



SINGH & SINGH

# Legally Rooted

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# WISE WORDS

## The Firm's Opinion

# Dance Moves and Copyright

**Aishwarya Chaturvedi**  
Associate

Copyright law gives the author of literary, dramatic works, composer of musical work, artist of an artistic work, producer of a cinematographic film and/or sound recording the exclusive right over their original creations. Choreographic works are explicitly included under the definition of "dramatic work" under the Copyright Act, 1957. But a ubiquitous conundrum is -does a choreographic work extend to single dance moves or does it apply only to works that combine a sequence of movements into a larger routine?

The term "choreography" has not been defined in the Copyright Act, 1957; however, the Canadian Copyright Act defines the said term as the design or arrangement of a staged dance, figure skating and also the sequence of steps and movements in dance or figure skating. **Agnes de Mille**, an American dancer and choreographer pertinently stated



in a comment submitted to the Copyright Office in 1959 that choreography is neither drama nor storytelling, it is a separate art; it is an arrangement in time-space, using human bodies as a unit design, and it may or may not be dramatic or tell a story. This implies that a broad class of works could fall under the ambit of choreographic work, thereby including an individual dance move as well.

Several factors such as the presence of rhythmic movements from a dancer's body in a defined space, compositional arrangement into

a coherent, integrated whole, musical or textual (notations) accompaniment, and dramatic content such as a story or theme have to be taken into consideration while considering whether a work is "choreography". The composition and arrangement of dance movements and patterns are copyrightable as choreographic works, provided they meet two criteria:

- **The dance must be your original work: it must originate with you and show some minimal level of creativity.**

- **The dance must be fixed in a tangible object. This might include a film or video recording of the dance, or a precise written description in text or in a dance notation system. An idea for a dance is not entitled to copyright protection, nor is a dance that has been performed but not notated or recorded.**

However, there cannot subsist copyright in certain types of choreography such as:

- **Social dances**
- **Discrete dance movements and simple routines**
- **Ordinary motor activities and physical skills**
- **Steps not choreographed and/or performed by humans**

The issue of copyright subsisting in dance moves was dealt with in the celebrated Indian case *Academy of General Education, Manipal and Anr. v. B. Manini Mallya*, the Hon'ble Supreme Court of India considered the fair use doctrine. Yakshagana Ballet had been developed by one Dr. Karanth and was performed in New Delhi in September 2001. Manini Mallya, in whose favour Dr. Karanth had executed his will, filed a suit for declaration, injunction and damages alleging violation of copyright in respect to the said dance works vested in her in accordance with the terms of the will. The basis of her claim was that Dr. Karanth had developed a new and distinctive dance, drama troop or theatrical system, which he had named as 'Yaksha Ranga' which in his description



meant "creative extension of traditional Yakshagana" and, thus, the Academy had infringed the copyright by performing the form without obtaining prior permission from her. She stated that seven verses or prasangas for staging Yaksharanga Ballet had been composed by Dr. Karanth apart from bringing in changes in the traditional form; thereof, on its relevant aspects, namely, Raga, Tala, Scenic arrangement, Costumes etc.

An argument was raised that literary work is different from dramatic work. The Hon'ble Supreme Court observed that the difference between the two rests on the fact that a literary work allows itself to be read while a dramatic work "forms the text upon which the performance of the play rests". The question related to copyright in respect of a form of dance ballet, which had been developed by the testator. The Hon'ble Court held that such rights (rights to seven verses of the ballet as well as its theatrical or dramatic form) went to the respondent by virtue of her being the residuary legatee. Considering the fact that the Hon'ble Karnataka High Court had granted an

injunction in favour of Ms. Mallya, the Hon'ble Supreme Court noted that the High Court modified the order of the trial Court stating that if the Academy desired to stage any of the seven Yakshagana prasangas in the manner and form as conceived by Dr. Karanth, the same could be done only in accordance with the provisions of the Copyrights Act, 1957, owing to the copyright in seven prasangas being vested with Ms. Mallya. The Hon'ble Supreme Court also opined that the High Court should have clarified that the Academy could take the statutory benefit of the fair use provisions contained in clauses (a), (i) and (l) of sub-section (1) of Section 52 of the Act. Elucidating upon the aspect, and dismissing the appeal, the Hon'ble Court observed as follows:

"When a fair dealing is made, inter alia, of a literary or dramatic work for the purpose of private use including research and criticism or review, whether of that work or of any other work, the right in terms of the provisions of the said Act cannot be claimed. Thus, if some performance or dance is carried out within the purview of the said clause, the order of injunction shall not be applicable.

educational institution, if the dance is performed within the meaning of provisions of clause (i) of sub-section (1) of Section 52 of the Act strictly, the order of injunction shall not apply thereto also. Yet again, if such performance is conducted before a non-paying audience by the appellant, which is an institution if it comes within the purview of amateur club or society, the same would not constitute any violation of the said order of injunction."

Interestingly, in certain circumstances choreography and even distinct moves have been accorded protection. For instance, the moves and choreography in the hundred-year-old West Side Story is iconic to the relevant segment of people who are acquainted with the said work. Owing to its popularity, it is also a work that many try to steal or imitate. In one of the seasons of the popular show "Dancing With The Stars", one of the professionals tried to recreate the choreography. However, they were not allowed to use any of the iconic moves as it was, and if they did so, it could have posed severe problems for the ABC network. Therefore, copyright in the particular dance routine was acknowledged and what resulted was a dance that reflected the style of the musical, but not the same routine.

