The Sheer ‘Film’ of Protection - An Exercise in Exhaustion

Karishma D Dodeja†
National Academy of Legal Studies and Research (NALSAR) University of Law, Hyderabad, India

Received 6 August 2012, revised 11 October 2012

The Indian intellectual property rights scene has undergone a sea change in the recent past with the country becoming an active participant in the field, aspiring to maintain steady but precarious balance between the social value and private character of intellectual property. Currently, one of the most contentious issues, the principle of ‘exhaustion of rights’, has assumed supranational importance with varying levels of exhaustion for each kind of intellectual property. With the advent of new mediums to record cinematographic films and the increasing popularity/notoriety of the ‘grey market’, the issue of the level/kind of protection accorded to copyright in this work assumes great significance. A potential starting point towards addressing this issue is through an examination of the signal pronouncement of the Delhi High Court in Warner Bros Entertainment Inc v Santosh V G. This paper is an attempt to critically analyse the legal protection accorded to cinematographic films in the light of a conceptual understanding of principle of exhaustion of rights, an examination of the dictum of the Court and an appraisal of the Copyright Amendment Act, 2012. This has been done through a holistic understanding of the Indian law in contradistinction with the laws of the United States, United Kingdom and Europe on the subject matter.

Keywords: Exhaustion of rights, doctrine of first sale, cinematographic films, copyright, infringing copy, rental rights, Warner Bros, DVDs, commercial rights, The Copyright Amendment Act 2012

Post-independence saw one of the biggest developments in Indian intellectual property law through the enaction of The Copyright Act of 1957 (the Act). From marking that initial surge of protection in the field; today, the provisions of the Act are a hot-bed of debate surrounding the controversial subject matter of parallel trade and exhaustion of rights. Quite simply, a typical parallel trade transaction occurs through the transference of goods from the market of the manufacturer to another country by another party unintended by the manufacturer. Essentially, that which runs parallel to the manufacturer’s intended distribution structure and falls in the vague distorted border between the legal and illegal can be deemed to fall within the bracket of parallel trade and the grey market. Owing to its ambiguous position, the concept juxtaposes the interests of the community in accessing Intellectual Property Rights (IPR) protected works (work) in a free trade regime with those of the manufacturer/innovator/author and his entitlement to the rights in his property and, economically, to his remuneration. One of the ways the latter can legally protect their rights is through the Principle of Exhaustion.

Every IPR holder possesses a bundle of exclusive rights accruing from the protection granted to his innovation. Taking a cue from the literal interpretation of the term ‘exhaustion’, it means a limitation or curb on the rights of the holder to a ‘certain extent’ and at ‘a point’ from which the commons can freely gain access to the innovation. To understand this exact point one needs to refer to the ‘Doctrine of First Sale’ which implies that on the first sale of the work, the rights holder loses his ability to further determine its movement having already benefited from the ‘first sale’. Intertwined with this concept, two issues emerge. The first is related to the ‘territoriality principle’ of IPR which means that these IPR are vested by, exercised and enforced under national legislations. The territorial extent of the application of the principle of exhaustion can thus be gleaned from the statute; it can be either: (i) National (ii) Regional or (iii) International in nature.

Depending on the kind of exhaustion regime adopted by the nation state (national, regional or international), the rights of the IPR holder are limited only to the microcosm of the nation state or to the wider regional arena or to the world respectively. For
instance, Section 30(3) of the Trademark Act, 1999 imbibes the principle of international exhaustion, which means a rights holder loses his rights on the first sale of the product anywhere in the world. The second issue is the nature of rights that are exhausted on the first sale. For instance, an author of a work possesses a bundle of rights ranging from rental rights to rights of sale. The nature of rights within the penumbra of ‘exclusive rights’ granted to an IPR holder broadly vary. It is thus imperative to ascertain which kinds of rights are exhausted on the first sale.

The Doctrine of Exhaustion and Copyright

These issues are of greater relevance in the realm of copyright, largely contingent on the kind of work that is protected. Section 2(y) of the Act defines ‘work’ as:
(i) a literary, dramatic, musical or artistic work;
(ii) a cinematograph film;
(iii) a sound recording.

