



INDIA



Name: Manisha Singh
Law Firm Name: LexOrbis
Country: India
Position: Managing Partner
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Manisha Singh is a founder and the Managing Partner of LexOrbis. She overviews and supervises all practice groups at the firm. Starting her career at the time when Indian IP laws and practices were undergoing substantial changes pursuant to India's obligations to comply with the TRIPS agreement, Manisha played an important and crucial role in advising and apprising Indian policy and lawmakers on global standards associated with IP administrative and enforcement systems.

Manisha is known and respected for her deep expertise in prosecution and enforcement of all forms of IP rights and for strategising and managing global patents, trademarks, and designs portfolios of large global and domestic companies. Her keen interest in using and deploying the latest technology tools and processes has immensely helped the firm develop efficient IP service delivery models and provide best-in-the-class services. She is also known for her sharp litigation and negotiation skills for both IP and non-IP litigations and dispute resolution.

She is involved in a large number of intellectual property litigations with a focus on patent litigations covering all technical fields – particularly pharmaceuticals, telecommunications, and mechanics. She has been involved in and successfully resolved various trademarks, copyright, design infringement, and passing off cases in the shortest possible time and the most cost-efficient manner applying out-of-box strategies and thinking.

She is an active member of many associations like INTA, APAA, AIPLA, AIPPI, LES, FICPI, and is actively involved in their committee work. She is an active writer and regularly authors articles and commentaries for some of the top IP publications.

Awards:

- ALB Top Dispute Lawyers, 2020: Manisha Singh recognised as one of the top dispute lawyers
- India Business Law Journal, 2020: Manisha Singh recognised as one of India's Top 100 Lawyers, The A-List
- IAM Strategy 300, 2020- Manisha Singh has been recognised as the world's leading IP strategist



- IAM 1000, 2020- Manisha Singh is recognised as a "Recommended Individual"
- Managing IP, 2020- Manisha Singh recognised as "IP Star" 2020 for Patent litigation, Patent strategy & counselling
- Manisha Singh recognised as Star Women in law for the year by Legal Era-Legal Media Group, 2020
- WTR 1000, 2020 - Manisha Singh ranked among the "Recommended Individuals."

Name: Amaya Singh
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Position: Partner
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Amaya is a Partner at LexOrbis. With over 17 years of experience in the field of Trademarks, she has acquired expertise in all nuances of the trademark laws, ranging from national and international filings, prosecution, assignments, records, renewals, oppositions, and cancellation actions. She regularly advises clients on allied areas of trademark enforcement, such as brand protection and domain name acquisition.

Amaya also regularly advises clients ranging from start-ups and small and medium scale enterprises in identifying and

protecting their IP assets in India as well as internationally and is responsible for large IP portfolios from various industries, including Media & Entertainment, Pharmaceuticals, Foods and Beverages, Computer Software, Fashion, Sports, Automobiles, Liquor, etc. She regularly represents LexOrbis in several national and international IP conferences and events throughout the year.

In addition, Amaya is also in charge of the Group for Research, Publications, and Programs at LexOrbis and Heads the Firm's overall operations.





Court Illuminates

Upon the Overlap of Copyright Infringement and Confidentiality Law



Written by Manisha Singh Partner, & Ritika Agarwal, Managing Associate at LexOrbis, India - www.lexorbis.com



In the recent case of Tarun Wadhwa v. Saregama India Ltd & Anr decided on January 13, 2022, the Bombay High Court reflected upon the connection of copyright infringement and confidentiality law and observed that ideas are not copyrightable. Still, they can be protected by bringing them under the purview of the confidentiality law.

The Facts

This case concerned an allegation by the plaintiff, Tarun Wadhwa, of copyright infringement and breach of confidentiality. In the plaintiff's case, he had created a synopsis and a screenplay, "Haila Zombie!", which was shared with the defendant. The defendant admitted to the same. The plaintiff alleged that the defendant's movie "Zombivili" was based on his screenplay and sought an injunction against the release of the movie. In order to prove this, the plaintiff showed the similarities in the story of the movie and his screenplay.

In doing so, the plaintiff considered locations, specifics of plot mechanisms and picturisation. The plaintiff alleged that the 'the germ of an idea' for a zombie comedy-based plot had been derived from his screenplay. The defendant infringed his copyright and violated confidentiality by using his screenplay for creating their movie Zombivili. In contrast, the defendant stated that there was a stark difference between their movie and the plaintiff's screenplay. The genre of the plaintiff's screenplay being 'comical' is different from the one behind the defendant's movie's storyline being 'grim and realistic'. The defendant stated that the examples of similarities pointed out by the plaintiff were, in reality, "scène à faire" (or "a

scene that must be done") for a storyline or idea behind zombie movies, over which no exclusive rights can be claimed by any one party. The locations over which the plaintiff claims monopoly are actually common to the city itself. No one can claim exclusivity by describing or using any of these.

