

NAVIGATING THE INTRICACIES OF FAIR USE, DISCLAIMERS, AND COPYRIGHT IN THE FILM INDUSTRY

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ABSTRACT

Filmmakers and audiences alike exhibit a profound fascination with narratives rooted in reality, particularly those involving real individuals. Biographical films, or biopics, cater to this inherent curiosity. However, the depiction of actual lives inevitably invites the specter of defamation. Consequently, the film certification authority mandates that creators of biopics incorporate disclaimers, ostensibly to mitigate legal repercussions and prevent the "hurt of sentiments." While these disclaimers serve a valid function in demarcating fact from fiction, their potential exploitation to circumvent legal liabilities or suppress dissent raises alarming concerns. The case of "The Dirty Picture" exemplifies such misuse, wherein the filmmakers strategically employ disclaimers to insulate themselves from legal scrutiny and silence critical voices. This scenario underscores an urgent need for transparency, accountability, and equitable treatment within the certification framework, ensuring that disclaimers are not weaponized to distort narratives or evade responsibility. This study adopts a doctrinal research methodology, drawing upon both primary and secondary sources, particularly critiques of "The Dirty Picture." It scrutinizes the filmmakers' assertions denying the film's status as a biopic of Silk Smitha, despite evident parallels to her life, thus provoking inquiries into the filmmakers' intentions and the potential for disclaimers to serve as a shield against accountability.

Keywords: *Biopic, Copyright, Defamation, Disclaimer Fair use, Film Maker*

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1.0 INTRODUCTION

The utilization of copyright disclaimers within the realm of biographical films has emerged as a multifaceted and contentious issue, particularly in relation to defamation and the

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safeguarding of sentiments. While these disclaimers ostensibly serve to delineate between fictionalized components and actual individuals, their application becomes problematic when employed as a protective veneer to elude legal ramifications or suppress dissenting perspectives. This predicament is vividly illustrated in the film "The Dirty Picture," which asserts that its characters are fictitious and that any resemblance to real individuals is entirely coincidental and unintentional. Despite the filmmakers' adamant disavowal of the film as a biopic of Silk Smitha, the narrative bears undeniable parallels to her life, thereby prompting inquiries into the filmmakers' motivations. This scenario underscores the potential for disclaimers to be misappropriated as a mechanism for leveraging artistic license while simultaneously evading accountability. In this context, copyright disclaimers assume a pivotal role, signifying that the user of copyrighted material acknowledges the ownership of such rights and engages with the material either within the parameters of fair use or with explicit permission from the copyright holder.² In India, the doctrine of fair use regarding copyrighted material is delineated under Section 52 of the Copyright Act of 1957. Although the Act does not explicitly articulate the concept of copyright disclaimers, individuals or organizations may opt to incorporate them as a means to assert ownership over works protected by copyright or to elucidate permissible applications of said works. A copyright disclaimer typically encompasses the copyright symbol or the term "Copyright," the designation of the copyright proprietor, and a statement delineating the terms under which the work may be utilized.

Within the domain of biographical films, disclaimers are imperative for elucidating the film's nexus to factual occurrences and fictional elements, thus safeguarding against potential defamation and mitigating the risk of offending public sentiments. Nevertheless, the deployment of disclaimers may evoke trepidation when filmmakers wield them as a facile labeling mechanism to secure legal immunity and stifle dissenting viewpoints.

The instance of "The Dirty Picture" starkly illustrates the tension between the filmmakers' assertion that the film is entirely fictitious and the narrative's evident parallels to the life of Silk Smitha. The conscious repudiation of any connection to Silk Smitha, despite manifest similarities, may be perceived as disingenuous, reflecting an attempt to circumvent legal repercussions or allegations of defamation. This situation engenders critical inquiries into the

² Leanne Stendell, 'Fanfic and Fan Fact: How Current Copyright Law Ignores the Reality of Copyright Owner and Consumer Interests in Fan Fiction' 58 SMU LAW REVIEW.

impartiality of the film certification process and raises concerns regarding the possible influence of political agendas or personal biases on the granting of certification and the protection afforded to filmmakers.

