

TC008

**7TH SURANA & SURANA AND SHAASTRA IIT MADRAS,
INTELLECTUAL PROPERTY LAW MOOT COMPETITION 2023-24**

Before

THE HON'BLE HIGH COURT OF HILED

In the matter of:

SAMAY SINHA.....PLAINTIFF

v.

EPIONA PRIVATE LIMITED DEFENDANT

C.O. (Comm. IPD-CR)

UPON SUBMISSION

TO THE HON'BLE JUSTICES OF THE HIGH COURT OF HILED

~ WRITTEN SUBMISSIONS ON BEHALF OF THE PLAINTIFF ~

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LIST OF ABBREVIATIONS

1.	§	Section
2.	¶	Paragraph
3.	PTC	Patents and trademark cases
4.	SCC	Supreme Court Cases
5.	IntCPM	Interactive Creative Pre-Conditioned Metamorphoser
6.	LLM	Large Language Model
7.	High Court	HC
8.	Supreme Court	SC
9.	Hon'ble	Honourable
10.	Ors	Others
11.	&	And
12.	No.	Number
13.	v.	Versus
14.	Ltd	Limited
16.	AI	Artificial Intelligence
17.	EBC	Eastern Book Company
18.	CMI	Copyright Management Information

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2	Amar Nath Sehgal v. Union of India	2005 (30) PTC 253 (Del).	23,24
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STATEMENT OF JURISDICTION

The plaintiff, in the instant matter, hereby, most humbly and respectfully invokes the jurisdiction of the HC of Hiled under the original civil jurisdiction as per § 5(2)¹ of the Delhi High Court Act, 1966 r/w to § 20² and § 2(4)³ of the Code of Civil Procedure, 1908.

¹ 5. Jurisdiction of High Court of Delhi.— (2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds 1 [rupees two crore].

² 20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction— (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or (c) The cause of action, wholly or in part, arises.

³ 2. Definitions.—In this Act, unless there is anything repugnant in the subject or context –
(4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

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STATEMENT OF FACTS

BACKGROUND

The lawsuit involves Plaintiff (Plaintiff), an acclaimed author, and EPIONA (Defendant), an AI developer. Sinha, known for award-winning novels, alleges that EPIONA copied his books into its database to train language models without authorization.

EPIONA	A developer and seller of artificial intelligence software products
PRODUCTS	LLMs like Int CPM, CPM1,CPM2,CPM3,CPM4
Nature of IntCPM	Allows users to input text prompts generating natural language response
The training dataset for IntCPM	BookCorpus including 7000 unpublished books sources from Smashwords
Training dataset for CPM-3	15% of Books1 and Books2 (Containing 294000 titles sources from shadow libraries)

CAUSE OF ACTION

The plaintiff sent a Cease and Desist Notice to the defendant, accusing them of using his copyrighted material without authorization, credit, or compensation. He argued that IntCPM's accurate summaries of his books constituted derivative works or adaptations of his copyrighted material.

The defendants in their Reply Legal Notice stated that copyright protects expression, not underlying concepts, and extracting information for training does not constitute infringement.

They claimed IntCPM's output lacks substantial similarity and qualifies as fair use

In response, the plaintiff filed a lawsuit alleging EPIONA's unauthorized use of his copyrighted materials, violating the Indian Copyright Act, 1957.

Hence the present case.

~WRITTEN ON BEHALF OF THE PLAINTIFF~

ISSUES RAISED

ISSUE I:

1. WHETHER THE INSTANT PETITION IS MAINTAINABLE?
-

ISSUE II:

2. WHETHER THE OUTPUTS PRODUCED BY IntCPM AMOUNTS TO
COPYRIGHT INFRINGEMENT?
-

ISSUE III:

3. WHETHER USAGE OF THE PLAINTIFF'S WORK INFRINGES THE MORAL
RIGHTS NOT AMOUNTING TO FAIR USE?
-

~WRITTEN ON BEHALF OF THE PLAINTIFF~

SUMMARY OF ARGUMENTS**[1.] WHETHER THE INSTANT PETITION IS MAINTAINABLE?**

The plaintiff submits that the present case is maintainable according to § 62 of the Copyright Act which states that Courts have the jurisdiction to hear matters of copyright infringement. The High Court of Delhi has the original civil jurisdiction to hear the matter under § 5(2) of the Delhi High Court Act, 1966. It is further submitted that the plaintiff has the locus standi to approach this court as the moral and economic rights of the plaintiff are being violated.

