

Legal Issues In
Draft Cinematograph (Amendment) Bill 2021

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Recommendations made by ALG in its Firm Submission in Response
There to

What is the Cinematograph Act?

- An Act to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs.
- Cinematograph Act 1952 establishes Central Board of Film Certification (CBFC).
- CBFC is responsible for issuing/denying certificates to films



Cinematograph (Amendment) Bill 2021

- It is a revision of the Cinematograph (Amendment) Bill 2019
- The Bill seeks '*to tackle the menace of film piracy*'.
- The key amendments proposed by the Bill are:

1. **Age-based certification:** Further age-based groups: U/A 7+, U/A 13+ and U/A 16+.
2. **Revisionary Power with Central Government:** Central Govt can direct Chairman, CBFC to re-examine an already certified film.



3. **Provision against piracy:** Violation shall be punishable with imprisonment and fine.
4. **Eternal certificate:** Amendment to certification validity from 10 years to perpetuity.

Age-based sub-division of category UA

- Sub-division of U/A category into U/A 7+, U/A 13+ and U/A 16+
- ❖ **ALG's Recommendation**
 - An additional age category, viz. U/A 4+ to cover younger group of children, between the ages of 4-7. This will give filmmakers more flexibility in terms of creating and tailoring their content to different age groups.
 - The amendment should also extend to Section 5C [Appeals], Section 7(1) and Section 7(3) [Penalties for Contravention].

- ❖ **Inclusion of definition to identify scope of “public exhibition”.**
- The Bill identifies the categories of certification for ‘unrestricted public exhibition’. However, the ambit of “public exhibition” is not defined.

- ❖ *ALG’s Recommendation*
- We have recommended the below insertion in the definition clause of section 2 of the Cinematograph Act, 1952:
- *““public exhibition” shall include the audio or visual dissemination of a film or part thereof or making available a film or part thereof, through use of a public medium, to persons not directly connected with the production, distribution, promotion or certification of that film. Provided that exhibition caused by the producer of the film, by invitation, to a select class of members of the public for the purpose of ascertaining their opinions on or reactions to the film shall not be public exhibition in terms of this Act, where prior permission has been taken from the Chairperson.”*

- ❖ **Pictorial representation and color coding of the certification.**
- ❖ *ALG's Recommendation*
- We have recommended strong pictorial representation and color coding of the certificates for easy identification of the category of certification by a larger section of the audience. For instance, the U certificate could carry a green background, the A certificate a red background, etc.



Revisionary Powers with Central Government

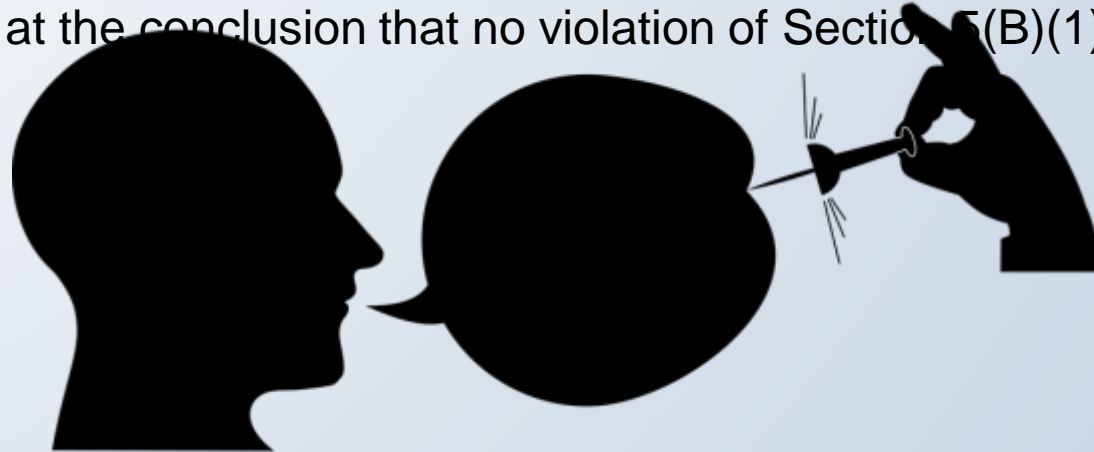
- Central Government may direct the Chairman of the CBFC to re-examine a film already certified for public exhibition.
- This power can be exercised in case of violation of Section 5B(1) of the Cinematograph Act, 1952.

❖ *ALG's Observations*

- Conferring such power goes against the essence of Supreme Court ruling in *Union of India v. K.M. Shankarappa*, [(2001) 1 SCC 582] wherein it had struck down the revisional powers of the Central Government under Section 6(1) extending to films already certified as unconstitutional.
- The reasonable restrictions under Article 19(2) have been reproduced in Section 5B(1).
- Under Section 5B(2) the Central Government has **also issued guidelines** to be followed by CBFC while sanctioning films for public exhibition.

- The members of the CBFC, examining committee and advisory panels are directly appointed by the Central Government and the Act does not lay down any criteria or qualification for such appointment.
- Revisionary powers with Central Government leaves scope for manipulation or stifling of free speech by the Government. Revisional power with the Central Government implies an additional layer of direct Government censorship that goes beyond the existing process run by the CBFC.
- Undue delay in the certification process given.
- No specified mechanism or time-period in disposal of such matters.
- Bill is silent on the consequence of certification in the event that the CBFC upon such direction arrives at the conclusion that no violation of Section 5(B)(1) has taken place.

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❖ ALG's *Recommendations*

- We have recommended that the amendment giving powers to the Central Government to revoke a film certificate be done away with.
- To deal with complaints relating to film certification, the Film Certification Appellate Tribunal (FCAT) may be re-instated, or a separate grievance redressal mechanism be put into place.
- The body or redressal mechanism should be **neutral, independent and autonomous** and may function like the erstwhile FCAT.
- The composition should be a mix of individuals from different walks of life who by reason of their profession, qualifications or experience in the field of art, cinema, drama, law, literature, history, sociology, psychology, media, education, performing arts, or public administration are deemed fit to judge the effect of film on the public and also possess cinematic understanding.
- For e.g., Members recommended by the National Film Development Corporation or the FFSI (Federation of Film Societies of India) or Representatives of the local film industry, as recommended by FFI (Film Federation of India).



Amendments to the provisions related to Piracy

ALG's Observations

- The provision prohibits using an audiovisual recording device 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.
- Provision fails to address other modes of piracy.
- The Bill is short of other important provisions such as those included in Sections 64 and 65 of the Copyright Act, 1957
- Recording may still be permitted, if it is for any of the purposes as set out under Section 52 of the Copyright Act.
- An aggrieved person will have remedy under two legislations, the Cinematograph Act and the Copyright Act (provides for lesser penalty)

❖ *ALG's Comment(s)/Recommendation(s)*

- We have recommended insertion of the below italicized text in the prohibitory Section 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 form of recording which includes copying from original storage media using audiovisual recording hardware or software or 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.

- Proposed provisions be brought in harmony with the related provisions of the Copyright Act.
- E.g., introducing a comprehensive chapter on 'Piracy' referring to provisions of the Copyright Act. [such as Section 64 – Power of Police to Seize Infringing Copies]



- The use of the term ‘author’ may also be replaced by “*owner of copyright*”
- Clarity as to enforcement of punishment against offenders, including a distinction between those who commit the act of piracy and those who only access the pirated content.
- There should also be clarity as to the affixation of the chain of legal liability for contravention of the provisions *i.e.* liability among producer, distributor, exhibitor etc.



THANK YOU!

Questions?

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