Presently, there is grave ambiguity about copyright subsisting in an individual dance move and most jurisdictions decide the aforesaid question in negative, and there is no doubt that copyright subsists in the artist's video taken as a whole. The US Copyright Office issued a circular published in 2017 stating that "short

dance routines consisting of only a few movements or steps" cannot be registered, "even if a routine is novel or distinctive." The said circular categorically specified that "social dance steps and simple routines" will not be protected by copyright "even if they contain a substantial amount of creative expression." However, the position of the US Copyright Office is dynamic and changes from time to time inasmuch as in the year 1952, Hanya Holm, an American dancer and choreographer had submitted a system of dance notation of her choreography for the musical "Kiss Me Kate" for registration as a dramatic work. It was accepted by the Copyright Office, although the dances did not tell a story. This was reported to be the first time dance notation was accepted.

Often single dance steps become immensely popular and come to be associated only with the performer

and/or choreographer and/or cinematograph film. Further, with the advancement of technology, such works now reach a wider and diverse audience who upon consuming the performance, begin to correlate it with the performer and even replicate the popular steps.

## So can a dance move can be protected under the trademark law?

Tebowing or Kaepernicking are two signature dance moves for celebratory touchdown poses which acquired trademark registration for various types of clothes and apparel. It is clear that even though the players developed the move, used the move and gained popularity for the same and the name developed



from there but only the name of the dance moves were registered. So, it is possible to trademark a dance move, but just the name of it and not the move itself.

Therefore, if an individual dance move within a performance/ song video displays substantial originality and becomes significantly popular amongst the public, then in that scenario if another entity commercially exploits such dance moves, with the intention to gain monetary benefit from such use then such exploitation without the permission/ authorization of the copyright owner ought not to be permitted in certain circumstances. However, as has been established above, copyright does not subsist in most single dance moves and while considering if copyright subsists in such move(s), it needs to be contemplated whether or not the part of the work copied represents a substantial part of the choreography and it needs to be emphasised that "substantial part" is not constituted only depending on the amount of work copied, but on its substantial significance or importance in relation to the work as a whole. Furthermore, another aspect that needs to be taken into consideration is whether creation or reproduction of a work involved substantial use of skill and labour.

The most fundamental and crucial question that needs to be ascertained is whether the dance move(s) is original. The answer to this question is subjective and would differ from work to work; however, the same deserves to at least be deliberated upon

inasmuch as it might actually involve an author's copyright being exploited by another person without permission for monetary gain, under the garb of fair use. The essential criteria for copyright to subsist in a work is that the work must be original and in tangible form. For instance, if a single dance move which is repeated multiple times to form a "sequence of steps" becomes so recognizable that even when performed by an animated character, it can be immediately distinguished from all other dance moves and/or choreography, resulting in association of the same with an individual performer/ artist/ choreographer/ cinematograph film, it must have some degree of originality for it to be protected. In such a scenario, the rights of the performer and/or choreographer should not be compromised by allowing the user of such work(s) to gain monetary benefit by cashing upon the performer's/ choreographer's work and popularity. The rationale behind Copyright law across jurisdictions is to balance the interests and equities of the copyright owners and the public at large. Therefore, the law promotes dissemination of knowledge through as many modes as possible so that more people can consume it; however, the law does not justify unjust enrichment by an entity by way of exploiting the original works of a copyright owner without due permission/ authorization. Thus, even though it is acknowledged that the prevalent law is that there can be no copyright in most individual dance moves, the same is not a line in the sand.

## Author



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Aishwarya is currently working with Singh & Singh Law Firm as an associate and her practice areas include Copyright and Trademark litigation. She has authored the book "The Unheard Predicament: Social and Legal Perspective on Women and Child Rights in India." She also has a keen interest in women and child empowerment and runs an NGO by the name Nirman.

# Necessity and Importance of Confidentiality Club

Confidentiality clubs have become the new norm in litigation/legal proceedings across the world, be it in the field of tech-licenses, trade secrets, data protection, arbitration involving business agreements, etc...

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In today's world of globalization, where competition is at its peak, the organizations may not be inclined to disclose trade secrets/confidential agreements or its details, it had entered with different parties lest may cause serious prejudice to such parties because of competition involved. A trade secrets may make or break a company hence need to be protected. Once such disclosure is made or is misused by a competitor no order of the Court can save the company from loss or could retrieve it to its original position.

The above stated observation made by the Delhi High Court pithily describes the importance of protecting commercially sensitive information in today's day and age. Disclosure of such information to a competitor could cause a deleterious effect on the business of the disclosing party and thus, to ensure that none of the parties are in any manner prejudiced and no one can steal a march over the other, the courts have formulated the



concept of confidentiality clubs to protect the commercially sensitive information of a business entity.

In fact, with global expansion of businesses, such practices have been adopted by courts world over as breach of confidentiality will have adverse implications for a party and its operations in various jurisdictions. As a result, confidentiality clubs have become the new norm in litigation/legal proceedings across the world, be it in the field of tech-licenses, trade secrets, data protection, arbitration involving business agreements, etc.

While deciding matters which involve access to confidential information of a contesting party, courts in India have always endeavoured to strike a balance between the principle of open justice and protection of commercial and business sensitive information of a party. The general rule of recording evidence is that each party should have access to evidence, documents and information presented to the court, however, courts have time and again held that where a party can demonstrate that there are good grounds for limiting the right of inspection on the grounds

of confidentiality, then access to confidential documents can always be denied.

