

NATIONAL LAW UNIVERSITY, DELHI

LL.M., Semester-II (Batch of 2021)

End Semester Examinations, April-2022

Paper: Comparative Copyright Law

Time: 3 Hours

Total Marks: 50

Instructions:

1. This is an open book exam. The students are allowed to bring and use any of the reading materials distributed as part of the course. However, no materials will be supplied by the university during the exam and the students cannot borrow reading materials from other students during the exam.
2. All questions are compulsory.
3. No clarification shall be sought on the question paper.
4. Questions may be a fictionalised composite of several events. While some of the statements are based on actual events, some of them are purely fiction. If you happen to know some aspects of the actual events that are inconsistent with the narrative given in the questions, please ignore that knowledge while writing your answers.

1. *Selena: The Series* is a biographical television series on the life and tragic death of the famous Tejano singer Selena. It was released globally (including India) on Netflix in 2020 over two seasons and has 18 episodes. It was created by Moisés Zamora. The series covered in extensive detail Selena's rise to fame and also the sacrifices she and her family had to face. It also covered in detail her relationship with Yolanda Saldivar, the former president of her fan club and the manager of Selena Etc. boutiques, who eventually killed her.

- a. Sreenivas Shinde, a famous Bollywood director, directed and wrote the script for a Hindi movie titled *Gaana* in 2021. The movie was produced by Green Chillies Entertainment Company and it was released on the OTT platform Amazon Prime for the global audience in January 2022. The movie told the story of a girl who was born in a remote village in Rajasthan. It showed in detail how despite economic hardships and many social challenges, she and her family pursued her dream of becoming a famous Bollywood singer. The climax of the movie showed the heroine in the movie getting killed by the manager of her fan club in India. The producers of *Selena: The Series* consider the Bollywood movie (*Gaana*) as an infringement of their copyright in *Selena: The Series*. Please prepare an advisory note for the producers of *Selena: The Series* on the probabilities of success of a copyright infringement action, based on settled principles of law and relevant case-laws. Please also advise on the appropriate jurisdiction for initiating the litigation, if your note is in favour of initiating a copyright infringement action. If additional evidences are required on any of the aspects, you may specifically seek those evidences through the advisory note. **(10 Marks)**

- b. Manju Nathyani is a film critic who provides extensive reviews on new movies through her YouTube channel. When the movie *Gaana* was released, she reviewed the movie and her critical review included several clippings from *Selena: the Series* as well as the movie *Gaana*. The primary objective of using the clippings from both the series and the movie were to illustrate the similarities between both. While some clippings were less than 2 minutes, some of the clippings used in her review were of 5-7 minutes duration. She used different software tools available online to take clippings from the movie as well as the series. Sreenivas Shinde and the Green Chillies Entertainment Company are very upset by the critical review of the movie by Manju Nathyani and they would like to initiate a copyright infringement suit against Manju Nathyani. Please prepare an advisory for Manju Nathyani, based on settled principles and relevant case-laws under Indian copyright law and the US copyright law. **(15 Marks)**

P.T.O.

2. The 161st report of the Department Related Parliamentary Standing Committee on Commerce titled 'Review of the Intellectual Property Rights Regime in India' was presented to the Rajya Sabha on 23rd July, 2021. One of the specific observations in the report reads as follows:

"The Committee notes that the relevance and utility of cutting edge technologies such as Artificial Intelligence (AI) and machine learning would increase manifold in the present world especially in the times of Covid-19 pandemic wherein the digital applications are playing a crucial role in responding to the crisis. Moreover, the huge benefits of AI and its applications in India's revenue generation and economy as well as its impact on technological innovation necessitate its expansion in a secured manner. In view of this, the Committee recommends that a separate category of rights for AI and AI related inventions and solutions should be created for their protection as IPRs. It further recommends that the Department should make efforts in reviewing the existing legislations of The Patents Act, 1970 and Copyright Act, 1957 to incorporate the emerging technologies of AI and AI related inventions in their ambit."

The Action Taken Report on the recommendations of the Parliamentary Standing Committee, submitted to the Rajya Sabha on April 6, 2022, has further emphasized on this aspect:

"...[G]ranteeing proprietary rights to AI innovators and protecting AI driven innovations by enforcing regulations and standards in the country should be the way forward. The Committee, therefore, recommends that the Department should channelise efforts to encourage and empower AI innovators by enacting suitable legislations or modifying the existing laws on IPR in order to accommodate AI based inventions."

In view of the recommendations of the committee, critically analyse the following:

- a. Can AI generated works (works which are produced by AI without any human intervention) be protected under the current provisions of Indian copyright law and the US copyright law? What are the key legal challenges for protecting AI generated works under current copyright laws in India and the US? **(10 Marks)**

- b. Should AI generated works be protected under copyright law? Please answer this question in the light of insights drawn from fairness theory, personality theory and incentive theory. **(15 Marks)**