

Team Code: TC020

**VIIth SURANA & SURANA AND SHAASTRA IIT MADRAS,
INTELLECTUAL PROPERTY LAW MOOT COMPETITION 2023-2024**

BEFORE THE HON'BLE HIGH COURT OF HILED

IN THE MATTERS OF:

SAMAY SINHA

... PLAINTIFF

V.

EPIONA PRIVATE LIMITED

... DEFENDANT

ON SUBMISSION TO THE HON'BLE HIGH COURT OF HILED

UNDER SECTION 62 OF THE COPYRIGHT ACT, 1957

WRITTEN SUBMISSIONS ON BEHALF OF THE PLAINTIFF

COUNSEL APPEARING ON BEHALF OF THE PLAINTIFF

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LIST OF ABBREVIATIONS

ABBREVIATION	TERM
&	And
§	Section
AIR	All India Report
Anr.	Another
HC	High Court
e.g	Example
Hon'ble	Honourable
i.e.	Id Est/ That Is
Ltd.	Limited
MANU	Manupatra
No.	Number
Ors.	Others
Pvt.	Private
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporters
UOI	Union Of India
v.	Versus
IP	Intellectual Property
w.r.t	With respect to
CPC	Civil Procedure Code
Vis - a - vis	In relation to

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STATEMENT OF JURISDICTION

The suit has been filed in the jurisdiction of this Hon'ble court under Section 62 of the Copyright Act, 1957. The plaintiff has approached this Hon'ble court for the infringement of Copyright under the Copyright Act, 1957. Section 62 provides copyright owners and their licencees an exception to the normal rules of jurisdiction as enshrined in section 20 of the Code of Civil Procedure 1908. Therefore, the plaintiff maintains that, the jurisdiction of section 62 of the Copyright Act, 1957 which protects the copyright owners and licencees from the infringement of copyrights, is applicable in the present suit.

STATEMENT OF FACTS

1. Samay Sinha, a celebrated literary figure, began his influential literary journey in 1999 with 'Demelops,' a historical novel that earned widespread acclaim and culminated in the Sahitya Akademi Award, marking a distinguished career. In the artificial intelligence domain, EPIONA emerged as a notable player, specializing in large language models (LLMs) and featuring the Interactive Creative Pre-Conditioned Metamorphoser (IntCPM).
2. On November 16, 2023, Sinha issued a Cease-and-Desist Notice to EPIONA, alleging unauthorized use of training datasets sourced from copyrighted works without proper authorization, credit, or compensation. The dispute centered around IntCPM's training dataset, with a significant portion controversially obtained from Smashwords, including over 7,000 unique unpublished books in the BookCorpus. EPIONA extended this practice to CPM-3, incorporating 15% of the training dataset from "Books1" and "Books2," the latter containing titles from notorious "shadow library" websites known for illegal book aggregation.
3. Sinha's concerns expanded beyond dataset sourcing, raising issues about IntCPM producing seemingly accurate summaries of his books upon prompt, implying the unauthorized ingestion of his copyrighted materials. He argued that these outputs constituted derivative works or adaptations, lacking reproduction of copyright management information.
4. In response, on December 14, 2023, EPIONA replied that copyright protection does not extend to underlying concepts, factual details, or fundamental elements of creative expression. They contended that statistical information, such as word frequencies, syntactic patterns, and thematic markers, falls outside copyright protection, aligning with principles supporting intellectual and artistic progress.
5. Despite EPIONA's legal stance, on January 4, 2024, Sinha filed a lawsuit under the Indian Copyright Act, 1957. The lawsuit seeks interim injunctive relief, damages for copyright infringement, final injunctive relief, accounts of profits, attorneys' fees, costs, and further relief. The claim designates the High Court of Hiled as the appropriate judicial venue, given EPIONA is incorporated in Chennai. Meanwhile, Sinha resides in Kolkata, West Bengal.

ISSUES RAISED

ISSUE 1

WHETHER THE SUIT IS MAINTAINABLE?

ISSUE 2

WHETHER THE ACT OF THE DEFANDANT AMOUNTS TO INFRINGEMENT OF
COPYRIGHT UNDER COPYRIGHT ACT ,1957?

