PROTECTING FICTIONAL CHARACTERS IN AN AI-DRIVEN CREATIVE ECONOMY: A COMPARATIVE ANALYSIS OF SRI LANKAN AND INDIAN INTELLECTUAL PROPERTY LAW

T. Theruwandi Edirisinghe*

Department of Legal Studies, Faculty of Business, NSBM Green University, Sri Lanka.

*Corresponding author: theruedirisinghe6@gmail.com

Abstract

Character merchandising is a commercially significant practice through which fictional, cartoon, celebrity, or personality-based characters are exploited through their names, images, appearances, voices to promote products and services and stimulate consumer demand. The emergence of Artificial Intelligence (AI) has expanded the scope of such exploitation by enabling the rapid replication, modification, and generation of character-related expressive features. This study uses the term "AI-related character merchandising" to refer specifically to the commercial exploitation of fictional characters through AI-generated or AI-assisted content including the unauthorised reproduction, adaptation, digital representation, and commercial use of protected character elements. Sri Lanka does not have a distinct statutory framework specifically regulating character merchandising or AI-related exploitation of fictional characters. Consequently, protection is primarily sought through existing copyright, trademark, industrial design, and unfair competition principles. This fragmented approach raises legal questions concerning the extent to which a fictional character or its distinctive attributes, can independently attract IP protection and how existing remedies can address AI-generated reproductions, adaptations and commercial uses. Against this background the study critically examines the adequacy of Sri Lankan IP law in protecting fictional characters from unauthorised AI-related commercial exploitation through a comparative analysis with India. India provides a relevant comparator due to its developing body of judicial decisions concerning the protection and commercial exploitation of fictional characters through copyright, trademark and passing-off principles. The study examines whether these existing legal mechanisms adequately address contemporary forms of character replication and digital exploitation facilitated by AI technologies. The research adopts a doctrinal and comparative legal methodology analysing relevant statutory provisions, judicial decisions, academic literature, and international intellectual property instruments. Particular attention is given to the legal status of fictional characters the scope of copyright and trademark protection, passing-off and unfair competition principles and the application of these mechanisms to AI-generated content. Based on the comparative findings the study proposes specific legal and policy measures for Sri Lanka including clarification of the protectability of distinctive character elements and the development of more coherent remedies for unauthorised AI-assisted commercial exploitation while maintaining an appropriate balance between intellectual property protection, technological innovation and creative freedom.

Keywords: Character Merchandising, Artificial Intelligence, Intellectual Property Law, Copyright Protection, Trademark Law, Sri Lanka.