

NEWSLETTER FEBRUARY, 2023

NATIONAL

SUPREME COURT ISSUES NOTICE TO CENTRE REGARDING APPEALS AGAINST BAN ON BBC'S DOCUMENTARY.

The Supreme Court has issued a notice to the Centre seeking a report over the appeals against ban on BBC's documentary on Prime Minister Narendra Modi regarding the allegations on him surrounding the Gujarat Riots of 2002. The petition was filed by veteran journalist N Ram, activist-lawyer Prashant Bhushan, and Trinamool Congress MP Mahua Moitra, for prohibiting the Centre from censoring the documentary.

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MADRAS HC DISMISSES PLEA FOR CHALLENGING ORDER OF IMPOSITION OF SERVICE TAX ON TRANSFER OF COPYRIGHT IN MUSICAL WORKS

The Madras High Court dismissed a plea by music composers AR Rahman, GV Prakash and Santhosh Narayanan challenging the proceedings initiated by the GST department for levying service tax on transfer of copyright in musical works between the years 2013 to 2017. The department argued that the music composers do not own the musical work hence they have no copyright vested with them as per the Copyright Act.

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DELHI HC IMPOSES DAMAGES OF 4 LACS ON 2 SHOPKEEPERS SELLING COUNTERFEIT SANDISK PRODUCTS

The Delhi High Court imposed damages of 4 Lakh Rupees in favour of Sandisk LLC and Sandisk Device Design Centre selling counterfeit Sandisk USB flash drives and microSDHC cards in Trichy, Tamil Nadu. The court noted that the photographs of the goods seized clearly demonstrate the use of identical marks by the shopkeepers as that of Sandisk for selling their products. The court further held that such use was made with a malafide intention to unlawfully profit from the goodwill and reputation of the Plaintiff.

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DELHI HC REFUSES TO STAY RELEASE OF MOVIE FARAAZ BASED ON A TERRORIST ATTACK

Division bench of the Delhi High Court refused to stay release of Hansal Mehta's movie Faraaz which is based on a terrorist attack at Holy Artisan, Dhaka, Bangladesh that took place in 2016. The appeal was filed by two women who lost their daughters in the attack against the order of the single judge who refused to grant interim relief in the matter. The filmmaker had already given a disclaimer that the film is inspired by the said terrorist attack and is a pure work of fiction.

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IMAI CRITICIZED THE DRAFT IT RULES AS "RIGHT ON INTENTION, BUT POOR ON SCOPING"

The Internet and Mobile Association of India in its statement on Draft IT Rules on online gaming said that it is right in intention but poor in scoping. The Association feels that the definition of gaming is too broad and vague and will bring within its ambit a set of firms that do not need regulation or need to be regulated very lightly. The Association further observed that the intermediaries hosting, publishing or advertising online games complying and verifying each game with the self regulatory body as per the rules is a very impracticable approach.

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IS ONLINE RUMMY A GAME OF CHANCE OR GAME OF SKILL?

The Andhra Pradesh High Court while hearing a petition filed by a software development company engaged in the business of developing online games ordered the State Government to set up a committee to submit a report on the manner in which online rummy is played so that the court can decide on the issue that whether online rummy is a game of skill or a game of chance. In this case, there was no material on record as to the manner in which the game is played which may include facts like time limit for discarding the card, technique involved, identity of the player etc. Therefore, the court observed that it is significant to know the operator functions before deciding on the issue and hence, ordered the State Government to set up a committee for the same.

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SC STAYS KERALA HC'S CONDITION FOR GRANTING ANTICIPATORY BAIL REGARDING COPYRIGHT INFRINGEMENT OF "VARAHROOPAM" SONG

The Supreme Court stayed Kerala High Court's order regarding grant of anticipatory bail to producer Vijay Kirgandur and director Rishab Shetty in a criminal case of alleged copyright infringement on the condition to not exhibit "Varahroopam" song in their movie Kantara. The hon'ble court observed that copyright infringement issues cannot be decided in an anticipatory bail application. The Chief Justice of India while passing the order stated that "The High Court felt very strongly that you people have plagiarised somebody's song. But the point is you can't impose these conditions for granting an anticipatory bail"

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DELHI HC ORDERED TRADER SELLING COUNTERFEIT PRODUCTS OF LOUIS VUITTON TO PAY RS. 5 LACS OR FACE CIVIL PRISON

The Delhi High Court after holding a Sadar Bazar Trader guilty of violating a restraining order by continuing sale of counterfeit products of Louis Vuitton directed him to pay Rs. 5 Lacs damages within 4 weeks, failure of which would lead him to face a week of civil prison. The restraining order was passed against several small entities infringing the trademark of the petitioners back in 2021. One of the defendants still continued to sell belts bearing the LV brand mark.

