

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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SUPER CASSETTES INDUSTRIES LTD. V. MYSPACE INC. 2011

AUTHORED BY - AMAN GOYAL

CASE NAME	Super Cassettes Industries Ltd. V. Myspace Inc.
PLAINTIFF	Super Cassettes Industries Ltd. Through: Mr Amit Sibal, Adv. with Mr Harsh Kaushik, Mr Rahul Ajatshatru, Mr Siddharth Silwal and Mr Shravanth Shankar, Advs.
DFENDANT	Myspace Inc. & Another. Through: Mr Rajender Kumar, Adv. With Ms Latha R. Nair and Mr Prashant Gupta, Adv.
CASE CITATIONS	2011 (48) PTC 49 (Del)
JUDGMENT DATED	29.07.2011
IN THE COURT OF	Hon'ble Justice Manmohan Singh
STATUTES AND PROVISIONS INVOLVED	The Information Technology Act, 2000 (79(1), 79(2), 79(3), 81) The Indian Penal Code, 1860 (Section 467) The Copyright Act, 1957 (Section 14, 51(a)(i), 51(a)(ii))

INTRODUCTION

The case was contended between T-Series, registered as ‘Super Cassettes Industries Ltd.’(Herein “**T-Series**” + “**Complainant-Respondent**” + “**Complainant-Plaintiff**”), which is a media house that owns copyrighted art such as motion picture and music, against Myspace Inc (herein “**Myspace**” + “**Defendants**” + “**Appellants**”), which is a US based social media website launched in 2003 and later sold to Justin Timberlake in 2011 where users could create accounts to share information and content free of charges. T-Series is a very litigious organization that actively utilizes contracts and suits to defend its copyrights to maximise monetization. In this instance T-Series instituted the suit against Myspace because user in

Myspace could share copyrighted content for free by logging into the social media website (<https://myspace.com/>). The complainant-plaintiff T-Series argues that their business is dependent upon the monetary exploitation of copyrights to support artists. The case was instituted before a single bench of Delhi High Court to adjudicate upon the use of music that was copyrighted with T-Series. In this instance the bench allowed the application of T-Series and directed the defendants, MySpace, to withdraw all the copyrighted content of the applicants and to diligently remove any such infringement before completion of 36 hours from uploading.¹ The single bench judgment of the 2011 case will later be set aside by the division bench of Justice S. Ravindra Bhat and Justice Deepa Sharma at Delhi High Court on 23rd January 2016 on the grounds of vagueness of directive.

For the benefit of this IRAC analysis we will compare both the ‘Single Bench Judgement of 2011’² and the ‘Division Bench Judgement of 2016’³

ISSUE(S)

ISSUE 1: Whether general awareness over actual knowledge of infringement suffices for liability u/s 51 of the Copyright Act?

2011: Sufficient

2016: Reversed

ISSUE 2: Whether the acts of the defendant-appellant are protected u/s 79 of IT Act, 2000?

2011: The acts of the defendant-appellant were not protected u/s 79 of the act since section 81 of the act has overriding effects.

2016: the Court took the view that proviso to Section 81 does not preclude the defence of safe harbour for an intermediary in case of copyright actions. Accordingly, it was held that Sections 79 and 81 of the IT Act and Section 51(a)(ii) of the Copyright Act must be read harmoniously.⁴

Section 51(a)(ii) reads “(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright

¹ Super Cassettes Industries Ltd. v. Myspace (2011) 48 PTC 49.

² *Ibid* 1.

³ My Space Inc. v. Super Cassettes Industries Ltd. (2016) SCC C.M. APPL.20174/2011.

⁴ My Space Inc. v. Super Cassettes Industries Ltd. (2016) SCC C.M. APPL.20174/2011 (¶40).

in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright;”⁵

The pertinent question of law in the subsequent section was whether general awareness of MySpace of the potential existence of suit upon utilization was complainants copyrighted material sufficient or whether MySpace required a more specific ‘knowledge’ under the section to deem there acts to be infringing.

