

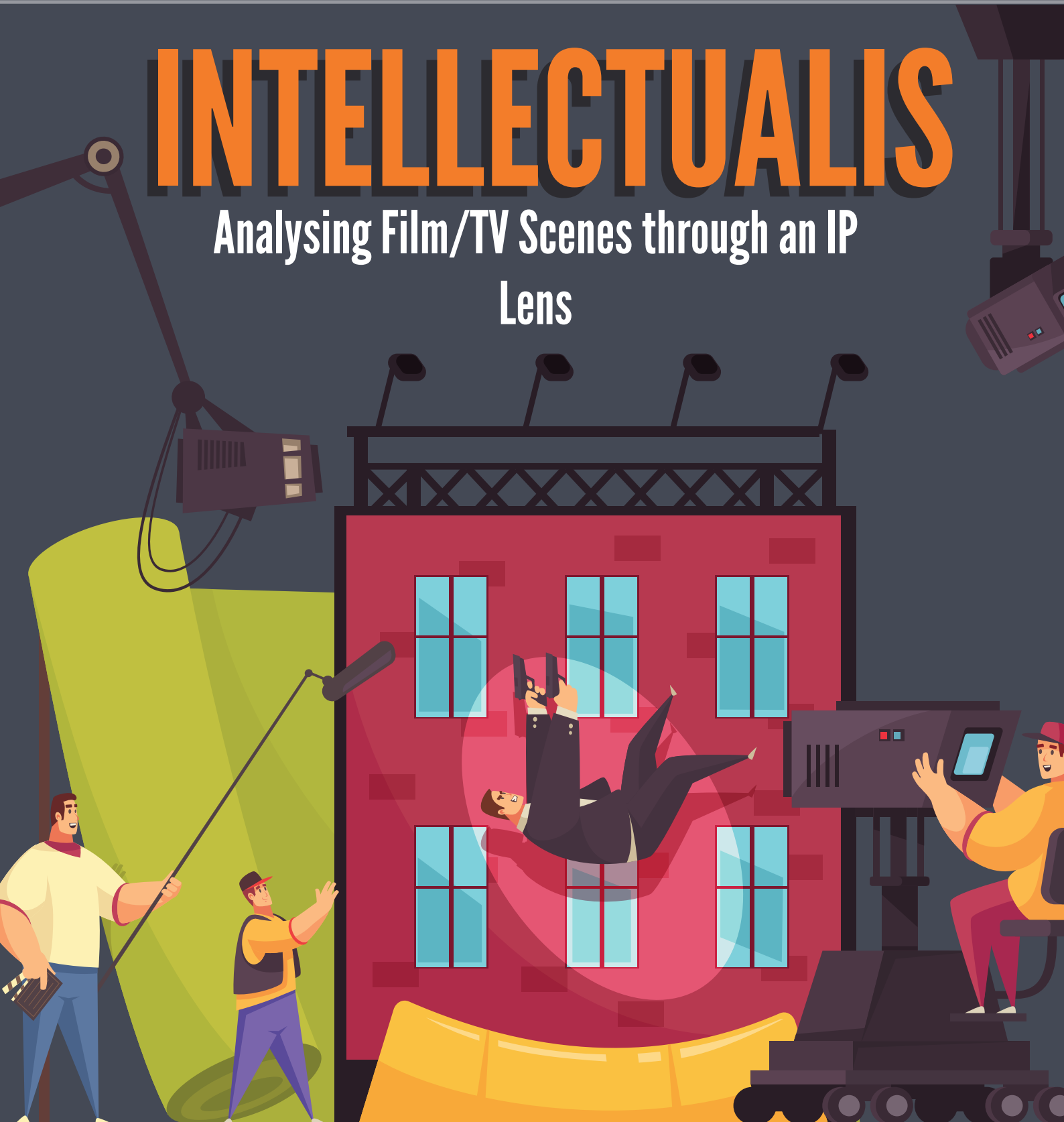


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INTELLECTUALIS

Analysing Film/TV Scenes through an IP
Lens



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EDITORS' NOTE

Dear Readers,

We proudly present the First Edition of Volume 5 of Intellectualis, with the theme ‘Analysing Film/TV Scenes through an IP Lens.’ The vibrant world of cinema is a confluence of various creative energies and ideas. This hub of creativity is inevitably in need of protection and here comes the tryst with IP law. To further the point that IP is all-pervasive, we have instructed students to pick a scene from a movie/TV series involving an IP problem. This gave students an opportunity to analyze arguments from both sides and come up with a legal solution/remedy the aggrieved party can avail, strengthening their critical analytical skills. This would also engage the reader as they would realize that there is an IP perspective even to their favourite movies and shows.

We hope that you take the time to read what our e-newsletter has to offer. We would like to extend our gratitude to the student body of School of Law, CHRIST (Deemed to be University) for their overwhelming response to the newsletter. This edition would not be possible without all our committee members, especially those in the Research and/or Editorial team. We would also like to thank our Faculty Coordinator Dr. Avishek Chakraborty for constantly supporting us and guiding us through the drafting of this newsletter.

We hope you enjoy reading this edition!

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Examining Ideas of Human Genetic Information Commodification and its Self-Ownership Through the TV Show "Modern Family"

- Shreya Sampathkumar

Explanation of the Scene and Legal Problems

In the "Egg Drop" episode (Season 3, Episode 12) of the popular television show "Modern Family," Claire is trying to convince her science geek daughter, Alex, to give her the design for an "egg parachute" to make Luke's (Claire's son's) project. Alex refuses to give Claire the design, so Claire says to her, "I made the egg that made you that did the project, so in many ways, that design is already mine." When fact-checking this statement - considering real-world implications, it becomes necessary to answer a fundamental question first. Can human beings own their genetic material?

Introduction

An essential jurisprudential debate will be addressed in answering the above question: does the act of commodifying the human body clash with achieving a healthy exercise of self-ownership rights? The average person would argue that the question renders a somewhat problematic image of the human self; in that it subverts arguments for anti-slavery and feminist revisions of the Lockean paradigm (in simple words, in terms of their societal statuses, women are on par with men, with certain limitations

and exceptions). A question to consider further is whether the purposes of human body commodification (for instance, biotechnology research and exploratory reproductive technologies) justify it.¹

Balancing Human Genetic Information Commodification and Self-Ownership

Since biotechnology applications of human body commodification may be universal and indiscriminate, this article contends that discrimination and market forces may cause disproportionate effects on repressed groups and put the benefits of self-ownership at risk.⁵ A scientist who has discovered a way to create immortal cells from cancer cells can claim that she owns the outcome. On the other hand, the individual whose cancer cell was utilised in the research could claim ownership because the outcome was directly derived from her unique genetic information. While most existing legislation states that particular kinds of genetic inventions are patentable and that donors of genetic information hold no property rights in the outcomes of related research, extant groups firmly hold that their genetic information is their property.²

Thus, the central point of inquiry is derived - is it possible to interpret laws of genetic ownership such that individuals can own their genetic material? Is it possible to secure a balance between theories of property attributed to the biotechnology and the exploratory reproductive technology industries and those attributed to those who provide their DNA for such use? In the current context, it is observed that researchers of the former category of stakeholders look at it from an economic approach to ownership of genetic material - the labour theory of property in particular. However, owners of the genetic material derive their contentions from the personhood theory. In attempting to accommodate these two insights, Jessica L. Roberts³ concludes that the wealth maximisation theory could harmonise these conflicting arguments to balance researchers' and genetic material providers' interests.

Morality in the Use of Genetic Information as Intellectual Property (IP)

This question has been answered from the perspective of those who view it as unethical to demean living beings' compositions to commodities that private individuals could own. However, those who argue that moral counter-arguments are unfounded must be able to answer one traditional economic question - is facilitating private ownership of property when it falls within "the commons" contributing to society as some form of a good or service?⁴ Human genetic information is to be handled

in a manner different from other conventional forms of property; it shares a very specific feature that all forms of Intellectual Property (IP) have - it is non-rivalrous, which means that the use of certain human genetic information does not tangibly impede others' use of it.

The perils of conducting research threaten the privacy or dignity of the genetic information provider; perhaps through publicizing information one would have preferred not to disclose or by violating their spiritual, philosophical, and moral beliefs. Thus, despite its non-rivalrous qualities, genetic information is truly personal and vital to the concept of personhood. When an individual chooses to donate their kidney, it is inherent that the kidney has been in the individual's possession beforehand - how else can one give it away? This realisation segues into an important question - when an individual provides a cell sample from which genetic information is derived, would it constitute giving away information that one previously owned?

23 and Me and the Moore case

In the *Moore* case,⁶ the Court addressed the question of whether Moore still owned his spleen cells once they left his body. As per U. S. Common law, individuals do not have property rights in extracted cells. U. S. Courts have extrapolated this to mean that the one from whose body the genetic material has been derived has no stake in the outcome of the research regardless of if one's unique genetic

information was crucial to the success of the research. Jessica L. Roberts⁷ also contends that because the law prohibits ownership of genetic material, it does not imply the impossibility of claiming ownership of genetic information.

In light of today's scientific advancement, scientists have been able to correlate human genetic information to an individual's perception of the self. Perhaps this knowledge may slowly begin changing how the law interprets ownership of genetic information and its future use.⁸ 23andme, for instance, exploits the connection between genetic information and individuals' self-identity to tend to its marketing needs. Products and services of such nature send a message that strengthens the idea that genetic information is a source identifier for self-awareness - this makes people associate genetic information as an element of their personhood.

Concerns of Economic Utilitarianism and Personhood

James Boyle, a Scottish IP scholar, reasons that another cannot own one's genes because the provider owned it first. He says that one's genetic information is their property and that gene sequences are always derived from a source.⁹ The source's claim should be given legal recognition instead of attributing it to the individual seeking a patent on research for the genetic information used. Another argument for providing property rights for providers of genetic material is

that it could mitigate the issues arising from bio-prospecting and genetic colonialism.

It is perhaps time to understand the debate between property and privacy as more jurisprudential – an inherent fight between economic utilitarianism (essentially the labour theory of property) and the personhood theory of property. The human body can constitute personal property because it forms an individual's personhood. If the human body is property, then it becomes property for personhood. From this, it may be derived that once any component of the human body is extracted, it would constitute personal property. In furtherance of the same, it may also be said that the unique nature of genetic information can make it even more suited to constitute personal property. While U. S. Courts have historically pushed aside notions of self-ownership of genetic material in adopting the labour theory of property, a personhood theory would serve to be a new perspective to look at genetic ownership claims.¹⁰

Under the personhood theory of property, the court in the Moore case recognised that although the skill and labour of the researchers led to the creation of the cell line, the individuality of Moore's genetic information made it possible to utilise the researchers' skill and labour. Even though Moore's spleen was not a part of his body anymore, Moore's unique genetic information was still contained within these cells. Thus, regardless of its location, the genetic

information contained in Moore's spleen cells remained uniquely his.

Addressing this case through a moral rights lens, Moore's claim may be more robust because the genetic information the cells contained was a part of his identity. In contrast, the researchers' skill and labour rendered the cell line a valuable commercial and utilitarian outcome. In using the personhood theory in this context, it is observed that self-ownership wins the stakes, and not commodification.

Genetic researchers, in most instances, claim ownership for financial reasons - in most cases, it results in obtaining economic incentive to continue such work, to use the derivative data in other studies, or to receive funding. From these observations, the labour theory makes the most sense in genetic researchers' ownership claims.

