

SPORTS RIGHTS – WHAT PROPRIETARY RIGHTS DOES AND SHOULD AN EVENT ORGANIZER HAVE WITH RESPECT TO MATCH SCORES?

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INTRODUCTION TO THE PRESENT SCENARIO

Beginning on a positive note, the good news, with the advent and subsequent advancement of information technology, principally the internet and mobile machinery, it has become increasingly easier to receive high-speed and dependable news content. This is true even more so in the case of sporting events. A significant proportion of the sports-aficionado populace in the country depends on services such as the short-message-service from various service providers for information regarding a crucial cricket match, such as match score updates. The same is true for sports news dissemination on the internet, where a little click can update you regarding the entire history of all the sports in the world, much less scores from a particular live sports match.

On the flipside, the end user may soon have limited options to access news from, even with the constant technological innovation that we witness. This is due to the natural monopoly held by sponsors and event organizers over the numerous sporting events in this country. They hold superior control over permits regarding information dissemination when it comes to sporting events. This holds true in light of the recent judgment.⁴

The Delhi High Court judgment in the *Star India* case has helped considerably to broaden the ambit of domestic intellectual property rights, in this nation. On 30 August 2013, the division bench of the Delhi High Court overturned the older judgment by the single judge of the same court, where Star to begin with had limited rights over match scores.⁵ Star, by means of the Board of Control for Cricket in India, from which it had licensed these rights, had exclusive rights to report information through mobile update for a certain period of time, while the news still constituted as ‘hot news’.

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⁴ *Star India Pvt. Ltd v. Piyush Agarwal & Others*, [2013] 54 PTC222 (Del)

⁵ *Onmobile Global Limited v. Star India Private Limited & Another*, [2013] CM APPL. 4880/2013 (Del), CM APPL. 4881/2013 (Del), CM APPL. 4882/2013 (Del)

The High Court had initially maintained that tort arising out of unfair competition, in relation to information stemming out of a cricket match, can be clubbed under quasi-property information. It is important to note that there has been a resurgence of the utilization of common law to remedy legal complications arising out of the realm of proprietary rights.

The High Court held that an *ad interim* injunction claim based on fact ownership, hot news principle, unfair competition and unjust enrichment is not grantable. As the present situation dictates, mobile accumulators and any other individual is free to provide SMS alerts and ball-by-ball commentary.

This article contends by way of precedents, statutes, and an informed assessment of the law and an understanding of our constantly technologically evolving world that there may be in fact allegations without ownership of factual and real time data. Recent case laws also suggest that the existing legal policies may not prevent competitors from scheming information by means of credentialing processes. Moreover, organizers of sports events must discharge information of this nature, including match scores, through their own amenities and without proprietary rights attached to such information.

ACCESSIBILITY OF COMMON LAW REMEDIES UNDER COPYRIGHT VIOLATION

Under Indian laws, unfair competition practices concerning intellectual property rights are an economic tort. Further, Section 27(2) in the Trade Marks, 1999 states:

(2) Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

This act makes way for a non-obstante provision allowing the parties involved in cases to do with unregistered trademarks. This provision enables the party to pledge a passing off action where passing off is a common law tort that is useful when it comes to imposing unregistered trademark rights. However, this non-obstante provision does not have complete acknowledgment in statutes dealing with copyrights, designs or patents.

Until 2012, the courts in India would only give recognition to passing off unfair competition tort only when it comes to trademark law. Recently the Bombay High Court held that there might be a passing off mechanism in place to counter a design violation. This is enforceable only if the consumers associate the unique design with the source. The infringer must copy the design with intention to mislead consumers.⁶

A larger bench of the Delhi High Court's in *Microlube India Limited v. Rakesh Kumar & Others*⁷ further substantiated this legal remedy. The Court opined that there is an availability of the passing off legal remedy when it comes to a design, used as trademark upon the registration term's interval. The direct inference from this is that the unfair competition tort is recognizable, at least when it comes to design.

