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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 Defendant,

Counsel for the Defendant.

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&	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
Sec./ S.	Section
v.	Versus
Vol	Volume

STATEMENT OF JURISDICTION

THE COUNSEL FOR THE DEFENDANT, HEREBY HUMBL Y SUBMITS TO THE JURISDICTION
OF THIS HON'BLE COURT UNDER SECTION 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 DEFENDANT MOST HUMBL Y AND RESPECTFULL Y 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 CASE 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 BE
CLASSIFIED AS COPYRIGHT INFRINGEMENT?**

ISSUE III

WHETHER THE RELIEF OF INJUNCTIONS SOUGHT BY THE PLAINTIFF 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 filed is not 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 CANNOT BE CLASSIFIED AS COPYRIGHT INFRINGEMENT

It is most humbly contended before this Hon'ble Court that all claims of the plaintiff alleging copyright infringement should be dismissed as there has been no copyright infringement from the side of the defendants. The defendants in using the work of the plaintiff, have only extracted non-expressive information for highly transformative purposes. Any such alleged use of copyrighted work would nonetheless fall within the ambit of fair use and hence legal under copyright law.

ISSUE III: THE RELIEF OF INJUNCTIONS SOUGHT BY THE PLAINTIFF MUST NOT BE GRANTED

It is submitted that the relief of injunction sought by the plaintiff should not be granted as the plaintiffs are not entitled to the same. The defendant contends that an injunctive relief of interim and permanent nature are both uncalled for, seeing as to the fact that no copyright infringement has been committed by the defendants. the existence of the three requirements for interim injunction; prima facie case, the balance of convenience and irreparable injury, are all in favor of the defendant. The defendant also contends the qualification to avail a permanent injunction as the defendant maintains that no copyright of the plaintiff has been infringed.

ARGUMENTS ADVANCED

**I. THE INSTANT LAWSUIT FILED IS NOT MAINTAINABLE BEFORE THE HIGH COURT OF
HILED**

**1.1. THE INSTANT LAWSUIT FILED IS NOT MAINTAINABLE UNDER S.62 OF THE
COPYRIGHT ACT,1957**

1. It is most humbly prayed by the defendant that the lawsuit filed before this Hon'ble Court alleging copyright infringement would not be maintainable under law before the High Court of Hiled, as According to Section 62¹ of the Copyright 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. On a reading of the judgement in the case of *Indian Performing Rights Society v. Sanjay Dalia*², the Supreme Court states that:

¹ Copyrights Act 1957, s62.

² Indian Performing Rights Society v. Sanjay Dalia AIR 2015 SC 3479.

“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 place³. Thus, a Plaintiff can also file a suit where the cause of action wholly or in part arises...”

3. On a reading of the IPRS v. Sanjay Dalia case (supra), the Supreme Court states that terms related to jurisdiction shall not be defined subjectively. Similarly, the additional provisions provided under the Copyright Act regarding the courts having jurisdiction, have been inserted for the sole purpose of convenience of the plaintiff. But, it should be noted that this convenience shall not be at the detriment of the defendant, and that this provision shall not result in the plaintiff dragging the defendant to far off places. In the instance of such an occurrence, it can be termed a mischief and misuse of law.

“If the interpretation suggested by the Appellant is accepted, several mischiefs may result, intention is that the Plaintiff should not to go far flung places than that of residence or where he carries on business or works for gain in order to deprive Defendant a remedy and harass him by dragging to distant place. ...The avoidance of counter mischief to the Defendant is also necessary while giving the remedy to the Plaintiff under the provisions in question. It was never visualised by the law makers that both the parties would be made to travel to a distant place in spite of the fact that the Plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business etc. The said provisions of law never intended to be oppressive to the Defendant.”

³ Rajasthan High Court Advocates Association v Union of India & Ors., AIR 2001 SC 416.

