

Protection of Hot News under the Broadcasting Laws in India

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Hot news has enormous value and as the name itself describes, it is new as well as hot which makes it highly exploitative commercially. The growing economic significance of the broadcast industry has intensified the competition among the broadcasters to exploit hot news. The craving for hot news amongst the masses sometimes stirs the competitors to free ride over the efforts of the original gatherer. The disputes arising out of this fact led to the birth of “doctrine of hot news” in the United States of America, which enjoined the free rider from misappropriating the hot news. Indian courts acknowledged this doctrine protecting the broadcasting organisations until 2013 when the position was overturned and dissemination of the hot news by free riders was legitimised. To understand the present as well as the correct position of hot news, the actual character of hot news and its relevance, the paper analyses the broadcasting laws of India *vis-a-vis* the protectability of hot news. The research finds that various laws, having a bearing on the Broadcasting Sector, including Copyright Act, Contract Act, Tort Law along with the Constitution of India contain enough provisions for protection of hot news.

Keywords: Hot News, Broadcast, Live Telecast, Broadcasters Rights, Copyright, Unjust Enrichment

This paper discusses the protection of ‘Hot News’ under copyright law together with laws of contract, tort and the Constitution of India. The protection of hot news, which signifies time sensitive content having great commercial value, has been marked by a chequered history in the legislative and judicial landscape around the world. The paper analyses the character of hot news as a ‘work’ protected under copyright law by examining it under the definitions of ‘literary work’ and ‘cinematograph film’ under the India Copyright Act, 1957. It evaluates the possibilities of covering hot news under the rights of performers and the rights of broadcasting organisations. The paper further analyses whether the dissemination of hot news is covered within fair dealing under copyright law. The paper also explores whether the recipients of hot news could be barred under the law of contract from further disseminating hot news and whether such a dissemination could constitute torts of unfair competition, commercial misappropriation or unjust commercial enrichment. The paper examines whether the protection accorded to hot news would fall foul of the freedom of speech guaranteed under Article 19 of the Constitution of India. The paper closely looks into Section 16 of

Copyright Act, 1957 and presents its analysis while examining whether common law is barred by Section 16. This question has a bearing on whether copyright law could be supplemented by other laws such as contract and tort.

The Concept of ‘Hot News’

Hot news refers to the content of news which is extremely time sensitive in nature and starts losing its commercial worth with time and especially once it is revealed to the public. For a clear understanding we refer to the graphs below. The first graph shows the relation of commercial value of the information arising out of a cricket match (scores, wickets etc.) with time. The commercial value is very high initially but it falls very soon and becomes stagnant. The second graph shows the same relation for a just released movie. The movie remains in the market for a couple of weeks before the enthusiasm of the public for it fades out and a new movie comes in. Usually, a popular and hit movie would last for a month or so (Fig. 1).

We see that for the cricket match the commercial exploitable time period is short ranging from minutes to a few hours and for a movie this time period is comparatively longer ranging from weeks to a month. This gives us an understanding that the information

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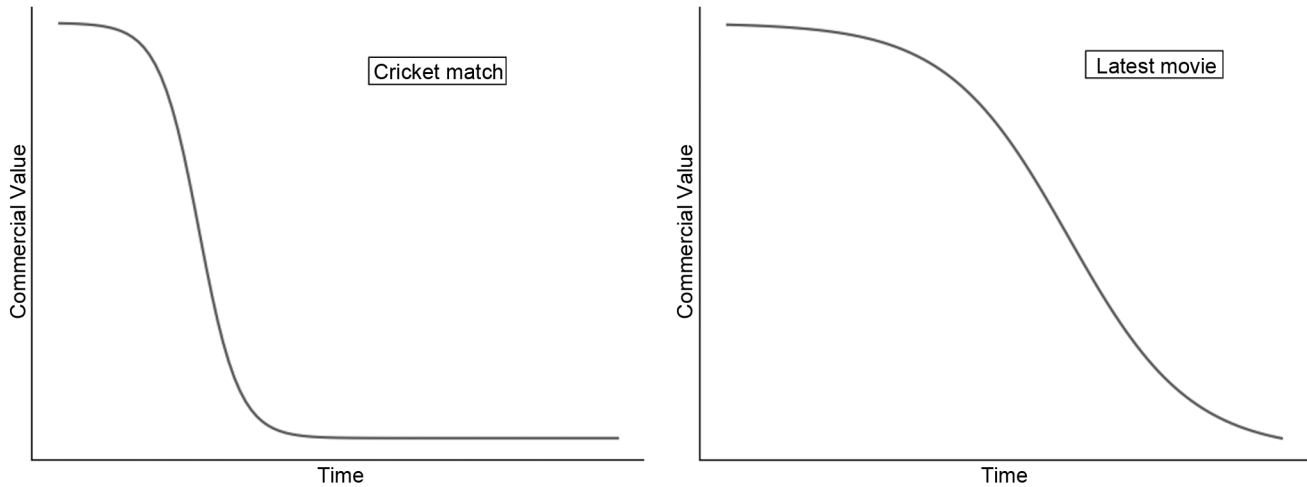


Fig. 1 — Relationship between commercial value of broadcasted content and time

arising out of a cricket match is hot news.

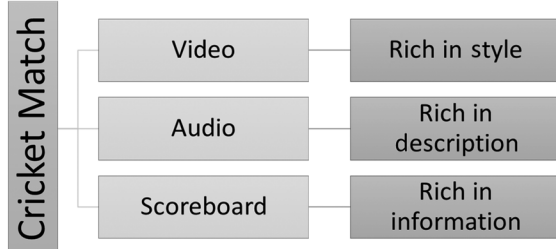


Fig. 2 — Components of broadcasting content

Figure 2 demonstrates that a broadcast of a cricket match could be dissected into three separate parts. The first is the video that viewers see on their screens; the second is the audio that the subscribers listen either along with the video or alone when they log on to the radio; and the third is the scoreboard that features detailed information about number of runs scored, wickets fallen, boundaries made, etc. which is exhibited on the screen or spoken by the commentator from time to time. It is pertinent to note that the third part is the essence and result of the whole cricket match. Each of the three parts has its own significance.

The video part is rich in the performance and the playing style which is unique for every player. It makes watching the match interesting. The viewers judge for themselves the worth of the performance of each player and relish the same. The commentary has its own significance as it makes a sports match entertaining. It provokes the listeners and offers itself as a substitute for viewing the match. The audio part in conjunction with the video seeks to give an enhanced experience to the viewers as a plain sports match without commentary and noise never appeals to the viewers as much. And all the factual information including the

score, number of overs left, number of wide balls thrown, etc. which is the third constituent of the match, is equally valuable. Even when a viewer is constantly watching the match, he would like to know at short intervals the information of this kind which is also dependent on much calculation, eg. the run rate required to win, the average score per over made, etc.

