

TEAM CODE: TC001

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

BEFORE THE HON'BLE
HIGH COURT OF HILED

(Filed under Section 62 of The Copyright Act, 1957)

SAMAY SINHA

.....PLAINTIFF

VERSUS

EPIONA PRIVATE LIMITED

.....DEFENDANT

Written Submission on behalf of the Plaintiff,

Counsel for the Plaintiff.

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TABLE OF ABBREVIATIONS

&	And
AIR	All India Reporter
¶	Para
¶¶	Paras
Anr.	Another
Art.	Article
CJ	Chief Justice
Co.	Company
&	And
Ed.	Edition
Etc.	Etcetera
HC	High Court
Hon'ble	Honourable
i.e.	That is
LLM	Large Language Models
AI	Artificial Intelligence
IntCPM	Interactive Creative Pre-Conditioned Metamorphoser

J.	Justice
Ker	Kerala
LR	Law Report
Ltd.	Limited
u/a	Under Article
U.S.	United States
No.	Number
Ors.	Others
Pg.	Page
PP	Pages
Pvt.	Private
SC	Supreme Court
SCC	Supreme Court Cases
Sec./ S.	Section
v.	Versus
Vol	Volume

STATEMENT OF JURISDICTION

THE COUNSEL FOR THE PLAINTIFF, HEREBY HUMBLY SUBMITS TO THE JURISDICTION OF
THIS HON'BLE COURT UNDER ARTICLE 62.

THE HON'BLE HIGH COURT OF HILED HAS THE JURISDICTION IN THIS MATTER UNDER
SECTION 62 OF THE COPYRIGHT ACT, 1957. THE COUNSEL FOR THE PLAINTIFF MOST
HUMBLY AND RESPECTFULLY SUBMITS THAT HIGH COURT OF HILED HAS A REQUISITE
TERRITORIAL AND SUBJECT MATTER JURISDICTION TO ENTERTAIN AND ADJUDICATE
MATTERS OF COPYRIGHT VIOLATION BY THE VIRTUE OF SECTION 62 OF THE COPYRIGHT
ACT, 1957.

STATEMENT OF FACTS

BACKGROUND:

The plaintiff, Samay Sinha, residing in Kolkata, is a luminary in the literary realm and has won many awards for his historical novels like Demelops, while the defendant, EPIONA incorporated in Chennai, is an AI software developer and seller known for creating large language models (LLMs) that are trained by copying extensive text from various sources into a training dataset like Interactive Creative Pre-Conditioned Metamorphoser (IntCPM).

UNFOLDING OF EVENTS:

The plaintiff issued a Cease-and-Desist Notice to EPIONA, asserting that they utilized training datasets, including a substantial portion sourced from his copyrighted works, without proper authorization, credit, or compensation. In the notice, he also claimed that IntCPM was trained on Book Corpus without consent and that CPM-3 incorporated undisclosed content from “Books1” and “Books2,” sourced from shadow library websites. Sinha alleged copyright infringement, stating that IntCPM produced summaries of his books without authorization and that when prompted to summarize them, it made accurate summaries based on his book. He claimed the outputs generated by IntCPM were derivative works or adaptations without reproducing copyright management information. Following this EPIONA issued a Reply Legal Notice asserting that copyright does not protect underlying concepts or factual details, and information related to word frequencies, syntactic patterns, and thematic markers falls beyond the scope of copyright protection and that IntCPM's creation does not display substantial similarity to the original, it does not qualify as a “copy” or a “derivative work. EPIONA took the defence of fair use for its activities. Therefore, a lawsuit was filed before the High Court of Hiled in response to EPIONA's unauthorized use of his copyrighted materials by the plaintiff, seeking interim injunctive relief, damages, final injunctive relief, accounts of profits, attorneys' fees, and any other relief deemed just and proper.

STATEMENT OF ISSUES

ISSUE I

WHETHER THE INSTANT LAWSUIT FILED IS MAINTAINABLE UNDER THE JURISDICTION OF
THE HIGH COURT OF HILED?

ISSUE II

WHETHER THE USE OF COPYRIGHTED WORK IN TRAINING DATASETS USED BY EPIONA
CAN BE CLASSIFIED AS COPYRIGHT INFRINGEMENT?

