

# RIGHTS OF BROADCASTING ORGANIZATIONS: DO WE NEED LEGAL REFORM?

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## INTRODUCTION

Broadcasting was an area less touched by the Indian legislators due to lesser competition and the existence of Prasar Bharati (national broadcaster), but now the situation is different, sports, especially cricket, is becoming more popular, and multinational broadcasting companies have started to buy broadcasting rights of cricket because of their enormous commercial value. The result being that litigation sprouts galore with complainants referring to international regimes to substantiate their claims. It has become the responsibility of the judiciary to fill this gap through various pronouncements.

The Supreme Court directed the government to set up an independent autonomous authority which would free Prasar Bharati from the shackles of government control and ensure conditions in which the freedom of speech and expression could be meaningful and effectively enjoyed by one and all<sup>1</sup>. The major objective of this article is to analyze the national and international broadcasting regime in the digital age and analyze whether there is any need for legal reform for regulating broadcasting services in India.

Neighbouring rights are a distinct form of intellectual property right (IPR). It is used to indicate rights of performers and producers to be compensated when their performances and recordings are performed publicly, broadcast, rented out or reproduced. The purpose of 'neighbouring rights' is to protect the interests of certain persons or legal entities that either contribute to making creative works available to the public or produce subject matter that is considered worthy of copyright-like protection, which is not original or creative enough to qualify as a work under a national copyright system<sup>2</sup>. The beneficiaries of neighbouring rights are usually producers of phonograms, performers and broadcasters.

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1. Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) 2 S.C.C. 161, 224.
2. Viviana Munoz and Andrew Chege, *The proposed WIPO Treaty on the Protection of Broadcasting Organization: Are New Rights Warranted and will Developing Countries Benefit*, SOUTH CENTRE, Sep. 3, 2006.

In India, broadcasting is one of the most important mechanisms for communicating information and knowledge to the public at large. Nonetheless, the development of digital technologies, leading to a technological convergence between the three pillars in the chain of communication, namely telecommunications, broadcasting and informatics, and interactive development (multimedia), holds enormous potential for increasing access and wider dissemination of footage to developing countries and of delivering information and entertainment quicker. India therefore needs to create an appropriate national regulatory framework to promote the production of works, as well as its transmission and diffusion to the benefit of the society. Part of this process involves revising the existing frameworks for the protection and regulation of broadcasting organisations, which play a fundamental role in transmitting information to the public.

Today, a state broadcasting service with a monopoly on broadcasting in the country and relying exclusively on public funding is no longer existent in developing countries. Neo-liberal policies and obligations of international treaties have led to a new market for broadcasting. In addition to creating a new competitive environment, the market model of broadcasting aimed at offering more choice. In an open market, it is considered that individuals can fully express their preferences and hence commercial broadcasters would be able to better meet their needs. Thus viewers become consumers; a belief exemplified by the emergence of multinational broadcasting companies.

## **BROADCASTING OF SPORTS EVENTS**

Now, 'sports from a sofa' is big business and an integral part of professional sporting events<sup>3</sup>. Programming is the key that opens the door to the fans, the networks, and, more recently, to internet providers<sup>4</sup>. Broadcasting sports means huge revenues. It is one of the most important revenue sources, critical to the welfare of the sports authority. To increase revenues, leagues are considering running their own network companies<sup>5</sup>. New technology presents the leagues with additional opportunities to license their rights, including broadband and wireless internet or digital channels<sup>6</sup>. The question of 'who shall have the power to sell broadcasting rights' is an

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3. See Ivy Ross Rivello, *Sports Broadcasting in an Era of Technology: Superstations, pay-per-view, and Antitrust Implications*, 47 *DRAKE LAW REVIEW* 177, 178 (1998).

4. See Steve Bornstein, *Coplin, Margulis join NFL Network lineup*, *NFL NEWS*, Jun. 27, 2003, <http://www.nfl.com/news/story/6476362>.

5. Beginning in the 2005 season, NFL Network will be launched. It will be on the air seven days a week, 24 hours a day on a year-round basis and will be the first TV network fully dedicated to the NFL.

