
Cable Television and Copyright Owners

RIYANKA ROY CHOUDHURY

TRAINEE JUDICIAL CLERKSHIP

Abstract: 'TV is galloping in; the country has sixty million homes with TV, of which twenty eight million are cabled, bringing to city and hamlet alike a choice of around a hundred channels. 'There are now more TV channels available in Mumbai than in most US cities,' Bill Clinton noted on a trip to the city in 19991'. The paper would explore the evolution of Cable Television in India in copyright law vis. a vis. other broadcasting laws. The current law regarding cable television in India is in the hands of private enterprises and is steadily growing with at par the Broadcasting Rights. This paper tries to answer the question whether Cable Television Copyright in India has gained its exclusive weightage at par with other Broadcasting Rights or not? And if not then how should it be at par with the television industry? What are the latest laws and evolution of rights of cable operators? The paper would explore the evolution of Cable Television in India in copyright law vis. a vis. other broadcasting laws. I have adopted the descriptive research attempts to describe systematically a situation, problem related to the problems in Cable Television in India and abroad. It is a secondary form of research involving various books, articles, reports, bills, Acts, cases and internet sources. I deduced the conclusions of compulsory licensing in television and broadcast. In this paper unbiased and objective steps are taken and each conclusion is drawn to the best of your ability and without introducing my own vested interest.

Keywords: IPR, Copyright, Broadcasting Rights, Law

I. INTRODUCTION

India is a country of curious contradictions². A vast proportion of its population has nowhere to live other than on streets and pavements, in squalor and apparent penury without proper shelter, sanitation or drinking water³. But peering into some of the shanties that line our roads, it shouldn't be a surprise to see its inhabitants rapt before a television set⁴. So potent is the power of the idiot box that its demand seems to surpass the need for a decent dwelling. Perhaps this should be no surprise in a country which has been unable to achieve for a vast majority of its citizens the right to a decent standard of living, but, nevertheless where watching televised cricket has been elevated, virtually, to the status of a fundamental right⁵.

This phenomenon of burgeoning television audiences is the result of the broadcasting revolution of the 1990. Technological developments, spurred by the satellite invasion, have outpaced the law. Though three hundred television channels cram the airwaves, there is no organised and effective regulatory mechanism⁶.

The concept of 'broadcast reproduction right' is comparatively new in comparison to copyright protection for literary, dramatic, musical and artistic works. In India with the enactment of Indian Copyright Act 1957 the lacunae of not giving any protection in cable television was removed. At international level also, protection was given to broadcast at a later stage⁷. Since broadcasting organisations are either departments of state or public corporations or commercial organisations they require a license from the government in order to operate⁸. In cable television, the signals are

² Cable and Broadcasting Act 1984 s.57, Sch.5 paras 6,7,

³ *Murphy v Media Protection Services* (2008) 1 W.L.R. 1869

⁴ *Football Association P L v Q C Leisure* (2008)

⁵ *N V Airfield v SABAB, AGICOA OJ C24 30.01.2010* p 24

⁶ CDPA 1988 s.64 A

⁷ Makeen (2010) J. Copyright Soc USA, p.56

⁸ *Cine Vog v Coditel (No.1)* (1980) E.C.R. 881

transmitted by cable to the individual television sets. The essence of cable television is that not the original broadcasting organisation, but a third party transmits signals from a simple aerial to more than one television set located in different places, such as rooms in hotels or houses in a town. The original purpose was to give the subscribers better reception in shadow zones. The Copyright (Amendment) Act 1983 substituted the definition of 'broadcast'. Broadcast meant communication to public which according to 2(ff) means making any work available for seen or heard or otherwise enjoyed by the public directly that is this definition includes cable television too⁹. However, the Cable Television Networks (Regulation) Act, 1955 defines 'cable service' to mean the transmission by cable programs. Television was separated from AIR on 1 April 1976 and named DD thus began a new era in the history of television in India. Doordarshan, the national television service of India, is devoted to PSB. Star TV shattered the monopoly of the Doordarshan in cable television. Cable Operators Federation of India (COFI) is a national level; non-profit organization with its head in New Delhi is a unified body to represent Indian Cable Operator in International and National level. In USA the Copyright Act, 1976 gave copyright licensing to the cable television transmission and jukebox. Thus this paper would like to explore whether justice has been granted to the Cable Operators in Copyright by protecting their right or not.¹⁰

II. HISTORY AND EVOLUTION OF CABLE TELEVISION IN INDIA

⁹ Kabushiki Kaisha Sony Computer Entertainment v Ball (2004) E.C.D.R. 33

¹⁰ Morgan, International Protection of Performer's Rights (2002)

Since 1959, television was confined to Delhi and was extended to Bombay only in about 1972¹¹. In 1973, before television had reached the major cities in India, it was extended to Srinagar and Amritsar which were close to the border. Soon television receivers were put into villages in the Kashmir valley. Television was used to project the government's viewpoint on social and political issues¹².