4. As held in the above judgment and in the case of *Kensoft Infotech Ltd. Vs. R.S. Krishnaswami and Ors.*⁴ even though the cause of action may have arisen within the jurisdiction of this court it is to be noted that the judges have the discretionary power to refuse the discretionary jurisdiction by invoking the doctrine of *forum conveniens*.
5. As mentioned by Plaintiff, if the suit has been instituted due to the fact that the alleged acts of copyright infringement and related claims fall within its territorial jurisdiction, as the Defendant engages in online activities within this jurisdiction, and a substantial part of the events giving rise to the claims occurred herein; the same shall be rendered ambiguous. The plaintiff has not put forward arguments to conclusively indicate that the cause of action has arisen wholly or partially in the territorial jurisdiction corresponding to that exercised by the High Court of Hiled. The determination of the cause of action, and thereby, jurisdiction under Section 20 CPC in an online context has been examined extensively in *Banyan Tree Holding Pvt. Ltd. v. A. Murali Krishna Reddy*⁵, a case where interestingly, neither the plaintiff nor the defendant was located within the territorial limits of the court. Here, the Division Bench of the Delhi High Court decided that mere accessibility or interactivity of a website in a particular place would not confer jurisdiction to courts in that place.
6. As such, the suit shall be rendered as not maintainable and hence should not be considered by this High Court of Hiled.

**II. THE USE OF COPYRIGHTED WORK IN TRAINING DATASETS USED BY EPIONA
CANNOT BE CLASSIFIED AS COPYRIGHT INFRINGEMENT**

7. It is humbly submitted before this Hon'ble Court that the use of copyrighted works in training datasets by the defendant cannot be classified as copyright infringement as the defendant has only

⁴ Kensoft Infotech Ltd. Vs. R.S. Krishnaswami and Ors (2007)ILR 1Delhi308.

⁵ Banyan Tree Holding Pvt. Ltd. v. A. Murali Krishna Reddy, MIPR2009(3)247.

extracted non-expressive information from within the copyrighted works of the plaintiff and thus has not violated the protected expression contained within the same.

8. It is also pertinent to note that training sets for Large Language Models like IntCPM are likely to contain millions of different works with thousands of different owners, there is no plausible option simply to license all of the underlying photographs, videos, audio files, or texts for the new use or to give acknowledgments to the same⁶.
9. It is also to be noted that the defendant's actions would undoubtedly constitute fair use of copyright doctrine. International Conventions that have been ratified by India and are thus binding, such as the Article 9(2)⁷ and Article 13 of the Berne Convention 1948⁸ address fair use. Article 13 of the TRIPS⁹ explicitly provides Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the Right holder. The actions of the defendant will be undoubtedly fall within such a definition.

2.1. EPIONA HAS EXTRACTED ONLY NON-EXPRESSIVE INFORMATION

10. The A.I tool extracting information about the original work does not constitute infringement, as it does not replicate protected expression. This principle is grounded in the fundamental distinction between mere extraction and the replication of protected expression. Machine learning requires the copying of large amounts of copyrighted material, and copying should generally be permitted as most ML systems copy works not to consume the expression copyright law protects, but to get access to the facts or statistical data present inside the copyrighted work.

⁶ Cf. Keller v. Electronic Arts Inc [2013] F.3d 1268 (9th Cir.).

⁷ Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, revised at Paris 24 July, 1971) 1161 U.N.T.S. 3 (Berne Convention) art 9(2).

⁸ *Ibid.* art 13.

⁹ Trade Related Aspects of Intellectual Property Right (adopted 15 April, 1994) 1869 U.N.T.S. 299 (TRIPS) art 13.

11. The respondent humbly pleads that during the training of the LLM only non-expressive content and content not protected by copyright such as statistical information, word frequencies etc. have been extracted. During A.I training only these non-infringing parts of a text are extracted, and as such, there would be no case as to infringement of the copyright of the plaintiff.
12. In general, during this stage the machine learning or training of an A.I it “implements the ML algorithm in order to recognize and extract from the training dataset empirical observations, such as patterns, styles or other micro-elements.”¹⁰ These are elements that are not protected by copyright. As given in *Hulm Entertainment Pvt. Ltd. & Ors. v. Fantasy Sports MyFab11 Pvt. Ltd. & Ors*¹¹ wherein it was held that only the way in which idea is expressed can be protected through copyright.
13. Just as copyright treats machines as too dumb to count as authors, it also treats machines as too dumb to count as readers¹². If machines cannot create authorial expression by themselves, it makes sense to infer that machines cannot engage with or appreciate that expression, either.
14. In *Sega Enterprises v. Accolade*¹³, wherein video game maker Accolade copied Sega’s games to access functional code necessary to create games compatible with Sega’s Genesis gaming console, the courts held in favor of the defendant even claiming that Accolade's games had no need of fair use in the first place as Accolade was not using Sega's games for their protected expressive content, but simply to extract some unprotected, functional, non-expressive information contained within them. This is true within our case as well; the defendants have only taken non-expressive information such as the statistical data, syntactic patterns, etc., which are as mentioned above, are not protected by copyright, and as such, the actions of the defendant are not infringing on the Intellectual property rights of the plaintiff.