ISSUE 3

WHETHER THE PLAINTIFF IS ENTILTLED FOR THE RELIEF OF INTERIM
INJUNCTION, COMPENSATION AND OTHER RELIEFS?

SUMMARY OF ARGUMENTS

I. WHETHER THE SUIT IS MAINTAINABLE?

This suit is maintainable as per section 62 of the Copyright Act 1957¹, provides for the jurisdiction for every suit or other civil proceedings of infringement of copyright in any work or the infringement of any other right conferred by this act shall be instituted in the district/high court having jurisdiction.

II. WHETHER THE ACT OF THE DEFANDANT AMOUNTS TO INFRINGEMENT OF COPYRIGHT UNDER COPYRIGHT ACT ,1957?

The act of the Defendant amounts to infringement of copyright because the Defendant in its work has utilised training data sets comprising copyrighted works including books written by Samaya Sinha with the substantial portion without due authorisation, credit or compensation as his rights are protected under section 13 of the Copyright Act of 1957². Thereby the act of the Defendant amounts to infringement of Copyright under section 51 of Copyright,1957³.

III WHETHER THE PLAINTIFF IS ENTILTLED FOR THE RELIEF OF INTERIM INJUNCTION, COMPENSATION AND OTHER RELIEFS?

The plaintiff is entitled for the relief of interim injunction as per Order 39, Rule 1 and for the cost under section 35 of Civil Procedure Code ,1908⁴. The Plaintiff's claim for damages and accounts of profit is also allowed on the ground of infringement of Copyright under section 51 of the Copyright Act ,1957.

¹ The Copyright Act, 1957, § 62 (1)

² The Copyright Act, 1957, § 13 (1) (a)

³ The Copyright Act, 1957, § 51

⁴ Civil Procedure Code ,1908 order xxxix ,rule 1 and § 35

ARGUMENTS ADVANCED

ISSUE 1: WHETHER THE SUIT IS MAINTAINABLE?

1.1 YES, THE SUIT HEREIN IS MAINTAINABLE.

In the facts it is clearly stated that as the plaintiff resides in Kolkata, State of West Bengal and the defendant i.e., EPIONA is incorporated in Chennai, State of Tamil Nadu, and the plaintiff has filed this law suit in The High Court of Hiled (with the same jurisdictional powers as the Hon'ble High Court of Delhi) as the subject matter of this action, the alleged acts of copyright infringement and related claims fall within its territorial jurisdiction. Moreover, as the defendant engages in online activities within this jurisdiction, and the substantial part of the events give rise to the claims occurred herein.

In this particular suit as the High Court of Delhi have original jurisdiction which refers to a Court's authority to hear the legal matter for the first time, as opposed to an appellate jurisdiction where a higher court reviews the decisions made by the lower courts.

Over the past decade, the Delhi High Court has become the hub of IP disputes. It has passed judgements interpreting the provision to determine the jurisdiction in cases where one of the parties (or both the parties) have online presence. The Court, in the case of **World Wrestling Entertainment v. M/S Reshma Collection & Ors**⁵, stated that, "The website of the appellant/plaintiff is not an offer but an invitation to an offer, just as a menu in a restaurant. The invitation, if accepted by a customer in Delhi, becomes an offer made by the customer in Delhi for purchasing the goods "advertised" on the website of the appellant/plaintiff. When, through the mode of the software and the browser, the transaction is confirmed and payment is

⁵ World Wrestling Entertainment Inc. v. M/s. Reshma Collection FAO(OS) No. 506 of 2013

made to the appellant/plaintiff through its website, the appellant/plaintiff accepts the offer of the customer at Delhi. Since the transaction between the two takes place instantaneously, the acceptance by the appellant/plaintiff is instantaneously communicated to its customer through the internet at Delhi. Therefore, in such a case, part of the cause of action would arise in Delhi.”

