

**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 DEFENDANT ~

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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.	CTC	Current Tamil Nadu Cases

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STATEMENT OF JURISDICTION

The defendant, in the instant matter, hereby, most humbly and respectfully submits to the jurisdiction of the HC of Hiled original civil jurisdiction under § 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;

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.

ISSUES RAISED

ISSUE I:

1. WHETHER THE OUTPUTS PRODUCED BY IntCPM CONSTITUTE
COPYRIGHT INFRINGEMENT?
-

ISSUE II:

2. WHETHER THE USE OF MATERIAL FOR TRAINING THE LLMs VIOLATES
THE RIGHTS OF THE PLAINTIFF?
-

SUMMARY OF ARGUMENTS**ISSUE I: WHETHER THE OUTPUTS PRODUCED BY IntCPM CONSTITUTE COPYRIGHT INFRINGEMENT?**

It is humbly submitted to the Hon'ble Court of Hiled that the outputs produced by IntCPM do not constitute a copyright infringement as it does not replicate the protected expression of the plaintiff. The output produced by IntCPM lacks substantial similarity and causal connection in accordance with the plaintiff's work. Therefore the output produced by IntCPM does not violate the Copyright Act.

ISSUE II: WHETHER THE USE OF MATERIAL FOR TRAINING THE LLMs VIOLATES THE RIGHTS OF THE PLAINTIFF?

It is humbly submitted to the Hon'ble Court of Hiled that the use of material for the purpose of training language models like IntCPM does not violate the rights of the plaintiff as it does not amount to copyright infringement. An AI language model functions in a way that it uses various sources from the large database and produces an output that it interprets differently. Therefore, the use of material is not to directly copy the original work but instead to train the model which acts as a transformative use which is protected under the doctrine of fair dealing.

ARGUMENTS ADVANCED**ISSUE-I****1. WHETHER THE OUTPUTS PRODUCED BY IntCPM CONSTITUTE
COPYRIGHT INFRINGEMENT?**

(¶1) It is humbly submitted before the Hon'ble HC of Hiled that the outputs produced by IntCPM do not amount to copyright infringement. This is because, *firstly*, it is the original work of IntCPM, *secondly*, it does not replicate the protected expression, *thirdly* it is not substantially similar.

1.1 It is the original work

(¶2) When it comes to the copyright world, the term original is an essential element. It generally means something newly developed that was not in existence previously. It is not the idea that can be copyrighted but the expression. Wherever the expression is original it constitutes an original work. There are various approaches to determining the originality of a work. By combining the modicum of creativity and the test of skill and labour, the test of skill and judgment was introduced.

1.1.1 Skill and judgment

(¶3) In *Eastern Company v D B Modak*⁴ the Supreme Court after reviewing varied approaches in different jurisdictions finally approved the approach of the Supreme Court of Canada *in CCH Canadian Ltd. v Law Society of Upper Canada*.⁵ The test is applied to determine whether the 'work' in question is original or not. To ascertain the same the author should have applied

⁴ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

⁵ *CCH Canadian Ltd. v. Law Society of Upper Canada*, (2004) 1 SCR 339 (Canada).

his 'skill and judgment' in creating the work and such work should have the minimal element of creativity thereby leading the work to be original.

It was held that *“The Copyright Act is not concerned with the original idea but with the expression of thought. The copyright work that comes into being should be original in the sense that by virtue of selection, coordination, or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author.”*⁶

(¶4) In *University of Oxford v Narendra Publishing House*⁷ and *University of Cambridge v B.D. Bhandari*,⁸ the problem was whether the questions at the end of each chapter, in Mathematics and English textbooks, were original enough to entitle them to copyright protection. The division bench held that the factors of skill labor and judgment were satisfied for framing the questions.

(¶5) Henceforth, AI has the potential to create an enormous amount of work with less investment in a very short span of time. The works created by AI may qualify for copyright protection for being original. The requirement of use of “skill and judgment” in originality may be deemed to have been satisfied as the AI compiles and generates output based on the programming and parameters provided. The AI ensures that by making a proper judgement it takes into consideration only the factual situations, statistical information, and not the protected expression⁹ and by applying some level of skill it produces its own summaries. With the help of the principle laid down in **EBC**¹⁰, the required amount of skill and judgment with minimal creativity is applied by IntCPM in order to come up with the summaries and hence it is an original work.

