The Indian courts do not enforce the copyright laws thoroughly, and the public lacks awareness of infringement.<sup>6</sup> This creates an environment of stifled creativity.<sup>7</sup> The infringement also expresses disregard for crediting the owners and authors of the original copyrighted works.<sup>8</sup>

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\* © Harini Ganesh 2011. Juris Doctor Candidate, May 2012, The John Marshall Law School. Bachelor of Science in News-Editorial Journalism, University of Illinois, May 2007. I would like to thank my family, particularly Hema Viswanathan, and my friends for all their support and belief in me during this process. I also am grateful for all the help and feedback given to me by my editors, Rebecca Haas, Deborah Meiners, and Mark Goldstein. Finally, thank you to the staff of The John Marshall Review of Intellectual Property Law for their invaluable editorial assistance. Any mistakes in this article are my own.

<sup>1</sup> *Malaysian Firm Ties up with Ilaiyaraja*, HINDU (India), Jan. 6, 2010, at 2.

<sup>2</sup> Nikhil Raghavan, *Let The Music Play On*, HINDU (India), Jan. 9, 2010, at 9 (reporting that Ilaiyaraja authorized Agi Music, which had the rights to administrate Ilaiyaraja's works, to initiate legal proceedings for any violations of his works created before the year 2000).

<sup>3</sup> Atul Prakash, *So, Is it The Real Thing?*, TIMES OF INDIA, Apr. 30, 2005 (reporting that most popular Indian film songs are usually rip-offs from Hollywood, regional and literary works).

<sup>4</sup> Shivli Tyagi, *Chura Liya*, TIMES OF INDIA, Feb. 20, 2006, available at <http://timesofindia.indiatimes.com/city/ahmedabad-times/Chura-liya/articleshow/1420152.cms> (noting that four incidents of singers, musicians, music composers and DJs throwing accusations back and forth of copyright infringement).

<sup>5</sup> Anuradha Moulee & Chris Bevitt, *Slumdogs & Copycats*, SHELSTON IP, Apr. 1, 2009, available at [http://www.shelstonip.com/news\\_story.asp?m=3&y=2009&nsid=93](http://www.shelstonip.com/news_story.asp?m=3&y=2009&nsid=93) (reporting that the Hindi film industry, also known as Bollywood, has an associated music industry that borrows freely from external and internal sources, and that even though copyright protection exists in India, infringement and copycatting is still a problem).

<sup>6</sup> Tyagi, *supra* note 4 (noting that copyright infringement is the result of weak legislation and the inability of registration organizations taking strong action when the situation requires it).

<sup>7</sup> Shivli Tyagi, *Copy Right?*, TIMES OF INDIA, Jul. 27, 2005 (mentioning that several Indian artists agree that lack of protection for intellectual property allows people to be less creative with their artistic works).

<sup>8</sup> Tyagi, *supra* note 4 (adding that creativity in Indian film music is at its "lowest ebb" and that credit is not given where due by those who remix or borrow samples of a copyrighted song).

For the last few years, Indian lawmakers have been trying to amend the current Indian Copyright Act to require derivative works to provide proper credit to the original copyright holder.<sup>9</sup>

This comment will explore and analyze the ever-present problem of Indian infringement of copyrighted works. Part I of this comment discusses the copyright laws of India and the United States, the existing international treaties that protect both countries' copyrighted works abroad, and provides an example of how India's neighboring countries are combating copyright infringement. Part II analyzes the advantages and disadvantages of the Indian and United States' copyright laws, as well as the effect of other developing countries' attempts at better enforcement of the laws. Part III proposes a solution to curb the increasing amount of copyright infringement in the Indian music industry and promote creativity in future Indian musical works.

## I. BACKGROUND

The Indian film industry joins together several regional language industries in India, but none are as large or as successful as Bollywood, which churns out Hindi-language films.<sup>10</sup> Since the dawn of the Indian film industry, songs have been a major part of the films<sup>11</sup> and represent the most popular form of music in India.<sup>12</sup> Foreign influence in Indian film music is apparent from early Indian movies,<sup>13</sup> and Indian music eventually started imitating Western music.<sup>14</sup> Though Indian film music remains extremely popular with the Indian public, the genre of music is relatively unknown to foreign audiences.<sup>15</sup>

Over time, however, Bollywood and other regional Indian film industries have borrowed heavily from many sources for their hit songs.<sup>16</sup> As India's entertainment industry becomes more globalized, the world gets a better look at Bollywood's copycat

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<sup>9</sup> Chetan Chauhan, *Copyright Shield for Melodies*, HINDUSTAN TIMES (India), May 22, 2006, available at <http://www.hindustantimes.com/Copyright-shield-for-melodies/Article1-100454.aspx> (reporting that the human resource development ministry proposed changes in Indian copyright law to protect artistic rights of popular Bollywood musicians).

<sup>10</sup> Alison Arnold, *Popular Film Song in India: A Case of Mass-Market Eclecticism*, 7 POPULAR MUSIC 177, 177 (1988) (noting that India is one of the largest film industries in the world, and at the time, Bollywood released about 750 million films per year).

<sup>11</sup> Anna Morcom, *An Understanding Between Bollywood and Hollywood? The Meaning of Hollywood-Style Music in Hindi Films*, 10 BRIT. J. ETHNOMUSICOLOGY 63, 63 (2001) (explaining that Hindi films have utilized songs and background music since the coming of sound to film in India in the late 1940s).

<sup>12</sup> Arnold, *supra* note 10, at 177.

<sup>13</sup> *Id.* at 178 (adding that Hindi film songs in the 1940s started showing obvious foreign influence mixed with traditional Indian musical elements).

<sup>14</sup> *Id.* (explaining that the music director of the 1961 Bollywood film *Chhaya* took the first movement from Mozart's G Minor fortieth symphony, changed the key and slightly altered the verse and harmony to create a Hindi film song).

<sup>15</sup> *Id.* (noting that though Hindi cinema music was India's most popular music in the twentieth century, the non-Indian population in the world remained relatively unaware of it).

<sup>16</sup> Moulee & Bevitt, *supra* note 5, at 2 (saying that Bollywood's music industry borrows freely from many sources, both external and internal, and only recently Sony BMG sued TPS Films for \$320,000 in damages for infringing a Taiwanese composer's tune).

behavior.<sup>17</sup> Hollywood has already taken notice of unauthorized Bollywood remakes of popular Hollywood films.<sup>18</sup> Bollywood film producers rely on the concept that there is no copyright in ideas, which enables them to create unauthorized derivatives of copyrighted works.<sup>19</sup> Big names in the Bollywood music industry continue to come under fire for copying and creating unauthorized derivative works, despite the cry from other heavy hitters in the industry to stop infringement.<sup>20</sup> Even though copyright laws exist in India, the reality of continued copyright infringement shows a weakness in the system.<sup>21</sup>

This section addresses this problem by first looking at the Indian copyright law and the problems associated with a lack of enforcement. Next, it looks at the maturation of United States copyright law and how it handles copyright infringement issues. Finally, it briefly summarizes the international treaties that protect copyright abroad and looks at other developing countries that have combated copyright infringement successfully.

#### *A. India Has Enacted Copyright Legislation and is a Member of Copyright Treaties*

Indian copyright law provides protection for works created in India.<sup>22</sup> The Indian Copyright Act of 1957 (“Indian Copyright Act”) stemmed from Great Britain’s copyright law.<sup>23</sup> The Indian Copyright Act provides copyright protection to various works, including original literary, dramatic, and musical works, films, and sound recordings.<sup>24</sup> The Indian Copyright Act further grants exclusive rights to the copyright holder, authorizing the copyright holder to reproduce, distribute, perform,

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<sup>17</sup> *Id.* (adding that as India joins the global entertainment industry, the emergence of foreign players may mean a change in the copycat attitudes in Bollywood as well as better copyright protection).

<sup>18</sup> Emily Wax, *Paying the Price for Hollywood Remakes: Bollywood Facing Copyright Lawsuits*, WASH. POST, Aug. 26, 2009, at A7, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/25/AR2009082503104.html> (reporting that Indian producers have knocked off American films scene-for-scene for many years and that Hollywood studio 20th Century Fox settled with an Indian film producer for copyright infringement by creating an unauthorized remake of “My Cousin Vinny”).

<sup>19</sup> Moulee & Bevitt, *supra* note 5, at 2.

<sup>20</sup> Diksha Sahni, *The Partners in Copyright Crime*, WALL ST. J., Feb. 10, 2011, available at <http://blogs.wsj.com/indiarealtime/2011/02/10/the-partners-in-copyright-crime/>.

<sup>21</sup> OFFICE OF THE U.S. TRADE REP., 2010 SPECIAL 301 REPORT 26 (2010) [hereinafter 2010 SPECIAL 301 REPORT], available at [http://www.ustr.gov/webfm\\_send/1906](http://www.ustr.gov/webfm_send/1906). Despite gradual progress in improving its intellectual property laws, India needs to change the perception that intellectual property rights offenses are low priority. The Special 301 list is updated every year in the Special 301 Report created by the United States Trade Representative.

<sup>22</sup> GOV’T OF INDIA MINISTRY OF HUM. RES. DEV., A HANDBOOK OF COPYRIGHT LAW 13 (1999) [hereinafter HANDBOOK OF COPYRIGHT LAW] (stating that copyright provided by the Indian Copyright Act extends only within the Indian borders).

<sup>23</sup> Pradip N. Thomas, *Copyright and Emerging Knowledge Economy in India*, 36 ECON. & POL. WKLY. 2147, 2152 (2001) (explaining that the Indian Copyright Act was modeled from the Indian Copyright Act of 1914, which was based on the UK Copyright Act of 1911).

