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# **Enforcement and Regulation in Relation to TV Broadcasting in Pakistan**

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## **Abstract**

In 2002, private broadcasters started their own TV transmissions after the creation of the Pakistan Electronic Media Authority. This thesis seeks to identify the challenges to the Pakistan public and private electronic media sectors in terms of enforcement.

Despite its importance and growth, there is a lack of research on the enforcement and regulatory supervision of the electronic media sector in Pakistan. This study examines the sector and identifies the action required to improve the current situation. To this end, it focuses on five aspects:

- (i) Institutional arrangements: institutions play a key role in regulating the system properly.
- (ii) Legislative and regulatory arrangements: legislation enables the electronic media system to run smoothly. It needs some more improvement as proposed in the thesis.
- (iii) International efforts: these efforts are very positive to enforce the broadcasting regulation at international level. It will also have a gradual effect on the national market.
- (iv) Current enforcement challenges: some current media enforcement issues are analysed for the first time in this thesis.
- (v) Regulatory Reforms: after the development of the technology, the broadcasting sector is now facing some significant regulation issues.

These five aspects are examined in Chapters 2 to 4 respectively. These three chapters constitute the main part of the thesis.

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## List of Abbreviation

### Legal Text

GATS: General Agreement on Trade in Services

GATT: General Agreement on Tariffs and Trade

TRIPS: Trade-Related Aspects of Intellectual Property Rights

WCT: WIPO Copyright Treaty

WPPT: WIPO Performances and Phonograms Treaty

### Others

ABC: American Business Council

ATV: A Shalimar Television Network Channel

APC's: Ant - Piracy Cells

BBC: British Broadcasting Corporation

BSA: Business Software Alliance

BT: British Telecom Corporation

C.P.S.L.A: Civil Petition for Special Leave to Appeal

CBR: Central Board of Revenue

CCP: Competition Commission of Pakistan

CDA: Capital Development Authority

CPB: Corporation for Public Broadcasting

CPC: The Code of Civil Procedure

CrPc: The Code of Criminal Procedure

DVB-T: Digital Video Broadcasting - Terrestrial

EC: European Community

ETSI: European Telecommunications Standards Institute

EU: European Union

FIA: Federal Investigation Agency

FIAS of the World Bank: Foreign Investment Advisory Services

GDP: Gross Domestic Product

IMB: Integrated Mobile Broadcast

IIPA: International Intellectual Property Alliance

## List of Abbreviation

IPEIS: Electronic Forum on Intellectual Property Enforcement Issues and Strategies

IPTV: Internet Protocol Television

IPO: Intellectual Property Organisation Pakistan

IPR: Intellectual Property Right

MCA: Monopoly Control Authority

MFN: Most-favored-nation Principle

NBF: National Book Foundation

NOC: No Objection Certificate

OECD: Organisation for Economic Co-operation and Development

PASHA: Pakistan Software House Association

PBA: Pakistan Broadcasting Association

PBC: Pakistan Broadcasting Corporation

PCT: Patent Cooperation Treaty

PEMRA: Pakistan Electronic Media Regulatory Authority

PIPRO: Pakistan Intellectual Property Rights Organisation

PKR: Pakistani Rupees

PSB: Public Service Broadcasting

PSDP: Public Sector Development Programme

PSEB: Pakistan Software Export Board

PTA: Pakistan Telecommunication Authority

PTCL: Pakistan Telecommunication Company Limited

PTV: Pakistan Television Corporation

RBC: Revised Berne Convention

RIAA: Recording Industry Association of America

SBP: State Bank of Pakistan

SCCR: Standing Committee on Copyright and Related Rights

STN: Shalimar Recoding & Broadcasting Company

TRIPS: Trade Related Intellectual Property Rights Agreement

UK: United Kingdom of Great Britain and Northern Ireland

UN: United Nation

US: United States

USTR: US Trade Representative

WTO: World Trade Organisation

WIPO: World Intellectual Property Organisation



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## List of Legislations

- Broadcasting Service Act, 1992
- Communication Act, 2003
- Companies Act 1913
- Companies Ordinance 1984
- Competition Ordinance, 2007
- Competition Act, 2010
- Design and patent Act 1988 (UK)
- Intellectual Property Organisation of Pakistan Ordinance, 2005
- Islamabad High Court (Establishment) Order, 2007 by President's Order No. 7 of 2007 on December 14, 2007.
- Pakistan Electronic Media Regulatory Authority Act, 2002 (Amendment 2007)
- PEMRA Act, 2007
- Pakistan Penal Court (XLV OF1860)
- The Civil Procedure Code, 1908
- The Constitution of the Islamic Republic of Pakistan, 1973 ( Amended in 2007)
- The Criminal Procedure code, 1898
- The Limitation Act. 1908
- Memorandum of Association of Pakistan Television Corporation, Subscriber Clause, 8.

## List of Regulations

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- Cable TV Regulations, 2002
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- NLR 1999 SC 1. (Pakistani case)
- *Union des Associations Europeennes de Football (UEFA) v European Commission* (T-55/08) Unreported February 17, 2011 (GC)
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- European Parliament (1996) Resolution on the broadcasting of sport events [1996] OJ C166/109.
- Guardian News and Media Limited v City of Westminster Magistrates' Court [2010] EWHC 3376, Case No: CO/7737/2010.
- Case C-280/00 *Altmark Trans GmbH and Regierungsprasidium v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR-I-07747.
- Case C-53/00 *Ferring v ACOSS* [2001] ECR-I-09067.

## Chapter 1: Introduction and Definition of Terms

### 1.1 Description of the topic

The objective of this thesis is to evaluate the efficiency of the regulation of TV broadcasting in Pakistan. The thesis also seeks to identify the manner in which the enforcement of regulatory instruments in Pakistan can be improved.

Although there is some literature on electronic media in Pakistan, there is not much on TV broadcasting and even less on internet TV. Pakistan is a developing country which has welcomed electronic media as a means of communication throughout its national territory and with its citizens that live all over the world. TV broadcasting has been selected for evaluation in this thesis given its significant growth in Pakistan in recent years.

The thesis seeks to explore enforcement and regulatory solutions for Pakistan, which can be found at international, regional and national levels and to analyse the identified challenges in TV broadcasting in Pakistan. As already stated, this is not a well-researched topic either in Pakistan or internationally. As a result, the thesis aims to achieve a significant and original contribution to existing knowledge.

TV broadcasting in Pakistan is transmitted through terrestrial, satellite, cable and internet. Each type of transmission has one ultimate goal: providing viewers, listeners, or readers with content news and information, entertainment and commentary.<sup>1</sup>

Internet TV is a further development in the manner in which television programmes are broadcast, which raises critical social and legal issues in the contemporary world. However, there is no single international law regime that regulates internet TV.

The thesis seeks to identify the general challenges and, in particular, those that will have to be resolved in order to regulate the electronic media the market in

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<sup>1</sup> A.P. Lutzker, *Content Rights for Creative Professionals Copyright and Trademarks in a Digital Age*, 2<sup>nd</sup> Ed. (Boston: Focal Press, 2003), xi.

Pakistan and to ensure that the social, cultural and economical development of Pakistan is promoted.

Globally, TV industry is owned either by the state or by private undertakings. As far as Pakistan is concerned, it is mostly newly owned by private undertakings although there is a large government owned corporation that broadcasts public TV channels. The thesis covers both private and public sectors. In Pakistan, electronic TV media (TV Broadcasting) owned by private undertakings is rapidly developing its technology but almost without a proper legal structure.<sup>2</sup> In Pakistan, although TV broadcasting is regulated by substantive media laws, there is no specific regulation of internet TV. There are often serious infringements in this sector which are not investigated properly nor eliminated. The Pakistan Electronic Media Regulatory Authority enforces all domestic laws that regulate privately owned electronic media.

The World Intellectual Property Organisation (WIPO) seeks to ensure regulation of TV broadcasting through various international conventions, treaties and agreements. The Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations (WIPO Proposed Treaty) is one of the latest international initiatives led by WIPO. The Government of Pakistan is also trying to improve the functions of the Pakistan Electronic Media Regulatory Authority and to strengthen the laws that regulate the electronic media market.

## 1.2 Scope

As already set out above, the scope of the thesis is limited to the enforcement of TV broadcasting and to the improvement of the regulatory mechanisms that exist in Pakistan. There are several legal issues which relate to electronic TV media that have been selected for examination. It is not possible in this thesis to discuss each and every issue. As a result, the thesis focuses on issues arising in TV broadcasting through satellite, cable, IPTV, mobile TV and internet TV.

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<sup>2</sup> TV broadcasting has substantive laws, which is discussed in chapter 2. There are no substantive laws regulating Internet broadcasting in Pakistan.

In this fast moving industry, technology develops and the law follows. Internet TV is a totally new phenomenon in the Internet age. This aspect of the study requires a highly creative, innovative and rational reasoning. The thesis will cover the legal and technical development of broadcasting. The thesis will also discuss the international and domestic (Pakistan) law in the context of electronic media. It will also consider the relevant international and national efforts to regulate this market.

## **1.3 Research Questions**

The main research question is to determine how the regulation of electronic media, with particular reference to TV broadcasting, can be enforced in Pakistan more effectively. In order to answer this question several subsidiary questions need to be addressed. First, what laws have been adopted by Pakistan to regulate the TV industry? Secondly, how effectively are they enforced? Thirdly, what international standards exist to regulate TV broadcasting and internet TV? Fourthly, what appropriate legal measures are necessary to strengthen the regulation of TV broadcasting and the enforcement of these rules?

As far as enforcement of TV broadcasting is concerned, Pakistan has introduced some electronic media laws, but there remains some enforcement and regulation problems in respect of issues such as cable, satellite, terrestrial, mobile TV and IPTV. Thus the thesis will focus on these issues.

In the context of the regulatory framework, Pakistan has no specific legislation on specific issues such as anti-siphoning sports laws and state aid.

As far as Internet TV is concerned, Pakistan has not adopted specific legislation governing this media mode. This is a field which has not been studied before in Pakistan. So, the thesis will focus mainly on webcasting and the WIPO Proposed Treaty in the search for appropriate solutions.

The thesis will try to fill the gap in the literature. Some recommendations will be proposed by way of conclusion to assist Pakistan in developing future policy and adopting necessary legislation to regulate TV broadcasting.

## **1.4 Research Methodology**

The research is undertaken mostly by reference to both primary and secondary sources in respect of the TV broadcasting industry. In doing so, four different types of research methods are used: explanatory, descriptive, comparative and prescriptive analyses. In particular, a comparative approach is used in the thesis to explore the different drafts of international agreements. Explanatory and descriptive methods are applied when examining the WIPO Proposed Treaty and domestic electronic media laws.

The primary sources upon which the research is based comprise mainly of legislative provisions relevant to electronic media adopted by Pakistan, WIPO and the WTO agreements. A number of national laws that Pakistan has adopted to regulate electronic media will be discussed in the thesis, namely Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 and Rule 2002 as well as other regulations, for example, Cable TV Regulations 2002, Broadcasting Regulations, 2002, Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010. Furthermore, in chapter five, relevant provisions of international agreements on broadcasting such as Bern Convention 1886 (Amended 1979), Rome Convention 1961, Brussels Satellite Convention 1974, TRIPS 1994, WIPO Performance and Phonograms Treaty 1996 will be discussed.

In addition, some annual reports published by the Pakistan Electronic Media Regulatory Authority, the Ministry of Labour, Manpower and Overseas Pakistanis (MOLMOP) and the Auditor-General of Pakistan are relied upon in the thesis, particularly in chapters three and four. An international executive summary by the European Broadcasting Union (EBU) is also used as a source, particularly in Chapter three. Some available Pakistani media cases are also discussed in the thesis.



Secondary sources include law journals, the annual reports of the Pakistan Electronic Media Authority, publications in legal and related fields and computerised research systems. Reference will also be made to drafts and proposals, the WIPO Proposed Treaty and other documents available on the WIPO website, particularly those concerning the special session of the WIPO standing committee on copyright and related rights.

## **1.5 Structure**

The thesis is divided into six chapters. Chapter one is an introductory part of the thesis, which defines some relevant terms. Chapter two sets out the contextual, historical and legal background as to how Pakistan regulates electronic media industry generally and lays the foundation upon which the following chapters are based. The chapter focuses on the relevant Pakistan legislation and enforcement agencies. In addition, this chapter analyses the Pakistan's media legal system through enforcement mechanisms.

Chapters three and four are the key chapters of the thesis. Chapter three analyses five specific enforcement issues that concern Pakistan, namely, cablecasting, satellite, terrestrial broadcasting and the regulation of the new digital technologies Mobile TV and IPTV. Chapter four focuses on two further key issues or gaps in the context of Pakistan media environment, namely sports broadcasting and state aid.

Chapter five describes the relevant international agreements and current initiatives for new and amended agreements and evaluates how these agreements have been implemented. It sets out the relevant provisions of international agreements. The chapter also concludes with a critical discussion on the WIPO Proposed Treaty and webcasting.

Chapter six concludes the thesis by setting out recommendations for the improvement of the regulation and enforcement of TV broadcasting in Pakistan.

## 1.6 Description of Relevant Terms

This section seeks to explain the terminology used in the thesis. The section therefore explains the meaning of broadcasting, the nature of broadcasting and TV and Internet TV broadcasting.

### 1.6.1 Broadcasting

Broadcasting is defined in international agreements, domestic laws and in the literature. The legal and historical development of the term is described below. Broadcasting is also a means of communication between the State and the public.<sup>3</sup> Different kinds of broadcasting, public and private broadcasting are also examined.

This thesis analyses different definitions<sup>4</sup> of 'broadcasting'. First, the word 'broadcasting' is defined in the Rome Convention as the transmission by wireless<sup>5</sup> of sounds or of images and sounds for public reception.<sup>6</sup>

The definition covers only traditional wireless transmissions (Hertzian waves) rather than cable, internet or other wire transmission.<sup>7</sup> The definition, therefore, covers satellite broadcasting which is wireless but is confined to satellite broadcasting which is only available for public reception and not for distribution satellite and point-to-point transmission.<sup>8</sup> The expression in the English version 'transmission for public reception' is misleading in comparison with the French version which correctly defines 'broadcasting' as 'reception par le public'.<sup>9</sup> Public reception is generally used to describe a reception in a public place such as a hotel lobby, a bar or a theatre with a large screen, as opposed to

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<sup>3</sup> M. Palmer & J. Tunstall, *Liberating communications: policy-making in France and Britain* (Oxford: Blackwell Publisher, 1991), 80.

<sup>4</sup> See Annexure I, Comparison between the Definitions of Broadcasting.

<sup>5</sup> There was an Austrian proposal to also include transmissions by wire in the definition. *Records of the Diplomatic on the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Rome* (Geneva: WIPO publication, October 1961), 40.

<sup>6</sup> Rome Convention, Article 3 (f).

<sup>7</sup> Such as cable-casting, webcasting (carried out by wire) and also cable retransmission, simulcasting and retransmission by wire by another organisation.

<sup>8</sup> S. V. Lewinski, *International Copyright Law and Policy* (Oxford: Oxford University Press, 2008), 200.

<sup>9</sup> Used in the definition.

private reception at home.<sup>10</sup> This would differ from the concept of broadcasting under Article 11 *bis* of the Berne Convention, which is clearly one form of communication to the public. The correct wording should therefore be ‘reception by the public’. It seems, however, that the intention of the Diplomatic Conference drafting the Rome Convention was also to understand ‘transmission for public reception’ as ‘transmission for reception by the public.’<sup>11</sup>

There is a distinction between wireless broadcast and cable distribution, although some national laws cover both kinds of media within the term of broadcasting. The French, German and UK laws provide protection for broadcasting organisations covering both wireless and cable as required by the EU Rental/Lending and Related Rights Directive Article 6-9.<sup>12</sup> Cable distribution is not protected under the Rome Convention.

Secondly, the latest definition of broadcasting is to be found in the WIPO Performances and Phonograms Treaty which states as follows:

Transmission by wireless means for public reception<sup>13</sup> of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organisation or with its consent.<sup>14</sup>

This definition comprises of three elements. The first element is practically the same as the one to be found in the WIPO Performance and Phonograms Treaty and the Rome Convention namely ‘broadcasting means the transmission by wireless means for public reception of sounds or of images and sound.’ The minor difference is that the reference to the ‘representations of sounds’ has

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<sup>10</sup> W. Rumphorst, ‘Neighbouring rights protection of broadcasting organisation’ (1992), European Intellectual Property review, 340.

<sup>11</sup> This is indicated directly by a number of statements in the report of the Diplomatic Conference: The words ‘transmission for public reception’ used in the definition should make it clear that broadcasts intended for reception by one person or by a well-defined group such as ships at sea, planes in the air, taxis circulating in a city, etc., are not to be considered as broadcasts.

*Records of the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Rome* (Geneva: WIPO publication, October 1961), 40.

<sup>12</sup> J.A.L. Sterling, *World Copyright Law* (London: Sweet & Maxwell 2003), 211.

<sup>13</sup> Public reception is used here instead of reception by the public.

<sup>14</sup> WIPO Performances and Phonograms Treaty, Article 2 (f).

been added, to indicate the connection with the definition of ‘Phonograms’<sup>15</sup>. This definition is restricted to the wireless transmission, so that any form of the cablecasting such as original cable transmission, cable retransmission and wire based web radio and several others is not covered by this definition.<sup>16</sup>

The second element confirms that a transmission for reception by the public through a satellite falls within the meaning of ‘broadcasting’. The Third element concerns encrypted satellite broadcasts. It is recognised that, where the means for decryption are made available to the public, the effect of the transmission corresponds to the effect of traditional broadcasting as long as the means for decryption are provided to the public by the broadcasting organisation itself or with its consent.<sup>17</sup>

Thirdly, the proposed definition in the WIPO Proposed Treaty on broadcasting is as follows:

Transmission by wireless/wire means for the reception by the public<sup>18</sup> of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also ‘broadcasting’/‘cablecasting’; transmission of encrypted signals is ‘broadcasting’/‘cablecasting’ where the means for decrypting are provided to the public by the broadcasting organisation or with its consent. “Broadcasting”/“cablecasting” shall not be understood as including transmissions over computer networks.<sup>19</sup>

This is the proposed definition of broadcasting. Both kinds of broadcasting, through wire and wireless such as via a satellite, fall within the definition but webcasting is not covered under WIPO Proposed Treaty.

Lastly and fourthly, broadcasting is also defined in the Pakistani statute in a similar manner, that is, as the ‘communication to the public of sound or images or both by means of radio diffusion, including communication by telecast, or

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<sup>15</sup> WIPO Performances and Phonograms Treaty, Article 2 (b).

<sup>16</sup> S. V. Lewinski, *International Copyright Law and Policy* (Oxford: Oxford University Press, 2008), 481.

<sup>17</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Adminstrated by WIPO and Glossary Of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 236.

<sup>18</sup> In the Rome and WPPT the words used ‘public reception’. In this definition the correct wording used that is ‘reception by the pubic’.

<sup>19</sup> WIPO Proposed Treaty, Article 5.

wire, or by both, or by any other means of communication’.<sup>20</sup> Broadcasting means audio and video transmission by way of wire and wireless. Any kind of communication is part of this definition. As a result, webcasting is also part of this definition.

Broadcasting has some relation to other terms such as broadcast and broadcasting organisation. The Rome Convention does not define ‘broadcast’ or ‘broadcasting organisation’ but mentions it in Article 13. The broadcasting organisations enjoy protection with regard to their broadcasts and the definitions of ‘broadcasting’ and ‘rebroadcasting’ clarify the idea of a broadcasting organisation. In any case, the term “broadcasting” obviously covers both radio and television.<sup>21</sup>

As a result, ‘broadcast’<sup>22</sup> is therefore to be understood as the ‘programme output as assembled and broadcast by or on behalf of the broadcasting organisation.’<sup>23</sup> Broadcasting organisation<sup>24</sup> is the organisation with is engaged in the said activity.<sup>25</sup>

There is another precise definition offered by Werner Rumphorst to elaborate the term in a different manner. ‘Broadcast’ means the electronic signal carrying radio or television programmes for reception by the public, irrespective of the original of such programmes or the ownership of the content thereof.”<sup>26</sup>

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<sup>20</sup> The Copyright Ordinance 1962, Section, 26.

<sup>21</sup> C. Masouye, *Guide to the Rome Convention and to the Phonograms Convention* ( Geneva: WIPO Publication, 1981), 15.

Translated from French to English by William Wallace (Formerly Assistant Comptroller in the Industrial Property and Copyright Department at the Department of Trade of the United Kingdom.

<sup>22</sup> “A program transmitted by broadcasting. As such, it is an object of related rights granted to broadcasting Organisations.”

This definition is taken from the Glossary of this Book.

M. Ficsor, *Guide to the Copyright and Related Rights Treaties Administred by WIPO and Glossary Of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 270.

<sup>23</sup> Quoted by W. Rumphorst, ‘Neighbouring rights protection of broadcasting organisation’ (1992), *European Intellectual Property review*, 340” from Gerhard Schricker, *Urheberrecht: Kommentar*, C.H. Beck’sche Verlagsbuchhandlung, (1987), 988-989.

<sup>24</sup> Two beneficiaries Performers, Producers of Phonograms of the Rome Convention defined but third beneficiary Broadcasting Organisation did not define in the Rome Convention.

<sup>25</sup> W. Rumphorst, ‘Neighbouring rights protection of broadcasting organisation’ (1992), *European Intellectual Property review*, 340.

<sup>26</sup> W. Rumphorst, ‘The broadcasters’ neighbouring right’ (22 June 2001) *European Broadcast Union*, 9.

## 1.6.2 Kinds of Broadcasting

TV Broadcasting can be provided by a variety of entities some of which are state-controlled (public broadcasting), some are private commercial companies who operate at global or local levels, and others are non-profit and owned by a community.<sup>27</sup> The thesis however is concerned only with public broadcasting<sup>28</sup> and private commercial broadcasting.

### 1.6.2.1 Public Broadcasting

Public broadcasting is aimed at the general public and it is intended to serve the public so it is financed from public funds and owned by the State.<sup>29</sup> Nevertheless, it should be independent of the State in order to serve the interests of the general public, that is, the people as citizens rather than as consumers.<sup>30</sup>

However, public broadcasting in Pakistan can be misused by the government, parliament, or president and political party or religious purposes or (private) interest group. Public broadcasting is supposed to serve the interests of the public in the best possible manner<sup>31</sup> and, therefore, should primarily serve the public.

The main source of finance in public broadcasting is the licence fee. However, public broadcasting may also be funded<sup>32</sup> from commercial revenue such as advertising, sponsorship or by additional State assistance such as tax reductions and even state aid.

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<sup>27</sup> S. Buckley, et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 34.

<sup>28</sup> Some language do not have a term fully corresponding to the English word “public” and the closest words are state/government/official broadcasting.

W. Rumphorst, ‘Public broadcasting legislation: basic requirements’ 2002, Media Online, 1.

<sup>29</sup> W. Rumphorst, ‘Model public service broadcasting law’ (2003), ITU/BDT and UNESCO, 1.

<sup>30</sup> W. Rumphorst, ‘Public broadcasting legislation: basic requirements’ 2002, Media Online, 2.

<sup>31</sup> W. Rumphorst, ‘Model public service broadcasting law’ (2003), ITU/BDT and UNESCO, 2.

<sup>32</sup> S. Buckley, et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 203.

In the United Kingdom, the British Broadcasting Corporation (BBC)<sup>33</sup> is the best examples of a public service broadcasting organisation which is listened to all over the world. In Pakistan the equivalent public broadcasting entity is the Television Corporation (PTV) and in Australia it is the Australian Broadcasting Company (ABC)<sup>34</sup> and Special Broadcasting Services (SBS).<sup>35</sup>

In Pakistan, PTV was established as a public entity in 1964 but incorporated as a Private Limited Company under the name of Television Promoters Company Limited in 1966. Subsequently in 1967 the Company was converted into a Public Limited Company under the name of Pakistan Television Corporation Limited (PTV). This company was registered under the Companies Act 1913<sup>36</sup> and it is the largest TV channel of Pakistan which provides 89% coverage to its population.<sup>37</sup>

PTV has established centres in Karachi, Rawalpindi/Islamabad, Peshawar and Quetta. PTV satellite transmissions are available round the clock. The company has six different TV channels under its control.<sup>38</sup> These are PTV Home,<sup>39</sup> PTV Global,<sup>40</sup> PTV News,<sup>41</sup> PTV National,<sup>42</sup> AJK TV<sup>43</sup> and PTV Bolan.<sup>44</sup> It is a huge organisation employing 6000 persons.<sup>45</sup>

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<sup>33</sup> The British Broadcasting Corporation (BBC) Published at <http://www.bbc.co.uk/tv/>. Last visited on 27th August 2012.

<sup>34</sup> The Australian Broadcasting Company (ABC) Published at <http://www.abc.net.au/>. Last visited on 27th August 2012.

<sup>35</sup> Special Broadcasting Services (SBS) Published at <http://www.sbs.com.au/>. Last visited on 27th August 2012.

<sup>36</sup> Replaced by the Companies Ordinance, 1984.

<sup>37</sup> PTV Home covers 89 % population while PTV news 78 %.

Pakistan Television Corporation Limited, 'Introduction' (2012), published at <http://www.ptv.com.pk/introduction.asp>. Last visited on 11th August 2012.

<sup>38</sup> M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 21.

<sup>39</sup> PTV Home is main family entertainment channel. It allegedly covers 89 percent of the population.

<sup>40</sup> PTV Global provides entertainment and the latest news to Pakistanis working abroad. It only broadcasts through satellite.

<sup>41</sup> PTV News and provides update news and current affairs round the clock. It allegedly covers 78 percent of the population.

<sup>42</sup> PTV National provides different local News and entertainment in all languages to promote the culture of the country's four provinces;

<sup>43</sup> AJK TV is Kashmiri Channel, providing Kashmiri news and Gojri news. It transmits from Muzaffarabad, in Azad Jammu and Kashmir

<sup>44</sup> Baluchi-language channel, it transmits from Quetta.

M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 21 and 22.

<sup>45</sup> Annual report of PTV year 2003-04, P4.

PTV is owned by the federal government of Pakistan. The government controls its editorial and administrative policies. The government also appoints the PTV Board of Directors. The Board then elects a chairman and a managing director, who are responsible for the implementation of the corporation's policies. As a result, PTV is entirely controlled by the federal government.<sup>46</sup>

### 1.6.2.2 Private Broadcasting

The main objective of private broadcasting companies is to make a profit. The private sector is funded from commercial revenue such as the subscription fees paid by viewers as well as from advertising and sponsorship. There are some private television channels in Pakistan namely Geo, Aaj TV, Dunya TV, Express TV, ARY and Hum TV. There are also a few vernacular language and food channels which broadcast locally. Private television broadcasting is regulated in Pakistan by the Pakistan Electronic Media Regulation Authority.<sup>47</sup>

All forms of broadcasting are ultimately financed by the viewers: as tax payers<sup>48</sup> (state funding); as consumers of products and services<sup>49</sup> (advertising and sponsorship); as subscribers to a given programme channel<sup>50</sup> (pay - TV); or as holders of a receiving set (paying a licence fee). In each case the consumers/viewers have no choice as they are obliged to pay one way or another.

The best examples of private service broadcasting organisations are to be found in the United Kingdom and the United States. Examples in the United Kingdom are Independent Television (ITV)<sup>51</sup> and Scottish Television (STV).<sup>52</sup> In the United States there are the National Broadcasting Company (NBC)<sup>53</sup> and the Fox

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<sup>46</sup> M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 21.

<sup>47</sup> See detail in Chapter 4.3.3.

<sup>48</sup> Being a tax payer, finance the programme indirectly through state aid.

<sup>49</sup> Being a consumer of products and services, finance the programme as a purchaser.

<sup>50</sup> Being a subscriber of TV channels, finance the TV as viewer.

<sup>51</sup> Independent Television (ITV) Published at [http://www.itv.com/?intcmp=NAV\\_HOME1](http://www.itv.com/?intcmp=NAV_HOME1). Last visited on 27th August 2012.

<sup>52</sup> STV's headquarters are in Glasgow Published at <http://www.stv.tv/>. Last visited on 27th August 2012.

<sup>53</sup> National Broadcasting Company (NBC)<sup>53</sup> Published at <http://www.nbc.com/>. Last visited on 27th August 2012.



Broadcasting Company<sup>54</sup> whilst in Pakistan there exists the following: Geo Television Network,<sup>55</sup> Aaj TV,<sup>56</sup> ARY<sup>57</sup> and Hum TV.<sup>58</sup>

### 1.6.3 TV and Internet

There are more means of communication with people than ever before - television and radio, cable and satellite, telephone and cellular, newspaper and magazines, the Internet. Media is one of the ways of communicating and it may take one of the following forms: printed or electronic media. Printed media includes newspaper publications and magazines etc. while electronic media includes broadcasts through mobile, computer, radio, TV and Internet. Electronic media is divided further into two categories visual and audio. TV and Internet TV are one of the categories of the visual category. The thesis focuses on selected legal aspects of TV and Internet TV (visual) broadcasting in Pakistan.

Broadcasting through TV is a major industry in Pakistan whether through terrestrial, satellite or cable. Each method of delivery has the aim of reaching an audience with one ultimate goal of providing viewers, listeners, or readers with content news and information, entertainment and commentary.<sup>59</sup> In addition to this service, TV can also play a vital role in educating viewers. It has been commented that '[T]elevision is a more powerful medium, less limited than radio by culture and linguistic frontiers.'<sup>60</sup>

Almost everyone uses a computer and most have access to the internet. The Internet is a major source of information and internet broadcasting is at a stage of further development. Nevertheless it has caused problems given the ease of access and the difficulty in controlling the material that is posted on the internet. One of the major problems that have emerged is internet broadcast piracy. This issue will be considered briefly in chapter 5.

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<sup>54</sup> Fox Broadcasting Company Published at <http://www.fox.com/>. Last visited on 27th August 2012.

<sup>55</sup> Geo Television Network Published at <http://www.geo.tv/>. Last visited on 27th August 2012.

<sup>56</sup> Aaj TV Published at <http://www.aaj.tv/>. Last visited on 27th August 2012.

<sup>57</sup> ARY Published at <http://www.arydigital.tv/home.aspx>. Last visited on 27th August 2012.

<sup>58</sup> Hum TV Published at <http://www.hum.tv/>. Last visited on 27th August 2012.

<sup>59</sup> A. P. Lutzker, *Content Rights for creative Professionals Copyright and Trademarks in a Digital Age*, 2<sup>nd</sup> Edition (Boston: Focal Press, December 16, 2002).

<sup>60</sup> E, Barendt, *Broadcasting Law A Comparative Study* (Oxford: Clarendon Press, 1993), 213.

## Chapter 2: Pakistan's Legal and Regulatory System

In this chapter, the legal and regulatory system of Pakistan media TV will be examined.

In the digital era, electronic TV media has become one of Pakistan's fastest growing service industries, but there is still a need for considerable improvement with regard to the laws and regulations governing the activity.

There are two main kinds of issues discussed in the thesis. The first one relates to enforcement issues (Chapter 3) and the second one focuses on existing gaps (Chapter 4) in the regulatory framework. So, it is necessary to understand the Pakistan media legal and regulatory system and how the media TV enforcement mechanism works in Pakistan.

In the past, Pakistan's electronic TV media market was run solely as a public sector industry<sup>61</sup> but now, after the rapid development of the private sector since 2003, most of the industry is privately owned. Pakistan is one of the countries where many privately owned television channels have started transmission within the last few years.

There are many regulatory bodies in Pakistan that play major roles in the regulation of electronic media. The most important regulatory authorities are the Pakistan Electronic Media Regulatory Authority (PEMRA) and Pakistan Telecommunication Authority (PTA) discussed below.

The PEMRA directly regulates private electronic TV media, namely cable TV and others broadcastings in Pakistan. This regulatory Authority controls Pakistani media by enforcing national laws.

The following laws will be considered in this section: the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007; the Cable TV

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<sup>61</sup> Pakistan Television Corporation Limited (PTV) is one and only public sector television company in Pakistan. Pakistan Television Corporation Limited is a public limited company.

Regulations 2002; Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010 and the Broadcasting Regulations 2002.

The Chapter starts with an historical summary of the electronic TV media industries in Pakistan. The chapter then defines the institutional arrangements for regulating this industry, and the relevant media laws. It will conclude with an analysis of the enforcement mechanism operating in Pakistan.

## **2.1 The History of Electronic TV Media in Pakistan**

This section focuses on the history of broadcasting and cable TV in Pakistan. It is divided into two stages that is the evolutionary period (1947 to 2000) and the latest developments (2000 to present).

### **2.1.1 Stage One: Evolutionary Period (1947 to 2000)**

Pakistan entered into the television<sup>62</sup> broadcasting age by establishing<sup>63</sup> the Pakistan Television Corporation Limited<sup>64</sup> at Lahore and Dhaka<sup>65</sup> in 26 November

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<sup>62</sup> At first, Pakistan Television started black and white transmission, colour transmission began on February 18, 1979.

<sup>63</sup> Over the years the system has grown countrywide.

- 1964 Television services in monochrome started commissioned
- 1967 Two production studios added at Rawalpindi and Karachi.
- 1973 National microwave network commissioned linking TV centres.
- 1974 Quetta/ Peshawar centres commissioned.
- 1976 Colour transmission started.
- 1987 Federal TV centre at Islamabad commissioned.
- 1992 Second TV channel for education commissioned. (Only TV station at Islamabad and 16 rebroadcast stations.
- 1996 Local area transmission from four stations started and extended to three more stations.
- 1998 transmission of PTV world programmes started.
- 1998 Upto 2006 production centres (Lahore, Quetta, Peshawar, Islamabad-I and Islamabad-II). 35 rebroadcast stations in operation for PTY-I. 16 rebroadcast stations in operation for PTV-2.

Pakistan Television Corporation Ltd. 'Introduction' (2012) Published at <http://ptv.com.pk/introduction.asp>. Last visited on 27th August 2012.

<sup>64</sup> Pakistan Television Corporation Limited (PTV) is a public limited company and all its shares are held by Government of Pakistan. So it is a public sector corporation.

<sup>65</sup> Dhaka was part of Pakistan but after independence of Bangladesh, it is a part of Bangladesh.

1964.<sup>66</sup> Television centres were established in Karachi and Rawalpindi/Islamabad in 1967 and in Peshawar and Quetta in 1974.<sup>67</sup> The private sector of Pakistan electronic media started operating under the control of the Pakistan Telecommunication Authority<sup>68</sup> on the 1<sup>st</sup> January 1997 in accordance with the Telecom Reorganisation Act 1996.

Before 2002 when the Pakistan Electronic Media Regulatory Authority (PEMRA) was created, the electronic media laws of Pakistan were not in a single legislative measure. They were scattered in different legislative measures, administrative regulations and departmental rules. The major national laws that contained electronic media legislation were Pakistan Television Company Act, 1964, Merchandise Marks Act, 1889, Pakistan Penal Code, and Custom Act, 1969.

As far as international obligations were concerned, during this period, in 1948, Pakistan acceded to the Berne Convention. Pakistan also joined WIPO<sup>69</sup> in 1977<sup>70</sup> and the WTO in 1995.<sup>71</sup>

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<sup>66</sup> M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 21.

<sup>67</sup> Pakistan Television Corporation Limited, 'History' (2012) Published at <http://ptv.com.pk/introduction.asp>. Last visited on 27th August 2012.

<sup>68</sup> The Pakistan Telecommunication Ordinance 1994, established the primary regulatory framework for the telecommunication industry including the establishment of an authority. Thereafter, Telecommunication (Re-Organisation) Act no XVII was promulgated in 1996 that aimed to reorganize the telecom sector of Pakistan. Under Telecom Reorganisation Act 1996, Pakistan Telecommunication Authority (PTA) was established in January 1997 to regulate the establishment, operation and maintenance of telecommunication systems, and the provision of telecom services.

PTA has its headquarters at Islamabad and zonal offices located at Karachi Lahore, Peshawar, Quetta and Rawalpindi.

<sup>69</sup> The World Intellectual Property Organisation (WIPO) is a specialized agency of the United Nations. It is dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

WIPO was established by the WIPO Convention in 1967 with a mandate from its member states to promote the protection of IP throughout the world through cooperation among states and in collaboration with other international organisations. Its headquarters are in Geneva, Switzerland.

WIPO, 'What is WIPO?' (2012), Published at [http://www.wipo.int/about-wipo/en/what\\_is\\_wipo.html](http://www.wipo.int/about-wipo/en/what_is_wipo.html). Last visited on 27th August 2012.

<sup>70</sup> WIPO, 'Convention establishing the World Intellectual Property Organisation: WIPO Convention (1967), amended in 1979' Published at WIPO.

WIPO, 'Contracting parties of treaties administrated by WIPO' (2012), [http://www.wipo.int/treaties/en/documents/pdf/wipo\\_convention.pdf](http://www.wipo.int/treaties/en/documents/pdf/wipo_convention.pdf). Last visited on 27th August 2012.

<sup>71</sup> WIPO, 'Pakistan and the WTO' (2012), Published at [http://www.wto.org/english/thewto\\_e/countries\\_e/pakistan\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/pakistan_e.htm). Last visited on 27th August 2012.

### 2.1.2 Stage Two: Latest Development (2000 to Present)

The Pakistan Electronic Media Regulatory Authority was established under the Pakistan Electronic Media Regulatory Authority Ordinance 2002 to facilitate and regulate only the private electronic media. On 8 April 2005, by a Presidential Ordinance, the Government of Pakistan decided to incorporate the Enforcement Committee in keeping with the upcoming global trend. The Enforcement Committee is working for enforcement coordination under the supervision of Intellectual Property Organisation of Pakistan. The Pakistan Electronic Media Regulatory Authority is also one of the stakeholders of these committees.<sup>72</sup>

The obvious need for new laws to control the private TV channels post 1997 resulted in legislative action. So, new electronic media laws have been promulgated, that is Cable TV Regulations 2002, Broadcasting Regulations, 2002, Copyright Ordinance, 1962 (amendment 2000), Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 and Rule 2002 and PEMRA (Councils of Complaints), Rules 2010. The content of these laws will be described in section 2.3.

## 2.2 Institutional Arrangements

The Government of Pakistan tries to enforce electronic media through autonomous organisations and various regulatory authorities. These are executive bodies whose tasks are to implement the relevant legislation. These organisations are directly or indirectly relate with media laws. The structure and function of these bodies is discussed below in the context of regulation of electronic media.

