



\$~30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 234/2024 & I.A. 6322/2024**

WARNER BROS. ENTERTAINMENT INC. & ORS. Plaintiffs

Through: Mr. Saikrishna Rajagopal,
Ms. Suhasini Raina, Ms. R. Ramya,
Ms. Anjali Agrawal, Mr. Raghav
Goyal, Ms. Mehr Sidhu, & Mr.
Ayush Saxena, Advocates

versus

DOODSTREAM.COM & ORS. Defendants

Through: Mr. K. S. Elangovan, Mr. Venkatesh
Mohanraj, & Mr. Sameer Aslam,
Adv. for D-5 & 6

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

ORDER
18.03.2024

%

I.A. 6321/2024 (seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 ('CPC') as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.
3. Accordingly, the present application is disposed of.

I.A. 6319/2024 (exemption from filing certified, typed copies)



1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance before the next date of hearing.
3. Accordingly, the present application is disposed of.

I.A. 6318/2024 (exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.*, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.
2. Accordingly, the application stands disposed of.

CS(COMM) 234/2024

1. Let the plaint be registered as a suit.
2. Upon filing of process fee, issue summons to the defendants by all permissible modes. Summons shall state that the written statements be filed by the defendant within 30 days from the date of receipt of summons. Along with the written statements, the defendants shall also file affidavit of admission/denial of plaintiffs' documents, without which the written statement shall not be taken on record. Liberty is given to plaintiffs to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiffs, affidavits of admission/denial of documents filed by the defendant, be filed by plaintiffs, without which the replications shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.



3. List before the Joint Registrar for marking of exhibits on 22nd May, 2024.
4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 6320/2024 (seeking leave to file documents in a CD/pen drive)

1. This application has been filed by plaintiffs seeking permission to place on record CD/pen-drive containing video clips of defendants' infringing activities.
2. In facts and circumstances as stated in the application, the same is allowed. The CD/pen-drive be taken on record.
3. Application stands disposed of accordingly.

I.A. 6317/2024 (under Order XXXIX Rule 1 & 2 CPC)

1. This application has been filed as part of the suit filed by plaintiffs against defendants seeking *inter alia* decree of permanent injunction against defendant nos. 1 to 3, its operators, owners, partners, and all others acting for and on their behalf, in any manner facilitating uploading, hosting, streaming, reproducing, distributing, making available to the public through their platforms/websites any cinematographic work/content/programme in relation to which plaintiffs own the copyright and other attendant reliefs.
2. Plaintiffs are amongst the leading entertainment companies known for creation, production, and distribution of motion pictures and cinematograph films which constitute plaintiffs' protected works under the Copyright Act, 1957 ('**the Act**') over which they have exclusive rights. Plaintiffs plead that no other entity can, without license and authorization from them to upload, stream, disseminate, communicate their content in any manner whatsoever,



through any transmission, platform including the internet. The list of plaintiffs is as under:

PLAINTIFF	PARTY
Plaintiff no.1	Warner Bros. Entertainment Inc.
Plaintiff no.2	Amazon Content Services LLC
Plaintiff no.3	Columbia Pictures Industries, Inc.
Plaintiff no.4	Disney Enterprises, Inc.
Plaintiff no.5	Netflix US, LLC
Plaintiff no.6	Paramount Pictures Corporation
Plaintiff no.7	Universal City Studios Productions LLP
Plaintiff no.8	Apple Video Programming LLC

3. Grievance of plaintiffs is against defendant nos. 1 to 3 (*Doodstream.com*, *doodstream.co* and *dood.stream* respectively along with cognate websites) who, they claim, are ‘*rogue cyberlocker websites*’. According to Mr. Saikrishna Rajagopal, counsel for plaintiffs, these rogue cyberlocker websites provide an infrastructure specifically designed to incentivise hosting, uploading, storing, sharing, streaming, and downloading of copyrighted material unauthorisedly (**‘illegal content’**). Defendant no.4 is the ‘*server*’ of defendant nos. 1 to 3 which facilitates storing and dissemination of illegal content.

4. Counsel for plaintiffs pointed out to previous order in relation to rogue cyberlocker websites *inter alia* in *Universal City Studios LLC. & Ors. v. Mixdrop.co & Ors. CS(COMM) 663/2023*, order dated 2nd May, 2023 of a coordinate bench of this Court. Various aspects relating to the mechanism adopted by these rogue cyberlocker websites are usefully narrated in the said order from paragraph 23 to 29, which this Court has perused today.



5. In essence, plaintiff pleads that these rogue cyberlocker websites *inter alia* defendant nos. 1 to 3 have created platforms which allow users to sign in and create their own dashboard through which they are permitted to upload content. The said content then becomes part of a '**library of content**' which allows a global search to access it by other viewers. **First issue** which arises in this regard is '**the nature of content uploaded by such users**'. Plaintiffs have stated that massive amount of infringing content, on which they have exclusive right, is uploaded by users on defendants' websites. Evidence of this has been placed on record as part of documents filed along with the plaint.

6. Counsel for plaintiffs states that they approached defendants upon noticing these infringing contents, first in June, 2023, after they discovered the identity as to who was operating these websites, who happen to be individuals based in Coimbatore, Tamil Nadu, India, arrayed as defendant nos. 5 and 6. This, according to plaintiffs' counsel, was achieved after some effort since the **WHOIS** details of defendant nos. 1 to 3 were masked.