<sup>24</sup> Copyright (Amendment) Act, 1957, No. 14, § 13-1, Acts of Parliament, 1992 (India) [hereinafter Indian Copyright Act].

and translate the work, among other rights.<sup>25</sup> Indian copyright law extends no protection to concepts and ideas, and only safeguards original works.<sup>26</sup> Any violation of these exclusive rights is considered copyright infringement.<sup>27</sup>

In infringement cases, Indian courts use a two-part test to determine whether the copyright holder's rights have been infringed.<sup>28</sup> The test requires substantial similarity between the original and infringing works, and the challenged work to be a copy of the original work.<sup>29</sup> The Indian Copyright Act provides civil remedies for a copyright holder in an infringement suit, which includes injunctions and damages, with the costs of proceedings determined by the court's discretion.<sup>30</sup> Additionally, the Indian Copyright Act also makes copyright infringement a criminal offense, punishable by imprisonment and fines.<sup>31</sup>

Further, the Indian Copyright Act protects any foreign works that are the product of countries mentioned in the International Copyright Order.<sup>32</sup> The International Copyright Order safeguards works of nationals of countries included in the Berne Convention, the Trade Related Aspects of Intellectual Property Rights Agreement ("TRIPS Agreement"), and the Universal Copyright Convention.<sup>33</sup> The Berne Convention aims to protect the rights of authors' literary and artistic works as

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<sup>25</sup> *Id.* § 14 (defining 'copyright' as giving the copyright holder the exclusive right to reproduce, distribute, make a film or sound recording, translate, or adapt the copyrighted work); *see also* HANDBOOK OF COPYRIGHT LAW, *supra* note 22, at 8 (noting that a copyright in a musical work includes the exclusive rights to reproduce the work, to issue copies of the work to the public, to perform the work publicly, to communicate the work to the public, to make a sound recording of the work, and to translate or adapt the work).

<sup>26</sup> HANDBOOK OF COPYRIGHT LAW, *supra* note 22, at 3 (mentioning that copyright specifically does not apply to titles, names, slogans, factual information, plots, ideas or concepts).

<sup>27</sup> *Id.* at 15. Common acts of infringement include making unauthorized copies, performing the copyrighted work without permission, importing infringing copies into India, distributing infringing copies that harm the copyright owner's interest in the work, and any public exhibition of the infringing copies.

<sup>28</sup> K. M. Gopakumar & V. K. Unni, *Perspectives on Copyright: The 'Karishma' Controversy*, 38 ECON. & POL. WKLY. 2935, 2935 (2003); *see* Eastern Book Co. v. Modak, (2007) 1 S.C.C. 14, 17 (India) (explaining that one approach to determining whether infringement has occurred is to see whether the plaintiff's work as a whole is original and protected by copyright, and then to "inquire whether the part taken by the defendant is substantial.").

<sup>29</sup> Gopakumar & Unni, *supra* note 28, at 2953 (explaining that the courts require sufficient similarity between the infringing and original works, and the infringing work to be a derivative of the copyrighted work).

<sup>30</sup> Indian Copyright Act § 55-1; *see* Lahari Recording Co. v. Music Master Audio Video Mfg. Ltd. (2002) 3 M.L.J. 912, ¶ 22 (Mad.) (explaining that there are two types of damages available to a copyright owner, under section 55 of the Indian Copyright Act for infringement, and section 58 for conversion, but that damages can be granted only if infringement is established).

<sup>31</sup> Indian Copyright Act § 63, *see also* Gopakumar & Unni, *supra* note 28, at 2935 (adding that the criminal remedies encompass imprisonment, fines, seizure of the infringed copies, and delivery of said copies to the copyright owner).

<sup>32</sup> HANDBOOK OF COPYRIGHT LAW, *supra* note 22, at 13 (explaining that foreign works are treated and protected as Indian works if the foreign works are products of countries included in the International Copyright Order); *see also* International Copyright Order, 1999, S.O.228(E), Acts of Parliament, 1999 (India) available at <http://copyright.gov.in/Documents/International%20Copyright%20Order.htm> (extending protection of the Indian Copyright Act to all countries listed in the International Copyright Order).

<sup>33</sup> HANDBOOK OF COPYRIGHT LAW, *supra* note 22, at 13.

effectively as possible.<sup>34</sup> Several countries are members of the Berne Convention, and by joining, these nations constitute a Union that pledges to protect authors' literary and artistic works.<sup>35</sup> Similarly, the TRIPS Agreement seeks to protect its member nations' intellectual property rights by requiring each member nation to offer a fellow member country's nationals the same treatment as it would to its own nationals with regard to IPR protection.<sup>36</sup> The Universal Copyright Convention follows the lead of the Berne Convention and requires that each contracting state make the effort to provide satisfactory and effective copyright protection to authors of literary, scientific, and artistic works.<sup>37</sup> India also has membership with several international conventions on copyright and neighboring rights so that Indian works are protected abroad.<sup>38</sup>

India's efforts at improving copyright enforcement in recent years consist of a copyright enforcement advisory board to educate Indian law enforcement about the copyright law.<sup>39</sup> The Indian government set up the Copyright Enforcement Advisory Council to review enforcement of the Indian Copyright Act and to advise on measures for better enforcement.<sup>40</sup> In spite of this advisory board, there continues to be a lack of enforcement with respect to monitoring violations of copyrighted musical works, which gives Indian music directors and composers reason to worry about protection of their own works.<sup>41</sup> Further, India amended its copyright statute in 1994 in

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<sup>34</sup> Berne Convention for the Protection of Literary and Artistic Works (Sept. 28, 1979) [hereinafter Berne Convention], available at [http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html).

<sup>35</sup> *Id.* at art. 1.

<sup>36</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Part I, art. 3.1, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125, 1869 U.N.T.S. 299 [hereinafter TRIPS], available at [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf).

<sup>37</sup> Universal Copyright Convention, Aug. 11, 1910, last revised in Paris, July 24, 1971, 6 U.S.T. , at art. I, available at [http://portal.unesco.org/en/ev.php-URL\\_ID=15241&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15241&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>38</sup> HANDBOOK OF COPYRIGHT LAW, *supra* note 22. The Indian Copyright Act provides copyright protection only within the borders of the country, and in order for Indian works to have protection internationally, India became a member of the Berne Convention, the TRIPS Agreement, the Universal Copyright Convention, among others.

<sup>39</sup> Mrinalini Das, *Intellectual Property Rights*, ASSAM TRIBUNE (India), Feb. 12, 2009, available at <http://www.assamtribune.com/scripts/details.asp?id=feb1009/edit3> (reporting that public awareness should be made about intellectual property rights protection, and as an answer to raise such awareness, India established its Copyright Enforcement Advisory Council to deal with copyright issues).

<sup>40</sup> Rajya Sabha, *Steps to Check Piracy in Cyber World*, PRESS INFO. BUREAU, (July 30, 2009), <http://pib.nic.in/newsite/erelease.aspx?relid=51268> (adding that the Copyright Enforcement Advisory Council advises on both the implementation of the law as well as policy measures).

<sup>41</sup> Raghavan, *supra* note 2 (reporting that famous Indian film music composer Ilaiyaraja licensed his compositions to a Malaysian music company because various uncontrolled media in India were misusing his creations without his permission).

response to piracy threats,<sup>42</sup> and continually tries to align its copyright laws to match international standards of intellectual property rights (“IPRs”) protection.<sup>43</sup>

Despite providing copyright protection to domestic and foreign works and creating enforcement methods, India still has difficulties in enforcing its copyright laws.<sup>44</sup> The United States recognizes this issue by placing India in the Special 301 “priority watch list” because of the meager protection afforded to intellectual property rights in India.<sup>45</sup> The Special 301 Report takes note of foreign countries’ intellectual property rights’ protection and enforcement and works with the United States’ trading partners to address concerns where intellectual property protection is lackluster.<sup>46</sup> Even though India proposed amendments to existing copyright laws both in 1994 and in 2010, it still remains on the United States’ “priority watch list” of countries with poor intellectual property protection.<sup>47</sup> The “priority watch list” is important because it monitors India’s problem with copyright infringement and proposes enforcement and legislative techniques to tackle the problems.<sup>48</sup> India’s failure to implement monitoring and enforcement provisions to domestic works to determine whether such works are truly original continues to hinder the strength of its copyright law.<sup>49</sup> The above illustrations show that while India provides copyright protection for domestic works of creativity, it still fails to enforce the law to its fullest extent.

### *B. The United States Provides for and Monitors Strong Copyright Protection*

Copyright law in the United States aims to foster and protect creativity.<sup>50</sup> The United States recognized the importance of promoting innovation and creativity when drafting the Constitution and subsequently provided protections to authors

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<sup>42</sup> Thomas, *supra* note 23, at 2152 (noting that the Indian Copyright Act has been amended in response to piracy and to comport with international standards of copyright); *see also* 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (listing several methods for India to improve its copyright laws in order to be in line with international standards).

<sup>43</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (reporting that India continues to make gradual progress in improving its IPR infrastructure and enforcement, but adding that India needs to amend its copyright laws to comply with international standards).

<sup>44</sup> *Id.* (reporting that India lacks effective enforcement of its intellectual property laws despite making some improvements, hence India remaining on the “priority watch list” for 2010).