ISSUE III

WHETHER THE RELIEF OF INJUNCTIONS SOUGHT BY THE PLAINTIFF IS TO BE GRANTED?

SUMMARY OF PLEADINGS

ISSUE I: THE INSTANT LAWSUIT FILED IS MAINTAINABLE UNDER THE JURISDICTION OF THE HIGH COURT OF HILED.

It is most humbly submitted before this Hon'ble court that the lawsuit is maintainable before the High Court of Hiled under S.62 of the Copyright Act, 1957.

ISSUE II: THE USE OF COPYRIGHTED WORK IN TRAINING DATASETS USED BY EPIONA IS CLASSIFIED AS COPYRIGHT INFRINGEMENT

It is submitted that the defendant EPIONA has violated the rights of the plaintiff by infringing upon his intellectual property rights as granted to him by the Indian Copyright Act in order to train their Large Language Model, IntCPM. This infringement of the copyright does not fall within the ambit of fair use as contended by the defendant.

ISSUE III: THE RELIEF OF INJUNCTIONS SOUGHT BY THE PLAINTIFF MUST BE GRANTED?

It is submitted that the relief of interim and permanent injunction sought by the plaintiff should be granted. Grant of interim relief requires the claim to fulfil three criteria, namely, the existence of a prima facie case, balance of convenience, and irreparable injury, all of which are in favour of the plaintiff. The plaintiff also maintains the qualification to avail a permanent injunction by passing a decree based on the merits of the suit to prevent and end further unauthorized use of the plaintiff's copyrighted materials.

ARGUMENTS ADVANCED

I. THE INSTANT SUIT FILED IS MAINTAINABLE UNDER THE JURISDICTION OF THE HIGH COURT OF HILED.

1.1. THE LAWSUIT FILED IS MAINTAINABLE UNDER S.62 OF THE COPYRIGHT ACT,1957

1. It is humbly submitted before the Hon'ble court that the present case is maintainable on merits in the High Court of Hiled as the actions of the Plaintiff has violated the intellectual property rights of the defendant and as such, under S.62¹ of the act,

“(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.”

2. According to Section 20 of the Code of Civil Procedure²:

“Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(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

¹ Copyright Act 1957, s62

² Code of Civil Procedure 1908, s20

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. Along the same lines, in the case of *IPRS v. Sanjay Dalia*,³ the Supreme Court recognized the occurrence of the cause of action, whether wholly or partially, as sufficient ground for invoking the jurisdiction of the respective court as it was held that,

Accrual of cause of action is a sine qua non for a suit to be filed. Cause of action is a bundle of facts which is required to be proved to grant relief to the Plaintiff. Cause of action not only refers to the infringement but also the material facts on which right is founded. Section 20 of the Code of Civil Procedure recognises the territorial jurisdiction of the courts inter alia where the cause of action wholly or in part arises. It has to be decided in each case whether cause of action wholly or in part arises at a particular place⁴. Thus, a Plaintiff can also file a suit where the cause of action wholly or in part arises.

4. In the case of *Expfar SA & Anr. v. Eupharma Laboratories Ltd. & Anr.*⁵, the Supreme Court recognizes the intention of the legislators in assigning the competent district courts with the jurisdiction to adjudicate matters of copyright infringement. At the same time, notwithstanding the additional clause, there is no bar for filing of such suit in any court which is superior to the District court.

“13. It is Therefore, clear that the object and reason for the introduction of sub-section (2) of Section 52 was not to restrict the owners of the copyright to exercise their rights but to remove any impediment from their doing so. Section 62(2) cannot be read as limiting the jurisdiction of the District Court only to cases where 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 presently works for gain. It prescribes an

³ *IPRS v. Sanjay Dalia* AIR 2015 SC 3479

⁴ *Rajasthan High Court Advocates Association v Union of India & Ors.*, AIR 2001 SC 416

⁵ *Expfar SA & Anr. v. Eupharma Laboratories Ltd. & Anr*, 2004 (3) SCC 688

additional ground for attracting the jurisdiction of a court over and above the "normal" grounds as laid down in Section 20 of the Code."

It was held in the same case that the sending of a cease and desist notice would be enough grounds to invoke the jurisdiction of the High Court. Many cases of copyright infringement, placing their reliance upon this case, have come to the same conclusion and been filed directly to the High Court.