⁶ *Id.*

⁷ *University of Oxford v Narendra Publishing House* , 2008 SCC OnLine Del 1058 : (2008) 38 PTC 385.

⁸ *University of Cambridge v B.D. Bhandari* , 2011 SCC OnLine Del 3215 : (2011) 47 PTC 244.

⁹ Moot Proposition ¶ 8.

¹⁰ *Supra* note 5.

1.2 That there is no causal connection

(¶6) In copyright law, a causal connection typically refers to the relationship between an original work and a subsequent copy or derivative work. It involves demonstrating that the later work was directly influenced by, or derived from, the original work in a way that's substantial enough to infringe upon the copyright of the original creator. This connection is crucial in determining whether copyright infringement has occurred.

There are two elements that need to be taken into consideration for causal connection

1.2.1 Level of access

(¶7) The level of access the infringer had to various sources is an important factor in establishing a causal connection. Access to original work constitutes a connection. In the present lawsuit, EPIONA had access to various sources, such as numerous books, reviews, blogs etc, and not only to the plaintiff's work. There is no direct infringement since IntCPM is widely assessing various data to produce the output.

(¶8) In *Francis Day and Hunter Ltd and another v Bron and Another*,¹¹ it was held that “*the similarities were probably coincidental and there was no evidence that the defendant had copied the work. The plaintiff was unable to infer that there was sufficient knowledge and memory for conscious or subconscious copying.*”

1.2.2 Extent of similarities

(¶9) The extent of Similarities is another element. It involves assessing and replicating various elements from the original work. Since the protected expression has not been presented in the output produced by IntCPM, the extent of similarities is meagre. In the case of *R.G. Anand*

¹¹ *Francis Day and Hunter Ltd and another v Bron and Another* (1963) Ch 587 (UK).

*v. Delux Films*¹² which case dealt with the alleged infringement of the script of a play, arising from the adaptation of the same into a cinematograph film held that, “*although one does not fail to discern a few resemblances and similarities between the play and the film, the said resemblances are not material or substantial and the degree of similarities is not such as to lead one to think that the film taken as a whole constitutes an unfair appropriation of the plaintiff’s copyrighted work.*”¹³

(¶10) In *Baigent and Leigh v the Random House Group Ltd*,¹⁴ concerning the book *The da Vinci Code* the English high court dismissed a claim for alleged breach of contract. The judge accepted the defence submission that “*if what is asserted to be infringed is so general that it cannot be certain that would lead to a conclusion that is such a level of abstraction that no protection should be afforded to it*”¹⁵

(¶11) In *Henkel KGaA v Holdfast New Zealand Ltd*¹⁶ the court highlighted the importance of establishing a causal connection in copyright infringement cases. It emphasized that evidence must demonstrate that the alleged infringing work was copied from the copyrighted work.

(¶12) It was opined that “*The ultimate issue in a breach of copyright case concerns derivation, not similarity, albeit the degree of similarity between the copyrighted work and the allegedly infringing work has evidentiary significance. Proof of copying will seldom be direct; in most cases, the Court will rely on inference. The closer the similarity between the two works the stronger the inference is likely to be that the one was copied from the other. If the alleged infringer has had access to, and therefore an opportunity to copy, the copyrighted work, and*

¹² *R.G. Anand v. Delux Films* (1978) 4 SCC 118.

¹³ *Id.*

¹⁴ *Baigent and Leigh v the Random House Group Ltd*, [2006] EWHC 1131 (UK).

¹⁵ *Id.*

¹⁶ *Henkel KGaA v Holdfast New Zealand Ltd* (2007) 1 SC 43/577 (NZLR) .

*the similarity between the works supports an inference of copying it may well be appropriate for the Court to conclude, on the balance of probabilities, that there was indeed copying”.*¹⁷

Taking these points into account, it is clear that the essentials are not fulfilled and hence no causal connection has been achieved in this suit.

1.3 There is no substantial similarity

(¶13) The defendant contends that there is no substantial similarity between the outputs produced by IntCPM and the work of the plaintiff.