The roadblock here is that there has been no set precedent suggesting unfair competition tort application in copyright. There are a number of reasons for the same but the primary reason is that the Copyright Act 1957 does not recognize copyright that exist without according and complying with the said Act. If we are to go by what the Bench dictated, there is no exercisable common law remedy when it comes to copyright desecration. The Delhi High Court Division Bench in *Star India Pvt. Ltd v. Piyush Agarwal & Others*⁸ noted:

*"Section 16 of the Act specifically bars a person from claiming copyright or any other similar rights in any work otherwise than in accordance with the provisions of the Act itself or any other law in force... The appellant-plaintiffs cannot claim copyright and sue for infringement of copyright dehors the Act. Common law rights under copyright law were abrogated earlier by Section 31 of the Copyright Act, 1911, which was enacted to amend and consolidate the law relating to copyright."*⁹

Moreover, the respected judge continues:

"Action for passing off can be initiated, where interest of an author or owner of a copyright work in his business reputation and goodwill is damaged by misrepresentation that falls outside the copyright law, i.e. The Act. Passing off action will be maintainable, when the claim is not based

⁶*Videocon Industries Limited v. Whirlpool of India Limited*, [2012] 6 BomCR 178 (Bom)

⁷*Microlube India Limited v. Rakesh Kumar & Others*, [2013] CS (OS) No. 384 of 2008

⁸*Star India Pvt. Ltd vs Piyush Agarwal & Others*, [2012] CS(OS) No.2722(Del)

⁹*Time Warner Entertainment Co. v. RPG Netcom & Others*, [2007] 34 PTC 668 (Del)

in infringement of copyright but damage to reputation and goodwill of the proprietor and the said damage is caused by deceit or misrepresentation by the defendant.”

There may be no common law remedy for copyright abuse but there is one for non-copyrightable data ensued as a quasi-property right.

A GLANCE AT QUASI-PROPERTY RIGHTS

‘Quasi-property’ as a term came first into use in Equity Courts in England in order to explain interests approximating property rights in function. This was the case even in instances where these rights were not in essence property rights or even an interest of possession or ownership.¹⁰

The classification of property rights is predominantly in accordance with their features. The present classification criterion is not sufficient to label rights qualifying as properties. Quasi-property rights are an example of the aforementioned and they are against an explicit group, often the competitors. Quasi-property rights are not associated with legal action directed toward property, rather than towards a particular person.

Quasi-property rights came to the forefront in the United States in 1918 when the respondent demanded quasi-property rights in an important Supreme Court case¹¹. The Court noted:

“Regarding the news, therefore, as but the material out of which both parties are seeking to make profits at the same time and in the same field, we hardly can fail to recognize that for this purpose, and as between them, it must be regarded as quasi property, irrespective of the rights of either as against the public.”

The landmark *International News Service* case gave acknowledgment to quasi-property rights in news of short duration i.e. hot news. It was decided that competitors making use of hot news aggregates to unfair competition practices.¹²

¹⁰Balganesh, Shyamkrishna, ‘Quasi-Property: Like but not quite Property’, *University of Pennsylvania Law Review* [Vol. 160] P. 1889

¹¹*International News Service v. Associated Press* [1918] 248 U.S. 215

¹²*Hot News Doctrine*

There were many successive pronouncements constricting this principle's range and scope. According to the decision, only deliberate and proper 'Free Riding' would amount to claims of quasi-property rights.¹³

Additionally, the famous *National Basketball Association*¹⁴ case judgment in the United States Court of Appeals reiterated:

"The surviving "hot-news" INS-like claim is limited to cases:

- (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."*

CLOSER HOME: INITIAL GATHERINGS FROM THE PROLONGED STAR INDIA CASE

As mentioned at the beginning of this article, the Star India case has accelerated most of what there is to do with proprietary rights of an event organizer, more so in respect to match scores. The background of this case is that Board of Control for Cricket in India (BCCI) granted Star India with a bouquet of rights, including "mobile rights" vide an agreement entered into between the two parties in October 2012. The BCCI contract is from July 2012 to March 2018. This bouquet of rights included mobile rights to provide live score updates of ongoing cricket matches. A 72-hour monopoly was contracted to Star India by the BCCI over all media related rights, including and not limited to match information such as real time scores.