5. One such case is *Kensoft Infotech Ltd. Vs. R.S. Krishnaswami and Ors.*⁶ wherein it was held that,

"54...In the letter case, as already stated, the Apex Court after considering all the earlier decisions, laid down that even if a small fraction of cause of action accrues within the jurisdiction of a High Court, the said High Court will have jurisdiction in the matter..."

6. Also, in *Shree Rajmoti Industries vs. Rajmoti Oil Mill Pvt. Ltd. and Ors.*⁷ it was held that when an objection to jurisdiction is raised, the Court can proceed on the basis that the facts as pleaded by the initiator of the impugned proceedings are correct which in this case would be the plaintiff.

"The plaintiff has averred in its plaint that it carries on business in Delhi and has referred to its two distributors for this purpose. Whether or not such a plea has merit and is sustainable has no bearing on the issue of jurisdiction. In my view that is a sufficient compliance under Section 62(2) of the Cr. Act and Section 134(2) of the T.M. Act."

7. In our present case the Plaintiff had already issued a Cease and Desist notice to the defendants and as the alleged acts of copyright infringement and related claims fall within its territorial jurisdiction, the High Court of Hiled would have proper jurisdiction in deciding this case, and hence the suit is maintainable.

**II. THE USE OF COPYRIGHTED WORK IN TRAINING DATASETS USED BY EPIONA CAN
BE CLASSIFIED AS COPYRIGHT INFRINGEMENT?**

⁶ Kensoft Infotech Ltd. Vs. R.S. Krishnaswami and Ors. (2007) ILR 1Delhi308

⁷ Shree Rajmoti Industries vs. Rajmoti Oil Mill Pvt. Ltd. and Ors. 115(2004)DLT212

8. The plaintiff humbly submits before the court that the defendant, EPIONA, by training their Large Language Models with text that includes copyrighted material owned by the plaintiff, has violated the intellectual property rights of the Plaintiff conferred to him under the Copyright Act 1957.
9. The defendant is a company engaged in making “Artificial Intelligence” or “AI” software. Particularly Large Language Models or LLMs, which would fall under the ambit of “Generative AI” as they are used to generate textual responses to inputs given by its users. EPIONA in training, such LLMs have been found to use training data sets containing vast amounts of texts that also contain copyrighted work, including the plaintiff's works in training, said LLMs.
10. As such, there is no contention from the defendant's side that copyrighted work has not been used in the training of their LLM. Regardless of whether IntCPM's work shared a substantial similarity with the work of the Plaintiff, it is affirmed that in order to train IntCPM, there has been a replication of substantial portions of the plaintiff's work.
11. Usually, the training in the context of Generative A.Is like IntCPM involves the reproduction of entire works or substantial portions of said works⁸ in their expressive form.⁹ As such, the contention raised by EPIONA in their Reply Legal Notice that by using a tool extracting information they do not replicate protected expression is dishonest and misleading as the computational and statistical analytical processing of the dataset inevitably involves copying of the training works, and it is to be noted that in all types of Machine-Learning independent of the algorithm used, the copying of training works is generally indispensable and unavoidable within this information-acquisition stage or training stage.¹⁰ In the landmark case of *Civic Chandran and Ors. vs. C. Ammini Amma and Ors.*¹¹ it was held that the reproduction of the whole work or a substantial portion of the same will

⁸ USPTO, *Public Views on Artificial Intelligence and Intellectual Property Policy*, (2020), <https://www.uspto.gov/sites/default/files/documents/USPTO_AI-Report_2020-10-07.pdf> accessed 20 December 2023

⁹ Franceschelli G and Musolesi M, ‘Copyright in Generative Deep Learning’ (2022) 4 Data & Policy

¹⁰ Chiou T, ‘Copyright Lessons on Machine Learning: What Impact on Algorithmic Art?’ (*JIPITEC*, 21 February 2020) <<https://www.jipitec.eu/issues/jipitec-10-3-2019/5025/>> accessed 20 December 2023

¹¹ *Civic Chandran and Ors v. C. Ammini Amma and Ors*, 1996(16)PTC670(Ker)

normally not be permitted, and only extracts or quotations from the work will alone be permitted even as 'fair dealing'.