In the case of *Ratna Sagar Pvt. Ltd. vs Trisea Publications And Ors*¹⁸. It was held that “*In order to constitute an infringement of copyright in any literary work, it is well established that there must be two elements present. First, there must be a sufficient objective similarity between the infringing work and the copyrighted work or a substantial part thereof. Secondly, the copyrighted work must be the source from which the infringing work is derived*”.¹⁹

EPIONA has access to a wide range of sources of over 7000 unique books and 15% of two internet-based books corpora (Books1 and Books2) containing 294,000 titles.²⁰ Therefore, it does not borrow the content, particularly from the plaintiff's books, it takes into consideration various blogs, reviews, and condensed versions. compilation etc in order to come up with a different interpretation. As a result the plaintiff's copyrighted work is not the only source and hence it does not lead to infringement of the plaintiff's work. Since one of the elements is not fulfilled it does not constitute substantial similarity.

¹⁷ *Id.*

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

¹⁹ *Id.*

²⁰ Moot Proposition ¶ 4 & ¶ 5.

(¶14) In *Balakrishnan vs R. Kanagavel Kamaraj And Another*²¹ it was held that “Historical facts are not copyrightable per se. A book on history is designed to convey information to the readers. There is no copyright in this information as such. However, the manner in which it is presented makes it an original literary work. Any person is free to read it and acquire from it such information as he could”.²² According to the aforementioned case, the summaries²³ provided encompass only the factual details which are disregarded elements that are not eligible for protection. Evaluating the remaining protectable elements, in isolation, does not display substantial similarities and hence it does not qualify as a copy or a derivative work.²⁴

ISSUE-II

2. WHETHER THE USE OF MATERIAL FOR TRAINING THE LLMs VIOLATES THE RIGHTS OF THE PLAINTIFF?

(¶15) The defendant humbly submits that the use of the copyrighted material to train the language models does not violate the rights of the plaintiff because, *firstly*, AI operates and produces independently, *secondly*, it is “fair dealing.”

1.1 That the AI operates independently

(¶16) “Artificial intelligence” may be stated to be “the ability of machines to do things that people would say require intelligence” and it also refers to the “ability of machines to perform cognitive tasks like thinking, perceiving, learning, problem-solving, and decision-making”.²⁵

²¹ *A. Balakrishnan v. R. Kanagavel Kamaraj*, 1999 SCC OnLine Mad 563: (1999) 3 CTC 247.

²² *Id.*

²³ Cambridge Dictionary definition of summary is “a short statement of the main ideas or facts in a report, discussion, etc.”

²⁴ Moot Proposition ¶ 9.

²⁵ Philip C. Jackson, *Introduction to Artificial Intelligence* 1, Dover Publications, Inc., (1985.).

(¶17) According to Russ Pearlman, “the central goals of AI include reasoning, knowledge, planning, learning, natural language processing (e.g., understanding and speaking languages), perception, and the ability to move and manipulate objects”.²⁶ To prove that AI operates independently without human intervention, it is vital to establish that (1) It has the capacity to learn and adapt and (2) Can make independent decisions.

1.1.1 Capacity to learn

(¶18) The foundation of AI is “artificial neural networks” which are “brain-inspired systems that are designed to imitate the way the human mind learns”.²⁷ The artificial neural networks have the capabilities of self-learning that “enable them to produce better results as more data becomes available”.²⁸

(¶19) “Machine learning” and “deep learning” are, therefore, two subsets of AI.²⁹ Machine learning involves the exploration of computer systems that autonomously learn and adapt based on experience without explicit programming. Through machine learning models, computer scientists can “train” machines by exposing them to extensive data. These machines follow a set of rules, or an algorithm, to analyze data and draw conclusions. The more data the machine processes, the more proficient it becomes in tasks or decision-making. Deep learning, a

²⁶ Russ Pearlman, “Recognizing Artificial Intelligence (AI) as Authors and Inventors under U.S. Intellectual Property Law”, 24 (2) Richmond Journal of Law & Technology 4 (2018).

