

COMPILATION OF SELECTED CASES ON COPYRIGHT LAW



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COMPILATION OF SELECTED CASES ON COPYRIGHT LAW

PREPARED BY

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GNLU CENTRE FOR IPR,
GNLU, GANDHINAGAR**

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COMPILATION OF SELECTED CASES ON COPYRIGHT LAW

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ABOUT ORGANISATIONS

LEGAL STARTUPS

Indian Legal System is going through a tough time because of pendency of cases for years. Many efforts have been made to cope up with this situation. We need radical change in the existing legal system and innovation is the answer to this. Western countries have come up with several innovative platforms in the form of legal start-ups to address various legal affairs. We also need similar kind of legal start-ups in India to make the system efficient and effective. Looking at this situation, 'Legal Startups' has been created to highlight all the legal start-ups across the world. Legal Startups has been incubated at GNLU Legal Incubation Council, Gujarat National Law University, Gandhinagar.

GUJARAT NATIONAL LAW UNIVERSITY, GANDHINAGAR

Gujarat National Law University (GNLU) is the statutory university established by the Govt. of Gujarat under the Gujarat National Law University Act, 2003. The University is recognized by the Bar Council of India (BCI) and the University Grants Commission (UGC) (2f & 12B). The University is also a member of the Association of Indian Universities (AIU), United Nations Academic Impact (UNAI), International Association of Law Schools (IALS), Asian Law Institute (ASLI) and Shastri Indo-Canadian Institute. GNLU is NAAC A Grade and amongst top 10 law schools in India.

GNLU CENTRE FOR IPR

GNLU Centre for Intellectual Property Rights founded in January 2016 with an aim to incentivize innovative and cutting-edge academic research in the field of IP Laws, and conducting various training and extension activities for creating more awareness in the field of IP laws. Also, functioning under the Centre's administration are two Chairs: 1. GNLU-Microsoft IPR Chair: Established in 2013, it aims to provide the framework for analyzing the impact of IPR Laws and Policy on development and growth of Indian economy; 2. GNLU-GUJCOST IPR Chair: Established in 2015, it aims at conducting research, training and educational activities in the areas of patents, GI, traditional knowledge and IP asset valuation for MSMEs. Centre activities are undertaken under the able guidance of Dr. Nidhi Buch (Centre Director & Assistant Professor of Law), Mr. Hardik Parikh (Assistant Professor of Law), Ms. Hetvi Trivedi (Research Associate -GNLU-GUJCOST IPR Chair) along with a group of 2nd, 3rd, 4th and 5th year undergraduate law students and postgraduate students. The Centre team wishes effective enhancement of knowledge and awareness in this rapidly growing field of law organising various training and extension activities.

***A brainy person does not
abuse copyright; instead,
they respect it and uphold it.***

- Maximillian Degenez

April 2022

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Disclaimer

Team has made all efforts to summarize the cases from original cases retrieved from AIR, SCC, Manupatra and other leadings databases. For some cases, team has tried to summarize cases from the available sources as they could not find original ones.



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Message

As a copyright expert, I played a key role in the introduction of the recent amendments to the Copyright Act in 2012 and the Copyright Rules in 2013. As I have already experienced and am now benefiting from the fruits of IP protection, I would like to use this occasion to convey my heartfelt gratitude and acknowledgement for the entire team's commitment and patience in putting together this well-crafted and praiseworthy work in the form of **Case Compilation on Copyright Law**. I thank the team for this memorable moment and pledge my unalloyed support and encouragement in all future endeavours. Further, I would like to convey that Legal Startups has stayed true to its main objective, which is to highlight all legal startups and put them on one platform. I appreciate the professionalism of the team in bringing innovation for a radical change in the legal startup sector through utmost dedication. We all aspire for nothing but the best in the domain of legal technology and I am confident that Legal Startups will, in the near future, become a pillar of support to all law firms in the region. The first Indian Copyright Act was passed in 1847, marking India's introduction to the idea of copyright and from then we regularly update and modernise our IPR Acts in order to ensure protection. Whatever efficient IP legal framework is put in place, society as a whole won't benefit from it unless everyone understands its importance and how it applies to them. The history of copyright law in India demonstrates that the country's citizens have been cognizant of the need for this protection since its inception and have not lagged behind the rest of the world in providing assistance and resources to ensure it. This means that encouraging others to respect intellectual property will benefit you whether you are a rights holder or a user of it.

This admirable endeavour was spearheaded by Dr. Kalpeshkumar L. Gupta (Founder, Legal Startup), Dr. Nidhi Buch (Head, GNLU Centre for IPR) and Dr. Hardik Parikh (Member, GNLU Centre for IPR) who made an effort to unite like-minded young professionals and law students. I am aware that they put a lot of energy into their work and actively support any initiative that aims to make the law more approachable to the public and emphasise its true significance to society. The presence of such young minds in this country, driven by the desire to ensure justice over all, equality over demarcations, and harmony over differences of opinion, is demonstrated by law students who are committed to contributing to society rather than institutions alone.

This work will undoubtedly be a valuable resource for law students, aspiring attorneys, legal researchers, and lecturers who wish to gain a deeper understanding of the laws governing IPR and access to justice. I am happy to see how hard this group of young, aspirant lawyers has worked to make the most of the IPR references that are currently available as part of their contribution to society.


G. R. Raghavender

Joint Secretary (National Mission for Justice Delivery & Legal Reforms)
Department of Justice, Ministry of Law & Justice, New Delhi



FOREWORD

“If you don’t move to protect copyright, if you don’t move to protect our children, it’s not going to sit well.”

— **Barbara Boxer**

Human creativity is the *bedrock* on which progress and development of societies is contingent. *Copyright* is a crucially important legal tool to promote, preserve and profitably explore the harvest of human creativity. It is a matter of common knowledge that the present era is driven by technology; for as much as technology has propelled the growth and expansion of the present aeon, it has also facilitated unhindered access to intellectual content on the World Wide Web, which has caused reasonable consternation in respect of *Copyright* infringement. The surge of digitization, in its wake, has brought forth unaccredited and unauthorized replication and commercialization of the intellectual property of ingenious creators. To exacerbate the challenge, detection of the source of infringement is onerous in a digital environment. Cognizance of the threat that looms large before primal *authors, artists, creators et al.*, with regard to protection of their intellectual property, has engendered ***The Copyright Act, 1957***, ***The Copyright Rules, 2013*** and the ***International Copyright Order, 1999*** which modulate *copyright* protection in India. The growing number of *copyright* lawsuits that we witness in the present times indubitably illustrate the earnest pursuit of India, as a nation, to make the current *copyright* laws and rules available, accessible and intelligible to its citizens.

The IP legislative framework and rules of the country, though replete in all respects, would cease to have any real meaning in the absence of a practical awareness about the same, among the citizenry. The academe is a veritable instrument for the promulgation knowledge in the society and ought to take upon itself the responsibility of disseminating pragmatic and utilitarian wisdom not just among the intelligentsia, but also the lay stakeholders. In this context, the present enterprise is laudatory as the same has the potential to generate and enhance understanding of the IPRs Acts, protocols and rules of the country, as have been emended and updated in sync with the evolving times. I am pleased to note that the book not only presents theoretical insights but also practical sound-sense, thereby, striking a balance between theory and praxis.

As a student of IPR, I take this opportunity to express my sincere appreciation and acknowledgement for the dedication and perseverance of the entire team in bringing out this well-designed and commendable compilation. As a *copyright* analyst, I believe that *copyright*, as a domain of intellectual pursuit, is poised for expansion. Progress of any society hinges on ingenuous creativity and innovation; it is imperative, therefore, that an eco-system be developed in which inventive creators and their creations are intellectually and financially protected. Copyright protection, is assuredly in public interest and therefore, has the essential impetus for intellectual exploration.

I laud the outstanding work carried under the direction of Dr. Kalpeshkumar L. Gupta (Founder, Legal Startups), Dr. Nidhi Hriday Buch (Head, GNLU Centre for IPR) and Dr. Hardik Parikh (Assistant Professor of Law & Member of GNLU Centre for IPR, GNLU, Gandhinagar) who made an earnest effort to convene like-minded young and enthusiastic lawyers and law students, in order to write accurate summaries of significant judgments pertinent to the instant discussion. I commend the engagement of the law students with the present exercise; such students through their persistent endeavour have amply reflected their commitment to the cause and the community, above all other parochial considerations.

This book will undoubtedly be a useful resource for legal scholars, aspiring attorneys, law researchers, and lecturers who wish to gain a deeper insight into the laws governing copyright. Furthermore, I acknowledge this compilation of pertinent copyright cases, encapsulating assessments of relevant copyright judgements and meticulous analysis thereof, by each author, as an acme of the synergistic efforts brought forth by intellectually seasoned minds. I would like to express my gratitude towards Dr. Kalpeshkumar L Gupta, Dr. Nidhi Hriday Buch, Dr. Hardik Parikh, for making this important contribution to the canon of literature on *copyright*. This book is a well-researched and well-documented compendium, which in my opinion, would help young law students learn more about *copyright* laws, and would also serve as a practical legal reference for copyrights law practitioners.

I express my sincere wishes to the authors and editors of the book entitled **Compilation of Selected Cases on Copyright Law** and hope that the same comes forth as a veritable resource for all concerned stakeholders, whether from the academia or the practical field.

Prof. (Dr.) V. K. Ahuja

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ABBREVIATIONS

AAR	Authority of Advance Ruling
AIR	All India Reporter
ALL ER	All England Reporter
ANR.	Another
ATL	Automatic Twist Lock
ASEAK	Association of Students for Equitable Access to Knowledge
BCCI	Board of Control for Cricket in India
CD	Compact Discs
CDN	Cable Division Network
CMM	Chief Metropolitan Magistrate
COMM.	Commercial
CPC	Civil Procedure Code
CrPC	Criminal Procedure Code
DLT	Delhi Law Times
DMCA	Digital Millennium Copyright Act
DRS	Decision Review System
DTAA	Double Taxation Avoidance Agreement
EULA	End User License Agreement
FIR	First Information Report
HPCL	Hindustan Petroleum Corporation Ltd.
ICAI	Institute of Chartered Accountants of India
IOCL	Indian Oil Corporation Ltd.
IPR	Intellectual Property Rights
IPRS	Indian Performing Rights Society Limited
IRRO	Indian Reprographic Rights Organization
ISP	Internet Service Provider
ITR	Income Tax Reporter
IT	Information Technology
MSA	Master Services Agreement
NCT	National Capital Territory
OTT	Over The Top
PPL	Phonographic Performance Limited

PTC	Patent and Trademark Cases
RFA	Regular First Appeal
RTI	Right to Information
S or Sec	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SEAK	Society for Promotion of Equitable Access to Knowledge
TRIPS	Trade Related Aspects of Intellectual Property Rights
UK	United Kingdom
UOI	Union of India
USA	United States of America
V.	Versus

PREFACE

Copyright is the engine of progress. It encourages creativity and innovation and enables producers to benefit financially. For example, a company stands to lose money if someone cheaply reproduces the product and sells it for fraction of the price. It not only brings losses to the developing company but acts as a disincentive to others who may come up with new innovative products. In India, copyright laws are the preserve of The Copyright Act, 1957. If any copyright violation occurs, various actions can be taken under Section 55 of the Act. These include injunction, financial relief and imprisonment. In India, those found guilty of copyright infringement could suffer imprisonment ranging from six months to three years, or a can be charged a fine of up to Rs 2 lakh. Copyrights law gives more control over how your work is presented to the public. It gives the sole right to any revenue that accrues from your original work and encourages general creativity in the society as owners enjoy the benefits of creative work. Once you get copyright for your work, others cannot use it without permission and you can carry out legal action if necessary.

This **Compilation of Selected Cases on Copyright Law** is a joint effort of Legal Startups and Gujarat National Law University through its Centre for IPR. Dr. Kalpeshkumar L Gupta (Founder, Legal Startups) and Dr. Hardik H. Parikh (Assistant Professor of Law, GNLU & Member, GNLU Centre for IPR), came up with the idea of this book ably guided by Dr. Nidhi Buch (Head, GNLU Centre for IPR) who was a source of constant support and guidance throughout. This book has been brought to life with the contributions of our enthusiastic volunteers, who are the backbone of this endeavours. In the series of case compilations under the Legal Startups banner, this particular case compilation book is the result of the hard work and determination of budding lawyers pursuing their three-year or five-year law course in different institutes situated at different corners of India and a professional working in the field of IPR especially copyrights. A sincere attempt has been made to ensure that the jurisprudential essence of each case is retained and accurately reflected in the summaries prepared by our team.

Being the editors of this book on important cases on the Copyrights, our journey has been a learning curve and it has made us appreciate everyone who is contributing to the evolution of knowledge in any way possible. The experience was also pleasant due to the presence of like-

mindful people on board. This book is a result of continuous and sincere efforts of the entire team since July 2021 and it wouldn't have been a smooth sail without the valuable contribution of all. The volunteers gave us all possible assistance despite the unprecedented extraordinary situations of the COVID-19 pandemic.

With this, we would like to introduce the team that made this compilation a reality with their contribution in the form of comprehensive summaries of the landmark Copyrights cases:

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This publication is not meant to be an authoritative commentary upon the present legal regime of the Copyrights; however, this is a humble attempt to place before the readers, proper compilation of landmark cases relating to the Copyrights in a lucid and simplified manner which can be a handy reference for the knowledge seekers in the field of the Copyrights. We hope that our intellectual endeavour will be beneficial and well received by the members of the Bar, Bench, academicians, researchers and law students.

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Dr. Nidhi H. Buch

Dr. Hardik H. Parikh

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CASE NO. 1
JA ENTERTAINMENT PVT. LTD.
V.
MS. SITHARA ENTERTAINMENT & ORS.
[CS (COMM) 191 OF 2022, DELHI HIGH COURT]
THE ORIGINAL FILM AND THE REMAKE HAVE
DISTINCT COPYRIGHTS

ABSTRACT

The Plaintiff in the case seeks a permanent injunction order against the defendant from infringing on their copyright for dubbing the original film in the Hindi Language. The court, in this case, upheld that the producer is the first owner of the remake of the film. Owing to this contention, the original and the remake of the original are two distinct creation of works bearing distinct bundle of rights. This case follows the premise that once the remake is made, it gains an autonomous status of its own which is purely distinct and thus can be commercialised or utilised in any form and on any platform whatsoever. It crucial to note here that the dubbing rights are also invested in the hands of the owner of the remake, i.e., the producer. This judgement delivered would assist us in deeply analysing and understanding dubbing rights of cinematographic works.

1. PRIMARY DETAILS OF THE CASE

Case No	:	Civil Suit (Commercial) No. 191 of 2022
Jurisdiction	:	Delhi High Court
Case Decided On	:	July 11, 2022
Judges	:	Justice Jyoti Singh
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 13, 14, 18, 51
Case Summary Prepared by	:	Kashvi Vachhani, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The facts of the case maintain that the plaintiff was to make the remake of the Malayam blockbuster ‘Ayyappanum Koshiyum’ which performed staggeringly well. The plaintiff approached the producer to seek permission to create a Hindi remake of the movie. Consecutively, the producer gained the distinct and permanent remake and dubbing rights for usage on all channels of media.

However, the plaintiff came across a preview for a Hindi dubbed Telegu remake of the film on YouTube. This movie was produced by Defendant Number 1 and was called “Bheemla Nayak”. The controversy resulted in a lawsuit by the Plaintiff, who sought a permanent injunction to halt the Hindi dub of the Telugu remake of the movie because it saw this as a probable infringement of its copyrights.

The Plaintiff while settling the remake and dubbing rights presumed that all the rights to make hind dubbed versions of the film would be vested with him. It was acknowledged by the plaintiff that the defendant was a legitimate holder of the rights of the film, however owing to the transfer of rights to remake the Hindi remake of the film to the plaintiff, restricted the scope of his rights. The defendant’s rights no longer included the dubbing the Telegu film to Hindi. This was contested by the defendants.

Conclusively, a commercial suit was filed by the plaintiff before the Delhi High Court seeking a permanent injunction against the defendants from distribution of the film or releasing it in theatres, online, or on any other medium.

3. ISSUES INVOLVED IN THE CASE

There were three primary issues involved in the case,

- I. Whether the Defendant No.1 infringed upon the copyright held by plaintiff by dubbing the Telegu Movie in Hindu Language?
- II. Whether the Plaintiff's Remake and Dubbing rights encompassed making a new cinematograph film and the underlying works thereof in Hindi language, as well as the right to dub the Malayalam film and the few films in any and all languages known or coming into existence soon?
- III. Does the Delhi High Court have the jurisdiction to hear the present matter?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiffs acknowledged that both Defendant Number 1 and Defendant Number 2 are owners of the copyright of the Malayalam Film. Bearing this, it can be inferred that they are entitled to exploit these rights in the manner in which they can. However, it is pertinent to note that this right is limited to remaking and dubbing of the film in Telegu language with subtitle in any language deemed fit by them. Since the rights of remaking in Hindi have been extended to Plaintiff, they do not fall under the purview of the rights belonging to Defendant 1 & 2.

The Plaintiff insisted that the rights assigned to the defendant number one were a distinct bundle of rights which only included dubbing the Malayalam film in Telugu. As a consequence of dubbing the film in Hindi Language, there has been an occurrence of copyright infringement on part of the defendant.

Only to the extent that is specified in Section 14(1)(d) of the Act, the suit film, which is a derivative work and is undeniably drawn from the Malayalam film and/or its supporting compositions, will be copyrighted. Due to the fact that the transfer made in favour of Defendant No. 1 was only limited, the effect of Section 18 of the Act ensured that Defendant No. 3 continued to be the holder of the interests that were not allocated to Defendant No. 1.

Defendants

The defendants in this matter insisted that it was within their ambit to commercially exploit the Telegu remake in all formats including dubbing it into all other languages. This was alluded to the fact that all copyrights arising from the Telegu remake wholly belonged to them and no one else. It was their contention that the assignment deed explicitly mentions how the rights relating to the Telegu film lies with them wholly, and not with the assignors.

A brief glance at the Sections 17 and 2 of the Copyright Act establish that the author of the film i.e., producer Defendant No. 1 is the owner of the copyright of the film. Additionally, the right to communicate the film to the public also lies with him. This right to communication is inclusive of dubbing in all languages.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright Act, 1957** are relevant to the present case:

- **Section 13 - Works in which copyright subsists.** The following types of works are eligible for copyright protection: literary works, theatrical works, musical works, artistic works, cinematograph films, and sound recordings.
- **Section 14 –Meaning of Copyright.** The rights and privileges conferred by the virtue of this Section can only be used by the copyright owner or by any other individual who has been granted a valid licence to do so by the rights holder. No one else is authorised to do so. This is inclusive of right to alter the work, the right to reproduce it, the right to publish it, the right to translate it, and the right to communicate it to the public, among other rights.
- **Section 18 – Assignment of copyright.** This section states that copyright owners can assign their rights to anyone. Assignment confers full copyright rights to the assignee.
- **Section 51 – When copyright gets infringed.** Infringement of the copyright is defined as the commission of an action by a person who is not permitted by the proprietor with the authority to do or allow any area for gain for violation of the copyright. It is said that this constitutes an incidence of copyright theft.

6. JUDGEMENT IN BRIEF

The court held that the in accordance with the rights assigned to the Plaintiff, there is no room for doubt that he has the right to remake the Malayalam film into a Hindi Film. However, the Defendant No. 1 is acting on his rights of the film, and his act of dubbing the Telegu film in Hindi doesn't constitute infringement on Plaintiff's rights, in consonance with Section 51 of the Act.

The court addressed the contention that the Defendant No. 1 is not entitled to dub the malayam film in any languages. The court opined that the defendant is acting in its capacity and dubbing the Telegu remake in Hindi and asserted that *"Plaintiff can have no grievance with the manner Defendant No.1 is exploiting its rights in the remade Telegu film."*

In accordance with the factual matrix, Defendant No. 3 has given separate copyrights to Defendant No. 1 and, as a result, has relinquished the rights in the newly created film. Furthermore, Plaintiff cannot complain about the commercialization of the rights of the since no rights in the said film were given to the Plaintiff and all of its interests remain in the Malayalam film or the new film developed by it from the original Malayalam film.

7. COMMENTARY

The rule of law upheld by the Honourable Court in this decision is that producer is the first owner of the copyright of the remade film. The court opined that the rights assigned to the plaintiff and the rights assigned to the Defendant No. 1 were distinct and independent. The author is in consonance with the judgement. The case establishes that the original movie and its remake are two separate works and hold separate rights. It is pertinent to note that the producer is the owner of the remade work. If and when the remade version is put into works, it will obtain an autonomous status of an original movie with distinct rights, which can be assigned to anyone by the virtue of a deed of assignment.

8. IMPORTANT CASES REFERRED

- *Thiagarajan Kumararaja v. Capital Film Works (India) Pvt. Ltd.* AIR 2017 MAD 32, 2017
- *James Stewart v. Sheldon Abend*, 495 U.S. 207 (1990)
- *G. Ricordi & Co. v. Paramount Pictures, Inc.* 89 F.2d 469 (2d Cir. 1951)

CASE NO. 2
M/S KNIT PRO INTERNATIONAL
V.
THE STATE OF NCT OF DELHI & ANR.
2022 SCC ONLINE SC 668
NATURE OF OFFENSE UNDER SECTION 63 OF THE
COPYRIGHT ACT 1957

ABSTRACT

The following is the case summary of the judgment pronounced by the Hon'ble Supreme Court of India in *M/s Knit Pro International v. The State of NCT of Delhi & Anr.* It is a landmark case with regards to criminality of copyright infringement cases in India. The present judgment authoritatively determines the nature of the offense under Section 63 of Copyright Act, 1957. There has been ambiguity regarding the nature of offense under this section, whether it is cognizable or non-cognizable. At least seven high courts have pronounced judgments on this point. However, the issue has remained far from being settled until the present decision rendered by the Hon'ble Supreme Court. This judgment has far-reaching implications and brought clarity over a very important point of law.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Criminal Appeal No. 807 of 2022
Jurisdiction	:	Supreme Court of India
Case Decided On	:	May 20, 2022
Judges	:	Justice M R Shah, Justice B V Nagarathna
Legal Provisions Involved	:	Copyright Act 1957: Sec. 63
Case Summary Prepared By	:	Nishant Mishra Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The appellant filed an application under Section 156(3) of CrPC, 1973 before the Court of Chief Metropolitan Magistrate (CMM) requesting for registration of First Information Report (FIR) against the respondent under Sections 51, 63 & 64 of the Copyright Act, 1957 read with Section 420 of the Indian Penal Code, 1860.

The CMM allowed the said application and on its direction an FIR was registered against the respondents. The respondents filed an application before Hon'ble Delhi High Court for quashing of FIR under Section 482 of CrPC. The main argument on behalf of the respondent was that the offense under Section 63 of the Copyright Act is a non-cognizable offense and bailable offense.

The Delhi High Court through its order dated November 25, 2019, allowed quashing of criminal proceedings against the respondent under Section 63 and 65 of the Copyright Act, 1957 and held that the offense under Section 63 of the Copyright Act is a non-cognizable offense.

The present appeal has been filed against the said order of the Delhi High Court.

3. ISSUES INVOLVED IN THE CASE

- I. Whether copyright infringement under Section 63 of the Copyright Act, 1957 is a cognizable or non-cognizable offense?

4. ARGUMENTS OF THE PARTIES

Appellant

The appellant argued that the offense punishable under Section 63 of the Copyright Act, 1957 is a cognizable offense and falls within Part II of the First schedule of the Code of Criminal Procedure, 1973 (Cr.P.C). To prove this point, it relied on the judgment of the *Intelligence Officer, Narcotics Control Bureau v. Sambhu Sonkar*, in which it was held by this Court that the maximum term of imprisonment prescribed for an offense, cannot be excluded for the purpose of classification of the offense.

Based on the above submission, it was contended by the Appellant the maximum punishment prescribed under Section 63 of Copyright Act may extend to three years, which means a punishment of three years can be imposed for offense committed under this section.

It is submitted by the appellant that only in a case where the offense is punishable with

imprisonment for less than three years or with fine that they are deemed non cognizable as per the scheme of CrPC. Therefore, in the present case the Hon'ble High Court has committed grave error by quashing F.I.R on the ground that offense under Section 63 of the Copyright Act is a non-cognizable offense.

Respondent

In response to the argument put forth, the Respondent contended that there is no specific provision in the Copyright Act which stipulates that said offense is a cognizable offense. It strongly relied on *State of NCT of Delhi v. Naresh Kumar Garg* and *Avinash Bhosale v. Union of India* to show that punishment stipulated under the Section 63 of the Copyright Act does not fall within the scope of cognizable offenses as set out in Part II of the First Schedule of the CrPC. In *Avinash Bhosale (Supra)*, the Supreme Court held that an offense prescribing punishment “upto” 3 years and not “more than 3 years” would fall within item 3 of Part II of Schedule I of the and therefore would be non-cognizable and bailable. The court in this case was looking at an offense under Section 135(1)(ii) of the Customs Act and held it to be bailable.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following are the significant relatable provisions or documents of this case law:

- **Copyright Act, 1957: Section 63 – Offence of infringement of copyright or other rights conferred by this Act.** It prescribes the punishment for copyright infringement. It states that a person who infringes or abets the infringement of a copyright shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to three years and along with the prescribed fine.
- A cognizable offense where the police can investigate the matter without the permission of court and can arrest the accused without a court warrant. In non-cognizable offenses, the police need the permission of the magistrate's court to initiate investigation. It also needs a court warrant to make an arrest. First Schedule of CrPC, 1973 provides classification of offense as cognizable or non-cognizable.
- A bailable offense is one in which a bail is obtained as a matter of right. Under non-bailable offense, a bail is granted by the court on the basis of facts and circumstances of the case.

6. JUDGMENT IN BRIEF

The Hon'ble Court in its short judgment held that the language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever and therefore the offense under Section 63 of the Copyright Act is a cognizable and non bailable offense. It analyzed Part II of the First Schedule of the CrPC, which states that if an offense is punishable with imprisonment for three years (including the period of three years) and onwards but not more than seven years the offense is a cognizable offense. For an offense under Section 63 Copyright Act the maximum punishment imposed can be three years. Hence, offense under Section 63 of the Copyright Act is a cognizable offense. The Hon'ble Supreme Court Set aside the decision of Delhi High Court and ordered that the criminal proceedings against respondent for the offense under Sections 63 & 64 of the Copyright Act to be proceeded further in accordance with law and on its own merits treating the same as a cognizable and non bailable offense.

7. COMMENTARY

The present judgment has cleared the prevailing ambiguity among various High Courts and brought forth a clear point of view regarding categorization of offenses under Criminal Procedure Code, 1973. Various other substantive laws such as Trademark Act and Patent Act contain similar provisions. The various high courts can now use this judgment as an authority to categorize offenses in other similar IPR related legislations. One valid criticism of this judgment is that it is not well-reasoned. For example, the Delhi High Court relied on *Avinash Bhosale v. Union of India*, to come to its conclusion. However, *Avinash Bhosale* judgment pertains to Section 135(1)(ii) of the Customs Act which is not the same as Section 63 of the Copyright Act. The Court could have explained this point in its judgment as how this case is not applicable to cases under Section 63 of Copyright Act. This has left a lacuna which would breed ambiguity. Similarly, it could have dealt with the various judgements of High Courts pertaining to the issue in detail to form a well-reasoned opinion. Despite its shortcomings, the present judgment is welcoming one.

8. IMPORTANT CASES REFERRED

- *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67

CASE NO. 3
SANJAY SOYA PVT. LTD.
V.
NARAYANI TRADING COMPANY
2021 SCC ONLINE BOM 407

**ADDING OIL TO IPR: THE JUDGEMENT THAT SET A NEW
PRECEDENT IN PROTECTION OF OWNERSHIP RIGHTS**

ABSTRACT

This case is related to trademark as well as copyright infringement. It is a rather special case wherein the respondent used a label that was significantly similar to that used by the plaintiff in their product. The current plea is with regards to the soya edible product trademark of the plaintiff company who adopted the label, trademark and artistic work in relation to the edible soya oil in question in May 2003. The respondent argued the validity of the plaintiff's right over the trademark label by questioning the company's assignment deed as well as whether the company is the true owner of the trademark considering it is not the "artist" as per the Copyright Act of 1957. The question of whether the plaintiff can claim relief under the Copyright Act if it has not previously registered under the Act was raised. The current case sets a new precedent by quashing a previous judgement of the court and adding notice to international treaties and previous judgements to prove in conclusion that registration is not necessary for a party to claim relief under the Copyright Act, 1957. Thus, this case upholds the rights of the author by elaborating upon the 'doctrine of precedent' through continuous provision of various reasons to disagree with the *Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt Ltd and Others* case (2012 (3) Mh LJ 888). Furthermore, the judgement also utilises Section 51 and Section 45(1) of the Copyright Act, 1957 to elaborate upon the nature of the concept of registration under the Act. Overall, this judgement proves to be extremely important for victims of plagiarism and copyright violations, by placing importance upon the test of deception to reach to a conclusion.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Interim Application (L) No. 5011 of 2020 in Commercial IP Suit No. 2 of 2021
Jurisdiction	:	Bombay High Court
Case Decided on	:	March 9, 2021

Judges	:	Justice G. S. Patel
Legal Provisions Involved	:	Trademarks Act, 1999 - Sec. 27, 134; Copyright Act, 1957 - Sec. 2(C), 2(D), 17, 44 to 50(A), 51, Sec. 45(1), Sec. 62; Code of Civil Procedure, 1908 - Sec. 20, 35; Commercial Courts Act, 2015 – Sec. 35
Case Summary Prepared By	:	Anupama Reddy Eleti, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

In the present case, the plaintiff, Sanjay Soya Private Limited, is an oil manufacturing company incorporated under the Companies Act, 1956. The defendant, Narayani Trading Company, is an edible oil trading company based in Chalisgaon, Maharashtra.

The plaintiff company has been manufacturing and selling oils for many years now, first incorporated on 17th February 2004 and the successor in title of SK Oil Industries. The plaintiff claims that it has adopted the label, trademark and artistic work in relation to the edible soya oil in question in May 2003. By virtue of the provisions under Section 17 of the Copyright Act, 1957, the Assignor, SK Oil in an agreement (in perpetuity) assigned and transferred Sanjay Supreme Label and the Soyal Drop Label to the Assignee, Sanjay Soya. It is further noted that on May 16, 2007, Sanjay Soya applied to register the label as a label mark under the condition that the registration would not include exclusivity on the descriptive matters of the label. By providing income statements of the product, Sanjay Soyal established that the trademark aided the product's sale and helped consumers identify the products as belonging to Sanjay Soya. The plaintiff then stated that it was around October 15, 2020 when it found Narayani Trading using their label for similar soybean edible products.

Sanjay Soya argues that Narayani Trading completely lifted and illegally reproduced Sanjay Soya's registered label mark as well as the copyright-protected artistic work in the label. The plaintiff also holds that it is the prior user of the trademark and sought for injunctions on both trademark and copyright infringement and to appoint a court receiver to seize and seal Narayani Trading's products. With regards to these claims, the present interim application stands.

3. ISSUE INVOLVED IN THE CASE

- I. Whether it is necessary to register under the Copyright Act, 1957 in order to avail protection under the Act?

4. ARGUMENT OF THE PARTIES

Plaintiff

The plaintiff, Sanjay Soya argues that Narayani Trading completely lifted and illegally reproduced Sanjay Soya's registered label mark as well as the copyright-protected artistic work in the label. The use of the label mark by Narayani Trading is dishonest, not genuine, and has an ulterior motive: to profit off Sanjay Soya's goodwill, recognition, and reputation.

The plaintiff also claims that it is the prior owner of the trademark in question. The plaintiff sought injunctions on both trademark and copyright infringement and to appoint a court receiver to seize and seal Narayani Trading's products.

Defendant

Learned counsel of the defendant, Mr. Burad, questioned the validity of the authorisation of assignment deed between SK Oil and Sanjay Soya. The counsel also questioned the limit of the assignment deed stating it's only for five years. However, both arguments were quashed noting that the respondent does not have the right to question validity of an assignment deed they are not a party to, and also that the agreement is clearly in perpetuity.

Mr. Burad also argued that neither the plaintiff nor its predecessor (SK Oil) is the rightful owner of the trademark. This he argued by referring to Sec. 17 and 19 of the Copyright Act, 1957. Upon analysis of the Sections, Mr. Burad argued that no copyright in the artistic work would have vested on SK Oil. A reading of Sec. 17 states that the author of the work is the first owner of the copyright and Sec. 2(d) defines author to mean artist. By this definition, SK Oil which is a commercial entity could not be deemed the "artist" and therefore not be eligible to copyright. However, this argument is clearly refuted under Clause (c) -

"in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein".

Mr. Burad further argued that the label mark is a registered mark and therefore cannot be considered artistic work. Which was soon quashed by the court which stated that the artistic work is an integral part of the label that clearly belongs to the plaintiff.

Mr. Burad then refers to the case of *Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt. Ltd. and Others*, to assert that no redress could be obtained under the Copyright Act since the plaintiff had not registered the plaintiff's label under the Act.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Chiefly prominent provisions concerned as under the **Trade Marks Act, 1999** are,

- **Section 27** - No action for infringement of unregistered trademark. No person shall be entitled to institute any proceeding to prevent or to recover damages for, the infringement of an unregistered trademark and nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof.
- **Section 134 - Suit for infringement, etc., to be instituted before District Court.** This Section includes the jurisdictional provision with regards to a suit for infringement. This Section is referred to in the present judgement to dismiss the jurisdictional argument presented in the previous judgement to state that the present court is not a 'special court' but only an additional jurisdictional facility available to a registered proprietor of a trademark or owner of the copyright.

Provisions discussed under the **Copyright Act, 1957** are as follows:

- **Section 2 (c) – Interpretation (artistic work).** It provides for works that can be defined as an Artistic work. Like a work having artistic merit, a picture, a sculpture, a drawing (including a diagram, map, chart, or plan), an engraving, or a photograph or any additional artistic creation.
- **Section 2(d) – Interpretation (author).** It provides for the definition of the term “design”. The Section mentions that the concerned article could either be in two or three dimensions, or in both and that the final product could be prepared either by hands, or by machine or in combination of both can be termed as a design when judged by an eye.
- **Section 17 - First owner of copyright.** It is specifically stated that the author of a work is the first copyright holder. The term author with respect to a film is defined under Section 2(d) is the producer of the film. The term producer is further stated to be a person who takes initiative and responsibility for the work.

- **Section 45(1) – Entries in Register of Copyrights.** This Section deals with entries in register of copyrights. In the present judgement, emphasis is placed upon the term “may” as it states that the owner of copyright may apply for registration.
- **Section 51- When copyright infringed.** It specifies when a copyright is infringed. According to Section 51 of the Act, Copyright is deemed to be infringed if: (a) A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorised to do; (b) A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright; (c) A person imports infringing copies of a work; (d) A person without obtaining the authority from the copyright holder reproduces his work in any form. This Section deals with infringement of copyright which in this judgement is referred to, to place importance on the point that it does not restrict itself to works that have been registered by the registrar of copyright.
- **Section 62 – Jurisdiction of court.** It corresponds with Section 134 of the Trademarks Act as it provides upon the jurisdictional provision with regards to a suit for infringement.

Provisions discussed under the **Code of Civil Procedure, 1908** are,

- **Section 20 - Other suits to be instituted where defendants reside or cause of action arises.** Section 20 clearly provides that a Court within whose local limits the cause of action, “wholly or in part”, arises, would have territorial jurisdiction to try the suit. Recourse under jurisdictional venues as per Section 62 of the copyright act and Section 134 of the Trademarks Act, act in addition/ supplement the ordinary provisions of Section 20.
- **Commercial Courts Act, 2015** – Amendments introduced to Section 35 of CPC, 1908 which elaborates upon the “costs” ordered by the court in relation to a suit. The new amendment adds that “the court has to also consider the conduct of parties, whether the party has succeeded partially if not wholly, whether frivolous claims or counterclaims were made, whether an offer for settlement was unreasonably rejected.” Thus, the conduct of a party is a relevant consideration for awarding costs

6. JUDGEMENT IN BRIEF

The court quashed the defence taken by the defendant noting that the defendant does not have the right to question validity of an assignment deed they are not a party to and also that the agreement is clearly in perpetuity. The Court noted that the Copyright Act does not require identification of the real creator of a creative work, notwithstanding the defendant's argument that plaintiff's predecessor could not be the author of the plaintiff's label since it was a legal company. The court also quashed the defendant's claim of a clear difference between the two labels stating that the two are significantly similar. In response to the case of *Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt. Ltd. and Others*, the court stated the judgment of the court was *per incuriam* and cited four previous decisions of the court in which it was clearly established that registration is not a necessary clause to seek relief under the Copyright Act. It stated the discrepancies in the Dhiraj judgment by stating how the court did not refer to previous binding decisions before passing the judgment. The Court also referred to Sections of the Berne Convention of 1886 and the Trade-Related Aspects of Intellectual Property Rights Convention (TRIPS Agreement) of 1994, that India is a signatory to, to prove that even the treaties did not state registration as compulsory requirement to avail relief under the Act.

Further the court refers to the test of the "Classic Trinity", i.e., (1) goodwill owned by a claimant; (2) misrepresentation; (3) damages to that goodwill. In mentioning the classic trinity, the court stated that the plaintiff, Sanjay Soya, has prima facie proven all three aspects. Upon general inspection of the two products in question the court's comment was, "*which is whose? I cannot tell*". Therefore, the Interim Application was made absolute in terms of prayer clauses (b), (c) and (d) and the Court requested that a copy of the decision be distributed to all Principal District Judges for future reference by the Registrar and Senior Master of the Court.

7. COMMENTARY

This judgment turns a new leaf when it comes to copyright infringement cases, as the court quashed the judgment in the *Dhiraj Dharamdas case* that did not take into account previous binding judgments and created new issues in the realm of IPR related disputes. This ruling by the court sets a new precedence in that it clarifies the true intentions of the Copyright Act, 1957. The court upholds the importance of safeguarding intellectual property by making it clear that registration is not a necessary requirement for a party to claim relief under the Act. This is therefore a landmark judgment in the realm of intellectual property rights as it puts the rights

of the true owner of the label above and over that of the respondent who in this case clearly disrespected the true work of the plaintiff.

8. IMPORTANT CASES REFERRED

- *Anand Patwardhan v. Director-General of Doordarshan and Others*
- *Asian Paints (I) Ltd v. M/s Jaikishan Paints & Allied Products* 2002(4) Mh L J 536.
- *Brundaban Sahu v. B Rajendra Subudh* 1986 (6) PTC 322
- *Burroughs Wellcome (India) Ltd v. Uni-Sole Pvt Ltd and another* 1997(3) Mh L J 914
- *Dashrath B Rahthod v. Fox Star Studios Pvt Ltd* 2018 (1) Mh LJ 474
- *Dhiraj Dharamdas Dewani v. Sonal Info Systems Pvt Ltd and Others* 2012 (3) Mh LJ 888
- *DSL Enterprises Pvt Ltd v. Maharashtra State Electricity Distribution Company Limited* 2018 SCC OnLine Bom 544
- *Erven Warnink v. Townend & Sons Ltd* [1979] AC 731, 742 (HL).
- *Foreshore Cooperative Housing Society v. Praveen D Desai* (2015) 6 SCC 412
- *Gulfam Exporters and Ors v. Sayed Hamid and Ors* 2000 (20) PTC 496 Bom.
- *Indian Performing Rights Society v. Sanjay Dalia and Anr.* (2015) 10 SCC 161
- *Indore Development Authority v. Shailendra* (2018) 3 SCC 412
- *International Association of Lions Club v. National Association of Indian Lions and Others* 2006(4) Mh L J 527
- *KC Bokadia & Anr v. Dinesh Chandra Dubey* 1999 (1) MPLJ 33
- *Manugraph India Ltd v. Simarq Technologies Pvt Ltd.* (2016) 67 PTC 254: AIR 2016 Bom 217: 2016 SCC OnLine Bom 5334
- *Mishra Bandhu Karyalaya & Ors v. Shivratanlal Koshal*, 1969 SCC OnLine MP 35: AIR 1970 SC 261
- *Prakash Singh Badal v. State of Punjab and Others* AIR 2007 SCC 1274.
- *Reckitt & Colman Products Ltd v. Borden Inc.* [1990] 1 All ER 873
- *State of UP v. Synthetics and Chemicals Ltd* (1991) 4 SCC 139

CASE NO. 4
ENGINEERING ANALYSIS CENTER FOR
EXCELLENCE PVT. LTD.

V.
COMMISSIONER OF INCOME TAX
AIR 2021 SC 124

NATURE OF COPYRIGHT IN SOFTWARE LICENSE

ABSTRACT

The following is the case summary of the judgment pronounced by the Hon'ble Supreme Court in the case of *Engineering Analysis Center for Excellence Pvt. Ltd. v. Commissioner of Income Tax*. This judgment deals with the controversy surrounding the taxation of software in India. The main issue in question was whether to treat the income arising from grant of software license as royalty or as a business profit. The case deals with the interplay of Income Tax Act, 1961 and Copyright Act, 1957. The court looked into the question regarding what will amount to grant of license in terms of Section 30 of the Copyright Act. After analysis of the various End User License Agreements (EULAs) pertaining to grant of software license the court came to the conclusion that consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software and therefore not taxable in India. This provides much needed clarity needed in case of software taxation in India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos. 8733-8734 of 2018
Jurisdiction	:	Supreme Court of India
Case Decided On	:	March 2, 2021
Judges	:	Justice R F Nariman, Justice Hemant Gupta, Justice B. R. Gavai
Legal Provisions Involved	:	Copyright Act 1957: Sec. 14, Sec. 30, Sec. 52
Case Summary Prepared By	:	Nishant Mishra, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The present case deals with a batch of tax appeals, filled by both assesses as well as the Department of Revenue, Ministry of Finance. The issue before the Hon'ble Supreme Court was whether amounts paid by the concerned persons resident in India to non-resident, foreign software suppliers, amounted to royalty and as this was so, the same constituted taxable income deemed to accrue in India under Section 9(1)(vi) of the Income Tax Act, 1961.

In this case, the appellant is a resident Indian end-user of shrink-wrapped computer software, directly imported from the United States of America. The Assessing Officer by an order dated May 15, 2002, after applying Article 12(3) of the Double Taxation Avoidance Agreement ("DTAA"), between India and USA, and upon applying Section 9(1)(vi) of the Income Tax Act, found that what was in fact transferred in the transaction between the parties was copyright which attracted the payment of royalty and thus, it was required that tax be deducted at source by the Indian importer and end-user, the appellant.

The Karnataka High Court, in the *CIT v. Samsung Electronics Co. Ltd.*, held that that what was sold by way of computer software included a right or interest in copyright, which thus gave rise to the payment of royalty and would be an income deemed to accrue in India under Section 9(1)(vi) of the Income Tax Act, requiring the deduction of tax at source. The Delhi High Court, gave a opposite view on this matter,

Various civil appeals have been filed before the Supreme Court against the order of the Karnataka High Court (by the assessee), Delhi High Court (by the Tax Officer) and Authority for Advance Ruling (AAR) (by the assessee).

The Supreme Court categorized the batch of appeals into four categories of software payments.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the license granted under the End User License Agreement (EULA) is a license under Section 30 of the Copyright Act, 1957?
- II. Whether distribution of copyrighted computer software would constitute the grant of an interest in copyright under Section 14(b)(ii) of the Copyright Act?

4. ARGUMENTS OF THE PARTIES

Appellants

Relying on Section 14(b) of the Copyright Act, 1957, it was argued by the Appellants that there

is a difference between a copyright in an original work and a copyrighted article. Section 14(b) of the Copyright Act, which refers to a “computer program” per se and a “copy of a computer program” as two distinct subject matters. In the present case, what was resold by appellants is not copyright, but merely a copyrighted article, which constituted goods in the hands of the end user, without any right to transfer the same.

