

# The Student

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## Magazine Committee

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## Student Achievements

Mr. Sourya Banerjee of VIII Semester has participated as *Chair*, a simulation of General Assembly (SPECPOL) at Marri Laxman Reddy Institute of Technology, Hyderabad from 12<sup>th</sup> to 14<sup>th</sup> March 2015.

### Moot Court Competition



Mr. Sourya Banerjee, Semester VIII, Ms. Anmol Gupta, Semester VI, and Ms. Dalia Pasari, Semester IV, won 1<sup>st</sup> prize in the Moot Court Competition held by Shastra University on Feb 28<sup>th</sup> and March 1<sup>st</sup> 2015.

**Faculty Development Program**

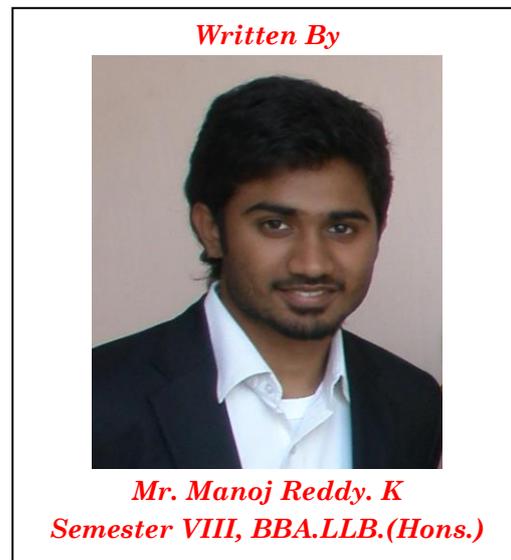




## Case Analysis of Perfect 10 V. Google, Inc. (Cyber Law Assignment)

### Introduction

It has often been said that “one picture is worth a thousand words,”<sup>1</sup> but the truth of that adage may rest with the individual viewing a particular picture or image. One may view an image only to find it holds no artistry or meaning, and deem its expressive value to merit a single derogatory comment, whereas another person may perceive a message that resonates because of life experiences, beliefs, or values. Ultimately, what a person has adjudged to be creative and considers to be real “art” is inherently subjective, and even the courts have tended to avoid



affixing such definitive labels on particular works.<sup>2</sup> There is indisputable value in those images, and for those bidding for the opportunity of ownership and control over them, they possess worthy expression. As a general rule, the expression shown in images— whether pictorial or graphic<sup>3</sup> – may be protectable, and as such can garner exclusive rights under U.S. copyright law. These rights may include, among others, the right to control their reproduction and their display in public. But the extent of such copyright protection is far from absolute, and may be limited by the Doctrine of Fair Use, which is found both in U.S. copyright law,<sup>4</sup>

<sup>1</sup> Regan v. Time, Inc., 468 U.S. 641, 678 (1984)

<sup>2</sup> Bleistein v. Donaldson Lithographing Company, 188 U.S. 239, 251-52 (1903) (where Justice Holmes announced the “anti-discrimination” principle: “It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits. At the one extreme, some works of genius would be sure to miss appreciation... At the other end, copyright would be denied to pictures which appealed to a public less educated than the judge.”).

<sup>3</sup> 17 U.S.C.A. § 102(a)(5) (1976).

and in international law within, inter alia, the Berne Convention for the Protection of Literary and Artistic Works.<sup>5</sup>

Perfect 10, Inc., the copyright holder of high-quality photographs of certain nude models, had invested roughly \$12 million to photograph more than 800 individuals.<sup>6</sup> Over 2,700 photographed images were published in its adult magazine “Perfect 10,” which sold for \$7.99 per issue, and roughly 3,300 images were displayed in a “member’s area” of its web-site, which was accessible only by subscribers who obtained a password upon \$25.50 monthly payments. Perfect 10 had also granted a license to a third party- Phonestarz Media Limited- permitting its world-wide sale and distribution of reduced size versions of Perfect 10’s copyrighted images. No other licenses permitting distribution or display of Perfect 10’s copyrighted images had been granted.