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<sup>72</sup> Enforcement coordination is being institutionalised and expanded by establishing Enforcement Committees in Islamabad, Karachi and Lahore. Its membership comprises the following stakeholders:

Agency	Designation
IPO	Director General, IPO HQ, Islamabad
CBR	Chief (Customs), CBR, Islamabad
PEMRA	General Manager (Enforcement), Islamabad
FIA	Additional Director General Islamabad
Police	Additional SP, Islamabad
Customs Intelligence	Additional Director, Islamabad
Law Division	Deputy Draftsman, Law Division, Islamabad

Intellectual Property Organisation of Pakistan, 'Introduction to IPO Pakistan' (2012), published at <http://www.ipo.gov.pk/Contents/AboutIPO.aspx>. Last visited on 27th August 2012.

### **2.2.1 Pakistan Telecommunication Authority**

The private sector of Pakistan electronic TV media started operating under the control of the Pakistan Telecommunication Authority (PTA)<sup>73</sup> on the 1<sup>st</sup> January 1997 in accordance with the Telecom Reorganisation Act 1996 but since the establishment of PEMRA, electronic media as a whole is regulated by the PEMRA instead of PTA.

The PTA's function now is to regulate the creation, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan. It has no role in regulating electronic media.

The trip play services, land phone, broadband and television include PTA as a regulatory authority in broadcasting. There is some broadcasting transmission which also belongs to telecommunication such as IPTV, cable and Mobile Operators. These service providers require a licence from Pakistan Telecommunication Authority to run their business in Pakistan. So, the authority has indirect involvement in broadcasting transmission as well.

### **2.2.2 Pakistan Electronic Media Regulatory Authority**

As mentioned above, the Pakistan Electronic Media Regulatory Authority (PEMRA) was established in 2002 by an Ordinance incorporating the private<sup>74</sup> sector into the field of electronic media.<sup>75</sup> This Regulatory Authority<sup>76</sup> directly

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<sup>73</sup> The Pakistan Telecommunication Ordinance 1994, established the primary regulatory framework for the telecommunication industry including the establishment of an authority. Thereafter, Telecommunication (Re-Organisation) Act no XVII was promulgated in 1996 that aimed to reorganize the telecom sector of Pakistan. Under Telecom Reorganisation Act 1996, Pakistan Telecommunication Authority (PTA) was established in January 1997 to regulate the establishment, operation and maintenance of telecommunication systems, and the provision of telecom services.

PTA has its headquarters at Islamabad and zonal offices located at Karachi Lahore, Peshawar, Quetta and Rawalpindi.

<sup>74</sup> Pakistan Electronic Media Regulatory Authority has been established under PEMRA Ordinance 2002 to facilitate and regulate the private electronic media.

Pakistan Electronic Media Regulatory Authority (PEMRA), 'Introduction' Published at <http://www.pemra.gov.pk/>. Last visited on 27th August 2012.

Pakistan Television Corporation Ltd is in public sector and not under control of Pakistan Electronic Media Regulatory Authority.

<sup>75</sup> The Authority works under Cabinet Division under the direct control of the Prime Minister just like other regulatory authorities such as National Electronic Power Regulatory Authorities (NEPRA) and Oil and Gas Regulatory Authority (OGRA) etc.

regulates privately owned electronic media namely cable TV and broadcasting. The public owned electronic media is not regulated by PEMRA.

The preamble of the Pakistan Electronic Media Regulatory Authority Act<sup>77</sup> states the following objectives: first to improve the standard of information, education and entertainment, enlarge the choice available to the people of Pakistan in the news media, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest; secondly, to facilitate the devolution of responsibility and power to the grass-roots by improving access of the people to mass media at the local and community level and thirdly, to ensure accountability, transparency and good governance by optimising the free flow of information.

The main responsibility<sup>78</sup> of the Authority is to regulate the establishment and operation of all broadcast media and distribution services in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences.<sup>79</sup> The Authority regulates the distribution of foreign and local TV and radio channels in Pakistan.

The Electronic Media Regulatory Authority controls electronic media by implementing the national legislation governing electronic media, some of which were adopted to implement international treaty obligations.

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<sup>76</sup> Established two years earlier as the Regulatory Authority for Media Broadcast Organisations (RAMBO), this authority was eventually renamed the Pakistan Electronic Media Regulatory Authority (PEMRA).

M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 26.

<sup>77</sup> The Pakistan Electronic Media Regulatory Authority Act 2007 of Pakistan has been amended many times from the date of its promulgation.

<sup>78</sup> Former Section 4, which read as "4. Functions of the Authority: The Authority shall be responsible for regulating the establishment and operation of all broadcast and CTV stations in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences" substituted by PEMRA (Amendment) Act, 2007 (Act No.II of 2007).

<sup>79</sup> The officers of the Federal Government, Provincial Government and Local Government including the Capital Territory Police and the Provincial Police assist the Authority in the discharge of its functions.

PEMRA Act, 2007, s 33A.

## 2.3 National Electronic Media Laws

The Authority, as a regulating body has legislative, executive, and judicial powers. It makes rules that apply to a media TV industry, enforces those rules, and hears initial cases that involve alleged violation of those rules. The Authority or Council of Complaints may impose fines or other punishments against infringements. The decisions of the authority are subject to judicial review.

There are a number of national laws in Pakistan, which regulate electronic media. Pakistan electronic media legislation is scattered in different laws, regulations and rules. The major national laws that contain electronic media are Pakistan Electronic Media Regulatory Authority Ordinance 2007 and Rule 2002 with other regulations. These two are the main legislative measures regulating electronic media operators. However, in addition, there are special regulations Cable TV Regulations 2002, Broadcasting Regulations, 2002 and PEMRA (Councils of Complaints), Rules 2010, which are also relevant and examine collectively.<sup>80</sup>

The statutes provide definitions of broadcast media,<sup>81</sup> broadcast station,<sup>82</sup> broadcaster,<sup>83</sup> cable TV,<sup>84</sup> cable television operator,<sup>85</sup> cable television system,<sup>86</sup>

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<sup>80</sup> Draft Content Regulation and Television Broadcast Station (Operations) Regulations 2011, draft is also available on Pakistan Electronic Media Regulatory Authority website. Pakistan Electronic Media Regulatory Authority, 'Television Broadcast Station (Operations) Regulations-2011(Draft)' (2011) published at [http://www.pemra.gov.pk/pemra/images/docs/pub-rep/television\\_broadcast\\_station\\_operations\\_regulations\\_2011.pdf](http://www.pemra.gov.pk/pemra/images/docs/pub-rep/television_broadcast_station_operations_regulations_2011.pdf). Last visited on 27th August 2012.

<sup>81</sup> PEMRA Act, 2007, s 2 (c) and Broadcasting Regulations, 2002, Part-I, r 2 (d). Broadcast Media means such media, which originate and propagate broadcast and pre-recorded signals by terrestrial means or through satellite for radio or television and includes teleporting, provision of access to broadcast signals by channel providers and such other forms of broadcast media as the Authority may, with the approval of the Federal Government, by notification in the official Gazette, specify.

<sup>82</sup> PEMRA Act, 2007, s 2 (ca) and Broadcasting Regulations, 2002, Part-I, r 2 (f). Broadcast Station means physical, technical and software infrastructure for the operation of radio or television and also includes satellite uplinking from ground, repeaters and all such other accessories.

<sup>83</sup> PEMRA Act, 2007, s 2 (d) and Broadcasting Regulations, 2002, Part-I, r 2 (e). Broadcaster means a person engaged in broadcast media except broadcast journalists not actively involved in the operation, ownership, management or control of the broadcast media.

<sup>84</sup> PEMRA Act, 2007, s 2 (da).

Cable TV means reception of broadcast and pre-recorded signals from different channels and their distribution to subscribers through a set of closed transmission paths.

<sup>85</sup> Cable TV Regulations, 2002, Part-I, r 2 (e).

Cable Television Operator means any person who, after receiving the broadcast signals from other transmission channels, re-broadcasts or provides service through a cable television system



copyright,<sup>87</sup> council,<sup>88</sup> electronic media,<sup>89</sup> eligible channel,<sup>90</sup> illegal broadcast operation,<sup>91</sup> illegal cable TV operation,<sup>92</sup> licence,<sup>93</sup> and programme etc.<sup>94</sup>

These statutes are generally very similar to each other. So, it is not discussed individually but into two sections.

There are two aspects of national media laws: regulation and enforcement.

### 2.3.1 Regulatory Process

In this subsection the following aspects of the regulatory process will be considered: the grant of a licence; ineligibility for the grant of a licence; the terms and conditions imposed on the licensee.

#### 2.3.1.1 Grant of a Licence

The Authority has exclusive right to issue a licence.<sup>95</sup> The licence must be issued within 100 days of the application being made.<sup>96</sup> It has the power to determine

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or otherwise controls or is responsible for the management and operation of a cable television system.

<sup>86</sup> CTV Regulations, 2002, Part-I, r 2 (f).

Cable Television System means a system for receiving the broadcast signals from other channels of communication and re-broadcasting or distributing of television programs through a set of transmission paths, including MMDS, to the multiple subscribers.

<sup>87</sup> PEMRA Act, 2007, s 2 (h) and Broadcasting Regulations, 2002, Part-I, r 2 (j),

Copyright means copyright as defined in the Copyright Ordinance 1962 (XXXIV of 1962).

<sup>88</sup> Broadcasting Regulations, 2002, Part-I, r 2 (k), Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 2 (e) and CTV Regulations 2002, Part-I, r 2 (j).

Council means the Council of Complaints and includes regional office of the Council of Complaints, established under the Ordinance.

<sup>89</sup> PEMRA Act, 2007, s 2 (hc).

Electronic media includes the broadcast media and distribution services.

<sup>90</sup> CTV Regulations, 2002, Part-I, r 2 (m).

Eligible Channel means a channel considered suitable for re-broadcasting or distribution.

<sup>91</sup> Broadcasting Regulations, 2002, Part-I, r 2 (p).

Illegal Broadcast Operation means the relaying programmes without having a valid licence from the Authority.

<sup>92</sup> CTV Regulations, 2002, Part-I, r 2 (o).

Illegal Cable TV Operation means the relaying or distributing programmes through a cable TV system, without having a valid licence from the Authority.

<sup>93</sup> PEMRA Act, 2007, s 2 (m), Broadcasting Regulations, 2002, Part-I, r 2 (r) and CTV Regulations, 2002, Part-I, r 2 (p).

Licence means a licence issued by the Authority to establish and operate a broadcast media or distribution service.

<sup>94</sup> PEMRA Act, 2007, s 2(t), Broadcasting Regulations, 2002, Part-I, r 2 (z) and CTV Regulations, 2002, Part-I, r 2 (v).

Programme means the systematic broadcasting of visual or sound images by a broadcast station but does not include an advertisement.

the number of licences to be issued in each category and charge fees<sup>97</sup> for the grant of a licence and annual renewal.<sup>98</sup>

The Authority evaluates the application as to economic viability, technical competence, financial capability, credibility and track record and the extent of Pakistani share in ownership.<sup>99</sup> The authority can impose any other condition as appears necessary.<sup>100</sup>

The Authority calls for a tender through advertising<sup>101</sup> and determines the number of licences to establish and operate a broadcast station.<sup>102</sup> After receiving the applications the Authority forwards them to the Frequency Allocation Board (FAB)<sup>103</sup> for frequency allocation<sup>104</sup> and issues the licence after allocation frequency.<sup>105</sup>

There is criteria for refusing to issue the licence,<sup>106</sup> namely that the applicant is not a Pakistani citizen or resident in Pakistan, or the applicant is a foreign company established under a foreign law, or the applicant company's majority of shares are owned or controlled by foreigners and managed by a foreigner or the application is made by any person funded or sponsored by a foreign government and organisation.<sup>107</sup>

The Authority can revoke or suspend the licence of a broadcast media or distribution service<sup>108</sup> if the licensee fails to pay the licence fee, the annual

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<sup>95</sup> PEMRA Act, 2007, s 19 (1), CTV Regulations, 2002, Part-II r 3(2) and Broadcasting Regulations, 2002, part-II r 3 (2).

<sup>96</sup> PEMRA Act, 2007, s 22 and CTV Regulations, 2002, Part-II r 6 (4).

<sup>97</sup> Authority will fix the rates from time to time. See fee structure of cable TV in Annexure-II and III.

<sup>98</sup> PEMRA Act, 2007, s 19 (4).

<sup>99</sup> CTV Regulations, 2002, Part-II r 5.

<sup>100</sup> CTV Regulations, 2002, Part-II r 6 (2).

<sup>101</sup> Broadcasting Regulations, 2002, part-II r 4 (1).

<sup>102</sup> Broadcasting Regulations, 2002, part-II r 4 (2).

<sup>103</sup> Broadcasting Regulations, 2002, part-II r 4 (6).

<sup>104</sup> Broadcasting Regulations, 2002, part-II r 4 (7).

<sup>105</sup> This rule applies only in broadcasting.

<sup>106</sup> PEMRA Act, 2007, s 25, Pakistan Electronic Media Regulatory Authority Rules, 2002, r 17, CTV Regulations, 2002, Part-II r 8 and Broadcasting Regulations, 2002, r 8.

<sup>107</sup> New clause (d) inserted by the PEMRA (Amendment) Act, 2007, (Act No. II of the 2007).

<sup>108</sup> Section 30

renewal fee or any other charges including fines<sup>109</sup> or contravenes any provision of this Ordinance or rules or regulations.<sup>110</sup>

The Authority can refuse a licence on the ground that it is against the public interest.<sup>111</sup> But there is no definition of public interest anywhere in these media statutes.<sup>112</sup>

A broadcaster<sup>113</sup> or cable TV operator who is issued a licence under this Act has several obligations imposed on him. The Authority makes sure that every licence follows the terms and conditions imposed to ensure preservation of the sovereignty, security and integrity of Pakistan<sup>114</sup> and the national, cultural, social and religious values and the principles of public policy. The Authority also ensures that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency.<sup>115</sup> There is also another condition, which is as follows:

A person who is issued a licence under this Ordinance shall not broadcast or distribute any programme or advertisement in violation of copyright<sup>116</sup> or other property right.<sup>117</sup>

In addition to the general terms and conditions contained in the Schedule, the Authority may impose on the licensee such other terms and conditions as appear necessary.<sup>118</sup>

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<sup>109</sup> Section 30 (a)

<sup>110</sup> Section 30 (b)

<sup>111</sup> CTV Regulations, 2002, Part-II r 6 (3).

<sup>112</sup> No definition of Public interest even in Pakistani laws.

<sup>113</sup> Broadcasting Regulations, 2002, part-II r 3(3).

<sup>114</sup> PEMRA Act, 2007, s 20 (a).

<sup>115</sup> PEMRA Act, 2007, s 20 (c).

<sup>116</sup> Broadcasting Regulations, 2002, part-II r 15 and CTV Regulations, 2002, Part-II r 13 (1).

<sup>117</sup> PEMRA Act, 2007, s 20 (g).

<sup>118</sup> CTV Regulations, 2002, Part-II r 6(2).

### 2.3.2 Enforcement Process

In this subsection the following aspects of the enforcement process will be considered: Council of Complaints, prohibition, offence and penalty and appeal.

#### 2.3.2.1 Councils of Complaints

There are seven Councils<sup>119</sup> of the Complaint Councils.<sup>120</sup> One is in the federal capital Islamabad headed by a Chairperson<sup>121</sup> and five members<sup>122</sup> and the remaining six are regional councils<sup>123</sup> in provincial capitals.

A Council of Complaint is a recommendatory body that assists<sup>124</sup> the Authority in carrying out the objectives and purposes of the PEMRA Ordinance.<sup>125</sup> Each Council of Complaints works independently but under the supervision of the Authority.<sup>126</sup>

PEMRA is the regulating and enforcing body. An individual can lodge a complaint directly to a Council of Complaint.<sup>127</sup> These complaints can be raised against broadcast media companies and distribution service operators.<sup>128</sup>

A Council of Complaint cannot take final action on these complaints. A Council just recommends<sup>129</sup> to the Authority<sup>130</sup> a number of actions<sup>131</sup> including a censure,

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<sup>119</sup> See detail in Chapter 2.4.

<sup>120</sup> Councils of Complaints have handled 1450 cases, which include 205 complaints of Sindh province, 315 of Punjab province and 180 of NWFP, 254 complaints of Balochistan and 496 relating to Islamabad Capital Territory.

Internews, Essentials about PEMRA: The who, what, where, when and why of the broadcast regulator, Issue 3, Vol.1, (Jan - Mar 2004), Media Law Bulletin, 15.

<sup>121</sup> For the word "Chairman" the word "Chairperson" substituted by the PEMRA (Amendment) Act 2007 (Act No.II of the 2007).

<sup>122</sup> PEMRA Act, 2007, s 26 (3).

<sup>123</sup> The officer incharge of a regional office represents of the Authority and performs such functions and duties as assigned to him from time to time. He also acts as Secretary to the respective regional Council under the supervision of the respective Commissioner of Complaints. The Authority appoints a coordinating officer at its headquarters in Islamabad to liaise with the regional offices of the Councils of Complaints.

Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 18.

<sup>124</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 12.

<sup>125</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 3 (1).

<sup>126</sup> Broadcasting Regulations, 2002, Part-III r 17 (2) and Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 3 (2).

<sup>127</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 8 (1).

<sup>128</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 3 (3).

<sup>129</sup> The Council must dispose of the matter within 40 days.

a fine<sup>132</sup> and/or revocation of a licence.<sup>133</sup> As a recommendatory body, a Council of Complaint gives its recommendation to the Authority and Authority gives its decision in the light of Council's recommendations. It is PEMRA which takes the final decision.

Any person, who is unhappy with the decision of the Authority, may appeal to the High Court<sup>134</sup> within 30 days by way of judicial review.<sup>135</sup> There may be a further appeal to the Supreme Court.

The Council has the power to summon a licensee against whom a complaint has been made and call for an explanation regarding any matter.<sup>136</sup> After that, the Council may recommend to the Authority for the suspension or revocation of a licence or censure or impose a fine on a licensee for violating the Code of Conduct for programmes and advertisements.<sup>137</sup> The Council consists of six members<sup>138</sup> headed by a chairperson<sup>139</sup> who holds the position for 2 years.<sup>140</sup>

The Council monitors all aspects of broadcasting including programme content, quality and standards of the transmissions from the broadcast stations. The Council keeps the Authority informed on feedback and public response to the programme content, the quality and impact of the programmes and advertisements that are broadcasted.<sup>141</sup> The Councils submits bi-annually reports to the Authority with regard to the nature and number of complaints received, recommendations made by the Council and the action taken by the Authority.<sup>142</sup>

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Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 9 (9).

<sup>130</sup> Authority means the Pakistan Electronic Media Authority (PEMRA). The Chairman and Members of the Authority make the final decision in reference to a recommendation by the Council of Complaints.

Reply received by email from Amin Afridi, Legal Consultant, Pakistan Electronic Media Regulatory Authority.

<sup>131</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 8.

<sup>132</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 8 (5).

<sup>133</sup> Reply received by email from Amin Afridi, Legal Consultant, Pakistan Electronic Media Regulatory Authority.

<sup>134</sup> See Annexure IV, Pakistan Judicial Hierarchy.

<sup>135</sup> PEMRA Act, 2007, s 30 (A).

<sup>136</sup> PEMRA Act, 2007, s 26 (3A), Broadcasting Regulations, 2002, Part-III r 18 (3) and Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 8.

<sup>137</sup> PEMRA Act, 2007, s 26(5) and CTV Regulations, 2002, Part-III r 16 (3).

<sup>138</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 4.

<sup>139</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 4.

<sup>140</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 5.

<sup>141</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 8 (6).

<sup>142</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 12.

### 2.3.2.2 Prohibition

The Authority or an officer may prohibit the broadcasting, re-broadcasting or distributing any programme or advertisement on the grounds that it raises hatred among the people or it is prejudicial to the maintenance of law or disturbance of the peace and endangers national security or it is against Ideology of Pakistan or pornographic, obscene or vulgar etc.<sup>143</sup> A foreign broadcasting service may also be prohibited as unacceptable.<sup>144</sup>

A person who has a broadcast media licence or a 'landing rights' permission cannot sell its air time to any foreign broadcaster without prior permission from Authority.<sup>145</sup>

The licensee cannot merge or amalgamate with any other person without the prior approval of the Authority.<sup>146</sup>

### 2.3.2.3 Offences and Penalties

The Authority has been granted significant enforcement powers in order to ensure compliance with the law. For example, the Authority may impose a fine which may extend to 10 million rupees<sup>147</sup> if a media company or a distribution service violates or abets the violation of any of the provisions of the Ordinance.<sup>148</sup>

The Authority has several powers at its disposal. It may order up to 3 years imprisonment or a fine or both, if anyone repeats the violation<sup>149</sup> and damages, removes, tampers or commits theft of any equipment of a broadcasting media or

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<sup>143</sup> PEMRA Act, 2007, s 27, Broadcasting Regulations, 2002, Part-IV r 24 and CTV Regulations, 2002, Part-IV r 21.

<sup>144</sup> Unacceptable means prejudice the security and sovereignty of Pakistan, the public interest or order or national harmony or obscene or pornographic or against good taste or decency. CTV Regulations, 2002, Part-IV r 22(2).

<sup>145</sup> Section 27 (A) inserted by the PEMRA (Amendment) Act, 2007, (Ordinance No. LXV of 2007).

<sup>146</sup> Broadcasting Regulations, 2002, part-II r 12.

<sup>147</sup> For word "one" word "ten" substituted by the PEMRA (Amendment) Act 2007 (Act No.II of 2007).

<sup>148</sup> PEMRA Act, 2007, s 33 (1).

<sup>149</sup> PEMRA Act, 2007, s 33 (2).

distribution service station.<sup>150</sup> The Authority may also impose a 4 year imprisonment or a fine or both, in addition to the confiscation of the equipment, if anyone without a licence violates any of the provisions of the Ordinance.<sup>151</sup>

Upon information supplied by the Authority, the courts in Pakistan can issue search warrants against unlicensed broadcast media or distribution service operators and seize all or any equipment.<sup>152</sup> The Authority required some amendment in laws with regard to discharge of its function.

Another amendment requires federal, provincial and district governments to assist the Authority in [the] discharge its functions. This means [the] police has been empowered to take action on a report from an authorised PEMRA official. Similarly the bill also allows PEMRA officials to get a search warrant from “the Court” (which court, it hasn't been defined) and raid with the help of police any premises, which is suspected of housing an illegal broadcasting station.<sup>153</sup>

The Authority may also authorise an officer/official to inspect the place where the illegal operation is being carried out. The officer is assisted by the local law enforcing authorities as well as his own force<sup>154</sup> and may seize the equipment being used for the illegal operation but needs prior permission of the Authority.<sup>155</sup> Any cable TV operator or person who violates or assists the violation of any provision of the Ordinance is liable to imprisonment for 6 month or fine<sup>156</sup> or both.<sup>157</sup> Where, they repeat the same acts then 3 years imprisonment or a fine<sup>158</sup> or both.<sup>159</sup> If the illegal act is carried out by a person, who has no licence, then 4 years imprisonment or a fine or both. Furthermore, the equipment will also be confiscated.

The Authority can revoke or suspend the licence of a broadcast media or distribution service on the following grounds, failed to pay the fee, the annual

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<sup>150</sup> Section 33 (4) inserted by the PEMRA (Amendment) Act, 2007, (Act No. II of 2007).

<sup>151</sup> PEMRA Act, 2007, s 33 (3).

<sup>152</sup> PEMRA Act, 2007, s 33B (2).

<sup>153</sup> M. Jan, ‘Amendments in the Broadcast law: shifting the goal post?’ Issue-I, Vol. 2, (Feb - April 2005), Media Law Bulletin, 22-24, 23.

<sup>154</sup> CTV Regulations, 2002, Part-IV r 18 (1 and 2).

<sup>155</sup> CTV Regulations, 2002, Part-IV r 18 (3).

<sup>156</sup> 1 million Pakistani rupees are equal to 7692 £, One UK pound is equal to 130 Pakistani rupees.

<sup>157</sup> CTV Regulations, 2002, Part-IV r 19 (1).

<sup>158</sup> 2 million Pakistani rupees are almost equal to 13,677 £, One UK pound is almost equal to 146.22 Pakistani rupees.

<sup>159</sup> CTV Regulations, 2002, Part-IV r 19 (2).

renewal fee or any other charges including fine, failed to comply with any condition imposed on the licensee or contravened any provision of the ordinance or rule<sup>160</sup> or regulation.<sup>161</sup>

The Authority can impose a fine up to certain amount<sup>162</sup> after giving notice and considering the explanation of the cable TV operator.<sup>163</sup>

The Complaint Councils may recommend to the Authority appropriate action of censure, fine against a broadcast or cable TV network station or licensee for violation of the Code of Conduct for programmes and advertisements.<sup>164</sup>

These offences are compoundable<sup>165</sup> and cognisable.<sup>166</sup>

#### 2.3.2.4 Appeals

An aggrieved person may appeal to the Authority itself within 30 days against the cable TV action of the Authority's officer and the Authority will decide the matter within 45 days.<sup>167</sup> After that, a further appeal to the High Court is possible within 30 days against the decision or order of the Authority.<sup>168</sup>

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<sup>160</sup> Broadcasting Regulations, 2002, Part-IV r 27.

<sup>161</sup> PEMRA Act, 2007, s 30.

<sup>162</sup> 1/2 million rupees are equal to 3,419 £, One UK pound is almost equal to 146.22 Pakistani rupees.

<sup>163</sup> CTV Regulations, 2002, Part-IV r 26(1) and Broadcasting Regulations, 2002, Part-IV r 29.

<sup>164</sup> Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010, r 8 (4).

<sup>165</sup> Compoundable offences are mentioned in section 345 of Code of Criminal Procedure (Act V of 1898).

<sup>166</sup> First Foot note: Cognizable offence and Cognizable case: Cognizable offence means an offence for, and cognizable case means a case in, which a police officer, may, in accordance with the second Schedule or under any law for the time being in force, arrest without warrant. Code of Criminal Procedure (Act V of 1898), s 4 (f).

Non-cognizable offence: Non-cognizable case and Non-cognizable offence means an offence for, and non-cognizable case means a case in, which a police officer may not arrest without warrant. Code of Criminal Procedure (Act V of 1898), s 4 (n).

Second Footnote: On 3 November 2007, President of Pakistan declared an emergency and amended the PEMRA Ordinance by Ordinance No. LXV of 2007.

The section 34 is substituted by the PEMRA (Amendment) Act, 2007, (Ordinance No. LXV of 2007).

<sup>167</sup> CTV Regulations, 2002, Part-IV r 28 (1) and Broadcasting Regulations, 2002, Part-IV r 31 (1).

<sup>168</sup> Section 30 A inserted by the PEMRA (Amendment) Act, 2007, (Act No. I of 2007).

CTV Regulations, 2002, Part-IV r 28 (2) and Broadcasting Regulations, 2002, Part-IV r 31 (2).



## 2.4 Judicial Review

The judiciary can adjudicate disputed or controversial decisions adopted by either an administration officer or by the Authority. It is a further step towards the enforcement mechanism. The following section describes the courts empowered to adjudicate these matter.

### 2.4.1 High and Supreme Courts

The remedy against the order of the PEMRA Authority is to seek a First Regular Appeal (FAO) before High Court.<sup>169</sup> In the case of broadcasting, the High Court<sup>170</sup> exercises appellate jurisdiction.

The Supreme Court is the apex Pakistan's court system and it exercises original, appellate and advisory jurisdiction.<sup>171</sup> It is the Court of final appeal and for that reason, the final arbitrator of law and of the Constitution. As a result, its decisions are binding on all other courts in Pakistan

Broadcasting cases are referred to the appellate jurisdiction (Supreme Court) in the form of a filing of a Civil Petition for Leave to Appeal (CPLA) against the decision of High Court.<sup>172</sup>

### *Special Courts*

The Pakistani Constitution authorises the federal legislature to establish administrative courts and tribunals<sup>173</sup> to deal with federal subjects.<sup>174</sup> As a result, several special courts and tribunals have been created. They are managed under the administrative control of the Federal Government. Most of

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<sup>169</sup> PEMRA Act, 2007, section 26 (2).

<sup>170</sup> There are five High Courts in Pakistan. One, in each of the province, that is in Lahore, Baluchistan, Sindh and Peshawar and fifth is in capital city Islamabad. Each High Court has a Chief Justice and other judges.

<sup>171</sup> The Constitution of the Islamic Republic of Pakistan, Part VII, The Judicature, Chapter 2, The Supreme Court of Pakistan, Articles 184, 185 & 186.

<sup>172</sup> The Constitution of the Islamic Republic of Pakistan, Part VII, The Judicature, Chapter 2, The Supreme Court of Pakistan, Article 185.

<sup>173</sup> The Constitution of the Islamic Republic of Pakistan, Part VII, The Judicature, Chapter 4, General Provisions Relating to the Judicature, Article 212.

<sup>174</sup> Item 14 of the Federal Legislative Act, Part I in the 4<sup>th</sup> Schedule.

these courts function under the Ministry of Law & Justice Commission of Pakistan<sup>175</sup> and some of them also operate under other ministries or departments such as the Special Banking Court, Special Custom Court, Taxation and Anti-corruption, Income Tax (Appellate) Tribunal, Insurance Appellate Tribunal and several others.

A special court's order may be appealed to the High Court or as provided in the said Ordinance or Act and the Tribunals to the Supreme Court such as the decree of Banking Court may be appealed to the Division Bench of High Court, whereas the Judgments of Provincial Service Tribunal and Federal Service Tribunal are appealed to Supreme Court.<sup>176</sup>

In the end, there should be a specialist tribunal rather than a just recommendatory body, with competence to resolve media issues. This is required to speed up the lengthy procedure in Pakistan Judicial system.

### ***Critical Commentary***

There are serious deficiencies in Pakistan's media enforcement mechanism. These deficiencies discuss accordingly;

First, key media posts are appointed by President of Pakistan which can affect a fair system. According to the PEMRA Act, the Authority consists of a Chairman and 12 members, all of whom are appointed by the President of Pakistan.<sup>177</sup> By this manner of selection, the President of Pakistan has a direct influence on the Authority's membership and, indirectly on the decision taken. Thus, the President can protect the agenda of the political party to which he belongs.<sup>178</sup> The Chairman and members of the broadcasting organisation should be appointed independently of the government in a fair and transparent manner.

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<sup>175</sup> The Law and Justice Commission of Pakistan is a Federal Government institution, established under an Ordinance (XIV) of 1979. The Commission is headed by the Chief Justice of Pakistan and comprises 12 other members including the Chief Justices of the superior courts, Attorney General for Pakistan, Secretary, Ministry of Law, Justice & Human Rights and Chairperson, National Commission on the Status of Women and others. One member represents each province.

<sup>176</sup> The Family Court Act 1964, the Rent Restriction Ordinance 1959 and the Financial Institutions (Recovery of Finances) Ordinance, 2001, are examples special courts in Pakistan.

<sup>177</sup> PEMRA Act, 2007, s 6.

<sup>178</sup> Present President of Pakistan is also Co- Chairmen of Pakistan People Party (Political Party).

At present, it is difficult for the Chairman and members of the Authority to provide a fair and non partisan enforcement system.

The Authority gives its final decision on the Council's recommendation against a complaint. Thus the Authority takes the final decision and therefore works as an administrative body. The Chairman and 12 members are already appointed by President. Due to this fact, the Authority or Council of Complaint as a decision making body may will be influenced by political motivate.

Second, there is some restriction in the legal procedure. According to the PEMRA Act, no court shall take cognizance of any offence under sub-section (1) or (2) of section 33 thereof<sup>179</sup> except on a complaint in writing by the Authority or any officer authorised by it.<sup>180</sup> This means that no individual person or organisation can go to a court directly. First, the party has to complain to the Council of Complaint<sup>181</sup> or to the Pakistan Electronic Media Regulatory Authority<sup>182</sup>. After that, with the approval of the Authority, they can go court.

It means that if any party suffers a loss due to the infringement or media piracy, that party cannot go to court directly. First, the party has to complain to the Pakistan Electronic Media Regulatory Authority. After that, with the approval of the Authority, they can go court. The impact of this provision is that no one can have direct access to a court. Due to this fact, the enforcement mechanism is very slow and lengthy.

As already discussed, Pakistan media enforcement mechanism is very slow, lengthy<sup>183</sup> and influenced. The present slow pace of the media enforcement process is not going in the right direction but a more rapid progress is required to fill the above discussed gaps.

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<sup>179</sup> World "sun-section (1) or (2) of section 33 of" inserted by the section 33A inserted by the PEMRA (Amendment) Act 2007 (Act No. II of 2007).

<sup>180</sup> PEMRA Act, 2007, s 34.

<sup>181</sup> PEMRA Act, 2007, s 26 (2) ,CTV Regulations, 2002, Part-III r 16 (1and 2) and Broadcasting Regulations, 2002, Part-III r 18 (1 and 2).

<sup>182</sup> PEMRA Act, 2007, s 34.

<sup>183</sup> O. Siddique., 'Approaches to legal and judicial reform in Pakistan: Post colonial inertia and the paucity of imagination in times of turmoil and change' (2011), Development Policy Research Centre Pakistan, 3.

For rapid progress in India, a specialised sector tribunal (Telecom Dispute Settlement and Appellate Tribunal (TDSAT) was set up to adjudicate disagreements between service providers.

So, it is proposed that there should be special media court instead of Council of Complaint for media disputes.

Finally, there are some other key issues in media TV sector in Pakistan requires specific discussions. First there are enforcement issues in respect of the various types of TV broadcasting Cablecasting, satellite, terrestrial broadcasting, Mobile TV and IPTV. Secondly, there are no Pakistani law to regulate TV broadcasting of sport events nor laws governing state aid to TV broadcasting provides.

It is submitted that appropriate legislation is required to regulate these aspects of TV broadcasting.

## Chapter 3: Enforcement of Electronic Media Laws in Pakistan

### 3.1 Pakistan Media Enforcement Environment

In this Chapter, the media regulation system in Pakistan will be analysed and a number of specific enforcement issues will be identified and discussed.

The current system in Pakistan has been criticised both at the national and at the international levels

At national level, the Institute of Social and Policy Sciences (ISAPS)<sup>184</sup> stated in 2006 that:

PEMRA is still struggling for its legitimacy, authority, and effectiveness. A variety of issues have been affecting the promotion of an enabling regulatory regime in the country. These issues include, but are not limited to, autonomy and independence of the regulatory authority; structure of the legal and regulatory framework; regulatory deficit - particularly with regards to media ownership and technological convergence; weaker and traditional enforcement mechanism; trust deficit between the licensees and PEMRA; ambiguity in government policies towards the regulator; and a lack of comprehensive research to develop a proactive approach in regulating the sector.<sup>185</sup>

There is also considerable international criticism of the enforcement situation in the Pakistan media industry. The International Intellectual Property Alliance (IIPA) commented on Pakistan cable and satellite signal piracy that:

Piracy of cable and satellite broadcasting signals is out of control in Pakistan, with cable companies estimated to transmit without authorisation 94% to 97% of the programming they provide to end users. In 2007, such piracy remained pervasive in the absence of sustained enforcement. The illegal cable piracy operations are serviced by “lead walas” who obtain cable feeds from a cable operator with hardware facility (head end).<sup>186</sup>

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<sup>184</sup> The Institute of Social and Policy Sciences (I-SAPS) is a not-for-profit organization with the mission of catalyzing knowledge-based social change in Pakistan driven by the principles of equity and social justice.

<sup>185</sup> M. Aftab., ‘Broadcast regulation in Pakistan: The Need for an enabling regulatory regime’ The Institute of Social and Policy Sciences (ISAPS), Islamabad, Pakistan, (2010), Islamabad, Pakistan, 3.

<sup>186</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2008), 292.

The IIPA in its 2007 Special 301 Report also pointed out a large number of unauthorised programmes and connections in Pakistan that:

There are around 50,000 satellite dishes receiving unauthorised programming in Pakistan, and over 10% of Pakistani households have unauthorised cable TV connections. It is vital that the Pakistani government take action to address this serious problem.<sup>187</sup>

These suggest that there is still a need for considerable improvement with regard to the laws and regulations governing media regulation.

## **3.2 Regulation of Broadcasting**

Several factors have been identified as causes for the lack of effectiveness PEMRA in enforcing the legislation. However focus in this chapter will be on enforcement structure and regulations deficit.

This section considers existing enforcement regulation issues in Pakistan's electronic media sector. First, the section elaborates the regulation of three main types of broadcasting in Pakistan: cablecasting, satellite and terrestrial. Section 3.3 discusses cablecasting. It explains the regulation of cablecasting in Pakistan. It also analyses the development of the cablecasting sector in Pakistan. It identifies very current domestic issues that prevail in Pakistan. In section 3.4 the right of a state to broadcast television signals and target them without the explicit prior consent of other States is discussed as a major international legal and political problem. Is sending a signal a potential violation of national sovereignty? The section examines the principles of prior consent and free flow of information in the context of satellite cross-border broadcasting. In this manner, the section discusses global media right protection in another way domestic implementation. In section 3.5, terrestrial broadcasting in Pakistan is analysed.

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<sup>187</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2007), 355.

Secondly, sections 3.6 and 3.7 cover issues in respect of digital broadcasting namely mobile TV and internet protocol television (IPTV). These issues arise as a consequence of technological development and have an impact on legislation. In Pakistan, digital broadcasting is very much in its infancy and its evolution is not complete.

Whenever, there is development in any sector of the industry new problems and issues emerge which challenge authorities to frame new strategies to cope with them. Nevertheless, the main concern is that the Government should resolve the current enforcement and regulation challenges without delay.

All these methods of transmissions operate under different technical and legal approaches and will be discussed separately below.

### 3.3 Cablecasting TV

There are four main platforms used for distributing TV signals in almost every country across the globe: terrestrial broadcasting, cable television, satellite television and Internet Protocol Television (IPTV).<sup>188</sup> Cable transmission is mostly distributed through pay-television. Cable Television (CATV)<sup>189</sup> is a transmission system through fixed optical fibre or coaxial cable. The coaxial cable is used in most of the part in Pakistan while in some metropolitan cities are digitalised with fibre optic. It is a general practice to transmit traditional and other broadcasting channels through cable. Terrestrial broadcasting through antennae is declining fast in Pakistan. This is due to the development of the cable industry in last two decades.

In 2010, the total number of cable TV operators in Pakistan was 2500.<sup>190</sup> In 2009, the number of cable TV operators were 2346,<sup>191</sup> Punjab province being number

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<sup>188</sup> J. Maisonneuve, et al., 'An Overview of IPTV Standards Development' (June 2009) IEEE Transactions on Broadcasting, Vol. 55, 315.

<sup>189</sup> The first Cable TV was called "Community Antenna Television (or CATV).

K. C. Creech, *Electronic Media Law and Regulation*, (Boston: Focal Press, 2007), 93.

<sup>190</sup> PEMRA Annual Report 2010, p 20. Latest (2012) available annual report published by Pakistan Electronic Media Regulatory Authority at [http://115.186.57.68/images/docs/pub-rep/annual\\_report\\_2010.pdf](http://115.186.57.68/images/docs/pub-rep/annual_report_2010.pdf). Last visited on 27th August 2012.