Under End User License Agreement, end-users in India only received a limited license to use the product by itself, with no right to sub-license, lease, make copies etc. In the present case, the license to use shrink-wrapped computer software was thus incidental to and essential to effectuate the use of the product. No license is granted as per Section 30 of the Copyright Act which entitles the owner of copyright in a “literary work” to grant any interest in his rights by way of a license in return for a royalty payment.

Appellant further argued that the doctrine of first sale/principle of exhaustion as provided in Section 14(b)(ii) of the Copyright Act, makes it clear that the foreign supplier’s distribution right would not extend to the sale of copies of the work to other persons beyond the first sale. As no distribution right by the original owner extended beyond the first sale of the copyrighted goods, it can be said that only the goods, and not the copyright in the goods, had passed onto the importer.

Respondent

As a response to the claims, the Respondent contended that since adaptation of software could be made, albeit for installation and use on a particular computer, copyright is parted with by the original owner.

Respondent further argued that Section 52(1) (ad) of the Copyright Act, states that the making of copies of a computer programme from a personally legally obtained copy for non-commercial personal use would not amount to an infringement of copyright therefore the contrary must be true if personally legally obtained copies of a computer programme are to be exploited for commercial use, it would necessarily amount to an infringement of copyright.

Respondent argued that the distribution of copyrighted computer software would constitute the grant of an interest in copyright under Section 14(b)(ii) of the Copyright Act, thus necessitating the deduction of tax at source under Section 195 of the Income Tax Act. It also argued that under Section 14(b)(ii) of the Copyright Act, the doctrine of first sale/principle of exhaustion will not apply to distributors.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Chiefly prominent provisions concerned as under the **Copyright Act, 1957**:

- **Section 14(a)(ii) – Meaning of copyright.** It recognizes the doctrine of first sale/principle of exhaustion. It states that the distribution right subsists with the owner of copyright to issue copies of the work to the public, to the extent such copies are not copies already in circulation.
- **Section 14(b)(ii) – Meaning of copyright.** It states that it is the exclusive right of the owner to sell or to give on commercial rental or offer for sale or for commercial rental “any copy of the computer programme”. The object of this section is to prevent the copies of computer software once sold being reproduced and then transferred by way of sale or otherwise.
- **Section 30 - Licences by owners of copyright.** It states that the owner of the copyright in any literary work may grant any interest in any right mentioned in Section 14(a) of the Copyright Act by license in writing by him to the licensee, under which, for parting with such interest, royalty may become payable.

6. JUDGMENT IN BRIEF

License under Copyright Act: The Hon’ble Court observed that ownership of copyright in a work is different from the ownership of the physical object which may embody any copyrighted work. Parting with copyright entails parting with the right to do any of the acts mentioned in Section 14 of the Copyright Act and not just the transfer of material substance itself.

The Court held that where the core of the transaction is to authorize the end-user to have access to and make use of the “licensed” computer software product over which the licensee has no exclusive rights, no copyright is parted with and consequently.

Therefore, a non-exclusive, non-transferable license, merely enabling the use of a copyrighted product cannot be construed as a license to enjoy all or any of the enumerated rights mentioned in Section 14 of the Copyright Act or create any interest in any such rights so as to attract Section 30 of the Copyright Act. Therefore, in such cases no copyright has been parted with and consequently payment for the same cannot be regarded as royalty.

In the present case, the transaction in question is in the nature of sale of goods as what is

“licensed” by the non-resident supplier to the distributor and resold to the resident end user or directly supplied to the resident end user is, in fact, the sale of a physical object which contains an embedded computer program which does not involve transfer of a copyright in the software.

Doctrine of First Sale/Principle of Exhaustion: The Court observed that Section 14(a)(ii) of the Copyright Act embodies the doctrine of first sale/principle of exhaustion as per which the distribution right subsists with the owner of copyright to issue copies of the work to the public.

The Section 14(b)(ii) of the Copyright Act further clarifies that it is the exclusive right of the owner to sell or to give on commercial rental or offer for sale or for commercial rental “any copy of the computer programme”.

In the present case, a distributor who purchases computer software in material form and resells it to an end-user cannot be said to be within the scope of the aforesaid provision. Therefore, distribution of copyrighted computer software would not constitute the grant of an interest in copyright under Section 14(b)(ii) of the Copyright Act.

7. COMMENTARY

There has been a long-standing controversy with regard to the nature of the income arising from grant of software program/license. Tax authorities always saw it as a ‘royalty’ in accordance with the expanded definition of royalty under Explanation 2 to Section 9(1)(vi) of the IT Act. On the other hand, taxpayers argue that what has been transferred under End Users License Agreements are Copyrighted articles/products and not the copyright itself. The court has brought much needed clarity in this respect by looking at the provisions of the Copyright Act to determine the nature of license granted under this act. The above judgment put an end to the said controversy and ruled that payments by resident end-users or distributors (residents/NRI) of shrink-wrapped software is not royalty. This judgment brought much needed clarity for the software industry of the country. The current ruling is well-reasoned and aligned with international practices. Also, the *ratio decidendi* of the present judgment would be useful in other similar cases dealing with issues of licensing in different technologies and their taxability under the India law.

8. IMPORTANT CASES REFERRED

- *CIT v. ZTE Corporation*, (2017) 392 ITR 80
- *Director of Income Tax v. Infrasoftware Ltd.*, (2014) 264 CTR 329
- *Director of Income Tax v. Nokia Networks OY*, (2013) 358 ITR 259

- *CIT v. Samsung Electronics Co. Ltd.*, (2012) 345 ITR 494
- *Director of Income Tax v. Ericsson A.B.*, (2012) 343 ITR 470
- *Warner Bros. Entertainment Inc. v. Santosh V.G.*, 2009 SCC OnLine Del 835
- *John Wiley & Sons Inc. v. Prabhat Chander Kumar Jain*, 2010 SCC OnLine Del 2000
- *Vernor v. Autodesk, Inc.*, 621 F.3d 1102 (9th Cir. 2010).

CASE NO. 5
INDIAN PERFORMING RIGHT SOCIETY LTD.
V.
ENTERTAINMENT NETWORK (INDIA) LTD.
2021 SCC ONLINE DEL 1: (2021) 85 PTC 190
‘APOCALYPTIC’ ARBITRABILITY OF COPYRIGHT
DISPUTES

ABSTRACT

The case was brought before the Delhi High Court to seek remedy for infringing of Intellectual Property Rights (IPRs) involving both sound recordings and the underlying literary and musical works, implying that separate licences would be necessary for each of these. However, contrary to the Delhi High Court’s precedents, the Court concluded that the underlying works were not used when making use of a sound recording, and thus no royalty shall be levied because no authorization from the authors of the underlying works is necessary. It begs the issue of whether this is what the legislature intended when it amended the Copyright Act in 2012. The other aspect of the case before the Hon’ble Bombay High Court, held in ‘*Indian Performing Right Society Limited (IPRS) v. Entertainment Network*’, that the matter at hand was not arbitrable since it related to an action *in rem*. This order by Justice R. D. Dhanuka contrasts sharply with Justice Patel’s well-reasoned ‘*Eros v. Telemax*’ (‘Telemax’) judgement where it was held that legal claims arising from IP licensing were *in personem* disputes, and hence there was nothing that excluded IP disputes from arbitration.

1. PRIMARY DETAILS OF THE CASE

Case No	:	CS(OS) 666 of 2006, IAs No. 4558 of 2006, 19921 of 2011, 9128 of 2012, 5953 of 2017
Jurisdiction	:	Delhi High Court
Case Decided on	:	January 4, 2021
Judges	:	Justice Rajiv Sahai Endlaw
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 33, 14(a), 19(10)
Case Summary Prepared By	:	Raj Shukla

2. BRIEF FACTS OF THE CASE

Section 33 of the Copyright Act, 1957 ('Act') created the Indian Performing Right Society ('IPRS') and the Phonographic Performance Limited ('PPL'). While IPRS is the only organisation permitted to licence public performance rights to literary and musical works generated by its members, PPL levies and collects licencing fees from users on behalf of its members who own sound recordings that are played and performed in public.

Though both IPRS and PPL are Copyright Societies, they are registered for and in two separate categories, namely musical/literary works and sound recordings.

IPRS was founded to monitor, defend, and enforce the rights, interests, and privileges of its members, who include writers, composers, and publishers of literary and/or musical works. It is India's only representative body for composers, authors, and publishers of literary and musical works. IPRS members have signed deeds of assignment in which they exclusively convey their 'public performing rights' in their literary and/or musical works to IPRS. IPRS' main function is to collect royalties from consumers of music who broadcast the literary/musical work to the general public and then distribute the funds to its members.

In *IPRS v. ENI*, the brand name 'Radio Mirchi' is widely used to refer to ENIL. In the year 2001, ENIL signed contracts with IPRS for music broadcasting in seven Indian cities. ENIL began broadcasting the music in three more cities after that, but did not get a new licence. As a result, IPRS sued ENIL, alleging infringement of its public performance rights and seeking a permanent injunction prohibiting ENIL from transmitting the music to the general public.

In *PPL v. CRI Events Private Limited & Others*, PPL and IPRS filed a second lawsuit against CRI Events Private Limited (CRI) and its officer Rajesh Verma, as well as Nitish Kunj, a banquet venue. CRI & Ors. organise events in Nitish Kunj banquet hall, where music is played at events, parties, and other occasions. According to IPRS and PPL, the song was played without a licence from PPL or IPRS and thus infringed on the copyright.

Music is created by a group of people with various abilities, according to IPRS and PPL, and so the copyright in the various components of the music may belong to a number of people. As a result, exploiting a sound recording entails exploiting the underlying literary and/or musical

work. As a result, consumers must pay separate licence fees to PPL and IPRS for these creations, i.e., literary and musical works on the one hand, and sound recordings on the other.

CRI & Ors., on the other hand, claimed that as event organisers, they were simply aggregators, and that the disc jockeys who played musical compositions at CRI's events would already have a licence from PPL and IPRS, and that the banquet hall where these events were held would also have a licence, so CRI was not needed to acquire one.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the communication of a sound recording to the public also amounts to communication of the literary and musical works embodied in the sound recording to the public under the Copyright Act, 1957?
- II. Whether IPRS is entitled to royalties when a radio broadcaster broadcasts sound recordings and whether two royalties are needed to be paid under Section 31D, one for sound recording and other for underlying literary and musical works?

4. ARGUMENTS OF THE PARTIES

Plaintiff

In the perspective of IPRS, broadcasting sound recordings also include broadcasting literary and/or musical works that are part of the recordings. As a result, users must pay a separate licencing price to each of the organisations for both of these works, i.e., musical/literary works and sound recordings. Furthermore, signing a licencing agreement with one society does not relieve the user of the obligation to get a licence from the other.

The Plaintiff (IPRS) claimed that as the exclusive owner of the public performance rights to the disputed literary and musical works, they are entitled to licence the public performance rights to literary and musical works generated by its members. Furthermore, because the owner has exclusive enjoyment of the right under Section 14(a) of the Indian Copyright Act, 1957, broadcasting companies who play IPRS music infringe on this rights unless a licence is secured. As a result, the Plaintiff asserted that the Defendant's transmission of music in three new places without obtaining a licence constitutes a violation of the Plaintiff's public performance rights.

Defendant

ENIL & the Defendant Counsel contended that the copyright for literary and musical works is combined or merged with the sound recording, resulting in the lyricists and composers losing their rights and the music firms owning the complete bundle of rights in a song. This is in line with the current trend in the music/film industry, in which sound recordings are mostly generated for films and composers/lyricists surrender full rights to music producers. When the complete bundle of rights resides in the music firms and those rights are controlled by PPL, IPRS cannot require ENIL to separately enter a licencing agreement. ENIL went on to say that it was already paying PPL for the items in its repertoire.

The Defendants argued that because they had obtained a licence from Phonographic Performance Limited, which is the assignee of the IP rights related to the songs broadcast on its radio channels, no separate licence fee is due with respect to the copyright vested in the underlying literary and musical works. The Plaintiff, on the other hand, claims to be the exclusive assignee of the songs' literary and musical works. Copyrighted works are mutually exclusive, according to Section 2(y) of the Act, according to the defendants' lawyer. As a result, a sound recording is an independent work with distinct and independent copyrights, and the Defendants claimed that the sound recording's licences for broadcasting purposes had been obtained.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The Court observed that significant revisions to the **Copyright Act, 1957** affecting composers/lyricists' rights were adopted in 2012 while the proceedings were underway, and considered whether such adjustments might be retroactive.

- **Section 19 – Mode of assignment.** The main change relevant to this case was in Section 19(10), which stated that assigning lyricists/music composers' rights to producers of sound recordings (not included in cinematograph films) did not preclude the lyricist and music composer from claiming equal royalties for the underlying literal and musical work. The Court went on to say that neither the owner of the copyright in the literary work nor the owner of the copyright in the musical composition has any claim or interest in the sound recording, which is a work of joint authorship under the Act's Section 2(z). It is a unique work created by the collaboration of two or more writers, in which one author's contribution is not distinguishable from that of the other author or authors. In a 'sound recording,' the law recognises an independent copyright.

It is the owner of the sound recording who converts a literary work that is otherwise just a collection of words into a sound capable of phonetic pleasure, and who adds the sound of numerous musical instruments to a musical composition. The Court further said that the foregoing situation in terms of interpretation of the clauses would not alter following the 2012 revision. The new Section 19(10) is a clarifying provision and there is no conflict between it and the preceding interpretation based on other Act Sections. As a result, the Court determined that Section 19(10) is not retroactive.

6. JUDGEMENT IN BRIEF

Based on the foregoing considerations, the Court dismissed IPRS's first lawsuit against ENIL, because the Defendant admittedly only exploited sound recordings that were part of cinematograph films through radio transmission, with no independent exploitation of lyrical/musical work. IPRS's comparable allegation in the second complaint was similarly rejected by the court. The court ruled that a licence from PPL is required for CRI to broadcast sound recordings. The court further determined that because CRI's event included live performances of musical/lyrical works by other artists, exploitation included not just the sound recording but also the underlying works, and therefore a licence from IPRS was required for such live performances.

PPL and IPRS licences were required in circumstances when CRI exploited works through sound recordings as well as live performances. It should be mentioned that an appeal has been filed against the single judge's judgment. The Court's Division Bench ordered the issue to be listed and said that the challenged judgement should not be relied on or used as a precedent in any proceedings until further directions.

7. COMMENTARY

This case narrows and clears the meaning of Section 13 of the Copyrights Act, 1957. It laid down the simple logic that licensing agreement with IPRS is not necessary as licensing with the authority of the copyright owner would be sufficient. This would further mean that no royalties would be paid to the authors and owners of the underlying works every time the song is played on radio. Moreover, what was left unanswered is the question whether this decision is applied only to radio or extended to other mediums of exploitation as well which may have an extreme impact on the music publishing royalties in India.

8. IMPORTANT CASES REFERRED

- *Eastern India Motion Pictures Association v. Indian Performing Right Society Limited*, AIR 1974 Cal 257 (DB)
- *Indian Performing Right Society v. Eastern India Motion Pictures Association*, AIR 1977 SC 1443
- *International Confederation of Societies of Authors and Composers (ICSAC) v. Aditya Pandey* (2017) 11 SCC
- *Super Cassettes Industries Pvt. Ltd. v. Trimurti Films Pvt. Ltd.*, (2017) SCC OnLine Bom 8999
- *Supreme Court in Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*, (2008) 13 SCC 30

CASE NO. 6
MR. JOHN HART JR & ANR.
V.
MR. MUKUL DEORA
AIR 2021 DEL 79

NO RELIEF AT THE ELEVENTH HOUR

ABSTRACT

In recent years, the Indian Judiciary has come across many cases of eleventh-hour injunction i.e., cases seeking an injunction on the basis of copyright infringement against a cinematographic work just some hours prior to its release. The courts in cases like *Dashrath B. Rathod v. Fox Star Studios India Pvt. Ltd.* have discouraged this practice and has seen it as a malicious attempt to pressurize defendants into making a statement and worse yet to pressurize courts into passing a hurried pro tem order for want of time without any assessment of merits. The courts do consider some cases of eleventh-hour injunction when the plaintiff had no knowledge of the copyright infringement earlier. This case is important in history of copyright as in this case the court strongly held that if the plaintiff decided to wait till last minute for getting justice, then the plaintiff has to face the consequences of such gambit.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS(COMM) 38 of 2021, IA 1167 of 2021 & 1168 of 2021
Jurisdiction	:	Delhi High Court
Case Decided On	:	January 21, 2021
Judge	:	Justice C Hari Shankar
Legal Provisions Involved	:	Copyrights Act, 1957: Sec. 51, Sec. 55 (1)
Case Summary Prepared By	:	Urmi Shah, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

In the present case Hollywood filmmaker John Hart Jr. and Sonia Mudbhatkal who runs a production company in the United States of America have filed case against producer of “The White Tiger” Mukul Deora, his accountant Sharad Sekasari and Netflix.

The plaintiff moved to the court at eleventh hour seeking an injunction against the release of film “The White Tiger” produced by the defendant, scheduled to be released on 12 a.m. on that day itself. Not only this they also sought ad interim injunction to restrain the release of the case during the pendency of suit.

3. ISSUES INVOLVED IN THE CASE

- I. Whether there is a difference between OTT release of movies and theatre release?
- II. Whether an injunction and further ad interim injunction should be granted to the plaintiff?

4. ARGUMENTS OF THE PARTIES

Plaintiff

Counsel for John Hart submitted that he owns exclusive copyright to make a movie of the book titled as “The White Tiger” authored by Mr. Arvind Adiga by the virtue of a purchase agreement dated on March 4, 2009 to make an Oscar-worthy film. So, if the film by Mr. Deora is allowed to release it will lead to copyright infringement.

The counsel also submitted that plaintiff came to know about the making of movie in October of 2019 and also sent official legal notice on October 4, 2019 where by he claimed to be exclusive owner of copyright. The plaintiff contended that if the film was allowed be released then it would cross all limits of piracy. The plaintiff also contended that if it was a theatre release then there would have been necessary checks and balance which have been given away since its OTT release.

The counsel submitted that plaintiff had no reason to believe that shooting will go on during COVID-19 pandemic as a result of which there was delay in approaching the court. The plaintiff contended that if movie was released on Netflix, then they will suffer irreplaceable injury both financially and emotionally. While if the release was stopped then the defendant would not suffer much loss as it is an OTT release and not a theatre release where huge amount of money is invested for infrastructural ramification.

Defendant

Counsel of defendant asserted that there is no justification for approaching court to restrain the movie from release just 24 hours before release when they were aware about the movie since October 2019.

Defendant contended that story portrayed by the plaintiff is one-sided story and certain facts were concealed from the court, in which defendant and plaintiff have a subsequent settlement for making the film of novel by an agreement dated on August 30, 2013. Further, a legal dispute was released by Sonia Mudbhalkar which was later on settled for 53 Lakhs where he waived all his claims regarding the current project. They further submitted that in response to legal note sent on October 4, 2019 a reply was sent denying the assertions made by plaintiff on October 11, 2019. Moreover, the counsel was informed that promotions for the film began in October and the film was released in US theatres on January 11, 2021. Thus, there should be no injunction provided in the favour of plaintiff.

The counsel representing Netflix and other defendants also stated that film was made after due diligence and was not the result of copyright violations.

The defendants also refute the submission that plaintiff's stake is higher in the current case. According to defendants, if film is postponed then they will suffer irreplaceable loss of goodwill and reputation in the market which cannot be compensated in form of money. The counsel also submitted that there is no difference between OTT and theatre release as in both of them large sum of money transactions is involved coupled with labour to make film.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case deals with the provision of the **Copyrights Act, 1957**. The sections involved in the case are:

- **Section 51- When copyright infringed.** It specifies when a copyright is infringed. According to Section 51 of the Act, Copyright is deemed to be infringed if: (a) A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorised to do; (b) A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright; (c) A person imports infringing copies of a work; (d) A person without obtaining the authority from the copyright holder reproduces his work in any form.

- **Section 55(1) - Civil remedies for infringement of copyright.** It provides that the copyright holder is entitled to remedy by way of an injunction. An injunction is the most effective remedy in case of copyright infringement. It further provides that the copyright holder is entitled to damages for copyright infringement. The purpose of providing the damages to the copyright holder is to restore him to the earlier position.

6. JUDGEMENT IN BRIEF

The court held that there is no reason for granting an interlocutory injunction in the present case. The court observed that the plaintiffs were already aware that film may be released on OTT platform at least from October 4, 2019. Therefore, the delay made in approaching court to put stay on movie just 24 hours prior to its release is not justifiable by any trace of material produced by them.

The court relied on various precedents and observed that balance of convenience tilts heavily in favour of defendant and prima facie materials fails to prove that film is by-product of copyright infringement. Court reasoned that defendant have invested huge sum of money and entered into various third-party agreements and if the injunction is granted then it will amount to great injustice and cause the loss irrecoverable injury to them.

The court held that OTT release is no different from theatre release as both involves large amount of money and labour and hence the stake of defendant is as high as that of defendant in the present case. Court further observed that the release of the film is merely the tip of a long-lasting procedure of publication, production and promotion of the film.

The court held that present case is a prima facie case of misuse of judicial process where the plaintiff deliberately waited till the last moment. The court also emphasised on a precedent that the plaintiff who waits till eleventh hour must face the consequences of his failed gambit.

The court emphasised that injunction especially release of cinematographic film ought not be granted when the loss associated could be adequately compensated in terms of money.

Hence, the court rejected to grant injunction though however defendants were directed to make a detailed tab for the earning of the film so that plaintiff if succeeds in later stage could be awarded damages as court may seem fit.

7. COMMENTARY

The court in this case rightly held that parties approaching court for stay of the cinematographic work at last moment is disentitled from such relief. The court was right with its observation that party cannot approach court on eleventh hour for injunction of a movie because huge amount of money and hard work of hundreds of people is involved in the movie and moreover monetary compensation could be sufficient remedy in such cases. It is important to note that plea of injunction was dismissed on the basis of preliminary findings and not on the basis of merits of copyright infringement. It is laudable that court also safeguarded interest of plaintiff despite the fact that they were sleeping over their rights and came to court on last moment. The court asked defendant to keep a detailed tab for earning of the film so that plaintiff if succeeds in later stage succeeds could be awarded damages. In this significant case the court firmly held that no remedy of injunction in case of cinematographic work if you approach court at eleventh hour as in such cases monetary compensation are enough and could lead to misuse of judicial procedure in future.

8. IMPORTANT CASES REFERRED

- *Dashrath B. Rathod and Ors. v. Fox Star Studios India Pvt. Ltd. and Ors.* 2017 (70) PTC 104 (Bom)
- *Glaxo Group Limited and Ors. v. Vipin Gupta and Ors.* 2006 (33) PTC 145 (Del)
- *Midas Hygiene Industries P. Ltd. and Ors. v. Sudhir Bhatia and Ors.* (2004) 3 SCC 90
- *Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel and Ors.* (2006) 8 SCC 726

CASE NO. 7
SAMEER WADEKAR & ANR
V.
NETFLIX ENTERTAINMENT SERVICES PVT. LTD.
2020 SCC ONLINE BOM 659
INFRINGEMENT OF COPYRIGHT OVER NETFLIX'S
'BETAAL'

ABSTRACT

In the case of *Sameer Wadekar & Anr v. Netflix Entertainment Services Pvt. Ltd.*, the Bombay High Court refused to provide interim relief in a copyright infringement action featuring the Netflix series “BETAAL” during a video conference hearing and evaluated the first and most significant question of whether any of the defendants had access to the plaintiff's work in order to copy or infringe it. The plaintiff had claimed that Netflix infringed on his script copyrights and that it was an instance of plagiarism. The court denied the interim application to keep BETAAL from being released on three grounds. The judgment reflects the courts’ tendency, unless proven otherwise, to deny a de facto injunction in a copyright infringement suit filed mere days before a film/web-debut. The most significant finding in this case is that it is necessary to demonstrate the point of contact in order to assert copyright infringement. It is harsh, but true, that if the plaintiff cannot establish an access or point of contact, the court will not even consider whether two works are similar. Only in the event of a confirmed point of contact would the “substantial similarities” be examined.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Interim Application Appeal Nos. 1, 2 & 3 of 2020
Jurisdiction	:	Bombay High Court
Case Decided on	:	May 22, 2020
Judges	:	Justice K. R. Shriram
Legal Provisions Involved	:	Code of Civil Procedure 1908: Order XXXIX Copyright Act, 1957 - Sec. 51

Case Summary Prepared By	:	Dhrutvi Modi, Gujarat National Law University, Gandhinagar
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2. BRIEF FACTS OF THE CASE

The Plaintiff, a Marathi screenwriter, claimed that in the years 2013-14, he wrote a script called “VETAAL” and filed it as a literary work in 2015. Following that, he shared the script with a few producers, including Wilson Louis, with the hopes of developing a motion picture out of it. The plaintiff on May 7, 2020 had seen a 146-second teaser for Defendant No 1’s (“Netflix”) online series “BETAAL”, in which he saw at least 13 similarities to VETAAL. As a result, the Plaintiff claimed that Netflix infringed on his copyrights in the script. It was also claimed by the Plaintiff that it was an instance of plagiarism.

3. ISSUE INVOLVED IN THE CASE

- I. Whether the defendants have infringed the copyright of the plaintiff?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The counsel for the plaintiff contended that “VETAAL” was written by him using his own imagination and ideas, props and characters. The projection of the film by the defendants were similar to the copyrights of the plaintiff.

Defendant

No arguments were put forth by the Defendants.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case deals with the provision of Copyright Act, 1957 and Code of Civil Procedure, 1908. The sections involved in the case are:

- **Code of Civil Procedure, 1908 - Order XXXIX** highlights the procedure to grant temporary injunctions and interlocutory orders.
- **Copyright Act, 1957: Section 51 - When copyright infringed.** Copyright is considered infringed under Section 51 of the Act if any act that only the copyright holder is authorized to do is done without the authorization of the copyright holder; or

a person permits the use of a location for the transmission, sale, distribution, or exhibition of an infringing work unless he knows or has cause to suspect that such permission will result in a copyright violation; or the infringing copies of a work are brought into the country or without the permission of the copyright holder, a person reproduces his work in any manner.

6. JUDGEMENT IN BRIEF

The Court rejected the interim application to restrain release of BETAAL on three grounds:

- The first and most important question the court considered was whether any of the defendants had access to the Plaintiff's work in order to copy or infringe on it. The Plaintiff had no direct relationship with any of the Defendants and had not given them the script. The only claim was that he gave the script to a man named Wilson Louis, who claimed to have ties to Netflix. However, it appears that the evidence does not support such a claim. In the lack of any further evidence, the court ruled that the Plaintiff's claim that Wilson Louis told him he has some contacts with Netflix was insufficient to obtain an injunction. Wilson Louis does not appear to be a party to the proceedings, and no claim for breach of confidence appears to exist.
- The second point was that on the July 16 & 17, 2019, the Defendants published many print and online publications promoting BETAAL, in which they revealed its plot. The Plaintiff, on the other hand, did not approach the Court until May 2020, a few days before BETAAL's publication. Despite the plaintiff's argument that he was unaware of the publications, the court appears to have found that he should have been because they were in the public domain. As a result, the court determined that the claim was affected by delays and locks.
- The court determined that the term "Betaal" comes from the Hindu legendary phrase "Vetalam," which was the third and most intriguing and original component. In this context, the court alluded to King Vikramaditya and Vetaal/ Betaal, two well-known Hindu mythical characters. The court determined that such stories are widely known, and hence no injunction could be issued.

7. COMMENTARY

A claim of copyright infringement requires the defendant to have access to the plaintiff's work. This case emphasises the importance of demonstrating with evidence that the defendant had access to the plaintiff's work. This is especially true if the plaintiff's work has not been published or is not in the public domain. In addition, if a claim for copyright infringement is brought in relation to unpublished work, plaintiffs should consider bringing a breach of confidence action as well. This ruling indicates that, unless there are strong reasons, judges are hesitant to award last-minute injunctions when approached just before the premiere of movies/pictures. Several courts have refused to award interlocutory injunctions when contacted just before the premiere of a film or television series. Courts have also stated that where the balance of convenience is tipped in favour of the plaintiff due to a delay, the principle of automatic injunction may not apply. At the same hand, courts have attempted to strike a balance when a strong case has been established by securing a plaintiff's claim even if an injunction has not been granted. Despite the plaintiff's proof of copyright infringement of its song "Ui Amma Ui Amma", the Court refused to enjoin the release of the defendant's film "The Dirty Picture" on the condition that the Defendant pay INR 20 million to the Plaintiff in *Saregama India Ltd v. Balaji Telefilms Ltd. & Ors.* Similarly, where courts have determined that a proceeding is frivolous, the plaintiffs have been ordered to pay hefty fees. In the case of *Dashrath B. Rathod and Ors. v. Fox Star Studios India Pvt. Ltd. and Ors.* (Suit (L) NO. 196 OF 2017), a fine of INR 0.5 million was imposed on the Plaintiff in relation to the film 'Phillauri'. However, in the context of delay, the question that requires more thought is whether the plaintiff's understanding of the infringing work can be presumed solely on the basis of the existence of certain public domain material, or whether there should be other factors to consider prior to actually attributing knowledge to the plaintiff and denying relief on the basis of delay.

The basis for denial of injunction, to the extent that it relates to VETAAL's mythological importance, may not be sustainable as per the facts of this case. First, the judgement makes no mention of any rights asserted in the script's title, and second, the plot does not appear to be identical to the mythological accounts of King Vikramaditya and Vetaal/Betaal to the extent specified in the judgement. *Anil Gupta and Ors. v. Kunal Dasgupta and Ors.*, where the dispute was over copyrights in an idea for a television serial for matchmaking known as 'Swayamvar', which is a mythical concept, would be relevant.

8. IMPORTANT CASES REFERRED

- *Kanungo Media (P) Ltd., v. RGV Film Factory And Others*, 138 (2007) DLT 312
- *Anil Gupta and Ors. v. Kunal Dasgupta and Ors.* [(2002) ILR 1 Delhi 250]
- *Saregama India Ltd v. Balaji Telefilms Ltd. & Ors* (TA No. 52/2012)

CASE NO. 8
JAGRAN PRAKASHAN LIMITED
V.
TELEGRAM FZ LLC & ORS.
CS (COMM) 146 OF 2020, DELHI HIGH COURT
COPYRIGHT INFRINGEMENT IN E-NEWSPAPER

ABSTRACT

The following is the case summary of the judgment pronounced by the Hon'ble Delhi High Court in *Jagran Prakashan Ltd. v. Telegram FZ LLC & Ors.* The present case deals with the intermediary liability and infringement of Dainik Jagran's copyright and trademark rights in the electronic version of its newspaper. The E-newspapers have gained prominence during Covid as physical circulation of newspapers was hampered. However, with this came the issue of dissemination of e-newspapers through different online platforms and legality of such practice under the copyright law. This case also deals with the issue of liability of administrators of WhatsApp/Telegram group for messages sent on the group. Intermediaries are service providers that facilitate interaction on the internet. Such entities include Internet Service Providers (ISP), social media platforms and search engines. Under Indian IT Laws, they are protected under 'Safe Harbor' provision. Section 79 of Information Technology Act, 2000 which exempts them from the act of their users. However, there has been a wide-ranging debate regarding the scope of protection under this law, which is also dealt with under this law.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS (COMM) 146 of 2020
Jurisdiction	:	Delhi High Court
Case Decided On	:	May 29, 2020
Judges	:	Justice Mukta Gupta
Legal Provisions Involved	:	Copyright Act 1957 - Sec. 51; Information Technology Act, 2000 - Sec. 79; Information Technology (Intermediaries Guidelines) Rules 2011 - Rule 3(4)

Case Summary Prepared By	:	Nishant Mishra, Gujarat National Law University, Gandhinagar
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2. BRIEF FACTS OF THE CASE

The present suit has been filed by the Plaintiff, ‘Jagran Prakshan Limited’. It is a company which is a publisher of leading Hindi daily named Dainik Jagran, which has wide circulation both in physical and digital form. The digital e-paper of the plaintiff is available and published on www.jagran.com. The website has a feature through which a reader can read the newspaper only in the digital form on the website and cannot download the same in the PDF form. It also offers various paid subscription plans to the users.

The defendant No.1 is Telegram FZ LLC having its registered office in Dubai, United Arab Emirates. Telegram is an instant messaging service. It is used to send messages and exchange photos, videos, stickers, audio and files etc. Defendant No. 2 is John Doe/Ashok Kumar unidentified administrator of the Telegram Channels who are indulged in alleged unauthorized circulation of the plaintiff’s newspaper.

The plaintiff alleged that the Defendant No. 1 through its platform is allowing its users (Defendant No.2) to upload and circulate the e-paper of the plaintiff in PDF format.

The present suit is filed seeking injunction under Order 39 Rule 1 & 2 of the CPC, 1908 against the Defendant No. 1 & No. 2.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the dissemination of downloaded E-paper through intermediary platforms would amount to copyright and trademark infringement?

4. ARGUMENTS OF THE PARTIES

Plaintiff

With regard to the claims put forth, it was argued by the plaintiff that it is an exclusive owner of the trademark “Dainik Jagran” and its variations are registered in number of classes.

The Defendant No. 1 through Defendant No. 2 was indulged in unauthorized dissemination of the plaintiff’s e-newspapers. Due to the acts of the defendants the plaintiff was facing serious financial losses. Further, the plaintiff’s trademark rights as well as copyrights in the e-newspaper were also being infringed.

These issues were brought to notice of the Defendant No. 1, but they did not respond. Plaintiff filed the present suit before this Court and an advance copy of the plaint and documents therewith were served to Defendant No. 1 by email on May 23, 2020. After this, plaintiff received a reply on May 25, 2020 from Defendant No. 1 claiming that the channels had been blocked. Plaintiff has however placed on record a screenshot dated May 28, 2020 which shows that the channels of the Defendant No. 2 were still working.

The plaintiff argued that as per Section 70 of the Information Technology Act, 2000 read with Rule 3(4) of the Information Technology (Intermediaries Guidelines) Rules, 2011 that intermediary has to conduct due diligence and when informed about the misuse has to pull down the said channels/account within 36 hours. In the present case Defendant No. 1 failed to do so.

Defendant

The Defendant did not enter appearance.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case deals with the provision of Copyright Act, 1957 and Information Technology Act, 2000. The sections involved in the case are:

- **Copyright Act, 1957: Section 51 - When copyright infringed.** It talks about what constitutes copyright infringement. It states that copyright is infringed inter alia when any person does anything exclusive right to do which has been conferred by the Act on the owner of copyright.
- **The Information Technology Act, 2000: Section 79 - Exemption from liability of intermediary in certain cases.** It enshrines the principle of 'Intermediary Liability'. Intermediary is an internet service provider which provides its platform to be used by the third parties for various activities such as buying and selling, communication etc. It states that an intermediary is not liable for any third-party information, data or communication link made available or hosted by them except as specified in Sections 79(2) and (3) of the IT Act, 2000.
- **Information Technology (Intermediaries Guidelines) Rules 2011: Rule 3(4) - Due diligence to be observed by intermediary.** It states that intermediary has to upon obtaining knowledge about any such information as mentioned in sub-rule (2), shall act within thirty-six hours to disable such information. Information as mentioned in

sub-rule (2) pertains to hosting, uploading, sharing of content that infringes any patent, trademark, copyright or other proprietary rights; harm minors in any way; is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic etc.

6. JUDGEMENT IN BRIEF

The Hon'ble court held that the plaintiff has made out a prima facie case in its favor, the balance of convenience is in its favor and if not granted ad-interim injunction then it would suffer irreparable loss. It also directed the Defendant No. 1 to disclose the basic subscriber information/identity of the users/owners of the channels who have been impleaded as Defendant No. 2. It also ordered the Defendant No. 1 to take down/block the Telegram channels which are infringing the rights of the plaintiff within 48 hours of the receipt of this order.

7. COMMENTARY

With changing market situation, the various newspapers have adopted this new strategy of making e-version of their newspaper available on their website. This has led to dissemination of e-paper via web-based media by people. It raised interesting copyright debate around the circulation of e-newspaper through web-based media. The Indian Newspaper Society has issued an advisory on April 30, 2022 that states that circulation of e-newspapers PDF files amounted to piracy. Although, the court in the present case has not dealt with the issue in hand in detail. However, prima facie it found that such circulation would amount to copyright infringement. More clarity in this area is required as even after the Covid-19 lead restrictions are lifted, the e-newspapers are going to stay, so does their piracy.

CASE NO. 9
SHAMOIL AHMAD KHAN
V.
FALGUNI SHAH AND ORS.
MANU/MH/0590/2020

IDEA-EXPRESSION DICHOTOMY

ABSTRACT

In *Shamoil Ahmad Khan v. Falguni Shah*, the Bombay High Court recently issued a decision that contradicted the idea-expression dichotomy. The subject, plotline, and plot that make up the core of a literary work can be protected, according to the High Court. This verdict contradicts the Supreme Court's historic decision in *R. G. Anand v. Deluxe Films*. The Court ruled that a theme, storyline, premise, and historical facts should all be preserved in the public domain. When there is a substantial similarity in the allegedly infringing work, copyright is considered to be infringed. Because the level of substantial similarity is believed to be ad hoc and subjective, there is no one-size-fits-all technique for determining if the works are substantially similar. However, courts must determine substantial similarities with caution and solely on the basis of protectable works, i.e., the authors' original expression.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Notice of Motion No. 2238 of 2019; Comemrcial IP Suit No. 1193 of 2019
Jurisdiction	:	Bombay High Court
Case Decided On	:	May 26, 2020
Judges	:	Justice S. C. Gupte
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 13(1)
Case Summary Prepared By	:	Shivam Agarwal, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

In this lawsuit, the plaintiff is the author of the short story collection “Singardaan.” It was written in Urdu and initially appeared in the journal “Zahne Jadid” in 1993. It was eventually

published in 1996 in the Plaintiff's own collection named "Singardaan." The complainant himself translated and published the narrative in Hindi. His narrative was eventually translated into English, Marathi, and Punjabi and published on websites. The narrative has also been made into a play.

The defendants created a "Singardaan web serial" with six episodes. The series has been released on the 'Ullu' app and is also available on YouTube. The plaintiff claimed that the defendants stole everything, including the title, storyline, and characters of the narrative, "Singardaan", and so seeks damages as well as injunctive relief in the litigation, as well as interim relief. The defendants rejected the notion, claiming that the story arc and storyline are distinct in each case.

3. ISSUE INVOLVED IN THE CASE

- I. Whether the copy of partial content, plot or story line and its presentation in a different format be the subject matter to copyright?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The Plaintiff claims that the Defendants created a web series with the same name, "Singardaan", with six episodes totaling about one hour and 54 minutes. The series was introduced or released on an app called 'Ullu' and is available on the web platform YouTube, among other places. The Plaintiff claims that the Defendants plagiarised not only the Plaintiff's title, "Singardaan", but also the whole plot, narrative, and characters of his story of the same name in their own web series. As a result, the plaintiff seeks damages as well as injunctive relief in the complaint, and prays for interim relief in the current notice of motion in terms of the suit's permanent injunctions.

Defendant

The defendants reject the action, claiming that their web series is neither a copy nor a modification of the plaintiff's narrative "Singardaan." The defendants contend that, notwithstanding the similar titles, the defendants' work is a completely unique concept and invention; the idea, story arc, and storyline of the two works are significantly different.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal provisions are eminent in analysis of this case which are profoundly found in international and national legislations. The following are the significant relatable provisions of the Copyright Act, 1957:

- **Section 13(1) - Works in which copyright subsists** - Subject to the provisions of this Section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say, — original literary, dramatic, musical and artistic works; cinematograph films.

6. JUDGEMENT IN BRIEF

The Court remarked that the defendants' web series is plainly a duplication of the plaintiff's subject, structure, and story line in many ways. Anyone who has read or watched both stories will notice a lot of similarities. In this instance, the defendant took the Plaintiff's subject, storyline, and story line and adapted it in a different style.

The Court took note of the fact that the web series has been illegally available on the internet for over a year. As a result, the court decided to bar the defendants from making any further adaptations of the plaintiff's story, and decided that the plaintiff should be compensated in the form of adequate remuneration or a share of the defendant's profit, rather than granting a temporary injunction to withdraw the work or prevent its exhibition, because the work was completed.

Hence, the defendants are asked to keep accounts of the profits from the day, publication was done till the pendency of the suit for the disposal of the case, soon after the court reopens in June 2020.

7. COMMENTARY

Many claims of copyright infringement have been filed previously, even when only the title of the work was identical. However, under Section 13(1) of the Copyright Act of 1957, it is expressly stated that the title can never be the subject matter of copyright in certain cases. However, in this case, as in many others, not just the title but also some other significant literary aspect, such as the storyline, topic, or some part of the material, characters, or story line, has been duplicated. As a result, the decision in those cases indicated that there is no need to establish that the infringement copied the entire work. The storyline, topic, character, and story line are the most vital aspects of the material and the lifeblood of any creative literary work.

No task cannot be accomplished without these components. As a result, if the key elements of the work are reproduced, a close likeness between the two works is created, which might lead to copyright infringement. As a result, we may claim that copyright extends to literary work's 'expressions,' such as theme, narrative, and plotline.

8. IMPORTANT CASES REFERRED

- *Krishika Lulla and Ors. v. Shyam Vithalrao Devkatta and Ors.* MANU/SC/1174/2015
- *R.G. Anand v. Delux Films and Ors.* MANU/SC/0256/1978
- *XYZ Films LLC and Ors. v. UTV Motion Pictures/UTV Software Communications Ltd. and Ors.* MANU/MH/0608/2016

CASE NO. 10
UTV SOFTWARE COMMUNICATION LTD. AND OTHERS
V.
1337X.TO AND OTHERS
[(2019) 78 PTC 375]

COPYRIGHT OF CINEMATOGRAPHIC FILMS

ABSTRACT

The following is a case summary of the case dealing in the matter of the publishing of the copyrighted content viz. movies, videos in the public domain without getting permission from the original owner. Eight suits were filed, and they plead for seeking injunction from the defendants to use the copyrighted material henceforth and permanent remedy for preventing from such infringement in future. The plaintiff is a company whose nature of business is producing and distributing films and their remedy is permanent injunction for usage of the copyrighted material without permission. Identifying those infringers, content providers and blocking the same by internet service providers and to identify the infringers, the website service providers should disclose the contact details of the content providers of website registrants, who infringes the copyright. The plaintiff has submitted through their counsel the affidavit of the investigator and the investigator has done a detailed analysis of infringement of the copyrighted material of the plaintiff by the defendants. The defendants have posted in the public domain through various websites and allowed the viewers to download, to share, to make use of it. The plaintiff's nature of business is such that, generating revenue through advertisement in the copyrighted material and this infringement has resulted in loss for the plaintiff and the defendants have infringed the copyrighted materials. The concept of "Rogue Website" was dealt in detail and a test to determine the rogue website was elaborately discussed in this case. Further, how to handle those rogue websites were also discussed and in final, the decree favoured the plaintiff, and the decree of permanent injunction was passed by the honourable court. The author is in support of the judgment of the Court that it has passed in the interest of justice, equity and good conscience.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS(COMM) 724 of 2017 & I.As. 12269 of 2017, 12271 of 2017, 6985 of 2018, 8949 of 2018, 16781 of 2018
Jurisdiction	:	Delhi High Court
Case Decided On	:	December 10, 2019
Judges	:	Justice Manmohan
Legal Provisions Involved	:	Copyright (Amendment) Act, 1994, Sec 2(y), 2(ff), 14, 14(d), 51(a)(i), 51(a)(ii), 52(1)(c), 55; The Information Technology Act, 2000, Sec 69A, 79
Case Summary Prepared By	:	Sankar Ganesh S SEOL, TNDALU, Chennai

2. BRIEF FACTS OF THE CASE

The plaintiffs are the real copyright owners of the film and other materials, and the defendants are unknown parties and they have infringed the copyrighted data.

