

LEGAL ENTANGLEMENT:EXCLUSIVE RIGHT OVER DISSEMINATION OF INSTANTANEOUS UPDATES (LIVE SPORT EVENTS)

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ABSTRACT

The article revolves around the question of exclusive right relating to dissemination of instantaneous information i.e. live score updates by the organizers or broadcasters. Since such events require huge amounts of investments, it is but natural for the organizers to commercially exploit the event and reap profit out of it. The Media or Corporate houses, perceiving such events as an opportunity to do business started provide live score updates on commercial basis. The Organizers and the Broadcasters seeing such potential and interference of these corporate entities objects on the legitimacy of such business. They claimed paramount right over all match content and exclusive right to exploit the same by resorting to statutory law i.e. Copyright or common law rights i.e. Unjust Commercial Enrichment or Unfair Competition. However, Corporate Houses refute the said argument stating that they do not infringe these rights as they only disseminate the score updates not the audio and/or visual broadcast. The score updates are in the form of facts and information and thus cannot be protected. Thus, the entanglement is that how protection i.e. exclusive right can be claimed over such updates which are in the form of facts and information.

I. INTRODUCTION

“The right of providing scores, alerts and updates is the result of skill, labour and money of the organisers and same is saleable only by them.”

“The most fundamental axiom of copyright law is that no person can claim copyright over certain facts or information per se.”

The above-stated dictums of the Court manifest two diverse outlooks which aggressively advance their support to another set of contradictory claims i.e. whether an entity can claim exclusive rights to disseminate contemporaneous/instantaneous information in form of updates with respect to any sporting event. The core issue, therefore, pertains to the underlying content/information contained in the audio visual broadcast of any sport event for instance a cricket match or a football match i.e. not of the audio visual broadcast itself as it is.

The organizers of the event are equipped with exclusive media/broadcasting rights, which are further bequeathed to any entity as a ‘bouquet of rights’ for its proper exploitation specifically monetary. It is argued that the organizers have therefore not only rights with respect to the first right of broadcast for diffusion of information to the public, but also the organizers contend to be equipped with the exclusive right to disseminate information underlying the broadcast.

On the contrary, what is argued on behalf of the big media houses that once there is a specific statute, being the Copyright Act (hereinafter used as ‘Act’) which occupies the field, and when Act specifies only specific rights to a ‘performer’ and his assignees, then, except such rights as specifically provided under the said Act, no other exclusive right, be it called by whatever name, can be claimed or granted to the performer and the assignee of the performer. No party can create rights which not only the statute does not provide, but rather specifically excludes/bars by virtue of Section 16.

Once information from the visual recording and sound recording is imparted through the first broadcast, a separate data base/information bank is created, and it is from that information bank that information is further transferred to various persons, including mobile service users. It is argued that once the direct footage; whether visual or audio or both; is not utilized, thus, it does not place any violation of any right of the organizers, inasmuch as information existing in public domain is

news which is not the subject matter of a copyright and news is that subject which no-one can monopolize.

The present article therefore is confined only with respect to information intrinsically underlying the first broadcast of the audio recording or visual recording or of both, and to which original/identical recording undoubtedly only the organizers and its assignee has the exclusive rights.

A. 'LEAD UP' TO THE PRESENT CONUNDRUM

The organizers of the tournament spend millions of dollars to pay money to the participating teams. For instance, in any ICC (International Cricket Council) cricket tournament, it pays special prize money for the team which comes first, second, for the Man of the Series, the best batsman of the series, the best bowler of the series is paid. And these are paid by the sponsors of the tournament. These sponsors pay money to ICC, apart from paying money for the special prizes, to cash upon the goodwill generated by the cricket tournament. Other than that people pay money for their product to be advertised on the field or of the field, within the precincts of the cricket stadium. They pay huge sums of money because they know millions of viewers, while seeing the broadcast or the footages replayed would simultaneously be seeing their advertisements. To put it pithily, money flows from different channels to the organizers of the cricket tournament and from this reservoir the organizers of the cricket tournament spend money; which flows out, for the tournament to be held.¹

A propaganda machine, which is a product of a marketing age, comes into being through this process. It understands only the 'language of profit'. It spends millions of dollars but endeavours to raise investment from third parties i.e. sponsors of the tournament; sponsors of the special prize monies; merchandisers who display their advertisements on and off the field, but within the precincts of the cricket stadium; merchandisers who advertise during commercial breaks. Thus, the propaganda machine which spends millions of dollars has, in turn, millions of dollars invested in it. The collective money pooled in is used to organize the sports events. No philanthropy is done. It is a business/commercial venture which seeks money in return. A pound of flesh for a pound of flesh is the motto. Nobody can take flesh by making the venture bleed.²

¹ *New Delhi Television Limited v. ICC Development (International) Limited*, (2012) 195 DLT 61 (DB).

² Ibid.

In the age of marketing and media saturation, hype is built when sports events are held all over the world. Recent example being the Olympic games conducted in Rio. This tendency can be especially observed in soccer events organized in soccer loving nations. These soccer events are hugely preceded by media hype, with the organizer of the event advertising, by booking time slots, the countdown has begun for example, the World Cup football. The countdown begins days before. Information is disseminated as to which teams are in which group. Where will the matches be played? Special events are organized, which are nothing but propaganda. Advertisers step in and join the propaganda. They make investments by paying the organizers while buying the time slots. Celebrities participate in chat shows sponsored by these sponsors. Money is invested. The hype created results in the football/soccer lovers thinking that they are a part of the World Cup themselves. It is akin to man creating the image of his God on the belief that his God looks like him. But soon starts thinking that he looks like his God.³ The fans i.e. the viewers start behaving like their soccer stars or celebrities in the advertisements. Eating and drinking the products they endorse, walking, talking, or dressing like them. They try to imitate their stars or for that matter doing mundane activities thinking that they are soccer stars themselves. This belief makes them to think that they are a part of the tournament. The physical manifestation of the belief is that they start living with the product of the sponsor. It is this physical manifestation which returns the revenue to the sponsor. In India, with cricket it is likewise.

Thus, when the tournament is on, any association by a third party, trying to exploit from the tournament in any manner would ex-facie be competing and might simultaneously be eating away the copyright of the copyright owner i.e. the broadcaster with the right of reproduction, in that, the potential customers of those who have invested would be predated upon. Such activities i.e. special events would clearly infringe the rights of the broadcaster.

To put in common man's language unlike events such as an accident; a judicial verdict being pronounced; a Finance Minister making a statement, where nothing is spent by anybody for creating the event and thus nobody being entitled to appropriate the newsworthy content of the event, special events such as a cricket match are organized by investing huge sums of money running into

³ Ibid.

millions of dollars.⁴ It is a creation of the investors and sans a fair use pertaining to reporting current events and affair; nobody is entitled to even a drop of “*milk from the milch cow*.”⁵

The organizers claim paramount rights over all information emanating from a sports event by virtue of organising and promoting the same sport. For instance, BCCI has contended that as the organiser of cricket in India, it has the exclusive rights in relation to the content generated during a cricketing event, including the right to commercially exploit all content arising from such event in *Star India v Piyush Agarwal*⁶ as well as in *Akuate Internet Services v Star India*.⁷ It funds everything relating to cricket, right from setting up of the stadium to starting training academies for umpires, scorers etc., all by itself. The main source of funding for the BCCI is claimed to be from monetizing the content arising from cricket matches, such as sponsorships and commercial advertisements. The revenue received from the sale of match tickets is contended to be negligible. Out of the revenue generated, BCCI contends that 85% is ploughed back into promoting the game of cricket in India. The defendants, who disseminate live score updates without license, do not contribute their revenue or a part thereof for the purpose of promoting the game of cricket in India. Whereas the right of the members of the public – who witness the event, having paid for the tickets or millions of television viewers who subscribe and watch paid channels, which cover the event, to share it on a non-commercial basis cannot be denied, yet the obligation of a third party not to commercially exploit it is self-evident.

With ease of access to technology the modes of access to a match have evolved from stadium to radio to TV to internet and mobile. Now one can obtain match information through these alternatives i.e through internet or mobile services. This increase the revenue generating or profit opportunities manifold. It can be understood from the fact that Star in 2012 took the broadcasting rights from BCCI in 3,281 crores for duration of six years. But match Information is time-sensitive and has commercial value only so long as it is disseminated while it is fresh i.e. “Hot”.⁸ Moreover, match information would be commercially worthless if it is stale or dated in terms of first principles, it is the person who has brought into existence a product which has a demand in the market, who is

⁴ *Star India v. Piyush Agarwal*, 2012 SCC Online Del 5691.

⁵ Ibid.

⁶ Ibid.

⁷ *Akuate Internet Services v. Star India*, 2013 SCC Online Del 3344.

⁸ *International News Service v. Associated Press*, 248 U.S. 215; Similar Observation was also made in *New Delhi Television Ltd v. ICC Development (International) Ltd. & Anr.*, (2012) 195 DLT 61 (DB).

entitled to the exclusion of all others to exploit the revenue streams arising out of such product and realize the fruits of its product.⁹

However, on the contrary it has been continuously contended that though the event is the result of the labour of the organizers but it does not entitle it to claim right let alone exclusive right over the dissemination of information lying within the broadcast since the basic principle of copyright law speaks that none can claim copyright over information or facts in public domain.¹⁰

⁹ Supra note 7.