<sup>45</sup> *Id.*

<sup>46</sup> OFFICE OF THE U.S. TRADE REP., 2011 SPECIAL 301 REPORT 1 (2011) [hereinafter 2011 SPECIAL 301 REPORT], available at [http://www.ustr.gov/webfm\\_send/2841](http://www.ustr.gov/webfm_send/2841).

<sup>47</sup> Lalit K. Jha, *India, 10 Others on U.S. Watch List for Inadequate IPR Protection*, ECON. TIMES, May 1, 2010, available at [http://articles.economictimes.indiatimes.com/2010-05-01/news/27618046\\_1\\_ipr-regime-protection-or-enforcement-patents](http://articles.economictimes.indiatimes.com/2010-05-01/news/27618046_1_ipr-regime-protection-or-enforcement-patents) (reporting that the U.S. wants India to amend its copyright laws to be in line with international standards and it is on the “priority watch list” for not providing adequate protection for intellectual property rights); 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (noting that India will remain on the Priority Watch List for 2010).

<sup>48</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (noting that India needs to address several flaws in its IPR enforcement and legislative regimes and suggesting methods to fix the problems).

<sup>49</sup> *Id.* (explaining that despite improved commitment in some industries regarding piracy and better implementations of intellectual property laws, piracy still remains rampant and enforcement is weak).

<sup>50</sup> SIVA VAIDHYANATHAN, COPYRIGHTS AND COPYWRONGS 21 (New York Univ. Press 2001).



through the Patent and Copyright Clause.<sup>51</sup> The Copyright Act of 1790 (“1790 Act”) was the first statutory copyright law in the United States, requiring registration for protection of a printed work.<sup>52</sup> The current 1976 Act grants federal protection to both published and unpublished works.<sup>53</sup> The 1976 Act specified that a work had copyright from the moment it was created,<sup>54</sup> and it granted several exclusive rights to a copyright holder.<sup>55</sup> The rights to distribute and to authorize reproduction of works are two of the rights included in Section 106’s “bundle of rights.”<sup>56</sup> The 1976 Act also, however, establishes several limitations on such rights.<sup>57</sup>

Copyright provides the author with control over his work<sup>58</sup> and the bundle of rights listed in the 1976 Act aim to deter infringement of the copyright protections of a work.<sup>59</sup> The 1976 Act deems anyone who violates a copyright owner’s exclusive rights to be an infringer of the copyright.<sup>60</sup> Similar to Indian copyright law, the 1976 Act requires a two-part test to establish copying in an infringement claim.<sup>61</sup> One goal of the 1976 Act is to protect original creative works.<sup>62</sup> In infringement suits, a

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<sup>51</sup> U.S. CONST. art. I, § 8, cl. 8; J.A.L. STERLING, *WORLD COPYRIGHT LAW* 12 (Thompson Reuters Ltd, 3d ed. 2008) (noting that before the Constitution was adopted in 1787, twelve of the thirteen states had passed laws that granted rights to authors with regards to printing their works, and such laws were similar to the British Act of 1710).

<sup>52</sup> STERLING, *supra* note 51, at 12 (stating that based on the Copyright Clause in the U.S. Constitution, Congress passed the first U.S. Copyright Act in May 1790, which gave authors and their successors in title the sole right and liberty of printing their works).

<sup>53</sup> LINDA A. TANCs, *UNDERSTANDING COPYRIGHT LAW: A BEGINNER’S GUIDE* 2 (Oxford Univ. Press 2009) (noting that effective Jan. 1, 1978, the Copyright Act of 1976 was a major overhaul of copyright law, even though revisions had been made to the 1909 Act to keep up with the changing technologies).

<sup>54</sup> *Id.* (explaining that copyright exists in a work from the moment it is created and is fixed in a tangible medium of expression).

<sup>55</sup> *Id.* at 4 (explaining that a copyright guarantees an owner certain rights and Section 106 of the 1976 Act gives a copyright owner the exclusive right to exercise the “bundle of rights.”).

<sup>56</sup> 17 U.S.C. § 106 (2006). The owner of the copyright has the exclusive rights to authorize reproduction, derivative works, distribution, public performance of the work, public display of the work, and in the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

<sup>57</sup> *Id.*; see STERLING, *supra* note 51, at 546 (stating the limitations in the 1976 Act include those concerning moral rights, fair use, limitations on the copyright owners’ exclusive rights in sound recordings, among others); TANCs, *supra* note 53, at 4 (noting that a copyright owner is conferred a “bundle of rights,” but each of these rights have some select limitations and are not absolute).

<sup>58</sup> 17 U.S.C. § 106; 4 MELVILLE B. NIMMER & DAVID NIMMER, *NIMMER ON COPYRIGHT* § 8.01[A] (2010) [hereinafter NIMMER] (explaining that the rights under the Copyright Act are those of express enumeration and the rights are the same for an author whether the work was published in the 1909 Acts reign or after the 1976 Act came into use).

<sup>59</sup> 17 U.S.C. § 106; 4 NIMMER, *supra* note 58, § 8.01[A] (adding that the current Act’s grant of exclusive rights to the copyright owner implies any unauthorized exercise of those rights constitutes infringement, and this fills up a void that existed in the 1909 Act because “infringement” was not defined in the old Act).

<sup>60</sup> 17 U.S.C. § 501. Anyone who violates any of the exclusive rights under Section 106 is liable of copyright infringement.

<sup>61</sup> TANCs, *supra* note 53, at 49; see Gopakumar & Unni, *supra* note 29, at 2935 (explaining that the Indian courts use a two-point test to establish copyright infringement by looking at substantial similarity between the works and whether the infringing work derives from the copyrighted work).

<sup>62</sup> 17 U.S.C. § 102(a). Copyright protection exists for any original work of authorship fixed in a tangible medium of expression, and such works of authorship include musical works with any accompanying lyrics. See also TANCs, *supra* note 53, at 2 (stating that Section 102(a) of the

copyright holder must show that he or she owns a valid copyright and show proof of copying.<sup>63</sup> Copying can be established by showing that the infringing work is substantially similar to the original work and that the infringer had access to the copyrighted work.<sup>64</sup> Infringement that occurs outside the borders of the United States, however, does not fall within the confines of the 1976 Act.<sup>65</sup> If the infringing act began within the United States' jurisdiction and continued outside its borders, then the suit may be brought in the United States.<sup>66</sup>

In contrast to India, the United States strongly enforces its copyright law and maximizes protection of copyright holders and their works.<sup>67</sup> The United States also adapts to technological changes in order to enforce the copyright laws.<sup>68</sup> For example, the hot topic issue of sampling music, where artists use small parts of other songs in creating their own work,<sup>69</sup> has ignited several copyright infringement suits.<sup>70</sup> In particular, Bridgeport Music Company has brought hundreds of copyright infringement suits, complaining that artists infringed by sampling.<sup>71</sup> The United States Court of Appeals for the Sixth Circuit ("Sixth Circuit"), in *Bridgeport Music v. UMG Recordings*, held that using even a relatively small portion of an original work

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Copyright Act of 1976 says that a work enjoys federal copyright protection if the work is original and fixed).

<sup>63</sup> TANCS, *supra* note 53, at 49 (noting that the complaining party must establish ownership of a valid copyright and then prove copying).

<sup>64</sup> *Id.* (adding that circumstantial evidence of copying can be shown if the infringing work is substantially similar to the original and if the infringer had access to the original shows copying).

<sup>65</sup> 17 U.S.C. § 501(a). "Anyone" is limited to any State, any State instrumentality, or any State officer or employee. *See also* 4 NIMMER, *supra* note 58, § 17.02 (adding that U.S. copyright laws do not have any extraterritorial application.); *L.A. News Serv. v. Reuters Tel. Int'l, Ltd.*, 340 F.3d 926, 931–32 (9th Cir. 2003) (holding that U.S. copyright laws have no application outside U.S. borders and that the 1976 Act does not provide actual damages for extraterritorial infringement).

<sup>66</sup> 17 U.S.C. § 501(a); 4 NIMMER, *supra* note 58, § 17.02 (explaining that if part of the act of infringement occurs in the U.S. and though the act is completed in a foreign jurisdiction, those who contributed to the infringement within the U.S. will be liable under American copyright law and if a violation of any one of the exclusive rights of a copyrighted work under Section 106 is completed in the United States, then that activity becomes actionable under American law).

<sup>67</sup> VAIDHYANATHAN, *supra* note 50, at 21 (noting that copyright law provides an incentive to create and that authors should enjoy the monopoly of promoting and selling their works for a limited time).

<sup>68</sup> Peter Decherney, *Copyright Dupes: Piracy and New Media in Edison v. Lubin*, 19 FILM HIST. 109, 109 (2007) (noting that copyright law is where media piracy battles are fought and not only is copyright the "metaphysics of the law," but copyright law is the metaphysics of new media).

<sup>69</sup> JOANNA DEMERS, STEAL THIS MUSIC: HOW INTELLECTUAL PROPERTY LAW AFFECTS MUSICAL CREATIVITY vii (University of Georgia Press 2006) (stating that the reproduction of short samples is potential infringement if the original work is recognizable); *see also* VAIDHYANATHAN, *supra* note 50, at 131 (writing that rap artists often "sample" bits of other artists' melody and harmony in their own songs).

<sup>70</sup> Ben Challis, *The Song Remains the Same: A Review of the Legalities of Music Sampling*, WIPO MAG., Dec. 2009, at 16, available at [http://www.wipo.int/wipo\\_magazine/en/2009/06/article\\_0006.html](http://www.wipo.int/wipo_magazine/en/2009/06/article_0006.html) (noting that failing to obtain a license before sampling cost several artists, including Dr. Dre, Truth Hurts, The Verve, and Vanilla Ice were sued for using samples in their songs without obtaining permission from the original copyright holder, resulting in these artists losing their royalties or their music from store shelves).