The legal protection granted to literary works and the application of the exhaustion principle in relation to the same are examined. It is crucial to examine the background of such works in the context of the stakeholders and their respective interests. The publication industry is marked by an elaborate chain of writers, publishers and distributors who follow a business model demarcated by territory as seen through the release of country specific editions. This specificity benefits consumers in that particular territory where such an edition is released first though it throws up a challenge for those advocating for the broader social character of IPR. From a purely commercial perspective, one has to consider the trickle-down effect of remuneration from the distribution channels to the ultimate rights holder.

These aspects were considered by the Delhi High Court in Penguin Books Ltd v India Distributors wherein it was held that importation of copies without the copyright holder’s permission tantamounts to secondary infringement of copyright as it violates the exclusive rights of the owner of IPR of printing, or otherwise multiplying, publishing and vending copies of the copyrighted literary production in India by handling unlicensed copies. According to the Court, the essence of infringement is unauthorised appropriation or use of another man’s property, particularly, in importation, it is the locals that matters. Territorial division and geographical area are of importance. Outside a defined territory the sale of a copyrighted work constitutes a sale of an ‘infringing copy’. Purposively and widely interpreting Sections 3, 51 and 53, it was held that the Act treats infringement of copyright as ‘infringement of a right in property’ as in its most elementary form copyright means ‘the exclusive right to multiply copies of a book’. Thus, the judiciary laid the foundation of the principle of national exhaustion of rights in addition to evolving the ‘right of importation’ for authors. It is pertinent to note that this judgment dates back to 1985, subsequently, the Act has been amended several times, notably in 1992, 1994 and 1999.

The issue of low-priced Indian editions (LPE) was addressed recently in John Wiley & Sons Inc v International Book Store and it was held that sale, and offer for sale, of such LPEs, meant for exclusive use in India, by the defendant, who is clearly targeting overseas buyers, to whom such products cannot be sold at Indian prices, constitutes acts of infringement under Section 51.

A turnaround from Penguin, the Court in John Wiley & Sons Inc v Prabhat Chander Kumar Jain held that in the absence of an express provision for international exhaustion, regional exhaustion would apply. Restricting the application of the first sale doctrine only against the exclusive licensees and not the owner- a much criticised aspect, Justice Manmohan Singh held, the purchaser after purchasing from the exclusive licensee cannot by claiming the principle of exhaustion or extinguishment of rights defeat the rights of the owner. This is the only harmonious interpretation possible by invocation of doctrine of first sales in the present case.

What can be observed from the above judgments is that the issue of exhaustion of rights as far as literary works are concerned remains unresolved and in an ambivalent state purely dependent on the factual circumstances of the case for the plain reason that even within literary works there are types and categories which influence the ultimate determination by the Court. Moreover, while, - the stark difference between parallel exportation and parallel importation is well-acknowledged in relation to exhaustion of rights, this particular aspect is relatively though the latter is deemed to be closely associated with international exhaustion of rights.

A brief statutory analysis of the law would be apposite to clarifying the issue at hand. The Indian
Copyright Act operates in the whole of India; a copy in circulation means a copy that has been sold once which logically implies a copy that is sold in India. Section 14(a) (ii) of the Act guarantees the exclusive right of issuance of copies, other than those in circulation, to the author. A conjoint reading of the provisions would lead one to understand that a person purchasing a book is debarred only from exercising those rights which are exclusive to the owner enumerated in Section 14 read with Section 51. His further actions in so far as future resale and redistribution within the territory of India cannot be dictated by the owner of the copyright. Extending the argument further, it means that the copyright holder can prohibit importation of literary works, though legitimately published, from other jurisdictions into India as that particular copy is not a ‘copy in circulation’ in the strictest sense of the statute. This statutory position still holds good in 2012 though an amendment was moved in 2010 to introduce international exhaustion though a proviso in Section 2(m). Subsequent to heated debate and discourse on the subject matter, vouchsafing for the rights of the publishers, the Indian Parliament retained the provisions as they are.

