

MOOT PROPOSITION

Himalayan Knowledge India Pvt Ltd. is a company duly incorporated in India, having its offices at Delhi. The said company has been created with a vision to foster the growth of Indian education and educational values and also to help Indians understand the value and utility of everything Indian, whether it is Indian ethos, Indian culture, Indian values, Indian systems or Indian educational standards.

Consequently, the company Himalayan Knowledge India Pvt Ltd. has got various diverse areas of business including education, training, knowledge management, learning systems and variety of other business endeavours.

The company has been particularly bullish about the electronic format and that is the reason it is particularly putting all its efforts on the electronic initiatives. The company saw some massive growth in its prospects and its businesses during Covid-19 when majority of Indians had to come online.

During that time, various courses and the knowledge services offered by the company Himalayan Knowledge India Pvt Ltd. came to be extensively used not just by professionals but also by students and other stakeholders and their revenue accrued during COVID-19 grew from mere 5 lakhs to Rs 24.8 crores.

Post COVID, the company has been consolidating on its own earlier initiatives but the company is alive to the need for constantly re-innovating itself. The company has been following the evolution of artificial intelligence and has been toying up with the idea of jumping in this space.

On 30th November 2022, ChatGPT got launched. The founders of the company became avid users of Chat GPT and they quickly started realizing that ChatGPT has opened up its APIs for the community in order to develop new content

Since Himalayan Knowledge India Pvt Ltd. is an Indian company, it decided to commission the creation of a new Indian artificial intelligence life companion called “Sutradhar”. Consequently, it decided that it has to come up with a holistic new AI Chatbot/ life companion which will enable the Indians to know everything about Indian system, Indian society, Indian values and everything else Indian. Consequently, Himalayan Knowledge India Pvt Ltd. conceptualized the need for coming up with this Indian customized AI Chatbot/ assistant/ life companion called “Sutradhar”.

In this regard, Himalayan Knowledge India Pvt Ltd. advertised its requirements on the internet

and asked for expressions of interest. Various companies, who are in the area of AI ecosystem, expressed interest in the RFP or the request proposals of Himalayan Knowledge India Pvt Ltd. . had very specific requirements. It called the developer companies to develop a completely new customized Indianized Chatbot/ assistant/ life companion who will only be enabling the dissemination of all aspects, knowledge, information pertaining to India, Indian values, Indian systems, Indian practices, Indian customs and everything Indian.

In the RFP it was categorically mentioned that the developers could use the APIs that are provided by ChatGPT, however, the Indian AI algorithm that's going to be created called “Sutradhar” must only rely upon Indian knowledge, Indian wisdom and Indian norms as also Indian data while coming up with its own generative outputs of audio/video, image and text.

RFP also categorically mentioned that Himalayan Knowledge India Pvt Ltd. is only commissioning the development of the said Indian AI Chatbot/ assistant/ life companion called “Sutradhar” and therefore the commissioning selected party has to make sure that they have looked at all the legalities, ethical and policy considerations and they have to ensure that the AI algorithm “Sutradhar” that they create is 100% Indian based on Indian wisdom, Indian values, Indian judgments and Indian societal norms. Further, it was also stipulated that the said “Sutradhar” should not be trained on foreign data and that the developers will make sure that the said “Sutradhar” algorithm would not cause any legal injury or damage to any stakeholder and in this regard the developers will have to take specific precautions for the purposes of trying to avoid the infliction of any such legal injury, damage or harm caused by AI.

The RFP stated that the selected commissioned party will have to indemnify Himalayan Knowledge India Pvt Ltd. ., thereby indemnifying Himalayan Knowledge India Pvt Ltd. from all costs, expenses arising out of any litigation because of the deficiencies/defects that were left behind in the creation of the algorithm and should the company gets sued, as a result of legal harm or injury caused by the AI algorithm called “Sutradhar”.

It was also categorically said in the said RFP that the “Sutradhar” algorithm has been defined, conceptualized and parameters of the same were crystallized by Himalayan Knowledge India Pvt Ltd. . and therefore the company alone will have all the intellectual property rights pertaining to the same. It is also specifically mentioned in the RFP that the selected commissioning party will have to make sure that the said Indian AI algorithm “Sutradhar” does not violate the copyright, trademark or other intellectual property rights of other stakeholders.

Further the RFP stipulated that appropriate parameters would be incorporated in making of the said AI algorithm “Sutradhar” to ensure that it does not give any output which is illegal or which aids or assists in any criminal activity or illegal design. Further the RFP mandated that the developers will have to take sufficient steps to ensure protection and preservation of the information security and cyber security of the AI algorithm “Sutradhar” and shall take steps to prevent potential cyber security breaches that could take place of AI “Sutradhar” algorithm.