We watch/listen to different types of content consisting of only audio, only video, only text, audio visual, audio textual, video textual, etc. and there is always some information hidden behind all these contents i.e., there is some amount of information in every type of content. The value of that information depends on the type of content. For example, there is not a large amount of information in a classical music show for a layman but counting of election voting contains much more information for a layman. This example was based on quantitative value. The information can be classified on qualitative basis also, like the updates of results of Olympic matches might hold more value than the result of a reality show. This suggests that value of any information would be subjective depending on the interest of the receiver but there is a commercial value of any information which is decided by its demand in the market and the quantity of receivers.

Among different commercially valuable information also, there are classifications based on the time period for which such value is commercially valuable. For hot news, the time period for which that information is commercially valuable is extremely small ranging from minutes to a few hours.

Till date in the legal sphere hot news has only been referred to live events. Newness is an essential

element of such an item. Involuntary and unexpected happenings of something like a natural event or an unplanned sports match can be understood as hot news and, planned sports matches like scripted wrestling or a new comedy/music item of an artist can also be considered as hot news. To understand the concept clearly, following illustrations would be helpful.

- (i) Election results - Results of any election are of much excitement and value to different strata of the society. As soon as the counting starts, information (the number of votes counted, leading/trailing candidates, party gaining majority, etc.) starts coming out of the event of counting votes. This information has different significance to different people. But all the commercial value this information possesses, diminishes within a couple of days when it becomes clear that which party has gained majority and would likely form the government.
- (ii) Unscripted sports match - Sports industry entails huge commercial interests to a variety of stakeholders. All the events are no doubt scripted inasmuch there is a fixed chronology of what happens when, but the performance of the players is not scripted. When such an unscripted sports match takes place, spontaneous and unpredicted facts emerge from the event like a sudden unexpected goal, falling of a wicket, etc. This sudden information has a massive commercial value which depletes quickly with time and when the new information comes out.
- (iii) Planned sports match/show - Sports like wrestling including both scripted and unscripted wrestling are hot news. The fight is already planned but it is new to the viewers so it being planned or unplanned does not matter because the fight and the information arising out of it is novel which is valuable to the fans. The value of such matches also fades with time.
- (iv) A Standup comedy show/ A poetry show - Professional comedians and poets usually make new sets of jokes and poems which they use for a certain period of time. Their jokes and poems have the highest commercial value when they reveal their new jokes and poems to the audience in their first show. Once it happens the value of these items starts decreasing because they are somehow disclosed to the general public. This is the reason why comedians, poets,

theatre artists, etc. do not let their performances be recorded by the general public.

- (v) Stock market prediction report and stock market updates - The information (report) provided by the professionals who analyse, predict and suggest profit making stocks to their clients, is valuable only before the market opens up and during the beginning phase. Once the prices of the shares are out, there is no value left to the information provided. Other information is the rapidly changing prices of shares which become useless as rapidly as the price of a share changes.

Doctrine of Hot News

The doctrine of 'Hot News' was propounded as the quasi-property doctrine of misappropriation in *International News service v Associated Press*¹, decided by the Supreme Court of the United States of America, where the court was presented with an opportunity to recognise a time-bound property right in news.² Shyamkrishna Balganeshe in his article², "*Hot News*": *The Enduring Myth of Property in News*, defined the doctrine of hot news as, "a cause of action for the misappropriation of time-sensitive factual information that state laws afford purveyors of news against free riding by a direct competitor."

The doctrine, as created by the Second Circuit, disintegrates into five factors for analysis. Accordingly, a plaintiff news gatherer may recover from a defendant in case:²

- (i) The plaintiff has incurred a significant expenditure in gathering the news,
- (ii) The news/information is time sensitive,
- (iii) The defendant free rides on the material collected by the plaintiff,
- (iv) Such free riding competes directly with the plaintiff's own market, and
- (v) It is likely to diminish the incentive to gather/collect the news in a timely manner.

The doctrine of hot news has been appreciated in varying ways around the world. It has travelled through various interpretations and has seen rise and diminution. In India, the doctrine had been well recognised in several cases³ until it was rejected in the *Star*⁴ case. These cases involved different contentions by the plaintiffs; in some cases, plaintiffs have claimed under copyright whereas in some cases plaintiffs have only claimed broadcasting rights. Some of the concerned provisions of the Copyright

Act *vis-a-vis* broadcasting of hot news have been discussed in these cases with different interpretations.

Some of these relevant legal points pertaining to hot news were argued by the parties in the case of *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. & Anr.*⁴ In this case the plaintiff, Star India, was an assignee of the Board of Control for Cricket in India⁵ (BCCI) with an exclusive right to broadcast cricket matches organised by the BCCI. The assigned bouquet of rights included 'Mobile Rights' and 'Mobile Activation Rights', thereby granting Star all media rights, including the right to all information emanating from the event such as real time scores, etc. Star obtained these rights by compensating the BCCI. The defendants who were telecom service providers collected match related information from the broadcast of the plaintiff such as scores, match updates, etc. on a real time basis and sent updates to their subscribers through text messages (SMS) and Mobile Value Added Service (MVAS). Star India sued the defendants based on the 'hot news' doctrine for having committed the tort of unfair competition, commercial misappropriation and unjust enrichment claiming that their exclusive rights emanating from a contract that they entered with BCCI were rendered redundant and that the defendants should not be allowed to 'misappropriate' their right. The plaintiff sought these remedies under common law, *de hors* the Copyright Act, 1957.⁶ We shall be referring to this case during the course of the paper, therefore, it is appropriate to mention facts of this case at one place here.

Protection of Hot News under Copyright Law

Hot News as such has not been defined in the Copyright Act, therefore, we need to explore and try to map hot news with the statute. In this part we analyse various provisions of the Copyright Act and investigate the possible relationship between hot news and copyright law.

In the overall scheme of Copyright Act protection is accorded to six different kinds of works, *viz.* literary, dramatic, musical and artistic work together with sound recording and cinematographic film.⁷ Further, within the Copyright Act, protection is also accorded to rights of broadcasting organisations⁸ and rights of performers.⁹ Hot news is a specific type of content or work which might run through some or all of these works. We need to examine whether the subject matter of 'hot news' potentially fits into any of these categories.

Hot News as Literary Work

Let us examine whether hot news could be a literary work. Section 2, Copyright Act defines Literary work as:¹⁰ "Literary work includes computer programmes, tables and compilations including computer databases."