¹⁰ *Feist Publications, Inc. V Rural Telephone Service Co.*, 499 U.S. 340 (1991).

II. THE IMPASSE OVER 'COPYRIGHT PROTECTION'

In order to appreciate the issue as to whether the exclusive rights claimed is covered under the Act or not, it is necessary at this stage to refer to the various/relevant provisions of the Act. The relevant sections are hereinafter reproduced:-

A. SUBJECT MATTER OF COPYRIGHT PROTECTION

What are the rights which can be the subject matters of a copyright under the Act are contained in Sections 13 of the Act. Section 13, qua its relevant part, reads as under: “**Section 13. Works in which copyright subsists.**-(1) 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,- (a) original literary, dramatic, musical and artistic work; (b) cinematograph films; and (c) sound recording”

But the decision of Delhi High Court in *Star India v Piyush Agarwal*, pertaining to such question only speaks that the work in which copyright subsists is not only contained in Section 13 but also Section 38.¹¹ **Justice Mehta** observes that a conjoint reading of Sections 13 and 38 shows that a copyright subsists in seven classes of works i.e literary work, dramatic work, musical work, artistic work, a cinematograph film including video film, a sound recording, and a ‘performer’s performance’.

It is also important to point out Section 16, the leitmotif of the media houses argument at this particular juncture which reads as under:-

Section 16. 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 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.”

Thus, there can be no manner of doubt once we read the heading of the section “no copyright except provided in this Act”, and the parts of the section reproduced above, that, there cannot exist a copyright in a work ‘dehors’ the Act i.e. exclusive right in a work or any right in a work is only that which is the subject matter of the Act.

¹¹ Supra note 4.

At this juncture, it is equally important to understand the expression ‘work’, and therefore, at this stage, it is required to reproduce the definition of the expression ‘work’ as contained in **Section 2(y)** in the Act, and the same reads: “work” means any of the following works, namely:- (i) a literary, dramatic, musical or artistic work; (ii) a cinematograph film; (iii) a sound recording.

Though the definition of work may not include the performer’s right, however, this Section 2(y) has necessarily to be read with Section 38 which provides for a performer to have a copyright in his performance and therefore performance is a work in which copyright is created under the Act.¹²

What are thus all those works in which copyrights can exist are those which are found on a simultaneous reading of Sections 13 and 38 of the Act. Moreover, there is also a line of opinion which sees broadcasting rights as ‘**copyright in broadcast**’ itself.¹³ The performance itself is the subject matter of recordings which constitutes “work”; they are also simultaneously communicated to the public i.e. broadcast. These activities, thus, get protection under “broadcasting rights”. Therefore, the right to use any other activity or aspect, capable of monetization inheres only with the sports organizer or owner of the content.

In these circumstances, organizers and broadcasters claim to have exclusive rights of such information which can be disseminated commercially only with their consent upon satisfaction of the terms which may be imposed in that regard.

B. ORGANIZERS/BROADCASTERS ‘STATURE’ UNDER THE ACT

Enormous information is disseminated in live sports events, which has not only acquired an immense market share in branding and value creation, but also given opportunities to illegal squatters to take the benefit of the vulnerability of law in these contexts.¹⁴ A growing part of the economic value of sports is linked to copyright protection so as to safeguard the interests of the organizers. They have a value and importance on their own, and also as marketing tools. Marketing techniques are applied in creation, maintenance, popularization and sustenance of distinctive marks, logos and personalities, while copyrights vesting in brand and image creation etc. are protected to reap benefits on an exclusive basis considering the very nature of competition in sports. Licensing and merchandizing rights in relation to major sports events, such as the International Federation of

¹² Ibid.

¹³ *Laddie, Prescott and Vitoria, Modern Law of Copyright and Designs*, Paragraph 7.32, 2nd edn., Butterworths, 1995.

¹⁴ *The Sports Business Journal* reported that as of their respective 2007 edition. See also Daniel Kaplan, *Nets’ Bill for Sports on the Rise*, SPORTS BUS. J., Dec. 10, 2007, at 1.

Football Association (FIFA) World Cup and the Olympic Games, are considered as ‘hot properties’, commanding high returns for the right owners and concessionaries alike.¹⁵

A perusal of Section 38 gives us insight about the status broadcasters and organizers hold under the Statute. The provision provides:-

Section 38 “Performer’s Right”:- (1) *Where any performer appears or engages in any performance, he shall have a special right to be known as the performer’s right in relation to such performance.”*

A read of the aforesaid Section 38 shows that there are two important expressions which are used viz. ‘a performer’ and ‘the performance’.

Section 2(q) “Performance”, in relation to performer’s right, *‘means any visual or acoustic presentation made live by one or more performers’*; ***Section 2(qq) “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.*

For instance, when a cricket match is played, there are various dramatis personae in the performance. So far as the visual recording is concerned, the performers essentially are the cricket players who play out the match. Also, in a way, the umpires are also an integral part of the live performance, and thus they can also be said to be performers in the match. Though a cricket match is not specified under Section 2(q) or Section 2(qq) as reproduced above, in view of the categorical language of these provisions, it cannot be doubted that a cricket match very much falls within the definition of expression ‘performance’ and qua such performance the cricketers/players (as also umpires) would be a performers.

Summarizing, though the definition of work may not include the performer’s right, however, this Section 2(y) has necessarily to be read with Section 38 which provides for a performer to have a copyright in his performance and therefore performance is a work in which copyright is created under the Act.¹⁶ Performers assign their rights to the organizers i.e. to make audio and/or visual recording of their performance and to communicate it to the public or broadcast. The acts/performances of the performers in the match event are recorded in a visual recording and/or the sound recording of the event, thereby producing a ‘cinematograph film’ as per the provision of

¹⁵ *I. Blackshaw. Sports and merchandizing- The legal and practical aspects*, in 2002, International Sports Law Journal 22-5.

¹⁶ *Ibid.*

section 2(f) of the Act which in turn was done by Organizers as producer in the instant case, thus, itself a subject matter of the copyright as per section 13(1)(b) of the Act.

C. RIGHTS EMANATING FROM COPYRIGHT

The next question which arises is that if a person has a copyright in the seven types of works as stated above, what is really the effect of having each of such copyright i.e what entitlements flow from the different types of copyright works. The effect of having a copyright, i.e benefits to be derived from a copyrighted work, are those as stated in Section 14 of the Act. As per this Section 14, the different subjects/ works which are the subject matters of copyrights, cause/bring about different/manifold rights i.e, whereas one type of work gives certain rights the other type of work gives separate rights; which can be either larger or lesser.

Each of such copyright works has specified rights as stated in Sections 14 and 38A of the Act. Section 38A deals with what are the legal rights of a performer. Section 38A deals with what are ***the legal rights of a performer***. The relevant portion of the aforesaid Section regarding this issue shows that a performer's right is an exclusive right only for specified purposes as stated in clauses (a) and (b) of sub-section (1). In terms of the language of this provision, basically, the performer's right would be making of a sound recording or visual recording of the performance; reproducing the sound recording and the visual recording; issuing copies of the recording or communicating the same to the public; and, selling or otherwise doing a commercial act including with respect to the copy of the recording.

Clause (b) of Section 38 A (1) is relevant inasmuch as a clue is provided in this clause which seems to indicate that with respect to a broadcast already made, qua the information which is disseminated through the first broadcast in public domain (as against the audio visual recording itself) the performer cannot claim a right, inasmuch as, Section 38A(1)(b) states that the entitlement of the performer with respect to his performance rights is to broadcast or communicate the performance to the public except where the performance is already broadcast. It is, therefore, a clear pointer to the fact that once a performance is already broadcast it may be possible to say that except with respect to the actual visual and audio recording of the performance itself, there may not be other rights with respect to the information contained in the performance which is already broadcast. Sub-section (2) of the aforesaid Section 38A states that once the rights of the performer and his performance have been incorporated in a cinematographic film, the performer cannot object to the

commercial exploitation by the producer of the film of the performance rights in the same film. The audio visual recording of the performance is a cinematographic film, as per the meaning/definition of the same under the Act.

Now, the same sections have been used by exploiters to interpret that except to the extent of original sound recording and original visual recording of the performance, and the rights which flow therefrom, there is no other right of a performer or his assignee with respect to the audio and/or visual recording of the performance. Meaning thereby that the underlying content/information is not made a subject matter of a copyright, thus if only the content or information contained in an audio recording and/or a visual recording is used for creating an information bank/data base, then, use of the information/content cannot/does not amount to infringement of the copyright either in the performance or in the audio and/or visual recording of the performance. For completion of narration at this stage it is important to reproduce the Sections which define the meaning of broadcast, the right of rebroadcasting and a cinematographic film.

These provisions are contained in Sections 2(dd), 2(f) and 37 of the Act provides the definition of broadcast which includes rebroadcast. Obviously rebroadcast is the exact and identical audio and visual recording. It is when the original audio and visual recording is again broadcast it is called a rebroadcast. Such rights of rebroadcast are given exclusivity under the Act as per Section 37 and which provides that with respect to the rebroadcast also no one has a right to use the audio and visual recording except in accordance with the license which is taken from the owner of the original audio and visual recording. Section 37 of the Act, in a way could be said to be duplication, if not otiose, inasmuch as, once really a combination of audio and visual recording creates a video recording/cinematographic film which is broadcasted, there would come into existence a 'cinematograph film' as per the provision of section 2(f) of the Act, and a cinematograph film is itself a subject matter of the copyright as per section 13(1)(b) of the Act.