While copyright disclaimers are not universally mandated across all jurisdictions, several nations, including the United States, the United Kingdom, and Australia, possess legal frameworks that acknowledge or endorse their utilization. Provisions about fair use, exemplified in Section 107 of the United States Copyright Act, permit the limited appropriation of copyrighted material without the necessity of securing permission from the copyright holder. However, the adjudication of fair use is inherently contingent upon a case-by-case analysis, taking into account various factors such as the purpose and nature of the usage, the quantity of material employed, and the potential ramifications for the market about the copyrighted work.

The marketing strategy employed for "The Blair Witch Project" adeptly utilized a disclaimer to cultivate an ambience of realism, leading numerous viewers to erroneously perceive the events depicted as authentic.³ This engendered a significant number of audience members to feel deceived, prompting them to admonish the directors for their failure to delineate the film as a work of fiction. The ensuing discourse illuminated the responsibilities incumbent upon filmmakers in the presentation of fictional narratives and underscored the critical importance of unambiguous disclaimers to obviate misunderstandings.⁴ In the aftermath of this controversy, filmmakers have adopted a more prudent approach, frequently incorporating explicit disclaimers to mitigate potential backlash from viewers. Henceforth, copyright disclaimers serve to establish ownership and enable the use of copyrighted material within the boundaries of fair use. However, in the context of biopics, the use of disclaimers can be contentious, particularly when they are employed to avoid legal consequences or silence dissent. The case of "The Dirty Picture" exemplifies the potential misuse of disclaimers and raises concerns about the integrity of the film certification process and the protection of public interest.

³ *The Blair Witch Project* (Directed by Daniel Myrick and Eduardo Sánchez, Haxan Films 1999).

⁴ Sayed Qudrat Hashimy, 'Comparative Insights into Copyright Disclaimers of the United States and India' (2024) 1 Annual International Journal of Vaikunta Baliga College of Law (AIJVBCL) 1.

2.0 COPYRIGHT LAW

In India, the principle of fair use regarding copyrighted material is enshrined in Section 52 of the Copyright Act of 1957.⁵ This provision allows for the utilization and reproduction of copyrighted works without transgressing the rights of the copyright holder, contingent upon the inclusion of a copyright disclaimer. Fair use is sanctioned for purposes such as personal or private use, scholarly research, critique, review, and reporting on current events. By employing a copyright disclaimer, one may legally reproduce a copyrighted work. Conversely, the omission of such a disclaimer during the utilization of copyrighted material may result in infringement. The copyright disclaimer is pivotal in safeguarding the rights of authors and artists, as it facilitates the utilization of their works within the parameters of fair use.⁶ A copyright disclaimer serves dual purposes: asserting ownership of original content and disclosing the application of copyrighted material under the aegis of "fair use." It assists in establishing ownership while deterring unauthorized appropriation. Disclaimers may take two forms: one for original works and another for content that incorporates copyrighted material. While a disclaimer can be beneficial, it does not guarantee absolute legal protection; thus, consulting a legal professional is prudent. Notably, the Indian Copyright Act of 1957 does not explicitly reference copyright disclaimers. Instead, the Act primarily concentrates on copyright protection, the rights of copyright owners, and the stipulations and exceptions pertinent to those rights. It encompasses clauses on copyright registration, infringement, fair use, and remedies for violations.⁷ Although the Act does not mandate a copyright disclaimer, individuals or organizations may opt to include one to assert ownership of copyrighted works or to delineate permissible uses. The objectives of such a notice are to alert potential infringers to the rights of the copyright owner and to notify others of their existence. A copyright disclaimer typically encompasses several critical components: the copyright symbol © or the term "Copyright," which signifies that the work is protected under copyright law; the name of the copyright holder, identifying the individual or entity that possesses the copyright; a declaration of ownership, asserting that the copyright proprietor is the sole owner of the content in question; and a permission statement, elucidating whether the copyright holder has authorized the use of the work. Should the usage fall within the ambit of the fair use doctrine a legal tenet that permits limited appropriations of copyrighted material without

⁵ 'Section 52 in the Copyright Act, 1957' <<https://indiankanoon.org/doc/1013176/>> accessed 10 May 2023.

⁶ Hashimy (n 4).