Understanding Property in the Context of Geographical Indications and its Implications for Personal Ownership of Human Genetic Information

In layman's terms, ownership and property are two fundamentally intertwined concepts that find roots in private property. In the context of genetic information, however, three forms of property and ownership seem to be relevant - common property, collective property, and private property. Common property may include property available to the entire world, such as fundamental physics formulae, the air

we breathe, and the oceans. When only a group of individuals decide the use of the property in question, it constitutes collective property - such as traditional knowledge or geographical indications (GI). Private property includes the right of individual persons to restrain unauthorised use of a specific resource by others, such as copyright, rights over a piece of land, or an invention.¹¹

How does the State, through the law, balance the ownership interests of various stakeholders for each kind of ownership? In terms of common property, it is seen that the law attempts to provide public access to prevent private parties' appropriation of such resources. For collective property, the law gives out bundles of rights to members of the specific group they are a part of. A good example of the same is that of the geographical indication of Bikaneri Bhujia - only its makers whose manufacturing processes fulfil all the necessary criteria may join the group that gets to use the GI tag and the rights that accompany it. Private property permits its owner to disincentive third-party use by relying on Court-issued injunctions or being financially compensated for its unauthorised use.

Genetic information finds footing in all three of these categories. As common property, genetic information could constitute information available to all - such as decoded sequence lists of a gene. As collective property, genetic information could be owned by a group like the Havasupai tribe that decides who gets

to use it. As private property, GI would fall under the conventional domain of IP - as patent rights, for instance.¹²

The discussion on the labour theory of property concerning the interests of genetic researchers makes it clear that self-ownership has a chokehold when it boils down to individual interests. However, the common societal goal is to advance knowledge and medicine - the greater good if it may be described as such. While it might exude a simplistic ideology, the pursuit of scientific progress sets aside the narrow interests of capitalism. It brings awareness of a common goal to discover new forms of therapy, vaccinations, and cures to promote the general welfare of society.¹³

In the colloquial sense, "exploitation" means "to take unfair advantage of." The exploited is denied something by another who unfairly benefits from the act of exploiting. In this understanding, some forms of genetic information may be exploitative - when a person donates her genetic information used by a researcher to commercialise without adequately compensating the provider of the genes. However, if a prior contract is in place that the provider must obtain compensation if the donation was essential to bring about a utilitarian result, it would breach the contract. Here, the violation is not one of the property rights but of a contractual nature.

Conclusion

Thus, the answer to our initial question is a simple no. Claire does not have any ownership rights whatsoever over her daughter's genetic material. However, in view of recent scientific advancements in biotechnology and the exploratory reproductive technologies field, one will come to realise that genetic information does indeed make up a large portion of the self-identity of any individual. Keeping in mind the personhood theory, it is possible for the law to adapt to new ways of perceiving genetic information ownership.

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Legal Analysis of a Scene from the Series ‘The Office’

- Samrudh P

Explanation of the Scene

Dunder Mifflin, a Paper Company, that is in the business of papers has its branches in most North Eastern States of the USA. The show follows upon the daily lives and the disorder that unfolds in the office and the monotonous humour that surrounds the dull routine of the Corporate. The Office is based in the Scranton Branch, where Michael Scott is the branch Manager. In Season 5, Michael resigns from his post as Branch Manager. The uncooperative behaviour of Corporate is what led him to take this decision. However, he chooses to open a rival

company in the same building as Dunder Mifflin. He proceeds to name it as Michael Scott Paper Company. Pam, the receptionist at Dunder Mifflin, also joins Michael in his venture of starting this new establishment. They hire Ryan, an erstwhile employee of Dunder Mifflin, who caused massive financial loss to Dunder Mifflin in the past.

The three of them together begin by contacting the clientele of Dunder Mifflin, as the database was previously accessible by Michael Scott. The objective of this move was to interfere with the business of Dunder Mifflin. After contacting a couple

of clients, they decide to access more Company information, in which way they could hasten the process of sabotaging the Company. Michael contacts Dwight Schrute, the best salesman of Dunder Mifflin and also Michael's wingman while he was the Branch Manager. However, Dwight tries to eschew Michael by saying that he is focused on the new Branch manager, Charles, as opposed to ameliorating him. Michael, staying adamant on persuading Dwight manages to secure a meeting with him during break time. As clandestine as it can get, Dwight snitches on Michael and tags along with the new Branch Manager, Charles, to confront Michael. Charles reasonably conveys to Michael that he doesn't want him pestering his employees for Company information, and also to not try and put the Company in jeopardy because of his malicious intentions. Michael avoids liability by pretending to not fathom anything told by Charles. But the attempt and accomplishment of soliciting a couple of customers from Dunder Mifflin by Michael is never further addressed and the issue goes unevaluated.

Legal Problems

Charles doesn't proceed to hold Michael liable for infringement of trade secrets, as the transaction costs involved in the happening of litigation is immense and also because there was not any explicit clarity provided on the non-disclosure of client information to the employees of the Company, it was not assumed to be considered as something confidential. Michael

further proceeds to attempt to put his previous company in jeopardy by causing them a loss. He manages to do this by undercutting them substantially and marketing this to their clients. Naturally, these clients move from Dunder Mifflin to the Michael Scott Paper Co. The question is whether this attempt of Michael Scott, to sabotage Dunder Mifflin attract penalties under the competition law. The answer is no, as in India, non-compete restrictions cannot be imposed on an erstwhile employee of a company. This was the approach taken by the 1958 Law Commission in its 13th report as they believed in a much more liberal approach towards trade and restrictions. But in the UK, Non-Compete restrictions on former employees are offered a qualifying assessment.¹

In the case of *Superintendence Company of India Pvt. Ltd. V. Krishna Murghai* (1980)², non-competes were considered valid, as there is a duty of fidelity towards the employer during the course of employment and ergo breaching this would likely attract penalties. However, it was also held that a negative covenant imposed on an employee that operates even after the termination of employment is illegal.³

Furthermore, the issue is whether the attempt of Michael to solicit insider information from within the company by bribing one of the employees to do so amounts to infringement of trade secrets and is thereby prohibited by Competition Law.

Legal Analysis

Customer information, or client database that is essentially not accessible by the public in general, and are stored in Customer Relationship Management (CRM) databases may qualify as Trade Secrets.⁴ Although in India, Trade Secrets aren't particularly recognised under any specific legislation. The protection offered to protect confidentiality in general is provided by contracts, principles of equity, copyright law and common law action of breach of confidence.⁵ In 1995, when the TRIPS Agreement came into effect in India, the definition and clarity on Intellectual Property Rights expanded. The TRIPS Agreement also defined Trade Secrets as information which is kept secret, has a commercial value and the owner of the information takes reasonable steps to keep it secret.⁶ Non-Disclosure Agreements (ndas) are quite a widespread means to protect trade secrets in India.

In the case of *Burlington Home Shipping Pvt. Ltd. V. Rajnish Chibber* (1995)⁷, where it was held that compilation of information in a form of a database that takes effort, research and creativity can be classified as a subject of Copyright. The principle resorted to during the case was the 'Sweat and Brow' principle, which fundamentally laid down that the originality of any entity can be determined from the reasonable research, labour and work put into forming the entity. This principle is long obsolete and ambiguous, as its threshold for authenticity is quite on the basic. However, the Courts have moved on from this principle. In the case of *Eastern Book*

Company v. DB Modak (2008)⁸, it was decided that the mere requirement of research and labour into any work to have it subject to copyright is flawed and that the threshold should be made more stringent in order to judge authenticity. It was also held that a measly compilation of information as in a form of a database is not subject to copyright unless there is , exercise of skill and judgement along with labour and work.

Nevertheless, in the *Burlington* case, the Court also shed light on what constitutes a trade secret and copyright infringement when the subject in contention is a customer information database. The courts opined that the thin line of difference between the two is that the trade secrets aspects of a customer information database is the confidential information per se and the accessibility of it is restricted to the ones authorised to do so; and that a copyright facets of it is the way in which it is stored, if any creative work is surrounding the method in which the information is being stored. It is this distinction which comes into play when it comes to customer information databases or client databases, the accessibility of it and the method in which it is stored which decides if it constitutes a trade secret or a copyright infringement.

Furthermore, in the case of *Navigators Logistics Ltd. V. Kashif Qureshi & Ors.*⁹, Justice Endlaw delivered a succinct judgement on the aspect of customer lists being the subject matter of copyright and confidential information. In this case, it was upheld that no copyright can subsist in a compilation in the absence

of employment of any skill or judgment.¹⁰ Additionally, it was also observed that any information that the company or establishment took no initiative towards concealment from the general public and keep it exclusive and that the employees knew about this cannot be classified as a trade secret as the confidentiality aspect of it is essential and absent in this particular case, ergo it can't be considered.

Plausible Arguments and Conclusion

In this case, Dunder Mifflin can potentially sue Michael Paper Company as they tried to maliciously attain company information and also used their client database which is usually stored in CRM Databases. Although the question of whether Dunder Mifflin explicitly made it clear to the employees to not reveal their client databases to competitors goes unanswered, the potential for them attracting penalties is indubitably present. However, from the side of Michael Scott Paper Co. It can be argued that Michael just had an advantage since he was the erstwhile manager of the Scranton branch and that there wasn't any explicit clarity provided to him on not to use or reveal their client databases even after termination of employment. Because albeit the assertion of negative covenants after employment being illegal, Trade Secrets of a Company can still be protected by Non-Disclosure Agreements (NDA) and if any of these come into picture, then further arguments can be placed.

Nevertheless, in India, there is not much clarity with regard to trade secrets as it deserves. However, there have been quite some theories trying to explain the ontology of trade secrets. Interpreting and incorporating these theories is the onerous part for any economy and nation. Notwithstanding the previous observation, the area of trade secrets are still protected under other existing laws that govern the confidentiality of a business.

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Critical IP Analysis of the Movie ‘Coming to America’

- Anjali Saran

“Look... Me and the McDonald's people got this little misunderstanding. See, they're
McDonald's... I'm McDowell's...”

Explanation of the Scene

The present scene is from the movie *Coming to America* (1988) where the protagonist, a Crown Prince is seen working at a local fast-food restaurant, McDowell's, a spinoff of McDonald's. In the movie, McDowell's is shown in colours yellow and green, similar to the trademark of the McDonald's of yellow and red, and also has a similar logo and restaurant interiors. The owner Cleo McDowell gives off a petrified expression on hearing a police siren reflecting his improper business of the McDowell's restaurant. This is the crux of the scene that has been chosen for analysis in this article.

Theories Involved

Apart from lawful thinking that is accessible to the general population, there are different philosophical and jurisprudential reasons with regards to why something ought to be done, or be restrained from being done. These hypotheses go about as the points of support for the legislation that are there today.

Essentially, there are additionally justified theories of laws engaged with the current scene that gives it legitimacy to be incorporated under the ambit of intellectual property laws. They are given below:

- a) *Natural Rights Theory*: The primary reasoning behind this theory is that everybody has a privilege to think about his/her thoughts as a regular property right by the explanation that the creation begins from the work, innovation and creativity of the maker. Here in the present case, McDonald's brand name and trademark is being misused by McDowell's.
- b) *Utilitarian Theory*: The essence of this theory is that the modern advancement and social products can make a superior and significant financial effect on the general public. According to this theory, a person should benefit (or long time happiness) from a thing he does. Thus, there ought to be ostensible confirmation that the benefit will outweigh

the costs incurred. Here in the present case, the happiness/benefit of the McDonald's franchise is under grave threat from the McDowell's owner.

- c) *The Ethic and Reward Theory*: This theory justifies the select privileges of licensed innovation from a moralistic and ethical angle. The idea of ethic requires a fair and relative commitment from the side of maker or pioneer who has concocted something for social utility. Here, the IPR are seen as "*a declaration of affirmation and obligation to a creator for accomplishing more than culture expects or feels that they are obliged to do.*"¹ In the present case, this theory has been infringed by McDowell's who started a restaurant similar to an already existing well known restaurant without taking due permission from them.
- d) *The Economic Theory*: This theory is a financial hypothesis of IPR and is directly connected with its worth in the market economy. For intellectual property, an incentive must be created to overcome the losses and market failure because every time the innovator loses a huge amount of money due to high initial creation costs and marginal distribution costs of intellectual products.² In the present case, it can be inferred that there is a threat to the profits of the McDonald's franchise by the McDowell's people.