Perfect 10’s copyrighted full-size images were re-published without authorization on other web-sites, and Google’s automated indexing process subsequently enabled internet users doing a search to view those infringing web-sites via Google’s in-line linking, albeit with a disclaimer appearing in the upper annotation window to indicate that certain information or images displayed in the lower window could be copyrighted.

### Facts

- Google searches facilitated access to images that infringed on Perfect 10 copyrights.
- Google stores thumbnails of images, then links to the webpage.
- Google also stores webpage content in its cache, so an infringing image could be viewed this way even if the webpage owner removed HTML instructions, a user could still get there. The owner would have to change the web address of the image or render it unavailable in order for it to be inaccessible through the cache.
- Perfect 10 users have to pay a fee to view the images in the "members' area' of the site. Google does not have these images in its index or database.
- However, some website publishers republish the images w/o authorization. When this happens, Google may index the webpages containing the images and provide thumbnail versions of images in response to searches.

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<sup>5</sup> The Berne Convention for the Protection of Literary and Artistic Works

<sup>6</sup> Perfect 10, Inc. v. Google, Inc., 416 F.Supp.2d 828, 832 (C.D. Cal. 2006).

- When a user clicks on the image, Google links to the website containing the image, but also frames the image with its own website.

### Issues

- Does the use of thumbnail images to facilitate internet browsing constitute fair use of copyrighted material?

### Holding/Rule

- The use of thumbnail images to facilitate internet browsing and searching constitutes fair use of copyrighted material.

### Reasoning

- *Direct infringement:*

There is no dispute that Google's computers store thumbnail versions of Perfect 10's copyrighted images and communicate copies of these thumbnails to users. This fulfils P's prima facie case for direct infringement. Google does not have a copy of the images for purposes of the Copyright Act, however, when it frames in-line linked full-size images. Providing HTML instructions is not the same as showing a copy, because HTML instructions do not themselves cause infringing images to appear on the screen and Google does not store the image. Facilitating access may raise contributory liability issues, but it does not constitute direct infringement.

This analysis is equally applicable to Google's cache, because Google does not store the image.

- *Fair Use Defense:*

Google contends use of thumbnails is a fair use of the images.

In *Kelly v. Arriba Soft Corp.*, the Court considered a similar claim and held that the search engine's use of thumbnails was fair use based on the transformative nature of a search engine and its benefit to the public. District Ct distinguished this case.

### *Factor Test:*

Purpose and character of use (transformative?)

D's use of thumbnails is highly transformative, because it transforms the image into a pointer directing the user to a source of information.

Completely changes the purpose of the original work and in this way is more transformative than a parody.

Even making an exact copy can be transformative so long as the copy serves a different function.

D. Ct. said that D's use of thumbnails superseded P's right to sell reduced-size images for cell phone use and because D profited (through AdSense) from the links.

D. Ct. did not consider, however, that perhaps the value of the search engine to the public outweighed the commercial nature of Google.

Superseding use (cell phone pics) doesn't seem to actually be occurring.

Also, transformative nature of Google's search engine and benefit to the public outweighs commercial gain from AdSense.

- Nature of the copyrighted work

This factor weighs only slightly in favor of Perfect 10.

The images are "creative in nature" and therefore closer to the core of intended copyright protection. However, P's images were previously published, and thus are no longer entitled to the enhanced protection available for unpublished work.

- Amount and substantiality of the portion used

This factor favors neither party, because in *Kelly*, the Court held that the use of entire photographic images was reasonable in light of the purpose of a search engine.

- Effect of use on the market

Because the thumbnails were not a substitute for the full-sized images, they do not harm the ability to license or sell the full-sized images.

P argued that when the intended use is for commercial gain, market harm can be presumed. However, D's use of thumbnails is highly transformative, so it is not the case that market harm can be presumed.

Argument that it harms P's cell phone download market is hypothetical.

This factor also favors neither party.

In light of this, Google is likely to succeed in proving its fair use defense.

- Therefore, the preliminary injunction order is vacated.

