

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19.09.2022

Date of decision: 10.10.2022

+ **CS (COMM) 400/2019 & I.A. 13800/2022**

WARNER BROS. ENTERTAINMENT INC

.....Plaintiff

Through: Ms.Suhasini Raina, Ms.R. Ramya
& Ms.Mehr Sidhu, Advs.

Versus

HTTP://WWW2.SERIES9.IO& ORS.

...Defendants

Through: Mr.Kirtiman Singh, CGSC with
Ms.Vidhi Jain, Advs. for D-26 &
D-27.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. The plaintiff has filed the present suit *inter-alia* praying for the following reliefs:

“52. In light of the foregoing, it is most respectfully prayed that this Hon’ble Court may be pleased to:

i. Issue an order and decree of permanent injunction restraining the Defendant No. 1 (and such other mirror/redirect/alphanumeric websites discovered to provide additional means of accessing the Defendant Website, and other domains/domain owners/website operators/entities which are discovered to have been engaging in infringing the Plaintiff's exclusive rights), its owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, from, in any manner hosting, streaming, reproducing, distributing, making available to the public and/or communicating to

the public, or facilitating the same, on their websites, through the internet in any manner whatsoever, any cinematograph work/content/programme/ show in relation to which Plaintiff has copyright,

ii. Issue an order and decree directing the Defendant Nos. 2-10, their directors, partners, proprietors, officers, affiliates, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, to block access to the Defendant No. 1 website identified by the Plaintiff in the instant suit (and such other mirror/redirect/alphanumeric websites discovered to provide additional means of accessing the Defendant Website, and other domains/domain owners/website operators/entities which are discovered to have been engaging in infringing the Plaintiff's exclusive rights)

iii. Issue an order directing the Defendant Nos. 11 and 12, to issue a notification calling upon the various internet and telecom service providers registered under it to block access to the Defendant No. 1 websites identified by the Plaintiff in the instant suit (and such other mirror/redirect/alphanumeric websites discovered to provide additional means of accessing the Defendant Website, and other domains/domain owners/website operators/entities which are discovered to have been engaging in infringing the Plaintiff's exclusive rights);

iv. Issue an order directing the Domain Name Registrars of the Defendant Website identified by the Plaintiff in the Plaintiff to disclose the contact details and other details about the owner of the said websites, and other such relief as this Hon'ble Court may deem fit and proper:"

2. The plaintiff claims itself to be a global entertainment company under the laws of the State of Delaware, the United States of America, and as being engaged in the business of creation, production and distribution of motion pictures. The plaintiff has also received certain

reputed awards, such as the Academy Award for '*Best Picture*' for the motion picture '*Argo*' in the year 2012.

3. It is the contention of the plaintiff that the motion pictures produced by the plaintiff, being works of visual recording and which include sound recordings accompanying such visual recordings, qualify to be a '*cinematograph film*' under Section 2(f) of the Copyright Act, 1957 (in short, 'the Act'). The plaintiff claims that this Court has jurisdiction by virtue of Section 13(1) read with Sections 13(2) and 5 of the Act. Since the plaintiff's cinematograph films are released in India, the cinematograph films of the plaintiff would be entitled to all the rights and protections granted under the provisions of the Act.

4. The claim of the plaintiff is premised on the allegation of illegal and unauthorized distribution, transmission and streaming of the Plaintiff's original content by the defendant nos. 1 and 51 (hereinafter referred to as the 'rogue websites'). It is the case of the plaintiff that as a result of the unauthorized transmission of their content, the rogue websites infringe upon the copyright of the plaintiff in the original works produced by it, which have been granted protection under the provisions of the Act.

5. The plaintiff has impleaded various Internet Service Providers (in short, 'ISPs') as the defendant nos. 2 to 10 and the concerned departments of the Government of India as the defendant nos. 11 and 12. The ISPs and the concerned departments have been impleaded for the limited relief of compliance with any directions of this Court granted in favour of the plaintiff.