Hot news would fit into the category of literary work perfectly, however, in various judgements¹¹ it has been held that facts are out of the pale of copyrightability. Therefore, to the extent hot news is facts and facts alone, it is not protected. However, the particular characteristic manner of presentation of news is certainly a subject matter of copyright protection.¹² Bare facts, bereft of any creative stylisation, would be out of copyright protection. In *Star*⁶ (Single Judge) this argument was not taken up by the plaintiffs who had chosen to argue their case *de hors* copyright law.¹³ Considering hypothetically, had it been taken up by the plaintiff, there was hardly a chance of success as what was communicated by the defendants was bare score which would fall within the domain of facts alone.

Hot News as Cinematograph Film

The next question is whether hot news could be covered within the concept of cinematograph film. Cinematograph film has been defined in the Copyright Act in the following words:¹⁴

"Cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films."

Considering the case of *Star*⁴ (Division Bench), if the underlying technology used by the plaintiff is such that the content of a cricket match is captured and *stored* and then transmitted through wires or wireless then it becomes a film first and then broadcast of that film takes place.

Whether the content is captured and stored for a second or a minute or a month should not make any difference. For example, if a person records a sporting event on his device and then broadcasts it after whatever time duration, is he technically not broadcasting a film? The argument that there are no performers in a sporting event is flawed on two counts. First, in the definition of 'performer',¹⁵ is wide enough to accommodate players. This is especially so when the definition includes acrobats and jugglers and includes any other person who makes a performance.

The players in most of the sports usually do a lot of artistic performance in their unique styles apart from playing their game. Second, if someone goes to a forest to make a recording of wildlife, we are keen to name it as a film without there being any 'performers' in it as the definition of performer is wide but *still* not wide enough to include animals.¹⁶

If such a technology has been employed by the plaintiff in *Star*⁴ (Division Bench) then there seems to be no basis on which to deny protection to the plaintiff's work as a cinematographic film. The rights that belong to the owner of a cinematograph film under the Copyright Act are as follows:¹⁷

For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any *substantial part thereof*, namely: —in the case of a cinematograph film, —

(i) to make a copy of the film, including—

(a) a photograph of any image forming part thereof; or

(b) storing of it in any medium by electronic or other means;

(ii) to *sell* or give on commercial rental or offer for sale or for such rental, any copy of the film.

The defendant, while sending hot news consisting of a scoreboard can be said to have copied and communicated the same to the public. Of course, the defendant has not copied the entire film and transmitted it to its consumers, however, he has certainly done a *substantial part* of it and a part which is the very essence of the film capable of generating much excitement to its consumers. Copying a *substantial part* of a film and *selling* the same would fall foul of the plaintiff's right under Section 14(d) as stated above. This argument was also not taken up in the *Star*⁴ case, however, a good case can certainly be made out.

There is yet another aspect applicable in case of cinematograph films and that is the concept of 'originality'. Originality is a condition for the protection of four of the six works mentioned in the definition of work and Section 13 of the Copyright Act. However, originality is not a precondition for the protection of a cinematograph film and a sound recording.¹⁸ The only requirement is that the film should not be the result of a copyright infringement in any other work.¹⁹ Therefore, the argument about lack of originality could work for protection under the 'literary work' category but not as a cinematograph film.

Hot News and Performer's Rights

The third aspect to be examined is whether the players in a sporting event are performers²⁰ and if yes then they certainly are vested with performers' rights. According to the Copyright Act, following are the performer's rights:²¹

Exclusive right of performers —

(1) Without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or *any substantial part* thereof, namely: —

(a) to make a sound recording or a visual recording of the performance, including—

(i) reproduction of it in any material form including the storing of it in any medium by electronic or any other means;

(ii) issuance of copies of it to the public not being copies already in circulation;

(iii) *communication of it to the public*;

(iv) *selling* or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;

(b) *to broadcast or communicate the performance to the public* except where the performance is already broadcast.

The players as performers in a cricket match are likely to licence/assign their performers' rights to the organiser of the sporting event, say BCCI. When the defendant communicates that a player has hit a six or made a century or bowled a bouncer or hit a cover drive, is it not *communicating the same to the public*?²² Is it not in a way *selling* the performance of the player, something the right over which has already been transferred by the player to the organiser? This question too has not been raised and debated in the *Star*⁴ case. Potentially, if this argument had been taken up there could have been a fair chance for its consideration by the courts in favour of the plaintiffs.

Hot News and Broadcasting Organisation's Rights

Broadcast has been defined under the Copyright Act as:²³

"broadcast" means communication to the public—

(i) by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or

(ii) by wire, and includes a re-broadcast."

The above is a very wide definition embracing in its fold all kinds of forms of ‘communication to the public’ through wire or wireless diffusion. The definition clarifies that a re-broadcast is also covered within broadcast. Broadcast has been defined through ‘communication to the public’.

‘Communication to the public’ has been defined as:²⁴

"Communication to the public" means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation- For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public.

Both the definitions make it amply clear that broadcasting is a ‘mode’ of communication to the public. The explanation provided in Section 2(ff) also covers the definition of broadcast.²⁵ The relationship between broadcast and ‘communication to the public’ is the relationship of sub-set and set and can be appreciated through the following diagram.

The content which is the subject matter of broadcast is a ‘work’ which is defined in the following words:²⁶

“Work” means any of the following works, namely: —

- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematograph film;
- (iii) a sound recording”

Broadcasting organisations like the plaintiff in *Star* have a special right under Copyright Act which is as follows:²⁷

Broadcast reproduction right. —

- (1) Every broadcasting organisation shall have a special right to be known as “broadcast reproduction right” in respect of its broadcasts.
- (2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made.
- (3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner

of the right does any of the following acts of the broadcast or *any substantial part* thereof, —

- (a) *re-broadcast* the broadcast; or
- (b) causes the *broadcast* to be *heard or seen by the public on payment of any charges*; or
- (c) makes any sound recording or visual recording of the broadcast; or
- (d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or
- (e) *sells* or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d) shall, subject to the provision of Section 39, be deemed to have infringed the broadcast reproduction right.

The act of the defendant in *Star*⁴ in collecting the key information of the match, which is indeed a substantial part of the broadcast of the plaintiff, and transmitting the same to its subscribers through SMS could possibly be covered within the concepts either of ‘broadcast’ or ‘re-broadcast’. What the defendants have done, i.e., sending SMS messages to its consumers for profit, would certainly come within Section 2(dd) stated above as the content is sent using wire or wireless or both.