Once a cinematograph film becomes a subject matter of the copyright then surely no one can broadcast or rebroadcast or communicate to the public or in any manner utilize the cinematograph film except with the consent of and the permission of the owner/author of the cinematograph film, otherwise it would result in infringement by the broadcast or rebroadcast in terms of section 51 and the related sections of the Act. Obviously, using without license, the cinematographic film/video recording or the identical visual recording or audio recording or both, will amount to a clear

violation of the performer's rights which have been created under Sections 38 and 38A of the Act, and thus before such identical audio and/or visual recording of the performance of the performer (which is recorded in the audio recording or visual recording) is used, the necessary license under the Act will have to be taken from the performer or his assignee. Section 37 possibly therefore does not give any further protection to an audio visual recording which is otherwise not protected and provided for in the other relevant provisions of the Act for a cinematographic film.¹⁷

D. UNCERTAINTY REGARDING COPYRIGHT INFRINGEMENT

Whether there exists any infringement of copyright protection or not in such cases has not yet been decided by the Apex Court but the author has tried to put forward both the facets of the present dilemma.

The judgment of the Madras High Court in the case of *Marksman Marketing Services Pvt. Ltd. vs. Bharti Tele-Ventures Ltd. & Ors.*,¹⁸ (Marksman Case) gains paramount importance in the present scenario, which dealt with nearly identical problem. In the Marksman Case, the Pakistan Cricket Board (PCB) 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 global basis for a valuable consideration. 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.

Though the case proceeded at the stage of interim injunction, in the peculiar feature of the case and since the case is first of its kind, the Court has deemed it proper to consider the underlying questions. The following questions arise for consideration: 1. *Whether there is property in providing Scores, alerts and updates in the cricket through SMS technology?* 2. *Whether PCB/Organizer has the exclusive Right over SMS Rights of the Cricket Match?* 3. *Whether the Defendants are entitled to appropriate Scores, alerts and updates in the cricket match by transmitting through SMS for their commercial use?*

¹⁷ Supra Note 4.

¹⁸ *Marksman Marketing Services Pvt. Ltd. vs. Bharti Tele-Ventures Ltd. & Ors.*, O.A. No. 78/2006 in CS No. 74/2006 dated 11.2.2006.

The Hon'ble High Court considered the judgment given in *National Basketball Association and NBA Properties Inc. v. Sports Team Analysis and Tracking Systems Inc.*¹⁹ (“the NBA-1 Case”) which stated:

“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.”

However, there is no dispute regarding communicate the scores or alerts gratuitously or for any legitimate purpose, not interfering with the rights of the organizer. But there is no right to make merchandise of it. But to transmit the ball by ball information or alerts for commercial use and seeking to justify the same, is entirely a different matter and the same cannot be equated with a common viewer.

But instead of such foreign dictas the Madras High Court went further to order as such that²⁰:

a) *Right of providing Scores/alerts and the updates via SMS Technology is the result of Organisation and expenditure of labour, skill and money, which is salable only by organizers.* b) *Through the SMS technology, the process of sending Scores, alerts and updates amounts to unauthorized, interference with the normal operation of organizer’s legitimate business.* c) *The act of the Defendants in appropriating facts and information from the telecast and selling it by providing Scores and alerts over SMS is nothing but endeavouring to reap the profit where they have not down.* d) *The whole process of SMS amounts to unauthorized interference with the organizers legitimate business proceeds at the point where the profit is to be reaped.* e) *By the act of the Defendants they are making profit and thereby diverting the material portion of the profit of SMS which PCB would have earned.*

The information/match updates forms a crucial or an essential part of the first broadcast. It is inseparable and an integral part of the performance viz its broadcast. It was observed in *Landbroke Ltd. v. William Hill*,²¹ that *whether there exist substantial copying or not is a question of fact and degree determined on the basis of ‘importance’ of the parts reproduced.* Thus, it can be concluded in consideration of

¹⁹ *National Basketball Association and NBA Properties Inc. v. Sports Team Analysis and Tracking Systems Inc.*, 939 F. Supp. 1071.

²⁰ Supra Note 18.

²¹ *Landbroke Ltd. v. William Hill*, (1964) 1 WLR 273.

this view point that there may be copyright infringement by reproducing the match scores as they constitute an 'important' part in the broadcast.

However, once the sound recording and/or the visual recording comes in the public domain, then the information which comes in the public domain from the content of the audio and/or visual recording is only an underlying content/information to which there is no copyright granted under the Act. But the question that when that information is in public domain? What are the relevant principles regarding public domain is discussed later in the article.

1. CONFLICTING VIEW

At this point, it is also important to know the difference between the information contained in any audio/visual work and the audio/visual work itself. There is a difference in the audio visual recording to which there is a copyright in comparison with the underlying content of the audio visual recording i.e. in a way similar to the underlying works in a subsequent/second sound recording created from the original copyright works being the musical notes and lyrics. Whereas the underlying original works viz. the musical and literary works are given specific protection under Section 13(4) although various original sound recordings are created therefrom but no protection is granted the underlying musical and literary work by Section 13(4). The underlying information/content itself/ only therefore cannot be raised to a pedestal of a legal nomenclature given for such right i.e. a common law right or property right and so on.²² This conclusion also becomes necessary in view of the categorical bar contained in Section 16 of the Act. But, on the counterpart, it would be in broadcasters benefit to observe the information contained therein not any different from the first broadcast i.e. it cannot be viewed separately.

For a better understanding one can take the example of version recording (or cover version as it is now called). Its concept will also help in understanding the aspect that a copyright which exists in original work is different from a new work created from the content/information contained in original copyrighted work.

A sound recording which is created out of musical work and lyrics/literary work, and such sound recording is a copyright work vide Section 13(1)(c) of the Act. The copyright in a sound recording is in addition to the copyright in the underlying musical and literary works which are also subjects of a

²² Supra note 4.

copyright. A sound recording includes a subsequent original sound recording made from the musical and literary work and which is called a version recording i.e. a sound recording made after a first sound recording is made by use of the musical work and literary work/lyrics. The principles qua version recording or cover version were contained in Section 52(1)(j) of the unamended Act which has now been deleted, and the equivalent provision of which is now Section 31C of the present Act. Reproduction necessarily does not always result in copyright infringement for instance in cases involving Abridgement, Adaptation or Translation.²³

The contrasting view found its reliance primarily on the judgement of *The National Basket Ball Association and NBA Properties vs. Ports Team Analysis and Tracking System Inc.(NBA-II)*,²⁴ it was observed that the organized events which are already in the public domain involve no labour or skill. Such organized events are not subjected to copyright protection. It was further contended that organized events like sports and the facts and information thereon are not protectable rights.

The US Court has quoted **Nimmer on Copyright**²⁵ specifically and resoundingly rejects the analysis and conclusion of the Court in *Baltimore v Oriories*²⁶ regarding the protectibility of an athletic event. Nimmer points out, inter alia, the problematic consequences of according copyright protection to an athletic event, as opposed to its telecast. For example, it is unclear who in addition to NBA would be considered a copyright owner and, therefore, whose consent a party would have to obtain prior to using copyrightable portions of the game. One coaches, and all other participants whose creative energies contributed to the NBA game.²⁷ The recognition of a performer's right in a copyrighted work would impose undue restraints on the potential market of the copyright proprietor since a prospective licensee would have to gain permission from each of possibly many performers who might have rights in the underlying work before he could safely use it. Similarly, if a coach copied a play devised by another coach, the second coach might be forced to defend a copyright

²³ *Govindan v. Gopalakrishnan*, AIR 1955 Mad 391; *Blackwood v Parasuraman*, AIR 1959 Mad 410.

²⁴ *The National Basket Ball Association and NBA Properties vs. Ports Team Analysis and Tracking System Inc* 105 F. 3d. 841 (1997)

²⁵ *M.Nimmer & D.Nimmer*, Nimmer on Copyright, 2.09[F] (1996)

²⁶ *Baltimore Oriories*, 1996 US District Lexis 10262

²⁷ See *Eastern Microwave, Inc. v. Doubleday Sports Inc.* 691, F.2d 125, 128(2d Cir. 1982) (discussing the unworkability of requiring a party "to obtain" the consent of or negotiate with numerous copyright owners") Cert. Denied, 459, US 1226, 75 L. Ed. 2D 67, 103 S.Ct. 1232 (1983); *Booth vs. Colgate-Palmolive*, Col. 362 F. Supp. 343, 347 (S.D.N.Y.1973).

infringement action if he or she failed to obtain the consent of the first coach.²⁸ In the end, Nimmer concludes that the “*more reasonable construction (is) that athletic events are subject to legal protection pursuant only to right of publicity, misappropriation and other established legal doctrine outside the ambit of statutory copyright.*” In addition to Nimmer, case law, although far from bountiful, suggests that organized events are not subject to copyright protection.²⁹

It can also be contended that match information was not a result of the originality or creativity’ of the plaintiff. And that the test of ‘originality or creativity’ has been followed by Indian Courts to grant copyright. In furtherance of this argument, support from the following cases can be taken such as *Servewell Products Pvt. Ltd. & Anr. v. Dolphin*,³⁰ in which this Court had observed, “The Supreme Court has recognized the shift in *Eastern Book Company v. DB Modak*,³¹ following the approach laid down by the Canadian Supreme Court in *CCH Canadian Ltd. v. Law Society of Upper Canada*,³² rejected the “sweat of the brow doctrine” (which conferred copyright on works merely because time, energy, skill and labour was expended), and held that the work must be original “in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, the work somewhat different in character, is produced by the author.” Thus, in India, the test for creativity establishes a higher threshold than the “sweat of the brow” doctrine, but not as high as ‘modicum of creativity’.

