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Victoriam Legalis - Advocates & Solicitors | Newsletter



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We here, at Victoriam Legalis, believe in continuous learning and growth, and agree that one way to do the same is to keep up with the developments and changes taking place around us.

We live in an Information Age, and while there is no dearth of knowledge and information, we, through this newsletter, hope to give you a consolidated account of relevant updates and developments.

In light of the same, we present to you the first issue of our newsletter, which we hope, you find beneficial!

Happy Reading!



Media and Entertainment

1. Design (Amendment) Rules 2021 come into force on 25th January, 2021

Vide a notification dated 25th January, 2021, the Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade published the Design (Amendment) Rules, 2021. The amendments, include, inter alia, recognition for startups; adoption of latest edition of Locarno Classification and a revised fee schedule.

2. Madras High Court: Present position of allowing no more than 50 percent of seating capacity in cinemas, theatres and multiplexes shall continue

In a recent order, the Hon'ble Madras High Court in the case of B. Ramkumar Adityan v. Chief Secretary, Govt. of Tamil Nadu (WP (MD) 344,424 and 426 of 2021) ruled that the present position of allowing no more than half the seating capacity in cinemas, theatres and multiplexes in view of the ongoing COVID 19 pandemic shall continue.

3. Application for Geographical Indication (GI) tag filed for 'Cumbum Panneer Thratchai', a grape variant

A farmer's association, namely Kaamayam Thiratchai Vivasayigal Sangam from Cumbum valley, a region in Tamil Nadu, also known as the Green Valley of South India or the Grape City, has filed an application of GI registration for Cumbum Panneer Thratchai, a variant of grape.

4. Phishing scam on Instagram: Fraudsters targeting Bollywood Celebrities

A scam being called as the Instagram Copyright Infringement Scam has been making rounds on the social media platform, Instagram and several Bollywood celebrities have fallen prey to it. In this scam, people including Bollywood celebrities receive a message from someone misrepresenting himself/herself as an associate of 'Instagram/Copyright Infringement Centre' and then asking for personal or transactional information by way of filling out of 'Copyright Appeal Form'.





Technology and E-Commerce Updates

1. Facebook may have vastly overpaid in data privacy settlement: court filing

Facebook Inc may have paid \$4.9 billion more than the maximum penalty it faced under a settlement agreement with regulators related to allegations it mishandled user privacy, according to a Wednesday court ruling. The information made public by a Delaware judge who gleaned it from a “white paper” prepared by a law firm advising Facebook’s board of directors as they debated a proposed \$5 billion settlement with the Federal Trade Commission. That agreement also protected Chief Executive Officer Mark Zuckerberg.

2. Microsoft approached Pinterest in recent months about potential deal: FT

Microsoft Corp approached Pinterest Inc in recent months about a potential deal to acquire the \$51 billion social media company, the Financial Times reported on Wednesday, citing people briefed on the matter. The negotiations were currently not active, according to the report. A general shift to virtual interactions leading to increased engagement on social media platforms benefited Pinterest as well, with its monthly active users jumping 37% to 459 million in the fourth quarter.

3. Twitter will explore letting users receive payments from followers

Twitter Inc Chief Executive Jack Dorsey said Wednesday the company is exploring allowing its users to receive tips, or digital payments, from their followers. Dorsey said the feature would help the social media platform earn more money and engagement from its base of 192 million daily users. “I think the first thing we want to focus on is that economic incentive to people who are contributing to Twitter,” he said at the virtual Goldman Sachs Technology and Internet Conference.

4. India slams Twitter amid face off over content; lawmakers spark exodus to rival Koo

India rebuked Twitter on Wednesday for not complying with its orders to take down certain content and warned the social media giant that it needs to obey local laws, even as Indian lawmakers urged their followers to switch to home-grown rival Koo. India has ordered Twitter to remove more than 1,100 accounts and posts that it alleges are spreading misinformation about the widespread protests by Indian farmers against new agricultural laws. Twitter Inc riled Indian Prime Minister Narendra Modi’s government earlier on Wednesday, after it said in a public blog post that it had not fully complied with the government’s order because it believed some of the take-down orders were not consistent with Indian law.