<sup>191</sup> Almost 3000 cable licences have been issued.

one with 1045, followed by Sindh 767, North West Frontier Province 106, Balochistan 77 and in last capital Islamabad 351.<sup>192</sup> These cable operators connect 4.20 million people to watch cable television daily in Pakistan.<sup>193</sup>

The section examines the development of the cable industry and the implementation of legislation with special reference to Pakistan.

### 3.3.1 International Standards & Development of Cablecasting TV

Cable TV services began in the United States to provide TV transmission to areas of the country where TV signals would not reach directly.<sup>194</sup> With the passage of time, it became a huge industry in the broadcasting sector. Now, cable networks provide their own programmes such as movies and shows etc.<sup>195</sup>

There is no international treaty on cablecasting TV. In the Rome Convention, broadcasting is defined as “the transmission by wireless means for public reception of sounds or of images and sounds.”<sup>196</sup> The word “wireless” narrows the field. Only hertzian waves or other possible wireless means constitute broadcasting.<sup>197</sup> As a result, wire diffusion is excluded. It is well known that the Rome Convention does not cover cable TV.<sup>198</sup> Similarly, the TRIPS agreement on related rights<sup>199</sup> protects broadcasting by wireless only, not wire.<sup>200</sup>

The Berne Convention covers two forms of cable transmissions: simultaneous and unchanged retransmission of broadcasting programmes, and transmission of

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Pakistan Electronic Media Regulatory Authority., ‘PEMRA held bidding to award cable TV licences’ (2011) published by Pakistan Electronic Media Regulatory Authority at [http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=186&Itemid=42](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=186&Itemid=42). Last visited on 27th August 2012.

<sup>192</sup> PEMRA Annual Report 2009, p 35.

<sup>193</sup> PEMRA Annual Report 2010, p 20.

<sup>194</sup> S. Balganes, ‘The social costs of property rights in broadcast (and cable) signals’ (Fall 2007), Berkeley Technology law Journal, 1333.

<sup>195</sup> S. Balganes, ‘The social costs of property rights in broadcast (and cable) signals’ (Fall 2007), Berkeley Technology law Journal, 1335.

<sup>196</sup> The Rome Convention 1961, Article 3 (f),

<sup>197</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Adminstrated by WIPO and Glossary of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 142.

<sup>198</sup> WIPO, *Neighboring Rights: Guide to the Rome Convention and to the Phonograms Convention*, (Geneva: WIPO, 1994), 24

<sup>199</sup> M. Viviana. and A. Waitara, ‘A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations’ (January 2007), South Centre, 21

<sup>200</sup> TRIPS Article 14.



cable originated programs.<sup>201</sup> The first form of cable transmission is covered by Article 11 bis(1) (ii) and second by Article 11 (1) (ii), 11ter(1)(ii), 14 (1) (ii) and 14bis (1).

The right to authorise original communication to the public by cable (wire) is granted to the authors of dramatic, dramatic-music and musical work,<sup>202</sup> literary work,<sup>203</sup> to all authors works with regard to public communication that have been adapted for, or reproduced in, cinematographic work<sup>204</sup> and for the author of cinematographic<sup>205</sup> work.<sup>206</sup>

The WIPO Copyright Treaty (WPT) recognised the author of literary and artistic works through wire (cable) and wireless means.<sup>207</sup> The Performances and Phonograms Treaty (WPPT) recognised performer<sup>208</sup> and phonogram<sup>209</sup> rights through wire (cable) and wireless means, although, the Treaty did not include wire transmission in the definition of broadcasting.<sup>210</sup> As a result, there is no international regulation of cable transmission of programmes, but there is recognition that this mode of transmission exists as rights are conferred on the author in respect of it.

### ***International Development***

There were 60.07 million cable TV customers in Europe in 2010<sup>211</sup> and the industry earned 18.68 billion Euros.<sup>212</sup> The Cable TV consumer is number two in

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<sup>201</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Administred by WIPO and Glossary of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 77.

<sup>202</sup> Berne Convention, Article 11(1) (ii).

<sup>203</sup> Berne Convention, Article 11 ter (1) (ii).

<sup>204</sup> Berne Convention, Articles 14 (1) ( ii).

<sup>205</sup> Berne Convention, Articles 14bis(1).

<sup>206</sup> T. Drier. and B. P. Hugenholtz., *Concise European Copyright Law* (Netherland: Kluwer Law International, 2006), 52.

<sup>207</sup> WIPO Copyright Treaty Article 8.

<sup>208</sup> Performances and Phonograms Treaty, Article 10.

<sup>209</sup> Performances and Phonograms Treaty, Article 14 and 15.

<sup>210</sup> Performances and Phonograms Treaty, Article 2(f).

<sup>211</sup> Cable Europe, 'Cable Facts & Figures' (2010) Published at [http://www.cableeurope.eu/uploads/images/FF-YE2009/111115\\_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf](http://www.cableeurope.eu/uploads/images/FF-YE2009/111115_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf). Last visited on 27th August 2012.

<sup>212</sup> Cable Europe, 'A fast growing industry with huge potential' (2010) Published at <http://www.cableeurope.eu/uploads/images/FF->

the European TV market as compared to satellite, Internet Protocol Television (IPTV), Digital Terrestrial Television (DTT), analogue antenna and others.<sup>213</sup> In the European Union, Germany is number one in digital Cable TV customers closely followed by the United Kingdom, Netherlands and France.<sup>214</sup> In the USA, cable television generates more revenue than traditional broadcasting.<sup>215</sup>

Cable TV is available in the majority of countries across the world to 60 % of the population in North America, Asia 50 %, close to 50 % in Japan<sup>216</sup> and 30 per cent in Europe.<sup>217</sup>

### ***Digital Cable TV***

Digital cable TV increased quickly as compared to analogue TV in the European Union between 2008 and 2010. Almost 29 % of cable TV customers subscribed to digital cable TV in 2008.<sup>218</sup> There is a 33% increase in use of digital cable TV.<sup>219</sup> In 2010, total European Cable TV customers are 60.07 million, out of this 24.96 millions are digital cable subscribers.<sup>220</sup> The cable industry is going to digitalise very quickly.

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YE2009/111115\_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf. Last visited on 27th August 2012.

<sup>213</sup> Cable Europe, 'Television in Europe' (2010) Published at [http://www.cableeurope.eu/uploads/images/FF-YE2009/111115\\_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf](http://www.cableeurope.eu/uploads/images/FF-YE2009/111115_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf). Last visited on 27th August 2012.

<sup>214</sup> Cable Europe, 'EU TV market' (2010) Published at [http://www.cableeurope.eu/uploads/images/FF-YE2009/111115\\_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf](http://www.cableeurope.eu/uploads/images/FF-YE2009/111115_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf). Last visited on 27th August 2012.

<sup>215</sup> S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), Berkeley Technology law Journal, 1335.

<sup>216</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2006), WIPO SCCR, 23.

<sup>217</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2006), WIPO SCCR, 52.

<sup>218</sup> Cable Europe, 'Digital cable TV switchover' (2008) Published at <http://www.cableeurope.eu/index.php?page=digital-cable-tv-switchover>. Last visited 27th August 2012.

<sup>219</sup> Cable Europe, 'Digital cable TV customers' (2008) Published at <http://www.cableeurope.eu/index.php?page=total-digital-cable-tv-customers>. Last visited 27th August 2012.

<sup>220</sup> Cable Europe, 'Cable facts and figures' 2, (2010) Published at [http://www.cableeurope.eu/uploads/images/FF-YE2009/111115\\_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf](http://www.cableeurope.eu/uploads/images/FF-YE2009/111115_Facts%20&%20Figures%20YE%202010%20-%20FINAL.pdf). Last visited 27th August 2012.

Cable TV services throughout Asia, Europe and the Americas are currently improving their infrastructure to cope with digital transmissions.<sup>221</sup> The world's leading region for digital cable is US.<sup>222</sup>

Cable TV is a big industry in Pakistan as compared to satellite, IPTV and analogue TV. To compare the new mode of transmission, digitalization of cable TV has already started in Pakistan.

### **3.3.2 Digitalization of Cable TV in Pakistan**

Digitalization helps the technical aspects of cable transmission. It enhances the cable channel capacity as compared to existing analogue cable TV system improving the quality, making technical maintenance easier and improving services like parental control, pay TV and video on demand.

PEMRA approved phase wise digitalisation of cable TV in Pakistan. The first phase is already started from the first quarter of 2009 and was completed at the end of 2011. It consists of two parts; first the issue of digital cable TV licences in the metropolitan cities and second, the conversion of existing head-ends in metropolitan cities in which fibre optic and HFC networks have already been deployed like Karachi, Lahore, Islamabad/Rawalpindi, Peshawar, Quetta, Multan and Faisalabad.<sup>223</sup>

The second phase was also started in January 2010 and will be completed in 2015. PEMRA will issue a new digital CTV licence and convert existing CTV licences at district level.<sup>224</sup>

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<sup>221</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2006), WIPO SCCR, 1.

<sup>222</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2006), WIPO SCCR, 2.

<sup>223</sup> PEMRA Annual Report, (2009), p 39.

<sup>224</sup> PEMRA Annual Report, (2010), p 13.

### 3.3.3 Transmission through Wire

As already mentioned above, the transmission through wire was not part of the broadcasting definition in the Rome Convention, although legislative protection of cable transmission has been adopted in a number of countries.<sup>225</sup>

Internationally, the European Union and its Member States as well as Honduras and Kenya proposed, in the WIPO Standing Committee on Copyright and Related Rights (SCCR), a broader definition of broadcasting that would include wire transmission in the broadcasting at international level. A separate term was proposed covering transmission by wire by Argentina, using the term “cable distribution”, Egypt, Singapore, and the United States of America in 2004.<sup>226</sup>

The first time that transmission by wire was included as an independent term in the WIPO Proposed Treaty was in 2006.<sup>227</sup> The WIPO Proposed Treaty defined the term “cablecasting” as follows: “the transmission by wire for the reception by the public of sounds or of images or of images and sounds or of the representations thereof. Transmission by wire of encrypted signals is cablecasting where the means for decrypting are provided to the public by the cablecasting organisation or with its consent. Cablecasting shall not be understood as including transmissions over computer networks.”<sup>228</sup>

The WIPO Proposed Treaty protects transmissions by wire in the same manner as wireless broadcasts. It aims to broaden the definition of broadcasting.<sup>229</sup>

In the WIPO Revised Proposed Treaty the term “cablecasting” defined in similar manners as defined in WIPO Proposed Treaty. A wire transmission within the meaning of cable is included as “cablecasting”. The idea of cablecasting is limited to wire transmission. Wireless transmission (satellite) is excluded from cablecasting definition. Transmissions over computer networks are also excluded

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<sup>225</sup> G. Hinze., ‘The WIPO Broadcasting Treaty: why granting intellectual property rights to information distributors will harm innovation and the free flow of information on the internet’ (2009), *Computer and Telecommunication Law Review*, 171 and 172.

<sup>226</sup> Report on the 12/2 Session of the SCCR, (WIPO November 2004), 22.

<sup>227</sup> WIPO Proposed Treaty, Article 2 (b).

<sup>228</sup> WIPO Proposed Treaty, Article 2 (b).

<sup>229</sup> M. D. Asbell., ‘Progress on the WIPO broadcasting and webcasting treaty’ (2006), *Cardozo Arts and Entertainment Law Journal*, 352.

from the definition of broadcasting; the same is applied in the case of the cablecasting definition as well.<sup>230</sup>

### 3.3.4 Domestic Legislation Regulating Cable TV

The cable TV network in Pakistan was introduced under licence from the Pakistan Telecommunication Authority (PTA) in 2000.<sup>231</sup> The new network ended the monopoly of government-controlled television channels.<sup>232</sup> All Cable TV and private broadcasting channels<sup>233</sup> were officially transferred to be regulated by PEMRA on 15 May 2002.<sup>234</sup>

PEMRA adopted the Cable TV Regulation 2002 and issued guidelines<sup>235</sup> on establishing and operating Cable TV networks. In the guidelines and PEMRA Ordinance Cable TV is defined as follows: “Cable TV means reception of broadcast and pre-recorded signals from different channels and their distribution to subscribers through a set of closed transmission paths.”<sup>236</sup> In the same manner Cable TV services are defined in Cable Regulation as follows: “Cable Television service” means distribution of programmes through a set of transmission paths, including MMDS,<sup>237</sup> by Cable Television System.’<sup>238</sup>

According to the definitions, both wire and wireless cables are included in this definition. In practice, there are only wire-cable operators in Pakistan.

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<sup>230</sup> Report on the 15/2 Session of the SCCR, (WIPO September 2006), 24.

<sup>231</sup> Centre for Civic Education Pakistan (CCE), ‘Window on Pakistani media’ (2010), 14 Published at <http://www.civiceducation.org/wp-content/uploads/2010/08/Window-on-Pakistani-Media.pdf>. Last visited on 27th August 2012.

<sup>232</sup> V. Raghavan., *Communication Law in India: Legal Aspects of Telecom, broadcasting, and Cable Services* (New Delhi India: LexisNexix 2007), 534.

<sup>233</sup> Only private sector/channel works under Pakistan Electronic Media Regulatory Authority.

<sup>234</sup> The Pakistan Electronic Media Regulatory Authority (PEMRA) established in 1<sup>st</sup> March 2002. Centre for Civic Education Pakistan (CCE), ‘Window on Pakistani media’ (2010), 14 Published at <http://www.civiceducation.org/wp-content/uploads/2010/08/Window-on-Pakistani-Media.pdf>. Last visited on 27th August 2012.

<sup>235</sup> Pakistan Electronic Media Regulatory Authority (PEMRA), ‘Guidelines to establishment and operate cable TV networks at district level’ (2010), Published at [http://www.pemra.gov.pk/pemra/images/docs/cabletv/Guidelines\\_Bidding\\_CTV.pdf](http://www.pemra.gov.pk/pemra/images/docs/cabletv/Guidelines_Bidding_CTV.pdf). Last visited on 27th August 2012.

<sup>236</sup> Inserted by PEMRA Amendment Act, 2007, (Act No.II of 2007).

<sup>237</sup> MMDS means Multi-channel Multi-point Distribution Service to transmit audio-video signals through satellite or other wireless telecommunication devices.’

Cable Regulation 2002 r 2 (s).

<sup>238</sup> Cable TV Regulation, 2002, r 2 (g).

The Council of Complaints and authorised officers of the Authority protect the interests of subscribers and ensure the ethics and the quality of the service.<sup>239</sup> A licence is required to run a cable business in Pakistan. The licence is awarded through an open bidding process.<sup>240</sup> The successful companies who are subsequently issued Cable TV licences by the Authority are allowed to set up and operate Cable TV networks providing Cable TV services on a commercial basis within the specified area of operation. The successful licensee pays a licence fee, an annual renewal and annual subscribers' fee to PEMRA.

The licensee can further enhance his business through franchises within the approved area of operations and the running of in-house channels with the approval of PEMRA. However, a franchisee is not to be eligible to broadcast its own in-house channels.<sup>241</sup>

There are some eligibility criteria for Cable TV operators. The cable company must be registered with the Security Exchange Commission of Pakistan (SECP) under the Companies Ordinance 1984. The company cannot be a recipient of funds from a foreign government or organisation.<sup>242</sup> A foreigner, a foreign company and a company whose majority shares and management is controlled by foreign nationals or companies are not eligible for a cable TV licence.<sup>243</sup> The cable industry is restricted and the foreign investor cannot invest in this sector.

The licensee is bound by the PEMRA Code of Conduct. The Council recommends to the Authority the suspension or revocation of a licence or censure or imposition of fine upon a licensee for violating the Code of Conduct.<sup>244</sup> It also keeps the Authority informed on feedback and public response.<sup>245</sup>

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<sup>239</sup> Cable TV Regulation, 2002, r 14 (5). See also Chapter 2.3.2.1.

<sup>240</sup> Cable TV Regulation, 2002, r 9.

<sup>241</sup> Pakistan Electronic Media Regulatory Authority (PEMRA), 'Guidelines to establishment and operate cable TV networks at district level' (2010), Published at [http://www.pemra.gov.pk/pemra/images/docs/cabletv/Guidelines\\_Bidding\\_CTV.pdf](http://www.pemra.gov.pk/pemra/images/docs/cabletv/Guidelines_Bidding_CTV.pdf). Last visited on 27th August 2012.

<sup>242</sup> Pakistan Electronic Media Regulatory Authority (PEMRA), 'Guidelines to establishment and operate cable TV networks at district level' (2010), Published at [http://www.pemra.gov.pk/pemra/images/docs/cabletv/Guidelines\\_Bidding\\_CTV.pdf](http://www.pemra.gov.pk/pemra/images/docs/cabletv/Guidelines_Bidding_CTV.pdf). Last visited on 27th August 2012.

<sup>243</sup> Cable TV Regulation, 2002, r 8. PEMRA Act, 2007, s 25 and PEMRA Rules, 2002, r 17.

<sup>244</sup> Cable TV Regulation, 2002, r 16 (3).

<sup>245</sup> Cable TV Regulation, 2002, r 16 (4).

The Authority can cancel the licence if the licensee has contravened any provision of the Ordinance or of the Rules.<sup>246</sup> The Authority may appoint an officer to seize equipment being used for illegal operation.<sup>247</sup>

The cable TV operator or any person who violates or abets a violation of any of the provisions of the Ordinance will be liable for imprisonment up to six months or a fine of one million rupees or both.<sup>248</sup> They will be liable to imprisonment for up to three years or a fine of up to two million rupees or both, if the offence is repeated.<sup>249</sup> If anyone without holding a licence violates any provisions of the Ordinance, he is liable to be imprisonment up to four years punishment or fine or both, in addition to the confiscation of the equipment.<sup>250</sup>

The Authority may suspend<sup>251</sup> and cancel<sup>252</sup> the licence of a cable TV operator within three weeks.

The Authority has the power to impose a fine of up to five hundred thousand rupees on a CTV operator over any contravention of the Ordinance, Rules or Regulations, or Code of Conduct.<sup>253</sup>

Any order of an officer of the Authority can be appealed within 30 days and the Authority shall decide the matter within forty five days of the submission of the appeal. Within thirty days an aggrieved person can appeal to the High Court against the decision of the Authority on the initial appeal.<sup>254</sup>

### **3.3.5 Cable Industry in Pakistan**

The most popular form of Private TV transmission in Pakistan is through cable and 74% of the urban population has access to it.<sup>255</sup> Clearly, Cable TV avoids a

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<sup>246</sup> Cable TV Regulation, 2002, r 14 (9).

<sup>247</sup> Cable TV Regulation, 2002, r 18 (3).

<sup>248</sup> Cable TV Regulation, 2002, r 19 (1).

<sup>249</sup> Cable TV Regulation, 2002, r 19 (2).

<sup>250</sup> Cable TV Regulation, 2002, r 19 (3).

<sup>251</sup> Cable TV Regulation, 2002, r 23.

<sup>252</sup> Cable TV Regulation, 2002, r 24.

<sup>253</sup> Cable TV Regulation, 2002, r 26.

<sup>254</sup> Cable TV Regulation, 2002, r 28.

<sup>255</sup> PEMRA Annual Report 2009, p 35.

large number of antennae on buildings. The main advantage of the cable system is to provide a large number of channels and programmes at the cheapest price. The cable industry is developing very quickly in Pakistan. Below, the facts and figures show the fast growth within a period of 8 years.

There are eight categories of cable TV licences ranging from B-1 to B-8 based on the numbers of subscribers in Pakistan. At present there are 2500 licences registered with Authority in Pakistan.<sup>256</sup> Table 3.1 analyses the yearly growth of cable TV operators in Pakistan as per detailed below:

Table: 3.1

Cable Industry in Pakistan<sup>257</sup>

Years	Cable TV Operators
2003	900
2004	1100
2005	1260
2006	1300
2007	1750
2008	2070
2009	2224
2010	2500

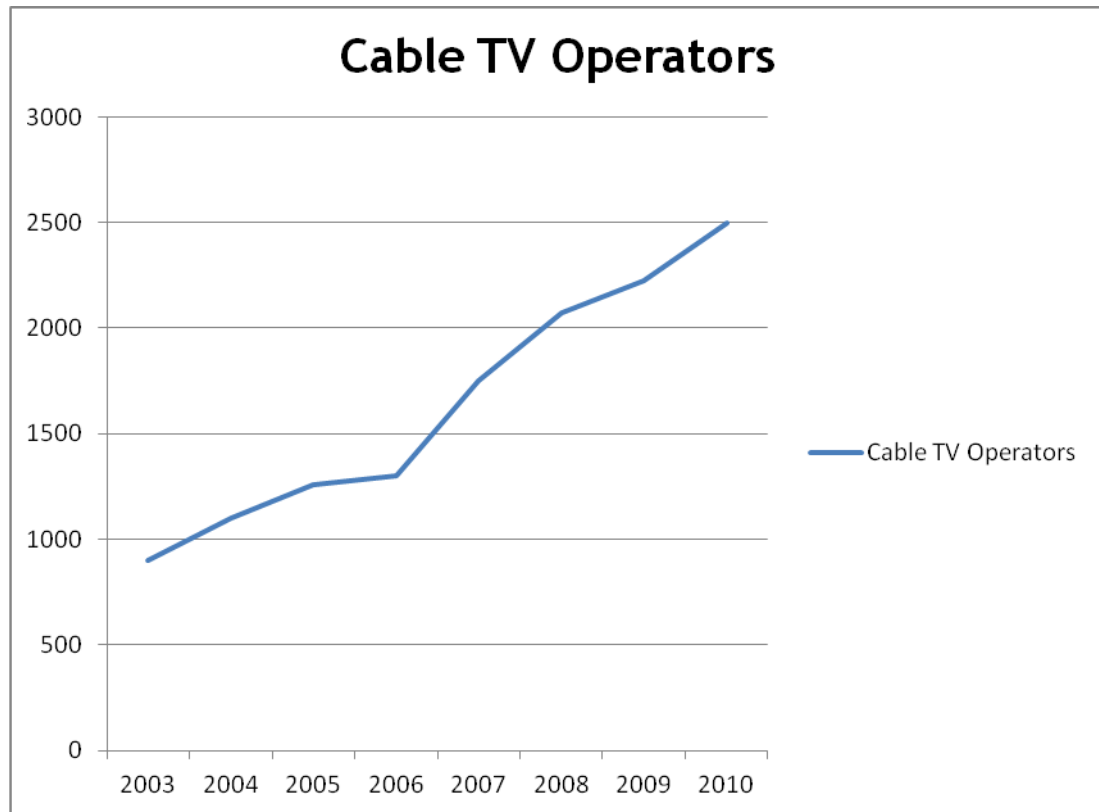
Table 3.1 shows that cable transmission is gradually spreading in Pakistan and it has full industry status now. This graph also shows that cable TV has a bright future in Pakistan. Having so many cable subscribers since the development of PEMRA in 2002 demonstrates the substantial achievement of electronic media in Pakistan.

<sup>256</sup> PEMRA Annual Report 2010, p 20.

<sup>257</sup> PEMRA Annual Report 2010, p 20.



Graph: 3.2



This graph shows the yearly number of cable TV operators in Pakistan. In 2003, there were only 900 cable operators in Pakistan, while in 2010, 2500 licences were issued by Authority in Pakistan. The continuous growth shows that cable industry is developing very fast in Pakistan. In 2004, there were almost 2699 illegal<sup>258</sup> cable TV operators/loop-holders in Pakistan.<sup>259</sup> One reason for such a huge number of illegal cable operators is that PTA was the first media regulatory authority and then regulation was completely transferred to the PEMRA. PTA controlled regulation of both telecommunication and media. After the fast development of the media, the government recognised its importance and decided to regulate it separately. As a result, PEMRA was established. It was difficult for a newly organised Authority to control these illegal activities.

<sup>258</sup> The International Intellectual Property Alliance in its Special 301 Report commented that: There are around 50,000 satellites dishes receiving unauthorised programming in Pakistan, Andover 10% households have unauthorised cable TV connections. It is vital that the Pakistani government take action to address this serious problem.

International Intellectual Property Alliance 2006 Special 301 Report on Pakistan: Executive Summary, (February 13, 2006), 330

The recording industry 2006 piracy report: protection creativity in music, (July 2006), Piracy Report 2006, 17.

<sup>259</sup> Internews, 'Essential about PEMRA: The who, what, where, when and why of the broadcast regulator' Issue-III, Vol.1, (Jan - March 2004), Media Law Bulletin, 16.

### 3.3.6 Domestic Enforcement Issues

Although regulation provisions exist in Pakistan in respect of cablecasting. Some of their weaknesses are discussed below.

#### *a) Unauthorised Programmes and Advertisements*

Cable operators have their own TV channels called in-house channels with the approval of PEMRA. However, they also use these to telecast pirated English and Indian movies, plays and songs, which is a direct infringement of the copyright rights of the authors. PEMRA has warned these cable TV operators many times and told them to stop the transmission of illegal satellite programmes.<sup>260</sup> These cable operators keep continuing their illegal broadcasting.

As the Neilson survey in 2002 indicated, 19.0 million Pakistanis viewed pirate VCDs and DVDs each month through pirate cable channels.<sup>261</sup> Piracy of cable TV broadcasting signals remains out of control. Operators provide the vast majority of the programming without authorisation. The pirates are organized, run their operations openly like a business, and essentially earn tax-free revenue.<sup>262</sup>

Piracy of cable and satellite broadcasting signals is growing in Pakistan, with cable companies estimated to transmit without authorisation 94% to 97% of the programming they provide to end users.<sup>263</sup>

Cable operators even telecast their own advertisements during the transmission of regular channels like HBO, Stars Sports and ESPN etc. Through the advertisements, they earn substantial sums of money. A foreign channel (HBO) approached the Pakistan Electronic Media Regulatory Authority wishing to take action against some cable operators. Article 34 of PEMRA Ordinance

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<sup>260</sup> Pakistan Electronic Media Regulatory Authority, Press Release, Islamabad, Pakistan, 'PEMRA takes action against proscribed channels & programmes' issued on 6 January 2012.

Published at [http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=191&Itemid=42](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=191&Itemid=42). Last visited on 27th August 2012.

<sup>261</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2005), 6.

<sup>262</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2009), 80.

<sup>263</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2008), 292.

required HBO to provide a written complaint against the cable operators to the Authority.<sup>264</sup> However, the channel was aware that if it complained against particular cable operator then all the other cable operators would not broadcast its TV channels<sup>265</sup> and therefore the channel would not have access to the Pakistani market.

Given the size of the problem, some radical action need to be taken and regulations need to be enforced against pirated cable TV channels.<sup>266</sup> In 5 January 2012, PEMRA enforcement teams raided a number of cable networks and confiscated receivers, decoders, CPUS and computers to stop the illegal satellite and CD channels.<sup>267</sup> PEMRA enforcement teams conducted surprise inspections of 430 Cable TV in various parts of the country.<sup>268</sup> These occasional actions are not a permanent solution as to how to control the enforcement situation.

Actions are not taken often enough nor consistently by the Authority. Whenever PEMRA receives a large number of complaints, it establishes an enforcement team<sup>269</sup> under the PEMRA Act and starts taking action but PEMRA has no permanent task force. PEMRA needs to be better resourced to enable proper task forces to be established in every part of the country to tackle, amongst other things, unauthorised programmes and advertisements. PEMRA also needs to be much more proactive to deal with Article 34 or international channels.

Furthermore, the penalties should be tougher. The Authority or the Council of Complaints should impose fines and imprisonment, not just confiscation of equipments. Provisions already exist in the PEMRA Act but these provisions need to be used effectively. For example, in the case of a repeat the offence, the Authority or the Council of Complaints already have the power to cancel the cable operator's licence.

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<sup>264</sup> It is already discussed in Chapter 2.2.3.2

<sup>265</sup> Source from Pakistan Electronic Media Regulatory Authority Islamabad Pakistan.

<sup>266</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2007), 359.

<sup>267</sup> Pakistan Electronic Media Regulatory Authority, Press Release, Islamabad, Pakistan, 'PEMRA takes action against proscribed channels & programmes' issued on 6 January 2012.

Published at [http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=191&Itemid=42](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=191&Itemid=42). Last visited on 27th August 2012.

<sup>268</sup> PEMRA Annual Report 2010, p 37.

<sup>269</sup> PEMRA Act, 2007, s 29.

**b) *Unregistered TV Channels***

PEMRA also issues licences for international channels.<sup>270</sup> Cable operators in Pakistan can broadcast these registered channels according to the subscriber's choice. The problem is that some cable operators allow unregistered T.V. channels on-air, which are not licensed, and so not allowed to broadcast in Pakistan. Examples are MM1, MM2 (South African), Star Pulse (India) and S1 to S7 etc. There are different reasons why these channels are not registered or allowed in Pakistan: some of the channels are not interested in doing business in Pakistan, some are banned due to pornographic material and some for political reasons like Star Pulse (an Indian Channel).<sup>271</sup> PEMRA has warned the cable TV operators many times to stop allowing these unregistered channels to use their cables.<sup>272</sup> The cable operators access these unregistered channels through illegal decoder cards for more income. The decoder cards are easily available either from abroad or even in Pakistani grey markets such as Super Market in Islamabad Pakistan.<sup>273</sup>

The cable operators broadcast the restricted channels through illegal decoder cards because it costs less.<sup>274</sup> The main reason to broadcast these restricted channels is that there is a public demand. Consumers want to see these channels. The operators do not broadcast restricted channels in Islamabad, but these are being broadcasted in the remainder of Pakistan. The reason for this is that the head office of the PEMRA is situated in capital (Islamabad), and, therefore, the Pakistan Electronic Media Regulatory Authority can take action

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<sup>270</sup> PEMRA issued 26 international channel licences. PEMRA, 'Name of companies/channels obtained landing rights permission' published at [http://www.pemra.gov.pk/pemra/images/docs/landingright/List\\_of\\_Licences\\_Issued\\_LR.pdf](http://www.pemra.gov.pk/pemra/images/docs/landingright/List_of_Licences_Issued_LR.pdf). Last visited on 27th August 2012.

<sup>271</sup> Indian Channels like Star Pulse (Indian Channel) cannot broadcast in Pakistan and Pakistani channels cannot be broadcasted in India.

<sup>272</sup> Pakistan Electronic Media Regulatory Authority, Press Release, Islamabad, Pakistan, 'PEMRA takes action against proscribed channels & programmes' issued on 6 January 2012.

Published at [http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=191&Itemid=42](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=191&Itemid=42). Last visited on 27th August 2012.

<sup>273</sup> Satellite decoder cards available in grey market. These cards purchased by a provider not licensed to operate in the market. The grey market is common in US, UK and other countries of the world. Some pubs use these cards to secure satellite TV broadcasting. European Court of Justice also discussed about these cards.

<sup>274</sup> For the registered channels, they have to pay more.

more easily in Islamabad. As compare to those areas, where there is no media office or inspection team.

When the Authority discovers that cable operators are working illegally with unregistered channels, its officials visit the premises and confiscate the operator's equipment. However, the problem in this fast telecommunication age is that the infringers inform each other before the PEMRA officials arrive. If an officer visits one cable operator area that one informs others. Thus, they close down their illegal activities prior to the inspection.

Section 4 of the PEMRA Act regulates international channels seeking to broadcast their transmission in Pakistan. PEMRA issues licences for these TV foreign channels. Some Indian entertainment TV channels are very famous in Pakistan given that both countries spoken languages are very understandable to each other. A solution to avoid transmission of unregistered channels is to relax the negative foreign media broadcast policy and encourage registration of the channels. Relaxation of the policy can be justified on grounds of general public interest as these programmes, particularly on entertainment TV channels, are very popular and harmless.

The Authority should take some administrative and judicial actions<sup>275</sup> in the shape of prohibition, fine and punishment already mentioned in chapter 2.3 and so control the growth of unauthorised TV Channels in Pakistan. Special media task forces established in the various regions of Pakistan can also help to improve enforcement against unregistered TV channels. These forces should target these unregistered TV channels at once.

### ***c) Monopoly***

PEMRA imposes a condition that cable TV operators need 'No Objection Certificates (NOC)' from development authorities before a licence is granted.<sup>276</sup> So, in another way NOC is another obstacle which the applicant needs to overcome. These development authorities have ownership rights over roads, parks, green belts and bridges etc. Before applying for a appropriate licence,

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<sup>275</sup> Prohibition, penalties and fines are already mentioned in Ch 2.3.2.2 and 3.

<sup>276</sup> Cable Television Regulations 2003, r 6 (1).

cable operators need No Objection Certificates from the development authority to use their property while installing the cable. The authority or council issues very few No Objection Certificates for cable operators to run their business, in some cases, only one NOC for one sector. However, PEMRA has no restriction on the number of cable licences, which it can award for any individual geographical area. Due to the need for a NOC, a monopoly can be created automatically and consumers suffer from it. Cable TV operators facilitate monopoly as well. Islamabad Capital Development Authority issued 3 NOC in one sector. Every sector was further divided in four big subsectors and each subsector covers 3000-4000 houses. After that, the cable operators divided the area of each subsectors between themselves thus creating a monopoly.

This issue relates to regulatory measures. Thus, it is recommended that only one authority should be involved in the process of granting a licence. PEMRA, as to media regulatory authority should deal with all the stages and processes involved in granting all the necessary licences needed to install and operate a cable TV service, instead of current situation which involves several authorities.

***d) Unauthorised Cable TV Access***

Another problem arises when a cable TV operator obtains a licence for one geographical area and then sells illegal connections to the neighbouring areas. This permits an unauthorised cable operator to start a business in a neighbouring area. These illegal cable operators pay no fee to PEMRA. Illegal operators have no offices or any other physical presence in the area.

In 2007, over 10% of Pakistani households had unauthorised cable TV connections.<sup>277</sup> The illegal operators run their businesses through mobile phones. Only a few operators know about the loopholes. It is difficult to trace illegal operators but not impossible. There is an estimated 4.6 million unauthorised subscribers causing over \$110 million in losses to the legitimate channels<sup>278</sup> and to the government in term of loss of fiscal revenue.

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<sup>277</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2007), 355.

<sup>278</sup> International Intellectual Property Alliance Special 301 Report on Pakistan, (2009), 80.

As mentioned above, PEMRA needs to take more effective action to control this illegal activity. Regional offices and their proposed task forces can help to stop unauthorised cable TV access. The task forces should also be better resourced and equipped with modern equipment and facilities to detect illegal activities. Strict judicial enforcement (tougher penalties) is very much needed to improve the situation.

### 3.3.7 Recommendations

In last two decades the cable TV industry started its business in Pakistan and now enforcement issues are beginning to cause concern. The issues raised by cable TV can be resolved through appropriate administrative measures and actions.

Pakistan can resolve the above-mentioned cable TV broadcasting problems with a more effective media regulatory framework and effective judicial powers. The relevant media institution (PEMRA) can play an important role in this regard.

PEMRA has started taking temporary actions against unlawful operators but further permanent action is needed if illegal operators are to be controlled from broadcasting illegally in Pakistan. PEMRA enforcement teams raided and carried out a number of surprise inspection numbers of cable networks<sup>279</sup>. 94 foreign illegal satellite TV channels being distributed on various cable TV networks of the country were shut down.<sup>280</sup> Penalties have been imposed on 51 cable TV operators for repeated violations.

Permanent task forces all over the country should replace the current temporary teams. This will enable swift action. The task forces should be well resourced and equipped with modern equipment and facilities to deal with the unlawful activities discussed above. The equipment and facilities will help the task forces

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<sup>279</sup> Pakistan Electronic Media Regulatory Authority, Press Release, Islamabad, Pakistan, 'PEMRA takes action against proscribed channels & programmes' issued on 6 January 2012.

Published at [http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=191&Itemid=42](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=191&Itemid=42). Last visited on 27th August 2012.

<sup>280</sup> PEMRA Annual Report 2010, p 37.

to cope more effectively with the situation. At the very least, a well equipped task force will be in a much better position to handle to these issues.

Another improvement would be for PEMRA and other enforcement organisations such as the Council of Complaints to apply the powers already existing in the PEMRA Act more effectively. These powers allow the enforcement agencies to impose hefty fines and even cancel the cable operator's licence. It has already been proposed in chapter two that there should be a Special Court to replace the Council of Complaints.<sup>281</sup>

Another recommendation is that the current restriction on Indian channels should be removed. Some entertainment Indian channels are very famous in Pakistan. These channels are not allowed in Pakistan but are popular in Pakistan. There is no justifiable reason to restrict these entertainment channels. The legislation should be changed to allow foreign entertainment channels.

Finally, there should be a single regulatory organisation which issues licence. Currently, there are several organisations which hinders those seeking broadcasting licence. PEMRA should exclusively deal with all the stages and processes involved in granting cable TV licences instead of different authorities.

These effective measurements are required to improve the cable TV broadcasting enforcement issues in Pakistan.

### 3.4 Satellite

Satellite transmission is directly beamed to community receivers and to individual homes from one country to another country in an international context.<sup>282</sup> So, this mode of transmission (wireless) has no boundaries as compared to wire networks.

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<sup>281</sup> As already discuss in Ch 2.4.

<sup>282</sup> J. E. Bailey. III., 'Current and future legal uses of direct broadcasting satellite in international law' (January 1985), Louisiana Law Review, 702.



Satellite transmission raises two issues which are discussed here sovereignty and free flow of information. It discusses state sovereignty while transmitting signals to one country to another and restriction of free flow of information in Pakistan.

Introductory subsection 3.4.1 will provide a general historical background and focus on the technical aspects of satellite broadcasting; subsection 3.4.2 and 3.4.3 will discuss satellite transmission with reference to international development; subsection 3.4.4 will explain the significance of international standards for satellite broadcasting in the context of basic principles that concern the free flow of information and prior government consent for it; subsection 3.4.5 will describe the Pakistan satellite broadcasting environment and its legal protection at the domestic level in the context of sovereignty and free flow of information and will describe how the satellite transmission industry is set up and organised in Pakistan; subsection 3.4.6 will elaborate on the enforcement challenges that the newly developed media industry in Pakistan has to address, and subsection 3.4.7 will set out recommendations for the promotion and development of cross-border satellite transmission and its coordination with national sovereignty.

Through the centuries, land routes and seaways between Asia and the Western world, have contributed their share to changing the world, by serving as channels of trading and exchange in tangible goods, spices, textiles and many other products. In the age of cross-border television, the invisible, global distribution and exchange of words and images constitute a new channel supplementing the traditional channels:<sup>283</sup> satellite broadcasting technology, having become a competitive alternative to cable and/or over the air television,<sup>284</sup> is in many respects contributing to changing the world.<sup>285</sup>

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<sup>283</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), *Cardozo Art and Entertainment Law Journal*, 3.