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 *Hulm Entertainment Pvt. Ltd. and Ors v. Fantasy Sports Myfab11 Pvt. Ltd. and Ors*, 2023/DHC/7593.

¹² Grimmelmann J, ‘Copyright for Literate Robots’ [2017] 101 *Iowa Law Review* 657

¹³ *Sega Enterprises Ltd. v. Accolade, Inc* [1992] F.2d 1510 (9th Cir.)

15. In *Google*, even verbatim replication of a complete work will not be termed as copyright infringement if the copy is used solely as input to a process that does not itself use the works expressively; that is to say non-expressive uses, like that of the defendant do not count as reading¹⁴¹⁵ and thus would not be infringing copyright. As such the contention from the plaintiff that the defendants violated his intellectual property rights would stand rejected.

2.2. IDEA EXPRESSION DICHOTOMY

16. The idea-declaration dichotomy draws a clear line between the concept of an idea and the tangible manifestation of that idea. “Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.”

17. In *R.G. Anand vs. M/s. Delux*¹⁶, the court provided that where the theme is same but presented differently, there can be no question of infringement and in the reply notice sent by EPIONA it is stated that utilizing a tool to extract information from the original work does not amount to infringement, as it does not replicate protected expression and only provides output in the same non-infringing manner. These principles align with the principle of copyright law, which is to promote intellectual and artistic progress by enabling authors to build upon the contributions of others.

2.3. THE DEFENDANT CONTESTS THAT ANY USE OF COPYRIGHTED WORK BY THEM IS TRANSFORMATIVE

18. Transformative uses tend to be an exception to copyright because a transformative use is a use that communicates something new and different from the original or a use that expands its utility, thus serving the purpose of copyright that is balancing the rights of the copyright holder yet contributing

¹⁴ *Supra* note 10.

¹⁵ *Authors Guild, Inc. v. HathiTrust* [2014] F.3d 87, 97 (2d Cir.)

¹⁶ *R.G. Anand v. M/s. Delux*, 1978 SC AIR 1613.

to public knowledge¹⁷ which is what was being done by the defendant as will be established before the Hon'ble Court.

19. In *Campbell v. Acuff-Rose Music*¹⁸, the Supreme Court stressed on how important the “transformative” use of the copyrighted work is. The transformativeness of the purpose of the use matters more than the transformativeness of the resulting expression¹⁹. In this case the purpose of using the copyrighted work is exceptionally transformative as it is used for obtaining data so that the A.I may learn to give better outputs which puts it far away from any use that has been intended by the plaintiff's works. As such they serve different market functions. EPIONA's model only uses the data for the purpose of understanding the relationship of the words and only uses the data for purpose of predicting texts by analysing their relationship with the words next to them.
20. In *Google LLC v. Oracle America, Inc.*²⁰, Google LLC's copying of approximately 11,000 lines of code from the Java SE application programming interface to create the Android mobile operating system was a fair use and did not support copyright infringement by the code's owner. The U.S. Supreme Court held that Google's use included only those lines of code that were needed to allow programmers to create a new and transformative program just like in our case, the defendant extracted only the data that was necessary to train the A. Is output generation ability hence rendering their use transformative. In *Authors Guild v. Google*²¹, the court deemed Google's scanning and database of millions of books, copying it entirely without their authors' permission as a "highly transformative" use, as Google Books provides information about books, not the books'

¹⁷ *Supra* note 16.