²⁷ Corrs Chambers Westgarth, “Artificial intelligence and copyright: ownership issues in the digital age”, Lexology’s Website, September 21, 2020, available at: <https://www.lexology.com/library/detail.aspx?g=849627a6-c428-4e45-a386-c6e49d98b446>

²⁸ Jake Frankenfield, “Artificial Neural Network (ANN)”, Investopedia, August 28, 2020, available at: [https://www.investopedia.com/terms/a/artificial-neural-networks-ann.asp#:~:text=An%20artificial%20neural%20network%20\(ANN\)%20is%20the%20piece%20of%20a,by%20hum%20an%20or%20statistical%20standards](https://www.investopedia.com/terms/a/artificial-neural-networks-ann.asp#:~:text=An%20artificial%20neural%20network%20(ANN)%20is%20the%20piece%20of%20a,by%20hum%20an%20or%20statistical%20standards)

²⁹ WIPO Secretariat, Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence, WIPO/IP/AI/2/GE/20/1 REV dated May 21, 2020, para 11.

technique within machine learning, employs layered algorithms and computing units (neurons) in an artificial neural network. These deep neural networks are inspired by the structure of the human brain, processing data in a non-linear fashion similar to how our brains handle information.

(¶20) EPIONA's IntCPM can generate outputs based on the training it undergoes. They are trained by copying extensive text from various into a training dataset.³⁰ AI systems like IntCPM also have the capacity to learn from large datasets which involve algorithms that improve their performance over time as they are exposed to more data. During training, it learns patterns, and associations, present in the input data, and outputs are produced by IntCPM when prompted to summarize the plaintiff's books as a result of the model learning from its training phase. Summarizing books by Plaintiff, clearly indicates that this consistency is a direct result of the AI system learning and retaining information from texts.

- IntCPM can generate extracts of expressive information from each piece of text, adjusting its output to closely resemble the sequences of words copied from the training dataset.³¹
- It has a learning capacity in the sense that it is trained on extensive datasets to understand and replicate syntactic structures³², word usage, and thematic elements present in the training data.

1.1.2 Independent decision

³⁰ Moot Proposition ¶ 2.

³¹ Id.

³² Moot Proposition ¶ 7.

(¶21) For machine learning, there happens to be an inbuilt algorithm in the computer program that “allows it to learn from data input, and to evolve and make future decisions” either on its own or on the direction. In other words, the machine learning algorithms learn from the programmer’s provided inputs to generate something new by making their own **independent decisions**. Therefore, the parameters are set by the programmer and the work is generated by the AI itself.³³

(¶22) It may also be added that Artificial Intelligence Virtual Artist (AIVA) Technologies’ “music composing AI becomes the first in the world to be officially given the status of a composer”. They have created an AI called “Aiva” (Artificial Intelligence Virtual Artist) and taught it how to compose classical music – an emotional art that is usually considered to be a uniquely human quality.³⁴

(¶23) IntCPM is a well-constructed AI, possessing independent opinion from its capacity to learn which makes it suitable for being an author and expressing the work in a unique manner that does not amount to copyright infringement.

1.2 It is fair dealing

(¶24) The Indian Copyright Act 1957, provides exclusive rights to the owners of copyright which allows them to reproduce or distribute their work. However, one exception to using the author’s material without obtaining authorization is fair dealing.

³³ Andres Guadamuz, “Artificial Intelligence and Copyright”, WIPO Magazine, October 2017, available at: https://www.wipo.int/wipo_magazine/en/2017/05/article_0003.html#:~:text=Artificial%20intelligence%20is%20already%20being,used%20and%20reused%20by%20anyone

³⁴ Ed Lauder, “Aiva is the first AI to officially be Recognised as a Composer”, AI Business, October 3, 2017, available at: https://aibusiness.com/document.asp?doc_id=760181

(¶25) The case of *Blackwood And Sons Ltd. And Ors. vs A.N. Parasuraman And Ors*,³⁵ highlighted two points necessary with regards to the term “fair” in “fair dealing” ;

“(1) in order to constitute unfairness there must be an intention to compete and to obtain profit from such competition; and

*(2) Unless the intention of the infringer was unfair, in the sense of being improper or oblique, the dealing would be fair”.*³⁶

(¶26) Firstly, there was no intention to compete with the original work of the plaintiff as IntCPM is a tool extracting information about the original work to provide information prompted by the user. In addition to that, these summaries do not serve as an alternative to the original book as it provide only a brief abstract.