<sup>284</sup> B. M. Yusim., 'Satellite: Like a diamond in the sky', (Fall 2001), *University of Illinois Journal of Law, Technology and Policy*, 392

<sup>285</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), *Cardozo Art and Entertainment Law Journal*, 3.

### 3.4.1 Technical and Historical development

In 1962 the first satellite TV transmission used Telstar<sup>286</sup> technology. It inaugurated a development that enabled the cable television industry to make available to consumers programmes received through satellite transmission.<sup>287</sup> Technically, satellite transmission is dependent on uplinking an originating ground station to a satellite. The satellites retransmit the information they receive over a large geographical area defined as the satellite's footprint. This stage of satellite transmission is described as the downlink.<sup>288</sup> It makes satellite signals available to viewers situated within the range of the satellite's footprint. The viewers can select and enjoy satellite transmission programmes according to their individual choice. For access to satellite television programmes, a viewer requires normally three components: (i) a receiving dish, (ii) a receiver and (iii) a smart card.<sup>289</sup> First, a receiving dish captures the signals from the satellite. The smart card's chip helps to decrypt the encrypted signal. The smart card can be kept active through remote control, that is, upon payment of a monthly subscription fee.<sup>290</sup> Through live broadcasting via satellite, great distances can be included with no delays in the satellite's footprint, because the transmitted signals travel at the speed of light.<sup>291</sup>

#### ***Direct Broadcast Satellite (DBS)***

In 1974, television (DBS) image transmissions became a reality with the launch of the Westar I satellite. DBS is a term used to distribute programme directly to the

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<sup>286</sup> J. Dominick, et al., *Broadcasting, cable, The Internet, And Beyond, An Introduction to Modern Electronic Media* Sixth Edition, Published by, (New York: McGraw-Hill Humanities Social, 2008), 13.

<sup>287</sup> C. Hunt., 'A satellite dish or a birdbath: The efforts of the 106<sup>th</sup> congress to revise the satellite home viewer Act' (Fall 2000), *Journal of Intellectual Property Law*, 85.

<sup>288</sup> B. M. Yusin., 'Satellite: Like a diamond in the sky', (Fall 2001), *University of Illinois Journal of Law, Technology and Policy*, 392.

<sup>289</sup> A smart card is not essential components. Satellite transmissions are free to view as well such as RAI 1, BBC One, BBC Two, E 4 Five and others.

<sup>290</sup> A. Colangelo., 'Satellite wars: Culture vs. expression' (Spring 2003), *Vanderbilt Journal of Entertainment Law and Practice*, 105.

<sup>291</sup> A. Colangelo., 'Satellite wars: Culture vs. expression' (Spring 2003), *Vanderbilt Journal of Entertainment Law and Practice*, 105.

public through a system of communications distributes and individual home receiving units.<sup>292</sup>

To relay television transmissions, DBS does not require earth stations and redistribution networks. Signals are beamed directly to private television sets. Furthermore, satellite transmission is not dependent on networks characteristic of cable TV or terrestrial TV services. Even if analogue or digital satellite broadcasts need a specialised satellite set-top box for reception, the costs of satellite transmission are lower but are capable to cover entire markets or regions, irrespective of considerations of low and/or high population density. Consequently, satellite television is, in the broadcasting sector,<sup>293</sup> a more economical proposition. Analogue satellite broadcasts are encoded at different frequencies, are broadcast via terrestrial or cable television.<sup>294</sup>

Direct Broadcasting via Satellite (DBS), compared with older C-band technology,<sup>295</sup> required a smaller dish. Most C-band customers currently continue to switch over to the new technology offering a higher capacity of access to televised programme channels while using a smaller dish.<sup>296</sup>

DBS was widespread in Western Europe by the late 1980s, becoming gradually available in the 1990s in Asia.<sup>297</sup> Without reference to national boundaries, some 25 million homes were receiving satellite television.<sup>298</sup>

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<sup>292</sup> T. G. Krattenmaker. and A. R. Metzger., 'FCC Regulatory Authority Over Commercial Television Networks: The Role of Ancillary Jurisdiction' (November 1982), *Northwestern University Law Review*, 479.

<sup>293</sup> Screen Digest Ltd, London., *Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector* (December 2006), WIPO SCCR, 3.

<sup>294</sup> Screen Digest Ltd, London., *Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector* (December 2006), WIPO SCCR, 4.

<sup>295</sup> C-band is a satellite TV frequency, called as a big dish. The antenna size on C-band is 7.5 to 12 feet (2 to 3.5 m).

<sup>296</sup> C. Hunt., 'A satellite dish or a birdbath: The efforts of the 106<sup>th</sup> congress to revise the satellite home viewer Act' (Fall 2000), *Journal of Intellectual Property Law*, 89.

<sup>297</sup> M. N. Yan., 'China and the prior consent requirement: A decade of invasion and counter invasion by transfrontier satellite television' (Winter 2003), *Hastings Communications and Entertainment Law Journal*, 272.

<sup>298</sup> J. Dominick, et al., *Broadcasting, Cable, The Internet, And Beyond, An Introduction to Modern Electronic Media*' Sixth Edition, Published by, (New York: McGraw-Hill Humanities Social, 2008), 119.

### 3.4.2 International Development

In Europe, media policy aims primarily to regulate the commercial sector by implementing minimal transnational regulation. Whereas terrestrial broadcasting media is nationally regulated, satellite communication is marked to some degree by an open sky communication trans-border satellite broadcasting structure.<sup>299</sup> This situation is characterised by (i) the “un-geographical” dimensions of satellite broadcasting and (ii) the corresponding inability of traditional international law to cope with the realities and challenges of satellite broadcasting.

In 1989, ‘Television Without Frontiers’<sup>300</sup> concept was adopted as a policy by the EU. In 2007, the ‘Television Without Frontiers’ Directive was redrafted and renamed as the ‘Audiovisual Media Services Directive’ (AVMSD).<sup>301</sup> It concerns jurisdiction issues affecting various forms of satellite communication in the EU.<sup>302</sup>

In the USA, the cable industry started transmission to consumers via received satellite signals.<sup>303</sup> Only cable operators, not individuals, paid satellite carriers for the signals. In 1988, the USA legislators passed the Satellite Home Viewer Act (SHVA), authorising the satellite carriers to re-transmit the broadcast signals to consumer households through dishes.

The Satellite Home Viewer Improvement Act of 1999 (SHVIA) modified the SHVA. The SHVIA is designed to promote competition between satellite companies and cable television operators. Additionally, it contributes also to increase

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<sup>299</sup> I. Volkmet., ‘Satellite cultures in Europe’ (2008), Global Media and Communication, Volume 4(3), 236.

<sup>300</sup> Official Journal (OJ) L 298, 17.10.1989, p. 23-30.

<sup>301</sup> OJ L 332, 18.12.2007, p. 27-45.

<sup>302</sup> I. Volkmet., ‘Satellite cultures in Europe’ (2008), Global Media and Communication, Volume 4(3), 236.

<sup>303</sup> C. Hunt., ‘A satellite dish or a birdbath: The efforts of the 106<sup>th</sup> congress to revise the satellite home viewer Act’ (Fall 2000), Journal of Intellectual Property Law, 85-86.

programme choices for availability to consumers.<sup>304</sup> Thereafter, the new technology of Direct Broadcast Satellite (DBS) was introduced.<sup>305</sup>

In Western Europe Pay-TV is split, mainly between cable and satellite transmission. Approximately 30 per cent of pay-TV households are using satellite TV.<sup>306</sup>

In North America, most households are opting for cable or satellite TV services. One third of pay-TV households have access to satellite television.<sup>307</sup>

### 3.4.3 UN and Prior Consent

The important concept that underlies trans-national satellite signal transmission from one country to another is prior consent. The UN and UNESCO have discussed the idea of prior consent from the late 1960s to the early 1980s.<sup>308</sup> The UN Committee on the Peaceful Uses of Outer Space (COPUOS)<sup>309</sup> have argued for a prohibition of broadcasting beamed from satellites by one state to other states without the explicit prior consent of the government/s concerned, that is, through bilateral or multilateral agreements.<sup>310</sup>

Satellite broadcasting was initially controlled by the United Nations.<sup>311</sup> The main forum COPUOS was responsible for drafting five UN space treaties:<sup>312</sup> (1) Outer

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<sup>304</sup> Satellite Home Viewer Important Act (1999) Published at <http://www.fcc.gov/mb/shva/shviafac.html>. Last visited on 27th August 2012.

<sup>305</sup> C. Hunt., 'A satellite dish or a birdbath: The efforts of the 106<sup>th</sup> congress to revise the satellite home viewer Act' (Fall 2000), *Journal of Intellectual Property Law*, 85.

<sup>306</sup> Screen Digest Ltd, London., *Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector* (December 2006), WIPO SCCR, 18.

<sup>307</sup> Screen Digest Ltd, London., *Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector* (December 2006), WIPO SCCR, 18.

<sup>308</sup> M. E. Price., 'Governance, globalism and satellites' (2008), *Global Media and Communication*, Volume 4(3), 246.

<sup>309</sup> The COPUOS has been a Standing Committee of the UN General Assembly since 1959.

<sup>310</sup> UN ,General Assembly, 'Committee on the Peaceful Uses of Outer Space, Working Group on Direct Broadcast Satellites, report of the 2<sup>nd</sup> Session of the Working Group' (12 August 1969), 7.

<sup>311</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), *Cardozo Art and Entertainment Law Journal*, 6.

<sup>312</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), *Cardozo Art and Entertainment Law Journal*, 9.

Space Treaty<sup>313</sup>, (2) Moon Treaty<sup>314</sup>, (3) Rescue and Return Treaty<sup>315</sup>, (4) Convention on Registration of Objects Launched into Outer Space<sup>316</sup> and (5) Convention on International Liability for Damage Caused by Space Objects.<sup>317</sup>

Up to June 2012, the Outer Space Treaty had only been ratified by one hundred one countries and 26 signed the treaty but it is not applicable yet.<sup>318</sup> Pakistan is one of the countries that has ratified the Outer Space Treaty in 1968, the Liability Convention in 1973, the Registration Convention in 1986 and acceded to the Rescue and Moon Agreements in 1972 and 1986, respectively.<sup>319</sup>

These are no binding instruments due to conflict of two major states, the Soviet Union and the United States. So, there is no unanimous system of global governance for satellite broadcasting.<sup>320</sup>

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<sup>313</sup> Known as the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, was adopted by UN General Assembly Resolution 2222 (XXI); opened for signature on 27 January 1967, it came into force on 10 October 1967, with 98 ratifications and 27 signatures.

UNOOSA, Treaty Text Published at <http://www.oosa.unvienna.org/oosa/SpaceLaw/outerspt.html>. Last visited on 27th August 2012.

<sup>314</sup> Known as the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies. Adopted by UN General Assembly Resolution 34/68, opened for signature on 18 December 1979, entered into force on 11 July 1984, with 13 ratifications and 4 signatures.

UNOOSA, Treaty Text Published at <http://www.oosa.unvienna.org/oosa/en/SpaceLaw/moon.html>. Last visited on 27th August 2012.

<sup>315</sup> Known as the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. Adopted by UN General Assembly Resolution 2345(XXII), opened for signature on 22 April 1968 and entered into force on 3 December 1968, with 90 ratifications, 24 signatures, and 1 acceptance of rights and obligations.

UNOOSA, Treaty Text Published at <http://www.oosa.unvienna.org/oosa/en/SpaceLaw/rescue.html>. Last visited on 27th August 2012.

<sup>316</sup> Adopted by UN General Assembly Resolution 3235 (XXIX), was opened for signature on 14 January 1975 and entered into force on 15 September 1976, with 51 ratifications, 4 signatures, and 2 acceptances of rights and obligations.

UNOOSA, Treaty Text Published at <http://www.oosa.unvienna.org/oosa/en/SORegister/regist.html>. Last visited on 27th August 2012.

<sup>317</sup> Adopted by UN General Assembly Resolution 2777 (XXVI) and opened for signature on 29 March 1972, entered into force on 01 September 1972, with 86 ratifications, 24 signatures, and 3 acceptances of rights and obligations.

<sup>318</sup> Rescue and Return Treaty is ratified by 91 and signed by 24 countries, Liability Convention is ratified by 88 and signed by 23 countries, Registration Convention is ratified by 56 and signed by 4 countries and Moon Treaty is ratified by 14 and signed by 4 countries.

<http://www.unoosa.org/oosa/SpaceLaw/treatystatus/index.html>. Last visited on 27th August 2012.

<sup>319</sup> <http://unoosa.org/oosatdb/showTreatySignatures.do>. Last visited on 27th August 2012.

<sup>320</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), Cardozo Art and Entertainment Law Journal, 35.

During the space race between the Soviet Union and the United States, the Soviet Union supported the prior consent approach as a requirement approved also by many developing countries while the United States, with a small group of allied states, opposed the restriction.<sup>321</sup> In this way, the adoption of an international treaty on the regulation of direct broadcasting via satellite (DBS) failed to materialise as a binding international treaty.<sup>322</sup>

In 1982, the UN General Assembly adopted Resolution 37/92, Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting.<sup>323</sup> 'The explicit principle of requiring 'prior consent' of the receiving countries was abandoned'.<sup>324</sup> This is the first time an instrument relating to outer space was not adopted by consensus as a UN General Assembly.<sup>325</sup> In this way, consensus on free flow of information and the right of States to send and receive information was not achieved.<sup>326</sup>

The standing of prior consent is measured against the basic principles of State sovereignty and freedom of information.

#### **3.4.4 Basic Principles**

The transmission of signals from one country's territory to another country's territory can be viewed in two ways, as (i) free flow of information or (ii) flow of information violating national sovereignty.

For a proper understanding of the concept of prior consent and its implications, it is necessary to refer to and understand the principle of sovereignty and free flow of information.

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<sup>321</sup> Monroe E. Price, *Satellite Transponders and free Expression?*, Cardozo Art and Entertainment Law Journal 2009, p 9 and 10.

M. E. Price., 'Satellite transponders and free expression?' (2009), Cardozo Art and Entertainment Law Journal, 9-10.

<sup>322</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), Cardozo Art and Entertainment Law Journal, 10.

<sup>323</sup> General Assembly Resolution 92(XXXVII), UN. Doc. A/RES/37/92(Dec.10, 1982) published at <http://www.un.org/documents/ga/res/37/a37r092.htm>. Last visited on 27th August 2012.

<sup>324</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), Cardozo Art and Entertainment Law Journal, 10.

<sup>325</sup> D. L. Fisher., 'Prior consent to international direct satellite broadcasting' (1993), *International & Comparative Law Quarterly*, 462.

<sup>326</sup> J. E. Bailey. III., 'Current and future legal uses of direct broadcasting satellite in international law' (January 1985), *Louisiana Law Review*, 701.

**a. Sovereignty and Satellite Transmission**

The particular nature, technology and conditions of satellite broadcasting constitute a challenge for the traditional legal concept of state sovereignty<sup>327</sup> as a legitimate legal barrier for excluding satellite television broadcast from access to the sovereign territory of a state.

The concrete exercise of sovereignty has been, traditionally, tangibly linked to state borders as points of entry or exclusion of persons, goods etc from the territory belonging to a state's sovereign sphere. As inter-state or international demarcation lines, borders have been and continue to be the line<sup>328</sup> where the exercise of the sovereign authority of one state can be said to end and the sovereign authority of another (neighbouring) state can be said to begin. In concrete terms, the tangible movement of persons, goods etc from the sovereign domain of one state, traditionally comprising its land, territorial sea and the controllable air space,<sup>329</sup> into the sovereign domain of another neighbouring state are subject to the latter state's sovereign approval. Satellite broadcasting programmes are, however, invisible, intangible realities, difficult to ban or exclude by invoking sovereignty. They cannot be regulated and controlled the way persons and goods can be controlled at international borders.<sup>330</sup>

There is as yet no comprehensive legal system for the global governance of cross-border direct television signals transmitted via satellites.<sup>331</sup> In practical terms, a (sovereign) state can broadcast television signals crossing directly into another state's area of sovereign jurisdiction without the latter state's sovereign consent. Basically, according to international law, in the absence of a global

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<sup>327</sup> J. Thomson., 'State Sovereignty in International Relations: Bridging the Gap between Theory and Empirical Research' (1995), *International Studies Quarterly*, 229.

<sup>328</sup> S. Ratner., 'Drawing a Better Line: UTI Possidetis and the Borders of New States' (October 1996), *American Journal of International Law*, 590.

<sup>329</sup> J. Marciacq., et al., *Accommodating sub-orbital flights into the EASA regulatory System* in J. Pelton. and R. Jakku *Space Safety Regulations and Standards* (China: Elsevier Ltd Publishers, 2008), 189.

<sup>330</sup> M., E. Price., 'Satellite broadcasting as trade routes in the sky' (1999), *Public Culture*, Volume11, Issue 2, 388.

<sup>331</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), *Cardozo Art and Entertainment Law Journal*, 35.



agreement for it,<sup>332</sup> a sovereign state's right to televise via satellite(s) clashes with the sovereign right of other states to consent or not to consent to the "landing" of foreign televised satellite programmes in their respective territory.

The concept of sovereignty is demonstrated to be relevant to the legal challenges of international satellite broadcasting; and inter-governmental practice shows that not unilateral acts but several, existing treaties concluded by (sovereign) states constitute the basis underlying the regulation of programmes broadcast, via orbiting satellite, from a state into neighbouring states. Conflicts can be prevented and are overcome through inter-governmental cooperation and agreement.

#### ***b. Free Flow of Information***

The second point of conflict regarding DBS concerns the free flow of information across national borders. Universal acceptance of this concept does not prevail for direct television broadcasting. In 1972, UNESCO issued a Declaration of Guiding Principles on the Use of Satellite Broad-casting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange<sup>333</sup> in favour of increasing the free flow of information but this is not binding.<sup>334</sup> The United States, supported by the United Kingdom and a limited number of other states including Japan and Belgium, advocated complete freedom for the flow of ideas and information, that is, without any regulation.<sup>335</sup>

Satellite transmission directly affects the society without any interference. Satellite transmission directly receives to home television sets.<sup>336</sup> This direct transmission has direct effect without any hurdle to the society.

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<sup>332</sup> M. E. Price., 'Governance, globalism and satellites' (2008), Global Media and Communication, Volume 4(3), 248.

<sup>333</sup> D. L. Fisher., 'Prior consent to international direct satellite broadcasting' (1993), International & Comparative Law Quarterly, 461.

<sup>334</sup> J. E. Bailey III., 'Current and future legal uses of direct broadcasting satellite in international law' (January 1985), Louisiana Law Review, 711-712.

<sup>335</sup> J. E. Bailey III., 'Current and future legal uses of direct broadcasting satellite in international law' (January 1985), Louisiana Law Review, 713.

<sup>336</sup> J. E. Bailey. III., 'Current and future legal uses of direct broadcasting satellite in international law' (January 1985), Louisiana Law Review, 702.

Free flow of information is restricted due to the propaganda which are used to getting political control. Such kinds of tactics or propaganda were mostly used by public sector news channels. There are different channels other than news such as entertainment, sports, cartoon, science, education, history and some others channels. These channels (sports, kids and education) have no relation with political encounter/overcome.

Even though, there are restrictions on entertainment and even sports channels which have no link with nation identity or sovereignty. Star Plus (Indian Entertainment Channel) and Geo Super (Sports Channel) were banned in Pakistan. Same time, Pakistani TV channels banned in Indian Jammu and Kashmir<sup>337</sup> due to similarity in language. These restrictions are violation of free flow of information.

#### **3.4.5 Pakistan Satellite Broadcasting Environment**

A large number of satellite channels are received in Pakistan.<sup>338</sup> There are very few Pakistani public satellite channels such as PTV World and PTV News.<sup>339</sup> Most private satellite channels are based in Dubai and uplinking in Pakistan. They have to register under PEMRA for down and uplinking. The best known Pakistani private registered channels are Geo network, Ary, Aaj and a few others. All of them, uplinking from Dubai, use satellite broadcasting originating or situated in other countries.

As a comparison, no more than 16 satellite television channels were broadcasting in 2005; for 2010, the number of private satellite television channels licensed in Pakistan by PEMRA is 85.<sup>340</sup> Two main factors are responsible for the substantial rise in the number of awarded licences for satellite television

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<sup>337</sup> UNHCR, 'Government banns Pakistani stations in Kashmir' (2008) published at <http://www.unhcr.org/refworld/country,,RSF,,IND,,4820055fc,0.html>. Last visited on 27th August 2012.

<sup>338</sup> See Annexure V for a list of Satellite TV Licences and Guideline issued by Pakistan Electronic Media Regulatory Authority.

<sup>339</sup> Pakistan Television Corporation Ltd, 'Introduction' (2010), Published at <http://ptv.com.pk/aboutus-history.asp>. Last visited on 15th April 2012.

<sup>340</sup> Pakistan Electronic Media Regulatory Authority (PEMRA), 'A list of satellite TV licence issued by Pakistan Electronic Media Regulatory Authority' (2010), Published at [http://www.pemra.gov.pk/pemra/images/docs/stv/list\\_of\\_licences\\_issued\\_stv.pdf](http://www.pemra.gov.pk/pemra/images/docs/stv/list_of_licences_issued_stv.pdf). Last visited on 27th August 2012.

channels, (1) relaxation in cross media ownership restrictions by the legislator and (2) the significant expansion of the national advertising budget through FMCG (Fast Moving Consumer Goods) companies.<sup>341</sup> For the commercial satellite television channels, advertising is the sole source of income. Currently, the Pakistan Electronic Media Regulatory Authority (PEMRA), the competent Authority, is not issuing any more Satellite TV broadcasting licences.<sup>342</sup>

About 26 International channels, with issued landing right licences,<sup>343</sup> operate; they include BBC, CNN, Sky News, Ten Sports and others.

All local satellite television channels are mainly free to air, because collecting the subscription revenue is almost impossible. Twenty-eight foreign satellite television channels have been granted landing rights for distributing their transmissions in Pakistan. These channels are mostly subscription based, collecting some US \$ one million in subscription revenue from the local Pakistani market.<sup>344</sup> All these channels are organised and managed by different organisations.

This part of the chapter discusses the legal and technical regulators of satellite TV in Pakistan.

***a. The Pakistan Electronic Media Regulatory Authority (PEMRA)***

PEMRA is a regulated body for satellite transmission in Pakistan. Only a company or a body corporate incorporated in Pakistan can qualify for a licence for satellite TV broadcasting granted by PEMRA. No investment from a foreign government, organisation or individual can be approved. PEMRA is in a position to restrict or exclude foreign investment in the Pakistani satellite transmission sector.

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<sup>341</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2009), 23

<sup>342</sup> Pakistan Electronic Media Regulatory Authority (PEMRA), 'Satellite TV' (2010) Published at [http://www.pemra.gov.pk/pemra/index.php?option=com\\_content&view=article&id=6&Itemid=1](http://www.pemra.gov.pk/pemra/index.php?option=com_content&view=article&id=6&Itemid=1)  
1. Last visited on 27th August 2012.

<sup>343</sup> See Annexure VI. A list of international channels landing rights in Pakistan.

<sup>344</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2009), 24

Under the Pakistani constitution, every citizen has the right to freedom of speech and expression, in addition to the freedom of the press.<sup>345</sup> Every citizen has also the right of information subject to regulation and reasonable restrictions imposed by law.<sup>346</sup> The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed. It is also provided that the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded.<sup>347</sup>

Under the PEMRA Act, a person<sup>348</sup> who is issued a licence must contribute to ensuring the preservation of Pakistan's sovereignty,<sup>349</sup> security, integrity national, cultural, social and religious values and the principles of public policy of the Islamic Republic of Pakistan.<sup>350</sup> The person has also ensure that all programmes and advertisements shall not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency.<sup>351</sup> It is also mentioned in the preamble of PEMRA Act that one of the purposes of PEMRA is 'to ensure accountability, transparency and good governance by optimizing the free flow of information.'

The concept of state sovereignty, freedom of press and free flow of information are therefore protected through Pakistani constitution and media laws.

#### ***b. Pakistan Space and Upper Atmosphere Research Commission (SUPARCO)***

As a national space agency, the Pakistan Space and Upper Atmosphere Research Commission (SUPARCO) was established in 1961, as a Committee and then

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<sup>345</sup> The Constitution of the Islamic Republic of Pakistan, Article 19.

<sup>346</sup> The Constitution of the Islamic Republic of Pakistan, Article 19A.

<sup>347</sup> The Constitution of the Islamic Republic of Pakistan, Preamble.

<sup>348</sup> For the words "broadcaster or CTV operator" the word "person" substituted by the PEMRA (Amendment) Act, 2007, (Act No.II of 2007).

<sup>349</sup> For the word "respect" the words "ensure preservation of" substituted by the PEMRA (Amendment) Act, 2007, (Act No.II of 2007).

<sup>350</sup> Pakistan Electronic Media Regulatory Authority Act, 2007, Article, 20 (a and b).

<sup>351</sup> Pakistan Electronic Media Regulatory Authority Act, 2007, Article, 20 (c).

granted the status of a Commission in 1981. SUPARCO is mandated to conduct research and development in space science and space technology.<sup>352</sup> One of its functions is to develop communication satellites for voice, video, Direct-to-home TV broadcast services and digital data transfers.<sup>353</sup>

SUPARCO launched its first digital communication satellite BADAR-1 in 1990 and a second, BADR-B, in 2001. Pakistan has a leased satellite PAKSAT-1. The government of Pakistan has granted approval for the replacement, by 2011, of PAKSAT-1 by a new communication satellite PAKSAT 1R. SUPARCO has also developed a prototype of a communication satellite named Prototype PAKSAT-1R and is now developing an Engineering Qualification Model (EQM).

#### **3.4.6 Newly Developed Media Industry Challenges**

Satellite broadcasting is a newly developed area in Pakistan media industry. So, it is facing some challenges against free flow of information.

Geo TV, a Pakistani television network, is an Urdu language satellite service feeding cable systems and homes in Pakistan. Privately owned, it favours and promotes freedom of speech and freedom of expression.<sup>354</sup>

Geo TV had been uplinking from Dubai in the United Arab Emirates (UAE). The UAE is exclusively answerable for the uplinking, not for any other aspects. The Gulf state had established a reputation as a home for media and for new media industrial companies.<sup>355</sup> Geo TV was available through direct-to-home television signals and was functioning despite the declared state of emergency. However, on 17 November 2007, after consultations between the governments of Pakistan and the UAE, the government of the UAE decreed the discontinuation of its uplinking service to Geo TV. On 30 November 2007, after notice that the state of

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<sup>352</sup> SUPARCO, 'Introduction' (2012), Published at <http://www.suparco.gov.pk/pages/intro.asp>. Last Visited on 27th August 2012.

<sup>353</sup> SUPARCO, 'Function' (2012), Published at <http://www.suparco.gov.pk/pages/functions.asp>. Last Visited on 27th August 2012.

<sup>354</sup> BOLYTV, 'Geo TV' (2010), Published at <http://www.bolytv.com/geo-tv.html>. Last Visited on 27th August 2012.

<sup>355</sup> M. E. Price., 'Satellite transponders and free expression?' (2009), *Cardozo Art and Entertainment Law Journal*, 18.

emergency would be soon uplifted in Pakistan, Dubai once again agreed to allow the uplinking of Geo TV.

In a second case, under immense pressure by the democratic government of Pakistan on the Dubai government, 'Meray Mutabiq', the popular programme of Geo TV, was banned from being telecast from the Dubai studios in 2009.<sup>356</sup> In another case, PEMRA banned 24 local FM radio stations from broadcasting news bulletins from the BBC Urdu Service.<sup>357</sup>

In a third case, PEMRA shut down the Aag youth entertainment channel.<sup>358</sup> This channel provides a blend of entertainment and education for young people.<sup>359</sup>

In a fourth case, PEMRA closed the Pakistan sports channel Geo Super<sup>360</sup> for 60 days.<sup>361</sup> Geo super applied for renewal of licence to PEMRA but rejected. Because, it had not been granting security licence. Geo Super is the first sports channel in Pakistan.<sup>362</sup> After that, PEMRA has issued the licence to Geo Super on the directive of Pakistan Supreme Court.<sup>363</sup> A three-member bench of the Supreme Court (SC) headed by Chief Justice ordered<sup>364</sup> PEMRA to issue a

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<sup>356</sup> The News (Newspaper), 'President Asif Ali Zardari forces closure of 'Meray Mutabiq' in Dubai, (2009).

<sup>357</sup> The International Press Institute (IPI), 'Pakistan Bans Broadcast of BBC Urdu News Bulletins, (April 2010) Published at <http://www.freemedia.at/press-room/public-statements/asia-australasia/singleview/article/pakistan-bans-broadcast-of-bbc-urdu-news-bulletins.html>. Last Visited on 27th August 2012.

<sup>358</sup> The News (Newspaper), 'PEMRA asks cable operators to shut Aag TV' (April 2011), published at <http://www.thenews.com.pk/Todays-News-13-5172-Pemra-asks-cable-operators-to-shut-Aag-TV>. Last Visited on 27th August 2012.

<sup>359</sup> Aag TV, 'Objective' (2012) published at <http://aag.tv/Static/aboutus.aspx>. Last Visited on 27th August 2012.

<sup>360</sup> GEO Super, 'About Us' (2012) published at <http://www.geosuper.tv/about.asp>. Last Visited on 27th August 2012.

<sup>361</sup> The News (Newspaper), 'PEMRA issues licence to Geo Super' (June, 2011) published at [http://www.geo.tv/important\\_events/2011/geosuper\\_banned/pages/english\\_news.asp](http://www.geo.tv/important_events/2011/geosuper_banned/pages/english_news.asp). Last Visited on 27th August 2012.

<sup>362</sup> GEO Super 'About Us' published at <http://www.geosuper.tv/about.asp>. Last Visited on 27th August 2012.

<sup>363</sup> The News (Newspaper), 'PEMRA issues licence to Geo Super' (June, 2011) published at [http://www.geo.tv/important\\_events/2011/geosuper\\_banned/pages/english\\_news.asp](http://www.geo.tv/important_events/2011/geosuper_banned/pages/english_news.asp). Last Visited on 27th August 2012.

<sup>364</sup> Geo Super Case, Civil petition no. 683 OF 2011, 6 June 2011. Publishes at [http://www.supremecourt.gov.pk/web/user\\_files/File/CIVILPETITIONNO.683of2011.pdf](http://www.supremecourt.gov.pk/web/user_files/File/CIVILPETITIONNO.683of2011.pdf). Last Visited on 27th August 2012.

broadcasting licence to Geo Super immediately and submit the compliance report in three days.<sup>365</sup>

These cases are noteworthy in two respects: (1) they reflect the restriction of free flow of information and (2) these restrictions are imposed in the name of the sovereignty of the nation.

The public sector channels have political agenda to protect the government interest. On the other hand, private sector has no concern with politics, their prime aim to earn profit. The government even banned some entertainment and sports channels in Pakistan. These channels have no concerns with state sovereignty. These restrictions in the name of state sovereignty are irrational and illogical in an area of communication and globalisation.

### **3.4.7 Recommendations**

Satellite transmission raises two main issues of state sovereignty and free flow of information.

As mentioned above, sovereignty of the state and free flow of information are protected through the Pakistani constitution and media laws. In Pakistan, the constitution underpins the freedom of speech and expression and freedom of the press as fundamental rights. The PEMRA Act ensures sovereignty as national values underlying the principles of public policy. At the same time, the Constitution proclaims to safeguard national sovereignty, democracy, freedom, equality, tolerance and social justice: thus, the Constitution of Pakistan upholds both the concept of sovereignty and the protection of the free flow of information.

In Pakistan, both martial law and democratic government have imposed bans and/or restrictions on the Pakistani media. The rights of the media have been restricted. It should be free from these restrictions.<sup>366</sup> The protraction of these

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<sup>365</sup> The New (Newspaper), 'SC orders immediate restoration of Geo Super' (2011), published at [http://www.geo.tv/important\\_events/2011/geosuper\\_banned/pages/english\\_news\\_06-06-2011.asp](http://www.geo.tv/important_events/2011/geosuper_banned/pages/english_news_06-06-2011.asp). Last Visited on 27th August 2012.

<sup>366</sup> As discussed in Ch 3.4.2.6.

rights is necessary for a democratic society. Satellite transmission is also a big source of information for thousands of overseas Pakistanis.

There is no international agreement on the establishment of communication routes in the sky.<sup>367</sup> An international, global agreement commends itself as the most desirable solution for reconciling the state sovereignty. Even though, regional agreements are also very effective<sup>368</sup> especially between Pakistan and India.<sup>369</sup> There should be no restriction especially on sports and entertainment channels such as Star Plus (Indian Entertainment Channel) are not allowed in Pakistan, same in India. Even some sports channels were banned within Pakistan. Because, both countries restricted their channels into each other country. Such kinds of bilateral agreement not only help to improve the media sector but also improve the trade. It is also very important to create peace in this region.

In the age of conference or multilateral diplomacy, a universal, global agreement concerning the global protection of media rights is needed, reflecting the diminishing significance of sovereign borders as lines dividing countries and continents, the media tend to overcome the same dividing lines. The international community of states and governments should reconcile, globally, media rights with the concept of sovereignty.

### 3.5 Terrestrial

The state has maintained its monopoly over the sole national terrestrial broadcaster which guarantees it access to the majority of TV viewers in rural areas who do not have access to satellite or cable.

There are different modes of funding for terrestrial public sector broadcasting in Pakistan. This part of the chapter will describe the public sector of the terrestrial broadcasting in Pakistan and impact of its mode of funding. First, it explains public broadcasting and its international practice. It also describes the historical evolution of terrestrial broadcasting in Pakistan. A comparison

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<sup>367</sup> M., E. Price., 'Satellite broadcasting as trade routes in the sky' (1999), Public Culture, Volume11, Issue 2, 401.

<sup>368</sup> J. E. Bailey. III., 'Current and future legal uses of direct broadcasting satellite in international law' (January 1985), Louisiana Law Review, 713.

<sup>369</sup> Their spoken languages are understandable in both countries.



between public and private terrestrial broadcasting also analyses current media financial mechanism in Pakistan. Then it explains the financial resources and their impact of industry; and, lastly, it suggests some recommendations.

In Pakistan, terrestrial broadcasting is owned by both the public and the private sector as well. Terrestrial broadcasting market is very developed in Pakistan, in particular due to the fact that public sector terrestrial broadcasting covers 89% of entire population of Pakistan.<sup>370</sup>

### 3.5.1 Public Broadcasting

As discussed under chapter 2, the public service broadcasters are independent of government and commercial interest and their sole purpose is to serving the public interest.<sup>371</sup> In the last third of the twentieth century, in Western Europe, public broadcasting was the main broadcasting model. While the US and Latin America has been dominated by the commercial broadcasters.

‘Public Service Broadcasting (PSB) is an essential instrument to ensure plurality, social inclusion, and to strengthen the civil society.’<sup>372</sup>

There is no standard definition of public service broadcasting, and models vary from country to country; however there are widely accepted characteristics that they are accessible to every citizen, demonstrate diversity in targeted audience and subject, independent from commercial pressure and political influence<sup>373</sup> and show a creative approach and promote peace in the world.<sup>374</sup>

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<sup>370</sup> Pakistan Television Corporation Ltd, ‘Introduction’ (2012) published at <http://ptv.com.pk/introduction.asp>. Last Visited on 27th August 2012.

<sup>371</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 37.

<sup>372</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook*, (Paris: UNESCO, 2005), 6.

<sup>373</sup> This includes editorial independence, protections for freedom of expression, adequate, predictable and independent mechanisms of financing and independence of governing bodies and the selection process for their boards and chief executives and national identity. S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 193.

<sup>374</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 193.

The following factors are necessary to understand the concept of public broadcasting that is accessible to every citizen, diversity of public interest, program and subject, independent, distinctive from others,<sup>375</sup> regional and communication interest, high quality technical and production standards, cultural, linguistic and social consideration, limited amount of advertising (Maximum seven minutes per hour), affordability, universal coverage and voice of the nation.<sup>376</sup>

A public service broadcaster broadcasts for the public benefit rather than for purely commercial purposes.<sup>377</sup> It is commonly understood that a public service broadcasters should be editorially independent of government, serve the public interest and protect against the political and commercial interest.<sup>378</sup>

### 3.5.2 International Development

This part of the chapter discusses public broadcasting practice in different countries of the world.

In the US, the Corporation for Public Broadcasting (CPB) serves as an umbrella organisation for public television broadcasting. The CPB is a non-profit private organisation.<sup>379</sup> Public broadcasting stations are mostly owned by universities, non-profit community associations, local and state governments. There are 350 public television stations in the United States.<sup>380</sup> It reaches approximately 99% of the population.

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<sup>375</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook*, (Paris: UNESCO, 2005), 15-16.

<sup>376</sup> The Council of Europe's Independent Television Commission (2004) has described the definition of a PSB channels.

I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook*, (Paris: UNESCO, 2005), 15-16.

<sup>377</sup> Ofcom, 'Television, What is public service broadcasting?' (2012) published at [http://ask.ofcom.org.uk/help/television/what\\_is\\_psb](http://ask.ofcom.org.uk/help/television/what_is_psb). Last Visited on 27th August 2012.

<sup>378</sup> The Council of Europe's Independent Television Commission (2004) has described the definition of a PSB channels.

I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook*, (Paris: UNESCO, 2005), 15-16.

<sup>379</sup> L.R. Ickes, *Public broadcasting in America*, (US: Nova Science 2006), 3.

<sup>380</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 38.

In United Kingdom, Japan, Germany, the Netherlands, the Nordic countries and Australia have well organised and established public sector.<sup>381</sup>

### 3.5.3 Terrestrial Sector

Terrestrial broadcasting is operated by both public and private sector entities in Pakistan. This part of the chapter discusses the organisation and set up of terrestrial broadcasting and offer a comparative analysis.

#### a. *Pakistan Television Corporation Limited (PTV)*

As stated chapter 1 at 1.6.2., PTV is a terrestrial broadcasting. Terrestrial broadcasting uses micro-wave transmitters to broadcast digital or analogue signals. It is free to air in most countries like Pakistan and UK. For terrestrial broadcasting, there is a need for a transmitter to broadcast and every transmitter has limited reach. Access to the transmission is by antenna.

#### b. *A Shalimar Television Network Channel (ATV)*

ATV<sup>382</sup> is Pakistan's largest privately operated terrestrial television network<sup>383</sup> with the second largest national viewership.<sup>384</sup> It has a free-to-air broadcasting license and launched on June 24<sup>th</sup>, 2005.<sup>385</sup> It has 20 stations in Pakistan.<sup>386</sup> TV is watched throughout Pakistan terrestrially by antenna and in 56 countries of the

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<sup>381</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 39.

<sup>382</sup> ATV is the first semi-private TV network of Pakistan.