[2.] WHETHER THE OUTPUTS PRODUCED BY IntCPM AMOUNTS TO COPYRIGHT INFRINGEMENT?

It is humbly submitted to this Hon'ble Court of Hiled that EPIONA is using the plaintiff's work without his authorization. The output produced by IntCPM does not constitute original work as it does not pass the test of modicum creativity and hence it is a derivative work that infringes the original work. There is direct infringement caused due to substantial similarity as well as vicarious infringement violating the plaintiff's rights.

[3] WHETHER THE USAGE OF THE PLAINTIFF'S WORK INFRINGE THE MORAL RIGHTS NOT AMOUNTING TO FAIR USE?

It is humbly submitted to this Hon'ble Court of Hiled that the defendant's action is violating the moral rights of the plaintiff which include the right to paternity that is the right to claim authorship and the right to integrity that protects the reputation of the author, guaranteed under § 57(1) of the Copyright Act. It does not amount to fair dealing as it does not fall in the exhaustive list under § 52 of the Copyright Act.

ARGUMENTS ADVANCED

ISSUE-I

1. WHETHER THE INSTANT PETITION IS MAINTAINABLE?

(¶1.) It is humbly submitted before the Hon'ble HC of Hiled that the present petition is maintainable under this Court as *firstly* the plaintiff has the locus standi and *secondly*, this Court is the appropriate and competent court to approach.

1.1 Locus standi

(¶2.) The plaintiff has the locus standi to approach this Hon'ble Court because the rights of the plaintiff have been violated by the actions of the defendant. The Copyright Act, of 1957 provides a bundle of rights to the copyright owners. This includes economic and moral rights.

(¶3.) *Economic rights*- § 14⁴ of the Copyright Act lists the economic rights of the owner. The defendant, by deriving, adapting⁵, and communicating the plaintiff's work to the public without authorization from the plaintiff has violated the rights of the plaintiff.

(¶4.) *Moral rights*- § 57⁶ of the Act encompasses moral rights. The defendant, from his actions, has violated the right to the paternity of the author by producing the plaintiff's work on IntCPM as its own production and not giving due credit, compensation,⁷ or acknowledgment to the

⁴ "to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:— (a) in the case of a literary, dramatic or musical work, not being a computer programme,— (i) to reproduce the work in any material form including the storing of it in any medium by electronic means; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi)

⁵ Moot Proposition, ¶ 6.

⁶ "57. Author's special rights.— 1 [(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right— (a) to claim authorship of the work; and (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work 2 [***] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation: "

⁷ Moot Proposition, ¶ 3.

plaintiff. Moreover, future unauthorized use of the work may lead to the infringement of the right to integrity as the language model can modify the content of the work and put the plaintiff's reputation at stake.

1.2 The High Court of Hiled is the appropriate Court

The Counsel submits that the High Court of Hiled is the appropriate and competent court for filing this suit on copyright infringement.

(¶5.) Here, the High Court of Hiled is said to have the jurisdiction according to § 62⁸ of the Copyright Act to adjudicate the matter. The term “district” is defined in § 2(4) of the Code of Civil Procedure which states that “ (4) “*district*” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “*District Court*”), and includes the local limits of the ordinary original civil jurisdiction of a High Court;”.⁹

Therefore, the plaintiff has approached the High Court of Hiled having original jurisdiction.

