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## Current Intelligence

# Cricket SMS—commentating on the legal validity of cricket scores sent via SMS

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## ▶ Abstract

An Indian court has set aside an order, issued by it earlier, restraining mobile operators from disseminating cricket scores and updates by SMS for the ODI cricket series between India and Pakistan. However, the ruling leaves open the question of whether there can be exclusive rights to scores via SMS and, if so, whether these can be arbitrarily granted by the sports body of a particular country?

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*M/s Marksman Marketing Services Private Limited's application*, Madras High Court, 11 February 2006 (interim order by Justice R Bhanumathi)

## ▶ Legal context

As readers will be aware, intellectual property rights (IPRs) exist in the form of patents, trade marks, copyrights, designs, confidential information, trade secrets, etc. Scores via SMS are certainly not covered under any of those categories of IPRs. The manner in which scores are presented or particular formats could possibly be regarded as a copyright work.

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## ▶ Facts

On 7 February 2006, Justice M. Chockalingam of the Madras High

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Court granted an interim injunction restraining 18 major mobile operators from disseminating information relating to scores, match alerts, and updates of the India–Pakistan One-Day International (ODI) cricket matches. This injunction was passed in a civil suit filed by Chennai-based M/s Marksman Marketing Services Private Limited, which contended that it had the exclusive global SMS rights for ODI.

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According to Marksman, VectraCom, a Pakistani company, had entered into an agreement with the Pakistan Cricket Board (PCB) on 29 December 2005 for exclusive global SMS rights of India's tour of Pakistan in January–February 2006. The petition stated that VectraCom had in turn granted exclusive rights for the entire Indian territory to Marksman to disseminate information relating to scores, alerts, and updates and/or other events or happenings in the tour via SMS on wireless and mobile phones. Marksman's case was that the mobile operators had failed to obtain permission from VectraCom and, by doing so, they had infringed intellectual property of the PCB and unlawfully exploited rights vesting in Marksman for commercial benefit and they must be restrained from doing so.

The mobile operators and content providers, responding that no company could claim such exclusive rights over news or information, filed various petitions with the Madras High Court challenging the order.

The mobile operators argued that, under the licensing conditions laid down by the government, the service providers were entitled to provide value-added services (VAS) such as SMS to their subscribers and that they were sharing revenue with the Indian government, including revenue from VAS. Some of the mobile operators even questioned the concept of 'exclusive global SMS rights' and asked whether there could be a monopoly over such rights.

The mobile operators and content providers breathed a sigh of relief when Justice R Bhanumathi of the Madras High Court passed an interim order, vacating the injunction passed on 7 February. The order however directed the mobile operators to maintain accounts of revenues earned through the SMS scores to ensure that, if the suit finally went in favour of Marksman, it could be adequately compensated.

In another similar dispute, during the India–England test series, the Board of Control for Cricket in India (BCCI) had issued legal notices to cellular operators, warning them against providing SMS updates about the series without their permission. The Cellular Operator's Association of India (COAI) is understood to be taking up the issue on behalf of all the operators and their stand is that they do not require any prior permission for offering updates of events.

## ► **Analysis**

The Marksman case and the BCCI notice raise an important issue

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relating to the nature and scope of rights that accrue to event organizers. Though the order was set aside, the suit remains pending and one will have to see how the courts interpret this at the final hearing. The order was set aside primarily due to an examination of the balance of convenience. This is one of the most important considerations for the grant or refusal of interim relief together with a *prima facie* case and irreparable harm, injury, and damage. Since the balance of convenience was in the favour of the mobile operators, the injunction was vacated and they were directed to keep accounts of revenue earned from the services.

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## ► **Practical significance**

In light of the *Marksman* case many questions remain open and need to be answered:

- i. Can there be exclusive rights to information sent via SMS?
- ii. Is such information not in the public domain?
- iii. Can global digital rights for International sports events be arbitrarily given by the sports body of a country?
- iv. Does the Indian cricket board have any rights over the Indo–Pak series? If yes, then what is the nature of these rights?

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There are many sports bodies, content providers, and website companies whose major source of revenue emanates from disseminating sports and sports related information in real-time using technologies like SMS and the web. By monopolizing exclusive global SMS rights to cricket matches, can *Marksman* prevent anyone from sending such information via SMS?

Such disputes are not peculiar to the subcontinent alone. The NBA in the US had filed a suit against Sports Team Analysis and Tracking Systems (STATS) and Motorola seeking to charge them from picking up scores of NBA games from televised broadcasts and transmitting them over a pager system. NBA argued that this real-time information amounted to ‘hot news’. The court in the NBA case said that real-time scores were not ‘hot news’ and that NBA could not restrain Motorola from transmitting them through pagers, as once the games are telecast, the scores are in the public domain.

To conclude, courts in most jurisdictions have held that sports bodies do not have a proprietary right over real-time information that they have already put into the public domain either through telecasts or by other means unless they are able to show that this information constitutes ‘hot news’. At the same time, sports bodies are free to impose curbs upon persons attending events in stadiums to prevent them from instantaneously transmitting this information for a limited duration.

The courts will have to balance two conflicting rights—that of the public to receive cricket and other scores/information as fast as it can get from various sources and that of the sports

bodies to profit from an event that they invest in heavily. It will be interesting to see how the *Marksman* case is finally decided.

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