Media Hotline

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STREAMING WEBSITES CAUGHT 'OFF-SIDE' MID-WAY THROUGH THE 2014 FIFA WORLD CUP

- More than 472 streaming websites have been restrained from broadcasting football matches of the 2014 FIFA World Cup in India.
- The 'John Doe' injunction has been granted against all websites infringing MSM's exclusive media rights.

BACKGROUND

On 23 June, 2014, the High Court of Delhi ("**Court**") granted Multi Screen Media Pvt. Ltd. ("**MSM**"), a restrain order against more than 400 websites that were illegally streaming live or recorded footage of the 2014 FIFA World Cup ("**2014 Football WC**").[1]

MSM, formerly Sony Entertainment Television India Pvt. Ltd. had approached the Court on 20 June, 2014 to seek an injunction against such websites. The Court has also directed the Department of Telecommunications ("**DoT**") and the Department of Information Technology ("**DIT**") to implement its order ("**Order**") and initiate action against the defaulting websites.

Fйdйration Internationale de Football Association ("**FIFA**") has granted MSM the exclusive license of the television rights, radio rights, mobile transmission rights and broadband internet transmission rights in respect of the 2014 Football WC for the territory of India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka. These rights include live broadcasts, delayed broadcasts, highlights, on demand and repeat broadcasts of the tournament. MSM also has these rights over the 2018 FIFA World Cup to be held in Russia.

MSM'S POSITION & THE ORDER OF THE COURT

MSM submitted to the Court that various websites both based in India and abroad were infringing its exclusive media rights as the sole broadcaster of the tournament in the territory of India. In particular, it's exclusive right to stream or broadcast the tournament online through its dedicated digital sports entertainment portal, Sony Liv. This caused irreparable loss and harm as such infringing acts was having a direct impact on the viewership on MSM's channels. MSM submitted that most of these websites are habitual offenders.

MSM was able to establish a *prima facie* case, i.e., its broadcast reproduction rights under Section 37 of the Copyright Act, 1957 ("**Copyright Act**") were being infringed. Under section 37(3), any person who performs certain acts without obtaining a license from the broadcaster is deemed to have infringed the rights of a broadcaster. These acts include:

- *re-broadcasting the broadcast; or*
- *causing the broadcast to be heard or seen by the public on payment of any charges; or*
- *making any sound recording or visual recording of the broadcast; or*
- *making any reproduction of such sound recording or visual recording where such initial recording was done without license or, where it was licensed, for any purpose not envisaged by such license; or*
- *selling or giving on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to above.*

Section 37(3) gives the broadcaster the right to re-broadcast and causes the broadcast to be heard or seen by the public on payment of any charges. The Court held MSM was entitled to an ex-parte ad-interim order as they were the sole and exclusive owner of the broadcast and reproduction rights of the 2014 Football WC under Section 37 of the Copyright Act.

Apart from the websites listed in MSM's petition, there are also other websites that have potentially been infringing MSM's media rights by streaming live coverage. The number of websites and the identity behind these websites is generally unknown. The Court felt this would amount to unfair competition and commercial misappropriation of MSM's rights. Therefore, the Court has taken an extra step to issue John Doe orders.

The Order directs the websites to restrain from indulging in *hosting, streaming, broadcasting, rebroadcasting, retransmitting, exhibiting, making available for viewing and downloading, providing access to or communicating to the public, displaying, uploading, modifying, publishing, updating or sharing (including to its subscribers and users),* through the internet in any manner whatsoever the broadcast of the 2014 Football WC.

The DoT and DIT have been directed to initiate action against the defaulting websites as per the Order.

JOHN DOE ORDERS TO PROTECT BROADCASTING RIGHTS

In general, John Doe orders are orders passed by the court against anonymous persons. There has been a recent inclination by the Indian judiciary to issue John Doe orders in cases of infringement of a copyright or broadcast

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reproduction right and are also known as Ashok Kumar orders. The concept of John Doe orders are not only well recognized in India but in various other countries such as United States of America, Canada, England and Australia. John Doe orders are most beneficial when obtained before rather than after rights are infringed. In many cases, broadcasting companies and film production companies may apprehend infringement of their media rights and obtain *quia timet* injunctions. Piracy is one of the major reasons as to why John Doe orders are obtained *quia timet* in the film industry. Often, John Doe orders are sought form the court before the release of films in India, movies such as '*Bodyguard*'[2] and '*Singham*'[3] being two such instances. In these cases John Doe orders were obtained even before the movie was released as it was feared that the movie will be copied and DVDs/CDs will be prepared and distributed in the market as also shown on television by cable operators; thus resulting in huge financial losses incurred by the concerned film production company.

Recently, John Doe orders have been sought from Indian courts during major sporting events as viewership numbers are high and the potential losses to the broadcaster even higher.

