CHAPTER 7

COMPUTER AND ELECTRONIC MEDIA
CHAPTER 7
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7.1.1 Introduction ........................................................................................................240
7.1.2 The role intellectual property based laws on computer ................................ 241

7.2.1 The cyber world and electronic media laws ........................................ 242
7.2.2 The types of the computer based media laws ............................................. 242
7.3.1 Cyber civil law ................................................................................................ 243
7.3.2 Cyber criminal law ....................................................................................... 243
7.3.3 Cyber law related procedure ....................................................................... 244
7.3.4 Cyber law and monopoly ............................................................................ 245

7.4.1 The e-commerce and the electronic media .............................................. 246
7.4.2 The internet based electronic media ............................................................ 249
7.4.3 The digital and analog television ................................................................. 249

7.5.1 Impact of Information Technology Act Electronic Media ....................... 250
7.5.2 The proposed Convergence Bill ................................................................. 251
7.5.3 The theory of renvoi and electronic media ............................................... 252

7.6.1 ADR (Alternative Dispute Resolution) and the electronic media .......... 253
7.6.2 ODR (Online Dispute Resolution) and the electronic media .................... 254
7.6.3 Scope of other laws in UNCITRAL model laws ....................................... 254
7.6.4 Conclusion .................................................................................................... 256
CHAPTER 7
COMPUTER AND ELECTRONIC MEDIA

7.1.1 Introduction

The face of mass media has changed by the introduction of Computers. One technological development that has made the biggest change on mass media is computers. Using the computers people today would be able to obtain information very quickly. The role of the intermediary known as the Gatekeeper or the publisher is gradually fading. Anyone can start a blog, post in social network like facebook or twitter or upload in the youtube video clipping. In other words the citizen channel has become more significant. Speed is increasing day by day. The camera has become a part of the phone. The style is changing. Anyone can change the shape or frame using special software for it. Before the matter comes in the newspaper the electronic media spreads the news in a new style. The importance of multimedia is rising along with the computers and electronic media. Any one makes any law regarding the electronic media is bound to know the computers.504 Section 2(1) (i) in The Information Technology Act, 2000 (i) “computer" means any electronic magnetic, optical or other high speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network.505 The most important method of the media using the computer network is IPTV or internet protocol television. At the same time the equipments, whether it is transponder, transducer, video camera, dish antenna, satellite, television, radio or anything related to it using in static or mobile manner are using the computers. We are concerned about the use of computers in the mass media. In this aspect every matter coming in the mass media is a kind of data. Section 2(1)(0): of Information Technology Act says that "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a

504 Stovekraft Private Limited, Rep and others v The Joint Director, Directorate and others. 2007 (214) ELT 179 Kara.
505 Section 2(1)(i) in The Information Technology Act,
formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.  

7.1.2 The role intellectual property based laws on computer based media

Intellectual Property Rights in the computer industry are affected by the following areas: Contract or License, Copyright and Related Rights, Undisclosed Information (Trade Secret), Patents, Trademarks and Layout. Designs (Topographies) of Integrated Circuits. The initial four have a role on computer software. The trademarks, layout and the designs are more relevant to the Internet and to computer hardware rather than to the computer software. Copyright, Trade Secret and Contract or Licenses are related to the electronic media. 'Contract or license' is general law that governs conditions in any transactions. It is equally applicable to the computer software. 'Copyright' lies related to the programmes. 'Undisclosed information or trade secret’ is a secret relating to the media in all the senses. It must not be of public or general knowledge in the trade. It may consist of any formula, pattern, device or compilation of information which gives an advantage over competitors who do not know or use it. It implies some novelty though not of the same degree as in the patent law, as that does not possess newness is usually known. Source Code and Object Code Computers is a computer language. They only understand 'machine language' or 'machine code'. The source code is compiled by a compiler—converting it into the language that computers understand. It is then known as the object code or machine code or binary code or machine language. Whether it is news, sports, music, cinema or live programme or an advertisement it is converted to binary language or zeros and ones. It is transmitted then. On the receiving end it will be converted to programmes. At present there no Code considering the factor. The electronic media must be capable of protecting the source code. Basically the Copyright laws are relating to it. Formerly the electronic media was having concern about anything related to economic recorded by electronically operated machines. This included the compact discs floppy discs, blueray