Pecuniary Jurisdiction

(¶6.) According to the Delhi High Court Act 1966, the HC has an original civil jurisdiction wherein the value exceeds rupees 2 crores. In the case of , ***ADOBE, INC v. Namase Patel***¹⁰, the suit stood decreed as, “*Additionally, the plaintiff shall also be entitled to the quantum of the damages claimed in the suit of Rs. 2,00,01,000/-. These damages are intended to be*

⁸ Section 62 of the Copyright Act states that, “Jurisdiction of court over matters arising under this Chapter.— (1)Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the district court having jurisdiction (2) For the purpose of sub-section (1), a “district court having jurisdiction” shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, include a district court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such persons, any of them actually and voluntarily resides or carries on business or personally works for gain. “

⁹ *The Code of Civil Procedure* , (1908) , Section 2(4).

¹⁰ *ADOBE, INC v. Namase Patel* ,2022 SCC OnLine Del 4190

deterrent in nature given the nature of activities of Defendant- 1."¹¹ Similarly, in the present case the value exceeds 2 crores and hence the plaintiff has approached the competent Court.

Territorial jurisdiction

(¶7.) In *Exphar Sa & Anr vs Eupharma Laboratories Ltd. & Anr*¹² it was held that, § 62 of the Act “prescribes an additional ground for attracting the jurisdiction of a Court over and above the 'normal' grounds as laid down in § 20 of the Code .”¹³ The same reasoning was followed in *Burger King Corporation v. Techchand Shewakramani & Ors*¹⁴ “Thus, the provisions of § 134 of the TM Act and § 62 of the Copyright Act are in addition to and not in exclusion of § 20 of the CPC. If the Plaintiff can figure out a cause of action within the territorial jurisdiction of this Court under § 20, no reference needs to be made to § 134.”¹⁵ In the instant case, the defendant engages in online activities within the jurisdiction, and a substantial part of the events giving rise to the claims occurred therein which falls under the ambit of § 20(c)¹⁶ of the Code of Civil Procedure, 1908.

ISSUE-II

**2. WHETHER THE OUTPUTS PRODUCED BY IntCPM AMOUNTS TO
COPYRIGHT INFRINGEMENT?**

(¶ 8.) It is humbly submitted before the Hon'ble HC of Hiled that the output produced by IntCPM amounts to copyright infringement. This is because, *firstly*, there is no authorization,

¹¹ *Id.*

¹² *Exphar Sa & Anr vs Eupharma Laboratories Ltd. & Anr* , (2004) 3 SCC 688.

¹³ *Id.*

¹⁴ *Burger King Corporation v. Techchand Shewakramani & Ors*, (2018) SCC OnLine Del 10881.

¹⁵ *Id.*

¹⁶ 20. Other suits to be instituted where defendants reside or cause of action arises. (c) The cause of action, wholly or in part, arises.

secondly the output produced by IntCPM is not original, *thirdly*, it is derivative work which is infringing the original work, *fourthly*, there is direct as well as vicarious infringement.

2.1 That there is no authorization

(¶ 9.) § 14 of the Copyright Act of 1957 states that “*copyright means the exclusive right subject to the provisions of the act to do or authorize the doing of certain acts in respect of any work or any substantial part thereof.*”¹⁷ The authorization of the person who has produced a particular work be it in the case of literary, dramatic, musical work, etc is essential. Hence when the copyrighted material is used without the permission of the copyright holder it accounts for unauthorised usage.

(¶ 10.) In another case of *Ratna Sagar pvt ltd v Trisea publication and others*,¹⁸ the petitioner who was a renowned publisher of the children's book 'Living Science' sued the respondent who published the book 'Unique Science '. According to the plaintiff, the content available in the defendant's book was deceptively similar to theirs. The court held the respondent guilty of unauthorized usage of the plaintiff's book. Similarly in the present lawsuit, the defendant EPIONA is using the books of Plaintiff to produce accurate summaries¹⁹ without his authorisation which leads to infringement of copyright.

2.2 That the output produced is not original

¹⁷ *Copyright Act , (1957) Section 14.*

¹⁸ *Ratna Sagar Pvt. Ltd. vs Trisea Publications And Ors, 1996 SCC OnLine Del 387.*

¹⁹ Moot Proposition ¶ 6.

