

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 13/2023**

**SONY MUSIC ENTERTAINMENT**

**INDIA PRIVATE LIMITED & ORS ..... Plaintiffs**

Through: Mr. Harsh Kaushik, Mr. Rahul Dhote, Ms. Anushree Rauta, Mr. S.S. Ahluwalia, Mr. Harsh Prakash, Ms. Devangiv Rai, Ms. Narayani P. Chowdhary and Mr. Mohit Bangwal, Advs.

versus

**YT1S.COM, YT1S.PRO, YT1S.DE & ORS ..... Defendants**

Through:

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

**12.01.2023**

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1. This plaint at the instance of Plaintiffs 1 to 3 is essentially directed against Defendants 1 to 18 as enlisted at pages 19 and 20 of the documents filed with the plaint. The said defendants have been arrayed on the basis of their domain IDs, as their identity is masked and attempt to ascertain their WHOIS particulars have been futile.

2. The case of the plaintiffs is that they are holders of copyright in various sound recordings and, consequently, under agreements executed with the original copyright holders of the said recordings, which have been placed on records. By virtue of the said agreements and the provisions of the Copyright Act, 1957, therefore, the plaintiffs assert that the transmission, broadcasting or reproduction of any of the

Signature Not Verified said recordings in which the plaintiffs hold copyright, would amount

to infringement of copyright within the meaning of Section 51(a)(i),(a)(ii) and (b)<sup>1</sup> of the Copyright Act.

3. Mr. Harsh Kaushik, learned Counsel for the plaintiffs, submits that Defendants 1 to 18 are rogue websites within the meaning of expression as defined by this Court in its judgment in *UTV Software Communication Ltd. v. 1337X.TO*<sup>2</sup>. Mr. Kaushik has invited my attention to the relevant passages of the said decision, which enumerate the criteria, requiring satisfaction in order for the website to be designated as a “rogue website”. He submits that the website forming subject matter of *UTV*<sup>2</sup>, like Defendants 1 to 18, also provide services whereby copyrighted content on various platforms, primarily YouTube, could be downloaded in MP3 or MP4 format by copying the YouTube link in the space provided in the website. This phenomenon, he submits, is known as “stream ripping”. The WHOIS details of the websites being masked, he submits that it would be impossible for the plaintiffs to pursue the websites by separate proceedings qua individual copyrighted content.

<sup>1</sup> 51. **When copyright infringed.** – Copyright in a work shall be deemed to be infringed –  
(a) when any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act –  
(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or  
(ii) permits for profit, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or  
(b) when any person –  
(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or  
(ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or  
(iii) by way of trade exhibits in public, or  
(iv) imports into India, any infringing copies of the work:  
Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

**Explanation.**—For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”.

4. In this situation, he submits that the situation that exists in the present case is similar to that which emerges in *UTV*<sup>2</sup> and, following the said decision, prays for interdicting the websites and also for a direction to block the access of the websites in India.

5. He submits that several similar orders have been passed by this Court in the past.

6. In the circumstances, the plaint seeks a decree of permanent injunction restraining Defendants 1 to 18 or any other mirror/redirect/alphanumeric websites or any other iteration thereof, associated with the websites of Defendants 1 to 18, and all others who are acting on their behalf, from hosting, reproducing or otherwise making available to the public or facilitating the downloading of the content in which the plaintiffs own copyright.

7. Additional and concomitant reliefs have also been sought, including reliefs for blocking access to the said websites in India.

8. The facts as outlined hereinabove, read with the decision in *UTV*<sup>2</sup>, make out a *prima facie* case in favour of the plaintiff, justifying interlocutory injunctive relief, to prevent further copyright infringement and proliferation of such activities over the internet.

9. In the circumstances, let the plaint be registered as the suit.

10. Issue summons in the suit.

11. Let summons be issued to the defendants by all modes.

12. Written statement, if any, accompanied by affidavit of admission and denial of the documents filed by the plaintiffs be filed within 30 days with advance copy to learned Counsel for the plaintiffs who may file replication thereto, accompanied by affidavit of admission denial of documents filed by the defendants within 30 days thereof.

13. List before the Joint Registrar on 22<sup>nd</sup> February 2023 for completion of pleadings, admission and denial of documents and marking of exhibits, whereafter the matter would be placed before the Court for case management and further hearing.

**I.A. 525/2023(exemption from filing pre-suit mediation)**

14. This is an application seeking exemption from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act. The identity of the contesting defendants is unknown. Even otherwise, given the law laid down by this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd*<sup>3</sup>, the plaintiffs are exempted from the requirement of pre-institution mediation.

15. The application is allowed accordingly.

**I.A. 524/2023 (exemption from Section 80)**

16. This application seeks exemption from the requirement of service of advance notice to Defendants 28 and 29, who are Governmental Authorities, under Section 80 of the Code of Civil Procedure, 1908 (CPC).

17. For the reasons stated in the application, prayer is granted. Exemption is allowed. The application is disposed of.

**I.A. 523/2023 (exemption from filing separate suits)**

18. This is an application seeking permission to Plaintiffs 1 to 3 to file a consolidated suit. Mr. Kaushik has drawn my attention to the order dated 21<sup>st</sup> February 2022, passed by a coordinate Bench of this Court in CS (Comm) 116/2022 (*Universal City Studios LLC & Ors. v. 123Movieshub.TC & Ors.*), in which, in similar circumstances, the permission as sought was granted. Following the said decision, permission to file a consolidated suit is allowed.