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506 Section 2(1) (o): of Information Technology Act
discs etc. In Garware Plastics and Polyester Ltd. and Others etc v Telelink and Others, etc 507 it was held it is more related to the Copyright Act, 1957.508

7.2.1 The cyber world and electronic media laws

Man and machine relationship is known as the Cyberculture. It is a world created by the computers known as the cyberworld. IPTV or internet is making the cyberworld. 509 It is made by the computer networks for communication, entertainment, and business. It is also the study of various social phenomena associated with the Internet and other new forms of network communication, such as online communities, online multiplayer gaming, social gaming, social media, augmented reality, and texting, and includes issues related to identity, privacy, and network formation. The laws relating to the computers relating to the computer based media are two (1) the Information Technology Act and (2) the notifications made under the Telecom Regulatory Authority of India Act. On reading the entire statutes neither of the statute is not sufficient for the electronic media since it includes the computer and computer based mass media.

7.2.2 The types of the computer based media laws

Apart from the satellite radio and IPTV almost all the mass media is using the branch of science known as the electronics. But we are concerned only those mass media. They must be using electronics for the propagation of mass media audio visual data for the general public. The computer based electronic mass media may be state

507 AIR 1989 Bom 331
508 In Garware Plastics and Polyester Ltd. and Ors. etc. v. Telelink and Ors. etc.; AIR 1989 Bom 331 wherein Bombay High Court had examined this kind of concern wherein the court observed that it is true that there are certain places like hotels where there are private viewings as well as public viewings, some of which are infringement and some are not. But still, the court proceeded to grant the injunction against the defendants from infringing the plaintiff’s works in respect of which the plaintiff is the owners and/or assignees of copyright without obtaining an assignment of the same from such owners and assignees or a licensee under the Copyright Act, 1957.
509 International Telecommunication Union has defined IPTV services as Follows:- “An IPTV service (or technology) is the new convergence service (or technology) of the telecommunication and broadcasting through QoS controlled Broadband Convergence IP Network including wire and wireless for the managed, controlled and secured delivery of a considerable number of multimedia contents such as Video, Audio, data and applications processed by platform to a customer via Television, PDA, Cellular, and Mobile TV terminal with STB module or similar device.”F.No. 16/03 /2006-BP&I, Vol.III Ministry of I&B SECRET, Annexure-IV, Guidelines For Provisioning of Internet Protocol Television (IPTV) www.mib.nic.com. Last visited on 12-2-2012
owned or private. Apart from the Information Technology Act 2000 there is no other enactment relating to computer.

The objectives of TRAI Act say that An Act to provide for the establishment of the Telecom Regulatory Authority of India to regulate the telecommunication services and for matters connected therewith or incidental thereto. The TRAI Act Section 2 (k) says that, “telecommunication service" means service of any description (including electronic mail, voice mail, data services, audiotex services, video tax services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services

7.3.1 Cyber civil law

Any dispute for which no specific provision is there, Civil Procedure Code Sec 9 says that, the civil courts shall try all such cases. The suits of a civil nature include the electronic media disputes also. The test is that, whether there is any law by which the court’s jurisdiction is expressly or impliedly barred.\(^{510}\) There should be specific directives regarding the exemption civil liabilities. The suits of civil nature with regard to the electronic media are suits relating to right to property, suits for damages for civil wrongs, suits for specific relief, suits for rent, Suits for or on accounts, suits for damages for breach of contract etc.\(^{511}\) the proposed Convergence Bill creates mainly the Civil Liability.\(^{512}\)

7.3.2 Cyber criminal law

The Information Technology (Amendment) Act has mentioned several offences Section 66 has now been expanded to include sections 66A, (offensive messages), 66B (Receiving stolen computer), 66C (Identity theft), 66D (Impersonation), 66E