During the Emergency in 1975 there was gross abuse of television by the government. This led to a political demand for the autonomy of television¹³. The Akash Bharati Bill declared that the trust was to be the 'trustee of the national interest for radio and television and shall uphold the collective right of the Indian people to freedom of speech, expression, and communication through broadcast media.'¹⁴ The bill was passed in 1990 but the government fell before the Act could be notified. The new caretaker government shelved the question of autonomy. It was only in 1997 that a non Congress government decided to notify the Act¹⁵.

For several decades in post-independence India, broadcasting remained the sole preserve of the State¹⁶. The closely controlled broadcasting system was consonant with the country's closed economic system. Radio and television remained government monopolies, ostensibly for the purpose of 'nation building' and to serve 'the larger public interest' but in reality were used as a mouthpiece of the political party in power¹⁷.

In the early 1990s, Doordarshan found itself overtaken by technological developments. For all its tight control, Doordarshan was unable to contain the onslaught from the skies. The satellite invasion began during the Gulf

¹¹ The Communication Convergence Bill, 2001

¹² (1970) 2 SCC 780

¹³ Raj Kapoor v. Laxman, (1980) 2 SC (Cri)

¹⁴ Ramesh v UOI, (1988) 1 SCC 668

¹⁵ (1995) 2 SCC 161

¹⁶ Indian Telegraph Act, 1885, Section 4

¹⁷ The Government of India Act, 1935, Section 129

war when hotels showed CNN coverage of the war and private sprang up in residential areas offering cable connections linked to a rooftop dish antenna. In September, 1992, the Air Time Committee of India¹⁸, was set up to examine ways of opening up the electronic media to private broadcasters. This was a move towards privatisation, to allow private producers to produce programmes for Doordarshan and radio. The recommendations of the committee were not implemented. The spurt in private channels was also nothing short of a revolution¹⁹.

Neighbouring Rights

The concept of 'neighbouring rights' which is also known as 'related rights' emerged primarily due to technological developments which took place since the second half of the nineteenth century²⁰. The recognition to these rights at international level was, however, accorded in 1961 by the Rome Convention²¹. The term 'neighbouring rights' generally covers three kinds of rights: the rights of performing artists in their performances, the rights of producers of phonograms in their phonograms, and the rights of broadcasting organisations in their radio and television programmes²².

III. SATELLITE BROADCASTING

Prior to the advent of satellite broadcasting, broadcasting was simply transmission by wireless means of electromagnetic signals which, when received by suitable apparatus, could be converted into sounds and visual images audible to, and perceivable by, human ears and eyes²³. The development was that instead of the electromagnetic signals emitted by the

¹⁸ The Prasar Bharati (Broadcasting Corporation of India) Act, 1990

¹⁹ The Cinematograph Act, 1918

²⁰ (1995) PTR 64, p 68

²¹ (1995) 2 SCC 161

²² Annual Report of the Ministry of Information and Broadcasting 1979-80 (1980)

²³ Stephan M Stewart, International Copyright and Neighbouring Rights, Butterworths, 1983, p 198

original broadcast traveling directly without any man-made intervening transmitter to the receiver, the transmitted signals were received first by a satellite placed a geo-stationary orbit²⁴.

Types of Satellite Broadcasting

There are mainly two types of satellite broadcasting: transmission by point-to-point satellite and direct broadcasting by satellite.

(i) Broadcasting via Point-to-Point Satellite

Point-to-point satellites, which are also known as fixed service satellites (FSS) are used for intercontinental communication between one emitting point and one or more receiving points. Their signals cover roughly one third of the earth's surface, so that with the aid of three satellites placed over the Atlantic, Indian and Pacific Oceans, signals from any country in the world can be transported to just about any country in the world.

(ii) Direct Broadcasting by Satellites

Direct broadcasting satellites (DBS) transmit signals on much lower frequencies. Their signals are more high-powered and receivable by members of the public in their homes after an adaptation of their receiving sets. The signals transmitted by the satellites are generally intended for reception in only one of a limited group of countries.

Cable Television

In cable television, the signals are transmitted by cable to the individual television sets. The essence of cable television is that not the original broadcasting organisation, but a third party transmits signals from a simple aerial to more than one television set located in different places, such as rooms in hotels and houses in a town²⁵. The original purpose was to give subscribers to the service better reception than their individual aerials could

²⁴ Ernest Turner, etc Ltd v Performing Right Society Ltd (1943) Ch 167

²⁵ Ibid at 1

provide, particularly in areas of poor reception (so-called shadow zones), such as in valleys where the mountains obstructed the signal, or in towns where high rise blocks were the obstruction, or where individual aerials were not allowed on environmental or other grounds. The transmission by the third party is made to a known public, usually subscribers to the service²⁶.

As the system of cable television emerged:

- (i) Simultaneous diffusion of programmes by wire to improve reception;
- (ii) Recording of programmes and relaying them at different times by cable;
- (iii) Diffusion of modified programmes usually by the insertion of advertising material;
- (iv) Programmes originated by the cable company;
- (v) Programmes imported from other regions of the same country or from other countries.