¹⁸ *Campbell v. Acuff-Rose Music, Inc.* [1994] 510 U.S. 569, (SC)

¹⁹ R. Anthony Reese, 'Transformativeness and the Derivative Work Right' [2008] 31 COLUM. J.L. & ARTS 101, 119

²⁰ *Google LLC v. Oracle America, Inc.* [2021] 141 S. Ct. 1183 (SC)

²¹ *Authors Guild, Inc. v. Google Inc.* [2015] 721 F.3d 132 (2d Cir.)

expression²². The court emphasized that Google Books serves as a tool directing users to a broad selection of books through snippets of text, emphasizing that it does not supersede or supplant the books themselves. The court declared fair use given the highly transformative nature of the use and the fact that they largely did not substitute for the authors' protected expression in the scanned books²³. In our case, EPIONA's development of IntCPM involves transforming copyrighted materials into training datasets, akin to creating a comprehensive search engine or database. IntCPM serves as a tool for generating natural language responses rather than replacing or supplanting the original copyrighted works. The concept that non-expressive and bulk uses are fair uses becomes evident in these cases.

21. In *A.V. ex rel. Vanderbye v. iParadigms*, where a plagiarism detection service, was deemed to have engaged in transformative fair use and the court emphasized that its use was "completely unrelated to expressive content," and the use of robotic readers was underscored as a transformative aspect. Similarly, EPIONA's use of plaintiff's copyrighted material in the development of IntCPM involves transforming copyrighted works into training datasets, contributing to creating a language model. Much like the plagiarism detection service automated comparison for plagiarism detection, IntCPM's functioning relies on transformed data without direct human review during the training process.
22. AI systems do not, by itself, harm the market for or value of copyrighted works in training corpora. Since such data is consumed by machines, not humans, the authors would lose no potential audience due to the use of their works in the corpus itself²⁴. They are not part of the market that copyright cares about, because the author's market consists only of readers²⁵. And since the output

²² *Supra* note 13, at 216–17

²³ *Ibid.*, at 216–17

²⁴ Sobel B, 'Artificial Intelligence's Fair Use Crisis' (2017) 41 *Columbia Journal of Law & the Arts*, Forthcoming 51

²⁵ *Supra* note 15.

of the A.I would not yield much more than a summary of the work, which could be found freely on the internet it would not harm the market of the plaintiff. The mere presence of a Transformative use may occur if its result and the original copyrighted work serve different market functions.²⁶ Authors may object that the outputs of generative AI systems will harm the value of their works²⁷. We will be addressing this objection in the later part.

2.3.1. SUBSTANTIALITY OF THE PORTION USED FROM THE PLAINTIFF'S MATERIAL IN TRAINING THE AI SYSTEM

23. The Corpora used in training AI systems sometimes contain nearly all content of sampled works²⁸. However, “*what matters in such cases is not so much ‘the amount and substantiality of the portion used’*” in making a copy, but instead the amount and substantiality of what is thereby made accessible to a public for which it may serve as a competing substitute. As long as the work is not made accessible to the reading public, this factor denies copyright infringement.
24. Each work in a training corpus makes a minimal contribution to the overall model, and thus, the loss of one work from the training corpus is not very detrimental to AI system quality. However, holding that training AI systems constitutes infringement would dramatically reduce the size of available training data (by demanding removal or substantial reduction of copyrighted works in the corpora) and thus lead to significant reductions in model quality. Increasing the amount of training data available to the system increases the output system’s accuracy and utility. Thus, non-expressive yet substantial use of entire works during training is reasonably necessary to the transformative purpose of creating AI systems.

2.4. THERE IS NO COPYRIGHT INFRINGEMENT IN THE OUTPUT CREATED

²⁶ *Supra* note 16, at 590

²⁷ *Ibid.*, at 590

²⁸ (Comment Regarding Request for Comments on Intellectual Property Protection for Artificial Intelligence Innovation) It; < https://www.uspto.gov/sites/default/files/documents/OpenAI_RFC-84-FR-58141.pdf>; > accessed 20 December 2023

2.4.1. THERE IS NO SUBSTANTIAL SIMILARITY BETWEEN THE TWO CONTESTED WORKS

25. It is humbly contested before the Hon'ble court that there is no substantial similarity and to notice that by disregarding elements that are not eligible for protection the remaining protectable elements, in isolation do not exhibit substantial similarity. IntCPM's creation lacks substantial similarity to the original, so it does not meet the criteria of being a "copy" or a "derivative work."
26. There is significant disagreement as to how likely it is that generative AI programs will copy existing works in their outputs. In the OpenAI case, it was argued that a “well-constructed AI *systems generally do not regenerate*, in any nontrivial portion, unaltered data from any particular work in their training corpus.”²⁹ In the OpenAI case it states, infringement “is an unlikely accidental outcome”
27. In such cases usually the plaintiff must prove by testing whether the viewer, after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original³⁰. If there are material and broad dissimilarities along with similarities, it negatives the intention to copy the original work. If the coincidences appearing in the work are clearly incidental, then there can't be infringement³¹. Considering that the most IntCPM has generated from the plaintiff's work is a summary, it would not be a “derivative work” or “copy”.