12. The contention raised by EPIONA that only non-expressive parts of the copyrighted work, like the statistical information related to word frequencies, syntactic patterns, and thematic markers, were extracted and, as such, they have not violated copyright is misleading as it has been proven that when asked to provide summaries of the Plaintiff's work, IntCPM did produce accurate summaries, and as such, the contention that there has been no extraction of protected expression would be a misrepresentation from the part of the defendants as without the extraction of expressive information such output could not have been generated by IntCPM. Most LLMs can even mimic the style in which an author writes, i.e., even how he expresses an idea can be replicated.¹² A similar LLM, ChatGPT used to be able to provide verbatim excerpts of copyrighted work¹⁴ which was since patched only to provide summaries. This proves that the A.I does have the capacity and knowledge inside it to produce verbatim excerpts and as such it can be inferred that theoretically it can even produce the whole of a book verbatim in its expressive form if the programmers would allow it to do so.
13. According to a survey done by the Author's Guild of America, the median income of full-time self-published authors in 2022 was \$12,800 from books and \$15,000 in total from all writing-related activities.¹⁵ By using the copyrighted content of thousands of authors like the plaintiff, EPIONA uses these same works to run them out of business. And as mentioned above most generative A.I

¹² Dysart J, 'Grammarly's New AI Learns Your Writing Style' (*Robot Writers AI*, 31 October 2023) <<https://robotwritersai.com/2023/10/30/grammarlys-new-ai-learns-your-writing-style/>> accessed 20 December 2023

¹³ Klein A, 'AI Can Mimic Students' Writing Styles. How Are Teachers Supposed to Catch Cheaters Now?' (*Education Week*, 14 December 2023) <<https://www.edweek.org/technology/ai-can-mimic-students-writing-styles-how-are-teachers-supposed-to-catch-cheaters-now/2023/12>> accessed 20 December 2023

¹⁴ *Authors AI, 'Complaint' (9.19.23) (FINAL) (2847451v17) (002), (19 September 2023)* <https://storage.courtlistener.com/recap/gov.uscourts.nysd.606655/gov.uscourts.nysd.606655.1.0_1.pdf> accessed 20 December 2023

¹⁵ Key Takeaways from the Authors Guild's 2023 Author Income Survey' (The Authors Guild, 27 October 2023) <<https://authorsguild.org/news/key-takeaways-from-2023-author-income-survey>> accessed 20 December 2023

nowadays can even mimic the specific writing style of authors. This would effectively cancel the income that would have come from other writing-related activities.

14. Thus, regardless of whether the output created by EPIONA exhibits substantial similarity to the original, the use of the copyrighted work of the plaintiff in training the A.I would be a copyright infringement as replicating the work would fall under the definition of “intermediate copying” as held in *Sega Enterprises Ltd. v. Accolade, Inc.*,¹⁶ and in that case the defendant relied upon the defence of fair use, which would not be of help to the defendant in our present scenario as will be established later. Therefore, they are in direct violation of the Copyright held by the Plaintiff for his literary works under S.13(1)(a)¹⁷ and his exclusive rights as a copyright holder under 14(a)(i)¹⁸. As such the actions of the defendant would no doubt fall under the definition of copyright infringement as specified in S.51(a)(i).¹⁹

2.1. THE INFRINGEMENT OF COPYRIGHT BY EPIONA WILL NOT HOLD THE DEFENCE OF FAIR DEALING/FAIR USE

15. The defence of fair use raised by EPIONA is hereby understood to be the defence of fair dealing as explained in S.52(1)(a) of the Indian Copyright Act. This is because, though fair use and fair dealing are terms used interchangeably and synonymously, some key differences exist. Fair use in the US is a very broad and flexible doctrine that does not limit itself to specific purposes and allows for a case-by-case analysis based on four factors: purpose, nature, amount, and effect on the market. Fair dealing in India, on the other hand, is more specific, with enumerated purposes such as private or personal use, including research, education and news reporting²⁰.

¹⁶ *Sega Enterprises Ltd. v. Accolade, Inc* [1992] F.2d 1510 (9th Cir.)