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DELHI HC PASSED AN INTERIM ORDER IN FAVOUR OF OREO AND RESTRAINED PARLE FROM USING FAB!O

The Delhi High Court granted interim protection to Intercontinental Great Brands for their trademark Oreo and restrained Parle from using their trademark Fab!o. The Court observed that brand names for biscuit and cookies ending with 'IO' and 'EO' are not common in the market and the consumers will likely presume an association between Oreo and Parle's Fab!o cookies because of the deceptive similarity between the respective marks. Thus, the court held that the defendant's Fab!o mark is deceptively similar to the Oreo trademark and therefore, a prima facie case of trademark infringement by Parle is made out.

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DELHI HC DISMISSED SCI HUB FOUNDER'S APPLICATION SEEKING REJECTION OF PLAINT IN A COPYRIGHT INFRINGEMENT SUIT

The Delhi High Court rejected an application of Alexandra Elbakyan, founder of shadow library, Sci-Hub to reject the plaint filed by publishing houses in a copyright infringement suit against her. The publishers claim that her website is making their literary works available to the public for free, thus engaging in online piracy. Elbakyan argued that the publishers do not have valid copyright ownership of the literary works as the royalties or consideration to be paid as per the assignment agreement that the publishers relied upon to prove their copyright ownership in the respective works were not paid to the authors.

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DELHI HC DIRECTS MEITY TO TAKE ACTION AGAINST DOMAIN NAME REGISTRARS NOT COMPLYING WITH IT RULES

The Delhi High Court has passed directions for Ministry of Electronics and Information Technology and Department of Telecommunication to take action against domain name registrars who are not complying with Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The court observed that stringent measures have to be adopted to curb "the menace of illegal domain name registrations" of well-known marks of other businesses. This matter came before the court concerning pleas filed by trademark proprietors seeking relief for misuse of their marks by unauthorized users who registered their trademarks as a domain name.

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DELHI HC SAYS, NO EXCLUSIVE RIGHT ON THE WORD "CHICKEN" BUT APPLICATION FOR "CHICKEN ZINGER" MARK CAN BE CONSIDERED

While hearing an appeal filed by Kentucky Fried Chicken International Holdings against an order of refusal of application for registration of the mark "Chicken Zinger", the Delhi High Court observed that the mark comprises of two words, "Chicken" and "Zinger" where the dictionary meaning of Zinger is "a thing outstandingly good of its kind" or "a wisecrack; punch line" or "a surprise question; an unexpected turn of events".

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IP DIVISION TO BE ESTABLISHED IN MADRAS HIGH COURT BY THE STATE GOVERNMENT

The Madras High Court has directed the State Government to issue a notification for the establishment of an Intellectual Property Division. The order was passed regarding a writ petition by M/s. Galatea Limited concerning its pending case before IPAB, Chennai that was to be heard by the Madras High Court. As soon as the notification is issued, the Registry would inaugurate the IP Division. Madras High Court Intellectual Property Rights Division Rules were drafted as early as 7th of July 2022 and were to be notified in the official Gazette of the Government of Tamil Nadu but no appropriate action was taken by the state government.

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DELHI HC RESTRAINS JOURNALIST FROM USING KESARI TV MARK

The Delhi High Court has restrained a freelance journalist from publishing news in print or electronic mode under 'Kesari TV' and associated marks. The domain name 'www.kesaritv.com' has also been suspended by the court. This order followed the suit filed by the Punjab Kesari Newspaper owners alleging infringement of their unregistered trademark 'Punjab Kesari TV' by the defendant by using a deceptively similar mark and also registering a domain name containing the deceptively similar mark. The plaintiff contended that they had been using the marks 'Kesari TV' and 'Punjab Kesari TV' since 2014 continuously and uninterruptedly.

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KERALA HC STAYS FIR AGAINST PRITHVIRAJ SUKUMARAN REGARDING THE COPYRIGHT INFRINGEMENT OF VARAHROOPAM SONG FROM MOVIE KANTARA

FIR registered against Malayalam Actor and Producer Pritviraj Sukumaran regarding the alleged copyright infringement of the Varahroopam Song from Kannada movie 'Kantara' has been stayed by the Kerala High Court. He was also a distributor of the movie. The court while granting the stay order observed, "Prima facie, I am satisfied that petitioner as a distributor of a movie cannot be mulcted with infringement of a copyright merely for distributing a movie in one of the states in the country."