6. See *The Global Business of Sports Television*, <http://corporate.findlaw.com/local.html>.

increasingly important one. Does the sports authority have the right to distribute the broadcasting rights centrally?

In recent years, with increased competition among Multi-National Corporations (MNC) for the transmission rights of footage, especially in cricket, organizers and authorities have become more aware of the value of their rights and commercial value. The development of technology allows computer users to see photos, enjoy real-time video and listen to live audio of the events over the Internet<sup>7</sup>. Due to its capacity to deliver information to users almost instantaneously, the Internet has become an increasingly popular way to reach news and information<sup>8</sup>.

In the past, the value of broadcasting rights to sports events stayed relatively low. Organizers concerned themselves more with ensuring coverage to attract sponsorship and promote popularity of an event. However, now the situation is entirely different as major sports events are among the programs that attract maximum viewers. There is heavy competition to be the exclusive broadcaster of sports events in a given geographical area because broadcasters want to attract the advertising income that flows from large viewing audiences. The broadcasting of sports events achieves high figures for viewers with strong buying power, particularly with the fifteen to fifty year age group. This target audience is essential for advertisers because it is a readily identifiable group not easily reached by other programs. As a result, the demand to advertise on sports event broadcasts has increased, as has the competition for the television right to broadcast those events.

The right to broadcast sports events is granted usually for a given territory, per country, on an exclusive basis. Broadcasters consider exclusivity necessary in order to guarantee the value of a given sports program. The value consideration is in terms of the number of viewers and the amount of advertising dollars an event attracts<sup>9</sup>. The organizer initially owns the broadcasting rights to a given event. The organizer controls access to the premises where the event occurs. It usually admits only one host broadcaster (i.e., the broadcaster in the country where the event takes place) to produce the television signal<sup>10</sup>. In this way, the organizer controls the broadcasting of

7. See Bernhard Warner, *IOC May Let Dot-Coms Cover Games in 2002*, THE STANDARD, Aug. 18, 2000 (The Net is a hybrid of print and broadcast, because sites can incorporate real-time coverage, moving pictures and sound.), <http://www.thestandard.com/article/0,1902,17807,00.html>.
8. See Jennifer M. Driscoll, *It's a Small World After All: Conflict of Laws and Copyright Infringement on the Information Superhighway*, 20 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL ECONOMIC LAW 939, 940 (1999).
9. See Coopers & Lybrand, *The Impact of European Union Activities on Sport*, 17 LOYOLA INTERNATIONAL AND COMPARATIVE LAW REVIEW 245, 285 (1995).
10. See Eurovision System, 1993 O.J. (L 179) at 27.

the event and guarantees exclusivity. The host broadcaster then must secure broadcast rights from the event organizer to televise the event within its own national territory<sup>11</sup>.

Other broadcasters typically try to secure similar exclusive rights to broadcast events within their respective national territories. They do so either from the host broadcaster or some other owner of the television rights. These rights are either in the form of a license to exploit the material produced by the host broadcaster or an assignment of all rights. In an assignment, the host retains the ability to be the exclusive broadcaster of the event in its own national territory<sup>12</sup>. In recent years, organizers have recognized the increased competition for broadcast rights and, in turn, have increased the broadcast fees. For example, Nimbus Communications paid \$612 million to Board of Cricket Control in India (BCCI) in order to get the exclusive broadcasting right of Indian cricket from March 1, 2006 to March 31, 2010.

### **CHALLENGES OF TECHNOLOGY IN PUBLIC BROADCASTING**

As with all other media, the dramatic changes in telecommunications technology in the last quarter of the twentieth century had substantial impact on the character and prospects for public broadcasting. Broadcasting had been built as an analogue system of production and transmission, using open, 'over the air' spectrum frequencies and serving generally as a mass medium. Beginning in the 1970s the quickly spreading uses of and interactions among coaxial cable, optical fibre cable (OFC), satellite distribution, and computerization inaugurated a series of challenges to the conventional model and began to take broadcasting more explicitly into the complex welter of telecommunications. Those challenges became more significant with the rapid increase in the pace of digital technology development in the 1980s and 90s, leading to a process of convergence and reconfiguration among media forms generally. By the end of the century, the very structure and associated industrial and service forms of traditional broadcasting were breaking down in the face of the much higher carrying and multimedia capacities of digital transmission, direct to home (DTH), digital TV and Internet.