## Confidentiality Clubs - Meaning and Purpose

A confidentiality club, as the name suggests, consists of a group of people having access to confidential information and data to the exclusion of others. It is a tool used by courts which sets up a club of usually advocates and external experts who have access to the confidential documents of a party which requests constitution of such a club. Upon establishment of a confidentiality club, the information and documents disclosed therein are accessible exclusively by the duly named and identified members of the club, upon their undertaking to maintain the confidentiality of the documents and/or information shared by the disclosing party. Constituting confidentiality clubs is vastly popular in patent and trade secret disputes globally, and has found recent footing in Indian litigation as well, especially in patent infringement cases.

The members of the club are specified external counsel and technical experts, along with advocates representing the parties. However, no person who is a party to the dispute or is in the employment of the parties or is its agent can be a member of the confidentiality club. Each member of the club is bound by the confidentiality orders passed by the court. The documents/information

for which request has been made to set up the confidentiality club is exclusively available only to the members of the club and no third person. Further, the parties are not allowed to make copies or disclose the contents of the said confidential documents to anyone else. However, the lawyers and external experts based upon their analysis of the confidential documents provide guidance, advice and support to their clients, in order to ensure that the interest of the opposing party is not compromised in any manner whatsoever. Moreover, all such documents are accessed and analyzed by Courts, which further ensures that no prejudice is caused to either of the party and justice is served.

## Provisions Pertaining to Confidentiality Club

### Patents Act, 1970:

The Patents Act, 1970 does not contain any express provision which caters to the constitution of confidentiality clubs. However, the statutory recognition of maintaining confidentiality is provided under sub-section 3 of Section 103 of the Patent Act, which contemplates a situation where the disclosure of any document regarding the invention may be made confidentially only to an advocate or to an independent expert mutually agreed upon. Section 103 of the Patents Act states as under:

“Section 103. Reference to High Court of disputes as to use for purposes of Government. - ... (3) If in such proceedings as aforesaid any question arises whether an invention has been recorded, tested or tried as is mentioned in section 100, and the disclosure of any document regarding the invention, or of any evidence of the test or trial thereof, would, in the opinion of the Central Government, be prejudicial to the public interest, the disclosure may be made confidentially to the advocate of the other party or to an independent expert mutually agreed upon.”

### Delhi High Court (Original Side) Rules, 2018:

In India, the Delhi High Court has been the flagbearer in developing jurisprudence on confidentiality clubs and propriety thereof. This can also be evidenced from the fact that in 2018, recognizing the legitimacy of the same, a provision relating to confidentiality clubs was inserted in the Delhi High Court (Original Side) Rules, 2018, which govern the civil and commercial cases heard on the original side of the Court. As per Rule 17 of Chapter VII, during the course of litigation, if parties wish to rely on documents/information which is commercially or otherwise confidential, the Court has the discretion to set up a confidentiality club to allow limited access to such information. This ensures a balance between safekeeping of the confidential data of the parties and also allows the Court to meet the ends of justice, as it has access to all relevant facts of the case.



The protocol and procedure for setting up such confidentiality clubs, upon receipt of an application for the same, is provided under Annexure F of the Delhi High Court (Original Side) Rules, 2018, which has the following salient features:

- i. All confidential documents/ information shall be filed in a sealed cover with the Registrar General of the Court;
- ii. Not more than three advocates, who have not been inhouse counsels for them, and not more than two external experts, may be nominated by each party to be part of the confidentiality club;
- iii. Members alone have access to the information and/or documents disclosed in the confidentiality club;
- iv. Members are allowed to inspect the documents in the presence of the Registrar General and are prohibited from making copies of the same. They are also precluded from disclosing the information and/or documents disclosed in the confidentiality club;
- v. During record of evidence in respect of the information and/ or document disclosed in the confidentiality club, only members of the same are allowed to remain present;
- vi. The Court may, at its discretion, allow making copies of the confidential document, after redacting the confidential information;
- vii. Any evidence by way of affidavit relating to confidential information

shared in the club would be kept in a sealed cover by the Registrar General of the Court. A copy of the same, may still be provided to the opposite party after taking leave of the Court by redacting the confidential information contained in such affidavits.

The Rules also provide that such confidential documents would not be available for inspection after disposal of the matter, except to the party producing the same.

From the above, it is clear that the confidentiality club is constituted by a Court only upon an application being made for its constitution and only if it feels that information sought to be filed is actually confidential. Further by way of Annexure F to the Rules, 2018, it is clear that guidelines have been put in place to safeguard the confidential documents/ information of the disclosing party. Such procedure has been specifically adopted to prevent the disclosure of information which, is deemed by the Court to be detrimental to the business and commercial interest of the parties. It is thus clear that constitution of a confidentiality club does not contemplate making concessions but is an exercise conducted merely for appreciating evidence and information that cannot be disclosed openly. In circumstances that warrant it, the Court also has the discretion to share the documents with the Defendant, after duly redacting the confidential information from the said documents.

Recently, the Hon'ble Delhi High Court, in **Transformative Learning Solutions Pvt. Ltd. & Anr. v. Pawajot Kaur Baweja & Ors.**, keeping the above stated principles in mind, observed that in a list involving patent infringement or copyright infringement in the source code of a computer program, the need for the Defendant to see the confidential documents does not arise, as the opinion with respect thereto is to be given by an expert only. The Court further observed that depending on the facts and circumstances of a case, the Defendants/opposite parties can be permitted to be members of a confidentiality club, if the Court so deems fit. Such Defendants/ opposite parties, then become bound by the terms of the club and cannot disclose any information shared with them as members of the club. However, in the event the Court is of the opinion that the information proposed to be confidential must be shared with the Defendant, it is still open to the Plaintiff to refuse sharing of the information with the Defendant, subject to any legal consequences thereof.