1.2 SPECIAL RULES AS TO COPYRIGHT.

The suit is maintainable as per Section 62 of The Copyright Act, 1957⁶ which deals with the jurisdiction of courts over copyright matters states that a suit or civil proceeding that arises w.r.t infringement of copyright shall be instituted in the District/High court⁷ having jurisdiction. However, it further provides for the expression, “notwithstanding anything contained in the in Clause 2 of Code of Civil Procedure, 1908” (5 of 1908)⁸ of the same section, while specifying that such District courts includes: a. where the person instituting a suit resides or where he/she carries on business or works for gain. This non-obstante clause {“notwithstanding anything contained in the Code of Civil Procedure, 1908 (CPC)} becomes relevant in reference to Section 20 of the CPC, in the case of copyrights. This is because Section 20⁹ of the CPC, specifies that a civil suit shall be instituted in either a court where the defendant resides or carries on business or works for gain; or where the cause of action wholly or partially arose. Also, if a non-resident defendant objects to the place of suing, then such a suit cannot proceed without the leave of the Court. The question of jurisdiction of courts in copyright infringement matters, taking into account the non-obstante clause in Section 62(2) of The Copyright Act, 1957 and laying particular emphasis on the word “include” in the said clause has come up before different courts in India from time-to-time. *In Caterpillar Inc. v. Kailash Nichani*¹⁰, the court observed that since the defendants are selling the infringed goods in Delhi

⁶ The Copyright Act, 1957, § 62 (1)

⁷ Dr. Raghbir Singh, commentary on the Copyright Act, published by universal law publishing co.pvt.ltd, new Delhi, seventh edition 2010

⁸ Code of Civil Procedure, 1908 (5 of 1908)

⁹ Code of Civil Procedure, 1908 § 20 (c)

¹⁰ *Caterpillar Inc. v. Kailash Nichani and Ors.* [2002(24)PTC 405(Del.)]

and therefore the court has the jurisdiction to try this suit. the court further held that the suit cannot be dismissed for want of territorial jurisdiction at this stage. In *Exphar SA & Anr v. Eupharma Laboratories Ltd & Anr¹¹*, the Court laid particular emphasis on the word “include” in Section 62(2) of The Copyright Act, 1957. While laying such emphasis, the Court compared the jurisdiction of Indian courts under the Copyright Act, 1957 vis. a vis. the Code of Civil Procedure, 1908. The court concluded that Section 62 of the Copyright Act, 1957 provided for a wider territorial jurisdiction as compared to that provided under § 20 of the CPC. The Court clarified that subsection (2) of Section 62 in the Copyright Act, 1957 does not restrict the rights of copyright owners to institute suits for infringement but rather removes the impediments to them exercising their rights. It held that the said subsection prescribes an additional ground, expanding the territorial jurisdiction of the courts in copyright cases, over and above the ones specified under Section 20 of the CPC.

1.3 LONG – ARM JURISDICTION:

“Jurisdiction” refers to the extent of the power of a court to entertain suits and applications. When we say that a particular court has ‘jurisdiction’ over a matter, it means that the said court has the power, authority and competency to adjudicate the matter presented before it. In other words, such a court enjoys the power and authority to inquire into facts, apply the law, pronounce a judgment and carry it into execution. Of the three kinds of the jurisdiction of a court – pecuniary, territorial and subject matter – w.r.t. the issue of ‘long arm’ jurisdiction in relation to the Copyright Act in India, we will concern ourselves mainly with the territorial jurisdiction of different Indian courts. It is pertinent to understand that while jurisdiction is an aspect of state sovereignty; it is not necessarily coextensive with it. A long-arm statute may allow the courts to exercise jurisdiction over non-resident entities, which are outside of the state or national boundary. It was the U.S. Supreme Court, which developed the jurisprudence