Based on the RFP a total of 15 companies bid for the said project. There were series of interviews and finally after the final interview, AI Roshandhan India Pvt Ltd. was selected to develop the said program algorithm AI “Sutradhar” for Himalayan Knowledge India Pvt Ltd. .. For this project they quoted that they would be charging a sum of rupees 9 crores and that the AI algorithm “Sutradhar” will be developed within a period of six months. Consequently, the various commercial terms were agreed between the parties and at various stages, various payments were stipulated. The said payments were duly paid to AI Roshandhan India Pvt Ltd by Himalayan Knowledge India Pvt Ltd. After six months, AI Roshandhan India Pvt Ltd. handed over the final copy of AI “Sutradhar” algorithm to Himalayan knowledge India Pvt Ltd. Thereafter, Himalayan knowledge India Pvt Ltd. launched the said AI tool and made it a paid commercial tool. They offered various pricing models for the use of the said algorithm.

The various subscription models offered to the public included as under:-

| Subscription Packages | Cost |
|------------------------------|--------------|
| For Individual | Rs. 1,00,000 |
| For Not For Profit | Rs. 50,000 |
| For AI Automations | Rs. 2,30,000 |
| For Small Teams | Rs. 3,80,000 |
| For Business | Rs. 5,00,000 |

They extensively advertised about “Sutradhar” algorithm and highlighted its various features. Consequently, its subscription plans started getting popular, and more and more enterprises and customers started buying the subscription of the “Sutradhar” algorithm. Amongst there were various clients for AI “Sutradhar” algorithm and in the next six months, more than 200 customers signed for the subscription of “Sutradhar”. One of those customers was Jaadunagri Books Pvt Ltd.

Jaadunagri Books Pvt Ltd. is a prominent Indian publisher that is publishing various books which are focused on the Indian market.

Consequently, Jaadunagri Books Pvt Ltd. had paid a subscription of Rupees 5Lakhs for obtaining the usage of “Sutradhar” algorithm. Jaadunagri Books Pvt Ltd. was very clear that it wanted to use the “Sutradhar” algorithm for creating Indian books and also for furthering its publication and publication business. Jaadunagri Books Pvt Ltd. started using “Sutradhar” algorithm for creation of India specific books. These were books in English as also in Hindi language.

That Jaadunagri Books Pvt Ltd. directed the “Sutradhar” algorithm to create a new book on Indian philosophical theories and their relevance in today's context entitled “Indian Philosophy Through the Ages”. “Sutradhar” algorithm helped create not just the structure of the book, but also helped this book to be authored by Jaadunagri Books Pvt Ltd. using “Sutradhar” algorithm and a new book of 300 pages came to be written totally authored by “Sutradhar” algorithm.

So, the book was authored by “Sutradhar” algorithm and the same got to be published. That when the book got published Jaadunagri Books Pvt Ltd. specifically wrote that the book was authored by “Sutradhar”, the AI program developed, marketed and owned by Himalayan knowledge India Pvt Ltd. and they also gave a link to the website of Himalayan knowledge India Pvt Ltd. They further mentioned in the book that this book has been authored by “Sutradhar” AI and that the AI usage is subject to the licensed subscription for which Jaadunagri Books Pvt Ltd. has paid the appropriate subscription.

The said book received a lot of reviews including some positive reviews from the media and from book analysts In the month of January 2024, Harfunmaula Publications sent an electronic notice to Himalayan knowledge India Pvt Ltd. saying that the book entitled “ Indian Philosophy Through the Ages”. has completely copied the extract of the various books published by Harfunmaula Publications including books being “Vedic Philosophy” “Mughal Era Philosophy” and “ Indian Philosophy During British Raj” and has hence infringed its copyright in its various books.

Consequently, a lawsuit was filed by Harfunmaula Publications against Himalayan Knowledge India Pvt Ltd and others in The High Court of Maryadapuram IP division.

In the lawsuit, Harfunmaula Publications filed its claim against defendant no.1 Jaadunagri Books Pvt Ltd., Defendant no.2 Himalayan Knowledge India Pvt Ltd. and the defendant no.3 “Sutradhar” algorithm.

In the said lawsuit, it was further argued by the plaintiff Harfunmaula Publications that “Sutradhar”

algorithm was unfair, was deliberately cheating and copying and passing off the original copyrighted content of the various books of Harfunmaula Publications being “Vedic Philosophy” “Mughal Era Philosophy” and “ Indian Philosophy During British Raj” as content authored by itself.

It is further argued that the book entitled “Indian Philosophy Through the Ages” published by Jaadunagri Books Pvt Ltd. had categorically stated that the said book is authored by “Sutradhar” algorithm which is the duly licensed copy, obtained by Jaadunagri Books Pvt Ltd. by paying an annual subscription of Rs 5 lakh to Himalayan Knowledge India Pvt Ltd.. It is the contention of Harfunmaula Publications that this act of “Sutradhar” algorithm copying the digital literary and artistic works of Harfunmaula Publications was result of a deliberate cheating and intentional infringement of copyright.

In fact, it was pleaded by Harfunmaula Publications that the algorithm “Sutradhar” was deliberately trained on the copyrighted content and books of the said Harfunmaula Publications and the training was done in such a mischievous, malafide manner that the said algorithm took the entire copyrighted content of Harfunmaula Publications and dished it out as that produced by it.