The plaintiffs for the owners or the legally authorized persons to telecast to stream, or to produce, broadcast the copyrighted material. The John Doe defendants namely, the unknown parties were engaged in the activities of infringing the copyrighted materials and the defendant's website were used for infringement.

The suit is filed for the unauthorized usage of copyrighted material by the John Doe defendants without obtaining the right for using such materials. The defendant despite several attempts were not able to be traced and they created an 'identifiable websites' for unauthorized publishing and using the copyrighted material of the plaintiff. Permanent injunction for restraining the defendants in usage of copyrighted materials.

3. ISSUES INVOLVED IN THE CASE

- I. Whether there is difference between infringement of copyrights in physical world and in internet world?
- II. What is the impact of blocking of website?
- III. What and how to know about rogue website?

- IV. What are all the test for determining rogue website?
- V. Whether defendant website fall under rogue website?
- VI. How this court will be justified in blocking the website?
- VII. How the court to handle these rogue websites when blocked?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The defendant has generated revenue by means of advertisement displayed in their websites. The plaintiff parties have appointed one investigator for finding out the infringement. The investigator reported along with the evidence as stipulated under Section 65B of Indian Evidence Act, 1872.

The investigator further reported that the defendants' websites have list of movies, tv shows etc., as that of plaintiff and contains all copyrighted material of plaintiffs. The investigator further reported that the uploading details of those infringed materials were not known.

If one website is blocked several mirror websites were opened and it is very difficult in blocking of those websites. Hence, those websites are termed as John Doe defendants.

International parlance on blocking the websites

A. European union

The infococ directive (recital 59) stresses the importance of intermediaries in blocking the infringers. The intermediaries play a vital role in identifying the infringers and blocking the same. It is easy to pass an injunction on intermediaries there by infringers can be controlled. This is termed as no fault-based injunction.

In addition to the above, Article 9 and 11 directive on enforcement of intellectual property rights. Envisages the importance of injunction on intermediaries and whose services are indirectly abused by the infringers.

B. France

Article L. 336-2 of the French intellectual property code. Entrusts, and ensures the power to the criminal court to pass an order against infringement and to prevent an infringement. Several judgments have paved of protecting the copyrighted materials.

The courts by means of judgment have played a vital role in delisting, deindexing, site blocking of infringing websites.

C. Germany

Part 3, Section 7 (4), and Section 8 (3) of Telemedia Act. Enforces the blocking of copyrighted information and to stop infringement in toto.

D. United Kingdom

Section 97A of the copyright, design, and patent act. Providing the powers of the court to direct injunction against service provider when there is infringement.

The right owner gets the benefit of no-fault injunction against the service provider.

E. Singapore

Section 193DDA, 193DDB, 193DDC of Copyright act, empowers court to pass an injunction against internet service providers (ISP) when they have been used to infringe a copyright material and by which the pirate websites can be controlled.

The petitioner further provided the statistics of blocking of websites by several countries and efficacy research on the said subject and the guidelines/rules/regulations/acts for controlling the infringement and for blocking the websites.

The petitioner further provided the list of countries who have adopted site blocking namely, Malaysia, Thailand, Indonesia, Korea.

To substantiate his argument the petitioner referred the article titled ‘how website blocking is curbing digital piracy without “breaking the internet”’.

The petitioner listed out the various methods like IP (internet protocol) address blocking, IP blocking, URL blocking, SDN (software defined network blocking), DNS blocking and how effectively this can impact the piracy.

The petitioner also pointed out the cost involved in blocking the websites and various methodology adopted by various countries in blocking the websites cost effectively and efficiently.

The petitioner while concluding his argument pointed out the effect of digital piracy and how it impacts the economy.

Arguments of Amicus Curie

The amicus curie submitted the importance of genuine website and its genuine content. It is the onus of the plaintiff to provide adequate evidence, substantial proof for proving there is an infringement.

The amicus curie also pointed out “**three-step verification test**”. Laid down by Bombay High Court for finding out the infringements and blocking of the websites. They also stressed about DNS blocking, IP blocking, DPI (deep packet inspection) and the challenges involved in this type of blocking which will affect genuine websites.

The amicus curie relied on various judgments of various courts of various countries and relied on the legal provisions and its impact in the blocking of websites.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case deals with the provision of Copyright Act, 1957, various international reports and literature. The sections involved in the case are:

The reports:

- i. The economic impacts of counterfeiting and piracy.
- ii. ICCBASCAP Frontier Report 2016.
- iii. KPMG-INDIA-FICCI-MEDIA-ENTERTAINMENT-REPORT-2017.

Article:

- i. How website blocking is curbing digital piracy without “breaking the internet”.

Acts and Sections:

- i. Section 2(Y) of Copyright Act 1957
- ii. Section 2 (F) of Copyright Act 1957- Cinematographic
- iii. Section 2 (ff) of Copyright Act 1957
- iv. Section 14, 14 (d) of Copyright Act 1957 - Exclusive Rights
- v. Section 51 (a)(i) & (ii) of Copyright Act 1957- Communication to the public for profit.
- vi. Section 52 (i)(c) – Exempts from liability of Copyright Infringement.
- vii. Section 2 (i)(w) of Information Technology Act 2000 which defines intermediaries

- viii. Section 79 of Information Technology Act 2000 which specifies about safe harbor for ISP, Intermediaries
- ix. Section 55 of Copyright Act 1957 civil remedies to the rights of the owner.
- x. Section 51 of Copyright Act 1957 specifies about infringement of copyrights.
- xi. Section 69 (A) of Information Technology Act 2000 empowers the central government to block access to certain information.

6. JUDGEMENT IN BRIEF

Treatment of infringement of copyright in internet world: Cyber space is a free space. All can be accessed, use, made for personal use, made for profitable basis but it is not so. The court finds that many websites are intentionally made to make use of copyrighted material without any authority, for commercial and monetary purposes.

Blocking of Websites: The court feels that blocking of illegal websites doesn't have any hurdle for legal websites. The internet freedom is not just an open freedom, the control, the limitation is all depends of the government.

Rogue Website: The factors which are necessarily to be considered for finding out whether the website is a normal or rouge website are as follows:

- i. Purpose of the website.
- ii. Flagrancy of infringement.
- iii. Whether the infringer details are available?
- iv. Whether the online location of the infringer is available?
- v. Whether owners of the infringements online location are available?
- vi. Whether the owner of the online infringement disregards?
- vii. Whether the online location of the infringer has been disabled or not permitted to share by any court or government?
- viii. Any other relevant matters.

Testing of Rogue Website:

Quantitative approach. Three steps have been laid down by court in the case of *Eros International Media* are as follows:

- a) Verification and assessment by external agency;
- b) Verification by deponent and along with plaintiff Advocate;
- c) The affidavit should be an oath.

Qualitative Approach. The court in the case of *Star India Private Ltd.* laid down the procedures for the qualitative approach.

- a) Whether defendant websites fall in the category of rogue website.

The court dealt the issue categorically and listed out the infringement in all means by the defendant website.

The court tested the websites by means of qualitative approach and satisfied itself that the defendants websites fall under the category of rogue websites.

Based on the above finding the court passed a permanent injunction in restraining the defendant's websites in all means, owners, proprietors, officers etc., in any manner of usage of the copyrighted material of the petitioner.

7. COMMENTARY

This court while passing this permanent injunction established the principles behind rogue websites and how the rogue websites have to be handled in detail. The court elaborated on the concept of identifying the websites as the rogue websites and how it impacts the copyright owners/authorized persons. The court categorically dealt with the issue and duly helped by amicus curie with the intricacies involved in blocking of websites and blocking of contents.

8. IMPORTANT CASES REFERRED

- *Stichting Brein v. Ziggo BV and XS4ALL Internet BV* (C- 610/15)
- *SFR and Others v. Association of Cinema Producers and Others*, Cour Cass, Civ I, 6 July 2017, No 16-17.217, 16-18.298, 16- 18.348, 16-18.595, ECLI:FR: CCASS: 2017:C100909 (Allostreaming)
- *Federation Nationale Des Distributeurs De Films and Others v. S.A. Orange and*

Others, 25 May 2018: On 25 May 2018

- *Scarlet Extended SA v. Societe Belge des Auteurs Compositeurs et Editeurs SCRL*, [Case C 70/10]
- *Shreya Singhal v. Union of India*, (2015) 5 SCC 1
- *Myspace Inc. v. Super Cassettes Industries Ltd.*, 2016 SCC OnLine Del 6382
- *Eros International Media Ltd. & Anr. v. Bharat Sanchar Nigam Ltd. & Ors.*, Suit No.751/2016
- *Department of Electronics and Information Technology v. Star India Pvt. Ltd.*, FAO(OS) 57/2015

CASE NO. 11
SANJAY KUMAR GUPTA & ANR.
V.
SONY PICTURES NETWORKS INDIA & ORS.
AIR 2018 DEL 169

**PUBLIC CONCEPT OR IDEA AS A SUBJECT-MATTER OF
COPYRIGHT**

ABSTRACT

The Single Judge Bench of the Delhi High Court in this case iterated the position of a concept as a copyrightable work. It was held that there are two pre-requisites to obtaining a copyright, (i) there must be some tangible work, like literary, artistic, musical work and not merely an idea/ concept, and (ii) the work must be original and novel. The appeal preferred by the rights owners was dismissed on the grounds that (i) their concept was not novel, and was already available in public domain, and (ii) that their concept had not been copied in whole, and infringement cannot be claimed on a portion of concept. The approach of the Judge in resolving the dispute without delving deeper into the issue of validity of appellants' copyrights validity (same being a concept) and redirecting the issue to the work being that of public knowledge is noteworthy as the same perhaps had reduced the complexity of the issue.

1. PRIMARY DETAILS OF THE CASE

Case No	:	RFA (Regular First Appeal) No. 627 / 2018.
Jurisdiction	:	Delhi High Court
Case Decided on	:	August 10, 2018
Judges	:	Justice Valmiki J. Mehta.
Legal Provisions involved	:	Copyright Act, 1957: Sec. 2(y), Sec. 14, Sec. 16
Case Summary Prepared by	:	Parthiv Joshi, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

Sanjay Kumar Gupta, the appellant in the present case, was a freelance concept maker who along with one another developed many concepts. They registered a copyright on 04 January 2013 for their concept “Jeeto Unlimited” that was a play along concept of a live show on TV whereby the home viewers played along and won rewards for successful answer to a quiz.

They presented this concept to Sony Pictures Network, the respondent, which ran the game show “Kaun Banega Crorepati” (KBC) in December 2011.

However, they later alleged before the Trial Court that the “KBC Play Along” segment of the show violated the said copyright due to striking similarities with their “Jeeto Unlimited”.

On 13 July 2018, the Trial Court dismissed the suit wherein it framed seven issues for determination.

Aggrieved by this, they filed Regular First Appeal (under Section 90 Civil Procedure Code, 1908) before High Court of Delhi.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the copyrights claimed by the appellants in the concept of “Jeeto Unlimited” is an original work?
- II. Whether the appellants are entitled to a decree for infringement of his copyright work?

4. ARGUMENTS OF THE PARTIES

Appellant

Jeeto Unlimited is an original work: The appellants conceived the idea of constant engagement with home audience to enhance the game. The live participation of audience on a TV reality show is brainchild of the appellants. The copyright registration in favour of appellants also raises further presumption as to the originality of the work.

Concept can be subject-matter of copyright which has been infringed: The appellants relied upon *Anil Gupta Case* to submit that even a concept can be subject matter of copyright.

There is a similarity between the concept of appellants and the segment of KBC as “(i) both games are simultaneously with contestant, (ii) the home audience answers same question as asked to contestant, (iii) home viewer can participate by watching T.V., (iv) reward depends

on the amount of money for which question is being played, (v) home viewer will be selected through digital mode programming by the channel's technical team."

Respondent

Jeeto Unlimited is not a novel concept: The concept of appellants was not novel in nature as it borrowed specific elements from original KBC Show and renamed them. Additionally, home audience participation in a T.V. show is not an original technology and there have been many instances of the same since era of landlines/ handsets as well.

Additionally, copyright registration "does not automatically lend to the copyrightable nature, validity and enforcement of copyright in the work." The registration is merely prima-facie evidence of the particulars being entered into the Register of Copyright. It is the duty of the appellants to establish that the registered work is of a copyrightable nature and subsequent work is infringing.

There is no copyright violation: A copyright can only be claimed in Jeeto Unlimited's precise note, and not the preamble for there is no element of novelty in the scheme of audience participation in TV Quiz shows. The concept notes featuring how i.e., "manner, way the game is to be played" and "how the prize money shall be distributed" can be a subject matter of registration for copyright.

In the alternative, the way in which KBC's segment is played is substantially different from Jeeto Unlimited as (i) KBC selects home audience based on fastest participation; appellants' concept show selects on lottery system, (ii) KBC allows an independent game to home audience; appellants' game is dependent on contestant on TV, (iii) KBC's game can be run with a pre-recorded event; appellant's game provides for a live show, (iv) KBC rewards audience based on points earned that can later be converted into awards; appellants' game only provides for monetary value, (v) KBC allows home audience to earn points irrespective of contestant's game; appellants' game is dependent on help sought by contestant.

Hence, there is no similarity in the appellant's concept and the game show segment of KBC.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright Act, 1957** have been discussed:

- **Section 2(y) - Interpretation (Work).** A work means (i) a literary dramatic, musical, or artistic works, (ii) a cinematograph film and, (iii) a sound recording. It also includes live shows, performer's right and broadcasting rights.

- **Section 14 - Meaning of Copyright.** A copyright means the exclusive right to do or authorise the doing of any acts in respect of a work or any substantial part. It provides various conditions under different sub-heads that are covered under the meaning of copyright.
- **Section 16 - No copyright except as provided in this Act.** There cannot be a copyright except as provided in the Act.

6. JUDGEMENT IN BRIEF

Appeal dismissed.

There cannot be any copyright on mere concept/idea and the rights are only granted on artistic, literary, etc. works and even for the sake of argument, if concepts are taken as a copyright work, the same must be operated in whole and transformed into a work.

Requirement of Novel Concept: A concept can be taken as a copyright work only when it is transformed into literary work, dramatic work, artistic work, musical work, etc., essentially any work covered under Section 2(y) of the Copyright Act. The concept of the plaintiffs in this case was already in public domain; there is no novel aspect in the well-known play along concept of audience sitting at home. Hence, the same cannot be regarded as an original work.

Concept cannot be copyrighted: After a thorough perusal of *R.G. Anand Case*, this Court relied on Supreme Court's opinion that the concept in its own with its essential components, cannot be a subject matter of copyright. Even if copyright is granted on the concept note as a whole, the appellants cannot "cull out one feature of their work and claim monopoly or exclusivity over it dehors the entire copyright work." KBC's game segment, although has some similar features to the plaintiff's concept, but it also has substantial difference to indicate that there has been no infringement of the copyrighted concept note.

Justice V J Mehta as an obiter dictum observed at para 18 of the judgement that no law can contravene the law declared by the Supreme Court. This principle persuaded the Court to arrive at the said decision.

7. COMMENTARY

This judgement reveals a very fundamental requirement of copyright law. The whole of the judgement revolved around the nature of the copyright on which the appellants claimed infringement – i.e., whether the same was an actual copyrightable work or merely a concept. As such, a copyright can be granted on works derived from a novel idea, and not on the ideas

(concepts) itself. The manner in which the Delhi High Court approached this matter is quite unique in the way that in intellectual property disputes, it is usually common for both parties to claim prior usage – and in this case as well – Respondent No. 1 in District Court, pleaded that the appellants (plaintiffs therein) had attempted to copy their concept. Nonetheless, it is noteworthy that the Appellate Court’s approach focused more on how copyright, however granted, operates only on the concept as a whole – and not in isolated aspects as the appellants contended. This perhaps helped resolve the dispute at hand without going into the further nuances of prior usage that could’ve increased costs of litigation and time of courts.

8. IMPORTANT CASES REFERRED

- *Mr. Anil Gupta v. Mr. Kunal Dasgupta*, (2002) ILR 1 Delhi 250: 2002 (25) PTC 1 (Del)
- *R.G. Anand v. Delux Films*, (1978) 4 SCC 118
- *Zee Telefilms Ltd. and Film and Shot v. Sundial Communications Pvt. Ltd.*, 2003 (3) Mh. L.J 695

CASE NO. 12
THIAGARAJAN KUMARARAJA
V.
M/S CAPITAL FILM WORKS (INDIA) PVT. LTD. AND ANR.
2018 (73) PTC 365 [MAD][DB]
A PRODUCER’S COPYRIGHT ON DUBBING

ABSTRACT

The following case is of *Thiagarajan Kumararaja v. M/S Capital Film Works (India) Pvt. Ltd. And Anr.*, which is one of the first cases that discusses the rights of a producer, the author of the script and dubbing of a film. In the present case the Madras High Court has expanded the meaning of communication to public, present in the Copyright Act, 1957. The subject of the case was a Tamil film “Aaranya Kaandam”, according to the court the rights to the script were owned by the director-author but the rights of the cinematographic film was with the producers of the film. The court faced the question to decide whether the producer is allowed to remake and/or dub the original film. Accordingly, the court delved into the aspects that make a film, that include story, script, screenplay and music. The court found that dubbing was essentially a change of sound track that was a basic part of the cinematographic film to which the producer owned the rights.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Original Side Appeal No. 22 of 2017
Jurisdiction	:	Madras High Court
Case Decided On	:	November 20, 2017
Judges	:	Justice Rajiv Shakdher, Justice Abdul Quddhose
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 2(ff), 14(a)(iv), 17; The Berne Convention for the Protection of Literary and Artistic Works
Case Summary Prepared By	:	Varuni Tewary, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

Mr. Thiagarajan Kumararaja is the appellant-plaintiff in this case. He is the script-writer and director of the Tamil film ‘Aaranya Kaandam’, a critically acclaimed film that also won the Grand Jury Prize at the New York Film Festival, and also won three National Awards in 2011-12 for best editing, best debutant director and best producer for giving opportunity to a newbie director but it failed to do well commercially. The appellant claims that commercial failure of the film was on account of the producers i.e., the respondents-defendants in this case. The producer of the film, S.P. Charan and his production company i.e., Capital Film Works, decided to dub the film to Telugu almost three years after its making, and was possibly also looking to remake the film.

It is the position of the appellant that in the year 2006, he wrote the script of the film “Aaranya Kaandam” and had it registered with the Film Writer’s Association in Mumbai. The appellant claims that he was interested in granting a license to the producer to use his script for the limited purpose of making a cinematograph film in Tamil language alone. Accordingly, the film was made in the Tamil language. The film received great critical acclaim however, the film remained a commercial failure. In February, 2012, the respondents were attempting to dub “Aaranya Kaandam” in Telugu, and also, perhaps, were wanting to remake and/or adapt the said film, albeit, without the appellant’s prior consent. The appellant claims that this would infringe his copyright. Hence, the present suit was instituted.

The appellant-plaintiff in this approached a single judge bench to pass an order of injunction. The same was done by the single judge. However, on an application, brought by the respondents-defendants, the interim order of injunction was vacated. The appellant took the case in appeal to the Division Bench which ended up with the same result and the appeal was dismissed. The appellant carried the matter further, in appeal, to the Supreme Court. The Supreme Court disposed of the special leave petition as the case was still pending in the Madras High Court. It observed that the High Court must dispose of the matter within the period of three months from the date of their order.

3. ISSUES INVOLVED IN THE CASE

- I. Whether dubbing and/or remaking the Tamil film “Aaranya Kaandam” into Telugu or any other language constitutes an infringement of the appellant’s right under the Copyright Act, 1957 and particularly, Section 14(a) thereof?

- II. Whether the plaintiff/Director has any right to stop or interfere with the respondents, who are the producers of the cinematograph film “Aaranya Kaandam” from dubbing remaking and doing any other activity in view of the admitted fact that the plaintiff has not entered into any agreement, as per Section 17 Proviso (b) with the respondents to restrain the respondents from performing any activity whatsoever in relation to the movie?
- III. Whether sub clause (d) of Section 14(1) of the Copyright Act is the only relevant Section, under Section 14, in relation to a cinematograph film?

4. ARGUMENTS OF THE PARTIES

Appellant

It was argued on behalf of the appellant that there was no assignment of copyright of the script as that could take place only in writing. To the contention of the respondents that there existed a budget sheet that is evidence of script rights being transferred to the producers, the counsels stated that if this was the case the rights thereof would be outlined in the sheet itself. Hence, in the absence of the same there is no assignment of copyright. Further, it was argued that, if it was assumed that the assignment did happen, it could only have been for the Tamil film. Moreover, under Section 19(5) of the Act, it could not have been for more than five years. It was also argued that the act of dubbing was to make a new sound track, thereby creating a new cinematography that would infringe on the plaintiff's rights.

Respondent

The counsels for the respondents argued that there was infact no script that was given by the director to the producers but a story. The producers had taken the responsibility and initiative of making the cinematographic film. The appellant in the case had been given his due consideration for the script. Thereby the copyright was with the respondents of the case, reliance being placed on proviso in 17(b) of the Act. It was contended that since the producers of the film were the copyright holders, they had the right to dub the movie to communicate with the public. In this context, the term communication with public was wide enough to include methods that are direct or by any means of display or diffusion available to the producers other than by making use of physical copies of the same. Additionally, it was brought to the court's notice that the registration with the Film Writer's Association was done after the cinematographic film was made.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The present case deals with the following relevant Sections of the **Copyright Act, 1957** in an exhaustive manner.

- **Section 14(a)(iv) - Meaning of Copyright.** It states that the owner of literary work has got the exclusive right to make any cinematograph film or sound recording in respect of the work. In part (d)(iii) of the same section, the owner of the cinematograph film or sound has the exclusive right to communicate the film to the public.
- **Section 17 - First owner of copyright.** It is specifically stated that the author of a work is the first copyright holder. The term author with respect to a film is defined under Section 2(d) is the producer of the film. The term producer is further stated to be a person who takes initiative and responsibility for the work.
- **Section 2(ff) – Interpretations (communication to the public).** An important aspect in the decision was the interpretation of communication to the public. The same defined under Section 2(ff) as follows: making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available.

6. JUDGEMENT IN BRIEF

The verdict was given by Justice Rajiv Shakhder on his and the other judge's behalf. The court opined that the appellant was the author of the script and the screenplay, however, the cinematographic film was made with the initiative of the respondents. Therefore, the producers would have the rights conferred to them under the Section 14(d)(iii). This right would include the right to dub as the term "communication to public" has to be read expansively. The court observed that a cinematographic film necessarily includes the embedded sound track, therefore, reconfiguring the sound track to a language different from the original would not affect the other underlying rights that the appellant may have in the other literary works of script and screenplay. More importantly, the court concluded that since the rights of script and screenplay are vested with the author, the producer did not have the right to make an entirely new film. As this would include making changes to the script, meaning infringing on the appellant copyright on the script.

The court delved into the fact that dubbing is an age-old practice in the Indian Film Industry. The judgement also looked at the ingredients of a film that includes story, script, screenplay and music. Musical works itself would have two ingredients i.e., lyrics and the musical score. In so far as the music is concerned, the lyricist and the music composer would have their separate and independent rights in the musical work. The point helped the court in differentiating the rights of the producers and author in the absence of assignment of copyright.

7. COMMENTARY

The case by far is the most expansive explanation of the rights of the producer of a cinematographic film. The court clarifies the rights guaranteed under Section 14(d) of the Copyright Act to a huge extent. While the judgement looks at all the points that are relevant to reach this conclusion, the finer points of reasoning need better explanation. While the court stated that the producer has the right to dub a film, it did not delve into the fact that when a film is dubbed, the necessary changes are made in the script of the film over which the author has a copyright. The outcome, ultimately, still leaves the scope of producers' rights unclear. Even assuming that the producers of a film do not have the right to remake the film, as it would be based on/ substantially similar to an underlying work, do they still have the right to challenge a subsequent remake on the grounds that it infringes their rights under Section 14? It is interesting to note that the court recognises the right to dub with the restrictive condition placed by the script writer. This is contradictory since the right to dub is of the producer and it is not clear how can the scriptwriter place a restriction on the same. The present case is an exception as in general practice, the producer buys all the rights associated with the script and story and facts like the present case are less likely to arise.

8. IMPORTANT CASES REFERRED

- *Fresh Trading Ltd. v. Deepend Fresh Recovery Ltd., Andrew Thomas Robert Chappell*, (2015) EWHC 52 (Ch).
- *Lalguid G. Jayaraman v. Cleveland Cultural Alliance*, MANU/TN/2297/2008
- *Pine Labs Pvt. Ltd. v. Gemalto Terminals India Pvt. Ltd.*, 2011 (48) PTC 248 (Del.)
- *PVR Pictures Ltd. v. Studio 18*, 2009 (41) PTC 70
- *R.G. Anand v. Delux Films*, (1978) 4 SCC 118
- *Star India Pvt. Ltd. v. Leo Burnett (India) Pvt. Ltd.*, 2003 (27) PTC 81 (Bom)
- *Sunder Pictures Circuit v. Moti Mahal Theaters*, 1965 SCC OnLine AP 295

CASE NO. 13
HOLLAND COMPANY LP & ANOTHER
V.
S. P. INDUSTRIES
CS (COMM) 1419 OF 2016, DELHI HIGH COURT
ENGINEERING DESIGNS' COPYRIGHT CASE

ABSTRACT

The case of *Holland Company LP & Another v. S.P. Industries* enumerates an important concept relating to Section 15 of the Copyright Act, 1957 which provides that when the copyright holder produces an item whose production exceeds 50 times, then that product is said to be readily available in the market and the copyright holder loses the intellectual property right. Not only this, the case also helps to distinguish between products that can be termed as design and an artistic work under Section 2(d) of the Designs Act 2000 and Section 29(c) of the Copyright Act, 1957. This not only helps the correct and the worthy person to attain the copyright over their product but it also helps the consumer and the customer to get the authentic product for their application. The present suit was filed by the plaintiff seeking permanent injunction as against the defendant on the grounds that as the plaintiffs were engaged in manufacturing and selling of an “Automatic Twist Lock” (hereinafter referred to as ATL) and that the copyright of the engineering designs which were prepared for the manufacturing of the ATL devices were owed by the plaintiff. The plaintiff claimed that the defendants did not have the required skills and knowledge for such repairing and replacing work and that because they (the plaintiff) artistically created the ATL, they have the right to maintain and sell spare parts for it, and that no other party has any rights over it. However, by reading out relevant Sections of the Copyright and the Designs Act, the court delivered the judgement in favor of the defendants denying the plaintiffs relief for grant of permanent injunction.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS (COMM) No. 1419 of 2016
Jurisdiction	:	High Court of Delhi
Case Decided On	:	July 27, 2017
Judges	:	Justice Deepa Sharma

Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 14, 15; Designs Act, 2000 - Sec. 2(d)
Case Summary Prepared By	:	Ayushi Kumari, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

In the present case, the Plaintiff No. 1 is Holland Company and M/s. Sanrok Enterprises is Plaintiff No. 2, and the defendants are S.P. Industries.

One Holland Company filed the present suit. It deals in the railways supply business for car/wagon components, as well as manufacturing and supplying the Indian Railways with ATL, a cargo container fastening system. The company also claimed that the ATL's industrial designs and spare components were protected by copyright. M/s. Sanrok Enterprises is Plaintiff No. 1's exclusive licensee in India for the manufacture, sale, marketing, and service of Plaintiff No. 1's ATL and spare parts. The plaintiffs had earlier provided the Indian Railways with the ATL device's drawings and spare parts, which they then used on their container flat wagon.

Following that, the Eastern Railway, Sealdah Division, issued a tender for the repairs, replacement of spare parts, and servicing of the ATL devices' faulty parts. Plaintiff No. 2 was outbid and the contract was given to S.P. Industries (hereinafter referred to as the 'Defendant'). The plaintiff claimed that the defendant did not have the required skills and knowledge to replace and repair spare parts for the ATL device that the Plaintiffs supplied to the Indian Railways, and that because they artistically created the ATL, they have the right to maintain and sell spare parts for it, and that no other party has any rights over it. As a result, the Plaintiffs filed a permanent injunction petition in the Delhi High Court.

The Hon'ble High Court of Delhi denied the Plaintiffs' motion for a permanent injunction against the Defendant filed under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) on May 20, 2014. The Plaintiff, who was aggrieved by the abovementioned ruling, filed an appeal, and the Hon'ble Court was ordered to reconsider the case by order dated September 12, 2014.

3. ISSUES INVOLVED IN THE CASE

- I. Whether permanent injunction order should be passed against the defendant, its proprietor, partners, or directors, among others, from manufacturing, selling, offering

for sale, or advertising ATL and parts thereof, directly or indirectly, by using know-how information of the plaintiffs by creating ATL and spare parts in three-dimensional form from the plaintiffs' two-dimensional artistic work in drawings of the ATL?

- II. Whether the defendants should be prevented from servicing the original ATL and parts thereof to be delivered to the Indian Railways by plaintiffs.

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiffs argued that no third party has the right to sell, manufacture, offer for sale, or market ATL devices or spare parts because the plaintiffs are the true proprietors of the ATL devices and spare parts, and because the Plaintiffs own the copyright and patent for the same.

The plaintiffs' contention is that the spare parts for which the Indian Railways floated the tender dated May 17, 2012 are components of ATL devices that the plaintiffs make and supply, and that the plaintiffs own the copyright and patent for these devices (an application for registration of patent moved and published). The plaintiffs have sole ownership of the ATL device, which comprises of certain assembly parts that can only be manufactured by them. By letter dated December 6, 2012, the Railway Board was informed of Plaintiff No. 1's proprietary rights in ATL devices, including their parts, supply, and servicing.

The plaintiffs claim that the defendant supplied its poor products and services to be employed in Indian Railways knowingly, on purpose, and willingly. They also claim that the drawings of the ATL device and its parts are their exclusive property and that it is an artistic work in which they have copyright.

It was argued that they have a good prima facie case because they own the copyright to the industrial drawings and the balance of convenience is in their favour, and that if the injunction is denied, they will suffer a loss not only financially but also in terms of their reputation, which cannot be compensated in terms of money.

A combined reading of Sections 2(c), 13(1)(a), and 14(c) I (B) of the Copyright Act, 1957, reveals that engineering drawings/technical drawings are covered by a copyright in the category of artistic works, which includes the exclusive right to depict the drawings in three dimensions. They argued that such engineering/technical drawings do not need to be aesthetic in order to be protected by Section 2(c) of the Copyright Act.

The Designs Act of 2000 only applies to "appeal to the eye alone" and excludes "functional" aspects. As a result, the Designs Act is said to be inapplicable to industrial/engineering drawings and technical drawings.

Defendant

The defendant submitted that the plaintiffs have no copyright in the industrial drawings.

The defendant also submitted that according to Section 15 of the Copyright Act of 1957, if a drawing or design has been produced more than 50 times by an industrial process using that drawing or design, no copyright exists in that drawing or design. The claimants in the present case, it is claimed, have admitted to supplying ATL devices to the railways based on drawings that they have duplicated for more than 50 products.

It is also claimed that under the contract issued to it by the Indian Railways, it was obligated to fulfil its obligations in accordance with the contract's specifications and drawings. The defendant also claimed that it never purported to be the producer and supplier of the plaintiff's spare components. The defendants are simply required to accomplish the tasks specified in the contract issued by the Indian Railways for the repair or replacement of ATL equipment parts. The plaintiffs cannot claim exclusive rights to repair and replace the ATL devices that belong to Indian Railways because they lost the tender.

The defendant asserted that it did not misappropriate the plaintiffs' know-how, information, drawings, or designs. Because the drawings had been published and were widely available in the market, the plaintiffs cannot be considered to hold exclusive intellectual property rights over them. It was submitted by the defendants that the components that must be replaced as a result of the tender awarded are not the plaintiffs' components. Furthermore, the defendant contended that the defendant by using reverse engineering, is neither infringing on the plaintiffs' copyright nor stealing their drawings.

The defendants argued that because industrial drawings are not considered artistic works, there is no copyright protection. The Plaintiffs are not the creators of the work, and as a result, they are not entitled to legal protection. Even if the Plaintiffs are believed to be the creators of the ATL's industrial drawings, they are capable of being registered under the Designs Act, 2000, and are excluded from the Copyright Act, 1957.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright Act, 1957** have been discussed in the present case:

- **Section 2 (c) – Interpretation (artistic work).** It provides for works that can be defined as an Artistic work. Like a work having artistic merit, a picture, a sculpture, a drawing (including a diagram, map, chart, or plan), an engraving, or a photograph or any additional artistic creation.
- **Section 2(d) – Interpretation (author).** It provides for the definition of the term “design”. The Section mentions that the concerned article could either be in two or three dimension, or in both and that the final product could be prepared either by hands, or by machine or in combination of both can be termed as a design when judged by an eye.
- **Section 14 – Meaning of copyright.** It provides the provision for nature of artistic work which is to be included in the Copyright Act, 1957 for which the copyright may be granted.

Section 14 (c) provides the provision for reproduction of a work in any form including depiction in two dimensions of a three-dimensional work or portraying a three-dimensional work in a two dimension.

- **Section 15 - Special provision regarding Copyright in designs registered or capable of being registered under the Designs Act, 2000.** Which grants exemption to certain artistic works and mentions that those designs which are capable of being registered under the Act cannot be granted copyright. Section 15(2) of the Copyright Act which deals with designs that are capable of being registered under the Designs Act but have not been, and have been utilized to replicate more than 50 times using an industrial method an article to which the design pertains.
- **Designs Act, 2000: Section 2(d) – Definition (Design).** It provides for the definition of the term “design”. The Section mentions that the concerned article could either be in two or three dimensions, or in both and that the final product could be prepared either by hands, or by machine or in combination of both can be termed as a design when judged by an eye.

6. JUDGEMENT IN BRIEF

The court while observing the facts stated that when the Railways issued a tender for the repair and maintenance of ATL equipment, it included detailed requirements for the things that needed to be repaired, maintained, or serviced. The plaintiffs have not objected to the Railways'

action. The defendant made its offer in accordance with the specifications, among other things, set forth in the tender notice dated May 17, 2012. In the light of these facts, the existence of copyright in the plaintiffs' industrial drawings of ATL devices was assessed.

Furthermore, the court defined what “artistic work” meant under Section 2(c) of the Copyright Act. Also, the court explained what type of artistic work is included in the Copyright Act under Section 14 for which the copyright may be granted.

The court went on to read Section 15 of the Copyright Act which exempts certain artistic works and mentioned that those designs which are capable of being registered under the Design Act cannot be granted copyright as under Section 15(2) of the Copyright Act deals with designs that are capable of being registered under the Designs Act but have not been, and have been utilised to replicate more than 50 times using an industrial method an article to which the design pertains. The court furthermore stated that, the plaintiff failed to contend about the fact that it had used the industrial designs for more than 50 ATL devices by an industrial process, and therefore, even if it is assumed that the plaintiffs did hold a copyright in the drawings, but by virtue of Section 15(2) of the Copyright Act, such right ceases to exist.

It was observed by the court that what “design” means as under Section 2(d) of the Designs Act. Furthermore, while mentioning about the Designs Act 2000 and the Copyright Act, the court made a cumulative reading of Section 2(d) of the Designs Act, 2000, Section 14(c) of the Copyright Act, 1957, and Section 15(2) of the Copyright Act, 1957, and stated that it makes it abundantly clear that where a design of an article is prepared for the industrial production of an article, it is a design and registrable under the Designs Act, and the author of such design can claim copyright under Section 14(c).

The court pointed out that the plaintiffs did not include the Railways as a defendant despite the fact that it was the Railways who gave the defendant the contract for the repair and maintenance of ATL devices.

Moreover, the court stated that it was undisputed that at the time the tender was floated, the specifications/drawings of the ATL devices that needed to be maintained were also included in the tender notice, and the plaintiffs had also participated in the tender process and had not raised any objections to the Railways for publishing the engineering drawings of ATL devices and inviting different parties to provide their service for maintaining these products according to their specifications. The Railways had also publicized the engineering drawings of the ATL

devices, according to the averment in the plaint. Also, the plaintiff's claim has raised no objections to such dissemination.

The defendant declared unequivocally that it was not producing or replicating the plaintiffs' product, but rather was going to repair and maintain the ATL devices in accordance with the contract issued to it by the Railways.

Coming to the conclusion the court commented that the plaintiffs have not named the Railways a party to the claim, despite the fact that it is an essential party in the facts and circumstances of the case because it is the Railways who have used the engineering drawings of the ATL devices to invite tenders. The plaintiffs' and defendant's case findings are based on the unique facts and circumstances of their respective cases. In this situation, the facts and circumstances are quite different. Finally, the court denied the plaintiff the relief of permanent injunction order which they had sought as they failed to establish the prima facie case in their favour. The court stated that the designs of the plaintiff are registrable under the Designs Act, however, the said drawings have not been registered under the same.

7. COMMENTARY

The judgement given in this case was in favour of the defendant, denying the plaintiff the relief it sought for, i.e., permanent injunction order against the defendant. It was the most suitable order given by the court considering all the relevant laws and sections of the Copyright Act and the Designs Act and also considering the nature of justice. If we consider a person's copyright right over a certain product, the product must stand up to certain criteria set by the applicable laws. Because if certain limitations are not put forth, everyone will start claiming their copyright over a particular product. It is through these limitations that distinguishments are made between the product that needs copyright protection and the product that does not. Not only this, there is a very high probability that a certain percentage of the population misinterprets the provisions of the law and those circumstances make the courts to interfere in order to maintain justice, just like in the instant case. By reading out the relevant sections of the Copyright Act, the court was correct in pointing out that the industrial drawings of the plaintiff cannot be protected by the copyright as they have been produced more than 50 times and also those "designs" will be categorized and defined under the said section of the Designs Act and as per Section 15 of the Copyright Act "designs" which are capable of being defined under the Designs Act cannot be protected under the Copyright Act and cannot be granted copyright whatsoever.

8. IMPORTANT CASES REFERRED

- *Escorts Construction Equipment v. Action Construction Equipment* 1999 PTC 36 (DEL)
- *Indiana Gratings Pvt. Ltd. & Anr. v. Anand Udyog Fabricators Pvt. Ltd. & Ors.* 2009(39) PTC 609 (Bom)
- *John Richard Brady and Ors. v. Chemical Process Equipments P. Ltd. and Anr.* AIR 1987 Delhi 372
- *Microfibres Inc. v. Girdhar & Co. & Anr.* 2009(40) PTC 519 (Del) (DB)
- *Mohan Lal v. Sona Paint & Hardwares*, 2013 (55) PTC 61 (DEL)(DB)
- *Photoquip India Ltd. v. Delhi Photo Store*, 2014 (60) PTC 563 (Bom)
- *Syndicate of the Press of the University of Cambridge v. B.D. Bhandari*, 185(2011) DLT 346 (DB)

CASE NO. 14
YASH RAJ FILMS PVT. LTD.
V.
SRI SAI GANESH PRODUCTIONS AND ORS.
(CS (COMM) 1329 OF 2016, DELHI HIGH COURT)
COPYRIGHT PROTECTION GIVEN TO CINEMATOGRAPH
FILMS IS AT PAR WITH OTHER ORIGINAL WORKS

ABSTRACT

When it comes to the issue of copyright infringement of cinematograph films, there exist two schools of thought- “physical copy doctrine” and “substantial copy doctrine”. In order to find out which argument carries more weight; it is important that one looks into the judicial precedent on the issue of copyright protection of cinematograph films. The present case is a suit for copyright infringement of the movie “Band Baja Baarat” produced by plaintiff Yash Raj Films Pvt. Ltd. by a Telegu movie named “Jabardasth” produced by the defendant Sri Sai Ganesh Productions. The Telegu film was made without taking permission or any rights from the original film’s producers. The analysis of the decision passed by Hon’ble Justice Manmohan in the present case will not only assist the author in identifying, exploring, and analysing the above-mentioned doctrines but also help gain a clearer picture of the laws surrounding the remake of cinematographic films in India.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Suit (Commercial) No. 1329 of 2016
Jurisdiction	:	Delhi High Court
Case Decided On	:	July 8, 2019
Judges	:	Justice Manmohan
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 2, Sec. 13, Sec. 14
Case Summary Prepared By	:	Isha Lodha, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

Yash Raj Films (YRF), a well-known production business and the plaintiff in this case, is the producer of the Bollywood film “Band Baja Baarat”, which was released in India and other countries on December 10, 2010. The Plaintiff owns the rights to the storyline, dialogues, theme, idea, screenplay, script, music, lyrics, and character drawings in this film, among other things.

YRF even declared in a public declaration in May 2011 that it had not transferred the film’s copyrights to any third party and was the sole owner of the same.

In December 2011, the Plaintiff learned that one of the defendants, Sri Sai Ganesh Productions, wanted to adapt the film in Telegu. The plaintiff served the defendants with two cease and desist notices, one in January 2012 and the other in April 2012, but got no answer.

Following the release of the trailer, the plaintiff sent the third legal notice asking a copy of the “Impugned Movie and the Script” prior to the release of the impugned movie. The defendants again did not respond to the third notice, instead released the film “Jabardasth” in February 2013.

The defendants also sold their rights to a Tamil production company for the remake, which was scheduled to be released in April 2013. Following that, the plaintiff filed a copyright infringement complaint against Sri Sai Ganesh Productions, the director, and the distributor of the Telegu film (collectively referred to as the “defendants”) for openly stealing the narrative, concept, and character-sketch of their film.

3. ISSUES INVOLVED IN THE CASE

There were three primary issues involved in the case,

- I. Can copyright subsist in a cinematograph film independent of the underlying works that it is comprised of?
- II. Can the expression ‘to make a copy of the film’ under Section 14 mean making physical copy of the film only? Is there substantial and material similarity between the two films?
- III. Does the Delhi High Court have the jurisdiction to hear the present matter?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiffs contended that the way the story progressed, as well as the treatment and expression given to the topic in the plaintiff's film, had been obviously imitated in the impugned picture.

They further claimed that the similarities between the plaintiff's film and the defendant's movie were substantial and material in terms of topic, premise, storyline, character drawings, story, script, form, and expression, among other things, resulting in copyright infringement.

Furthermore, they asserted that a spectator or viewer of the contested film who had previously watched the plaintiff's film would have a clear impression that the defendant's film was a copy and/or reproduction of the plaintiff's film.

It was claimed that the impugned movie's reviews corroborated and strengthened the fact that the defendants' film was a clear replica of the plaintiff's film.

The plaintiff also claimed that the Defendant No. 1's sale of the rights to release the Tamil dubbed version of the impugned film to the Defendant No. 2 infringed on the plaintiff's copyrights and rendered the plaintiff's efforts to make Telugu and Tamil remakes, for which it had already taken irreversible steps.

Defendant

The defendants contended that the trial court lacked territorial jurisdiction to hear the case since the contested picture was conceived, written, and directed in Hyderabad and no portion of its preparation, including post-production work, took place in New Delhi.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright Act, 1957** are relevant to the present case:

- **Section 2(f) – Interpretation (cinematograph film).** This section defines “cinematograph film” as any work of visual recording and includes a sound recording accompanying such visual recording.
- **Section 13(3)(a) – Works in which copyright subsists.** This section says that copyright shall not subsist in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work.
- **Section 13 (1)(b) -** According to this section a copyright shall subsist in a cinematograph film throughout India.

- **Section 14 (d)(i) – Meaning of copyright.** This section defines copyright in the case of a cinematograph film as to make a copy of the film including a photograph of any image for storing a part thereof.

6. JUDGEMENT IN BRIEF

The Court ruled that, for the purposes of copyright law, a cinematograph film is defined as more than merely a collection of its underlying works. The phrase “underlying works” refers to the various types of creative and unique efforts that go into creating a whole cinematograph film. For example, the screenplay and dialogues are considered literary works; song lyrics are considered musical works; songs are considered sound recordings; posters and ads are considered creative works, and so on. While each of these underlying works is entitled to separate copyright protection under the Copyright Act of 1957, a cinematograph film as a whole is also protected by the Act.