Shalimar Recording & Broadcasting Company Limited (SRBC), 'Introduction' (2010), Published at <http://www.srbc.com.pk/index.asp>. Last visited on 27th August 2012.

<sup>383</sup> M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 22.

<sup>384</sup> Pakistan Television Annual Report (2003-04), 51.

<sup>385</sup> In 1989 it created a wholly owned Peoples Television Network (Pvt) Limited which was later amalgamated with SRBC with the new name of STN, now called ATV.

<sup>386</sup> The ATV stations are located at Islamabad, Karachi, Lahore, Faisalabad, Daska, Multan, Bahawalpur, Larkana, Hyderabad, Sukkur, Peshawar, Mangora, Qalat, Batkhail, Khuzdar, Thandiani, Sahiwal, Sibi, Quetta and Tando Allahyar covering over 50% of the population. The success of ATV is primarily attributable to its extremely popular family entertainment programs. Shalimar Recording & Broadcasting Company Limited (SRBC), 'ATV stations' (2010), Published at [http://www.srbc.com.pk/stn\\_stations.asp](http://www.srbc.com.pk/stn_stations.asp). Last visited on 27th August 2012.

world through satellite.<sup>387</sup> All the capital and running expenses of this company are met from its own resources. No government grant, budgetary allocation or subsidy was ever acquired.<sup>388</sup>

There are some comparative analyses between PTV and ATV or private and public sector territorial sector. The profitability ratio of the ATV is 73% and the PTV ratio is 49%. The return on shareholder equity is 64% for ATV and 29% for PTV. The ATV enjoys sound financial health. It has paid unprecedented dividends of 6597% in the corporate history of Pakistan since its inception.<sup>389</sup> Although, ATV is a very small organisation. PTV is a huge organisation structure and financial aspects.

ATV met all the capital and running expenses from its own resources. No government grant, budgetary allocation or subsidy was ever acquired.<sup>390</sup> PTV depends on TV licence fees, advertisements, sponsorship, government grants and subsidies.

In this way, public broadcaster raises additional revenues from direct subsidies, commercial activities and donations. A variety of financial models are used. These are household levy (a licence fee), direct government funding, a levy on commercial broadcasting and advertising.<sup>391</sup> Funding is a key factor to influence the autonomy of public broadcasters.<sup>392</sup> Direct funding can be used to undermine the independence of the regulator.<sup>393</sup> In India, Doordarshan and AIR (PSB) TV channels are depended on budgetary support. So, it would be difficult for them to have independent decision-making.<sup>394</sup> The public broadcasting should be

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<sup>387</sup> Shalimar Recording & Broadcasting Company Limited (SRBC), 'International coverage' (2010), Published at [http://www.srbc.com.pk/satellite\\_connection.asp](http://www.srbc.com.pk/satellite_connection.asp). Last visited on 27th August 2012.

<sup>388</sup> Shalimar Recording & Broadcasting Company Limited (SRBC), 'The company' (2010), Published at [http://www.srbc.com.pk/srbc\\_in\\_brief.asp](http://www.srbc.com.pk/srbc_in_brief.asp). Last visited on 27th August 2012.

<sup>389</sup> Pakistan Television Annual Report (2003-04), 51-88.

<sup>390</sup> Pakistan Television Annual Report (2003-04), 52.

<sup>391</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 203.

<sup>392</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 191

<sup>393</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 169.

<sup>394</sup> A. Mukherjee., 'India's Trade Potential in Audio-Visual Services and the Gats' (2002), Indian Council for Research on International Economic Relations, 72.

financing through a funding mechanism designed to protect its independence<sup>395</sup> such as private media sector generates revenue.

#### 3.5.4 Financial Resources

Traditionally, the government invests in the production and distribution of public service broadcasting and justifies the investment on the basis of social and cultural benefits.<sup>396</sup>

There are several models of funding public broadcasting. The major earning model is through the licence fee. It also generates revenue through advertising, sponsorship and sells the air time and getting benefit through tax reduction and state aid as well.

##### *a. Licence fees*

As stated in Chapter 1 at 1.6.2.1, the main source of finance for the public sector is the licence fee. The domestic or terrestrial broadcasting are financed by TV licence. The Government of Pakistan set the level of the licence fee.

The licence fee is collected from the owner of a television receiver. Pakistan is one of the countries where they charge TV licence fees through power bills.<sup>397</sup> It is the easiest way to collect the licence fee.<sup>398</sup>

The Government has made it mandatory for all electronic consumers to pay the licence fee. In Pakistan, the television licence fee is 480 rupees<sup>399</sup> per year. It is collected as a 40 rupee<sup>400</sup> monthly instalment with the electricity bill.<sup>401</sup> It is

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<sup>395</sup> Pakistan Television Annual Report (2003-04), 87.

<sup>396</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook*, (Paris: UNESCO, 2005), 114.

<sup>397</sup> K. Siddiqi., 'Playing games with ourselves' (October 26, 2009), The News (Daily English newspaper).

<sup>398</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 204.

<sup>399</sup> 300 Pak Rupees is equal to 2.02 pound almost.

<sup>400</sup> 40 Pak Rupees is equal to .27 pound almost.

<sup>401</sup> Presently, domestic TV holders are required to pay TV license fee of Rs.300 per annum in lump sum. This system burdens the TV set holders by requiring bullet payment and the discomfort of payment after standing in long queues. In order to lessen this burden and to create

compulsory regardless of whether a homeowner actually possesses a TV or not.<sup>402</sup> In this way, all mosques, factories, offices, universities, colleges and libraries have to pay the licence fee.

In Greece, the licence fee is also paid by electricity bill. However, the law provides certain exemption for the state, public entities, local authorities, church and a number of others. The licence fee is imposed as a surcharge on all other electricity bills regardless of whether the debtor owns a television set. It constitutes a tax.<sup>403</sup>

Aside from the licence fee the other main source of income for PTV is advertising. The Corporation licence fee income is 2,308.099 million and advertising income was 2,107.834.<sup>404</sup> Same in previous year 2006-07, licence fee income is 2,102.308 and advertising income is 1,525.064.<sup>405</sup> In this way, licence fee income is more than its advertisement income.

A licence fee is an ideal form of financing and remains the most widespread form of financing in Europe.<sup>406</sup> The BBC (United Kingdom) is the best example of the public service broadcasting organisation funded by the licence fee<sup>407</sup> and the world service and some others sources. The BBC is accountable to the public through Parliament. They are funded through licence fee that is paid for the privilege of having a TV set. Some of the BBC channels are even commercially free such as BBC1 and BBC2.<sup>408</sup> Blind people have 50% discount in licence fee as

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ease for payment, it has been decided that this fee will be collected in 12 equal monthly instalments of Rs.25 each through domestic electricity bills from those whose monthly consumption of electricity exceeds 100 units. This scheme will not be applicable for FATA, PATA and AJK.

Central Board of Revenue (CBR), 'Budget speech 2004-05' (2010), Published at <http://www.cbr.gov.pk/budg2005/Speech/Speech.pdf>. Last visited on 6th May 2011.

<sup>402</sup> BBC News, 'TV licence fees around the world' (2007), Published at <http://news.bbc.co.uk/1/hi/entertainment/6241013.stm>. Last visited on 27th August 2012.

<sup>403</sup> I. Katsirea, *Public Broadcasting and European Law*, (The Netherland: Kluwer Law International, 2008), 64.

<sup>404</sup> Audit Report on the Accounts of Public Sector Enterprises Audit Year (2008-09), Auditor-General of Pakistan, 197.

<sup>405</sup> Audit Report on the Accounts of Public Sector Enterprises Audit Year (2008-09), Auditor-General of Pakistan, 197.

<sup>406</sup> M. E. Price and M. Raboy., *Public Service Broadcasting in Transition: A Documentary Reader*, (The Hague: Kluwer Law International, 2003), 5.

<sup>407</sup> W. Rumphorst., 'Model public service broadcasting law' (2003), ITU/BDT and UNESCO, 3.

<sup>408</sup> A. Cooper-Chen., *Global Entertainment Media Content, Audience and Issues* (London: Lawrence Erlbaum Associates, 2005), 40.

well.<sup>409</sup> There is no discount in license fees or commercial free channels in Pakistan.

In UK, the consumers need to be covered by a valid TV Licence if you watch or record television programmes as they are being shown on TV. This includes the use of devices such as a TV, computer, mobile phone, games console, digital box or DVD/VHS recorder. There are some exemptions for persons receiving welfare benefits and disabilities and a number of others. However, this obligation is waived for the same person except they are paying already.<sup>410</sup>

Few countries rely of single source of financing. NHK (Japan Broadcasting Corporation), Japan's sole public broadcaster is financed by receiving fee paid by each household that owns a television set. Germany (Association of Public Service Broadcasters) is funded almost entirely by the licence fee.<sup>411</sup> In Japan and Sweden, public broadcasters rely entirely on licence fees.<sup>412</sup>

#### ***b. Advertisement/Sponsorship and other Sources***

The second major source of income in the public sector comes from advertisement. In the past few years, many public broadcasting rely on advertising as well. In 2007-08, the PTV income is mentioned in previous section for comparison.

Spain's TVE and New Zealand's NZTV are totally financed by advertisement revenues.<sup>413</sup> The Chilean public service broadcaster, TVN is funded almost entirely through advertising.

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<sup>409</sup> I. Katsirea, *Public Broadcasting and European Law* (The Netherland: Kluwer Law International, 2008), 133.

<sup>410</sup> I. Katsirea, *Public Broadcasting and European Law*, (The Netherland: Kluwer Law International, 2008), 39.

<sup>411</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 204.

<sup>412</sup> A. Mukherjee., 'India's Trade Potential in Audio-Visual Services and the GATS' (2002), Indian Council for Research on International Economic Relations, 72.

<sup>413</sup> A. Mukherjee., 'India's Trade Potential in Audio-Visual Services and the GATS' (2002), Indian Council for Research on International Economic Relations, 72.

In some cases, public broadcasting has no revenue from advertising.<sup>414</sup> In most cases, there is mixed finding. This is in the large majority of (Western) European Countries.<sup>415</sup>

**c. Government Grants**

Third source of Pakistan broadcasting sector is through government's grants. Direct government funding establishes high risk of government interference.<sup>416</sup> The Government of Pakistan supports the PTV in different ways such as grants, loans and bank loan etc.

In this way, PTV depends on licence fee, advertisement, sponsorship, government grants and subsidies. The government justifies these investments on the basis of social and cultural benefits.<sup>417</sup> The public funding of PTV alone of broadcasters cannot be justified on the grounds such as "democratic, social and cultural needs of each society".<sup>418</sup>

As we have seen, it is stated in PEMRA Act that every private sector licence holder must ensure the preservation of the national, cultural, social and religious values and the principles of public policy. It is even mentioned in the preamble of the PEMRA Act that;

enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest.

So, it means that it is duty of both sectors to protect the social and cultural values of the society. In this way, the government cannot give above mentioned benefits to public sector media alone.

The Government of Pakistan want a tight control over terrestrial broadcasting. Because, there are 52 million viewers out of 86 million in rural area in

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<sup>414</sup> W. Rumphorst., 'Model public service broadcasting law' (2003), ITU/BDT and UNESCO, 4

<sup>415</sup> W. Rumphorst., 'Model public service broadcasting law' (2003), ITU/BDT and UNESCO, 5

<sup>416</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 203.

<sup>417</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook*, (Paris: UNESCO, 2005), 114.

<sup>418</sup> A. F. Bavasso., 'Public service broadcasting and state aid rules: Between a rock and a hard place' (2002), *European Law Review*, 344.



Pakistan.<sup>419</sup> To maintain its monopolistic position in terrestrial broadcasting, it can use this position, whenever it is required.

As cable and satellite transmission were banned in the November 2007 emergency.<sup>420</sup> Due to this ban, the Government had controlled all over Pakistan TV transmission through only available terrestrial broadcasting in Pakistan.

It is necessary for the independence of Pakistan media that not rely depend on above mentioned financial resources. There are some examples to overcome this situation. There are some public broadcasters who do not depend on government funds in the world. In Germany, public broadcasting sector (ARD) has set up a private law subsidiary company to sell airtime to private sector.<sup>421</sup> In Estonia, public service broadcasters run through the fees collected from private broadcasters.<sup>422</sup> In Jamaica, cable operators are required to pay five per cent of their gross income as a licence fee.<sup>423</sup> In this way, Government of Pakistan should depend on these sources of income for the independence and credibility of public sector broadcaster.

### 3.5.5 Recommendations

In Pakistan, terrestrial TV broadcast sectors are organised separately in public and private sector. The Government should crystallise the role of public service broadcasting in the context of its financial sources.

Financing is the main issue in public sector. Politicians can misuse it for their political purposes.<sup>424</sup> The public media industry required protections for adequate, predictable and independent mechanisms of financing.<sup>425</sup>

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<sup>419</sup> M. Mezzera. and S. Sial., 'Country case study: Pakistan, Media and governance in Pakistan: A controversial yet essential relationship' (October 2010), IFP Democratisation and Transitional Justice Cluster, 21.

<sup>420</sup> Army Government imposed martial law in Pakistan. As mentioned in Ch 3.4.6.

<sup>421</sup> S. Nikoltchev., *The Public Service Broadcasting Culture* (Strasbourg: European Audiovisual Observatory, 2007), 42.

<sup>422</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 204.

<sup>423</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook* (Paris: UNESCO, 2005), 123.

<sup>424</sup> Some of the cases mentioned in Ch 3.4.6.

<sup>425</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 193.

First, these public sector financial resources are not justified on the basis of social and cultural benefits. It is clearly mentioned in PEMRA Act for private sector (ATV) that every licence holder ensures preservation of the national, cultural, social and religious values and the principles of public policy. It is also mentioned on PTV memorandum of association for public sector that ‘its affairs are conducted on sound commercial basis, it does not lose the character of public services’.<sup>426</sup>

In this way, it is duty of both public and private media sectors to protect the social and cultural values of the society. So, the government cannot give financial benefits just to public sector media on the social and cultural grounds.<sup>427</sup>

Second, the government cannot give unjustified financial benefits to public media sector. The major source of income is licence fee for public terrestrial channel. It also earns from advertisement, government grants, sell the air time and tax reduction and some others. To cope with the financial barriers, there are some practical examples in the world for Pakistan media industry. These countries do not depend on government funds such as in Germany sell airtime to private sector,<sup>428</sup> Estonia fees collect from private broadcasters,<sup>429</sup> Jamaica cable operators pay licence fee.<sup>430</sup>

In this way, the public media TV sector does not depend on government funds for the sake of an independence of media regulation in Pakistan.

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<sup>426</sup> Pakistan Television Corporation Ltd, Memorandum of Association, 4.

<sup>427</sup> As mentioned in 3.5.4.

<sup>428</sup> S. Nikoltchev., *The Public Service Broadcasting Culture* (Strasbourg: European Audiovisual Observatory, 2007), 42.

<sup>429</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 204.

<sup>430</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook* (Paris: UNESCO, 2005), 123.

### 3.6 Mobile TV

TV broadcasting was historically only accessible through a fixed mode of delivery. Now, with the development of the technology, the consumer has access to the contents of TV broadcasting anywhere through different modes. Mobile Television is in its formative years and as a result institutional measures are required to regulate the new technology.

This section covers regulatory issues in a key area of digital broadcasting namely mobile TV. Mobile TV is the broadcast of live TV to an adapted mobile phone handset or the streaming of an on-demand programme through the internet. There are a large number of sports and events for which mobile rights are sold.<sup>431</sup> Nearly half of US mobile users are interested in watching live digital television on a mobile device.<sup>432</sup> Issue arises as a consequence of technological development and have an impact on legislation. In Pakistan, the digital TV media is very much in its infancy and its evolution is not complete. This section will explore the regulatory framework governing the emerging technologies.

TV Media is going to commercialise gradually through the development of new technology.<sup>433</sup> Mobile TV presents new challenges from legal and regulatory points of view.<sup>434</sup>

This section of the chapter focuses on the binary relationship between broadcasting and communication, and technological development in Pakistan. First, it explains the new technology used in Mobile TV broadcasting and its operation in different countries of the world. Then it examines the international environment and defines the current prevailing situation of broadcasting through Mobile TV in Pakistan. The institutional gap between the communication and

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<sup>431</sup> L. Penny, 'Sports rights - How mobile are they? A consideration of the competition issues arising from the European Commission's investigation in the sector inquiry into new media (3G)' (2005) *Entertainment Law Review*, 203.

<sup>432</sup> Frank N. Magid Association, 'The OMVC mobile TV study: Live, local programming will drive demand for mobile TV' (2009), Published at [http://www.openmobilevideo.com/\\_assets/docs/press-releases/2009/OMVC-Mobile-TV-Study-December-2009.pdf](http://www.openmobilevideo.com/_assets/docs/press-releases/2009/OMVC-Mobile-TV-Study-December-2009.pdf). Last visited on 27th August 2012.

<sup>433</sup> D. Sehgal., and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), *Journal of Intellectual Property Rights*, 403

<sup>434</sup> C. Alvarez., 'Mobile TV: Where are and the way forward' (2009), *IBA Convergence*, 1.

broadcasting sectors in regulating mobile TV is then considered; and, lastly, recommendations for improving the situation in Pakistan are set out.

### 3.6.1 Technology

Mobile TV is defined through the International Telecommunication Union accordingly;<sup>435</sup> ‘Mobile TV is the wireless transmission and reception of television content - video and voice - to platforms that are either moving or capable of moving.’<sup>436</sup>

There are different popular digital broadcasting standards used in Mobile TV broadcasting all over the world such as MediaFLO,<sup>437</sup> 2G,<sup>438</sup> 3G,<sup>439</sup> Digital Video Broadcasting-Handheld DVB-H, DVB-H2 and<sup>440</sup> DVB-SH.<sup>441</sup>

In November 2004, DVB-H was formally adopted by the European Telecommunications Standards Institute (ETSI) as the standard in Europe for Mobile TV services.<sup>442</sup> From March 2008, DVB-H has been added to the list of official standards of the European Union.<sup>443</sup> ‘DVB-H technology is a superset of

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<sup>435</sup> C. Alvarez., ‘Mobile TV: Where are and the way forward’ (2009), IBA Convergence, 2.

<sup>436</sup> International Telecommunication Union, *Trends in Telecommunication Reforms 2008 Six degree of sharing*, (Geneva: International Telecommunication Union Press, 2008), 23.

S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 169.

<sup>437</sup> MediaFLO is a multimedia broadcast technology that delivers television content to mobile devices.

A. Ishii, ‘Development of mediaFLO handset’ (2007), 第95号・2007年2月, 33

<sup>438</sup> Refers to the second generation cellular phones that introduced digital technology and carried both voice and data conversation. CDMA, TDMA, and GSM are examples of 2G mobile network. GSM used throughout the world. CDMA and TDMA are used primarily in the Americas.

H. Newton., *Newton’s Telecom Dictionary*, 25<sup>th</sup> edition (New York: Flatiron Publishing, 2009), 71.

<sup>439</sup> 3G is the generic term for the third generation of wireless mobile communications networks. Most commonly, 3G networks are discussed as graceful enhancement of the GSM cellular standards. An upgrade to 2G.

H. Newton., *Newton’s Telecom Dictionary*, 25<sup>th</sup> edition (New York: Flatiron Publishing, 2009), 72.

<sup>440</sup> DVB-H2 is future enhancements to DVB-H.

<sup>441</sup> DVB-SH (Digital Video Broadcasting - Satellite services to Handhelds) is one of the most recent video broadcast standards to come from the DVB consortium.

S. Pekowsky., et al., ‘Mobile TV receiver technology with special emphasis on DVB-SH, International Journal of Satellite Communications 2009, p 275.

S. Pekowsky, et al., ‘Mobile TV receiver technology with special emphasis on DVB-SH’ (2009), International Journal of Satellite Communications, 275.

<sup>442</sup> R. Hawkins and P. Ballon, ‘When standards become business models: reinterpreting “failure” in the standardization paradigm’ (2007), The Journal of Policy, Regulation and Strategy for Telecommunications Information and Media, Volume 9, Issue 5, 20-30

<sup>443</sup> Commission Decision 2008/286/EC of 17 march 2008 amending Decision 2007/176/EC as regards the List of standards and/or specification for electronic communications networks, services and associated facilities and services (OJ L 93, 4.4.2008, p. 24)

the very successful DVB-T (Digital Video Broadcasting - Terrestrial) system for digital terrestrial television, with additional features to meet the specific requirements of handheld, battery-powered receivers'.<sup>444</sup> DVB-H has been launched in Vietnam, India, Nigeria, and The Philippines.<sup>445</sup>

Mobile TV services are delivered via third generation mobile technology "3G", a modified version of second generation technology "2G". 3G technology allows consumers to watch real-time video instead of downloading clips, and it provides as optimal platform for downloading large amounts of video content.<sup>446</sup> . The BBC has provided a range of TV channels to the 3G networks of Orange, Vodafone and 3. It will help to develop future mobile strategy.<sup>447</sup>

In 2005, Orange mobile company launch first mobile TV in UK.<sup>448</sup> In 2012, Orange<sup>449</sup>, T-Mobile<sup>450</sup> and Vodafone<sup>451</sup> provides Mobile TV services in UK. Sky Mobile TV News and Sports is also available on the Apple iPhone on O2<sup>452</sup> and Orange.

In the United States, the company Qualcomm developed MediaFLO. The market is divided between MediaFLO and services like MobiTV. The Qualcomm stopped

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Legal Framework for Mobile TV Networks and Services: Best Practice for Authorisation - The EU Model, Brussels, 10.12.2008, COM (2008) 845 final, 2.

<sup>444</sup> WIPO, 'Improving transmission of media streams of broadcast services in a multimedia broadcast transmission system, WO/2009/155963, (2010), Published at <http://www.wipo.int/patentscope/search/en/detail.jsf?docId=WO2009155963&recNum=1&maxRec=&office=&prevFilter=&sortOption=&queryString=&tab=PCTDescription>. Last Visited on 27th August 2012.

<sup>445</sup> European Broadcasting Union (EBU), 'Mobile broadcast television in Europe,' (January 2008), Executive Summary, 2.

<sup>446</sup> N. A. Behar, 'Regulating chimeric communications technology: The future of mobile TV' (2006), CommLaw Conspectus, 188.

<sup>447</sup> European Broadcasting Union (EBU), 'Mobile broadcast television in Europe,' (January 2008), Executive Summary, 22.

<sup>448</sup> Mobile TV, 'What is mobile TV from Orange' (2012) Published at <http://www1.orange.co.uk/entertainment/tv/whatIsOrangeTV.php>. Last Visited on 27th August 2012.

<sup>449</sup> Orange, 'What is mobile TV from Orange' (2012), published at <http://www1.orange.co.uk/entertainment/tv/whatIsOrangeTV.php>. Last Visited on 27th August 2012.

<sup>450</sup> T-Mobile, 'T-Mobile TV' (2012) published at <http://apps.t-mobile.com/mobile-tv/>. Last Visited on 27th August 2012.

<sup>451</sup> Vodafone, 'Mobile TV' (2012) published at <http://www.vodafone.co.uk/vodafone-uk/about-this-site/terms-and-conditions/products-and-services/mobile-tv/index.htm>. Last Visited on 27th August 2012.

<sup>452</sup> 3G, 'Sky mobile TV free on your iphone with o2' (2012), published at <http://www.3g.co.uk/PR/Nov2009/Sky-Mobile-TV-Free-On-Your-iPhone-With-O2-3G.html>. Last Visited on 27th August 2012.

MediaFLO services.<sup>453</sup> MobiTV is using some of the core technologies such as HTTP adaptive streaming and others.<sup>454</sup> MobiTV delivers live and on-demand television, downloadable video and related media content across mobile devices. The preferred technology for beaming television to mobile phone is known as DVB-H.

Public Service Broadcasters (PSB) will be key players. PSBs have experimented by offering their content on 3G networks.

### 3.6.2 International environment

At international level there have been significant developments in respect of this mode of delivery.<sup>455</sup> This section will consider some of the countries with Mobile TV transmission.

The Hong Kong government made an effort to follow the international trend for the development of broadcasting services. The Hong Kong government issued a framework for mobile television. The Government aims to grant two to three mobile TV licences broadcasting 26 channels. More than one service provider creates a competitive market.<sup>456</sup>

Frequency spectrum is to be allocated by auction. The successful bidder will pay a licence fee as well as a spectrum utilisation fee. The successful bidder shall develop the services within 18 months.<sup>457</sup> These licences will be awarded for 15 years. There is no restriction on foreign broadcasters/investors in this field. These new development will expand potential economical growth.

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<sup>453</sup> M. Lapedus., 'Qualcomm's FLO TV to stop flowing' (2010), published at <http://www.eetimes.com/electronics-news/4209345/Qualcomm-s-Flo-TV-to-stop-flowing->. Last Visited on 27th August 2012.

<sup>454</sup> MobiTV, 'Core technologies' (2012) published at <http://www.mobitv.com/core-technologies/>. Last Visited on 27th August 2012.

<sup>455</sup> Almost 40 million mobile TV users watch mobile TV.

A. Little., 'Mobile TV: Tuning in or switching off' (2009), 3, published at [http://www.adlittle.com/downloads/tx\\_adlreports/ADL\\_Report\\_Mobile\\_TV.pdf](http://www.adlittle.com/downloads/tx_adlreports/ADL_Report_Mobile_TV.pdf). Last Visited on 27th August 2012.

<sup>456</sup> G. Kennedy, et al., 'Legal developments and industry issues relevant to IT, media and telecommunications law in key jurisdictions across the Asia Pacific' (2009), Computer Law & Security Review 25, 199.

<sup>457</sup> G. Kennedy, et al., 'Legal developments and industry issues relevant to IT, media and telecommunications law in key jurisdictions across the Asia Pacific' (2009), Computer Law & Security Review 25, 200.

In Japan live national and local television is free for its citizens' mobile phones. Verizon is the largest mobile operators in America and offers news, sports, primetime shows and cartoon channels for an additional \$15 a month.<sup>458</sup>

South Korea is the first country in the world to have had mobile TV in 2005 when satellite DMB (S-DMB)<sup>459</sup> and terrestrial DMB (T-DMB)<sup>460</sup> services have started.<sup>461</sup> South Korea and Japan are at the forefront of this developing sector;<sup>462</sup> nearly half of all Koreans have access to mobile TV.

In Europe, the actual number of mobile television subscriber is almost 6.2 millions.<sup>463</sup> The most advanced market in Europe is Italy.<sup>464</sup> In Italy, Mobile TV users will increase from 1.2 million to 2.5 million in 2015.<sup>465</sup> The UK and Germany have minor successes as compare to Italy. This may be due to the limited service provided to viewers.<sup>466</sup> In 2012, Poland's leading DTH platform Cyfrowy Polsat officially launched its DVB-T mobile TV service.<sup>467</sup>

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<sup>458</sup> The Economist, 'Tech.view tellyphone, America is finally poised to get mobile television' (Dec 31st 2009).

<sup>459</sup> The Satellite Digital Multimedia Broadcasting (S-DMB) system provides high quality audio, video and data broadcasting services to handheld and mobile receivers.

J. Seo, 'Personal and mobile satellite DMB services in Korea' (March 2007), IEEE Transactions on Broadcasting, Vol. 53, NO. 1, 179.

<sup>460</sup> DMB stands for Digital multimedia broadcasting. The terrestrial DMB is called by T-DMB in Korea.

G. Lee, et al., 'Development of Terrestrial DMB Transmission System based on Eureka-147 DAB System' (2005) 63. (Conference Paper)

<sup>461</sup> D. Sehgal, and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), Journal of Intellectual Property Rights, 403

<sup>462</sup> Broadcast Engineering, 'South Korea takes to mobile TV like crazy' (7 July 2009) TNS Global. (Newspaper)

<sup>463</sup> T. Evens., and B. Prario., 'Mobile television in Italy: The key to success, the curse of failure' (2012), International Journal of Digital television, 85.

<sup>464</sup> European Broadcasting Union (EBU), 'Mobile broadcast television in Europe,' (January 2008), Executive Summary, 19.

<sup>465</sup> R. Briel., 'Research: Italian mobile TV usage to double, (2009) published at <http://www.broadbandtvnews.com/2009/11/27/research-doubling-of-mobile-tv-usage-in-italy/>. Last Visited on 27th August 2012.

<sup>466</sup> European Broadcasting Union (EBU), 'Mobile broadcast television in Europe,' (January 2008), Executive Summary, 19.

<sup>467</sup> C. Dziadul., 'Mobile TV launches in Poland' (June 2012) published at <http://www.broadbandtvnews.com/2012/06/04/mobile-tv-launches-in-poland/>. Visited on 11th August 2012.

### 3.6.3 Mobile TV Industry in Pakistan

At the end of February 2011, there were 100 million mobile TV subscriptions in Pakistan.<sup>468</sup> There are 6 mobile TV companies which provide the mobile connection to the consumers in Pakistan. They are Instaphone, Mobilink Telenor, Ufone, Zong and Warid. Telenore is the first mobile company to introduce mobile television in Pakistan. By 2012 three mobile TV licences have been issued in Pakistan namely M/S Brands Promotion Centre Pvt. Ltd., M/S Cellevision Pvt. Ltd., and M/S Dialogue Pvt. Ltd. Telenor and Mobilink are the two mobile companies currently providing this service in Pakistan.<sup>469</sup>

In March 2012, Pakistan was in 8<sup>th</sup> position globally in terms of mobile subscribers<sup>470</sup> and crossed almost 118 million mobile customers in Pakistan.<sup>471</sup>

#### *a. Mobile TV in Pakistan*

In South Asia, Pakistan is the second country after India that has launched a mobile television service. Telenor and Mobilink Pakistan's mobile companies are offering mobile TV.<sup>472</sup> Through mobile TV, customers in Pakistan can enjoy national and international news, latest stock market reports, financial news and entertainment. The mobile TV service streamcasts 13 TV channels.

#### *b. Licence Fee Required for Mobile TV*

In the UK, consumers need a valid TV licence if they use TV receiving equipment to watch or record television programmes shown on TV. The equipment includes

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<sup>468</sup> Pakistan Telecommunication Authority, 'PTA Organized 100 Million Cellular Subscription Celebration Event' (February 2011), Published at [http://www.pta.gov.pk/index.php?option=com\\_content&task=view&id=1663&catid=92&Itemid=739](http://www.pta.gov.pk/index.php?option=com_content&task=view&id=1663&catid=92&Itemid=739). Last Visited on 11th April 2012.

<sup>469</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 23.

<sup>470</sup> Theguardian., 'Surfing the web on an iPhone in Iran(2012), published at <http://www.guardian.co.uk/media-network-partner-zone-publici/web-iphone-iran>. Last Visited on 27th August 2012.

<sup>471</sup> Pakistan Telecommunication Authority., 'Annual cellular Subscribers' (March 2012), published at [http://www.pta.gov.pk/index.php?option=com\\_content&view=article&id=269&Itemid=599](http://www.pta.gov.pk/index.php?option=com_content&view=article&id=269&Itemid=599). Last Visited on 27th August 2012.

<sup>472</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 23.



a TV, computer, mobile phone, games console, digital box, DVD/VHS recorder or any other device. If anyone has already a valid TV licence, they can use any device.<sup>473</sup> Because, the fee is not on particle device but for watching or recording of television programme. In Pakistan, TV licence is only required for television sets and not for other devices. Mobile TV does not require TV License in Pakistan

#### 3.6.4 Institutional Arrangements

Institutions play a key role in the development of the communication sector of a country. The Republic of Korea had four government authorities responsible for regulating the communication sector; the Telecommunications Commission, the Ministry of Information and Communication (MIC), the Broadcasting Commission, and The Ministry of Culture and Tourism.<sup>474</sup> Recently, the Korean government introduced new legislation transferring the powers of all four authorities to one single organisation. Pakistan has three government authorities responsible for regulating the mobile communication sector; Ministry of Information and Broadcasting, Pakistan Telecommunications Authority (PTA) and Pakistan Electronic Media Regulatory Authority (PEMRA).

In Mobile TV broadcasting two regulatory organisations are involved: telecommunication and broadcasting. However, there is no regulatory framework that directly addresses streamcasting TV content to mobile TV in Pakistan.<sup>475</sup>

More than 153 countries have established independent regulatory authorities for ICT (information and communications technologies) and telecommunication.<sup>476</sup> Most of the OECD (Organisation of Economic Cooperation and Development) countries have separate regulators for broadcasting and for telecommunications.

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<sup>473</sup> UK TV Licensing, 'Technology' (2010), Published at <http://www.tvlicensing.co.uk/check-if-you-need-one/topics/technology-top8/>. Last Visited on 27th August 2012.

<sup>474</sup> ICT Regulation Toolkit (International Telecommunication Union and Information for Development Program) 'Regulatory authorities responsible for IPTV and mobile TV' Published at <http://www.ictregulationtoolkit.org/en/Section.3438.html>. Last Visited on 27th August 2012.

<sup>475</sup> T. Johnsen, 'Mobile TV in Pakistan' (2010) Published at [http://www.wirtel.co.uk/mobile\\_tv\\_in\\_pakistan\\_telenor.htm](http://www.wirtel.co.uk/mobile_tv_in_pakistan_telenor.htm). Last Visited on 27th August 2012.

<sup>476</sup> ICT Regulation Toolkit (International Telecommunication Union and Information for Development Program) 'How did we get here' Published at <http://www.ictregulationtoolkit.org/en/Section.3102.html>. Last Visited on 27th August 2012.

The nine countries have one regulator for broadcasting and for telecommunication. These countries are Australia, Canada, Finland, Iceland, Italy, Japan, Luxembourg, United Kingdom, and the United States.

Reference has already been made to the PTA in chapter 2 at 2.2.1. However, below the relevance laws and mobile companies is set out.

**a. *Pakistan Telecommunication Authority (PTA)***

The Pakistan Telecommunication Ordinance (1994) established a regulatory framework for the telecommunication industry and established an authority. The Pakistan Telecommunication Authority (PTA) was established to regulate the creation, operation and maintenance of telecommunication systems, and the provision of telecom services under the Telecom Reorganisation Act 1996.<sup>477</sup>

PTA works under the following laws: Pakistan Telecommunication (Re-Organisation) Act, 1996 (as amendments in 2006); Pakistan Telecom Rules, 2000, Pakistan Telecommunication Authority (Functions & Power) Regulations, 2006 and Class Value Added Services Licensing and Registration Regulations 2007.

PTA's function is to regulate the creation, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.

There are seven mobile companies working under the supervision of the PTA, namely Instaphone, Mobilink, Paktel, Telenor, Warid, Ufone and SCO (Special Communication Organisation) and some broadband, WiMax networks or Wireless Broadband companies such as Burraq, PTCL, Z-WLL, Cyber Internet, Wateen Telecom and Mytel.

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<sup>477</sup> The Telecommunication (Reorganisation) Act, 1996 (Amended in 2006), s 4 (a) (d).

**b. *Pakistan Electronic Media Regulatory Authority (PEMRA)***

The Electronic Media Regulatory Authority<sup>478</sup> controls electronic media by implementing the national legislation governing electronic media, some of which were adopted to implement international treaty obligations.<sup>479</sup> In this way, the Mobile TV broadcasting for Pakistani audience would be regulated under PEMRA Ordinance as well. PEMRA issues the licence for 1 year which is extendable for further 4 years subject to satisfactory report.

The regulatory authorities are connected with each other due to the development of technology. But, there is no coherence between these organisations.

The triple play services, that is, land phone, broadband and television include PTA as a main regulatory authority in broadcasting.<sup>480</sup> Some firms are expanding the service with a 'quadruple play' that includes wireless services (mobile) as well.<sup>481</sup> There is some broadcasting transmission which also applies to telecommunication such as IPTV, cable and Mobile Operators. Every Mobile TV service provider requires a licence from PEMRA under an agreement Mobile TV (Content Provision Service)<sup>482</sup> to run their business in Pakistan. So, the authority has direct involvement in broadcasting transmission as well.

However, there are some conflicts between PTA and PEMRA on Mobile broadcasting.<sup>483</sup> First, the main telecommunication and broadcasting sector is directly regulated by PTA. Second, there is less professional approach between regulators. Now, Mobile TV is regulated by independent media authority PEMRA.

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<sup>478</sup> Pakistan Electronic Media Regulatory Authority has been established under Pakistan Electronic Media Regulatory Authority Act 2007 to facilitate and regulate the private electronic media. Pakistan Electronic Media Regulatory Authority (PEMRA), 'Introduction' (2010), Published at <http://www.pemra.gov.pk/>. Last Visited on 27th August 2012.

<sup>479</sup> The Pakistan Electronic Media Regulatory Authority is already discussed in Chapter 2.2.2.

<sup>480</sup> A. Lee., 'The development of IPTV and VOD in Europe in the context of transition to digital television' (2007), Media Law and Policy, 58.

<sup>481</sup> L. Holt., 'Federal regulation and competitive access to multiple BT-unit premises: More choice in communications services?' (Spring 2008), Journal on Telecommunications & High Technology Law, Issue 6 (2), 425.

<sup>482</sup> See Annexure VII, A list of mobile TV licence issued by Pakistan Electronic Media Regulatory Authority attached.

<sup>483</sup> H. Sarfaraz., 'Freedom of expression in dissemination of mobile 2.0 content: Pakistan' (2009) LIRNEasia, 3.

Even though, it requires a licence from PTA to allocation the PEMRA's licensees. PTA and PEMRA had no idea how to deal with the launch of first mobile TV in Pakistan. The PTA representative argued that it has nothing to do with the mobile TV because it deals with telecom. The PEMRA representative argued that it has nothing to do with its laws because it just deals with transmission. After getting a Mobile TV licence, a licensee has to apply to the Frequency Allocation Board (FAB) through the PTA for frequency allocation.<sup>484</sup> Similarly, a licensee of PEMRA using any spectrum has to pay annual spectrum charges to the PTA. It does seem that the present mobile TV broadcasting is beyond the scope of regulatory framework. Third, in respect of technical aspects, it is regulated by PTA and legally under the control of PEMRA. Although, there is no law exist to regulate Mobile TV in Pakistan. On these points, there is some inconsistency between two regulatory organisations.

### 3.6.5 Recommendations

There is no regulatory framework in Pakistan that directly addresses mobile TV broadcasting.<sup>485</sup> Furthermore, there is no single regulator and no cooperation agreement has been entered between the authorities.<sup>486</sup>

Traditionally, telecom and broadcasting are regulated separately. The technological development that has taken place changed this manner of regulation. Consequently, a single regulatory body should be established with responsibility for both broadcasting media and telecoms services. This is the position in the United Kingdom since 2003 when the Office of Communications (Ofcom) was given statutory responsibility for television, radio, telecommunications and wireless communications services.<sup>487</sup>

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<sup>484</sup> Z. Tahir., 'Cell TV gives wake-up call to Pemra, PTA' (2011), Dawn Newspaper, published at <http://archives.dawn.com/dawnftp/72.249.57.55/dawnftp/2007/05/12/nat35.htm>. Last Visited on 27th August 2012.