(¶27) Secondly, the copyrighted material was used only for the purpose of training the AI, and the same was not put out in the public domain. As per, *The Authors Guild, Inc. v. Google, Inc.*,³⁷ the U.S. Court of Appeals for the Second Circuit held that Google’s copying of entire books to create a searchable database that displayed excerpts of those books constituted fair use. In the instant case, the defendant is only using it to train the LLM and the output was the summaries and not the entire copyrighted material. Therefore, the intention was to produce information in terms of summaries to the user which is a bona fide fair use of work and not blatant mala fide copying.

1.2.1 Transformative Use

³⁵ *Blackwood And Sons Ltd. & Ors. vs A.N. Parasuraman & Ors*, (1959) AIR Mad 410.

³⁶ *Id.*

³⁷ *Authors Guild v. Google, Inc.*, (2015) 804 F.3d 202 (US).

(¶28) Delhi High Court in the case of *Super Cassette Industries Ltd. v. Hamar Television Network Pvt. Ltd.*,³⁸ the single judge established certain legal principles regarding fair dealing. One of which was that “transformative use” may be deemed in certain situations as fair use of copyrighted work.”³⁹

(¶29) The defendant contends that the purpose of the language models is transformative because the training process creates a useful generative AI system. Generative AI refers to “deep-learning models that can generate high-quality text, images, and other content based on the data they were trained on.”⁴⁰ The term “generative” emphasizes the ability to create new content by learning and utilizing patterns and relationships from training data.

(¶30) “*The use must be productive and must employ the quoted matter in a different manner or for a different purpose from the original. . . . If . . . the secondary use adds value to the original – if the quoted matter is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings – this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society*”⁴¹

(¶31) *Camp II v. Accuff-Rose Music*⁴² established that the purpose and character of use must be different to constitute transformation. In addition to that, it held that “*whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is “transformative,” altering the original with new expression, meaning, or message. The more*

³⁸ *Super Cassettes Industries Ltd v. Hamar Television Network Private Ltd*, (2011) PTC (45) PTC (70) (Del).

³⁹ *Id.*

⁴⁰ Kim Martineau, “What is Generative AI?” IBM (20TH April 2023).

⁴¹ Leval, Pierre N. “Toward a Fair Use Standard.” *Harvard Law Review*, vol. 103, no. 5, 1990, pp. 1105–36. *JSTOR*, <https://doi.org/10.2307/1341457>

⁴² *Camp II v. Accuff-Rose Music* (1994) 510 US 569 (US).

transformative the new work, the less will be the significance of other factors, like commercialism, that may weigh against a finding of fair use.”⁴³

(¶32) Through these definitions of what constitutes “transformative use”, we can establish that there is a transformation of work when (1). there is a new expression, meaning, aesthetics, or understanding (2) The use must be productive and have a different purpose than the original work (3) the intention is for the enrichment of the society

(¶33) The work of a generative AI can be termed as a transformative use as it adds "new expression, meaning, or message" to the original work. In the present case, the factual details and the underlying concept of the work are retained but the manner of expression in terms of word frequencies, syntactic patterns, and thematic patterns ⁴⁴are a new form of expression brought forth by the LLM itself.

(¶34) The other aspect of transformative use is to analyze whether the purpose of the subsequent work is different from that of the original work. The defendant submits this as affirmative. IntCPM is providing summaries of the books written by the plaintiff. The main objective of that is to give the users a bird eye’s view of the fiction. However, the main intent of the plaintiff’s work is to entertain the readers by narrating a compelling story. The use of both works is clearly meant for different purposes as a result of which the use of the plaintiff’s work by IntCPM is transformative. In the Campbell⁴⁵ case, it was held that *“no infringement occurred because the defendant added a new meaning and message rather than simply superseding the original work. This meant that the new work likely would not affect the market*

⁴³ *Id.*

⁴⁴ Moot Proposition¶ 7.

⁴⁵ *Supra* note 42.

*for the original work, so the copyright owner would not suffer financial harm.*⁴⁶ Given that the objectives of the two works are distinctly divergent, the plaintiff is unlikely to incur any financial loss. Summaries of novels, being inherently incapable of replacing the original work, are improbable to dissuade the audience of the plaintiff's novels from continuing to read the complete works, making any perceived harm non-existent. Moreover, the plaintiff has not shown any direct financial loss suffered by him through these summaries.

