

# **CENTRE FOR INTELLECTUAL PROPERTY RIGHTS**

## **NEWSLETTER SEPTEMBER 2021**

# INTERNATIONAL NEWS



## HIGHLIGHTS OF THIS ISSUE

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**MARVEL SUING TO KEEP RIGHTS TO 'AVENGERS' CHARACTERS FROM COPYRIGHT TERMINATION**

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**AP BAND SUED BRUNO MARS FOR UPTOWN FUNK**

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**MAPPLE INC IN TROUBLE WATERS AGAIN AFTER RALF HARTMANN SUED FOR COPYRIGHT INFRINGEMENT**

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## Apple Inc in trouble waters again after Ralf Hartmann sued for copyright infringement

Ralf Hartmann, a German citizen who claims to be the proprietor of the film "Austin Powers: International Man of Mystery," has launched a copyright complaint against Apple Inc. in Manhattan federal court. Hartmann claims ownership of the film through a so-called "chain of titles," in which the rights were passed from the film's initial distributor, New Line Cinema, to a couple of other firms, and finally to him. In addition to Apple, he has filed lawsuits against Amazon and Google for infringement of film rights, all of which are still unresolved.



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## Marvel suing to keep rights to 'avengers' characters from copyright termination

In an attempt to prevent the loss of copyright control of iconic characters like Iron Man, Spiderman, Doctor Strange, and others, Marvel Entertainment, a wholly owned subsidiary of the Walt Disney Company, has filed a series of lawsuits against the heirs of Stan Lee, Steve Ditko, Gene Colan, and others. Marvel is requesting a decision that the characters were developed for hire and thus are not subject to copyright revocation. This arose after the late comic book creator Steve Ditko's estate alerted the US Copyright Office of Spiderman and Dr. Strange's copyright. Marvel presently owns the rights to these two characters, but Ditko's estate, which co-created both characters with the late Stan Lee, plans to terminate the copyright grant to Marvel by June 2023. Authors or their successors can claim the rights to their creations after a specified amount of time, according to a clause in US copyright law.



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## GAP band sued Bruno Mars for Uptown Funk

Members of the GAP Band filed a lawsuit in federal court in Tulsa, alleging that Bruno Mars and Mark Ronson's popular single "Uptown Funk," which was released in 2014, infringed on the copyright of the GAP's song "I Don't Believe You Want to Get Up and Dance: Oops." According to the lawsuit, the song's rap and hooks are "strikingly similar" to the GAP Band's song. The lawsuit also wants a "full accounting" of all net earnings from "Uptown Funk," an end to the use of the copyrighted material, and an undefined amount of damages, in addition to a copyright infringement determination.



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## Jay-Z sues photographer Jonathan Mannion for violation of right of publicity

Jonathan Mannion, the photographer who captured the portrait of rapper Jay-Z that appears on the cover of his debut album 'Reasonable Doubt,' lost his quest to avoid Jay-Z's claims that he has been abusing the rapper's image to sell items in federal court in Los Angeles. Jay-Z sued Mannion in June, alleging that the rapper's right to publicity had been infringed by Mannion's use of his likeness to sell shirts, turntable slip mats, and copies of the photographs. Jay-Z's arguments withstand Mannion's petition to dismiss, according to the federal court, and there is insufficient evidence to find Mannion's uses protected.





## De Minimis Defense Doesn't Protect Minimal Use of Concededly Infringing Material

Richard Bell photographed the Indianapolis skyline and shared it on social media. He submitted the photograph to the US Copyright Office eleven years later. Bell later ran a reverse web search for images of his photo to find potential infringers, and filed over 100 infringement claims as a result. Bell filed a copyright infringement lawsuit against Wilmott in 2018, stating that he was denied his right to "show the copyrighted work in public" by making it publicly available on Wilmott's server. On the de minimis objection, the district court granted Wilmott summary judgement. Because Wilmott was unaware that the photo was still on his website, the Ninth District overturned the District Court's determination that his infringement was a "technical infraction." The ninth court further decided that there was no need to look into whether there were de minimis copies because the "degree of copying" was complete because the infringing work was an exact replica of the protected photo.

## Pearson Education sues Chegg for copyright infringement

Pearson Education, the world's largest textbook publisher, has filed a lawsuit in the District Court of New Jersey against Chegg, an education technology business, for allegedly infringing on Pearson's copyright just months after the two companies' cooperation ended. Chegg has been accused of infringing on Pearson's copyright by selling answers to end-of-chapter questions from Pearson textbooks. Chegg Study, an online application that provides answers to thousands of homework questions for a monthly charge, provides the answers to pupils. The lawsuit seeks unspecified monetary damages as well as a court order requiring Chegg to discontinue utilising answer sets based on Pearson materials.