¹¹ Exphar SA and Anr. v. Eupharma Laboratories Ltd. and Anr. (2004) 3 SCC 688

related to ‘Long-Arm Jurisdiction’¹². In the *International Shoe v. Washington case*¹³ : In the context of India, The Copyright Act, 1957 includes a non-obstante clause, which, it has been argued, provides long-arm jurisdiction to the Indian courts. The long-arm jurisdiction in relation to The Copyright Act, 1957 was further clarified in the *Indian Performing Rights Society Ltd. v. Sanjay Dalia*¹⁴ case. In this case, the Court used Heydon’s “rule of mischief” while interpreting Section 62 of the Act. It held that four things are to be discerned and considered in this regard: Common Law before the making of the Act: Section 20 of the CPC, which provided that a suit was to be instituted only in accordance with the provisions contained therein); a. The Mischief and Defect for which the Common Law provided: There was no provision for an author whose copyright had been infringed to sue where he lived, operated a business or was employed. As a result, he suffered inconvenience or deterrence; b. By expressly providing for a provision to the author or copyright that enabled him to sue at his place of residence/business/occupation, the defect was sought to be removed; c. The True Reason of the Remedy is that Plaintiffs should not be forbidden from bringing a suit where they reside, have a head/registered office, conduct business, or work for gain, or where the cause of action arose because the legislature intended that they do not have to drag the defendant to a distant location where they have subordinate offices or branches only to inconvenience them. While providing a remedy to the plaintiff for his convenience, avoidance of counter-mischief to the defendant is also necessary. The lawmakers did not intend for both parties to go to a far-off distant place only because the plaintiff wants to inconvenience the defendant. Thus the express provision is not to be misused to the detriment of the defendant. The expression: “District court” will include the High Court having original jurisdiction¹⁵. District Court as referred in section 62 which means District Court as defined in the Code of

¹²IPLEADERS, <https://blog.ipleaders.in/the-long-arm-jurisdiction-of-courts-regarding-copyright-law-in-india/> last visited on 20th December 2023

¹³ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945)

¹⁴ *IPRS v. Sanjay Dalia and Anr.* MPR 2007 (3) 204, Bench: B. D Ahmed

¹⁵ *Penguin books Ltd. England v. India Book Distributors*, A.I.R. 1985 Delhi 29 at p.38.

Civil Procedure, 1908, i.e. Act No. 5 of 1908. The District Court defined under that Act is the principal court of the District as also High Court which has the original jurisdiction over a District or more Districts. In *S. Dharmalinga Nayakar v. D. Balasubramania Ayyar*¹⁶, The Court observed that: Copyright Act which deals with the special subject – matter of copyright clearly restricts jurisdiction to hear a suit or proceeding relating to copyright to the High Court and the District Courts. In *Daily Calendar Supplying Bureau, Sivakasi v. United Concern*¹⁷, The Court held that: Section 13 of which provides that the Court where a suit or other civil proceeding regarding infringement of copyright shall be instituted would be the High Court or the Court of the District Judge. Thereby we are very much before the appropriate authority to get our grievance redressed.

ISSUE2: WHETHER THE ACT OF THE DEFANDANT AMOUNTS TO INFRINGEMENT OF COPYRIGHT UNDER COPYRIGHT ACT ,1957?

We humbly submit that the act of the defendant amounts to infringement under copyright Act ,1957 because the works in which copyright subsists is provided in section 13 of the copyright Act,1957 Which clearly says that; Copyright shall subsist throughout India in the following classes work, That is to say, i) original literary, dramatic, musical artistic work.

And the same has been dealt in the facts of this case.

2.1 SECTION 14 AND SECTION 17 OF COPYRIGHT ACT, 1957.

In section 14, of copyright act ,1957; It clearly states that, "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;

¹⁶ A.I.R. 1937 Mad. 94.

¹⁷ A.I.R. 1967 Mad. 381 at pp. 384,385.

(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);

In the case, *Blackwood v. Parasuraman*¹⁸, It was held that if copyright subsists in the original work, then reproduction or publication of the translation without the consent or licence of the owner of the copyright in the original will constitute infringement. And In section 17 of copyright Act, 1957¹⁹; makes it clear that the author of a work shall be the first owner of the copyright therein, Provided that-

(a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;

So, this above-mentioned section mandates that the author of the work shall be the first owner of the copyrighted work.

2.2 ACTS WHICH CONSTITUTE INFRINGEMENT

Since the forms of creative works are numerous, i.e., literary, dramatic, musical, artistic, etc. the acts which would constitute infringement would depend upon the nature of the work.

