
SUPER CASSETTES INDUSTRIES V. MYSPACE INC. & ANR.

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Facts

1. The plaintiff being a media house which distributed and produced films and had many copyright ownerships and exclusive rights over material which included 20,000 films and 50,000 songs approximately. Its income was dependant on the money obtained from the following material.
2. The defendant was an online USA based platform which allowed users to upload content and the same content was accessible to all it's subscribers.
3. The defendants site had many uploads whose access was to all users whose copyright was exclusively held by the plaintiff and on the obtainment of such information a notice was sent to the defendant to take such content off its website
4. The same was not taken down by the defendant due to which a suit was filed for copyright infringement¹.

Procedural History

The Delhi High Court passed order in favour of the plaintiffs Supper Cassettes Industries Limited and held them liable of copyright infringement. Further passed an injunction and interim order that caused Supper Cassettes to take down all infringing content

This Decision was then *overruled* by the Division Bench comprising of Justice Rabindra Bhatt and Deepa Sharma which invalidated the injunction and held that there was lack of knowledge therefore the defendant Supper Cassettes were not liable of copyright infringement.

¹ Super Cassettes Industries Ltd. v. MySpace Inc. 2011 (48) PTC 49 (Del)

Issues

The issues raised and addressed by court are:

- Whether the appellate Myspace had the said knowledge of the upload and usage of the infringing material therefore invoking secondary infringement under Section 51(a)(ii) of the Copyright Act, 1957.
- Whether the “safe harbour” granted to intermediaries under section 79 of the Information Technology Act, 2000 is superseded by the provision Section 81 of the Information Technology Act, 2000.
- Whether Section 79 and Section 81 of the Information Technology Act, 2000 be harmoniously read along with Section 51 of the Copyright Act, 1957

Rules

The Rules applied mainly fall under the Copyright Act, 1957 and the Information Technology Act, 2000 and are:

Section 13 , *Section 14* along with *Section 51(a)(i)* & *51(a)(ii)* of Copyright Act, 1957 were applied.

Section 13 of the Copyright act provides for what works copyright exist. The section namely states that copyright exist mainly for “*original literary, dramatic, musical, artistic works, cinematograph films and sound recordings*” and further states certain requirements for such copyright to subsist².

Section 14 of the Copyright act further defines the right of the copyright owner in relation to their work. It comprises of rights such the “*right to reproduce, issue copies, adaptation rights, rights to sell and other such rights* which exist exclusively to the owner and breach by other leads to copyright infringement”³.

Section 51(a)(i) of the Copyright act states three conditions under a copyright is considered to

² The Copyright Act,1957, § 13, No. 14, Acts of Parliament, 1957 (India)

³ The Copyright Act,1957, § 14, No. 14, Acts of Parliament, 1957 (India)

be infringed namely:

- Performs an act without a license which may be granted to him by the owner of the copyright or the Registrar of Copyrights under this Act.
- Violated the terms of the license granted to him or conditions which may be imposed by the owner or competent authority.
- Does any such act whose right exist exclusively with the copyright owner⁴.

Section 51(a)(ii) of the Copyright act states it is deemed to be an infringement if a place or location is used for public communication and profit is derived from the same and permission for same has been granted. The act performed at this place shall be a breach of the license or exclusive right of the copyright owner and profit shall be derived. Although the person giving such permission or approval must know or have reasonable ground to believe that such act comprises of an infringement. Liability does not occur in cases of unawareness of the infringement or have no reason to believe the act comprises of any infringement⁵.

Section 79 & 81 of Information Technology Act, 2000 were applied:

Safe Harbour principle provides protection against the transmission or hosting of third party content online to internet service provides or any such intermediaries. It is further elaborated and inculcated under Section 79 of the IT Act.

Section 79 of the IT Act provides protection and exempts internet service provides or any such intermediaries from liability of infringement which may arise from third-party content hosted or transmitted by them. They lay down certain conditions which needed to be follow to be exempted such as not initiating the transmission of content, no modification, following certain due diligence and removing content on the receipt or knowledge of infringement⁶.

Section 81 of the IT Act states that this act shall take precedence and shall have effect over any other conflicting laws which me exist although this act cannot prevent the exercise of rights

⁴ The Copyright Act,1957, § 51(a)(i), No.14, Acts of Parliament, 1957 (India)

⁵ The Copyright Act,1957, § 51(a)(i), No. 14, Acts of Parliament, 1957 (India)

⁶ The Information Technology Act, 2000, §79, No. 21, Acts of Parliament, 2000 (India)

under the Copyright Act⁷.

Analysis

On the issue of whether Myspace had real or actual knowledge the court stated that real knowledge would be defined as actual awareness or reason to believe something. To attract violation there shall be motive or intention and since there are no existent provisions for security measures like notice or takedown therefore Myspace couldn't have had real knowledge and therefore not liable.

The court further stated that Myspace fit well within the definition of intermediaries. Even if minimum standard exist or safeguard exist then there cannot be any charges of violation. No need to extreme standards under the law and since this condition was met Myspace was not liable.

Court stated that Section 79 and 81 of the IT Act, 2000 must be read harmoniously. Section 79 has an overriding effect and states that regardless of other laws there shall be 'safe harbour granted to intermediaries subject to them following the terms of this section. Section 81 on the contrary states that the act shall a person's right under the copyright act must not be infringed. Section 41 further provides when infringement takes place and protects copyright owners. Therefore copyright owners cannot be banned from seeking legal remedy under IT Act and all these sections must be read harmoniously to promote the telecom sector in India. Intermediaries only liable when content uploaded by them directly or not taking down of content after having knowledge of such infringing content on their domain which shall be accessible to all.