Relying on its precedent in *MRF Limited v. Metro Tyres Limited*, the Court found that even if a cinematograph film does not infringe any of the underlying works, the film as a whole may not be copyrightable due to a lack of ‘originality’. The fact that a cinematograph film infringes on another film might be a solid justification for a lack of “originality,” and hence the film will not be protected under copyright law. The Court further stated that, while the term “original” is not included in the language of Section 13(1)(b) of the Act, which deals with copyright in cinematograph films, the need of “originality” may be plainly drawn from Sections 13(3)(a) and 2(d) of the aforementioned Act. It clarified that copyright does not exist in a cinematograph film if a major portion of it infringes a copyright.

The Court further concluded that the phrase “to make a copy of the film” in Section 14 (d)(i) of the Act is not limited to producing just physical copies of the film through the duplicating process. It also entails taking an existing cinematograph film’s idea, expression, and other intangible characteristics and combining them into another.

The Court applied the standard established in the historic decision of *R.G. Anand v. Deluxe Films* to evaluate a film’s originality. As it was decided that in such cases, the Court must compare “the essence, the foundation, the nucleus” of the two films in issue. It is critical to determine if an ordinary audience watching both films would acquire the distinct sense that one is a carbon replica of the other.

In this case, the Court determined that the defendants had openly duplicated the fundamental, important, and distinguishing characteristics of the plaintiff’s film, “Band Baja Baarat”, in their

film “Jabardasth”. The Court recognised on record nineteen precise similarities between the two films, and the defendant recognised the plaintiff as the owner of the copyright in the storyline, screenplay, dialogues, and other works which the plaintiff may copyright.

In response to the defendants’ allegation that the whole process of creating their film was in Hyderabad and no portion of it was carried out in Delhi, hence the Delhi High Court lacked territorial jurisdiction to hear or rule on the case. The Honorable Court ruled that because the defendants’ film was released in Delhi with the rest of the country, the Delhi High Court had territorial jurisdiction over the case.

7. COMMENTARY

The rule of law established by the Hon’ble Court in this decision is that “*a feature film is an original copyrightable work by itself independent of the fundamental works and is susceptible to protection under the Copyright Act, 1957.*” The Court determined that a cinematograph film is more than merely a collection of its underlying works, such as literary, theatrical, or musical works. As a result, copyright in a cinematograph film might exist independently of the works that inspired it. Furthermore, the Court noted that creating a duplicate of a cinematograph film comprises not only manufacturing physical copies of the film but also replicating the idea behind the film. The aspect of originality is latent in Section 13 of the Copyright Act, 1957. Justice Manmohan, determined that it was a case of copyright infringement and issued a permanent injunction against the defendants, preventing them from infringing the plaintiff’s copyrights. However, one significant flaw in this decision is that the plaintiff did not even establish that it was a breach of the cinematograph film. The court following its own decision in *MRF* case held so anyway. In any event, even if a ‘copy’ contains a recreation of the picture, the plaintiff must demonstrate a substantial audio-visual resemblance between his film and the infringing film in order to prevail on infringement. There is no discussion of this point. As a result, infringement is assumed. As a result, these judgements give the creative leap to the producers, despite the fact that the ones responsible for this jump are frequently the directors.

8. IMPORTANT CASES REFERRED

- *MRF Limited v. METRO Tyres Limited*. CS(COMM) 753/2017
- *R.G Anand v. M/S. Delux Films & Ors.* [4 SCC 118 (1978)]

CASE NO. 15
MY SPACE INC.
V.
SUPER CASSETTES INDUSTRIES LTD.
FAO(OS) 540 OF 2011, C.M. APPL. 20174 OF 2011,
13919 & 17996 OF 2015, DELHI HIGH COURT
SAFE HARBOR IMMUNITY TO INTERNET SERVICE
PROVIDERS (ISPS) IN CASE OF COPYRIGHT
INFRINGEMENT

ABSTRACT

The following is the case summary of the judgment pronounced by the Division bench of Hon'ble Delhi High Court in the case of *Myspace Inc. v. Super Cassettes Industries Ltd.* This was a landmark judgement in field of copyright infringement in digital space. This case deals with interplay of Copyright Act, 1957 and Information Technology Act, 2000. Internet Service Providers enjoys protection under safe harbor provisions due to which they are generally not liable for the act of third party (their users) except in certain cases. If they had knowledge of the wrongful act/s of the third party and they still fail to take action, then the intermediary can not avail protection under the shield of 'Safe Harbor'. This judgement in depth discusses what constitutes 'knowledge' of infringement to attract Section 51(a)(ii) of Copyright Act and consequent liability. The judgment also analyzed the proviso to Section 81 of IT Act, to see whether its override "safe harbor" granted to intermediaries under Section 79 of IT Act and if there is any possibility of harmonious reading of Sections 79 and 81 of IT Act and Section 51 of Act. This judgment advanced the jurisprudence related to the intermediary liability and provide a strong and logical precedent for future cases. It also rectified the erroneous interpretation of law done by the learned Single Judge of Delhi High Court.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	FAO(OS) 540 of 2011, C.M. APPL. 20174 of 2011, 13919 & 17996 of 2015
Jurisdiction	:	Delhi High Court
Case Decided On	:	December 12, 2016

Judges	:	Justice S. Ravindra Bhat, Justice Deepa Sharma
Legal Provisions Involved	:	Copyright Act 1957 - Sec. 13, 14, 51, 52, 55; Information & Technology Act 2000 - Sec. 79 Civil Procedure Code 1908 - Order 39 Rule 4
Case Summary Prepared By	:	Nishant Mishra, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The defendant, Myspace, is an Internet Service Provider (ISP) and operator of the social networking website known as “www.myspace.com.” It was launched in India in 2007. Myspace provides a free of cost platform to its users and offers an interactive user-submitted network of friends, personal profiles, blogs, groups and photos, music, video, instant messaging services etc. The registered users of Myspace have to oblige by its Terms of Use Agreement and Privacy Policy with respect to the intellectual property rights of others.

Super Cassettes Industries Ltd. (SCIL) also known as T-Series, is one of the India’s largest music companies.

SCIL alleges that Myspace is infringing its intellectual property rights by making its work available to the public for viewing, distributing and sharing despite not having any authorization to do so. In past, the SCIL has issued various legal notices to Myspace to remove such content from its platform. SCIL alleged that Myspace has not removed the infringing content and was still broadcasting them despite the assurances that such content had been taken down.

The learned Single Judge of the High Court in interim application in the suit held that MySpace was aware of a possible infringement and its liability would not mitigate by it creating certain safeguard tools. It observed that MySpace had knowledge of SCIL’s works on its website because it had been provided with an entire list of such works and had been notified repeatedly about infringements. The learned Single Judge found that the Appellant’s actions constituted infringement of the Plaintiff’s work as per Section 51 of the Copyright Act, 1957 and restrained it from dealing in Respondent’s work.

The Single Judge also held that MySpace’s claim under Section 79 of the IT Act, as a safe harbor for intermediary liability was unfounded as Section 81 of the IT Act has an overriding

effect. Proviso to Section 81 provided that nothing contained in the IT Act shall restrict the rights of any person under the Copyright Act. The Impugned Judgment had even placed the onus of conducting a preliminary check, on all content, on the intermediaries before such material was transmitted to the public.

The instant appeal before Division Bench was filed by the MySpace (“Defendant/ Appellant”), a social networking site, against the Single Judge’s decision (“Impugned Judgment”) in an interim application in the Suit filed by Super Cassettes Industries Limited (“T-Series/ Plaintiffs/ Respondents”).

3. ISSUES INVOLVED IN THE CASE

- I. Whether Appellant could have said to have knowledge of infringement as to attract Section 51(a)(ii) and consequent liability?
- II. Whether the proviso to Section 81 of the Copyright Act overrides the “safe harbor” granted to intermediaries under Sections 79 and 81 of the IT Act, 2000 and Section 52 of the Copyright Act?

4. ARGUMENTS OF THE PARTIES

Appellants

With regard to the claims put forth, it was argued by the Appellants that the single judge directions to remove SCIL’s future works from its platform is erroneous. Under Section 51(a)(ii), “the work” implies an existing specific work and does not refer to all or future works. Further, the removal of all future work would amount to pre-infringement measures, in which the party concerned has to go through each work individually and check it for infringement before it is communicated to the public, which taking into account the amount of content available on the internet is impractical. The Myspace contended that the intermediary should have “actual knowledge” of the infringing content to constitute its liability under Section 51(a)(ii). Further, it is the responsibility of content owner and not intermediary to provide the information regarding the infringing content. Only when owner sends the notice for taking down the content that the duty is cast on the intermediary to remove it. Myspace argues that its use of safeguard tools is on the basis of “general knowledge” of infringement and this could not be test for attaching secondary liability under Section 51(a)(ii), when the accepted standard worldwide is that of “actual knowledge”. To substantiate this point reference to Section 512 of the Digital Millennium Copyright Act is given.

MySpace also argues that Section 81 of the IT Act does not have overriding effect. If the legislature wanted it to make it an exception to Section 79 of the IT Act a proviso would have been made within that section. Its omission means that Section 79 continues to exempt intermediaries such as the appellant as long as they satisfied the conditions mentioned therein.

Respondent

As a response to the claims, the Respondent primarily contended that the Myspace is liable under Section 51(a)(i) of the Copyright Act, 1957 when it copies and stores content in its own servers. It also is liable under Section 51(a)(ii) of the Act, when it permits use of its “space” for profit by communicating to the public, respondent’s works. It stated that MySpace had sufficient knowledge or had reason to believe it was hosting infringing content. It was clear from the fact that it had deployed technological tools to weed out infringing material from its platform or that its user agreement prohibits users from uploading infringing content. This establishes that MySpace had knowledge that there were infringing content on its platform.

It also argued that MySpace could not rely on Section 79 of the IT Act as it does not exercise due diligence and also modify the uploaded works by inserting advertisements in it. By doing so it possesses knowledge about the infringing nature of the work. Moreover, it does not full fill the criteria to claim exemption under this section as it actively participates in communicating content. Furthermore, the proviso to Section 81 clearly states that the rights of copyright and patent owners would not in any way be curtailed by the provisions of the IT Act.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The case deals with the provision of Copyright Act, 1957 and Information Technology Act, 2000. The sections involved in the case are:

- **Copyright Act, 1957: Section 51 – When copyright infringed.** It states that when a copyright is said to be infringed. Section 51(a)(i) states that a person is liable for infringement when he does those acts which the owner of copyright is conferred by the act to do, without the latter’s authority or b) when a person permits any place for profit for infringement of copyright.

Section 51(a)(ii) that a person is liable for infringement if he permits for profit any place for communication of copyrighted work to the public. However, he won’t be liable under this section if a party is unaware and had no reasonable ground for believing that the works so communicated are infringing work.

- **Information Technology Act, 2000: Section 79(1) - Exemption from liability of intermediary in certain cases.** It provides safe harbor immunity to intermediary as long as the intermediary fulfils the conditions set out in the provision including exercise of due diligence and lack of actual knowledge.

Section 79(2) and Section 79(3) provides restriction on Section 79(1) of the IT Act, 2000.

6. JUDGMENT IN BRIEF

The Hon'ble Court observed that Section 51(a)(ii) of Copyright Act, 1957 states that when anyone permits for profit any place for communication of copyrighted work to the public, he/she is liable for infringement. In the present case, the Myspace does provide a space (a virtual one) for the purpose of generating revenue through advertisement.

However, Section 51(a)(ii) contains, in the second part, an exception, i.e., of lack of knowledge or reasonable belief. Single judge held that a general awareness is sufficient to impute knowledge to intermediary. The Hon'ble Court differed with the view of the Learned Single Judge. It observed that "knowledge" has a definite connotation, i.e., a consciousness or awareness and not mere possibility or suspicion of something likely.

The requirement is to give specific information to the content host or the website that infringement occurs with respect to the specific work. The burden lies on the plaintiff to give detailed description of its specific works, which are infringed to enable the web host to identify them.

It also rejected respondent's argument that insertion of advertisements or modification of content by MySpace discloses its knowledge about infringing content. The court observed that such advertisement is placed through automated process, and it does not involve MySpace's actual control. With regard to MySpace not taking down on content after notice being sent by the respondent the Court held that the respondent's list of infringing material was too general in nature. It did not specify the work nor the locations where work was accessible. In the absence of specific titles and locations it would be impossible for MySpace to identify and remove such content. In such cases it becomes important for a plaintiff to provide the same otherwise an intermediary may remove the content fearing liability and damages, but such practice may impact an authorized individual's license and right to fair use.

The Hon'ble court held that Sections 79 and 81 of IT Act, and Section 51(a)(ii) of Act, have to be read harmoniously. The court observed that Section 79, has an overriding effect which means that only restriction to be placed in the application of Section 79(1) is contained within the section. This means that irrespective of any other law, an intermediary is guaranteed a safe harbor and the only restriction comes from Section 79(2) and (3). However, a proviso to Section 81, introduced by the same Amendment, provided that nothing contained in the IT Act shall restrict the rights of any person under the Copyright Act. The Court looked into the legislative intent behind Section 81 of the act. The court observed that Section 79 sets up a scheme where intermediaries have to follow certain minimum standards to avoid liability. It does not provide for a blanket immunity from liability. Section 81 provides a legal resource against intermediaries in certain circumstances where they cannot seek safe harbor. For example, when conditions of Section 79 and the Intermediaries Guidelines Rules, 2011 are not fulfilled. Accordingly, proviso to Section 81 of IT Act, does not preclude affirmative defense of safe harbor for an intermediary in case of copyright actions.

The court held that MySpace falls within Section 2(1)(w) and qualifies as an intermediary/ Internet service provider as it provides a portal for information where users can upload and view content. In reference to the question whether MySpace can claim protection from liability under Section 79, it observed that MySpace provides a neutral platform as it creates a platform where users can freely exchange data in the form of songs, videos, documentaries etc. It restricts its users from uploading infringing content and gives the content owner option to take down infringing content. It neither initiates the transaction nor selects its receiver. Even the modification done by it is automatic hence it complied with the requirement of Section 79(2)(b) and could be granted protection under Section 79(1). Therefore, the Hon'ble Court set aside the interim injunction order of the Ld. Single Judge and directed Respondent to provide MySpace with a "specific" list of works.

7. COMMENTARY

The present judgement is a landmark and a forward looking one. It appreciated the working of online intermediaries and practical consideration involved in preventing copyright infringement in online space. It recognized that digital media is different than conventional media and literal interpretation of the copyright act to it may lead to absurd result. It interpreted various sections of the Copyright Act, 1957 and Information Technology Act, 2000. Under Section 51, the knowledge required is construed as actual knowledge. It would mean that onus shifts on the content owner to apprise intermediary with specific instance of copyright

infringement. Otherwise, undue burden would lay on intermediaries to sniff out infringing content out of the multitude of content available on their platform. It will relieve social media platforms from pre-screening user-uploaded content, which obviously had chilling effect on free speech. They can also avail safe harbor provision under Section 79 of the IT Act. This will certainly help in restoring the confidence of the big tech and Media Company by providing them reasonable legal protection in line with global practice. It also protects the right of content owner if they discharge the burden by pointing out the exact violation. Through this path breaking judgment, the Court has ensured that a balance is maintained between the rights of the content owner and the users of such work in digital space.

8. IMPORTANT CASES REFERRED

- *International Confederation of Societies of Authors and Composers v. Aditya Pandey*, 2016 SCC Online 967
- *Comdel Commodities Ltd. v. Siporex Trade SA*, (1990), 2 All ER 552
- *Garware Plastics and Polyester Ltd. and Ors v. Telelink and Ors*, AIR 1989 Bom 331
- *Time Warner Entertainment Company, L.Cpl. & Others v. RPG Netcom*, 2007 (34) PTC 668
- *Religious Technology Center v. Netcom Online Communication Services Inc.*, 907 F. Supp. 1361 (1995)
- *Viacom International v. YouTube Inc.*, No. 07 Civ. 2103 (LLS)

CASE NO. 16
THE CHANCELLOR, MASTER AND SCHOLAR OF THE
UNIVERSITY OF OXFORD & ORS.
V.
RAMESHWARI PHOTOCOPYING SERVICES AND ANR.
2016 SCC ONLINE DEL 5128

FAIR DEALING UNDER THE INDIAN COPYRIGHT LAW
(DELHI UNIVERSITY PHOTOCOPY CASE)

ABSTRACT

The case in question, better known as the Delhi University photocopy case, is a monumental judgment in the domain of law of copyright. The aforementioned issue originated when a couple of hugely and widely known publishers lodged a complaint against a photocopy shop on the campus of Delhi University. The point of contention here was that the shop compiled the resource materials from their books into one ‘course pack’. The plaintiffs claimed that this was a copyright infringement of their intellectual property.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS(OS) 2439 of 2012
Jurisdiction	:	Delhi High Court
Case Decided On	:	September 16, 2016
Judges	:	Justice Rajiv Sahai Endlaw
Legal Provisions Involved	:	Copyright Act, 1957 - Section 2(m), 13, 14, 51, 52
Case Summary Prepared By	:	Kashvi Vachhani Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

In the present case, the plaintiffs are Oxford University Press, Cambridge University Press and Taylor and Francis group and the defendants include Delhi University (Defendant No.1), Rameshwari Photocopy Service (Defendant No. 2), Association of Students for Equitable

Access to Knowledge [ASEAK] (Defendants No.3), Society for Promotion of Equitable Access to Knowledge [SEAK] (Defendants No. 4.).

In August 2012, a case was initiated against the Delhi High Court by leading publishers across the domain of academia namely Oxford University Press, Cambridge University Press and Taylor and Francis Group for infringement of copyright of their resource materials against a publishing shop situated in the campus of Delhi University. It was the assertion of the plaintiffs that the defendants were chargeable for encroachment of copyright of their published work. They republished sizable amounts of excerpts from their work and made a compendium of sorts. This makes them accountable under Section 14 and 51 of the Copyright Act. It was maintained by the plaintiffs that the defendants ought to be issued a license under the Indian Reprographic Rights Organisation (IRRO). As a result, it would be permissible for fifteen percent of the original work to be reprinted by them. The defendants to the suit are: Delhi University (Defendant No.1) and Rameshwari Photocopy Service (Defendant No. 2).

In the year of 2013, ASEAK, a Union/association of students of the university pleaded to become a party to the suit claiming that they were personally affected by the injunction. They were identified as Defendants No.3. Additionally, SEAK also pleaded to be a party to the suit claiming that defendants are entitled take the defence of fair trade under Section 52(1)(1). Their request was allowed. They identified as Defendants No. 4.

3. ISSUES INVOLVED IN THE CASE

- I. Is it possible that the defendants' compendiums were published in contravention of the Copyright Act's provisions in question?
- II. Is it permissible under the statute for such republishing of the material as fair-trade use?

4. ARGUMENTS OF THE PARTIES

Plaintiff

It was first appealed by the plaintiff that they are entitled to a relief of permanent injunction. Here they maintained that the defendants supplied course packs comprising copies of their published work. This makes them liable under the Copyright Act, 1957.

They asserted that the defendants ought not to take defence under Section 52(1)(i). Here it was contended that there was no form of instruction by a teacher. Since, they took excerpts from their publications and sold them in the form of compendium, it holds them answerable.

They maintained that such activity is competitive in the marketplace of books because people will be more inclined to buy course packs at a lower price and also out of convenience. Hence, the actual publications will face deterrence in their worth.

Following this, it was also contended that they surely had a commercial intent as the course packs were being photocopied at rupees fifty per page at the shop as opposed to 25 rupees per page being charged elsewhere.

Further, the plaintiff made an assertion that India was to follow the Berne Convention and the defendants were to be issued licenses under IRRO (Indian Reprographic Rights Organization) to publish these course packs. Additionally, asserted that *“Municipal law must recognize international law norms, and the unanimity of nations necessitates that international law rules be incorporated in municipal law, even without specific statutory authorization, as long as they do not contradict with other Acts of Parliament.”* (Gramophone Company of India Ltd. v. Birendra Bahadur Pandey).

Defendant

The defence counsel argued that republication was done in conformity with the relevant sections of the Act. They took the defence of fair trade under Section 52(a) and (h).

The defendants no. 1 also refuted the argument that the behaviour was competitive by claiming that their course packs had no major impact on the business for their services. Moreover, this only helps the students as they are unable to bear the expense of the actual published works.

The phrase ‘reproduction’ contained in Section 52(1)(i) did not restrict the number of copies made by educational institutions.

The defendants discussed the nuances of the phrase ‘instruction’ in Section 52 of the Act and contended that it doesn’t only extend to classroom education but goes beyond that. It begins with the commencement of an academic session.

The defendants maintained that since there is no copyright infringement, licensing under IRRO is immaterial.

The defendant No. 4 argued that the case should be looked at through a different lens. Firstly, the compendium had no actual influence on the sale of the books. It was also argued that 55 authors were cited and 34 of them didn't make any opposition to the suit. Further, owing to the economic and social condition of the country, not everyone can afford the expense of education and academic materials. The number of excerpts borrowed from the book were not in a sizable amount.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The genesis of the case finds itself around Section 52 of **Copyright Act, 1957**. Additionally, attention is also drawn to Sections 2(m) 13, 14, 51 and 52.

- **Section 2 (m) – Interpretation.** This relates to the term 'infringing copy' which is defined as a reproduction of a literary, dramatic, musical or artistic work; or a copy of a cinematograph film made on any medium by any means or any other recording embodying the same sound recording, made by any means or the sound recording or a cinematographic film or broadcasting of a programme or performance if reproduction of sound recording is made or imported in contravention of the provisions of the Act.
- **Section 13-** Inarguably the most important section in the statute. It entails the subject matter of copyright. Section (1) talks about how the jurisdiction of the act is extended across India. It also lists works which are protected by this statute.
- **Section 14** - enumerates and defines the concept of copyright.
- **Section 51** - states that copyright is breached when someone does something that the copyright holder has a special right to do under the Act. As a result, if no special right exists, there is no infringement.
- **Section 52** - defines what doesn't amount to copyright infringement. Here, the court enunciates that it is immaterial if an act holds an exclusive right to copyright, if is touched upon in Section 52 that will not entail copyright infringement.

6. JUDGMENT IN BRIEF

The Court after assessing the arguments was of the opinion that copyright law is not a natural law but a statutory law. It observed that "therefore there can be no copyright in any author or producer save as provided under the copyright act."

It was ruled by the court that the claimants are in no competition with 'course packs' or assemblages. The Court insisted that even if these compilations were not made, students would

still go ahead and borrow the books from the library at no cost. Hence, there is no direct threat to the intellectual property of the plaintiffs.

In paragraph 29 of the judgment, Justice Edwall discusses the relevance of the Section 52 of the Act. The court says that Section 51 says that copyright is said to be infringed when one performs an act which can only be done by the person who has been bestowed with the special right of copyright of the same. Following this, the Court enumerates what Section 52 entails. It comprises exceptions to copyright infringement. Here the Court enunciates that it is immaterial if an act holds an exclusive right to copyright, if it is touched upon in Section 52, it will not entail copyright infringement. However, they need not be read together as Section 52 should be read broadly. The rights of persons mentioned in Section 52 and Section 14 should be read along with Section 51.

Further while discussing Section 52 (1)(i), it says that reproduction is not only constricted to a stereotypical teacher student discussion, it also extends to educational institutions ‘in course of instruction’.

The phrase ‘in course of instruction’ relates to the entire process or program covering the term, rather than merely the process carried out in the lecture. The Court asserts that since it’s established that a student’s action of photocopy of the resource material doesn’t amount to infringement, the act of photocopying by the university for their students also will not be considered infringement.

Additionally, it is immaterial if the machine is installed inside the library or outside or is done by a student or by a person employed or a contractor.

Lastly, on IRRO licenses, the court maintains that it is unnecessary as all the act of the defendants are in conformity with Section 52(1)(i). Later, an appeal surfaced before a divisional bench of the Delhi High Court. In the then precedent setting judgement, the divisional bench observed that crafting of these “course packs” in question, putting together "course packs," which are printed copies of the applicable components of various texts on the curriculum, and giving them to the pupils by academic institutions did not breach the copyright in those books under the Copyright Act, 1957, considering the creations included were purely for academic purposes, irrespective of the quantity. As a result, the appeal was dropped, and the case trial was restarted to establish if the course packs were truly of adequate and a fair necessity. The Court determined that expert testimony was needed in the case and authorised the petitioners to revise their complaint suitably. It also directed the trial court to determine the validity of

these copied versions. Consecutively, the Court denied the publishers an interim injunction and it was required of the photocopier to keep track of the course packages copied, deliver it to pupils and then present it the same in the court every six months.

7. COMMENTARY

The Delhi University Photocopy case has changed the trajectory of Copyright law. The whole debate surges around the rights of a creator against the user rights. It invokes the conundrum - Whether the rights of the creators should be put first or the user rights should be held to a higher ground? It is a prodigious judgment because the case has been decided by a literal interpretation or application of the statute. By ascertaining that copyright law is not a common law, it has strayed away from the usual fair-trade test. This case brings out the sensitivity of the copyright law to the user rights and maintains that protection of intellectual property is paramount as long it is not detrimental to the welfare objectives of the society and doesn't wrong the oppressed. However, the author would bring attention to a point of cognizance that a grave desideratum for a provision that is determinant of what degree of reproduction of copyrighted content does not constitute violation of copyright law for academic purposes.

8. IMPORTANT CASES REFERRED

- *Bombay Municipal Corporation and Anr. v. Ramachandra Laxman Belosay* (03.04.1959 - BOMHC), 1959 (61) BOMLR 1129.
- *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*, (2008) 37 PTC 353 (SC).
- *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey and Ors.*, 1984 (16) UJ 475.
- *Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin*, (2015) 6 MLJ 748 (SC)
- *S. P. Gupta v. President of India*, AIR 1982 SC 149.
- *The State of Maharashtra and P.C. Singh v. Praful B. Desai and Ors.*, 2003 (2) UJ 769.

CASE NO. 17
STAR INDIA PVT. LTD.
V.
PIYUSH AGARWAL & ORS.
2012 SCC ONLINE DEL 5691

**EXCLUSIVE RIGHT TO CREATE OR BROADCAST SMS ON
CRICKET MATCH INFORMATION ORGANISED BY BCCI**

ABSTRACT

The present judgment is with respect to information that is available in the public domain after the first broadcast of the audio recording or visual recording or both, and to which original/identical recording undoubtedly only the plaintiff has the exclusive rights. Such exclusive rights the plaintiff has because the performers, and thereafter the assignee of the performers, being the BCCI in this case, have given such rights to the plaintiff. Thus, this judgment deals not with the exact and original video recording and/or sound recording, but only with the content and the information contained in the audio recording and/or visual recording which comes into the public domain pursuant to the right of the first broadcast which is exercised by the plaintiff. The present judgment will result in the disposal of three suits with the observations that the defendant should not utilize the original audio and/or visual recording save for fair dealing, but there should be no limit to the defendant using information that is in the public domain and commercially use the contents/informations contained in the original audio and/or visual recording after two minutes of the first broadcast by the plaintiff.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS (OS) 2722 of 2012, 3232 of 2012, 2780 of 2012
Jurisdiction	:	Delhi High Court
Case Decided on	:	November 8, 2012
Judges	:	Justice Valmiki J. Mehta
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 38, 38A
Case Summary Prepared By	:	Aditi Jaiswal, Banasthali Vidyapith, Jaipur.

2. BRIEF FACTS OF THE CASE

The parties to the present case are Star India Pvt. Ltd., as the plaintiff, and Piyush Agarwal (Cricbuzz) appearing as the Defendant No. 1, Idea Cellular as the Defendant No. 2, and ONMOBILE as the Defendant No. 3.

The BCCI granted exclusive broadcasting rights to Star TV to broadcast information/content arising from cricket matches in 2012. Other copyrights arising from live match recordings were also assigned, including the right to record, reproduce, and broadcast, and so on. Mobile applications like Cricbuzz, Idea Cellular, and ONMOBILE launched SMS services afterward that provided real-time ball-by-ball coverage of live cricket matches. Piyush Agarwal (Cricbuzz), Idea Cellular, and ONMOBILE (Appellants/Defendants) have been sued by Star TV India (Plaintiff/Respondents). The 'mobile distribution' rights were the sticking point in the case. In all three instances, BCCI was named as the common defendant. The BCCI, on the other hand, backed Star, claiming exclusive rights to all information arising from cricketing events as the sport's organizer and promoter in India.

Star alleged that the defendants had violated the copyrights and consequently filed a suit for permanent injunction and damages.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the copyrights which are claimed by the plaintiff to be violated, are or are not covered under the Copyright Act, 1957, or putting it differently, can they arise or exist independently of the Copyright Act, 1957?
- II. Whether the information is available in the public domain after the first broadcast of the audio recording or visual recording or both do the plaintiff possess the exclusive right over the same?

4. ARGUMENTS OF THE PARTIES

Plaintiff

It is argued on behalf of the plaintiff that BCCI for a period of 72 hours had given exclusive rights to the plaintiff with respect to all the media rights which are mentioned as aforesaid in the agreement. It is further argued that once all the media rights are given exclusively to the plaintiff for 72 hours, and such media rights include the exclusive right to the plaintiff to disseminate information even through SMSs which are created by the defendants. In this case,

such rights continue to exist in the plaintiff for 72 hours in spite of the fact that a first broadcast has taken place and information is already in the public domain. Such rights are argued to exist in favor of the plaintiff although the SMSs are not copies of the original sound and/or visual recording. This is in spite of the fact that only content/information existing in the already broadcast audio and/or visual recording is used after preparing an information bank created by the defendants.

The plaintiffs have also objected to the score cube at the bottom of the screen where the defendant gives the score of the match on a continuous basis along with the name of an advertiser/sponsor.

Defendant

The defendants' counsel has made the argument that the plaintiff has no legal right as claimed and that if this Hon;ble Court finds that the plaintiff has no such legal right, the suits should be dismissed under Order XII Rule 6 of the Code of Civil Procedure (CPC) on the unquestioned position that once no legal right persists, it cannot be imposed, and no reliefs as prayed by the plaintiff can be granted, and the suits should be dismissed.

It was further argued on behalf of the defendants that once there is a specific statute, being the Copyright Act 1957, which occupies the field, and which Act specifies only specific rights to a 'performer' and his assignees, then, except such rights as specifically provided under the said Act, no other exclusive right, be it called by whatever name, can be claimed or granted to the performer and the assignee of the performer, i.e., BCCI or its further assignee(s).

5. LEGAL ASPECTS INVOLVED IN THE CASE

In order to appreciate the issue as to whether the rights which are claimed by the plaintiff are or are not covered under the Act, it is necessary at this stage to refer to the various/relevant provisions of the **Copyright Act, 1957**. The relevant sections are hereinafter reproduced:

- **Section 38 - Performer's right.** (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance.
- **Section 2(q) - Interpretation (performance).** Performance in relation to performer's right, means any visual or acoustic presentation made live by one or more performers;

- **Section 2(qq) – Interpretation (performer).** A performer includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.
- **Section 38A – Exclusive rights of performers.** It deals with what are the legal rights of a performer. The emphasized portion of the aforesaid Section shows that a performer's right is an exclusive right only for specified purposes as stated in clauses (a) and (b) of subSection (1). In terms of the language of this provision, basically, the performer's right would be made of a sound recording or visual recording of the performance; reproduce the sound recording and the visual recording; issuing copies of the recording, or communicate the same to the public; and, selling or otherwise doing a commercial act including with respect to the copy of the recording. Clause (b) of Section 38A(1) is relevant in as much as a clue is provided in this clause which seems to indicate that with respect to a broadcast already made, qua the information which is disseminated through the first broadcast in the public domain (as against the audio-visual recording itself) the performer cannot claim a right, inasmuch as, Section 38A(1)(b) states that the entitlement of the performer with respect to his performance rights is to broadcast or communicate the performance to the public except where the performance is already broadcast. It is, therefore, a clear pointer to the fact that once a performance is already broadcast it may be possible to say that except with respect to the actual visual and audio recording of the performance itself, there may not be other rights with respect to the information contained in the performance which is already broadcast.

6. JUDGEMENT IN BRIEF

The court considers several provisions of the Copyright Act, 1957 in light of the court's observations of the copyright provisions in order to determine whether the plaintiff's asserted rights are or are not covered by the Act.

A combined reading of Sections 13 and 38 led the court to the conclusion that a copyright exists in seven types of works: literary works, theatrical works, musical works, artistic works, and cinematograph films including video films, sound recordings, and performer's performances. Because the cricket match comes under the definition of 'performance,' the cricketers, commentators, and empires are considered performers under Section 2 (qq) of the Act.

When a cricket match is played, there are various *dramatis personae* in the performance. So far as the visual recording is concerned, the performers essentially are the cricket players who play out the match. Also, and in a way, the umpires are also an integral part of the live performance, and thus they can also be said to be performers in the match. Though a cricket match is not specified under Section 2(q) or Section 2(qq) as reproduced above, in view of the categorical language of these provisions, it cannot be doubted that a cricket match very much falls within the definition of expression ‘performance’ and qua such performance, the cricketers/players (as also umpires) would be a performer.

The plaintiff’s claim was ruled to be hollow and shallow by the court, as the agreement cannot result in the creation of a legal right. Because content/information from a copyrighted work is not the subject matter of copyright as per Sections 13, 14, and 38A, and thus no rights can contend in the same in light of the reading of the relevant provisions of the Act, primarily Sections 16 and 13(4), the news in the public domain is not and cannot ever be monopolized.

The conception of a 72-hour monopoly in favor of the plaintiff with respect to news created from the incident that is available in the public domain obviously contradicts the principles of fair dealing and public policy.

The court laid that “*the hiatus of two minutes is required with respect to the defendants using the content/information in the first audio and/or visual broadcast of the plaintiff, except of course with respect to momentary events for which there need not be any time lag.*”

As a result, the court’s obiter is that the defendant should not utilize the original audio and/or visual recording save for fair dealing, but there should be no limit to the defendant using information that is in the public domain. The suits are therefore dismissed by the Court.

7. COMMENTARY

The decision was rather narrow; few individuals will be saddened by the demise of paid SMS score alerts from these three companies. The bigger question is whether this gives Star India and the BCCI free license in the mobile and online worlds? The judge made no mention of or appeared to comprehend the future of media. His distinction between television viewers and those who follow a game without viewing it ignores the increasingly blurry distinctions that are emerging in the digital age. There are now numerous options to follow games. The majority of these are available online and on mobile devices, either as a browser or as an app, eliminating the need for SMS updates. These services are almost all free to consumers; their income

strategy is based on advertising dollars rather than direct revenue from fans. The Star India-BCCI contract makes no distinction between the two, but the judge was only concerned with paid services.

8. IMPORTANT CASES REFERRED

- *Krishna Mochi v. State of Bihar*, (2002) 6 SCC 81
- *Charan Singh v. State of Uttar Pradesh*, (2004) 4 SCC 205
- *T. Arvindandam v. T.V. Satyapal*, AIR 1977 SC 2421

CASE NO. 18
PINE LABS PVT. LTD.
V.
GEMALTO TERMINALS INDIA PVT. LTD. & ORS.
FAO (OS) 635 & 636 OF 2009, DELHI HIGH COURT
DURATION & TERRITORY OF COPYRIGHTED
ASSIGNMENT WHEN UNMENTIONED

ABSTRACT

The Delhi High Court considered the requirements of the assignment agreement between the assignee and assignor. Since under Section 17 of the Copyright Act, 1957 the first ownership of the work is extended to the author followed by Section 18 where the owner of the work, existing or which may exist in future may choose to assign such work completely or partially to any person by keeping in mind the provision for mode of assignment under Section 19. For Section 19 it is extremely important that the validity of any assignment of the copyright is only valid until and unless it has been duly signed by the assignor in writing. This decision of the court has been an example for a situation where the assignee and assignor have omitted to mention the duration and territorial extent of the assignment in their initial signed writing, thereby after the breakdown of their professional relationship both the parties sought to determine their ownership and rights over the copyright assignment.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	FAO (OS) 635 of 2009, 636 of 2009
Jurisdiction	:	Delhi High Court
Case Decided On	:	August 3, 2011
Judge	:	Justice A. K. Sikri, Justice Suresh Kait
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 17, 18, 19
Case Summary Prepared By	:	Ishaan Chopra, Bennett University, Greater Noida

2. BRIEF FACTS OF THE CASE

The appellant, Pine Labs Pvt. Ltd. (hereafter referred to as “Pine Labs”), offers program management and software creation services. The respondents, Gemalto Terminals India Pvt. Ltd. (hereafter referred to as the "Gemalto"), previously known as Axalto Terminals India Pvt. Ltd. and Schlumberger Measurement and Systems India Ltd., is a computer hardware terminal provider for retail establishments.

Respondent 1 (Gemalto Terminals) supplies computer hardware terminals to retail locations, whereas appellant is a software firm. Respondent No. 2 is a bank that also installs the Hindustan Petroleum Corporation Ltd (HPCL) Fleet Card System. Respondent No. 3 is a firm that was hired by Respondent No. 1 to alter and adapt the appellants’ software.

The Appellant was solicited in 2003 by Respondent No. 1, Gemalto Terminals, to develop/write specific software and supervise the operation of the planned Fleet Card Program for Indian Oil Corporation Ltd. (IOCL). On November 17, 2003, Respondent No. 1 issued a work order whereby the appellant was requested to supply services for the system’s implementation, including delivering and maintaining server-related hardware and software, as well as developing essential software. Appellant created Version 1.00 of the program and updated it to Version 1.03 with a few new features by August 2004, along with written documentation outlining the system specs for the generated software.

On June 24, 2004, Appellant and Respondent No. 1 (formerly known as Axalto) signed a Master Services Agreement (referred to as the MSA for brevity). Appellant is claiming its copyright in the program as well as the factum of transfer of the same to Respondent No. 1 under MSA Clause 7.1. - “Axalto shall be entitled to all property, copyright, and other intellectual property rights in the Project Materials,” according to the clause, whichever property, copyright, and other intellectual property rights Pine Labs as beneficial owner transfers to Axalto. “Pine Lab must notify Axalto in writing and verify that the Project Materials do not infringe on any third-party intellectual property rights.”

In the year 2009, Respondent No. 1 was asked by Respondent No. 2 to bid for a card program at HPCL. On June 26, 2009, Respondent No. 1 emailed appellant to advise them that they had been awarded the HPCL fleet card program and that they would be adapting the current IOCL system, which Appellant had designed. Appellant replied to the correspondence on June 29, 2009, stating his readiness to collaborate on the project.

Appellant thereafter learned that Respondent No. 1 had sub-contracted respondent no. 3 to develop software for the HPCL fleet card and that Respondent No. 1 had passed the source code of the IOCL program to Respondent No. 3. Appellants argue that while Clause 7.1 of the MSA contains no territorial or time constraints/restrictions, Sections 19(5) and (6) of the Copyright Act, 1957 apply, which state that in the case of a copyright assignment if no time or territory is specified, the assignment is only valid for 5 years and within India's territory. Appellant's rights to the Respondent No. 1 in relation to the IOCL fleet card program ended after 5 years since no new work was given to appellant by the Respondent No. 1; Appellant would become the only owner of that software, pursuant to Section 19(5) of the Copyright Act, 1957.

The appellant filed these appeals against the learned Single Judge's order vacating the appellant's ad-interim ex-parte injunction on the grounds that not only was the appellant's ownership claim of the source code dubious but also that the Master Agreement for Development Services (MSA) between the Appellant and the Respondent pertaining to the source code used in software development appeared to be an assignment in equity.

The appellant, fearful of the source code of the software it had developed being distributed to a third party, filed an appeal seeking a restraining order against infringement of its copyright in the source code and a mandatory injunction relating to the enforcement of its moral right under Section 57.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the agreement between the parties constituted a present agreement or just an agreement to 'assign'?
- II. What is the ownership status of the copyright of the invention?

4. ARGUMENTS OF THE PARTIES

Appellant

Clause 7 of the MSA specifies that Pine Labs will continue to create software for Gemalto in the future. The assignment is presumed to be for a term of five years and for the territory of India solely by virtue of the deeming requirements of Sections 19(5) and 19(6) of the Copyright Act, as indicated in the MSA or any other instrument.

Gemalto's claim that clause 7.1.1 was just an "agreement to assign" is unlawful under Section 29 of the Contract Act 1872, notwithstanding the plain and present wording of Clause 7.1.1. If not, the agreement would also be subject to the deeming requirements of Sections 19(5) and 19 since the time of assignment or territory is not specified in the agreement to assign (6).

Only a minimal amount of new code has been developed to enhance efficiency or add new features to version 1.03, which is the most fundamental and basic version of the software. There is no "reassignment" of the version 1.03 source code; instead, each new literary work is a "derivative work" based on version 1.03.

It has been more than a year after the injunction order was issued, and the Gemalto has yet to prove how it has been harmed. According to the company Gemalto, the version 1.03 is not used in any of its applications, including BPCL and IOCL. This means that the balance of convenience is in Pine Labs' favor. The Gemalto's use of the software is distinct from the rights it has as an assignee. As a licensee, Gemalto is authorized to use the programme, but it is not allowed to alter, adapt, or replicate the same.

Because of this, Pine Labs had agreed to allow Gemalto to continue using version 1.03 or any of its derivatives in the IOCL programme, as shown by the order dated October 9, 2009. There was and still is a complaint from Pine Labs claiming Gemalto changed the version 1.03 for use in the HPCL application, which is an obvious violation of copyright. Unless the injunction is lifted immediately, Gemalto might utilise this software for other purposes or engage into agreements with several different parties, which would cause Pine Labs great harm and loss.

As argued by Mr. Tiku, "assigns" is obviously and unmistakably a verb in the present tense, implying that the assignment has already taken place. The meaning of the sentence may be deduced from its plain reading alone, hence no more explanation is necessary.

Respondents

According to the MSA, Pine Labs' "Project Materials" include, but are not limited to, all computer programmes, data, charts, reports, specifications, studies, and inventions, as well as all draughts and working papers in relation to them. The respondent argues that this definition of "Project Materials" is consistent with the MSA. Thus, Clause 7.1 of the MSA was an "Agreement to Assign" rather than an "Assignment Deed" as previously stated. Terms 7.1 and 7.2 plainly state that Pine Labs had agreed to transfer all copyright and intellectual property rights in the works that Pine Labs was paid to produce to Gemalto, and no real assignment can be inferred from the clauses.

Pine Labs was expected to provide Gemalto equitable ownership of the Project Materials under the MSA by doing all of the acts and signing all of the papers that were reasonably required for Gemalto to secure, defend, and enforce its rights in the Project Materials.

Without a genuine assignment document, that Section 19 cannot be applied to the circumstances of this case. Section 19(1) requires that the “assignment” must be in writing, which is not satisfied, allowing Section 19(5) to be evaluated first. MSA requires that “the assignment of copyright in any work shall identify such work and shall specify the rights assigned and the duration as well as territorial or subject matter in as much as according to Pine Lab’ own submissions, MSA is an omnibus or umbrella agreement providing for ownership of all types of intellectual property,” according to Section 19(2).

If Section 19(2) isn’t met, the MSA isn’t an assignment agreement, and Sections 19(5) and (6) don’t apply since it doesn’t define the specifics of the job being done, past or future.

Clause 7.2 requires Pine Labs to execute any documents/instruments required for Gemalto to acquire, defend, and enforce its rights and the project materials. Gemalto had agreed that Pine Labs would sign the necessary legal documents to transfer the legal ownership or title of the work to the company when it was requested.

Furthermore, Gemalto argued that Pine Labs’ software applications for Gemalto’s different programmes are copyrighted and so Gemalto is entitled to demand a formal transfer of such property in accordance with Clause 7.4 of the MSA.

Pine Labs acknowledges that “MSA continues to be in effect” in Complaint 18 of CS (OS) No. 1876/2009. Clause 7 of MSA has to be given full effect, as Pine Labs admitted, including the execution of all essential papers such as Transfer Deeds for the official assignment of copyright in issue to Gemalto, as required by the MSA.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The major legal provisions of the **Copyright Act, 1957** are mentioned below in tune with this case analysis. The following are the particulars relied upon by the Court of law for interpretation as well.