As demonstrated in the above Fig. 3, broadcast and re-broadcast cannot travel outside ‘communication to public’ and ‘communication to public’ can certainly inform the scope of broadcast and re-broadcast. ‘Communication to the public’ means making any work or performance available for being seen or heard or *otherwise enjoyed* by the public *directly or by any means of display or diffusion...*²⁸ The defendant’s action of sending SMS of match information to its subscribers is meant to be *enjoyed* by the subscribers. Further, the use of whatever communication technology by the defendant to send such SMS would be covered within the expression *any means of display or diffusion*. This line of argument was also not taken up by the plaintiffs in *Star*⁴. However, this could verily have been taken up with a high probability of success.

Hot News and the Concept of Fair Dealing within Copyright Law

Fair dealing constitutes various situations where the use of a copyright work would not be constituted as infringement. Section 52 of the Copyright Act

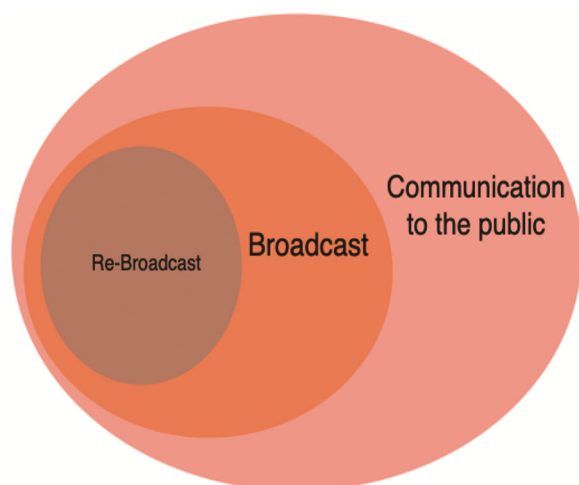


Fig. 3 — Relationship between communication to the public, broadcast and re-broadcast

deals with these situations in an exhaustive manner and accordingly does the listing of various acts which would be deemed permissible without the permission of the owner of a work. The part relating to hot news of Section 52 is as follows:²⁹

“The following acts shall not constitute an infringement of copyright, namely, — a *fair dealing* with any work, not being a computer programme, for the purposes of— the reporting of *current events* and *current affairs*, including the reporting of a lecture delivered in public.”

Further, in the context of fair dealing with respect to related rights, Section 39 states:³⁰

Acts not infringing broadcast reproduction right or performer’s right.— No broadcast reproduction right or performer’s right shall be deemed to be infringed by— the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research....

Hot news comprising of match information is certainly covered within ‘*current events*’ or ‘*current affairs*’ and the defendant in *Star*⁴ would be entitled to transmit the same to its subscribers, however, this transmission comes with a rider of being *fair*. To be fair the use of a work must be restricted to certain special cases and should not conflict with a normal exploitation of the work and should not unreasonably prejudice the legitimate interests of the author.³¹ This question has not been debated in *Star*, however, hypothetically applying the same to the facts of *Star* we come to the finding that the action of the defendants cannot be covered as fair dealing as their

action is not restricted to certain special cases in any manner as they are providing the whole of match information to all their subscribers. Second, their action certainly comes in conflict with the normal exploitation of the work of the plaintiff and third, the action of the defendant would cause prejudice to the legitimate interests of the plaintiff.

In a sporting event like a cricket match the most commercially exploitable part is the newest part which makes it hot news. Once that hot element diminishes, it could be allowed to be used by others as fair dealing. Allowing others to do that before that could not be considered ‘fair’. In this light, considering the act of the defendant in *Star* in regularly sending SMS messages to its subscribers about match information goes way beyond what can be considered as fair dealing.³²

Protection of Hot News under the Law of Contract

In live sporting events and shows there are viewers and audience present right at the place of performance watching the performance physically. These viewers constitute the set of people who receive all constituents (sound, view, and information) of the match or show at first, before the people not present there. This fact gives them potential to exploit their position³³ commercially and disperse the constituents of the match or show to the people who have not subscribed or paid for watching either the match or show physically or through other mediums like TV, radio etc. For example, a person watching a cricket match in the stadium can shoot the match and send the video to a number of people outside the stadium. With the technology available nowadays a person can even stream it live on social media platforms like Youtube or Facebook, thereby making it available potentially to an unlimited number of persons. Another example can be a live music show. A person watching a live music show in a concert or a theatre can possibly record the audio and send it to the people outside the theatre. Such acts if done on a large scale can possibly harm and jeopardise the business of the broadcasting organisations. To prevent this, the organisers of the show make a contract with the viewers by mentioning it in the ticket, which prohibits them from disseminating the event, including the information it contains, through any means. It has been held that an organiser of an event, by virtue of being in control of premises, can impose any restrictions he wishes by contract.³⁴

It is an experienced fact that in the shows where the number of viewers is not large, the organisers prevent people from making videos and recording the show. The same type of contract with viewers is entered into by a broadcasting organisation with its subscribers in case of broadcasting.

In broadcasting a live show or a live sporting event there are multiple contracts in place which enable the event to be transmitted to the end viewers. First, the performer(s) contract the rights over their performance to the organisers; second, the organisers contract out the right to broadcast the same performance to the broadcasting organisation³⁵; third the broadcasting organisation enters into independent contracts with its subscribers for receiving the broadcast signal containing the live show or event.

Through these contracts, the viewers could be bound by a term not to disseminate the constituents of the performance and broadcast. In this context the doctrine of consideration as enumerated under the Indian Contract Act is relevant which states:³⁶

“When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, *something*, such act or abstinence or promise is called a consideration for the promise.”

Further Section 2(e) of the Indian Contract Act states: “Every promise and every set of promises, forming the consideration for each other, is an agreement.”³⁷

For a contract to be valid, law mandates the presence of consideration which is typically ‘*something*’ i.e., something which has some value in the eyes of law. The defendants in the case of *Star*⁴ have received the broadcast under such a contract, thereafter they cull out hot news, i.e., content consisting of match information and seek to sell the same to its subscribers for a charge. The very fact that the defendants have been able to sell it demonstrates that this content is of some value. Hence, the defendants could be said to have violated the contract they entered with the broadcaster by sending text messages to their subscribers.

In this situation, it will be too naive to consider that the plaintiff broadcasters are trying to extend the scope of copyright by entering into private contracts. First, as demonstrated in part 4 above the content transmitted by the defendants comes under the ambit of copyright³⁸ and second, presuming that it is not covered under copyright, will the doctrine of consideration not be enough to entitle the plaintiffs to

legitimately exploit the content which is the subject matter of dispute in the case. If the defendants are so concerned about the interest of its subscribers to receive hot news in the form of minute-to-minute match information, can they not buy a licence for the same from the plaintiffs, especially when the defendants are not indulging in philanthropy and are charging their subscribers. Here, the argument that match information is not covered under copyright law cannot hold ground as that way this argument can be used to trump all the laws. For example, the argument that something which is not covered under copyright should also not be covered under trademarks or patents or trade secrets or contracts, makes little sense.