5. EU privacy agency urges more safeguards to curb U.S. tech giants

EU privacy watchdog EDPS on Wednesday backed the bloc’s push to curb the power of Apple, Amazon, Alphabet unit Google and Facebook via new tough rules and suggested more safeguards to boost users’ privacy rights. Unveiled by EU Competition Commissioner Margrethe Vestager and EU industry chief Thierry Breton in December last year, the two sets of rules are known as the Digital Markets Act (DMA) and the Digital Services Act (DSA). DMA takes aim at online gatekeepers which will be subject to a list of dos such as sharing some data with rivals and regulators and don’ts among them not favouring their own services on their platforms.





Fashion & Sports Law Updates

1. Sports Budget 2021

The impact of the COVID-19 pandemic was felt on the national sports budget as the central government allocated Rs 2596.14 crore for the financial year 2021-22, a reduction of Rs 230.78 crore when compared to the amount earmarked initially for the previous year. The Sport's Ministry's ambitious 'Khelo India' schemes has taken a hit of Rs. 232.71 crore, with its allocation slashed to Rs. 657.71 crore from Rs. 890.42 crore. There has been a slight increase in the allocation for incentive for sportspersons. The fund now stands Rs. 70 crore, up by Rs. Crore from last year. Likewise, the contribution to The World Anti-Doping Agency (WADA) will now be 2.5 crore, up Rs. 50 Lakhs.

2. Ministry Circular: Government to have power to relax provisions of Sports Code

The Sports Ministry have issued a circular stating that the ministry will have the power to relax provisions of the National Sports Development Code while deciding on grant of recognition to federations and the management of the Indian Olympic Association and other instructions issued with regard to recognition of National Sports Federations (NSFs) renewal of recognition of NSFs on annual basis and governance and management of Indian Olympic Association and NSFs, as a special exemption where considered necessary.

3. BCCI to use drones for live aerial filming of matches

The Ministry of Civil Aviation (MoCA) and the Directorate General of Civil Aviation have granted a conditional exemption to the Board of Control for Cricket in India (BCCI) for the deployment of drones for live aerial cinematography of the Indian Cricket Season in the year 2021. The conditional exemption is valid till 31st December 2021. MoCA had received requests from BCCI & M/s Quidich pertaining to granting of request and other correspondences regarding permission to use Remotely Piloted Aircraft System for live aerial filming. The Drone Rules 2021 are in the final stages of discussion with law ministry.

4. Esports Federation introduces national rankings for esports

Esports Federation of India in a bid to streamline the sport as well as to bring in legitimacy among the gamers involved released the first-ever national ranking system based on the open ranking tournaments played in the last two months to determine the best performing players. Team Resilience, Checkmate and Adhuth Esports have topped the individual categories in the national rankings.

5. Aditya Birla Fashion buys 51% stake in Sabyasachi

Aditya Birla Fashion and Retail Limited (ABFRL) has signed a definitive agreement to buy 51 per cent stake in designer brand Sabyasachi for Rs 398 crore. The deal is expected to be closed in late-February or mid-March. The ABFRL platform will complement brand Sabyasachi on its journey to becoming a global luxury house out of India. ABFRL has stated that it expects to build a large ethnic wear business over next few years to complement its strong and diverse portfolio in western wear segment of the Indian apparel market.

6. USPIRG: Ban Brand's practice of destroying unsold goods

The Denver, Colorado-based U.S. Public Interest Research Group and its various state entities is calling on state lawmakers to take action to prevent apparel companies from destroying unsold garments and excess materials. It stated that clothing companies commonly destroy, incinerate or send to the landfill unsold and unused clothing, to make way for new merchandise. Clothing and textile waste now makeup the fastest growing waste stream in the US. Meanwhile the practice of disposing of overstock has gotten out of control in fashion industry. Burberry reported in its 2018 annual report that the company burned US\$36.8m worth of unsold clothing.



Corporate & Commercial Law Updates

1. MCA issues Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

The Ministry of Corporate Affairs vide notification having -F. No. CSR-05/3/2020-CSR-MCA issued Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 to amend the certain rules in the Companies (Corporate Social Responsibility Policy) Rules, 2014, with effect from January 22, 2021.

2. Revised framework for Innovation Sandbox

Market regulator Sebi vide circular no.: SEBI/HO/ITD/ITD/CIR/P/2021/16 revised the objective and eligibility criteria of its innovation sandbox with graded entry norms in order to encourage innovation and boost participation. In addition, a steering committee comprising representatives from the enabling organisations has been formed to drive the innovation sandbox.