¹⁷ Copyright Act 1957, s13

¹⁸ Copyright Act 1957, s14

¹⁹ Copyright Act 1957, s51

²⁰ Copyright Act 1957, s52

16. The U.S application of fair use is not followed in India until and unless, the use can be brought under the heads given in S.52 of the Copyright Act. After which, as the doctrine of fair dealing has not been defined anywhere in the statute, the American Fair use doctrine may also serve as a guide in finding whether using the copyrighted work would constitute fair dealing. This is the case without exception in India as seen in *The Chancellor Masters and Scholars of The University of Oxford Vs. Narendera Publishing House and Ors.*²¹, *Super Cassettes Industries Ltd., and Hamar Television Network Pvt. Ltd. and Ors.*²² just to give a few examples. This would also mean that cases like *Authors Guild v. Google, Inc.*²³ or any other American case that was decided in favour of the party infringing the copyright would not be applicable as it was decided based on the fair use doctrine.
17. As such, any attempt by the defendants to bring in fair use defence outside those exceptions given in S.52 is futile as it is a well-established principle that when the provisions in a statute are clear and unambiguous, it must be interpreted as such without enlarging the scope of said provision, as is given in *Nasiruddin Vs. Sita Ram*²⁴ and it cannot add or subtract words to a statute or read something into it which is not there.
18. It is never the case that the American doctrine of fair use is applied outside the scope of the exceptions given in S.52, as seen in cases like *Super Cassettes Industries Limited and Ors. vs. Chintamani Rao and Ors.*²⁵ wherein it was held that

“71. I am also not impressed by the submission of Ms. Singh that, because the laws of various other countries permit the use of derivative works for purposes of criticism, review of the said works or of other works or for purposes of reporting current events without having to obtain a license from the concerned

²¹ The Chancellor Masters and Scholars of The University of Oxford v. Narendera Publishing House and Ors, (2009) ILR 2Delhi221

²² Super Cassettes Industries Ltd., and Hamar Television Network Pvt. Ltd. and Ors. (2010) ILR 6Delhi230

²³ Authors Guild, Inc. v. Google Inc.[2015] 721 F.3d 132 (2d Cir)

²⁴ Nasiruddin and Ors. vs. Sita Ram Agarwal AIR 2003 SC 1543

²⁵ Super Cassettes Industries Limited and Ors. vs. Chintamani Rao and Ors. 2011/DHC/5686

copyright owner, the same legal position should obtain in India. The Indian law as it presently stands is amply clear and does not admit of any ambiguity. The language used in the respective statutes of the aforesaid countries is starkly different from that used in the Act, which this Court is bound to implement. Therefore, the said laws cannot be brought in aid by the defendant, India TV. For the same reason, I do not consider it necessary to deal with the decisions of American Courts relied upon by the defendant, wherein the fair use defence in relation to cinematograph films and sound recordings has been upheld.”

Here, although American fair use guidelines, if implemented, might have been successful, ultimately was not used by the court as the statutory provisions in India at that time did not provide the use of cinematograph films and sound recordings within its ambit.

19. EPIONA’s use of the plaintiff’s copyrighted work definitely falls outside the ambit of any of the said exceptions as provided by S.52. Unmistakably, it does not warrant S.52 (1)(a)(ii) or S.52 (1)(a)(iii) as it is not criticism or review, nor the reporting of current events and current affairs that is being done by EPIONA by using plaintiff’s copyrighted work. S.52 (1)(a)(i) that is private or personal use, including research, would also not be a viable defence as the development of IntCPM was done for public use and utilization for commercial gain by EPIONA and, as noted in *Rupendra Kashyap vs. Jivan Publishing House*²⁶

“The words 'research or private study' have been substituted by the words 'private use including research' by the Copyright (Amendment) Act, 1994 (Act 381 of 1994). What is contemplated is a defence to the person conducting research or private study who while doing so, if dealing fairly with a literary work, may not incur wrath of the copyright having been infringed. But, if a publisher publishes a book for commercial exploitation and in doing so infringes a Copyright, the defence under section 52(1)(a)(i) would not be available to such a publisher though the book published by him may be used or be meant for use in research or private study. The defence raised by defendants 1 and 2 based on Section 52(1)(a)(i) is not available to them and the plea so raised has to be rejected.”