Hot News vis-a-vis the Torts of Unfair Competition/ Commercial Misappropriation/ Unjust Commercial Enrichment

The Supreme Court in the case of *Mahabir Kishore & Ors. v State of Madhya Pradesh*,³⁹ observed that the Courts in England have formulated the doctrine of unjust enrichment in situations where it would be ‘unjust’ to allow the defendant to retain a benefit at the plaintiff’s expense. It was held:

“The principle of unjust enrichment requires; first, that the defendant has been ‘enriched’ by the receipt of a ‘benefit’; secondly, that this enrichment is ‘at the expense of the plaintiff’ and thirdly, that the retention of the enrichment be unjust. This justified restitution. Enrichment may take the form of direct advantage to the recipient wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved.”

In *Star*⁴, the plaintiff claims to have spent a whopping sum of money to successfully bid for obtaining media rights from BCCI, whereas, the defendants have neither participated in the bid nor acquired any license from the plaintiff to disseminate such match information.⁴⁰ The plaintiff relied upon the legal principle enunciated in a landmark decision of the United States Supreme Court in the case of *International News Service v Associated Press*⁴¹, i.e., he who has fairly paid the price should have the beneficial use of the property. It was held:

“The defendant’s acts of taking material acquired by the skill, organisation and money of the complainant and appropriating it and selling it as its own, is trying to reap where it has not sown and would thus constitute unfair competition. The underlying principle behind the tort of unfair

competition is that he who has fairly paid the price should have the beneficial use of the property."

The Court cited the decision of the Madras High Court which held:⁴²

"The right of providing scores, alerts and updates is the result of expenditure of skill, labour and money of the organisers and so the same is saleable only by them. The sending of score updates and match alerts via SMS amounts to interference with the normal operation of the Organisers business. The defendant's act of appropriating facts and information from the match telecast and selling the same is nothing but endeavouring to reap where the defendants have not sown."

Relying on the above stated case the Single Judge held the actions of the defendants to be causative of the tort of unjust enrichment because the defendants were enriching themselves at the cost of the plaintiff. Further, it was held that the action of the defendants in cashing upon the efforts of the plaintiff would constitute free-riding. However, the division bench held the protection under unfair competition or unjust enrichment to be akin to copyright protection and therefore, in the opinion of the division bench, it would amount to extending the turf of copyright.⁴³

Importantly, the "free-riding" or misappropriation claim, it was held, survived only if the plaintiff was able to show that the defendant was in direct competition with it in the same activity. In *Star*⁴⁴, the defendants' dissemination results purely from resources invested by the plaintiff, and directly results from Star's conduct. Plaintiff's acquisition of broadcast and related rights from the BCCI, results in the defendant's unjust gain. It is submitted that plaintiff's claim is sustainable independently under the torts of unfair competition, commercial misappropriation and unjust commercial enrichment irrespective of whether the case is successful under copyright.

The Protection of Hot News and the Significance of Section 16 of Copyright Act

Some doubt persists about the significance and construction of Section 16 of the Copyright Act. For an analysis Section 16 of the Copyright Act is reproduced below:⁴⁴

No copyright except as provided in this Act— No person shall be entitled to copyright or *any similar right* in *any work*, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act *or of any other law for the time being in force*, but nothing in this section shall be

construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

In various decisions it has been held that except under the provisions of this Act there cannot be any copyright under the common law.⁴⁵ The division bench in *Star*⁴⁶ has held that owing to Section 16 the remedy by virtue of tort of unjust commercial enrichment cannot be invoked. This reliance on Section 16 is inappropriate on three counts. First, the usage of 'work' in Section 16 supposes that this provision is applicable only qua copyright in a work.⁴⁷ On the one hand the division bench holds match information not to come within the purview of *work* and on the other hand it proceeds to apply section 16 to the situation. This certainly is logically anomalous.

Second, the division bench holds that because of section 16 the tort of unjust enrichment is excepted. In other words, the applicability of common law has been specifically made impermissible owing to Section 16.⁴⁸ However, a close reading of section 16 belies this finding of the division bench. The words— "*...or any other law for the time being in force*" included in Section 16 specifically make room for the application of common law or any other law. Therefore, if a remedy is available under common law or law of contract or any other law even for a work, then the same may be resorted to. And if hot news is not a work, then there is no reason to deny the benefit of any other law⁴⁹ if it suits the plaintiff.

In the previous Copyright Act of 1911, the usage of the expression 'statutory enactment' had been replaced with 'law'.⁵⁰ It is clear that the legislature wanted to expand the scope of Section 16 by replacing 'statutory enactment' with 'law'. Therefore, the law that exists beyond statutory enactments, like common law, is also included now. Accordingly, any person may enjoy a right similar to copyright under any law other than Copyright Act.

Third, Section 16 makes entitlement to copyright and 'any similar right' dependent on the Copyright Act and other laws. On the one hand, the expression 'any similar right' would include related rights such as broadcasting organisation's right given in the Copyright Act and on the other hand, the expression is fit enough to include common law rights such as right against unjust enrichment, commercial misappropriation or unfair competition.

Section 16 of Copyright Act is *parimateria* with Section 27 of the Trade Marks Act which is as follows:⁵¹

No action for infringement of unregistered trade mark—

- (1) No person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark.
- (2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

Both the statutes are clearly permissive of the application of common law in addition to the statutory law. While the Trade Marks Act in Section 27 is more specific in its narration, the Copyright Act in Section 16 is more general in its disposition. Further, statutory provisions apart, there is absolutely no reason to deny the protection of rights similar to copyright to the extent they exist under common law or any other statute. If a right is not specifically denied under the Copyright Act, then it should be possible to protect the same under any other law if that law is permissive of that. As discussed, above⁵⁰, if a right is possible to be seen in the common law, Contract Act, or any other law, the Copyright Act may not take it away.

Public Domain and Hot News

‘Public domain’ is an expression used under copyright law signifying those works on which copyright has expired as copyright is a time limited right. If the work is not protected by copyright there is no question of it passing into public domain. The defendants in *Star*⁵² on the one hand argued that match information does not attract copyright and then go on to claim that it has passed on to public domain. These arguments cut across each other.

