



# VERDICT

*"World of Law in the Universe of Technology"*

**3<sup>rd</sup> NATIONAL IP LAW MOOT COURT COMPETITION**

31<sup>st</sup> Jan- 2<sup>nd</sup> Feb , 2014

## PROBLEM STATEMENT

Host : Rajiv Gandhi School of Intellectual Property Law

Co-Host: Kshitij, IIT Kharagpur





## Moot Problem

1. ABC Press Pvt. Ltd. [Hereinafter referred to as “ABC”] is a publishing company which was established in 1960 under the Companies Act, 1956. It is one of the most successful publishing houses in India having its registered office at New Delhi. They publish more than 200 new titles each year in various educational fields. ABC sells its books through its franchisee and retail outlets, which are spread over 30 cities, 200 towns and 800 smaller towns. In 2012, it ventured into publishing of E-books. On 20<sup>th</sup> November 2011, ABC through its Head of Marketing, Ravi Raghuram, published a press release stating the following, “The publishing industry is moving towards a new era. With the advancement in technology, people now prefer reading on their electronic devices such as E-book readers, smartphones, tablets, etc. The publishing industry too needs to stay at par with the technology. A decade back we used to struggle to meet our target of selling 3000-5000 copies of a bestseller. Now we achieve sales of over 50,000 easily. And with the boom in the E-book industry, we can comfortably target a figure of half a million books. E-books are the future of publishing.”
2. Ganga.com [Hereinafter referred to as “Ganga”] is a well-known Indian e-commerce company established under the Companies Act, 1956. It was founded in 2007 and has its headquarter at New Delhi. It is the company which introduced the people of India to online shopping. As per various web traffic data reports, Ganga is the 5<sup>th</sup> most visited website in India. It has developed a unique ‘Cash When Delivered’ [Hereinafter referred to as “CWD”] mode of payment for the customers, where the customer can buy the item and pay for it only after the item is delivered at their doorstep. Rajat Kansal, CEO of Ganga, was quoted by a popular daily, “Indian customers prefer transacting in cash. The CWD scheme is one of its kind as it is tailored for the Indian customers. It ensures availability, convenient interface and the option to pay on the delivery of goods, upon the satisfaction of the customer.” In the year 2011, Ganga decided to start selling books online.
3. ABC, on 16<sup>th</sup> January 2012, was approached by the marketing executives of Ganga regarding a deal. The executives from Ganga offered to sell the titles published by ABC online through the Ganga portal. A series of meetings and negotiations followed





and finally the two parties entered into an agreement enabling Ganga to sell physical books [Hereinafter referred to as “PB”], electronic books [Hereinafter referred to as “EB”], digitalized books [Hereinafter referred to as “DB”] which are published by ABC on their website. The agreement can be found in Annexure-A. In consonance with the agreement, Ganga has an extensive list of EB titles published by ABC which are made available free of cost, subject to free subscription with Ganga.

4. Vidya University [Hereinafter referred to as “the University”] is a premier University of India known for its high standards in teaching and research. It was established in 1922 as a unitary, teaching and residential university by an Act. Over the years, it has attracted eminent scholars to join the university as faculty. The President of India is the Visitor, the Vice President is the Chancellor and the Chief Justice of the Supreme Court of India is the Pro-Chancellor of the University. Over 109 different courses are offered at the University. In an academic year, the University houses approximately 12,000 students which include undergraduate, postgraduate, doctoral and postdoctoral students. Students from all over the country study at the University.
5. A joint body [Hereinafter referred to as “Senate”], consisting of representatives of students and faculty members, exists at the University, which makes recommendation for timely changes and alterations in the curriculum and teaching methods of the University. In the year 2010, following a Senate recommendation, it was felt that the teaching activity is required to be more proactive and the exchange of knowledge between the professors and the students should move beyond the classrooms and traditional teaching methods. It was recommended that the faculty members start discussion forums, physical as well as online, and have healthy discussion with the students from time to time.
6. On being motivated by the recommendation, the faculty of the University came across an online portal named Gyanbato.com [Hereinafter referred to as “Gyanbato”]. To participate in these discussions one would need to register a user identification [Hereinafter referred to as “UI”] by creating a free account on Gyanbato’s website. The website gave users an option to upgrade to Gold Membership [Hereinafter referred to as “Gold UI”], which was a paid Membership and allowed the members to upload and download material on the groups. Using UI, one could create groups, view





shared materials, start online discussions and participate in online chat with the members of the group. The account can be created by any person free of cost. The person creating a group would be the moderator of the group and could control the data shared within that group; though a member can view all the materials, he/she would be required to upgrade to Gold UI to upload/download any material.

7. Gyanbato has a cyber due-diligence cell headed by Mr. Trihoot Roy, who is incidentally an alumnus of Law school at Vidya University. Gyanbato advertises on its website its “takedown policy” which states that Gyanbato, upon obtaining knowledge by itself or been brought to its actual knowledge by an affected person in writing or through an email signed with electronic signature about any objectionable information, shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information. Further Gyanbato shall preserve such information and associated records for at least ninety days for investigation purposes.
8. The faculty and students of the University created accounts on Gyanbato and individual faculty created groups with the students in his/her course. At the beginning of the semester, the faculty started creating course packs consisting of materials gathered from various books of renowned authors and journals and they were shared on the online groups. In the course of the discussion, at the request of the students, some faculty members scanned some important chapters of books and uploaded the scanned copies on to the online group on Gyanbato. Students preferring to read the materials in hardcopy downloaded the material by upgrading to Gold UI and got them printed.
9. An official of Ganga.com visited the campus of the University during placement season of 2013. While having an informal chat with the students over a cup of tea, he stumbled upon this practice of material sharing. In order to investigate further, he created an account on Gyanbato and joined an online group run by a faculty of the University. While going through the material shared on that group, he found that the course packs consisted of study material which contained 20-25 percent data copied from the books and about 75 percent of the books that were being copied were those published by ABC. Further, most of the scanned copies were also from the books





published by ABC. It was further noticed by him that, some of the E-books published by ABC which retailed at a certain price were being circulated free of cost in these groups.