<sup>485</sup> T. Johnsen, 'Mobile TV in Pakistan' (2010) Published at [http://www.wirtel.co.uk/mobile\\_tv\\_in\\_pakistan\\_telenor.htm](http://www.wirtel.co.uk/mobile_tv_in_pakistan_telenor.htm). Last Visited on 27th August 2012.

<sup>486</sup> D. Petranyi, and C. Watson, 'Crossed Wires' (2009), Legal Week , Vol 11, Issue 11, 33.

<sup>487</sup> L. Srivastava, et al., 'Key Issues in the evolution to always-on mobile multimedia environments (Part-2)' (2006), Computer and Telecommunication Law Review, 279.

There should be one organisation to regulate media (PEMRA) and telecommunications (PTA) to ensure efficiency will increase. This single manner of regulation will support industry growth and enhance development.

One in 10 mobile users worldwide watches mobile TV.<sup>488</sup> As mobile technology develops and becomes more accessible to the subscriber, the more significant will this mode of broadcasting become as long as this sector is properly regulated.

### 3.7 IPTV

Internet Protocol Television (IPTV) has been recently launched in the Pakistan media market. It is the first digital television provision in Pakistan utilising digital media services. Like every new commercial enterprise it is bound to encounter some potential challenges in its bid for survival and success.

It would be quite difficult to exercise control over a triple play package of services through different regulatory authorities. Multiple agencies operating in the country, an overlap of their regulatory powers would probably delay the development of IPTV. These technological developments and regulatory difficulties will determine its future in Pakistan.

This section focuses on the technological development in the communication sector in Pakistan. It explains Internet Protocol Television (IPTV) and highlights past and future aspects of IPTV development particularly in European Union. The section then examines the technical concept of digital broadcasting and comments on the distinction between the concept of Internet TV and IPTV. The institutional arrangements underlying the protection and enforcement of broadcasting are discussed as well as the procedure for obtaining an IPTV licence. The section concludes with some recommendations for improving the current situation in Pakistan.

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<sup>488</sup> T. Johnsen, 'Mobile TV in Pakistan' (2010) Published at [http://www.wirtel.co.uk/mobile\\_tv\\_in\\_pakistan\\_telenor.htm](http://www.wirtel.co.uk/mobile_tv_in_pakistan_telenor.htm). Last Visited on 27th August 2012.

### 3.7.1 The IPTV market in Pakistan

Owing to certain distinctive features discussed below which go beyond traditional TV, IPTV faces legal and technical challenges as well.

There are approximately 12 million TV sets in Pakistan,<sup>489</sup> with over 8 million households receiving CTV services.<sup>490</sup> For example, by the start of 2011, PEMRA issued 85 satellite TV channels, 26 landing right permissions,<sup>491</sup> 2500 cable TV distribution,<sup>492</sup> 138 FM radio station,<sup>493</sup> 3 mobile TV<sup>494</sup> and 2 IPTV licences.<sup>495</sup> In contrast, in 2005, there were only 16 satellite television channels and 86 FM radio licences.<sup>496</sup> These figures shows that media is a big industry in Pakistan. There is a great chance for IPTV growth.

Pakistan has only one land Phone Company, that is, Pakistan Telecommunication Company Limited (PTCL), which provides IPTV services. This telecommunication operator has an advantage over 2500 cable operators in Pakistan, since cable companies are smaller and more fragmented.<sup>497</sup> Although, there is a tough competition for new arrival IPTV with other mode of transmissions especially Cable TV in the private media sector.

### 3.7.2 Internet Protocol Television

IPTV is Internet Protocol Television which is a new method of delivering and viewing television programmes using an Internet Protocol network and high speed broadband access technology. The TV signal is delivered via a dedicated set-top box or a multifunction ADSL modem feed. This makes available the

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<sup>489</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 23.

<sup>490</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2009), 18.

<sup>491</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 16.

<sup>492</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 20.

<sup>493</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 21.

<sup>494</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 23.

<sup>495</sup> See Annexure VIII, A list of IPTV Licenses and Guideline issued by Pakistan Electronic Media Regulatory Authority.

<sup>496</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2009), 23.

<sup>497</sup> J. Lee, 'IPTV Market Development and Regulatory Treatment, Organisation for Economic Co-operation and Development (OECD)' (19 December 2007), 11.

‘triple play’ services<sup>498</sup> fixed line telephone, internet access and the distribution of television services on a single medium i.e. on existing telecommunication infrastructure.<sup>499</sup> Some firms are expanding the service with a ‘quadruple play’ that includes wireless services as well.<sup>500</sup>

Newton’s Telecom Dictionary defines IPTV as follows:

IPTV describes the technique of sending digital TV programs over a broadband network running the IP protocol. IPTV requires that the TV programming be digitized and then compressed before being fragmented into IP packet before transmission over a broadband network that supports Quality of Service (QoS)..... At the subscriber premises, the signal is decompressed in a set-top box (which could also be a PC). The advantage of IPTV is that the common denominator of the IP protocol supports not only video-oriented features such as High-Definition TV (HDTV), Video on Demand (VOD), Digital Video Recording (DVR), Instant Channel Changing (ICC), multiple Picture-in-Picture (PIP) and Interactive TV (ITV), but also media services for telephone, PCs and other consumer devices.<sup>501</sup>

Internet Protocol Television was launched primarily by telecom companies.<sup>502</sup> IPTV is distinct from cable, satellite or terrestrial transmission because the data can flow in two directions in an IP network.<sup>503</sup> IPTV is a Microsoft project which will support high-definition television and ‘next-generation’ digital video recording and video-on-demand.<sup>504</sup>

The largest IPTV service providers are the incumbent telecommunications firms, such as Singapore’s Singtel, Hong Kong’s PCCW, Germany’s Deutsche Telekom and Pakistan’s PTCL. They can cover the entire country with their telephony, broadband and television network. In this way, IPTV is typically low cost, often

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<sup>498</sup> R. Bhat., ‘Television in India: The starting point for digital switchover’ (2012), International Journal of Digital Television, 77.

<sup>499</sup> A. Lee., ‘The development of IPTV and VOD in Europe in the context of transition to digital television’ (2007), Media Law and Policy, 58.

<sup>500</sup> L. Holt., ‘Federal regulation and competitive access to multiple BT-unit premises: More choice in communications services?’ (Spring 2008), Journal on Telecommunications & High Technology Law, Issue 6(2), 425.

<sup>501</sup> H. Newton., *Newton’s Telecom Dictionary*, 25<sup>th</sup> edition (New York: Flatiron Publishing, 2009), 619.

<sup>502</sup> Screen Digest Ltd, London Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2009), WIPO SCCR, 1-2.

<sup>503</sup> P. Ganley., ‘Copyright and IPTV’ (2007), Computer Law & Security Report 23, 249.

<sup>504</sup> H. Newton., *Newton’s Telecom Dictionary*, 25<sup>th</sup> edition (New York: Flatiron Publishing, 2009), 620.

bundled in for no extra fee with a broadband connection. But, in Pakistan the situation is different.<sup>505</sup> It is a very expensive package as compared to other services.

### Technological Expansion

As already explained, IPTV is the transmission of video over a combination of fibre optic and Digital Subscriber Line (DSL) lines using internet protocol.<sup>506</sup> Using the internet protocol enables video data to be sent across the Internet in packets.<sup>507</sup> IPTV can be delivered to homes via DSL running on copper wire, relying on advanced compression techniques, such as H.264 for extreme clear picture.<sup>508</sup> The consumer requires three elements in order to receive IPTV: a broadband connection from either a telecom, cable or satellite service provider; a set-top box programmed; and a television set.

Traditional copper telephone lines are not suitable for data transfer. For this reason, the bandwidths may limit the receiving capacity of the consumer. Asymmetric Digital Subscriber Line (ADSL) lines are the best way to enhance capacity for IPTV transmission. A more advanced DSL connection such as ADSL2+<sup>509</sup> or VDSL<sup>510</sup> (Very High Bitrate Digital Subscriber Line) or a fibre-optic connection is vital for future enhancement of additional outcomes, to receive several channels or HD channels.<sup>511</sup>

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<sup>505</sup> Screen Digest Ltd, London, Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2009), WIPO SCCR, 3.

<sup>506</sup> L. Lapan., 'Network television and the digital threat' (Summer 2009), UCLA Entertainment Law Review, 365.

<sup>507</sup> C. Burbridge., 'Internet Protocol Television and regulation, IPTV: The dependencies for success' (2006), Computer Law & Security Report 22, 409.

<sup>508</sup> M. Jain., and B. Puranik., 'Win in the flat, TV finally gets smart' (March 2008), white pare, 2.

<sup>509</sup> ADSL2+ is the latest data communications technology that enables faster data transmission and a greater capacity than standard ADSL, allowing for much faster broadband speeds. ADSL2 also makes it possible to use two phone lines for a single connection.

<sup>510</sup> It stands for Very High Bitrate Digital Subscriber Line. It is the first high-speed technology that can provide an entire home-entertainment package, making it entirely unique.

<sup>511</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2009), WIPO SCCR, 12.



### **Difference between IPTV and Internet TV**

IPTV channel distribution service is provided on a fixed telephone network, whereas Internet TV broadcasts through websites and is accessible anywhere in the world through the internet. IPTV services are delivered via a closed network with the information conveyed, which is inaccessible to those outside the network. Only consumers connected to the network can access the TV services. Internet TV is accessible<sup>512</sup> through any Internet connection.<sup>513</sup>

IPTV is a digital service and therefore, the quality of picture is much superior. A large number of functions, such as High-Definition TV (HDTV), Video on Demand (VOD), Digital Video Recording (DVR) and several others account for consumer's choice of IPTV rather than other services. It also provides interfacing of the subscriber with a single service provider for provision of telephone, internet and television services, resulting in easier technical maintenance, streamlined billing and improved quality of service.

#### **3.7.3 The market in the EU and other parts of the world**

At the end of 1999, IPTV was launched in Europe by Kingston Communications TV and Homechoice (Tiscali TV). Currently, Inuk Network, British Telecom (BT) and<sup>514</sup> Talk Talk are the service providers of IPTV in UK.<sup>515</sup> BT broadcasts a free-to-air digital terrestrial television service, a hard-disk recorder and Internet connectivity throughout the UK.<sup>516</sup> France is the leading world market with over 7 million consumers- and more than 28% of the TV household owners. IPTV is

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<sup>512</sup> Sometime specific content may be blocked in some cases.

<sup>513</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2009), WIPO SCCR, 3.

<sup>514</sup> Tiscali UK Limited trading as TalkTalk.

Talk Talk, 'Welcome to talk Talk' (2012) published at <http://www.talktalk.co.uk/homechoice/index.html>. Last visited 27th August 2012.

<sup>515</sup> Tvoer.net, 'Find an IPTV service provider' (2012), published at <http://www.tvoer.net/ServiceProvider,search,2-N.aspx>. Last visited 27th August 2012.

<sup>516</sup> C. Burbridge., 'Internet Protocol Television and regulation, IPTV: The dependencies for success' (2006), Computer Law & Security Report 22, 409-410.

extremely successful in Estonia, Slovenia and Croatia in comparison with other parts of Europe.<sup>517</sup>

In the Far East, Hong-Kong and South Korea have a large number of IPTV subscribers. Over half of their 2.3 million households buy one IPTV service. However, not all Asian countries have had such success. For example the situation is different in India.<sup>518</sup> It is predicted that from 2012 to 2017, IPTV subscriptions worldwide will grow at 70% with 100% growth rate in the Asia-Pacific. There are large numbers of IPTV subscribers in this region 28.5 million. Pay TV subscribers (Private sector) will reach 853.5 million at the end of 2012, with 116 million IPTV subscribers in the world.<sup>519</sup> In 2012, the Multimedia Research Group forecast predicted that the number of global IPTV subscribers will grow from 53 million at the end of 2011 to 105.1 million in 2015.<sup>520</sup>

#### **3.7.4 Institutional Arrangements**

Although institutions play a key role in the development of the communications sector of a country, multiple ministries and government authorities regulating the markets also create hurdles in the development of broadcast sector.

In addition to its other role the PTA and PEMRA also have a role in the context of regulating IPTV.

##### ***a. Pakistan Telecommunication Authority (PTA)***

The Pakistan Telecommunication Authority (PTA) has already been discussed in previous section 3.6.4. The PTA is a regulatory authority with responsibility for

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<sup>517</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2009), WIPO SCCR, 26.

<sup>518</sup> Screen Digest Ltd, London., Study on the socio Economic Dimension of the unauthorized use of signals: Part I: Current Market and technology trends in the broadcasting sector (December 2009), WIPO SCCR, 3 and 28.

<sup>519</sup> Associazione Bancaria Italiana (ABI) Research., 'National TV digitalization drivers 100% IPTV growth in Asia' (2012) published at <http://www.marketwatch.com/story/national-tv-digitization-drives-100-iptv-growth-in-asia-says-abi-research-2012-06-11>. Last visited 27th August 2012.

<sup>520</sup> Multimedia Research Group (MRG)., 'IPTV global forecast - 2011-2015' (2012) published at <http://www.ibeweb.com/ibe-news/iptv-global-forecast-2011-2015>. Last visited 27th August 2012.

the regulation of telecommunication systems and the telecommunication sector in Pakistan.<sup>521</sup>

The triple play services, land phone, broadband and television include PTA as a regulatory authority in broadcasting. There are some broadcasting transmissions which also fall within the telecommunication sector such as IPTV, cable and Mobile Operators. Every IPTV service provider requires a licence from the Pakistan Telecommunication Authority to run their business in Pakistan. So, the authority has also direct involvement in broadcasting transmission.

PTA, therefore, supervises the activities of one fixed land telephone corporation that is PTCL, seven mobile companies,<sup>522</sup> and a few broadband companies.<sup>523</sup>

**b. *Pakistan Electronic Media Regulatory Authority***

The Pakistan Electronic Media Regulatory Authority (PEMRA) was established to regulate only<sup>524</sup> the private sector.<sup>525</sup> In Pakistan, IPTV comes within the private sector category. In this way, IPTV is also under the control of PEMRA. PEMRA issue the licence for 5 years.

PEMRA decided to issue licences on zones basis for 14 telecom regions. The response from telecom operators was very encouraging. IPTV licences were granted to PTCL (Pvt) Ltd. and Sachal Communication (Pvt.) Ltd. Two more applications for IPTV are under process. However, as Sachal did not start their transmission, the licence was revoked<sup>526</sup> And so Pakistan Telecommunication Company Limited (Pvt) Ltd is the only company currently holding an IPTV licence which is operational in Pakistan.<sup>527</sup>

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<sup>521</sup> The Telecommunication (Reorganisation) Act, 1996 (Amended in 2006), s 4 (a) (d).

<sup>522</sup> The name of these seven companies in Pakistan are Instaphone, Mobilink, Paktel, Telenor, Warid, Ufone and SCO (Special Communication Organisation).

<sup>523</sup> The name of these broadband companies are Burraq, PTCL, Z-WLL, Cyber Internet, Wateen Telecom and Mytel providing, WiMax networks or Wireless Broadband services.

<sup>524</sup> The Pakistan Television Corporation (Public Sector Television in Pakistan) continues to be administered under the provisions of the Companies Ordinance 1984 (XLVII of 1984).

PEMRA Act, 2007, s 37A.

<sup>525</sup> The Pakistan Electronic Media Regulatory Authority is already discussed in Chapter 2.2.2.2.

<sup>526</sup> Pakistan Electronic Media Regulatory Authority, List of IPTV licences issued by Pakistan Electronic Media Regulatory Authority, Published at [http://www.pemra.gov.pk/pemra/images/docs/iptv/LICENCES\\_ISSUED\\_IPTV.pdf](http://www.pemra.gov.pk/pemra/images/docs/iptv/LICENCES_ISSUED_IPTV.pdf). Last visited 27th August 2012.

<sup>527</sup> Pakistan Electronic Media Regulatory Authority Annual Report, (2010), 23.

### ***IPTV Licence in Pakistan***

All the IPTV companies are required to fulfil the entire below legal requirement as per the PEMRA Ordinance 2007. PEMRA grants IPTV licences for a period of 5 years. There are compulsory pre-conditions which need to be fulfilled in order for an applicant to be eligible for the grant of a licence by the Authority. One such requirement is that the company or body corporate applying for the licence is incorporated in Pakistan. Another is that the majority of the company shares are not owned or controlled by foreign nationals or those whose management control is not vested in foreign nationals or companies. Moreover, a defaulter of the Government of Pakistan or any of its organisations including PEMRA is not eligible to apply for a licence. A final compulsory requirement is that the applicant already holds a Fixed Local Loop Licence from the Pakistan Telecommunications Authority (PTL).

Each company is required to submit a statement of qualifications (SoQ), an application for the grant of IPTV channel distribution service licence, mandatory information about the organisation of the company, management and organisational set-up, financial capability or sources of finance and cash flow<sup>528</sup>, a technical proposal and a copy of the fixed local loop licence in the name of the applicant company.

#### **3.7.5 PTCL Smart Television**

Telecom operators have a significant opportunity to change the landscape of broadcasting and telecommunication through offering entertainment services in Pakistan media sector. These advanced features of combination are a unique opportunity to gain the trust of the consumer and achieve financial targets.

PTCL (Pakistan Telecommunication Company Limited) launched Smart TV using the flexible Internet Protocol (IP) technology in fifteen cities of Pakistan. This

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<sup>528</sup> Details of financial and operating background for the last 3 years demonstrating financial viability, including audited financial statements, an up-to-date statement showing the outstanding liabilities to banks and financial institutions, Bank credit references from at least 2 years and letter of intent from financier (if involved).

service was launched in the summer of 2008.<sup>529</sup> The service is not available in the whole of Pakistan because telecommunication operators need to upgrade their DSL network.<sup>530</sup>

It is a service which allows the customer/subscriber to be more interactive and more in control of their TV service in comparison with conventional TV broadcast or cable TV. It delivers television programmes to households via a broadband connection and requires only a subscription, a set-top box, and offers key advantages over existing cable TV.

The consumer/subscriber can enjoy advanced features and services that are not possible with traditional broadcast television systems. These services include rewinding live TV channels at any time through Time Shift Television (TSTV),<sup>531</sup> parental lock facility on any channel,<sup>532</sup> search and select favourite programmes by using 'Electronic Program Guide (EPG).' Thus viewers have full control over functionality such as rewind, fast-forward and pause through the electronic function, watch DVD quality videos/movies on demand (VoD), some channels are allowed for near video on demand (NVOD)<sup>533</sup> and watch 102 digital quality TV channels. All these facilities are enjoyed without any need of the computer. Consumers control the on screen video program menus via a remote.<sup>534</sup>

### 3.7.6 Recommendations

This section discussed the emerging technologies and their impact on governing regulatory authorities. Multiple agencies regulating IPTV in Pakistan, an overlap

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<sup>529</sup> Tele News, 'Launch of PTCL Smart Line (IPTV)' Oct-Des 2008 Issue, 23.

<sup>530</sup> J. Lee., 'IPTV Market Development and Regulatory Treatment, Organisation for Economic Co-operation and Development (OECD)' (19 December 2007), 11.

<sup>531</sup> This function is available to the TV viewers for the first time in Pakistan.

<sup>532</sup> This feature enables parents to restrict certain channels which are not suitable for juvenile viewing.

<sup>533</sup> NVOD is another exciting feature working like a community TV Channel. Popular or recently released movies and programs are played on NVOD channels. In case of NVOD channels, customer feedback plays a pivotal role in content selection.

<sup>534</sup> The State of IPTV 2006: The advent of personalized programming, Mew Millennium Research Council, (June 2006), 12.

of their regulatory powers will probably delay the development of newly launched 'Smart TV (IPTV)'.

There are multiple requirements under the multiple authorities to regulate the IPTV in Pakistan, and, therefore, IPTV is not under the single control of media authority (PEMRA). As the service provider requires to have obtained a Fixed Local Loop licence from Pakistan Telecommunication Authority (PTA), another agency (PEMRA) is involved in the process of applying for an IPTV licence, especially in case of triple play.

This overlap in the regulatory authorities is hindering the marketing of new services within the broadcast market. With future prospects in view, the Government needs to consider merging and updating the functions of these organisations. South Korea and Colombia were facing the same problems but have resolved them and Pakistan should follow the example of the United Kingdom and India and these countries. From 2003, the Office of Communications (Ofcom)<sup>535</sup> in the United Kingdom has statutory responsibility for telecom, radio, telecoms and wireless communications services.<sup>536</sup> In India,<sup>537</sup> the Telecom Regulatory Authority of India (TRAI) regulates telecommunication, broadcasting (IPTV)<sup>538</sup> and Cable TV.<sup>539</sup> The Government of Pakistan should take action to improve the situation. All the broadcasting channels should be brought under one umbrella organisation (PEMRA) for the better future of IPTV in Pakistan.

The service providers can achieve customer confidence through triangle services, namely phone, broadband and television services, which is first time introduced in Pakistan. Common regulation and unique service can facilitate the development of IPTV transmission in Pakistan. The future of the IPTV is clearly in

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<sup>535</sup> Ofcom., 'About' published at <http://www.ofcom.org.uk/about/>. Last Visited on 11th August 2012.

<sup>536</sup> L. Srivastava, et al., 'Key Issues in the evolution to always-on mobile multimedia environments (Part-2)' (2006), Computer and Telecommunication Law Review, 279.

<sup>537</sup> H. Sarfaraz., 'Freedom of expression in dissemination of mobile 2.0 content: Pakistan' (2009) LIRNEasia, 3.

<sup>538</sup> Telecom Regulatory Authority of India (TRAI), 'Rates of pay TV channels' (2010) Published at <http://www.trai.gov.in/Content/CableService.aspx?qid=2>. Last Visited on 27th August 2012.

<sup>539</sup> Telecom Regulatory Authority of India (TRAI), 'Our mission' (2012), Published at <http://www.trai.gov.in/Default.asp>. Last Visited on 27th August 2012.

the hands of the Government of Pakistan, the Regulatory Authorities and the service providers who can vindicate and establish the smartness of smart TV.

### 3.8 Conclusion

In this Chapter, the media regulation system in Pakistan has been analysed and a number of specific enforcement issues discussed.

This chapter initially discussed the enforcement issues related to three modes of transmission: cablecasting, satellite and terrestrial transmissions. Then, it discussed regulatory enforcement challenges to the broadcasting sector in the context of mobile TV and IPTV.

These issues can be resolved through appropriate effective administrative measures. First, Pakistan can resolve the cable TV broadcasting problems with an effective media regulatory framework and effective judicial powers. Permanent task forces all over the country will help to stop illegal activities and help to enforce the media law to improve the situation. The idea of Special Court<sup>540</sup> can also help the situation. Secondly, it discussed the issue sovereignty and free flow of information in the context of satellite transmission. The Constitution of Pakistan and media laws protect both the concept of sovereignty and free flow of information. There should be no cultural and social restriction especially on entertainment and sports channel. TV broadcasting should be free for the development of the country. Regional and international agreements can play as important role. Thirdly, terrestrial public broadcasting should be financed through a clear funding mechanism designed to protect its independence.

Lastly, Mobile TV and IPTV raise similar issues with respect to their regulation. More than one regulatory organisations (mainly Pakistan Telecommunication Authority and Pakistan Electronic Media Regulatory Authority) are involved in the technical and legal administration. There should be one single agency for appropriate regulation and affective enforcement in Pakistan media sector.

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<sup>540</sup> See Chapter 2.4.

## Chapter 4: Gaps in Regulatory Framework

This chapter discusses some exiting gaps in the regulatory framework of electronic TV media in Pakistan.

This chapter first considers the broadcasting of sport events. No specific law exists in Pakistan to regulate siphoning of sport events. So, the first section of the chapter discusses whether regulatory change is needed for Pakistan. Then the chapter focuses on state aid. The Pakistan Government provides direct financial support to the public broadcasting sector. After the development of the private sector, commercial channels compete with the public sector. However, in Pakistan, PEMRA laws are only applicable to the private sector not to the public broadcasting sector. This issue is analysed particularly in the context of EU state aid rules, given that these are well developed

### 4.1 Sport Broadcasting

Anti-siphoning laws ensure that certain public interest events, especially major sport events, are made available to the whole viewing public by preventing pay TV licensees from acquiring exclusive rights.<sup>541</sup> In this way, these laws prevent monopoly rights over certain major events being acquired by pay television. As a result, the laws protect the public's ability to watch their favourite events on free television.<sup>542</sup>

Cricket is part of the Pakistani culture and the population is passionate about it. After the development of private TV media sector, some cricket events are only broadcast on private TV channels.

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<sup>541</sup> Department of Broadband, Communications and the Digital Economy, 'Anti-siphoning and anti-hoarding' (2010), Published at [http://www.dbcde.gov.au/television/antisiphoning\\_and\\_antihoarding](http://www.dbcde.gov.au/television/antisiphoning_and_antihoarding). Last visited on 27th August 2012.

<sup>542</sup> R. Saltzman, 'Television News Access to Exclusively Owned Sporting Events: A Comparative Study' (Spring 2000), Sport Lawyers Journal, 21.



This section argues for a change in the law as it particularly applies to cricket broadcasting in Pakistan. Subsection 4.1.1 will define the international arguments of anti-siphoning sport laws. Subsection 4.1.2 will discuss Pakistani cricket culture and Pakistan Television Corporation (PTV) traditional cricket broadcasting. Subsection 4.1.3 will explain the public interest in the context of sport broadcasting generally. Subsection 4.1.4 will discuss the current challenge to cricket fans. Subsection 3.1.5 will set out a recommendation.

#### **4.1.1 Anti-Siphoning Laws**

Compared to Australia, the European Union, the UK and other countries, pay television in Pakistan is of recent origin. Sport events transmission is sometimes only available on private TV channels in Pakistan. Other countries have adopted an anti-siphoning policy and enacted legislative provisions, some of which are considered below.

In 1994, the Australian Government introduced an anti-siphoning scheme.<sup>543</sup> Australian legislation empowers the Minister to authorise the broadcast of certain types of televised sport events free-to-air<sup>544</sup> to the general public.<sup>545</sup> The subscription television broadcasters are subject to a licence condition<sup>546</sup> that they cannot acquire the right to broadcast certain sport events if the events are specified in the list attached to in the Broadcasting Services Act 1992 section 115(1).<sup>547</sup> From September 2008, the Australian Communications and Media Authority (ACMA) a monitoring authority, enforces the anti-siphoning laws instead of the Ministry of Communication.

Some commentators have criticised Australia's anti-siphoning legislation as favouring free-to-air broadcasters over pay TV<sup>548</sup> or to restricting Pay TV.<sup>549</sup>

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<sup>543</sup> T. Humphrey, 'The politics of sport: the why, when and how of sport law development and implementation' (2008), *International Sport Law Review*, 34.

<sup>544</sup> Free-to-air means that the Australian Broadcasting Corporation (ABC) or the Special Broadcasting Services (SBS) or by commercial free-to-air broadcasters reaching more than 50 per cent of the Australian population.

<sup>545</sup> Broadcasting services Act, 1992, s 115.

<sup>546</sup> Schedule 2, part 6, Clause 10

<sup>547</sup> R. Redman, and J. Dwyer., 'Sport broadcasting in Australia - Government signals significant legislative changes' (2006), *Sport Law Administration & Practice*, 15.

<sup>548</sup> R. Redman, and J. Dwyer., 'Sport broadcasting in Australia - Government signals significant legislative changes' (2006), *Sport Law Administration & Practice*, 15.

Actually, this is not the correct interpretation of the existing law. Priority is just the outcome of the anti-siphoning laws whose core intention is to provide free access to the general public. The anti-siphoning law ensures the public interest in viewing sport events is protected in Australia.

In this way, ACMA publishes a list of sporting events which are to be broadcast free and, therefore, available to the general public.<sup>550</sup> Under these laws, pay television can never acquire exclusive rights to a listed event while free to air broadcasters may acquire exclusive rights and are allowed to sell broadcasting rights to pay TV or cable operators.<sup>551</sup>

The Australian anti-siphoning list is updated regularly.<sup>552</sup> The list comprises domestic and international sporting events in 12 categories including cricket, tennis, golf, motor sport and football. Cricket matches are divided into three categories. First, each test and one day cricket matches in which the Australian team plays in Australia or the United Kingdom. Second, at least one match of each one day cricket series played at home. Finally, all matches in the one day cricket World Cup are also on the list.<sup>553</sup> Australia is one of the few countries, which provides legislation to ensure public access to sport broadcasting.

The European Union has also adopted rights in respect of free viewers. Major important events (Football World Cup and European football championships)<sup>554</sup> must be available on free TV.<sup>555</sup> The broadcasting rights for such matches are not permitted to be the part of the football broadcasting market on pay-TV. In

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<sup>549</sup> T. Humphrey, 'The politics of sport: the why, when and how of sport law development and implementation' (2008), *International Sport Law Review*, 34.

<sup>550</sup> Broadcasting services Act, 1992, s 115.

<sup>551</sup> J. B. Perrine, 'Media Leagues: A Australia suggests new professional sport leagues for the twenty-first century' (Spring 2002), *Marquette Sport Law Review*, 801.

<sup>552</sup> Australian Government ComLaw., 'Broadcasting services (events) notice series' (2012 published at <http://www.comlaw.gov.au/Series/F2010L03383/Compilations>. Last visited on 27th August 2012.

<sup>553</sup> The Australian Communications and Media Authority (ACMA), 'Anti- siphoning list commencing 2006' (2006), Published at [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_91822](http://www.acma.gov.au/WEB/STANDARD/pc=PC_91822). Last visited on 27th August 2012.

<sup>554</sup> The ECJ held that the World Cup and European Championship were single sporting events and could not, therefore, be divided up at the will of FIOFA and UEFA.

I. Blackshaw., 'Court kick-off' (2011), *European Lawyer*, 30.

<sup>555</sup> The Television without Frontiers Directive (89/552) was amended in 1997 (97/36) to include new Article 3A enabling member states to view the major sport event on free TV.

S. Clover, 'Confused signals - satellite broadcasting and premiership football' (2007), *Entertainment Law Review*, 128.

Europe, certain major sport events may not be broadcasted exclusively on Pay TV and must be available for the general public on free TV.<sup>556</sup> Member states may draw up a list for these events, determine the scope of coverage on free TV<sup>557</sup> and also broadcast the events of major interest for short news reports.<sup>558</sup> Article 14 of the Audiovisual Media Services (AVMS) Directive allows Member States to draw up a list of events “which it considers to be of major importance for society.”<sup>559</sup> Currently, Austria, Belgium, Finland, France, Italy, Ireland, Germany and the United Kingdom have adopted measures and have notified the Commission of the lists.<sup>560</sup> Germany and Switzerland have only sport events on the list but some EU countries also have included cultural events.<sup>561</sup>

In the UK, these events are called ‘Listed Events’.<sup>562</sup> Firstly, the Broadcasting Act 1996<sup>563</sup> empowers the Secretary of State to designate key sporting and other events as ‘listed events’.<sup>564</sup> These events are categorised either as Group A or Group B events. Group A consists of live events such as the Olympics, the FIFA World Cup,<sup>565</sup> Wimbledon and the European Football Championship and highlights in the case of Group B events such as Cricket Test Matches, Six Nations Rugby or Commonwealth Games.<sup>566</sup> The purpose of keeping events available for free viewing is to ensure that key sporting events are made available to all television viewers,<sup>567</sup> particularly those who cannot afford the extra cost of subscription

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<sup>556</sup> Council Directive 89/552, art. 3(i), 1989 O.J. (L298) 23 (EC), amended by Council Directive 1997/36, 1997 O.J. (L202) 60 (EC), and Council Directive 2007/65, 2007 O.J. (L332) 27 (EC).

See P. Hettich, ‘You tube to be regulated? The FCC sits tight, while European broadcast regulation make the grab for the internet’ (Fall 2008), *Saint John’s Law Review*, 1485.

<sup>557</sup> Council Directive 2007/65, art. 3j, 2007 O.J. (L332) 27 (EC).

<sup>558</sup> Council Directive 2007/65, art. 3k, 2007 O.J. (L332) 27 (EC).

<sup>559</sup> Article 14(1) of the codified Audiovisual Media Services (AVMS) Directive.

<sup>560</sup> I. Blackshah, et al., *TV Rights and Sport, Legal Aspects* (UK: Cambridge University Press 2009), 28.

<sup>561</sup> P. Hettich, ‘You tube to be regulated? The FCC sits tight, while European broadcast regulation make the grab for the internet’ (Fall 2008), *Saint John’s Law Review*, 1485.

<sup>562</sup> Communication Act 2003, Section 299.

<sup>563</sup> The Broadcasting Act 1996 as amended by the Television Broadcasting Regulations 2000 (the ‘Regulations’) and the Communications Act 2003.

The Broadcasting Act 1996, Part IV superseded by Communication Act 2003, Section 299-302.

D. Goldberg et al., *Media Law and Practice* (New York: Oxford University Press 2009), 51.

<sup>564</sup> Ofcom., ‘Code on sport and other listed and designated events, (2012), published at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/code-sports-events/>. Last visited on 27th August 2012.

<sup>565</sup> Case Comment., ‘Restrictions on pay-tv broadcasts of football matches justified’ (2011), *EU Focus*, 23.

<sup>566</sup> Communication Act 2003, Section 299-300.

<sup>567</sup> I. Blackshaw., ‘Court kick-off’ (2011), *European Lawyer*, 30.

television.<sup>568</sup> In the UK, only those channels qualified free viewing Listed Events which transmissions covers 95% population without payment.<sup>569</sup>

Anti-siphoning regulations currently do not exist in the United States.<sup>570</sup> In the past the Federal Communications Commission (FCC)<sup>571</sup> enacted anti-siphoning laws but they no longer exist.<sup>572</sup>

In India, the Supreme Court opined if one private TV Channel was the only broadcaster of the cricket matches, then the rights of a “vast section of the people” in India would be “trampled”.<sup>573</sup>

#### 4.1.2 Cricket Culture

Cricket is the most famous game in Pakistan.<sup>574</sup> It has swept all other sport aside to become the number one sport of the country.<sup>575</sup> Cricket is the de facto national game of Pakistan.<sup>576</sup> It is a social outing for educational institutions in Pakistan.<sup>577</sup>

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<sup>568</sup> Department for Culture, Media and Sport (DCMS)., *Sport Broadcasting Policy in Brief*, in DCMS., *Coverage of Sport on Television* (Great Britain: Broadcasting Policy Division DCMS, 2001), 4.

<sup>569</sup> Ofcom, ‘Restrictions on broadcasting listed sport events’ (2012), Published at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/code-sports-events/>. Last visited on 27th August 2012.

<sup>570</sup> J.B. Perrine, ‘Media Leagues: Australia suggests new professional sport leagues for the twenty-first century’ (2002) *Marquette Sport Law Review*, 800.

<sup>571</sup> In the United States, anti-siphoning rules were challenged in *Home Box Office, Inc v. FCC*, 567 F.2d 9, 34 (D.C. Cir. 1977) See P. Hettich, ‘You tube to be regulated? The FCC sits tight, while European broadcast regulation make the grab for the internet’ (Fall 2008), *Saint John’s Law Review*, 1484.

<sup>572</sup> In fact, there are only very few people, who do not have access to pay television in America. J. B. Perrine, ‘Media Leagues: A Australia suggests new professional sport leagues for the twenty-first century’ (Spring 2002), *Marquette Sport Law Review*, 800.

<sup>573</sup> *Cricket Ass’n of Bengal*, 2 S.C.C. at 229.

S. Bouvier., ‘Broadcasting Reform in India: A case study in the use of comparative media law’ (1997), *Cardozo Journal of International and Comparative Law*, 508.

BBC., ‘Pakistan Profile’ (2012) published <http://www.bbc.co.uk/news/world-south-asia-12965779>. Last visited on 27th August 2012.

<sup>574</sup> K. Bashir., ‘Prodigies, politics and Pakistan cricket’ (2011) *TheNation*, published at <http://www.thenational.ae/thenationalconversation/sport-comment/prodigies-politics-and-pakistan-cricket>. Last visited on 27th August 2012.

<sup>575</sup> K. Bandyopadhyay., ‘Pakistani cricket at crossroads: An outsider’s perspective’ (2007), *Sport in Society*, 115.

<sup>576</sup> K. Bandyopadhyay., ‘Pakistani cricket at crossroads: An outsider’s perspective’ (2007), *Sport in Society*, 102.

<sup>577</sup> S. Wagg, *Cricket and National Identity in the Postcolonial Age* (New York: Routledge 2005) 115.

During the international matches, everybody's conversation is about the cricket match.<sup>578</sup> Cricket popularity did gradually increase through media promotion.<sup>579</sup>

Cricket has always remained an emblem of national pride in Pakistan. 'Cricket serves as a metaphor for the assertion of Pakistani identity, expression of cultural nationalism or feeling of emotional commonality'.<sup>580</sup> Pakistani cricket is an integral part of the sub-continental cricket culture.<sup>581</sup> It is the strongest unifying force amongst its people, young and old, rich or poor, man or woman, Shia or Sunni, Pathan or Sindhi.<sup>582</sup>

The Pakistan Cricket Board (PCB) is the governing body for cricket in Pakistan.<sup>583</sup> The Pakistan Cricket team is one of the top teams in international cricket. A large proportion of the Pakistani population watches cricket on TV.<sup>584</sup> In Pakistan, cricket is part of the national culture and in the past was mostly available to all through PTV.

### PTV Traditional Broadcasting

Pakistan Television has always played a great role in promoting sport, especially cricket in Pakistan.<sup>585</sup> Pakistani cricket matches are broadcast live from all over the world.<sup>586</sup> Now, PTV Sport is the first government owned sport channel. It is operated by Pakistan Television Corporation (PTV). It started its transmission in January 2012.<sup>587</sup> PTV is the largest public TV channel of Pakistan which covers 90% of entire population of Pakistan.<sup>588</sup>

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<sup>578</sup> K. Shaharyar., *Cricket: A Bridge of Peace* (Oxford: Oxford University Press 2005) 179.

<sup>579</sup> S. Wagg, *Cricket and National Identity in the Postcolonial Age* (New York: Routledge 2005) 115.

<sup>580</sup> K. Bandyopadhyay., 'Pakistani cricket at crossroads: An outsider's perspective' (2007), *Sport in Society*, 101.

<sup>581</sup> K. Bandyopadhyay., 'Pakistani cricket at crossroads: An outsider's perspective' (2007), *Sport in Society*, 102.

<sup>582</sup> K. Shaharyar., *Cricket: A Bridge of Peace* (Oxford: Oxford University Press 2005) viii.

<sup>583</sup> The Pakistan Cricket Board (PCB)., 'About PCB' (2012) published at <http://www.pcb.com.pk/>. Last visited on 27th August 2012.