The single judge bench observed that the protection could not have been granted since there was **apparent knowledge and due diligence** exercised post infringement, and “thus the exercise of due diligence after the infringement cannot operate in favour of the defendants to escape the liability.”⁶ The single-judge bench observed that the defendants were pleading “some helplessness” simply because they operated virtually was not acceptable since the law impacted the internet similarly.⁷

The single judge bench finally observed as remarks to the matter that:

“88. There is no reason to axiomatically make each and every work available to the public solely because user has supplied them unless the defendants are so sure that it is not infringement. If the defendants cannot exercise diligence of this nature, the necessary inferences can be drawn is that the defendants are making itself liable for infringement by its inactions to enquire about the source of the works at the appropriate stage.

89. Thus, even if the post infringement measures which may be acceptable in certain legal systems due to the specific legislations may not be hold good in India when the statute in India does not culls out any such exception as mitigating factor.”⁸

The division bench contradicted the position of law upholding the protection u/s 79 of the IT Act and accordingly interpreting the requirement of **actual knowledge** being **communicated by a competent authority** as an essential for Section 51(a)(ii) also by placing their reliance on ***Shreya Singhal case***⁹.¹⁰

⁵ Copyright Act, § 51(a)(ii), No. 98, Acts of Parliament, 1978 (Ind).

⁶ Super Cassettes Industries Ltd. v. Myspace (2011) 48 PTC 49 (¶85C).

⁷ Super Cassettes Industries Ltd. v. Myspace (2011) 48 PTC 49 (¶85D).

⁸ Super Cassettes Industries Ltd. v. Myspace (2011) 48 PTC 49 (¶88&89).

⁹ Shreya Singhal vs Union of India AIR 2015 SC 1523.

¹⁰ My Space Inc. v. Super Cassettes Industries Ltd. (2016) SCC C.M. APPL.20174/2011 (¶50).

The court observed the 'Red Flag Test' as devised in *Viacom Vs YouTube*¹¹ in US. The "red flag" test originates from statutory language that mandates an Online Service Provider (OSP) must not possess awareness of "facts or circumstances from which infringing activity is apparent."¹² This test encompasses both subjective and objective components. Subjectively, the OSP must be cognizant of the residence of the material on its system. Objectively, the test requires that the infringing activity would be evident to a prudent individual functioning under comparable conditions.¹³

The final remarks of the division bench of the subject were:

*"We agree that if a computer system operator learns of specific infringing material available on his system and fails to purge such material from the system, the operator knows of and contributes to direct infringement. ... Conversely, absent any specific information which identifies infringing activity, a computer system operator cannot be liable for contributory infringement merely because the structure of the system allows for the exchange of copyrighted material. Napster was held to possess actual knowledge that specific infringing material is available using its system which it could block access to the system by suppliers of the infringing material, and that it failed to remove the material. In a later decision, the US Supreme Court had occasion to consider the issue of copyright infringement in the context of software that had potentially infringing use. In *MGM Studios Inc v Grokster, Ltd* 545 US 913 (2005)¹⁴ the proper test in such cases was laid down: —We hold that one who distributes a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement, is liable for the resulting acts of infringement by third parties. || More relevant for the discussion in this case is the test indicated for discerning intent: —it has to be shown that the distributors of the program have advertised and/or otherwise induced its use for copyright infringement; if this intent can be shown, additional contributory aspects may be relevant. For example, *MGM et al.* had asserted that the defendants' refusal to incorporate protocols that would filter copyrighted materials from the file-sharing network constitutes an intent to*

¹¹ *Viacom International, Inc. V. YouTube, Inc.* 676 F.3d 19.

¹² 17 U.S. Code § 512 - Limitations on liability relating to material online.

¹³ Digital Millennium Copyright Act of 1998, REPT. 105–551 (Part – 2), 105th Congress 2nd Session (1998).