<sup>71</sup> *Bridgeport Music, Inc. v. UMG Recordings, Inc.*, 585 F.3d 267, 272 (6th Cir. 2009) (noting that plaintiff filed several hundred copyright infringement actions to recover damages, injunctive relief, and declaratory judgments from some 800 defendants in the music industry for copyright infringement).

is enough to constitute substantial similarity for copyright infringement actions.<sup>72</sup> In *Bridgeport*, one of the plaintiffs claimed that a defendant infringed his copyrighted song.<sup>73</sup> The Court held that the jury made no error in finding that the defendant had lifted small, but unique elements of the plaintiff's song, which constituted infringement.<sup>74</sup> The Sixth Circuit affirmed the test that if an ordinary observer could recognize that a song or other work is taken from a copyrighted work, there is infringement.<sup>75</sup>

The 1976 Act gives unknown and well-known musicians in the United States to bring copyright infringement suits against samplers.<sup>76</sup> Funk artist George Clinton claimed that the Black Eyed Peas used elements of his song, *(Not Just) Knee Deep*, in their song "Shut Up."<sup>77</sup> Further, rapper 50 Cent also received complaints of infringing another rapper's rights to an instrumental track.<sup>78</sup> As shown by these examples, copyright law in the United States exists to protect copyright holders' bundle of rights and to vindicate these rights through appropriate enforcement of the laws.

### *C. The TRIPS Agreement Ensures Countries Satisfy IP Enforcement Protocols*

Soundtrack scores, platinum selling songs, and any other musical compositions created solely in the United States are protected from infringement domestically, but such measures do not extend extraterritorially.<sup>79</sup> In lieu of the domestic copyright laws that stop at a given country's borders, a host of international IPR treaties and conventions protect a country's copyrighted work outside its boundaries.<sup>80</sup> Both the

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<sup>72</sup> *Bridgeport Music, Inc.*, 585 F.3d at 275–77 (finding that the jury determined correctly that there was substantial similarity between defendant's song and the copied elements of plaintiff's song).

<sup>73</sup> *Id.* at 273 (stating that plaintiff sued defendant for first, using elements of plaintiff's song in defendant's recording, and second for failing to respond to an offer of a license agreement).

<sup>74</sup> *Id.* at 276 (holding that substantial and fragmented literal similarity can be shown when the infringer has copied elements of qualitative importance from the original).

<sup>75</sup> *Id.* (citing several other opinions that utilized the "fragmented literal similarity" test in determining infringement).

<sup>76</sup> Associated Press, *George Clinton Sues Black Eyed Peas Over 'Shut Up,'* ABC NEWS (Dec. 15, 2010), <http://abcnews.go.com/Entertainment/wireStory?id=12394165> (reporting that funk pioneer George Clinton sued the Black Eyed Peas for sampling his music without his permission).

<sup>77</sup> *Id.*

<sup>78</sup> Associated Press, *50 Cent Sued for Copyright Infringement*, BILLBOARD.COM (Dec. 16, 2010), <http://www.billboard.com/news/50-cent-sued-for-copyright-infringement-1004134746.story#/news/50-cent-sued-for-copyright-infringement-1004134746.story> (reporting that rapper Tyrone Simmons filed a copyright infringement suit against 50 Cent for using an instrumental track to which Simmons had bought the exclusive rights).

<sup>79</sup> 4 NIMMER, *supra* note 58, § 17.02 (stating that "[a]ny purely extraterritorial conduct is not actionable in American courts").

<sup>80</sup> MARTIN KRETSCHMER & FRIEDEMANN KAWOHL, *THE HISTORY AND PHILOSOPHY OF COPYRIGHT IN MUSIC AND COPYRIGHT* 40 (Simon Frith & Lee Marshall eds. 2004) (writing that the principle of national treatment was established with the Berne Convention and that it included the principle that all countries should give recognize rights of non-nationals to their works as they do their own citizens' works); 1 NIMMER, *supra* note 58, § 4.01[C][2] (mentioning that the act of publication of a work in the U.S. exerts considerable significance in world copyright affairs and under treaties such as the Berne Convention and the Universal Copyright Convention, if the work is

United States and India, for example, are members of the TRIPS Agreement.<sup>81</sup> The TRIPS Agreement requires that a member nation offer a fellow member country's nationals the same treatment as it would to its own nationals with regard to IPR protection.<sup>82</sup>

Article Fourteen of the TRIPS Agreement specifically seeks to protect producers of sound recordings and performers.<sup>83</sup> Where the extraterritoriality provision of the 1976 Act does not reach, the TRIPS Agreement exists to secure protection of a copyright holder's exclusive rights outside his country.<sup>84</sup> The TRIPS Agreement addresses the concerns of effective and adequate trade-related IPR protection.<sup>85</sup> Further, the TRIPS Agreement requires each member nation to satisfy minimal national enforcement requirements for rights holders.<sup>86</sup>

The TRIPS Agreement states that a member nation need not extend IPR protection beyond what the TRIPS Agreement requires, though a member nation may include extensive protection if necessary.<sup>87</sup> Developing countries, such as India, comply with the TRIPS Agreement's standards without improving any existing Indian IPR legislation.<sup>88</sup> Nevertheless, the TRIPS Agreement offers a structure for developing countries to build their intellectual property laws and enforcement.<sup>89</sup>

One example of a developing country improving its intellectual property infrastructure and enforcement is Malaysia.<sup>90</sup> In order to fight illegal trade of counterfeit goods and piracy, the Malaysian government improved the legislative framework.<sup>91</sup> Malaysia introduced specialized intellectual property courts within its judicial system and added border provisions to curb copyright and trademark

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published in or by a citizen of a member nation, the work must be given the same protection in other member nations as they would provide for copyrighted works in their respective countries).

<sup>81</sup> TRIPS, *supra* note 36.

<sup>82</sup> *Id.* at part I, art. 3.1.

<sup>83</sup> *Id.* at part II, art. 14 (providing that sound recording producers have such rights as preventing or authorizing the direct or indirect reproduction of the recordings and that the TRIPS Agreement will provide protection for fifty years from the end of the calendar year when the recording was created).

<sup>84</sup> Michael L. Doane, *TRIPS and International Intellectual Property Protection in an Age of Advancing Technology*, 9 AM. U.J. INT'L L. & POL'Y 465, 481 (1994) (reporting that the TRIPS Agreement's copyright provisions codify traditional copyright standards in order to counter copyright infringement occurrences abroad).

<sup>85</sup> TRIPS, *supra* note 36, at part I, art. 1.

<sup>86</sup> Doane, *supra* note 84, at 483; *see also* TRIPS, *supra* note 36, at part I, art. 1 (requiring TRIPS member nations to grant appropriate treatment and copyright protection to another member nation's copyrighted works, and consider the other member nation's nationals as eligible for protection under the Berne Convention, Paris Convention, or Rome Convention).

<sup>87</sup> TRIPS, *supra* note 36, at part I, art. 1.

<sup>88</sup> Jayashree Watal, *Implementing the TRIPS Agreement: Policy Options Open to India*, 32 ECON. & POL. WKLY 2461, 2461 (1997) (noting that the TRIPS Agreement lays down standards for various types of intellectual property and India, as a member, already was in compliance with the TRIPS Agreement standards with its existing laws).

<sup>89</sup> Thomas, *supra* note 23, at 2147 (noting that India administered policy changes to its intellectual property laws, particularly in the patent field, to accommodate the TRIPS Agreement standards).

<sup>90</sup> Cathy Jewell, *Country Focus: Where There's a Will, There's a Way!*, WIPO MAG., Sept. 2009, at 24, available at [http://www.wipo.int/wipo\\_magazine/en/2009/05/article\\_0010.html](http://www.wipo.int/wipo_magazine/en/2009/05/article_0010.html).

<sup>91</sup> *Id.* (noting that Malaysia's efforts to combat illegal trade in counterfeits show a great example of achieving good IP enforcement with political will).

infringement.<sup>92</sup> Malaysia also formed a Special Task Force to combat counterfeiting at a ministerial stage and encouraged inter-agency cooperation to create awareness of illegal trade and counterfeiting at all levels.<sup>93</sup>

Another country that has slowly improved its copyright law enforcement is Taiwan.<sup>94</sup> When Taiwan was on the “priority watch list,” it took measures to continue improving its IPR protection in order to get off the list.<sup>95</sup> The Taiwanese government continued to push IPR protection as an important agenda.<sup>96</sup> Like Malaysia, Taiwan established an IP enforcement task force that dealt with over a thousand infringement cases and seized over \$60 million worth of counterfeit goods.<sup>97</sup> Taiwanese government officials remain committed to improving IPR protection, and have also made efforts to increase public awareness about piracy.<sup>98</sup> Because these other countries are making an enhanced effort to improve its copyright laws and enforcement of said laws, India should also make a better effort to bolster its copyright laws.

## II. ANALYSIS

First, this section compares and contrasts the copyright laws of India and the United States and how the two countries manage current music copyright infringement issues. Next, this section investigates how the copyright laws of both countries cause economic damage. Finally, this section looks at the positives and negatives of the improved copyright enforcement in other developing countries.