Legal Problem

The legal problem in this movie is two-fold. The first problem deals with the infringement of the trademark of the McDonald's franchise. As mentioned above, the owner Cleo McDowell used to be under the apprehension that the police are coming to arrest him. This wouldn't have been the case if he did it with due permission or if he was an innocent infringer. Innocent or unintentional copyright infringement occurs when a person who engages in the infringing activity does not know that his conduct is infringing, perhaps most commonly when they intentionally imitate the work of another but reasonably believe that the copy thereof is not infringing. In the movie, as can be inferred from the behavioural pattern of Cleo McDowell that he is neither an innocent infringer nor someone who is not aware of their crime. He knows that he has infringed upon the trademark of McDonald's by using their logo and colours that are similar to the original McDonald's group. This is one of the major legal problems in the movie.

However, this is not the only problem encountered in the movie. Another interesting fact about this movie is that the fictional restaurant has been brought alive by some people. Claiming to be fans of the movie, these people have brought the restaurant McDowell's from reel to real life in New Jersey. So, it's not a surprise that Paramount Pictures, the production house behind this movie, has brought a suit against these infringers. While the satirical use of

McDonald's in the movie has been held under Fair use, the same defense doesn't go for the real-life McDowell's restaurant. Paramount is seeking \$30,000 in damages, the maximum allowed by the court, and for fan club to cover the production company's legal fees.³ The lawsuit is yet to be decided.

Legal Analysis

Trademark is a name or symbol that helps people in identifying the goods to their manufacturers. For example, the Royal Bengal Tiger is a trademark used by Sabyasachi to identify their apparel and products. Similarly, McDonald's trademark is their 'M' in yellow and red colours which acts as a trademark for them.

As per the Trademarks Act 1999, Section 2(1)(h) states that- *"deceptively similar —A mark shall be deemed to be deceptively similar to another mark if it so nearly resembles that other mark as to be likely to deceive or cause confusion."*⁴ Here, the McDowell's mark can be seen as a deceptively similar mark.

Under Section 2(1)(i), *"false trade description" means (IV) any marks or arrangement or combination thereof when applied— (a) to goods in such a manner as to be likely to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose merchandise or manufacture they really are."*⁵ Seeing the definition of false trade description here, it's clear that McDowell's in the present case was

trying to falsely use McDonald's trademark to mislead customers.

Section 10 of the Trademarks Act mentions the limitation on the use of colours in the Trademark Act. It states that: *"—(1) A trade mark may be limited wholly or in part to any combination of colours and any such limitation shall be taken into consideration by the tribunal having to decide on the distinctive character of the trade mark."*⁶ Hence, even the Act recognizes that the colours used in one trade mark may play an important role in determining the way it garners public response to it. So, even the courts are skeptical in giving the colour combination a free escape under this Act.

Section 102(1)(a) of the Act deals with Falsifying Trademark. It states that: *"—(1) A person shall be deemed to falsify a trade mark who, either,— (a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark."*⁷ Section 103 mentions penalties for the same, where it states that: *"be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees."*⁸ Hence, falsifying trademarks is a big crime in India, which carries a penal punishment with it.

It is safe to say then that if the McDowell's case was a real story in India, then the infringer Cleo McDowell's would have had to pay heavy compensation and may even be imprisoned for the

offence. To be on the safer side, it is of utmost importance to never infringe upon someone else's trademark, however harmless that infringement may be in the person's eyes, as it may cause great economic loss to the plaintiff, who, if in a suit, is able to prove their stance, then the defaulting party will be heavily tramped upon.

The real McDowell's that was started by the fan club infringed upon the Copyright granted to the fictional restaurant in the movie. As for the Copyrights Act 1957, Section 2(h) states: "*dramatic work*" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting, form of which is fixed in writing or otherwise but does not include a cinematograph film."⁹ Hence, McDowell's will come under the ambit of dramatic work.

Since it is a movie, therefore, its rights will be held by the producer, who has put in money for making the movie, here Paramount Pictures. So, none of the characters of the movie can be used without the due permission of the production house. But this was not followed in the present case, where the fan club opened up the 'reel' restaurant in 'real' locations. Hence, Paramount Pictures have all the rights to file copyright claims against the restaurant people.

International Perspective Trademarks

The Madrid Protocol is a good protocol governing trademarks in the international sphere. Even Chapter IVA of the Trademarks Act talks about it. The Madrid

System is a convenient and cost-effective solution for registering and managing trademarks worldwide. A person can file a single application and pay one set of fees to apply for protection in up to 128 countries. Any application can be modified, renewed or expanded global trademark portfolio through one centralized system. An individual can utilize the Madrid Protocol if an individual or business association with one of the Protocol's members. This implies that there are mainly 2 criteria for the Madrid protocol to be applied to an individual: be domiciled, have an industrial or commercial establishment in, or be a citizen of one of the 128 countries covered by the Madrid System's 112 members.¹⁰

Copyright

The Berne Convention, which was effectuated in 1886, manages the assurance of works and the privileges of their creators. It gives makers, for example, creators, performers, artists, painters and so on with the resources to control how their functions are utilized, by whom, and based on what conditions. It depends on three fundamental standards and contains a progression of arrangements deciding the base security to be conceded, as well as unique arrangements accessible to emerging nations that need to utilize them.¹¹ This Convention also provides for minimum standards required for the protection of an artistic work. It also gives the minimum protection that should be given under Copyright. Hence, the present Copyright laws in the international field

revolve around this Convention, which can be said as a starting point for IP protection in copyrights.

Lessons Learnt - From IPR Perspective

There were numerous lessons that were learnt from this article. It showed the importance of registering an IP, here, trademark and copyright as well as the benefits, both monetary and legal that, come to the owner of these assets. It showed the importance of Trademark, and how necessary it is to have a distinct and unique trademark, that cannot be duplicated by others. If a trademark is found to be violative, then, that trademark will be cancelled and sanctions can be imposed on the person who has been found to duplicate it with malicious intent, such as what happened in the movie with McDowell's. Similarly, lessons of copyright were also learnt from this article wherein when the reel life restaurant was brought alive by the fan club in real life settings, then the production company filed for copyright infringement. Therefore, this article shows a mix of both copyright and trademark and the detrimental impact of using them with hostile objectives.

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2. *Ibid.*
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4. The Trademarks Act 1999, s. 2, cl. 1(h), No. 47, Acts of Parliament, 1999 (India).
5. *Supra* note 4 at s. 2, cl. 1(i).
6. *Supra* note 4 at s. 10, cl. 1.
7. *Supra* note 4 at s. 102.
8. *Supra* note 4 at s. 103.
9. The Copyright Act 1957, s. 2, cl. (h), No. 14, Acts of Parliament, 1957 (India).
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Critical Analysis of the Series 'The Lincoln Lawyer': An IPR Perspective

- Shreya Jagadish

Explanation of the Scene

The protagonist of the show 'The Lincoln Lawyer' is Mickey Haller. Due to unforeseen circumstances, Mickey Haller did not practice law for a while, but when Mr. Vincent was murdered, all of his cases were immediately turned over to Mickey Haller. The Trevor Elliot case was one of the most high-profile and contentious cases, involving a murder trial in which Trevor was accused of killing his wife, Lara, and her alleged boyfriend, Jan Rilz. Mr. Haller wanted to be hired as the defense attorney so that he could restart his career.

In the present case, Trevor and his wife, Lara, founded the company "Parallax," the primary purpose of which was to create video games. Mr. Haller gathered all the evidence and facts and pleaded to the Hon'ble Court that Trevor was not guilty. However, by the end of the season, it is learned that Lara was a brilliant coder and that Trevor was a controlling husband who took credit for the majority of the work that Lara used to do. Lara, not Trevor, had coded and structured the famous game 'Nocturna Legacy.' Trevor, however, claimed the right to use it as his invention. When Lara decided and threatened Trevor

that she would return to the Chaos Game, where she had previously worked, and reclaim the game codes that were rightfully hers, Trevor framed an entire scenario and killed Lara and Jan Rilz, fearing that everyone would discover that Trevor was a fraud.

Legal Problems

Lara's hard work resulted in the famous Nocturna Legacy video game. *"Those hundred lines of code that changed everything, Lara wrote them, not me,"* Trevor quotes. It is seen that Lara, and not Trevor, coded the game 'Nocturna Legacy.' Trevor claimed the right to call the innovation his own, even though it was his wife's invention. This raises the issue of Patent rights, which are governed by the Intellectual Property Rights regime. Lara threatened Trevor that she would return to the Chaos games and reclaim what was rightfully hers, even if it meant proving to the world that Trevor was a fraud.

When Trevor discovered this, he became paranoid because the innovation was his wife's, and if she reclaimed her rights, his company would shut down. As a result, his reputation would suffer greatly, and he would face charges of patent infringement. Patent infringement occurs when another party or individual manufactures, uses, or sells a patented item without

the patent holder's permission. In the current scenario, we can see that Trevor appropriated Lara's innovation and codes and claimed them as his own.

Legal Analysis

The present case involves the case of patent infringement. The Patents Act, 1970 is the legislation that governs patents in India. Section 48 of the Act¹ grants the patentee exclusive rights to prevent third parties from “*making, using, offering for sale, selling, or importing the patented invention for the purpose of operating, selling, or offering for sale in India without the patentee's consent until the expiry of the said patent.*” Infringement can land the infringer in hot waters because the patentee can sue the infringer for infringement and seek monetary compensation.

In the landmark case of *Bajaj Auto Ltd v. TVS Motor Company Ltd.*², the Court held that if TVS used the exact technological combination as patented, it could have resulted in infringement. Still, improvements were made, and three valves were used instead of two; thus, this was not an infringement. The Court also held that there was a slight variation and modification in the technology used, and different combinations were used to achieve it. The definition of a trademark, patent, and copyright infringement was also expanded. The Court observed that intellectual property rights are important issues that should be resolved quickly. This case clearly dealt with the technical combinations and codes that the other

company adopted with minor variations and improvements.

The Court ruled in favor of the plaintiff and applied the Doctrine of Equivalents in the case of *Ravi Kamal Bali v. Kala Tech. And Ors.*³ The Court determined that the two products served the same purpose, were made of the same material, and performed similar functions. The Court further stated that simply changing the construction and building a product does not imply a new invention. The Court used Section 54 of the Patents Act⁴ to determine this, which states that only the patentee has the right to improve and modify a patented product and claim a patent for it. This simply means that one cannot make small changes to an already patented product and call it an invention. Section 108(1)⁵ of the Patents Act, 1970 provides for relief to the plaintiff in case his patent rights have been violated.

Under US patent law, in the case of *Samsung Electronics Co. v. Apple Inc.*⁶, Apple sued Samsung and argued that certain design elements of Samsung's smartphones infringed on specific patents that Apple holds for design elements in the iPhone. The jury determined that Samsung had violated Apple's patents and awarded more than \$1 billion in damages.

Conclusion

A patent infringement is a crime regardless of whether the person is a family member, a spouse, a friend, or a business rival. Stealing or copying someone else's innovations or ideas and passing them

off as your own, or using them without permission, constitutes infringement and is punishable by law.

Patent infringement not only harms the inventor's interests but also disincentivizes further inventions. This is why patent laws were created to protect the interests of patent holders. As a result, it can be seen in the preceding example how, without the rights to one's invention, anyone can claim ownership of it, potentially causing harm to one's personal and professional life. As a result, it is critical to file a patent ahead of time so that one can own exclusive rights to the invention and have a monopoly over it.

References:

1. The Patents Act, 1970, § 48, No. 39, Acts of Parliament, 1970 (India).
2. Bajaj Auto Ltd. V. TVS Motor Company Ltd., 2010 SCC online Mad 5031.
3. Ravi Kamal Bali v. Kala Tech, 2008 SCC online Bom 496.
4. *Supra* note 1 at §54.
5. *Supra* note 1 at § 108(1).
6. Samsung Elecs. Co. V. Apple Inc., 137 S. Ct. 429 (2016).

Mismatched: Can Game Code Be Stolen if there is no IP Protection?