6. The plaintiff has alleged that the defendant nos. 1 and 51 are the rogue websites. The plaintiff, vide an investigation conducted by an independent investigator, learnt of the extent of the infringing activity of the rogue websites, in as much as the rogue websites have infringed the plaintiff's copyright under the provisions of the Act in the original cinematograph films by streaming or hosting and/or by facilitating the use of the rogue websites, *inter alia* by downloading and streaming the plaintiff's original cinematograph films in which copyright vests.

6A. It is also the case of the plaintiff that a cease-and-desist notice was served on the rogue websites calling upon them to cease from engaging in their infringing activities. Despite the cease-and-desist notice, the rogue websites continue to infringe the copyright of the plaintiff in its original content.

7. The learned counsel for the plaintiff presses only for prayers in terms of paragraph nos. 52(i), (ii) and (iii), as noted hereinabove, of the plaint. The other reliefs as made in the plaint are not pressed.

8. The learned counsel for the plaintiff relies upon the judgment dated 10.04.2019 passed by this Court in a batch of suits, including *UTV Software Communication Ltd. & Ors. v. 1337X.to & Ors.*, 2019 SCC OnLine Del 8002, which dealt with the determination of rogue websites.

9. The plaintiff has filed I.A. 13800 of 2022 under Order XIII-A of the Code of Civil Procedure, 1908 (in short, 'CPC'), as applicable to commercial disputes, seeking a Summary Judgment.

10. The grounds for filing the above application, as enumerated by the plaintiff in the same, are as follows:

a. That all the defendants have been duly served by the plaintiff, however, only the defendant nos. 2, 7, 9, 11 and 12 have entered appearance before this Court.

b. That the defendant nos. 1 and 51 being the rogue websites, against whom the plaintiff is seeking primary relief, are illegally streaming the plaintiff's content on their websites and even after being duly served by the plaintiff, have decided not to contest the present suit.

c. That the rogue websites impleaded as the defendant nos. 1 and 51 have no real prospect of successfully defending the claim of copyright infringement under Section 51 of the Act and have further not chosen to contest the said claim.

d. Additionally, there is no other compelling reason why the present suit should not be disposed of before recording of oral evidence particularly in view of the fact that there is no dispute regarding the illegal activities of the defendant nos. 1 and 51 and in any event, in the absence of any challenge or opposition to the factual allegations made in the plaint, in view of the provisions of Order VIII Rule 5 of the CPC, there is no occasion for recording of oral evidence in the present matter.

11. The learned counsel for the plaintiff has further relied upon Clause 3 of Chapter XA of the Delhi High Court (Original Side) Rules, 2018 which states the grounds under which a Court can pass a Summary Judgment.

12. The learned counsel for the plaintiff has drawn my attention to the two affidavits filed by Mr. Manish Vaishampayan, who conducted the

investigation with regard to the aforesaid websites at the instance of the plaintiff, to contend that the said websites need to be treated as rogue websites. With respect to this contention, reliance is placed on the following documentary evidence in support of each of the aforesaid websites:

S.No.	Particulars	Court File Pagination along with Volume Number
1.	Print of Contact Details of various websites as available on WHOIS (primary domains):	
	1) 1)Series9.to (Defendant No. 1)	Pg. 255-256 Folder IV (Vol. 2)
	2)Series9.io (Defendant No.1)	Pg.317-318 Folder IV (Vol.2)
	3) Series9.ws (Defendant No. 51)	I.A. No. 18417/2019 Pg. No. 114-116
2.	Copies of proof of ownership of movie titles	
	a) Aquaman (Warner)	Pg.26-27 Folder IV (Vol.1)
3.	Screenshots of Homepage of various websites (primary domains):	
	1) Series9.to (Defendant No. 1)	Pg. 219-226 Folder IV (Vol. 2)
	2) 2) Series9.io (Defendant No. 1)	Pg. 276-277 Folder IV (Vol. 2)
	3) Series9.ws (Defendant No.51)	I.A. No. 18417/2019 Pg. No. 39-73