10. This information was brought to the notice of ABC, who along with Ganga, instituted a suit before the honourable High Court of Delhi at New Delhi against the University and Gyanbato for grant of suitable relief.
11. Khabar of India (popularly known as KOI), a leading news daily, ran an extensive report on the suit pending before the court. An anonymous student of the University was quoted saying that the materials found on Gyanbato.com are very relevant, extremely helpful and aptly made. Another student further went on to say that Gold membership costs much less than the cost of buying all the books individually, which he cannot afford and he asserted that he is totally against the lawsuit. Various writeups on blogs across the country criticised the move by the publisher. Out of general resentment, students across the country started a signature campaign online and gathered more than 1500 signatures of academicians, authors, students, and other members of the general public who are worried about the law suit and its implications for the future of access to education in India. An association of students named Fight for Equitable Access of Knowledge (hereinafter referred to as FEAK) was formed out of the campaign. FEAK reaffirms the need for such activity in a developing country like India where photocopying ensures the access to otherwise prohibitively expensive books to the majority of students of higher education. It condemns the move of the publishers who claim to be fostering academic excellence, but are in fact working towards making higher education a preserve of the privileged few who can afford these books.
12. According to Ajit Makhija, the spokesperson of FEAK, “That photocopying of educational material takes place at such a large scale across the country and across disciplines is indicative of the gap within our education system that is filled by photocopying. Until alternative mechanisms of access to the same material is evolved, any curbing on photocopying will severely impact the student community, not only in Vidya University, but in every educational institute across the country. We affirm and express solidarity with the students of Costa Rica who are fighting for their right to





photocopy, directly linked with access to education, as it is in India. We express our solidarity with the open access movement and affirm the cause that Aaron Swartz fought for. We welcome the move in the USA that has led to the decision of free access to publicly funded research after one year of remaining within subscription journals, and we will push for similar moves for opening access to publicly funded research within India, including academic works produced by teachers while being employed by State Universities”.

13. FEAK wrote a letter to the Honourable Chief Justice of India highlighting the question of public interest in the present case and sought for suitable remedy. After scrutiny, the matter has been sent to the High Court of Delhi to be heard along with the pending case where FEAK will represent the interest of the students. Hence, the Honourable bench of High Court of Delhi at New Delhi will listen to the arguments from both the sides pertaining to the present case.





## Annexure-A

### License Agreement

THIS AGREEMENT is made and executed on the 16<sup>th</sup> day of January 2012, at New Delhi.

BETWEEN,

ABC Press Pvt. Ltd. [Hereinafter referred to as “ABC” or “Licensor” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees] a publishing company having its registered office at New Delhi.

AND

Ganga.com [Hereinafter referred to as “Ganga” or “Licensee” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assignees] is a well-known Indian ecommerce company founded in 2007 having its headquarters in New Delhi.

WHEREIN ABC a successful publishing company is interested to sell its books online and Ganga a well-known e-commerce company is interested to sell products of ABC online,

Thus the parties agree to be bound by the terms and conditions set forth in this agreement, as evidenced by the signatures below.

#### 1. GRANT OF LICENSE

1.1 As used in this Agreement, the following terms shall have the meanings indicated;

(a) “Books” means all books made and published by ABC.

(a) “Physical Book” means a set of written, printed, illustrated, or blank sheets, made of ink, paper, parchment, or other materials, usually fastened together to hinge at one side and published by ABC.

(b) “Electronic Book (E-book)” means a book-length publication in digital form, consisting of text, images, or both, readable on computers or other electronic devices usually in .epub or .mod format published by ABC.

(c) “Digitalized Book” means converting physical book to electronic version other than .e pub format.



(d) “Exclusive License” a right granted under this Agreement which the grantor will not itself exercise and will not authorize other persons to exercise.

(e) “Non-exclusive License” a right granted under this Agreement which the grantor may itself exercise and may authorize and assist any third party to exercise.

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For the purpose of promotion and distribution of the Books published by ABC.

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## **2. Covenant**

2.1 Licensor reserves the right to determine the price of the E-book version, even at Rs 0/-, if the Physical copy of the book is not available in print.





2.2 If the Physical book is available in print and the price of the same is less than Rs.500, then price of the E-book version cannot be greater than Rs.200 for the first 12 months of the sale, after publication of Physical Book.

2.3 If the Physical book is available in print and the price of the same is greater than Rs.500, the Licensor reserves the right to determine the price of the E-book version.

2.4 If the Physical book is available in print to be published only in India and the price of the same is greater than Rs.500, the price of the E-book version cannot be more than Rs.100.

2.5 The Licensee reserves the right to determine recommended retail price for Digitalized book after consultation with the licensor.

2.6 If the Physical book is available in Print, the Profit sharing from selling Digitalized Book will be as follows,

- 70% to the Licensor
- 30% to the Licensee.

2.7 If the Physical book is not available in Print, the Profit sharing from selling Digitalized Book will be as follows,

- 20% to the Licensor
- 80% to the Licensee.