Just because a work is freely available to the public does not mean that it is in the public domain and out of the pale of copyright protection. That way, a book once published and a film upon release could be said to be in the public domain.⁵³

In *Star*⁵⁴ (Division Bench), the respondents make a very interesting distinction between ‘passing into public domain’ and ‘making available to the public’. Respondents assert “that match information does not pass into public domain upon broadcast / telecast of the match for third parties to freely and commercially exploit.” In fact, the defendant has made it available to the public inasmuch as it had supplied the information

to its ‘subscribers’ through text messages. ‘Making available to the public’ as per the Copyright Act, is a part of ‘communication to the public’. Section 2(ff) defines ‘communication to the public’ as:

2(ff) “communication to the public” means *making any work or performance available for being seen or heard or otherwise enjoyed by the public* directly or by any means of display or diffusion other than by issuing physical copies of it....

However, in *Star* (Division Bench), the Court does not recognise the cricket match to be a ‘work’ and only if a cricket match ever gets recognised as a work in any case, the broadcasting organisers would be entitled to such copyright.

Hence, here comes a clear understanding that the injury caused to the plaintiff was not due to passing of the information to the public by itself as a normal course, but by the defendant’s action of making it available to the public.

Hot News under Article 19(1) of the Constitution of India

Article 19(1) of the Constitution of India grants all citizens various freedoms including freedom of speech and expression and freedom to practise any profession, or to carry on any occupation, trade or business.⁵⁵ In *Star*⁵⁶ (Single Judge) the defendants contended that they are exonerated under Article 19(1)(a) of the Constitution whereby they have the freedom to carry on trade by dissemination of information to the public and such rights can only be subject to the reasonable restrictions under Article 19(2). In support, the defendants cited *Tata Press Limited v Mahanagar Telephone-Nigam Limited & Ors.*⁵⁷ where it was held by the Supreme Court that: “the public at large has a right to receive the commercial speech. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech... The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech.” Whether the defendants had the freedom to disseminate contemporaneous cricket match information under Article 19(1)(a) of the Constitution was thus examined by the court. The court cited the case of *Tata Press*⁵⁸ which states: “the public’s right to receive information is within the ambit of Article 19(1)(a) of the Constitution. The Courts have held that the freedom of speech and expression was available to the press to disseminate

such information but a line has to be drawn in cases where the power is misused.”

In this case the defendants have been offering ball-by-ball and minute-by-minute updates to its subscribers. This goes way beyond the function of providing news and seems akin to providing a running commentary of the match by way of text messages. The core function of providing cricket news to its subscribers would be reasonably perceived as providing periodic details say five times a day or even hourly. Further, all this was done on payment of a charge by its subscribers. The court (single judge) accordingly held that this practice is not worthy of being exonerated under Article 19(1)(a).⁵⁹

However, the division bench in the above case perceived this view as making restrictions on freedom of speech under Article 19(2) to (6).⁶⁰ The division bench stated: “In other words, the Constitution visualises that restrictions, saved by virtue of Articles 19(2) and 19(6) are in terms of enacted law, and not judge-declared fiats. Doing what the plaintiff invites this court to do would be to enclose from the public match facts and information which are not protectable in any manner known to law. Such an injunction would tend to insidiously, and in a creeping manner, denude the fundamental right to free speech and dissemination of topical information to members of the public.”⁶¹

However, as held in *New Delhi Television Limited v ICC Development (International) Limited & Anr.*⁶², the freedom of speech and expression cannot be used by organs of entertainment and revenue generation like media houses; least of all as an organ offering on its back, a piggyback ride for commercial entities i.e., business houses to advertise their products by commercializing the goodwill of others.⁶³ Therefore, with regard to 19(1)(a) of the Constitution of India the reasoning of the single judge is better because if we do not stop the defendant then the plaintiff’s right to free speech will be severely hampered because the plaintiff has spent a huge sum of money to obtain the rights for the same.

Further, Article 19(1)(g) of the Constitution of India guarantees freedom to practise any profession, or to carry on any occupation, trade or business. In *Star* the plaintiff obtained rights to broadcast the cricket match and had been carrying on business legitimately. The defendant’s exercise of sending repeated SMS to its subscribers by piggybacking on the efforts of the plaintiff would severely curtail the

right of the plaintiff to carry on business under Article 19(1)(g). The defendant cannot be given protection to carry on the same activity under the garb of Article 19(1)(g) because this activity is illegal under various provisions of the Copyright Act, Contract Act and Tort Law.⁶⁴

The plaintiffs in *Star*⁶⁵ (Single Judge) also relied on the decision of the Madras High Court in *Marksman Marketing Services Pvt. Ltd. v Bharti Tele-Ventures Ltd. & Ors.*⁶⁶ In the Marksman Case, the Pakistan Cricket Board had assigned its exclusive rights over a cricket series between India and Pakistan in the form of television rights, audio rights, internet rights, SMS rights and other rights to several persons on a global basis for a valuable consideration. M/s. Vectracom Pvt. Ltd., a company incorporated under the laws of Pakistan had entered into an agreement with the PCB with respect of SMS rights in India’s tour of Pakistan. The Plaintiff prayed for an injunction under Sections 55 and 61 of the Copyright Act, 1957, restraining the defendants from disseminating information relating to scores, alerts and updates through SMS technology on wireless and mobile phones by means of transmission to handheld mobile phones in respect of the matches. Relying on *National Basketball Association and NBA Properties Inc. v Sports Team Analysis and Tracking Systems Inc.*,⁶⁷ the High Court held that: “The right of providing scores, alerts and updates is the result of expenditure of skill, labour and money of the organisers and so the same is saleable only by them. The sending of score updates and match alerts via SMS amounts to interference with the normal operation of the organiser’s business. The defendant’s act of appropriating facts and information from the match telecast and selling the same is nothing but endeavouring to reap where the defendants have not sown.”

While balancing and deciding between fundamental rights of two parties, the court relies on the larger public interest. In *Star*⁶⁸ (Division Bench), the larger public interest, prima facie, seems to be the right of the general public to receive information, but an in-depth analysis would manifest a different picture. It is not uncommon that the BCCI is the whole and sole promoter of international cricket in India, be it any capacity, and the BCCI heavily relies on the revenue generated by broadcasting the matches and related activities for its financial survival. If the business and the revenue of the broadcasting organisation is harmed due to the unauthorised

competition created by the defendants, it would indirectly harm the game of cricket. The existence and promotion of the game seems to be in the larger public interest than interest of a certain number of people receiving information through text messages. Also, the defendants do not contribute their profit or a share of it for the purpose of promoting the game of cricket in India.