Following the October 2012 agreement between the two parties BCCI and Star India, there were complaints from both sides alleging that third party groups such as Cricbuzz and Idea Cellular

¹³*Barclays Capital Inc. v. Theflyonthewall.com*, [2011] 650 F.3d 876 (2d Cir)

¹⁴*National Basketball Association. Motorola*, [1997] 105 F.3d 841 (2nd Cir.)

were committing a civil wrong as they were unfairly misappropriating news for commercial gains. They took note of match scores in real time and forwarded by way of SMS to their select subscribers. This chain of events brought the doctrine of “hot news” to the forefront of sports and intellectual property rights law in India.

In November 2012, Justice Valmiki Mehta of Delhi High Court held that Star India could claim no copyright claim over match score updates by virtue of its BCCI contract.¹⁵ This was the first instance of substantial progress concerning proprietary rights of organizers of sporting events. Even though Star India might be the exclusive holder of media rights for the cricket matches organized by the BCCI, it does not amount to having copyright claims over match information after it is a part of public domain. Further, any party could commercially exploit information from the match broadcast after two minutes. Furthermore, a vital fleeting event such as the fall of a wicket would be a part of the public domain within a matter of a few seconds.

Subsequently, the case was appealed before the Delhi High Court’s Division Bench. The Delhi High Court in this case next held that quasi-property rights claims in cricketing event in relation to match scores and their publication through short-message-service amount to unfair competition practices.¹⁶

Star India originally brought three distinct actions forward and they were against the defilement of their bouquet of rights. The Board of Control for Cricket in India apportioned these actions to the plaintiffs, Star India. The plaintiffs primarily contested that they had exclusive rights concerning every iota of information stemming from any BCCI orchestrated cricket match or event. Going by that contention, broadcasting of all such data and information by mean of match updates aggregates to unfair completion tort, including and not limited to match score alerts made available by means of SMS by the defendants.

The plaintiffs in this case claimed that quasi-proprietary rights ensued were in the information at hand, which in this particular case was to do with match scores. The plaintiff’s cause of action insinuated being outside or beyond the bounds of the Copyright Act 1957 i.e. it was *de hors* of it. The defendants in turn differed to this and opposed the quasi-property claim. They were in disagreement of the common law remedy and it was vied from their side that data such as match

¹⁵*Star India Pvt. Ltd vs Piyush Agarwal & Others*, [2012] CS(OS) No.2722(Del)

¹⁶*Star India Pvt. Ltd vs Piyush Agarwal & Others*, [2013] 54 PTC222(Del)

scores was in *public juris* and is open to or exercisable by all persons before the same had been broadcasted by them.

In this initial judgment of March 13, 2013, the court was of the opinion that even though the Hot News Doctrine was watered down by the *National Basketball Association* case, the Five Factor Test still held merit. The Test retained the fundamental principle of unjust enrichment. Further, the court noted that the defendants spent for the specific purpose of broadcasting the information and not only organizing the event. Information broadcasting was the primary purpose for the event expenditure and not the legal procurement of information from the BCCI, the court opined. The defendants were “free riding” and this constituted unfair competition practices. Finally, the court held that the defendant could broadcast match updates, albeit with a 15 minutes postponement. This would be minus any license obtaining from the organizers or the plaintiff.

It was feared that this judgment would lead to a floodgate where people would auction off exclusive news rights, as self-styled news producers, to various news conglomerates. This would have had an adverse effect on the news reporting and journalistic scenario in the country and possibly cripple it; the hot news doctrine first established in the INS case was never meant to make way for such a situation.

This judgment though considered as a leap forward was challenged for its rather narrow scope of view as it might have disregarded several quantifiable facets. The court may have misinterpreted the NBA Five Factor Test as it held that only three of the five factors were sufficient to satisfy the fundamental principle of unjust enrichment. For a quasi-property claim to exist all five factors need to be addressed, particularly the passing off factor. The judgment did not sit well among various foreign precedents.