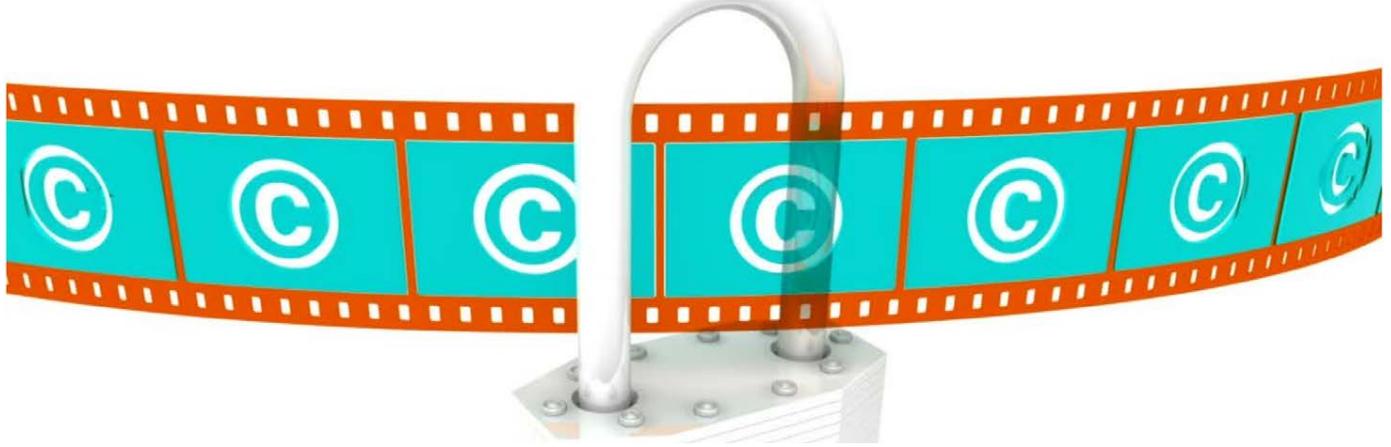
The Judgement

The judgement noted that the key allegation of the plaintiff was that the defendant's movie incorporated a significant part of his screenplay and that the movie was centred on critical or crucial aspects of this screenplay. The single judge further noted that the plaintiff, in fact, did not allege that the defendant had replicated his screenplay and did not allege originality in any one component or that there was a scene-by-scene reproduction. To establish his case involving the breach of confidentiality by the defendant, the crucial factor on which the plaintiff relied was the truth that the screenplay was revealed by the plaintiff to the defendant.

The court stated that breach of confidentiality and copyright infringement were closely tied. The former is frequently claimed for matters that cannot be the subject of copyright infringement. An idea, in particular, cannot be the subject of a copyright infringement action. The

Court also observed this in a similar case, Zee Entertainment Enterprises Ltd v Sony Pictures Pvt Ltd & Ors, AIR 2017 Bom 221. But it may be the subject of breach of confidentiality. Either may yield a broadly similar injunction. There is no copyright in India except as provided by the Copyright Act, 1957. But this is not in derogation of a claim of breach of trust or confidence.

The court further stated that the Confidence law is perhaps broader than copyright law. It protects the substance of ideas and information, irrespective of the mode of communication. There is no copyright in an idea, but only in the form of its expression. Copyright is a right 'in rem', but a confidence obligation is entirely 'in personam'. The court further stated that there is no copyright except as provided by the statute, and infringement is also prescribed by statute. A confidence obligation is one in contract or equity (or both). There are statutory defences to a copyright infringement action. These do not apply to a breach of confidence action. The distinction between copyright and confidence assumes importance where, say, a manuscript has been submitted for publication. An obligation not to use the submitted manuscript may be implied and enforced under confidence law. It may extend to a plot or a developed idea that may not otherwise be protected by copyright.



However, in order to identify if the idea, which is allegedly disclosed in breach of the confidence law, can be termed as confidential or not, the court relied on the test given in the case of Zee Telefilms Ltd v Sundial Communications Pvt Ltd & Ors, 2003. In this case, the court held that in a breach of confidence action, the plaintiff must (i) identify clearly the information relied on; (ii) show that it was handed over in circumstances of confidence; (iii) show that it was information that had to be treated as confidential; and (iv) show that it was used or threatened to be used without consent.

It is an important point to note that the plaintiff did not claim originality of his screenplay when seeking copyright protection. He rather particularly sought

protection for the arrangement of the various elements of the movie. The plaintiff also did not claim that his composition of the plot was largely copied by the defendant. It was rather alleged that individual components were used by the defendant. Hence, in the court's opinion, the plaintiff failed to present a clear and unambiguous identification of the proprietary, original material other than that which was copyright protected and said to be confidential.

Copyright and Confidentiality

While the court concluded that the breach of confidentiality and copyright infringement offers a similar remedy in the form of an injunction, it also emphasised that copyright and confidentiality law operate in different realms. The minimum requirements for the two vary. The court made it clear that the copyright law has a superior threshold for what can be protected. For copyright infringement, it is necessary to prove that there is an overlap in the expression of an idea. On the other hand, for breach of confidentiality, the prerequisites must be fulfilled, that the information is not existing in the public domain and the transmission of this information in confidence, either explicitly or in an inferred manner.



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