- **Section 17 – First owner of copyright.** Section 17 proviso (c) addresses situations in which the work is generated in the course of the employer’s employment. In this instance, the work belongs to the employer, who is the owner of the work in the absence of a contract to the contrary.

- **Section 18 – Assignment of copyright.** Understanding ownership is vital because, according to Section 18 of the Act, only the owner may assign either current or future work. The ownership of the copyright is statutorily acknowledged by Section 17 of the Copyright Act, 1957, which states that the author is the owner of the copyright, subject to the Act's requirements.
- **Section 19 – Mode of assignment.** Similarly, Section 19(1) of the Act requires that any assignment of copyright be in writing, and Section 19(2) requires that the assignment identify the duration and territorial scope of such assignment. As a result, if the parties fail to specify for the duration and territory in the instrument by which the assignment of copyright is made, the period of the assignment will be just five years, regardless of the parties' desire, and the territory will only be India's territory. Sections 19(5) and (6) of the Copyright Act, 1957 make this obvious, regardless of whether the contract was an assignment agreement or just an agreement to assign.

6. JUDGEMENT IN BRIEF

The Court held that the language used in Clause 7 of the agreement was in present, meaning that the appellants had assigned the copyright and other intellectual rights in the project material to the respondents, and that the word “assigns” made it clear that the Respondent No. 1 would “be entitled” to all such rights, which the appellants had again assigned. The Court went on to say that Clause 7.2, which allows the respondent to obtain, defend, and enforce its rights in the project material assigned to the appellant, was only intended to protect the respondent's position and could not be said to have any bearing on Clause 7.1, which was to be construed separately to resolve the purported issue.

The Court also rejected the Ld. Single Judge's observations that the parties' contractual relationship was that of principal and agent as being contrary to the intent expressed in Clauses 18 and 20 of the MSA, which stated that the agreement was not to be construed as creating any joint venture, partnership, or other similar agreement and that both parties were specifically labelled as “independent contractors” with additional specific clarification.

The Bench relied on Sections 19(5) and 19(6) of the Copyright Act to reach the judgement that: because no length or territorial scope is specified in the agreement or any assignment deed, the requirements of Section 19(5) and (6) of the Copyright Act would apply.

Gemalto claimed that the MSA was only an agreement to assign rather than an assignment, and that it was the equitable owner of the copyright. As a result, Sections 19(5) and 19(6) of the

Copyright Act did not apply, and Pine Labs was required to sign documentation transferring the copyright to Gemalto. The Bench overruled this position, concluding that whether the MSA was an agreement to transfer or an assignment, Sections 19(5) and 19(6) of the Copyright Act apply.

The Court held that the ingredients necessary for granting an injunction against the respondent's use of the programme, while noting that the MSA was an "agreement to assign," had no bearing on the instant dispute and thus the respondent's defence was all but crumbled, were satisfied in favour of the appellant, and thus the appeal was allowed and the impugned order of the Ld. Single Judge set aside and upheld the injunction order passed earlier against the respondent.

7. COMMENTARY

This decision is critical in outsourcing contract/commissioning work, not only for computer software but for all elements when an author is engaged to create any literary work. Sections 19(5) and 19(6) of the Copyright Act, which were first included in 1995 through an amendment, are unique in this regard and are frequently missed during the preparation of contracts for assignment of copyright. This ruling clearly states that if the parties fail to stipulate for the time in the instrument by which the assignment of copyright is made, then the period of assignment will be just 5 years and the territory will only be India's territory, regardless of the parties' intentions. If the parties intend to transfer copyright for a permanent and universal period (or for a period longer than five years), this should be clearly stated in the instrument through which the assignment of copyright is affected. Authors should be aware that in the case of prior assignments, if more than 5 years have passed and the assignment agreement did not clearly state a period, the copyright may have reverted to them. Even after an agreement to assign, the Delhi High Court upheld the statutory necessity of confirmation of such assignment. The assignment of ownership rights to future works is considered an agreement to assign rather than an actual assignment. This idea was created in the sphere of intellectual property law and was later extended to patent law. Before an assignment can be given, an invention must be confirmed and identified. Although the Copyrights Act of 1957 acknowledges an employer's right to work generated by an employee during the course of employment, patent law has not developed to correct this flaw. As a result, rather than a real assignment of rights over a future work, a pre-invention assignment establishes an equitable assignment. In a real assignment, the interest in the intellectual property flows from one party to another and generates an enforceable right; nevertheless, an agreement to assign does not create such a right. The

inability of pre-invention patent assignments to be enforced in India adds another degree of administrative requirements. The implementation of an assignment provision after the invention permits workers to unilaterally reject ownership rights over an innovation created during employment. This puts companies at risk and permits antagonistic workers to hinder employers from establishing their claim to the ideas they funded.

8. IMPORTANT CASES REFERRED

- *Burn Ltd. v. R. N. Banerjee*, 1958 SCR 514
- *Speedplay Inc. v. Bebop Inc.* 211 F3rd 1245
- *St. Clair Intellectual Property Consultants Inc. v. PALM Inc. et Al* (Civil Action no. 06-040JJF-LPS)
- *Zenit Mataplast P. Ltd v. State of Maharashtra and Ors.* (2009) 10 SCC 388

CASE NO. 19
SUPER CASSETTES INDUSTRIES LTD.
V.
MY SPACE INC. & ANR.
2011 (48) PTC 49 Del

INTERMEDIARIES V. COPYRIGHT HOLDERS CASE

ABSTRACT

The decision in the present case of *Super Cassettes v. MySpace* is a landmark and a progressive decision that improves the safe harbour immunity enjoyed by internet intermediaries in India. It interprets the provisions of the IT Act of 2000 and the Copyright Act of 1957 to grant intermediaries safe harbour status even in the case of copyright disputes. It also relieves MySpace of the responsibility of pre-screening user-uploaded information in an effort to find a balance between free expression and censorship. CIS was one of the case's intervenors, and its presence was recognised in the decision.

1. PRIMARY DETAILS OF THE CASE

Case No	:	IA No.15781 of 2008 & IA No. 3085 of 2009 in CS (OS) No. 2682 of 2008
Jurisdiction	:	Delhi High Court
Case Decided On	:	July 29, 2011
Judges	:	Justice Manmohan Singh
Legal Provisions Involved	:	Information Technology Act, 2000 - Sec. 79, 81; Copyright Act, 1957 - Sec. 14, 51(a)(i), 51(a)(ii)
Case Summary Prepared By	:	Raj Shukla, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The plaintiff, Super Cassettes Industries, is in the music distribution and film production business. The plaintiff claims to hold a number of sound recordings, cinematograph films, songs, and other items, as well as 20,000 non-film Hindi songs and 50,000 songs in various

regional languages. It is overly dependent on the exploitation of its copyright, as this exploitation financially benefits the plaintiff, allowing it to carry on its many commercial activities. The plaintiff argues that it exploits its copyright by offering public performance licences in exchange for a set amount of royalty.

In this case, there are two defendants. Defendant No. 1 is MySpace Inc., which is situated in the United States of America and is described as a social networking and entertainment website. It is also believed to have a wide range of uses for activities such as sharing, viewing music, photos, and cinematograph works, among others. Defendant No. 2 is the owner of MySpace Inc, Defendant No. 1, which is alleged to be a branch of News Corporation, Fox Interactive media, and which offers a border-free online network that caters to its clients by providing a variety of tools.

The plaintiff claims that a non-disclosure agreement was made between the plaintiff and the defendants in 2007, after which there were conversations about the defendants obtaining a licence from the plaintiff to show the plaintiff's copyrighted information. However, the talks between the two parties fell through, and the plaintiff's intellectual information remained on the defendants' website without any permission from the plaintiff. The defendants proposed to the plaintiff through email in 2008 that it sign up for its risk management tool programme (one of the three main precautions given by the defendants). On February 20, 2008, the plaintiff served the defendants with a legal notice outlining its rights, and the defendants responded on March 12, 2008. The defendants presumed in their reply notice that the plaintiff's copyrighted material had been removed and would not be available online again. The plaintiff learned in December 2008 that the defendants had not removed the plaintiff's copyrighted material from its website, despite assurances that it would not be available on their website. Dissatisfied with the defendants' guarantees, the plaintiff launched the current complaint in the Delhi High Court; the plaintiff also sought interim relief in the same court.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the defendants' act of publishing the plaintiff's copyrighted work on its website without a licence or authority constitutes infringement under Section 51(a)(i) of the Copyright Act, 1957?
- II. Whether the defendants' act of offering a location for its users to communicate work to the public for profit would amount to allowing the location to be used for infringement under Section 51(a)(ii) of the act?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The counsel appearing for plaintiff argued that the defendant's use of the plaintiff's copyrighted works without permission or licence constituted a breach of Section 51(a)(i) of the Copyright Act, 1957. He further noted that no royalty is paid, and hence the owner of the material being disseminated to the public suffers a loss. The third point was that the act violated Section 51(a)(ii) since it supplied users with webspace equivalent to a 'place,' allowing communication with the public and profiting from such violation. The counsel explained the defendant's performance as a business model, as the defendants' act was reaping those cash from all of their commercials, in addition to the plaintiff's sound recordings and cinematograph works. The plaintiff contended that the defendant's act does not come within the exemption of Section 51(a)(ii) of the Act since the defendants are committing the infringement with knowledge and have a reason to suspect that such activities would constitute an infringement of copyright.

The defendant's act was also found to be infringing on the plaintiff's right guaranteed under Section 14 of the Copyright Act, as the work was transmitted to the public at large by the defendant without any authority from the work's owner i.e., the plaintiff. They further claimed that the defendants' proposed "notice and take down" alternative does not reduce the defendants' wrongdoing and is insufficient as a safeguard for an infringement that occurs on a daily basis. The plaintiff further disputed the defendant's claim about the safe harbour provisions, stating that the matter should be settled based on the existing legal situation and the law of the land, rather than the US Digital Millennium Copyright Act.

Defendants

Defendant's counsel first contested the essential territorial and personal jurisdiction to entertain and trial the actions against the defendants who are conducting business, residing, and working for profit in the United States of America. The counsel stated that the plaintiff's arguments by stating that the plaintiff is seeking a general type of injunction, which is not permissible in law because there must be specific acts complained of for an infringement to happen. Since the act for which an infringement is granted has not been committed and was to be committed in the future after authorization. It was argued against the plaintiff's position that there is a distinction between copyright infringements occurring in the real or tangible form and activities occurring in the virtual world of the internet that are not available in the physical form.

The counsel also argued that the Defendants' provision of online space to subscribers, allowing them to share media online, constitutes acting as an intermediary within the meaning of Section 79 of the Information Technology Act, 2000 which is not illegal because there was no specific knowledge that such action would constitute infringement. It was also suggested that the court should interpret the terms of the Copyright Act and the Information Technology Act coherently, with the IT Act acting in the same way as the safe harbour provisions of the US statute spare the defendants from liability.

The defendants stated that the platform on which the material was submitted was a global platform and that it is impossible to monitor every action on the site; thus, the defendants cannot be held accountable for the inability to monitor every content. It was also stated that the defendants received no monetary gains as a result of the user generated content. To avoid any kind of objection, the defendants provided that, without a doubt, for such act of communication, the defendants take licence from the user to use, add, delete from, or publicly perform or publicly display, publicly perform, reproduce, and distribute the said content for the purposes of the website, and thus it does not make taking licence for such communication mandatory for the defendants. The defendant went on to claim that they had already established that their website had mechanisms in place to eliminate or prevent copyright infringements.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright Act 1957** have been discussed:

- **Section 13 - Works in which copyright subsists.** This section states that copyright is granted to original literary, artistic, dramatic and musical works, cinematograph films and sound recordings and subsists throughout India, subject to certain conditions.
- **Section 14 - The definition of copyright.** Copyright means the exclusive right to reproduce the work, make the work available to public, etc., subject to the provisions of the Copyright Act, with respect to literary, dramatic, artistic or musical work that is not a computer program, cinematograph films and sound recordings.
- **Section 51 - When copyright infringed.** It specifies what constitutes an infringement. Section 51 (a) states that a copyright in a work is considered infringed when any person performs any act without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act, or if he performs any act in violation of the conditions given in the licence which was so granted to him, or contravenes any condition imposed on him by any competent authority, where the exclusive right to

perform such an act vest exclusively with the owner. Section 51 (a) (ii) states that when a person provides for profit any place to be used for communicating with the public, such communication can be considered infringement unless the person is unaware and has no reasonable grounds to believe that such communication to the public will constitute infringement.

6. JUDGEMENT IN BRIEF

The court ruled in favour of the plaintiff on infringement under Section 51(a)(ii), stating that the defendant's actions might be considered prima facie infringement under this provision of law. Regarding the defendant's participation in authorising infringement under Section 51(a)(i), the court determined that this issue was not clear from the evidence provided to it; yet, the defendants had clear understanding of what they were communicating. The court also stated that when the plaintiff informed the defendants about its copyrighted material, the defendants became aware not only of the mode of infringement but also of the plaintiff's rights, and the defendants cannot continue to do the same acts in relation to the work for which no permission has been granted to them after becoming aware. If the defendants fail to accomplish what is required, they will be classified as ordinary infringers under Section 51(a)(i) and the issue of authorization will become immaterial. The court also issued an interim direction and order prohibiting the defendants, their agents, representatives, servants, officers, or any other persons acting on their behalf from modifying the plaintiff's work, adding advertisements, logos, and sponsorship to the plaintiff's work, and making any profits in any way, by uploading the same to their webpage without any inquiry into the ownership of such work.

The defendants were also ordered not to make such work available on their webpage to the public. Concerning future work of the plaintiff being uploaded on the defendants' space by those other than those previously mentioned, the court held that, as and when it comes to the plaintiffs' notice that any of its copyrighted material is available on the defendants' website, the plaintiff shall provide the defendants with a detailed list of the songs and films available on its website, and the defendants shall take action to remove the same within one week of the date of sue. The court further ordered the defendants to take measures to check the plaintiff's ownership and updates in its work through its own efforts, as well as to remove any infringing material or objectionable content on its website whenever it becomes aware of it.

7. COMMENTARY

While deciding this issue, the court first discussed the law of copyrights in India. It looked at the wording of Section 51(a)(ii), which allows profits to be made “wherever.” It is unclear from the phrase what type of location has to be used in order for there to be an infringement. However, the court determined that the phrasing in the sub-sections implied that any place might be a real location or a location on the internet or web space. The court examined the UK Copyright Act of 1956 and the Act of 1988 in order to gain a clear understanding of this phrase. While deciding on this issue, the court referred to a House of Lords decision in *Comdel Commodities Ltd v. Siporex Trade, SA*, which held that when there is a change in social conditions and the law does not provide for it, there should be no assumption that the law does not apply to it, if the wording in the law is broad enough to apply to the situation. The court also considered the case of *State of Maharashtra v. Praful B. Desai*. In accordance with previous decisions, the court decided that because the wording in Section 51(a)(ii) is ambiguous, there is a presumption that the term “any place” covers web space in order to include wrongs committed in the web space. The defendants also had advertisements on their web pages that ran alongside the plaintiff’s copyrighted material, either before or after showing excerpts. In this instance, the defendants also have a restricted permission to add, edit, and delete specific content provided by users, which amounts to allowing the place for profit. The court then distinguished between the concepts of allowing infringement and offering a platform for profit. It was of the opinion that authorisation entails more than just knowledge. The court examined English cases that ruled that authorization would necessitate sanction or approval. Even though the defendants had some control over the material submitted, the court determined that it did not amount to complete sanction or permission, as required by common law. The court ruled that even though there was no active approval or penalty, the defendant’s actions infringed on the plaintiff’s copyright.

8. IMPORTANT CASES REFERRED

- *Entertainment Network (India) Ltd. v. Super Cassettes Industries*, 2008 (9) SCALE 69
- *Exphar SA & Anr v. Eupharma Laboratories Ltd. & Anr.*, (2004) 3 SCC 688
- *Gujrat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors.*, (2003) 2 SCR 799
- *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225
- *State of Maharashtra v. Praful B. Desai (Dr.)*, (2003) 4 SCC 601
- *Super Cassette Industries Ltd. v. Nirulas Corner House, (P) Ltd.* (2008) DLT 487

CASE NO. 20
**SYNDICATE OF THE PRESS OF THE UNIVERSITY
OF CAMBRIDGE ON BEHALF OF THE
CHANCELLOR, MASTERS AND SCHOOL**

V.

B. D. BHANDARI

**RFA (OS) NO. 21 OF 2009, FAO (OS) No. 458 of 2008,
DELHI HIGH COURT**

COPYRIGHT IN LITERARY WORK

ABSTRACT

The following is a case summary of the case dealing with the reproduction of the copyrighted material of the University of Cambridge by Narendra Publishing House. The Cambridge University Press is a printing division of the University of Cambridge, and it is one of the oldest printing presses in the world. The books published by this press are used extensively throughout the world for educational purposes, including in India. The defendant has published the copyrighted material of the University Press of Cambridge, viz., Advance English Grammar, by Martin Hewing, without obtaining permission from the owner and reproduced the content for educational purposes of Guru Nanak Dev University. The appellant filed an Original Suit with Delhi High Court for an interim injunction to restrain the defendant from using the copyrighted material and permanent order to prohibit such books' sale. The appellant succeeded in obtaining the interim ex parte injunction in reproducing the copyrighted content from the work of the appellant, but the learned single judge dismissed the original suit. The learned single judge observed that there is no invention or originality in the grammar and spelling, and it is regular content only. Hence the suit was dismissed by the learned single judge. The appellant, aggrieved with the judgement, filed an appeal, and this appeal is the subject matter of this case commentary. The Author, a law student, supports the Court's decision that it has passed in the interest of Justice, Equity and Good Conscience.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	RFA (OS) No.21 of 2009, FAO(OS) No. 458 of 2008
Jurisdiction	:	Delhi High Court

Case Decided On	:	August 3, 2011
Judges	:	Justice A. K. Sikri, Justice Suresh Kait
Legal Provisions Involved	:	Copyright Act, 1957 – Sec. 13, 21, 52, 52 (1)(h),
Case Summary Prepared By	:	Sankar Ganesh S, SOEL, TNDALU, Chennai

2. BRIEF FACTS OF THE CASE

The syndicate of the University of Cambridge press on behalf of the Chancellor, Master and Scholars of the University of Cambridge and the Chancellor Masters and Scholars of the University of Oxford were the appellants of this case who contented that there is an infringement of copyrighted material. Narender Publishing and House & Others were the case respondents who contended that there is no infringement and no originality in the work in dispute.

The fact of the case is that the appellant has published a book in the name and style of “Advance English Grammar by Martin Hewing”. The same has been reproduced by Guru Nanak Dev University, Amritsar, Punjab, in their curriculum.

The appellant contended that there is a verbatim reproduction of the book published by the appellant, which is against the copyright rules and regulations.

The appellant got an interim injunction against the respondent in an ex-parte mode that the defendant has infringed the copyrighted material. But the learned single judge dismissed the petition in his final order and stated that there was no infringement and no originality and invention displayed.

At this juncture, the appellant filed an appeal against the order of the single learned judge that there was an infringement.

The respondent has not contended against the appellant’s copyright but defended it differently. Their main contention is that English grammar is common, and there is no specific invention or change of any originality. The book published by the respondent is a referral guide for things involved in the university’s curriculum, which is different from the book published by the appellant in all means.

Section 52(1)(h) of the Copyright Act, 1957 envisages ‘fair use’, and the appellant book is a prescribed book for the respondent university. The learned single judge accepted this contention of the respondent, which paved the way for dismissing the original suit by the learned single judge.

3. ISSUES INVOLVED IN THE CASE

Based on the submission of the appellant and respondent, the court finds the following issues:

- I. Whether the work of the appellant fall under the category of originality?
- II. Whether the university prescription has eroded the originality of the appellant’s work or not.
- III. In what extent the infringement has happened?
- IV. Whether the appellant entitled to the relief of permanent injunction?
- V. Is the plaintiff eligible to claim the damages from the defendants?
- VI. Whether the plaintiff is eligible for a rendition of the account of profits?
- VII. What exactly is the relief?

4. ARGUMENTS OF THE PARTIES

Appellant

The exact reproduction of grammatical works falls under the category of infringement as enumerated under Section 13 of the Copyright Act, 1957.

The appellant contended that the author of the original book has made enormous efforts in designing that book to ensure that the book is more effective and more straightforward in approach.

The appellant contended that the design and the author’s work is unique. The appellant to substantiate his claim to reproduce the exact works of the Section 13 of the Act. The appellant further submitted that the author had created the exclusive design, patent, methodology and approach in making the book. The appellant, to substantiate his claim, relied upon several judgments pronounced by various courts, including the apex courts.

The appellant contended that the owner has not relinquished the rights stipulated under Section 21 of the Copyright Act.

Respondent

The respondent contended that there is no infringement of copyright in the material. The respondent contended that it is not a mere reproduction of the book of the appellant, so the respondent has spent many man-hours in bringing out the guide. The respondent contended that the appellant lacks originality and cannot be protected under the umbrella of copyright. It was argued that there are several doctrines, namely the “sweat of the brow doctrine”, “doctrine of fair use”, skill, judgment and labour.

The respondent contended that the composition of the book made by the appellant doesn't have any invention or any specific methodology, or any unique approach which tantamount to copyright protection. They also contended that it is not a mere reproduction, and the guide has 120 units, and each portrays a different set of dramatical rules.

The respondent contended that the said grammar and its contents are very much available in public domain. They relied on Section 52(1)(h) of the Copyright Act that the reproduction of literary work for question and answer doesn't constitute infringement. The respondent relied on various judgments of various courts to substantiate his claim.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright Act, of 1957** have been discussed:

- **Section 13 - Works in which copyright subsists.** It states the work in which copyright subsists, when the work is original literary, dramatic, musical, artistic work, cinematographic films and records. The original literature plays a vital role in determining the copyright infringement.
- **Section 21 - Right of author to relinquish copyright.** It states about relinquishment of the copyright. The author has right to relinquish his copyright by giving a notice to a registrar of copyrights.
- **Section 52 - Certain acts not to be infringement of copyright.** It talks about the doctrine of fair use. The Section enumerates the principle and methodology which constitutes no infringement of copyright. It specifies when it is a part of the questions to be answered in the examination will not constitute as an infringement. Further, the Section states that when it was used in the purpose of instruction by a teacher to a pupil doesn't tantamount to copyright infringement.

6. JUDGEMENT IN BRIEF

The court interprets Section 13 of the Copyright Act in detail, especially the terminology “original literary” to interpret the terminology, the court relied on various judgments pronounced by Indian and foreign courts. The court further relied on the definition given by Black Law Dictionary. The court relied on the doctrines of “sweat of the brow”, and “skill, judgment and labour” to find out the original literature as termed under Section 13 of the Copyright Act. The learned single judge has elaborately discussed the term “original literature” and found no originality and invention in the case of the appellant.

Notably, copyright protection is not available in all the work in the public domain. The doctrine of fair use is a limitation and exception to the copyright owner’s right. In the same way, the court relied on the definition of the Black’s law dictionary for the term fair use. Section 52 of the Copyright Act, 1957 states: when it can be claimed that there is no copyright infringement. It specifies when a teacher uses it for educational purposes and if the copyrighted material is used for question and answer in the examination. The court relied on various judgments and upheld the decision of the learned single judge.

As stipulated under Section 21 of the Act, the author has the right to relinquish copyright. In the present case, the originality of work is under dispute and the learned single judge has clearly interpreted the provisions of the act and said there is no originality or invention. Hence, the question of copyright protection does not arise.

The Section 52(1)(h) of Copyright Act clearly stipulates the action in which infringement of copyrights does not arise. In the case of usage of copyrighted material for the purpose of instruction by the teacher to the pupil, during the question and answer in the examination. The respondent has spent more man hours and have done some work and not merely the reproduction of the work of the appellant.

The court relied on various judgments in interpreting the term “used for question and answer in examination” and held that the two books are different in nature. Hence, there is no infringement of copyrights

7. COMMENTARY

This is a peculiar case in which one party contended that there is an infringement of copyright material. Whereas the other party contended that there is no infringement and there is no originality and invention in the work of the appellant. The court relied on various judgments

and elaborately discussed in detail the provisions enshrined in various Sections of the copyright act. The court upheld the decision of the learned single judge and the “doctrine of fair use”, and “skill, judgment and labour” were dealt in detail. The judgment paved the effective usage of copyright material during education.

8. IMPORTANT CASES REFERRED

- *Agarwala Publishing House v. Board of Higher Secondary & Intermediate Education & Ors.* AIR 1967
- *Civil Chandran v. Ammini Amma.* 1996 (16) PTC 670
- *E.M. Forster & Anr. v. A.N. Parasuram.* AIR 1954 Mad. 331
- *E.M. Forster & Ors. v. Parasuram,* AIR 1964 331
- *General Division in the case of De Garis and Another v.*
- *Gopal Das v. Jagannath Prasad and Another,* AIR 1938 All. 266
- *Jagdish Prasad Gupta v. Parmeshwar Prasad Singh and Ors.* AIR 1966 Pat 33
- *Kelly v. Morris,* (1866) LR 1 Eq. 697
- *Luther R. Campbell aka Skyywalker, et al. v. Acuff-Rose Music, Inc.* 510 US 569 (1994)
- *Meade v. United States,* 27 Fed. Cl. 367, 372 (1992)
- *Mohamed Abdul Jalil v. Ram Dayal,* AIR 1916 All 216
- *N City Slicks, Inc. v. Sheen,* 77 F.3d 1280, 1287
- *Nag Book House v. State of West Bengal & Ors.,* AIR 1982 Cal. 245
- *Neville Jeffress Pidler Pty Ltd.* 18 ITR 292
- *Parry v. Moring and Gollancz, Cop Cas,* (1901-1904) 49
- *Romesh Chowdhry & Ors. v. Ali Mahomed Nowsheri & Ors.* AIR 1965
- *Rupendra Kashyap v. Jiwan Publishing House,* 1996 (38) DRJ 81
- *V. Ramaiah v. K. Lakshmaiah,* 1989 PTC 137 (AP)
- *V. Ramaiah v. K. Lakshmanaiah,* 1989 PTC 137
- *West Publishing Co. v. Mead Data Central,* [1986 US App. Lexis 29211]

CASE NO. 21
THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA

V.
SHAUNAK H. SATYA AND ORS.

AIR 2011 SC 1336

DISCLOSING QUESTION PAPER, SOLUTIONS AND
INSTRUCTIONS AS COPYRIGHT INFRINGEMENT

ABSTRACT

In the *Institute of Chartered Accountants of India v. Shaunak H. Satya and Others* case, the Supreme Court of India gave a clear judgment in the field of Copyright Law. The Supreme Court ruled that any examination board may reveal the question papers, model answers, and instructions for any given test as long as it does not affect any third party's competitive position once the examination is held. Rejecting the institute's claim that it had copyright over the question papers and thus they could not be disclosed even after the tests, the court ruled that if an aspirant requests a revision of the examination under the Right to Information Act, 2005, the institute must disclose the standard criteria relating to moderation used by it.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 7571 of 2011
Jurisdiction	:	Supreme Court of India
Case Decided On	:	September 2, 2011
Judges	:	Justice R.V. Raveendran, Justice A.K. Patnaik
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 52; Right to Information Act, 2005 - Sec. 4, 8; Chartered Accountants Act, 1949 - Sec. 3
Case Summary Prepared By	:	Shivam Agrawal, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The appellant, the Institute of Chartered Accountants of India (ICAI), is a legal entity created under Section 3 of the Chartered Accountants Act, 1949. The examination of candidates for enrollment as Chartered Accountants is one of the tasks of the appellant institute. Satya, who had failed the CA final test, has sought for marks verification in this case. The appellant conducted the verification in line with the Chartered Accountants Regulations, 1988, and discovered no inconsistency in the appraisal of response scripts. The appellant notified the first respondent of the situation.

Not being satisfied, the respondent filed an appeal with the appellate authorities. By ruling dated April 10, 2008, the appellate authority rejected the appeal, concurring with the order of the appellant's Chief Public Information Officer. Following that, the first respondent filed a second appeal with the Central Information Commission (CIC) on inquiries 1 to 5 and 7 to 13. The appeal was dismissed by CIC in a decision dated December 23, 2008.

Dissatisfied with the denial of information sought under items 3, 5, and 13, the first respondent filed a writ suit with the Bombay High Court. By ruling dated November 30, 2010, the High Court granted the petition.

The order of the High Court was challenged in the Supreme Court of India.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the ICAI's instructions and solutions to questions (if any) issued to examiners and moderators are intellectual property of the ICAI, the revelation of which would affect third parties' competitive position, and thus exempted under Section 8(1)(d) of the RTI Act?
- II. Whether granting access to the sought-after material (that is, instructions and answers to questions supplied by ICAI to examiners and moderators) would constitute an infringement of the copyright, and therefore the request for information is liable to be refused under Section 9 of the RTI Act?
- III. Was the High Court right in ordering the appellant to provide the first respondent with five items of information sought (in query No. 13) pursuant to Regulation 39(2) of the Chartered Accountants Regulations, 1988?

4. ARGUMENTS OF THE PARTIES

Appellant

According to the appellant, each request for verification is treated in line with Regulation 39(4) of the Chartered Accountants Regulation, 1988, using a well-defined scientific and rigorous approach, and a thorough examination is performed before reaching any judgement. After the pronouncement of the result, the verification procedure begins, and each request is processed on a first come, first served basis. After the exhaustive check has been properly performed, the answer books are verified by two independent individuals separately and then evaluated by an Officer of the Institute. Upon his satisfaction, the letter stating the outcome of the verification exercise is issued.

The appellant claims that the information requested in inquiries (3) and (5), namely, instructions and model answers supplied by ICAI to examiners and moderators, cannot be released because they are excluded from disclosure under Clauses (d) and (e) of sub-section (1) of Section 8 of the RTI Act. According to the submission, the request for information is likewise subject to rejection under Section 9 of the Act. They further claimed that, in the case of question No. (13), whatever information was available had been provided, aside from the broad invocation of Section 8(1)(e) to claim exemption.

Respondent

Respondents have stated that what they supply to examiners is “solutions,” not “model answers,” as the appellant imagined. “Suggested answers” to test questions are brought out and marketed in the market to assist students and examinees.

It would be completely wrong to supply the solutions to the questions to the students for the sole benefit of examiners and moderators. Given the secrecy of the interactions between the public authority conducting the tests and the examiners, the “solutions” qualify as items prohibited under Section 8(1)(e) of the RTI Act. This information is likewise protected under Section 8(1)(d) as the public authority’s exclusive intellectual property. Respondents have correctly encouraged the appellant to obtain the “recommended solutions” to the questions on the open market, where they are for sale.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal provisions are eminent in analysis of this case which are profoundly found in international and national legislations. The following are the significant relatable provisions or documents of this case law:

- **The Copyright Act, 1957: Section 52 - Certain acts not to be infringement of copyright.** It lays down that works which use a copyrighted work for “fair use”, or research purpose, or for criticism/review, do not constitute copyright infringement.
- **Right to Information Act, 2005 - Section 8:** Exemption from disclosure of information
- **Chartered Accountants Act, 1949: Section 3 – Incorporation of the Institute.** All persons whose names are entered in the Register at the commencement of this are hereby constituted a body corporate by the name of the Institute of Chartered Accountants of India, be known as members of the Institute.

6. JUDGEMENT IN BRIEF

The question sheets, assessment instructions, and solutions to questions (or model answers) provided to examiners and moderators in conjunction with the examination of response scripts are literary works produced by human intelligence and hence protected by copyright. The paper setters and writers (other than ICAI staff) who are the first proprietors of the question papers/solutions are obligated to assign their copyright in favor of ICAI.

Section 9 of the RTI Act states that an application for information would be denied if the information sought constitutes a violation of copyright owned by someone other than the State. The Chartered Accountants Act, 1948 established the ICAI as a statutory entity. Providing access to information over which ICAI has a copyright does not constitute a violation of a copyright held by someone other than the State. As a result, ICAI is not eligible to seek protection from disclosure under Section 9 of the RTI Act.

Regulation 39(2) of the Chartered Accountants Regulations, 1988 states that the council may, at its discretion, alter the marks achieved by all candidates or a subset of candidates in a specific paper or papers, or in the aggregate, in order to preserve the Regulations' pass percentage criteria. Regulation 39(2) therefore allows for moderation,' which is a necessary corollary of the answer script assessment process in which a large number of examiners are engaged to analyse a big number of response scripts.

The Supreme Court ruled that the Right to Information Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions), and instructions, if any, given to examiners or moderators after the examination has taken place and the evaluation of answer scripts has been completed, as it will not harm any third party's competitive position at that time.

The Court decided that information might be requested under the RTI Act at various stages or times. Before the result was published, the examining body was not obligated to provide information about the question papers, solution, model response, or directions, among other things.

7. COMMENTARY

Any examination body, in my opinion, should reveal the question papers, model answers, and instructions in relation to any particular examination, as this would not impair any third party's competitive position once the examination is held. Providing access to information in which the ICAI owns a copyright does not constitute an infringement of a copyright owned by someone other than the government. Examining bodies like the ICAI should shift their thinking and adapt to the new system of maximum information availability. Previous traditions of unnecessary secrecy should no longer have a place in an era of transparency, officials should recognise.

8. IMPORTANT CASES REFERRED

- *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors.* [JT 2011 (9) SC 212]
- *Sanjay Singh v. U.P. Public Service Commission* [JT 2007 (2) SC 534]

CASE NO. 22
SHEMAROO ENTERTAINMENT PVT. LTD.
V.
AFZAL KHAN AND ORS.

**NOTICE OF MOTION NO. OF 2008 IN SUIT (LODGING) NO.
2429 OF 2008, BOMBAY HIGH COURT**

ASSIGNMENT OF COPYRIGHT

ABSTRACT

The following is the case summary of the judgment pronounced by the Hon'ble Bombay High Court in *Shemaroo Entertainment Pvt. Ltd. v. Afzal Khan and Ors.* In the present case, the court dealt with the assignment of rights in a feature film. Assignment is a very important concept under the Copyright Law. It relates to transfer of ownership rights from one party to another. In the entertainment industry, the assignment has very important commercial implications. Usually, the party creating a work is not the best entity to handle its commercial exploitation. Therefore, the Producer/Owner of copyright in the work assigns it to the distributors who then exploit it commercially through different mediums. The present case deals with the question of when an assignment agreement becomes operational and ownership in work is passed from one party to another.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Notice of Motion No. of 2008 in Suit (Lodging) No. 2429 of 2008
Jurisdiction	:	Bombay High Court
Case Decided On	:	August 13, 2008
Judges	:	Justice V. M. Kanade
Legal Provisions Involved	:	Copyright Act, 1957 – Sec. 18, 19
Case Summary Prepared By	:	Nishant Mishra Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

In the present case, plaintiff is a company indulged in the business of making and distributing various feature films. Defendant No. 1 (Shemaroo Entertainment Pvt. Ltd.) is the producer of the disputed film. Defendant No. 2 is a facility where the disputed film had been edited and stored. Defendant No. 3 (Eros Multimedia Pvt. Ltd.) is a Company to whom the Defendant No. 1 is alleged to have sold certain rights in the said film.

Through an assignment agreement dated February 16, 2007, the Defendant No. 1 assigned the broadcasting rights of the said film to the plaintiff. In the said agreement, it was provided that the plaintiff would pay to the defendants' certain amounts as per the schedule annexed to the said agreement. The schedule of the payment could be understood from the following table:

Installment	Amount (in Rs)	Date on which it becomes Payable
1 st - On execution of said agreement	1,00,00,000/- (Rs 1 Crore)	February 16, 2007
2 nd - Subject to the plaintiff not receiving any objection from a third party.	2,00,00,000/- (Rs 2 Crore)	March 10, 2007
3 rd	50,00,000/- (Rs 50 Lakhs)	April 25, 2007
4 th	3,50,00,000/- (Rs 3.50 Crores)	7 days prior to the theatrical release of the film in India.

As per the assignment agreement, the plaintiff issued a public notice dated March 2, 2007 calling for objections and on March 5, 2007, it received an objection from a third party, namely Super Cassette Industries Ltd. contending that the plaintiff only had the right to broadcast "full length" film and not the audio and music rights which vests with the said party. The Plaintiff conveyed the said objection to the defendants on March 15, 2007 and asked it to obtain a letter of withdrawal of objection from the third party. As defendants failed to do so, the plaintiff contended that the 2nd installment has not become due and payable.

Further, there was a modification in the said assignment agreement through oral medium. According to new terms, an amount of Rs. 2 Crores was paid by the plaintiff, though it was not due and further amount of Rs. 50 lakhs which was to be paid on April 25, 2007, would be paid alongwith the last installment of Rs 3.50 crores.

The plaintiff alleged that though they had paid the defendant a sum of Rs. 2 Crores on May 22, 2007, the defendant terminated the said assignment agreement by a letter dated February 16, 2007 on the ground of failure to pay Rs. 50 Lakh (3rd Installment) as per the schedule fixed in the agreement.

3. ISSUES INVOLVED IN THE CASE

- I. When does assignment of copyright under Section 18 of the Copyright Act, 1957 become complete?
- II. When does any modification to the assignment agreement become effective?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiff had contended that the assignment deed via which broadcasting rights were transferred to the plaintiff had become complete and irrevocable. In the present case, the plaintiff was willing to make payment of the 2nd installment as and when it had become due and payable. It is submitted by the plaintiff that on receiving objections from a third party, the obligation is cast upon the Defendant No.1 to remove the said objection. Only then it could be said that the 2nd installment has become payable. As said objections were not cleared by the defendants, no default was committed by the plaintiff in making payment as per the schedule. The plaintiff submitted that since the said amount did not become due and payable, the subsequent installment of Rs. 50 lakhs also was to be paid after the objection was removed.

The plaintiff also raised a plea that via an oral modification to the said agreement, the plaintiff paid the 2nd installment on May 22, 2007, although it was not due yet. It is also willing to deposit an amount of Rs. 4 crores which was the 3rd and 4th installment in the payment schedule.

The plaintiff on the basis of above contentions argues that the defendant had no right to terminate the said agreement since the assignment had become complete and the plaintiff was ready and willing to deposit the entire installments.

Defendant

As a response to the claims, the Defendant No.1 primarily contended that as per the assignment agreement dated February 16, 2007, the assignment of copyright was made subject to payment of installments by the plaintiff. Time was the essence of the contract. In the present case, the

plaintiff has breached the contract by not making payment as per the schedule. Therefore, the defendants were justified in terminating the agreement.

Further, the defendant argued that as per Clause 30 of the said assignment agreement, modification of the assignment could only be made after it was reduced to writing. The contention of the plaintiff regarding modification of the agreement was an attempt by him to circumvent the condition imposed on him in the assignment agreement.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Chiefly prominent provisions concerned are in the Copyright Act, 1957.

- **Section 18** of the Act deals with the Assignment of the copyright. It provides the conditions of the assignment. Section 18 Sub-clause (1) in clear terms states that the assignment should be made subject to certain limitations imposed in the agreement.
- **Section 19** of the Act deals with the Mode of the Assignment. It states that assignment in any work shall be in a written form.

6. JUDGMENT IN BRIEF

The Hon'ble Court undertook detailed analysis of Section 18 of the Copyright Act and various clauses of the assignment agreement. The Court observed that as per sub-Section (1) of Section 18 of the Copyright Act, an assignment can be made subject to certain limitations imposed in the agreement. Therefore, the parties had the right to assign the copyright and imposed certain conditions before the assignment could be complete.

In the present case the assignment agreement dated February 16, 2007, itself cannot amount to complete assignment as perusal of the various clauses in the agreement indicates the parties intended the assignment to be operation only after the payment of the installments as per schedule fixed by the parties.

The court held that after taking clauses of the agreement into consideration, it could be inferred that the intent of parties was that payment should be made on time and as long as the payment is not made, the assignment would not be complete.

The Hon'ble Court observed that the third installment had become payable and due on April 5, 2007, which the plaintiff failed to pay as per the schedule fixed by the parties. The court found it to be a clear breach of contract on part of the plaintiff. Court also rejected the plaintiff's contention that through an oral modification in the agreement the plaintiff paid the 2nd

installment on May 22, 2007, although it was not due yet. The Court on perusal of Clause 30 of the agreement, held that agreement clearly stipulates that any modification in any of the clauses of the agreement had to be reduced in writing. In the present case as the said modification was not reduced to writing therefore no change could be said to have been taken into the agreement.

The court also found that the pleadings pertaining to the alleged modification was very vague and it appears that the plaintiff is trying to twist the facts to hide the breach committed by him in payment of Rs. 2 Crores in time.

The Hon'ble Court held that the payment as per schedule was an essence of the contract and the plaintiff having committed the default in making payment as per schedule, Defendant No. 1 was entitled to terminate the agreement. The Court found that plaintiff has not made a prima facie case for grant of any interim relief. It also directed the Defendant No. 1 to deposit the entire amount received by them in this Court, which the plaintiff would be entitled to withdraw.

7. COMMENTARY

This judgment has expounded the scope of Section 18 of the Copyright Act 1957. Section 18 of the copyright deals with the assignment of copyright of transfer of ownership in a work. Despite some reasonable restrictions to protect the interest of the artists, the Act gives sufficient commercial freedom to the parties to commercially exploit their work by assignment of rights. The Sub-section (1) of Section 18 states that the parties had the right to assign the copyright and impose certain conditions before the assignment could be complete. In the present case, the court held that unless such conditions i.e payment of consideration, are fulfilled the assignment could not have become operational. The court relied heavily on the assignment agreement itself, to find the intent of the party. Mere execution of assignment agreement could not bring it in force, unless all the prescribed conditions to be completed before the assignment are fulfilled. The present judgment will make the jurisprudence regarding assignment of copyright clearer. It has also ensured primacy of agreement freely entered between the parties and hence will have positive effect especially on the entertainment industry.

CASE NO. 23
MATTEL INC. AND ORS.
V.
JAYANT AGARWALLA AND ORS.
2008 (153) DLT 548
DOCTRINE OF MERGER

ABSTRACT

The key details of the case *Mattel Inc. and Ors. v. Jayant Agarwalla and Ors.* are summarized here. It is crucial to highlight right away that the court's decision resulted from a request for a temporary injunction. The plaintiff just needs to make a prima facie case in cases involving temporary injunctions. The plaintiff's version of the events is therefore likely to be accepted without much questioning. The plaintiffs, who are the creators of the well-known game "Scrabble," basically asked the court to grant an injunction preventing the defendants, who are the creators of the online game "Scrabulous," from violating the plaintiffs' copyright and trademark. The court upheld that "Scrabble" is not entitled to copyright protection because the required standards of originality were not met, and applicability of the doctrine of merger and Section 15(2) of the Copyright Act, 1957.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	IA 2352 of 2008 in CS (OS) 344 of 2008
Jurisdiction	:	Delhi High Court
Case Decided On	:	September 17, 2008
Judges	:	Justice S. Ravindra Bhat
Legal Provisions Involved	:	Code of Civil Procedure 1908 - Order 39 Rule1, Order 39 Rule 2; Trade Marks Act, 1999 - Sec. 11(6), 29, 36; Copyright Act, 1957 - Sec. 15(2), 2(c), 2(o), 14; Design Act, 1911 - Sec. 15(2) Patents Act, 1970: Sec. 3 Designs Act, 2000: Sec. 2(d), 6, 47, 47(2)(c)

Case Summary Prepared by	:	Shivam Agarwal, Gujarat National Law University, Gandhinagar
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2. BRIEF FACTS OF THE CASE

The plaintiff in the present case was involved in the leading toy, gaming, and consumer product manufacturing. The board game known as “SCRABBLE” that the plaintiffs produced is one of their well-known goods (hereinafter referred to as “the game”).