⁷ Sayed Qudrat Hashimy, 'Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?' (2023) 1 Intellectual Property and Corporate Law Review 1.

the owner's consent such utilization is thereby legitimized. Ultimately, a copyright disclaimer serves as a formal assertion by the copyright owner, establishing their claim to the original content. In the context of disclaimers within "The Dirty Picture," the legal quandary of ownership arises: who possesses the rights? In instances where an artistic or literary work is created under an employment contract, the employer typically retains rights over the original work. It is crucial to note that a copyright disclaimer does not in itself confer permission for the use of copyrighted material. The creator of an original work possesses the option to secure copyright protection through the appropriate copyright office, thereby safeguarding their creation. Copyright serves as the official mechanism to protect one's unique creative output, endowing the copyright owner with exclusive authority to utilize the work. The author of an original work retains the capacity to shield it from unauthorized use.

The primary function of a copyright disclaimer is to clarify that the individual utilizing the material does not own the copyright but is engaging with it within the confines of fair use as delineated by copyright law. Fair use is a legal doctrine that allows for the appropriation of copyrighted material for purposes such as criticism, commentary, news reporting, education, scholarship, or research. A copyright disclaimer is commonly invoked when one incorporates copyrighted material be it artwork, images from films or television, or excerpts from literary works into their creation. By appending a fair use copyright disclaimer, the individual aims to communicate that their use of the copyrighted material is undertaken in good faith and for legitimate purposes, adhering to the parameters of fair use.

It is imperative to recognize, however, that the determination of whether a specific use qualifies as fair use is conducted on a case-by-case basis, taking into account various factors such as the purpose and nature of the use, the quantity and significance of the portion utilized, and the potential impact on the market for the copyrighted work. If one intends to utilize copyrighted material while relying on the fair use doctrine, it is advisable to seek legal counsel to assess the particular circumstances and ensure adherence to copyright law.

Copyright disclaimer requirements vary across jurisdictions. While many countries do not mandate copyright disclaimers, some, such as the United States, United Kingdom,⁸ and Australia,⁹ have legal frameworks allowing their use. In the United States, a copyright disclaimer can be utilized alongside fair use provisions under Section 107 of the Copyright

⁸ 'How Copyright Protects Your Work' (*GOV.UK*) <<https://www.gov.uk/copyright>> accessed 10 May 2023.

⁹ 'Copyright Basics' (*Attorney-General's Department*) <<https://www.ag.gov.au/rights-and-protections/copyright/copyright-basics>> accessed 10 May 2023.

Act.¹⁰ In the UK, disclaimers are not necessary but can be included in contracts due to the recognition of fair dealing.¹¹ Australian copyright law includes fair dealing provisions, and while disclaimers are not obligatory, they are permitted. To ensure compliance with local regulations, it is prudent to consult the specific copyright laws pertinent to a jurisdiction or to seek legal counsel regarding the requisite practices and requirements for copyright disclaimers. Under Section 107 of the Copyright Act, the fair use of copyrighted material is sanctioned for several designated purposes: education and research, scholarship, criticism, news reporting, commentary, and teaching. These categories facilitate the limited appropriation of copyrighted material without necessitating prior permission from the copyright owner. Nevertheless, it remains imperative to scrutinize the particular circumstances and relevant factors involved in assessing whether a given use qualifies as fair use. A copyright disclaimer serves to legally incorporate copyrighted material into the oeuvre of another author, establishing a framework that delineates the boundaries of permissible use. The determination of fair use hinges upon a confluence of factors, including the purpose and character of the use, the amount of material appropriated, and the resultant impact on the market for the original work. Such disclaimers elucidate non-infringement and are prevalent in various contexts, including blogs, websites, and other digital platforms.¹²

The salient features of a copyright disclaimer encompass source attribution, the protection of rights, the specification of obligations, and the safeguarding of creative endeavours. Disclaimers can be categorized into several types: warranty disclaimers, investment disclaimers, confidentiality disclaimers, no-responsibility disclaimers, views-expressed disclaimers, and fair use disclaimers. The incorporation of a disclaimer necessitates the explicit mention of the year of publication and the author's name, the utilization of the copyright symbol, the strategic placement of the disclaimer in a conspicuous location, and the inclusion of the fair use clause. In the realm of film, the application of copyright disclaimers is imbued with numerous legal complexities:

¹⁰ '17 U.S. Code § 107 - Limitations on Exclusive Rights: Fair Use' (*LII / Legal Information Institute*) <<https://www.law.cornell.edu/uscode/text/17/107>> accessed 10 May 2023.

