



NIMS SCHOOL  
OF LAW

in association with

BAR COUNCIL  
OF INDIA



ALL-INDIA INTER-UNIVERSITY MOOT COURT COMPETITION

Moot problem subject  
for

2nd round

INTELLECTUAL PROPERTY RIGHTS

IG: @nismootcourt  
law.nimsuniversity.org

+916376392508  
mootcourtbci2022@nimsuniversity.org

## MOOT PROBLEM (on IPR)

1. Indistan is a developing country located in South Asia with a vast population of over 130 crores. Home to one of the world's oldest civilizations, Indistan has prided itself on its ancient systems of learning, centres of education and research; and cultural values of open dissemination of knowledge. As a growing knowledge-driven economy, Indistan aims to attain the status of a knowledge superpower and has been actively involved in formulating strategies and policies that foster research and development activities in the country. However, with a vast population and a literacy rate of about 70%, the present-day Indistan faces a challenge of realising the goal of making quality education affordable for all. Indistan has over 900 universities, out of which 54 are central universities and 400 are state-run universities. Apart from the central and state-run universities, there are several private universities as well offering higher education in the country. Strengthening quality of research in higher education institutes is a primary concern for the state of Indistan. According to WIPO, Indistan is ranked at 7<sup>th</sup> position among the top 10 Patent Filing Offices in the world. Indistan's growth rate of scientific publication during 2011–2016 as per the SCOPUS and SCI (Science Citation Index) database was 8.4% and 6.4% as against the world average of 1.9% and 3.7% respectively. Further, Indistan occupies 3<sup>rd</sup> rank in terms of the number of Ph.D. degrees awarded in Science and Engineering. The current expenditure of the state of Indistan on research and development stands at 0.7% of its GDP. Acknowledging the need for incentivizing research endeavours, the country has a robust domestic framework for protection of intellectual property rights and is also committed to the international framework for protection of intellectual property rights.
2. Sci-Lab is a shadow library website which allows its users to access millions of academic research articles and publications without any charge. Founded by Alex Elba, a national of Kazakhstan, the website describes itself as a tool to provide free and unrestricted access to scientific knowledge to all and claims to have revolutionized science by making all paid knowledge free. It further describes itself as a part of the Open Access Movement in science. The Open Access Movement emerged as a response to the exorbitant prices that are charged by the publication houses of the academic journals for access to the research publications. The Open Access Movement gained momentum as the realisation grew that the publication houses have deployed monopoly-like mechanisms in the field of academic publishing which has made it extremely difficult for even universities, let alone individuals, to have access to academic research material. Sci-Lab provides access to academic material from most of the prominent academic publishers across the globe, without requiring any subscription or payment from the user. Thus, it has attracted immense interest in academic circles, and researchers devoid of sufficient resources, have resorted to using the website for their work and have become heavily dependent upon the same. Infact, as on date, usage statistics published by Sci-lab indicate that the downloads

from the website are booming not just in countries which lack the resources to pay for bulk subscriptions of the academic journals but also in countries with vast economic resources. Indistan has the second-highest number of individual users accessing the website and with 1.8 million downloads in a month, appears on the list of the most active users of Sci-lab at the fifth spot.

3. Xavier is a publishing company based in Netherlands, and is the world's leading publisher in the field of science, technology and medicine. Xavier publishes over 2500 journals and with a vast market share, has disproportionately high profit margins. The products and services provided by Xavier include abstract and citation database 'Scopus' which has over 40,000 titles from the world's leading academic publishers as well as 'Science Direct' which is a website providing access to a large bibliographic database of scientific and medical publications.
4. Riley is another multinational publishing company with its headquarters in America, which produces high impact research and education content both in print and in the digital medium. Originally started as print shop in 1807 in Manhattan, the company today has a distinct global presence and its operations have grown manifold. It produces text books and instructional material for students as well as career advancement courses for working professionals. It also has a massive, subscription-based online library with over 1600 journals, 22000 books and more than 200 reference works. The company has over the years acquired several other reputed publishing houses such as Blackwell Publishing and also has publishing alliances with big brands in the knowledge and education industry such as Microloft and the National Society of Geography.
5. Both the publishing giants have filed a case before the High Court of Dehlia, the capital of Indistan alleging copyright infringement by the shadow library website Sci-Lab and its founder, Alex Elba. It is alleged by the plaintiffs that their publications constitute literary work and are protected under the copyright law of Indistan and thus, the exclusive right of reproduction and sharing of these publications, rests exclusively with them. The publishing companies have copyright agreements with the original authors of the works and it is contended by the plaintiffs that the exclusive rights concerning the reproduction of the work, issuing copies of the work to the public, and to communicate the concerned work to the public lies with them and no one else. They allege that by making the plaintiffs' works available on their website without due permission Sci Lab has violated their exclusive rights. It is also contended by the plaintiff publication houses that Sci-Lab uses stolen user credentials and phishing attacks to extract copyrighted journal articles illegally. This, it is alleged, compromises the security of libraries and higher-education institutions, and allows Sci Lab to gain unauthorized access to scientific databases and other proprietary intellectual property, and illegally harvest journal articles and e-books. The plaintiffs have approached the High Court of Dehlia with the above concerns,

seeking the defendant websites to be blocked and for a dynamic injunction to be issued against the same. The plaintiffs allege copyright infringement by Sci-Lab and seek compensation for the loss of revenue that they have incurred, because of the alleged illegal access and distribution of their works by Sci-Lab. It is further prayed by the plaintiffs that the website be declared as a 'rogue' website.

6. Sci- Lab founder Alex Elba maintains that the activities of Sci Lab remain permitted under the exceptions provided under the copyright law framework in Indistan. Sci Lab also counter-alleges that the publishing companies have been involved in rent-seeking behaviour, charging extortionate amounts for accessing research work that is largely publicly funded. It contends that publishing houses incur little cost in the publication process and the steep pricing offered by the publishers is detrimental to the cause of dissemination of knowledge. Sci Lab has also released a statement which mentions: "Open communication is a fundamental property of science and it makes scientific progress possible. Paywalled access prevents this". Relying on Article 27 of the Universal Declaration of Human Rights, Sci Lab asserts the right to freely participate with the scientific community and maintains that the activities of Sci Lab are completely legal and in line with the moral obligation of the academic community to foster the communication of knowledge and research for the benefit of the whole society at large.
7. The fraternity of academicians and scholars in the country has also expressed concern about the matter and a group of twenty scientists, academicians and eminent scholars from different disciplines have written a letter supporting free access to research, which has been submitted to the court.

The matter is listed for final arguments before the High Court of Delhia.

(The laws in force in Indistan are in *pari materia* to the laws of India.)