‘*Cable Television Network*’ is defined to mean any system consisting of a set of closed transmission paths and associated Signal generation, control and distribution equipment, designed to provide cable service for reception by multiple subscribers²⁷. Further, ‘programme’ is defined by the Act to mean any television broadcast and includes (i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players; (ii) any audio or visual or audio-visual live performance or - presentation²⁸.

IV. OWNERSHIP AND DURATION OF BROADCAST AND

²⁶ Kaminstein Report, Ar 13, Stephan M Stewart, International Copyright and Neighbouring Rights, Butterworths, 1983, p 228

²⁷ Cable Television Networks (Regulation) Act 1995, s 2(c).

²⁸ Cable Television Networks (Regulation) Act 1995, s 2(g).

CABLE TELEVISION PROGRAMME

The Copyright Act 1957 confers on every broadcasting organisation a special right known as 'broadcast reproduction right' in respect of its broadcasts. Copyright does not subsist in broadcast and cable programmes²⁹. It is because of this reason that special right has been conferred on broadcasting organisations.

Duration of Right in Broadcasts and Cable Programmes

The broadcast reproduction right subsists until 25 years from the beginning of the calendar year next following the year in which the broadcast is made. The *Copyright Act 1957* is silent on the term of repeat broadcast. In absence of any specific provision no new broadcast reproduction right is conferred on the repeat broadcast³⁰.

The *Rome Convention 1961*³¹ provides for a 20 year term computed from the end of the year in which the broadcast took place. The *Satellite Convention 1974*³² does not establish a term of protection, leaving the matter to domestic legislation³³.

Rights of Right Owner in Broadcast and Cable Programmes

The owner of copyright in a broadcast: has the exclusive right to *Re-broadcast the Broadcast*³⁴. It is a restricted act to re-broadcast the broadcast without the licence of the right owner. Rebroadcast is included in the definition of broadcast. Broadcast means communication to the public, by any means of wireless diffusion, whether in any one or more of the forms of signs, Sounds or visual images; or by Wire. Thus, the restriction is also applicable to the inclusion of an already broadcasted work in the cable

²⁹ Copyright Act 1957, s 37(1)

³⁰ Copyright Act 1957, s 37(3) (a)

³¹ Rome Convention 1961, art 3(f)

³² Satellite Convention 1974, art 1 (ii)

³³ Copyright Act 1957, s 37(3) (b)

³⁴ (1995) 2 SCC 161

programme³⁵.

Re-transmission by cable; where a broadcast is immediately re-transmitted by cable within the area of reception for the broadcast, this action is not an infringement of the broadcast, provided that it is not encrypted or by satellite; nor is it an infringement of any work included in the broadcast. This exception, in its present version limited mainly to cases where poor reception is averted by cabling of a broadcast. But that obligation may be conditioned by national legislation as it is here.

TRAI's recommendations on broadcasting and distribution of Cable Television:

On 1st October, 2004, the TRAI submitted to the Government of India, its recommendations on broadcasting and distribution of cable television³⁶.

PROGRAMME CODE AND ADVERTISING CODE: INTRODUCTION OF THE CABLE ACT, 1995

The Cable Act³⁷ brought into force a Programme Code and an Advertising Code in respect of programmes and advertisements transmitted by cable operators³⁸.-‘Both codes are haphazardly drafted and contain wide and loosely worded restrictions, most echoing those contained in Article 19(2)³⁹; restrictions in the interest of the integrity of the nation, friendly relations with foreign States, morality, decency, defamation, contempt of court or incitement to an offence and the like. However, some restrictions are wider and not strictly within the scope of Article 19(2). For instance, rule 7(3) of the Cable Television Network Rules, 1994, prohibits advertisements with a

³⁵ The Uplinking and the Downlinking Guidelines, 2005

³⁶ Ten Sports v Citizen Consumer & Civic Action Group, SLP (c)

³⁷ The Cable Television Networks (Regulation) Act, 1995

³⁸ Taj Television (India) Pvt Ltd v. Union of India

³⁹ Ten Sports v Citizen Consumer & Civic Action Group, SLP (c)

religious or political object⁴⁰.

Powers and Penalties under the Cable Act

Where any of these officers have reason to believe that provisions of the Act have been or are being contravened by a cable operator, they may seize and confiscate equipment used by the cable operator for operating the cable network⁴¹.

Conditional Access System (CAS)

The Cable Television Networks (Regulation) Amendment Act, 2002 introduced what is popularly known as the Conditional Access System (CAS)⁴². The 2002 amendment inserted section 4A in the Cable Television Networks (Regulation) Act, 1995 providing for 'Transmission of programmes through addressable system'⁴³. The 2002 amendment was introduced with a view to address a number of difficulties relating to the working of the cable industry which the Cable Act of 1995 had failed to address⁴⁴.