¹¹ 'Disclaimer and Copyright Page' <<https://www.citizensadvice1066.co.uk/disclaimer-copyright>> accessed 10 May 2023.

¹² Sayed Qudrat Hashimy and MS Benjamin, 'The Convolution of Artificial Intelligence and Intellectual Property Rights' (2023) 6 *International Journal of Law Management and Humanities*, 2891.

2.1 *Ownership*

Films have multiple creative elements, and understanding copyright ownership is crucial to obtain necessary permissions and licenses. Ownership in the film industry involves rights and control over a film and its elements. Key points include copyright ownership, work-for-hire agreements, collaboration and joint ownership, chain of title, distribution and licensing rights, assignment and transfer of rights, and co-production agreements. Consulting legal professionals ensures compliance and protects the film's rights.

2.2 *Clearance and Licensing*

Obtaining clearances and licenses for copyrighted materials used in films is essential, including music, images, artwork, and clips from other films. Clearance and licensing are crucial in the film industry to ensure legal compliance and obtain permissions for copyrighted materials and intellectual property. Key points include conducting thorough research, identifying rights holders, negotiating license agreements, acquiring music licenses,¹³ obtaining location and property releases, considering trademarks and branding, understanding fair use and public domain, and seeking legal advice. These processes protect the film's integrity and help avoid infringement and legal disputes.

2.3 *Fair Use*

Filmmakers may rely on fair use, but fair use in the case of the United States depends on the following factors:¹⁴

- i. **Purpose and Character:** Nonprofit educational uses and transformative works are more likely to be considered fair use.
- ii. **Nature of the Work:** Fair use applies more broadly to nonfiction and less to creative works or those commercially available for educational purposes.
- iii. **Amount Used:** The less used, the more likely it's fair use. Using the main content excessively may not qualify.
- iv. **Effect on the Market:** If the use of substitutes for purchasing the original work, it weighs against fair use.

¹³ Hashimy (n 7).

¹⁴ Leon R. Yankwich, 'What Is Fair Use?' (1954) 22 The University of Chicago Law Review 203.

Fair use is evaluated case-by-case, considering these factors. No precise limits exist, and courts assess the specific circumstances. Fair use is a legal defence, but its application is complex and subjective.

Whereas in the case of India Fair dealing in Indian copyright law (Section 52) allows certain uses of copyrighted works without permission. It applies to private use, research, criticism, and review. Fair dealing distinguishes legitimate uses from copying and upholds freedom of expression. The court determines fair dealing based on the extent of use and purpose. There are no fixed limits; the court's discretion considers the public interest.¹⁵

2.4 *Publicity and Personality Rights*

Obtaining permissions or releases is necessary when using the likeness of recognisable individuals in films, considering jurisdiction-specific laws. Publicity rights safeguard an individual's authority over the commercial utilisation of their name, image, or parity. It is crucial to obtain consent and release from individuals featured in films, particularly public figures or recognisable individuals.¹⁶ Unauthorised commercial use of someone's likeness can result in legal consequences and potential liability. While transformative use, like in documentaries or fictional works, may be protected, the specifics of laws and exceptions differ by jurisdiction. Filmmakers should exercise caution to prevent defamation or false endorsement and accurately portray individuals. Given the variations in publicity and personality rights laws across countries, understanding and adhering to local regulations is vital. Consulting with an entertainment lawyer aids in navigating these intricacies and ensuring compliance with applicable laws and regulations. Ultimately, respecting individuals' rights is essential to steer clear of legal disputes and maintain ethical standards in filmmaking.

¹⁵ Lydia Pallas Loren, *Fixation as Notice In Copyright Law*, 96 BOSTON UNIV. W REV. (2013).

¹⁶ Melville B Nimmer, 'Copyright Publication' (2016) 56 COLUMBIA LAW REVIEW 186.