### Analysis

Perfect 10 v. Amazon.com provided a succinct primer in the law of direct and indirect copyright infringement and then applied those principles to the Internet. To present a prima facie case of direct copyright infringement, the plaintiff must show that it owns the allegedly infringed material and that the infringer has violated at least one of the exclusive rights granted under 17 U.S.c. § 106, namely, the rights to reproduce, distribute, and publicly display the copyrighted work. Since Perfect 10' s ownership of at least some of the images at issue was not disputed, the opinion focused on allegations that Perfect 10's exclusive rights were being infringed.

The Ninth Circuit applied the basic definitions set forth in the Copyright Act and the novel "server test" originally devised by the district court to determine whether Perfect 10 had established a prima facie case that Google directly infringed its copyrights. For purposes of the Copyright Act, to "display" an image means "to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process," wherein a "copy" is a "material object in which a work is fixed by any method now known or later developed and from which the work can be perceived, reproduced, or otherwise communicated, ... " and wherein "a work is fixed in a tangible medium of expression when its embodiment ... is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period more than transitory duration. „<sup>7</sup> As used in this definition, a photographic image is "fixed" in a tangible medium of expression in the context of computers when it is "embodied (i.e., stored) in a computer's server (or hard disk, or other storage device)," and the digitally stored image is considered a "copy" as defined under the Copyright Act. Applying these definitions, computer users "display" a "copy" of a photographic image when their computer fills its screen with a copy of the image as it is stored, or "fixed" in the computer's memory. Thus, the court's analysis of whether Google directly infringed Perfect 10' s display right turned largely on whether the image displayed on the user's computer screen was stored on Google's servers, an analysis christened "the server test., Applying this

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<sup>7</sup> Perfect 10 v. Amazon.com, 508 F.3d at 1160 (citing 17 U.S.C. §101).

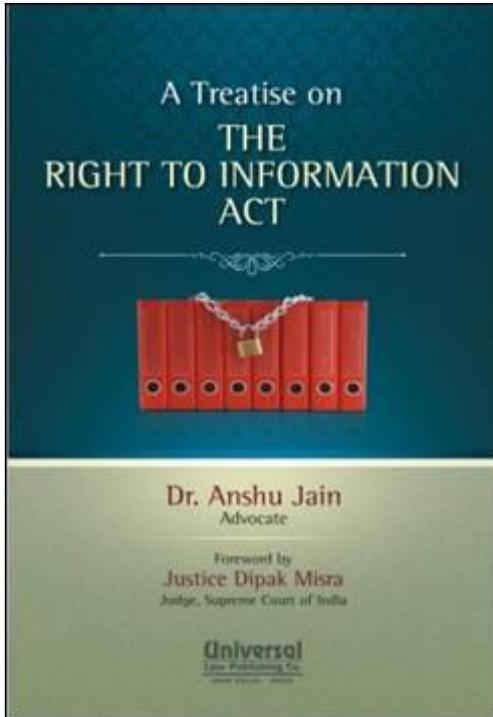
criteria, the court found that Perfect 10 had not established a prima facie case of direct infringement based on Google's process of in-line linking full-sized images from third-party websites or its storage of web page text in its cache for the simple reason that the copyrighted image displayed on a user's computer screen was never stored on Google's servers. Rather, Google simply provided HTML instructions through which images stored on third-party computers were located and accessed. The court found that providing these instructions was not equivalent to "displaying" a "copy" of the image and, therefore, Google did not directly infringe Perfect 10's copyrights through these two activities.

Having found that Perfect 10 had established a prima facie case of direct infringement based on Google's use of thumbnail images, the court went on to find that Google would likely prevail on its fair use defense, and, consequently, vacated the preliminary injunction issued by the district court that otherwise prohibited Google from creating and publicly displaying thumbnail versions of Perfect 10's images.

The Ninth Circuit first considered the "purpose and character" of Google's use of thumbnail images, concluding that it was "highly transformative," and concluding that the first factor weighted heavily in Google's favour. The "central purpose" of the analysis under this factor is to "determine whether and to what extent the new work is 'transformative.' The court's conclusion that the thumbnails were highly transformative was based on several factors. First, Google's thumbnail images served a different function than the originals. "Although an image may have been originally created to serve an entertainment, aesthetic, or informative function, a search engine transforms the image into a pointer directing a user to a source of information. Moreover, the "search engine provides social benefit by incorporating an original work into a new work, namely, an electronic reference tool," which places the images "into a different context" so that they are "transformed into a new creation.