A few noteworthy instances with respect to sports are given below:

- **2002 FIFA World Cup**

  The first instance of John Doe orders being passed in India was by the High Court of Delhi in the case of *Taj Television Ltd. and Ors. v. Rajan Mandal and Ors.*[4] during the course of the 2002 FIFA World Cup held in Korea and Japan ("**2002 Football WC**"). Taj Television Ltd. ("**Taj**") owned the sports channel 'Ten Sports' and was the owner of the broadcasting rights. The Court granted Taj an ex-parte injunction against both named and unnamed cable operators for unauthorized transmissions as its broadcasting rights under section 37(3) were being infringed. Although a large number of cable operators had taken licenses, several prominent cable operators had not signed up with Taj or its authorized operators and broadcasted the tournament without any approvals, thereby costing the television industry in terms of millions of rupees.

- **ICC Cricket World Cup 2011**

  An order of similar nature was passed in the case of *ESPN Software India Pvt. Ltd. v. Tudu Enterprise and Ors.*[5] by the High Court of Delhi during the course of the ICC Cricket World Cup 2011 ("**2011 Cricket WC**") jointly held in India, Sri Lanka and Bangladesh. ESPN Software Pvt. Ltd. ("**ESPN**") claimed to have the exclusive rights to broadcast the 2011 Cricket WC. ESPN obtained a John Doe injunction against 175 named defendants it had identified as well as an undetermined number of unnamed defendants. The Court deemed the unauthorized transmission made by the defendants to be violative of section 37(3) since there was no license agreement signed with ESPN's distributors. The Court further held that ESPN's channels were paid channels and viewed by persons who were subscribers through authorized cable operators.

- **Indian Premier League 2010**

  Similarly, the High Court of Delhi had passed a similar order[6] against cable television operators for downloading and broadcasting content from the Sony Set Max Channel without having obtained licenses from M.S.M. Satellite Singapore Ptd Ltd. during the 2010 Indian Premier League cricket tournament held in India.

IMPACT & ANALYSIS

Since a John Doe order was passed by the High Court of Delhi granting an injunction, it will be applicable not only to the websites listed in MSM's petition but to all websites that are infringing MSM's media rights in some way.

While the DoT and DIT are to ensure compliance of the Order and direct the Internet Service Provider ("**ISP**") to block the websites identified in the plaint by MSM (and any further website notified by MSM), a number of websites not indulging in the infringing acts against MSM, may also be blocked. These websites have the opportunity to file an application to modify the Order or appear before the Court and satisfy the Court of their non-infringement when they receive summons to appear before the Court.

Keeping in mind the 2014 Football WC is held over the period of one month and with tens of millions of viewers expected to tune in to the global event on television over the one month period, the damage caused thus far may be high and difficult to overcome. However, the silver lining for MSM is that the second half or the 'business half' of the tournament is to be played with a larger audience expected for the knock-out rounds, quarter-finals and semi-finals. The tournament, with the final set to be played on 13 July is expected to have a large number of Indian viewers, having the tournament compete with the likes of the 2012 London Olympics that attracted approximately 325 million Indian viewers[7] and the 2010 FIFA World Cup South Africa that attracted approximately 45 million Indian viewers.[8]

John Doe/Ashok Kumar orders are an effective tool indeed to prevent further losses to broadcasters. However, the ability to fully identify the websites in violation of the broadcasting rights enjoyed by MSM or any other broadcaster is uncertain. An accurate estimate of such websites can perhaps be never made by the broadcaster, the DoT or the DIT. Even if identified, the extent to which such websites may be able to pay damages may be limited. In business like this, where the investment amount is big but the period in which the broadcaster can make its money is rather short, obtaining an injunction before damage actually occurs is important. A John Doe injunction is best served as a *quia timet* action rather than a last ditch roll of the dice.

– Aaron Kamath, Ranjana Adhikari & Vivek Kathpalia
You can direct your queries or comments to the authors

[1] *Multi Screen Media Pvt. Ltd. v. Sunit Singh & Ors.*, CS (OS) 1100%/2014
[2] *Reliance Big Entertainment v. Multivision Network & Ors.,* CS (OS) No. 2066/2011
[3] *Reliance Big Entertainment v. Multivision Network & Ors.*, CS(OS) No. 1724/2011
[4] [2003] F.S.R 24
[5] MANU/DE/1061/2011
[6] *M.S.M. Satellite Singapore Pvt. Ltd. v. Star Cable Network & Ors.,* F.A.O. (OS) 211/2010
[7] International Olympic Committee Marketing Report London 2012. Available at: http://www.olympic.org/Documents/IOC_Marketing/London_2012/LR_IOC_MarketingReport_medium_res1.pdf
[8] 2010 FIFA World Cup South Africa Television Audience Report. Available

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at: http://www.fifa.com/mm/document/affederation/tv/01/47/32/73/2010fifaworldcupsouthafricatvaudiencereport.pdf

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