2.5 *International Considerations*

Copyright laws vary across countries, so filmmakers must know the regulations and obtain licenses or permissions for international distribution.¹⁷ Dealing with international copyright issues requires careful consideration.¹⁸ Here are some practical tips to navigate these challenges:

- a) Understand local copyright laws
- b) International treaties and agreements
- c) Copyright Registration
- d) Obtain permissions and licenses
- e) Use copyright notices
- f) Monitor and enforce copyrights
- g) Utilize international resources

2.6 *Indemnification and Liability*

Including a copyright disclaimer is beneficial, but it does not absolve filmmakers from liability. Obtaining clearances, licenses, and proper documentation is crucial. It is essential to ensure that all necessary permissions, licenses, and clearances are obtained to comply with copyright laws. This helps minimise the risk of infringement claims and associated liabilities.

3.0 DISCLAIMERS AND IDENTITY IN BIOPICS

The audiences are inquisitive about the hushed-up life of actual persons, especially of the transgressors. Biopics cater to this fascination of the audience. Biopics are films that are based on the life of real people. It is mandatory for the biopic to carry a standard disclaimer: “All the characters and events depicted are fictitious. Any resemblance to a person living or dead is purely coincidental”. Disclaimer is emplaced by the filmmaker voluntarily or on the insistence of the film certification authority to vouch that there are no instances of defamation of the subject or contents that hurt public sentiments in the film. Practically it is a paratext that clarifies the film’s relationship with facts and fiction to the audience, but it can also be a

¹⁷ Copyrightlaws.com Editor, ‘Introduction to International Copyright Law’ (*Copyrightlaws.com: Copyright courses and education in plain English*, 7 February 2023) <<https://www.copyrightlaws.com/introduction-international-copyright-law/>> accessed 10 May 2023.

¹⁸ Sharon Bar-Ziv and Niva Elkin-Koren, ‘Behind the Scenes of Online Copyright Enforcement: Empirical Evidence on Notice & Takedown’.

filmmaker-friendly tool which, in the name of artistic license, allows abuse. *The Dirty Picture* was meant to be a biopic of Silk Smitha, a dancer-actress who has acted and danced for popular spunky song numbers in all the languages of south India and in Hindi as well. The film was speculated as a biopic of Silk Smitha, the makers of the film, including the director, producer, and the reel Silk Vidya Balan maintained during the promotion of the film and also through the film's disclaimer that the film is not based on the life and experiences of Silk Smitha. The disclaimer of the film claims that the characters in the film are "fictitious and imaginary" If there is any resemblance to any person living or dead, then it is "purely coincidental and unintentional". There seems to be a conspicuous conflict between the intent of the filmmaker, who claims that the film is fictitious and the content of the film, which is silk and silk. This article problematises the claims of disclaimers and analyses how the makers of *The Dirty Picture* use the disclaimer as a convenient labelling device to secure legal insulation and coerce the dissenting voice into the realm of silence. It is on the trope of fidelity that the biopic genre faces challenges from various quarters. The claim of the biopic that it is based on fact or fiction is manifested through the agency of the disclaimer. The film's disclaimer is "a disclosure made with the purpose of clarifying potentially misleading or deceptive statements."¹⁹ Under the guise of section 5 of the Cinematograph Act 1952, the Film Certification Appellate Tribunal (FCAT) has been established by the Ministry of Information and Broadcasting to deal with film-related claims and as a statutory body to receive appeals in this regard.²⁰ Makers can voluntarily insert a disclaimer. The FCAT, as a statutory film-certification body, direct the makers to append disclaimer/s. The makers are guided to concede for the sole purpose of procurement of certification. Bollywood filmmakers spice biopics up by adding drama to emotionalise the audience for commercial success. It is, therefore, mandatory for the biopics to carry a disclaimer as they traverse a tough terrain in which there are dangers of invading a person's privacy, misrepresentation of her/his life or projections that hurt the sentiments of family, religion, caste, tradition, practices, institutions, professions and so on. Expressing apprehensions about the disclaimer, Johannes Mahlknecht states, "Legally speaking, then, it is safer to renounce *all* claims of

¹⁹ Mary Ann Stutta and Garland G Hunnicutt, 'Can Young Children Understand Disclaimers in Television Commercials?' (1987) 16 *Journal of Advertising* 41.