Section 51 of the Act defines infringement of a copyright not specifically with respect to each kind of creative work, but in general terms. According to section 51²⁰ of the Act, copyright in a work shall be deemed to be infringed:

¹⁸ AIR 1959 Mad 410

¹⁹ The Copyright Act, 1957 (14 of 1957)

²⁰ The Copyright Act, 1957, § 51

a) when any person without a licence from the owner or the Registrar of Copyrights does anything, the exclusive right to do which is by this Act conferred upon the owner of copyright, or permits for profit, any place to be used for the communication of the work to the public, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright²¹;

For the purpose of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an infringing copy.

In ***Bridgeport Music, Inc. v. Dimension Films (2004)***²²:

This case dealt with the unauthorized sampling of a three-note guitar riff. The Sixth Circuit Court of Appeals held that even a small portion of a copyrighted work could constitute infringement if it was qualitatively significant.

In determining whether an act of the defendant would amount to infringement or not, the factors which are taken into consideration is that

i. Whether copying has a causal connection, deliberately made or is a unintentional, indirect copying. Causal connection can be found where the infringer has some overt motive to produce a copy, for instance reaping or monetary reward.

Illustration

A poem is copied verbatim by another and published in his own name. A third person borrows the idea of the poem and paraphrases it. In the first case, the person is directly infringing the copyright. In the latter case, infringement may be indirect depending upon the degree of similarity between the two works. Both cases, however, involve infringement.

Therefore based on the degree of similarity between the two works, we humbly submit before the bench that EPIONA has copied the accurate summary of our work and it has infringed the copyright of Samay Sinha.

²¹ Dr. BL. Wadehra, Law relating to intellectual property, published by universal law publisher co. pvt. ltd., 2007, fifth edition .

²² Bridgeport Music, Inc. v. Dimension Films, 410 F.3d 792

2.3. WITHOUT THE CONSENT OR LICENCE OF THE OWNER OF COPYRIGHT, THE DEFENDANT IS GUILTY OF COPYRIGHT INFRINGEMENT.

Section 51 when read with section 14(a) brings out that if a person without the consent or licence of the owner of copyright does or authorises the doing of any of the following acts, he will be guilty of infringement of copyright in the work.

- (1) To reproduce the work in any material form including the storing of it in any medium by electronic means.
- (2) To issue copies of the work to the public not being copies already in circulation.
- (6) To make any adaptation of the work.

Thereby, EPOIONA in it's development of IntCPM utilised training datasets comprising copyrighted works, including books written by Samay Sinha's without the consent or licence of the owner of copyright, Hence EPIONA is guilty of copyright infringement.

2.4 TEST OF INFRINGEMENT:

The test of infringement is the presence of two elements:

1. There must be sufficient objective similarity between the infringing work and the copyright work or a substantial part thereof.
2. The copyright work must be the source from which the infringing work is derived.

In the case of Jarrold v. Houston, (1857) 3 K& 708²³, a third element was identified.

It was held that whether there has been an animus furandi, i.e., intent to commit fraud on the part of the defendant for the purpose of saving labour, was an important consideration in arriving at the conclusion of occurrence of any infringement.

Therefore, from the above mentioned test And case we humbly submit before the bench that For the purpose of saving the labour, EPIONA pvt. Ltd. has used samay Sinha's work.

²³ Jarrold v. Houston, (1857) 3 K& 708

2.5 ADAPTATION OF LITERARY WORK

Copyright subsists in the original adaptation of another literary work because the adaptation itself can be a literary work. Adaptation in relation to literary work means the conversion of the work into a dramatic work by way of performance in public or otherwise, any abridgement of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical. According to section 2(a)(v) of the Act adaptation in relation to any work includes any use of such work involving the rearrangement or alteration. Where the owner of a copyright in an original work licences another person to arrange or adapt it, e.g., to base a film script or a play upon a book, the copyright in the arrangement then vests in the arranger. The owner of the copyright in the original work does not own the copyright in the arrangement. So here, in this suit there was adaptation without permission of Samay Sinha, the book is converted in the form of online dataset. Ultimately, it amounts to adaptation giving rise to infringement of copyright.

2.6 THERE IS SUBSTANTIAL COPYING IN THIS PARTICULAR WORK

For the purposes of infringement of copyright, an exact reproduction of copy is not necessary. What is essential is to see whether there is a reproduction of substantial part of the picture. There can be no test to decide what a substantial part of a picture is.