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<sup>92</sup> *Id.*; see also Santha Oorjitham, *Racing to Make Our Laws ICT-Ready*, NEW STRAITS TIMES (Malay.), May 23, 2009, at 16, available at [http://findarticles.com/p/news-articles/new-straits-times/mi\\_8016/is\\_20090523/racing-laws-ict-ready/ai\\_n44442118/](http://findarticles.com/p/news-articles/new-straits-times/mi_8016/is_20090523/racing-laws-ict-ready/ai_n44442118/) (reporting that 170 cases were filed at the IP High Court in Kuala Lumpur in 2008 and 81 of those cases settled).

<sup>93</sup> Jewell, *supra* note 90, at 24 (adding that inter-agency cooperation in accordance with Malaysia’s new IP enforcement scheme contributes to more effective collaboration between the police, customs, Attorney General’s chambers, local authorities and the rights holders themselves).

<sup>94</sup> INT’L INTELL. PROP. ALLIANCE, TAIWAN 2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT, 400 (2010) [hereinafter TAIWAN 2010 SPECIAL 301 REPORT], available at <http://www.iipa.com/rbc/2010/2010SPEC301TAIWAN.pdf> (reporting that Taiwan was removed from the Special 301’s “watch list” in 2009 for the first time since 1998 for curbing piracy, but that the country still needed to be monitored by the U.S. government in order to maintain its commendable record).

<sup>95</sup> Stephen Norris, *Taiwan Remains Committed to IPR*, CHINA POST, May 3, 2003, available at <http://www.chinapost.com.tw/business/2003/05/03/37289/Taiwan-remains.htm> (noting that despite intensive efforts to provide sufficient protection for its intellectual property rights, Taiwan found itself on the United States’ Special 301 “priority watch list,” much to Taiwan’s disappointment).

<sup>96</sup> *Id.* (reporting that Taiwan made sure its intellectual property laws complied with international IP treaties, such as the TRIPS Agreement).

<sup>97</sup> *Id.* (noting that Taiwan’s Integrated IP Enforcement Task Force was involved in 1,375 infringement cases since its establishment).

<sup>98</sup> *Id.*; see also Shelley Shan, *Taiwan Makes Progress in Protecting IPR, But More Needed Challenges Are Ahead, Experts Say*, CHINA POST, Jun. 13, 2005, available at <http://www.chinapost.com.tw/business/2005/06/13/63739/Taiwan-makes.htm> (reporting that to counter charges by the United States that Taiwan needs to strengthen its IPR, the Taiwanese government continued taking progressive actions to improve its status in the Special 301 report).

*A. Indian Copyright Act Provides Ample Protection*

Copyright infringement in India occurs in spite of legislation that grants protection to copyright holders and provides damages for infringement of copyrighted works.<sup>99</sup> Despite amendments made to the Indian Copyright Act in 1983 and 1994, India still finds itself on the “priority watch list” year after year because of ineffective enforcement of its copyright laws.<sup>100</sup> In 2010, an amendment to the Indian Copyright Act (“2010 Amendment”) was submitted to the Indian Parliament.<sup>101</sup> The 2010 Amendment aimed primarily to offer authors and music lyricists royalties and other benefits from commercial exploitation of their work.<sup>102</sup> The Indian Copyright Act, prior to the 2010 Amendment allowed the royalties to vest with music firms and film producers.<sup>103</sup> Despite such an amendment and attempts to enforce the law, India still does not meet the criteria established by authorities such as the International Intellectual Property Alliance (“IIPA”) and the Special 301 Report.<sup>104</sup>

*1. The Positive Effects of India’s Copyright Laws.*

India is home to a booming entertainment industry.<sup>105</sup> Within this industry are composers and lyricists who work on the many songs that make up an Indian film.<sup>106</sup> Until the proposed 2010 Amendment, composers and lyricists received a small share of royalties for the work they did for Indian films.<sup>107</sup> In addition to increasing the

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<sup>99</sup> Indian Copyright Act §§ 14, 54, 57.

<sup>100</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26.

<sup>101</sup> *Government Aims to Align Indian Copyright Laws to Global Standards*, RADIO & MUSIC (Oct. 18, 2010), <http://www.radioandmusic.com/content/editorial/news/govt-aims-align-indian-copyright-laws-with-global-standards> (reporting that the proposed bill has better provisions to deal with technology issues and extending copyright protection over digital networks related to literary, dramatic, and musical works).

<sup>102</sup> Manish Ranjan & Santosh K. Joy, *Draft Copyright Bill Introduced, Could Transform Film, Music Biz*, MINT (Apr. 19, 2010), <http://www.livemint.com/2010/04/19221428/Draft-copyright-Bill-introduce.html>.

<sup>103</sup> *Id.*

<sup>104</sup> INT’L INTELL. PROP. ALLIANCE, INDIA 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 36 (2011) [hereinafter INDIA 2011 SPECIAL 301 REPORT], *available at* <http://www.iipa.com/rbc/2011/2011SPEC301INDIA.pdf>.

<sup>105</sup> Priya Jaikumar, *Bollywood Spectacular*, 77 WORLD LITERATURE TODAY 24, 24 (2003), *available at* <http://www.jstor.org/stable/40158170> (explaining that Indian film is a prolific medium and popular music and television shows take inspiration from Indian movies).

<sup>106</sup> Jonaki Ray, *Who is Lord of the Rings?*, TIMES INDIA, Sept. 9, 2005, *available at* <http://timesofindia.indiatimes.com/city/ahmedabad-times/Who-is-lord-of-the-rings/articleshow/1224998.cms> (reporting that generally in the film industry, music composers and lyricists do not earn their share of the royalties).

<sup>107</sup> Avinash Celestine, *Lyricists, Composers Get a Boost in Royalty Battle*, ECON. TIMES, Nov. 26, 2010, *available at* [http://articles.economictimes.indiatimes.com/2010-11-26/news/27592919\\_1\\_lyricists-royalties-composers](http://articles.economictimes.indiatimes.com/2010-11-26/news/27592919_1_lyricists-royalties-composers) (reporting that a parliamentary committee supported the amendments to the Indian Copyright Act that ensured composers, lyricists, and authors would receive a greater share of royalties for their works). *See also* Ranjan & Joy *supra* note 102 (reporting that music composers and lyricists support the 2010 Amendment because it gives them lifelong royalties).

royalty rate for authors, composers and lyricists, the 2010 Amendment conforms to international treaties so that Indian copyright will be protected abroad.<sup>108</sup>

The Indian government has amended the Indian Copyright Act on previous occasions to keep up with technological changes.<sup>109</sup> Additionally, big names in the Indian film and music industry have voiced their opposition to music copyright infringement.<sup>110</sup> Awareness among the top names in the Indian film and music industry of copying previously copyrighted songs has grown, and peers are not afraid to speak up about the violations.<sup>111</sup> When film composers notice their collaborators infringing existing works, it reflects poorly on the creative output of Indian composers and projects the view that profit is more important than producing a truly original, creative piece.<sup>112</sup> The increasing knowledge that the Indian film industry infringes copyright has awakened a desire to foster originality in Indian film music.<sup>113</sup>

## 2. Indian Copyright Law Contains Several Flaws.

Even with a growing awareness of copyright infringement in the Indian film and music industries,<sup>114</sup> law enforcement officials and agencies do not completely perceive the importance of copyright protection.<sup>115</sup> Further, many persons, particularly the producers, in the Indian film industry do not support the 2010 Amendment.<sup>116</sup> Although the 2010 Amendment will result in positive effects for creative artists and will align more with international standards, the proposed amendment is vague about definitions of “equal rights” to lyricists and composers<sup>117</sup> and with respect to royalties when ownership of the work is owned by different people.<sup>118</sup>

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<sup>108</sup> Nandini Vaish, *Wronging a Right*, INDIA TODAY (June 26, 2010), <http://indiatoday.intoday.in/site/story/wronging-a-right/1/103029.html>.

<sup>109</sup> Thomas, *supra* note 23, at 2152 (explaining that with the ability to copy audio and video cassette tapes, the Indian government amended the Indian Copyright Act in 1984, 1992, and 1994).

<sup>110</sup> Sahni, *supra* note 20.

<sup>111</sup> Tyagi, *supra* note 4 (reporting that several musicians, singers and film music directors in Bollywood threw accusations and counter-accusations of plagiarism).

<sup>112</sup> *Id.* (adding that plagiarism is a side-effect of creativity and that there are several “sleazy composers” in the industry willing to make a mark for themselves by copying others’ songs).

<sup>113</sup> Divya Kumar, *Tracking Copycats*, HINDU (India), Mar. 17, 2007, at 3 (reporting that one man’s quest in tracking plagiarism in Indian film music has led to more people noticing the similarities between the infringing Indian music and the original works, which leads to more awareness about unauthorized derivatives).

<sup>114</sup> Sahni, *supra* note 20.

<sup>115</sup> 2011 SPECIAL 301 REPORT, *supra* note 46, at 28 (noting that India’s IPRs enforcement regime continues to be ineffective).

<sup>116</sup> Celestine, *supra* note 107 (reporting that film producers strongly oppose the 2010 Amendment as government interference in contracts signed between the producers and the composers and lyricists).