- Melissa Joseph

Mismatched: The Netflix Series

Mismatched is a romantic comedy based on Sanhya Menon's book 'When Dimple Met Rishi'. It is a story about a modern, ambitious young woman (Dimple) who wants to become an app developer and an old-fashioned young man who has a traditional mindset

About arranged marriage (Rishi). The web series is about the young generation and the challenges they face. All the youngsters are enrolled at a particular summer school to learn about developing apps.

Legal Problem

In summer school, while a few may have just come for wi-fi, social media engagement, or even to meet a

potential bride, Dimple is here to become a successful app developer. Throughout the season, we can see her working on the code of her app to such a level that even her professor is impressed by her level of perfection.

In the last episode of Season 1, after she wins a game battle challenge with one of her classmates, her professor comes to her and tells her about a start-up company that recently announced the release of an app. He is responsible for testing the beta version of the app. Dimple gets confused about how that is of any relevance to her. The professor then shows her the code, and to her utter shock, the app has the same code as her app.

Legal Analysis

From an IP point of view, a mobile app can be treated as a fundamental component or as separate smaller parts. A mobile application is a combination of different IP rights, rather a variety of IP rights apply to various app elements.¹

1. *Built-in creative content* - Could include any pre-existing content like photographs, songs, logos, etc.
2. *Code and architecture, including functional aspects* - There is no differentiation between source and object codes in an IP regime. Source code is the most essential and primary component of a computer program that a programmer creates.² Object code generally refers to the output, a compiled file, produced when the Source Code is compiled with a compiler.³
3. *Esthetic aspects of graphical user interfaces* - The esthetic aspects of graphical user interfaces (guis) have some inherent functional elements that have a thin layer of copyright protection. This means that Esthetic elements of guis may be eligible for copyright protection only if they have some original function and not merely technical function.
4. *Functional aspects of graphical user interfaces* - The functional aspects qualify to be patented. For example, Apple received a patent for its slide-to-unlock feature.

If we compare this with Dimple's app, she was done with the code of her app and could have opted to get it copyrighted. Even if Dimple files a suit against the start-up company, there is no guarantee that she can win the case since there is no substantial proof that the code belonged to her. However, had Dimple has registered her code under Copyrights Act, then, there are several remedies for copyright infringement which could be made available to her. Firstly, she could have availed the civil remedies covered under Section 55 of the Copyright Act of 1957.⁴ The remedies that are there are Interlocutory Injunctions, Pecuniary Remedies (under Section 55 and 58 of the Copyright Act of 1957), Anton Pillar Orders, Mareva Injunction and Norwich Pharmacal Order (generally for information from a third party). Secondly, Criminal reliefs are also available to her. Criminal remedies under the Copyright Act, 1957 include imprisonment of the accused, imposition of a fine, or both.⁵ Seizure of infringing copies can also be done in order to safeguard the interest of the owner. There is also a limitation period of three years from the date of infringement.

Lessons to be Learnt

Dimple's story highlights the importance of IP protection and can be compared to the U.S. Supreme Court's observation in the case of *Bobbs-Merrill Company v. Isidor Straus and Nathan Straus*.⁶ In American jurisprudence, it is pointed out that the law does not recognize property rights in abstract ideas, nor is an idea protected by copyright, and it becomes

a copyrighted work only when the idea is given embodiment in a tangible form. A country's development and progression depend on its citizens' creativity and invention. Effective implementation of the same cannot be possible without the proper implementation, administration and enforcement of copyright laws.

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4. The Copyright Act 1957, s. 55, No. 14, Acts of Parliament, 1957 (India).
5. *Supra* note 5 at S. 63.
6. *Bobbs-Merrill Co. V. Straus*, (1908) 210 U.S. 339 (US).

“My Employee, My Work” - Analysing a Scene from the Series ‘Silicon Valley’

- Prarrthana Gopi

Explanation of the Scene

Programmer Richard Hendricks works for Hooli, a prominent tech company. He creates the Pied an app called ‘Pied Piper’, which uses ground-breaking data compression technology. This brings him into the limelight of eager investors in Silicon Valley for his innovation. In Season 2, Episode 2 titled ‘Runaway Devaluation’, Pied Piper is threatened with a lawsuit, claiming Intellectual property by Hooli.

Hooli, owned by Gavin Belson, Richard Hendricks’ previous employer claims that he owns Pied Pieper as it was developed during the time that Richard Hendricks worked in the company. Mr. Belson also instructs his team to develop a similar product named ‘Nucleus’ with a compression performance very similar to that of Pied Pieper. Richard approaches Ron laflamme, his legal advisor, who questions him regarding whether Richard, while

working at Hooli, ever used any of Hooli's resources to help build Pied Pieper. Richard denies ever doing so and claims complete ownership of his app by stating that he didn't even work in the same sector developing any data compression technology. Ron further explains that the lawsuit is an intimidation lawsuit and that Richard needs to back his company up with a team of lawyers to prove to the court that he created Pied Piper on his own credit.

Legal Problem

Gavin Belson was successful in developing his version of Richard Hendricks's product and both the parties were lined up to present their respective products at 'Techcrunch', a virtual newspaper that deals with start-up companies in the field of technology. Although Gavin's compression performance was equally competent to that of Pied Piper, Richard successfully manages to recode his program the night before the presentation, demonstrating a product that outperforms Nucleus. This results in Pied Piper attracting many venture capitalists. This is when Hooli claims that they solely have IP rights over Pied Piper. Richard Hendricks then faces a lawsuit for copyright infringement because Hooli claimed it was their product. Ron laflamme explains that the lawsuit was a classic case of intimidation by Hooli to stall Pied Piper until their product 'Nucleus' comes into the market. It is generally said that an expensive lawsuit against company that is still a startup and new to the market can cause investors to back out, which is

exactly what happens when Pied Piper loses their investor and is followed by rejections.

Legal Analysis

The nature of the IP that we are dealing with here is '**Copyright**'. Copyright in simpler words refers to the rights an individual is given to protect his IP for which he solely owns the right to copy, distribute or adapt. In the episode, Ron Laflamme questions Richard on whether he worked on his application during Hooli's time or used any of Hooli's resources to help develop his product. This leads us to question whether an employer can own his employee's work and claim it as his Intellectual Property. The answer can only be a yes if the employee is specifically tasked to create a product using his own creativity and intellect as his employment description. For example, if a writer writes an article for a newspaper, the article would be published as the newspaper's IP. The employer gets to claim the work of the employee as the employee is paid in salary for his work under Section 17(c) of the Indian Copyright Act, 1957.¹ If the product developed by the employee was done using the employer's resources or on his hours of work, then the employer can claim his employee's work as his own and that's exactly what Gavin Belson does when he files for IP claims as the app was developed during Richard's course of employment at Hooli. It would also be harder for Richard to prove this in court, especially considering Hooli's financial dominance over Pied Piper. In India, this question

would fall under Section 2(o) of the Act², which defines “literary work” as anything that includes computer programs, tables, and compilations including computer databases. In *Tata Consultancy Services v. State of Andhra Pradesh*³, The Supreme Court determined that computer software is intellectual property regardless of how it is delivered, whether it is through diskettes, floppy discs, magnetic tapes or CD Roms, whether it is included with a computer or purchased separately, whether it is branded or unbranded, tangible or Net.’ The defendants supposedly marketed the same under the name ‘IExchangeForex’. The Court appointed an expert “Court Commissioner” that examined both the softwares/GUIs and found that the extent of similarities between the software was not very high. However, the Court observed that even the design features must be considered for copyright infringement. In order to save *Pied Piper*, Richard Hendricks must be able to prove to the court that he did not use any of Hooli’s equipment to aid

intangible and/or whether it is a good that is subject to sales tax. As long as the software becomes a product that can be bought and sold, it is considered a good and can be owned and possessed intellectually. In *Maraekat Infotech Ltd. V. Naylesh V. Kothari*⁴, the plaintiff Maraekat Infotech Ltd. Filed a suit against the defendants who were former employees of the plaintiff claiming they had copied the plaintiff’s software known as ‘EON-Exchange Net.’ The defendants supposedly marketed the

his software and must prove that he worked on it on his own time.

References:

1. Copyright Act, 1957, § 17(b), No. 14, Acts of Parliament, 1957 (India) [hereafter CRA].
2. CRA, *supra* note 1, §2(o).
3. *Tata Consultancy Services v. State of Andhra Pradesh* (2004) 271 ITR 401 (SC).
4. *Maraekat Infotech Ltd. V. Naylesh V. Kothari*, 2016 SCC online Bom 2369.

Copyright Infringement Through ‘Big Eyes’

- Manushri Bhat

“I’m Keane, you’re Keane...what’s the difference?”

Explanation of the Scene

This is a true story about a bizarre art fraud case in the 1960’s America. The movie opens with the protagonist, Margaret, along with her daughter, Jane, leaving her husband and meeting a friend in pursuit

of a job. She paints portraits, mostly of children, with huge distorted eyes and does this as a side job at an outdoor art show, but is widely ignored. However, her work catches the eye of “Walter Keane” who paints Parisian Street scenes, who encourages her to

be more “aggressive” in her dealings. Soon, the duo marries and she continues to paint portraits but signs them “Keane”. Being a good salesman, Walter manages to get both their paintings hung in a bar for display. However, only Margaret’s paintings sell. This leads to a huge fight in the bar as Walter believes his paintings were side-lined on purpose. The fight makes headlines, and the bar, with the paintings, gains traction. Walter tells Margaret that he sold one of her paintings as his own to make a profit, but Margaret requests him to never repeat it again. However, word spreads and Walter starts to gain fame. He goes on talk shows and opens galleries while Margaret sits at home and paints him pictures of wide-eyed children consistently, never fully understanding the gravity of the situation or the legal implications of her actions, until one day, she comes clean to the world.

Legal Problem

The true essence of copyright infringement in the movie occurs right in the beginning when Walter “passes off” Margaret’s painting as his own to earn some money. When Margaret utters, “never do it again”, her right or authority over her work or creation is asserted. She says, “these children are a part of my being” with respect to the characters in her painting. This in itself summarizes the theory of a moral right in copyrights. In the case of *Amarnath Sehgal v. UOI*¹, it was held that every author has a soul to his work called as his moral rights, where the author has the right to protect and nurture his art through this right.

Legal Analysis

As previously mentioned, the nature of intellectual property violated here is ‘Copyright’, as the art that has been fraudulently misrepresented by Walter as his own falls under Sec. 13(1)(a) of the Copyright Act, 1957², which includes literary, dramatic, musical and artistic works within the ambit of its subject matter; herein the final subcategory is relevant in this situation. In the case of *Eastern Book Company v. MD Modak*³, “flavour of minimum requirement of creativity” was introduced and it was held that it was not necessary to prove novelty or non-obviousness of an idea, but that it should show some amount of creativity in order to claim the copyright.

In order for a copyright infringement claim to be successful, there must be:

1. Presence of a valid copyright in question.
2. Consequent presence of actionable copying, either through illicit copying, or actual copying.

Actual copying can thus be shown through two means: direct and circumstantial evidence. This circumstantial evidence can further be presented in two ways. Firstly, when there is access to the original work or art, causing probative similarity. This means that the creation of independent work becomes next to impossible in relation to the referred art. Secondly, when there is no access to the original work, there is a necessity to show a ‘striking similarity’ between the art and the alleged copyright infringement, increasing the possibility of independent creation. In

the present case, Walter alleged that Margaret copied his artworks. However, he failed to prove substantial similarity or even the allegation that she had indeed copied his work, according to his counterclaim. Therefore, the Court of Appeals reiterated its standing in favour of Margaret. In the case of *R G Anand v. M/S Delux Films and Ors.*³, it was held that there is no protection given to ideas but it can protect the way it has been expressed, or the pattern it involves.