²⁰ 'Film Certification Appellate Tribunal | Ministry of Information and Broadcasting | Government of India' <<https://mib.gov.in/film/film-certification-appellate-tribunal>> accessed 10 May 2023.

authenticity because with it, one renounces all responsibility for potential misrepresentations of fact, whether willful or accidental.”²¹

The disclaimer of *The Dirty Picture* claims upfront that the film is a work of fiction; the characters are imaginary and deny the chances of resemblance as “purely coincidental and unintentional”. The denial of the disclaimer warrants that the film is veritably on Silk Smitha. Indeed, this disclosure encloses in the bosom a “censorial compromise between the artist and any claims to the offence?” The film’s disclaimer follows Friedrich Nietzsche’s quote:²² “You must have chaos within you to give birth to a dancing star.” The quote appears soon after the disclaimer to divert the audience and reinforce the intentions of the filmmaker and generate consent that the film, indeed is about the “dancing stars/girls” of south India (Jayamalini, Disco Shanti and Anuradha who were contemporaries of Silk Smitha danced for the Indian version of cabaret songs) and not about Silk Smitha. Vidya Balan, who plays Silk, in an interview during the film’s promotion, denied that the film is a biography of the southern dancing star’s life. She said: “The film is primarily about dancing stars in the southern industry. I am named Silk because she was perhaps the most prominent of them all”.²³ Milan Luthria, the director of the film parrots the very lines of Vidya: “We have always said that it was based on a dance girl, but it was not Silk Smitha as in those days there were other women in the industry like Disco Shanti. The story is about a dancing girl who left a mark while she was pitted against so many men.”²⁴ Besides, “it is the journey of a dancer and what goes on in her mind, what made her a phenomenon and how troubled relationships were part of her life, how she battled fame, fortune and alcohol. So it is not about Silk. You have to see it to believe that it’s a work of fiction.”²⁵

Ektha Kapoor, the producer of the film, affirms that the film “chronicles the journey of Silk Smitha, who in my opinion, was one of the boldest and most courageous women out there. At no point have we tried to justify her (Smitha) or criticise her. We will just let the audience

²¹ Johannes Mahlknecht, ‘The Textual Paratext — the Cinematic Motto and Its Visual Presentation on the Screen’ (2011) 27 *Word & Image* 77.

²² ‘716 Apar Gupta, Movie Disclaimers: A Contract with the Offended’ <https://www.india-seminar.com/2019/716/716_apar_gupta.htm> accessed 9 May 2023.

²³ “‘The Dirty Picture’ Is Not about Silk Smitha, Refutes Vidya Balan’ <<https://www.dnaindia.com/entertainment/report-the-dirty-picture-is-not-about-silk-smitha-refutes-vidya-balan-1617994>> accessed 9 May 2023.

²⁴ ‘Lust Is Part of Our Lives: The Dirty Picture Director’ (*Hindustan Times*, 26 November 2011) <<https://www.hindustantimes.com/india/lust-is-part-of-our-lives-the-dirty-picture-director/story-O4CmzbPALtQsRiSEg5fKhO.html>> accessed 9 May 2023.

²⁵ Ekta Kapoor, ‘It’s Saucy, Sensational and Shocking!’ *The Times of India* <<https://timesofindia.indiatimes.com/blogs/ekta-kapoor-blog/it-s-saucy-sensational-and-shocking/?val=3728&source=app&frmapp=yes>> accessed 9 May 2023.

live her life.” These polarised statements by the director, the lead artist, the producer and the disclaimer do not render the audience, especially of south India, buy the claim that it is “purely coincidental and unintentional.” The South Indian film-goers are very well aware of “Silukku”, her image and her rebellious life and tragic death. The likeness between Reshma, who transforms into Silk and Silk Smitha is evident enough. The disclaimer’s denial and name change can only serve as a gimmick to avoid litigation. The disclaimer’s negation allows for inconsistencies and contradictions. It affirms that the characters are fictitious and presupposes the “resemblance” to the “dead”. It denies the semblance, and if found, one has to take it to be “accidental and unintentional”. The disclaimer affirms and denies its very own claims.