There must be substantial copying of the work. In deciding whether there has been substantial copying, some factors have to be taken into consideration. These are:

(i) The volume of the material borrowed by the defendant. Volume here does not mean only the quantity but also the quality (a short passage may be of vital significance in a work), which is borrowed by the defendant. In *Landbroke Ltd. v. William Hill*, (1964)²⁴, it was held that substantiality is a question of fact and degree determined on the basis of importance of the parts reproduced.

²⁴ Landbroke Ltd. v. William Hill, (1964) 1 WLR 273

(ii) The extent to which the plaintiff's and defendant's work are competing with each other.

Illustration; A work of fiction is written by X. Y reads the work and authors another work carrying 10 chapters of the previous book which have been paraphrased by him though marginally, both the novels are sold in the same outlet. In this case, there has been substantial copying with the intention of cashing it on the work created by another.

All the above factors suggest that there has indeed been infringement of the original author's copyright. In the case of *D. Narayan Rao v. V. Prasad*, (1979)²⁵, the defendant had borrowed a part of the speech which was only of two-and-a-half-minutes duration in a three hour film. Yet it was held that substantial part of the speech had been copied.

Here, in this particular suit even if it is the only summary but still it amounts to substantial copying because accurate part of the literary work is copied.

2.7 ABRIDGEMENT OF LITERARY WORK

A genuine abridgement of a literary work is an original work and can be subject of copyright. An abridgement of a literary work is entitled to copyright if it is new and original and the author has bestowed sufficient skill and labour upon it. It is obvious that the learning, judgment, literary taste and skill requisite to compile properly and effectively an abridgement deserving that name would not be needed merely to select such scripts taken from an author and to print them in a narrative form. In other words, to copy certain passages and omit others so as to reduce the volume in bulk is not such an abridgement as would entitle an author of the abridged version, a copyright in the same. In *Govindan v. Gopalakrishna*,²⁶: (1955), the view expressed on Abridgement was that "abridgement is the reproduction of an original work in a much more precise and concise way. So, a genuine abridgement of a literary work is an 'original work' and is the subject-matter of copyright. A digest of any literary work is an abridgement. An abridgement of a literary work is entitled to protection if it is original and the author has

²⁵ D. Narayan Rao v. V. Prasad, (1979) 2 APLJ 231

²⁶ AIR 1955 Mad 391, LJ 401

bestowed sufficient skill and labour upon it. It does not matter if the amount of originality is very small.

So therefore, in this suit, as per Section 51 of the Copyright Act, 1957, All the above stated arguments on the act of defendant amounts to infringement.

ISSUE 3: WHETHER THE PLAINTIFF IS ENTITLED FOR THE RELIEF OF INTERIM INJUNCTION, COMPENSATION AND OTHER RELIEFS?

It is humbly submitted before this Hon'ble Court that, the Plaintiff is entitled for the relief of interim injunction, compensation and other reliefs as the defendant has infringed the copyright. EPIONA's unauthorised use of his registered copyrighted materials, without obtaining consent, providing credit or offering compensation, thereby violating the Indian Copyright Act, 1957.

3.1 INTERIM INJUNCTION.

Interim Injunction are also known as temporary injunctions which are granted to the pending and final adjudication of the case to prevent potential harm or prejudice to the plaintiff. Injunctions play an integral role in preventing irreparable harm, preserving subject matter, and maintaining equities between parties. This preventive relief is especially crucial in property disputes, Intellectual Property cases, and several other civil matters²⁷.

- i. One of the first elements that the court evaluates is whether the plaintiff has a Prima facie case. This is essential for the issuance of an injunction.

To establish a prima facie case of copyright infringement the plaintiff must show:

- (1) Ownership of a valid copyright, and
- (2) Violation by the alleged infringer of at least one of the exclusive rights granted to copyright owners by the Copyright Act.