Exhaustion in Cinematographic Films – The Warner Bros Ratio

This paper is an attempt to understand the exhaustion regime in relation to copyright in cinematographic films through the first judicial pronouncement of the Court in Warner Bros Entertainment Inc v Santosh V G. The emphasis in the following discourse is on the two issues, the first, being the applicability of the ‘Doctrine of First Sale’ and the second being the nature of rights that are exhausted on the first sale. The decision lays down an interpretation of Sections 2(m), 14(d) and 51 of the Indian Copyright Act 1957 in the light of principle of international exhaustion and the doctrine of first sale as applied in the United States. Although the case arose in India, the author examined the implications of the exhaustion principle in the United States as well as it is germane to critically analysing the ratio.

Warner Bros (WB) is in the business of production of films and is the owner of copyright in the films produced by them. By virtue of the International Copyright Order, 1991 they enforced their exclusive right under Section 14(d) of the Act against the defendant, Cinema Paradiso alleging that the rental services of DVDs, legally purchased from the United States by them, infringes their copyright as it is imported without the authorization of the holder. The central issue before the Court was whether giving on hire or rent in India by the defendant, copies of cinematograph films authorized for sale or rental only in a particular territory outside India constitutes infringement under Section 51(a) (i) of the Copyright Act, 1957 and its importation into India infringement under Section 51(b) (iv). The Court answered the issue in favour of the plaintiff and granted an injunction against the defendant. In a nutshell, the Court held that importation of copies under Section 2(m) is an act of infringement and the principle of exhaustion inapplicable in so far as cinematographic films as the explanation to Section 14 and the term ‘copy in circulation’ applied only to literary, musical and dramatic works. The very existence of the proviso to Section 51 limiting importation for the private use of the importer fortifies the proposition further, that is, importation other than for the private use of the importer amounts to an act of infringement.

Primarily, the Court fails to address the effect of international exhaustion in the United States on the copyrighted DVDs. This is relevant in view of the first sale doctrine wherein the exclusive right to distribution a species of which is importation is exhausted by the first sale when the copies are manufactured in the United States or where the copies are first sold lawfully domestically. The manufacture and sale of the DVDs by WB has been restricted to the territory of the United States, thus, the first sale of the DVD would exhaust its rights internationally. It follows that any subsequent transfer of ownership in terms of sale, rental, lending and leasing cannot be restricted by Warner Bros. This leads to the question of parallel ‘exportation’ for which Section 602(a)(2) of Title 17 requires the authority of the copyright owner delimited by three exceptions. Unless these exceptions apply in the transaction of sale between the authorized sources of Warner Bros and Cinema Paradiso, the exportation from the United States without WB’s authority is an infringement under Section 106(3). Assuming that the copyright owner’s rights are not exhausted taking into account the above mentioned reasoning, it becomes pertinent to critically examine the conclusion of the Court on the issue of copyright infringement. The Court stumbles through this assertion, particularly, while examining the concept of an infringing copy under Section 2(m) of the Act. The essence of an
infringing copy lies in the ‘manufacture’ of such a copy on any medium and subsequent importation (As was factually presented in WB) in contravention of this Act. This interpretation would resolve the absurdity of considering every copy made including the one generated by a producer as an infringing copy. Hence, a copy which is ‘made’ as observed by the Court will be infringing if manufactured by a person other than the owner of a copyright. Only when such a copy is imported in contravention of the provisions of the Act (assignment and licensing) would there arise a claim for infringement. However, if the copy is ‘sold’ and not assigned/licensed, the claim of violation of the Act will not hold water.

In addition to Section 2(m), the Court bases its understanding of an ‘infringing copy’ in Sections 51 (b) (iv) and Section 53 on the basis of the test in the latter. The explanation to Section 51(b)(iv) needs to be reasonably construed to avoid any preposterous consequences of literal construction. Further, the emphasis in Section 53 is on the ‘manufacture of such a copy’. For these reasons, the Court’s rationale cannot be said to be water-tight. Moreover, the concept of parallel trade does not necessarily apply to ‘infringing copies’. It refers to trade in genuine products outside official channels of distribution and should not be confused with trade in counterfeit goods which generally refers to trade in products that infringe IPR. It is submitted that the discussion on infringing copies therefore is redundant in the present case.