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MAHARASHTRA CIVIL COURT REFUSES TO STAY 'BESHARAM RANG' SONG ON YOUTUBE

A civil court in Maharashtra refused to pass an order to restrain Yashraj Films from publishing teaser trailer of movie "Pathan" and "Besharam Rang" song on YouTube without showing the U/A certificate. The plaintiff contended that it is mandatory to publish a U/A certificate before publishing an advertisement in newspapers, hoardings, trailers and teasers as per the provisions of the Cinematograph Act, 1953. However, the provisions of the said Act do not apply to advertisements published on the OTT platforms. The court observed and held that "No prima facie case is made out."

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AIDCF'S APPEAL AGAINST DISCONNECTION NOTICES BY BROADCASTERS HEARD BY THE KERALA HC

All India Digital Cable Federation's (AIDCF) appeal for an interim relief from disconnection notices from the broadcasters is to be heard by the Kerala High Court.

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VALIMAI FACES PLAGIARISM CHARGES AFTER A YEAR OF ITS RELEASE

A short film director Rajesh Raja has filed suit for a plagiarism claim against Ajith's 'Valimai' alleging that 10 scenes from his short film 'Thanga Sangili' are similar to the respective scenes in Valimai

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INTERNATIONAL

LIZZO GRANTED A FEDERAL TRADE-MARK FOR "100% THAT BITCH" LYRIC FROM HER SINGLE "THAT HURTS"

According to the USPTO, Lizzo succeeded in registering her lyric "100 % THAT Bitch" from her 2017 single "That Hurts" as a trademark giving her exclusive rights for her merchandise in apparels. This application was rejected last year which has now been reversed in an appeal before the USPTO's Trademark Trial and Appeal Board. The Board observed, "Considering the entirety of the record, we find that most consumers would perceive 100% THAT Bitch used on the goods in the application as associated with Lizzo rather than as a commonplace expression.

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TRUMP FILED A COPYRIGHT INFRINGEMENT SUIT AGAINST A JOURNALIST OVER INTERVIEW RECORDINGS

Former President of the United States, Donald Trump filed a 50 million dollars copyright infringement suit in the federal court of Florida against a journalist, Bob Woodward asserting that he released Trump's interview recordings made for the book "Rage" to the public without his permission. Woodward asserted that Trump's case is without merit and further added, "All these interviews were on the record and recorded with President Trump's knowledge and agreement. Moreover, it is in the public interest to have this historical record in Trump's own words.

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NETFLIX ROLLS OUT ITS NEW ANTI-PASSWORD SHARING MEASURES

According to an estimate by Netflix, over 100 million of its users are using login credentials of someone else. In order to bring in a new infusion to its revenue the company has decided to put an end to account sharing. The accounts are still shareable, but only within one household. The Netflix Help Centre has rolled out guidelines on how an account can be shared and how it shouldn't be shared.

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HERMES WON THE METABIRKINS TRADEMARK TRIAL

Hermes, the luxury fashion brand, won its trademark lawsuit against Mason Rothchild, the creator of Non-Fungible Tokens MetaBirkins. The Court ordered Rothchild to pay \$110,000 to Hermes for infringing their trademark with an additional \$23,000 for cybersquatting as he used a confusingly similar domain name to that of Hermes.

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CANADA ROLLS OUT NEW RULES FOR PROTECTION OF INTELLECTUAL PROPERTY

Canada announced its new rules for the protection of intellectual property that consists of blocking funding to researchers affiliated with institutions connected to foreign governments.

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NIKE FACES LAWSUIT FOR USING UNLICENSED FONTS FOR THEIR ADVERTISING AND MARKETING

A lawsuit has been filed by a French company, Production Systems SAS against Nike for their alleged unlicensed use of their copyrighted "Kreuz" font software causing loss of substantial revenue to their design business. According to the complaint, Nike purchased only two single user desktop licenses and one single title audio-visual license for the "Kreuz Condensed Light" font on Dec. 12, 2019.

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RESERVOIR, POP ARABIA SUES MIDDLE EAST STREAMER ANGHAMI FOR COPYRIGHT INFRINGEMENT

Pop Arabia, a music publishing company, and its partner Reservoir Media filed a lawsuit against Anghami Technologies for the alleged unlicensed exploitation of songs in numerous territories across Middle East region including songs of Kelly Clarkson and Lil Jon. Reservoir claimed that Anghami may have licensed copyright of sound recordings from the labels but it has not obtained a license for the underlying lyrical and musical works

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