3. Government to strengthen NCLT framework

The Government of India is planning to strengthen the framework of National Company Law Tribunal and implement systems such as e-courts along with alternate methods of debt resolution. The government will also introduce special framework for micro, small and medium enterprise.

4. Nationalised Banks (Management and Miscellaneous Provisions) Amendment Scheme, 2021

In exercise of the powers conferred by section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Central Government, after consultation with the Reserve Bank, made scheme vide notification dated 25/01/21 to further to amend the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970.

5. Withdrawal of circulars - on Recovery of excess pension made to pensioners

The Reserve Bank of India (RBI) vide Notification RBI/2020-21/84 DGBA.GBD.No.SUO 546/45.01.001/2020-21 have stated that the recovery of excess /wrong pension payments from the pensioners are being made in a manner that is not in keeping with the extant guidelines / Court orders. RBI after examining the said issue has decided that some circulars issued by Department of Government and Bank Accounts, Reserve Bank of India related to recovery of excess pension paid by agency banks stands withdrawn with effect from the date of this circular.





Hospitality & Real Estate

1. Tax holiday for affordable housing projects: Budget 2021

As a part of the Budget 2021 – 22 presentation, Finance Minister Smt. Nirmala Sitharaman, announced a tax holiday till March 31, 2022 for affordable housing projections. Further, relaxation on loans till the said date were also announced in the Budget presentation.

2. Minister of Tourism, Govt. of Maharashtra and Principal Secretary, Tourism and Excise, Govt. of Maharashtra felicitated by FHRAI, HRAWI and HAI for contribution in hospitality and tourism

The Federation of Hotel and Restaurant Associations of India (FHRAI); Hotel and Restaurant Association of Western India (HRAWI) and the Hotel Association of India (HAI) organized a formal felicitation ceremony to appreciate Maharashtra Govt.'s progressive initiatives towards hospitality and tourism. The above-noted bodies, in the said ceremony, acknowledged and felicitated Shri Aaditya Thackeray, Minister of Tourism and Smt. Valsa Nair, Principal Secretary, Tourism & Excise, Govt. of Maharashtra for their contributions.

3. O2Cure and ITC collaborate for installation of air purifiers in ITC's hotels

O2Cure, the venture which has launched an air purifier tested successfully for reduction of SARS – CoV 2 by 97.48 percent from air and surfaces, has collaborated with ITC for installation of air purifiers in ITC Maurya and other ITC hotels.

4. India Convention Promotion Bureau releases Volume I, Issue VI of its newsletter MICE Pulse

Sponsored by Ministry of Tourism, Government of India, India Convention Promotion Bureau (ICPB), has released its December 2020 – January 2021 edition of its newsletter, namely MICE Pulse. The newsletter features updates and developments related to the hospitality industry and accounts of events organized at the 13th Conventions India Conclave.

5. Mumbai Restaurants allowed to remain open till 1 AM

Maharashtra State Government's programme titled, Mission Begin Again, involves guidelines of easing of restrictions and phase-wise opening of lockdown. The latest move, appreciated and acknowledged by stakeholders in the hospitality business, includes resumption of local train services and allowing restaurants to function till 1 AM.





Litigation & Dispute Resolution

1. Illegal, arbitrary and without jurisdiction: Amazon moves Supreme Court against Delhi High Court stay on Future- Reliance deal status quo

Amazon has moved Supreme Court through a Special Leave Petition challenging the Delhi High Court Division Bench order staying the implantation of status quo order passed by Single Bench Delhi High Court in an appeal preferred by Future Retail Group. Amazon has contended that the Division Bench passed the stay order without waiting for the detail order of the Single Bench.

2. Delhi Court takes cognizance of defamation complaint by Republic TV against Navika Kuma

Delhi Magistrate Court has taken cognizance of the defamation Complaint filed by ARG Outlier Media Pvt Ltd against Times Now's Navika Kumar for making alleged slanders statements against Republic TV Network in connection with TRP scam. Additional Chief Metropolitan Magistrate at Patiala House Court Chander Jit Singh today fixed the matter for pre-summoning evidence on June 8.