(¶11.) In *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.*²⁰, the court observed that §13(1)(a)²¹ protects Originality in the work of an artist, whereas. § 14(a)²² talks about the original work that is being done by the people. The work produced by IntCPM cannot be original. As per the case of *Camlin Pvt. Ltd. v. National Pencil Industries*²³, the Delhi High Court elaborated on the meaning of the term “author”. The Courts stated that “*mechanically reproduced printed carton*” was not a subject matter of copyright for the reason that it was not possible to determine who the author of such carton was. The Court further stated that “*copyright is conferred only upon authors or those who are natural persons from whom the work has originated.*”²⁴

2.2.1 The doctrine of modicum creativity

(¶12.) This doctrine requires a minimal level of creativity in the artistic work to make the product copyrightable. The courts while applying this have given greater importance to the creativity and subjective contributions made by the authors. It also emphasized the literary and artistic merit of the work. The criteria for Originality in the artistic work is defined by its uniqueness. The artist's expression is given more importance than creativity. The labor of converting the work into a creative manner does not pass the test of originality as per this

²⁰ *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd & Others* , (2008) 37 PTC 353 (SC).

²¹ 13. Works in which copyright subsists.— (1) 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,— (a) original literary, dramatic, musical and artistic works.

²² 14. Meaning of Copyright.— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:— (a) in the case of a literary, dramatic or musical work, not being a computer programme,—(i) to reproduce the work in any material form including the storing of it in any medium by electronic means; (ii) to issue copies of the work to the public not being copies already in circulation; (iii) to perform the work in public, or communicate it to the public; (iv) to make any cinematograph film or sound recording in respect of the work; (v) to make any translation of the work; (vi) to make any adaptation of the work; (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

²³ *Camlin Pvt. Ltd. v. National Pencil Industries*, AIR (1986) Delhi 444.

²⁴ *Id.*

doctrine. *In Fiest Publication v Rural Telephone Service*,²⁵ the court held that copyright protection shall be granted when the work and creativity are original in the making of art and not merely presenting the works differently.²⁶ As a result, the expression of the Plaintiff should be restored as it is his original work and not that of IntCPM.

(¶13.) In the case of derivative works, the principles laid down in *Eastern Book co v D B Modak*²⁷ Determining originality requires some skill and judgment. Simple compilations aren't eligible for protection. The evaluation must consider the extent and significance of corrections, improvements, independent skills, and labor invested to attribute authorship of the derivative work to its creator.

(¶14.) As a result, the accurate summaries²⁸ produced by EPIONA do not constitute an original work but a replica of the books produced by Plaintiff. It lacks the elements of creativity, subjectivity, and uniqueness as it broadly falls under the spectrum of the plaintiff's literature and fails to show a sense of self-expression.

2.3 That the derivative work is infringing

(¶15.) In EBC,²⁹ the term derivative work is defined as “*A derivative work consists of a contribution of original material to a pre-existing work to recast, transform or adapt the pre-existing work. This would include a new version of a work in the public domain and abridgment adaptation, arrangement, dramatization, or translation.*”

²⁵ *Fiest Publication v Rural Telephone Service Co.* (1991) 499 US 340 (US).

²⁶ *Id.*

²⁷ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

²⁸ *Supra* note 20.

²⁹ *Supra* note 28.

(¶16.) In *Macmillan & Co. v Cooper*³⁰, Lord ATKINSON stated: “*An abridgment of an author's work means a statement designed to be complete and accurate of the thoughts, opinions, and ideas by him expressed therein but set forth much more concisely in the compressed language of the abridger.*”³¹ In the present case, the output produced by IntCPM acts as an abridgment because when prompted to summarize³² the books authored by the plaintiff, IntCPM produced accurate summaries³³ signifying the act of compressing the work concisely.

(¶17.) § 2(a)(ii)³⁴ stipulates that adaptation encompasses any abridged or modified version of a work. Copyright holders are granted exclusive rights, as outlined in § 14(a)(vi)³⁵ of the Copyright Act, one such right is to create adaptations. The defendant has infringed upon the plaintiff's rights by producing an abridged version of the work without due authorization³⁶.

(¶18.) The defendant has the right to use the basic idea involved but he is not permitted to express that idea in the same form and the same manner. The defendant in this case has not only copied the entire foundation of the plaintiff's work but also substantially appropriated the form in which the idea was depicted.