<sup>584</sup> SAARC (South Asian Association for Regional Co-operation)., 'Pakistani Culture' (2011) published at <http://www.saarctourism.org/>. Last visited on 27th August 2012.

<sup>585</sup> Dawn Newspaper., 'Different strokes: Pakistan satellite as PTV fails' (2004), published at <http://archives.dawn.com/weekly/dmag/archive/040822/dmag16.htm>. Last visited on 27th August 2012.

<sup>586</sup> N. ZUBARI., 'Social and cultural impact of satellite broadcasting in Pakistan' (1993), In AMIC Seminar on the Social and Cultural Impact of Satellite Broadcasting in Asia, 1.

<sup>587</sup> PTV Sport Live., 'PTV Sport' (2012), published at <http://ptvsportslive.pk/ptv-sports/>. Last visited on 27th August 2012.

In the past, public television dominated the market in Pakistan. Pakistan Television Corporation had a very good tradition of free broadcasting of cricket matches to the general public and there was no other television channel except PTV in Pakistan till the end of 20<sup>th</sup> century. There are now, however, private television companies that are the dominant players. Pakistan operates a mixture of state-controlled and private broadcasting, with little in the way of independent media law.<sup>589</sup> The private broadcast companies broadcast through satellite-to-cable and direct satellite television and the public broadcast companies transmit through terrestrial broadcasting.

#### 4.1.3 Sports Broadcasting and the Public Interest

Sport is considered of major importance for society and of public interest. This section defines public interest and its relation with sport broadcasting.

Sport events are controlled by sport bodies or organisations. The exclusive right to broadcast is granted to the broadcaster by an agreement. Exclusivity has economic advantages to broadcasters and organisers of sport events.<sup>590</sup> The commercial broadcasters have as their commercial interest the generation of more revenue from these events.<sup>591</sup> For example, the English Premier League has sold its broadcasting rights for the three seasons 2013-14 for a record sum of nearly £3 billion.<sup>592</sup>

In Europe the focus is on guaranteeing the public's access to, preferably live, sport events that are considered to be of major importance for society.<sup>593</sup> It is

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PTV Sport official website, <http://sports.ptv.com.pk/>. Last visited on 27th August 2012.

<sup>588</sup> Pakistan Television Annual Report (2003-04), 2.

<sup>589</sup> S. Buckley, et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 63.

<sup>590</sup> S. Bouvier., 'Broadcasting Reform in India: A case study in the use of comparative media law' (1997), *Cardozo Journal of International and Comparative Law*, 508.

<sup>591</sup> S. Clover, 'Confused signals - satellite broadcasting and premiership football' (2007), *Entertainment Law Review*, 127.

<sup>592</sup> *theguardian.*, 'Premier League lands £3 bn TV rights bonanza from Sky and BT' (June 2012), published at <http://www.guardian.co.uk/media/2012/jun/13/premier-league-tv-rights-3-billion-sky-bt?intcmp=239>. Last visited on 27th August 2012.

<sup>593</sup> K. Lefever., et al., 'Watching live sport on television: A human right? The right to information and the list of major events regime' (2010), *European Human Rights Law Review*, 400.

mentioned in paragraph 1 in Article 3a of the television without Frontiers (TWF) Directive in 1997.

Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.<sup>594</sup>

The EU General Court has decided two cases which are of interest.<sup>595</sup> The General Court held that two sport events serve the public interest. The UK and Belgian governments had decided to list all FIFA World Cup matches and the UEFA European Championship as sporting events considered to be of 'major importance for society'.<sup>596</sup> This was challenged by the respected sport organisations but the general courts upheld the decisions of the two governments concerned. So, these events are on free-to-air television in both countries for reasons of public interest.

The definition of the public interest in sport is itself controversial.<sup>597</sup> One meaning is "A program in which large part of the audience is interested".<sup>598</sup> The term "public interest" should mean something in which the public at large have some interest or by which their rights or liabilities are affected, but it does not mean the interest of a particular person.<sup>599</sup>

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<sup>594</sup> Directive 89/552 on television broadcasting activities art.3a (1).

Article 14(1) of the Codified AVMS Directive

<sup>595</sup> Case One: *Federation Internationale de Football Association (FIFA) v European Commission* (T-68/08) Unreported February 17, 2011 (GC)  
case two: *Union des Associations Europeennes de Football (UEFA) v European Commission* (T-55/08) Unreported February 17, 2011 (GC)

<sup>596</sup> I. Blackshaw., 'Court kick-off' (2011), *European Lawyer*, 30.

<sup>597</sup> H. Fleming, 'Television without frontiers: The broadcasting of sporting events in Europe' (1997), *Entertainment Law Review*, 285.

<sup>598</sup> F. W. Friendly, *Due to Circumstances Beyond Our Control* (New York: Random House, 1967), 291.

<sup>599</sup> 2005 CLD 264. (Pakistani Case Law)

There have been public statements in support of the public interest in sport events. For example, in 1996, the President of the European Parliament's Committee on Culture, Youth, Education and the Media stated that "watching a football match on television is a human right".<sup>600</sup> The European Parliament's Resolution on the broadcasting of sport events also considers it "essential for all spectators to have a right of access to major sport events, just as they have a right to information".<sup>601</sup> According to the European Court of Human Rights<sup>602</sup>, the public has a right to receive information on all matters of public interest. 'Listed sport events reflect a public interest that deserves a solid level of protection under art.10 ECHR'.<sup>603</sup>

In a similar way, cricket is most famous sport in Pakistan just like football in UK and, therefore, it is in the public interest to broadcast cricket on free-to-air channel in Pakistan.

#### 4.1.4 Current Challenge

The problem in relation to sport broadcasting started, when PTV as a public terrestrial broadcaster organisation did not telecast Pakistan cricket matches. It did not broadcast the Twenty20 world cup 2007<sup>604</sup>, Pakistan and Australia cricket test series<sup>605</sup> and some others. These cricket matches were broadcasted only by one private channel in Pakistan. In this manner, the private broadcasting industry tries to attract a large audience by buying the exclusive rights. The result of this is that cricket broadcasting has now been moved from the public broadcasting sector to the private one.

The public (free-to-air) and private sector should compete with each other. The broadcasting rights of major cricket events should not be exclusively grants to

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<sup>600</sup> A. Lewis and J. Taylor, *Sport: Law and Practice* (London: Butterworths, 2003), p.325.

<sup>601</sup> European Parliament (1996) Resolution on the broadcasting of sport events [1996] OJ C166/109.

<sup>602</sup> *Guardian News and Media Limited v City of Westminster Magistrates' Court* [2010] EWHC 3376, Case No: CO/7737/2010.

<sup>603</sup> K. Lefever., et al., 'Watching live sport on television: A human right? The right to information and the list of major events regime' (2010), *European Human Rights Law Review*, 407.

<sup>604</sup> Pakistan Television Corporation Ltd. (PTV), 'Welcome to the guestbook' (2010), Published at <http://ptv.com.pk/guest/z/default.asp?PagePosition=9>. Last visited on 27th August 2012.

<sup>605</sup> Pak Tribune (Online Newspaper), 'To save Rs 32m PTV failed to show Pak-Australia series' (May 12, 2009), Published at <http://www.paktribune.com/news/print.php?id=214784>. Last visited on 27th August 2012.



either sector. Through recommended anti-siphoning laws, PTV (free-to-air) would not acquire exclusive broadcasting rights. Private Television channels could also broadcast these matches in their channels in Pakistan. As the cricket World Cup 2011 and the Twenty20 world cup 2012 are available on PTV (free-to-air) also on Geo Super (private Channel) in Pakistan.

#### 4.1.5 Recommendations

The section explains the changing environment of Pakistan in the broadcasting of cricket matches. The Government should consider this issue more seriously. Otherwise, commercial channels will obtain the exclusive right to broadcast all cricket matches in Pakistan. Public sector broadcasting covers around 150 million<sup>606</sup> of the Pakistan population of over 170 million,<sup>607</sup> while in the private sector just 40 million people can watch cable television.<sup>608</sup> It is a major threat for Pakistani cricket fans because the private sector has a small area of coverage as compare to public sector. This practice of broadcasting cricket matches just on private sector channels has already started. However, there is still time to take the necessary action to control this development.

Cricket is so popular in Pakistan that it is part of the Pakistani culture. PTV traditionally broadcasts cricket and it should continue to do so.

The Pakistan broadcast legislation should also protect the public interest in making sport events accessible to the general public on free-to-air television. There is no legislation in Pakistan relating to anti-siphoning sport. The Government should take the significant step of adopting an anti-siphoning sport law. For this purpose, the Government of Pakistan needs to amend one section of the Pakistan Electronic Media Regulation Authority (Amendment) Act, 2007. This section should empower the PTV to broadcast live Pakistan One day and Test cricket domestic and international matches on free-to-air television. In this way, Government of Pakistan can protect the interests of millions of cricket fans.

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<sup>606</sup> Pakistan population till 27<sup>th</sup> January 2012 is 180,584,995 published at <http://www.census.gov.pk/>. Last visited on 27th August 2012.

<sup>607</sup> Public sector covers 90% of all Pakistan.

<sup>608</sup> Pakistan Television Annual Report (2003-04), 2.

<sup>608</sup> PEMRA Annual Report 2009, p 35.

## 4.2 State Aid

In Recent years, the European Union has become very active in its application of EU State Aid rules to the media TV sector. It has applied EU State aid rules to this sector in a rigorous manner. The large western European countries have a dual public and private TV broadcasting system,<sup>609</sup> similar to the one that prevails in Pakistan.<sup>610</sup> The EU State aid rules are applied throughout all the member states. So, this section of this chapter considers EU state aid rules and policies as a possible model for Pakistan even though its market structure is different as compared to Pakistan. Consideration is given to the suitability of the EU state aid policy objectives and transplanting them to Pakistan so as to regulate the State aid practices of the Pakistan government in the context of the media sector market.

Television broadcasting began as a public service and therefore the companies providing these services were government agencies or companies owned or controlled by the government. The service was financed either from state resources or from licence fees paid by the consumer. However, in the last half of the twentieth century technological developments together with the vast increase in the number of viewers led states to open up the broadcasting market and allow private parties to provide broadcasting services. Nevertheless in several states, like Pakistan, the private operators provide broadcasting services alongside public operators. The market is not fully privatised and therefore the Pakistan government provides financial support for the public broadcasting sector, and, in this manner, potentially creates unfair competition between the public and private broadcasting sectors. Furthermore, in Pakistan, public and private media TV sectors are regulated separately. The public broadcasting sector is regulated by the Company Ordinance 1984 under the direct control of Government of Pakistan and the private sector by the PEMRA Ordinance 2002 (as

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<sup>609</sup> A. Czepek, et al., *Press Freedom and Pluralism in Europe Concepts and Conditions*, (UK: Intellect Book Publishers, 2009), 17.

<sup>610</sup> In USA, the public broadcasting services is a private, non-profit corporation owned and operated by the nation's public television stations which is a different media system. R. Gershon., *Telecommunications and Business Strategy*, (New York, Routledge Publisher, 2009), 60.

amended in 2007) under the supervision of the Pakistan Electronic Media Regulatory Authority (PEMRA).

The financial support afforded by the Pakistan government to the public media TV sector constitutes state aid but there is no practice of a competitive evolving environment in the media sector. One of the reasons is that Pakistan has a newly developed private media TV sector.

In this section of the chapter it will be considered how for EU state aid rules can be applied to the public media TV sector in Pakistan. In order to carry out this evaluation the section is divided into a number of subsections. Under subsection 4.2.1 a brief historical overview of how the media TV sector started in Pakistan will be described. This will then be followed in subsection 4.2.2 by an examination of the state aid rules operated in the EU which is the most advanced regime set up to enable state aid to be provided in a regulated and supervised manner so as not to interfere too much with the competitiveness of the market. With that background, subsection 4.2.3 will point out the relevant Pakistani national law provisions and discuss in subsection 4.2.4 the current challenge of Pakistani media in the context of state aid. Finally, based on the EU experience, recommendations for improving the competition environment in Pakistan will be set out in subsection 4.2.5.

#### **4.2.1 Historical overview: the Pakistan Television Corporation Limited (PTV)**

As stated above in Chapter 2 at 2.1.1, the first company offering television broadcast was PTV which was established in 1964 and incorporated in 1966 as a private limited company under the name of Television Promoters. Subsequently in 1967 the Company was converted into a public limited company under the name of Pakistan Television Corporation Limited (PTV). It is the largest public TV channel of Pakistan which covers 90% of entire population of Pakistan.<sup>611</sup> PTV is a terrestrial broadcasting company. Terrestrial broadcasting use micro-wave transmitters to broadcast digital or analogue signals. It is a free to air in most countries like Pakistan and the UK.

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<sup>611</sup> Pakistan Television Annual Report (2003-04), 2.

PTV is limited by shares and it is a non listed company and initially the Ministry of Information and Broadcasting Rawalpindi<sup>612</sup> owned 6 shares on behalf of the Government of Pakistan, Nippon Electronic Limited Company of Tokyo Japan owned 6 shares and Thomson Television (International) Limited London UK owned 1 share.<sup>613</sup> At present, all the shares are held by the Government of Pakistan.<sup>614</sup>

No specific budget is allocated in a fiscal year. A small amount is given by the Government in the shape of aid or subsidies.<sup>615</sup> Its major income is through the licence fee. It also generates revenue through advertising, sponsorship and sells air time and gets benefits through tax reduction and State aid. As a result, PTV is not a financially autonomous corporation.

#### **4.2.2 EU Public Broadcasting and State Aid**

The conflict between financing public broadcasting and competition rules has also arisen in the European Union (EU). A brief examination of the EU state aid rules and how they have been applied to public broadcasting will be carried out in order to establish whether a similar regime might be appropriate for the Pakistan market.

The EU state aid rules are part of the EU competition law regime.<sup>616</sup> The rules are applied where the State grants aid to market operators. These operators can be public bodies or private ones. A number of State measures are subject to the State aid scrutiny such as licence fees, subsidies, grants, capital injections, preferential fiscal treatment, exemption from corporation tax and an interest free or low interest loan.

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<sup>612</sup> Rawalpindi is the name of Pakistan's city.

<sup>613</sup> Memorandum of Association of Pakistan Television Corporation, Subscriber Clause, 8.

<sup>614</sup> Pakistan Television Corporation Ltd, 'History: Pakistan Television Corporation Limited' (2010) Published at <http://ptv.com.pk/introduction.asp>. Last visited on 27th August 2012

<sup>615</sup> M. Ashraf, 'Broadcasting autonomy of Pakistan television a study of financial resources' (2002), Thesis, 93.

<sup>616</sup> E. Szyszczak, *Research handbook on European State aid law* (The UK: Edward Elgar Publishing Ltd, 2011).

Public Broadcasting is traditionally funded in most EU states primarily by means of a licence fee but there are also government interventions in the form of tax advantages, capital injections, loans, debt-rescheduling.<sup>617</sup> The broadcasters, of course, also generate revenues through commercial activities such as advertising, sponsorship, subscription and sale of programmes.

In the beginning of nineteen nineties, the EU received several complaints about the anti-competitive nature of the licence fee and other support<sup>618</sup> given by the state. The complaints were made to the European Commission by private sector operators who claimed that unlawful State aid in breach of Article 107 (1) Treaty on the Functioning of the EU (TFEU) had been given to public broadcasters. The licence fee itself constitutes State aid in breach of Article 107 only if it is granted by a Member State or through State resources. Measures such as licence fees,<sup>619</sup> subsidies, grants, capital injections, preferential fiscal treatment, exemption from corporation tax and an interest free or low interest loan are likely to constitute state aid.<sup>620</sup> Public broadcasters perform both public and 'commercial' activities<sup>621</sup> may receive benefits from state resources which may constitute state aid.<sup>622</sup> For example, "The funding of BBC through television licence fees has been held to be a State aid for the purpose of Article 107."<sup>623</sup> Article 107 (1) states that

Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.<sup>624</sup>

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<sup>617</sup> K. Donders., 'Superficial harmonisation versus one-size-fits all: The implementation of European state aid principles in Flanders and the Netherlands' (2011), *Journal of Media Law*, 240.

<sup>618</sup> I. Katsirea, *Public Broadcasting and European Law*, (The Netherlands: Kluwer Law International, 2008).

<sup>619</sup> Dec. C (2009) K(2009) 8113 ORF, rec. 100-111.

<sup>620</sup> Annul Commission Decision C(2006) final of 22 June 2006 concerning the ad hoc measures implemented by the Netherlands for the purpose of financing public broadcasters in the Netherlands in relation to the State aid case No C 2/2004 (ex NN 170/2003).

<sup>621</sup> C. Lewke., 'Drawing the line-the application of state aid provisions to internet activities of public broadcasting' (2011), *Journal of European Competition Law & Practice*, 219.

<sup>622</sup> H. Hobbelen, et al., 'The increasing importance of EC state aid rules in the communications and media sectors' (2007), *European Competition Law Review*, 103.

<sup>623</sup> J. DC. Turner., 'What to do if a competitor is being subsidised?' (2006), *The Commercial Litigation Journal*, 5.

<sup>624</sup> The Treaty on the Functioning of the European Union, Article 107 (1).

Article 107(1) TFEU is the Treaty's main provision on State aid.<sup>625</sup> It has been argued that public broadcasting financial support constitutes state aid in the sense of this Article. For example in Germany and Austria, public broadcasters stressed that licence fees were directly paid by the TV set holders to the public broadcasters and so the income did not come from State resources.<sup>626</sup> This argument however, was not accepted by the Commission as the licence fees are imposed on the citizens in a similar way to taxes and, therefore, funds were granted by the government.<sup>627</sup> Furthermore, the fee level was determined or approved<sup>628</sup> by the government.<sup>629</sup>

There are exceptions in Article 106(2)<sup>630</sup> and 107 (2) and (3) to the general rule set out in Article 107(1). The TFEU, however, also provides a means to ensure that the non-commercial elements of public service broadcasting are protected.<sup>631</sup> Public broadcasting has an important role to play in the support of 'democratic, social and cultural needs of each society'<sup>632</sup> and it may be considered a general economic interest (SGEI).<sup>633</sup> First exception in Article 106 (2) states that

Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in these Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to

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<sup>625</sup> K. Donders., 'Superficial harmonisation versus one-size-fits all: The implementation of European state aid principles in Flanders and the Netherlands' (2011), *Journal of Media Law*, 239.

<sup>626</sup> Commission Decision OY 2007 C (2007) 1761 State Aid E 3/2005, Financing of public service broadcasters in Germany, rec 82

Commission decision C (2009) K (2009) K (2009) 8113 E2/2008, Financing of ORF, rec.89.

<sup>627</sup> Dec. C (2009) K (2009) 8113 ORF, rec. 100-111.

<sup>628</sup> Dec. C (2007) 1761 Germany, rec.144-150.

<sup>629</sup> C. Lewke., 'Drawing the line-the application of state aid provisions to internet activities of public broadcasting' (2011), *Journal of European Competition Law & Practice*, 217.

<sup>630</sup> K. Donders., 'Superficial harmonisation versus one-size-fits all: The implementation of European state aid principles in Flanders and the Netherlands' (2011), *Journal of Media Law*, 241.

<sup>631</sup> A.F. Bavasso, 'Public service broadcasting and state aid rules: Between a rock and a hard place' (2002), *European Law Review*, 341.

<sup>632</sup> A.F. Bavasso, 'Public service broadcasting and state aid rules: Between a rock and a hard place' (2002), *European Law Review*, 344.

<sup>633</sup> K. Donders., 'Superficial harmonisation versus one-size-fits all: The implementation of European state aid principles in Flanders and the Netherlands' (2011), *Journal of Media Law*, 241.

them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.<sup>634</sup>

Article 107(1) is the provision on State aid and Article 106(2) is one of the exceptions of this general rule. The 2009 Broadcasting Commission<sup>635</sup> in accordance with the judgment of the ECJ specifies the conditions<sup>636</sup> under which the requirements of Article 106 (2) TFEU are met. The Court of Justice and European Union in the *Altmark case*<sup>637</sup> put forward a particular approach to exempt general economic interest from the prohibition in Article 107(1). Although, this reasoning had already been adopted in *Ferring case*.<sup>638</sup>

Furthermore, there are some circumstances where State aid is excepted from the prohibition of Article 107(1). Some categories of aid are specified in Article 107 (2) TFEU as automatically compatible with the common market.<sup>639</sup> Second exception in Article 107 (2) states

- aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- aid to make good the damage caused by natural disasters or exceptional occurrences.<sup>640</sup>

Finally, there are other categories of State aid, defined in Article 107(3) TFEU, where the Commission may exercise its discretion in favour of the aid and grant an exemption from the prohibition of Article 107(1). Third exception in Article 107 (3) states

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<sup>634</sup> The Treaty on the Functioning of the European Union, Article 106 (2).

<sup>635</sup> 2009 Broadcasting Commission, OJ 2009/C 257/01.

<sup>636</sup> These conditions are definition, entrustment ad supervision and proportionality/ transparency.

C. Lewke., 'Drawing the line-the application of state aid provisions to internet activities of public broadcasting' (2011), Journal of European Competition Law & Practice, 218.

<sup>637</sup> Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR-I-07747, paras 87-88.

<sup>638</sup> Case C-53/00 *Ferring v ACOSS* [2001] ECR-I-09067.

<sup>639</sup> H. Hobbelen, et al., 'The increasing importance of EC state aid rules in the communications and media sectors' (2007), European Competition Law Review, 101.

<sup>640</sup> A Third category, aid compensating for the former division of Germany, is conserved no longer relevant.

J. DC. Turner., 'What to do if a competitor is being subsidies?' (2006), The Commercial Litigation Journal, 6.

- aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, and of the regions referred to in Article 349, in view of their structural, economic and social situation;
- aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;
- such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.<sup>641</sup>

Thus, in some situations, State aid can be lawful, either because it is excepted automatically or because the Commission concludes that it should be allowed as it promotes one of the objectives set out in Article 107(3) such as to promote culture and heritage conservation.

Government financially support the public sector through licence fees,<sup>642</sup> subsidies, grants, capital injections, preferential fiscal treatment, exemption from corporation tax and an interest free or low interest loan which constitute State aid.<sup>643</sup> Public broadcasts are exempted because they broadcast social and activities. However, some public broadcasters also generate profit from other commercial activities such as advertisement, sale of air time and others. In this way, public broadcasters perform both public and in the same time 'commercial' activities.<sup>644</sup> These commercial activities constitute State aid.<sup>645</sup> The commercial activities include advertising, sponsorship, subscription and sale of programmes.

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<sup>641</sup> The Treaty on the Functioning of the European Union, Article 107 (3).

<sup>642</sup> Dec. C (2009) K(2009) 8113 ORF, rec. 100-111.

<sup>643</sup> Annul Commission Decision C(2006) final of 22 June 2006 concerning the ad hoc measures implemented by the Netherlands for the purpose of financing public broadcasters in the Netherlands in relation to the State aid case No C 2/2004 (ex NN 170/2003).

<sup>644</sup> C. Lewke., 'Drawing the line-the application of state aid provisions to internet activities of public broadcasting' (2011), *Journal of European Competition Law & Practice*, 219.

<sup>645</sup> H. Hobbelen, et al., 'The increasing importance of EC state aid rules in the communications and media sectors' (2007), *European Competition Law Review*, 103.



### 4.2.3 Relevant Provisions in Pakistani National Law

Pakistan does not have State aid rules like those discussed above in the context of the EU. However, there are a number of laws that regulate the electronic media sector in Pakistan and govern how the operators conduct themselves in the market.

Pakistan has adopted a competition law regime and has established a quasi judicial, quasi regulatory, law enforcement agency called the Competition Commission of Pakistan (CCP).<sup>646</sup> The CCP was set up to administer in Pakistan the Competition Ordinance 2007 and now, the Competition Ordinance 2010.<sup>647</sup> Before that the Monopoly Control Authority (MCA) controlled the Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance' (MRTPO) 1970.

The main purpose of the Competition Ordinance is to prevent distortion of competition as a result of unlawful conduct of undertakings.<sup>648</sup>

The competition laws are regulated by the Competition Act, 2010 by the Competition Commission of Pakistan which was set up to encourage competition.<sup>649</sup>

The electronic media sector is regulated by the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2007 and Rule 2002, Cable TV Regulations 2002, Broadcasting Regulations, 2002 and Council of Complaint (Organisation And Function) Regulations, 2002 under the Pakistan Electronic Media Regulatory Authority which promotes private media.

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<sup>646</sup> The Monopoly Control Authority (MCA) was the organisation to administer this Law.

<sup>647</sup> Competition Commission of Pakistan (CCP) was established on 2nd October, 2007 under the Competition Ordinance, 2007.

<sup>648</sup> Competition Act, 2010, Preamble.

<sup>649</sup> Competition is regulated through the following procedures; Competition Commission (Collection of Fees and Charges) Rules, 2009, Competition Commission Enquiry (Conduct of Investigating Officers) Rules, 2007, Competition Commission (Appeal) Rules, 2007, Competition Commission (Extension in Exemption) Rules, 2007, regulation; Competition (Merger Control) Regulations, 2007, Competition Commission of Pakistan (Conduct of Business) Regulations, 2007, Competition (Leniency) Regulations, 2007, Competition Commission (General Enforcement) Regulations, 2007, Competition Commission (Expenditure and Investment) Regulations, 2007, Competition Commission (Service) Regulations, 2007.

In the next subsections the relevant provisions of the Pakistan Electronic Media Regulatory Authority (Amendment) Act and the Competition Ordinance of the concerned issue will be described.

**a. PTV and PEMRA**

As already stated, public and private TV broadcasting sectors are governed by different laws in Pakistan and regulated by different organisations. There are some legislative provisions that restrict State intervention in Pakistan. There are exceptions to every condition.

As discussed above, State aid is prohibited in some circumstances in the EU but there are some exceptions such as under Article 107(3) which allows some State aid where the organisation supported serve social and cultural needs of society. Being a public sector TV channel, PTV is obliged to protect the democratic, social and cultural needs of Pakistani society. In this way, PTV justifies its government aid.

The PEMRA Act also contains similar provisions which apply to the private sector. For example, it is duty of all the private TV Channels, as it is in respect of the public media TV sector, to respect the democratic, social and cultural needs of each society.<sup>650</sup>

The rules applying to the private TV broadcasting sector in Pakistan are as follows:

A broadcaster has to respect the national, cultural, social, religious values, principles of public policy as protected in the Constitution, sovereignty, security and integrity.<sup>651</sup> The licensee also ensures that their programmes and advertisements should discourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, contains pornography and other material offensive to commonly accepted standards of

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<sup>650</sup> It is already discussed in Ch 3.5.

<sup>651</sup> Pakistan Electronic Media Regulatory Authority Ordinance, 2007, s 20 (a and b).

decency.<sup>652</sup> The Authority can revoke or suspend the licence on the non-compliance of some terms and conditions in the Ordinance.<sup>653</sup>

It is a duty of both public and private channels in Pakistan to respect the democratic, social and cultural needs of each society. As a result, Pakistan television, as a public broadcasting service, has no superiority in the name of the “democratic, social and cultural needs of each society”<sup>654</sup> over the private sector.<sup>655</sup>

#### ***b. Competition Ordinance 2010***

In section 3 of the Competition Ordinance, no person can abuse a dominant position. An abuse of dominant position means maintained or continued practices, which prevent, restrict, reduce or distort competition in the relevant market.<sup>656</sup>

Section 2 of the Competition Ordinance defines dominant position in this manner; ‘the dominant position of one undertaking or several undertakings in relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of competitors, customers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent’.<sup>657</sup>

To understand the concept of dominant position, the undertaking needs to be defined. These operators can be either public bodies or private ones. In Pakistan, these operators or undertakings are defined below.

Undertaking means any natural or legal person, government body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly, in the production, supply,

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<sup>652</sup> Pakistan Electronic Media Regulatory Authority Ordinance, 2007, s 20 (c).

<sup>653</sup> Pakistan Electronic Media Regulatory Authority Ordinance, 2007, s 30.

<sup>654</sup> A.F. Bavasso, ‘Public service broadcasting and state aid rules: Between a rock and a hard place’ (2002), *European Law Review*, 344.

<sup>655</sup> Pakistan Electronic Media Regulatory Authority Ordinance, 2007, s 20 (c).

<sup>656</sup> Competition Act, 2010, s 3 (3), e.

<sup>657</sup> Competition Act, 2010, s 2 (e).

distribution of goods or provision or control of services and shall include as association or undertakings.<sup>658</sup>

In Pakistan, there is no competition between Pakistan Television Corporation (Public sector) and private TV channels (Private sector). This is a direct result of the State aid granted to PTV which enable it hold a dominant position as compare to private the TV channels. This aid restricts competition in the Pakistan media TV market.

There is no section in Pakistani laws, similar to EU rules which directly regulate State aid. So, this situation is only regulation in respect of an undertaking holding a dominant position within the scope of the Competition Act 2012.

#### **4.2.4 Current Challenge**

Every enterprise that the government may influence directly<sup>659</sup> or indirectly, due to its ownership, economic share or specific provisions will be considered public.<sup>660</sup> The Pakistan Television Corporation is a public sector TV channel owned by the Government of Pakistan. The PTV income and different sources of benefit through Government support creates favourable position. In the TV broadcasting sector a mature competition environment is required.

The Government of Pakistan supports the PTV in different ways such as grants, loans and bank loan etc. The Prime Minister granted millions of Pak Rupees out of Prime Minister Funds. The Government also granted almost Rs. 200 million to PTV.<sup>661</sup> It also gave more than 50 million rupees loans without any interest.<sup>662</sup> Furthermore, the Board of Directors of PTV approved the grant of bonus to his employees even though the company sustained an operating loss.<sup>663</sup> The payment of bonus to employees of public sector companies should be paid out

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<sup>658</sup> Competition Act, 2010, s 2 (q).

<sup>659</sup> The Commission Directive 80/723 excludes the sectors of water supply, energy, telecommunications, transport and postal services that belong to Directive 85/413.

<sup>660</sup> N. E. Zevgol., 'Anti-competitive conduct from public or privileged enterprises: towards a per se abuse of dominant position? Applicability of the provision of TFEU article 106(2) by national competition authorities' (2012), European Competition Law Review, 84.

<sup>661</sup> Pakistan Television Annual Report (2003-04), 46.

<sup>662</sup> Pakistan Television Annual Report (2003-04), 43.

<sup>663</sup> Audit Report on the Accounts of Public Sector Enterprises Audit Year (2007-08), Auditor-General of Pakistan, 186.

from operational profit, reflected in the annual audited accounts of the organisation.<sup>664</sup> The bonus cannot be paid without prior agreement of the Government's Finance Division<sup>665</sup> therefore it had Government support.

The PTV has two main sources of income that is licence fee and advertising. The Corporation advertising income is 2,107.834 and licence fee income was 2,308.099 million within a year.<sup>666</sup> Thus, advertisement income is almost equal to licence fee. PTV also generates profit from other commercial sources such as advertisement revenue, sale of air time and others. Thus, PTV performs both public and 'commercial' activities.<sup>667</sup> It is submitted that these commercial activities by public sector amount to a form of State aid.<sup>668</sup>

State aid from State resources is significantly distorting competition. State aids strengthen PTV's financial position and make it significantly more difficult for private sector to compete on equal terms in the broadcasting TV market in Pakistan.

#### **4.2.5 Recommendations**

In Pakistan, the public and the private TV broadcast sectors are regulated separately and do not compete with each other. After the development of newly private sector, no competition culture has evolved and there no competition between the two sectors. The public sector receives State aid through different means. It is submitted that one way to improve the situation, is to have only one regulatory body, which would control both sectors and ensure that a competitive market comes into existence in Pakistan. Through this, the Media authority can ensure that competition rules are applied to the public TV broadcast sector. As a result, fair competition will also develop in the wider communication sector.

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<sup>664</sup> According to Government of Pakistan, Finance Division (Regulation Wing) office O.M. No.F-3(5)R-12/80 (R-14)/2002-154 dated March 18, 2002.

<sup>665</sup> Finance Division office memo No.F-3(5) R-12/80 (R-14) Vol-II/2001-544 dated November 30, 2001.

<sup>666</sup> Audit Report on the Accounts of Public Sector Enterprises Audit Year (2008-09), Auditor-General of Pakistan, 197.

<sup>667</sup> C. Lewke., 'Drawing the line-the application of state aid provisions to internet activities of public broadcasting' (2011), *Journal of European Competition Law & Practice*, 219.

<sup>668</sup> H. Hobbelen, et al., 'The increasing importance of EC state aid rules in the communications and media sectors' (2007), *European Competition Law Review*, 103.

The public funding of the PTV cannot be justified on any grounds such as “democratic, social and cultural needs of each society”.<sup>669</sup> There are two reasons for this. First, the same obligations also apply to private broadcasters under the PEMRA Ordinance, section 20 (a and b). Second, PTV’s activities are not just limited to culture and heritage conservation. PTV also generates profit from other commercial sources such as advertisement revenue, sale of air time and others. In this way, PTV at the same time performs both public and ‘commercial’ activities.<sup>670</sup> These commercial activities of public sector broadcasting operators constitute state aid.<sup>671</sup>

There is no section in Pakistani laws which directly regulate State aid as provided in EU State aids rules 107(1). The Government should adopt specific law on the granting of State aids to both public and private TV broadcasters.

## 4.3 Conclusion

The chapter discussed some present gaps in the TV broadcasting sector, which prevail in Pakistan media regulation namely sports law and State aid.

The Government should adopt the necessary laws to protect public and private service TV broadcasting from anti-siphoning and State aid. Such action would contribute to ensuring a competitive environment in this media industry.

However, at this stage, there is no proposed law or regulation in Pakistan to address these issues. The Government should take the initiative and adopt new and effective legislative measures. For this reason, the Government of Pakistan needs to amend the new section in the Pakistan Electronic Media Regulation Authority (Amendment) Act 2007. By doing so, the Government of Pakistan can protect the general public interest more effectively. In the same way, the Government should also adopt State aid laws.

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<sup>669</sup> A.F. Bavasso, ‘Public service broadcasting and state aid rules: Between a rock and a hard place’ (2002), *European Law Review*, 344.

<sup>670</sup> C. Lewke., ‘Drawing the line-the application of state aid provisions to internet activities of public broadcasting’ (2011), *Journal of European Competition Law & Practice*, 219.

<sup>671</sup> H. Hobbelen, et al., ‘The increasing importance of EC state aid rules in the communications and media sectors’ (2007), *European Competition Law Review*, 103.

## Chapter 5: International Legal Environment

This chapter focuses on the international environment of the broadcasting market. The chapter explores the historical context, which consists of related international agreements and their provisions. It also analyses the Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations (WIPO Proposed Treaty).

The growth in the development of media technology worldwide has resulted in the need to protect broadcasting at an international level. World organisations, such as the World Intellectual Property Organisation (WIPO)<sup>672</sup> are actively engaged in securing consensus by the negotiation and adoption of international treaties. Most of these international initiatives are coordinated by WIPO.

There are currently 185 member states of WIPO including Pakistan.<sup>673</sup> Pakistan is also member of WIPO bodies namely, the Assembly of Berne Union, the Assembly of Paris Union, the Paris Union Executive Committee, the Coordination Committee of WIPO, the General Assembly of WIPO<sup>674</sup> and Program and the Budget Committee of WIPO.<sup>675</sup>

Some of these international agreements directly and indirectly relate to broadcasting and will be noted below.

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<sup>672</sup> World Intellectual Property Organisation (WIPO) is a specialized agency of the United Nation since 1974, and administers agreements or treaties in the area of intellectual property field. Twenty four international treaties are administrated by the WIPO in this field<sup>672</sup>, global protection<sup>672</sup> and classification system<sup>672</sup>. Almost all the copyright and related rights treaties are executed by the WIPO namely the Berne Convention, Brussels Convention, Geneva Convention, Rome Convention, WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.

<sup>673</sup> WIPO, 'Members States' (2012), Published at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&search\\_what=B&bo\\_id=4](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&search_what=B&bo_id=4). Last visited on 27th August 2012.

<sup>674</sup> Assemblies of the member states of WIPO, Forty-Fourth Series of Meetings, Geneva, March 31, 2008, p 3.

<sup>675</sup> WIPO, 'Members of WIPO Bodies' (2012), Published at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&search\\_what=B&bo\\_id=4](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&search_what=B&bo_id=4). Last visited on 27th August 2012.

## 5.1 The 1986 Berne Convention

The Berne Convention<sup>676</sup> is the oldest and the most important international treaty<sup>677</sup> in the field of copyright<sup>678</sup> and it was adopted to protect literary and artistic works.<sup>679</sup> It was concluded in 1886. Subsequent revisions of the Berne Convention have sought to address new technologies as they emerged. For example, the Rome Revision of 1928 was the first to recognise the author's exclusive right to control a work broadcast by radio<sup>680</sup> and the Brussels Act 1948 expanded the protection to works broadcast by television.<sup>681</sup>

Since the aim<sup>682</sup> of the Berne Convention is to protect the rights of authors over their literary and artistic work,<sup>683</sup> the Convention sets out and defines minimum standards of protection for the economic and the moral rights of authors of literary and artistic works. As to the works themselves, the protection must

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<sup>676</sup> Berne Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), at Brussels (1948), at Stockholm (1967 and at Paris (1971), and amended in 1979 (Berne Union).

<sup>677</sup> Total parties are 160 in Berne Convention. Berne conventions entered into force in Pakistan since July 5, 1948 through Rome Act (1928) and accession in July 5, 1948.<sup>677</sup> Articles 22 - 38 of Stockholm Act (1967) entered into force in January 29, 1970 and accession in November 26, 1969. (Stockholm Act: Alternative entered into force in February 26, 1970). Total contracting parties are 160; Pakistan is one of them and also member of Berne Union "Executive Committee" of WIPO Bodies (Total contracting parties are 39 of Executive Committee). Total contracting parties are 157 in the Assembly of WIPO Bodies (Berne Union) and Pakistan one of them.

<sup>678</sup> *WIPO Intellectual Property Handbook: Policy, Law and Use*, 2<sup>nd</sup> ed. (Geneva: WIPO Publication, 2004), 262-265.

<sup>679</sup> The Berne Convention of 1886 (with 2 Additions and 5 Revisions since the first Act was signed - the Paris Act of 1971 being the most recent one (usually referred to as Revised Berne Convention - in short: RBC). The RBC is administered by the WIPO, a specialized agency of the United Nations.

<sup>680</sup> WIPO, *Guide to Berne Convention for the protection of Literary and Artistic Work* (Geneva: WIPO Publication, 1978), 66.

<sup>681</sup> P. Goldstein, *International Copyright, Principles, Law, and Practice* (Oxford: Oxford University Press, 2001), 21.

<sup>682</sup> Preamble of the Berne Convention.