The amendment made it obligatory for every cable operator to transmit or retransmit programmes of pay channels through the addressable system⁴⁵.

Digitalisation of Cable Television

The cable industry in India grew in an unregulated and unorganised environment. The lack of regulation in the initial years contributed to the enormous growth and reach of cable television. As they grew the number of

⁴⁰ Pratibha Nathani v UOI, 2004(Bom) 1232

⁴¹ Kirit Somaiya v. The Chief Secretary, Govt of Maharashtra 2003 (Bom) 61

⁴² Just Society v. UOI 2003 (Bom) 1484

⁴³ The Registrar of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2004.

⁴⁴ The Registrar of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2005.

⁴⁵ The Registrar of Interconnect Agreements (Broadcasting & Cable Services) Regulation, 2006.

channels vastly increased⁴⁶. Higher channel relaying capacity required higher investments which cable owl-atom were either unwilling or unable to make. DTH is in digital format. Digitalisation also creates a two way link with subscribers⁴⁷.

Private Broadcasting

The arrival of STAR TV through satellite telecasting in 1992 shattered the monopoly of DD (Kumar, 1998). From two television channels prior to 1991, Indian viewers were exposed to more than fifty channels by 1996, while there are more than 200 channels today⁴⁸. The initial success of the channels had a snowball effect - more foreign programmers and Indian entrepreneurs flagged off their own versions. Software producers emerged to cater to the programming boom almost overnight. Some talent came from the film industry, some from advertising and some from journalism. The spread of satellite channels like BBC, CNN, NDTV, AajTak, Zee, Sun, ETV and others led to intense competition, not just to DD but also amongst the various private channels. No of satellite television channels naturally led to the entry of offered a variety of channels all under one roof to the only choice of watching DD.

Political Broadcasting

Stations. B.V. Keskar, Minister for Information and Broadcasting from 1952 to 1962, went one step better. Political commentaries were broadcast from Delhi alone and relayed throughout the service. Political comment apart, AIR did not give expression to views critical of the government or of any part of the establishment even in talks on general subjects. Government instructions on what could or could not be said over the AIR were issued to

⁴⁶ Trai Reccomendations on Issues relating to convergence and competition in broadcasting and telecommunications, New Delhi, March 20, 2006

⁴⁷ British Leyland Motor Company Ltd v Armstrong Patents copynght m ref C9 Ltd [1986] 2 WLR 400

⁴⁸ Purefoy engineering Lts v Sykes Boxall Ltd (1955) 72 RPC 89

Station Directors (SDs). The Station directors were expected to settle matters ‘tactfully’ with talk show guests and writers if they try to transgress the bounds of what was permissible.

V. THE BILLS AND COMMITTEE REPORTS PASSED: RELATED TO CABLE TELEVISION

The Communication Convergence Bill, 2001⁴⁹

The Communication Convergence Bill, 2001 was introduced to promote, facilitate and develop in an orderly manner the carriage and content of communications, including broadcasting, telecommunication and multimedia⁵⁰. The objects of the proposed legislation are to facilitate the development of national infrastructure for an information based society and to enable access thereto; to provide a choice of services to the citizen; to promote plurality of views and information; establish a regulatory framework for carriage and content of communications in the wake of converged technologies and establish a single regulatory and licensing authority.⁵¹

The Broadcasting Bill, 1997⁵²

The Broadcasting Bill was introduced as a direct response to the Supreme Court of India’s directive to the Central government in February 1995 to take immediate steps to establish an independent autonomous public authority representative of all sections and interests of society to control and

⁴⁹ The Communication Convergence Bill, 2001

⁵⁰ Jules F. Simon, The Collapse Of Consensus: Effects Of The Deregulation Of Cable Television Columbia Law Review, Vol. 81, No. 3 (Apr., 1981), Pp. 612-638

⁵¹ Richard A. Posner, The Appropriate Scope Of Regulation In The Cable Television Industry, The Bell Journal Of Economics And Management Science, Vol. 3, No. 1 (Spring, 1972), Pp. 98-129

⁵² The Broadcasting Bill, 1997

regulate the use of air waves⁵³. It noted that the broadcasting media should be under the control of the public as distinct from the government⁵⁴.

The bill aims: To establish an autonomous broadcasting authority for the purposes of facilitating and regulating broadcasting services in India so that they become competitive in terms of quality of services, cost of services and use of new technologies, apart from becoming a catalyst for social change, promotion of values of Indian culture and shaping of a modern vision. It will also curb monopolistic trends in this sensitive field, so that people are provided with a wide range of news and views.

Prasar Bharati Bill, 1989⁵⁵

The Prasar Bharati Bill was introduced in the Lok Sabha on December 5 30, 1 989, by the National Front Government led by V.P. Singh⁵⁶. The purpose of this Bill was to grant autonomy to the electronic media, that is AIR and Doordarshan. The Lok Sabha passed the Bill on August 30, 1990 and the Rajya Sabha approved it on September 6, 1990. The President accorded assent to the Bill soon after⁵⁷.