\(^{510}\) Ranbaxy Laboratories Ltd. vs Punjab State Electricity Board (2004) 137 PLR 101 (a specific law does not bar from a civil litigation.). Other cases are Smt. Fulan Devi v Mangtu Maharaj and others. AIR 1969 Pat 294, Satyawadi s/o Ganpatrao Pimple and others v Sow. Aruna w/o Ganpatrao Narwade and others. 2000 (3) Bom CR 182, 2000 (industrial dispute is not a civil case)

\(^{511}\) http://www.lawnotes.in/Section_9_of_Code_of_Civil_Procedure_1908#ixzz2MRnyhNf last visited on 1-2-2013

\(^{512}\) Convergence Bill is dealt in another Chapter.
(Voyeurism) and 66 F (Cyber Terrorism), Section 67 has been expanded to include Sections 67A (Sexually explicit content) and 67 B (Child Pornography). Copyright infringement is punishable under section 63 of the Copyright Act. It is Offence of infringement of copyright or other rights conferred by this Act. Any person who knowingly infringes or abets the infringement of (a) the copyright in a work, or (b) any other right conferred by this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees. The important thing to be noted here is that the penalty in the case of the media people is too little comparing to the fee to be paid for uplinking or downlinking or for the registration.  

The concept of the lex forii or the law of the forum principle is to in the case of the cyber disputes relating to the media. According to section 9 of the CPC (Civil Procedure Code) if a court is not mentioned by virtue of any law, then the civil court has to dispense the matter. While the civil court was in existence the Consumer Redressal Forum was formed. While civil remedy was available a criminal remedy was has been given by Negotiable Instruments Act Section 138. Similarly the theft of intangible property in cyber law may be punishable under Copyright Act or Indian Penal Code a more clear action may be taken under the Information Technology Act. Like that a separate forum defining the rights and duties of the media people separate jurisdiction may be established.

7.3.3 Cyber law related procedure

“A simple yet sturdy definition of cyber crime would be unlawful acts wherein the computer is either a tool or a target or both”. Defining cyber crimes, as “acts that are punishable by the information Technology Act” would be unsuitable as the Indian Penal Code also covers many cyber crimes, such as e-mail spoofing, cyber defamation, etc.

513 The Copyright Act 1956
It relates to any crime that involves a computer and a network. It is defined as: "Offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim or cause physical or mental harm to the victim directly or indirectly, using modern telecommunication networks such as Internet (Chat rooms, emails, notice boards and groups) and mobile phones". The cybercrime includes cracking, copyright infringement, child pornography, and child grooming. Intrusion to privacy, taking away of confidential information is and intercepted unlawfully internationally, both governmental and non-state actors engage in cybercrimes, including espionage, financial theft, and other cross-border crimes. Activity crossing international borders and involving the interests of at least one nation state is sometimes referred to as cyber warfare. The international legal system is attempting to hold actors accountable for their actions through the international criminal court. Crimes that primarily target computer networks or devices include computer viruses, denial of service attacks, malware (malicious code), cyber stalking, fraud and identity theft, information warfare, scams, spam, fraud, obscene or offensive content, harassment, threats, drug trafficking, cyber terrorism, cyber extortion, cyber warfare etc. Basically every crime originates on the basis of human behaviour.

7.3.4 Cyber law and monopoly

The telegraphs act is creating a monopoly in favour of the states. But by the introduction of Internet the monopoly is taken away. But in other electronic media like radio and television the regulation and monopoly exists in some form. Cyberlaw may be regulated or unregulated. For example the television using the internet may be regulated. Even the Internet Television may be regulated regarding the programmes and advertisements. The internet is unregulated in any aspects. Formerly the television and the radio were having a license fee. Two reason was that the money collected in the form of the license fee was less than the collection expenditure and the money collected in the form of tax on sale proceeding was higher than the license fee. It was found that license fee is acting as a hindrance for collecting tax at the time of the sale. In addition

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ICC or International Criminal Court relating to the crime which may occur between nations. More is given in the website www.icc.com. Last visited on 2-2-2013.
to that the telegraph laws are not binding upon the Cyber laws no monopoly by the state is possible. Since the modern electronic media is largely using the computers a separate law as well as the court to deal with the cyber issues is a must.