Surmising that the exposition on ‘infringing copies’ holds good, it is submitted that a judicious interpretation of infringing copies would still not label the DVDs as infringing copies. The Court’s reference to the case of Clarke Irwin & Co Ltd v C Code Co Ltd rightfully finds its place in the present context however the importation of the lawfully published subject books in that particular factual matrix was confined to the infringement of the copyright of an exclusive licensee. Warner Bros, on the other hand, evidently deals with the question of lawful procurement of DVDs which have been legally sold to authorized sources. The provisions relating to assignment, lease, license or rent, different modes of transfer of property cannot possibly be applied to the present fact situation. Further, whether an omission to assign or license a copyright or to receive such authorization (when a copyrighted article could be sold as well thus changing the nature of rights and ownership transferred) could be considered as a contravention of the Act remains unanswered. The only contravention of the Act which is of any significance in WB is the omission to receive certification under the Cinematograph Act under Section 52A of the Act. Thus, the claim of alleged infringement under Section 51(b)(i) thus does not hold good.

The Court rightfully held that the application of international exhaustion depends on the construction of the enactment. Section 51(a)(i) relates back to Section 14(d)(ii) which states that the copyright owner has the exclusive right, subject to the provisions of the Act, to do or authorize, to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions.

The word ‘or’ separates the exclusive rights granted to the owner at a particular point of time. The exhaustion principle would thus work to the effect that the owner can either sell his copy or give on hire his copy but cannot perform both because the transaction of a sale passes over ownership to the purchaser and grants him all rights in relation to the property including that of subsequent alienation. Even if importation or exportation is viewed as an exclusive right in itself, it is submitted that, traditionally, the principle of exhaustion implies the exhaustion of all rights in commercial exploitation including sale, distribution and importation. This becomes particularly evident in cases of re-imports wherein a sale by an owner of a copyright will exhaust rights of distribution in another country; the right of importation thus does not exist as an independent right. The rights bundle in terms of commercial exploitation is thus thoroughly exhausted. Further, the latter part of the section would apply solely to cases of re-purchase and re-sale of the property by the holder. The above interpretation thus transports the concept of international exhaustion in the Indian scenario. Warner Bros through the sale has already exhausted its exclusive right under Section 14(d) and restricting any further alienation would in fact amount to depriving the person of the right to his property and a restraint on trade. For the purposes of this analysis, take a hypothetical situation. Assume a situation where a legitimate copy of a DVD is sold for the purpose of home viewing, the owner of the copyright cannot possibly mandate/control in which home the copy is going to be viewed or whether it
would be restricted to the country’s territory even. The several hypothetical situations by which the Court envisages dissemination of the content of the DVD’s in this case would be obvious and probable consequences of a sale or any mode of transfer of the copyrighted article. It is presumed that in a typical commercial transaction of sale there is a transfer of possession, custody, control and title to the product (not of the copyright). This would lead to the obvious conclusion that the owner of the copyright protected article can subsequently alienate the product through sale or any other mode as the privileges of traditional ownership cannot be denied.\(^28\) The law generally disfavours restraints on alienation\(^29\) especially when the owner of the copyright is already receiving economic returns through his first sale, channels for which are orchestrated by him. The effect of practically prohibiting transfer of the property through any mode can have disastrous consequences in terms of completely abrogating the person’s right to his/her property. Applying the logic of the Court, an owner of a DVD cannot lend her copy of a movie to her neighbour as this would constitute an act of infringement. In totality, the effect would be evisceration of the traditional rights of ownership in contradistinction to the actuality of the exhaustion principle which permits the transfer of legitimate copies but does not permit the creation or distribution of additional copies.

The term ‘rental’ finds place in the TRIPS Agreement and has been defined in the draft definition as,

\[
\text{Rental shall mean the disposal [for a limited period of time] of the possession of the original or copies for [direct profit-making purposes] [direct or indirect commercial advantages].}\(^{30}\)
\]