The changes in the original Bill ran as the autonomous Prasar Bharati or Broadcasting Corporation of India will be directly answerable to three authorities—a Parliamentary Committee, the Central Government and the

⁵³ Bridger M. Mitchell, Robert H. Smiley, Cable, Cities, And Copyrights, *The Bell Journal Of Economics And Management Science*, Vol. 5, No. 1 (Spring, 1974), Pp. 235-263

⁵⁴ George R. Borsari Jr., Rachel O. Davis, Cable Television, *Jurimetrics*, Vol. 24, No. 2 (Winter 1984), Pp. 179-186

⁵⁵ Prasar Bharati Bill, 1989

⁵⁶ Stephen R. Barnett, Cable Television And Media Concentration, Part I: Control Of Cable Systems By Local Broadcasters, *Stanford Law Review*, Vol. 22, No. 2 (Jan., 1970), Pp. 221-329

⁵⁷ Feldstein, Stuart F. , Perspectives On Copyright And Cable Television [Article] , *Idea: The Ptc Journal Of Research And Education*, Vol. 17, Issue 3 (1975), Pp. 59-68, 17 Ptc J. Res. & Ed. 59 (1975)

proposed Broadcasting Council⁵⁸. The original draft of the Prasar Bharati Bill introduced in the Lok Sabha did not contain any provision for the Parliamentary Committee. The government inserted this provision on August 29, 1990, as one of the 65 amendments proposed by an all-party consensus⁵⁹.

Vergheze Committee⁶⁰

A 12-Member Working Group headed by B.G. Vergheze was set up on August 17, 1977, to go into the working of AIR and Doordarshan and suggest changes.⁶¹ They made wide ranging recommendations to transform All India Radio and Television into a more responsive organisation from a mere government department.⁶² The two-volume report was presented to Parliament on March 9, 1978. In its unanimous report, the working group suggested that the national broadcasting services should be vested exclusively in an independent established by law to act as a the legal framework of the a trustee for the national interest autonomous national trust, as envisaged or by the working group, was that the establishment of the corporation should not await a constitutional amendment⁶³.

⁵⁸ Greene, Susan C. , Cable Television Provisions Of The Revised Copyright Act, Catholic University Law Review, Vol. 27, Issue 2 (Winter 1978), Pp. 263-304

⁵⁹ Chenghuan Sean Chu, The Effect Of Satellite Entry On Cable Television Prices And Product Quality, The Rand Journal Of Economics, Vol. 41, No. 4 (Winter 2010), Pp. 730-764

⁶⁰ Vergheze Committee Report, 1977

⁶¹ Federal And State Regulation Of Cable Television: An Analysis Of The New Fcc Rules Duke Law Journal, Vol. 1971, No. 6 (Feb., 1972), Pp. 1151-1197

⁶² Jane C. Ginsburg, Copyright And Control Over New Technologies Of Dissemination, Columbia Law Review, Vol. 101, No. 7 (Nov., 2001), Pp. 1613-1647

⁶³ Copyrights. Radio And Television. Cable Television Operator Subject To Liability For Copyright Infringement When Distant Signals Are Imported. Columbia Broadcasting System, Inc. V. Teleprompter Corp., 476 F. 2d 338 (2d Cir.), Cert. Granted, 94 S. Ct. 52 (1973) (Nos. 72-1628 & 72-1633), Harvard Law Review, Vol. 87, No. 3 (Jan., 1974), Pp. 665-675

VI. FOREIGN COPYRIGHT ACTS AND INTERNATIONAL CONVENTIONS

UK Copyright Act 1956⁶⁴

Section 14(8) of the **UK Copyright Act 1956** provided that such works were to be taken to be seen or heard by a paying audience if they were seen or heard by persons who had been admitted for payment to the place where the broadcast or programme was to be seen or heard, or had been admitted for payment to a place of which that place formed part⁶⁵.

Communication to the Public of Their Television Broadcasts; Broadcasting organisations enjoy the right to authorise or prohibit the communication to the public of their television broadcasts⁶⁶. The right is, however, restricted to the public performance of television broadcasts as opposed to sound broadcasts and exercisable only if the communication to the public is made in places accessible to the public against payment of an entrance fee⁶⁷.

Satellite Convention 1974⁶⁸

The Satellite Convention 1974 obliges contracting States to protect the programme- carrying signals, but does not create any rights for copyright owners. Article 2 which is a central article obliges contracting states to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not intended⁶⁹.

