

*Roll No. ....*

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

*Total number of printed pages : 7*

*NOTE : Answer ALL Questions.*

1. Read the following case study and answer the questions given at the end :

The Music no. 1 is a music company operating from Mumbai. The Company initially started with creating musical work and recording. Later as their popularity chart increased, they started venturing into film production, direction, recording of audio and video musical contents for the Bollywood industry. The Company is known for producing some of the best classical movies as well as modern movies. It becomes the number one company in the film industry in terms of creative contents, revenue generation and popularity charts. In all the work created under their banner they claim to be the owner of the copyright in the repertoire of songs, cinematography films, sound recordings etc. It claims to have created around 10000 Hindi Non film songs and around 30000 songs in regional languages. The company admits that their business is largely dependent upon the exploitation of its copyright. The said copyright exploitation enables the plaintiff to sustain its creative activities, thereby giving opportunities to many talents including composers, artists, singers, etc. The plaintiff states that the monetary gains arising from copyright exploitation further empowers it with financial strength to carry on its business of film making.

The infringements of such works of the plaintiff, thus, causes royalty losses to the plaintiff and are responsible for the loss in the business of the plaintiff. The plaintiff claims that the copyright exploitation of the works is done by the licensing system whereby the company gives public performance licences to the parties who in turn give the necessary royalty.

The **share.com** is stated to be a social networking and entertainment website which offers a variety of entertainment applications including sharing, viewing of music, images, cinematograph works having its base in the United States of America and operates from there. Mr. XYZ is the owner of the share.com. As per the Company, the share.com website as a place for friends and projects its website as a place to upload pictures and videos. The said website provides country specific content and is one of the most popular social networking and content sharing website in the world. The company contends that the share.com's basic point of attraction in running this website is to make available the multimedia content including songs, pictures, clips which can be seen and shared by the user over the internet space. The said website not only includes recently released infringing material but also the material which has not yet been released or is authorized for broadcast through the authorized distribution channels. The features of the website are being described as that the user or visitor need not subscribe to the website in order to enable him to search and view the video on the same. But for the purposes of uploading a video on to the website, the user is required to subscribe and create a user profile. It is also pointed out in the plaint that when a user in India visits the said website the said user is immediately forwarded to India centric version of the website namely in.share.com which is catering to the Indian community. The company states that the website contains the additional features and instructions which encourages the users and enables them to learn how to share videos. These additional functions create additional unauthorized copying, electronically store, transmit the content that infringes the rights of the others including the company. The website of the website is stated to also generate revenue by offering of this illegal content/infringing works. The said revenue is made through the medium of advertisements being displayed on each webpage. The whole business of the website is specifically depend upon authorizing free uploading and then distributing the content through downloading or streaming content to end users. The complaint of the company emerges from

: 3 :

the kind of business model adopted by the website wherein it states that the songs, cinematograph works including the ones which are for new movies or upcoming movies distributing which the company earns its revenue and completes its cost of film making gets deprived due to illegal dissemination of the songs, cinematographs works by the website whereby the website encourages and authorizes the users to share these contents and the end users are benefitted with the said songs and films free of charge by in turn distribution by the defendants to the public at large.

The plaintiff has stated that in the year 2007 a non-disclosure agreement was signed between the company and the website owner and thereafter there were in talks with the website whereby they were called upon to take the licences from the company. But, the talks broke down and the XYZ rather offered the company to go for registration of rights management tool programmed by way of email dated January 18, 2008. However, the company then gave a legal notice on February 22, 2008 informing the XYZ about its rights. The reply to the notice of the company by the defendants was issued on March 12, 2008 wherein the XYZ on behalf of website assumed that the content of the company's copyright has been taken down and also that the same shall not be made available on the website in future. However, in December 2008, it was realized by the company that the website have not removed the said infringing material from the website.

Therefore, the Company filed the present suit feeling dissatisfied with the assurances of the XYZ and sought the interim reliefs from this court to the following terms :

- (i) Grant an order of permanent injunction restraining the defendants, their officers employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from reproducing, adapting, distributing, communicating, transmitting, disseminating or displaying on their website www.share.com or any sub-domain thereof or otherwise infringing in any manner the cinematograph films, sound recordings and/or the underlying literary or musical works in which the plaintiff owns exclusive, valid and subsisting copyright(s).

: 4 :

- (ii) Grant an order of permanent injunction restraining the defendants, their officers, employees, agents, servants and representatives and all others acting on their behalf and in active concert or participation with them or any of them from causing, contributing to, inducing, enabling, facilitating or participating in the infringement of the cinematograph films, sound recordings and/or the underlying literary or musical works in which the plaintiff owns exclusive, valid and subsisting copyright(s) on their website www.share.com or any sub-domain thereof or otherwise; and
- (iii) Grant an order of rendition of accounts by the defendants to the plaintiff.
- (iv) Grant an order requiring the defendants jointly and severally to pay damages as stated hereinabove to the plaintiff.
- (v) Grant costs of the instant suit to the plaintiff; and
- (vi) Pass any other such order(s) in favour of the plaintiff.

