

Public comments sought on the Cinematograph (Amendment) Bill 2021

Ministry of Information and Broadcasting Government of India

Dated: 18 June, 2021

1. To tackle the menace of film piracy, The Cinematograph (Amendment) Bill, 2019 was introduced in the Rajya Sabha on 12.02.2019 after getting Cabinet approval on 06.02.2019, wherein it was proposed to insert a new section 6AA and a new sub-section (1A) in Section 7 of the Act. The Standing Committee on Information Technology (2019-20) presented the 9th Report on Cinematograph (Amendment) Bill, 2019 in the Rajya Sabha and Lok Sabha on 16.03.2020. The observations/recommendations made by the Standing Committee on Information Technology in the Report have been examined and it is proposed to suitably revise the clauses in the Cinematograph (Amendment) Bill, 2019 based on the recommendations made by the Committee.

2. An Expert Committee under the Chairmanship of Justice Mukul Mudgal was constituted in 2013 to examine the issues of certification under the Cinematograph Act, 1952. Another Committee of Experts was set up under the Chairmanship of Shri Shyam Benegal in 2016 to evolve broad guidelines for certification within the ambit of the Cinematograph Act and Rules. The recommendations made by both the Committee of Experts have been examined in the Ministry and efforts have been made to consider all the relevant issues through internal reviews of the Act in consultation with various stakeholders.

3. The Ministry of Information and Broadcasting proposes to introduce the Cinematograph (Amendment) Bill, 2021 which will make the process of sanctioning of films for exhibition more effective, in tune with the changed times and curb the menace of piracy. The important changes proposed are as follows:

- a) The following provisions relating to certification of films under 'unrestricted public exhibition' category are proposed to be amended so as to further sub-divide the existing UA category into age-based categories, viz. U/A 7+, U/A 13+ and U/A 16+:
 - i. **proviso to clause (i) of sub-section (1) of section 4** - Examination of films
 - ii. **clause (a) of sub-section (1) of section 5A** - Certification of films
 - iii. **clause (b) of sub-section (2) of section 6** - Revisional powers of the Central Government
- b) **Amendment of sub-section (3) of section 5A regarding 'Validity of certificate'**
- As per the provision of the present Act under sub-section 3 of section 5A, the certificate issued by the Board is valid for 10 years. Although this restriction on validity of certificate for only 10 years has been removed through executive

orders, the existing provision in the Act requires to be amended to remove the stipulation such that the certificate is valid in perpetuity.

- c) **Amendment of sub-section(1) of section 6 regarding ‘Revisional powers of the Central Government’:** In the existing Act under section 6, the Central Government has been empowered to call for the record of proceedings in relation to certification of a film which is pending or has been decided by the Board and pass any order thereon. This, in other words, means that the Central Government, if the situation so warranted, has the power to reverse the decision of the Board. However, the Hon’ble High Court of Karnataka in KM Shankarappa Vs. Union of India case stated that the Central Government cannot exercise revisional powers in respect of films that are already certified by the Board. This has also been upheld by the Hon’ble Supreme Court vide judgment dated 28/11/2000 in Civil Appeal 3106 of 1991. The Hon’ble Supreme Court has also opined that the Legislature may, in certain cases, overrule or nullify the judicial or executive decision by enacting an appropriate legislation. In this regard, it is stated that sometimes complaints are received against a film that allude to violation of Section 5B(1) of the Cinematograph Act, 1952 after a film is certified. Article 19(2) of the Constitution imposes reasonable restrictions upon the freedom of speech and expression in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of any offence. Therefore, the following amendments are proposed in the Draft Bill:
- i. **Removal of the provisions struck down by the Hon’ble Court in sub-section (1) of section 6** in the principal Act.
 - ii. **Adding a proviso to sub-section (1) of section 6 for granting revisionary powers to the Government on account of violation of Section 5B(1) of the Act:** Since the provisions of Section 5B(1) are derived from Article 19(2) of the Constitution and are non-negotiable, it is also proposed in the Draft Bill to add a proviso to sub-section (1) of section 6 to the effect that on receipt of any references by the Central Government in respect of a film certified for public exhibition, on account of violation of Section 5B(1) of the Act, the Central Government may, if it considers it necessary so to do, direct the Chairman of the Board to re-examine the film.
- d) Film Piracy, particularly release of pirated version of films on internet, causes huge losses to the film industry and government exchequer. In most cases, illegal duplication in cinema halls is the originating point of piracy. At present, there are no enabling provisions to check film piracy in the Cinematograph Act, 1952 making it necessary to have a provision in the Act to check film piracy. Therefore, the following amendments are proposed in the Draft Bill:
- i. **Insertion of new section 6AA - Prohibition of unauthorized recording**

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

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

ii. Insertion of new sub-section 1A in section 7 – Penalties for contravention of this part

7(1A). If any person contravenes the provisions of section 6AA, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to three years and with a fine which shall not be less than three lakh rupees but which may extend to 5% of the audited gross production cost or with both.

Provided also that, any act mentioned in Section 52 of the Copyright Act, 1957 (Act 14 of 1957) is not an infringement of the provision of Section 6AA of this Act.”

The Cinematograph Act, 1952 is available on MIB website, i.e. <https://mib.gov.in/> << Documents << Acts & Rules and can be directly accessed on the following URL: https://www.indiacode.nic.in/bitstream/123456789/2170/1/A1952_37.pdf .

MIB solicits comments from General Public on the Draft Cinematograph (Amendment) Bill, 2021 by 2nd July, 2021.

The comments may be submitted at the following email address: dhanpreet.kaur@ips.gov.in .

In exceptional cases, submissions by post may be sent to:

Director (Films)
Ministry of Information and Broadcasting
Room No. 122C, ‘A’ Wing, Shastri Bhawan,
Dr Rajendra Prasad Road, New Delhi - 110001