2.4 That there is a direct and vicarious infringement

³⁰ *Macmillan & Co. v Cooper*, (1923) SCC Online PC 59.

³¹ *Id.*

³² Moot Proposition ¶ 6.

³³ *Supra* note 20.

³⁴ 2. Interpretation.— In this Act, unless the context otherwise requires,— (a) “adaptation” means,— (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise.

³⁵ [14. Meaning of Copyright.— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:— (a) in the case of a literary, dramatic or musical work, not being a computer programme,— (vi) to make any adaptation of the work.

³⁶ Moot Proposition ¶ 3.

(¶19.) Infringement is defined under § 2(m)(i)³⁷ “*about a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film; if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act*”.

2.4.1 Infringement

(¶ 20.) § 51³⁸ of the Copyright Act of 1957 specifies when a copyright is infringed. To constitute a complete infringement a copyright owner is required to prove that he owned the copyrighted material and that the defendant violated one of the exclusive rights of the copyright owner. In the case of the reproduction of work, there is seldom direct evidence of the offending act. Infringement can be proven under a given circumstance by establishing:

2.4.1.1 Lay observer test –

(¶ 21.) In associated *Electronic and Electrical Industries v Sharp Tools*³⁹, The court, in establishing the "lay observer test" for copyright infringement, assesses whether a non-expert observer, upon closely examining both works, would perceive the subsequent work as a reproduction of the original. In the case of *R G Anand v M/s Delux Films*⁴⁰, this test was applied, and infringement was substantiated when the lay observer perceived the works as reproductions. The focus is on the visual appearance of the works, and if, to an untrained eye, the resemblance is apparent, copyright infringement is established. Further, the experts who

³⁷ 2. Interpretation.— In this Act, unless the context otherwise requires,— [(m) “infringing copy” means— (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film.

³⁸ 51. When copyright infringed.— Copyright in a work shall be deemed to be infringed— (a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act— (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or.

³⁹ *Association Electronic and Electrical Industries Bangalore Private Ltd v Sharp Tools* ,(1991) 13 PTC 85.

⁴⁰ *R G Anand v M/s Delux films* (1978) 4 SCC 118.

are not in favor of giving copyright protection to AI-generated works argue that if the same model and the same inputs are given, the AI will produce output that will be the same every time. Therefore, it is hard to say that it is unique and creative.⁴¹

(¶ 22.) By keeping aside the historical and factual matters the plots and subplots appearing in the summaries produced by EPIONA's work were a replica of Plaintiff's books which are a result of his creative expression. Hence by copying his creative expression, they have also violated his exclusive rights.

2.4.1.2 Substantial similarity test

(¶ 23.) Copyright infringement occurs when someone imitates a work without the owner's license or authorization. Substantial similarity focuses on identifying essential elements in both works to establish infringement. If the similarities are extensive and detailed, making it highly challenging to prove independent creation, the copied work is deemed strikingly similar to the original. Several factors taken into consideration to prove the similarities are - firstly uniqueness, intricacy, and complexity of both works are examined. Secondly, unexpected or idiosyncratic elements are considered. Thirdly the errors and fourthly the fictitious elements in the original work and the infringed work are examined.

(¶ 24.) In the case of *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*,⁴² it was held that “*to find similarity between two concepts what was to be seen as the substances, the foundation, the kernel, and the test as to whether the reproduction was substantial was to see*

⁴¹ Brigitte Vézina and Brent Moran, “Artificial Intelligence and Creativity: Why We’re against Copyright Protection for AI-Generated Output”, Creative Commons, August 10, 2020, available at: <https://creativecommons.org/2020/08/10/no-copyright-protection-for-ai-generated-output/> (last visited on January 23, 2021).

⁴² *Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.*, (2003) 27 PTC 457 (Bom).

if the rest could stand without it. If it could not, then even if many dissimilarities existed in the rest, it would nonetheless be a substantial reproduction liable to be restrained.” The core foundation of the work produced by IntCPM is the original work of the plaintiff. EPIONA’s Language Models cannot function without the data upon which it is trained which makes it the kernel and given that the tool provided accurate summaries⁴³, it is not possible to establish that the AI-generated output can hold on its own without the substantial material taken from the plaintiff’s work.