In *Eastern Book Company & Others vs. Navin J. Desai*,³³ it was related to publication of Law Books by Eastern Book Company and CD ROM by the Defendants, wherein the Plaintiffs alleges infringement of their Head Notes on Law Reports by the Defendants. The Supreme Court found that unless the Head Notes of the Judgments have been prepared by the Plaintiff with his own labour and skill and that there is originality or creativity in the preparation of Head Notes, the Plaintiff cannot allege infringement. That the appellant expended some skill, labour and money did not entitle them the protection: “*The exercise of the skill and judgment required to produce the work is trivial*

²⁸ Supra note 24.

²⁹ *Morrissey v. Procter & Gamble Co.*, 379 F. 2d 675, 678 (1st Cir. 1967) (characterizing as “unquestionably correct” the proposition that the substance of a promotional sweepstakes contest was not copyrightable). *Production Contractors, Inc V. WGN Continental Broadcasting Co.*, 622 F. Supp. 1500, 1503 (N.D.III.1985) (holding that a “[Christmas] parade, including its production and promotion, is not a work of authorship entitlement to copyright protection”)

³⁰ *Servewell Products Pvt. Ltd. & Anr. v. Dolphin*, 2010 (43) PTC 507 (Del)

³¹ *Eastern Book Company v. DB Modak*, (2008) 1 SCC 1

³² *CCH Canadian Ltd. v. Law Society of Upper Canada*, (2004) SCC 13

³³ *Eastern Book Company & Others vs. Navin J. Desai* 2001 PTC 217 (Del)

and is on account of the labour and the capital invested and could be characterized as purely a work which has been brought about by putting some amount of labour.”³⁴

In the *Victoria Park Case*³⁵, the plaintiff carried on the business of conducting race meetings at a racecourse owned by it. The plaintiff did not permit any description or information concerning the races to be broadcast. The defendant, an owner and occupier of a piece of land on the opposite side of the racecourse allowed the other defendant, Commonwealth Broadcasting Corporation, to observe and broadcast the race. The plaintiff sought an injunction against such broadcasting contending that since its efforts and expenditure was spent on organising the race, it has quasi-property rights in the race. The Court held that the law of copyright did not give any person an exclusive right to describe a particular set of facts. Just because a person announces for the first time, that a particular horse won the race or any fact, it would not prevent others from describing the same event. Similarly, in the *Feist Publications Case*³⁶, the plaintiff sought to copyright a compilation of telephone numbers, which was denied by the Court on the ground that it was merely a different presentation of facts and did not possess ‘originality or creativity’, which is the sine qua non of copyright.

The first principle of copyright law (for any copyright inhering in works, i.e. literary, dramatic, musical or artistic work, sound recordings or cinematographic films) is that it is in respect of expression of ideas, not the underlying facts or the ideas themselves. It is asserted that once the event occurs, it is a “fact” over which no one can claim monopoly.³⁷ The reporting of such facts cannot be restrained and doing so, through courts would abridge free speech. This was put neatly in *Feist*³⁸ by the US Supreme Court as follows:

“This case concerns the interaction of two well-established propositions. The first is that facts are not copyrightable; the other, that compilations of facts generally are. Each of these propositions possesses an

³⁴ (Eastern Book) overruling *University of London Press, Ltd. v. University Tutorial Press, Ltd.*, [1916] 2 Ch. 601

³⁵ *Victoria Park Racing and Recreation Grounds Co. Ltd. vs. Taylor*, 58 CLR 479 (“the Victoria Park Case”)

³⁶ *Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991) (“Feist”)

³⁷ The decisions of *Triangle Publications Inc. v. New England News Paper Publishing Co.*, 46 F. Supp. 198 (1942) and *Compco Corp v. Day Brite Lightning Inc.* 376 U.S. 234 (1964), given by the US courts. They also relied on *Cadbury-Schweppes Pty. Ltd. & Ors. v. Pub Squash Co. Pty. Ltd.*, (1981) 1 W.L.R. 193 and *Moorgate Tobacco Co. Ltd. v. Philip Morris Ltd.*, 156 CLR 414.

³⁸ Supra note

*impeccable pedigree. That there can be no valid copyright in facts is universally understood. The most fundamental axiom of copyright law is that “no author may copyright his ideas or the facts he narrates.”*³⁹

2. AUTHOR’S VIEW

But, according to *Laddie, Prescott and Vitoria*,⁴⁰ (a leading authority on laws relating to copyright) Modern Copyright and Designs “*may be copyright even though it is wholly devoid of originality. The statutory monopoly arises even though the author expended no mental skill, labour or ingenuity in its preparation*”

Crucially, however, this copyright in the broadcast – which is protected purely by the fact of being a broadcast, absent determinations of originality or expense – is distinct from the underlying creative content, “*which may well be protected aliunde.*”⁴¹ Therefore, even after the digression from NBA I case in NBA II and numerous other pronouncements cited above, there is still scope of copyright protection firstly, because broadcasters and organizers are assignees to the performance and secondly, have copyright protection over the broadcast which Nimmer as well as NBA-II and Laddie, Prescott and Victoria acknowledged of it being within the ambit of protection in certain situations as elaborated in this chapter.

³⁹ *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 556 (1985).

⁴⁰ Supra note 10.

⁴¹ Ibid at paragraph 7.32.

III. REPORTING OF CURRENT EVENTS- TO WHAT EXTENT PERMISSIBLE?

News and information which emanating from any sport event like a cricket match in public domain is not and cannot ever be in the monopoly one or more persons and more particularly by virtue of Sections 16 & 13(4). With reference to clause (b) of Section 39 of the Copyright Act 1957, that reporting of current events, consistent with fair dealing, having excerpts of a performance or of a broadcast does not constitute infringement of the broadcast reproduction right or the performers' right. Similarly, with reference to Section 52(1)(a)(iii) of the Copyright Act 1957, the reporting of current events and current affairs but as fair dealing do not constitute an infringement of the copyright held by the broadcaster or a performer. But all these principles are applicable only after the first broadcast when information has entered the public domain; what organizers claim is still in respect with the first broadcast and further contends that the information has yet not entered the public domain. Nevertheless, it has not been decided yet that whether the information taken and disseminated by the media houses is in public domain or not.

But, before that one has to first determine: Whether the offending activity is by way of reporting or otherwise. A test was propounded in for the above determination in *New Delhi Television Limited vs ICC Development (International)*⁴² that if the offending activity is not reporting, that would be the end of the matter; and we caution. Thus, two objective facts would determine whether the offending activity is reporting or not. The first objective fact would be the nature of the coverage with respect to information being diffused i.e. ***Is it result oriented.*** And while analyzing the first objective fact, the second objective fact to be simultaneously identified is: ***Is it primarily an analysis or review of the sporting event.*** If the offending activity fails to qualify as 'reporting' i.e. is not result oriented but is by way of analysis or review that would be the end of the matter. Injunction must follow without any further analysis.

The methods of disseminating information even while reporting should not in any manner misled or entice the viewers or consumers into believing that the sponsor of the programme is a sponsor of the activity or is intimately associated with the event.

⁴² Supra Note 1.

The court observed the role of media in today's world by stating that *the media is free to continue with its activities of disseminating information in whatever manner the media feels and this is their unbindered and unobstructed right, but not by offering its back for piggy riding who have money bags.*⁴³ Meaning thereby that the footages are permitted to be used while reporting sports events in both hard news and sports news programmes but only if the programmes were pre-existing news format programmes and were not designed for a particular sports event and specific advertisements are not solicited from third parties to be put on the air in the programme or the third party has not voluntarily approached the TV channel and paid special premium for its advertisement to be put on the air. It is only when the activity is found to be reporting, issues of use being fair or unfair would arise.

It is also necessary to refer to paras 46 to 49 of the said judgment and which read as under:-

“46. **Stale news is no news.** Law permits current events and affairs to be reported i.e. recognizes that stale news is no news and thus must be reported currently. It could thus be said that a rough and a ready thumb rule to apply to an event or an affair being news would be the **time period of 24 hours** within which the event or the affair remains a news and thereafter **it mutates into history**. Thus, the lifespan of an event or an affair, in its form of news, is 24 hours. Lapsing into history, any reflection thereon would not be news but would be views.

47. Now, is the problematic area! When does an event or an affair become news? **Does news has a gestation period to mutate into history?** If yes, what would be the gestation period? Just as the life span of creatures and the gestation period, before they take their ultimate manifested form, vary from species to species, same has to be, in our opinion, with events and affairs.

We extend the **Galilean – Newtonian method** i.e. Naturalism, to resolve the issue. Mosquitoes and flies, from the embryonic stage i.e. egg, pass on to the stage of a larvae/maggot, and the mosquito larvae finally metamorphose as adults and the fly egg metamorphose as an adult, from maggot, within a span of less than three to four days and live a life as adults of a few days and die. The mosquito egg would be news of being an egg the moment it is laid and would be news of becoming a larva when it metamorphoses and becomes news (and a nuisance) when it emerges as an adult, and all this within a short span of time. Similar would be the position of some kinds of events and affairs.