It has been argued that even the personal data of Indian philosophers has also been copied as data principals by the said algorithm “Sutradhar” and that has led to violation of the Digital Personal Data Protection Act 2023 of the Republic of Rigvedvarsh.

It is further averred in the said law suit that by infringing the copyright of the Harfunmaula Publications and its various authors, the acts of the defendant have led to the commission of various offences under the Penal Code, Copyright Act and Information Technology Act of the Republic of Rigvedvarsh.

The main techno-legal arguments put forward by the plaintiff in the said law suit include interalia the following:-

1. The Plaintiff requires third parties to obtain permission before using the Plaintiff’s content and trademarks for commercial purposes, and for decades the Plaintiff has licensed its books under negotiated licensing agreements. These agreements help ensure that Plaintiffs controls how, where, and for how long its book and brand appears and that it receives fair compensation for third-party use. Third parties, including large tech platforms, pay the Plaintiff significant royalties under these agreements in exchange for the right to use

Plaintiff's books for narrowly defined purposes. The agreements prohibit uses beyond those authorized purposes.

2. Defendants' unlawful use of the Plaintiff's work to create artificial intelligence products that compete with it threatens the Plaintiff's ability to provide that service. Defendants' generative artificial intelligence ("GenAI") tool "Sutradhar" relies on large-language models ("LLMs") that were built by copying and using the Plaintiff's copyrighted books. While Defendants engaged in widescale copying from many sources, they gave the Plaintiff's books particular emphasis when building their LLMs—revealing a preference that recognizes the value of those works. Through the Defendant's "Sutradhar", Defendants seek to free-ride on the Plaintiff's massive investment in its works by using it to build substitutive products without permission or payment.
3. While the Plaintiff, like virtually all publishers, permits search engines to access its content for the limited purpose of surfacing it in traditional search results, the Plaintiff has never given permission to any entity, including Defendants, to use its books for GenAI purposes.
4. The Plaintiff has reached out to Defendants to raise intellectual property concerns and explore the possibility of an amicable resolution, with commercial terms and technological guardrails that would allow a mutually beneficial value exchange between Defendants and the Plaintiffs. These efforts have not produced a resolution.
5. Defendants have created and operated bespoke computing systems to execute the mass copyright infringement detailed herein. These systems were used to create multiple reproductions of Plaintiff's intellectual property for the purpose of creating the Generative models that exploit and, in many cases, retain large portions of the copyrightable expression contained in those works.
6. By building training datasets containing millions of copies of Plaintiff's works, the Defendants have directly infringed the Plaintiff's exclusive rights in its copyrighted works.
7. By storing, processing, and reproducing the training datasets containing numerous copies of works to train the "Sutradhar" models on Defendant's supercomputing platform, Defendants have jointly directly infringed the Plaintiff's exclusive rights in its copyrighted works.

8. By disseminating generative output containing copies and derivatives of Plaintiff's works through the "Sutradhar" offerings, the Defendants have directly infringed Plaintiff's exclusive rights in its copyrighted works.
9. On information and belief, Defendants' infringing conduct alleged herein was and continues to be wilful and carried out with full knowledge of the Plaintiff's rights in the copyrighted works. As a direct result of their conduct, Defendants have wrongfully profited from copyrighted works that they do not own.
10. Defendants' removal or alteration of the Plaintiff's copyright-management information has been done knowingly and with the intent to induce, enable, facilitate, or conceal infringement of the Plaintiff's copyrights.
11. Defendants knew or had reasonable grounds to know that their removal of copyright-management information would facilitate copyright infringement by concealing the fact that the "Sutradhar" models are infringing copyrighted works and that output from the "Sutradhar" models are infringing copies and derivative works
12. The Plaintiff's has been injured by Defendants' removal of copyright-management information. The Plaintiff is entitled to statutory damages, actual damages, restitution of profits, and other remedies provided by law, including full costs and lawyers' fees.

Harfunmaula Publications further stated that because of the said action of the defendants, the sales of its books have diminished, further the copyright of Harfunmaula Publications in the said books has been infringed for which not just Jaadunagri Books Pvt Ltd. books is liable to pay damages of 100 crore rupees but more significantly even Himalayan Knowledge India Pvt Ltd. . has also to pay equal some of damages of another 100 crore rupees. The lawsuit also has arrayed "Sutradhar" algorithm as defendant no.3 and the algorithm has also been further directed to pay as damages for some of rupees 100 crores. Total the lawsuit has prayed for 300 crore rupees damages by way of compensation.

The lawsuit has been filed in the original jurisdiction of the IP division of the High Court of Maryadapuram. It is pertinent to note that the High Court of Maryadapuram covers the entire state of Maryadapuram which is one of the thirty two states that are existing in the Republic of Rigvedvarsh.

For the purposes of the present moot court, the Republic of Rigvedvarsh has the same laws which are exactly same to the laws of Republic of India as of January 2024.

The High Court of Maryadapuram IP division has follows exactly the same rules which are applicable to the IP division of High Court of Delhi.

The said lawsuit is currently pending arguments before the single bench of the High Court of Maryadapuram. You are requested to argue the matter from the side of the Plaintiff/Defendants together in support of the said legal proposition.