APPRAISAL OF THE JUDGMENT DATED 30 AUGUST 2013 IN STAR INDIA

In the subsequent 30 August 2013 decision, Justice Bhat of the Delhi High Court reversed the earlier lower court decision. In addition, the hot news doctrine application was rejected.

The judgment’s reasoning can be understood by this short analysis of the four prudent issues that were addressed by the court with great wisdom:

1.) *Was the Respondents’ claim prohibited by Section 16 of the Copyright Act?*

The Court pronounced that if the Parliament had intended for the claimed rights to exist, then they would have been enacted, with appropriate mechanisms for their implementation and effectuation. Here two important sections from the Copyright Act 1957 come into play, Section 16¹⁷ and Section 39A¹⁸.

The Court held that under Section 16, that the term “work” limits the exclusion. Even though the text does not describe what “other similar rights” are, it must point to broadcasting rights. This is further demonstrated how Section 63¹⁹ is applicable to broadcasting rights. This holds true even though it is not included in Section 39A. Also, Chapter VIII of the Copyright Act 1957 that deals with the rights of broadcasting organization and performers exists to protect broadcast rights such as copyright, in a limited way. Rights providing protection of facts similar to the aforementioned, essentially broadcasting are in exclusion since a while. This was so as they were similar to copyright protection²⁰. Exclusion of rights other than the ones in Chapter VIII is applicable even though no prompt mention to Section 16 in Section 39A exists.

2.) Hot News Doctrine and India

The respondents were unable to substantiate on whether they had proprietary rights over the information they sought protected, even for the shortest time. Even if the third party had the intention to broadcast the information as a monetary incentive there was no feature of Hot News present in this scenario. This holds true as neither Star nor BCCI principally broadcast match news by means of SMS. Direct competition is an essential requirement and the plaintiff fails on this count, as the plaintiff’s principal service is not hot news broadcasting but match organization.

3.) Injunction claim with unfair competition basis

¹⁷Section 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 law for the time being in force but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.’

¹⁸Section 39A – ‘Other provisions applying to broadcast reproduction right and performer’s right.--Section 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performer’s right in any performance as they apply in relation to copyright in a work:

Provided that the copyright or performer’s right subsists in respect of any work or performance that has been broadcast, or licence to reproduce such broadcast shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them.’

¹⁹Section 63 – ‘Offence of infringement of copyright or other rights conferred by this Act’

²⁰*Donaldson v. Beckett*[1774] 1 ER 837

Unless a qualitatively distinct aspect is alleged for inclusion in the doctrine of unfair competition, the prevention under Section 16 would be applicable to claims of this sort. If the hot news doctrine were to be upheld here then a grant of protection would be implied in order to match the information. This is directly in contravention of the Copyright Act 1957.

4.) Injunction claim with unjust enrichment basis

The court held that the unjust enrichment claims were forestalled, similar to the doctrine of unfair competition. There was no misconduct incorporating elements present apart from copyright infringement claims. An unjust enrichment claim cannot prohibit any match score broadcast. The monetary benefits of the appellants were not at Star's expense as it was a result of the appellant's resources and investments. Before the rights can be licensed, it should first be proven if they exist. Star and BCCI do not have the permission to mention mobile rights and sell them off. This is so, as it would legalize parceling away of right to broadcast and disseminate information without even proving if such a right has any evidentiary existence.

Section 16 of the Copyright Act 1957 obstructed all claims and the Appellant's Right to Freedom of Speech and Expression and their Right to Freedom of Trade under Article 19 of the Constitution of India, were not interfere. Complying with the Appellants' disputations that their rights under Article 19 (1)(a)²¹ and 19(1)(g)²² cannot be violated with when the law is deficient, the single Judge's decision proclaiming the enforcing of reasonable restrictions on such rights by the Court in the law's absence to that effect was reversed.