4.	Printout of proof of infringement by websites (primary domains):	
	1) Series9.to (Defendant No. 1)	Pg.227-254 Folder IV (Vol. 2)
	2) Series9.io (Defendant No. 1)	Pg.285-316 Folder IV (Vol. 2)

13. I have heard the learned counsel for the plaintiff.

14. In *UTV Software* (supra), this Court, as far as rogue websites are concerned, identified the following illustrative factors to be considered in determining whether a particular website falls within that class:

“59. In the opinion of this Court, some of the factors to be considered for determining whether the website complained of is a FIO/L/Rogue Website are:-

a. whether the primary purpose of the website is to commit or facilitate copyright infringement;

b. the flagrancy of the infringement, or the flagrancy of the facilitation of the infringement;

c. Whether the detail of the registrant is masked and no personal or traceable detail is available either of the Registrant or of the user.

d. Whether there is silence or inaction by such website after receipt of take down notices pertaining to copyright infringement.

e. Whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright;

f. Whether the owner or operator of the online location demonstrates a disregard for copyright generally;

g. Whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;

h. whether the website contains guides or instructions to circumvent measures, or any order of any court, that disables access to the website on the ground of or related to copyright infringement; and i. the volume of traffic at or frequency of access to the website;

j. Any other relevant matter.

60. This Court clarifies that the aforementioned factors are illustrative and not exhaustive and do not apply to intermediaries as they are governed by IT Act, having statutory immunity and function in a wholly different manner.

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69. Consequently, the real test for examining whether a website is a Rogue Website is a qualitative approach and not a quantitative one.”

15. This Court, in *UTV Software (supra)* further held as under:

“29. It is important to realise that piracy reduces jobs, exports and overall competitiveness in addition to standards of living for a nation and its citizens. More directly, online piracy harms the artists and creators, both the struggling as well as the rich and famous, who create content, as well as the technicians-sound engineers, editors, set designers, software and game designers-who produce it and those who support its marketing, distribution and end sales. Consequently, online piracy has had a very real and tangible impact on the film industry and rights of the owners.

30. The Indian Copyright Act, 1957 (“the Copyright Act”) confers a bundle of exclusive rights on the owner of a “work” and provides for remedies in case the copyright is infringed.

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34. The above definitions make it clear that making any work available for being seen or heard by the public whether simultaneously or at places chosen individually, regardless of whether the public actually sees the film, will constitute communication of the film to the public. The intent was to include digital copies of works, which would include within its scope digital copies of

works being made available online (as opposed to the physical world). Communication can be by various means such as directly or by display or diffusion. In this context, definition of “broadcast” is also relevant which identifies communication to public by wireless diffusion or by wire. Thus, making available of a film for streaming or downloads in the form of digital copies on the internet is within the scope of “communication to the public”.

35. It is pertinent to note that the definition of “communication to the public” was first added in the Copyright Act by the 1983 Amendment and was as follows:-

“Communication to the public” means communication to the public in whatever manner, including communication through satellite”.

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53. Also should an infringer of the copyright on the Internet be treated differently from an infringer in the physical world? If the view of the aforesaid Internet exceptionalists school of thought is accepted, then all infringers would shift to the e-world and claim immunity!

54. A world without law is a lawless world. In fact, this Court is of the view that there is no logical reason why a crime in the physical world is not a crime in the digital world especially when the Copyright Act does not make any such distinction.