Public broadcasting had been able to take creative advantage of the early phases of those changes, for instance, in its adoption of geo-stationary orbiting satellite services for distributing its national signals. In keeping with

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11. *See supra* note 8.

12. *Id.*

its ownership and fiscal base in the stations, it had been more open to the flexibility of that technology than had commercial broadcasting initially, where centralized network controls militated such distribution options. It had also taken a leading role in the development of closed captioning for use by the hearing impaired. By contrast, the commercial television responses of the broadcasting and cable industries to the newer program service opportunities seemed initially stronger, and by the mid-1980s those industries were cooperating to develop new services that, to many eyes, resembled much of traditional public broadcasting.

## **INTERNATIONAL AND NATIONAL LEGAL FRAMEWORKS**

In the scenario of globalization, shrinking government control was regular in most fields. But globalization is going hand in glove with legislation by bringing more international regimes to control national governments further and to provide MNCs with more legal security. In the present international framework broadcasting organisations have legal protection only over the transmissions made through wireless means (satellite). They enjoy a certain level of protection against signal theft<sup>13</sup> under the existing international regimes, namely the Rome convention 1961<sup>14</sup>, Brussels Satellite convention 1974<sup>15</sup>, TRIPs agreement 1994<sup>16</sup>, WIPO Performers and Phonograms Treaty (WPPT) 1996<sup>17</sup> and WIPO Copyright Treaty (WCT) 1996.

Since 1998<sup>18</sup>, WIPO has been addressing the topic of updating the protection of the rights of broadcasting organizations to manage the problem of signal theft, particularly in the digital environment. The proposed WIPO broadcasting treaty's exclusive 'rights-based'<sup>19</sup> approach would create a new

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13. Using signals without the authorization of broadcasters, which could cause the economic losses for broadcasting organizations.
  14. It establishes that broadcasters have the right to prohibit but not to 'authorize' the fixation, reproduction of fixation, and the re-broadcasting by wireless means of broadcasts.
  15. The Brussels Convention Relating to the Distribution of Programme - Carrying Signals Transmitted by Satellite May 21, 1974, 34 I.L.M 3, protects broadcasters' rights by allowing members to prevent dissemination of programme-carrying signals by any distributor for whom the signals are not intended. The duration is to be decided by national law.
  16. Article 14(3), Agreement on the Trade - Related Aspects of Intellectual Property Rights Apr. 14, 1994, 33 I.L.M 1125, provides broadcasting organizations have the right to control the fixation, reproduction, wireless re-broadcasting and communication to the public of broadcasts.
  17. WIPO Performers and Phonograms Treaty, Article 15, December 20, 1996 equitable remuneration for wireless broadcasting or for any communication to the public of phonograms.
  18. See the first meeting of the Standing Committee on Copyright and Related Rights (SCCR), November 1998, [www.wipo.org](http://www.wipo.org).
  19. Relfi Paul, *WIPO Negotiations Threaten Exclusive "Signal Based" Protection in Broadcasting*, IP-WATCH, Oct. 30, 2008, <http://www.ip-watch.org/weblog/2008/10/30/inside-views-wipo-negotiations-threaten-exclusive-signal-based-protection-in-broadcasting/>.

intellectual property right, such as rights in broadcast signal, which would be layered upon existing copyright in the underlying program material (content). Normally broadcasting organizations do not produce any works; they just arrange transmission of works. Is it justified to grant new rights to broadcasting organizations, similar to those granted to the creators, through new international copyright norms? Will it constrain the rights of the copyright holders in favour of the broadcasting organizations? If so, will it eventually create ownership over the 'contents' broadcasted in favour of the broadcasting organizations? How far does such a new layer of IPR affect the citizen's fundamental right to be informed?