Section 14(c) defines the meaning of copyright in the case of artistic work. Section 14(c)(ii) states “to communicate the work to the public”. Walter had repeatedly, consistently, and with intention communicated Margaret’s work as his own to the public. It is important to keep in mind that there had in fact been no mistake as per Section 79 of the Indian Penal Code, and it cannot be taken as a defence. There is a clear case of fraud in this scenario. He has also issued copies of the work to the public at large, that which had not already been in circulation as per section 14(c)(iii).

Section 2(d) defines an author of a literary work. According to Section 21, the author has the right to relinquish the copyright over their work. In this situation, Margaret has never explicitly mentioned transferring her rights over the art. Throughout the movie, it has been shown that she had only gone along with her husband’s ruse due to the undue influence he had on her life and the constant threat she and her daughter would face if failed to comply.

Legal Standing: Case of Keane v. Keane⁵

The movie depicted the legal battles over the rightful ownership of the paintings. Margaret reveals herself to be the true maker of the paintings in a radio interview 6 years after her divorce from him. However, when Walter told USA Today that the only reason Margaret said so in the interview was that she believed him to be dead, she sued for slander. The suit gets furthermore interesting as Walter countersues Margaret for copyright infringement. The trial took place for a period of 3 weeks, where the judge asked both parties to paint a picture of the wide-eyed girl. As Walter said that he was on medication for an injured arm, Margaret went on to paint the picture in 53 minutes, winning her the case as well as 4 million dollars in damages. Walter further appealed, but the Court upheld the District Court's judgment in favour of Margaret with respect to Walter's copyright infringement claims.

Thus, we understand how all-pervasive intellectual property rights are and the role it plays in every aspect of life, the rights do not just award a person what is rightfully and legally theirs, but much rather a chance at a better life, with better opportunities and representation, and a world that offers them a chance to continue doing what they desire, just as it did to Margaret.

References:

1. Amarnath Sehgal v. UOI, 2005 (30) PTC 253 (Del).

2. The Copyright Act 1957, s. 13, cl. (1)(a), No. 14, Acts of Parliament, 1957 (India).
3. Eastern Book Company v. MD Modak, (2008) 1 SCC 1.
4. R G Anand v. M/s Delux Films and Ors., AIR 1978 SC 1613.
5. Keane v. Keane, 893 F.2d 1338.

‘Suit Up’ & Infringe Patents

- Harthik Roy

Explanation of the Scene

Harvey Specter, the protagonist of the series "Suits", who is a senior partner at Pearson Hardman, a top law firm in Manhattan. In season 1, Episode 2 of the show Mike Ross has already dropped four straight games of air hockey with client Wyatt. They are approached by Harvey Specter, who alerts Wyatt about the arrival of investors.

Mike visits Rachel at Pearson Hardman to ask for her assistance in submitting a patent, but she forbids him entry to her workspace. Gregory Boone, whom Mike encounters in the break room, says that he is aware of how to submit a patent claim, which gives Mike a thought. Mike struck a deal with Gregory to prove the BrainBridge briefs for him in exchange Gregory would get the file the claimed for Mike.

Mike tells Harvey that he spent the entire night proofing the Bainbridge briefs when they meet the following day. Harvey worries about Mike's hesitation and inquires as to why he has not yet received confirmation that the patent claim for the prototype has been filed. Mike lies, telling Harvey that the claim is on his desk while lying. The patent

claim is the only thing holding up their deal. Mike is frustrated when he visits Gregory and learns that he hasn't yet submitted the patent claim. Gregory declines to file the claim earlier despite its relevance, telling Mike that he would do so after Mike has finished proofing the Bainbridge briefs. Louise catches Mike performing Gregory's share of work but Mike lies about it and claims that he volunteered for it and did not strike a deal with Gregory.

Mike's associate Harvey tells him their patent claim has been rejected and suggests he call the Patent Office to find out who filed the other claim. Harvey files an injunction to stop the other party from releasing the product first. Later the same day Harvey was waiting for Mike when he returned to his cubicle after a short meeting with Louis. Mike's lawyer Harvey asks for an injunction when the opposing counsel asks the judge to dismiss the case, but the judge interrupts him in the middle of his motion. While on the phone with Velocity's attorney, Harvey refuses to accept their meagre settlement proposal. To increase their chances of success, he instructs Mike to go back to Pearson Hardman and submit an interference claim to the Patent Office. He counters

by claiming that the verdict on his injunction will be overturned, and after some deliberation, they double their offer to \$20 million, which would match the cost of creating the prototype. When they meet with the opposing firm to discuss the agreement, they let them know that rather than litigating the matter in court, they will instead post the satellite phone's specifications on the web for free in 48 hours. Wyatt Energy's Mike Harvey tells the opposing attorney that by the time they request an injunction, the specs would already be online, and Wyatt will have credit for the design, which would be worth more money. After the meeting, Harvey pays a visit to Mike in the file room and requests that he prepare a settlement memorandum for the Wyatt case. The opposing business has consented to a \$400 million settlement.

Legal Problem

In this show, we can see that Mike failed to file for a patent claim in time due to which their client lost the exclusive rights to the product invented by the client. To simply understand patents the breach of a patent holder's exclusive rights is known as patent infringement. It was Mike's negligence that led to the rise of an IPR dispute. As the company velocity filed for the patent claim in less than 24 hours and they beat Mike to it and claimed exclusive rights over the product. The Indian Patents Act 1970, ("Patents Act") does not specifically define activities or situations that constitute patent infringement. During the duration of the patent's valid term, the patent holder or patentee has the "exclusive right" to prohibit any third person from making, using,

offering, selling, manufacturing, etc. The patented invention, product, or process. In essence, this grants the patent holder, product, or method monopolistic rights. Therefore, any action that infringes on this exclusivity qualifies as a patent infringement. When a patent is violated, the patent holder has the legal right to sue the offending party to seek redress and damages. Sections 104 to 114 of the Act contain specific principles for patent infringement, including the burden of proof, defences, court's jurisdiction, acts that do not constitute infringement, reliefs, etc.

Legal Analysis

The nature of IP violated here is Patent. A few cases that are known for patent infringement are *Indoco Remedies Ltd v. Bristol Myers Squibb Holdings*¹, the manufacturer and owner of the patent for the medication "Apixaban" is Bristol Myers Squibb (Bristol). In 2019, Bristol filed a petition with the Delhi High Court seeking an ad-interim injunction against Indoco Remedies (Indoco) for infringing their patent and creating a generic version of the medication known as "APIXABID." The court rejected Indoco's bid to sell the drug, citing the lack of any proof of a shortage of the Bristol Myers drug that would have justified the sale of the generic version as well as the lack of any compelling evidence of a compelling public interest. In *Shogun Organics Ltd v. Gaur Hari Guchhait*², Manaksia Ltd. (Defendant) is a company that competes with Shogun Organics Ltd. (Plaintiff), which conducts research, manufactures, and sells insect repellents. A patent was granted to the Defendant in 2009. In 2013,

Defendant submitted a post-grant to the opposition that the IPAB reviewed and upheld the Plaintiffs' patent. Soon after learning that Defendant had been utilizing this patent technology, Plaintiff filed a claim for infringement against Defendant. To prevent Defendant from exploiting the patented technology, Plaintiff asked the court to issue a permanent injunction. The defendant had been asked by the court to submit the procedure employed numerous times. The Court may require Defendant to demonstrate that the procedure employed by Defendant is distinct from the patented process in accordance with Section 104A of the Patents Act. They did not, however, submit the same. Plaintiff used and sold D-trans Allethrin before the patent's grant, but the Court rejected the claim that this constituted previous or public usage because no one could determine the production process just by looking at the product. Finally, the court determined that under Section 30 of the Act, disclosure to any department of the Government would not constitute prior use. In *Ravi Kamal Bali v. Kala Tech. And Ors.*³, A patent for "tamper locks/seals" had been given to Ravi Kamal Bali (the plaintiff) in 1994. He had also obtained a second patent for the "Techlock", a tamper-proof lock that he had improved. A patent infringement lawsuit was filed before the Bombay High Court when the Plaintiff discovered that the Defendants (three defendants) were utilizing and selling similar products. The Doctrine of Equivalents was utilized by the Court in its decision, which

favoured the Plaintiff. The court ruled that the two products under comparison served the same purpose, were made of the same material and performed similar tasks. The court further ruled that merely changing a product's design or construction does not constitute a new invention.

Conclusion

Overall, patent infringement is a major concern for many businesses, particularly pharmaceutical and technology firms. Courts typically base their decisions on three criteria: a prima facie case, the convenience of all parties, irreparable harm to the party seeking the interim injunction, and public interest as the fourth consideration. The instances discussed above illustrate how these four criteria are used to define patent infringement and address a variety of concerns, including direct infringement, injunctions, conflicts of jurisdiction, etc.

Therefore, it can be understood how important filing a patent is to own the exclusive rights to have a monopoly over the product, design, etc.

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I'M LOVIN' IT! – IP Analysis of Movie “The Founder”- McDonald's

-Amisha Sharma

The movie "The Founder" is based on the story of Ray Kroc, the man who founded the McDonald's business, and goes on to show how he amassed his wealth. Only those who have delved into the business model of the McDonald's Corporation, which currently launches a new restaurant every 14.5 hours, are aware that it is a real estate company that franchises the restaurant industry to its tenants. Moreover, how persistently immoral practices—as seen through the prism of the law—were used by the person we now refer to as McDonald's founder.

While Ray Kroc is credited with turning the company into a franchise success, the company was actually founded by two brothers, Dick and Maurice McDonald, before Ray eventually took control of the ground-breaking system and created the business that endures today.

The Movie emphasizes the importance of trademark registration. To best explain this crucial lesson, one may refer to the scene of Ray and Dick conversing in the men's room after Ray had successfully signed and purchased the whole McDonald's business from the McDonald brothers.

Dick: “Let me ask you one thing. Something that I never understood.”

Ray: “Alright.”

Dick: “That day we met, we gave you the tour. We showed you everything. The whole system. All of

our secrets. We are an open book. So, why didn't you just...”

Ray: “Steal it? If I start my own business using all the ideas, it will fail.”

Dick: “How do you know?”

Ray: “I am not the only one who got the kitchen tour. You must have invited a lot of people back there. How many of them succeed?”

Dick: “Once, people started their restaurant.”

Ray: “As big as McDonald's? Of course not. No one ever had. No one ever will. Because they all lacked one thing that makes McDonald's special.”

Dick: “Which is?”

Ray: (Laughing while shaking his head unbelievably) “Even you don't know what it is.”

Dick: “Enlighten me.”

Ray: “It's not just the system, Dick. It's the NAME! That glorious name. McDonald's. I remember the first time I saw that name. It's love at first sight. I knew right then, and there I had to have it. And now I do.” (Grinning with satisfaction)¹

Short Summary

In the movie, Ray Kroc plays a travelling salesperson who works with restaurants to sell milkshake mixes under the 'Prince Castle' brand. To look into a rather large order of milkshake mixers, Ray Kroc decides to go to San Bernardino. When he gets to California, he discovers McDonald's, a well-known walk-up eatery

with a welcoming family environment, high-quality cuisine, and quick service. When Ray Kroc first meets the restaurant's two proprietors, Mac, and Dick McDonald, they give him a tour. Ray Kroc notices the workers' excellent work ethic and how quickly a burger is made. Ray extends an invitation to supper to the two brothers and learns the history of McDonald's. The brothers revealed that their initial attempt to franchise the restaurant had failed, but Ray persuaded them to try again with his assistance. Ray Kroc then shows up the next day and recommends franchising the company. Ray agreed to a contract stipulating that the brothers must receive and accept any modifications in writing. As he looks for fresh investors, Ray starts constructing a restaurant near Des Plaines. Ray began to draw in investors from the middle class as they were more deserving and wanted to sustain and adhere to the McDonald's concept. As other eateries open, Ray touts himself as the founder. Harry Sonneborn approaches Ray and asks to look at his books. Ray is informed by Harry that the actual money is made by selling franchises' real estate and that in doing so, he has influence over the brothers. The brothers accepted 2.7 million dollars from Ray Kroc and the San Bernardino restaurant in addition to 1% of the business's revenues since they had no other choice. The brothers agree that the 1% agreement must be completed on a handshake basis, even if Ray is prepared to approve practically everything else.²

Stating Issues

- 1) Trade secrets were not safeguarded.