<sup>117</sup> Bhusha Nagpal, *IBF Protests Proposed Amendments to Copyright Act*, RADIO & MUSIC (Nov. 26, 2009), <http://www.radioandmusic.com/content/editorial/news/ibf-protests-proposed-amendments-copyright-act> (noting that the Indian Broadcasting Foundation found that the amendments were proposed in a hush-hush manner and that the stakeholders of the proposal had not read the proposal properly to see if royalties would be shared equally between them); *see also* INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 43 (explaining that although the Parliamentary Standing Committee in India accepted the positions taken by rights holders about royalties, it did not

Apart from the problems associated with the 2010 Amendment, the Indian legal structure only weakly enforces the copyright laws.<sup>119</sup> Copyright infringement is not well monitored by criminal enforcement and IPR cases are considered low-priority offenses in the courts.<sup>120</sup> The Indian government gives its entertainment industry freedom to do business as it wishes, which hampers the government's ability to enforce intellectual property rights.<sup>121</sup> The Indian Copyright Act establishes copyright infringement as a criminal offense, but ineffective enforcement of copyright infringement and other IPR suits halts the process and also disregards the copyright holder's right to have her day in court.<sup>122</sup>

While the Indian entertainment industry profits from creating unauthorized derivatives of copyrighted works,<sup>123</sup> the United States stands to lose from such actions.<sup>124</sup> Further, if protection of copyrighted works continues to be careless, then India will deter foreign investments by multinational corporations.<sup>125</sup> As a result,

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recommend any changes recommended by the International Intellectual Property Alliance ("IIPA") to remedy key deficiencies within the 2010 Amendment).

<sup>118</sup> Vaish, *supra* note 108 (explaining that Indian IP lawyers worry that the 2010 Amendment does not clearly set out exactly who gets the royalties when several people claim ownership to a musical work).

<sup>119</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26; *see also* INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 36 (adding that even though the Indian government has taken measures to enforce its laws, it has to be more proactive when addressing IPR concerns because of the magnitude of the problem).

<sup>120</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (explaining that the Indian government needs to create an understanding that IPR infringement cases in India are not low-priority cases).

<sup>121</sup> Neelam Verjee, *India Plans: Hollywood Looks to Safeguard Interests, Curb Piracy*, MINT (Mar. 4, 2009), <http://www.livemint.com/2009/03/04001151/India-plans-Hollywood-looks-t.html>.

<sup>122</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26.

<sup>123</sup> *Partners in Plagiarism*, FIN. EXPRESS (Aug. 10, 2007), <http://www.financialexpress.com/news/partners-in-plagiarism/209513/> (stating that Indian producers in Bollywood have gotten away with cinema plot plagiarism over the years and as the bridge between Hollywood and Bollywood shrinks, Hollywood is starting to demand payment for the movies Bollywood copies).

<sup>124</sup> OFFICE OF THE U.S. TRADE REP., 2010 "SPECIAL 301" USTR DECISIONS (2010) [hereinafter SPECIAL 301 STATISTICS], *available at* <http://www.iipa.com/pdf/IIPA2010USTRDecisionsSpecial301TableofEstimatedTradeLossesandPiracyLevels061110.pdf> (listing statistics of all the amount of trade losses due to copyright piracy in the countries on the "priority watch list" and the "watch list," with losses in India amounting to \$17.7 million in 2009); *see also* SHAYERAH ILIAS & IAN F. FERGUSON, INTELLECTUAL PROPERTY RIGHTS AND INTERNATIONAL TRADE, 14 (Nova Science 2008) (noting that for 2009, the International Intellectual Property Alliance estimated that copyright piracy in forty-three countries resulted in a \$1.4 billion loss in U.S. records and music losses); *see also* S.P.S. Pannu, *U.S. Wants India to Rein in Copycat Biz*, MAIL TODAY (India), Oct. 27, 2009, *available at* 2009 WLNR 26149377 (reporting that U.S. trade representative ambassador Ron Kirk informed the Indian commerce minister that India's copycatting of intellectual property violated American intellectual property rights).

<sup>125</sup> Agence France-Presse, *U.S. Pushes India on Copyright Enforcement*, INDUSTRYWEEK.COM (Jun. 18, 2009), [http://www.industryweek.com/articles/u-s-pushes\\_india\\_on\\_copyright\\_enforcement\\_19425.aspx](http://www.industryweek.com/articles/u-s-pushes_india_on_copyright_enforcement_19425.aspx) (reporting that U.S. Commerce Secretary General Gary Locke said that U.S. businesses need assurance that they will be working in a reliable and secure environment for intellectual property when they come to India, and that India's current criminal enforcement remained weak); Kevin Donovan, *Why Might China and India Want to Strengthen National Intellectual Property Policy?*, TECHDIRT (Jul. 9, 2009), <http://www.techdirt.com/articles/20090530/1623225063.shtml> (noting that executives at



the United States encourages India to improve its intellectual property rights regime so that both countries can gain from better protection.<sup>126</sup>

### *B. The United States Exemplifies the Copyright Laws of a Developed Nation*

The United States provides comparatively strong enforcement of its copyright law. In the United States, famous artists frequently file infringement suits or have such claims brought against them.<sup>127</sup> Artists and the recording companies are aware of their copyrights,<sup>128</sup> ensuring that infringement suits are brought frequently and without regard to whether the artist is famous or unknown to the public.<sup>129</sup>

In spite of strong enforcement policies and monitoring copyright infringement, the United States' copyright laws have been criticized by some as providing too much protection.<sup>130</sup> The Copyright Term Extension Act ("CTEA"),<sup>131</sup> which extended the copyright protection term from fifty to seventy years,<sup>132</sup> was criticized by the petitioners in *Eldred v. Ashcroft* as exceeding Congress's powers.<sup>133</sup> Increasing a work's copyright term by twenty years means the work stays out of the public domain for longer than intended.<sup>134</sup>

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multinational companies look at the strength of intellectual property rules as an important factor in determining research and development locations).

<sup>126</sup> Pannu, *supra* note 124 (indicating that Kirk noted that India violated arts and music rights as well and if India improved its intellectual property rights, India would stand to gain from strengthening its existing rights rather than allowing the violations to continue); *see also* INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 36–37 (explaining that because of India's ineffective enforcement of copyright and other IP laws, both India and the United States' markets in the entertainment and software industries have faced losses).

<sup>127</sup> M. WILLIAM KRASILOVSKY & SIDNEY SHELLEY, THIS BUSINESS OF MUSIC 197 (Robert Nirkind & Sylvia Warren eds. 10th ed. 2007) (mentioning that copyright infringement suits are common in the music industry and cases have involved figures such as Andrew Lloyd Webber, Michael Jackson, Mariah Carey, and the Rolling Stones).

<sup>128</sup> *Id.* at 93 (noting that a copyright owner should promptly register and place the public on notice of his claims to copyright, and until then, the owner cannot bring action for copyright infringement).

<sup>129</sup> *Id.* at 197–98 (noting that popular composer Jerome Kern and rapper M.C. Hammer have been sued for copyright infringement); *see also* Associated Press, *50 Cent Sued for Copyright Infringement*, note 78, at 36 (reporting that a little-known rapper accused 50 Cent of infringement).

<sup>130</sup> VAIDHYANATHAN, *supra* note 50, at 11.

<sup>131</sup> Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827 (codified as amended in 17 U.S.C. §§ 108, 203(a)(2), 301(c), 302, 303, 304(c)(2) (2006)) [hereinafter Copyright Term Extension Act].

<sup>132</sup> Copyright Term Extension Act, §§ 102–103; *see also* Catherine Seville, *Copyright Term: Who's Taking the Mickey?*, 63 CAMBRIDGE L.J. 291, 292 (2004).

<sup>133</sup> *Eldred v. Ashcroft*, 537 U.S. 186, 193 (2003) (noting that the petitioners, who were individuals and businesses whose products and services used previously copyrighted works that had become part of the public domain, claimed the CTEA failed constitutional review under both the 'limited Times' prescription of the Copyright Clause and the First Amendment's free speech guarantee); *see also* Seville, *supra* note 132, at 292 (stating that the petitioners argued that the Copyright and Patent Clause in the United States' Constitution specifically said that copyright protection could be granted only for a "limited time").

<sup>134</sup> *Eldred*, 537 U.S. at 193–94 (adding that the petitioners argued their First Amendment right to free speech because preventing the works from falling into the public domain constituted a form of speech regulation).

The Petitioners argued that Congress exceeded its authority by enlarging the term of copyright protection for published works with existing copyrights.<sup>135</sup> The Court, however, held that Congress followed historical practice by “keeping the duration provisions of the 1976 Act largely in place” and simply added twenty years to each of the copyright terms.<sup>136</sup>

In his dissent, Justice Stevens argued that the purposes of encouraging new inventions and the overriding interest in adding knowledge to the public domain are not served by increasing the term of protection.<sup>137</sup> Similarly, Justice Breyer added that the Copyright Clause does not exist to provide a “private benefit,” but rather to “stimulate artistic creativity for the general public good.”<sup>138</sup> The Copyright Clause, he said, limited the copyright term so that the benefitting public would not be permanently deprived of the artist’s product.<sup>139</sup> Where generally United States’ copyright law provides ample protection for owners of creative works, *Eldred* suggests that there might be something as too much copyright protection, which stifles the benefits to the public of works in the public domain and any resulting creative activity.<sup>140</sup>

In addition, as shown in the examples of George Clinton, the Black Eyed Peas, 50 Cent, and Coldplay, high-profile musicians bring suits against other music artists constantly in the United States.<sup>141</sup> In the United States, copyright owners do not hesitate to take alleged infringers to court, because of the exclusivity for the copyright holder by the 1976 Act.<sup>142</sup> Despite criticism of overprotection, the United States exhibits consistency and reliability in its enforcement of the 1976 Act.

### *C. Other Developing Countries Pave the Way for India in Improving Infrastructure*

Though India’s status in the global economy is growing, it remains a developing country.<sup>143</sup> India’s increasing awareness of copyright infringement within its film

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<sup>135</sup> *Id.* at 193 (clarifying that petitioners were not arguing that Congress was enlarging the copyright protection term to newly created works).