The Indian Copyright regime is a legacy of its colonial past. In 1885, the British Colonial government passed a legislation granting broadcasters, in effect, a monopoly over communications and broadcasting (Indian Telegraph Act 1885). The Indian Copyright Act 1914 and 1957 was mainly based on the U.K. Copyright Act, (1911, 1956). With the development of new technologies and international legal frameworks it became essential to update the copyright laws. In India the rights of broadcasting organizations were not envisaged under the Copyright Act of 1957. However, with an amendment in 1994 the Act was substituted with the new section providing for broadcast reproduction rights. The Copyright Act of 1957 has been amended five times (1983, 1984, 1992, 1994, and 1999).

### **WHY UPDATE PROTECTION?**

In the international context, WCT and WPPT<sup>20</sup> are being considered for accession by India in respect of rights of creative authors and producers; there is a need to clarify protection for broadcast organizations and update the same to be abreast of international developments in this regard. WIPO is preparing to introduce a separate law for the protection of the rights of broadcasting organizations<sup>21</sup> at the international level. It has important implications for developing countries, for which access to information and knowledge is crucial to their development prospects. Sports broadcasting, especially cricket, has become more popular in developing countries like India. So MNC's have started to buy broadcasting rights of cricket because of their enormous commercial value.

*Update in the law will help in the following:*

- Clarity on what is a broadcast organization - currently, since broadcast is defined broadly, any entity communicating anything to the public by wireless means or through wire is qualified to be a broadcaster under the copyright act.

20. WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 36 I.L.M 76 (1997).

21. A knowledge society is that in which "the production of information and its conversion into knowledge is a primary activity and knowledge is a key aspect of organizational power and social stratification". THOMAS GIBBONS, REGULATING THE MEDIA 1 (Sweet and Maxwell 1998).

- Fillip to fighting piracy of signals - this cost the Indian broadcasting industry, US\$565 million in 2005.
- Additional layer of protection to the creative works being transmitted via the broadcast.
- Equality of treatment overseas for Indian broadcast signals, which have hitherto been pirated without adequate safeguard and for international commit.
- To facilitate better investment in broadcast infrastructure.
- Prasar Bharati as public broadcaster is a creator of innumerable broadcasts, generally in 'free to air' mode of important sports events, news, serials and other copyright contents. Pirates are indulging in simulcasting, delayed broadcasting, re-broadcasting of Doordarshan broadcasts and even misusing the recordings of its archival treasure with a motive to make money.

### **DOES INDIA NEED LAW REFORMS?**

India is the third largest broadcasting market in the world and it constitutes a large segment of mass media. Through broadcasting the media plays a fundamental role in providing knowledge and information to the people. It is a powerful means of exerting influence in society. With the change in the pattern of broadcasting rights from the traditional forms (live, delayed, highlights, clips) based on territory, platform and content to the emergence of the next generation media rights involving the Internet, mobile devices, terrestrial TV, convergence TV, it is not surprising that questions relating to the basic principle, origins, ownerships, sale and acquisition of such rights in relation to sporting events could involve diverse legal issues.

The important landmarks for the broadcasting regulations in India are given below:

1. Indian Telegraph Act, 1885.
2. Copyright Act, 1957.
3. Prasar Bharati Act, 1990.
4. Cable Television Network Act, 1995.
5. Information Technology Act, 2000.
6. Sports Broadcasting Signal Ordinance, 2007.

The area of copyright and neighbouring rights dealing with broadcast rights falls essentially under the Copyright Act, 1957 as amended in 1999, which provides broadcasting organizations with 'broadcast reproduction rights' as their intellectual property. It is a special right that encompasses certain exclusive rights including rebroadcast of a broadcast or causing the broadcast to be heard or seen by the public for a duration of 25 years. This is a right distinct from the copyrights held for the contents of the broadcast. By virtue of these rights, the following acts if done during the continuance of a broadcast reproduction right and without the consent of the broadcasting organization in respect of the broadcast or any substantial part thereof would amount to an infringement of the said right:

- Re-broadcasts;
- Causing the broadcast to be heard or seen by the public on payment of any charges;
- Making any sound recording or visual recording of the broadcast or selling or hiring to the public or offering for such sale or hire the same;
- Making any reproduction of such sound recording or visual recording where such initial recording was done without license or, where it was licensed, for any purpose not envisaged by such license or selling or hiring to the public or offering for such sale or hire the same.