- 2) The actual value of their specific intellectual property was not known.
- 3) Terms and conditions were not expressed clearly while engaging in intellectual property dealings.

Legal Problems

The first issue envisioned in the film came about when the McDonald brothers told Ray Kroc about their trade secrets. The McDonald brothers gave Ray a tour of their kitchen at the beginning of the movie and demonstrated how the "speedy method" was used. The McDonald brothers even explained to Ray how the system came to be, saying that it was inspired by a simulation technique used on tennis courts. At the time, the ability to serve meals in under a minute, as opposed to competing for drive-in restaurants that required much longer preparation times, was their USP. These business secrets must be kept private and hidden from the public and inquisitive eyes.³

For example, the Coca-Cola recipe was preserved for over 90 years in a vault. With a brand value of 56 billion dollars, Coca-Cola is one of the most successful manufacturers of carbonated soft drinks in the world. It ranks fourth among the most valuable brands in the world, according to Forbes Magazine. The Coca-Cola recipe was developed in the late 19th century by John Pemberton, a physician and opium addict. However, businessman Asa Griggs Candler used creative marketing strategies to propel Coca-Cola to global dominance during the 20th century and beyond.

Coca-Cola became a billion-dollar corporation thanks to a well-guarded recipe that created a unique and delicious soft drink. This company's whole operation revolved around its special formula. As a result, the corporation made great efforts to keep this formula a secret, and it continues to be one of the best-kept corporate secrets today. The secret formula used by Coca-Cola is essential to its operation.⁴

The McDonald's Brothers did not utilise their intellectual property to its full potential

The McDonalds Brothers produced a groundbreaking product, but they were unable to maximise the potential of their intellectual property and gave up readily whenever they encountered challenges. On the other hand, Ray Kroc was tenacious and had a distinct idea of what he intended to do with the intellectual property of McDonald's. Someone else will do something great if you do not do it soon enough!⁵

The McDonald's Brothers' strict standardisation of the franchise program was a failure

To guarantee that one's franchise has only one identity and becomes the centrepiece of one's restaurant's brand, it is crucial that one standardizes everything in a franchising business, from the restaurant's look to its services. When one ensures that every franchise offers the same quality products and services regardless of which franchise consumers visit, this boosts the company's brand recognition and inspires brand loyalty among customers.

Before Ray Kroc took over the franchise business, the McDonald brothers made numerous attempts to franchise their company. However, each of their endeavours failed because they could not ensure that the franchisee would adhere to their system and provide the same quality for their goods and services. Even though the franchisees were friends from the Club House when Ray Kroc took over, he was ruthless and extremely rigorous with them to keep the same food quality and cleanliness. In deals involving IP rights, terms and conditions must be made explicit and cannot be agreed upon based on a handshake.

The McDonald brothers ultimately consented to sell Ray the entirety of their company for \$2,750,000 plus a 1% royalty when they could no longer tolerate Ray, and Mac was rushed to the hospital with diabetic shock. Ray originally concurred with the terms, but on the day of the signing, he told the brothers that he was not prepared to add the 1% royalty as a clause and suggested that they shake hands instead. Unsurprisingly, Ray never did honour the agreement up to this day. The McDonald's brothers were denied from the 1% royalty estimated to 100 million dollars a year.

Laws Governing Situation

The Trademarks Act of 1999 complies with the World Trade Organization's TRIPS mandate. The Trademark Act's objectives are to protect trademark users, set guidelines for property usage, and offer legal recourse to enforce trademark rights. McDonald's Golden Arches and "I'm Lovin' It" are

examples of company logos. Trademark piracy is the illicit or unauthorised use of a trademark by producing it for commercial purposes. If a trademark is violated, the registered trademark owner may file a lawsuit; in the case of an unregistered trademark, passing off is the sole recourse.

An application to register a new mark, characterised as "an overlapping, double-arched 'M' sign," was submitted by Kroc in 1961, the year he took ownership. The golden arches that served as the foundation for the newly designed architecture of the first franchised restaurant in 1952 are represented by the McDonald's logo. McDonald's logo is one of the most popular logos in recent history and continues to be classy and stunning.⁶

To prevent trademarks from being misused, one of the main benefits franchisors offer to franchisees is their usage. Consumers should not be misinformed about trademarks. The trademark needs to be associated with the kind of business. The type of menu becomes crucial while protecting a brand. Important factors to consider include the date of trademark registration and its actual use.

Solving the IP Issue

Trademark registration is essential because there is a soul in every name and when it is used as a trademark for the correct kind of company, it will provide that company an advantage. In the film, the McDonald's brand is influenced by the name, logo, and design

that makes it different and unique from its other restaurant competitors. Ray Kroc shows us towards the end of the movie that the firm brand name is what helped lead him to the success that he achieved.⁷

What made McDonald's a unique restaurant was its logo, which was recognized and known as Golden Arches. McDonald's became a more robust and better brand than all the other restaurants in the industry.

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IP'll Be There for You

- V. Sudekshana

The most loved sitcom of all times, "F.R.I.E.N.D.S.," surprisingly has many instances which tick an Intellectual Property lawyer. Before delving into specific instances in the show, it is pertinent to note that the makers got a registered trademark for the show's name and 'Central Perk', the coffee house where the 6 friends hung out. Apart from this, there are several catchphrases of various characters which have hooked the viewers, like Joey's "How you doin'?", Ross' "Pivot" or "Unagi", Monica's "I know." When an average 'Friends' fan hears these words, they immediately return to the series. These catchphrases have hence become a creation of the series and can be easily attributable to it even though not registered as the show's intellectual property. The article will now enumerate various instances when the 'Friends' series triggers the attention of Intellectual property law.

The One with the song 'Smelly Cat':

The Scene: Phoebe's song 'Smelly Cat' is undoubtedly one of the show's main highlights. From initially singing it at the gang's coffee house, she goes on to make an album of the song. The song being her original work, she is entitled to the copyright of the song. When Phoebe plays her album to her friends, the title is displayed as "Smelly Cat- Phoebe Buffay." This way, the show has rightly portrayed that the song being her original musical work; she is the owner of the same.

Legal principle: The natural rights theory of John Locke and the labour theory are significant in this context. Since Phoebe has incorporated her labour in the creation of the song, she is naturally entitled to hold the ownership of the piece.

Analysis: At a specific point in the series, before the album is created, one of Phoebe's friends who sings jingles takes the song to an ad agency, and the song is used for a cat product commercial. If the song were copyrighted from the beginning, then the use of the song in the commercial would amount to copyright infringement as the copyright holder has a bundle of rights which also includes the right to derivative work. Therefore, such use in the commercial would require a license from the creator. As a creator of the original musical work, Phoebe has both economic and moral rights over the work.

The One with the idea-Expression Dichotomy of Atlantic City

The Scene: In an episode, the friends try to cheer Phoebe up by taking a trip to Atlantic City as she could not go to London with the gang for Ross' wedding. In this scene, Phoebe is overjoyed to hear about the trip and asks whose plan it was. Both Joey and Ross claim that it is theirs. Joey claims that he was the one who said they needed a new plan, and Ross comes up with the idea of visiting Atlantic City; which is technically the new plan, hence Ross' plan.

Legal Principle: Though it might seem remote from any concept of intellectual property law, the scene illustrates the idea-expression dichotomy.¹

If both, ideas and expressions have to be copyrighted, there will not be any creative progress. There may be numerous ways of expressing a single idea that is original to the creator. This is why ideas are not copyrightable, and, copyrightability of ideas is out of reach of someone who might have a unique way of expressing the said idea.²

Analysis: Under copyright law, the idea-expression dichotomy plays a vital role. Ideas are not copyrightable. Only an expression of an idea can be copyrighted since only the expression is the original creation of the copyright holders.

In the scene, the idea is to 'have a new plan', and the expression is 'to go to Atlantic City.' Joey therefore cannot claim that it is his plan since he only came up with an idea and hence it is not protected, while Ross came up with the expression. Technically, it is Ross' plan. This scene effortlessly demonstrates the principle of idea-expression dichotomy.

The One with 'The Rachel Haircut':

Among various iconic features that the show brought forth is the famous "The Rachel" haircut. Being named after the show's character, it springs the question of intellectual property protection. But what type of protection can be granted to a haircut? This has been the subject of various discussions among professionals.

Legal Principle: A prevalent viewpoint is that haircuts can be patented.³ When it is said that only inventions can be patented, it does not necessarily mean that it should be some elaborate mechanical gear or circuitry. Throughout history, many valuable patents have been relatively simple.

Though it may seem odd, in the US, hairdos have been issued patents as they are considered inventions. If the hairdo is reduced to a photograph or a logo, it gets trademark protection. However, on detailed legal analysis, a hairdo falls short in meeting patent or trademark protection requirements. This is where the Designs Act comes into the picture. The Act grants protection to objects having visual appeal, features of a pattern, etc. By widening the scope of the same, a hairdo can be brought under its ambit.

The hairdo of Rachel, being quite famous, has been used in various merchandise of the series as photographs. Such being the case, trademark protection would be pertinent because any reasonable person would attribute the hairdo to the female protagonist: Rachel, and the series. Trademark protection can be granted when pictures of the hairdo are used on merchandise.

Analysis: Hairdo being a work that does not strictly fall under any particular form of Intellectual Property protection as it may be seen, it can be brought under the protection of the Designs Act. Once registered under the Act, the designer has a monopoly not only over the design but also on substantially similar

products. This way, "The Rachel" hairdo can be protected under the Designs Act.

The one with the joke- Chandler's or Ross'?

The Scene: In one particular episode, Ross brags to the gang about his joke being published in a magazine. Chandler claims that it was his joke and that Ross stole it from him. Through the prism of Intellectual Property law, Ross has misappropriated the literary work of Chandler. Later, Ross and Chandler ask Monica to judge who the joke belonged to based on their individual stories of how they came up with the joke. If only Chandler had gotten copyright for every joke of his, he could have sued Ross for a copyright infringement. Later on, Chandler decides to document every joke of his in a 'joke journal'. By doing so, he tries to gather evidence to point out that it is, in fact, his joke.

Legal principle: According to the jurisprudential theory of John Locke, i.e., the natural rights theory, ownership arises from the labour and innovation of the creator. Accordingly, the ownership over the joke is to be vested with Chandler.

Analysis: A practical question may arise about whether 'jokes' can be copyrighted. Theoretically, they can be. However, certain principles of intellectual property law complicate its practical application.

- Firstly, the idea-expression dichotomy. To successfully claim copyright infringement,

the plaintiff must prove that the 'expression' was infringed.

- Further, the plaintiff is to demonstrate that the infringer's use of the work is not original. This is what Chandler and Ross try to do when asking Monica to judge based on their individual origin stories.
- The plaintiff also has to consider the merger doctrine.⁴ In cases with limited ways of expressing an idea, they merge, and the expression cannot be copyrighted. So, the plaintiff is to prove that it is otherwise.

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Identification of IP Infringement in the Major Motion Picture ‘A Flash Of Genius’: A Critical Analysis

-Joanna Jacob

Explanation of the Scene

The protagonist of the movie ‘The Flash of Genius’ is Robert Kearns, an engineer and a part-time professor in Detroit. He invents the intermittent windshield wiper, which is meant to be used by cars around the world. He considers pitching this invention to an automobile giant. Realizing the uniqueness and value of his invention, he decides to go along and patent it, but before he could've possibly done that, the automobile giant The Ford Motor Company stole his invention and installed it into their automobile models without informing or taking consent from Robert Kearns, the inventor of that particular windshield wiper.