Silk Smitha’s brother, Vadlapati Naga Vara Prasad, sent a legal notice to the film’s producer Ektha Kapoor and director Milan Luthria to stall the film’s screening. He accused them of making the film without the family’s consent and of the obscene portrayal of his sister. He added that the film was “made on Smitha’s life, barring some modifications to suit the film.”²⁶ In response to the charge of mischaracterisation, the film’s publicist issued a statement: “It draws inspiration from the strugglers in the 1980s whose indomitable spirit made them emerge triumphant and create a unique space for themselves in a male-dominated film industry. The film is not a formal biopic or biography, as is being speculated. It is a work of fiction, and any character’s resemblance to real persons, living or dead, is coincidental.”²⁷ The makers of *The Dirty Picture* clarified to the court that the film was not based on the life of the actress-dancer Silk Smitha. The film was already certified and had fortified itself with a disclaimer. The Andhra Pradesh High Court dismissed the writ and cleared the movie for release.

The change of the name of the character Silk in the film, which is otherwise suggested, did not materialise. If the filmmakers do not intend to project real Silk, then why use the name Silk? Is it just to get away from litigations or a foxy publicity stunt? Was it intentional and engineered to take up the project as the subject was dead? The filmmakers are too sure that an illiterate Dalit brother can not save his sister. Is the affair entangled with the superstars of the

²⁶ ‘Silk Wasn’t “dirty” at All, Says Brother - India Today’

<<https://www.indiatoday.in/movies/celebrities/story/silk-smitha-the-dirty-picture-brother-148203-2011-12-08>> accessed 9 May 2023.

²⁷ ‘Makers Say “Dirty Picture” Is Not a Formal Biopic’ (*News18*, 4 November 2011) <<https://www.news18.com/news/india/makers-say-dirty-picture-is-not-a-formal-biopic-415826.html>> accessed 9 May 2023.

dominant caste? The screen name Reshma is a contrived measure as she transfigures only after 22 minutes of the beginning of the movie, and after that, she is Silk (22:03; Running time 144 minutes). If dancing girls were a real inspiration for the filmmakers, we had great dancers like Aruna Irani, Bindu, Helen, Shashikala, and Padma Khanna from Bollywood itself. The insistence on retaining the actual name of the subject and claim that similarity is unintentional and accidental seems too “dirty”. Silk Smitha’s brother claims that the film was “made on Smitha’s life” and further charges that it is made in consultation with Smitha’s Doctor friend, who is believed to be the reason for her doom. The South Indian origin of the subject, poverty, dark skin, fame, success, the image of a sex siren, lack of support, miserable love life, rebellious spirit, the decision to produce films, superstars, press, vulnerability, alcoholism, and her death at the age of 36 these similitude are not unintentional and accidental. The “dirty secret” lies in identifying a vulnerable female victim subject for the biopic who is dead, a Dalit, an outcaste in the film industry because of her sex siren image, and negates the subject’s identity for the very same reasons. Silk Smith’s life is commodified and marketed in the garb of a grand feminist narrative. The disclaimer claims are, in fact, intentional and, therefore, political.

3.1 Unravelling the Legal Controversy

The film's publicist clarified that "The Dirty Picture" is not a formal biopic but a romantic journey of an ambitious starlet in the 1980s film industry.²⁸ It is a work of fiction inspired by the struggles of aspiring actors during that time. The filmmakers state that any resemblance to real individuals is coincidental. The clarification came after Silk Smitha's brother sent a legal notice claiming they didn't seek permission. The film is described as a spectacular musical entertainer that celebrates the spirit of newcomers and tells a love story. The Andhra Pradesh High Court dismissed a petition seeking a ban on the movie "The Dirty Picture," filed by the late actress Silk Smitha's brother. The court accepted the filmmakers' claim that the movie was not based on Silk Smitha's life, and the censor board supported this decision. Silk Smitha was a popular actress in South Indian films, but she died by suicide in 1996 at the age of 36.²⁹ The legal issues surrounding the scenario you described primarily revolve around defamation,

²⁸ 'The Dirty Picture Is Not a Formal Biopic' <<https://www.ndtv.com/entertainment/the-dirty-picture-is-not-a-formal-biopic-602349>> accessed 10 May 2023.