Further, protection can also be sought under section 43 of The Information Technology Act, 2000 which makes one liable to pay damages by way of compensation up to Rs 1 crore for unauthorized downloading.

The Constitution of India states that "all citizens shall have the right to freedom of speech and expression"<sup>22</sup> The Supreme Court says that "the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained."<sup>23</sup> In the case of *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal (CAB)*<sup>24</sup> the Supreme court has considerably widened the scope and extension of right to freedom of speech and expression and held that the government has no monopoly on electronic media and

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22. CONSTITUTION OF INDIA, art. 19(1)(a).

23. *Secretary, Ministry of Info. & Broad. v. Cricket Association of Bengal*, (1995) 2 S.C.C. 161, 224.

24. (1995) 2 SCC 161.

under Article 19 (1)(a)<sup>25</sup> a citizen has the right to telecast and broadcast to the viewers through electronic media. The government can impose restrictions on such a right only on grounds specified in clause (2) of Article 19 and not on any other ground. State monopoly on electronic media is not mentioned in clause (2) of Article 19. To this effect, the Supreme Court noted that the, 'airwaves are public property'<sup>26</sup>. Their use has to be controlled and regulated by a public authority in the interests of the public and to prevent the invasion of their rights. Obviously the only legitimate role for the state in this regard is that of trustees. The Supreme Court, confirming the order of Calcutta High Court, held that monopoly over electronic media is inconsistent with the right to freedom of speech and expression<sup>27</sup>. But Article 19(6) of the Constitution allows monopolies in business activities. The Court held that this clause limits Article 19(1)(g)-the right to trade and conduct business - but broadcasting, being a means of expression and therefore covered by Article 19(1)(a), could not be monopolized, whether by the government or private companies. It clarified that 'Merely because an organisation may earn profit from an activity whose character is predominantly covered by Article 19(1)(a), it would not convert the activity into one involving Article 19(1)(g) (business, in which monopolies are not unconstitutional).'

While acknowledging the government's oft-repeated claim that its monopoly on broadcasting was to best utilize limited frequencies for the benefit of society at large, the court felt that this claim rang hollow if any section of society is unreasonably denied access to broadcasting, or if the governmental agency claims an exclusive right to prepare and relay programmes. It also found the claim inappropriate given that those wanting to broadcast, such as the CAB, do not make a demand on limited frequencies and wants bandwidth unused by the government.

As for the national security plea, based on the sensitive nature of the electronic media, that the damage done by private broadcasters may be irreparable, the court finds much to be said in its favour, and suggests regulation and licensing as a remedy. However, if the government could

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25. Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. But this right is subject to limitations imposed under article 19(2) which empowers the state to put reasonable restrictions on the following grounds, eg. Security of states, contempt of court, defamation, sovereignty etc.

26. Secretary, Ministry of Info. & Broad. v. Cricket Association of Bengal, (1995) 2 S.C.C. 161, 224.

27. *Ibid*, Supreme Court suggested that suitable amendments should be made to the India Telegraph Act keeping in view of modern technological developments in the field of information and communication.

grant or refuse to grant licenses at its unbridled discretion, then it would be able to suppress the freedom of speech instead of protecting it and using its licensing authority correctly. So the Supreme Court recommended an autonomous broadcasting authority, independent of the government to control all aspects of the operation of the electronic media. The Court opined that the Indian Telegraph Act 1885, was totally inadequate to govern broadcasting media. It does give the government a monopoly on communications, and although this aspect of the act will change thanks to the government's need for investment in infrastructure, it is not considered unconstitutional.

This judgment held that the 'freedom of speech and statement' guaranteed by Article 19(1)(a) of the Constitution includes the right to acquire and disseminate information. And, in turn, the right to disseminate includes the right to communicate through any media - print, electronic or audio-visual - though restrictions were permissible on such rights. The fundamental rights, the Court opined, can be limited only by reasonable restrictions under a law made for the purpose. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and statement on the ground that public safety is endangered.