## SEPs and Confidentiality Clubs

Historically, in India, the most common cases where courts have constituted confidentiality clubs are cases pertaining to infringement of Standard Essential Patents (SEPs). In a case for infringement of a SEP, in addition to the questions of infringement and validity of



the patent, additional issues of essentiality of the patent (to the concerned standard) and whether the same was offered at FRAND rates to the defendant, also arise for adjudication. It is for the latter issue that the constitution of confidentiality clubs becomes important.

The most common way to determine whether the license offered by the patentee for its SEPs was FRAND or not is to analyze comparable licensing agreements entered into by the patentee with similarly placed parties. To determine the amount of royalty payable, the defendants often demand production of such comparable license agreements before Court.

A license agreement negotiated between two parties is peculiar to them and generally contains commercial and business sensitive information that each party generally does not wish to disclose to its business rivals/ third parties. As an illustration, a license agreement may contain the following confidential particulars:

i. **Sales projections/details, which are not available in public domain;**

ii. **Business expansion details;**

iii. **Proprietary technology details, in cases of cross-licensing;**

iv. **Often the licensee also offers its portfolio of patents in a cross license to the SEP holder to enable both parties to reap the maximum benefit from the agreement. Since this cross-licensing arrangement is dependent upon not only the concerned IP part of the portfolio of the licensee, but also upon the nature of business of the licensee, disclosure of the same in open court may put the party in breach of its obligations under the agreement;**

v. **Technical know-how and trade secrets;**

vi. **Tech-transfer details.**

Thus, placing an onerous obligation to produce these licensing arrangements openly before a party, who is a competitor/business rival to both the licensor and licensee, may prove detrimental to the commercial interests of the parties involved. Since the object of producing the license agreements before Court is to determine the rate of reasonable royalty payable by a defendant to a patentee, there is no need to disclose all the above-

mentioned particulars forming part of the said agreement in open court and more particularly to a defendant. Based on the aforesaid principles, the Hon'ble Delhi High Court has passed orders pertaining to constitution of confidentiality clubs in several SEP cases.

## No Adverse Effect on the Defendant

As can be seen from the above, the purpose of setting up a confidentiality club is to ensure that the commercial secrets of a party and any other confidential information are not disclosed openly, more so to their competitors.

The argument, more often than not, set up by a defendant in cases involving the constitution of Confidentiality Clubs is that prejudice would be caused to its interest if it is not able to verify the contents of the license agreements. The apprehension often quoted is that the defendant is coerced to agree to a rate of royalty payable without verifying on its own if that is actually the rate being paid by a similarly placed party. Discomfort is also expressed on the fact that its advocates, upon examining the documents, would bind the defendant to a particular rate of royalty, without due verification and obtaining instructions from the client. However, what is overlooked is the fact that the final rates are determined by a court after detailed analysis of facts and circumstances of a case, including comparable license agreements. Under no

circumstances are defendants put to the disadvantage of making a concession before the court. The argument that the advocate is acting without instructions does not hold water, as the advocate, as a member of the club, looks at the agreements placed on record, and after consulting the external expert, advises a defendant to agree/disagree to a rate of royalty payable by it, comparable to that being received by a patentee from similarly placed parties. The advocate need not disclose the confidential details of the license agreements. Thus, the factum of verification of royalty rates payable vis-à-vis similarly placed parties can get verified by the experts of a defendant and accordingly, a defendant is appropriately advised. At any rate, the evidence in this respect of whether a license is comparable or not is procured from an expert only and not a plaintiff or a defendant. Thus, there is no requirement to include the opposing party in the confidentiality club.

Further, what is also interesting is the fact that when such parties execute a license agreement themselves, they insist upon confidentiality clauses and refuse to produce their own existing license agreements for perusal before the courts. In the end, what needs to be understood is that the jurisprudence surrounding confidentiality clubs does not seek to favor a particular party and is simply guided by rules of discovery/production of documents and recording of evidence as also the commercial interests of the parties.

## Authors



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**Saya** is a graduate from Delhi University with a B.Sc. (Hons) degree in Physics. She completed her law from Delhi University and graduated in 2007. She has also done post graduate diploma courses in IPR law and Securities and Banking Laws. She heads one of the patent litigation team which primarily deals with the patent litigation and has handled various landmark cases. She has extensive experience in relation to disputes pertaining to the field of Standard Essential Patents. She has also experience of negotiating and executing FRAND licensing deal on behalf SEP owners.



### Devanshu Khanna

**Devanshu** completed his engineering in the field of Information Technology and then went onto pursue his LL.B. from Faculty of Law, University of Delhi. Devanshu has closely worked with the Think Tank which was entrusted with the task of drafting India's first National IPR policy. He has experience of working on all forms of Intellectual Property matters. He is a registered Patent Agent and a facilitator appointed by the Government of India under the Start-Ups Intellectual Property Protection (SIPP) Scheme. He has also assisted various departments of the Government on critical issues such as 'Patentability of computer related inventions' and 'Working of patents in India'. Devanshu is currently part of the Patent Litigation team and has actively worked on matters involving Standard Essential Patents (SEPs) and pharmaceutical patents. Devanshu was conferred with the title of 'Rising IP Star' by Managing Intellectual Property for the year 2019.