²⁶Rupendra Kashyap vs. Jivan Publishing House 1996(38)DRJ81

20. This is further supported by S.29 of the *Copyright, Designs and Patents Act 1988*²⁷ in the U.K wherein it is stated that, *Fair dealing with a work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.* Here, it is pertinent to note that fair dealing is granted terms of research as long as it is for a non-commercial purpose and accompanied by sufficient acknowledgment. However, EPIONA, being a software development company that both develops and sells artificial intelligence software cannot in any way claim that their use of copyrighted work is for a non-commercial purpose. It is also to be noted that no due credit or acknowledgment has been given to the plaintiff in using his work. The use of UK legislation gains much more value when one takes into consideration the fact that the doctrine of fair dealing was explicitly recognized in the imperial copyright legislation for the first time in the UK Copyright Act, 1911, and in India, the doctrine of fair dealing has been developed after extensively borrowing from the UK Copyright law.²⁸
21. Thus, it is most humbly submitted before the Hon'ble Court that the defendant is not protected under any of the exceptions under S.52 of the Copyright Act, and neither would they be protected under the doctrine of fair dealings. As such they are in clear violation of the copyright of the plaintiff.

III. THE RELIEF OF INJUNCTIONS SOUGHT BY THE PLAINTIFF MUST BE GRANTED TO THE PLAINTIFF?

22. It is most humbly submitted before this Hon'ble Court that the plaintiffs are entitled to the relief of injunction both temporary and permanent in nature. As established before defendants have used registered copyright materials as training material for IntCPM, a large language model, which in turn are trained by copying extensive text from various sources into a training dataset. The same

²⁷ Copyright, Designs and Patents Act 1988, s29

²⁸ Surana P and Surana, 'Doctrine of Fair Dealing in Indian Copyright Law' (*SURANA SURANA*) < <https://suranaandsurana.com/2022/09/02/doctrine-of-fair-dealing-in-indian-copyright-law/> .> accessed 20 December 2023

has been done without providing any credit or compensation to the plaintiff and with no authorization or consent of the plaintiff, thereby violating the Indian Copyright Act 1957.

23. Section 55 of the Indian Copyright Act 1957²⁹ prescribes civil remedies for copyright infringement among which one is injunction. Granting of the same is most imperative to ensure prevention of further unauthorized use of Plaintiffs' copyrighted materials.

3.1. RELIEF OF INTERIM INJUNCTION

24. The objective of an interlocutory injunction is to provide the plaintiff immediate and temporary protection against any continuous violation of his rights for which he cannot be adequately compensated in terms in terms of damages.³⁰ The criteria for availing the same were laid down in the English case of *American Cyanamid v. Ethicon Ltd*³¹ which put forward three such prerequisites known as the “Trinity” rule and the same has been propounded in the apex court’s judgement in *Shanti Kumar Panda v. Shakuntala Devi*³². The same have been elaborated below respectively under sub-issues (3.1.1), (3.1.2), (3.1.3).

3.1.1. FIRSTLY, THERE NEEDS TO BE A PRIMA FACIE CASE.

25. Prima Facie literally means, on the face of it. In *Martin Burn Ltd. vs. R.N. Banerjee*³³, while discussing the meaning of the ‘prima facie’ case, the court said:

“A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at

²⁹ Copyright Act 1957, s55

³⁰ Sehgal DR, ‘Civil Remedies of Copyright Infringement’ (*iPleaders*, 29 September 2020) < <https://blog.iplayers.in/civil-remedies-copyright-infringement> > accessed 20 December 2023

³¹ *American Cyanamid Co v. Ethicon Ltd* [1975] (UKHL).

³² *Shanti Kumar Panda v. Shakuntala Devi*, AIR2004SC115

³³ *Martin Burn Ltd v. R.N Banerjee*, SCR 514 (SCI 1957)

the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”

26. It has been well established that EPIONA, in its development of IntCPM, utilized training datasets comprising copyrighted works, including books written by the plaintiff. During training, the LLM extracts expressive information from each piece of text, adjusting its output to closely resemble the sequences of words copied from the training dataset. As such it is prima facie visible that the defendants using registered copyrighted materials as training material for IntCPM, and the same being done without providing any due credit or compensation to the plaintiff and with no authorization or consent of the plaintiff is a clear violation of the rights of the plaintiff.

3.1.2. SECONDLY, THERE NEEDS TO BE A BALANCE OF CONVENIENCE.

27. In the case of *Anwar Elabi vs Vinod Misra and Anr*,³⁴ the court has clearly explained the meaning of ‘balance of convenience’. According to the court:

“Balance of convenience means that comparative mischief or inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it. In applying this principle, the Court has to weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.”

