

BROADCASTERS BEWARE

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Do you get disgruntled each time a banner advertisement comes on when you are viewing your favourite television programme or a cricket match! Do you feel that broadcasters bombard viewers with unnecessary commercials! The right of a broadcaster to superimpose a website on the signal of a cricket match was discussed in the case of Buddha Films (P.) Ltd. v. Prasar Bharti [2001] 34 SCL 675, by the Delhi High Court.

The Board of Control for Cricket in India (“BCCI”) possesses exclusive rights over cricketing events. With the growing viewership for cricketing events, BCCI entered into an agreement with Prasar Bharti, whereby Prasar Bharti was vested with the rights to broadcast cricket matches over all modes of communication, including the television, radio and Internet. Pursuant to this agreement, Prasar Bharti invited open tenders from various parties to market airtime during cricket matches that were to be telecast on Doordarshan and the Doordarshan Sports Channel.

Buddha Films (P.) Ltd. (“Buddha”) was given the exclusive domestic rights to sell or market air-time in respect of cricketing events as well as commercials to be shown during the telecast of cricket matches in the territory of India for a minimum assured revenue to Prasar Bharti of Rs. 450 crores. The terms of the agreement provided that Prasar Bharti/Doordarshan would uplink from the venue of the match clean video/audio feed (without logos, commercial and branded graphics) along with audio signals. These signals would be made available to Buddha. In turn, Prasar Bharti was prohibited from permitting the broadcast of “any kind of commercial” during the term of the contract either by itself or through any other company. Simultaneously, Prasar Bharti also entered into an agreement with TWI/Stracon for international marketing of cricket matches under which it was required to superimpose the URL www.dd.sports.com.

During the India-South Africa series in 2000, Prasar Bharti started superimposing the website www.dd.sports.com. This also continued in the India-Zimbabwe series held in November 2000.

Buddha’s main contention centered around the interpretation of the graphic displayed by Prasar Bharti, which, according to Buddha, was a branded graphic

and had commercial value. Buddha's basis for this assertion was the agreement between Prasar Bharti and TWI/Stracom, under which it was clear that the website in question was not the official website of Doordarshan but that of NOW.com - Cyber Tech Group Limited, from whom Prasar Bharti was earning licence fees. Prasar Bharti rejected Buddha's claim that superimposition of the aforesaid website was in violation of the agreement, as it did not form part of the airtime sold to Buddha. Prasar Bharti further contended that there was no commercial value attached to the superimposition of the aforesaid website, as it merely wanted to inform its viewers that they could also access coverage of the cricket matches online. Moreover, the superimposition was not made during the airtime reserved for Buddha. Therefore, there was no loss of revenue to Buddha.

It was held that the display of a website address was tantamount to an advertisement. The effect of the website address was that a viewer could access the website on the Internet without needing to switch on the Doordarshan channel for which the petitioner had the exclusive right of airtime. This meant encroachment upon the right and competing at the cost of Buddha, both in terms of licence and viewership.

Therefore, agreements being entered into by companies for exclusive airtime rights with broadcasters need to be vetted carefully. Loose language can result in misinterpretation and a dispute. The wording of the relevant clause in Buddha's contract was that Buddha could air commercials during the period of the match but confined to the end of an over, fall of a wicket, a drink break, etc. Prasar Bharti stretched the interpretation of the word "etc." to mean any time when the match was on and displayed its website address at hourly intervals in course of the match. In the circumstances, both parties must be *ad idem* as regards the broadcasting rights being granted under an agreement.

With the advent of the Internet, a new broadcast medium has been added. It is very important to include the rights of broadcast that are available through this medium. If a broadcaster wants to retain the right to telecast via the Internet, this should be negotiated carefully. The Internet knows no boundaries. Hence, defining territorial rights for an Internet broadcast is not the best way forward. A more preferred option in case of a broadcaster who wants to reserve the right to broadcast over the Internet would be to negotiate a fee for the estimated loss of revenue to the licensee who will broadcast over other media, i.e., the radio, television, etc. An easier alternative would be to negotiate a global agreement for

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broadcast over all possible media and identifying them in significant detail in the contract. With the advancement of cellular communications, broadcast over the WAP protocol, 2.5G and 3G cellular protocols should also be clearly spelt out and covered.