Enraged by this unlawful act of the automobile company, Robert Kearns decides to sue the company for patent infringement. He ensures to bring an action against the same and brings the matter to court. Unfortunately, though their case lacks substance, Ford being an internationally well-established brand, uses its monetary influence to suppress Kearns' powers and legal arguments in order to cancel the patent grant. Eventually, the matter has to go to a settlement - Looking into the issue here, the scene explains the absolute tarnishing of an innovator's morale. In the opening of the scene, we can see Gregory Lawson, the attorney representing Kearns, about to inform Robert and his wife Phyllis that Ford

has agreed to a settlement of \$2,50,000, but does not agree to own up to the fact that they committed a creative theft.¹ They offered to sideline the issue and deteriorate its magnanimity so that the suit could finally come to an end, but this does not give Kearns the recognition he rightfully deserves, nor does it establish that Ford Co. Had stolen his invention of the intermittent windshield wiper.

Legal Problems

The movie begins only with Kearns inventing this particular windshield wiper he believes is necessary for all cars and, once discovered, would become an absolute game changer in the automobile world. When his invention gets stolen and he goes in to sue the corporation, he doesn't gain much success in getting back what he lost. Not only does he repeatedly refuse settlement offers, but he continuously attempts to seek justice, which is that he goes about trying to retrieve the patent and recognition for having invented this particular intermittent windshield wiper, continuing the streak of the ‘*David vs Goliath*’ formula of the little guy fighting against the big corporation.

Since he continued to refuse offers of all the out-of-court settlements from the corporations, even his attorneys backed out, eventually leading to Kearns electing himself to be his attorney. Kearns constantly kept trying to submerge the offers of settlements

because his life's principle was not to make massive money but to be recognized for his work and in this instance, his invention.² He repeatedly kept bringing up and questioning the validity and existence of 'justice' to his attorney, which is what eventually led to him backing off; as his legal representative, it was not his only job to provide legal guidance and representation but also to free his client from the magnitude of the burdens that could be imposed on the clients so that it reduces the agony.³ Throughout the film, we could see that Ford Motor Company used its influence to suppress the opposite party by making their patent over the windshield wiper expire. Also, by not owning up to the wrongful act committed, the instance of patent infringement under Section 48 of the Patents Act, 1970⁴ is difficult not to notice.

Legal Analysis

As per the analysis of the film's premise, it is identified that the nature of intellectual property violated here is that of patents. In any patent infringement lawsuit where the end goal is to obtain creative ownership over a product or its functioning, it could be proved under Section 104 of the Act⁵ unless there have been counterclaims made for its revocation, i.e., of the patent made by the defendants the suit and the counter-claims could be transferred to a higher court for a judgment and validity of the specific patent.

As per the film, patent infringement, as a concept has been clearly defined, Robert Kearns developed a new method of inventing a windshield wiper out of pre-existing elements which had uniqueness to it since it

served a specific purpose, one which he was able to come about with because of a visual defect that he possesses. Since this was an innovation of one's own, it could be brought under Section 83 of the Act⁶, which refers to the general principles applicable to patented innovations and their functioning, as this could further encourage more such inventions and also secure these inventions. The action of the corporation, i.e. Stealing the invention initially conceptualized and materialized by Kearns, could be contended as a violation of Section 6⁷, which deals with the provisions which deal with the applications for patenting an invention. In *Bayer Corporation v. Union of India*⁸, where the issue was in relation to granting of licenses, it was held that holding a restriction of Section 156⁹ is invalid. In the present case also, neither was the inventor informed nor was it approved by the actual inventor and hence, there is a case of infringement here.

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5. *Supra* note 4 at §104.
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9. *Supra* note 4 at §156

Critical IP Analysis of a Scene from Iron Man 2: ‘Stark Discovers a New Element’

-Anjali Saran

Explanation of the Scene

In the present scene, a still from *Iron Man 2*, Tony Clark tries to invent/create a new core for his arc reactor. As known to many, Tony Stark is also the famous Avenger hero *Iron Man*, who gets his powers from the arc reactor that has been put into his body and works like a heart. However, the core that powers this reactor is made up of palladium, a metal that now acts as a poison for the famous superhero. If not replaced, then he can die. So, he starts searching for a new metal. He comes across his father’s research on a certain metal that can act as a viable substitute and save his life. Working along those lines, he tries to create a new metal. This is the gist of the scene depicted in the picture, which will be used in this article.

Theories Involved

In law, apart from legal reasoning available to the public, there are also various philosophical and jurisprudential reasons as to why something should be done or be abstained from being done. These theories act as the pillars for the laws that are there today at present. Similarly, there are also certain theories of law involved in the present scene that

gives it validity to be included under the ambit of intellectual property laws. They are given as follows.

- a) *Natural Rights Theory* - According to this theory, if a person has put in hardwork and labour into a particular thing, and it has turned out to be fruitful, then the person (or creator) has the right to benefit from it and claim rights on it. In the given case, Tony Stark has put in his hard work on the invention of the metal for the arc reactor, which was a success; hence he should get rights over his product by virtue of the labour he put in.
- b) *Personal Rights Theory* - According to this theory, if a person owns something, then he/she must have a right over it by ownership. Here, Tony Stark has created something independently without any financial help from anyone. Hence, he gets ownership rights over his invention. Therefore, it is safe to say that Tony Stark owns complete IPR over his invention here.
- c) *Utilitarian Theory* - According to this theory, a person should get benefits (or long-time happiness) from a thing he usually does. Now, since in IPR, a person has created something using his skills, therefore he is

liable to get the fruits of his invention and enjoy it. This also incentivises the person to invent more. Here as well, if Tony Stark is given the right to enjoy the fruits of his hard work, he will be incentivised to invent more such things for the benefit of people or to add academic knowledge and contribute to the field of science with his knowledge.

Legal Problems

The main legal problem surrounding the invention in the movie is Stark's armour. Stark's armour was illegally copied by his rivals, who made a similar prototype, and later an army of such armours to get back at Stark. The main people behind this act were Vanko, who wanted to show down Stark's invention, and Justin Hammer, CEO of Hammer Industries. They helped Vanko in his mission by providing him with aid for making or rather duplicating Stark's hard work behind the armour. However, another problem is that it is quite unclear from what is shown in the movie whether Stark went for registering his products under appropriate laws or not. Hence, this problem will be analysed through dual means, that is, if Stark had gone in to apply for IPR and if Stark does not apply for IPR.

Legal Analysis

The legal analysis of this problem will be done based on the Patents Act 1970. The Patents Act has been chosen because the present category of problem falls within the ambit of patents, which are granted for an invention. Here too, the crux of the issue was that of

the invention, be it the core of the arc reactor or the armour itself. Sec. 2(1)(m)¹ talks of patents and states: "*patent*" means a patent for any invention granted under this Act." In *Telemecanique & Controls (I) Ltd. V. Schneider Electric Industries SA*², the Delhi High Court held that patents created a statutory monopoly protecting the patentee against any unlicensed users of the patented device.

In India, the situation is such that the invention has to be patented so that the individual can benefit from it. It means that if a person has not patented his work, and there is a case of infringement, then Courts may not be able to help him in this case. In *Shining Industries v. Shri Krishna Industries*³, the Court held that an invention is not a (property) right unless it has been patented. Therefore, in the present case, if Stark has not registered his product under the Patents Act 1970, he will not be able to claim infringement.

However, if he did register and patent his product, then there are remedies under the Act that Stark can avail. Section 25 of the Act is one such provision wherein if a known invention is brought before the Controller to grant patent, then an objection could be raised. Section 25(1)(d)⁴ states: "*Where an application for a patent has been published, but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of the patent on the ground— that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority*

date of that claim.” Furthermore, in *Re Seillers Application*⁵, it was held that “*It is necessary that proof of prior users in opposition cases should be very clear.*” Hence, Stark can object to the grant of the patent to Hammer Industries. However, this is not the only remedy available to him.

Chapter XVIII of the Act deals with infringement suits. Section 104A⁶ talks about the Burden of Proof, which, on the fulfilment of certain criteria, lies with the defendant. Section 108⁷ provides for relief in case of infringement suits. Section 108(1)⁸ states that an injunction can be granted, as well as compensation for the loss caused to the plaintiff. As per cl. 2 of the same section⁹, the Court may also order the forfeit or destruction of such infringed items. Hence, Stark, in the present case, has a number of remedies to choose from to safeguard his rights and interests.

International Perspective on Patents

WIPO (World Intellectual Property Organisation) defines a patent as “*An exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.*” In the present case, Stark’s invention perfectly satisfies the requirements of this definition. On a fundamental level, the patent proprietor has the select right to keep or prevent others from economically taking advantage of the protected development. All in all, patent assurance implies that the creation cannot be monetarily made, utilised, circulated, imported or sold by others without the patent proprietor's assent.

As per Article 27.1 of the TRIPS Agreement¹⁰, it is required by member nations to make licences accessible for any creations, whether items or cycles, in all areas of innovation without separation, dependent upon the typical trial of curiosity, imaginativeness and modern relevance. It is additionally expected that licences be accessible and patent privileges pleasant without separation concerning the spot of creation and whether items are imported or privately delivered. Hence, patents form an essential component of the international IP framework as well, and should be protected by nations across the globe through various municipal laws.

Lessons Learnt from an IPR Perspective

Numerous lessons were learnt from this article. It showed the importance of registering an IP (here, patent) as well as the benefits, both monetary and legal, that come to the patent-owner. It also shows the different reliefs available to the person in case of infringement of a patent. If this case takes place in the real world, it is extremely easy for Stark to prove his invention’s claim and demand heavy compensation from Hammer Industries, who were the primary unit behind manufacturing the armour without Stark’s consent. It also shows that if Stark would not have registered his invention, then he would not have gotten any relief/compensation from the Court. Therefore, it is of utmost importance for the creators to apply for registration to avail the gains accruing from an invention.

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‘The Social Network’: Facebook and Intellectual Property

- Kandalam Abhisvara

Movie Plot

The 2009 American biographical drama film ‘The Social Network’, a movie based on the book ‘The Accidental Billionaires’ by Ben Mezrich, depicts the founding of the social networking site Facebook and the ensuing litigation. In the movie, Tyler, Cameron, and Divya Winkelvoss (The "Founders"), Mark Zuckerberg’s fellow college mates, come up with the idea for a social networking website for Harvard college students in 2003. Zuckerberg was approached to build the website's source code and assist with setting up the website since none of the Founders had any programming experience.

The Founders alleged that in addition to failing to deliver the development and coding services, Zuckerberg had also discreetly stolen their concept, business plan, and source code and used them to start

a rival social networking website, called "the facebook.com" (later shortened to "facebook.com"). The website had gone live by the time the Founders realised what Zuckerberg had done. The website had amassed a sizable lead in user traffic that the Founders' social networking service, Connectu, would ultimately be unable to overtake. Connectu filed a lawsuit against Facebook.com, Zuckerberg, and five other co-developers of the website.

In the context of the general backdrop of the movie, one particular exchange is especially interesting as it lays down the originality requirement under copyright law¹ (*“protects against private appropriation of broad plot elements or standard motifs that have come into common usage—so-called ‘scenes a faire’”*). Eduardo (a co-founder) finds a cease-and-desist letter posted on the chimney as he and Mark are discussing ways to monetize their

website. The letter was sent by the Founders' legal representative. The phrase "to steal an idea" or "intellectual property theft" in the letter makes it quite evident that Founders were exerting pressure on Mark to close thefacebook.com. Mark then says "A guy who builds a nice chair doesn't owe money to everyone who has ever built a chair, okay? They came to me with an idea, I had a better one." He also goes on to state that he did not copy their code.

Legal Issues

The underlying dispute involved the following legal issues: whether there was a breach of an oral employment contract, whether, firstly, the idea for connectu was sufficiently developed to attract copyright protection; and if so, whether the idea by the Founders was stolen or misappropriated (constituting a copyright infringement), and if Mark Zuckerberg had used the confidential source code and business plans. The case ultimately reached a \$65 million settlement with the Founders in 2008.