(¶ 25.) In *Fateh Singh Mehta v O P Singhal*,⁴⁴ the court held that where a person has copyright in a literary work and any other person produces or reproduces the work or any substantial part thereof in any material form, he is infringing copyright. In *Hindustan Pencils Ltd v Alpha College Cottage Industries*⁴⁵, the court took a similar view and held that “*where the similarities between the artistic works are fundamental and substantial in material aspects then it amounts to a violation of copyright.*”⁴⁶ The defendant has infringed the work by proving all the tests. It has reproduced Plaintiff’s work without his authorization and also lacks a sense of originality to be considered as an independent work and hence is proven liable.

2.4.2 Vicarious Infringement

(¶ 26.) Vicarious infringement is mainly constituted of two components. the defendant must have had both (1) the “right and ability to supervise the infringing activity” and (2) “a direct financial interest” in the activity. In the landmark case of *My Space Inc. vs Super Cassettes*

⁴³ *Supra* note 20.

⁴⁴ *Fateh Singh Mehta v O P Singhal* AIR (1990) Raj 8.

⁴⁵ *Hindustan Pencils Ltd v Alpha College Cottage Industries* , (2001) PTC 504 (Goa).

⁴⁶ *Id.*

*Industries Ltd*⁴⁷, “if the intermediary satisfies the conditions under § 79, no liability can be imposed on it but if any of the provisions of § 79 are found to have been violated by the intermediary i.e., by exercising control over the content or aiding/abetting the violation, then the safe harbor defense would not be available.”⁴⁸ EPIONA acts as an active intermediary who exercises control over the content produced by IntCPM and has the right and ability to supervise the infringing activity. In addition to that, the company has a direct financial interest vested in it by allowing IntCPM to produce the infringed work of the plaintiff. Hence, the actions of vicarious infringement arise from the output of EPIONA's LLMs, and such activities are ineligible for the protection afforded by § 79⁴⁹ of the Information Technology Act, 2000,⁵⁰ according to § 79(3)⁵¹ of the Act.

ISSUE-III

3. WHETHER USAGE OF THE PLAINTIFF’S WORK INFRINGES THE MORAL RIGHTS NOT AMOUNTING TO FAIR USE?

(¶ 27.) It is humbly submitted before the Hon'ble HC of Hiled that the usage of the plaintiff's work is an act of violation. This is because, *firstly*, it violates the moral rights of the plaintiff which includes the right to paternity and the right to integrity, *secondly*, it does not amount to fair use because it is not mentioned under the exhaustive list of the Copyright Act.

3.1 Defendant’s action infringes the moral rights of the plaintiff

⁴⁷ *My Space Inc. vs Super Cassettes Industries Ltd*, (2011) 47 PTC 49 (Del).

⁴⁸ *Id.*

⁴⁹ 79. Exemption from liability of intermediary in certain cases.--(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-section (2) and (3), an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by him.

⁵⁰ Information Technology Act, 2000.

⁵¹ (3) The provisions of sub-section (1) shall not apply if-- (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(¶ 28.) Among the bundle of exclusive rights granted to copyright owners, moral rights are one of them. An artist's moral rights consist of the right to be identified as the creator of a work (Attribution or paternity), the right to decide when and whether to publish the work (Disclosure), the right to withdraw a work from circulation (Withdrawal), and the right to preserve the integrity of the work (Integrity)⁵²

(¶ 29.) § 57⁵³ of the Copyrights Act of 1957 which can be read alongside Article 6 *bis*(1) of the Berne Convention⁵⁴ provides authors special rights. It includes the right to paternity and the right to integrity.