### Vrinda Bagaria

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# The Need for Regulation of Content of News Television Channels in India

A specific law with one exclusive regulatory body is the need of the hour to regulate the news broadcasting sector in order to reinstate the trust and confidence of the people in news television channels.

**Luv Virmani**  
Associate

With more than 400 news channels, India is indubitably the world's most over-served news market. In this huge market, there is an alarming rise in the phenomena of paid news, fake news, biased news and unreliable news. Trying to set an agenda for the country, most news television channels in India can easily be identified as either pro-government or anti-government. Not only this, the daily schedule of most news channels in India consists of talk shows, comedy programs, and music events, as if they are trying to turn into General Entertainment Channels. Prioritizing sensationalism over fair journalism, such news channels in India have blurred the line between news and entertainment. The absence of regulation and lack of control over the content of news television channels is the primary reason for the content and credibility crisis of the Indian television news industry. As on date, there is no statutory regulatory



mechanism for news channels and they are regulated by several self-regulatory bodies such as the News Broadcasters Association (NBA), Broadcast Editors' Association and News Broadcasters Federation. One of the primary effects of the absence of a statutory regulatory body to regulate the content of news channels in India is that viewers are in a conundrum as to what content is reliable.

The NBA is a private association which has been established by Indian news channels. The News Broadcasting Standards Authority (NBSA), set up by the NBA, adjudicates upon complaints about broadcasts. In a petition filed by social activist Nivedita Jha before the Hon'ble Supreme Court of India, NBSA filed an affidavit informing the court that it had received 18 complaints regarding reporting of sexual offenses against the broadcasters and the action taken by it. The list showed that the authority did not take any action in 7 cases, and in the remaining cases, no punitive action was taken against the news channels, as they were let off with a warning or at most were asked to air an apology.

The NBA has also devised a Code of Ethics to regulate content. However, the said Code appears more like guidelines as there are no standards required to be followed mandatorily. The content being aired on most news channels today makes it easy to infer that the NBA's 'Code' is essentially ineffective. The office bearers and members of all such self-regulatory associations include the office bearers of leading



news channels, leaving no room for ambiguity that the self-regulatory mechanism fails to be an effective, reliable and trustworthy regulation. Adding to all these problems is the non-unification of the self-regulatory news media regulations in India, since the presence of multiple self-regulatory bodies has led to issues over the enforceability of decisions.

Even the Press Council of India (PCI), which is a statutory body

for regulating content, is primarily to enforce standards upon newspapers, journals, magazines and other forms of print media, and does not have the power to monitor the functioning of the news television channels. Moreover, the PCI acts only on complaints and adjudicates the said complaints against and by the press for violation of ethics and for violation of the freedom of the press, respectively.

Although the Government has been considering regulating all online content, including entertainment portals like Amazon Prime and Netflix, social media platforms like Facebook and Twitter, and online news portals like Scroll and timesofindia.com, there have been no developments on the regulation of content of news television channels.

Most news television channels are missing sensible content, they have become opinionated, ill-informed, platforms for character assassination, and are focused towards being 'interesting' rather than being informative. Instead of discharging the responsibility of being informative about the unreliable news being spread on social media, most news channels have been competing with social media while creating and circulating such unreliable news including fake news, paid news and agenda-driven news.

The sensitivity of the issue can further be evaluated from the fact that the phenomenon of paid news was acknowledged by the Press Council of India long ago when it conducted a study of the widespread practice of "paid news" in India in 2010. In its report, the PCI stated that paid news is "a pervasive, structured and highly organized practice" in Indian newspapers and other media outlets, where news space and favorable coverage is exchanged for money. It also acknowledged other forms of paid news including "private treaties"

between media companies and corporate entities, wherein a non-media company transfers certain shares of the company to the media company in lieu of advertisement space and favorable coverage.

Back in 2013, the PCI in its statement said that it would soon issue a white paper on 'paid news'. The said statement came in view of increasing complaints of media taking price, in cash or kind, for publishing specific news or analysis. However, it has been more than 6 years and any such policy or legislation is yet to be framed. Paid news is undermining our democracy since the functioning of media has a direct impact on the citizens, government and the society.

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## Author



### Luv Virmani

**Luv** completed his B.B.A. LL.B. (IPR Hons.) from Institute of Law, Nirma University, Ahmedabad in the year 2017 and got enrolled with the Bar in the same year. Thereafter, he practiced before the Hon'ble High Court of Gujarat for 2 years while working in the IPR division of a full-service law firm in Ahmedabad. He has published papers on various issues such as the protection and scope of non-conventional trademarks. He is currently working as an Associate with Singh & Singh, and is handling matters pertaining to trade marks, patents, copyright, and DPCO.

# REPORTAGE

## Noteworthy Judgements/ Transactions by the Firm

### Havells India Limited v. L Ramesh [CS (COMM) 20 OF 2020] Before Hon'ble Ms. Justice Mukta Gupta of the Hon'ble Delhi High Court.

The firm represented Havells India Limited in the matter Havells India Limited vs. L. Ramesh before the Hon'ble Delhi High Court. The suit was filed for permanent injunction restraining infringement of trademark, passing off, infringement of copyright, trade dress, rendition of accounts, misrepresentation, fraud, damages etc.