2.4.2. THE USE OF COPYRIGHTED MATERIAL BY THE DEFENDANT FURTHERS SCIENTIFIC AND CREATIVE ADVANCEMENT

28. Machine Learning (ML) just wants to learn from the work in order to put that knowledge to a different instrumental use. 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, that use should be presumptively fair under the first fair use factor.

²⁹ *Sipra*, Note 28

³⁰ R.G Anand v. M/s. Delux 1978 SC AIR 1613.

³¹ *Ibid.* at 52.

29. The fair use doctrine “permits courts to avoid rigid application of the copyright statute when, on occasion, it would stifle the very creativity which that law is designed to foster³².” AI systems offer immense promise for both creative expression and general economic as well as scientific innovation. Copyright barriers to training AI systems would have “disastrous ramifications” and “could jeopardize technology’s social value, or drive innovation to a foreign jurisdiction with relaxed copyright constraints” and retard “the Progress of Science and useful Arts. Therefore, holding that training AI systems is infringement would severely hinder AI research, thus stifling the very creativity copyright is supposed to promote. A.I systems have enormous potential societal benefits.”
30. The use must be productive and must employ the quoted matter in a different manner or for a different purpose from the original which is the case with EPIONA. If the secondary use adds value to the original, 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 society³³.
31. It was held in *Google Books* case that Google provides significant public benefits. It advances the progress of the arts and sciences, while maintaining respectful consideration for the rights of authors and other creative individuals, and without adversely impacting the rights of copyright holders. Similarly, EPIONA's use of copyrighted materials in the development of IntCPM provides for the broader implications of AI in advancing scientific development and increases public accessibility and benefits.

**III. THE RELIEF OF INJUNCTIONS SOUGHT BY THE PLAINTIFF CANNOT BE GRANTED TO
THE PLAINTIFF**

³² Stewart v. Abend [1990] 495 U.S. 207 (SC)

³³Leval PN, ‘Toward a Fair Use Standard’ [1990] 103 Harvard Law Review 1105.

32. It is most humbly submitted, before this court that the plaintiffs are not entitled to the relief of injunction both temporary and permanent in nature. It is hereby contended that the tool extracting information regarding the original work does not in fact constitute a copyright infringement as it does not imitate protected expression.
33. In the case of *Hulm Entertainment Pvt. Ltd. & Ors. v. Fantasy Sports MyFab11 Pvt. Ltd. & Ors*³⁴, the Delhi High Court laid down certain principles of law, such as:

“(I) Only the expression of an idea, which is original, can be protected through copyright (ii) In order to constitute copyright ‘infringement’, there must be ‘substantial’ similarity between competing works, (iii) Competing works are not to be tested hypercritically, but by observations and impressions of an average reasonable reader and spectator, (iv) Similarity of competing works does not by itself establish copyright infringement, if the similarity results from the fact that both works have the same subject/source, and (v) Where idea and expression are linked such that the idea can be expressed in a limited manner, expression of the idea may not be protected through copyright as doing so would confer monopoly.”

34. In the present case, the defendant aimed at training the software so as to generate output based solely on statistical information related to word frequencies, syntactic patterns, and thematic markers within existing published work. The same falls beyond the ambit of copyright protection. Moreover, the works of the plaintiff and the defendant do not contain any substantial similarity and a plea for an injunction against the defendant, both interim and permanent, is wholly unwarranted for taking into account that no copyright of the plaintiff has been infringed. The same is elaborated below in sub issues (3.1) and (3.2).