3.1.1 Right to Paternity (§ 57(1)(a))

(¶ 30.) It gives the author the right to claim authorship. This means that the author has the right to be named as the author and the creator of the work. The defendants have infringed this right of the plaintiff by removing CMI⁵⁵ in the output produced by IntCP. The defendants have violated § 65B⁵⁶ of the Copyrights Act 1957. The plaintiff's published work included CMI as

⁵² Rushton Michael. "The Moral Rights of Artists: Droit Moral Ou Droit Pécuniaire?" *Journal of Cultural Economics*, vol. 22, no. 1, 1998, pp. 15–32. JSTOR, <http://www.jstor.org/stable/41810649>. Accessed 10 Dec. 2023.

⁵³ 57. Author's special rights.— 1 [(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right— (a) to claim authorship of the work; and (b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work 2 [***] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.”

⁵⁴ “Independently of the author's economic rights, and even after the transfer of said rights, the author shall have the right to claim authorship of the work, and to object to any distortion, mutilation or other modification of, or other derogatory action about, the said work, which would be prejudicial to his honor or reputation.”

⁵⁵ Copyright management information, according to section 2(xa) means-

- (a) the title or other information identifying the work or performance;
- (b) the name of the author or performer;
- (c) the name and address of the owner of rights;
- (d) terms and conditions regarding the use of the rights; and
- (e) any number or code that represents the information referred to in sub-clauses (a) (d), but does not include any device or procedure intended to identify the user.]

⁵⁶ “Any person, who knowingly, — (i) removes or alters any rights management information without authority, or (ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies

per § 2(xa). However, the defendants copied the work without authorization, used it to train LLMs, and failed to preserve CMI during the process. During LLM training, the defendants excluded the CMI present in the original work, leading to IntCPM's failure to reproduce that information in its output.⁵⁷ Failure to give credit may result in financial losses for the plaintiff, as the creation of competing products or services negatively affects the sales of the original book, reducing potential royalties.

3.1.2 Right to integrity (§ 57(1)(b))

(¶ 31.) An author of a work possesses the right to integrity because of the nature of his work.

According to the philosophies of Kant and Hegel, “*a creative work is not simply an external object but the communication of author's thoughts, imbued with his personality*” Any modifications or mutilations to his work directly impact the reputation of the author as the work represents his personality. This can be substantiated with the landmark case of **Amar Nath Sehgal v. Union of India**⁵⁸. Here, the SC had widened the amplitude of § 57 of the copyright act, stating that “*Further, in relation to the work of an author, subject to the work attaining the status of a modern national treasure, the right would include an action to protect the integrity of the work concerning the cultural heritage of the nation.*”⁵⁹

(¶ 32.) In the present lawsuit, the plaintiff is an inspiration in the literary field, bestowed with numerous accolades including the prestigious Sahitya Akademi Award⁶⁰ which shows his unparalleled contributions to the literary heritage of the nation. The defendant has utilized and

of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine: Provided that if the rights management information has been tampered with in any work, the owner of copyright in such work may also avail of civil remedies provided under Chapter XII against the persons indulging in such acts.”

⁵⁷ Moot Proposition ¶ 6.

⁵⁸ *Amar Nath Sehgal v. Union of India*, 2005 (30) PTC 253 (Del).

⁵⁹ *Id.*

⁶⁰ Moot proposition ¶ 1.

replicated the plaintiff's work, characterized as a national treasure, for training Language Models (LLMs). During this training, LLMs can extract information from each piece of text, adjusting its output.⁶¹ Due to the non-traditional nature of these AI systems, they possess the capacity to interpret and disseminate data in the public domain. the potential legal consequences of such actions remain uncertain.

(¶ 33.) Considering AI as an author of the AI-generated work may cause several issues. The work generated by AI may not be flawless. The AI may use biased and toxic language⁶² which may result in defamation or obscenity; incite violence on the lines of caste, creed, or religion; or produce any other undesired result. potentially distorting the author's intended message and harming his reputation. Such alterations by AI infringe upon the rights protected by Article 57(1)(a) of the act. The case *Amar Nath Sehgal v. Union of India*⁶³ also highlights the need to protect the soul and the essence of artistic work. When AI replicates, modifies, and generates output, the personal touch and essence of the author's literary work are compromised.