## **A Treatise on The Right to Information Act**

**Authored by: Dr. Anshu Jain**



Every liberal democracy nowadays is moving towards a culture of openness and India is no exception to this trend. As a matter of fact, this concept of an open government emanates directly from Article 19(1)(a) of the Constitution of India guaranteeing the freedom of speech and expression subject to certain reasonable restrictions. This being so, the right to information assumes greater importance now than ever before. Every citizen should responsibly make use of this right and participate in the functioning of the government.

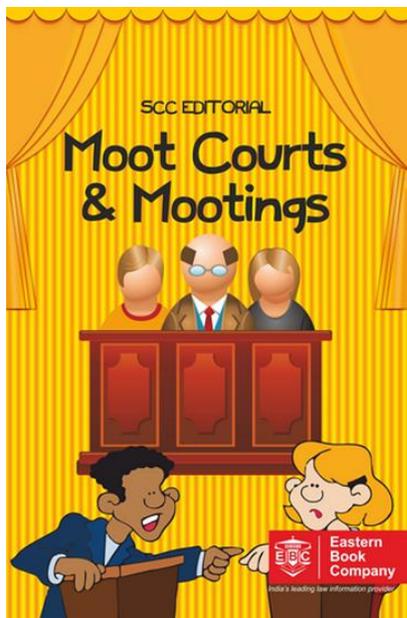
This book has been worded in a simple yet lucid style which allows the reader not only to easily understand

the salient features of the Right to Information Act, 2005, but also be aware of the latest developments in the area of information rights. The historical developments leading to the passage of the Act in India as well as the global perspective in this regard has also been discussed in detail in the book, which has been systematically divided into nine broad chapters. The highlight of the book is the fact that it is the outcome of an analytical study conducted by the author wherein views of various stakeholders in the information regime, including judges, information commissioners as well as the common information seekers, have been collected and assessed. Conflicting views have been discussed and deliberated upon. Landmark orders and judgments are not merely mentioned but have been analysed thoroughly. Decisions followed, overruled or approved are also indicated.

The book intends to be of immense assistance to students, scholars, researchers and all those who wish to know more about the theoretical (normative) as well as the practical (functional) aspects pertaining to transparency issues in the country.

## Moot Courts and Mooting

**Authored by: Abhinandan Malik**



Moot Courts and Mooting is an invaluable guide to prepare for moot court competitions. It covers all stages of moot court preparation - from tackling moot problems to giving presentations on competition day. Drafting of memorials and preparing for oral arguments have been discussed at length in this book. Moot problems, memorials, competition rules, score-sheets and moot transcripts have been included so that the readers can gain valuable practical knowledge.

The notable features of this book include:

1. Includes a companion web resource EBC Explorer ([www.ebcexplorer.com](http://www.ebcexplorer.com)), powered by SCC Online.
2. Interviews of Contributors and other online resources on EEC Explorer.
3. Discussion Forum on EBC Explorer to interact with fellow mooters and clear doubts.
4. Practical advice by experienced mooters, moot judges and trainers.
5. Question and Answer format for easy navigation.
6. Chapter Summaries and Points of Caution.
7. Find updates, video lectures, a discussion forum and a host of free learning resources on [www.ebcexplorer.com](http://www.ebcexplorer.com)

This book is essential not just for mooters who are starting out but also for experienced mooters who wish to further hone their skills. Faculty members in law colleges will also benefit from this book as it explains all organisational aspects of moot court competitions.

## Hon'ble Sri Justice Kalyan Jyoti Sengupta



### **Chief Justice of Telangana & Andhra Pradesh**

Born on 7th May, 1953. Enrolled as an advocate on 21st April, 1981. Practiced in the High Court in Civil, Constitutional and Criminal matters, Civil suits and Arbitration matters. Appointed as a permanent Judge of the Calcutta High Court on 17th July, 1997. Assumed charge as the Acting Chief Justice on and from October 5, 2012. His Lordship has held the office of Chairperson, High Court legal Services Committee and also of Executive-Chairman "State Legal Services Authority, West Bengal". Transferred to High Court of Uttarakhand at Nainital vide Notification dated 18/10/2012 and assumed charge of his office on 31/10/2012. He was Executive Chairman of the Uttarakhand State Legal Services Authority.