²⁹ 'Bollywood News, Latest Bollywood News and Celebrity Gossips Today' (*Hindustan Times*) <<https://www.hindustantimes.com/entertainment/bollywood>> accessed 10 May 2023.

privacy rights, and the use of real people's lives for commercial purposes without their consent. Here are some key points to consider:

3.2 *Defamation*

The brother of Silk Smitha, Vadlapati Naga Vara Prasad, sent a legal notice accusing the filmmakers of making the film without the family's consent and of portraying his sister in an obscene manner. Defamation occurs when false statements are made that harm the reputation of an individual. If the film includes false and damaging portrayals of Silk Smitha, it could potentially lead to a defamation claim.

3.3 *Right to Privacy*

Portraying real individuals in a biopic without their consent raises concerns about the right to privacy. Individuals have the right to control the use of their personal information, including their likeness and life story. If the film invades Silk Smitha's privacy or misrepresents her life, it could infringe upon her right to privacy and result in legal consequences.

3.4 *Consent and Authorization*

Making a biopic without obtaining the necessary consent and authorisation from the subject's family or estate can lead to legal complications. Using someone's life story, likeness, or personal details for commercial purposes without proper permission may violate their rights and result in legal action.

3.5 *Misrepresentation*

The filmmakers claim that the film is a work of fiction and not a formal biopic or biography of Silk Smitha.³⁰ However, if the film includes significant similarities to Silk Smitha's life, it could be argued that the filmmakers are misleading the audience and attempting to avoid legal liabilities associated with a biopic.

³⁰ GEOFFREY COWAN, 'The Legal and Ethical Limitations of Factual Misrepresentation' (1998) 560 *The ANNALS of the American Academy of Political and Social Science* 155.

3.6 *Disclaimers*

The presence of disclaimers in the film does not necessarily absolve the filmmakers of legal responsibility.³¹ Disclaimers serve as a disclosure to the audience about the fictional nature of the story or characters, but they may not fully protect the filmmakers from legal action if the film infringes upon someone's rights or defames them.

3.7 *Litigation and Court Decisions*

In the case you mentioned, the Andhra Pradesh High Court dismissed the writ and cleared the movie for release, indicating that the court did not find sufficient grounds to block the film's screening. However, it's important to note that court decisions can vary depending on the specific circumstances and the jurisdiction in which the case is heard. In a nutshell, the legal issues surrounding biopics involve balancing the rights of the individuals being portrayed with the freedom of expression and artistic license of the filmmakers. Filmmakers need to navigate these legal complexities by obtaining proper consent, avoiding defamation, respecting privacy rights, and ensuring that disclaimers accurately reflect the nature of the film.

4.0 CONCLUSION

In India, fair use of copyrighted material is established under Section 52 of the Copyright Act 1957, allowing for the use and reproduction of copyrighted works within certain boundaries. While the Act does not explicitly require a copyright disclaimer, individuals or organizations may choose to include one to clarify ownership and permissible uses of the work. A copyright disclaimer typically includes components such as the copyright symbol, the name of the copyright owner, and a statement regarding permission for use. However, it's important to note that a copyright disclaimer alone does not grant permission to use copyrighted material. The determination of fair use is made on a case-by-case basis, considering factors such as the purpose, nature, amount, and effect on the market of the copyrighted work. Copyright disclaimer requirements vary across jurisdictions, and it is advisable to consult local copyright laws or seek legal advice for specific requirements in a particular jurisdiction.

³¹ 'DISCLAIMER | English Meaning - Cambridge Dictionary'
<<https://dictionary.cambridge.org/dictionary/english/disclaimer>> accessed 10 May 2023.

Regarding the review of the film "The Dirty Picture," the article discusses the conflict between the filmmakers' claims that the film is fictitious and the content that strongly resembles the life of Silk Smitha. The film's disclaimer denies any resemblance to real persons and asserts that it is a work of fiction. However, the article suggests that the denial in the disclaimer is contradicted by the film itself and the public statements of the filmmakers. The inclusion of Silk Smitha's name and the similarities in the film's portrayal raises questions about the intent and authenticity of the disclaimer. Legal disputes and objections from Silk Smitha's family further complicate the situation. The article highlights how disclaimers can be used as a legal protection but also as a tool to evade responsibility or misrepresent the nature of a biopic.

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