3.2 Use of copyrighted material does not amount to fair dealing

(¶ 34.) In the case of *Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*,⁶⁴ it was held that “*The general principle of fair use would be required to be read into the clause and not the four principles on which fair use is determined in jurisdictions abroad and especially in the United States of America. The purpose of the use would determine whether it is fair use.*”⁶⁵ The purposes of fair dealing is clearly defined in

⁶¹ Moot Proposition ¶ 2.

⁶² Cade Metz, “Meet GPT-3. It Has Learned to Code (and Blog and Argue)”, The New York Times, November 24, 2020, available at: <https://www.nytimes.com/2020/11/24/science/artificial-intelligence-ai-gpt3.html> (last visited on January 23, 2021).

⁶³ *Supra note 59.*

⁶⁴ *Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, (2016) SCC OnLine Del 6229.

⁶⁵ *Id.*

§52⁶⁶ of the Copyright Act and the defendant's purpose in the instant case does not fall under the ambit of the exhaustive list.

(¶ 35.) It's important to note that EPIONA's profitability from the use of copyrighted works in training IntCPM is the main purpose and objective of the defendants. The Delhi HC in the case of *Rupendra Kashyap v. Jiwan Publishing House*⁶⁷ “dealt with the applicability of the test of “commercial exploitation” and stated that the “defense of fair dealing would not be available to a publisher who commercially exploits the original work”⁶⁸. In the ongoing lawsuit, the defendants commercially exploit the original work through licensing and subscription services, potentially offering agreements with fees or a subscription model. Additionally, they may provide custom solutions and consultancy services for businesses seeking specialized implementations of IntCPM.. Moreover, in the case of *Civic Chandran vs. Ammini Amma*⁶⁹, It was held that Hon’ble Courts may allow only extracts from the work as ‘fair dealing’ by § 52 of the Copyright Act, 1957. The defendant in this case has utilized the complete copyrighted material from the training datasets of his books, which doesn't meet the criteria for "extracts." The commercial nature of this use excludes it from qualifying as fair dealing.

⁶⁶ § 52 of the Copyright Act states that 52. Certain acts not to be infringement of copyright.— (1) The following acts shall not constitute an infringement of copyright, namely,— 4 [(a) a fair dealing with any work, not being a computer programme, for the purposes of— (i) private or personal use, including research; (ii) criticism or review, whether of that work or of any other work; (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public.

⁶⁷ *Rupendra Kashyap v. Jiwan Publishing House Pvt. Ltd.*, (1994) (1) Arbitration Law Reports (Delhi) 156 .

⁶⁸ *Id.*

⁶⁹ *Civic Chandran v/s C. Ammini Amma* (1996) 16 PTC 329 (Ker.).

PRAYER

WHEREFORE, IN LIGHT OF THE FACTS STATED, ISSUES RAISED, ARGUMENTS ADVANCED, AUTHORITIES CITED, SUBMISSIONS MADE, HERETO ABOVE AND THOSE TO BE URGED AT THE TIME OF HEARING HUMBLY PRAY THAT THIS HON'BLE COURT MAY BE PLEASED

1. TO AWARD AN INTERIM INJUNCTIVE RELIEF TO PREVENT FURTHER UNAUTHORISED USE OF THE PLAINTIFF'S COPYRIGHTED MATERIALS,
2. TO AWARD Rs. 2,00,01,000/- AS DAMAGES FOR THE COPYRIGHT INFRINGEMENT,
3. AN AWARD FOR FINAL INJUNCTIVE RELIEF TO PREVENT UNAUTHORIZED USE OF THE PLAINTIFF'S COPYRIGHTED MATERIAL,
3. TO COMPENSATE ATTORNEY'S FEES AND COSTS INCURRED IN BRINGING THE PRESENT ACTION,
4. TO AWARD ANY FURTHER RELIEF THE COURT DEEMS JUST AND PROPER.

AND PASS ANY OTHER ORDER, DIRECTION, OR RELIEF THAT THIS HON'BLE COURT MAY DEEM FIT AND APPROPRIATE IN INTEREST OF *justice, equity, and good conscience.*

All of which is humbly prayed,

COUNSEL FOR THE PLAINTIFF

~WRITTEN ON BEHALF OF THE PLAINTIFF~