28. Similarly, in the case of *Antaryami Dalabehera v. Bishnu Charan Dalabehera*³⁵ the Orissa High Court held that balance of convenience, means, comparative mischief for inconvenience to the parties. The inconvenience to the plaintiff if temporary injunction is refused would be balanced and compared with that of the opposite party, if it is granted. If the scale of inconvenience leans to the side of the plaintiff, then alone interlocutory injunction should be granted.

³⁴ Anwar Elahi v. Vinod Misra and Anr, 60(1995) DLT752

³⁵ Antaryami Dalabehera v. Bishnu Charan Dalabehera, 2002(I)OLR531.

29. In the present case, the scale of inconvenience certainly leans more towards the side of the plaintiff. The case involves the unauthorized use of registered copyrighted materials of the Plaintiff as training material for IntCPM, without obtaining consent, providing credit, or offering compensation to him. It is established by the plaintiff that a substantial portion of their training datasets were sourced from copyrighted works, including those of the plaintiff, without due authorization, credit, or compensation and as contended above IntCPM would make a significant reduction in the market of the plaintiff as nearly half the income of the self-published authors like the plaintiff come from writing-related work other than their books³⁶ which would now be overshadowed by IntCPM. This would in essence mean that the Plaintiff's works are being used to reduce his own market which would cause a lot of inconvenience to him the more this goes on.
30. Not granting an injunction to prevent further unauthorized use of the copyrighted material would result in severe inconvenience to the plaintiff and further perpetration of continual copyright infringements by the defendants. This would lead to the facilitation of repeated violation of the copyright act and the intellectual property rights of the plaintiff and further loss in revenue for the plaintiff. As mentioned by the apex court in the case of *Dalpat Kumar Versus v. Prahlad Singh*³⁷, the Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. The substantial mischief or injury and inconvenience likely to be caused to the plaintiff in this case is increased manifold if an injunction is not granted. Therefore, this suit fulfils the criterion of balance of convenience in favour of the plaintiff.

3.1.3. THIRDLY, THERE NEEDS TO BE AN IRREPARABLE INJURY

³⁶ *Supra*, Note 15

³⁷ Dalpat Kumar vs. Prahlad Singh AIR1993SC276

31. The case of *Mr M. Ashraf Bhat vs Mr Z. A. Qureshi*,³⁸ has established that,

“The term ‘irreparable injury’ means injury which is substantial and could never be adequately remedied or atoned for by damages, injury which cannot possibly be repaired. It implies a substantial and continuous injury for which there does not exist any standard for ascertaining the actual damage likely to be caused. It is most apposite to mention here that irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, that cannot be adequately remedied or compensated by way of damages.”

32. The present case portrays a situation of such irreparable damage caused to the plaintiff as a direct result of the actions undertaken by the defendant. As stated, multiple times before, the defendant not only trained its AI software product (IntCPM) using controversial sources that provide unique unpublished books without gaining proper consent or providing credit or compensation to the authors, but also utilized training datasets comprising copyrighted works, including books written by the plaintiff in order to develop IntCPM, without due authorization, credit, or compensation. This results in irreparable injury to the plaintiff which cannot be adequately compensated without the award of an injunction as non-granting of the same will lead to further exploitation of non-consensual uncompensated work of the plaintiff by the defendant which is an infringement of the intellectual property rights of the plaintiff and also a violation of the Copyright Act of 1957. In addition to that the loss in revenue for authors like the plaintiff would also be irreparable as A.Is like IntCPM provides accurate summaries of the books which usually contains details not available in reviews and other publicly available materials³⁹ it may even reduce the market of the plaintiff's as well as other writers from their main source of income if allowed to work unchecked. Therefore, it is hereby contended that this suit fulfils the criterion of irreparable injury in favour of the plaintiff

³⁸ Mr M. Ashraf Bhat v. Mr Z. A. Qureshi, (JKHC 2019)

³⁹ *Supra*, Note 14

and the court must immediately move towards the granting of an interim injunctive relief to prevent further unauthorized use of Plaintiffs' copyrighted materials.