Since 1948, the word “SCRABBLE” has been a registered trademark. In all nations other than the United States and Canada, the plaintiffs claimed to be the owners of the SCRABBLE trademark. A list of the licensees for each platform was provided by the plaintiffs. Additionally, they claimed to have heavily pushed the game online and to have kept up popular websites like www.scrabble.com and www.mattelscrabble.com. According to the claimants, the mark “SCRABBLE” has acquired widespread recognition under the terms of Section 11(6) of the Trademarks Act, 1999.

The plaintiffs claimed that the defendants used the trademark SCRABULOUS to release an online version of their board game as an application through the well-known social networking site www.facebook.com. Additionally, the defendants’ websites www.scrabulous.com, www.scrabulous.info, and www.scrabulous.org marketed the online version.

In order to support their claim, the plaintiffs cited Section 29 of the Trade Marks Act, 1999 as well as passing off to argue that the unlawful use of a misleading and confusingly similar mark for the online version of their game constitutes infringement.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the use of metatags and hyperlinks amount to trademark infringement and therefore should be afforded protection?
- II. Whether the rules of the board game Scrabble and its layout were capable of copyright protection?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The counsel for the plaintiff has submitted mainly 3 contentions before the Hon’ble Delhi High Court, which are as follows:

Firstly, the Court cannot deny protection under the Trade Marks Act, 1999 since the word mark is both descriptive and unique.

In addition to utilising a confusingly similar mark, the defendants violated the trademark owner's rights by employing metatags, or machine-readable data, on their website. Metatags are utilised by search engines to index websites. The following metatags were utilised by the defendants: scrabble online, play scrabble online, scrabble for free online, scrabulous live, etc. The defendants' use of such tags to direct internet traffic away from the plaintiffs' websites and deceive the public into believing that their (the defendants') products are linked with the plaintiffs amounted to blatant infringement and passing off.

Links to the websites of the plaintiffs as well as the scrabble game's regulations were also utilised by the defendants. Free online scrabble, free download scrabble, and so forth were some of the hyperlinks used. Infringement can be proven based just on the wordings of the hyperlinks, regardless of the websites' content. The gaming board and the rules, according to the plaintiffs, violate their copyright. The plaintiffs assert that the defendants violated their copyright in the gaming board, which is an artistic work, by using red, pink, blue, and light blue tiles, identical designs for arranging the coloured tiles, and a star pattern on the central square.

Defendants

In response to the contentions made by the plaintiff, the counsel for the defendants has made the following submissions before the Delhi High Court:

They argue that since the word "Scrabble" is typically used as a name rather than a brand, it cannot be protected under the Act.

There was no attempt to divert any traffic, and they were operating their websites legally. Instead of "Scrabble," "Scrabulous" was the subject of the metatags that were used. The word "Scrabble" was used in coding to describe the game and was not meant to be a brand name. There was no prospect of redirecting internet traffic because the plaintiffs had no online version of their game. Links to numerous illegally infringing websites were absent from their website. Any such use cannot be considered an infringement of the plaintiffs' rights since the word "Scrabble" is in the public domain.

A copyright claim regarding the gaming board cannot be upheld since the three-dimensional board is not a copyrighted object. Additionally, under Section 15(2) of the Copyright Act, the board's design and configuration may be registered as a design, which would result in the

extinction of the copyright monopoly the moment more than 50 items were created and commercially sold.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Trade Marks Act, 1999** have been discussed:

- **Section 11 (6) – Relative grounds for refusal of registration.** The said Section has been used by the plaintiff in the present case in defining that the word “SCRABBLE” is a well-known trademark within the meaning of Section 11(6) of the Trade Marks Act, 1999.
- **Section 29 - Infringement of registered trademarks.** This Section of the said act details about the infringement of the registered trademarks. Plaintiffs claimed that such unlawful adoption of deceptive and confusingly similar mark for the online version of their game, amounts to infringement under Section 29 of the Trade Marks Act, 1999 and passing off.

The following provisions of the **Copyright Act, 1957** have been discussed:

- **Section 2 (c) – Interpretation (artistic work).** It includes a painting, a sculpture, a drawing, an engraving or a photograph, whether or not any such work possesses artistic quality; or work of architectural or any other work of artistic craftsmanship.
- **Section 15 - Special provision regarding Copyright in designs registered or capable of being registered under the Designs Act, 2000.** Mattel claims a copyright in their “Scrabble” board. They also claim copyright in the underlying drawings which were used to create the board in the first place. Section 15(2) applies and the board is incapable of copyright protection. Section 15(2) reads as below: “Copyright in any design, which is capable of being registered under the Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been produced more than fifty times by an industrial process by the owner of the copyright or, with his licence, by any other person.”

In light of the **Designs Act, 2000** the following relevant Sections have been discussed,

- **Section 2 (d) – Interpretation (design).** It means only the features of shape, configuration, pattern, ornament, or composition of lines or colors applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined,

which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trademark or property mark or any artistic work.

Lastly, from the **Patents Act, 1970**,

- **Section 3 - What are not inventions.** This Section provides a list of items that are not considered as inventions under the Act and thus not eligible for patent protection.

6. JUDGEMENT IN BRIEF

The following is the judgement held by the Hon'ble Court which mainly details about the two aspects of: Trade Mark and Copyright.

The Court said that although they are not the only considerations, the type of the product, the degree of similarity it bears to the word mark, and the period of use are guiding criteria when courts must decide whether common terms used as marks are source particular. Although courts would be reluctant to grant a monopoly over popular terms, if a mark is demonstrated to evoke strong connections with the good or services, protection should be granted without delay.

As a result, the Court noted that, unlike, say, MONOPOLY or CROSSWORD, which are near to the genus, "SCRABBLE" is not per se descriptive of the word game in the current case's factual backdrop. Without a doubt, the word is now used to characterise the game due to its widespread use and popularity. However, that is precisely what the plaintiffs argue in support of their claim that the mark is distinctive, and as a result, the court prohibited the defendants from violating the plaintiffs' trademark.

Except for the regulations, the placement of the colours, values on the board, collocation of the lines, values for the individual alphabetic tiles, etc., have no inherent meaning. The notion in the game would be granted monopoly if these rules, which are the sole means of expressing the underlying idea, are subject to copyright. This was not the intention of the legislators, who only wished to safeguard the expression of ideas. As a result, this Court determines that the plaintiff's copyright claim cannot be granted, at least on the surface.

According to Section 15 of the Copyright Act, any design that is registered under the Designs Act of 1911 has copyright protection under the Copyright Act. However, for designs that are eligible for registration under the Designs Act, copyright protection expires once the owner of

the copyright or his licensee has reproduced any article using the design more than 50 times using an industrial process. There is no disputing the fact that the alphabet tiles and the multicoloured game board have been copied more than 50 times. Additionally, it is undeniable that no registration has occurred under the Designs Act of 1911 (or under the Designs Act, 2000).

The defendants' point that copyright cannot be asserted is, at least on the surface, valid. Additionally, it is decided that at this time, the plaintiffs' copyright claims cannot be granted.

In the conclusion it was decided that:

The defendants were prohibited from violating the plaintiffs' registered trademark in SCRABBLE and from using the name SCRABULOUS or any other mark that is confusingly similar to or deceptively similar to SCRABBLE in any way, including by using it as part of a domain name or for other purposes like hyperlinking, metatagging, advertising, or any other similar use. The Doctrine of Merger and Section 15(2) of the Copyright Act, 1957, however, prevented the Plaintiff from receiving Copyright protection. According to the notion of merging, an expression cannot be protected when it is the sole means by which an idea can be represented, meaning that the idea could not be expressed in any other way and merges with the expression.

7. COMMENTARY

Our legal system still needs to explore the usage and exploitation of intellectual property on the internet. Additionally, because neither net neutrality nor complete and absolute intellectual property rights are recognised in our country, misleading meta-tags become a highly ambiguous legal issue where decisions are made more on the basis of facts and situations than on established rules and laws. India has long begun to recognise the abuses in the use of meta-tags and search engines that amount to willful manipulation of the end user's search results, but as a country, we lack any specific laws to control the use of such tags aside from a few precedents, like in the present case, to establish the fundamental rules that must be followed. The government's preference for e-commerce over offline shopping has made it more important than ever for statutory legislation to handle cyber security for intellectual property. Netizens currently have no choice but to wait and see whether any provisions are created.

8. IMPORTANT CASES REFERRED

- *Affiliated Hospital Products, Inc., Appellant, v. Merdel Game Manufacturing Company, et al., Appellees*, 513 F.2d 1183 (2d Cir. 1975)
- *Anti-Monopoly, Inc. v. General Mills Fun Group*, 515 F. Supp. 448 (N.D. Cal. 1981)
- *Atari, Inc. v. North American Philips Consumer Electronics Corp.*, 672 F.2d 607 (7th Cir. 1982)
- *Barbara Taylor Bradford v. Sahara*, 2004 (1) CHN 448
- *Chamberlin v. Uris Sales Corporation*, 150 F.2d 512 (2d Cir. 1945)
- *Guthrie v. Curlett*, 10 F.2d 725 (2d Cir. 1926)
- *Herbert Rosenthal Jewelry Corporation v. Kalpakian* 446 F.2d 738 (9th Cir. 1971)
- *Holmes v. Hurst*, 174 U.S. 82 (1899)
- *Microfibres v. Girdhar*, 2006 (32) PTC 157 (Del)
- *Midway Mfg. Co. v. Bandai-America, Inc.*, 546 F. Supp. 125 (D.N.J. 1982)
- *Morrissey v. Procter & Gamble Co.* - 379 F.2d 675 (1st Cir. 1967)

CASE NO. 24
ENTERTAINMENT NETWORK (INDIA) LTD. AND ORS.
V.
SUPER CASSETTE INDUSTRIES LTD. AND ORS.
2008 (37) PTC 353 (SC)

COMPULSORY LICENSING AND COPYRIGHT HOLDER

ABSTRACT

Compulsory licenses are an exceptions to the copyright owner's exclusive rights. If the licensor engages in monopolistic or exclusionary behavior, the market will become anti-competitive, suffocating potential. If copyright holders exercise their right to refuse to communicate or withhold their work from the public, it will have an impact on the public interest. India is a developing country, and its economic, social, and educational progress must be advanced rather than slowed. The public interest cannot be jeopardized for the benefit of a single individual. In the sphere of intellectual property, the Supreme Court's decision in *Entertainment Network (India) Ltd v. Super Cassette Industries Ltd* can be considered a watershed moment. The case became even more significant since it encompassed such broad problems as the interpretation of Section 31 of the Copyright Act and the purposeful meaning that was applied to it, all while treading a fine line between public and commercial interests.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal Nos. 5114, 5178-5180, 5181, 5182 and 5183 of 2005
Jurisdiction	:	Supreme Court of India
Case Decided On	:	May 16, 2008
Judges	:	Justice S B Sinha, Justice LS Panta
Legal Provisions Involved	:	Constitution of India - Article 14; Copyright Act, 1957 - Sec. 31; TRIPS Agreement - Article 13
Case Summary Prepared By	:	Shivam Agrawal, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

SCIL (Super Cassettes Industry Limited) is a well-known music company that specialises in song recording and the purchase of songwriting rights. “Radio Mirchi” is an FM radio station owned by ENIL (Entertainment Network Industry Limited). Bennett Coleman & Co Ltd is the holding company for Super Cassettes. ENIL, the appellant, is a member of the Phonographic Performance Ltd (PPL) copyright organisation that owns and manages radio stations in 12 locations.

In this case, two petitions were merged into one. “ENIL, one of the appellants, was denied permission to transmit copyrighted musical works, resulting in compulsory licencing. Section 31 of the Indian Copyright Act, 1957, lays out the methods for acquiring a ‘compulsory licence’ to republish copyrighted works that have been kept from the public.”

PPL, the second appellant, is a phonogram makers’ organisation that was registered as a Copyright Society with the Indian government in 1996. On behalf of 'all members' of the music industry, it is responsible for administering broadcasting/telecasting rights as well as public performance rights.

The issue arose when the appellant (ENIL) was mistakenly under the assumption that the respondent (SCIL) was a member of PPL and was playing music in which, the respondent (SCIL) possessed copyright. In the Delhi High Court, a suit was filed to prevent the appellant from playing the respondent's songs. As a result, numerous broadcasters, including the appellant, petitioned the Copyright Board for a compulsory licence under Section 31 (1)(b) of the Act. The Board agreed and set the amount of royalties to be paid. The Bombay High Court heard appeals against the Board's decision, and the subject was remanded to the Copyright Board for reconsideration.

The appellant filed an application for a compulsory licence under Section 31(1)(b) of the Act with the Copyright Board in Delhi. The respondent argued in the Bombay High Court that they were not given adequate opportunity to submit their case. This was filed in the same court as the several prior appeals. The respondent also filed appeals in the Delhi High Court, which remanded the case to the Copyright Board after the appellant agreed that the music would not be broadcast. The Bombay High Court ruled that granting a compulsory licence on reasonable remuneration is permissible under Section 31 of the Act, while the Delhi High Court disagreed.

An appeal was filed in the Supreme Court of India against the Delhi High Court’s ruling.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the Copyright Board has power under Section 31(1)(b) of the Copyright Act, 1957 to order the owner of a copyright in any Indian work or a registered copyright organization to give compulsory licenses to broadcast such works when they are available to the public via radio broadcast?
- II. In any case, in light of Section 31(2)10, can such a compulsory licence be awarded to more than one complainant?
- III. What are the important factors that the Copyright Board should examine when determining on: (a) whether or not to provide a compulsory licence to a certain individual; and (b) the terms on which the compulsory licence may be issued, including the compensation?

4. ARGUMENTS OF THE PARTIES

Appellant

The appellants submitted that the term 'or' in sub-section (1) of Section 31 should be read disjunctively between clauses (a) and (b). It was contended that the terms 'such work' used in clauses (a) and (b) refer to different types of labor, and that music broadcasting and publication in print media are not comparable. Sub-section (2) should be limited to clause (a) only, otherwise an anomaly will arise.

Respondent

Whereas, the respondents suggested that copyright protection should be prioritized. Within the four corners of the statute, the rights should be dealt with. It was contended that Section 31 should be interpreted literally. The literal interpretation would entail that the Board can exercise its authority if the work has been withheld from the public or if publication has been refused. Both parties' interests must be considered: (i) the copyright owners' interests and (ii) the general public's interests. It was contended that under Section 31 of the Act, the broadcasters' narrow

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal provisions are eminent in analysis of this case which are profoundly found in international and national legislations. The following are the significant relatable provisions of the **Copyright Act, 1957**:

- **Section 31 - Compulsory licence in works withheld from public.** Compulsory license in unpublished Indian works which is mentioned in the Section 31 of the Copyright Act, 1957 plays an important role in the present case which emphasizes on the procedure for the issuance of the compulsory license to republish the copyrighted works, which are withheld from the public. Further, interpretation of sub-section (2) of Section 31, for ascertaining whether the party seeking the license is doing so in public interest or not.
- **Section 31D - Statutory licence for broadcasting of literary and musical works and sound recording.** Clause 1 of the Section 31 D also the important point of law discussed in the case which states that “Any broadcasting organization desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this Section.”

6. JUDGEMENT IN BRIEF

Two most important aspects of the decision:

1. Any applicant can be awarded an automatic Compulsory License, especially if it is in the “public interest.” After the application is submitted, all that is left to determine is a reasonable royalty to be paid by the licensee to the licensor.
2. The Bench found that you can have numerous applications for a licence after a “purposive interpretation” of the relevant legislation, Section 31 of the Copyright Act, 1957. It would be against the spirit of the Act to grant a licence to only one individual upon application. The existence of the copyright society, it was argued in this case, is for the advantage of the copyright holder. The Copyright Society must assist the copyright owner in an organized manner in order for him or her to be able to monetize their intellectual property rights. "The Copyright Society provides licences on behalf of copyright owners and files lawsuits on their behalf not just for enforcement but also for protection of the copyright owner's rights." It is entitled to distribute the sum collected among its members in addition to paying royalties to the copyright owner." However, the functioning of societies is currently under scrutiny, since societies are accused of abusing this law for personal advantage, rendering its enforcement obsolete and resulting in a slew of problematic issues.

7. COMMENTARY

Now, as a result of this decision, a sound recording that was previously protected from use by others under the Copyright Act, 1957 can now be utilised by anybody who applies for a permission to do so. As a result, any monopoly of use given by a copyright grant is now subject to the will of the prospective licensee, as well as the Copyright Board. When describing the many features of an Intellectual Property Right, Justice Sinha has not only gone on for several pages about how the public will suffer if this music is not compulsorily licenced to the Respondents, but has also drawn similarities with tangible property and “human rights.” The use of the word “public interest” in the context of sound recording broadcasting, in my opinion, is frivolous and utilised without any justification. In general, licences are only provided in very limited conditions and with severe deadlines." The Act allows a complainant to be granted a compulsory licence if he or she helps the public at large to the greatest extent possible. The Board's discretion in assessing whether or not to give a licence to qualified candidates is nonsensical because there is no stated definition of sufficient grounds. The Board's discretion would be unrestricted if it were granted the power to choose the number of complainants who met the relevant consideration criteria and then grant licences. In this case, the Madras High Court provided an instructive review of patent law philosophy as well as several key patent concepts. The Supreme Court has failed to do justice to compulsory licencing and, rather than providing a thorough study and interpretation, has dismissed the entire subject. For the most part, Sinha J has presented tangential arguments. This case, on the other hand, will undoubtedly go down in history as one of the most contentious in the subject of copyright.

8. IMPORTANT CASES REFERRED

- *Bharat Petroleum Corporation Ltd. v. Maddula Ratnavalli and Ors.* MANU/SC/7339/2007
- *Indian Administrative Services (SCS) Association, U.P. and Ors. v. Union of India and Ors.* MANU/SC/0643/1993
- *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.* MANU/SC/0166/2008
- *K.P. Varghese v. Income-tax Officer, Ernakulam* MANU/SC/0300/1981

CASE NO. 25
EASTERN BOOK COMPANY AND OTHERS
V.
D. B. MODAK AND ANOTHER
AIR 2008 SC 809

**DEFINITION OF DERIVATIVE WORK AND SECONDARY
WORK AND THEIR USAGE**

ABSTRACT

This is a momentous judgement in the intellectual property jurisprudence of the country as it was essential in highlighting several principles of Intellectual Property Rights. This case first came before the Delhi High Court and was ruled against the appellant, this ruling urged them to pursue the matter further through appeals in the High Court of Delhi itself and ultimately in the Supreme Court where the ruling was in their favour. During this period several aspects of the Copyright Act came into the fray and became part of the discussion. The judgment is instrumental in clarifying some of the aspects which were ambiguous.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 6472 of 2004
Jurisdiction	:	Supreme Court of India
Case Decided On	:	December 12, 2007
Judges	:	Justice B. N. Agrawal, Justice P.P. Naolekar
Legal Provisions Involved	:	Copyright Act, 1957 - Section 13, 14, 52(1)(q)(iv)
Case Summary Prepared By	:	Digvijay Singh Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The appellants, Eastern Book Company are a publishing house were involved in the publication of a compilation of various Supreme Court Cases (SCC). Their publication included several

short judgements, reports, documentation of proceedings, directives given by the apex court, moreover their publication would also include headnotes, footnotes, and other comments. It so happened that Defendants, Spectrum Business Support Ltd. and Regent Datatech Pvt Ltd. launched a software package called “The Laws” via CD-ROMs in 2004 that contained the same material as the petitioners.

The appellants subsequently filed suit in the Delhi High Court seeking a provisional order to prevent the defendants from releasing the appellants’ account of the judgements, which was denied.

Left unsatisfied with the Single Judge Bench’s decision, the appellants took their case to the High Court's Division Bench, which again ruled in favour of the respondents, referencing the fact that even after modifications, the “character of the judgement stays the same” and “does not render it fundamentally different” from the initial judgments. The High Court bench, however, added to the precursory decision that the defendants couldn’t utilise the appellant's footnotes, headnotes, or modifying notes since they were produced by the appellant.

The appellants, then finally chose to file an appeal before the Supreme Court by way of a special leave petition in the case addressed, against both respondents who were examined simultaneously.

3. ISSUES INVOLVED IN THE CASE

- I. What is an appropriate level of original and creative work that qualifies as derivative work for it to be regarded as the author's original piece and so be protected under the Copyright Act of 1957, which would ultimately protect the party?
- II. The legitimacy of the petitioner's argument that the entire judgment’s copy-edited version is protected by copyright as their original literary creation, rather than merely adding a Section to the ruling’s text or the court’s proceedings?

4. ARGUMENTS OF THE PARTIES

Appellant

The judgments were given a different form all-together by the plaintiff, making it very different and unique from the original draft of the Supreme Court. The plaintiff’s work was presented in the reports; includes footnoting, cross-referencing, selection, editorial notes, sequencing, and arrangement of the judgments.

The plaintiff also argued that a substantial amount of time, work and energy was invested in this project. The project was a result of hard labour, skills of trained professionals, capital including financial capital, and infrastructure of various sorts on the appellant's part, making it eligible to be copyrighted under Section 13 of the Copyright Act and subsequently published digitally and on e-platforms under Section 14 of the Copyright Act, 1957.

It was also submitted that there is not enough clarity on the matter that if in the event of a person has modified the decisions of the court and published his own version or a rendition, some other individual is allowed to duplicate that person's form of the decisions or not, significantly or in its completion, considering that Section 2(k) read with Section 17 says that the government is the first owner of the judgments of the courts and Section 52(1)(q)(iv) provides that any person wanting to reproduce or publish it would not be liable for copyright infringement.

The claim was made that the work is neither negligible nor trivial in its scope and nature and is a result of skill and creativity of the author hence they have the right to claim copyright over his derivative work.

Respondent

One of the defendants were represented by learned counsel, Mr P. N. Lekhi who argued that as the publication of judgments of the Supreme Court does not lead to copyright infringement under Section 52(1)(q)(iv) of the Copyright Act, hence the act of the defendant would not be categorized as copyright infringement.

The defendants also claimed that the appellant's work did not involve creativity and said the with regard to subsistence of copyright of the appellants in law report, the extensions lacked even minimal level of creativity or application of intellectual labour which is required to get copyright as per Copyright Act, 1957.

The other learned counsel, Ms. Pratibha M. Singh, of the other respondent, discussed the difference between a law report and law journal. The law journal, as it was stated lists the judgments verbatim with some inputs while a law report is the Author record of the judgment in his own words mentioning, the arguments put forward and the judgment given in the case. Therefore, the appellant's work was claimed to be Law Journal and not Law Report, hence would fail to seek rights for copyright.

It was also stated that some minimal level of creativity is a pre-requisite for copyright which the appellant's content lacked and hence cannot be copyrighted.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Several legal aspects were involved around the issue were to determine what level of creativity is required to secure a copyright. The following Sections under the **Copyright Act, 1957** were discussed:

- **Section 13- Works in which copyright subsists.** This Section states that Copyright is granted to original literary, artistic, dramatic and musical works, cinematograph films and sound recordings and subsists throughout India, subject to certain conditions.
- **Section 14- The definition of copyright.** Copyright means the exclusive right to reproduce the work, make the work available to public, etc., subject to the provisions of the Copyright Act, with respect to literary, dramatic, artistic or musical work that is not a computer program, cinematograph films and sound recordings.
- **Section 52(1)(q)(iv)- Certain acts not to be infringement of copyright.** This particular sub-clause of S. 52 says that reproduction of any judgment or order of a court, tribunal or other judicial authority will not be considered as infringement unless it has been specifically prohibited by such court, tribunal or other judicial authority.

6. JUDGEMENT IN BRIEF

The court ruled in favour of the appealing party, giving them sole rights to their content and forbidding both defendants from using it. The court further ordered the respondents to sell their CD-ROMs with their own headnotes, footnotes, and editorial, and not to replicate the Eastern book company's work in any way. The respondents were also ordered not to use the appellants' paragraphs in their copy-edited version for internal references and their editor's judgement regarding the Judges' opinions by using phrases like "concurring", "dissenting", "partly dissenting", and so on based on SCC reported judgments.

This judgement laid down the premise that derivative work should be considered more than just a copy of the original work. It should have a creative edge in footnoting, head noting and other creative arenas. The Hon'ble judges added that inserting paragraph numbering and indicating the concurring and differing opinion of the judges in a case requires legal skills and acumen of the subject.

This activity and production, according to the court, exhibit a minimum level of inventiveness needed to work to be subject to copyright under the Copyright Act, 1957.

7. COMMENTARY

This judgment is very crucial in the arena of copyright as it brought important issues to the forefront and it further went on to set a new standard and a benchmark for originality of the content by making a decision which best suits the interest of creators. The case established that, regardless of linguistic excellence, a derivative work or secondary production should not only be a duplicate of the primary material, but should also have basic originality beyond labour and capital.

8. IMPORTANT CASES REFERRED

- *Law Society of Upper Canada v. CCH Canadian Limited*, 2004 SCC 13
- *Gopal Das v. Jagannath Prasad*, AIR 1938 ALL 266

CASE NO. 26
ESPN STAR SPORTS
V.
GLOBAL BROADCASTS NEWS LTD. & ORS.
(2008) 38 PTC 477 DEL
BROADCASTER'S REPRODUCTION RIGHTS

ABSTRACT

The history of television broadcast rights in India has been from the era of Doordarshan to the present age of technology and advanced forms of broadcasts. Entry of many private players into this sector has given rise to the need to differentiate between broadcast rights and copyright. Although, there is no express provision for the same, many of the aspects of copyright do not resemble with that of broadcast, which is why Chapter 8 of the Copyright Act, 1957 specifically talks about broadcaster's right. The TV channels which win the rights to broadcast Cricket matches, reality television shows, serials, etc. not only broadcast those events live but also apply some extra features like pre-match show, post-match show, DRS system, between the innings show to name a few. All of these must be considered as not only broadcast rights but also copyright that is owned by those channels or broadcasting organizations. This judgement of *ESPN Star Sports v. Global Broadcasts News Ltd. & Ors.* addresses that conundrum as it differentiates between the broadcasters right and copyright and also talks about the interpretation of the exception of fair dealing in the light of the freedom of speech and expression which is claimed as a defense by the news channels.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	RFA (OS) No. 25 of 2008
Jurisdiction	:	Delhi High Court
Case Decided On	:	September 26, 2008
Judges	:	Justice Mukul Mudgal
Legal Provisions Involved	:	Copyright act 1957- Section 37, 39A, 61
Case Summary Prepared By	:	Rohan Kalita

2. BRIEF FACTS OF THE CASE

The facts of the case are such that CA (Cricket Australia) issued an exclusive license in favour of the appellant ESPN star sports for broadcasting rights of the India-Australia cricket series to be held in Australia, the respondent are some parent companies of various news channels who were alleged to have ran shows on their news prime time which had short footages of the cricket match going on between the two teams, it was alleged by the appellant that the respondents commercially exploited the footage and ran them for more than the prescribed time on their channels in the pretext of broadcasting news prime time.

3. ISSUES INVOLVED IN THE CASE

- I. Whether broadcasters right under Section 39A are distinct and exclusive from copyright?
- II. Whether the case can be dismissed under the purview of Section 61 of the Copyright Act?
- III. Whether the usage of the footage by the respondent comes under the exception of fair dealing?

4. ARGUMENTS BY THE PARTIES

Appellant

The appellant claimed that the broadcasters right under Section 37 of the act was distinct from copyright and cannot be included under the definition of copyright in the act itself, they claim that there are several notable differences between them in the act itself for instance the definition of work under copyright doesn't fit under the broadcasters right, another important difference is that the provision in case of infringement of the copyright and broadcasters' reproduction right are also included under different Sections i.e., 51 and 37 respectively.

Another argument put forward by the appellant was that the telecast rights of the appellant was restricted to mere broadcast but included several other features like commentary by famous cricketers, post-match show, pre match show hence these features must be treated as a separate copyright.

The appellants claim that if the broadcast is to be considered as copyright, then the respondents cannot use the defence of fair dealing since they were commercially exploiting the copyright for their own gain and commercial exploitation must be presumed in this case.

Respondent

The respondents claim that the broadcasters right and copyright must be treated at par as there is an absence of any non-obstante clause in the copyright act which considers broadcasters right out of the purview of the Sec. 61 of the Act. Hence the respondents claim that according to the Sec. 61 the appeal should be dismissed because of non-joinder of a necessary party i.e., the copyright owner in this case which is CA.

Fair dealing cannot be pre-judged, and of necessity can only be decided on a case-to-case basis. The respondents also claim that there is no law, rule or regulation applicable to the answering respondents that lays down any limit on the length of footage that may be used by broadcasting organizations reporting upon/covering any sporting event. There is no basis or warrant for the Plaintiff's prayer that the respondents cannot utilize the footage in excess of 30 seconds per bulletin and a total of 2 minutes per day.

The respondents being new channels had the fundamental right to freedom of speech and expression and hence can be conferred the defence of fair pleading.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of **Copyright Act, 1957** were discussed:

Section 37- Broadcast reproduction rights. It provides for the broadcasters special rights to reproduction of the broadcast and this Section prevents non-licensees from the following activities (a) re-broadcast the broadcast or (b) causes the broadcast to be heard or seen by the public on payment of any charges; or (c) makes any sound recording or visual recording of the broadcast; or (d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence.

Section 39(A)- Certain provisions to apply in case of broadcast reproduction right and performer's rights. It provides that where copyright to performer's right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast, shall be given without the consent of the owner of rights or performer, as the case may be, or both of them: Provided further that the broadcast reproduction right or performer's right shall not

subsist in any broadcast or performance if that broadcast or performance is an infringement of the copyright in any work.

Section 61- Owner of copyright to be party to proceeding. provides that the owners of the copyright have to be a party to the proceedings in any civil suit or other proceedings, this is done mainly so that the copyright owner has sufficient knowledge of the assignee taking any matter to the court and the copyright owner needs to be included as a defender so that if he wants to raise any claim against any of the parties he can be given a chance to do so, hence an assignee or licensee must always serve notice to the copyright owner to make him a party to the suit.

6. JUDGEMENT IN BRIEF

The first court of instance led by Justice Ravindra Bhat held that copyright and broadcast rights are to be considered at par with each other because of the absence of any non-obstante clause in the Section 39(A) and Section 61 hence the court held that due to the non-joinder if a necessary party is not present, the suit is liable to be dismissed.

After an appeal, the court formed a two-judge bench and held that the broadcasters right and the copyright are two exclusive and separate rights within the act, this implies that there is a separate existence of the broadcasters right within the copyright act and after a clearly analysing of the clause of the objects and reasons of the Copyright Act it is implicit that the broadcasters right and copyright are meant to be treated as two separate concepts which is exclusive and under separate ambits, two other reasons given by the court were,

“(a) inclusion of a separate definition of ‘broadcast’ in Section 2(dd) of the Act and not including it within the definition of ‘work’ (defined under Section 2(y)) that would be the subject matter of copyright protection under Section 13 of the Copyright Act;

(b) copyright infringement being dealt with under Section 51 of the Copyright Act, whereas the infringement of Broadcasting Rights being dealt with under Section 37(3) of the Act, independent of any reference to provisions dealing with copyright infringement;

(c) that fact that Section 39A referred only to certain specific provisions, applicable to copyright, which were to be adapted, modified and applied to rights of broadcasting organizations. Hence, given the fact that the legislature has enumerated the specific provisions which are to be made applicable to broadcasting organizations, the absence

of a non-obstante clause does not take away from the exclusive operation of these provisions, independent and to the exclusion of provisions not mentioned in the concerned Section.”

The court also held that there were separate rights held by the appellant in the telecast, these rights can be classified into two parts: -

1) Live matches broadcast by the Appellants as exclusive licensees of Cricket Australia can be considered as broadcaster's exclusive right.

2) whereas the post-match show, pre match show, cricket commentary by famous cricketers, hawkeye, DRS facility etc., are facilities which are innovated by the broadcasters themselves hence they must be considered as copyright owned by the broadcasters themselves.

Hence the fact that the appellant broadcasters have filed for injunction and infringement against the respondents must be considered as a violation of their own copyright and hence the suit is not barred by the Section 61 as the copyright owners are the broadcasters itself in this case.

The court in this case couldn't pass an order of injunction against the respondents because the concerned event had already finished by the time any such restriction could be passed, but the court made an observation favourable to the appellant broadcasters and held that the defense of fair pleading cannot be attributed to the respondents.

The court observed that facts and circumstances of the case seem to be the most dependable variables or prerequisites for the test of fair pleading, there is no universal time limit within which the defense would fall, the court referenced the conditions laid down in *Media Works NZ Limited and Anr. v. Sky Television Network Ltd.*, wherein it was observed that, "*fair dealing meant that the extract must be brief, and should be considered in light of the length of the recording. Moreover, the extracts should be used within 24 hours of the concerned event for it to amount to current events and only be used in a programme that reported current events, e.g., not in a review of the player's career to date.*" Using these criteria, the High Court of New Zealand issued a ruling in favour of the Broadcasters in the case.

Based on the above judgement the court held that since the respondents clearly overran the show multiple times and used it for commercial exploitation, moreover the court held that since the respondents ran the show for more than the prescribed limit and had advertisements placed on the special shows that were specifically designed for the event shows that the main intent

behind running the show was commercial exploitation and it can't be done under the garb of 'freedom of speech and expression' of news channels.

7. COMMENTARY

This case after the *Prasar Bharti* judgment turns out to be a landmark judgment highlighting and protecting the broadcasters right, the main feature of this case is the separation of copyright from broadcasters right, this judgement concluded that the broadcasters right is a special category of rights which are distinct from the copyright, the court delved deep into the legislators intent while clearing this conundrum, another major turnaround that this judgement introduced was that the difference between the broadcasters copyright and broadcasting rights, this was a significant step because before this judgement the stance by the courts in broadcasters right was not much clear but through this judgement the court held that the broadcast available for final broadcast with all the special modifications by the broadcasting organization should be considered as their own copyright distinct from the broadcasting rights conferred by Cricket Australia. It is to be seen how the broadcasters right are shaped up following this judgment, this judgment has already provided the broadcasters with the much needed leverage to deal with other such television telecast right infringements especially as in todays modernized world everything is on the media it is not just restricted to news channels disseminating news, today there are many other programs and shows that are telecasted on the news channels for entertainment, another reason why this judgment has become so important is due to the increase in amount of live streams on the TV as well as on the internet in such scenarios it is the need of the hour to distinguish between these two distinct set of rights.

8. IMPORTANT CASES REFERRED

- *Raj Video Vision v. Sun TV*, 1994-2-LW
- *A.A. Associates v. Prem Goel*, AIR 2002 DEL 142
- *Video Master v. Nishi Productions*, 1998(3) Bom. CR 782
- *Habburd v. Vosper*, (1972) 1 All ER 1023
- *Media Works NZ Limited and Anr. v. Sky Television Network Ltd.*,

CASE NO. 27
RADIO TODAY BROADCASTING LTD.
V.
INDIAN PERFORMING RIGHTS SOCIETY LTD. & ORS.
2007 (34) PTC 174 CAL
THE IPRS AND ITS CLAIM TO ROYALTY FEES

ABSTRACT

The following is the case summary of the judgment pronounced by the Apex court in *Radio Today Broadcasting Ltd. v. Indian Performing Rights Society Ltd. & Ors.*, wherein, while hearing an interim application, the High Court of Calcutta was required to decide whether Radio Today Broadcasting Ltd. (hereinafter “Radio Today”) should be required to submit royalty and/or licence fees to the Indian Performing Rights Society (hereinafter “IPRS”) for the music transmitted via their radio station after having already paid the licence fees to the producer. The court ruling becomes significant because of the intricacies of making an Indian movie, in which singers, songwriters, composers, and others are all involved. The judgment meticulously disentangled these complexities with respect to rights that is often caused by the participation of several entities and resolved uncertainty regarding the licence fee that accrues to the underlying works in one whole film. Previously, cinema producers profited from musical compositions in the picture, and the payment of additional licence fees for using songs used in a film remained under the shadow of legal ambiguity.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Suit No. 90 of 2006
Jurisdiction	:	Calcutta High Court
Case Decided On	:	April 26, 2006
Judges	:	Justice A. K. Banerjia
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 13,17, 60
Case Summary Prepared By	:	Haritima Kavia, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The plaintiff, Radio Today Broadcasting is a company that launched a radio station on the FM band called “Radio Today,” and it wanted to broadcast both film and non-film tracks. It paid royalty fees for airing the film and non-film songs to the producers, who were members of Phonographic Performance Limited (hereinafter “PPL”). It did not agree to compensate the same royalties to the lyricists, composers, and performers who were members of the defendant, the IPRS.

The defendant is a registered non-profit organization that has been functioning since 1963 to represent owners of music, meaning composers, lyricists, singers and the like. It is the only national copyright society that is granted permission to perform and distribute the musical works and their performance.

The IPRS, founded in Maharashtra, on August 23, 1969, is governed by the Copyright Act, 1957 and has the power to award licences for the performance of all existing and anticipated Indian written and musical works for which the copyright is provided. It is a company limited by the guarantee that it carries out its mission. In this case, IPRS claimed that it is entitled to royalty if the radio station broadcasts any song, albeit having paid the licence fees to PPL for the film wherein the song was initially placed. The plaintiff then instituted a suit, seeking a declaration from the Court that IPRS has no right to issue licences or the requisite licence fees related to broadcasting of works encapsulated in the recordings provided by the PPL or other music companies.

Radio Today sought a declaration stating that IPRS had no copyright in any work containing and/or containing sound recordings for which PPL issued licences. Furthermore, they requested to be released from any responsibility to acquire an IPRS licence or incur any costs in connection with works transmitted by them. This was followed by a request for a declaration that an infringement lawsuit would not be brought against RTB as a result of this, as well as an injunction prohibiting IPRS from claiming any compensation or litigating against them in subjects relevant to the current complaint. Furthermore, the plaintiff sought a decree of permanent injunction prohibiting the IPRS and/or its members from demanding any remuneration from the Plaintiffs for the projected transmission of sound recordings managed by PPL and other recording firms.

The Court decided to grant leave under Order 1 Rule 8 of the Code of Civil Procedure, 1908, and later six more companies were joined as plaintiffs the litigation following an advertisement.

Radio Today petitioned for the grant of an ex-parte interlocutory application for an injunction, against which IPRS Counsel intervened. Following that, IPRS filed an action against RTB in the Delhi High Court, demanding damages for violation of its copyright.

Radio Today claimed in the High Court that the Indian government had failed to give a broadcasting licence, despite the fact that a letter of intent had been issued in January 2006 and the procedures to be fulfilled just before broadcast were projected to take four months. The Plaintiff argued that there was an imminent risk that would necessitate an interlocutory injunction, and that if it intended to begin broadcasting, an advance notice of at least two weeks would be given to the court, along with notification to the IPRS, and hence any heed of the interlocutory application could be expedited in that event. However, the High Court did not issue an interim injunction.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the Plaintiff is liable to pay licence fees and/or royalties to the Defendant even after paying fees to the PPL?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiff's counsel detailed the circumstances of the matter and averred that, even after noting the precedent established by the Supreme Court in the case of *Indian Performing Right Society v. Eastern India Motion Pictures*, wherein it retained the position that a composer can presume copyright in their art provided that there exists a contractual relationship involving them and the creator of the movie preserving their right. The Apex Court concluded that IPRS is entitled to royalty. In addition to this, citing the earlier decision in *Eastern India Motion Pictures and Others v. Performing Right Society Ltd. and Others*, the plaintiff argued that IPRS and/or its members might have a right in certain works if it is particularly restricted to independent songs/works under contracts they consented to enter into. The plaintiff tabled the argument that in this matter, no such agreement was declared. Hence, IPRS had been unable to prove that it had rights in any compositions incorporated in the concerned sound recordings.

It was further argued that, even after presuming that the songwriters and composers had agreed to retain their rights, such rights will still be limited to “public performance rights” where no royalties can be demanded from radio stations since they are not a participant to such a “public performance.” It was also argued that because the some of the rights accrued to songwriters

and composers intimately involved the producers, who would in turn permit the sound recording businesses to manufacture and publish sound recordings. Hence, the plaintiff obtaining a licence from a PPL that represents a sound recording company or the sound recording company itself would be consistent with the objective of broadcasting sound recordings.

Lastly, it was concluded that, under the totality of the available facts of the present case, a fortiori, quia timet action would be admissible, since the plaintiff's right to justice must not tampered with or delayed when its fundamental right to carry business is involved. Numerous rulings were offered to bolster this contention. As a result, it was contended that Radio Today not obtaining a licence from PPL too was irrelevant to the matter at hand and the rights at stake.

Defendants

Various corroborating arguments were advanced by counsel for the defendants, particularly IRPS, in relation to Radio Today receiving threats and those threats constituting wrongful threats under Section 60 of the Copyright Act, 1957. IPRS contradicted facts surrounding the plaintiff's application to the Court to furnish notification of broadcast by asserting that it was not broadcasting and it did not have had any indication to the contrary supplied. The current suit was described as frivolous and dubious. Many clauses and observations in the Copyright Act were addressed by the counsel, including IPRS's status as a copyright society and the rights that come with the title and responsibility carried by it.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions under the **Copyright Act 1957** were discussed:

- **Section 13 - Works in which copyright subsists.** Section 13(4) in the Copyright Act, 1957, states that separate copyrights in a work will not be affected by the copyright given to the cinematographic film within which the aforementioned works appear. IPRS focused on this Section to assert its separate claim to licence fees in this case.
- **Section 17(c) - First owner of copyright.** Section 17(c) of the Copyrights Act, 1957, on the other hand, states that in the case of a contract of service for consideration, the proprietor becomes the absolute owner unless there is an agreement to the contrary. As a result, the possibility of assignment of rights in contrast with the absolute right vested in IPRS to provide permission for a public performance was debated in the case.

- **Section 60 - Remedy in the case of groundless threat of legal proceedings.** Under Section 60 of the Copyright Act of 1957, protection is provided to a party that is being threatened by the copyright owner for the institution of a dubious and alleged copyright infringement suit. This was one of the major reasons for Radio Today to institute the present appeal.

6. JUDGEMENT IN BRIEF

Following the Supreme Court's decision in *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association*, the Court held that even though a composer or lyricist's right in respect of a song that was put into the sound track of a film was "extinguished" when they were paid, they could still claim the copyright for their song and reserve their right to assign it to others for commercial reproduction of their work in other formats if there was an enforceable contract. The Court found that, in this instance, Radio Today did not argue that the IPRS members had agreed to convey their exclusive legal interests to the producers. The court ruled that unless it could be demonstrated that the IPRS members' exclusive rights had been specifically allocated in benefit of PPL representatives, IPRS was eligible to fees from the plaintiff if it intended to monetize the copyrighted material by playing the tunes on its radio station.

7. COMMENTARY

It has been stated time and time again that the primary goal of laws governing intellectual property is to award the author or owner of the copyright to the work for his or her creative efforts, while at the same time taking into account the preferences of the general public. In order to accomplish this goal, statutory rights in this area cannot be eliminated, and one of these rights is the right to public performance. Because the owner of the copyright is the only person who may exercise this right, it is considered one of the most fundamental legal protections. This judgement is significant because it confirmed, while following suit of the landmark ruling of *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Association*, the distinct character of composers' and lyricists' authorship rights in their original tunes and producers' derivative rights in the music incorporated in their films. It cleared up the misconception that composers and lyricists could not licence their songs for usage in other formats as they were included as sound tracks in movies. It is important to note that turning on a radio in a public setting constitutes a distinct public performance from the original performer. An installation that broadcasts a private performance to an audience beyond the immediate

family would be considered a public performance in violation of copyright laws. A performance can still be considered “in public,” even if it is held in an unusual location. Those in charge of broadcasting a performance and issuing licences that allow listeners to perform the broadcast in public are liable for infringement in the same way that those who authorise a public performance are, and there are arguments to suggest that even a broadcast to private listeners only is a public performance because the audience is not confined to a single location.