7.4.1 The e-commerce and the electronic media

The term e-commerce relates to a commercial activity through internet. The electronic media is largely involved in the activities of electronic commerce. Basically all the commercial activity from film theatre to Income Tax Office the electronically operated commercial activity is taking place. The government is promoting e-commerce or computer based commerce. So the Electronic Media Code should have the provisions of e-commerce

Delhi High Court held in Avnish Bajaj vs State that even if the charge under IPC will fail that the charges upon the Information Technology Act will lie. Even if existing laws are not applicable the laws relating the laws on information technology is applicable on computer. The following US cases are acting as the guidelines for e-commerce. Hotmail Corporation v. Van$ Money Pie Inc. This is the first case implicitly holding that a click wrap contract, specifically a "Terms of Service" e-mail agreement, is valid. ProCD Inc. v. Zeidenberg, Rejecting the buyer's claim that he could not be bound by a shrink wrap license contained within a sealed software package, the court determined that the terms of that shrink wrap license which were not unconscionable, were enforceable because no contract was formed until the buyer "accepted" the terms of the license by agreeing to keep the software.

Hill v. Gateway 2000, Inc. This decision follows the holding of ProCD, upholding the validity of an "approve or return" trigger for setting the terms of a shrink-wrap license, even though the consumer claimed not to have read the statement of

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516 Nandan Kamath, Law relating to computers, internet and e-commerce
517 http://www.indiankanoon.org/doc/309722/
518 ibid
519 ibid
522 86 F.3d 1447 (7th Cir. 1996) 86 F.3d 1447 (7th Cir. 1996)
523 ibid
524 105 F.3d 1147 (7th Cir. 1997)
terms with regard to the specific clause at issue. Following ProCD and Hill, the court here found that a shrink wrap contract was formed when the plaintiffs retained the software for longer than the 30 day "approve or return" period. However, the court further held that certain contract terms relating to the arbitration provision at issue were not enforceable. In this case, the court followed the reasoning of ProCD and Hill, and held that software license terms shipped with the software were part of the parties contract and therefore limited the plaintiff's remedies, despite the defendants' failure to mention the license terms when negotiating the sale. Vault Corp. v. Quaid Software Ltd., In this case which pre-dated ProCD by a decade, the court refused to enforce terms contained in a shrinkwrap license without directly analyzing the enforceability of these agreements. The particular license agreement at issue was based on a state statute which the court determined conflicted with federal copyright law. Because the state law upon which the license agreement was based was invalid, the license agreement was unenforceable.

Step Saver Data Systems, Inc. v Wyse Technology, In a claim between two businesses concerning the validity of a "Limited Use License Agreement" printed on a package containing a computer program, the court held that the terms of this "box top license" were not enforceable under §2.207 of Article 2 of the UCC (the "battle of forms") as the buyer did not agree to be bound by terms that were only disclosed after the goods had been paid for and shipped. Whether the court would reach the same conclusion after ProCD is debatable. Arizona Retail Systems Inc v Software Link, Inc.,

In Arizona Retail Systems, Inc. v. Software Link, Inc substantially similar to Step Saver, the court held that shrink-wrap terms that were on the packaging and were inconsistent with specific representations made by the seller were unenforceable. The

525 105 F.3d 1147 (7th Cir. 1997)
528 970 P.2d 803 (Wash.App. 1999)
529 970 P.2d 803 (Wash.App.1999)
530 Vault Corp. v. Quaid Software Ltd., 847 F.2d 255 (5th Cir. 1988)
531 Step-Saver Data Systems, Inc. v. Wyse Technology, 939 F.2d 91 (3d Cir. 1991)
court concluded that additional "terms and conditions" disclosed after the shipment of the goods were invalid without the buyer's expressed specific assent.\textsuperscript{533}

The Indian cases on consumer fraud on the Internet are the Red Hat Inc v Mr. Hemant Gupta and Others High Court of Delhi: New Delhi in I.A. No.10679/2011 in CS (OS) No.1654/2011 where the domain name and trade mark of the defendant is deceptively similar to that of plaintiff is prevented from using it in any form\textsuperscript{534} Stephen Koenig v Arbitrator, National Internet, In the High Court of Delhi at New Delhi\textsuperscript{535} and Jagdish Purohit v Stephen Koenig was treated as a trade mark and domain name dispute and use of 'internet in' as a domain name is prohibited.\textsuperscript{536}