⁴³ Ibid.

48. How does it translate to an event of sports? Each match would be an event. Thus, the span of the match as an event being news would span the entire duration of the match. But, within this period of match, the fall of a wicket; the achievement of a milestone in the career of a player taken would be events, spanning a momentary duration, and being news when the event takes place. The latter i.e. a wicket falling, a century being scored (by a player or by the team), would be events which on the principle of stale news is no news and analogy with biology, would require it to be held that to put an embargo on reporting said event at a cricket match by putting the time restriction 30 minutes would amount to not permitting news to be reported but history to be reported, for the reason the news element content of such an event i.e. a wicket falling or the century being scored **is momentary.**

A reading of all the aforesaid paras of the Division Bench judgment shows that the Division Bench has held that the issue is whether the programme which is made by a person other than the original broadcaster is reporting or it is result oriented. If the programme which is conducted is not reporting, injunction must follow. This the Division Bench has observed with respect to the programmes which contain discussions on the match during the match or during the intervals of the match or immediately after the match, and which discussions show actual clips from actual audio and visual recording which is broadcast by the plaintiff and to which obviously ordinarily except the plaintiff no one else can have a right except for the purpose of fair dealing.

Thus, it is pertinent to note that 'news' or 'noteworthy information' arising from a cricket match is very different from the ball-by-ball or minute-by-minute information. For instance, who won the toss and chose to bat/bowl, whether the batsman has scored a century, or a bowler has taken a hat-trick, or a new world record being set constitutes news in the realm of a cricket match. To substantiate with an example, a news channel 'reporting' a cricket match would not engage in the contemporaneous dissemination of ball-by-ball or minute-by-minute match information. A news channel would only report selective excerpts from the match which is news worthy.

AUTHOR'S VIEW

What the media and corporate houses are doing is in no way reporting as they are attracting money from sponsors and advertisements, thus, is a result oriented activity. There is no philanthropic or gratuitous work done by the companies like news agencies.

IV. WHEN DOES INFORMATION INGRESS IN PUBLIC DOMAIN?

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 still confusion as to when the match information has entered public domain i.e. available to the public,

The term 'public domain' may be used to connote the information becoming freely available to the public. A distinction was also drawn *Secretary, Ministry of Information and Broadcasting, Govt. of India & Ors. v. Cricket Association of Bengal & Ors.*⁴⁴ in between those having access to television or radio and their ability to be informed about match status in real-time and those who do not have such access (like those in office or courtrooms etc.) who cannot have instant access to match status. Similarly, there are different classes of public who are consumers of cricket information in the sense that the persons who have purchased tickets to watch the match live at the stadium consists a class in itself, as opposed to those who have decided to stay at home and follow the match on their TV/radio. Similarly, the class of public who have chosen their work, vocation or any other engagement instead of going to the stadium or sitting in front of the TV cannot be considered and treated at par with those who have. 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. It can be said that the information emanating from a cricket match, enters the public domain at different moments of time i.e. is becomes freely available to the public at different moments of time.

To elucidate through an example, the outcome of the first ball bowled in a cricket match, enters the public domain instantly qua the spectators in the stadium. The same information enters the public domain after a delay of a few seconds (or micro-seconds) subject to the time-lag in transmission of such information over a live telecast through television/radio. As a corollary, the information has still not entered the public domain qua the persons who do not have any access to a source of contemporaneous information i.e. TV or radio.

⁴⁴ Infra note 46.

The issue thus would be what is that later point of time after the first broadcast for the information contained in that first broadcast to *cease to be taken to be part of that first broadcast*. Putting it differently, what should be the time gap that is required so as to distinguish the right of first broadcast from the content/information contained in the broadcast? That later point of time, would be that point of time at which the hiatus or the period or the interregnum ends by which the information can be no longer be said to be part of or so intimately associated to/with the first right of the broadcast. Once the information ceases to be associated and is no longer closely associated with the first right of broadcast, thereafter, such information becomes ordinary news, and, thereafter the information which is contained in audio and/or visual recording cannot be allowed to be monopolized by the plaintiff inasmuch as no one can monopolize news in larger public interest.

Judicial opinion is diverse on this particular point with two relevant judicial pronouncements deciding on the issue that after what time lag it can be considered that the information has entered the public domain. In *Star India v Piyush Agarwal*,⁴⁵ it was observed that the 50 overs cricket match takes a time of roughly about eight hours. What should be period of time qua such event, and after which period the information contained in the first audio and/or visual recording broadcast becomes an information in the public domain for it to become ordinary news which any one can commercially use and would not be taken as a part and parcel or closely associated to the broadcast. Therefore, after a period of two minutes of the first broadcast, the information will become information in the public domain which is ordinary news for not being taken as part of the first broadcast. *After two minutes the content/information in the broadcast can be commercially exploited by any person.* The time lag period of two minutes because in today's age and world technology has really reached stupendous heights that the dissemination of information is very fast. A period of two minutes from the first broadcast is more than sufficient time so that the plaintiff can, in that period, commercially exploit its exclusive audio and visual rights arising from the cricket match as if that is a part and parcel or so closely associated with the right of first broadcast. Thereafter, it is impermissible to stifle the news which comes into public domain.

In *Star India v Idea Cellular*,⁴⁶ the Court was of the view that it takes about 3-5 minutes for gathering, compiling and disseminating the score updates/match alerts by the defendants. In such a circumstance, those who do not obtain a license from the plaintiff, may not disseminate the score

⁴⁵ Supra note 2.

⁴⁶ Supra Note 46.

update/match alert before 15 minutes from the moment such score update/match alert is telecasted/broadcasted.

A. AUTHOR'S OPINION

If the time lag was 2/3 minutes, it would be more or less contemporaneous with the live telecast/broadcast of the match. If it is 30 minutes or more, as observed by the Division Bench in the *NDTV Case*, the information becomes irrelevant, and it would deprive the public of their right to that information. Therefore **a time lag of 15 minute** would be perfect as it ensures that the companies other than organizers are not providing ball-by-ball or minute-by-minute score updates/match alerts contemporaneously with respect to the live telecast/broadcast of match. Considering the time-sensitive nature of the information, after a span of 15 minutes, there is no longer a direct competition between the parties to provide contemporaneous match information to the customers who demand it. This maintains a balance between the right of the broadcasters to monetize the cricket match and the right of the public to receive such information, and also prevents other corporate entities from free-riding on the efforts of the plaintiff.

V. RECOURSE TO COMMON LAW RIGHTS

The organizer of sport events claim to have an exclusive rights in relation to the content generated during a cricketing event, including the right to commercially exploit all content arising from such event. Reason being that it funds everything relating to cricket, right from setting up of the stadium to starting training academies for umpires, scorers etc., all by itself. The main source of funding for the BCCI is claimed to be from monetizing the content arising from cricket matches, such as sponsorships and commercial advertisements. For instance, the revenue received from the sale of match tickets is contended to be negligible. Out of the revenue generated, BCCI contends that 85% is ploughed back into promoting the game of cricket in India and the infringers too do not contribute their revenue or a part thereof for the purpose of promoting the game of cricket in India.⁴⁷

It is argued that such rights of the plaintiff exist independently of the Copyright Act, 1957 as the copyrights provided under the Act are not exhaustive of the rights which can be created in respect of an event/live event.

A. PROPERTY RIGHTS

The property rights were first recognized with respect to commercial activities by United States Supreme Court in *International News Service vs. Associated Press*,⁴⁸ when it observed that '*He who has fairly paid the price should have the beneficial use of the property*' thus providing exclusive right to commercially exploit all event content to the creator of the event. Similarly in *Secretary, Ministry of Information and Broadcasting, Govt. of India & Ors. v. Cricket Association of Bengal & Ors.*⁴⁹ in which, the Hon'ble Supreme Court of India, finding the BCCI to be a non-profit making organization, which controls officially organised game of cricket in India, observed that-

“Being the organisers of the event had a right to sell the telecasting rights of the event to any agency... It has the right to choose the best method to earn the maximum revenue possible.”

⁴⁷ Supra Note 7.

⁴⁸ Supra Note 8.

⁴⁹ *Secretary, Ministry of Information and Broadcasting, Govt. of India & Ors. v. Cricket Association of Bengal & Ors* (1995) 2 SCC 161.

In *Akute Internet Services v Star India*,⁵⁰ it was however clarified by STAR and BCCI i.e. broadcaster and the organizer that *the asserted property right is not “against the world at large”*. It is admitted that there is no exclusive property right against persons who carry on the same activities gratuitously. In this context, STAR admits that it cannot have any cause against one using a satellite positioned above a stadium and broadcasts an on-going match free of cost. The respondents submit that what is asserted is not an intellectual property right, or a copyright. It is a unique property right, which stems out of a negative obligation, who secure match related information contemporaneously, not to use it commercially for a short duration.

Whereas the right of the members of the public – who witness the event, having paid for the ticket or millions of television viewers who subscribe and watch paid channels, which cover the event, to share it on a non-commercial basis cannot be denied, yet it is the obligation of the third parties not to exploit it commercially. One cannot say that there exists other equally lucrative revenue opportunities (like broadcast rights) for the organizer of an event and consequently the mobile value added service market should be abandoned by the organizer. It is asserted against competitors who are commercially exploiting such match information by disseminating it contemporaneously / almost instantaneously through SMS alerts, for a premium fee.