This definition was ultimately abandoned and the final version of the TRIPS does not contain any definition at present. Article 11 providing Rental Rights has to be read in conjunction with Article 13 which provides for Limitations and Exceptions\(^31\) which provides for a small diminution of the rights in question.\(^32\) Employment of Article 13 connotes that the copyright holder’s right under Section 14(d) (ii) and his legitimate interests are in any case satisfied through returns on the first sale of the book. Therefore, limitations or exceptions in terms of an absence of controls on further distribution can be argued to be a marginal reduction of the exclusive right of the copyright holder. Although Article 6 leaves exhaustion to be decided at the discretion of the Member Countries, it is contended that rules prohibiting parallel importation are non-tariff barriers to trade and are inconsistent with the general terms, structure and spirit of the WTO.\(^33\) Today, rental rights are viewed on a different footing as compared to a transaction of sale and continue to remain one of the prerogatives of the author and producer notwithstanding the sale of a copyrighted article.\(^34\) Steady development and advances in technology have lead to the widespread problem of reproduction of copies especially the pirated kind, thus depriving the copyright owner of his remuneration. It is further advanced that even in cases of remuneration it is impossible to guarantee to the holder his due in terms of the repeated use of the DVD on a number of occasions.\(^35\) This would virtually render the rental/hire right granted to the copyright owner worthless. Examining the economies of parallel importation in terms of sharing of risks and revenue, it is clearly not a feasible option as there is a limit on the quantity of such imports, compulsory procurement of censor certificate on payment for each copy and compatibility issues due to varying region coding.\(^36\) The Act in India restricts not only import of pirated copies but also those of legitimately obtained copies branding it as infringement if undertaken without the copyright owner’s express consent.\(^7\) Therefore, rental rights in this context could be viewed as inexhaustible for any copyrighted article and the judgment rightly upholds this aspect. However, the rationale of the Court at arriving at such a conclusion is flawed at several points. The sleight of judicial reasoning in relation to Section 14 is notable in the judgment.

Ultimately, the issue of international exhaustion boils down to balancing of the economies and the social character of intellectual property. The dynamics of price discrimination in line with indigenous governmental regimes, further investment in new innovations, the nature of the product sought to be imported and several other factors augment against the principle of exhaustion. Any advantage in terms of eliminating price differentials and providing goods across the globe is deemed to be short term.\(^37\) These factors have to be balanced with the larger social interest in IPR as the legitimate interest of the public in having unhindered dissemination and use of intellectual goods should not be hampered or impeded by copyright.\(^38\)
The Law Today as amended by the Act of 2012

Section 14 has been amended to include making of a copy by storing it in any medium by electronic or other means. As per Section 2(m) (ii) of The Act, a reproduced copy is clearly an infringing copy so the possible thrust of such a modification is not about accessing/viewing the copyrighted work per se as much as it is about possessing a copy of the same in any form. There are multifarious ways of producing a copy and possessing one or coming into possession of one. To illustrate, an infringer could record the film on his mobile phone/video recorder/tablet and produce such a copy which could be replicated several times over and sold at a cheap price. This would entail the infringer storing such a copy in any of the above mentioned mediums including the computer/laptop/CDs/DVDs/VCDs. Subsequently, this master copy could be the basis for other infringing copies of the work which could be sold to several consumers. It is practically impossible then to predict the distribution channel from the point of sale and its further penetration in every city and even the world. For instance, through borrowing, lending, gifting, exchange, such copies means that any person can come into possession of the same. Section 14 clearly enunciates the exclusive right, primarily, that of making a copy which may or may not include the creation of a copy or storing it in any medium. The provision not only grants the owner more nuanced rights but fortifies copyright protection further as violation of any of such right is reprehensible in itself.

The other significant change is the introduction of the term commercial rental. One of the central objects and reasons for moving such an amendment is India’s attempt to harmonise its national legislations with its obligations under the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. Neither does the Notes on Clauses nor ‘statement of objects and reasons’ reveal any particular well though-out reasoned dicta on the introduction of the term. On this count, the Indian definition differs considerably from the elaborate UK model. Section 18A of The Copyright, Designs and Patents Act 1988 lays down the provisions for infringement by rental or lending of work to the public. The term ‘rental’ has been defined as making a copy of the work available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage. Lending means making a copy of the work available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public. Fortifying Section 18A inserted in 1996 the EU Parliament has now issued the expansive ‘EU Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on Rental Right and Lending Right and on Certain Rights related to Copyright in the field of intellectual property’. Contrastingly, the Indian definition of the term commercial rental is exclusionary rather than explanatory in nature. Encompassing a variety of different concepts such as rental, lease or lending, it excludes a lawful acquisition of a film for non-profit purposes by a non-profit library or non-profit educational institution from the purview of the definition. The lacunae in the law is further seen by the absence of precise meaning of the terms rental, lease or lending. Essentially, any activity that is commercial/profitable and will accrue any sort of gain can be said to be brought within the realm of ‘exclusive rights’ of the owner since it directly co-relates to the remuneration he can expect from his innovation. It is laudable that the provision encourages non-profit uses of the work sans any possible incidental accrual of profit although such use is myopically restricted to the institutionalised framework of libraries and educational institutions.