Analysis

The person who creates a work is recognised as the author under copyright laws.² Computer programmes are given copyright protection as a result of the 1980s-era worldwide consensus that they should be covered by copyright, which was confirmed by Article 4 of the TRIPS Agreement and Article 4 of the WIPO Copyright Treaty.³

The requirement to record or preserve the work in a permanent form must be combined with the principle that the work's creator is the author; since an idea in

itself is not subject to copyright; only the expression of an idea is.⁴ The Agreement on Trade--Related Aspects of Intellectual Property (TRIPS), which states that copyright protection extends to "expressions and not to ideas, procedures, methods or operation or mathematical concepts as such," makes the idea-expression distinction explicit. When an idea can only be expressed in one specific form, such expression would not be protected because doing so would monopolise the idea, according to the case of *Kenrick & Co Ltd v. Lawrence & Co.*⁵ Therefore, even though copyright protection is vast, it has limitations. It can be challenging to describe the scope of the creator's copyright precisely, thereby sometimes giving rise to joint copyright systems.

In the case of *Springfield v. Thame*, where a journalist inspired an article published by his editor, a similar issue to the one seen in the movie emerged.⁶ Since he was not the author of the literary work, his idea was not what attracted copyright; rather, it was how his editor expressed the idea that did. The editor was the one who came up with the idea's expression, making him or her the author of the literary piece.

Therefore, while the idea of creating a social network site itself could not be protected by copyright laws, its software code could have been copyrighted. In fact, the Founders hired Zuckerberg specifically to write the ConnectU software code.

Contracts of employment, however, invalidate this principle of the author of a specific work being its first owner.⁷ The employer will be the first owner of

any copyright in any source code or software produced by an employee during the course of the employment.⁸ Contrary agreements, however, may be negotiated.

In order to establish ownership of future copyright in the source code and the components of the website design that Mark eventually produces, it is essential to determine whether there is a contract of employment. Zuckerberg being hired through an oral agreement to write ConnectU's code was not disputed; the dispute arose from the fact that it was not apparent from the contract whether Zuckerberg stood in the position of an employee or an independent contractor.

The first question that arises is whether the software that Zuckerberg wrote in his dorm room after the meeting arose out of the course of the contracted employment? If yes, the employer (in this case, the Founders) will own the first copyright in the programme because it was developed while the employee was working on the project. If not, Zuckerberg, the original author and creator, will be the one to own the copyright.

According to U. S. Copyright law, employees automatically own their work product, including the copyright in it.⁹ But unless there is an explicit agreement that indicates that this work product is a "work done for hire," contractors control the work they create for other people. Although the parties' \$65 million settlement in favour of the Founders may have been influenced by Zuckerberg's contested

employment status, the absence of an agreement regarding the same benefited Zuckerberg given Facebook's ultimate multibillion-dollar market cap subsequently.

Lessons Learnt/The Way Forward

The certainty of copyright ownership is in the best interests of the employee and the employer. If the author is an independent contractor, copyright ownership rights are much less clear. It is advisable to include language in the service contract with the contractor stating whether or not ownership of the work created will be transferred. Otherwise, one is limited to using the idea of an implied license.

Further, the founders could have safeguarded the confidential information in their idea with two crucial documents, even without an enforceable agreement relating to Zuckerberg's employment. In a nondisclosure agreement, or NDA, the person who receives confidential information (also known as a Recipient) undertakes to keep it private. Except as provided for by the NDA, the Recipient agrees not to divulge or utilise that confidential information. The disclosure of the confidential information has the right to sue the Recipient for the damages that result from the Recipient's violation of the NDA, and/or to ask for an injunction to stop any further disclosures or uses of its confidential information, including the discloser's ideas, in violation of the NDA.¹⁰

Things would have been very different if the Founders had signed an NDA with Zuckerberg before he started working for them (regardless of

whether he was an employee or a contractor) that specifically covered the source code he was developing and, most importantly, the social networking site concept itself. It is possible that Zuckerberg would have been barred from firstly appropriating the idea, and even if done so, from utilising and/or exploiting the code and the idea.¹¹ An employee or contractor's ability to compete with their employer during and after employment is typically prohibited under a non-compete agreement.¹²

Non-compete agreements are more likely to be challenged, However, they are generally enforceable when they are aimed to discourage an employee or contract or from exploiting the employer's ideas, innovations, brand, customer lists, or other trade secrets.¹³ Zuckerberg would not have been able to launch Facebook, at least for a certain duration if the Founders had required him to sign a non-compete agreement. The Founders could have reached a critical mass for their social networking platform at this time, giving it the intended competitive advantage over any rival websites that Zuckerberg developed, including Facebook.

At the conclusion of the movie, Marylin Delpy, a young defence attorney, counsels Mark that it would be good to settle the claims because the dubious circumstances surrounding the establishment of Facebook and Mark's caustic demeanour would leave a U. S. Jury with little sympathy. This also sets the tone for settlement of Intellectual Property disputes through an alternative dispute resolution mechanism.

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‘Soft Kitty, Warm Kitty, Little Ball of Fur’: The Big Bang Theory Sued For Their Usage of The Soft Kitty Lullaby

- **Karan Mathias**

“Soft Kitty... Warm Kitty... Little Ball of Fur... Happy Kitty... Sleepy Kitty...
Purr Purr Purr”

Explanation of the Scene

The Big Bang Theory is one of the most iconic and well-known sitcoms, which went on for a period of 12 seasons, during which it won ten Emmy awards. The Big Bang Theory was created by the executive producer Bill Prady and Chuck Lorre, who are also the head writers of the show. Filmed in front of a live studio audience, the show garnered the love of millions around the world due to its near resemblance to the world-famous comedy sitcom ‘Friends.’ The show's storyline broadly revolves around the lives of two physicists that live in America who go by the names of Sheldon Cooper and Leonard Hofstadter, along with their best friends, neighbours, and co-workers at the institute they work at. The two physicists have two close friends named Howard Wolowitz and Rajesh Koothrappali, who play the roles of a mechanical engineer and an astrophysicist, respectively. The four of them combined have a life that majorly revolves around watching films of science fiction, reading comic books and getting involved in video games on a daily basis. The four of them are seen to find it extremely hard to maintain a regular social life due to the fact that they have varied

interests and different ideas of fun in comparison to the general society. One of the show's main characters, Sheldon Cooper, is known to have a hard grasp over the real world and its workings. He is known to be an extremely controlling character who is fixed in his ways.

Whenever the protagonist Sheldon is down with an illness-be it, a common cold or being quarantined in a hazmat suit-the sole sense of comfort to him is the rendition of his favourite lullaby, “Soft Kitty.” He would force those around him to sing this to him until he fell asleep cosily. Penny, his next-door neighbour; Amy, his partner; Bernadette, his friend's wife; and Mary, his mother, were not spared from his antics. The melody is first heard in season one, but the rhyme makes an appearance over eight times during the show up until season ten. Further, in the show's spin-off prequel ‘Young Sheldon’, it is heard multiple times. It narrates the origin of the lullaby-with his grandmother Meemaw singing to him his comfort tune.

Legal Problem

The rhyme was copied and rooted through an original rhyme from an already existing 19th-century lullaby

made in Poland, which was later refined, written, and composed by Edith Newlin, whose next of kin has now filed for a copyright suit against its usage in mainstream media without any credit and permission being taken. This lullaby was filed to be a copyright infringement of an original song written in the year 1930, by a children's author and copyright owner named Edith Newlin, whose two children were later seen as the plaintiffs, came forward with this suit for their mother's song "Warm Kitty"¹. Page Number 27 of the said book is where the song first appeared in the children's books, and there is a clear mention of credit to "Edith Newlin" where the Soft Kitty Lyrics appear.² It is also seen that the book's fellow contributor and the compiler have provided a personal mention to Edith Newlin for providing her with permission to use the respective copyright in the acknowledgement section of her book. The main reasoning for the petitioner's claim was that their mother had written and gone on to publish this song in the year 1937. The defendants were accused of not only failing to accredit Newlin, but were also accused due to the fact that they created merchandise and profited from it using the rhyme and its reference. This set an undertone to the general public that The Big Bang Theory and its writers are the original creators and authors of the Warm Kitty nursery rhyme. On August 17th, 1933, the author of the book Songs for Nursery School-Laura Pendleton MacCarteney approached Edith Newlin for her grant of permission for the usage of the poem "Warm Kitty" to be incorporated into the book. The book went on to be published by one of the defendants of

the case named Willis Music co, who made it a point to provide credit to Edith Newlin as being the original author behind the poem in question.

Legal Analysis

The true reasoning behind why the author of "Warm Kitty," i.e., Edith Newlin, still seems to hold copyright over the lyrics is due to the fact that the defendant Willis Music registered their rights over the same with the Copyright Office in the year 1937 and further proceeded to extend the copyright in the year 1964 by renewing its copyright and making the book's author Laura Pendleton as the author, which automatically went on to renew and register the rights of the poem "Warm Kitty" with Edith Newlin. The laws that would govern the following copyright infringement suit would be Section 24 of the American Copyright Act 1908, which would govern works that occurred before 1978 in relation to the renewal of copyrights. The case was adjourned and seen to be dismissed by a U.S. District Court in New York on the basis that the following copyright suit filed by the plaintiffs did not hold any strong grounding as the plaintiffs did not have enough proof as to how Edith Newlin still held valid copyright over the lyrics of "Soft Kitty". The backing and reasoning provided by the court behind its decision are that the lyrics of Newlin appeared in a book that was published in the year 1930, which meant that the Copyright Act of 1909 would govern the following copyright. Since the publisher of the songbook written for kids decided to renew the copyright of the book, there is no ground to prove that the same renewal for the songbook can be used to renew the

plaintiff's mother, Edith Newlin's song that is mentioned in the songbook. The District Court of New York held that the lullaby "Warm Kitty" will be found to be advanced into the sphere of the general public, and hence the infringement case holds no grounds. The American Copyright Act of 1909 is seen to hold governance and authority over works that were created between the years 1909 to 1978, whereas the Act of 1976 is seen to only protect works that have been made and registered for copyright post on or after January the 1st, 1978. Under the former Act, twenty-eight years from the registration and publication of the work is the duration of the copyright, but the Act mentions that the maximum amount of time for a work to hold the protection of being copied is only fifty-six years in total. The 1976 Act, on the other hand, allows for a piece of work to hold protection under copyright for a span of 47 years, making the entire term of copyright protection under American law to be 75 years. There lies a real need, when it comes to the usage of a deceased artist's work, to make sure that proper credit is enshrined to them for their large influence in the works of major media. The intellectual property protection behind a deceased author's work allows his family to make sure that adequate recognition and royalties are given for the usage of the author's work.³ There have been multiple instances like the case of *Williams v. Bridgeport*⁴, which found that the song "blurred lines" by Robin Thicke and Pharrell Williams was seen to have infringed on the copyright of veteran musician Marvin Gaye over his song 'Got to Give It Up'. The Court held the defendants liable, and they

were asked to compensate Gaye's family through half of the song's royalties.

The late artist Randy California, who had performed with Led Zeppelin in the late 1960s, claimed that the iconic song "Stairway to Heaven" violated the song "Taurus". In another recent litigation, members of the rock group Led Zeppelin were able to dismiss the claim effectively. Notably, the judge denied Led Zeppelin's request for attorney's fees despite the fact that the jury did not find infringement and the plaintiff's lawyer had received numerous reprimands for improper conduct throughout the trial. The judge did so based on the plaintiff's "honourable motivation" in filing the lawsuit.⁵ In the case of Edith Newlin and the copyright claim made by her children, it can be seen that the suit would have had sufficient grounds if the renewal of the copyright was made on her actual work due to the fact that she acts as the putative owner of the lyrics through the process of registration at the Copyright Office. The plaintiff held every other right in making demands from the defendants for the violation on behalf of their rights. But in the following case, the lyrics became part of the public domain as a result of Newlin never submitting a separate copyright registration or renewal for them.

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