Conclusion

After examining the potential protection of hot news under copyright law together with the law of contract, tort and the Constitution of India we find that hot news merits protection under various provisions of these laws. As hot news mainly consists of facts, therefore, it cannot be protected under the category of literary work. When hot news is culled out of a cinematograph film and exploited then such an exploitation could verily be injuncted under copyright law. The communication of hot news particularly in sports matches that pertains to the performance of players is certainly an affront to the rights of performers. Further, in such situations the dissemination of hot news by third parties could also potentially fall foul of the broadcast reproduction right of the initial broadcaster of the content.

Hot news consisting of sporting match information is certainly covered within 'current events' or 'current affairs' and hence entitled to be used by third parties under the doctrine of fair dealing. However, such an exception for fair dealing is conditioned upon certain fairness requirements such as being restricted to certain special cases, non-conflict with normal exploitation of the work and not being unreasonably prejudicial to the legitimate interests of the author.

Irrespective of protection under copyright law, the dissemination of hot news by its recipients could be prohibited under a contract. Where a third party disseminates hot news without the authorisation by the one who gathered such information, then such third party could be liable for having committed the torts of unfair competition, commercial misappropriation or unjust commercial enrichment under the concept that a person should not be permitted to reap where he has not sown. It has been held in *Akuate Internet Services Pvt. Ltd. v. Star India Pvt. Ltd. &Anr.*, that owing to Section 16 of the Copyright Act, 1957 the remedies by virtue of contract or tort cannot be invoked. We submit that this interpretation of Section 16 is inappropriate. Section 16 itself makes room for application of law of contract, tort or any other law irrespective of the work's protection

under the Copyright Act. Lastly, protecting the unauthorised dissemination of hot news under the garb of Article 19(1)(a) and (g) of the Constitution of India is wholly unjustified as such acts necessarily interfere with the legitimate business operations of the organisation which has invested in exploiting the hot news.

References

- 1 *International News service v Associated Press*, 248 U.S. 215 (1918).
- 2 ShyamkrishnaBalganesh, 'Hot News': The Enduring Myth of Property in News, 111 *Column Law Review*, 422 (2011); https://scholarship.law.upenn.edu/faculty_scholarship/704.
- 3 *M/s. Marksman Marketing Private Limited v Bharti Tele-Ventures Limited*, O.A. No. 78/2006 (Madras High Court, unreportable); *National Delhi Television Limited v ICC Development (International)* FAO(OS) 460/2012.
- 4 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. &Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, decided on 30 August 2013 (*hereinafter*, *Star* (Division Bench)); <https://indiankanoon.org/doc/66104323/>.
- 5 BCCI is a not-for-profit organisation, registered under the Tamil Nadu Societies Registration Act, 1975, recognized as the de-facto apex body which deals with promotion and organisation of cricketing events in India by the Government of India. It is not funded by the Government. It funds all cricket related activities, from setting up of the stadium to starting training academies for umpires, scorers etc. Its main source of funding is by monetizing content arising from cricket matches, such as sponsorships and commercial advertisements. *Akuate Internet Services Pvt. Ltd. V Star India Pvt. Ltd. &Anr.*,FAO (OS) Nos. 153, 160 & 161/2013, decided on 30 August 2013.
- 6 *Star India Pvt. Ltd. vPiyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013 (*hereinafter*, (*Star* (Division Bench)), paras. 1 and 3; <https://indiankanoon.org/doc/160841206/>.
- 7 Sections 2(y) and 13, Copyright Act, 1957.
- 8 Section 37, Copyright Act, 1957.
- 9 Section 38, Copyright Act, 1957.
- 10 Section 2(o), Copyright Act, 1957.
- 11 *Feist Publications, Inc. vRural Telephone Service Co.*, 499 U.S. 340 (1991); *Eastern Book Company v DB Modak* 2008 (1) SCC.
- 12 Section 13(1)(a), Copyright Act, 1957.
- 13 However, the defendants contended that they were legally entitled to disseminate the score updates/match alerts to the public and consequently generate income. Such information, emanating from the cricket matches i.e., score updates/match alerts, were 'facts' over which there cannot be copyright monopoly. The defendants cited the cases of *Feist Publications, Inc. v Rural Telephone Service Co.*, 499 U.S. 340 (1991); *Eastern Book Company v DB Modak* 2008 (1) SCC; *Supra* note 9, para 11.
- 14 Section 2(f), Copyright Act, 1957.
- 15 Section 2(qq), Copyright Act, 1957: "Performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