¹⁴ *MGM Studios Inc v Grokster, Ltd* 545 US 913 (2005).

promote copyright infringement. Justice Souter also noted that "...in the absence of other evidence of intent, a court would be unable to find contributory infringement liability merely based on a failure to take affirmative FAO(OS) 540/2011 Page 42 steps to prevent infringement, if the device otherwise was capable of substantial non infringing uses. Such a holding would tread too close to the Sony safe harbor."'¹⁵

REASONING

The crucial difference in reasoning between the Single-bench impugned order and the division bench judgement was the application of law, while the single judge bench judgement interpreted law to have overriding effect over one another the division bench was of the opinion that the provisions served different purposes and had to be read harmoniously. To reach this conclusion the 2nd bench had to deploy two tools of interpretation name (1) **Legislative intend** and (2) **Doctrine of Harmonious Construction**.

LEGISLATIVE INTEND

The phrase used by the courts to describe their examination of the historical records created when the relevant statute was being considered by the state or federal legislature is known as legislative intent. For e.g. the legislative intend for the constitution can be found in the constituent assemble debate. The Rules of Statutory Construction are frequently used by courts to decide how to correctly apply the statutory language to the particular facts of a case where an understanding of a legislative act is in question. The "cardinal" premise of statutory construction, according to the courts on a regular basis, is that the court must select the interpretation that comes closest to accomplishing the Legislature's goal.¹⁶

DOCTRINE OF HARMONIOUS CONSTRUCTION

The courts are required to prevent a conflict between provisions and to construe the opposing provisions in a way that harmonizes them; this doctrine states that a provision of the law should not be interpreted or construed on its own but rather as an entire document so as to remove any disparity or repugnancy. The goal of harmonious construction is to interpret the statute's enacting sections in a way that promotes cohesion and prevents any conflicts between them.

¹⁵ My Space Inc. v. Super Cassettes Industries Ltd. (2016) SCC C.M. APPL.20174/2011 (¶52).

¹⁶ Legislative Intend Service, INC, <https://www.legintent.com/what-is-legislative-intent/> (Last Visited: 08-08-2024).

This rule is based on the idea that the Legislature would never intend for a statute to contain two provisions that contradict one another since doing so would be self-contradiction.¹⁷

ANALYSIS

Internet Intermediaries are companies that facilitate communication and interaction of active users over the virtual mediums. Internet intermediaries play a pivotal role in enabling diverse activities through services provided over the multifaceted architecture of contemporary communications networks. This category encompasses entities such as search engines, social networks, internet service providers, website operators, hosts, and payment gateways. Collectively, these intermediaries wield significant and expanding influence on national and global economies, governments, and cultural landscapes.¹⁸ The definition of internet intermediaries is available in **section 2(1)(w) Information Technology Act, 2000** that defines "Intermediary" with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes.¹⁹

The Indian legal framework incorporates safe harbour provisions that aim to shield internet intermediaries from liability concerning third-party content, provided specific conditions are met, these specific conditions are enlisted in Section 79 of the IT Act, 2000.²⁰

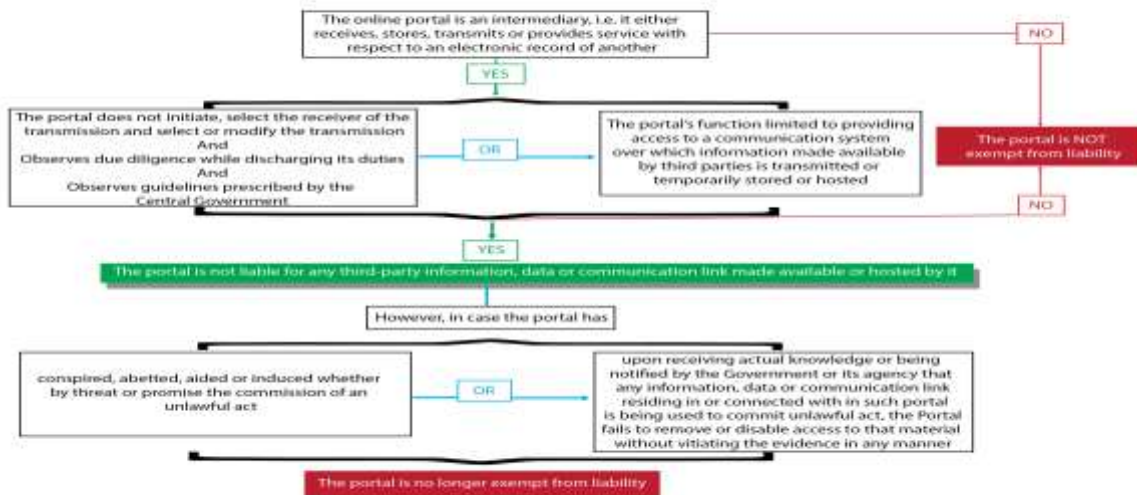
¹⁷ Aryan Tulsyan, *Harmonious Construction and the International Law Allegory in India*, CAMBRIDGE CORE BLOG, (Accessed on 08/08/24; at 6:24PM) <https://www.cambridge.org/core/blog/2022/11/23/harmonious-construction-and-the-international-law-allegory-in-india/> .

