

# Courts address application of *de minimis* principle to copyright cases

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## **Introduction**

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## **Introduction**

Section 52 of the Copyright Act 1957 specifically provides for a window for certain acts that will not be considered an 'infringement' of works in which copyright subsists. However, the benefits of such a fair-use defence can be invoked only when it can be demonstrated that the copyrighted works were used for purposes that are indicated under Section 52.

The Indian courts have recently relied on the *de minimis* argument as a valid defence for infringement allegations. The *de minimis* principle argues that some issues are so minor in nature that the courts will not categorise them as contentious at all.

A number of copyright infringement suits have recently reached the courts in India wherein the *de minimis* principle has been applied as a defence. The courts have therefore deployed the principle to specific situations in order to determine whether infringement has occurred.

## **Delhi case**

In *India Independent News v Yashraj Films Pvt Ltd*(1) the Delhi High Court applied the principle in a copyright infringement suit.

### **Facts**

The court's opinion was based on two issues. First, a part of a popular song was used in an advertisement clip. Second, a popular singer was invited to perform on a television chat show, where she sang various songs that she had performed as a playback singer. In addition to this 'live' arrangement, video clips of the songs were played simultaneously in the background.

### **Decision**

In relation to the first issue, the court held that the party had not infringed the copyright, finding that the purpose of the advertisement was to create public awareness. In relation to the second issue, it was held that the singing "consumed less than 10 minutes" of the total show time and the aim was to highlight the achievements of her life as a singer. In both cases, the parties relied on the *de minimis* defence.

In its ruling, the court laid down the five considerations that can be relied on to determine the application of the *de minimis* principle. With reference to the claim relating to the advertisement, the court argued as follows.

#### *Size and type of the harm*

This is the most important factor in assessing an infringement. In the case at hand, it was found that only five words were used. The judges considered this to be too trivial and insignificant to warrant an

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actionable claim. There was also no evidence of whether it was a paid advertisement or whether the advertisement was made in the context of social corporate responsibility. Further, the judges conceded that while the five words of the song were conspicuous and prominent, the remainder of the advertisement was packed with powerful dialogue and expressions, such that the song reference was completely eclipsed in the minds of viewers.

#### *Cost of adjudication*

The court enquired from the respondent's counsel as to the charges that the respondent (as copyright owner) would have charged had the maker of the advertisement approached it for a licence to use the words in the advertisement. In response, the counsel stated that the respondent would probably not have charged any fee if the purpose was socially relevant. However, the counsel added that if the purpose was commercial, the respondent would have charged Rs10,000. The court argued that such an amount was trivial when compared to cost of adjudication.

#### *Purpose of violated legal obligation*

To ascertain the purpose of the advertisement, the court reasoned that it was created with the aim of consumer awareness and lacked a profit-making objective. The intention was to educate the public about the problems resulting from pirated products and not to appropriate the goodwill or efforts of the copyright owner. No actual personal monetary gain flowed to the advertisers.

#### *Effect on legal rights of third parties*

The court did not discuss this point in detail, but it stated that the purpose of the advertisement was to create awareness among the public with respect to pirated goods. This factor is mostly applied in cases to justify denial of the defence.

#### *Intent of wrongdoer*

The court found that there was no intention to violate or steal, but merely to educate the public. Thus, it would appear that the judges wished to look at the advertisement in totality, without focusing on the mere act of infringement to determine the intention of the alleged infringer. In their analysis, there was no dishonest motive and it was considered a consumer awareness advertisement.

### **Calcutta case**

In *Saregama India Ltd v Viacom 18 Motion Pictures*(2) the Calcutta High Court also dealt with copyright infringement. A few words of a famous song from an old film had been used in a recently released film. In a *prima facie* opinion, the court held that as the few words were segregated from the rest of the song, no copyright claim could be made, as these words were used in common parlance.

The court followed the decision of the Delhi High Court and applied the *de minimis* principle, arguing that if the use is minimal, the court should ignore it. However, the Calcutta High Court did not apply the principles laid down by the Delhi High Court to conclusively decide if the use of few words of a song could deploy the *de minimis* defence.

### **Comment**

Section 52 sets out the exceptions under the act, ranging from several fair dealing provisions to instances relatable to specific acts that have been deemed not to amount to infringement of copyright. The applicability of *de minimis* as a fair-use defence has been recognised in India beyond the scope of Section 52 of the act. It is clear that the courts have graciously accommodated the *de minimis* defence, taking into consideration the end motive of the alleged infringer. While not comprehensive, the five-point evaluation used by the court may act as an indication that the courts in India are amenable to expanding the scope of the defences available under Section 52 of the act.

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### **Endnotes**

(1) 192 (2012) DLT 502.

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