<sup>136</sup> *Id.* at 204 (stating that Congress has consistently applied newly enacted copyright terms to future and existing copyrights as a historical practice, and such a practice does not go beyond Congress’s authority under the Copyright Clause).

<sup>137</sup> *Id.* at 226–27.

<sup>138</sup> *Id.* at 245.

<sup>139</sup> *Id.* at 245–46.

<sup>140</sup> Seville, *supra* note 132, at 293.

<sup>141</sup> Associated Press: *George Clinton Sues Black Eyed Peas*, *supra* note 76; *see also* Phil Miller, *Coldplay Rocked by Guitarist’s Claim of Plagiarism*, HERALD (Glasgow), Dec. 6, 2008, at 10, available at <http://www.heraldscotland.com/coldplay-rocked-by-guitarist-s-claim-of-plagiarism-1.896712> (reporting that American guitarist Joe Satriani sued UK band Coldplay for a full jury trial after Coldplay allegedly copied one of his songs).

<sup>142</sup> 17 U.S.C. § 106 (2006); *see also* Miller, *supra* note 141, at 10 (stating that the rock and pop industries frequently get hit with lawsuits, starting from the Chiffons’ successful suit against George Harrison in 1971 to the Flaming Lips and Avril Lavigne in the past decade).

<sup>143</sup> *A Bumpier But Freer Road*, ECONOMIST, Sept. 30, 2010, at 75–76, available at <http://www.economist.com/node/17145035> (reporting that business in India is booming but that it also has a 40 percent illiterate population, bad public schools, and a lack of proper infrastructure).

industry,<sup>144</sup> coupled with increasing threats of piracy are good motivations to advance enforcement India's copyright and other intellectual property laws.<sup>145</sup>

As mentioned in the Background section, the TRIPS Agreement offers a structure for developing countries to ensure their IPRs comply with appropriate regulations.<sup>146</sup> Member nations such as Malaysia<sup>147</sup> and Taiwan<sup>148</sup> have positively responded to piracy issues and reorganized their respective IP legal structures.<sup>149</sup> Recent amendments to the Malaysian Copyright Act aspire to grant greater royalty rights to musicians and to act against copyright infringement.<sup>150</sup> By showing efficiency and deference to IP infringement cases, Malaysia attracts foreign investment.<sup>151</sup> The specialized IP courts in Malaysia heard 68 percent of the cases in 2009, compared to 14.6 percent the previous year.<sup>152</sup> A backlog in case adjudication, however, has stifled the IP courts in the past year.<sup>153</sup>

Despite Malaysia's increases in copyright protection, the country remains on the Special 301 "ordinary watch list."<sup>154</sup> The International Intellectual Property Alliance recommended several suggestions for the Malaysian government to implement in order to improve Malaysia's status as a strong protector of IPRs.<sup>155</sup> Malaysia's efforts at improving its copyright law enforcement have suffered setbacks, but it left the "priority watch list."<sup>156</sup> India's attempt at passing the 2010 Amendment can be

<sup>144</sup> Tyagi, *supra* note 4 (reporting that those within the film and music industry are aware of music directors taking tunes without giving credit to the original owner of the work).

<sup>145</sup> Sharmila Ganesan-Ram, *India Among Top 10 Online Pirates*, TIMES INDIA, July 5, 2010 (writing that Hollywood and Bollywood studios formed a coalition called Alliance Against Copyright Theft to thwart instances of film piracy in India).

<sup>146</sup> TRIPS, *supra* note 36, at art 1, part 1.1.

<sup>147</sup> Jewell, *supra* note 90, at 24 (reporting that the Malaysian government improved the country's IP legal infrastructure and enforcement as an answer to fight large levels of piracy and counterfeiting).

<sup>148</sup> TAIWAN 2010 SPECIAL 301 REPORT, at 400 (noting that in 2009, Taiwan was removed from the Special 301 "Watch List" because of the Taiwanese government's effectiveness in curbing piracy).

<sup>149</sup> *Id.* at 401 (noting that Taiwan succeeded in reducing the amount of physical product piracy and also maintained good enforcement of the IP laws in the piracy sector).

<sup>150</sup> V. Vasudevan, et al., *Copyright Tribunal to Handle Royalty Issues Soon*, NEW STRAITS TIMES (Malay.), Apr. 1, 2010, at 15, available at [http://www.mfact.org/Press\\_Room/NewspaperCuttings/2010/Apr10/English/20100401NST\\_CopyrightTribunalToHandleRoyaltyIssuesSoon.pdf](http://www.mfact.org/Press_Room/NewspaperCuttings/2010/Apr10/English/20100401NST_CopyrightTribunalToHandleRoyaltyIssuesSoon.pdf).

<sup>151</sup> Jewell, *supra* note 90, at 24 (adding that through timely and efficient treatment of IP infringement cases, Malaysia builds confidence at home and in the international realm, which attracts foreign investors).

<sup>152</sup> *Id.*

<sup>153</sup> INT'L INTELL. PROP. ALLIANCE, MALAYSIA 2011 SPECIAL 301 REPORT 226 (2011) [hereinafter MALAYSIA 2011 SPECIAL 301 REPORT], available at <http://www.iipa.com/rbc/2011/2011SPEC301MALAYSIA.pdf> (reporting that cases from five years ago were only just being disposed of by the Malaysian IP courts).

<sup>154</sup> *Id.* at 221.

<sup>155</sup> *Id.* (noting that Malaysia needs to reemphasize the need to formalize and expand the IP courts, create better standard enforcement procedures, and train key officers, among other issues).

<sup>156</sup> Lee Shi-Ian, *Malaysia off the Priority Watch List for Movies, Music*, NEW STRAIT TIMES (Malay.), Oct. 3, 2006, at 6, available at [http://findarticles.com/p/news-articles/new-straits-times/mi\\_8016/is\\_20061003/malaysia-priority-watch-list-pirated/ai\\_n44337832/](http://findarticles.com/p/news-articles/new-straits-times/mi_8016/is_20061003/malaysia-priority-watch-list-pirated/ai_n44337832/) (reporting that Malaysia was off the international "priority watch list" after stringent enforcement measures took effect against copyright infringement and piracy).

construed as a small step in following Malaysia's copyright clean-up action, directed to getting India off the "priority watch list."

The Taiwanese film and music industries receive ample cooperation in taking down infringing material from the Internet.<sup>157</sup> Taiwan created a successful enforcement regime for IPRs, which helped remove the country from the Special 301 "watch list."<sup>158</sup> Special task forces were set up to police infringement of film, music, and books through filesharing.<sup>159</sup> In spite of Taiwan's efforts and effectiveness at enforcing its copyright law, piracy remains a problem.<sup>160</sup> Further, despite the protection of copyright laws, the length of the litigation process fails to stop infringement in time.<sup>161</sup> IPR protection becomes a means to prevent competitors from entering the market rather than a method to protect copyright owners from infringers.<sup>162</sup> Efforts to improve Taiwan's IPR protection are stunted by continuing piracy problems.<sup>163</sup> The above examples show that countries such as Malaysia and Taiwan present good examples to India for improving IPR enforcement and deterring infringement. Nevertheless, these countries also illustrate the hard and continuous work necessary to maintain a strong and successful IPR enforcement regime.

### III. PROPOSAL

India, like the United States, established a copyright law to protect artists and performers' creative outputs.<sup>164</sup> Unlike the United States, however, India suffers from an inability to enforce the laws efficiently and effectively, particularly copyright and other intellectual property laws.<sup>165</sup> As a result of ineffectual enforcement, copyright infringement runs rampant in the forms of piracy and unauthorized derivatives of copyrighted musical works.<sup>166</sup>

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<sup>157</sup> TAIWAN 2010 SPECIAL 301 REPORT, *supra* note 94, at 401 (explaining that Internet Service Providers ("ISPs") help the entertainment industries in removing infringing material from hosted sites).

<sup>158</sup> *Id.* at 400 (noting that because of Taiwan's efforts in creating an enforcement regime to curb piracy, the country was removed from the "watch list" in 2009).

<sup>159</sup> *Id.* at 402 (adding that the Ministry of Education has done a better job of monitoring illegal file-sharing of music and movies, and that the Ministry received help from special task forces created for such a purpose).

<sup>160</sup> *Id.* at 400 (explaining that even though Taiwan was removed from the "watch list," the IIPA expected the United States to continue monitoring Taiwan's enforcement and ensure that such a record was maintained).

<sup>161</sup> Shan *supra* note 98 (reporting that the long litigation processes in copyright cases fail to stop infringement and also fail to prevent the victims from suffering greater damages).

<sup>162</sup> *Id.*

<sup>163</sup> TAIWAN 2010 SPECIAL 301 REPORT, *supra* note 94, at 400 (stating that despite Taiwan's good efforts in creating an effective enforcement regime in most areas, a piracy problem persists).

<sup>164</sup> Indian Copyright Act § 14 (stating that "copyright" gives the holder a bundle of exclusive rights."); *see also* HANDBOOK OF COPYRIGHT LAW, *supra* note 22 (explaining that copyright is a bundle of rights given, by the law, to creators of artistic works).

<sup>165</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (noting that India continues to ineffectively enforce its IPR laws and that the United States has concerns about India's inadequate legal framework).

<sup>166</sup> INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 36 (summarizing that piracy keeps India's creative industries from reaching their potential and that the music market decreased 23 percent between 2006 and 2009).