The thrust of this provision is on the terms ‘commercial’ and ‘rental’; starkly distinguishing it from the plain usage of the word ‘hire’. Other than a semantic play on words, the legislative intent behind the amendment remains unclear other than the previously stated objective of bringing the Indian law up to date with international standards. Presuming the synonymous nature of the concepts of hire and rental, the core difference between the two is the usage of the word ‘commercial’. Adopting a strict interpretation of the provision, clearly, personal lending and borrowing does not fall within its purview, as the facet of commercialization are absent in this transaction. This circumscription of rental rights can be said to be rooted in the economics of remuneration; additionally,
it can be taken to be the rationale for the deletion of the words, ‘regardless of whether such copy has been sold or given on hire on earlier occasions’. The repercussions of such an effacement is two-fold, the first being an open acknowledgment that the owner/licensee cannot track/mandate every act of plain hire/rent once the copy is distributed and the second being the widening of the ambit of exclusivity over ‘any copy of the film’. Unlike its unamended version, the unconditional qualifier in this case is absent. A purposive understanding would thus be that the owner has an exclusive right of sale or commercial rental over any copy of his film which consequently includes even those that have been legitimately purchased. Applying Section 16, a rights holder protected under the Act possesses the exclusive right to control the sale/re-sale/commercial rental of any copy of his film.

An attempt at understanding the term ‘rental’ or defining its contours would not get us far as evident from the intermingling of the concepts as ‘rent, lease or lending’. This brings commercial lending libraries in the dock for their activities of lawful purchase of CDs/DVDs/VCDs and subsequent rental to individuals. While the Indian provision can be markedly contrasted with the UK provision, in a much surprising alignment of jurisdictions, the US law appears to be on the same lines as India. The US Code Title 17, Section 101 defines publication as the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending, much like our Indian provision. Section 106 affirms the exclusive right to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending. As evident from the judgment of WB, rental rights are given their due under the Act and TRIPS. What this amendment does is clarifies the scope of ‘rental rights’ while introducing flexibility in so far as non-profit uses of the film. The distinction thus between copyright in films and literary works becomes clearer, in so far as the application of the doctrine of first sale; while lending rights are not separately covered under literary works, rental rights have been given their place under the Act.

Conclusion

A perusal of literature on exhaustion of rights and parallel importation across jurisdictions reveals a mixture of opinions, views and varying levels of understanding by academicians, scholars, jurists, legislators and judges leaving one groping in the dark on issues of crucial importance. WB in this scenario equips us with a useful solution, that the exhaustion regime is statutory specific, analogously, adjudication based on individual factual matrixes and distinguishing precedents would shed much needed light at the end of the tunnel. The darkness epitomised by the lacunae and confusion in the law makes it practically inconceivable to find a ‘one size fits all’ answer to complex questions dealing with exhaustion of rights as it is a veritable mix of intellectual property law, competition law, contract law, public policy and economics.

It is at moments like these that we remember Mark Twain’s words,

Only one thing is impossible for God: To find any sense in any copyright law on the planet.

Acknowledgement

The author expresses her gratitude to Kruttika Vijay, Advocate for her encouraging score in the test, without which, this paper would not have materialized. Last but not the least; this is, for the family. Any faults which may be found with this comment, however, may be attributed to the author.

References

10. The Copyright Act Section 1(2).
11. The Act, Explanation to Section 14.
The proviso read as follows, Provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy.


Warner Bros Entertainment Inc v Santosh V G, MIPR 2009 (2) 25, 175.


Parfums Givenchy Inc v Drug Emporium, Inc 38 F.3D 477 (9th Cir.1994).

Sen Vikramajit, J’s observation in Samsung Electronics Company Lt v Mr G Choudhary, 2006 (33) PTC 425 (Del) (para 7).


The Constitution of India 1950, art. 19(1)(g).