3. Allahabad High Court Imposes 3 Lakh Cost On A Petitioner For Repeatedly Filing Petitions Agitating Same Cause Of Action

The Allahabad High Court imposed extraordinary fine of Rs 3 Lakh on the Petitioner for filing writ petition repeatedly on same cause of action despis. The Petitioned, former Gram Sabha Pradhan has till date filed 4 writ petition, despite several dismissals of the earlier writ petition, for lack of merit.

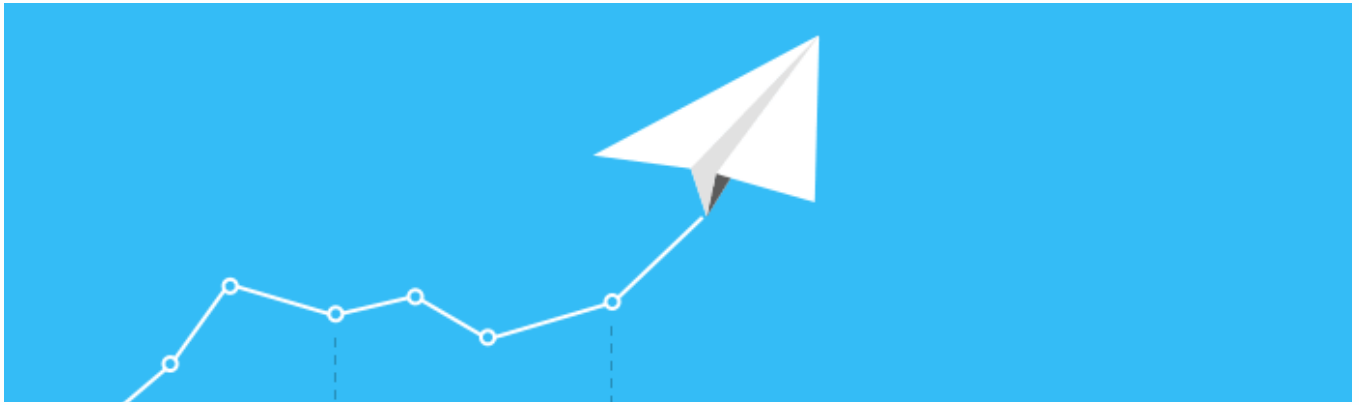
4. Swiss Supreme Court confirms principle of 'kompetenz-kompetenz' as a rule of chronological priority

In a dispute between the state of Lybia and a Turkish Company on the validity of the settlement agreement by arbitral tribunal, the state of Lybia filed an appeal against the validity of the arbitral award with the SFSC. The SFSC dismissing the appealing party's contentions held that challenging of the legitimacy or presence of an agreement on arbitration doesn't stop the arbitral tribunal from arbitration proceedings and rendering an award and furthermore held that the rule of 'Kompetenz-Kompetenz' permits the arbitral tribunal to decide on a choice of their own jurisdiction as a rule of chronological supremacy than that of the State government.

5. Ex. CJI Ranjan Gogoi appointed as Sole Arbitrator by Supreme Court

The Supreme Court after obtaining consent from both parties in a matter of contract agreement, appointed former CJI RajanGogoi as a sole Arbitrator. The arbitration shall be conducted by the Mumbai Centre of International Arbitration and the seat of arbitration is at New Delhi.





Start-Up, Advisory & Consultancy

1. Ixigo acquires train booking app Confirmktk

Confirmktk, an online train discovery and booking platform is now procured by ixigo, making it the owner of 100% of the company's shares. This agreement will assist the gathering with merging its existence in Tier II, III, IV markets with its consolidated client base of almost 200 million Indians with a scale of 35 million month to month dynamic users.

2. Uber is buying alcohol delivery service Drizly for \$1.1B

Alcohol delivery service Drizly to be bought by uber, giving uber client's all-inclusive resource for both food and drink deliveries so as to extend its delivery realm. The agreement is valued at \$1.1 billion, and the service is currently accessible in more than 1,400 urban areas across the United States.

3. PayPal is shutting down domestic payments business in India

Paypal is no longer rendering domestic payment services within India because of the battle in making advances in India. The company will concentrate on empowering more global deals for Indian organizations and move their focus away from domestic items in India.