Denying a basis in common law and equity for organizers to assert its property rights / ownership in dissemination of match information through SMS update, is contradictory and paradoxical. In this context it is argued that this would lead to denial of all property rights / ownership claims in the cricket match itself; furthermore, the entire structure of rights in sports event, including broadcasting rights, audio rights, internet rights, stadium rights etc. would be rendered nugatory. If ownership is partially or fully conceded even for one of the rights, then all incidents and insignia of ownership must follow in respect of the entire bundle of rights. The rights claimed and sought to be enforced are not absolute, in that not all factual information is the subject matter of protection, but only a limited property right – the right to generate revenue by monetizing Match Information through the new platform / medium of Mobile services.

⁵⁰ Supra Note 7.

1. AUTHOR'S OPINION

Property rights evolve and are to be viewed contextually.⁵¹ The Courts too have construed the expression “property” broadly rather than in a narrow fashion.⁵² Just as property need not be tangible, the exclusivity need not be absolute at any point of time or against absolute in other time or as regards the object, i.e. the entire world. So long as the one who asserts the right can establish exclusivity that he, as creator or one having exclusive rights to the underlying events that constitute the fact can successfully prevent commercial dissemination, the *Courts would enforce the monopoly – a limited one, having regard to the context of the case*, i.e. the typical nature of the cricket scores – as a negative restraint upon those who seek to appropriate and commercially gain from it.

B. UNFAIR COMPETITION

The dissemination of match information through live score cards, match updates and score alerts via Short Messaging Service (SMS)/Mobile Value Added Services (MVAS), thus, would amount to free-riding on the efforts, eating away into the mobile and internet rights, without sharing the profit gained by them; thereby indulging in unfair competition and unjust commercial enrichment.

The bedrock of this argument is the legal principle enunciated in landmark decision of the United States Supreme Court in the case of *International News Service vs. Associated Press*.⁵³ The U.S. Supreme Court, observing that the question: What is unfair competition in business must be subjectively determined in particular reference to the character and circumstances of each business, held:

“The defendant’s act 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.”

Brussels Diplomatic Conference for the Revision of the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the Paris Convention) recognized unfair competition as manifested in Article 10bis of the Convention which reads as follows-

⁵¹ *Jay Laxmi Salt Works (P) Limited v. State of Gujarat* 1994 (4) SCC 1. *Jilubhai Nanbhai Khachar, Etc. v. State Of Gujarat and Another* AIR 1995 SC 142

⁵² *Vikas Sales Corporation v. Commissioner of Commercial Taxes*, AIR 1996 SC 2082

⁵³ Supra Note 8.

“The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.”

Article 10ter(1) of the Convention further provides for the obligation for the contracting parties to ensure appropriate legal remedies.

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. It has been followed in other cases regarding dissemination of updates/alerts arising from sporting events. In the case of *Pittsburgh Athletic Co. et.al vs. KQV Broadcasting Co.*,⁵⁴ 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 vs. Martin Fass*,⁵⁵ 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 vs. Transradio Press Service Inc.*,⁵⁶ (Twentieth Century Fox Case). In all the three cases, the Courts granted the injunction following the ratio of the INS Case. These precedents have a large persuasive value due to the similarity in the factual matrix, specifically with respect to play-by-play updates being analogous to the ball-by-ball updates.

The Madras High Court in Marksman case, relying on the decision of the New York District Court in the case of *National Basketball Association and NBA Properties Inc. v. Sports Team Analysis and Tracking Systems Inc.*,⁵⁷ (NBA-1 Case) held –

⁵⁴ *Pittsburgh Athletic Co. et.al vs. KQV Broadcasting Co.*, 24 F.Supp. 490 (Pittsburgh Case).

⁵⁵ *National Exhibition Company vs. Martin Fass*, 143 N.Y.S.2d 767

⁵⁶ *Twentieth Century Sporting Club Inc. and Ors vs. Transradio Press Service Inc.*,⁵⁶ 300 N.Y.S. 159

⁵⁷ *National Basketball Association and NBA Properties Inc. v. Sports Team Analysis and Tracking Systems Inc.*, 939 F.Supp. 1071

“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 endeavoring to reap where the defendants have not sown.”

1. CONFLICTING VIEW

The action of disseminating match information, it was argued, that do not amount to free-riding because, they neither copy the actual content of the broadcast, nor provide access to audio or visual footage of the broadcast. In any event, the defendants contend that they are legally entitled to disseminate the score updates/match alerts to the public and consequently generate income. Firstly, because the information emanating from the cricket match such as score updates/match alerts amounts to facts which cannot be owned or afforded copyright protection. Secondly, even if it were afforded copyright protection, the score alert/match update has already entered the public domain and therefore, can be freely used by the defendants. Thirdly, it would be preempted under Section 16 of the Act as it would be equivalent of providing a copyright protection.

2. AUTHOR’S OPINION

The action can be sought after as a way of declaring a right to generate revenue by monetizing the information arising from an event, which has been conceptualized, developed, created and organised by the sole efforts and expenditure of the BCCI organizers; as its assignee. Admittedly, in order to monetize the expense, effort and skill employed in organising cricket matches in India, the right to raise revenue by disseminating match information contemporaneously via SMS/MVAS by exploiting the ‘mobile rights’ and ‘mobile activation’ rights exclusively assigned to it.

C. UNJUST ENRICHMENT

The Apex Court in the case of *Mahabir Kishore & Ors. v. State of Madhya Pradesh*,⁵⁸ has observed that the Courts in England have formulated the doctrine of unjust enrichment in certain situations where it would be ‘unjust’ to allow the defendant to retain a benefit at the plaintiff’s expense. The Court has held,

⁵⁸ *Mahabir Kishore & Ors. v. State of Madhya Pradesh*, 1989 SCR (3) 596

“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.⁵⁹ 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.”

The contemporaneous dissemination of score updates/match alerts, without payment, but encashing the labour and expenditure of the organizers would amount to unjust commercial enrichment, which would not be fair.

Supreme Court also accepted the same formulation in *Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs*,⁶⁰ and also approved in *Godfrey Phillips India Ltd. & Anr. v. State of U.P & Ors.*⁶¹ Most recently, this was accepted the Supreme Court in Indian Council for *Enviro-Legal Action v. Union of India*,⁶² at as the Supreme Court notes, “a person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust” thereby upholding the claim.

1. CONFLICTING VIEW

It can be averred that the claim of unjust enrichment cannot be survive for three distinct reasons. First, the claim of unjust enrichment here is similarly pre-empted as the doctrine of ‘unfair competition’ is. But the question, in cases of whether a statute pre-empts a claim, is whether the two i.e. copyright and unjust enrichment can be regarded as “equivalent rights”⁶³ (i.e. whether, in terms of Section 16, the right sought to be asserted is a “copyright or any similar right in any work”? Section 16 to not restrict independent claims merely because it relates to intellectual property (or specifically, copyright).⁶⁴ Rather, if the “nature and degree” of the right asserted by Star is such that it conflicts with the scheme of the Copyright Act⁶⁵ thus offering “the equivalent of a (copyright) monopoly”⁶⁶ that the Act itself does not recognize, its claim must be pre-empted by Section 16. Thus, for example, claims of unjust enrichment against a tabloid for publishing Elvis Presley’s

⁵⁹ See Burrows, *A Restatement of the English Law of Unjust Enrichment* 44 (Oxford, Oxford University Press, 2012)); Birks, *An Introduction to the Law of Restitution* 16-8 (Clarendon Press, Oxford 1989)

⁶⁰ *Sahakari Khand Udyog Mandal Ltd. v. CCE & Customs*, (2005) 3 SCC 738

⁶¹ *Godfrey Phillips India Ltd. & Anr. v. State of U.P & Ors.*2005) 2 SCC 515

⁶² *Enviro-Legal Action v. Union of India*,2011 (7) SCALE 768

⁶³ Supra note 25.

⁶⁴ *Aronson v. Quick Point Pencil Co.*, 440 US 257, p. 262

⁶⁵ *Kewanee Oil Co. v. Bicron Corp.*, 416 US 470 (1974),

⁶⁶ *Sears, Roebuck and Co. v. Stiffel Co.*, 376 US 225, p. 233

photographs inspired by the plaintiff's collection in *Curtin v. Star Editorial Inc.*,⁶⁷ and a similar claim against a studio for building a replica of the plaintiff's home in a movie sequel *Tavormina v. Evening Star Productions Inc.*,⁶⁸ were considered to be pre-empted, amounting to (in essence) copyright claims though dressed up under alternate heads of common law.

2. AUTHOR'S OPINION

If one were to deal with this issue afresh – two questions arise: first, have the defendants, though undeniably benefiting from the dissemination of match information, been so benefited “at the expense of the broadcasters; and secondly, if so, does the retention of such benefit present any unjust factor? Both of these conditions, according to me, are satisfied by the dissemination of live score updates.