In People v. Lipsitz,\textsuperscript{537} New York court held that the defendant was subject to personal jurisdiction and liable for violating New York consumer protection laws, even though the defendant conducted its magazine subscription business globally over the Internet.\textsuperscript{538} Minnesota v. Granite Gate Resorts.\textsuperscript{539} In this case, the Minnesota Attorney General brought suit under the state consumer protection statute alleging that the defendant, a Nevada resident, was liable for deceptive trade practices, false advertising and consumer fraud on the Internet by advertising that gambling on the Internet is legal even though the specific on line gambling service associated with the defendant was not yet operational. While the decision is limited to the defendant's unsuccessful argument that, as a Nevada resident, he was not subject to personal jurisdiction by the Minnesota courts, it illustrates the extent to which consumer protection laws are being used by the states to prosecute fraud, even prospective fraud on the Internet. In Online Services, L.P. v. Juno Lighting, Inc.\textsuperscript{540} over the use of Internet domain names, the court held that the mere registration of a domain name, without setting up a web site or e-mail service, does not constitute "trade or commerce" or amount to "deception" as

\textsuperscript{534} Red Hat Inc Vs Mr. Hemant Gupta and Ors High Court of Delhi: New Delhi in I.A. No.10679/2011 in CS (OS) No.1654/2011
\textsuperscript{535} O.M.P. 132 of 2007, with O.M.P. No. 928 of 2011
\textsuperscript{536} Stephen Koenig v Arbitrator, National Internet, In the High Court of Delhi at New Delhi, O.M.P. 132 of 2007
\textsuperscript{537} 663 N.Y.S.2d 468 (N.Y. Sup. Ct. June 23, 1997)
\textsuperscript{538} People v. Lipsitz, 663 N.Y.S.2d 468 (N.Y. Sup. Ct. June 23, 1997)
\textsuperscript{540} 979 F Supp. 684 (N.D. Ill. 1997)
required by the Illinois consumer fraud and deceptive business practice statute.\textsuperscript{541} In other words the Electronic Media Code should promote the paperless office and e-commerce.

7.4.2 The internet based electronic media

Internet Protocol Television or IPTV is different from traditional satellite, cable or terrestrial networks. In IPTV the television content is packetized into IP packets and delivered through a high speed access network. It is not television over internet like example watching. Basically internet is a best effort network and does not provide any guarantees to an individual service. But in the IP network used for delivery of IPTV is built specially to deliver this service and hence has performance and security features required to build a reliable service which customers will pay for. The difference is that the traditional TV using satellite or cable only includes Live TV and maybe a fixed small collection of movies that can be viewed as pay per view. IPTV is typically greater options like gaming, time shift television and Video on Demand (VoD), apart from live TV. The term IPTV first appeared in 1995 with the founding of Precept Software. Precept developed an internet video product named IP/TV. IPTV services in India are provided by Bharti Airtel and BSNL and MTNL MyWay have recently exited the IPTV market due to insufficient demand. IPTV is expected to pick up again in a few years.\textsuperscript{542}

7.4.3 The Digital and analog television

It is otherwise known as the Digital Addressable Cable TV Systems (DAS). DAS is a cable TV service in which TV channels are sent through cable TV network in digital and encrypted form. Only authorised users can receive channels using a Set Top Box (STB) and TV set. The authorization is given by the service provider. This system is able to carry large number of TV channels, radio services and other value added