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80. In the opinion of this Court, while blocking is antithetical to efforts to preserve a “free and open” Internet, it does not mean that every website should be freely accessible. Even the most vocal supporters of Internet freedom recognize that it is legitimate to remove or limit access to some materials online, such as sites that facilitate child pornography and terrorism. Undoubtedly, there is a serious concern associated with blocking orders that it may prevent access to legitimate content. There is need for a balance in approach and policies to avoid unnecessary cost or impact on other interests and rights. Consequently, the onus is on the right holders to

prove to the satisfaction of the Court that each website they want to block is primarily facilitating wide spread copyright infringement.

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82. One can easily see the appeal in passing a URL blocking order, which adequately addresses over-blocking. A URL specific order need not affect the remainder of the website. However, right-holders claim that approaching the Court or the ISPs again and again is cumbersome, particularly in the case of websites promoting rampant piracy.

83. This Court is of the view that to ask the plaintiffs to identify individual infringing URLs would not be proportionate or practicable as it would require the plaintiffs to expend considerable effort and cost in notifying long lists of URLs to ISPs on a daily basis. The position might have been different if defendants' websites had a substantial proportion of non-infringing content, but that is not the case.

84. This Court is of the view that while passing a website blocking injunction order, it would have to also consider whether disabling access to the online location is in the public interest and a proportionate response in the circumstances and the impact on any person or class of persons likely to be affected by the grant of injunction. The Court order must be effective, proportionate and dissuasive, but must not create barriers to legitimate trade. The measures must also be fair and not excessively costly (See: Loreal v. Ebay, [Case C 324/09]).

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86. Consequently, website blocking in the case of rogue websites, like the defendant-websites, strikes a balance between preserving the benefits of a free and open Internet and efforts to stop crimes such as digital piracy.

87. This Court is also of the opinion that it has the power to order ISPs and the DoT as well as MEITY to take measures to stop current infringements as well as if justified by the circumstances prevent future ones.”

16. It is notable that the plaintiff, in a similar batch of suits, including **Warner Bros. Entertainment INC v. <https://skymovies.live> and Others**, 2022 SCC OnLine Del, wherein judgment was pronounced on 08.09.2022, had filed an application under Order XIII-A of the CPC, as applicable to commercial disputes, wherein this Court relying on the judgment in **UTV Software** (supra) has passed a Summary Judgment and decreed the suits in favour of the plaintiff.

17. In the present Suit as well, vide order dated 05.08.2019, this Court had granted an *ex-parte ad-interim* injunction against the defendant no. 1 (and such other domains/domain owners/website operators/entities which are discovered during the course of the proceedings to have been engaging in infringing the plaintiff's exclusive rights), their owners, partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, restraining them from, hosting, streaming, reproducing, distributing, making available to the public and/or communicating to the public, or facilitating the same, in any manner, on their websites, through the internet any cinematograph work/content/programme/ show in relation to which plaintiff has copyright.

18. This Court had further directed the defendant nos. 2 to 10 to block the domain name '*Series9*' and its URLs as mentioned in the table below-

Domain	URLS	IP Addresses
series9.io	https://www2.series9.io	104.25.206.11 104.25.207.11

Series9.to	https://www2.series9.to/	104.26.6.177 104.26.7.177
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19. This Court further directed the defendant nos. 11 and 12 to suspend the above-mentioned domain name registration of the defendant No. 1 and to issue requisite notifications calling upon various ISPs and telecom service providers registered under them to block the aforementioned website identified by the plaintiff within five working days.

20. The learned counsel for the plaintiff submits that pursuant to the *ex-parte ad-interim* order dated 05.08.2019, the defendant no. 11 has issued the requisite notification. The learned counsel for the plaintiff further states that the defendant nos. 2 to 10 have blocked the defendant no. 1's rouge websites. This Court had also passed the following direction in its order dated 05.08.2019:

“21. Further, as held by this court in UTV Software Communication Ltd. (supra), in order for this court to be freed from constant monitoring and adjudicating the issues of mirror/redirect/alphanumeric websites it is directed that as and when Plaintiff file an application under Order I Rule 10 for impleadment of such websites, Plaintiff shall file an affidavit confirming that the newly impleaded website is mirror/redirect/alphanumeric website with sufficient supporting evidence. Such application shall be listed before the Joint Registrar, who on being satisfied with the material placed on record, shall issue directions to the ISPs to disable access in India to such mirror/redirect/alphanumeric websites”.