Hon'ble Mr. Justice Kalyan Jyoti Sengupta assumed office of Chief Justice High Court of Andhra Pradesh on 21/05/2013.

By virtue of Sec.6(2) (a) of Legal Services Authorities Act, 1987, the Chief Justice of Andhra Pradesh Hon'ble Sri Justice Kalyan Jyoti Sengupta is the Patron-in-Chief of the Andhra Pradesh State Legal Services Authority w.e.f. 21-05-2013

He is the Chancellor of NALSAR University of Law, Hyderabad.

**Hon'ble Mr. Justice M. Hameedullah Beg**



**Former Chief Justice of India**

The Hon'ble Mr. Justice Mirza Hameedullah Beg, M.A. (Cantab), Barrister-at-Law; Born at Lucknow on 22nd February, 1913; son of the Hon'ble Mirza Samiullah Beg, former Chief Justice of Hyderabad State; educated at St. George's Summer School, Hyderabad (Deccan); Obtained a Gold Medal for a record performance securing first position in Senior Cambridge H.S.L.C. Examination, 1929; joined Trinity College, Cambridge, England, 1931, and obtained Honours in Archeological and Anthropological and Historical Triposes; took the B.A. (Honours) degree in 1934, and then the M.A. degree, of the Cambridge University, attended advanced classes in Economics, Public Finance, Political Theory and Organisation, Constitutional Law and International Law, at the London School of Economics, joined the Honourable Society of Lincoln's Inn; obtained a first class first in Hindu and Mohammedan Laws at the Bar Examinations held by the Council of Legal Education in England, was called to the Bar in February, 1941; practised at Meerut and Allahabad as an Advocate of the Allahabad High Court from 1942; Lecturer on Constitutional Law and on Equity at Meerut

College, Meerut, from 1943 to 1946, and, at the Allahabad University, On the Law of Evidence and on Human Law and Ancient Law, from 1946 to 1963; enrolled as an Advocate of the Federal Court of India in 1949, and, subsequently of the Supreme Court of India, built up an extensive practice on all sides; was Standing Counsel to the Allahabad University, and to the U.P. Sunni Central Wakf Board, and appeared frequently for Municipal bodies; raised to the Bench of the Allahabad High Court on 11th June, 1963; sat both on the Criminal and Civil sides and then on the Tax Bench at the Allahabad High Court; appointed Company Judge of the Allahabad High Court and was also incharge of the matrimonial and testamentary jurisdiction of the High Court from the middle of 1967 to 1970; appointed Chief Justice of the High Court of Himachal Pradesh in January, 1971; appointed as Judge of the Supreme Court of India on 10.12.1971; Member of the International Law Association and of the World Association of Judges, appointed as Chief Justice of India on 29.01.1977, retired on 21.02.1978.

## Maxims

**Ad infinitum:** Forever, without limit, to infinity.

**Ad perpetuam rei memoriam:** For a perpetual memorial of the matter.

**Consensu:** Unanimously or, by general consent.

**De bonis asportatis:** Of goods carried away.

**De bonis non administrates:** Of goods not administered.

**Malitia Supplet aetatem:** Malice makes up for age.

**Res integra:** A matter untouched (by decision).

**Voluntas in delictis non exitus spectator:** In offences the intent and not the result is looked at.

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### **Supreme Court Bar Association will not admit Applicants facing Criminal Proceedings:**

The Executive Committee of Supreme Court Bar Association has resolved that henceforth all fresh applications for Membership must be accompanied by an affidavit that there are no criminal proceedings pending against the applicant, in which charge sheet has been filed in a competent court, for any offence involving moral turpitude. It has further been resolved that all those applicants who are facing any criminal proceedings, their applications will not be considered and will be deferred till they are finally exonerated by a competent court.