\textsuperscript{542} Consumer fraud on the Internet is a natural outgrowth of the recent explosion in the use of the Internet to conduct consumer transactions and the number of people on-line. To date, prosecutions for consumer fraud, including claims for false advertising, unfair and deceptive trade practices, and investment fraud, have largely been initiated by governmental agencies, including the Federal Trade Commission, the Securities and Exchange Commission, and the state Attorneys General. These cases not only discuss traditional fraud principles in the context of promotions and "commerce" on-line but often raise issues concerning personal jurisdiction. The details of IPTV is given in the www.trai.com Last visited on 2-2-2013.
services. In this system the consumers can choose channels/services of their choice and pay only for the same. The Multi System Operator (MSO) and its linked local cable operators (LCOs) are the service providers in DAS (hereinafter referred as cable operators). The existing cable TV system is predominately analog in nature. In case of analog cable TV system, the TV channels are sent in analog and unencrypted form. The analog cable TV system can carry up to 80 to 100 TV channels. In this system the consumers do not have an option to choose channels or services of their choice and pay accordingly; rather they have to pay for the entire bouquet of channels offered by the cable operator. On the other hand, the capacity of a DAS is much higher than the existing analog cable TV system. A consumer under DAS will be able to choose channels or services of his choice and pay accordingly. A Set Top Box (STB) is required along with the TV set for receiving the channels in DAS.

DAS is a fully digital addressable system whereas CAS is not. In CAS notified area, the free to air (FTA) channels are carried over the network in analog form while the pay channels are carried in encrypted and digitally modulated form for which a STB is required. While in DAS all the channels (pay as well as FTA) carried over the network are encrypted and digitally modulated and a STB is required for receiving both FTA and pay channels. Although DAS and DTH are digital addressable systems, in DTH service, TV channels are directly received by consumer from satellite using small dish antennas located at customer premise. However, in DAS TV signals reach consumer through the cable network. The DAS is capable of carrying interactive value added service, triple play services (Video + Audio +Data), broadband etc. through the same cable TV network.543

7.5.1 Impact of Information Technology Act on Electronic Media

The Information technology Act 2000 consisted of 94 sections segregated into 13 chapters. Four schedules form part of the Act. Essence of the Act Information Technology Act 2000 addressed the following issues: Legal Recognition of Electronic Documents Legal Recognition of Digital Signatures, Offenses and Contraventions, Justice Dispensation Systems for Cybercrimes ITAA 2008 (Information Technology

Amendment Act 2008) as the new version of Information Technology Act 2000 is often referred has provided additional focus on Information Security. It has added several new sections on offences including Cyber Terrorism and Data Protection.

The United Nations General Assembly by resolution A/RES/51/162, dated the 30 January 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. This is referred to as the UNCITRAL Model Law on e-commerce. Following the UN Resolution India passed the Information Technology Act 2000 in May 2000 and notified it for effectiveness on October 17, 2000.

Justice G.N.Ray said that “The media is the Fourth limb of a democratic system, the legislature, executive and judiciary being the other three. While legislature prepares the law for the society and the executive takes steps for implementing them, the third stepping stone is the judiciary, which has to ensure legality of all actions and decisions. The fourth estate i.e. the press has to operate within the framework of these statutes and constitutional provision to act in public and national interest. This is indicative of the fact that nobody is above law. When the Constitution of India guaranteed freedom of expression and speech to its citizens, it ensured that the freedom was not absolute and any expression, by way of words, speech or visual medium, did not violate any statutory provisions enacted by legislature and executed by the executive. If the media, electronic or print, exceeded its jurisdiction, the courts came forward to ensure that violation of the Fundamental rights by the media does not go unchecked.”

7.5.2 The proposed Communication Convergence Bill

The Communication Convergence Bill is something near to the Electronic Media Code. The Communication Convergence Bill was intended to promote, facilitate and develop in an orderly manner the carriage and content of communications (including broadcasting, telecommunications and multimedia), for the establishment of an autonomous Commission to regulate carriage of all forms of communications, and for

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544 G.N. Ray (Former Judge) Address at University Law College, University of Rajasthan on the inauguration of seminar on “Media and the Law”
establishment of an Appellate Tribunal and to provide for matters connected therewith or incidental thereto. Further the Bill intended that the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, the Telegraph Wires (Unlawful Possession) Act, 1950 and the Telecom Regulatory Authority of India Act, 1997 and the Cable Television Networks (Regulation) Act, 1995 are repealed.