D. HOT NEWS DOCTRINE

The tort of hot news misappropriation is effectively a sort of property right which gives some protection to factual information for a limited time while it is still "hot news". It was observed *that given the "economic value" of the news, a company can "therefore" have a limited property interest in it against a competitor (but not the general public) who would attempt to take advantage of the information.* The so-called “hot news” doctrine, the *leitmotif* to the organizer's case, founded on unfair appropriation of a *quasi-property* right; was propounded in *International News Service vs. Associated Press.*⁶⁹

For comprehensive news coverage and minimizing costs, consenting news organizations formed editorial consortiums, excluding those who did not contribute. Associated Press (AP) and International News Service (INS) were parties to one such arrangement; they were in competition between themselves in the distribution of news. The value of their news distribution businesses depended heavily on the timeliness of the news reaching their paying audiences. AP alleged that INS copied news from bulletin boards and from early editions of AP members' newspapers and passed the news off as its own to INS customers. The time period of the alleged misappropriation – World War I – made this difficult to AP since, like other news agencies, it spent large amounts reporting world affairs across the Atlantic Ocean. The questions posed before the Court were whether a property right in news existed to prohibit such misappropriation, and, if so, whether such a property

⁶⁷ *Curtin v. Star Editorial Inc.*, 2 F. Supp. 2d 670 (E.D. Pa. 1998)

⁶⁸ *Tavormina v. Evening Star Productions Inc.*, 10 F. Supp. 2d 729 (S.D. Tex, 1998)

⁶⁹ Supra Note 8.

right should be limited in time to balance the competing interests. The bedrock of the opinion was that:

*“This defendant . . . admits that it is taking material that has been acquired by complainant as **the result of organization and the expenditure of labor, skill, and money**, and which is saleable by complainant for money, and that defendant in appropriating it and selling it as its own is **endeavoring to reap where it has not sown**”⁷⁰*

Significantly, the 'hot' news doctrine is concerned with "the copying and publication of information gathered by another before he has been able to utilize his competitive edge". Thus, the said principle provided extension of legal protection on facts or 'hot' news as a propriety interest. The same principle was also taken in essence by Delhi High Court in ***New Delhi Television Limited vs ICC Development (International)***.⁷¹ But with passage of time at damaging decision undermining the INS doctrine was given in ***Errie Railroad v Tompkins***⁷² observing:

“Sports events are not “authored” in any common sense of the word. Unlike movies, plays, television programs, or operas, athletic events are competitive and have no underlying script. Preparation may even cause mistakes to succeed, like the broken play in football that gains yardage because the opposition could not expect it. Athletic events may also result in wholly unanticipated occurrences. What “authorship” there is in a sports event, moreover, must be open to copying by competitors if fans are to be attracted. If the inventor of the T-formation in football had been able to copyright it, the sport might have come to an end instead of prospering.

It would thus be seen that the INS decision, propounding “time sensitive” hot-news-misappropriation doctrine, based on unfair dealing and unfair competition, had its sceptics from inception.

Later in ***Moorgate Tobacco Co. v. Philip Morris***⁷³, the High Court of Australia upheld the *Victoria Park Judgment* and observed that:

“The decision in International News Service, which was hailed in the United States as a ‘landmark’ in the law of unfair competition, has been seen even in that country to be more properly described as an island. Indeed, in a recent United States case...the “legal concept” of unfair competition was described as a “child of confusion”

⁷⁰ ***Cheney Brothers v Doris Silk Corporation***, 35 F.2d 279

⁷¹ Supra Note 1.

⁷² ***Errie Railroad v Tompkins***, 304 US 68. NBA (1998)

⁷³ ***Moorgate Tobacco Co. v. Philip Morris***, 156 CLR 414 (1984)

which has “spawned a body of law that lacks in judicial definition and scope... The notion of a general action for “unfair trading” or “unfair competition” has received little encouragement in either the House of Lords or this Court...” In the United Kingdom, similar contentions were rejected in ***Sports and General Press Agency Ltd v “Our Dogs” Publishing Co Ltd***⁷⁴; and ***Cadbury-Schweppes Pty Ltd and Others v Pub Squash Co Pty Ltd***.⁷⁵

Its foundation being questioned by the Appellate Circuit Court in ***Errie Railroad***, a later decision of the Supreme Court, undercut the constitutional legitimacy of the Court’s assumption to weave doctrines, i.e. the jurisdiction to discover and enforce federal “common” law. The later decisions of the U.S. Courts represents a digression from the ‘Hot-News Doctrine’ laid down in the INS Case by citing various other foreign decisions.⁷⁶

Finally, The Court of Appeals, in the ***The National Basket Ball Association and NBA Properties vs. Ports Team Analysis and Tracking System Inc.***,⁷⁷ cleared all the ambiguity regarding the hot news doctrine. The Court accepted the doctrine but narrowed it down to limited cases where,

“(i) a plaintiff generates or gathers information at a cost; (ii) the information is time-sensitive; (iii) a defendant’s use of the information constitutes free-riding on the plaintiff’s efforts; (iv) the defendant is in direct competition with a product or service offered by the plaintiffs; and (v) the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened.”

⁷⁴ ***Sports and General Press Agency Ltd v “Our Dogs” Publishing Co Ltd***,1916 (2) K.B. 880

⁷⁵ ***Cadbury-Schweppes Pty Ltd and Others v Pub Squash Co Pty Ltd***, 1981 (1) W.L.R

⁷⁶ ***National Basketball Association and NBA Properties Inc. v. Motorola Inc.***, 105 F. 3d. 841 (1997) (NBA-2 Case). The defendants have also relied upon ***Barclays Capital Inc., Merrill Lynch, Pierce, Fenner & Smith Inc. & Morgan Stanley & Co. Inc. v. Theflyonthewall.com Inc.***, 650 F.3d 876 (Theflyonthewall Case), ***Triangle Publications Inc. v. New England News Paper Publishing Co.***, 46 F.Supp. 198 (1942) and ***Compco Corp v. Day Brite Lightning Inc.***, 376 U.S. 234 (1964) by the Courts in the U.S.; and ***Cadbury-Schweppes Pty. Ltd. & Ors. v. Pub Squash Co. Pty. Ltd.***, [1981] 1 W.L.R. 193 and ***Moorgate Tobacco Co. Ltd. v. Philip Morris Ltd.***, 156 CLR 414 by the Courts in Australia.

⁷⁷ ***The National Basket Ball Association and NBA Properties vs. Ports Team Analysis and Tracking System Inc*** 105 F. 3d. 841 (1997)

1. AUTHOR'S OPINION

The above findings recently were reiterated in the *Barclays Capital Inc. v. Theflyonthewall.com, Inc.*,⁷⁸ when the Courts of Appeal for Second Circuit considered the Hot News Doctrine by giving legal recognition to the same along with the above guidelines given in NBA-2. Thus, the organizers can claim protection over the score updates if they are successful in bringing their cause within the Hot-News Doctrine (as modified after NBA-2 case)

⁷⁸ *Barclays Capital Inc. v. Theflyonthewall.com, Inc.*, 650 F.3d 876 (2d Cir. 2011)

VI. BAR OF 'SECTION 16'

“Section 16. 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 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.”

Section 16 and 'Work'- There thus can be no manner of doubt once we read the heading of the section “no copyright except provided in this Act”, and the emphasized parts of the section reproduced above, that, there cannot exist a copyright in a ‘work’ de hors the Act⁷⁹ i.e. exclusive right in a work or any right in a work is only that which is the subject matter of the Act. As a defence, it had been claimed that information not being a work under the Act, thus, cannot be afforded protection. However, this argument can be negated by the reasoning as given in *Star India v Piyush Agarwal* as discussed above.⁸⁰

Section 16 and Common Law Rights- Section 16 in the 1957 Act is a derivative of Section 31 of the erstwhile Copyright Act, 1911 which specifically stated for abrogation of common law rights.⁸¹ The ‘proprietary rights’ or the ‘common law rights’ as claimed by the organizers do not exist as they are not recognized under any law or statute enacted by the Parliament because, Section 16 of the Copyright Act, 1957 precludes the entities like BCCI from claiming any other right except as provided under the Act. Merely because a particular nomenclature not stated in the Act is sought to be given to a type of ‘work’ which is urged to be not a work under the Act, proprietary rights or property rights cannot be claimed in such a work. The claim of unjust enrichment and unfair competition is barred by this Section as it specifically says that there can copyright or ‘any similar right’ except in accordance with the Act. Secondly, giving the benefit of common law rights would be equivalent to giving of copyright protection indirectly, thus, transgressing Section 16.

⁷⁹ *Manjeh Cine Productions v. A. Sundaresan and Another*, AIR 1975 Mad 22

⁸⁰ Subject Matter of Copyright and Supra Note 2.

⁸¹ *Time Warner Entertainment Co., L.P. & Ors. v. R.P.G. Netcom & etc.*, AIR 2007 Del 226.

A. CONFLICTING VIEW

Moreover, the Copyright Act creates several rights besides copyright i.e. neighbouring rights. These rights include the rights of broadcasting organisations under Section 37, the rights of performers under Sections 38 and 38A, and the moral rights of authors which are recognized under Section 57; which are all distinct from copyright. This has also been noted by the Division Bench of this Court in the case *Raj Video Vision v. M/s Sun TV*, “Satellite broadcasting rights are treated as separate rights and the said rights are recognized throughout the world as independent rights”.⁸² The scope of Section 16 is further limited by Section 39A of the Act. This provision belongs to the Chapter VIII of the Act which deals with ‘Broadcasting, Organization, Performers’ Rights’. It *enumerates those provisions* of the statute that apply to copyright would also apply, *mutatis mutandis* to the neighboring rights. The provisions stated in Section 39A in which copyright provisions are to be applied are Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66. Thus, absence of Section 16 shows that it was not intended by the Parliament to apply the bar of section 16 to broadcasting rights. Thus, the broadcasters still can claim protection and remedy under the Act.

