

**Legal Issues**  
**in**  
***IP in Literary Works, IP in Comics & Computer Programs***

## **Legal Issue-I**

**Whether movie titles are protectible under Copyright law in India?**

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## Introduction

- ❖ Class 41 of the Nice Classification - '*services having the basic aim of the entertainment, amusement or recreation of people;*'.
- ❖ Sufficient judicial consideration on applicability of Trademarks law v. Copyright laws.
- ❖ Significance of protection- title of the work as an identifier.
- ❖ In India there are various associations where movie titles are registered such as Indian Motion Picture Producers' Association (IMPPA), Association of Motion Pictures and Television Program Producers (AMPTPP), etc.
- ❖ Application for registration of title of the film at the associations before commencement of projects.
- ❖ No legal protection from infringement owing to such registration.

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## Relevant Provisions

❖ **Section 2(o) defines “literary work”:**

- *““literary work” includes computer programmes, tables and compilations including computer databases.”*

❖ **Section 13(1) (a) states that:**

- *“(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,*

*( a) original literary, dramatic, musical and artistic works;”*

❖ **Section 14 of the act defines Copyright:**

- *“Meaning of copyright.—For the purposes of this Act, copyright means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:— (a) in the case of a literary, dramatic or musical work, not being a computer programme,—...”*

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## Judicial Interpretation

### ❖ **Kanungo Media (P) Ltd. v. RGV Film Factory [2007 (34) PTC 591 (Del)]**

- Movie titled “Nishabd” was under dispute.
- RGV Film Factory adopted the title “Nishabd” for their upcoming Hindi movie which was identical to the plaintiff’s Bengali film’s title “Nisshabd”. The plaintiff had instituted a suit in the High Court of Delhi for copyright infringement and passing off against the Defendants. The plaintiff contented that the movie title used by the defendant was deceptively similar to their title “Nisshabdh”.
- *“if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone.”*
- Held- Film titles cannot be brought under the ambit of literary works and therefore enjoy no copyright protection. The title of any literary work forms the identity of the work.

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## Judicial Interpretation

### ❖ **Krishika Lulla v Shyam Vithalrao Devkatta & Anr [(2016) 2 SCC 521]**

- Complainant (Mr. Devkatta) claimed that he had created the synopsis of a story and had titled it “Desi Boys” and had got it registered with the Film Writers Association, but subsequently came to know that a movie with a similar title was being promoted and to be released soon.
- According to the creators of the movie “Desi Boyz”, they had hired an author to write a story for their movie and he was duly paid for the same.
- No similarity found between the storyline of the two upon release of the movie.
- Section 13, of the Indian Copyright Act, 1957 confers protection upon creators of original literary work alone.
- Title of a work is merely in the nature of the name of the work and is not the work on the whole. It is the title along with its content that constitutes a work.
- Threshold of originality which as a prerequisite for literary work to qualify as original and gain protection under the Copyright law.

## **Legal Issue-II**

**Whether comic books are sufficiently protected under IP laws?**

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## Introduction

- ❖ Comic books are works of intellect and imagination created by the author. They are essentially expressions of ideas and thoughts through textual or visual representations and as such are capable of protection under Copyright law.
- ❖ Characters that are further expressed in derivative works such as television shows, movies, etc, as well as through merchandise.
- ❖ Revenue generated from publication of comics with literary and pictorial characters and further merchandising of these characters.
- ❖ The Marvel and DC comics alone generate millions of dollars as revenue each year and even though the demand for paper back comics have declined in the digital era, their licensing and assignment agreements continue to exist, and the comics continue to be protected under IP laws. The story, characters, textual and visual expressions of the ideas of the artists are subject matter of copyright law while character branding and merchandising are protected by Trademark laws.
- ❖ Under the current legal framework , the protection of these unique attributes, personality traits and graphical representation of comic characters have not been adequately addressed, considering the contemporary trends of excessive merchandising, and commercial exploitation of such characters.