3.1. RELIEF OF INTERIM INJUNCTION

35. 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

³⁴ *Supra* Note 11.

compensated in terms of damages. The criteria for availing the same were laid down in the English case of *American Cyanamid v. Ethicon Ltd*³⁵ 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*³⁶. The defendant contends that this suit does not fulfil any of the criteria required to avail an order of interim injunction and as such the plaintiff should be disqualified from obtaining any such relief. This has been further elaborated under sub issues (3.1.1) (3.1.2) (3.1.3)

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

36. Prima Facie literally means, on the face of it. In *Martin Burn Ltd. vs. R.N. Banerjee*, 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 the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”

37. There is no prima facie case in question in the present case as no copyright has been infringed. The tool extracting non-expressive information from the original work does not in fact constitute a copyright infringement as it does not imitate protected expression. As established above, copyright is concerned with protecting the specific manner in which an author conveys or expresses an idea and that has not been replicated by the defendant. The defendant aimed to train the software to generate output based solely on statistical information related to word frequencies, syntactic patterns, and thematic markers by analysing texts all falling beyond the ambit of copyright protection. Therefore, this suit fails to fulfil the criterion of the establishment of a prima facie case as it is prima facie visible that protected expression is not violated.

³⁵ *American Cyanamid Co v. Ethicon Ltd* [1975] (UKHL).

³⁶ *Shanti Kumar Panda v. Shakuntala Devi*, AIR2004SC115.

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

38. In the case of *Anwar Elahi vs Vinod Misra and Anr*³⁷, 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.”

39. In the present case, the scale of inconvenience does not lean towards the side of the plaintiff at all as no copyright infringement has been committed. There is no substantial similarity on comparing the works of the plaintiff and the defendant and no copyright has been infringed through training the A.I as it does not replicate protected expression and instead intends to generate output based solely on non-expressive information existing within existing published work which falls beyond the ambit of copyright protection. As no copyright of the plaintiff has been infringed no inconvenience could have been caused to the plaintiff. Therefore, this suit fails to fulfil the criterion of balance of convenience. Any inconvenience claimed by asserting the loss in market of the plaintiff has already been dismissed.³⁸

3.1.3. THIRDLY, THERE NEEDS TO BE AN IRREPARABLE INJURY

40. The case of *Mr M. Ashraf Bhat vs Mr Z. A. Qureshi*³⁹, has established as follows-

“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

³⁷ *Anwar Elahi v. Vinod Misra and Anr*, 60(1995)DLT752.

³⁸ *Supra*, Note 24

³⁹ *Mr M. Ashraf Bhat v. Mr Z. A. Qureshi*, (JKHC 2019).

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.”

41. There exists no instance of irreparable injury in the present case. No copyright of the plaintiff is being infringed and thereby there is no resultant or associated irreparable injury caused to the plaintiff. The defendant has trained the programme to produce output that in no way shows any substantial similarity to the work of the plaintiff. As such any claims that the market of the plaintiff will be affected by the defendant's action has already been rendered incorrect. It is thereby proved that the plaintiff has and will not undergo any irreparable injury as a result of the actions of the defendant. Therefore, this suit fails to fulfil the criterion of irreparable injury as well.

3.2. RELIEF OF PERMANENT INJUNCTION

42. A permanent injunction is generally granted by the 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. In the present case, no such final injunctive relief should be granted to the plaintiffs as it is established by the defendant that no copyright of the plaintiff has been infringed. The extraction of information from the original work in a non-expressive and transformative way does not constitute a copyright infringement as it does not replicate protected expression, and the use of the copyrighted work would fall under the fair use doctrine. The very objective of copyright law is to encourage intellectual and artistic growth and development by allowing various authors to develop content based on the contributions of others while still balancing the rights of creators.

43. Hence, no copyright infringement has occurred from the part of the defendant. A claim for a final injunctive relief such as that of a perpetual and permanent injunction is wholly uncalled for and the case put forward by the plaintiff does not warrant for the same. It is humbly submitted before the court that the plea for a final injunctive relief be dismissed and not granted to the plaintiff.

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) Dismiss the claim for interim injunctive relief in favour of the plaintiff.
- 2) Dismiss the order by the plaintiff to provide an award of damages for the copyright infringement.
- 3) Dismiss the claim for final injunctive relief in favour of the plaintiff.
- 4) Direct the plaintiff 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 EPIONA PRIVATE LTD.

(Defendant)

PLACE: Hiled

COUNSEL CODE: TC001