B. AUTHOR’S OPINION

One of the interpretations regarding bar of common law remedy or not under Section 16 speaks that if we interpret the words of the section it can be seen that its application is regarding the claiming of copyright protection and not regarding the remedy. Secondly, Abrogation of common law rights found place in Section 31 of the previous Copyright Act, 1911 but the 1957 Act has amended version of this section thereby replacing ‘statutory enactment’ with the term ‘other law in force’ and changing the title of the section show the intention of the Legislature to involve common law action in copyright protection. A settled canon of statutory construction is that Parliament or the concerned legislature is deemed to be aware of existing laws when it enacts a new legislative measure as observed in *Syndicate Bank v. Prabha D. Naik*.⁸³

Even for arguments sake, if it is accepted that remedies can also be given only in accordance with section 16, then also the ‘common law’ remedies is within the scope of Section 16. Section 16 was interpreted that the rights can be claimed beyond the Act only in terms law which was in force at the

⁸² *ESPN Star Sports v. Global Broadcast News Ltd. & Ors.*, 2008 (38) PTC 477 (Del.) (DB), as held in *Raj Video Vision v. M/s Sun TV*, 1994 (2), Madras Law Weekly 158 and approved in *AA Associates versus Prem Goel* AIR 2002 Del 142.⁸² A similar view has been taken in *M/s Video Master v. M/s Nishi Productions*, 1998 (18) PTC 117.

⁸³ *Syndicate Bank v. Prabha D. Naik*, (2001) 4 SCC 713).

time when the Act was enacted in *Akuate Internet Services Pvt. v. Star India Ltd.*, and *Super Cassettes Industries Ltd. v. Mr. Chintamani Rao*.⁸⁴ It is also a settled law that 'law in force' includes the decisions of the court and the common law of the land and continued after coming into force of the Constitution.⁸⁵

⁸⁴ *Super Cassettes Industries Ltd. v. Mr. Chintamani Rao*. 2012 (49) PTC 1 (Del)

⁸⁵ *Director Rationing v. Corp. of Calcutta*, AIR 1960 SC 1355; *Builders Supply Corporation v. UOI*, AIR 1965 SC 1061; *Commissioner Of Income-Tax v. Godavaridevi Saraf*, 1978 (2) ELT 624 Bom.

VII. CONCLUSION

“[B]eing the organisers of the event had a right to sell the telecasting rights of the event to any agency...[I]t has the right to choose the best method to earn the maximum revenue possible. In fact, it can be accused of negligence and maybe attributed improper motives, if it fails to explore the most profitable avenue of telecasting the event, when in any case, in achieving the object of promoting and popularizing the sport, it has to endeavor to telecast the cricket matches.”⁸⁶

It is amply clear now in view of all the material stated above that the main issue is regarding the information contained in the audio and/or visual of broadcast of any sport event rather than the broadcast itself. The contention of the organizers is to have exclusive right over the dissemination of such information whereas the counter contention comprises itself of the argument that there can be no protection given to the information under statutory law i.e. copyright or under common law. After analyzing the above stated case laws, doctrines, principles, the author here would like to present his opinions and conclude article in the following paragraphs as such:-

(i) With regard to the question that whether ‘information’ or ‘score update’ are within the ambit of the work as given in Section 2(y) and can be given protection under the Act or not can be answered by the judgement of Delhi High Court in *Star India v. Piyush Agarwal*⁸⁷. Firstly, performer’s performance is a work of copyright itself by virtue of conjoint reading of Section 13 and Section 38. Secondly, the rights of the performer as given in Section 38A provides for the recording and communicating it to the public. This right is assigned to the organizers and broadcasters to record the performance and to communicate the same. After recording of the said performance, it takes the form of a ‘cinematographic film’ and organizers as its producer, which in turn is also a copyrightable work. Therefore, before the first broadcast the information underlying it is so intrinsically related

⁸⁶ *Secretary, Ministry of Information and Broadcasting, Govt. of India &Ors. v. Cricket Association of Bengal &Ors* (1995) 2 SCC 161.

⁸⁷ Supra note 4.

with the film that it cannot be separated. Thus, in consideration of in *Landbroke Ltd. v. William Hill*,⁸⁸ it can be said the usage of the same is copyright violation.

(ii) The extent of reporting any current event and whether such reporting constitutes fair dealing by virtue of Section 52(1)(a)(iii) and Section 39 of the Act was determined in *New Delhi Television Limited vs ICC Development (International)*⁸⁹. Summarizing, the Court gave two conditions to be satisfied; firstly, it should not be result oriented. For instance, footages are permitted to be used while reporting sports events in both hard news and sports news programmes but only if the programmes were pre-existing news format programmes and were not designed for a particular sports event and specific advertisements are not solicited from third parties to be put on the air in the programme or the third party has not voluntarily approached the TV channel and paid special premium for its advertisement to be put on the air. Secondly, it should be fair. What the media and corporate houses are doing is in no way reporting as they are attracting money from sponsors and advertisements, thus, is a result oriented activity.

(iii) To the issue that when an information particularly a score update comes into public domain, the author is inclined towards the proposition given in *Star India v Idea Cellular*,⁹⁰ a time lag of 15 *minute* would be perfect as it ensures that the companies other than organizers are not providing ball-by-ball or minute-by-minute score updates/match alerts contemporaneously with respect to the live telecast/broadcast of match. Considering the time-sensitive nature of the information, after a span of 15 minutes, there is no longer a direct competition between the parties to provide contemporaneous match information to the customers who demand it. This maintains a balance between the right of the broadcasters to monetize the match and the right of the public to receive such information, and also prevents other corporate entities from free-riding on the efforts of the organizers. The Apex Court also prima facie found merit in the above reasons and gave interim injunction for maintaining status quo on the above order of the Delhi High Court.⁹¹

(iv) Organizers and Broadcasters had taken recourse to particularly four common law rights as in property rights, hot news doctrine, unfair competition and unjust commercial enrichment. With

⁸⁸ *Landbroke Ltd. v. William Hill*, (1964) 1 WLR 273

⁸⁹ Supra Note 1.

⁹⁰ Supra Note 46.

⁹¹ *Star India Private Limited v Akuate Internet Services Pvt. Ltd.*, Special Leave to Appel (C) No, 29629/2013 (pending as on 14th of August, 2016).

respect to property rights, the judgement given in INS case followed by the Airwaves case,⁹² that who '**He who has fairly paid the price should have the beneficial use of the property**', is enough to provide them with the property rights however a limited one. That is, only against those using the information commercially and till it enters the public domain. The 'Hot-News' doctrine is applicable in the instant case as it fulfils the condition given in the NBA-2 case, modifying the earlier original doctrine given in INS case. Thus, in effect it gives a quasi-property right to the organizer. Thirdly, both tort of unjust commercial enrichment and unfair competition can be claimed by the organizers as they are without any doubt eating away the rights of the organizers especially if the judgement of the *Mahabir Kishore & Ors. v. State of Madhya Pradesh*.⁹³

(vi) Section 16 bars copyright protection to anything which is not a work but the same issue can be resolved by the judgement of *Star India v. Piyush Agarwal*⁹⁴ where information was held to be a work but under certain circumstances and upto certain duration only. Secondly, it does not find place in section 39 which incorporates those provisions which are applicable to copyright also. Thus, it cannot be applied to neighbouring rights i.e. broadcasting or performer's rights. Thirdly, one of the interpretations regarding bar of common law remedy or not under Section 16 speaks that if we interpret the words of the section it can be seen that its application is regarding the claiming of copyright protection and not regarding the remedy. Fourthly, Abrogation of common law rights found place in Section 31 of the previous Copyright Act, 1911 but the 1957 Act has amended version of this section thereby replacing 'statutory enactment' with the term 'other law in force' and changing the title of the section show the intention of the Legislature to involve common law action in copyright protection. Even for arguments sake, if it is accepted that remedies can also be given only in accordance with section 16, then also the 'common law' remedies is within the scope of Section 16. Reason being Section 16 was interpreted that the rights can be claimed beyond the Act only in terms law which was in force at the time when the Act was enacted⁹⁵ and the same is very well within the contours of law as the 'law in force' includes the decisions of the court and the common law of the land which continued after the coming into force of the Constitution.⁹⁶

⁹² *International News Service vs. Associated Press*, 248 U.S. 215, 39 S.Ct.68 (1918), *Secretary, Ministry of Information and Broadcasting, Govt. of India & Ors. v. Cricket Association of Bengal & Ors* (1995) 2 SCC 161.

⁹³ *Mahabir Kishore & Ors. v. State of Madhya Pradesh*, 1989 SCR (3) 596.

⁹⁴ Supra note 4.

⁹⁵ *Super Cassettes Industries Ltd. v. Mr. Chintamani Rao*. 2012 (49) PTC 1 (Del)

⁹⁶ *Director Rationing v. Corp. of Calcutta*, AIR 1960 SC 1355; *Builders Supply Corporation v. UOI*, AIR 1965 SC 1061; *Commissioner Of Income-Tax v. Godavaridevi Saraf*, 1978 (2) ELT 624 Bom.

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