3.2. RELIEF OF PERMANENT INJUNCTION

33. A permanent injunction can be granted by a court by passing a decree made at the hearing and upon the merits of the suit. Once such decree is passed, the defendant is permanently prohibited from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. A permanent injunction may also be granted under Section 38(3) of the Specific Relief Act, 1963⁴⁰ which puts forth situations wherein permanent injunction can be granted such as when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property. To be more specific, the same can be granted under Section 38(3)(b) or Section 38(3)(c) of the Act which put forward situations where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion⁴¹ and, where the invasion is such that compensation in money would not afford adequate relief, respectively.⁴²
34. In the present case, the copyright of the plaintiff is being infringed by the defendant's unauthorized use of the registered copyright material of the plaintiff as training material and the same being done without obtaining the consent of the plaintiff and without providing credit or compensation for such use thereby violating the Indian Copyright Act, 1957 and therefore as is established by case law such a violation enough is necessary for granting permanent injunction.
35. Thus, it is most humbly requested by the plaintiff that the Hon'ble Court grant a final injunctive relief to be granted in favour of the plaintiff to avoid future unauthorized use of the Plaintiff's copyrighted materials.

⁴⁰ Specific Relief Act 1963, s38(3)

⁴¹ Specific Relief Act 1963, s38(3)(b)

⁴² Specific Relief Act 1963, s38(3)(c)

36. There are various case laws wherein permanent injunctions have been granted to prevent further unauthorized of copyrighted materials. One such case is that of *M/s. Sun TV Network Ltd. V. M/s. Nitin Productions & Anr.*⁴³ the defendant, illicitly telecasted songs from the film without permission, using pirated CDs. Thereafter, the High Court of Madras found the defendant's use of pirated CDs and granted a permanent injunction, declaring the plaintiff as the exclusive copyright holder, preventing the defendant from telecasting the film or any part of it. In another case of *M/s. Sun T.V. Network Ltd. v. M/s. Shree CMR Productions*⁴⁴, the plaintiff sought a declaration as the exclusive copyright holder of the film in contention and a permanent injunction against Defendant No. 2. Defendant No. 2, had telecasted songs from the film without permission. After examining relevant documents, the court confirmed the plaintiff's exclusive copyright ownership. Finally, in the case of *Mrs. Sellappapa Keeran v. S. Vijayaraghavan & Anr.*⁴⁵ the widow of a late religious Hindu preacher, sought a declaration from the Madras High Court asserting her rightful ownership of her husband's copyright. Analysing relevant copyright and Berne Convention sections, the court ruled in favour of the plaintiff, granting her the rightful copyright ownership and issuing a permanent injunction against the defendants, prohibiting the use, sale, distribution, broadcasting, or exploitation of the literary works. In both these cases injunction has been granted on merit.
37. All of the above cases are instances wherein the copyright of a party has been infringed and following the same a permanent injunction has been granted on merits against the unauthorised use in order to prevent future instances of the same. It is humbly submitted before the Hon'ble court that the same be considered and duly granted to the plaintiff in the present case.

⁴³ *M/s. Sun TV Network Ltd v. M/s. Nitin Productions & Anr*, C.S. (COMM DIV) 193/2016.

⁴⁴ *M/S. Sun Tv Network Ltd v. M/S. Shree CMR Productions*, C.S(COMM DIV).195/2016.

⁴⁵ *Mrs. Sellappapa Keeran v. S. Vijayaraghavan*, 2021(5)CTC776.

PRAYER

Wherefore, in the light of the facts stated, issues raised, arguments advanced, and authorities cited, it is most humbly and respectfully prayed before this Hon'ble High Court of Hiled that it may be pleased to:

- 1) Grant interim injunctive relief in favour of the plaintiff in order to prevent the defendant from further unauthorized use of Plaintiffs' copyrighted materials.
- 2) Direct the defendant to provide an award of damages for the copyright infringement.
- 3) Grant final injunctive relief in favour of the plaintiff to prohibit the defendant from using Plaintiffs' copyrighted materials in the future.
- 4) Direct the defendant to provide accounts of profits derived from the unauthorized use of Plaintiffs' copyrighted materials.
- 5) Direct the defendant to reimburse attorneys' fees and costs incurred in bringing this action. and pass any other order in the ends of justice that this Hon'ble High Court of Hiled may deem fit and true all of which is most humbly and respectfully submitted.

Date: 20th December 2023

Counsel for Samay Sinha (**Plaintiff**)

Place: Hiled

Counsel Code: TC001