VII. JUDICIAL PRONOUNCEMENTS ON CABLE TELEVISION

⁶⁴ *UK Copyright Act 1956*

⁶⁵ *Stephenson Blake v Grant Legros* (1916) 33 R.P.C. 406

⁶⁶ Ar 11bis, *Berne Convention*, *Ricketson and Ginsburg*, paras 12.24-12.27

⁶⁷ *Football Association PL v QC Leisure* (2008) 3 C.M.L.R. 12

⁶⁸ *Satellite Convention 1974*

⁶⁹ *Makeen, Copyright in a Global Information Society* (2000), Ch 4

In *Cine Vog v Coditel (No, 1)*⁷⁰, a national German channel transmitted the French film, *Le Boucher*. A Belgian company received it and retransmitted it via cable to subscribers in Brussels and West Belgium. The film was licensed for broadcasting in Germany but not yet in Belgium, in accordance with standard distribution arrangements designed first to exploit the cinema market for the film. The cabling, being unlicensed, was in infringement of Belgian copyright law, but the company argued that the initial broadcast in Germany exhausted any right in the material throughout the EU; the Rome Treaty's policy of free provision of services within the EU demanded that there could be no right over such further treatment of the material as re-cabling⁷¹.

In *Odyssey Communications (P) Ltd V. Lokvidayan Sanghatana*⁷², the Supreme Court held that the right of a citizen to exhibit films on Doordarshan, subject to terms and conditions imposed by Doordarshan, is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) and can be curtailed Only under the circumstances set Out in Article 19(2).⁷³ The Court held that this right is similar to the right of a citizen to publish his views through any other medium such as newspapers, magazines, advertisements, hoardings, etc. In this case, the petitioner challenged exhibition of a serial telecast on Doordarshan titled *Honi Anthoni* on the ground that the serial encouraged superstition and blind faith. The petition was dismissed since the petitioner failed to show evidence of any prejudice to the public⁷⁴.

⁷⁰ *Cine Vog v Coditel (No, 1)* 2 PC 525

⁷¹ William S. Comanor, Bridger M. Mitchell, *Cable Television And The Impact Of Regulation*, *The Bell Journal Of Economics And Management Science*, Vol. 2, No. 1 (Spring, 1971), Pp. 154-212

⁷² (1988) 3 SCC 410

⁷³ *Cable Television And Copyright Royalties*, *The Yale Law Journal*, Vol. 83, No. 3 (Jan., 1974), Pp. 554-579

⁷⁴ Stephen Hopkins Willard, *A New Method Of Calculating Copyright Liability For Cable Rebroadcasting Of Distant Television Signals*, *The Yale Law Journal*, Vol. 94, No. 6 (May, 1985), Pp. 1512-1528

The right to broadcast in television was also recognised in *LIC v. Manubhai Shah*⁷⁵. In this case, the subject matter of the challenge was Doordarshan's refusal to telecast a documentary film on the Bhopal Gas Disaster titled Beyond Genocide. Doordarshan refused to telecast the film on various grounds: the film was outdated; it had lost its relevance; it lacked moderation and restraint; it was not fair and balanced; political parties were raising various issues concerning the tragedy; claims for compensation by the victims were 'sub-judice'; the film was likely to create commotion in an already charged atmosphere; and the film criticised the action of the State Government⁷⁶.

Another distinction between television and the print medium arises on account of the limited availability of airwaves or frequencies which are in the domain of public property controlled by the State. In *Secy., Ministry of Information and Broadcasting v. Cricket Assn. of Bengal*⁷⁷, the Court held that due to the limited nature of this resource, it has to be used optimally in the best interests of society by the establishment of a central authority establishing its own broadcasting network or regulating the grant of licences to other agencies which include private agencies⁷⁸.

The Decision in the Panel Case-*The Panel Case*⁷⁹ concerned the alleged infringement of television broadcast copyright relating to 20 Channel Nine television programs. The case arose from the activities of the popular Network Ten show 'The Panel'. The show is basically an informal (chat show) in which members of 'The Panel' discuss, and sometimes parody or

⁷⁵ (1992) 2 SCC 161

⁷⁶ Niels B. Schaumann, Copyright Protection In The Cable Television Industry: Satellite Retransmission And The Passive Carrier Exemption, Volume 51 | Issue 4, Fordham Law Review

⁷⁷ Secy., Ministry of Information and Broadcasting v Cricket Association, Bengal (1995) 2 SCC 161

⁷⁸ Cable Television And Copyright Liability (Cbs, Inc .V. Teleprompter Corp.), Volume 48 Issue 2 Volume 48, December 1973, Number 2, St. John's Law Review

⁷⁹ (1910) 2 CH D 210

satirize, issues ranging from current affairs to sport and movies. In the course of doing so, they rebroadcast portions of these Nine programs⁸⁰. Accordingly, nine sued ten for re-broadcasting their earlier broadcasts under section 87 (c) of the Copyright Act.” The decision in the Panel Case asserts that a substantial part of Part IV subject matter is not taken by a use of that subject matter unless that use occasions the copyright owner quantifiable harm. As an infringing use must be, among other things, of a substantial part of a work or other subject matter, the effect of the decision is to make some form of quantifiable harm a necessary requirement of copyright infringement⁸¹.

Time Warner Entertainment Company, L.P. and Ors. Vs. RPG Netcom and Ors⁸².