The main crux of the matter is that the Defendant had been illegally manufacturing, marketing and selling of electrical accessories and fittings, under the impugned marks/logos STANDARD/ SS STANDARO. We argued that the Defendant had adopted the impugned marks / device STANDARD/ SS STANDARO, which are identical and/

or deceptively similar to that of the Plaintiff's trademark/logo STANDARD and its variants thereof. We further submitted that the Defendant had also copied the get up and over all packaging of the Plaintiff including identical colour scheme of blue and white.

Consequently, the Ld. Single Judge was of the view that the Defendant had dishonestly and malafidely adopted the impugned marks and the packaging, which are identical/ similar to that of the Plaintiff. Accordingly, the Ld. Single Judge

was pleased to grant an ex-parte ad interim injunction in favour of the Plaintiff and against the Defendant thereby restraining the Defendant from manufacturing, marketing, selling(including on online), using the impugned marks or any other mark identical to that of the Plaintiff, in any manner whatsoever.

Singh & Singh team involved Sudeep Chatterjee, Partner along with Sonal Chhablani, Senior Associate, Surbhi Singh Associate and Sanya Sood, Associate





## Creative Travel Pvt. Ltd. v. Creative Tours and Travel (I) Pvt. Ltd. & Anr. [CS (COMM) 249/2018] Before Hon'ble Mr. Justice Rajiv Sahai Endlaw of the Hon'ble Delhi High Court

The firm represented Creative Travel Pvt. Ltd. in this matter instituted before the Hon'ble Delhi High Court in the year 2006. The suit was filed seeking permanent injunction to restrain the defendants from using the mark 'CREATIVE' and 'TRAVEL' or any other mark identical or deceptively similar to the Plaintiff's mark, as part of their corporate name or in relation to travel industry or for any business, trade, etc., amounting to violation of Plaintiff's statutory and common law rights.

The main crux of the matter was that not only had the defendants adopted a deceptively similar trademark 'Creative Tours and Travel' but they had also entered into the same business as that of the Plaintiff and

were approaching the clients and customers of the Plaintiff not only in Delhi but even in other parts of the country and abroad. On July 14, 2006 an ex parte ad interim order, was passed in favour of the Plaintiff restraining defendants from using the trade name 'CREATIVE', whether in full or as part of any other trade name which was identical/deceptively similar to 'CREATIVE'. However, the ex parte ad interim order was vacated by the Hon'ble Court vide order dated August 29, 2006. Following which the Plaintiff filed FAO (OS) NO. 684/2006, against the vacation of the injunction, however, the same was dismissed. Several parallel proceedings continued to be filed and contested by the Plaintiff and Defendants against each other involving the mark CREATIVE for years before various forums such as the Hon'ble Supreme Court, Hon'ble High Court of Judicature at Bombay and the Intellectual Appellate Board (IPAB).

After completion of evidence, the matter was taken up for final arguments in the year 2019. We argued that Plaintiff was the "prior user" of the trademark and was incorporated in 1977. We further submitted that use of the trademark "CREATIVE" is causing confusion

amongst the public. In response to this, the case of the defendants was that their use of the mark CREATIVE was honest and bona fide. Interestingly, the defendants also argued that the word/ mark trademark "CREATIVE" is generic and common to trade, and that several third parties had been using the said mark.

After hearing both the parties at length, the Ld. Single Judge reserved his judgment on October 14, 2019 and pronounced it on April 21, 2020. The Hon'ble Court held that the defense of honest and concurrent use could not be admitted as the Defendants were aware of the existence of the Plaintiff. The Hon'ble Court also acknowledged that the existence of the mark of the Defendant caused confusion in the minds of the public. Accordingly, the Hon'ble Court was pleased to decree the suit in favour of the Plaintiff and against the Defendants and granted the following reliefs to the Plaintiff:

**Permanent & mandatory injunction against the Defendants from using the trademark "Creative Travel" in conjunction;**

**Direction to the Defendant to change the name of their Company and to inform all their patrons, not later than 1.08.2020;**

**Recovery of cost of Rs. 11 Lakhs for the costs incurred by the Plaintiff during the pendency of litigation.**

Singh & Singh team involved Sudeep Chatterjee, Partner along with Sonal Chhablani, Senior Associate and Sanya Sood, Associate.



# HEADLINES

## Relevant IP News



### Bitter medicine: COVID-19 has exposed pitfalls of Indian pharma's over-dependence on Chinese API

Recently, India lifted the export ban on 24 pharma ingredients and drugs in a move to alleviate shortages in the countries severely affected by Covid-19.

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### India gears up for patient trials on 20 different drugs for Covid-19

In the search for a potential line of treatment, India is lining up patient trials on about 20 different drugs, which include patented anti-viral drugs like Favipiravir.

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### USTR's move to keep India on IP watch list could hit covid-drug access

The US Trade Representative's (USTR) move to keep India on the priority watch list for patenting norms can be used to block access for affordable drugs against covid-19, said health activists.

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## India slips to 40th position on International Intellectual Property Index

India's slipped to 40th position on the International Intellectual Property (IP) Index, which analyses the IP climate in 53 global economies, this year, according to a report of US Chamber of Commerce's Global Innovation Policy Center.

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## India, US ink pact on intellectual property rights

India and the US have signed an agreement on intellectual property rights (IPR) ahead of US President Donald Trump's visit.

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## Manipur Black Rice gets a GI Tag

Chakhao, the aromatic black rice of Manipur being cultivated for centuries with traditional practices, was recently awarded the Geographical Indication (GI) tag.