Sec 32 of the Bill mentioned about the breach of terms and conditions of license, etc or failure to comply with any decision, direction or order of the Commission (a) direct the licensee or grantee (b) suspend the license (c) curtail the period of the license (d) revoke the license and (e) initiate adjudication. The commission may seize the incriminating materials. The commission may create. Civil liability for breach of terms and conditions of license etc by virtue of Sec 33 of the Bill and section 34 of the Bill says that any contravention of the provisions relating to transmission, etc. Section 35 says that a civil liability will be made for delivery of content through facilities services or equipments not licensed or registered Sec 36 of the Bill mentions about civil liability for failure to register agreements.

Sec 37 says that a civil liability for failure to comply with the decision, etc., of the Commission, Section 38 says about the Filing of complaint, reference for adjudication, etc, Sec 39 Power to adjudicate and Sec 40 of the Bill .Civil liability for willfully or otherwise damaging network infrastructure facility and causing interruption. These are new to the electronic media laws comparing to the Cable Television Regulation, the TRAI Act and the Prasarbarathi Act and at the same time they are not explained in the Communication Convergence Act.

7.5.3 The theory of Renvoi and electronic media

In Private International Law, Renvoi is a method of choice of the choice of law. It may be applied whenever a forum court is directed to consider the law of another state. In cable television and IPTV a considerable portion of the media is made by the foreign channels, commercial operators, money makers and others. They have

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545 The Supreme Court in National Thermal Power v Singer Company and others 1993 AIR 998, 1992 SCR (3) 106 agreements contained a specific provision that any dispute arising out of the contract should be decided as per the relevant clauses of the General conditions of the contract. According to the General Terms, the Respondent being a foreign contractor it would be governed by the provisions relating to foreign.
laws and rules which are having a foreign element. In such cases whenever a dispute arises the theory of Renvoi is to be applied. The theory of renvoi is applicable to civil cases only. Whenever a new statute having a foreign element the theory is to be applied. Similarly in order to avoid litigation steps may be taken Online Complaint Monitoring System (OCMS) and for which Automated Complaint Processing Software (ACPS) shall be installed in the principal office as well as the exention centers.

7.6.1 ADR (Alternative Dispute Resolution) and the electronic media

In electronic media cases Alternative Dispute Resolution (ADR) is more attractive. ADR is a collective term for the ways that parties can settle disputes, with (or without) the help of a third party. Despite historic resistance to ADR by many popular parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. Typical advantages of ADR over litigation are that:(1) Suitable for multiparty disputes like the media disputes. (2) The procedure should be flexible regarding the disputes. The process shall be determined and controlled by the parties to the dispute (3) the cost is lower (4) ADR is less complex in an actual litigation (5) Parties choice of neutral third party (and therefore expertise in area of dispute) to direct negotiations/adjudicate (6) there is a chance for speedy settlement (7) Practical solutions in a civil dispute is possible (7) The agreements is durable (8) ADR is confidential (9) The preservation of relationships and (10) ADR helps for the preservation of reputations. The Legal Service Authority Act 1987 has made ADR legal.

ADR in India is not new and it was in existence even during Vedic period and under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, (CPC) 1908 has also been amended and section 89 has been introduced. Section 89 (1) of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement. Due to
extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach.

7.6.2 ODR (Online Dispute Resolution) and the electronic media

ODR (Online Dispute Resolution) is the form of ADR in online form. ODR (Online dispute resolution) in India is in its rudimentary stage and it is gaining significance in the contemporary life. With the enactment of The Legal Service Authority Act 1987, the Information Technology Act, 2000 and the Arbitration and Conciliation Act, 1996 India has become ready for e-commerce and e-governance. ODR is applicable where the computer is used. 

7.6.3 Scope of other laws in UNCITRAL model laws

Andhra High Court held in Satyam Computer Services Limited v Venture Global Engineering LLC, in Civil Revision Petition No.5712 of 2009, that for speedy justice the UNCITRAL Model laws on civil disputes relating to Arbitration shall be implemented for speedy justice. The Electronic Communications Convention builds upon earlier instruments drafted by the Commission, and, in particular, the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures. These instruments are widely considered standard legislative texts setting forth the three fundamental principles of electronic commerce legislation, which the Convention incorporates, namely non-discrimination, technological neutrality and functional equivalence.