The court while resolving the issues examined the Copyright law and examined certain discrepancies in the law. Section 51(a)(ii) of the Copyright Act mentions "any place" for profits but does not define the category of place on which such profit shall be derived which would constitute a violation. The court therefore clarified that "any place" therefore could consist of both physical as well as online or internet based domains.

To clarify and reach this decision the Bench referred to the UK Copyright Act of 1956 and the 1988 Act along with the House of Lords decision in *Comdel Commodities Limited*⁸. This cases

⁷ The Information Technology Act, 2000, §81, No. 21, Acts of Parliament, 2000 (India)

⁸ *Comdel Commodities Ltd v Siporex Trade S.A.*, [1997] EWCA Civ J0205-11

stated that laws to evolve with time and need of society and law must be broad. Further the case of *Prafulla B. Desai vs. State of Maharashtra* was also cited as it supported this view. Therefore validating internet as a valid profit place under copyright Act⁹. Therefore based on this decision the court stated that Section 51(a)(ii) to include webspace. Since the defendant had advertised on their webpage using the plaintiffs copyrighted work therefore had generated profit from the work of the plaintiff. Additionally, the defendants had a limited license to modify actions uploaded by users, which equates to allowing space for profit.

Further the court also defined and created a distinction between providing a place to generate profit and authorizing a violation or providing place for infringement. Authorized violation was defined using the English ruling as having more than mere knowledge and means of giving explicit permission or approval. Since there was involvement in providing a platform for profit and there was no complete active permission from the plaintiff therefore there was usage of place for profit purposes.

The court further stated that Sections 79 and 81 of the IT Act should be read together with Section 51 of the Copyright Act and further clarified that “knowledge” under these provisions when collectively used shall mean actual knowledge and any interim relief for intermediaries should be specific.

Further the court stated that a balance shall be created between copyright infringement and not holding intermediaries responsible for task beyond their control. It was stated that holding the intermediaries responsible would curb the growth of the digital sector while not holding them responsible would weaken the copyright law and therefore urged to implement for intermediaries a investigation mechanism although they were asked to not solely rely on the same but also implement more safeguards to prevent violations.

The court laid down a 4 step mechanism for OECD to avoid conflict which stated:

1. Notice and takedown
2. Notice and notice
3. Notice and disconnection

⁹ *The State of Maharashtra vs Dr. Praful B. Desai*, 2003 (4) SCC 601

4. Filtering

Further the court also laid attention on further implementing and strengthening the safe harbour doctrine and stated that intermediaries are highly vulnerable to risk as burden of proof falls on them therefore this doctrine safeguards them and also ensured no wrongdoing by them and therefore necessary.

Conclusion

Decision by Delhi High Court:

The Delhi High Court ruling was in favour of the plaintiff and *held Myspace liable for copyright infringement*. The court stated that Myspace had knowledge of the infringement as the same was informed to them by Super Cassettes. Since even after having knowledge no act was done to take down infringed content it was said the defendant had knowledge and therefore liable.

Interim order was issued which prevented the defendant from modifying any of the plaintiffs work and generating profit from the same. The defendant was asked to take down within one week all the infringing content a list of which would be provided by the plaintiff. Since profit was derived the defendant to compensate for the loss caused to plaintiff.

Decision by Division Bench comprising of Justice Rabindra Bhatt and Deepa Sharma:

The decision by the two judge bench was considered progressively developed as it kept in mind the challenges and seriousness that intermediaries confront.

The previous judgement enforced an injunction against all the future works of Myspace which this division bench invalidated and overruled and stated that injunction under Section 51 of the Copyright Act shall not be applicable to creators and future work but only to current and existing materials.

With relation the issue of whether Myspace had knowledge or not, the court stated and that using safety equipment does not qualify as a person having actual knowledge of copyright infringement. There was automatic modification and therefore no manual intervention. It is clearly stated in Section 51(a)(ii) that liability only arises when there is actual knowledge or

has reasonable grounds to believe so. *It was stated that Myspace had no knowledge and the precedent of Shreya Singhal v. Union of India (2015) and therefore not liable under this issue.*

It was determined that offering a catalogue without specific URLs was inappropriate because it might lead to the removal of content that belonged to distributors and other approved parties. This expectation might also result in the deletion of posts that contain any trace of copyrighted material, which would be bad for the freedom of speech.

The court stated that Section 79 of the IT Act is only subjected to restricts as stated in Section 79 (2) and 79 (3) of the act therefore providing defences for intermediaries who meet the conditions although not completely exempt you from the liability. The judges also believed that Section 71 of the IT Act does not remove this defence for an intermediary, even in copyright cases. *As Myspace only facilitated content and did not initiate broadcasting and had due diligence in check therefore are entitled to the safe harbour principle and not liable.*

Judge Ruled for the issue of reading Section 1 of the Copyright Act and Sections 79 and 81 of the IT Act that the *above sections to be read harmoniously to provide the most effective relief.*

Further Myspace to take down within 36hours all the infringing content from their website whose URL was to be provided by Super Cassettes.

Track of all the revenue generated to be prepared and same to be used to ascertain the relief which would be provided to Super Cassettes for their losses.

References

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