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# HOTLINE

## Important Regulatory Announcements



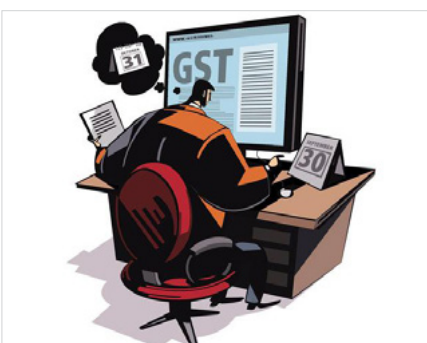
### To woo businesses, govt wants cap on court adjournments on commercial cases

Serious about attracting businesses from China, a central task force, set up to improve India's ranking in the World Bank's 'ease of doing business' scale, has been holding regular weekly review meetings on 'enforcing contracts' and various other reforms.

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### India sees big spike in film piracy post covid-19

Locked up at home without much to do, a big section of India's population, who either cannot afford legal video streaming platforms or simply wants to consume free content through cheap internet connectivity, is responsible for pushing up piracy figures.

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### People registered under Companies Act 2013 can file GSTR-3B via EVC: Govt

People registered under provisions of Companies Act 2013 can furnish their GSTR-3B through electronic verification code (EVC), according to Department of Revenue, Ministry of Finance.

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## India Decides to Suspend Insolvency Filings For Six Months

To avoid a slew of fresh bankruptcy filings, the government has decided to suspend several provisions of the Insolvency and Bankruptcy Code, according to a senior government official.

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## TRAI recommends making interoperability of set top boxes mandatory

The Telecom Regulatory Authority of India (TRAI) on Saturday recommended that all DTH and cable set-top-boxes (STBs) provided to the customers support interoperability and urged the Ministry of Information and Broadcasting to make it mandatory by introducing the requisite provisions.

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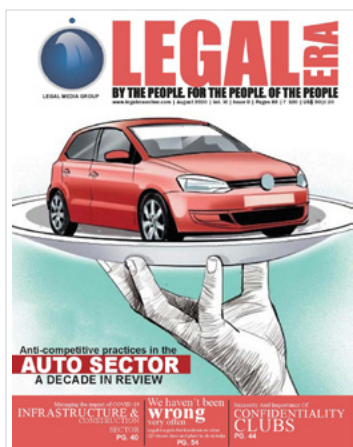
## COVID-19: Delhi HC Suspends Summer Break to Make up for Work Loss

Delhi High Court, decided to suspend its summer vacation this year, slated from 1-30 June, to make up for the loss of working hours due to the coronavirus pandemic lockdown.

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# AUTHORSHIPS

## The Firm's Thought Leadership



### Necessity and Importance of Confidentiality Clubs

Legal Era, August 2020

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Saya Choudhary  
Kapur,  
Partner



Devanshu Khanna,  
Senior Associate



Vrinda Bagaria,  
Associate



### IP Protection, Monitoring & Compliances remain Indispensable

Lex Witness, May 2020

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Sudeep Chatterjee,  
Partner



## Affordable access to Covid-19 drugs: Are voluntary patent licences here to stay?

Economic Times, May 2020

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Anusuya  
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## Pertinence of Patents in Thwarting the Pandemic (COVID-19)

Lex Witness, April 2020

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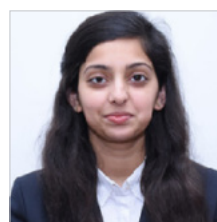
Surbhi Singh,  
Associate



## Traditional knowledge and contemporary trends

Lex Witness, March 2020

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Aishwarya Chaturvedi,  
Associate



## The Need for Regulation of Content of News Television Channels in India

Legal Era, January 2020

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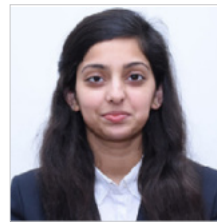
Luv Virmani,  
Associate



## Dance Moves and Copyright

Global IP Matrix, January 2020

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Aishwarya Chaturvedi,  
Associate