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546 http://www.academia.edu/2093470/Online_Dispute_Resolution_in_Asia.Last visited on 2-12-2012. ODR is practiced in Japan, China, Malaysia and Singapore. Online dispute resolution (ODR) is yet to be developed in India. With the enactment of Information Technology Act, 2000 in India, e-commerce and e-governance have been given a formal and legal recognition in India.

547 Satyam Computer Services Limited v Venture Global Engineering LLC, in Civil Revision Petition No.5712 of 2009

548 The UNCITRAL Secretariat has established a system for collecting and disseminating information on court decisions and arbitral awards relating to the Conventions and Model Laws that have emanated from the work of the Commission. The purpose of the system is to promote international awareness of the legal texts formulated by the Commission and to facilitate uniform interpretation and application of those texts. The system is explained in document A/CN.9/SER.C/GUIDE/1/Rev.2. For details visit www.uncitral.org. Last visited on 12-2-2013.

The Convention applies to all electronic communications exchanged between parties whose places of business are in different States when at least one party has its place of business in a Contracting State (Art.1). It may also apply by virtue of the parties' choice. Contracts concluded for personal, family or household purposes, such as those relating to family law and the law of succession, as well as certain financial transactions, negotiable instruments, and documents of title, are excluded from the Convention's scope of application (Art.2). Moreover, the Convention establishes the general principle that communications are not to be denied legal validity solely on the grounds that they were made in electronic form (Art.8). Specifically, given the proliferation of automated message systems, the Convention allows for the enforceability of contracts entered into by such systems, including when no natural person reviewed the individual actions carried out by them (Art.12). The Convention further clarifies that a proposal to conclude a contract made through electronic means and not addressed to specific parties amounts to an invitation to deal, rather than an offer whose acceptance binds the offering party, in line with the corresponding provision of the CISG (Art.11). Moreover, the Convention establishes remedies in case of input others by natural persons entering information into automated message systems (Art.14). Finally, the Convention allows contractual parties to exclude its application or vary its terms within the limits allowed by otherwise applicable legislative provisions (Art.3). Whether the Convention applies to a given international commercial transaction is a matter to be determined by the choice of law rules of the State whose court is asked to decide a dispute (lex fori). Thus, if the rules of private international law of that State require application of the substantive law of a Contracting State to the resolution of the dispute, the Convention will apply as law of that Contracting State, irrespective of the court's location. The Convention is also applicable if the parties to the contract have validly chosen its provisions as the law applicable to the contract.

Moreover, States may also consider adopting the provisions of the Convention at the domestic level. Such decision would promote uniformity, economizing on judicial and legislative resources as well as further increasing certainty in commercial transactions, especially in light of the diffusion of mobile devices for electronic
transactions. It is particularly recommended for those jurisdictions that have not yet adopted any legislation on electronic commerce. Otherwise, purely domestic communications are not affected by the Convention and will continue to be governed by domestic law.\textsuperscript{551} Becoming party to the Convention has no financial implications and its administration at the domestic level does not require any dedicated body. Furthermore, no mandatory reporting requirement arises from the adoption of this treaty. The Electronic Communications Convention is accompanied by an explanatory note. The UNCITRAL model laws drafted by the UN are intended for the electronic media and ADR. In general the electronic mass media like radio and television can take so many things from the UNCITRAL model laws by the UN.

7.6.4 Conclusion

The computer related media does not have a specific Code. The code shall include the relevant provisions of the existing statutes. It should contain provisions for the speedy disposal. It should be as per the provisions of UNCITRAL model laws. It needs a special treatment in disposal of cases. The law must be effective. Those who have spent ten lakhs of rupees for obtaining an OB van and ten crores for obtaining an electronic media license a fine of rupees one thousand is nothing. ADR or ODR is a speedy way comparing to conventional methods of civil criminal dichotomy. Further a separate court to treat with the matters regarding electronics based mass media shall be established. Every complaint shall have a tracking system. Moreover the electronic mass media system shall have a particular ideology and perspective.

\textsuperscript{551} Wipro Ltd. v Dy. CIT, 2006 5 SOT 805 Bang, Income Tax Appellate Tribunal – Bangalore, Commerce Policy Subcommittee, Cyberspace Committee, ABA section of Business Law.