8. IMPORTANT CASE REFERRED

- *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures*, (1977 SCR (3) 206)

CASE NO. 28
AMAR NATH SEHGAL
V.
UNION OF INDIA AND ANR.
117 (2005) DLT 717

EVOLUTION OF MORAL RIGHTS IN INDIA

ABSTRACT

The intent behind safeguarding moral rights of artists extends beyond only the pecuniary interests of the creative authors and the society. Rather, its motive is to secure the natural interests and rights of the creative authors. The doctrine of ‘moral rights’ that have been assigned under the Copyright Law provides an alternative route to protect the cultural heritage of a nation. The focus of moral rights is to protect the non-economic rights of the creative work authored. The case of *Amar Nath Sehgal v. Union of India and Anr* is one of the landmark cases to address and elucidate the concept of moral rights in India. It established the foundation of the jurisprudence of moral rights in India. The Delhi High Court through this case set a landmark precedent for years to follow by aiming towards expanding the scope and ambit of moral rights existing under Section 57 of the Copyright Act, 1957.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	CS(OS) 2074 of 1992
Jurisdiction	:	Delhi High Court
Case Decided On	:	February 21, 2005
Judges	:	Justice Pradeep Nandrajog
Legal Provisions Involved	:	Copyright Act, 1957 - Section 57
Case Summary Prepared By	:	Saumya Bazaz Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The plaintiff, Amar Nath Sehgal is a well-renowned sculptor of international repute who was commissioned by the Government of India in 1957 to create and design a bronze mural sculpture for the lobby of Vigyan Bhawan.

The sculpture took five years to finish and was placed on the wall of the lobby in the Convention Hall. This sculpture became an in discriminable part of national architecture and was embellished as an Indian art heritage. The cause of action arose when the Government of India arbitrarily took down the sculpture in the year 1979 and consigned it to the store room, no longer made available for viewing by the public. When the Plaintiff took notice of this fact, he made representations to the government authorities for restoration of the mural which were left unheard. As a last recourse, he moved the Delhi High Court to seek relief under Section 57 of the Copyright Act, 1957. In pursuance of which he filed a petition for injunction before the Delhi High Court for recognition and enforcement of his rights on the mural. However, the Plaintiff's legal battle was unnecessarily prolonged for more than a decade which left no stones unturned in recognising moral rights of creative artists under the Copyright Act, 1957.

The plaintiff first filed the suit before Justice Jaspal Singh on May 29, 1992, and an interim injunction was issued in his favour, prohibiting the government from inflicting any more damage to the mural. In 1992, an interim judgement established two main factors about the ambit of moral rights in India. To begin with, the moral right of integrity can save an artistic creation from being destroyed altogether. Second, the government owes an obligation of care to the artworks it owns. The case was heard for 13 years before a single bench decision by Pradeep Nandrajog J. on February 21, 2005, finally put an end to the proceedings.

3. ISSUES INVOLVED IN THE CASE

- I. Whether plaintiffs are entitled to special rights under Section 57 of the Copyright Act once the copyrights have been deposited in the defendants' involvement?
- II. Whether there is any evidence that the defendant breached the plaintiff's rights under Section 57 of the Copyright Act?
- III. Whether any compensation for any alteration, mutilation, alteration, or other act in regard to the aforementioned work that occurs before the copyright period expires?

4. ARGUMENTS OF THE PARTIES

Plaintiff

It was argued by the plaintiff that by destroying his mural, the defendant had distorted not only his handiwork but also his identity and repute. The mural was the result of the plaintiff's creative efforts and the destruction of his work impacted the volume of the corpus of his work which was claimed to be prejudicial to his reputation and thereby violating his right to integrity. Further, this mutilation was done without his consent or authorisation which was contended to be a direct violation of his moral rights protected by Section 57 of the Copyright Act, 1957. It was argued that post the amendment made to Section 57 in 1995, the proof of prejudice to the author's honour has been made the *sine qua non* for claiming damages.

When seeking remedies against the defendant, the plaintiff prayed for permanent injunction against the defendant and the compensation of INR 50 Lac for the restoration of the artwork as well as for the mental distress caused to the plaintiff. It was vehemently argued by the plaintiff that in cases wherein the right to integrity is compromised and violated, the remedy is not limited to injunction or damages. The plaintiff has the right to preserve the mutilated work as well. Further, the plaintiff sought for the decree to direct the defendant to return the mural to the Plaintiff as well as bear the cost of restoration of the same.

Defendant

The defendant on the other hand argued that on being given the assignment of the mural, the defendant had the privilege and was at liberty to decide the fate of the mural and in doing so had not infringed the rights of the plaintiff. The defendant had obtained the assignment of the mural in exchange of a consideration which had divested the plaintiff of his rights over the mural. It was also pointed out that the terms of the contract were not in infraction with Section 57 of the Copyright Act, 1957. Hence, it was contended that the ownership of the mural lies solely with the Defendant.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The Copyright Act of 1957 provides copyright protection in India in two forms:

- **Economic Rights:** The copyright law is applicable in cases of original literary, dramatic, musical and artistic works, cinematographic films and sound recordings.
- **Moral Rights:** **Section 57** of the Act defines two basic “moral rights” of an artist. These are:

(i) Right of Paternity: The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work.

(ii) Right of Integrity: Right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be detrimental to his honour or reputation.

6. JUDGEMENT IN BRIEF

When examining the extent of Section 57, the Delhi High Court stated that moral rights are divided into four categories: paternity, distribution, moral right of integrity, and right to retraction. The right to be connected with the work is known as paternity right. The commercial right to sell the work for a particular price is known as the dissemination right. The right to retain purity in one's work is included in the right to integrity. The Right to Retraction gives innovative artists the right to revoke their work from publication.

While discussing moral rights, the court made a deliberate attempt to widen the scope of these rights and thereby included the protection of cultural heritage within its ambit. Therefore, the interpretation of moral rights under Section 57 inherently included the protection of cultural heritage of India. The Court appreciated the reputation of the Plaintiff by acknowledging his national and international accolades. The court also acknowledged the author's work of art as a part of the national culture.

While widening the scope of moral rights and author's special rights as enshrined in Section 57 of the Copyright Act, 1957, the Delhi High Court relied upon international conventions such as the Berne Convention and The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of ownership of Cultural Property to bridge the gap between the international obligations and the current domestic laws in India. In order to promote this consistency, the court relied upon the case of *Vishaka and Ors. v. State of Rajasthan and Ors.* which observed that in absence of domestic law, international conventions can be read into domestic laws, provided that they are not inconsistent with the domestic laws. Therefore, Section 57 needs to be read with these international conventions in order to legally protect India's national cultural heritage. The court connected the right of paternity and integrity of the author with the cultural development of the country and hence emphasis was laid on the interdependency of the author's right of integrity and the overall integrity of the nation.

The court concluded and held that Section 57 includes the right of integrity in relation to cultural heritage and that through the moral rights of an artist in Section 57 it was possible to protect the cultural heritage of India.

The court held that by mutilating and demolishing the plaintiff's mural, the work has been rendered imperfect which directly impacts the reputation of the plaintiff. Further, the fact that the Defendant has stored the mutilated mural in the basement and refrained from returning it back to the Plaintiff inadvertently displays a distorted version of the Plaintiff's artwork leading to creation of poor and untruthful impression of the Plaintiff among the viewers and to the whole nation.

The reason behind preserving patents or copyrights with the intent of later releasing them into public domain after a certain period is that the release of these articles builds and escalates public knowledge. The judgement delivered by the court answers the question of whether destruction of creation is the extreme form of mutilation by indicating the importance of national cultural heritage for preserving the integrity of the nation.

The plaintiff has the right to recreate his work and therefore has the right to receive the broken-down mural. Consequently, he also has the right to be compensated for the loss of reputation, honour and mental distress caused due to the offending acts of the Defendant. As a result of this the court passed a mandatory injunction against the Defendant directing it to return the mural to the Plaintiff within two weeks from the date of judgment.

The court further passed a declaration transferring all the rights over the mural from the Defendant to the Plaintiff and an absolute right to recreate the mural or sell the same. The court granted damages worth INR 5 lakhs and cost of suit to the Plaintiff. The Court favoured the plaintiff and stated that the defendants are liable to pay the damages and also to return the mural to its author. The Court also stated that prior permission should always be taken before taking any such action.

In order to bridge the gap between international conventions and India's domestic laws pertaining to an author's moral rights, the court elaborated and elucidated the specific provisions of the Berne Convention.

Under Article 6bis of the Berne Convention, the moral right of integrity enables the author to seek appropriate legal remedies if the moral right of attribution in his work is violated. The moral rights set out in the Berne Convention are significant because they continue to be vested in the author even after he has parted with his economic rights in his work. The right of the

author under Article 6bis of the Berne Convention provides that ‘an author may object to any distortion, mutilation or modification of his work which is deemed to be prejudicial to his honour or reputation’. Copyright Law in India was thus brought to be in consonance with the Berne Convention under Section 57 of The Copyright Act, 1957 which protects the author’s right of paternity as also the right of integrity. Distortion, mutilation or modification if established to be prejudicial to the author's reputation or honour are actionable. It was also emphasized that if the violation of moral rights is to be hedged upon proof of negative impact of the author’s reputation, it proves to be counterintuitive and restricts the span and sweep of the moral right.

The court further went on to discuss The Declaration of the Principles of International Cultural Co-operation proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization which in its 14th session under Article 4 set 5 aims of international cultural co-operation in its various forms, bilateral or multilateral, regional or universal. Within these 5 aims, the 4th aims states that “To enable everyone to have access to knowledge, to enjoy the arts and literature of all peoples, to share in advances made in science in all parts of the world and in the resulting benefits, and to contribute to the enrichment of cultural life.’

The court also relied upon the article titled ‘Moral Rights and the Protection of Cultural Heritage’ published in the International Journal of Cultural Property authored by Mira T. Sundara Rajan who opined that- *“The rights of attribution and integrity are particularly congruent to the cultural domain. Apart from the interests of individual authors in maintaining their standing and reputation, these moral rights are closely linked to a public interest in the maintenance of historical truth and cultural knowledge. Moral rights also promote the development of a social attitude of respect toward individual creativity. While authors must accept the responsibilities which accompany the privileges of creative work, is incumbent upon both the public and the state to acknowledge the value of artists’ contributions to cultural heritage.”*

7. COMMENTARY

The current case broadens the scope of moral rights in dispute, extending outside pecuniary concerns. This decision supports the premise that ‘a right that isn't enforced isn't a real right at all’. It emphasises that moral rights are embedded in the work produced and that additional powers should be provided to artists/authors to defend their work against third-party distortion.

Moral rights are unique to authors, excluding them from their intended audiences and protecting the author's work even after the assignment has been transferred. In his decision, Justice P. Nandrajog praised moral rights and recognised them as the heart of copyright law. The following section of the opinion refers to copyright as "the Cinderella of the family of intellectual property". The court has gone to great lengths to demonstrate that the status of moral rights is unrivalled and unavoidable. The judgment incorporated and reflected the Doctrine of Sweat of the Brow as well by implying that the amount of work and creative energy that was put in to complete a piece of original work should be credited with the respect it deserves. It was noted that there is an imminent need to widen the scope of moral rights of authors so that their artistic integrity remains protected. However, it is imperative to note that had the court decided the matter and looked at the concept of moral rights in the context of cultural heritage from the perspective of the Constitution of India, especially Article 49 which imposes a duty on the State 'to protect every monument or place or object of artistic or historic importance from spoliation, disfigurement, destruction, removal, disposal or export, this ruling could have had a wider implication and imposing harsh penalties and liabilities on the state would be more acceptable and justified. Further, as against the remedy of INR 50 Lakhs claimed by the Plaintiff, the court awarded him a remedy worth INR 5 Lakhs which begs the question of how monetary damages for moral rights are determined. In such a scenario, the courts need to formulate a set of guidelines for computing the damages in case of infringement of moral rights since the question essentially is 'How can you quantify something which does not exist objectively?' Following this decision, the Delhi High Court's ruling of *Raj Rewal v. Union of India*, in which Justice Endlaw ruled that an author's moral rights take priority over the building's owner's right to demolish or alter the structure. However, the central point at which these 2 verdicts vary and take divergent routes is when the Court decided that an architect's rights are limited in order to avoid the building owner from making changes to the structure and professing that the architect is the author of the modified structure.

8. IMPORTANT CASES REFERRED

- *Amar Nath Sehgal v. Union of India and Anr.*, 2005 (30) PTC 253 Del.
- *Vishaka and Ors. v. State of Rajasthan and Ors.*, (1997) 6 SCC 241
- *Raj Rewal v. Union of India*, CS(COMM) 3 of 2018.

CASE NO. 29
HAWKINS COOKER LTD.
V.
MAGICOOK APPLIANCES
100 (2002) DLT 2008

INFRINGEMENT OF COPYRIGHT AND ITS EXTENT

ABSTRACT

This is a momentous judgement in the intellectual property rights jurisprudence of the country as it was essential in highlighting several principles of copyright laws. The judgement creates distinction between what qualified under the law as copyright and what doesn't. This case first came before the Delhi District Court but moved to the Delhi High Court eventually; the matter in the High Court was dealt with absentism by the defendant but the decision came in the favour of the plaintiff as an *ex parte* decree was passed and it was ruled that the defendant's intention was of unjust enrichment. During this period several aspects of the Copyright Act, 1957 came into the fray and became part of the discussion. The ruling was instrumental in clarifying some of the many aspects which were ambiguous. The case was decided in the year by the Delhi High court's single bench.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Suit Appeal No. 895 of 1992
Jurisdiction	:	Delhi High Court
Case Decided on	:	September 13, 2002
Judges	:	Justice S Mukerjee
Legal Provisions involved	:	Copyright Act, 1957 - Sec. 51, 55
Case Summary Prepared by	:	Digvijay Singh, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The plaintiff who happens to be a pressure cooker manufacturer named as 'Hawkins Cookers Ltd' filed for a perpetual injunction bringing to halt the operations by the defendants which are using a label very similar to that of the plaintiff. They claim that they are a very reputed brand with goodwill in the market and their product is sold widely in both urban and rural areas. The plaintiff alleges that the defendant has done this to capitalize on their esteemed product.

The also put forward the fact that they have spent a substantive sum on the marketing of the product and the action of the plaintiff is harmful towards them.

Moreover, the plaintiff also filed for a perpetual injunction on their cook book having passages verbatim from the manual produced by the plaintiff titled 'Pressure Cookery and Instructions Book' hence infringing the rights of the plaintiff.

Relief was also sought by the plaintiff for the destruction of all such pressure cookers and articles manufactured by the defendant which resemble the products manufactured by the plaintiff.

The matter fell under the jurisdiction of the district court under the provisions of the Copyright Act, 1957 but eventually reached the Delhi High Court where the court raised several questions on several issues of copyright law.

During the proceedings, the defendant chose to remain absent from the hearing and eventually an ex-parte order was passed in favor of the plaintiff by the Delhi court as the court found that there was unjust enrichment on the side of the defendant, the plaintiff's right under Section 55 of the Copyright Act, 1957 were being violated. Hence permanent injunction was granted.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the defendants have any right to market their goods under the same mark and label as that of the plaintiff? If so, to what effect?
- II. Whether the defendants are passing off their goods as those of the plaintiff? If so, to what effect?
- III. Whether the plaintiff has a copyright in the book "Pressure Cookers and Instruction" Book?
- IV. To what relief, if any, is the plaintiff entitled?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiff's side argued that their products were of superior quality and attracted people from both urban and rural areas. And because they possessed such good will in the market the defendant with malicious intentions violated the copyright act and capitalized on the plaintiff's work.

They argued that the similarities between their and the defendants' products are astounding as both products share several features including:

- “(a) Two semi circles disposed in a spaced and reflective manner to each other;
- (b) Two semi circles in red colour;
- (c) The space between the semi circles is in white;
- (d) The trade mark is written in black colour in white space;
- (e) The words ‘Pressure Cooker’ are written in white in the lower semi-circle.”

And (c) to (e) are protected under the several provisions of the Copyright Act hence the actions of the other party are in violation.

It was also argued that all such manufacturing should be stopped as it can cause damage to the plaintiff and the good which have been manufactured should be destroyed.

The plaintiffs also argued that this was done to deceive to the buyers by inducing a feeling that the said products belonged to the plaintiff's company. The intention of the defendants was malafide.

Defendant

The judgment was passed *ex parte* primarily because the defendants remained absent throughout the proceedings in the Delhi High Court but written statements were filed by them in the court which failed to aptly rebut the concerns raised by the plaintiff.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The relevant provisions of the **Copyright Act 1957** involved in this case:

- **Section 51 - When copyright infringed.** It specifies what constitutes an infringement. Section 51 (a) states that a copyright in a work is considered infringed when any person performs any act without a licence granted by the owner of the copyright or the

Registrar of Copyrights under this Act, or if he performs any act in violation of the conditions given in the licence which was so granted to him, or contravenes any condition imposed on him by any competent authority, where the exclusive right to perform such an act vests exclusively with the owner. Section 51(a)(ii) states that when a person provides for profit any place to be used for communicating with the public, such communication can be considered infringement unless the person is unaware and has no reasonable grounds to believe that such communication to the public will constitute infringement.

- **Section 55(1) - Civil remedies for infringement of copyright.** It provides that the copyright holder is entitled to remedy by way of injunction. The injunction is the most effective remedy in case of copyright infringement. It further provides that the copyright holder is entitled to damages for copyright infringement. The purpose of providing the damages to the copyright holder is to restore him to the earlier position.

6. JUDGEMENT IN BRIEF

As per Section 48 of the Copyright Act it was held that the plaintiff were the original owners of the product and its specifications and hence they enjoy the sole rights over marketing of the good as such, the defendants obviously does not have any right to market their goods under the same mark and label as that of the plaintiff company hence this matter was decide in the plaintiff's favour.

This issue was decided in favour of the plaintiff as the plaintiff's publication "Pressure Cookery and Instructions Book" was presented before the court and so was the cook book by the defendant which was "Apsley Pressure Cookery and Instructions Book" and on inspection it was realised that unerringly the verbatim reproduction of substantial passages from the cook book of the plaintiff company by the defendant in its publication was undertaken which is a violation of Sections 2(d), 2(m) and Section 41 and 51 of the Copyright Act and hence the court ruled the defendant was liable.

The courts found the defendants guilty on this ground as the plaintiffs were successful in proving that the registration was done in 1980 while the defendant failed to provide any such grounds where they could claim that they weren't passing off these goods as theirs. The court ruled that their intention was to confuse the buyer with the defendant's product.

It was ruled that the plaintiff's plea for destruction of such pressure cooker would be accepted and the possession of all such book books from the defendants would be taken away and the plaintiff is also liable for damages.

An accountant was appointed by the court to study the accounts and derive on the losses that have been incurred and submit a report within six months.

7. COMMENTARY

This ruling has been very important as it brought copyright and trademark related issues to the forefront, it further went on to set a new standard and a benchmark for originality and the level of accepted similarity. It answered several questions on matters of perpetual injunction. The case laid down parameters to understand copyright as it restored the rights of the plaintiff over their goods. It interpreted clearly the meaning of Section 55 of the Copyright Act, 1957.

CASE NO. 30
TAJ TELEVISION LTD. & ANR
V.
RAJAN MANDAL AND ORS.
[2003] F.S.R. 22, DELHI HIGH COURT

JOHN DOE ORDER IN INDIAN JURISPRUDENCE

ABSTRACT

The following is a summary of the case of the *Taj Television Ltd. and Anr v. Rajan Mandal and Anr.*, in which the first ever ex-parte interim order was issued allowing the plaintiff to search and seize the equipment and gadgets of unknown defendants, kicking off the jurisprudence of issuing orders against unknown defendants, which is known as John Doe's "John Doe" orders enabling the order to be served upon persons whose identity is unknown to the plaintiff at the time the action was commenced, but whose activity falls within the scope of the action. It contains the details of the arguments put forth by the plaintiff and the decision rendered by the High Court about using the inherent powers vested to the HC under Section 151 of the CPC.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	[2003] F.S.R. 22
Jurisdiction	:	Delhi High Court
Case Decided On	:	June 14, 2002
Judges	:	Justice Dalveer Bhandari
Legal Provisions Involved	:	Code of Civil Procedure, 1908 - Sec. 151 John doe's order Copyright Act, 1957 - Sec. 37
Case Summary Prepared By	:	Shivam Agrawal, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The Plaintiff in the present case is the owner of the well-known leading sports channel known as the "Ten Sports". The telecasts of the channel were hugely successful and became very

popular channel in the Indian Population. The channel has been granted the exclusive right to telecast the World Cup Football, 2002, a sporting event that had highest viewership in the world.

To enter the markets of India, the Plaintiff has entered into the distribution arrangement agreement with the second plaintiff, 'Cable Division Network ("CDN")' to enter into the agreements with cable operators in India. The payments have to be made by the cable operators to the plaintiffs for the broadcasting of the channel depending upon the number of subscribers. The plaintiff is therefore the owner of the broadcast reproduction right as provided under the Section 37 of The Copyright Act, 1957.

The plaintiff has filed this case before the hon'ble court with the arise of the issue when the plaintiff identified some of the cable operator/Parties/networks is unauthorizedly transmitting their Ten Sports channel and reaping huge dividends. This has not only cost the plaintiffs money in terms of licence payments, but it has also harmed their relationship with current licensees, who no longer see the need in paying license fees since they may potentially transmit the signal unauthorizedly.

The plaintiffs also feared that unlicensed cable transmission of the plaintiff channel would result in significant income losses. The plaintiff also submitted before the court that the last phase of the World Cup, which was to be concluded on June 30, 2002, is likely the most crucial because it is the stage with the most viewers and, as a result, the greatest risk of widespread infringement by all parties who have not yet secured licences from the plaintiffs. The plaintiffs believe that if they wait to identify specific parties and gather proof of infringement by such specific parties, they would waste a significant amount of time, and the World Cup matches will be cancelled. This delay in exercising their rights would result in immediate and irreversible hurt, loss, and damage.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the court in the present case has the powers to use the inherent powers as given under the Section 151 of the Code of Civil Procedure?
- II. Whether it is justified to pass a John Doe's order in the present dispute of copyright infringement or not?

4. ARGUMENTS OF THE PARTIES

Plaintiff

According to the plaintiff, this unlicensed and unlawful behavior has continued to cost the television industry millions of rupees in lost income from the channel's original and subsequent exploitation. The plaintiff also feared that unlicensed cable transmission of the plaintiff channel would result in significant income losses.

The plaintiff submits before the hon'ble court that, the unauthorized broadcast will motivate other cable operators, including those who have currently signed up under a valid licence, to steal the cable signal and transmit it unauthorizedly without paying the required fees. The plaintiffs, reputation may be harmed as a result of the unauthorized distribution, which may result in poor programme quality.

Plaintiff's counsel argued that, given the unique facts and circumstances of the case, this court should exercise its inherent powers under Section 151 of CPC to devise a fair and reasonable procedure to address the needs of the present situation, which is consistent with international "John Doe" practice as well as India's TRIPS obligation to effectively enforce all types of IPRs, including rights with a practical life span of now less than a year.

The plaintiff claims that the Court's inherent powers are in addition to the powers specifically conferred on the Court by the Code, citing different case laws from national and international courts. They are complementary to those powers; thus it must be held that the court is allowed to exercise them for the purposes listed in Section 151 of CPC as long as doing so does not conflict with what is expressly granted in the Code or go against the legislature's intentions.

No parties were present as the respondent, ex-parte judgment was declared thereof.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The legal provisions are eminent in analysis of this case which are profoundly found in international and national legislations. The following are the significant relatable provisions or documents of this case law:

- 1. Civil Procedure Code: Section 151 - Saving of inherent powers of Court.** It is mentioned in the case to emphasis the court in using the inherent powers of the court looking at the facts and circumstances of the case to devise a reasonable and fair justice by passing a John Doe's order.
- 2. Copyright Act, 1957: Section 37 - Broadcast reproduction right.** It is used in the present case to set up a solid background that the present plaintiff is the owner of the broadcast reproduction right of the channel.

6. JUDGEMENT IN BRIEF

Justice Dalveer Bhandari in the present case after examining the facts, documents and background of the case came to the conclusion that the Cable Operators in India have a long history of violating copyrights. The courts using its inherent powers under Section 151 of the CPC, opined that, while the court is not powerless to issue John Doe orders in India, the directions made in the following paragraphs may protect the plaintiffs' interests and fulfil the goals of justice in the facts and circumstances of this case.

The former joint registrar was also designated as a court commissioner to carry out the case's future directives. The Commissioner has the authority to enter the premises of any cable provider who was unlawfully broadcasting the 2002 FIFA World Cup. The first ex-parte interim order was issued, authorising the plaintiff to search and seize the equipment and gadgets of unknown defendants, beginning off the jurisprudence known as the John Doe's order.

7. COMMENTARY

The expanding media and entertainment industries have embraced this development with open arms, seeking John Doe orders against Internet Service Providers (ISPs), unlawful unlicensed distributors, and cable operators in an effort to combat piracy and its threat. While the John Doe's order is a welcome boost for IPR holders and enthusiasts, enforcement has always been a challenge. The conflict might have raised only in the process of implementation. After all there is a limit to what the retired registrar of the High Court can do as the Court Commissioner, he cannot be physically present everywhere. The only hope remained at that time was that one raid in a certain pocket would elicit a chain reaction from other offenders.

8. IMPORTANT CASES REFERRED

- *EMI Records Ltd. v. Kudhail*, [1985] F.S.R. 36; [1983] Com. L.R. 280
- *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527
- *Shaw v. Various John Does No.80* Civ. 722 (S.D.N.Y. February 6, 1980)
- *Billy Joel v. Various John Does*, 1980 U.S.Dist. LEXIS 12841
- *BCCA and Dukoff v. Toronto General Hospital* (1986), 54 O.R. (2d) 58, HC

CASE NO. 31
RATNA SAGAR PVT. LTD
V.
TRISEA PUBLICATIONS & ORS.
(1996) 64 DLT 539

DERIVATIVE WORK FROM A COMMON SOURCE

ABSTRACT

This case is a classic case of copyright infringement where the source of the text in contention has been derived from a common source. These kinds of cases usually happen in patent infringement cases where the accused party claims that the main source of the subject matter or the patented product in dispute has its origins from a common source. This case mainly delves deep into copyright protection when the copyrighted work has been derived from a common source. The court, in this case, looks into how to determine the rights of the copyright holder when it is derived from a common source. Such kind of cases have been very prevalent in cases of patent infringement. Through this judgment, the court makes it clear as to when compiled works from other sources are treated as copyrighted work of the creator.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Interim Application Appeal No. 1072 of 1994, Suit Appeal No. 2814 of 1994
Jurisdiction	:	Delhi High Court
Case Decided On	:	May 20, 1996
Judges	:	Justice K. Ramamoorthy
Legal Provisions Involved	:	Copyright Act, 1957 - Sec. 51, 55
Case Summary Prepared By	:	Rohan Kalita, Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The plaintiff Ratna Sagar is a publishing company who publishes various types of literary works; one such literary work is the living science books consisting of volumes 1 to 5, which

were science books which talked about plants and other animal life, it is alleged by the plaintiff that another publishing company namely Trisea Publications has published another science book namely unique science which is a direct copy of the plaintiffs work living science and hence infringes the copyright of the plaintiff under Section 51 of the Copyright Act, 1957.

3. ISSUES INVOLVED IN THE CASE

- I. Whether the defendants are liable for infringement of the plaintiff's copyright?
- II. Whether the plaintiffs work is an original work under the Copyrights Act?

4. ARGUMENTS BY THE PARTIES

Plaintiff

The plaintiff claims that the defendants have infringed their copyrighted work namely "Living Science" and that major part of the work has been directly derived or copied from the existing textbooks of the plaintiffs

Defendant

The defendant refutes the plaintiffs' claims and says that the contents of both of these books have been derived from a common source; hence the work is not a unique creation of the plaintiffs, and there have been certain changes and unique additions made to the defendant's work which makes their work a unique creation, they also claim that the plaintiffs do not own the copyright of the original work as the assignment did not take place

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following provisions of the **Copyright act, 1957** have been discussed:

- **Section 48 - Register of Copyrights to be prima facie evidence of particulars entered therein.** The Register of Copyrights shall be prima facie evidence of the particulars recorded therein, and papers purporting to be copies of any entries therein, or extracts from them, certified by the Registrar of Copyrights and sealed with the Copyright Office seal shall be admitted as evidence in all courts without additional proof or presentation of the original.
- **Section 51 – When copyright infringed.** Copyright is infringed, according to the law, when someone does anything that only the owner of copyright has the exclusive right to do. As a result, there is no infringement if there is no exclusive right.

- **Section 55 – Civil remedies for infringement of copyright.** When a copyright work is infringed under Section 51 of the Copyright Act, 1957, the owner of the copyright is entitled to civil remedies from the misuse of his own work, including injunctions, damages, and accounts of profit, among other civil remedies. However, if the defendant was unaware of the copyrighted work's existence, the plaintiff is not entitled to any civil remedies other than injunction.

6. JUDGEMENT IN BRIEF

The court, in this case, held that “...on the facts and in the circumstances of the case, I have no hesitation in coming to the conclusion that the defendants are guilty of infringing the copyright of the plaintiff in the books and the plaintiff has made out a *prima facie* strong case for granting injunction. The balance of convenience is also in favour of the plaintiff”.

Accordingly, the court granted an injunction restraining the defendants, their servants, stockists, distributors, agents, and retailers from printing, publishing, selling, and/or offering for sale, advertising, directly or indirectly dealing in the infringing literary works titled “UNIQUE SCIENCE” Volumes III, IV and V which works were an infringement of the registered copyright of the plaintiff the defendants were further restrained from printing, publishing, selling and/or offering for sale any other infringing work similar to the above mentioned literary works of the plaintiff till the disposal of the suit.

The court further held that argument of the counsel for defendant that the plaintiff had not proved the assignment is not a matter before the court and the person aggrieved in the absence of assignment may be the original author, but the defendants cannot be heard to be contended that the plaintiffs have not proved the assignment and, therefore, the defendants were free to infringe the copyright of the plaintiff.

The court held, “No doubt the ideas for books both of the plaintiff and the defendants would come from nature but what we are concerned here is, how the things existing in nature were presented by the plaintiff and the defendants. The idea of the configuration of the ideas into the picture and words would form the fulcrum of the work done by any person”.

It was held that though in the case of “compilation” the amount of originality will be very small but even that small amount is protected by law and no man is entitled to steal or appropriate for himself the result of another’s brain, skill or labour even in such works. On the defence plea of common source, it was held: “...a person relying on it must show that he went to the common

source from which he borrowed, employing his skill, labour and brains and that he did not merely do the work of the copyist, by copying away from another work”.

7. COMMENTARY

This case is a classic case of copyright infringement where the source of the text in contention has been derived from a common source, these kinds of cases usually happen in patent infringement cases where the accused party claims that the main source of the subject matter or the patented product in dispute has its origins from a common source. For instance, in the case of *La roche v. La roche*, the defendant claimed that the origins of the medicine were derived from a common source i.e., a common chemical compound hence, its creation becomes very obvious and it shouldn't be patented; The court dismissed the allegation and held that even if its origins are from a common source, there has been considerable amount of labour and skills involved in producing the finished patented medicine and that is why it should be protected. Similarly, in this case the court held that whenever such a situation arises where both the materials in contention have been derived from a common source it has to be seen whether there is any amount of brain, skill or labour that has been put into the work, for instance in this case the subject matter of the dispute was related to school books which were about nature. The court categorically said that in such a publication what is necessary to be seen is the compilation of the work, i.e., how things which are already existing in nature was presented by the plaintiff in its published book. This is in consonance with the Supreme Court judgement in the case of *Govindan v. Gopalakrishna*, where the Supreme Court held that “*even though in the case of ‘compilation’ the amount of originality will be very small but even that small amount is protected by law and no man is entitled to steal or appropriate for himself the result of another’s brain, skill or labour even in such works.*” Hence, the court, when comparing the works of both the defendant and the plaintiff’s creation came to a conclusion that the defendant’s creation has copied a significant portion of its material from the plaintiffs already copyrighted creation and hence would constitute infringement. The other argument of the defendant related to the assignment of copyright not being made properly was rejected by the court as not being a matter of contention in this case as it should have been dealt with at the initial stages. Even if we consider that assignment was not made properly, the fact that there still existed a right as the original author’s work was copyrighted, would not absolve the defendant of the liability for having infringed an original copyrighted work.

8. IMPORTANT CASES REFERRED

- *Govindan v. Gopalakrishna, AIR 1955 Madras 391*

CASE NO. 32
NAJMA HEPTULLA
V.
ORIENT LONGMAN LTD.
AIR 1989 DEL 63

JOINT AUTHORSHIP IN THE COPYRIGHTED WORK

ABSTRACT

When it comes to the concept of joint authorship in the backdrop of the copyrighted work, this is an extremely important case. Section 2 (z) of the Copyright Act, 1957 defines “work of joint authorship” as “a work produced by the collaboration of two or more authors in which one author’s contribution is not distinguishable from the contribution of the other author or authors”. This is the idea at the heart of the case of *Najma Heptulla v. Orient Longman Ltd.* This is an excellent copyright case, and every law student should study and comprehend the importance of intellectual property rights in the modern world, as well as why it is critical to maintain, safeguard, and defend one’s intellectual property rights. This case is especially important in developing the concept of copyright in modern-day intellectual property lawsuits involving shared liability.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Interim Application Appeal No. 1153 of 1988
Jurisdiction	:	Delhi High Court
Case Decided On	:	August 19, 1988
Judges	:	Justice B. N. Kirpal
Legal Provisions Involved	:	Copyright Act, 1957 - Section 2(d), 18, 55(2)
Case Summary Prepared By	:	Dhrutvi Modi Gujarat National Law University, Gandhinagar

2. BRIEF FACTS OF THE CASE

The release of the book ‘India Wins Freedom’, which was the autobiography of Maulana Abdul Kalam Azad, a Freedom Fighter and the First Education Minister, was scheduled for November of 1957. Unfortunately, due to a stroke, Maulana Azad (Author of the Book) passed away before the text could be published. The question now was, who would be the trustee for the unreleased manuscript? As a result, the National Archives in New Delhi and the National Library in Calcutta decided to become trustees of the entire book, including the unpublished 30 pages that were not made public until the current judgement.

On February 22, 1988, it was recognised and agreed that the whole book’s seal would only be broken with the approval of a close associate of the author, Professor Humayun Kabir. All of the above conditions, with the exception of the 30 unpublished pages, were granted in writing by the author’s legal heirs, Fatima Begum [Grandmother of Najma Heptulla (Plaintiff)] and Nooruddin Ahmed. Professor Kabir later signed a contract with Orient Longman Limited for the publication of the book (except the first 30 pages), and it was determined that the royalties would be split between the Indian Council of Cultural Relations, Fatima Begum, and Nooruddin. In the aforementioned agreement, Professor Kabir was identified as the book’s composer. It was also agreed that after the seals were broken on February 22, 1988, the publishing business would have first rights to publish the entire book.

The plaintiff, Najma Heptulla, submitted a notification on February 13, 1988, claiming that she was not in favour of publishing the complete book. As a result, a complaint for “rendition of accounts” was brought, and an order was issued against Orient Longman Limited, preventing them from publishing the complete book. Orient Longman Ltd. (Defendant No. 1), a party to the agreement formed with Professor Kabir, who is claimed by his daughter to be the actual and real author of the book, was sued by Najma Heptulla (Plaintiff).

3. ISSUES INVOLVED IN THE CASE

- I. Who is the actual author of the book in question?
- II. Is there any evidence that professor Kabir had the power to carry out the deal with Orient Longmann?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The plaintiff contended that the book's publication rights belong only to Maulana's heirs, and that the seal must not be removed since the claimant does not want the work to be published. Furthermore, Professor Kabir lacked the power to make such a deal.

Defendant

Professor Kabir is the only author of the work and has the authority to sign the contract. Although Maulana possessed the ownership in the work, he had consented to Professor Kabir's arrangement, and he might consent to any deal. Furthermore, only Nooruddin held copyright rights, and he consented to Orient Ltd's publication of the complete work.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following sections of the **Copyright Act, 1957** were discussed:

- **Section 2(d) - Interpretation (author).** Author would be with respect to literary or dramatic work, the author of the work, would be called a composer for a musical work, would be called an artist for artistic work, would be a person taking a photograph in case of a photograph, would be a producer for a cinematograph film or sound recording and if any literary, dramatic, musical or artistic work is computer-generated, then the person who caused the creation of the work is the author of the work.
- **Section 18 - Assignment of copyright.** It allows the owner of a copyright to assign his copyright to another person. The mechanism of assignment is specified in Section 19. It stipulates that the assignment must be signed in writing by the assigner or his lawfully authorised representative.
- **Section 55(2) - Civil remedies for infringement of copyright.** This Section states that a person whose name appears in the copies of copyrighted work published, shall be considered to be the author of such work unless otherwise is proved for the purpose of infringement of copyright.

6. JUDGEMENT IN BRIEF

The court considered the word 'author' as defined by Section 2(d) and 55(2) of the Copyright Act, 1957. It is indisputable that the author of the book is Maulana, but the prologue implies

that Professor Kabir is also an author, but not as a solitary author, but as a joint author. But it was partly because Maulana only gave thoughts in Urdu, and Professor Kabir took notes based on that, which were later published as a book.

The court cited *Donoghue v. Allied Newspapers Ltd.*, in which the racing secrets of Steve Donoghues were not copyright under Steve Donoghues because the expression had been listed down by the journalist. In *Walter v. Lane*, the court decided that when a reporter publishes about a hearing, it also inserts punctuation marks and makes attempts to ensure that the reporter receives copyright. The reporter not only writes down what will be published, but also organises it, therefore report preparation necessitates more than mechanical ability.

As a result, Professor Kabir was considered the only author because he did all of the translating, editing, and other work. However, Professor Kabir stated in his agreement with Orient Longman that he would transfer 50% of the royalties to Maulana's legal heirs, therefore he did not consider himself the sole author of the book. Hence, it can be said that both of them were joint authors.

According to the court, the owner has the right to assign his Copyright to any other person under Section 18 of the Copyright Act and Section 19 of the Act specifies the method of assignment, which might be in writing. When there is joint authorship and one of them is deceased, the consent of the deceased heir's legal representatives is required. Fatima Begum ratified the agreement and the publication of the books throughout the time of the arrangement, according to the evidence.

Even if the ratification was't express, the concepts of promissory and equitable estoppel suggest she was aware of the arrangement and receiving the royalty. As a result, it may be assumed that she gave her consent. It was also stated expressly in the introduction that 30 pages would be locked and released after 30 years.

As a result, because the plaintiff had reaped the benefits of royalty, the rule of estoppel would apply. Furthermore, the plaintiff suffered no irreversible loss or injury. As a result, the injunction was denied. However, Orient Ltd. was ordered to pay Rupees One lakh as security.

7. COMMENTARY

The Court based its decision on *Donoghue v. Allied Newspapers Ltd.* and *Walter v. Lane*, and distinguished between the speaker and the reporter, as well as who will receive the copyright. The court believes that when a speaker shares his views, he is expressing an idea. However,

the reporter takes the notes, organises them, and communicates them in the way that he sees fit, and therefore the work is not merely mechanical. Because it necessitates talent, the reporter is entitled to copyright. As a result, the term author, as defined by the Court, also includes the task of translation, which entails artfully arranging someone's ideas. Another topic on which the court deliberated was the rights of a joint author. The legal heirs or legal representative of the deceased author's permission to the assignment of copyright has been examined by the court. The court also discussed the Promissory and Equitable Estoppel Principle, which states that if one party changes his position in reference to another, the other party cannot change his stance afterwards. Furthermore, after a person has reaped the benefit, he cannot later repudiate the arrangement. As a result, the definition of author, as well as who would be an author and a joint author, as well as the author's copyright assignment rights have been disputed.

8. IMPORTANT CASES REFERRED

- *Donoghue v. Allied Newspapers, Ltd.*, 3 All. E.R. 503
- *Levy v. Rutley*, L.R. 6 C.P. 523
- *Walter v. Lane*, [1900] AC 539

CASE NO. 33
R. G. ANAND
V.
DELUX FILMS AND OTHERS
AIR 1978 SC 1613
APPLICATION OF COPYRIGHT TO EXPRESSION
OF IDEAS

ABSTRACT

This is the case summary of the landmark judgement of *R. G. Anand v. Delux Films and Others*, deals with a very important aspect of law which is copyright. The concept of copyright refers to who owns and controls the rights to use and distribute particular works of creative expression, such as books, videos, films, musical compositions, and computer program. It guards them against those who want to imitate their fortitude. This case is important as this case established the standard for determining whether the work in question is a duplicate of the plaintiff's original work. This was a key ruling that clarified that copyright does not apply to mere ideas, but rather to the expression of thoughts/ideas, etc. The court in this case was of the view that copyright on one hand does protect one's work (like marketing documents, website article, posts, written literature, etc.,) but still when a case of copy right infringement is filed then the main point of emphasis lies upon the fact that if a person views the original works and the work in question then can he make out the similarities and difference between them or not? The same question has been addressed by the court in the below case analysis.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 2030 of 1968
Jurisdiction	:	Supreme Court of India
Case Decided On	:	August 18, 1978
Judges	:	Justice S. Murtaza Fazal Ali, Justice Jaswant Singh, Justice R. S. Pathak
Legal Provisions Involved	:	Copyright Act, 1911 - Sec. 1(2)(d), 2
Case Summary Prepared By	:	Ranvir Singh Sisodia Symbiosis Law School, Noida

2. BRIEF FACTS OF THE CASE

The appellant (R. G. Anand) in the present case is a playwright, dramatist and producer of a stage play. The respondents are a company by the name 'Delux Films' who are involved in the business of film producing.

In the year 1953, the Appellant wrote a play called "Hum Hindustani," which was performed in New Delhi in 1954. The play became so well-known and renowned that was re-staged in Calcutta in 1954, 1955, and 1956.

The appellant wanted the play to be filmed because it was so popular. The respondent learned of the Appellant's purpose, and the two met in New Delhi to explore the prospect of hearing it. The appellant described the full play to the respondent, but the respondent made no commitment to shoot it. The respondent produced the film "New Delhi," which was released in 1956. The appellant detailed the entire play to the respondent, but no promise was made to shoot it. The film 'New Delhi,' which was released in 1956, was produced by the respondent. The appellants first went to the Delhi trial court, saying that the respondents infringed on their Copyright in their play "Hum Hindustani" in their motion picture "New Delhi." The District Judge in Delhi dismissed the appellant's suit, ruling that there was no copyright infringement because the two works were so unlike. The appellants went to the Delhi High Court to have the District Judge's ruling overturned, but the Hon'ble High Court upheld the District Judge's decision. The appellants then filed a Special Leave Petition before the Supreme Court against the Delhi High Court's order.

3. ISSUES INVOLVED IN THE CASE

The main issue which has been discussed in the case is that:

- I. Whether the film "New Delhi" created by the respondents is an infringement of copyright of the appellants play "Hum Hindustani"?

4. ARGUMENTS OF THE PARTIES

Appellant

Mr. Andley, for the appellants, contended that the lower courts misapplied the law and that their decision goes against established legal principles established by courts in England, America, and India. The appellants also claimed that the film is so close to the play that it gives the unmistakable impression that it is a duplicate of the play. Mr. Andley cited a number of parallels between the film and the play, including the common idea of provincialism, the fact

that both families are Punjabi and Madarasi, the fact that either one of the lovers attempted suicide but was saved by someone else, the fact that the girl's father's name is Subramaniam, the fact that both the film and the play are set in New Delhi, and the fact that the girl is fond of music and dance, etc. The appellants further claimed that the respondent was aware of the play and that it was only after hearing it that they chose to make a film about it without their consent.

Respondent

For the respondents, Mr. Hardyal Hardy claimed that the lower courts appropriately applied the law. He further contended that this court does not need to intervene with the Court of Facts' conclusions. He denied the assertion that the play and the movie are similar, claiming that the two are vastly different in terms of events and spirit. Mr. Hardyal Hardy also laid emphasis on the fact that the Trial Court was correct in its evaluation, and hence, there is no question of breach of the appellant's copyright.