The judgment regarded broadcasting as a 'means of communication and, therefore, a medium of speech and statement'. Hence in a democratic polity, neither any private individual, institution or organisation nor any government or government organisation can claim exclusive right over it. Our constitution also forbids monopoly either in the print or electronic media. However, the monopoly in broadcasting and telecasting is often claimed by the government to utilise the public resources in the form of the limited frequencies available for the benefit of society at large. It is justified by the government to prevent the concentration of the frequencies in the hands of the rich few who can monopolise the dissemination of views and information to suit their interests and thus in fact to control and manipulate public opinion, in effect smothering the right to freedom of speech and statement and freedom of information to others.

The government sometimes claims monopoly also on the ground that having regard to all pervasive presence and impact of the electronic media, it may be utilised for purposes not permitted by law and the damage done by private broadcasters may be irreparable. There is much to be said in favour of this view and it is for this reason that the regulatory provisions including those for granting licenses to private broadcasters are enacted. On

the other hand, if the government is vested with an unbridled discretion to grant or refuse to grant the license or access to the media, the reason for removing monopoly will lose its validity. For then, it is the government which will be enabled to effectively suppress the freedom of speech and statement instead of protecting it and utilising the licensing power strictly for the purpose for which it is conferred. It is for this reason that in most of the democratic countries an independent autonomous broadcasting authority is created to control all aspects of the operation of the electronic media. Such authority is representative of all sections of the society and is free from control of the political and administrative executive of the state. It therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and television. Consequently, every citizen of this free country, has the right to air his or her views through the print and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The Supreme Court, thus in its expansive interpretation emphasized that 'the print media, the radio and the tiny screen play the role of public educators, is so vital to the growth of a healthy democracy.'

Though the Indian courts have interpreted<sup>28</sup> the scope of these rights in relation to the unauthorized broadcast of films and other like programmes, judicial recognition of such rights exclusively pertaining to the sports industry was accorded by an order of the Delhi High Court in 2004 wherein it granted the first open-ended Anton-Piller order in a legal row over TV broadcasting rights to the India-Pakistan cricket series involving Taj Sports India Pvt. Ltd.<sup>29</sup> and its sports channel Ten Sports, against unauthorized transmission of cricket matches on rival cable TV channels. The injunction named 36 cable operators, whom the court ordered to stop illegally reproducing broadcast rights. Coming at a time when India was gearing up towards full compliance with the TRIPS agreement, the Ten Sports order came as a boon to IP owners, especially those who owned rights with a limited shelf life. This order heralded the growth of sports law in India, a legal domain that was hitherto untested.

With the increasing number of rows relating to the broadcasting rights involved in a particular sporting event, and more pertinently between the privately owned channels and the national broadcaster, Doordarshan regulated by the body Prasar Bharati, the Ministry of Information and

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28. Appeal filed by Taj Private (India) Ltd – before the Supreme Court Bench, comprising the Chief Justice V.N. Khare, Justice S.B. Sinha and Justice S.H. Kapadia.

29. Taj Sports India Pvt. Ltd., is only an agent of Dubai based Taj Television Ltd, which is the management company of Ten Sports.

Broadcasting issued a new policy guideline for down-linking of TV channels issued in the year 2005, relating to the broadcast of various kinds of sporting events, particularly cricket matches. The relevant clauses of this policy made it mandatory for all private channels to share with Doordarshan the live telecast feed of national and international sporting events of national importance, held in India or abroad. The events of national importance were to be determined by the Ministry of Information and Broadcasting in consultation with Ministry of Sports and Youth Affairs, Prasar Bharati and the concerned sports channels/sports rights management companies. The guidelines also made it clear that private channels bagging the exclusive telecast rights will have to share 25% of marketing revenue with Doordarshan.

In a petition to the Supreme Court, Ten Sports challenged these provisions as having no authority of law and being detrimental to the channel owners' rights and business. The entire dispute came right before the crucial India-Pakistan series. Interestingly, the Indian government submitted before the Supreme Court that for the first three tests against Pakistan, it would not force Ten Sports to abide by the down-inking guidelines. As a result, Doordarshan was not allowed to telecast the cricket series and had to suffice by airing only the 90 minutes daily highlights of the Test series with Ten Sports. Later, by means of an agreement between Prasar Bharati and Ten Sports, Doordarshan got the right to telecast the matches for which Ten Sports provided a live feed. The Court, in this concern, held with its order dated January 30 2006 that Doordarshan should carry the 'uninterrupted feed' of the matches received from the Ten Sports. It should not telecast its own programmes during lunch breaks and also cannot show its own advertisements.