The Plaintiffs, US based corporations, along with their affiliated companies and concerns are carrying on business of film production. They own various interests in and to the copyright in the films produced by them⁸³. Defendant is a company which provides cable television services through their associate or affiliated companies, agents, franchises or distributors. The defendants’ states that they are Cable TV operator under the Cable TV Networks (Regulations) Act, 1995 and engaged in the business of only receiving satellite/terrestrial transmission of various channels and carrying television software produced by independent production houses and delivering the same at the Signal Injection Point of various other cable operators. The court in its judgment issued a permanent injunction against the defendant, its servants, agents, distributors, etc, restraining them from doing any act, or transmitting signals or broadcasting, or carrying in its

⁸⁰ Cable And Satellite Carrier Statutory License, United States House Of Representatives

⁸¹ Fred H. Cate, Cable Television And The Compulsory Copyright License, Maurer School Of Law: Indiana University Digital Repository @ Maurer Law

⁸² AIR 2007 Delhi 226

⁸³ Evolution Of Cable Television, [Http://www.fcc.gov/encyclopedia/evolution-cable-television](http://www.fcc.gov/encyclopedia/evolution-cable-television), (Last Accessed On 14 Feb 2014)

network, any cinematograph film or work mentioned in the Annexure to the suit, without prior license of the plaintiff. However, the learned Single judge was silent on the issue pertaining to injunction vis-à-vis the future works⁸⁴. Hence, the Appellant plaintiffs went before the division bench of the Hon'ble High Court of Delhi under S.10 of The Delhi High Court Act, 1966 seeking permanent injunction vis-à-vis the future works under the Copyright Act, 1957⁸⁵.

VIII. Conclusion

Rapidly advancing technologies and the booming industry in infotainment has far outpaced legislation in the broadcasting arena⁸⁶. The response of the legislature has been sorely inadequate if not muddle headed and knee jerk. The government has been conscious of the need for a law on, convergence for over six years but has rest content with stop-gap and short sighted measures. While the Telecom Regulatory Authority of India, to whom regulatory powers have been delegated, is with its technical expertise, in a position to deal with issues of carriage, it is not equipped to deal with issues of content⁸⁷. This is an area which remains unaddressed and is of pressing relevance. The content of news and entertainment has a profound impact on social mores and sensibilities and has the power mould and manipulate the minds of over a billion people.⁸⁸ With a broadcasting industry that has gone largely unregulated for years, consumerism and sensitisation of news have

⁸⁴ Stanley M. Besen, Copyright Liability For Cable Television, Jstor (Accessed 14 Feb 2014)

⁸⁵ Susan C. Greene, The Cable Television Provisions Of The Revised Copyright Act, 27 Cath. U. L. Rev. 263 (1977-1978)

⁸⁶ Dr V K Ahuja, Law Of Copyright And Neighbouring Rights: National And International Perspectives, Lexis Nexis Butterworths, 2nd Edition 2007

⁸⁷ Kiran Prasad, Media Law In India, Wolters Kluwer, 1st Edition 2011

⁸⁸ T R Srinivasa Iyengar, The Copyright Act, 1957, Universal Law Publication, 6th Edition 2008

overtaken ~newsworthiness and intellectual debate. While moral policing in the “broadcasting industry is undesirable, there must be, either effective self regulation or as the SC directed in the Hero Cup⁸⁹ judgment, a truly autonomous regulator as free from the shackles of government as from private monopolies and agendas.⁹⁰ Cable television system operators located antennas in areas with good reception, picked up broadcast station signals and then distributed them by coaxial cable to subscribers for a fee in USA. Cable television (originally called CATV or community antenna television) was developed in the late 1940's for communities unable to receive TV signals because of terrain or distance from TV stations.. The goal of copyright laws, in particular, is to provide a financial incentive to authors to produce original works by granting them control over the use of their products. Thus the Cable Television has grown a lot from its recognition in early 1940s and has reached to a new wavelength⁹¹.

⁸⁹ Secy., Ministry of Information and Broadcasting v Cricket Association, Bengal (1995) 2 SCC 161

⁹⁰ V K Ahuja, Law Relating To Intellectual Property Rights, Lexis Nexis Student Series, Reprint 2012

⁹¹ P. Narayanan, Intellectual Property Law, Eastern Law House, Third Edition 2012

REFERENCES

Statutes- Acts and Conventions

- Satellite Convention 1974
- UK Copyright Act 1956
- Cable Television Networks (Regulation) Act 1995, s 2(g).
- Copyright Act 1957, s 37(1)
- Rome Convention 1961, art 3(f)
- Cable and Broadcasting Act 1984 s.57, Sch.5 paras 6,7,
- Indian Telegraph Act, 1885, Section 4'
- The Government of India Act, 1935, Section 129
- The Prasar Bharati (Broadcasting Corporation of India) Act, 1990
- The Cinematograph Act, 1918

