



2023 OVERVIEW – COPYRIGHT LAW IN INDIA

By [Lynn Lazaro](#) and [Aparna Venkat](#)

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The year 2023 saw several advances in copyright law, including updated definitions of an “expression” and “work”. The courts also laid down the law in relation to the use of generative artificial intelligence to create deepfakes, the shield of fair use of celebrity names and images and the usage of dynamic injunctions in contemporary copyright law. Some key events include,

KEY CASES

“LITERARY WORK” CANNOT INCLUDE A MOBILE APP; GUI IS NOT CONSIDERED “WORK” UNDER THE COPYRIGHT ACT.

HULM Entertainment Pvt. Ltd. v. Fantasy Sports MYFAB11 Pvt. Ltd

Date of Judgment: 17/10/2023

A suit was filed by Plaintiffs against the Defendant over their Fantasy Sports app that further amalgamated features of stock market.

The High Court held that the competitor’s app could not be proved to be infringing on the Plaintiff’s copyright, which as for a concept note registered as a literary work; an adaptation as in section 2(a)(ii)-(iii) could not include a mobile app. The High Court also held that a Graphic User Interface (GUI) is not a ‘work’ under the Copyright Act and thus there is no copyright in a GUI per se under sections 13 & 16; relying on the test in the US judgement of Apple Tech v. Microsoft.

The High Court further went into detail regarding the Doctrine of Merger, that when an idea can only be expressed in a limited number of ways, there is no copyright as that would confer a monopoly on the idea.

ONLY UNIQUE COMMUNICATION WOULD CONSTITUTE AN EXPRESSION PROTECTABLE UNDER COPYRIGHT

Humans of Bombay Stories Pvt. Ltd. v. POI Social Media Pvt. Ltd.

Date of Judgment: 11/10/2023

A copyright infringement suit filed by Humans of Bombay against People of India for alleged copyright violation in their content imitating the Plaintiff’s content.

The court ruled that there could be no monopoly over a storytelling platform, but each one’s unique way of communicating those stories, including images, literary

content and manner could constitute an expression protectable under copyright. Moreover, with regards to subject submitted content, if commissioned, copyright would be with the platform itself but otherwise there could be no claim on these.

DISTRIBUTION OF TV SERIALS ON WEBSITES AMOUNT TO PIRACY AND COPYRIGHT INFRINGEMENT

Star India Pvt. Ltd. v. Yodesiserial.su & Ors.

Date of Judgment: 10/04/2023

A suit was filed by Plaintiffs, being producers of TV serials, against defendants running websites distributing said serials under Plaintiff's copyright – i.e., piracy.

The Court passed a permanent injunction restraining these websites as well as all others acting on their behalf from; communicating, hosting, streaming, or making available for viewing and downloading without authorization, on websites/social media/any other platform through the internet or in any other way the Plaintiff's copyrighted content.

DYNAMIC INJUNCTION RULING AGAINST ALL MIRROR WEBSITES

Star India Pvt. Ltd. & Anr. v. JioLive.tv & ors.

Date of Judgment: 27/09/2023

A request for dynamic injunction against potential violators of Plaintiff's copyright to broadcast the ICC Men's World Cup was filed against piracy websites that are highly likely to pop up and damage the Plaintiff's profits.

The Court granted a dynamic injunction – as soon as the content was created, i.e. the footage, it would be protected; and any illicit websites distributing it could be shut down as and when they arose without filing a case per violator.

THE COPYRIGHT OF A SCREENPLAY COMMISSIONED ON BEHALF OF A PRODUCER WOULD VEST WITH THE ORIGINAL AUTHOR

RDB and Co. HUF v. HarperCollins Publishers India Pvt. Ltd.

Date of Judgment: 23/05/2023

In this case, the question in dispute was whether the copyright of a screenplay commissioned on behalf of a producer would vest within the original author or the producer (Nayak by Satyajit Ray)

The Plaintiff being the producer, and the Defendants being the publishers, assumed copyright would fall with Satyajit Ray's son and the Preservation Society run by him. The Court held that while the copyright for the Plaintiff indubitably vests in the producer, this could not affect the copyright of the screenplay, which is a separate literary work, as the categories are distinct in the Copyright Act. Section 17 tells us that the author is the copyright owner, in this case Satyajit Ray

(and now his estate) and not the producer even though it was written on request of the Plaintiff.

THE USE OF CELEBRITY NAMES AND IMAGES UNDER FAIR USE CATEGORIES FALLS UNDER THE RIGHT OF FREEDOM OF SPEECH UNDER THE INDIAN CONSTITUTION

Digital Collectibles Pte. Ltd. and Ors. vs Galactus Funware Technology Private Limited and Anr.

Date of Judgment: 26/04/2023

In this case, the court declined to issue a temporary injunction against the gaming platforms Mobile Premier League (MPL) & Striker for using the name and likeness of certain cricketers to create Non-Fungible Token (NFT) – enabled “Digital Player Cards”.

The Hon’ble High Court of Delhi through reference of various judgements, noted that the Use of celebrity names, images for the purpose of lampooning, satire, parodies, art, scholarship, music, academics, news and other similar uses would be permissible as facets of right of freedom of speech and expression under Article 19(1)(a) of the Constitution of India and would not fall foul to the tort of infringement of the right of privacy.

THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE TO CREATE DEEPPAKES FOR COMMERCIAL PURPOSES IS NOT PERMITTED

Anil Kapoor v. Simply Life India

Date of Judgment: 20/09/2023

The Delhi High Court delivered a significant order in the case of Anil Kapoor v. Simply Life India & Ors, ruling in favor of the widely known Indian actor, Anil Kapoor. The court issued an ex-parte order in response to Suit CS COMM 645 of 2023, where Kapoor sought protection for various facets of his personality that amounted to certain commercial value. These included his name, voice, dialogue delivery, image likeness, gestures, signatures, and other elements, primarily concerning their misuse across the internet.

It was held that creation of merchandise, GIFs, and the use of generative Artificial Intelligence to create deepfakes for commercial purpose and the domain names using the term Anil Kapoor cannot be allowed.

CONTACT DETAILS

[Lynn Lazaro](#)

Resident Partner (Toronto)

lynn.lazaro@bgl.kochhar.com

[Aparna Venkat](#)

Senior Associate (Bangalore)

aparna.venkat@bgl.kochhar.com