21. In light of the aforesaid direction, the plaintiff filed the subsequent application under Order I Rule 10 of the CPC for the impleadment of the defendant no.51, that is, I.A. 18417 of 2019 in the present suit proceedings, which was allowed by the Court and the *ex-parte ad-interim* order dated 05.08.2019 was thereby extended to the defendant no. 51, vide order dated 24.12.2019.

22. On 13.07.2022, the Court allowed the defendant no. 12's application, that is, I.A. 15810 of 2019 seeking deletion from the array of parties and the plaintiff has not prayer relief against the defendant no.12 in the present Suit.

23. Thereafter, on 06.09.2021, the learned Joint Registrar (Judicial), passed the following order in regard to rogue websites, that is, the defendant nos.1 and 51 :-

“All of the contesting defendants against whom substantial relief has been sought by the plaintiff have been served, however they have not preferred to appear to contest this case or to file written statement and affidavit of admission/denial of documents. In this regard law shall take its own course.

Learned counsel for plaintiff submits that there is no document for admission/denial of documents. Hence, pleadings stand complete.

Other defendants who were supposed to comply with interim directions have already complied with.”

24. Since the defendant nos. 1 and 51 are not appearing, despite notice, in my opinion, the suit can be heard and decided summarily. The defendant nos. 1 and 51 have no real prospect of successfully defending the claim of copyright infringement and have further not chosen to contest the said claim. The present matter is mainly concerned with

enforcement of the injunction orders which are passed against the rogue websites who do not have any defense to the claim of copyright infringement but use the anonymity offered by the internet to engage in illegal activities, such as copyright infringement in the present case. This is a fit case for passing a Summary Judgment invoking the provisions of Order XIII-A of the CPC, as applicable to the commercial disputes, read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

25. In the present case, applying the test as laid down in *UTV Software (supra)*, and considering the documents filed and the averments made in the plaint, which remained uncontroverted, it has to be held that the defendant no. 1 and 51 are 'rogue websites', with their primary purpose being to commit and facilitate infringement of the copyright of the plaintiff. The plaintiff is therefore, held entitled to a decree in terms of prayers made in paragraph no. 52(i), (ii) and (iii) of the plaint.

26. In *UTV Software (supra)*, the Court also examined the issue of grant of dynamic injunctions and permitted subsequent impleadment of mirror/redirect/alphanumeric websites which provide access to the rogue websites, by filing an application under Order I Rule 10 of the CPC before the learned Joint Registrar (Judicial) along with an affidavit with supporting evidence, confirming that the proposed website is mirror/redirect/alphanumeric website of the injuncted defendant websites. At the request of the counsel for the plaintiff, the same directions are liable to be made in this case also.

27. Accordingly, I.A. No. 13800 of 2022 under Order XIII-A of the CPC, as applicable to commercial disputes, seeking a Summary Judgment is allowed. All the pending applications are also disposed of.

28. The suit is decreed in terms of prayers given in paragraph no. 52(i), (ii) and (iii) of the plaint. Pursuant to the deletion of the defendant no. 12, the prayer (iii) of the plaint is being decreed in favour of the plaintiff and against only the defendant no. 11. The plaintiff is also permitted to implead any mirror/redirect/alphanumeric websites which provide access to the defendants nos. 1 and 51's websites by filing an appropriate application under Order I Rule 10 of the CPC, supported by affidavits and evidence as directed in *UTV Software* (supra). Any website impleaded as a result of such application will be subject to the same decree.

29. Let a decree sheet be drawn up accordingly.

OCTOBER 10, 2022/AB

NAVIN CHAWLA, J.

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