Dictionery

- Blacks Law Dictionary, 9th Edition

Books

- Dr V K Ahuja, Law Of Copyright And Neighbouring Rights: National And International Perspectives, Lexis Nexis Butterworths, 2nd Edition 2007
- Kiran Prasad, Media Law In India, Wolters Kluwer, 1st Edition 2011
- T R Srinivasa Iyengar, The Copyright Act, 1957, Universal Law Publication, 6th Edition 2008
- V K Ahuja, Law Relating To Intellectual Property Rights, Lexis Nexis Student Series, Reprint 2012
- P. Narayannan, Intellectual Property Law, Eastern Law House, Third Edition 2012

- Stanley M. Besen, Copyright Liability For Cable Television, Jstor (Accessed 14 Feb 2014)
- Susan C. Greene, The Cable Television Provisions Of The Revised Copyright Act, 27 Cath. U. L. Rev. 263 (1977-1978)
- Evolution Of Cable Television, [Http://Www.Fcc.Gov/Encyclopedia/Evolution-Cable-Television](http://www.fcc.gov/encyclopedia/evolution-cable-television), (Last Accessed On 14 Feb 2014)
- Cable And Satellite Carrier Statutory License, United States House Of Representatives
- Fred H. Cate, Cable Television And The Compulsory Copyright License, Maurer School Of Law: Indiana University Digital Repository @ Maurer Law

Articles

- Cable Television And Copyright Liability (Cbs, Inc.V. Teleprompter Corp.), Volume 48 Issue 2 Volume 48, December 1973, Number 2, St. John's Law Review
- Niels B. Schaumann, Copyright Protection In The Cable Television Industry: Satellite Retransmission And The Passive Carrier Exemption, Volume 51 | Issue 4, Fordham Law Review
- Jane C. Ginsburg, Copyright And Control Over New Technologies Of Dissemination, Columbia Law Review, Vol. 101, No. 7 (Nov., 2001), Pp. 1613-1647
- George R. Borsari Jr., Rachel O. Davis, Cable Television, Jurimetrics, Vol. 24, No. 2 (Winter 1984), Pp. 179-186
- Bridger M. Mitchell, Robert H. Smiley, Cable, Cities, And Copyrights, The Bell Journal Of Economics And Management Science, Vol. 5, No. 1 (Spring, 1974), Pp. 235-263

- Richard A. Posner, The Appropriate Scope Of Regulation In The Cable Television Industry, The Bell Journal Of Economics And Management Science, Vol. 3, No. 1 (Spring, 1972), Pp. 98-129
- Daniel Brenner, Cable Television And The Freedom Of Expression, Duke Law Journal, Vol. 1988, No. 2/3, Nineteenth
- Federal And State Regulation Of Cable Television: An Analysis Of The New Fcc Rules Duke Law Journal, Vol. 1971, No. 6 (Feb., 1972), Pp. 1151-1197
- Chenghuan Sean Chu, The Effect Of Satellite Entry On Cable Television Prices And Product Quality, The Rand Journal Of Economics, Vol. 41, No. 4 (Winter 2010), Pp. 730-764
- Cable Television And Copyright Royalties, The Yale Law Journal, Vol. 83, No. 3 (Jan., 1974), Pp. 554-579
- Stephen Hopkins Willard, A New Method Of Calculating Copyright Liability For Cable Rebroadcasting Of Distant Television Signals, The Yale Law Journal, Vol. 94, No. 6 (May, 1985), Pp. 1512-1528
- William S. Comanor, Bridger M. Mitchell, Cable Television And The Impact Of Regulation, The Bell Journal Of Economics And Management Science, Vol. 2, No. 1 (Spring, 1971), Pp. 154-212
- Jules F. Simon, The Collapse Of Consensus: Effects Of The Deregulation Of Cable Television Columbia Law Review, Vol. 81, No. 3 (Apr., 1981), Pp. 612-638
- Annual Administrative Law Issue (Apr. - Jun., 1988), Pp. 329-388
- Stephen R. Barnett, Cable Television And Media Concentration, Part I: Control Of Cable Systems By Local Broadcasters, Stanford Law Review, Vol. 22, No. 2 (Jan., 1970), Pp. 221-329
- Copyrights. Radio And Television. Cable Television Operator Subject To Liability For Copyright Infringement When Distant Signals Are Imported. Columbia Broadcasting System, Inc. V.

Teleprompter Corp., 476 F. 2d 338 (2d Cir.), Cert. Granted, 94 S. Ct. 52 (1973) (Nos. 72-1628 & 72-1633), Harvard Law Review, Vol. 87, No. 3 (Jan., 1974), Pp. 665-675

- Greene, Susan C. , Cable Television Provisions Of The Revised Copyright Act, Catholic University Law Review, Vol. 27, Issue 2 (Winter 1978), Pp. 263-304
- Feldstein, Stuart F. , Perspectives On Copyright And Cable Television [Article] , Idea: The Ptc Journal Of Research And Education, Vol. 17, Issue 3 (1975), Pp. 59-68, 17 Ptc J. Res. & Ed. 59