- 16 The Monkey Selfie case may shed some light on the aspect of granting copyright to animals, albeit in a different context. *Narutov Slater, No. 16-15469* (U.S. 9th Cir. 2018).
- 17 Section 14(d), Copyright Act, 1957. Emphasis supplied.
- 18 Section 13, Copyright Act, 1957: Works in which copyright subsists. — Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,— original literary, dramatic, musical and artistic works; cinematograph films; and sound recording.
- 19 Section 13(3), Copyright Act, 1957.
- 20 While playing a match, players play in their respective styles which entertain the viewers. Hence, their overall actions while playing can be considered as performance.
- 21 Section 38, Copyright Act, 1957. Emphasis supplied.
- 22 Section 2(ff), Copyright Act, 1957.
- 23 Section 2(dd), Copyright Act, 1957.
- 24 Section 2(ff), Copyright Act, 1957.
- 25 Section 2(dd) was added in the Copyright Act by the Amendment Act no. 23 of 1983. Through this amendment the expression “radio diffusion” was substituted by the expression “broadcast”.
- 26 Section 2(y), Copyright Act, 1957.
- 27 Section 35, Copyright Act, 1957. Emphasis supplied.
- 28 Section 2(ff), Copyright Act, 1957.
- 29 Section 52(1)(a)(iii), Section 2(ff), Copyright Act, 1957. Emphasis supplied.
- 30 Section 39(b), Section 2(ff), Copyright Act, 1957.
- 31 Article 9(2), Berne Convention for the Protection of Literary and Artistic Works, 1886 lists three step test for judging whether a particular use is fair or not. India is a member of the Berne Convention.
- 32 Para 27, *Espn Star Sports v Global Broadcast News Ltd. & Ors* RFA (OS) No.25/2008, decided on 26 September 2008; <https://indiankanoon.org/doc/184944149/>.
- 33 A person watching a live match in real life physically at the stadium receives the information earliest.
- 34 *Sports and General Press Agency Ltd. v "Our Dogs" Publishing Co Ltd.* [(1916) 2 K.B. 880]; *Cadbury-schweppes Pty Ltd. and Others v Pub Squash Co Pty Ltd.* [(1981) 1 W.L.R. 193]; *Hodgekinson Corby Ltd. v Wards Mobility Services Ltd.* [1994 Ch. 1564].
- 35 The organisers can make separate contracts with separate entities for different modes of broadcast.
- 36 Section 2(d), Section 2(ff), Copyright Act, 1957. Emphasis supplied.
- 37 Section 2(e), Indian Contract Act, 1872.
- 38 Part 4 *supra*, i.e., Protection of Hot News under Copyright Law, as “Literary Work”, “Cinematographic Film”, “Performer’s Rights” and “Broadcasting Organisation’s Rights”.
- 39 *Mahabir Kishore & Ors. v State of Madhya Pradesh*, 1990 AIR 313.
- 40 In *Star India Pvt. Ltd. v Piyush Agarwal & Ors.*, plaintiffs contended that they spent Rs. 3581 crores (rupees three thousand five hundred and eighty-one crores only) to successfully bid for the Media Rights Agreement dated 10.8.2012.
- 41 248 U.S. 215, 39 S.Ct.68 (1918). It is also pertinent to note that this principle enunciated in the *INS* Case with respect to ‘unfair competition’ and ‘unjust commercial enrichment’ has been followed in other cases regarding dissemination of updates/alerts arising from sporting events. In the case of *Pittsburgh Athletic Co. et al v KQV Broadcasting Co.*, 24 F.Supp. 490 (Pittsburgh Case), the District Court of Pennsylvania in the year 1938 dealt with a case where the plaintiff prayed for a preliminary injunction to restrain the defendants from broadcasting play-by-play reports and description of baseball games played by the plaintiff’s baseball team. The defendant admitted to the broadcasting of play-by-play news of the plaintiff’s games and asserted its intention to continue doing so. In a similar case, *National Exhibition Company v Martin Fass*, 143 N.Y.S.2d 767, (National Exhibition Case) the Supreme Court of New York County was also faced with a prayer for injunction against the defendants who were listening to the broadcast of play-by-play descriptions of baseball games organised by the plaintiff and sending out simultaneous teletype reports of the games to radio stations for immediate broadcast. The same Court in the year 1937, was faced with a prayer for injunction against the defendants from interfering with the exclusive right of the plaintiffs to broadcast a description of certain boxing exhibition in the case of *Twentieth Century Sporting Club Inc. and Ors v Transradio Press Service Inc. and Anr.*, 300 N.Y.S. 159 (Twentieth Century Fox Case). In all the three cases, the courts granted the injunction following the ratio of the *INS* Case. *Star India Pvt. Ltd. v Piyush Agarwal & Ors.*, para. 7.
- 42 In *Star India Pvt. Ltd. v Piyush Agarwal & Ors.*, the Court relied on the decision of the New York District Court in *National Basketball Association and NBA Properties Inc. v. Sports Team Analysis and Tracking Systems Inc.*, 939 F.Supp. 1071.
- 43 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. & Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, paras. 62 and 63.
- 44 Section 2 (16), Copyright Act, 1957. Emphasis supplied.
- 45 *Eastern Book Company and Others v Navin J. Desai and Another*, AIR 2001 Delhi 185, para. 39; *Manjeh Cine Productions v A. Sundaresan and Another*, AIR 1975 Mad 22; *Time Warner Entertainment Co., L.P. & Ors. v. R.P.G. Netcom & etc.* AIR 2007 Del 226; *Super Cassettes Industries Ltd. v. Mr. Chintamani Rao & Ors.* 2012 (49) PTC 1 (Del).
- 46 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. & Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, paras. 42, 44 and 61.
- 47 *Star India Pvt. Ltd. v Piyush Agarwal & Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013 (*hereinafter*, (*Star* (Division Bench)), para. 30.
- 48 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. & Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, paras. 41, 56 and 61.
- 49 The Constitution of India, Article 13(3)(a) states: “Law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.
- 50 The erstwhile Copyright Act, 1911, Section 31: Abrogation of common law rights.—No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other *statutory enactment* for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence. Emphasis supplied.
- 51 Section 27, Trade Marks Act, 1999.

- 52 *Star India Pvt. Ltd. v Piyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013 (*hereinafter*, (*Star* (Division Bench)), para 4.
- 53 There is a great demand for knowing ball-by-ball progress of a match as opposed to the match-summary at the end of the match. This is evidenced by the fact that customers of such SMS/MVAS are willing to pay between two to three rupees per alert/update. There is no merit in the argument that the match information has entered public domain i.e. available to the public, the very instance it is broadcasted by the plaintiff. It is similar to saying that the plot of a book or movie has entered the public domain as soon as it is released.
- 54 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. &Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, para 22.
- 55 The Constitution of India, Article 19(1) states: Protection of certain rights regarding freedom of speech etc.-- (a) All citizens shall have the right to freedom of speech and expression; (g) to practise any profession, or to carry on any occupation, trade or business.
- 56 *Star India Pvt. Ltd. v Piyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013 (*hereinafter*, (*Star* (Division Bench)), para 4.
- 57 *Tata Press Limited v Mahanagar Telephone-Nigam Limited &Ors.*, AIR 1995 SC 2438.
- 58 *Star India Pvt. Ltd. v Piyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013, para. 43.
- 59 *Star India Pvt. Ltd. v Piyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013, para. 50.
- 60 Article 19(2) to (6), Constitution of India provides for various grounds of restrictions.
- 61 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. &Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, decided on 30 August 2013, para. 73.
- 62 *New Delhi Television Limited v ICC Development (International)Limited &Anr.*,FAO (OS) 460/2012.
- 63 *Star India Pvt. Ltd. v Piyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013, para. 47.
- 64 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. &Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, decided on 30 August 2013 and Section 37, Copyright Act, 1957 for protection of hot news under Copyright Act, 1957. Section 14(d), Section 16, Section 38, Section 35, Copyright Act, 1957. *Star India Pvt. Ltd. v Piyush Agarwal &Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013 for protection under Contract Act, 1872. Sections 2 (y) and 13, Copyright Act, 1957for protection of Hot News under the Torts of Unfair Competition/ Commercial Misappropriation/ Unjust Commercial Enrichment.
- 65 *Star India Pvt. Ltd. v Piyush Agarwal & Ors.*, CS (OS) Nos. 2722/2012, 3232/2012 and 2780/2012, decided on 13 March 2013, paras. 8 and 9.
- 66 *Marksman Marketing Services Pvt. Ltd. v Bharti Tele-Ventures Ltd. &Ors.* O.A. No. 78/2006 (Madras High Court, Unreportable).
- 67 *National Basketball Association and NBA Properties Inc. v Sports Team Analysis and Tracking Systems Inc.*, 939 F. Supp. 1071.
- 68 *Akuate Internet Services Pvt. Ltd. v Star India Pvt. Ltd. & Anr.*, FAO (OS) Nos. 153, 160 & 161/2013, decided on 30 August 2013