¹⁸ Riordan, J. (2016). *The Liability of Internet Intermediaries*.

¹⁹ IT Act 2000, § 2(1)(w), No. 21/2000, Acts of Parliament, 2000 (Ind).

²⁰ IT Act 2000, § 79, No. 21/2000, Acts of Parliament, 2000 (Ind).

Under what circumstances can an on-line service provider claim benefit of Safe Harbour?



A legal foundation for intermediaries is provided under **Section 79 of the Information Technology Act, 2000 (IT Act)**²¹, which outlines their obligations regarding content housed or transmitted over their platforms. This section seeks to protect online platforms from undue liability for content created by third parties while promoting the expansion of the digital economy.²² The "safe harbour" clauses established in this section shield intermediaries from accountability for any illegal content users may post or send through their services. Intermediaries must behave lawfully, engage in good faith, and refrain from creating or disseminating offensive content to be eligible for this protection.²³ **This content can be copyrighted content that has been posted without due consent and infringes the copyright of the holder.**

Once the Copyright Act becomes relevant the coherence of Section 79 with Section 51(a)(ii) of Copyright act becomes a legal question, the question that was ultimately addressed in this case.

CONCLUSION

The T-Series v. MySpace Inc. case is a noteworthy example of how internet intermediary liability is changing and how statutory interpretations are applied to modern digital disputes. In its initial ruling, the Single Bench Judgment of 2011 highlighted the strict responsibilities placed on intermediaries such as MySpace, stating that liability could not be discharged by

²¹ Ibid 20.

²² Asunka, A. *Advances in Multidisciplinary and scientific Research Journal Publication*, Internet Service Providers and Intermediary Liabilities (2022).

²³ Ibid 22.

post-infringement due diligence alone. This ruling emphasized the need for proactive steps to reduce the likelihood of infringement and was in line with the requirements of due diligence set forth by Indian copyright law.

In contrast, the Division Bench Judgment of 2016 integrated legal principles, namely the Doctrine of Harmonious Construction and Legislative Intent, to produce a more nuanced interpretation. This ruling expanded the safe harbor protections under Section 79 of the IT Act, 2000 to include MySpace, arguing that the establishment of contributory infringement liability requires real, specific knowledge given by a competent authority. This strategy is consistent with international legal viewpoints, especially the "Red Flag Test" that was applied in the *Viacom v. YouTube* case and the *MGM Studios Inc. v. Grokster, Ltd.* ruling.

The two benches' differing judgments highlight how difficult it is to strike a balance between copyright protection and the practicalities of online commerce, and the legal safeguards provided to intermediaries. The judiciary's changing position on intermediary obligations in the digital age is highlighted by the Division Bench's reliance on *Shreya Singhal v. Union of India*. This ensures a harmonic interpretation of overlapping statutory provisions to achieve legislative coherence and intent.

All things considered; this case perfectly captures the judicial difficulty of defending intellectual property rights without obstructing the operations of digital intermediaries. It also emphasizes the necessity of approaching the development of statutes with an eye toward the future, respecting the intentions of legislators as well as the ever-changing nature of technical advancements and the legal ramifications that follow.