²⁷ SIMRAN LAW, [Injunctions in Civil Law: Understanding Order 39 of CPC - SimranLaw](#), last visited on 20th December 2023

- ii. The statement of facts which are already mentioned states that the said defendant i.e., EPIONA, in its development of IntCPM, has utilised training datasets comprising copyrighted works, including books written by Samay Sinha. Also he stated that EPIONA has utilised various training datasets, with a substantial portion sourced from copyrighted works, including those of his, without due authorisation, credit or compensation.
- iii. In a case of clear infringement of the plaintiff's copyright under Sec. 55²⁸ of the Act plaintiff is entitled *prima facie* to the relief of permanent injunction for the infringement of his Copyright. The infringement of Copyright being *prima facie* established, the plaintiff is entitled to interim relief for the infringement of the copyright as well in the shape of temporary injunction till the disposal of the suit from dealing in the matter in question and from passing off the goods as those of the applicants in any manner.

The Hon'ble Supreme court has maintained in a series of decisions, including the landmark *Gujarat Bottling Co. Ltd. Case[1]*²⁹, that when considering an application for a temporary injunction, the Court must follow specific guidelines, many of which are briefly described below:

The applicant for a temporary injunction must prove his case *prima facie*. For this purpose, the Court will look at the basic facts that show the applicant has a *prima facie* case to contest, rather than the merits of the matter. They must then demonstrate that the claims in the temporary injunction application are justified. The court will also investigate the applicant's activity, which should be done even before a move to set aside an order is made under Order 39 Rule 4 of the CPC, 1908³⁰. If the order is not issued, the court must weigh the balance of convenience, or the comparative damage sustained by the applicant and defendant.

²⁸ The Copyright Act, 1957 § 55

²⁹ LEGALSERVICEINDIA, <https://www.legalserviceindia.com/legal/article-8647-temporary-injunctions-in-matter-of-intellectual-property.html#:~:text=In%20Specific%20Relief%20Act%201963%2C%20temporary%20injunctions%20are,be%20granted%20at%20any%20stage%20of%20a%20suit.%22> last visited on 20th December 2023

³⁰ Civil Procedure Code ,1908 order xxxix ,rule 1.

The court will first consider the degree of the loss that would be suffered by the applicant if the order is not granted, as well as whether the loss is recoupable through monetary compensation. The party who stands to lose the most is said to have the balance of convenience on their side, and the court will either grant or deny the order.

If directed, the court might further ask the party to post compensation security or give an assurance to pay the compensation. Order 39, Rule 1 of the Code of Civil Proceeding which speaks about the cases in which temporary injunction may be granted –

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to? [defrauding] his creditors,

[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders³¹.

Therefore, Samay Sinha contended that IntCPM's functionality relies on the data upon which it is trained, and also when prompted to summarize books authored by him, produced accurate summaries based on the allegedly unauthorized ingestion of his copyrighted materials. Samay Sinha stated that these outputs by IntCPM were derivative works or adaptations of his copyrighted books and that at no point did IntCPM reproduce any copyright management

³¹ CPC, order 39 rule 1, (5 of 1908) The Code of Civil Procedure 1908, India.

information included in their published works. Hence, the plaintiff is entitled for the relief of interim injunction.

3.2. IRREPARABLE LOSS:

The plaintiff must show that not granting an injunction would lead to irreparable harm or loss that cannot be compensated by damages. In copyright law, the concept of "irreparable loss" often arises in the context of seeking injunctive relief. Irreparable loss implies harm or damage that is difficult or impossible to quantify in monetary terms and cannot be adequately compensated through financial remedies. In *Colgate Palmolive (India) Ltd v Hindustan Lever Ltd (1999)*³²: This Indian case involved the alleged disparagement of a product through a commercial. The court considered whether the harm suffered by the plaintiff was irreparable and whether an injunction was necessary to prevent such harm. This demonstrate how the concept of irreparable loss is considered in various legal contexts, including intellectual property disputes and commercial cases. Courts typically weigh the potential harm to the plaintiff if an injunction is not granted and assess whether monetary compensation would be sufficient to remedy the harm suffered. The goal is to prevent unjust consequences that cannot be adequately compensated with monetary damages alone.