India has taken measures to amend the Indian Copyright Act with the 2010 Amendment, which provides royalties for music composers and lyricists and also works better with international standards.<sup>167</sup> Despite various amendments to the Indian Copyright Act and gradual progress towards stronger enforcement measures, India continues to place on the Special 301 “priority watch list” year after year.<sup>168</sup> In order to be eliminated from the list, India must tighten enforcement measures for IP protection and give deference to copyright and other IP infringement cases in court.<sup>169</sup>

This section proposes methods to gradually decrease music copyright infringement and enforcement problems in India. First, this proposal suggests that India place tougher sanctions on high-profile domestic copyright infringers in an effort to stop unauthorized copying. Second, this section considers how the United States can work with India, beyond mere advising, to take steps to prevent further infringement of American copyrighted works.

#### *A. India Should Impose Strict Penalties on High-Profile Infringers*

India’s problem with rampant copyright infringement can be credited to its poor enforcement of the Indian Copyright Act. The trouble lies with courts’ enormous backlog of cases and, significantly, with the lack of importance given to copyright and other intellectual property court cases.<sup>170</sup> Further, Indian film producers and music directors have taken advantage of Bollywood and other regional Indian film industries’ relative anonymity for years by copying foreign copyrighted works.<sup>171</sup> With the advent of globalization, the original copyright owners as well as the listeners of the unauthorized derivative works now can make connections with the original and the copy.<sup>172</sup>

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<sup>167</sup> Anuradha Salhotra & Rahul Chaudhry, *Decoding The Good From the Bad in the Copyright Amendment Bill, 2009*, LEGALLY INDIA (Feb. 9, 2011), <http://www.legallyindia.com/201102091785/Intellectual-property-IP/decoding-the-good-from-the-bad-in-the-copyright-amendment-bill-2009> (reporting that the proposed 2010 Amendment seeks to conform the Indian Copyright Act to the WIPO Internet treaties and also ensures that lyricists receive royalties for commercial exploitation of their songs).

<sup>168</sup> INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 43 (noting that even though the 2010 Amendment has been heard by the Indian Standing Parliamentary Committee, the Bill does not adequately apply the WIPO Internet Treaties, nor does it address internet and other infringement problems and appropriate enforcement measures).

<sup>169</sup> 2010 SPECIAL 301 REPORT, *supra* note 21, at 26 (explaining that the United States urges India to improve criminal enforcements for IPR infringement cases and to change the view that IPR infringement cases are low priority issues).

<sup>170</sup> *Id.* at 26 (stating that the United States encourages India to improve its enforcement regime by requiring “expeditious judicial disposition” of IPR infringement cases).

<sup>171</sup> Afsana Ahmed, *I Lift Tunes Like Any Other Composer Does*, TIMES INDIA, Feb. 13, 2003, available at 2003 WLNR 9034252 (reporting music director Bappi Lahiri’s admission that he and other popular Bollywood music directors such as R.D. and S.D. Burman all “lifted tunes” from the Beatles, Tequila, and others).

<sup>172</sup> Moulee & Bevitt, *supra* note 5 (explaining that while copycatting has always been a problem in India due to the failure of obtaining proper authorization, globalization might stop Bollywood from freely copying from copyrighted works).

One way to help curb the frequent instances of copying by Bollywood and other regional film music directors would be for India to impose harsher and more stringent penalties to those who commit such crimes. If the authorities went after the popular musicians who generate the most profits from unauthorized derivatives, the public would understand the wrongs being committed.<sup>173</sup>

The Copyright Enforcement Advisory Council should make use of public information and discussion of famous musicians who copy from outside sources. The general public is aware of infringement and criticizes the big name music directors who commit this wrong.<sup>174</sup> Public awareness and recognition that hit music is copied from an existing work, will hopefully create a desire for original, creative music from talented artists.

The problem begins with popular music directors who routinely create hit songs by copying exiting copyrighted works. Popular music directors create hit songs by taking the easy route and copying off copyrighted works.<sup>175</sup> If the copyright enforcement authorities take the step to punish the most popular or prolific copycats, the necessity for original creativity will become obvious. Stronger penalties will also help push India out of the Special 301 “priority watch list.”<sup>176</sup> Additionally, India will be honoring its obligations under various international intellectual property treaties by providing stringent copyright protection to foreign works, just as for domestic works.<sup>177</sup>

Musicians in the Indian film industry have quite a bit of clout and punishments may be nonexistent. Awareness of copycats within the music-loving Indian public as well as in the international music community will gradually ensure that frequent copying desists. Just as the Malaysian and Taiwanese governments took the reins in targeting infringers, the Indian government should commit to reducing copyright infringement by penalizing high-profile violators.

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<sup>173</sup> Kumar, *supra* note 113, at 3 (reporting that the Internet has helped Indian film music lovers around the world trace and acknowledge the plagiarism in Indian film songs); *see also* Sahni, *supra* note 20 (stating that the biggest names in Hollywood frequently come under scrutiny for alleged plagiarism of songs).

<sup>174</sup> Kumar, *supra* note 113, at 3.

<sup>175</sup> Pratap Ravindran, *Hey! That's My Track*, BUS. LINE (India) (Nov. 13, 2002), <http://www.thehindubusinessline.in/ew/2002/11/13/stories/2002111300070100.htm> (stating that a large number of Bollywood musicians have achieved their fame and fortune from lifting tunes from artists in the West and claim “accidental copyright infringement” when caught).

<sup>176</sup> INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 36–37 (recommending that India needs to improve its judicial enforcement of the copyright laws, as well as impose fines and imprisonment upon violators of the copyright laws, in order to modernize and strengthen copyright protection).

<sup>177</sup> *Id.* at 43–44 (noting that the 2010 Amendment to the Indian Copyright Act must comport with the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty and that the 2010 Amendment’s extension of compulsory licenses of foreign works do not fall under the TRIPS Agreement and Berne Convention’s requirements).

*B. The United States Should Help Lead India Toward Better Copyright Enforcement*

The United States repeatedly has listed India in its Special 301 “priority watch list” due to India’s ineffective intellectual property law enforcement.<sup>178</sup> Though the United States continues to provide encouragement and suggestions to improve enforcement, infringement continues to run rampant in India.<sup>179</sup> As India works to curb domestic infringement, the United States can provide much needed international guidance and support to help get India off the “priority watch list.”<sup>180</sup>

So far, the United States utilizes the Special 301 Report to suggest methods to improve the poor IP enforcement in India.<sup>181</sup> To go beyond the report, however, would be much more beneficial than providing suggestions that go largely unheeded. Instead, the United States should use attaché programs that the United States Patent and Trademark Office (“USPTO”) uses to promote excellent standards of IP protection.<sup>182</sup> The United States Copyright Office should install a satellite office in India, just as the USPTO has with its attaché program, so that infringement in India can be monitored more effectively.

The United States, by leading India by the hand to ensure better protection of domestic and international copyright, acknowledges two facts. First, the United States considers India’s infringement problem a threat to both economic and intellectual property rights interests.<sup>183</sup> Second, the United States has an interest in helping India tighten its copyright laws and help educate both creators and owners of copyrighted works as well as those that willfully infringe about the copyright laws.<sup>184</sup>

Critics will undoubtedly find fault with this set up, particularly that the United States oversteps its boundaries when it becomes a watchdog for Indian infringers. Indian music directors may say that the United States should focus on infringement issues occurring on domestic shores before turning its focus to foreign copyright issues. The point, however, of such a parental approach is to enable a better understanding and respect towards intellectual property rights by the Indian government and the Indian public. Increased involvement by the United States will also enable India to better respect domestic and foreign copyrighted works. As the United States and India become closer economic partners, the mutual protection of intellectual property will become an important factor in their economic relations.

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<sup>178</sup> 2011 SPECIAL 301 REPORT, *supra* note 46, at 2 (listing India as one of the countries in the 2011 “priority watch list”).

<sup>179</sup> *Id.* at 28 (saying that India has made some improvements to its IPR protection, but weak enforcement continues to be a problem).

<sup>180</sup> *Id.* at 29 (noting that the United States recommends what India must do to improve its status in the Special 301 Report and that the United States hopes to be engaged with India in pursuing these improvements in the coming year).

<sup>181</sup> *Id.*

<sup>182</sup> *Intellectual Property Rights (IPR) Attaché Program*, U.S. PATENT & TRADEMARK OFFICE, available at <http://www.uspto.gov/ip/global/attache/index.jsp>.

<sup>183</sup> SPECIAL 301 STATISTICS, *supra* note 124, at 1; *see also* INDIA 2011 SPECIAL 301 REPORT, *supra* note 104, at 36 (stating that India’s music market shrank over 23 percent between 2006 and 2009, and that piracy and IPR infringement stifles India’s markets and stalls its creative industries).

<sup>184</sup> 2011 SPECIAL 301 REPORT, *supra* note 46, at 28 (noting that the United States recommends various suggestions for India to improve its IPR protection, from patents to copyrights).

## IV. CONCLUSION

India still has a long way to go before its film and music industries cease making unauthorized reproductions without permission or credit. Nevertheless, authors within the Indian entertainment industries are slowly recognizing the need to protect copyrighted works, whether such works belong to them or to foreign authors.<sup>185</sup> If India follows the lead of other developing countries that have increased IPR protection and enforcement, India can move itself off the United States' Special 301 "priority watch list." India should use the examples set by Malaysia and Taiwan and impose penalties on high-profile copyright infringers in the Indian music industry. Finally, by working together with the United States and learning from its enforcement of copyright laws, India can ensure that copying and infringement decreases and the level of creativity rises.

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<sup>185</sup> Raghavan, *supra* note 2, at 9.