**Supreme Court dismisses PIL seeking to ban strikes by lawyers:** The Supreme Court of India on Friday dismissed a public interest litigation that had sought to declare strikes by lawyers as illegal. The Bench headed by Chief Justice of India HL Dattu, which also had Justice S.J. Mukhopadhaya said that a judgment of the Constitution Bench was already there on the issue. The Bench said, “This court has already given a judgment and laid down the procedure to be followed for calling a strike. It is for the Bar Council of India to take some measures. We can’t be giving directions. Litigants can always appear in the court in person if lawyers are unable to appear in court because of strike.”

**Ban on advertisements to a particular Media Group violates freedom of press : Calcutta High Court:** In times where the governments (Central, State) seem to be on a spree on banning/restricting anything whimsically, the Calcutta High Court has come forward with striking off one of them. The High Court has ruled that a ban on a media agency for government advertisements violates the constitutional right to freedom of expression of the press. The matter pertained to the decision of the current ruling establishment in West Bengal deciding to deny advertisements to one ‘Ganashakti’ Newspaper on the ground that it was an organ of CPM and the state could not permit funding to a political party organ from the exchequer’s money.

**Over 8.80 Lacs Cases Related Land Acquisition, Revenue and MNREGA, Involving Rs.200 Crores were Settled at National Lok Adalat:** Over 8.80 lacs land acquisition, revenue and MNREGA related cases were settled involving over Rs.200 crores at a National Lok Adalats that were held across the country yesterday. This is the second in a series of National Lok Adalats which are being organized one a month on a specific subject matter. The National Legal Services Authority (NALSA) had drawn up a Calendar for this purpose under the directions of the Executive Chairman of NALSA and the Judge of the Supreme

Court of India Mr. Justice T.S.Thakur, & and the Patron-in-Chief of NALSA & Chief Justice of India, Mr. Justice H.L.Dattu. The aim is to reduce pendency as well as prevent additional litigation swathing the courts, where settlements are possible. The National Lok Adalats also draw the attention of the public to the efficacious alternative dispute resolution method of Lok Adalat. Due to the efforts put across the country and with cooperation from the government departments and lawyers, a good number of cases have been settled finally and in an amicable manner. There will be no further appeal in these cases. Thus, it will have a significant impact on the judicial system. On the other hand, the settlement at pre-litigation stage would mean that, that many cases will not reach the courts. Of the cases resolved yesterday, about 69000 are pending matters and 8.10 lacs are pre-litigation matters which have not reached the courts.

**Legal education must be remodelled, redrafted & redesigned: Justice Lalit:** Supreme Court judge Uday Lalit expressed concern over the current legal education system, which he felt, was not equipped to make a complete lawyer. He was speaking at ‘State lawyers’ conference’ convened by Bar Council of Maharashtra and Goa (BCMGM) at Deshpande Hall on Saturday. Supreme Court judge Justice Sharad Bobde, Bombay high court judges - VM Kanade and Bhushan Gavai, advocate generals of Maharashtra and Goa — Sunil Manohar and ANS Nadkarni, additional solicitor general Anil Singh, Bar Council of India (BCI) chairman Manan Kumar Mishra, and BCMGM chairman Asif Qureshi shared the dais. “Legal education doesn’t teach what the professional needs, and values lawyers should possess, what exactly they should do and how to conduct themselves. BCI must think over it, as youngsters are still struggling,” Lalit lamented.

## ***Competitions***

### **GOI Peace Foundation International Essay Competition 2015**

Submit by June 15

<http://www.goipeace-essaycontest.org/>

### **Policy India Essay Competition 2015**

Submit by May 30

<http://www.lawctopus.com/policy-india-essay-competition-2015/>

### **National Seminar on “Law, Social Transformation & Dalit” on 3rd May, Sunday, 2015**

Organised by Faculty of Law, University of Lucknow, Janakipuram Extension, Lucknow – 226031.

1. Last date for submission of abstracts: 20th April, 2015.

2. Last date for submission of papers: 30th April, 2015.

Submission shall be made to [lawlkouniv@gmail.com](mailto:lawlkouniv@gmail.com)

For query: Dr. Ashish Kumar Srivastava, Mob: 8960675643 Email: [\*asrinlu@gmail.com\*](mailto:asrinlu@gmail.com)