Further, in 2006 on the same lines, the Delhi High Court in *Prasar Bharati v. Sahara TV Network Pvt. Ltd. & Ors*<sup>30</sup> held that though a news channel cannot be treated on par with commercial channels, it has to be regulated in terms of the same clause as stated in the rules of the Prasar Bharati on record except to the extent that the maximum cap-limit of two minutes shall extended to seven minutes in 24 hours. However it was further held that the use of this time shall only be for giving cricket news without any commercial programme or advertisements before, during or after the cricket news. However, they would be at liberty to show any news or important events during that period as well. The same year Doordarshan used its clout with the Ministry for Information and Broadcasting, to release

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30. 2006 (32) PTC 235 (Del).

an ordinance<sup>31</sup>, which made it mandatory for private television channels to share their live feed of the official one day international matches and the 'Twenty20' ties and some other test matches, with the national broadcaster Doordarshan (DD). On the contrary, private television channels had paid substantial amounts of cash to secure telecast rights to all of those matches<sup>32</sup>.

The next dispute was between Nimbus Sports and DD in January 2007 regarding the broadcasting rights over the second ODI between India and West Indies. Nimbus filed a petition before the Delhi High Court for preventing DD from using footage of their exclusive right. But in its provisional order, the court directed Nimbus to provide a feed to DD, which will telecast it on DD International and its DTH service. The cricket action on DD was, however, to be at a delay of seven minutes. Considering the popularity of sports events in India especially cricket, the judiciary and government always manages to force private broadcasters into sharing their signal with national broadcaster DD.

For escaping from the continuing conflict over the distribution/sharing of broadcasting signal, DD used its supremacy with the ministry for Information and Broadcasting (I&B), which made it mandatory for private television channels to share their live feed of all one day international (ODI) cricket matches and the Twenty20 ties and some other test matches, citing public interest abroad<sup>33</sup>. This Broadcasting Signals Ordinance, 2007<sup>34</sup> mandates that live television and radio feed, minus advertisements, be shared with DD and All India Radio for events judged as being of national importance by the Union Government. On the contrary, private television channels had paid substantial amounts of cash money to secure telecast rights to all of those matches<sup>35</sup>.

The most recent dispute in this regard is something different; here the national broadcaster filed a petition to the Delhi High Court against private news channels using the unauthorized recording of the Beijing Olympics

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31. Ultimately the government passed the Broadcasting Signal Ordinance 2007, which compels other broadcasters to license their broadcast rights to DD in the case of a sporting event of national interest. It provides Mandatory Sharing of signals with Prasar Bharati; Ordinance issued by Government of India on 1st February 2007.

32. Nimbus Communications has paid \$612 million to BCCI for getting the exclusive broadcasting right of cricket from March 1, 2006, to March 31, 2010.

33. *Way cleared for sharing Sports live feed with DD*, BUSINESS LINE, Feb 02, 2007 <http://www.thehindubusinessline.com/2007/02/02/stories/2007020204020100.htm>.

34. It provides Mandatory Sharing of signals with Prasar Bharati, Ordinance issued by Govt. of India on 1st February 2007.

35. *Supra* note 32.

which was the exclusive right of DD<sup>36</sup>. Prasar Bharati has obtained an order from the Delhi High Court that restrained all private news channels from sharing Doordarshan's footage of the Beijing Olympics, unless they entered into a commercial agreement with Prasar Bharati and the Indian Olympics Association. DD paid around \$3 million for the exclusive broadcasting rights to the Beijing Olympics Organizers, and argued that footage beamed by other channels damaged their commercial interests<sup>37</sup>. So the national broadcaster is set to claim damages of around Rs. 5 crore from over a dozen news channels for illegal use of their signals. Any kind of broadcast piracy causes serious harm to the broadcasters, who therefore need substantial legal protection. The lack of a robust protection and enforcement mechanism acts as an impediment to fully realizing the potential that exists in this industry.