The court further expressed that the recognition of the doctrine of unfair competition would inevitably be a strong restriction to the ability of the appellant to disseminate any information. On the face of it, this is an infringement of the most crucial of all components of Article 19(1)(a). This does not denote that the doctrine of unfair competition is a policy to be discarded in favor of Article 19(1)(a)'s violation. Neither does it signify that the freedom of speech of the appellant, the most basic of fundamental rights, must face curtailment due to the nature of the aforementioned doctrine. Understanding the most critical matter in its entirety is vital, the matter being that Courts ought to be cautious while creating rights and doctrines having clear implications and repercussions on

²¹ Article 19 – 'Protection of certain rights regarding freedom of speech etc'(1) All citizens shall have the right (a) to freedom of speech and expression;

²²(g) to practise any profession, or to carry on any occupation, trade or business

fundamental rights. This matter may be limited but it is crucial. It is further advisable to leave such matters to the lawmaking realm of the legislature. The consequence of such an effort would be a articulate and consistent legislation that creates a framework within which the curtailment of Constitutional rights would take place.

As has been declared previously through the course of this article and by means of the 30 August 2013 judgment²³, mobile operators and other entities are to face no preclusion or barring from making available SMS alerts and ball-by-ball commentary. Unless there is a further appeal by Star against this judgment, possibly in the Supreme Court, things could remain so with proprietary rights of event organizers with respect to match scores. Justice Bhat, has supported his judgment with conclusive proof in the form of precedents from sporting law decisions and proprietary rights cases, some recent and some judged over the years, in various nations. It has been establishment by way of this ruling that intellectual forms a closer link with investment, as opposed to intellect.

CONCLUSION

The general populace's insatiable and unquenchable insistence for real time information and news has made way for intensely aggressive struggle among conventional media outlets, online news providers, sporting event organizers, and the sports organizations as well; eliciting a plethora of public disagreements. More recently, there has been an escalation in litigation battles in the country's courts regarding the aforementioned points of contention. This has subsequently led to the introduction of many fresh concepts and precedents in the legal domain of the aforementioned issues.

With the arrival of quasi-property rights, information and services, which are in actuality the end result of expertise, toil and expenses, there was a possibility that they may be regarded in a similar fashion to property. Infringement of the same would make way for action causes. Nonetheless, the Delhi High Court ruling of 30 August 2013²⁴ has established many imperative points dealing with the contestability of quasi-property rights regarding sporting events related information such as match scores and other equally disputable issues.

²³*Onmobile Global Limited v. Star India Private Limited & Another*, [2013] CM APPL. 4880/2013 (Del), CM APPL. 4881/2013 (Del), CM APPL. 4882/2013 (Del)

²⁴*ibid*

According to an understanding gauged out of common law, proprietary worth is not attributable to something only based on financial worth. It is integral to have something tangible beyond the economic factors. The law recognizes intangible property rights and they include rights included in a multitude of intellectual property right statutes. A claim to do with property rights of something as intangible as a match score would have to be established to fall within the brackets of intangible property rights with due evidentiary support. Interim junction by courts cannot be provided otherwise as the investments of people must be protected.

In the days to come, a good deal of constructive work is to be done in the intellectual property rights arena in order to avoid future conflicts and an excess of litigation suits to do with property disputes, as has been carefully documented in regard to the *National Basketball Association* case.

Moreover, confidential information or trade secrets are traditionally a component of the quasi-property rights, despite being as of now unprotected under *sui generis* laws, and existing out of archetypal legal protections. It is indeed a major relief that the quasi-property rights based decision by Delhi High Court division bench²⁵ was overturned. If the decision was not reversed, it might have resulted in a surplus of property right based litigations.

As established by means of previous proofs and understanding of the law, the respondents were unable to corroborate on whether they had proprietary rights over the information they sought protected, even for the shortest time. As things stand now, Star India's claim for *ad interim injunction* amounting to proprietary rights over the match scores, as based on the "hot news" principle stands rejected. The Delhi High Court has recognized that sporting event organizers and even sports governing bodies are in preclusion from claiming any exclusive proprietary rights over information such as match scores.

In order to seek licensing proprietary rights, it is crucial to first institute whether the said proprietary rights existed at all. This is the essential inference from the subject matter discussed in this article.

²⁵ *Star India Pvt. Ltd vs. Piyush Agarwal & Others*, [2013] 54 PTC222 (Del)