## Relevant Provisions

❖ **Section 2(o) defines “literary work”:**

- *““literary work” includes computer programmes, tables and compilations including computer databases”*

❖ **Section 2 (c) defines “artistic work”**

- *“artistic work” means,—*

*(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;*

*(ii) a work of architecture; and*

*(iii) any other work of artistic craftsmanship;*

## Judicial Interpretation

### ❖ **Detective Comics vs. Bruns Publication [111 F 2d 432 (2d Cir, 1940)]**

- Plaintiff was the owner of the popular comic character ‘SUPERMAN’ and the Defendants created a character with the same physical and emotional attributes as that of the Plaintiff’s character and named it ‘WONDERMAN’
- Held- Defendants guilty of copying the pictorial as well as the literary details of the Plaintiff’s character ‘SUPERMAN’. The court, in this case, laid down the rule that characters in Comics can be protected only when the same has been portrayed in detail and the idea has crystallized into a visual expression.

### ❖ **Raja Pocket Books vs. Radha Pocket Books [1997 (40) DRJ 791]**

- Plaintiffs published and distributed a widely popular comic series called ‘NAGRAJ’ and claimed copyright in the character ‘NAGRAJ’.
- Defendants created a strikingly similar character ‘NAGESH’ with similarities in looks and personality traits, including the superpowers of the Plaintiff’s comic character.
- Injunction granted against the Defendant on the use of ‘NAGESH’ in imaging, posters and advertising.
- Held- Use of the Plaintiff’s copyright in the character ‘NAGESH’ would amount to infringement.
- Landmark in determination of “character rights” and protection of comical characters under the Copyright Act, 1957.

## **Legal Issue-III**

**Whether Graphical User Interface (GUI) should be protected under Copyright Act or Designs Act in India?**

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## Introduction

- ❖ Graphical User Interface (GUI) is a kind of user interface that allows interactions with the computer through graphical elements like icons and menus as opposed to command line interfaces which function based on command entered in the text box of the device.
- ❖ Evolution in using GUIs from mouse or the keyboard to touchscreen interface on smart phones.
- ❖ Protection as a computer program.
- ❖ Lack of settled position through precedent.
- ❖ Current positions of computer programs- Copyright protection in computer programs should be extended to the overall structure, sequence and organization of the program.
- ❖ The Ministry of Electronics and Information Technology has provided an interpretation of GUI:
  - *“GUI is an element of the program through which users can interact with various other features of the computer programme. Copyright protects form of expression and can be used to protect source code and the object code of a computer programme. Furthermore, computer programme is protected as a literary work by the Indian Copyright Act and hence, the look and feel of Graphical User Interface (GUI) can be protected under the Copyrights”*

## Relevant Provisions

### ❖ Section 2 (c) defines “artistic work”

- “artistic work” means,—(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; (ii) a work of architecture; and (iii) any other work of artistic craftsmanship;”

### ❖ Section 2(a) of the Designs Act, 2000 defines “article”:

- “article” means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately;

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### ❖ Section 2(d) of the Designs Act, 2000 defines “designs”:

- ‘design’ means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye ...;

## JioMeet v. Zoom Controversy

- ❖ July 2020- launch of JioMeet by Reliance Jio
- ❖ Concerns regarding identity/similarity of user interface and similar design with Zoom.
- ❖ Zoom was one of the top downloaded applications during the global lockdown last year and there has been an unprecedented increase in its users since last year.
- ❖ No legal action has been initiated yet.
- ❖ if the owners of Zoom do initiate a copyright infringement suit against JioMeet, they have a very strong chance of success as even though JioMeet revamped its GUI subsequently, (the new icon is bright red/orange in color instead of the old blue) the modifications in the basic user interface are still very limited. The Court's decision in this dispute will be crucial in determining the extent to which GUI can be copyrightable in India.
- ❖ Globally, GUIs are registered as designs and if this matter is decided as such, the same protection can be given to GUIs in India under design law. This could prove to be landmark development in Indian IP regime as this would be in conformity with global practice of protecting GUI under design law and not under copyright law.

# THANK YOU!

## Questions?

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