IPRS & Radio Mirchi - Spicing Up the Discourse on Overlapping Rights in Sound Recordings and Underlying Works: Landmark Precedent Awaited

Amay Jain

Introduction

The legal and academic discourse in copyright law jurisprudence with respect to communication to the public of a sound recording *vis-à-vis* communication to the public of the literary and musical works embodied in such a sound recording, has been going on for quite some time. Further, in view of recent developments regarding radio diffusion and broadcasting of songs with respect to copyright and royalties payable for such radio diffusion and broadcasting, this discourse assumes substantial contemporary significance in the legal as well as commercial vertices of IP, media and entertainment.

This article aims to analyze and throw light on an ongoing litigation in a couple cases, taken up together by the Courts, *i.e.*, the cases of *The Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd.*¹ and *The Indian Performing Right Society Ltd. v. CRI Events Private Ltd. & Ors.*². Both these cases, revolve around the above-noted issue and are taken up together by the Courts. Firstly, let us have a look at the background and factual matrix of the matter.

Background and Facts

The Indian Performing Right Society (“IPRS”), is a Copyright Society, registered³ under the Copyright Act, 1957 (“**the Act**”). Established to monitor, protect and enforce the rights, interests and privileges of its member, namely authors, composers and publishers of literary and/or musical works, IPRS carries out the function of collective administration of copyright, *i.e.*, *inter alia*, issuing licenses in

respect of the copyright vested in its members’ works; and charging and collecting license fee from users of such work which is thereafter distributed among the members. Simply put, IPRS legitimizes use of copyrighted music by music users by issuing licenses for and on behalf of authors, composers and publishers, *i.e.*, copyright owners in literary and musical works, and collecting royalty payable in lieu of such licenses. The royalty thus collected, is distributed among members after deduction of administrative costs incurred by IPRS.⁴ Similarly, Phonographic Performance Ltd. (“PPL”) collectively administers copyright with respect to sound recordings. PPL charges and collects license fee from users, on behalf of its members who hold rights in and to cassettes, compact disc and other media of sound recordings, played and performed in public. IPRS and PPL, both being registered Copyright Societies, administer copyright in two different categories of works viz a) underlying musical and literary works [IPRS]; and b) sound recordings [PPL].

Here, we note that a song, as we listen to it, is in the form of sound recording, the copyright for which is administered by PPL. However, essentially, a sound recording consists of a collection of underlying works such as literary works (the lyrics of the song); musical works (the musical composition of the song), the copyright for which is administered by IPRS, as well as other underlying elements such as the performances of vocalists, instrumentalists, musicians etc.

Point of Focus

1 RFA (OS) 5/2021, Delhi High Court

2 RFA (OS) 6/2021, Delhi High Court

3 Section 33 of the Copyright Act, 1957

4 Who Are We, The Indian Performing Rights Society, <https://www.iprs.org/about-iprs/>



Our focal point of discussion, in the instant matter shall revolve around, IPRS (one of the Plaintiffs) being aggrieved by Entertainment Network India Limited (ENIL), the owner of the business of broadcasting under the brand *Radio Mirchi* (hereinafter "**Radio Mirchi**"), the Defendant's exploitation of IPRS members' copyrighted works, *i.e.*, underlying works *sans* obtaining license for those works from IPRS.

In view of the administration of copyright in sound recordings by PPL, Radio Mirchi contends that once it has obtained licenses from PPL in respect of the entirety of sound recordings, separate licenses for the underlying works in those sound recordings, is not required. *Per contra*, the contention of IPRS is that the exploitation of a sound recording implies the exploitation of underlying literary and/or musical works as well. Accordingly, the license fee for both, underlying literary and/or musical works as well as sound recording, has to be paid for separately to IPRS and PPL, respectively.

Observation, Interpretation and Ruling

It was observed that the Act recognizes a separate copyright in the sound recording besides the copyright in the literary work and musical works. It was stated that it is the owner of the sound recording who transforms the literary work into a sound, capable of phonetic pleasure. Further, the judgment goes on to say that if a separate copyright exists in a sound recording, the radio diffusion of the sound recording couldn't be a violation of the copyright in the underlying literary and musical works which are not, by themselves, being communicated to the public in the course of such radio diffusion. Recognizing sound recordings, as elements having an "independent statutory existence", the Court ruled that in the given circumstances, the underlying works are being communicated only as a part of another "whole" having independent statutory existence, *i.e.*, sound recording.