# ACCOLADES

## Recent Accomplishments



### IP STARS

IP STAR

2020

### Managing IP Stars

Tier 1  
Copyright & Related Rights

Tier 1  
Contentious Patent

Tier 2  
Contentious Trademark

Tier 3  
Trademark Prosecution

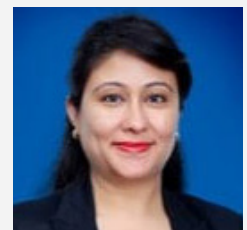
### IAM

Highly Recommended - Litigation

Saya Choudhary, Partner  
Recommended Individual - Litigation



Bitika Sharma, Partner  
Recommended Individual - Litigation



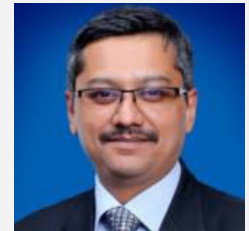


## Benchmark Litigation

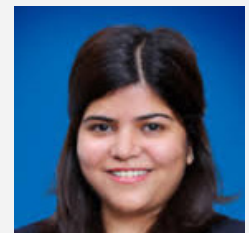
Tier 1  
Intellectual Property

Tier 4  
Competition/Antitrust

Litigation Star  
Sudeep Chatterjee, Partner



Future Star  
Saya Choudhary, Partner





# IP STARS

IP STAR

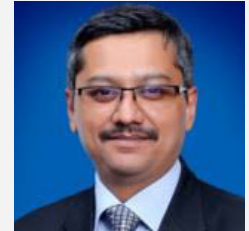
2020



## Managing IP Stars

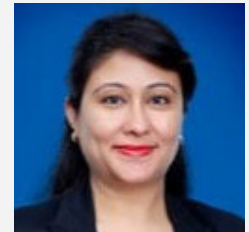
Trademark Star

Sudeep Chatterjee, Partner



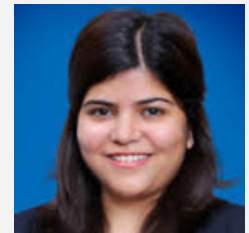
Patent Star

Bitika Sharma, Partner



Patent Star

Saya Choudhary, Partner



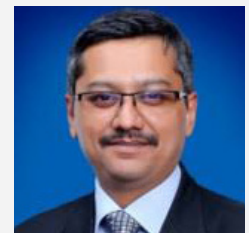
## WTR 1000

Recommended Firm

Enforcement & Litigation

Sudeep Chatterjee, Partner

Recommended Individual





## Chambers Asia Pacific Guide

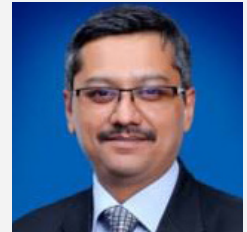
Band 3

Intellectual Property

Band 3

Sudeep Chatterjee, Partner

Litigation (Individual)



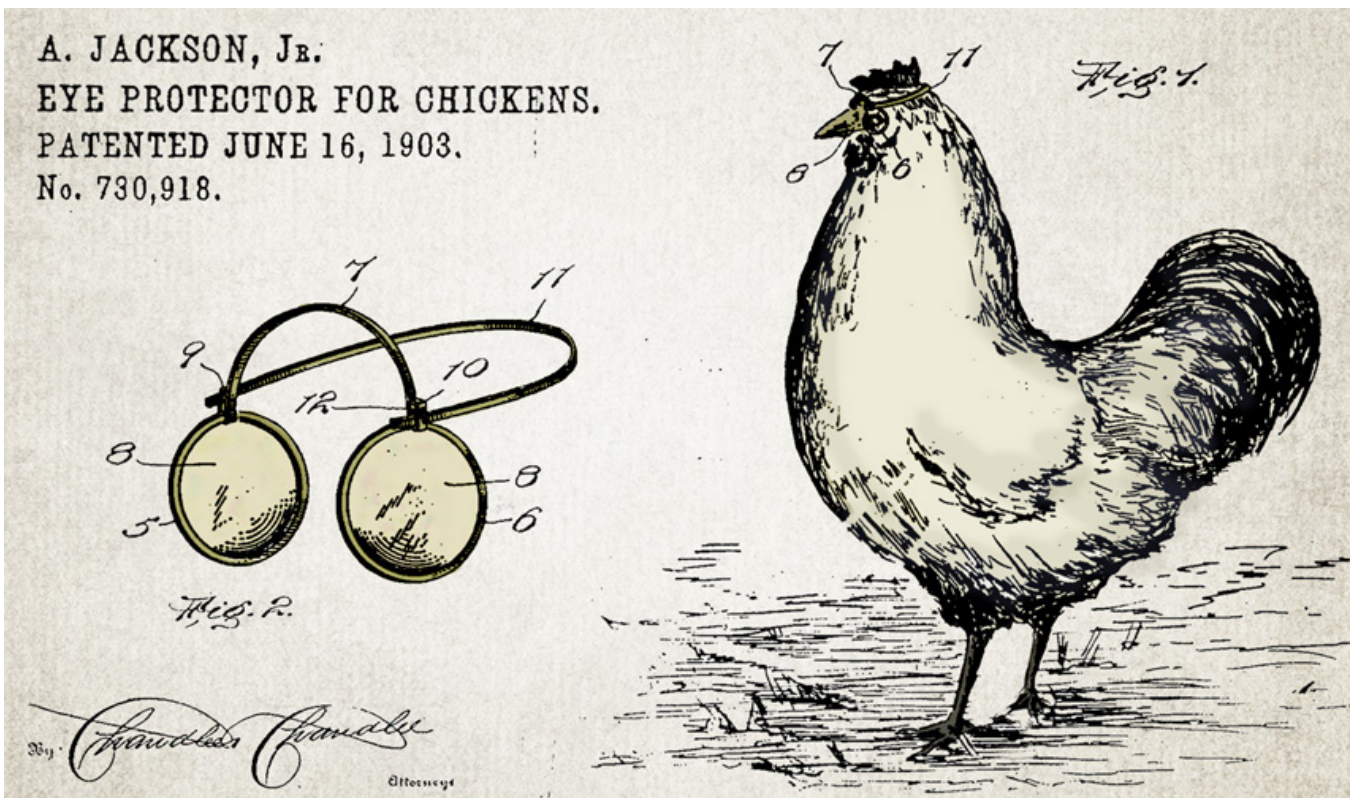
## Legal 500

Tier 2

Intellectual Property

# CANDID COUNSEL

## Off the Work-Track



Andrew Jackson Jr. patented the “Eye-protector for Chickens” in 1903. The invention was supposed to protect the eyes of chickens from other chickens “that might attempt to peck them”. To this day you can buy

slightly upgraded “Chicken eye glasses”.

The attorney tells the accused, “I have some good news and some bad news.”

“What’s the bad news?” asks the accused.

“The bad news is, your blood is all over the crime scene, and the DNA tests prove you did it.”

“What’s the good news?”

“Your cholesterol is 130.”

## NEED TO KNOW MORE?

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