The defendants have replied and have raised the following defences :

This court does not have territorial jurisdiction to entertain and try the present proceedings on the grounds : The defendant No. 1 is a foreign national and is carrying on business outside the jurisdiction of this court in US. No part of cause of action has occurred within the territorial jurisdiction of this court. The defendant No. 1 is not amenable personally to jurisdiction of this court and therefore cannot be compelled to be under the jurisdiction of this court.

*Questions :*

- (a) Whether the court have the territorial Jurisdiction in the given case ?  
(10 marks)
- (b) What are the rights of the copyright owner as per the Copyright Act ?  
(10 marks)

: 5 :

- (c) Whether the third party can be subject matter of copyright infringement ?  
(10 marks)
- (d) What is the best mode of copyright protection under the given environment ?  
(10 marks)
- (e) Whether the copyright holder shall be entitled to any claim or rendition of accounts/  
profit ?  
(10 marks)

2. India is rich of biodiversity and the Indian culture and traditional knowledge acknowledge the medicinal value of the biodiversity and its best use. The case is with regard to the patenting of XYZ plant by the US Patent and Trademark Office by awarding at least four broad patents for use of XYZ plant, the good old *sine qua non* of Indian food and medicine. The patents, one of which has been awarded to an NRI scientist duo, Abhishek and Shayam, of the University of New York confer on the applicant's exclusive rights to specific formulations of powder as the wound-healer, the anti-inflammatory agent. These scientists on their visit to India to their native place have taken the samples of plant XYZ without information and permission of the appropriate State or National biodiversity board regarding their intention of research and development of the XYZ plant.

Indian activists protested to that as blatant example of biopiracy. They rightly raise the concern that how can anybody patent something that has been the collective wisdom of a people for centuries ?

Indian scientists, too, for a change, have woken up from their complacency. The head of the Council for Scientific and Industrial Research's Intellectual Property Management Division, says the Council will immediately challenge the patents as XYZ's medical uses have been well-documented in India's medical literature. Meanwhile, the Chandigarh-based Central Drug Research Institute, which has been working on XYZ for over a decade, has promptly applied for a patent on XYZ's wound-healing property.

The US patent office, defends the patents arguing that while XYZ as a wound-healing ointment has been in public use, its application in the powder form is not known. This argument was not well received by the Indian counterpart and they retort that the above patent does not satisfy the two most important requisites of a patent claim in US i.e., novelty and non-obviousness. As per them under the US law, a new medicinal property of a known compound could be patented, but not the known property. To secure patent protection even for the new property, the applicant has to submit substantial medical evidence which is not very easy.

*Questions :*

- (a) Whether the US company is guilty of bio-piracy ?  
(10 marks)
- (b) Is there violation of TRIPs provisions by granting patents in USA ?  
(10 marks)
- (c) How traditional knowledge are protected under Indian IPR regime ?  
(10 marks)
3. A Scientist in CSIR genetically modify the seeds of the mango tree, making it possible to have fruits even dry geographical landscape and have two variety kinds of mango in one tree. The scientist wants to take the benefits of his invention. Please advise him about its IPR protection.  
(5 marks)
4. Mr. X claims to make an invention of a device which has twin purpose of serving as torch and radio. As per the choice of the user, the device can be used for one or the other use or both simultaneously. It has an option of electric charge or solar charge. Advise Mr. X about the patentability of the product.  
(5 marks)

: 7 :

5. M/S Nandhini Deluxe, the plaintiff is having business of series of restaurants which has been running since 1989 under the name of “NANDINI”. It has moved an applications for registration of trade mark ‘NANDHINI DELUXE WITH LOGO (Kannada)’ in respect of meat, 32 fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, eggs, milk and milk products, edible oils and fats, salad dressings, preserves and all other goods being included in Class 29 and 30. The defendant also has registration of its trademark “NANDINI” in respect of milk and milk products falling under class 29 and 30 as per classification under Schedule IV to the Trade Marks Rules, 2002.

On the other hand M/s Karnataka Co-operative Milk Producers Federation Ltd. had already adopted the Mark ‘NANDINI’ in 1985 and they had been selling their milk and milk products under the same. The Party no. 2 has objected to the registration of the trademark on the ground of deceptive similarity to the mark of the Respondent “NANDINI” and likelihood of deception to the public or cause confusion.

What are the rights conferred by the registration ?

(5 marks)

6. If a company in India distorting or preventing competition in a given market then can you suggest the steps/action which can be taken by the Government in respect of anti-trust law.

(5 marks)