In a significant judgment<sup>38</sup> the Supreme Court held that the Indian Telegraph Act (1885) is totally inadequate to govern broadcasting media. While all the leading democratic countries (including UK and US) have enacted laws specifically governing the broadcasting media, India still follows the colonial act and Copyright Act of 1957. The amendments to the Copyright Act (1994, 1999) are not perfectly covering the issues related with broadcasting. The judgment gave as a reason the limited and public nature of the airwaves, although they conceded the citizens' right to 'have access to telecasting' in principle and the right to 'impart and receive information' was implicit in the right to freedom of expression. The Judges cited, as they did throughout their judgments, the laws of the UK and US. They took this right to mean access to a plurality of views, and said that any new legislation on broadcasting should ensure the diversity of content. The Court also noted that such a legislation should be consistent with the right of freedom of speech and expression of the citizens under Article 19 (1)(a) and "must contain strict Programme and other controls", as has been provided in the Broadcasting Act, 1991 in the United Kingdom.

## RECENT LEGISLATIVE INITIATIVES

The Ministry of I & B has been examining the issue of introducing a legislation to regulate the operation of broadcasting services consequent upon the judgment of the Supreme Court in the *Cricket Association of Bengal* case delivered in 1995 that airwaves are public property and have to be controlled and regulated by public authority in the interests of the public. The

36. See [www.business-standard.com/India/storypage.php](http://www.business-standard.com/India/storypage.php)? the Business Standard reports that DD has actually secured an injunction from the Delhi High Court requiring all news channels to abide by DD's guidelines.

37. Krishnadas Rajagopal, *Olympics Telecast: Prasar Bharati goes to Court*, THE INDIAN EXPRESS, Aug. 23, 2008.

38. Union of India (Ministry of I&B) & Cricket Association of Bengal, (1995) 2 SCC 161.

Broadcasting Bill of 1997 was introduced in the Parliament but lapsed. The Communication Convergence Bill 2001 was introduced but even this lapsed due to the dissolution of the 13<sup>th</sup> Lok Sabha. In 1995 the Cable Television Networks Act was brought in to regulate the cable business and their operations. Most of the other required regulations in the sector were being accomplished by issuing guidelines such as broadcaster's right, signal sharing issues etc.

The proposed Broadcasting Services Regulation Bill 2007 is an attempt to facilitate and develop, in an orderly manner, the carriage and content of broadcasting. It also aims to codify a framework of guidelines and proposes to set up a regulatory authority called the Broadcasting Regulatory Authority of India (BRAI). The draft bill aims to prevent media monopolies through what it calls "restrictions on accumulation of interest"<sup>39</sup>.

Although the relevant section mentions the need to prevent monopolies across different segments of the media, the present provisions are confined to the broadcast sector, with some of the restrictions relating to equity and others to the reach or subscriber base of television channels. Not surprisingly, these clauses have been strongly condemned by several groups representing the media industry, which have variously described such measures as anti-consumer, anti-choice and anti-market, not to mention 'against the spirit of free enterprise.' At the same time, the proposed restrictions on ownership patterns have been welcomed by several serious and disinterested commentators who oppose other provisions of the Bill as anti-democratic.

Restrictions on ownership have been important features of media regulation in most mature democracies like UK, USA, France, Germany, and Australia. In the experience of several countries, every move towards deregulation has intensified concentration of ownership. Many media-watchers, as well as informed sections of the public, in many parts of the world are concerned about this growing trend, which is understood to be a central aspect of the ongoing process of media globalization.

But unfortunately the Broadcasting Services Regulation Bill was put off numerous times due to several reasons. The disputes over the transmission and ownership of broadcasting signals is regularly being raised before the Supreme Court and different High Courts in India. So the need for a comprehensive legislation in this area has certainly been felt.

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39. Broadcasting Services Regulation Bill, 2007, section 12 - restrictions on accumulation of interest: the central government shall have the authority to prescribe such eligibility conditions and restrictions with regard to accumulation of interest at national, state or local level in the broadcast segments of the media by the print or other media as may be considered necessary from time to time, to prevent monopolies across different segments of the media as well as within the broadcast segments, to ensure plurality and diversity of news and views.