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## Twitter sued in case of copyright infringement of photographs

Genevieve Morton, a swimsuit model for 'Sports Illustrated,' has filed a \$10 million lawsuit in federal court against Twitter, TweetDeck, and Magic Pony Technology, a photo algorithm company acquired by Twitter in 2016, alleging that its algorithm contributed to copyright infringement by cropping photos of her that were posted by other users, resulting in unauthorised derivative works.



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## Apple Pay again target of patent infringement suit

RF Cyber, has filed a complaint against Apple, alleging that the iPhone maker has violated five intellectual property rights connected to mobile payment technologies.

In a case filed in the United States District Court for the Western District of Texas, RF Cyber claims that Apple Pay infringes on various patents addressing contactless mobile payment techniques using NFC, secure goods, and other technology.



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## Only Humans, Not AI Machines, Get a U.S. Patent, Judge Says

In the United States, only humans, not artificial intelligence computers, are eligible for patents. A federal judge in Alexandria, Virginia, made the first judgement in the United States, stating that artificial intelligence devices are not patentable. A machine that uses artificial intelligence cannot be recognised as a patent inventor since only a human can be an inventor, according to US law.





## EVEL KNieVEL'S SON SUES DISNEY OVER 'TOY STORY 4' CHARACTER

Kelly Knievel, the son of American stunt actor Evel Knievel, filed a complaint in Las Vegas District Court against the Walt Disney Company, Pixar, and their affiliates, saying that the character "Duke Caboom" was wrongly modelled on the deceased stunt actor in the film "Toy Story 4." Disney-owned Pixar did not ask permission to use his father's likeness in the creation of the character. "Duke Caboom," as it's known. The court, on the other hand, determined that Duke Caboom's role in the film passed a standard that was used to assess a possible trademark violation against First Amendment rights in artistic works. The plaintiff also failed to produce adequate proof that Disney was attempting to deceive the public, according to the court. Since facial hair, name, hair, monkey, and Duke Caboom's backstory parted ways, the court ruled that the use of Knievel's trademarks was insufficient to indicate the possibility of consumer confusion, and that there were sufficient variances between the animated double and the real person. The court dismissed the claim that Disney had infringed publicity rights.



# NATIONAL NEWS



## HIGHLIGHTS OF THIS ISSUE

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**ASCI DISMISSES  
ADVERTISEMENT  
PLAGIARISM COMPLAINT  
AGAINST LUX COZI**

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**RIGHTS OF PRIOR USER  
WILL OVERRIDE RIGHTS  
OF SUBSEQUENT USER  
DESPITE REGISTRATION  
OF ITS MARK**

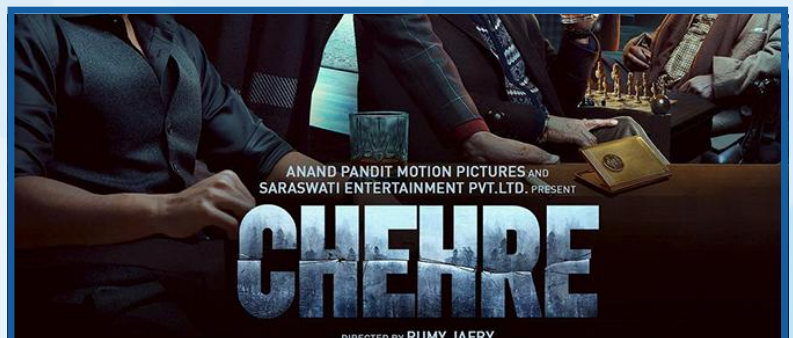
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**GI TAG FOR BASMATI:  
MPGOVT.'S PLEA TO BE  
RECONSIDERED**

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**KANTHILAL V. SHETAN  
SINGH**

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## ASCI dismisses advertisement plagiarism complaint against Lux Cozi

Amul Macho filed a complaint against Lux Cozi stating that an advertisement of the latter starring Varun Dhawan was a copy of its advertisement in 2007. Amul Macho claimed that Lux Cozi took unfair advantage of its brand equity, character and goodwill. Lux argued that the complaint intended to malign Lux's character in the market. Lux further argued that both the ads were different in terms of the concept, theme and expression. The Consumers Complaints Council (CCC) of ASCI held that the advertisement by Lux was not plagiarised and thereby rejected Amul's complaint.