Further, it was held that once copyright owners in the underlying works have consented to incorporation of their works in a sound recording, they cannot claim infringement of copyright, when such works, as a part of the sound recording, are communicated to the public by the owner of the sound recording.

Role of 2012 Amendment in the Act

In view of the above backdrop, the Hon'ble Court also went on to analyze the situation in light of the incorporation of Section 19(10) by way of the 2012 amendment of the Act which provides that assignment of copyright in any work to make a sound recording not forming part of any cinematograph film shall not affect the right of the author of the work to claim equal share of royalties and consideration payable for any utilization of such work in any form.

The Court noted that reading this provision to mean that utilization of such work as embodied in sound recording also entitles the owner of copyright in such work to demand equal share of royalties and consideration payable for sound recording, would make other provisions, whose interpretation provides for independent statutory existence of sound recording, otiose. Applying the rule of harmonious construction, the Court held that the said provision cannot be interpreted in a manner which makes another provision of the statute redundant. Accordingly, as per the judgment, Section 19(10) has to be read to mean that the right to claim share in royalty for utilization of such works in any other form than the sound recording in which such works have been incorporated with their consent.

Court's Findings and Implications thereof

In view of the aforesaid interpretation, the following conclusion was arrived at, in the Delhi High Court Single Bench ruling:



Firstly, in case the Defendant wishes to play the sound recordings in public, a license from PPL shall be required. Secondly, in case the musical works are to be communicated or performed in the public, independently, through an artist, a license from IPRS shall be required; and thirdly, in case, the Defendant wishes to hold an event involving performances or communication of works of both kinds, *i.e.*, playing of sound recording as well as performance of musical works, licenses from both PPL and IPRS shall be essential.⁵

Potential Issue with the Ruling

The ruling places claims to be placing reliance on the findings of the Hon'ble Supreme Court in the case of *International Confederation of Societies of Authors and Composers (ICSAC) v. Aditya Pandey*⁶. Albeit, the said Supreme Court judgment upheld the ruling of the Division Bench of the High Court, the ruling of which was in line with the above-stated ruling by Hon'ble Mr. Rajiv Sahai Endlaw J., it is pertinent to note that the Apex Court's judgment also categorically stated that all holdings observations, findings and views expressed by the High Court in original as well as appellate proceedings before it was of no legal effect, in so far as the merits of the suits were concerned. The judgment also stated that with effect from 21st June 2012, the assignment of the copyright in the work to make sound recording which does not form part of any cinematograph film, shall not affect the right of the author of the work to claim an equal share of royalties or/and consideration payable for utilization of such work in any form.

What Next

The above judgment passed by Hon'ble Mr. Rajiv Sahai Endlaw J., in the cases of *The Indian Performing Right Society Ltd. v.*

*Entertainment Network (India) Ltd.*⁷ and *Phonographic Performance Ltd. & Anr. v. CRI Events Private Ltd. & Ors.*⁸, was appealed against and brought before the Division Bench of the Hon'ble Delhi High Court ("D.B.").

The Appellant's counsels argued that, in effect, the Delhi High Court Single Bench ruling, did not take into account the Supreme Court judgment in *International Confederation of Societies of Authors and Composers (ICSAC) v. Aditya Pandey*, as it had held that the observations expressed by the High Court with respect to the aforesaid interim orders in the original as well as appellate proceedings were in the context of the law prevailing prior to 2012 amendment.

Accordingly, in view of the above-noted issue with the ruling being raised by Appellant's counsels, the D.B. issued notice in the matter and ruled that the above-noted impugned judgment shall not be treated as a precedent in other proceedings.

The matter is now listed on 3rd May, 2021 as the both the legal and commercial wings of the world of IP, media and entertainment, eagerly await an interesting and potentially landmark precedent this litigation may turn out to be.

⁵ Infra Note, Paragraph 33

⁶ (2017) 11 SCC 437

⁷ CS (OS) 666/2006, Delhi High Court

⁸ CS (OS) 1996/2009, Delhi High Court



Get in Touch

We hope you enjoyed reading the newsletter, and we would love to hear your thoughts on what you want to be covered in our next edition!

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