3.3 BALANCE OF CONVENIENCE:

Once the infringement and its continuance is proved the plaintiff will usually be got entitled to an injunction, but the injunctions would not be granted if the damage caused to the defendants by granting the injunction would be out of all proportion to the seriousness of the infringement or to the possible damage to the plaintiff. In actions for infringement of copyright damages are often not an adequate remedy since there are difficulties in both ascertaining and quantifying such damage as injury to the plaintiffs than in refusing injunction. Thus, the balance of

³² Colgate Palmolive Co. & Anr v. Hindustan Unilever Ltd., FAO(OS) 396/2013 (Del. DB Dec. 10, 2013)

convenience lies in granting rather than in refusing injunction. The question of balance of convenience. In *American Cyanamid v. Ethicon the House of Lord*³³s laid down the process through which it should go before granting an injunction;

1. Is there a serious issue to be tried. If there is not, no injunction will be issued. If there is, then the Court moves to the second question;

2. If the plaintiff can be adequately compensated by damages at trial no injunction will be issued. If the defendant can be adequately compensated at trial by the plaintiffs undertaking to pay the defendant his damages, then an injunction should be ordered;

3. If there is no clear answer to either question then the Court should attempt to determine whether the defendant would suffer greater inconvenience if the injunction were granted or the plaintiff if it is not granted. This is known as the balance of convenience test;

4. It is only if the "balance of convenience" test does not resolve the matter that the Court should look at the relative strength of the parties case as revealed by their affidavit evidence.

The third condition for granting an interim injunction is the balance of the convenience which must be in favor of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or the inconvenience which is likely to be caused to the applicant by refusing injunction will be greater than that which is likely to be caused to the opposite party by granting it. Hence, it is the duty of the court to consider the convenience of the plaintiff as against the convenience of the defendant. If the court thinks that by refusing the injunctions, greater or more inconvenience will be caused to the plaintiff, it will grant interim injunction. Moreover, if the court finds that greater inconvenience will be caused to the defendant, it will refuse the relief. In *Bikash Chandra Deb v. Vijaya Minerals Pvt. Ltd*³⁴: The Hon'ble Calcutta High Court observed that issue of balance of convenience, it is to be noted

³³ American Cyanamid Co v Ethicon Ltd [1975] UKHL 1

³⁴ Bikash Chandra Deb vs Vijaya Minerals Pvt. Ltd.: 2005 (1) CHN 582

that the Court shall lean in Favor of the introduction of the concept of balance of convenience, but does not mean and imply that the balance would be on one side and not in favor of the other. There must be a proper balance between the parties and the balance cannot be a one-sided affair. It should not be forgotten that the grant of an interim injunction is discretionary and equitable remedy and, the power to grant injunction must be exercised in accordance with sound judicial principles. Being equitable relief, the court would keep in mind all the equitable considerations. The relief can be granted only if justice, equity, and good conscience require. Hence, the court must follow all the sound judicial principles and must ensure that there is an equal and proper balance between the interests of the parties. Defendant has utilised various training datasets with the substantial portion sourced from the copyrighted works of plaintiff without due authorisation, credit or compensation, further defendant continued this practice incorporating 15% of the training dataset from two internet-based books corpora which was remained undisclosed by the defendant.

This controversial nature of defendant's practices is based on allegedly unauthorised ingestion of the copyrighted materials of the plaintiff. All these instances shows that there is continuous process of successive infringing acts so, the Hon'ble Court can weigh the possible damage to the plaintiff if the injunction is not granted as the balance of convenience is in favour of the plaintiff compared to the defendant.

PRAYER

In the light of facts stated, arguments advanced and authorities cited, the Plaintiff, humbly prays before this Hon'ble high court may please to adjudge and declare:

1. Interim injunctive relief to prevent further unauthorized use of Plaintiffs' copyrighted materials.
2. An award of damages for the copyright infringement.
3. Final Injunctive relief to prevent further unauthorized use of Plaintiffs' copyrighted materials.
4. Accounts of profits derived from the unauthorized use of Plaintiffs' copyrighted materials.
5. Attorneys' fees and costs incurred in bringing this action.

And pass any other order, which the Hon'ble Court may deem fit in light of justice, equity and good conscience. All of which is humbly prayed.