5. LEGAL ASPECTS INVOLVED IN THE CASE

Even though both the play and the movie are based on the principle of 'Provincialism,' the court found that the similarities between the play and the movie were not significant. An infringement of copyright cannot be said to have occurred unless there is a substantial similarity between the original work and the alleged copy, the play and the movie in this case, in terms of scenes, incidents, and treatment, and the similarity is such the play is concentrating on some aspects of 'Provincialism', whereas the movie focuses on other sides which are also related to 'Provincialism', and hence one reasonable man can easily make the difference between the movie and the play in question.

The provisions discussed in the case from the **Copyright Act, 1911** are,

Section 1(2)(d) – Imperial copyright. The right to produce, deliver, perform, or publish the work or any part of it in public is defined in this clause. Sub-clause (d) allows for the creation of any record, perforated roll, cinematographic film, or other device by which the work can be mechanically performed or conveyed in the case of any literary, dramatic, or musical work. As in the present case it has been stated that one should focus on the level/degree of similarity of ideas of the original work and the work in question, so this Section can include a clause which states particular degrees in which if an idea falls it will amount to copyright infringement.

Section 2 – Infringement of copyright. There are various grounds that cause the breach of a copyright and these have been laid down in this Section. Even though this Section talks relating to near about all the scenarios of copyright infringement but still it lacks in specifying the fact

that on what basis a item or work be actually infringing a copyright. As it is possible that two things can the idea from the same place/book/instance, etc, but there way of representing it can be different. This Section should be built keeping such situations in mind, because any person can state that even though it is claimed that “I have copied someone’s work but it is not true as our work differ from each other on the following one or two points”. In such a case the person who is the actual creator of the work can be seen bearing a loss, and the Copyright Act has been made to avoid people from making such losses.

6. JUDGEMENT IN BRIEF

According to the Court, there is no copyright in the idea or plot but there is copyright in the way, arrangement, or representation of such an idea. If the works’ source is common, some similarities are bound to exist, but the Court must determine whether the similarities are significant enough to warrant infringement. It is infringement if an ordinary person, after seeing the work in question, calls it a copy or reproduction of the original work. The idea can be the same, but it must be depicted in a unique way to be considered new original work. It also stated that if the differences outnumber the similarities, it indicates a negative intent to duplicate. If there is clear evidence of infringement, then copyright violations are considered acts of piracy.

There are two judges amongst the four were of another opinion, that if they consider the facts deeply and read the play and then view the movie then one can easily make out that the movie is a copy of the play. Justice Fazal Ali and Justice Pathak were of the following opinion:

Justice Fazal Ali was of the opinion that if it comes upon the plaintiff who is the writer of the play to prove that whether there has been an infringement of copyright, then it is a difficult task for him. This can be said because the fact that the movie helps in focusing on a wider concept as compared to the play cannot be ignored. But if one views the movie and the play, then they can develop the feeling that the movie is a copy of the play, and hence it will amount to infringement of copy right.

Justice Pathak was of the view that a person who takes use of copyrighted work may be able to cover broader themes and make minor adjustments to the theme in order to demonstrate differences from the original work and therefore avoid the appearance of plagiarism. If the facts of the current case had been reconsidered before this Court, Justice Pathak stated he could have disagreed with the High Court's decision. However, as the Courts of Fact, namely the District Judge and the High Court, have both dismissed the appellant’s claim, this Court will not intervene with their determination.

7. COMMENTARY

The present case is treated as a landmark judgement in the field of copyright and is still referred to in the present set of copyright laws we have in India. There are three types of copyright protection established under Section 13 of the Copyright Act, 1957 (i.e., original literary, dramatic, musical and artistic work; cinematography films; and sound recording.). The court's decision emphasised the importance of two key elements in copyright cases - significant resemblance and copyrightability of ideas. The guidelines established by the Court in this judgement are still relevant today, and Indian courts follow them.

8. IMPORTANT CASES REFERRED

- *Shree Ventakesh Films (SVF) v. Vipul Amrutlal Shah* (2009)
- *Bobbs- Merrill Company v. Isidor Straus and Nathan Straus*
- *K R Vengopalan Sarma v. Sangu Ganesan*, 1972 Cr L.J. 1098
- *C. Cuniah and Co. v. Balraj & Co.*, AIR 1961 Mad. 111
- *S K Dutt v. Law Book Co. & Ors.*, AIR 1954 All. 570, (2), AIR 1965 J & K. 101
- *Mohini Mohan Singh & Ors. v. Sita Nath Basak*, AIR 1913, Cal 230

CASE NO. 34
INDIAN PERFORMING RIGHT SOCIETY LTD.
V.
EASTERN INDIA MOTION PICTURES ASSOCIATION &
ORS.
AIR 1977 SC 1443

COPYRIGHT OWNERSHIP IN FILMS

ABSTRACT

This narrative is the case summary of the judgment pronounced by the Supreme Court in *Indian Performing Rights Society v. Eastern Indian Motion Pictures Ltd. & Ors.*, wherein the previously ambiguous position regarding the ownership of copyright between musicians and lyricists was substantially settled. However, the rationale of this ruling was not in consonance with the belief and interests of a Section of artists, leading to the passing of the Copyright Amendment Act, 2012 to permanently ameliorate this discomfort. The landmark judgement, however, becomes important due to the complexities of producing an Indian film, where musicians, lyricists, composer, etc. are all a part of the process. The case carefully untangled this overlapping rights due to the involvement of many parties and cleared the confusion regarding the ownership of copyright in films. Previously, the film producers reaped the benefits of musical works in the film, leaving the lyricists or composers bereft of their share at times.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	Civil Appeal No. 967 of 1975
Jurisdiction	:	Supreme Court of India
Case Decided On	:	March 14, 1977
Judges	:	Justice Jaswant Singh, Justice V. R. Krishna Iyer
Legal Provisions Involved	:	Copyright Act, 1957 - Section 13, 14, 17, 18, 22, 26, 30
Case Summary Prepared By	:	Ishika Gupta Symbiosis Law School, Noida.

2. BRIEF FACTS OF THE CASE

Indian Performing Rights Society, which was established on August 23, 1969, in Maharashtra and governed by the Copyright Act, 1957 (herein after called The Act) and a registered society under Sec. 33 of The Act. It was authorised to grant licences for the performances of all current and future Indian literary and musical works in public, for which the copyright is granted. It is a company limited by guarantee to carry out its purpose in India. In this case, IPRS asserted its claim to a royalty in the event that a literary work featured in a cinematograph film is disseminated through radio stations, arguing that they were assignees of the said works and levying a tariff to compensate themselves.

The producers, on the other side, were against the proposition, claiming that IPRS had no rights over the works in question as the true owner of copyrights was the production house. They believed that since it was a contract under service between IPRS and production house which also included consideration, hence the composer would lose their right to the production house. The producers averred that the copyright of the film is with them, and that this right applies to the film in totality, including musical or literary work, and includes the right to perform the same in public.

In light of Sec. 34 of the Act, the Association of Film Producers filed objections with the Copyright Board. Although the Copyright Board stated that music composers retain ownership of their copyright, they were legally permitted to grant performing rights in public to IPRS. The respondents, discontented by the Board's decision, appealed before the High Court of Calcutta. The High Court held that the music composers did not have the right to use their music and that the producers of cinematographic films were the ones who owned the copyright, overturning Copyright Board's decision.

The appellant filed an appeal under Article 133(1) of the Constitution against the High Court's judgment. The appellants argued that music composers control the copyright to their works and that the IPRS has the jurisdiction to charge a fee, or royalty, for their public performance. The respondents, on the other hand, claimed that because the composers were bound by a contract and the music was used in a motion picture, they were the only owners of the work.

3. ISSUES INVOLVED IN THE CASE

- I. Where the existing or future right of the composer are capable of assignment under the provisions of the Act?

II. Whether a producer is entitled to copyright by just engaging with the composer?

4. ARGUMENTS OF THE PARTIES

Appellant

The Appellants stated that when it comes to literary or musical works, the composer has exclusive copyright, and that this right is breached by anybody who performs the work in public by screening a video without first obtaining a licence from the owner of the copyright. If someone wants to display a copyrighted work in an audience, even if it's through the medium of a cinematographic film, they must first get it authorized from the copyright owner, such as the composer or lyricist.

The Appellants also claimed that the copyright in a cinematographic film and the copyright in a musical work are two separate things. According to them, because Sec. 17(b) of the Act does not apply, film producers cannot claim copyright over music content created for their picture.

The Appellants also argued that the separate copyright of the authors of the work will not be affected simply because that concerned work was incorporated in a film, as per Sec. 13(4) of the Act.

Respondent

According to the respondents, the soundtrack is a component of film under Section 2(f) of the Act. This cinematograph film is protected by copyright under Section 13(1)(b) and 14(1)(c)(ii) of the Act, giving copyright holders the permission to have their work seen in public and to have their music played publicly if it contains music that is intended for public performance. It is not necessary to obtain the authorization of lyrics or music composers nor is it necessary to pay any fees to IPRS in order to exhibit the movie.

It was also contended that, under Sec. 17(b), if producers engage someone to create music or lyrics as part of a film project while taking into account, the producer obtains independent copyright to the film. The Appellants, on the other hand, maintained that the songs written for a drama that must be presented on stage were not separate compositions but rather an inherent component of the drama. As a result, the music composer will have no copyright over the music composition under such a contract.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following Sections of the **Copyright Act, 1957** were discussed in the case:

- **Section 13- Works in which copyright subsists.** It states that copyright shall subsist in India over all original literary, dramatic, musical, artistic works, sound recordings, and cinematographic films.
- **Section 14- Meaning of Copyright.** Copyright means the exclusive right to reproduce the work, make the work available to public, etc., subject to the provisions of the Copyright Act, with respect to literary, dramatic, artistic or musical work that is not a computer program, cinematograph films and sound recordings.
- **Section 17- First owner of copyright.** It states that in cases related to service for consideration, the proprietor becomes the absolute owner unless there is an agreement to the contrary. As a result, the possibility of assignment of rights in contrast with the absolute right vested in IPRS to provide permission for a public performance was debated in the case.
- **Section 18- Assignment of Copyright.** It allows the owner of a copyright to assign his copyright to another person. The mechanism of assignment is specified in Section 19. It stipulates that the assignment must be signed in writing by the assigner or his lawfully authorised representative.
- **Section 22- Term of copyright in published literary, dramatic, musical, and artistic works.** It states that except as otherwise provided, copyright in any literary, dramatic, musical, or artistic work (other than a photograph) published during the author's lifetime shall continue for fifty years from the beginning of the calendar year following the author's death.
- **Section 26- Term of copyright in cinematograph films.** It states that copyright in cinematograph films shall be till sixty years from the beginning of calendar year next following the year in which the film is published.
- **Section 30- License by owners of copyright.** It states that a licence to assign a work must be issued by the composer or his assignee and must be signed by both the composer and his assignee. In the case of a licence relating to a future work, however, the assignment will take effect only after that work comes into existence. This means that the copyright for both present and future work can be obtained in the prescribed manner. Once a piece of work is completed, the assignment will become valid.

6. JUDGMENT IN BRIEF

The Court concluded that a composer can assign rights to future work while dealing with Issue No. 1. As soon as the composition is finished and published, this assignment becomes effective. The assignment of work is possible under Section 30 of the Copyright Act, 1957, which allows for the issuance of a licence in favour of the future owner of the copyright. The rights can be transferred with the help of a document signed by both the assignor and the owner. A composer's current and future works can be assigned to another person or entity; however, the assignment is only effective once the work in question has been completed.

The composer's rights to the composition are surrendered whenever an agreement is struck between the production company and the composer for the purpose of inserting the composer's music into the film, and the production house becomes the sole owner of the copyright of the particular piece. The agreement could be reached right now or in the future. IPRS will not be able to collect a royalty in any case since it lacks legal authority. The situation is slightly different if there is a lack of agreement.

The Court determined that the second issue was disputed in nature. The court found that, under Section 17(b) and (c) of the Act, if a film producer contracts a music composer for the development of music/lyrics for any film project for a contract of service while receiving remuneration, the work would be owned by the producer rather than the composer. According to Section 17(c) of the Act, if the music is composed under a contract of employment or apprenticeship, the producer has the right to sue the composer and can override the composer's rights under Section 17 of the Act.

While Justice Krishna Iyer agreed with Justice Singh, he went a step farther and broadened the rights of music composers to some extent. According to Justice Iyer, the producer does hold exclusive rights to the entire picture and is thus immune from paying any fees or royalties to IPRS. While the composer retains copyright of the music as a separate component of the film, the producers might claim ownership of the picture as a whole when it is shown in public. However, in order to draw an audience, the producers are not allowed to play parts of the music individually in a theatre because this would be a violation of the composer's ownership of the music.

7. COMMENTARY

Upon closer examination of the judgement, it is obvious that it did result in significant troubles for musicians and other writers of creative works. The authors' inability to negotiate effectively is at the heart of this dilemma. Despite the fact that Sections 17(b) and 17(c) of the Act mention a contract between the author and the producer by which the author can retain his or her rights, there were very few such contracts that were negotiated between the parties over the course of the litigation. This is in stark contrast to the position in the United Kingdom and the United States of America, where authors are collectively organised and thus have greater bargaining power. Strikes by scriptwriters and their colleagues are a typical phenomenon in the Western entertainment industry. Authors in Bollywood, on the other hand, have been unable to organise into significant collectives, let alone launch strikes. Sections 17(b) and 17(c) of the Act provide for the enforcement of contracts, however there are very few composers who could benefit from them. This demonstrates the type of dilemma that the artists are dealing with, as well as how the jury's decision completely overlooked it. The Copyright (Amendment) Act, 2012 was enacted as a result of sustained efforts by artists in the film industry over an extended period of time to overturn some of the judgment. A number of significant changes were made to Sections 17, 18 and 19 of the Act when it was published. However, this judgment has been relied upon by the Supreme Court time and again. As a result, the law remains intact until today, except to the extent that it has been altered by the Amendment Act of 2012.

8. IMPORTANT CASE REFERRED

- *Wallerstein v. Herbert, (1867) Vol. 16, Law Times Reports 453.*

CASE NO. 35
UNIVERSITY OF LONDON PRESS
V.
UNIVERSITY TUTORIAL PRESS
[1916] 2 CH. 601, (THE COURT OF CHANCERY DIVISION, UK)
COPYRIGHT IN EXAMINATION PAPERS

ABSTRACT

This is a landmark case which defined the phrase “literary work” and the concept of “originality of ideas”. This landmark judgment was pronounced by the Court of Chancery Division, United Kingdom based on the infringement suit filed by the University of London Press and two co-plaintiffs named Professor Lodge and Mr. Jackson against the University Tutorial Press for the issue of copyrights being infringed upon by the act of publishing examination papers of mathematics for matriculation examination as set by the said two co-plaintiffs. The court decided that the examination papers were original and their copyrights were vested with the examiners under United Kingdom Copyright Act of 1911. Originality is a pre-condition to copyright protection. Protection of copyright in a work is necessary for the purpose of protecting and encouraging a person’s creative expression. Copyright protection should be a form of reward for a person seeking protection of his original work and not copied from work of any other person. Such a right is granted in relation to original works since one has the right of protection over the work completed through one’s own efforts. This case had led to the development of the “Sweat of the Brow Test” which conferred copyrights on work merely because time, energy, skill and labour were expended, i.e., originality of skill and labour.

1. PRIMARY DETAILS OF THE CASE

Case No.	:	[1916] 2 Ch. 601, (The Court Of Chancery Division, UK)
Jurisdiction	:	The Court Of Chancery Division, United Kingdom
Case Decided On	:	July 16, 1916
Judges	:	Justice Peterson
Legal Provisions Involved	:	Copyright Act, 1911 - Sec. 1(1), 2(1), 5, 35

Case Summary Prepared By	:	Arvind Kumar Bhandari The University of Lucknow, Lucknow
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2. BRIEF FACTS OF THE CASE

The University of London appointed two professors, Professor Lodge and Mr. Jackson to prepare matriculation examination paper of elementary mathematics for the University. They were employed on the condition that any copyright in the examination papers shall be vested to the University. The university entered into an agreement with the University of London Press Limited (the plaintiff) to assign copyright to them to prepare and issue examination papers for the University.

After the examination, University Tutorial Press Limited (the defendant) published the “London Matriculation Directory” which included sixteen examination papers of the University taken from copies supplied by the students. Their publication also included answers to the questions and some criticisms on the papers. On February 24, 1916, the plaintiff commenced an action against the defendant for infringement of copyright. Objection was raised that the plaintiff was not entitled to sue, thus Professor Lodge and Mr. Jackson joined as co-plaintiff. The Court of Chancery division United Kingdom held the question papers of the examiners as their original literary work, well protected under the Copyright Act, 1911 and held the defendant liable for violating the copyright of the plaintiff.

3. ISSUES INVOLVED IN THE CASE

- I. Can question papers be included in terms of ‘literary works’ under the Copyright Act 1911?
- II. Whether the question papers were ‘original’ in nature?
- III. Who owns the copyright in question papers after preparation?
- IV. Whether the defendant was liable for copyright violation?

4. ARGUMENTS OF THE PARTIES

Plaintiff

The Copyright Act, 1911 provides a non-exhaustive list of things included within the meaning of literary works which includes – maps, charts, plans, tables, and compilations. Therefore, any written or printed matter can be considered as literary work having no bearing on quality and

style of writing. Thus, plaintiffs were of the point that question papers, being in a printed form, could come within the definition of literary works.

The Plaintiffs argued that the two examiners had used selection, judgment, and experience in order to prepare questions to test whether the students had read and understood the syllabus. Although the questions were prepared by relying on pre-existing knowledge common to all, they weren't in themselves copied from anywhere. They originated from the two examiners and hence, they were subject to copyright under the Copyright Act, 1911 on being 'original'.

The Plaintiffs had also argued that the two examiners continued to be regularly employed by other educational institutions and were free to perform the work assigned by the Defendant in their own time as long as it was completed before the final deadline. Therefore, the two examiners were engaged in a 'contract for service' and not 'contract of service' thus they were the first owners of the copyright. The copyright therefore remained in the examiners, subject to the obligation under the contract of employment to assign it to the University or as it may direct. The copyright was vested in the examiners, but the university was equitably entitled to it subject to the restrictions under Section 5(2). The university assigned its rights to the plaintiff company, which is now equitably entitled to the copyright.

The Plaintiffs also made the argument that the Defendant had published the question papers already published earlier by the Plaintiff. While issuing the publication the Defendant had included the answers to two examination papers, however, no attempt to provide answers for the advanced papers were taken. Furthermore, in the garb of criticism, the Defendant had only published eleven lines based on the difficulty of the questions. Thus, the Defendant had appropriated the work of the Plaintiff, and it fails to fall within the scope of fair dealing.

Defendant

The defendant argued on the point that copyright did not apply to question papers because it had very little scope of originality. They further argued that each question had less substance of literary expression which needed to be protected.

Here there was no point of copying; rather two examiners claimed that questions were well thought out by them which they set in papers and later created a memoranda for future questions. These questions papers were prepared originally by themselves on their thoughtfulness and thus comes under the meaning of 'original' of the Copyright Act, 1911. The defendants on the issue of questions in the elementary papers, argued that they were of common type as might be used by any other examiner and thus did not require to be copyrighted.

The defendant objected and argued that the plaintiff did not own the copyright to the question papers as they were not under a contract of service.

Here the examiners were employed to prepare the question papers on the subject as assigned as examiner. The examiners were asked to set the papers for exam in September 1915 and January and June in 1916 and get lumpsum paid for their work. While considering the syllabus, the book work, and the matriculation standard of knowledge exam, they were free to use their skill to prepare question papers for the above said exams.

However, the plaintiff must have assignment of copyrights or joined them as parties in order to file suit for violation of copyrights but they does not have it so they become co-plaintiffs with the two examiners.

The defendant had argued that they had published the question papers with answers for the purposes of private study under “fair dealing” as per Section 2(1) (i) of the Copyright Act.

They even argued that these papers were intended to enable prospective candidates to prepare for examination, and not to make a profit out of it. They also argued that they had also done considerable amount of work in preparing the answers and in making criticisms. They again said that the defendants and plaintiffs were not rival and hence not using it for examination rather for the benefit of studies thus enhancing the purpose of the examiners without any intention to steal.

5. LEGAL ASPECTS INVOLVED IN THE CASE

The following are the significant Sections of the **Copyright Act 1911** prevalent at that time of this case:

- **Section 1(1): The subject matter of copyright.** Copyright act provided the protection to the work done by subjects within the country and its dominions and not to foreign countries and self governed dominions.
- **Section 2(1): Infringement of copyright.** Copyright in a work shall be deemed to be infringed when any person without the consent of his owner does anything against the sole right of its owner but not to any work for fair dealing related to private study, research, review, criticism, summary, recitation, reading in public and other works of artistic expressions like drawings, engravings, photographs and any bonafide use of works in schools, report publications in newspaper unless prohibited to do so.
- **Section 5: Ownership of copyright and exceptions for the same.** According to this

Act, the author of a work shall be the first owner of the copyright therein. However, in absence of any agreement the person who paid for the order of any artistic work shall be the first owner of that work or the employer who employs the author on contract of service or apprenticeship. But for any article contribution to newspapers, magazines, periodicals the author has a right to restrain the publication of that work

- **Section 35: Interpretations.** This Act defines terms used in here as, “Literary work” which comprises maps, charts, plans, tables, and compilations. “Collective work” includes an encyclopaedia, dictionary, year book, newspaper, review, magazine and also any work written by various authors in parts or incorporated. “Infringing” refers to any copy, any colourable imitation either made or imported. It also states that without the consent or assignment by author or its representatives no work shall be deemed to be published. The work shall be deemed to be first published within UK and its dominions and if at two places simultaneously then it has to be done within a period of 14 days or as prescribed by law.

6. JUDGEMENT IN BRIEF

The court held that the words ‘literary work’ cover work which was expressed in print or writing, irrespective of the quality or style. The court was of the view that the question papers were ‘literary work’ under the meaning of the Copyright Act, 1911.

The Court held that ‘original’ means that the work must be the expression of original or inventive thought. Copyright Act is not concerned with the originality of ideas, but with the expression of thought. The originality which is required relates to the expression of the thought. It is only required that the work originates from the author and not be copied from another work.

In this case there was no point of argument of copying of papers. Both of the examiners viz. Professor Lodge and Mr. Jackson proved that the questions were set on their thought process, and also made notes or memoranda for future questions. These question papers originated from them and hence under the meaning of the Act were original.

For the issue of common type of questions in the elementary papers, it was said that similar types of questions were asked by other examiners but it was held that most elementary mathematics books might be of common type but they are well protected by copyright.

Under Section 5 of the Copyright Act, the author is the first owner of the copyright subject to the exceptions under sub-section 1. It is clear that the examiners were employed by the

university and the examination papers were prepared by them during their course of employment. For exception under sub-section 1(b) to be applicable, the examiners must have been under a contract of service or apprenticeship.

In this case, for preparation of the question papers there was a condition that the University of London will have ownership over the papers and therefore examiners only hold the title, not ownership and because the University of London again transferred the title to the University of London Press to publish the paper and hence it held that all the three were plaintiffs, with ownership being with the University of London and title with the professors and the University of London Press.

The defendant took the plea that the purpose of publishing the examination paper was for educational purpose and therefore they should be given exemption from the infringement violation. Ignoring their point the court gave a very famous legal maxim – “*What is worth copying is prima facie worth protecting*” (The skill, human mind, expressions and thoughts which are used to create a subject matter worth copying then it is paramount to protect the said subject matter) and hence defendant was liable for the violation of copyright. The said maxim is still very relevant and use in legal world even after so many years of this decision.

7. COMMENTARY

This is a landmark case in the history of copyright; the courts had to tackle the question of what can be considered an original work within the Copyright Act 1911. The University of London had decided that all examination papers created by appointed examiners would belong to the University and reserved all rights to reproduce those exam papers without any extra compensation to the examiners who had written them. Anyone can have ideas, but how those ideas are expressed in writing or pictures has to be different so that none can claim it to be copied from its original. Though the idea first generates in the mind of the person but the one who transforms it into any form of expression of words or writing can own it's copyright. If the work which is sought to be protected is the result of independent creation, it most likely will fall under copyright and be protected. Ideas themselves are not protected, but the expression of those ideas through individual creative effort would be. Here the Court passed the decision in favour of the Plaintiff University to the extent of the question papers prepared by the two examiners – Professor Lodge and Mr. Jackson. The question papers were held to have copyright which vested in Professors as they were not in contract of service. There was no effective assignment as stipulation of condition in the contract cannot be said to be

assignment. London University had a right to obtain assignment from holders of copyright. The court issued injunction in respect of those question whose copyright owners had joined as plaintiffs in prosecuting London Tutorial Press. The judgment laid down the ‘test of originality’ which has made our understanding of ‘literary work’. This case has become a guiding light for the development of intellectual property jurisprudence pertaining to originality in copyright law. Furthermore, this case has also given the famous maxim “*What is worth copying, is worth protecting*”.

8. IMPORTANT CASE REFERRED

- *Simmons v. Health Laundry Co.*, [1910] 1 K. B. 543

TEAM MEMBERS

ADITI JAISWAL is a BA, LL.B. student at Banasthali Vidyapith, Rajasthan. She is an enthusiastic student and interested in legal research and writing and legal drafting in the various areas of law. She has previously interned with CARCIL – CNLU, Scriboard, Chitransh Law Associates, ProBono India, Law Mentoring, Success Boat, CRCJ – MNLU, Hello Counsel, Dayal Legal Associates, and Parashurami Legal – Advocates and Legal Consultants. She actively participates in Moot Court Competitions, debates, and various competitions. She has authored 3 Research Papers on legal aspects. She has been interested in writing legal and socio-legal blog posts on various blogs. Her article on child pornography in relation to cybercrime has been published in The Daily Guardian's Legally Speaking column.

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AYUSHI KUMARI is a student at Gujarat National Law University, Gandhinagar coming from Patna, Bihar and is pursuing BSc., LL.B. course. She is good at writing and researching and got her first article published on a legal blog platform, in her first year itself. She has a keen interest in learning, experiencing, and exploring new things. She loves traveling, reading novels, listening to music, decorations, long rides exploring the beauty of our mother earth, and a cup of coffee. She is very kind-hearted and leaves not a moment to help and soothe people in need. Her area of interest includes IP Laws, Constitutional Law, and Criminal Law as of now (as exploring never ends and it might alter later on. She expects to learn a myriad of new things which would help her to contribute her knowledge and experience for her nation's development and growth in the legal field.

BHAVYANSHI AHUJA is a Delhi-based student studying a BA.,LL.B. at Gujarat National Law University, Gandhinagar. Intellectual Property Law and Alternative Dispute Resolution are two areas of law in which she aspires to practice and is extremely passionate about. She hopes to use her enthusiasm to have an impact on people's lives and to be the voice of the unheard. She exhibits a gift for writing and maintains a fiction narrative blog. She aspires to tour the world and be the best version of herself. Amidst all, in her books and violin she finds serenity

DIGVIJAY SINGH is a second-year law student at Gujarat National Law University, Gandhinagar from Bhopal, Madhya Pradesh and is pursuing BA.LL.B. He is a determined individual with a knack for research and writing. Several of his blogs have been published by law school blogs as well. In the course of his two years at law school he has undertaken several

research related initiatives and wishes to have a career in public policy and law. He is particularly passionate about Intellectual Property Rights, International Law and Environmental Law jurisprudence and plans on learning the intricate nuances of these subjects. He is a part of various research cells and committees at his university including GNLU Centre for Intellectual Property Rights, Student Research and Development Council for International and Environmental Law. He has undertaken various internships under several reputed firms and attended seminars enhancing his skills including a course by University of California, Santa Cruz. He is also a debater and enjoys public speaking and has represented his university at several events. In his free-time he enjoys reading and watching tennis.

DHRUTVI MODI is a student at Gujarat National Law University, Gandhinagar coming from Vadodara, Gujarat and is pursuing BA.,LL.B. course. She is good at writing and has been a part of various committees in school as well as college along with attending multiple workshops on how to improve researching and writing skills. Apart from academics, she is really good at playing badminton and convincing people to watch her favorite shows and read her favorite books. Her other interests include discovering good music and listening to Taylor Swift songs on loop. She occasionally enjoys painting, baking, drawing cartoons and trying out new recipes.

HARITIMA KAVIA is a third year student at Gujarat National Law University, Gandhinagar and is pursuing the BA, LL.B. course. She has published various articles on refugee vaccination and IPR with respect to Rawl's Theory of Justice. She has been consistently researching in the field of Intellectual Property Rights and is actively looking for more opportunities to foster this interest.

ISHAAN CHOPRA is a fourth year student of Bennett University, Greater Noida coming from Lucknow, Uttar Pradesh and is pursuing BBA, LL.B. He carries a zeal to do good for others and likes to push others and get pushed by others to achieve maximum potential. He is also the Co-Convenor of Clinics Committee-ADR. He holds 2nd position in Moot Shanghai Special Edition 2020 and 3rd place CNLU Mediation Competition. He enjoys traveling and photography.

ISHA LODHA is a third year student at Gujarat National Law University, Gandhinagar pursuing BBA, LL.B. Her interests mainly lie in Intellectual Property, Human Rights, Technology and Corporate Laws. She is a student member at GNLU Centre for Intellectual Property Rights and has been an editor for Human Rights Law and Policy Review as well as the first and second issues of the GNLU-ADR magazine. She is proficient at legal research and mootng. She is an avid reader and enjoys traveling. She wishes to pursue a career in Intellectual Property and Corporate Law.

KASHVI VACHHANI is a third year law student at Gujarat National Law University, Gandhinagar pursuing BA, LL.B. She has always had an avid interest in research and writing and is exceptionally intrigued by the disciplines of human rights and IPR. She has written a gamut of articles as a commentary on human rights violations in the country discussing issues of illegality of internet shutdowns and protection of human rights in a digital age. Having developed a recent interest during the pandemic in importance of IPR in the pharmaceutical

industry, she has then branched out her interest in significance of IPR protection for indigenous people and is something she feels passionately about. Her other interests also include Humanitarian Law and Refugee Law.

KOMAL SALONI is a fourth year law student at Jamnalal Bajaj School of Legal Studies, Banasthali Vidyapith, Rajasthan, pursuing BBA, LL.B. course. She is good at writing and has been part of ProBono India. She holds 3rd position in an Extempore Competition Organized by Parul University, Gujarat. Her area of interest is Criminal Law, Insolvency & Bankruptcy Code, Dispute Resolution and Labour Law. She is keenly interested in research, publication moot, debate and enhancing her legal and professional skills. She has done a number of good articles and publications at various platforms like - iPleaders, ProBono India. Other than her legal profession, she is a keen Martial Artist and highly interested in writing, public speaking and traveling.

KUSHANG is a student at Himachal Pradesh National Law University (HPNLU), Shimla and is pursuing BBA, LL.B. course. He has a keen interest in legal research and writing and also has legal papers and blogs published on topics relating to dispute resolution and IPR. He has actively participated in moot competition, debates and even presented a research paper at NLU Ranchi. He has successfully completed various courses relating to ADR and IPR, and attended various National and International workshops. Apart from academics, he has a deep interest in Cricket. He aspires to serve the judiciary system of the country.

LAKSHAY GUNAWAT is a Master's candidate at Gujarat National Law University, Gandhinagar and pursuing his LL.M. in Intellectual Property Law. He is an avid freelance lawyer having experience in IP Law, Technology Law, and Corporate and Civil Litigation with a proven track record of drafting and negotiating commercial/IP contracts in the entertainment industries thereby dealing with issues of IP and Tech Law. With a clear interest to venture into this field, he has authored a dissertation titled – “Interaction of Blockchain Technology and Intellectual Property Rights”, as a bid to be part of the Industrial Revolution 4.0 taking place right now. His vision lay in spearheading the digital revolution in the legal industry making the system more robust and efficient. Apart from a keen interest in the law, fitness and music are his favourite hobbies.

NISHANT MISHRA is a Delhi-based student studying a BA, LL.B. at Gujarat National Law University, Gandhinagar. Taxation and Alternative Dispute Resolution are two areas of law in which he aspires to practice. Over the course of five years he has participated in various moots, conferences and seminars. He is also interested in reading and writing non-fictions.

NOYONIKA KAR, a student pursuing B.Sc., LL.B. at Gujarat National Law University, Gandhinagar currently in fourth year. While reading, researching and writing on various topics (both legal and otherwise) have always been her passions, her interest in IPR is a fairly recent discovery. Following this discovery, she has completed a Certificate Course in Copyright Law, while pursuing a second one in Trademarks. The main reason behind joining GCIPR for her was the hope of learning more about the widespread subject of IPR from her peers and mentors. She is ever-grateful for this opportunity, and she is hopeful that her work here will culminate into something of importance.

PARTHIV JOSHI is a law student at Gujarat National Law University, Gandhinagar coming from Rajkot, Gujarat and is pursuing BA.,LL.B. course. His interest lies in research and academic writing and he has been a part of GNLU Centre for IPR, interned under Adv. Bhavna K. Joshipura, and suggested amendments to the Draft UP Population Bill in the initial years of his law school. His curiosity in Intellectual Property Law and Taxation Law has promoted him to shape his career path in the same. His hobbies include discovering ancient Indic philosophy, playing chess, listening to music, and casual gaming. He expects a wide range of opportunities in Intellectual Property Law with the digital and start-up culture arriving in India in the backdrop of development of the GIFT City at Gandhinagar, Gujarat.

POOJA LAKSHMI is pursuing BBA, LL.B. third year at Bennett University, Greater Noida. She is always keen to learn and read new things and loves to attend webinars of eminent personalities around the globe. She is capable of handling high volume workloads and flexible to adapt to change. Being passionate about legal research and interest in law from the perspective of society and empowerment, Pooja has published multiple research papers in esteemed journals and other publications at numerous online platforms including paper presentation conferences in various NLUs. She is currently working as a Researcher at ProBono India and has coordinated 2nd edition Online Certificate Course on Legal Aid and Allied laws conducted in Collaboration with Legal Services Committee, Gujarat National Law University, Gandhinagar & RGNUL Legal Aid Clinic, Patiala (secured certificate of merit) as well as Compilation of Selected Cases on Socio Legal Issues Filed During Corona Crisis (Book). She is good at communicating things as well as essay writing from her school days and has a skill of finding relevant information. She is also a part of bringing laurels to her university through her achievements in the field of law. She is an expert in interpersonal skills as well as maximizing the opportunities from new ventures.

RAJ SHUKLA is a second year Law student at Gujarat National Law University, Gandhinagar coming from Surat and is pursuing BA., LL.B. course. Having a family background of lawyers has brought in him a keen interest to study law and take it up as a career. Being an active servant leader, he is involved in various community service work.

RANVIR SINGH SISODIA is a third year learner at Symbiosis Law School, Noida. His focus of interest primarily lies in Criminal Law, Alternate Dispute Resolution, IPR, & International Laws. He takes a keen interest in writing articles and research papers, and a few of these have been published in various journals and websites. He has achieved the feat of presenting his research paper at the 'National Law Conference' conducted by Christ University in the year 2022. He also has a great fascination towards the aspects related to policy making and in pursuant to this, he has been associated with the Centre for Civil Society's 'Fellowship Program' for the past one year as a 'Senior Fellow' under their 'Jeevika program'. He is inclined to acquire in-depth knowledge on the subject through his passion for exploring new spheres and meticulously applying them in practicable scenarios. He aspires to become a prominent part of the 'Indian Judicial System' in the capacity of being a 'Judge' to make a mark by bringing about some value addition through his intellect, hard work and dedication.

RAGINI SUMAN is a LL.M. student at Gujarat National Law University (GNLU), Gandhinagar, specializing in Intellectual Property Rights (IPR). With a focus on IPR, she is

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RISHI RAJ is a third year law student pursuing BA, LL.B. from Symbiosis Law School, Noida. He is an avid reader and writer. He is passionate for research and wants to carve a niche in it. He has interned at HelpAge India, ProBono India and Human Rights Law Network etc. He has a keen interest in Criminal Law, Constitutional Law, Human Rights and Security Law. He is part of ongoing research projects at Maharashtra National Law University and Symbiosis Law School, Noida. He is also pursuing the course of Company Secretary through ICSI. He is also a cricket player and athlete. After the completion of his course, he would like to pursue a career in the Indian Armed Force.

ROHAN KALITA, a second year BBA, LL.B. student at Gujarat National Law University, Gandhinagar is a keen researcher in the field of law especially Corporate Law and IPR law, he has interned with Kartavyam NGO, he is currently part of the All India Legal Forum as an Associate Editor, He likes playing cricket and have also represented his school in the DSO, he has also written numerous articles on socio-political issues.

SAKSHI MEHTA, a fourth year BA., LL.B. law learner at Symbiosis Law School, Noida. She has a keen interest in the field of Public International Law, International Human Rights Law, Humanitarian Law, Criminal Law and IPR which encourages her to write research papers, research articles or blogs. Currently she is part of a research project being conducted by MNLU and CRJ at national level on prison reforms. She has previously published her work covering issues of human rights. She is completely indulged in research and writing.

SANGITA SHARMA is a student at Gujarat National Law University, Gandhinagar. She is currently pursuing BSc. LL.B. She has keen interest in technology and innovation, therefore she wishes to work in the field of Intellectual Property Rights or/and Technology Law.

SAUMYA BAZAZ is a fourth year student pursuing BA., LL.B. at Gujarat National Law University, Gandhinagar. She is particularly interested in the dynamic field of Intellectual Property Rights and has explored the varied aspects of this field of law through internships at reputed law firms as well as undertaking research opportunities at organizations such as DPIIT and GNLU Centre for Intellectual Property Rights. She aims to pursue her LL.M. in Intellectual Property Law and establish a career as an academician.

SAKSHI AGRAWAL is a student of Indore Institute of Law, Indore. She is good at writing and has been a part of many competitions, paper presentation, article writing, content writer and so on. She believes to keep herself always busy which will give her success. She believes in doing hard work because hard work will never go wasted either you will learn something or gain something.

SHIVAM AGARWAL is a second year law student at Gujarat National Law University, Gandhinagar. He worked with GNLU Centre for Intellectual Property Rights as a student

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SHAKHI JIVESH is a student at United World School of Law, Karnavati University, Gandhinagar. She is a keen researcher in field of law and as interned under several NGOs and interned under Adv. Piyush S Modasia and Adv. Subhash R Rakshe and in law firm Jani and Co. Solicitors & Advocates Corporate Attorneys. She is a part of Samskriti the culture committee of United World School of Law and she has also completed Certificate Course in Family Law, Hindu Marriage Act, Jurisprudence and in Intellectual Property Rights. She has also participated in other co-curricular activities such as Youth Parliament, MUN, Debate competition. Her vision for life is to be the change we wish to see, and thus as a future lawyer she wishes to focus her career in the field of Criminal Law and in IPR.

SNIGDHA AGARWAL is a third year B.Com, LL.B. student at IMS Law College, Noida. She has an inherent interest in Criminal Law, Corporate Law, International Law, etc. which encourages her to take part in the Intra Mock Trial, Moot Courts and other mediation competitions to apply her analytical thinking. Not only this, she aims to enhance her legal research and writing skills with each assignment. She is an active member of the moot court society, debate society and RTI Club of her college and participates in all kinds of seminars and workshops affiliated with it to gain knowledge. Other than this, she is also a freelance content writer and copywriter which involves her in writing on various niches.

SONAKSHI AGARWAL is a student at United World School of Law, Karnavati University, Gandhinagar. She is good at writing and she is currently a part of The Blend, Karnavati University's student – run magazine, and has also completed numerous certification course on Family Law (Hindu Marriage Act) , Jurisprudence and Understanding Intellectual Property as well. She is a keen researcher and has also interned with Sr. Adv. Nirupam D Nanavati wherein her role sought for intense research on various cases related to civil, criminal and Administrative Law. She has also previously interned with Jani & Co., Solicitors & Advocates, Corporate Attorneys wherein her role sought for drafting documents and referred to several legal opinion on issues relating to titles clearance of properties. She has also participated in many co-curricular activities such as in Youth Parliament organized by Nirma University, in intra-moot court and debate competition, participated as a member for the Lok Sabha committee at Samvaad, organized by Karnavati University. Her vision for life is to be the change we wish to see, and thus as a future lawyer she wishes to focus her career in the field of Corporate Law and IPR.

SUBRAMANIAN SANKARGANESH is an LL.B. graduate from School of Excellence in Law. He is an enthusiastic student and interested in legal research and writing and legal drafting in the various areas of law. He has published seven research articles in various law journals both national and international level. He has presented papers in conferences. He is a research scholar, and he is currently doing research on Corporate Governance and its intricacies with respect to India. He has actively participated in Moot Court Competitions, debates, and various other competitions. He has attended two hundred plus online conferences and symposiums. He

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SUBHRATA BORTHAKUR has obtained her LL.M. from Gujarat National Law University, Gandhinagar with specialization in Intellectual Property Rights. She has completed her BA.,LL.B. from National Law University and Judicial Academy, Assam with specialization in IPR and International Law. She is currently working as Senior Research Assistant at GUJCOST-GNLU Centre of Excellence in IPR. She has also worked as an IPR Consultant at National Institute of Design, Ahmedabad. She wants to pursue her career in research and build a niche in the field of academia and help build a better system of education accessible to all. To further her interest in the field of intellectual property she has done certificate courses from WIPO and Michelson Institute of Intellectual property. She has also organized workshops on copyright and design registrations in collaboration with Cell for IPR Promotion and Management and Rajiv Gandhi National Institute of Intellectual Property Management. She is very organized with her work and strives to produce well researched and well-structured content and constantly tries to pursue her obsession with what's next in culture, relevance and the internet. Apart from academics, she loves exploring new cultures and cuisines and perfecting her gardening skills.

SWASTIK GROVER is a student of H. P. National Law University, Shimla and is pursuing a BBA,LL.B. course. He is good at writing. He has written various research papers and blogs on AI in Law, Human Rights, and interned with firms like Amazon and CompliansoTech. He participated in various moot court competitions and has attended many national and international conferences. He has a keen interest in developing his acumen in the field of Technology Law and Intellectual Property Law and with regards to his interest, he is currently working with a legal-tech startup. His objective in life is to continuously improve himself and to try new things that challenge him. He is a firm believer of the fact that "learning never stops."

UJJWAL SINGH is a student of Chanakya National Law University, Patna coming from Bihar and pursuing a BBA., LL.B. He is research-oriented and good at writing articles and blogs on legal as well as social issues. He has to date several publications on his name including one at the London School of Economics. He has been a part of the Centre for Innovation, Research and Facilitation in Intellectual Property for Humanity and Development, (CIPR IPHD) CNLU. He is an explorer of everything exciting and challenging in the field of Law but his interest also lies in History, Philosophy, Science, and Technology.

URMI SHAH is a highly motivated and focused second-year student of B.Com. LL.B. at Gujarat National Law University, Gandhinagar. With a strong interest in Insolvency Law and general Corporate Law, She has already demonstrated her capabilities and commitment through her work as a Student Research Associate for nine months on a project related to the Corporate Insolvency Resolution Process (CIRP). Her exceptional academic skills are highlighted by her publication of a case compilation on Article 12 and 142 and her writing being featured on well-known websites such as Lexlife and Juris Centre and in UGC-recognized journals. She looks forward to learning more in this journey of law.

VARUNI TEWARY is a student at Gujarat National Law University, Gandhinagar. She is pursuing a course in Bachelor of Social Work and Law. She acquired a flair for writing at a very young age and was the youngest candidate in "The Times of India" Junior Editorial Board. She is an astute learner and has carried out research on varied subjects ranging from data privacy to rural development. She is a spirited environmentalist and is also a member of the Environmental Law committee of her college. Additionally, she also has interest in the field of IPR, especially in Trademarks and Geographical Indications. She aims to make the complex world of law easily understandable and accessible to the common man.

*“The Copyright Bargain:
a balance between protection for
the artist and rights for the consumer.”*

— Robin Gross