7. There was also a previous order by the Judicial Tribunal in Paris in **National Federation of Film Publishers & Ors. v. S.A. Societe Francaise Du Radiotelephone – SFR**, No. RG 23/06569, Portalis no. 352J-W-B7H-CZ3Z2, decision dated 6th July, 2023 which directed internet service providers to block access to said defendants in the territory of France.

8. Aside from this, plaintiffs pursued the defendants for taking down the infringing contents by notifying them of the listings from time to time, however, despite promises to comply, it was found that the mechanism itself, which was embedded as part of the infrastructure of defendants' websites, permitted generation of a new link the moment the takedown took place. Further, uploaded content would also generate a link which could be



disseminated by the uploader and therefore, potentially could be disseminated through parallel websites. Thus, as per counsel for plaintiffs, the takedown itself was elusive and of no effect, since the system immediately permitted generation of a new link. He thereby submits that it became a hydra-headed monster which made it difficult to police through only takedown measures.

9. We also have the benefit of plaintiffs' experts namely, Mr. Daniel Seymour, Director of BCGuardian LLP, Washington DC, USA, who appears through video conferencing, and Mr. Nikhil Kumar Gakhar, Lead, Protection & Research for MarkScan who is present in Court today. What differentiates, according to them, the defendants' websites from rogue cyberlocker websites, is that they are not simply an aggregator of user uploaded content but allow uploading without any filter and takedown request is immediately subverted by generation of a new link. It is further stated by the experts that the contents on defendants' websites is both of non-adult nature and adult nature (pornographic). As regards the non-adult content of which a sample of 500 links was assessed by the experts/by an investigator, 37% of the same was found to be belonging to plaintiffs, thereby infringing their copyright. It is also stated that, aside from that 37%, rest of the content also *prima facie* seems to be infringing content since a bare perusal of content would show that it is copyrighted material, although owner of those copyrighted content are not before us today.

10. What Mr. Rajagopal asserts is an application of the parameters and guidelines delineated by this Court in decision of *UTV Software Communication Ltd. & Ors. v. 1337x.to and Ors.*, 2019:DHC:2047 for dealing with rogue websites/Flagrantly Infringing Online Locations ('FIOLs') to qualitatively assess whether the nature of such websites is that



of flagrant violators.

11. Mr. Rajagopal, therefore, insists on a complete blocking of the domains and/or appointment of a Local Commissioner to takeover administration of said websites.

12. However, Mr. K. S. Elangovan, Mr. Venkatesh Mohanraj, counsel appearing on advance notice on behalf of defendant nos. 1-3, 5&6, state on instructions that defendant nos. 1 to 3, 5&6 are ready to comply with complete takedown in entirety of plaintiffs' infringed material exhaustively and completely from their platforms.

13. On a concern expressed pursuant to plaintiffs' contention that this undertaking would simpliciter not account for regeneration of links and uploading of infringing content again, counsel for defendant nos. 1 to 3 (and 5&6) have further undertaken, on instructions, that they would also take down tabs/features which allow regeneration of links leading to availability of infringing content and any other feature on defendants' websites allowing uploaders to reload/redistribute infringing content. They have further assured that they will take instructions in relation to concerns as narrated above and ensure that infringing content of any sort and of any party will not be permitted to be hosted or transmitted through their websites and, in any event, will change the features on their websites' architecture to ensure that once the process of takedown is complete (either through a party's information or through a Court's order) regeneration cannot be allowed. They seek to place a reply to this application; same may be filed before the next date before this Court with copies to opposing sides.

14. In view of the undertaking by counsel for defendant nos. 1 to 3 (and 5&6), following directions are passed in the interim:

a. Defendant nos. 1 to 3, 5&6 shall take down, within 24 hours, all



listings of plaintiffs' infringing contents which will be communicated to them in writing/email through counsel for plaintiffs. This communication will be *inter se* counsel, i.e. from plaintiffs' counsel to defendants' counsel so that it is responsibly received and promptly executed;

- b. Defendant 1 to 3, 5&6 shall disable all features which allow regeneration of links and reuploading of infringing content post takedown *inter alia* the following features - removal of the “**generate link**” and “**disable download link (protected option)**” tabs;
- c. Defendant 1 to 3, 5&6 shall file an affidavit disclosing revenues generated, **duly certified by Chartered Accountant**, from the time of launch of said websites till date; same shall be filed along with replies to present application;
- d. Defendant 1 to 3, 5&6 shall file on affidavit in a tabulated fashion – *firstly*, number of requests for de-listing which they have received from any entity whatsoever, **including plaintiffs herein**, indicating details of content that was requested to be de-listed; and *secondly*, whether said content was available on their platforms/websites at any point thereafter, i.e., post the takedown sought for.

15. Plaintiffs will be permitted to monitor takedown of their infringing listings which they had communicated in the past and will communicate hereinafter, i.e., pursuant to this order, to the defendants. For this purpose of monitoring, plaintiffs' investigator's account [**Username: skullshot123; Email ID: skullshot13@gmail.com**] shall be made active on defendants'



platforms so that they are allowed to be monitored by plaintiffs. All aspects including '*global search feature*' access will continue to remain active with plaintiffs' investigator and will not be disabled by defendant 1 to 3, 5&6. Needless to state that in case any violation of the orders or non-compliance is found, plaintiffs will be at liberty to approach this Court in that regard.

16. List on 8th April, 2024.

17. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 18, 2024/sm/sc