## Madras HC: Widow declared owner of literary works

The Madras High Court has declared Sellappapa, the late singer Pulavar Keeran's widow, to be the sole proprietor of copyright in his literary works. The judge observed that no proof was available to show that Pulavar Keeran made recordings under any contract of service or during employment with the firm. The Court rejected the defendant as the first owner of the copyright and held that a copyright cannot be assigned in an oral manner and has to be in writing as under Section 19 and 30 of the legislation. Hence, purchase of copyright sans a written agreement is not accepted and thereby the allegations of the defendant were rejected.







## GI Tag for Basmati: MP Govt.'s plea to be reconsidered

The Madras High Court had rejected the MP Government's petition for obtaining GI tag for Basmati Rice grown in regions of MP. The Supreme Court set aside the order of the Madras HC, remanding the case back to the Court to be decided within three months. The MP government had approached the Madras HC against the grant of GI certificate by the IPAB to the Agricultural and Processed Food Products Export Development Authority (APEDA) for basmati rice. MP Govt. claimed that several regions producing Basmati in MP are not covered under the list of APEDA.



## Rights of Prior User will override rights of subsequent user despite registration of its mark

In *Victoria Foods Private Limited v. Rajdhani Masala Co. & Anr*, the Delhi High Court granted an interim injunction to the plaintiff thereby prohibiting the defendants from using the trademark RAJDHANI or any mark deceptively similar to RAJDHANI. The Court held that Victoria Foods, the Plaintiff is the registered owner of the trademark and also the prior user. Further, the defendants were using the trademark for allied goods and thus infringed the rights of Victoria Foods. The Court also held that delay in instituting a claim of trademark infringement will not lead to dismissal of the application of temporary injunction under Order 39 Code of Civil Procedure, 1908.





## INTERIM RELIEF NOT GRANTED AGAINST FILM 'CHEHRE'

The High Court of Allahabad High Court refused to grant interim relief to stay the film 'Chehre' that was accused of copyright infringement. It was held that the film and the copyrighted work were based on a common theme but the development and treatment of both scripts were distinct. However, the observations of the Court are not final and only restricted to the grant of interim injunction and the final decision will be concluded upon trial.



## Court Cannot Rewrite Statutory Language': Supreme Court Sets Aside Madras HC Order Reading Down Advance Notice Condition for Broadcasters Under Rule 29(4) of Copyright Rules

FM Radios/Broadcasters had challenged the validity of Rule 29(4) of Copyright for violation of Article 19(1)(a) of the Constitution and for being ultra vires Section 31D of the Act before the Madras High Court. The Court observed that the duty of broadcasters is difficult in notice to broadcast under Rule 29(1). The HC directed that to broadcast a copyrighted work under Rule 29, a previous notice must be issued and all details related to the broadcast such as time, duration, should be provided within 15 days of the broadcast. This order was challenged before the Supreme Court on the ground that the order is equivalent to re-writing Rule 29(4) of the Rules. The Apex Court held that the Madras HC had brought in its own regime and the judiciary cannot encroach upon the legislative powers by re-writing words of a statute. The interim order of the Madras HC was set aside by the Court.

## P Kanthilal v. Shetan Singh

The Bangalore District Court issued a permanent injunction prohibiting the defendant and his associates from infringing and passing off the plaintiff's registered trademark PREETHI that is registered for kitchenware, pressure cooker, thermo ware, all types of domestic utensils etc. through the use of identical and deceptively similar trademark PREETHI/RREETHI.

**TRADEMARK**

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## Salt Lake Society for Hotel Management v. Gazi Murshidul Arefin

The plaintiff had filed a petition against the defendant stating that the latter's use of the mark 'IIHM' and the iihmkolkata.com domain name infringed their registered trademark and resulted in passing off. The Calcutta High Court passed an interim order on the maintainability of a suit and held that the actions of the defendants amounted to passing off thereby raising a cause of action making the suit maintainable.

## Living Media India Limited v. <http://www.news-aajtak.co.in>

The Delhi High Court allowed the impleadment of more parties for infringing the trademark of "Aaj Tak" on the ground that prima facie it will lead to loss of goodwill of "Aaj Tak" due to the unlawful activities carried out by the proposed defendant parties. The Court extended the interim injunction to include the impleaded parties and directed them (that included Google and Facebook) to block/suspend certain websites and domain names for that infringe the "Aaj Tak" mark.



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