(¶35) It is necessary to look into the purpose of copyright as a whole. *“The immediate effect of our copyright law is to secure a fair return for an "author's" creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good. When technological change has rendered an aspect or application of the Copyright Act ambiguous, "the Copyright Act must be construed in light of this basic purpose.”*⁴⁷ The basic purpose of any company, like EPIONA, in creating these AI language models is to foster growth and innovation towards the enrichment of society.

(¶36) The fair dealing concept in India or anywhere else in the world does not address AI, since it is a relatively niche concept. Texas Law Review Journal can be referred to, *“In this subpart, we suggest that the analysis of fair use for AI training data should incorporate a principle we call “fair learning.”*⁴⁸ If the purpose of the AI's use is not to obtain or incorporate the copyrightable elements of a work but to access, learn, and use the unprotectable parts of the work. Fair learning isn't fair because it is a machine doing it, or because it happens outside the public view. It's fair because the value the ML system gets from the copyrighted work stems

⁴⁶ *Supra* note 42.

⁴⁷ *Sony Corp. v. Universal City Studios, Inc* 464 U.S. at 432, 104 S.Ct. at 783 (quoting *Twentieth Century Music Corp. v. Aiken*, (1975) 422 U.S. 151 (US)).

⁴⁸ Mark A. Lemley and Bryan Casey, Fair Learning (VOLUME 99 - ISSUE 4)
<<https://texaslawreview.org/fair-learning/>>

from the part of the work the copyright law has decided belongs to the public, not to the copyright owner.⁴⁹

1.2.2 Storage and Training

(¶37) The act of storing and using data for training purposes is a fundamental aspect of developing AI models. Storing data for AI training does not necessarily involve the direct reproduction of the original works. Instead, it involves the extraction of patterns, features, and information from the data to enable the AI to generate novel content.

(¶38) *Authors Guild v. Google, Inc*⁵⁰ establishes that simply because copyrighted works are used as “input” in a given model, this does not mean that the *outputs* constitute infringement. It's important to highlight that the court determined Google's utilization as fair, even though it was employed by a commercial entity seeking profit. If AI training involves using works as input to extract patterns and features without directly reproducing the original works, it may be considered transformative and not necessarily infringing.

(¶39) In *Cartoon LP v. CSC Holdings*,⁵¹ the court held “ *that there is a difference between voluntarily making a copy and issuing a command to the computer that obeys the command. Such nonvolitional uses of copyrighted work are ‘intermediate operational use’. Such nonvolitional use of copyrighted works by the computer is not creative in nature and does not amount to infringement* ”.⁵²

(¶40) Storing data, especially for training AI models, often involves automated processes where the computer follows predefined algorithms and commands. If the act of storing data is

⁴⁹ *Id.*

⁵⁰ *Supra* note 18.

⁵¹ *Cartoon LP v. CSC Holdings*, (2008) 536 F.3d 121, (2009) 557 U.S. 946 (US).

⁵² *Id.*

considered a non-volitional, intermediate operational use, it may be viewed as a mechanical, routine task not amounting to infringement.

(¶41) In *Kelly v. Arriba*⁵³, Arriba produced thumbnail images of Kelly. For that purpose, they used a web crawler that visited various websites to collect images and turn them into thumbnails. These images were featured on the Arriba search results. The court's decision suggests that the act of storing and displaying these thumbnails for the purpose of facilitating efficient search results is justifiable. The court considered the transformative nature of the use and the value it added to users searching for visual content. where the storage is a necessary step in the process of creating a new, valuable output (the trained model) rather than a mere reproduction of the original works.

(¶42) In the case of *Sega v. Accolade*⁵⁴, the court held that the intermediate copying of functional code will be protected under the fair use doctrine as it is a functional element not amounting to copyright protection. The copying was a preliminary step to creating a new product. It was held that *"However, the key to this case is that we are dealing with computer software, a relatively unexplored area in the world of copyright law. We must avoid the temptation of trying to force "the proverbial square peg in[to] a round hole."*⁵⁵. Similarly, in the instant case, the use of copyrighted material to train the language model is the necessary intermediate step required for the development of the output.

⁵³ *Kelly v. Arriba* ,(2003) 336 F.3d 811 (US).

⁵⁴ *Sega v. Accolade* (1992) 977 F.2d 1510 (US)

⁵⁵ *Id.*

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 DISMISS THE PETITION.

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 DEFENDANT