19. The application stands allowed accordingly.

**I.A. 522/2023 (exemption)**

20. Subject to plaintiffs filing legible copies of any dim or illegible documents on which it may seek to place reliance within four weeks, exemption is granted for the present.

21. The application is disposed of accordingly.

**I.A. 521/2023 (Order XXXIX Rules 1 and 2 of the CPC)**

22. Issue notice to the defendants, returnable before the Court on 15<sup>th</sup> March 2023.

23. Reply be filed within four weeks with advance copy to learned Counsel for the plaintiffs, who may file rejoinder thereto, if any, within four weeks thereof.

24. This application seeks interlocutory injunction *ad interim* reliefs in the following terms:

“In view of the aforesaid, it is respectfully prayed that this Hon'ble Court may be pleased to pass the following order(s):

a) Pass an order of temporary injunction restraining the Defendant Websites i.e. Defendant No. 1 to 18 and any such other mirror/redirect/alphanumeric websites and/or any iterations thereof, which appears to be associated with any of the Defendant Websites and/or their owners, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through them, from Stream Ripping, hosting, reproducing, distributing, facilitating, making available to the public and/or communicating to the public, Plaintiffs' works and/or facilitating such activity on their websites and/or through the internet in any manner whatsoever, resulting in infringement of Copyright of the Plaintiffs in any of their works;

b) Pass an order directing Defendant No. 19 to 27, their owners, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and, on their behalf, or anyone claiming through, by or under it, to block access to Defendant No. 1 to 18 identified in the instant suit and any such other mirror/redirect/alphanumeric website which appears to be associated with any of the Defendant Websites which are engaged in Stream Ripping and infringing Plaintiffs' copyright in any of their works;

c) Pass an order directing Defendant No. 28 and 29 to issue a notification calling upon various ISPs registered under it to block access to the websites of Defendant No. 1 to 18 (and any such other mirror/redirect/alphanumeric website which appears to be associated with any of the Defendant Websites which are engaged in Stream Ripping and infringing Plaintiffs' copyright in any of their works;

d) Pass an ex-parte interim order in term of the

prayer clauses (a) to (c) hereinabove.

e) Pass such other order(s), if any, in the interest of justice as this Hon'ble Court may deem fit.”

**25.** For the reasons stated hereinabove, till the next date of hearing the following interlocutory orders are issued:

(i) Defendants 1 to 18, and also any mirror/redirect/alphanumeric websites enumerating therefrom, are restrained from hosting, reproducing, distributing, facilitating or making available to the public, works in which the plaintiffs hold copyright, or facilitating the downloading and dissemination of such works in any manner whatsoever.

(ii) Defendants 19 to 27 are directed to block access to the Defendants 1 to 18 websites in India.

(iii) Defendants 28 and 29 are directed to issue a notification calling upon the various Internet Service Providers (ISPs) registered under Defendants 28 and 29 to block access to the aforesaid websites Defendants 1 to 18 in India or any other mirror/redirect/alphanumeric websites.

**26.** Inasmuch as this order is being passed in the absence of the defendants, the plaintiffs are directed to comply with the provision of Order XXXIX Rule 3 of the CPC within one week from today.

**27** Mr. Kaushik also seeks interlocutory relief in terms of para 101 of the *UTV*<sup>2</sup>, which reads thus:

for impleadment, the plaintiffs shall file an affidavit confirming that the newly impleaded website is a mirror/redirect/alphanumeric website with sufficient supporting evidence. On being satisfied that the impugned website is indeed a mirror/redirect/alphanumeric website of injuncted Rogue Website(s) and merely provides new means of accessing the same primary infringing website, the Joint Registrar shall issue directions to ISPs to disable access in India to such mirror/redirect/alphanumeric websites in terms of the orders passed.”

**28** Inasmuch as the exercise that has been delegated to the learned Joint Registrar by para 101 of the decision in *UTV*<sup>2</sup> would not involve any exercise of an adjudicatory functions regarding the aspect of infringement and merely requires the learned Joint Registrar to facilitate the implementation of the order passed by this Court by satisfying himself that the website of which blocking is being sought, is indeed a mirror/redirect/alphanumeric *avatar* of the websites which already stand injuncted by the previous order passed by this Court, I see no impediment in passing a similar order.

**29.** Accordingly, in the event of coming into existence of any mirror/redirect/alphanumeric of the websites of the rogue websites and Defendants 1 to 18, the plaintiffs shall be entitled to file an affidavit before the learned Joint Registrar who, on being satisfied that the website is indeed a mirror/redirect/alphanumeric of the website of one or more of the Defendants 1 to 18 websites impleaded in this suit, may issue directions to the ISPs to disable such mirror/redirect/alphanumeric of the websites in terms of the orders already passed hereinabove.

**C.HARI SHANKAR, J**

**JANUARY 12, 2023**

Signature Not Verified  
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Digitally Signed  
By: KAMLA KAWAT  
Signing Date: 19.01.2023  
11:48:58

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