<sup>683</sup> The Berne, Universal, Rome, Satellites Conventions, the WCT and the WPP Treaties do not regulate the issues of the interpretation of their own provisions. Therefore, Article 31 and 32 of the Vienna Convention on the Law of Treaties will be used as a basis for the interpretation of those instruments.

The Vienna Convention on the Law of Treaties provides, in its Article 31.1, that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose," and then, in its Article 31.2(a), it continues in the following way: "The context for the purpose of the interpretation of treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty.

See details in Annexure- IX.



include “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.”<sup>684</sup>

The Berne Convention was adopted to regulate copyright rights at an international level and, therefore, the Convention did not originally cover the so-called “neighbouring rights” which are sometimes also referred to as “related rights”.<sup>685</sup> The concept of neighbouring rights<sup>686</sup> is based on copyright.<sup>687</sup> Neighbouring rights include rights in performance, phonogram and broadcast. “These auxiliaries rest in the work of creators; and therefore, their rights are derived from the author’s right. Derivative rights were developed from the rights of creators and thus the reason why they are called neighbouring or related rights”.<sup>688</sup> The owner of related rights may be different from those that are normally considered traditional beneficiaries of copyright that is the author. They have a relation with copyright (“the rights of authors in their literary and artistic works”), since their full names are “rights neighbouring with copyright” and “rights related to copyright.”<sup>689</sup>

At the international level, related rights are first mentioned in a proposal at the 1928 Rome revision of the Berne Convention<sup>690</sup> and recognized by the

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<sup>684</sup> Berne Convention, Article 2 (1),

<sup>685</sup> The term neighbouring rights is equivalent to related rights, and is a more literal translation of the original French *droits voisins*. Related rights in civil law are rights which are similar to authors’ rights but which are not connected with the actual author of the work. Both authors’ rights and related rights are copyright in the sense of English or U.S. law.

<sup>686</sup> The term neighbouring rights was first used in Europe in 1948 during a diplomatic conference for the revision of the Berne Convention.

M. Nora, ‘Neighbouring Rights: International and EC Aspects’ (September-October 1993), Practising Law Institute, Patent, Copyrights, Trademarks, and Literary property Course Handbook Series, 249.

<sup>687</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Administred by WIPO and Glossary Of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 163.

For a while, both expressions were used in legal literature, without however, any of the expressions having been included in the text of any international norms. The TRIPS Agreement has brought about a change in this respect, since the title of section 1 of its part II reads as follow: Copyright and Related Rights” (and its clear that “ related rights” mean the rights of performers, producers of phonograms and broadcasting organisations). Since, in this way, the international community has chosen an “ official” common name of these rights, now the expression” related rights” is used ever more frequently. For example, the name of the competent committee of WIPO is “Standing Committee on Copyright and Related Rights,” although, in WIPO documents and publications, previously the expression “neighbouring rights”.

<sup>688</sup> G. B. Roberto, ‘Revisiting international copyright law’ (Spring 2007) Barry Law Review, 55.

<sup>689</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Administred by WIPO and Glossary Of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 133.

<sup>690</sup> Goldstein, P., *International Copyright, Principles, Law, and Practice* (Oxford: Oxford University Press, 2001), 37.

International Convention for the Protection of Performers<sup>691</sup>, Producers of Phonograms<sup>692</sup> and Broadcasting<sup>693</sup> Organisations in relation to their performances, phonograms and broadcasts respectively, better known as the Rome Convention. The beneficiaries of related rights are performers, producers of phonograms and broadcasting organisations.<sup>694</sup>

The authors of literary and artistic works have been granted the exclusive right to authorise the broadcast of their works. The right includes the right to authorise broadcasting and communication to the public by, diffusion of signs, sounds or images by wireless means<sup>695</sup> and rebroadcasting by wire<sup>696</sup> (cable retransmission of a broadcast work).<sup>697</sup> There are two exceptions to the ability of national laws to determine the conditions under which these rights are exercised.<sup>698</sup> This provision provides for the possibility of compulsory licences for the right to broadcast and communicate to the public, by wire, rebroadcasting and the broadcast of the work. First, the conditions and compulsory licences apply in the country which has granted them.<sup>699</sup> Second, it allows ‘ephemeral recordings’<sup>700</sup> to be made of broadcasts.<sup>701</sup>

For teaching purposes, free use of literary and artistic works is allowed when delivered in the following manner, namely broadcast, publication and sound or visual recording.<sup>702</sup>

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<sup>691</sup> Performer means actors, singers, musicians, dancers, and other person who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works.  
Rome Convention, 1961, Article, 3(a).

<sup>692</sup> Producer of phonograms means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds.  
Article, 3(c), Rome Convention, 1961.

<sup>693</sup> Broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds.  
Rome Convention, 1961, Article, 3(f).

<sup>694</sup> Defined in Chapter 2.1.2.

<sup>695</sup> Berne Convention, Article 11 bis (1) i.

<sup>696</sup> Berne Convention, Article 11 bis (1) ii.

<sup>697</sup> When this communication is made by an organisation other than the original one.

Berne Convention, Article 11 bis (1) ii.

<sup>698</sup> Berne Convention, Articles 11bis (2).

<sup>699</sup> Berne Convention, Articles 11bis (2).

<sup>700</sup> The ordinary meaning of ‘ephemeral’ in itself suggests that it should last ‘for a very short time’. Ephemeral recoding for broadcasting suggests that what is supposed to be free here to make a recording for a time-delay broadcast and, at maximum, for some repetition of the broadcast within a relatively short time (certainly not more than a couple of months).

M. Ficsor, *Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 80.

<sup>701</sup> Berne Convention, Article 11 bis (3).

<sup>702</sup> Berne Convention, Article 10 (2).

The author of dramatic, dramatic-musical and musical works has the exclusive right to authorise the public performance of his works,<sup>703</sup> and any communication to the public of the performance of his works.<sup>704</sup> The owner of the copyright in a cinematographic (related rights) work is given the same right as the author of an original work.<sup>705</sup>

## 5.2 The 1961 Rome Convention

In 1961, when the Rome Convention<sup>706</sup> was adopted, colour television was still years away, audiovisual recording equipment (video cassettes) was hardly dreamt of, cable distribution was in its early beginnings, satellite broadcasts belonged to the realm of futuristic dreams, competition among broadcasters, with the risk of piracy, was virtually nonexistent.<sup>707</sup>

The Convention,<sup>708</sup> however, laid the foundation for the idea of related rights. For the first time, the Rome Convention<sup>709</sup> established<sup>710</sup> an international minimum standard of protection and recognised three groups of rights owner namely performers, producers of phonograms and broadcasting organisations. Protection is granted to performers in respect of their performances, to producers in respect of phonograms and to broadcasting organisations in respect to their broadcasts.<sup>711</sup>

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<sup>703</sup> Berne Convention, Article 11 (1) i.

<sup>704</sup> Berne Convention, Article 11 (1) ii.

<sup>705</sup> Berne Convention, Articles 14*bis* (1).

<sup>706</sup> It was concluded in October 26, 1961<sup>706</sup>, at the end of a Diplomatic Conference held in Rome.

<sup>707</sup> R. Werner, 'Neighbouring rights protection of broadcasting organisation' (1992), *European Intellectual Property review*, 339-340.

<sup>708</sup> The United States had active role in the drafting process but did not sign the Rome Convention, remains a mystery.

S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), *Berkeley Technology law Journal*, 1305.

<sup>709</sup> It is jointly administered by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the International Labour Organisation (ILO) and WIPO.

<sup>710</sup> In 1949, three international organisations namely International Office of the Berne Union, the United Nations Educational, Scientific and Cultural Organisation and the International Labour Organisation began a draft proposal on a related rights international treaty. After ten years of meeting and revisions, the Rome Convention final draft was ready in 1961.

<sup>711</sup> M. Viviana, and C. W. Andrew, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), *South Centre*, 18.

The rights granted to performers and phonograms producers developed gradually, but was substantially improved later on through WIPO Performance and Phonograms Treaty. However, it is the broadcasters that are the major victims of such developments and it is submitted that the sensitive balance of interests among three parties under the Rome Convention has been seriously disturbed.

Before the Rome Convention was adopted, very few countries provided protection for all three categories of beneficiaries.<sup>712</sup> Many civil law countries who, before the Rome Convention, did not provide protection for these three categories, when revising their national legislation, provided specifically for such protection, clearly distinguishing between literary and artistic works and related rights.<sup>713</sup> Most common law countries, on the other hand, opted to extend or provide new protection for these beneficiaries under existing copyright law.<sup>714</sup> At present, 91 countries are contracting parties of the Rome Convention.<sup>715</sup> However, the United States<sup>716</sup> and India have a very developed broadcasting industry but are still not members of the Convention.<sup>717</sup> The United States and more than 100 other countries have never recognised<sup>718</sup> the concept of related

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<sup>712</sup> M. Viviana, and C. W. Andrew., 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), South Centre, 18.

<sup>713</sup> G. Davies, *Copyright and the Public Interest*, 2nd edn. (London: Thomson/Sweet & Maxwell, 2002), 336.

<sup>714</sup> M. Viviana & C. W. Andrew, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), South Centre, 18.

<sup>715</sup> WIPO., 'Contracting Parties' (2012) published at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=17](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=17). Last visited on 27th August 2012.

<sup>716</sup> The United States actively participated through the drafting process of Rome Convention especially with regard to broadcastings' rights provisions. It proposed alternative "broadcast" and "broadcasting organisations" and even proposed extending the period of tie of protection to fifty years.

S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), Berkeley Technology law Journal, 1312.

<sup>717</sup> The head of the delegation placed on record the fact that he had yet to receive authority to sign the Convention from his government and had come merely with instruction to "return with the Final act". The exact reason for the United States not signing the Rome Convention, despite its role in the drafting process, remains mystery.

S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), Berkeley Technology law Journal, 1312.

<sup>718</sup> "Even though the United States never implemented a system of broadcasters' rights, its domestic television industry did not develop without the idea of property rights altogether, despite the fact that the United States was never a signatory to the Rome Convention".

S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), Berkeley Technology law Journal, 1386.

rights.<sup>719</sup> Most European countries have acceded to the Rome Convention and have included a “broadcasting right” as part of a scheme of “related rights” that co-exist with copyright.<sup>720</sup>

The Rome Convention also established minimum rights for broadcasting organisations.<sup>721</sup> These organisations are granted three rights: to authorise or prohibit the rebroadcasting<sup>722</sup> of their broadcasts, fixation of their broadcasts, and reproduction of their broadcasts.<sup>723</sup> Furthermore, they enjoy the right to authorise or prohibit communication of their broadcasts in places accessible to the public and for an entrance fee.<sup>724</sup>

The Convention provides for the principle of national treatment to be applied. Through the national treatment principle,<sup>725</sup> broadcasters from all the other countries automatically enjoy the same standard of protection which the host country grants to its own broadcasters.<sup>726</sup> Each Contracting State grants national treatment<sup>727</sup> to a broadcasting organisation on two conditions. First, the headquarters of the broadcasting organisation must be situated in one of the Contracting States. Secondly, the broadcast is transmitted from a transmitter situated in another Contracting State. Thus the broadcasts of an organisation of a non- Contracting State are protected if either transmitter is on convention territory.<sup>728</sup> A Contracting State can require both conditions to be met.<sup>729</sup>

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<sup>719</sup> L. James., ‘A UN/WIPO plan to regulate distribution of information on the internet’ (November 30, 2005), The Huffington Post [http://www.huffingtonpost.com/james-love/a-unwipo-plan-to-regulate\\_b\\_11480.html](http://www.huffingtonpost.com/james-love/a-unwipo-plan-to-regulate_b_11480.html). Last visited on 27th August 2012.

<sup>720</sup> L. James., ‘A UN/WIPO plan to regulate distribution of information on the internet’ (November 30, 2005), The Huffington Post [http://www.huffingtonpost.com/james-love/a-unwipo-plan-to-regulate\\_b\\_11480.html](http://www.huffingtonpost.com/james-love/a-unwipo-plan-to-regulate_b_11480.html). Last visited on 27th August 2012.

<sup>721</sup> Rome Convention, Article 13.

<sup>722</sup> See Article 3 (e and f) for the meaning. Because limited to wireless means of transmission. So Cable is not cover under it.

<sup>723</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Adminstrated by WIPO and Glossary of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 153

<sup>724</sup> Rome Convention, Article 13 (d).

The background of this provision at the time of adoption of Rome Convention: many households had no television sets and it was quite common that cinemas, hotels, restaurants, and other places offered the showing of broadcast programmes to the public against an entrance fee.

S. V. Lewinski, *International Copyright Law and Policy* (Oxford: Oxford University Press, 2008), 218.

<sup>725</sup> Rome Convention, Article 2.

<sup>726</sup> Rome Convention, Article 6.

<sup>727</sup> Rome Convention, Article 6.

<sup>728</sup> *Guide to the Rome Convention and to the Phonograms Convention* (Geneva: WIPO Publication, 1981), 32.

<sup>729</sup> Contracting state need to deposited notification at the time of ratification, acceptance or accession or at any and it effective after six months of deposition.

The Contracting States may provide exceptions in their national laws and regulations such as private use of the protected work, use of short excerpts to report current events, ephemeral fixation by a broadcasting organisation by means of its own facilities and broadcasts, and for teaching or scientific research.<sup>730</sup> The teaching or scientific research exceptions are of special benefit to developing countries.

National laws may also provide limitations for the protection of performers, producers of phonograms and broadcasting organisations in connection with copyright protection. Contracting states can provide for compulsory licences but these licences should be those permitted by the Convention.<sup>731</sup>

The law on neighbouring rights in respect of broadcasting does not provide for a fixed term of protection but makes it clear that the period chosen must not be less than twenty years computed from the end of the year in which the broadcast took place.<sup>732</sup>

The level of protection granted under the Rome Convention is no longer adequate. There are two main reasons to for this. The first reason is that there has been no serious revision of the Convention since its adoption in 1961.<sup>733</sup> The second reason is that there are only 91 contracting parties.<sup>734</sup> As already stated some countries which have very developed broadcasting industries are not members of the Convention such as the United States<sup>735</sup> and India.<sup>736</sup> In this

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<sup>730</sup> Rome Convention, Article 15 (1).

<sup>731</sup> Rome Convention, Article 15 (2).

<sup>732</sup> Rome Convention, Article 14.

<sup>733</sup> W. Rumphorst, 'Neighbouring rights protection of broadcasting organisation' (1992), *European Intellectual Property review*, 339.

<sup>734</sup> WIPO., 'Contracting Parties' (2012) published at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=17](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=17). Last visited on 27th August 2012.

<sup>735</sup> The United States actively participated through the drafting process of Rome Convention especially with regard to broadcastings' rights provisions. It proposed alternative "broadcast" and "broadcasting organisations" and even proposed extending the period of tie of protection to fifty years.

S. Balganeshe., 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), *Berkeley Technology law Journal*, 1312.

<sup>736</sup> The head of the delegation placed on record the fact that he had yet to receive authority to sign the Convention from his government and had come merely with instruction to "return with the Final act". The exact reason for the United States not signing the Rome Convention, despite its role in the drafting process, remains mystery.

manner, the Rome Convention failed<sup>737</sup> due to its limited membership, low level of international acceptance and lack of revision.<sup>738</sup>

### ***The Rome Convention and the 1994 TRIPS Agreement***

The Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS)<sup>739</sup> represents the most comprehensive international agreement on intellectual property protection to date. The TRIPS Agreement includes higher standards of protection in the field of copyright and related rights than ever before.<sup>740</sup> The Agreement consists of two important features as compared to all other international agreements in the field of copyright and related rights by including enforcement provisions<sup>741</sup> and dispute settlement mechanisms.<sup>742</sup>

There are two approaches to the relationship between the TRIPS Agreement and Rome Convention. First, the TRIPS Agreement incorporates many elements of the Rome Convention, albeit in a simpler form.<sup>743</sup> In this way, Contracting states who are not party to the Rome Convention, are obliged to provide in their national law an equal level of minimum legal protection. The conditions, limitations, exceptions and reservations permitted by the Rome Convention apply to performers,<sup>744</sup> producers of phonograms<sup>745</sup> and broadcasting organisations<sup>746</sup> covered by TRIPS.<sup>747</sup> Broadcasting organisations are given rights to authorise the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of

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S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), Berkeley Technology Law Journal, 1312.

<sup>737</sup> Rome Convention failed due to the opposition of American broadcasting entities to article 12 of the Rome Convention.

A. Bercovitz, 'Copyright and related rights, in intellectual property and international trade: the TRIPS agreement' (1998), Kluwer Law International, 145-149.

<sup>738</sup> R. G. Barbosa, 'Revisiting international copyright law' (Spring 2007), Barry Law Review, 69

<sup>739</sup> The TRIPS Agreement, entered into force on January 1, 1995.

<sup>740</sup> TRIPS Agreement, Articles 9 -14, Part II, Section 1.

<sup>741</sup> TRIPS Agreement, Articles 41-61, Part III, Section 1, 2, 3, 4.

<sup>742</sup> TRIPS Agreement, Articles 63-64, Part V.

<sup>743</sup> TRIPS Agreement, Articles 2(2), Part I, Section 1.

<sup>744</sup> TRIPS Agreement, Articles 14(1), Part II, Section 1.

<sup>745</sup> TRIPS Agreement, Articles 14(2), Part II, Section 1.

<sup>746</sup> TRIPS Agreement, Articles 14(3), Part II, Section 1.

<sup>747</sup> WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use*, 2nd edn. (Geneva: WIPO Publication, 2004), 350.

television broadcasts of the same, but such obligations are optional for member states.<sup>748</sup>

Second, the TRIPS agreement does not incorporate the provisions of Rome Convention in the same manner, as does the provisions of Berne Convention.<sup>749</sup> The reason for not doing so is the limited membership and low level of international response to the Rome Convention.<sup>750</sup>

The TRIPS Agreement improves some of the rights granted by the Rome Convention. For example, the TRIPS Agreement extends the 20 years<sup>751</sup> of protection granted to Performers and producers of phonograms to 50 years, but continues the 20 year<sup>752</sup> protection of broadcasts, provided by Rome Convention.<sup>753</sup>

### 5.3 The 1974 Brussels Satellite Convention

The Brussels Satellite Convention<sup>754</sup> concerns the distribution of programmes via signals transmitted by satellite.<sup>755</sup> The Convention serves the interests of the beneficiaries of the Rome Convention, and in particular broadcasting organisations.<sup>756</sup> The focus of the Convention is the unauthorised distribution of signals, not their unauthorised reception. Thus, reception of signals for private use is not a violation of the Convention. The signal which carries the programs is the object of protection and not the content of the signals themselves. This

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<sup>748</sup> Report on the 8/INF/1 Session of the SCCR, (WIPO November 2002), paragraph 28, 40 and 45.

<sup>749</sup> Article 9 of the TRIPS Agreement binds member states to comply with Berne Convention Part Articles 1 to 21. However, TRIPS does not recognise the moral rights in Article 6bis of the Berne Convention.

<sup>750</sup> R.G. Barbosa, 'Revisiting international copyright law' (Spring 2007), *Barry Law Review*, 69.

<sup>751</sup> Rome Convention, Article 14 (a and b).

<sup>752</sup> Rome Convention, Article 14 (c).

<sup>753</sup> TRIPS Agreement, Articles 14(5), Part II, Section 1.

<sup>754</sup> The actual name of the Brussels Satellite Convention is "Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite". But well know as a Brussels Satellite Convention.

<sup>755</sup> The Brussels Satellite Convention came into force on May 21, 1974 at Brussels.

<sup>756</sup> See WIPO (2002), p.174, SC-Pr.2.



means that a signal will be protected even if its content is unprotected by copyright or a neighbouring right.<sup>757</sup>

The Universal Copyright Convention<sup>758</sup> and the Berne Convention<sup>759</sup> provide an exclusive right to broadcast; but it was unclear whether the term “broadcasting” in these two conventions covers satellite transmissions. The Brussels Satellite Convention fills this void.<sup>760</sup> The Convention has very limited application. The Convention “shall not apply where the signals emitted by or on behalf of the originating organisation are intended for direct reception from the satellite by the general public.”<sup>761</sup>

At present, the development of satellite communication is required to protect signals, particularly television transmissions by satellite. The Satellite Convention was designed to address such concerns by establishing an “international system ... to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors”.<sup>762</sup> This Convention secures for the authors, performers, producers of phonograms, or broadcasting organisations protection in every national law or international agreement.<sup>763</sup>

Contracting States implement the provisions of the Convention as they think appropriate, that is, through legal framework of copyright or related rights, administrative measures, penal sanctions, telecommunications laws or regulations. The Treaty is different from the others as to the duration of the protection. The exact period of time is not specified. The duration of the protection is to be determined by the national law.<sup>764</sup>

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<sup>757</sup> P. Goldstein, *International Copyright, Principles, Law, and Practice* (Oxford: Oxford University Press, 2001), 46.

<sup>758</sup> Universal Copyright Convention, Article IV bis.

<sup>759</sup> Berne Convention, Article 11bis.

<sup>760</sup> M. Leaffer, ‘International copyright from an American perspective’ (1990), *Arkansas Law Review*, 379.

<sup>761</sup> Brussels Satellite Convention, Article 3.

<sup>762</sup> Preamble of the Brussels Satellites Convention.

<sup>763</sup> Brussels Satellite Convention, Article 6.

<sup>764</sup> Brussels Satellite Convention, Article 2(2).

## 5.4 The 2002 WIPO Performance and Phonograms Treaty

The WIPO Performance and Phonograms Treaty<sup>765</sup> was designed as part of the “digital agenda”<sup>766</sup> of WIPO and is known as the “Internet treaty”. The Treaty<sup>767</sup> borrows its operative concepts from Rome Convention.<sup>768</sup>

The Treaty deals with intellectual property rights granted to two kinds of beneficiaries; performers (actors, singers, musicians, etc.), and producers of phonograms (the persons or legal entities who or which take the initiative and have the responsibility for the fixation of the sounds). They are provided for in the same instrument because most of the rights granted under the Treaty to performers connect rights with their fixed, purely aural performances (which are the subject matter of phonograms).<sup>769</sup> Independently of a performer’s economic rights, performers are granted rights of attribution and integrity, e.g. to object to distribution, mutilation, or other modification of their live aural performances fixed in phonograms.<sup>770</sup>

Performers enjoy the exclusive right to broadcast and communicate to the public their unfixed performances except where the performance is already a broadcast performance and to fixation of their unfixed performances.<sup>771</sup> Prior to the Performance and Phonograms Treaty,<sup>772</sup> no international agreement had provided for moral rights being granted to performance and to producers. The

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<sup>765</sup> The WIPO Performance and Phonograms Treaty entered *into force* on 20 May 2002.

<sup>766</sup> The WIPO Digital Agenda received approval from WIPO’s member states at their General Assembly in September 1999. One of the purposes of the digital agenda is to promote adjustment of the international legislative framework to facilitate e-commerce through: the extension of the principles of the WPPT to audiovisual performances, the adaptation of broadcasters’ rights to the digital era, and progress towards a possible international instrument on the protection of databases.

WIPO, ‘Digital Agenda’ (2012), Published at [http://www.wipo.int/copyright/en/digital\\_agenda.htm](http://www.wipo.int/copyright/en/digital_agenda.htm). Last visited on 27th August 2012.

<sup>767</sup> The WIPO Performances and Phonograms Treaty was concluded in 1996.

<sup>768</sup> P. Goldstein, *International Copyright, Principles, Law, and Practice* (Oxford: Oxford University Press, 2001), 42.

<sup>769</sup> At that time, many countries felt that instrument should include broadcast as well. However unanimously putt off from the WIPO Performance and Phonograms Treaty. Report on the 1/9 Session of the SCCR, (WIPO November 1998), paragraph 21.

<sup>770</sup> WIPO Performance and Phonograms Treaty, Article 5 (1).

<sup>771</sup> WIPO Performance and Phonograms Treaty, Article 6.

<sup>772</sup> WIPO Performance and Phonograms Treaty, Article 5.

Treaty grants a moral right maintained at least as long as the economic rights last.<sup>773</sup> Pakistan is not a contracting party to this Treaty. The total number of contracting parties on December 23, 2011, was 89.<sup>774</sup>

The Treaty does not require compliance with the Rome Convention, and does not include broadcasting organisations as beneficiaries of the Treaty. However, it incorporates certain terms contained in the TRIPS Agreement.<sup>775</sup>

The Treaty provides and protects the rights of performers and producers of phonograms in an effective and uniform manner.<sup>776</sup> The preamble of the WIPO Performance and Phonograms Treaty differs from the preamble of the Rome Convention since the latter Treaty simply refers to a ‘desire to protect’ the related rights, while the WIPO Performance and Phonograms Treaty’s preamble refers to a desire ‘to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible.’ The Rome Convention was of a “pioneer” nature and established adequate protection of related rights at the time of adoption. By 1996, the protection of performers and producers of phonograms rights had been provided for in a number of countries at regional and international levels. Such protection was also introduced in the European Community by the adoption of a specific directive and, of course, included in TRIPS.<sup>777</sup>

## 5.5 WIPO Treaty on the Protection of Broadcasting Organisations (WIPO Proposed Treaty)

The 2002 WIPO Performance and Phonograms Treaty updated the two categories of related rights namely those of performers and producers of phonograms but not those of broadcasting organisations. Broadcasters are still waiting for their further protection. There is a sign of new era of technology development in

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<sup>773</sup> WIPO Performance and Phonograms Treaty, Article 5 (2).

<sup>774</sup> WIPO, ‘WIPO Performances and Phonograms Treaty Contracting Parties’ (2012), Published at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=20](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=20). Last visited on 27th August 2012.

<sup>775</sup> V. Munoz & A. C. Waitara, ‘A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations’ (January 2007), South Centre, 22.

<sup>776</sup> Preamble of the WIPO Performances and Phonograms Treaty.

<sup>777</sup> M. Ficsor, *Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Term* (Geneva: WIPO Publication, 2003), 229

broadcasting field. As part of the WIPO's Digital Agenda, the WIPO proposed a new Treaty "the Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations" for the protection of a broadcasting right in the digital era.

The Internet is a network with multiple usages. One of its uses is broadcasting, in the form of webcasting. Broadcasting has been defined by the Rome Convention but not webcasting. This concept emerged after the Convention was signed. The main question to be considered in this respect is whether it is the right time to recognise the term 'webcasting' which is examined below in section 5.5.1. However, before addressing this issue, an explanation of the internal working of WIPO in respect of the digital agenda will be given.

### ***Standing Committee on Copyright and Related Rights***

The Standing Committee on Copyright and Related Rights<sup>778</sup> of WIPO is responsible for working out the details of a digital agenda for WIPO in the area of copyright and neighbouring rights. First, the Committee presents recommendations. Then, the member states develop consensus in the General Assembly of WIPO to require a new binding international instrument.<sup>779</sup> After that, the General Assembly adopts a decision to set up a diplomatic conference. A diplomatic conference is the last step in the Treaty making process.

In its first session in 1998, the newly established Committee discussed the protection of broadcasting organisations but the primary focus was on the protection of audiovisual performances.<sup>780</sup> The Committee recommended that the broadcasting organisation issue should remain on the agenda and be subject to regional consultation. The International Bureau invited participants to submit proposals or views on the topic.<sup>781</sup>

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<sup>778</sup> The Standing Committee of Copyright Related (SCCR) is an expert committee within WIPO of a technical nature, established to consider emerging issues in the copyright and related rights field.

<sup>779</sup> The General Assembly is the main decision making body of the WIPO.

<sup>780</sup> Report on the 1/2 Session of the SCCR, (WIPO November 1998), 3.

<sup>781</sup> Report on the 1/9 Session of the SCCR, (WIPO November 1998), paragraph 204(c).

“(c) Protection of the rights of broadcasting organisations:

The Committee proposed a Treaty to give broadcasting organisations the exclusive right to authorise the fixation, transmission, retransmission, reproduction, distribution, and dissemination of a broadcast. These rights are separate and in addition to any copyright they may hold.<sup>782</sup> This triggered a substantive discussion on the protection of broadcasting organisations.<sup>783</sup> The European Union and its member states submitted treaty language to the Committee.<sup>784</sup> The Ukraine also submitted some text for the treaty.<sup>785</sup> Furthermore, the Committee discussed definitions, objectives of protection and the rights to be granted.<sup>786</sup>

In the fourteenth session, the Chair of the Standing Committee in cooperation, with assurance from the Secretariat, proposed a Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations<sup>787</sup> which was revised in fifteenth session.<sup>788</sup>

Finally, the General Assembly agreed to convene a diplomatic conference in November/December 2007 to conclude a treaty.<sup>789</sup> This agreement was based on

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(i) the International Bureau should organize regional consultations, whether in the form of regional meetings, seminars or round tables, during the second quarter of 1999, coordinated with the consultations provided for under item b(i), above;

(ii) The International Bureau should invite member states of WIPO and the European Community, as well as intergovernmental and non-governmental organisations invited to the Standing Committee, to submit, by the end of March 1999, proposals and/or views in treaty language or in other form; these proposals and/or views should in advance be made available in suitable form to the Standing Committee;

(iii) the issue should be carried forward to the agenda of the second session of the Standing Committee.”

<sup>782</sup> L. Mak, ““Signaling” New barriers: implications of the WIPO broadcasting treaty for public use of information’ (Spring 2008), *Hastings Communications and Entertainment Law journal*, 536.

<sup>783</sup> Protection of broadcasting organisation proposal by Kyrgyzstan, Sudan and Japan.

Report on the 5/2-4 Session of the SCCR, (WIPO November 2001)

<sup>784</sup> Report on the 6/2 Session of the SCCR, (WIPO November 2001)

<sup>785</sup> Report on the 6/3 Session of the SCCR, (WIPO November 2001)

<sup>786</sup> Protection of broadcasting organisation proposal by Kyrgyzstan the Eastern Republican of Uruguay.

Report on the 7/7-9 Session of the SCCR, (WIPO May 2002)

<sup>786</sup> Report on the 6/3 Session of the SCCR, (WIPO November 2001)

<sup>787</sup> Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations.

Report on the 14/2 Session of the SCCR, (WIPO May 2006)

<sup>788</sup> Revised Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations.

Report on the 15/2 Session of the SCCR, (WIPO September 2006)

<sup>789</sup> The WIPO General Assembly discussed in its thirty-second session, which took place from September 26 to October 5, 2005, the question of the protection of the rights of broadcasting organisations and decided that “two additional meetings of the Standing Committee on Copyright and Related Rights (SCCR) would be scheduled to accelerate discussions on the second revised

positive negotiations at the diplomatic conference. In the second special session of the Standing Committee of Copyright Related Rights the issue of the protection of broadcasting organisation was not promoted before the diplomatic conference due to lack of agreement. It is back on the agenda of the Committee.

The Revised Draft Basic proposal for the WIPO Treaty on the Protection of Broadcasting Organisations<sup>790</sup> (after that called WIPO Revised Proposed Treaty) adopted a signal-based approach. Article 6 of the Revised Basic Proposal explicitly states that the Treaty is to be signal-based rather than rights-based, providing that ‘protection granted under this Treaty extends only to signals used for the transmissions by the beneficiaries of the protection of this Treaty and not to works and other protected subject matter carried by such signals.’ There are two approaches to the protection of the rights of broadcasting organisations that is: content based and signal-based approach. A content-based approach (also referred to as the rights based approach) gives rights to broadcasters in the underlying content of the signals. A signal-based approach gives the rights to the broadcasters in the actual signal that carries the content. The WIPO Proposed Treaty focus is on signal-based protections for traditional broadcasting organisations and cablecasting.

The Treaty aims to develop the protection of the rights of broadcasting organisations namely to introduce new international rules, establish a balance between the rights of broadcasting organisations and the larger public interest, establish an international system of protection of broadcasting organisations without compromising the rights of holders of copyright and related rights and authors, performers and producers of phonograms protection against illegal use of broadcasts.<sup>791</sup>

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Consolidated Text (SCCR/12/2 Rev.2) and on the Working Paper (SCCR/12/5 Prov.). These meetings shall aim to agree and finalize a Basic Proposal for a treaty on the protection of the rights of broadcasting organisations in order to enable the 2006 General Assembly to recommend the convening of a Diplomatic Conference in December 2006 or at an appropriate date in 2007”.

<sup>790</sup> Report on the 15/2 Session of the SCCR, (WIPO September 2006)

<sup>791</sup> Preamble of the Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations.

### ***Critical Analysis***

There are different arguments in favour of and against the WIPO Proposed Treaty. In this context, some provisions of the WIPO Proposed Treaty have also been significantly criticised.<sup>792</sup> The first controversial issue is the duration of the protection.<sup>793</sup>

#### ***a. Time Duration***

The Rome Convention grants rights to broadcasters for 20 years. The new draft proposed the period for 50 years.<sup>794</sup> The longer proposed term<sup>795</sup> has been controversial.<sup>796</sup> There are two criticisms in respect of the time duration. First, it is more than 100% extension of the protection period and outlives the economic life span of a broadcast.<sup>797</sup> When a broadcast organisation finds that its broadcast right is about to expire, it can simply rebroadcast and obtain another 50 years protection under the WIPO Proposed Treaty<sup>798</sup>:

The term of protection to be granted to broadcasting organisations under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place.<sup>799</sup>

In this way, the broadcasters can gain a perpetual right to broadcast. Copyright protection is time limited and unlike physical property, which lasts as long as the object in which it is vested (a chair, a camera, a house). After that time it

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<sup>792</sup> For example, Viviana Munoz Tellez, Andrew Chege Waitara, Adam R. Tarosky and Lisa Mak.

<sup>793</sup> The WIPO is trying to solve these issues through the Standing Committee on Copyright and Related Rights. These issues based on the grounds of different domestic copyright laws and approaches.

<sup>794</sup> WIPO Proposed Treaty, Article 18.

<sup>795</sup> There are two alternatives Article 18 about term of protection of the WIPO Proposed Treaty. Article 18 Alternative DD.

"The term of protection to be granted to broadcasting organisations under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the broadcast took place."

Article 18 Alternative EE.

"The term of protection to be granted to broadcasting organisations under this Treaty shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place."

<sup>796</sup> M. M. Lee, Legislative Attorney, American Law Division, WIPO Treaty on Protection of Broadcasting Organisations, CRS Report for Congress (United States Congressional Research Service, January 26, 2007, 3.

<sup>797</sup> IP Justice (IPJ), 'Top 10 Reasons to Reject the WIPO Basic Draft Proposal for a Broadcasting Treaty' (May 2006), 1.

<sup>798</sup> A. R. Tarosky, 'The constitutionality of WIPO's broadcasting treaty: the originality and limited terms requirements of the copyright clause' (September 25, 2006), Duke Law & Technology Review, 1-40.

<sup>799</sup> WIPO Proposed Treaty, Article 13.

passes into the public domain.<sup>800</sup> But through this provision, the broadcasters can secure protection over and over again. The broadcasting right never comes into the public domain and can be perpetuated forever just like tangible property.

Second, most laws of the European countries do not differ between copyright and certain related rights. In most of the cases, the term of protection of related rights (performers and sound recordings) is set at 70 Years in EU.<sup>801</sup> In this way, such extension in the protection period creates no further hurdle. The performer<sup>802</sup> and the producer<sup>803</sup> are already protected for 70 years. Related rights consist of three beneficiaries' performer, producer and broadcaster. Therefore, the broadcaster should be protected for 50 years instead of 20 years.

The TRIPS<sup>804</sup> and Rome Convention<sup>805</sup> provide 20 years protection for broadcaster. There is no justification for the huge increase the protection of broadcasters from 20 years to 50 years in Proposed Treaty. The protection should not extend beyond 20 years from its first broadcast.

#### **b. Originality**

The WIPO Proposed Treaty seeks to grant protection for broadcasts that do not qualify as original and are outside the scope of copyright.<sup>806</sup>

Broadcasting organizations do not produce works, but merely arrange and transmit them.<sup>807</sup> The action that is rewarded by conferring a related right is not sufficiently original and creative to qualify as a work in itself. Related rights provide a layer of protection, over that provided to copyright beneficiaries. The purpose of the related right is to protect the interest of a certain person or legal entity, who contributes to making work available to the public or produce

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<sup>800</sup> S. M. Stewart, *International Copyright and Neighbouring Rights* (London: Butterworth Publisher, 1983), 4.

<sup>801</sup> 2011/77/EC

<sup>802</sup> WIPO Performances and Phonograms Treaty, Article 17 (1).

<sup>803</sup> WIPO Performances and Phonograms Treaty, Article 17 (2).

<sup>804</sup> TRIPS Agreement, Articles 14(5), Part II, Section 1.

<sup>805</sup> Rome Convention, Article 14 (c).

<sup>806</sup> D. Sehgal., and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), *Journal of Intellectual Property Rights*, 404

<sup>807</sup> M. Viviana, and C. W. Andrew, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organizations' (January 2007), *South Centre*, 11.



subject matter that is consider like copyright protection. “This recognizes that the beneficiaries of related rights are not original creators of works but merely intermediaries in their production, recording or diffusion, hence the term “related” or “neighbouring” rights.”<sup>808</sup>

In another way, the primary beneficiary of the copyright protection is the natural person i.e. author. However, some national laws grant copyright to legal persons, i.e. business organizations, collection societies and public agencies. The primary beneficiaries of the related rights protection are the legal persons mainly producers of phonograms, performers and broadcasting organizations. Copyright and related rights are legal concept that protects the rights of creators in their works.

### *c. Signal Theft*

There are different understandings of the protected “work”. One view is that the actual problem lies with “signal theft” in broadcasting. The main purpose of the Treaty is to protect broadcasting organisations against signal theft.<sup>809</sup> The WIPO Proposed Treaty would protect the “unauthorised use” of broadcasts. There are two schools of thought with regard to this issue. First, the protection of signals does not require new rights at all. The WIPO Proposed Treaty will be based on a ‘signal-based approach’ that targets the unauthorised interception and redistribution of broadcast signals. This approach is not a further development of Rome convention but of the Brussels Convention.<sup>810</sup> The Brussels Satellite Convention<sup>811</sup> is concerned with signals. The signal-based approach has, therefore, already been adopted in a treaty. Thus it is argued that, there is no need for a new treaty.

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<sup>808</sup> M. Viviana & C. W. Andrew, ‘A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organizations’ (January 2007), South Centre, 11.

<sup>809</sup> <sup>809</sup> D. Sehgal., and S. Mathur., ‘Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations’ (2011), Journal of Intellectual Property Rights , 405.

<sup>810</sup> M. M. Lee, ‘Legislative Attorney, American Law Division, WIPO Treaty on Protection of Broadcasting Organisations’, CRS Report for Congress (United States Congressional Research Service, January 26, 2007, 4.

<sup>811</sup> The approach of the Brussels Satellite Convention (which anyway addresses only one specific problem) is inadequate notably because it left open to Contracting States to implement measures under either public or private law.

Other scholars<sup>812</sup> criticize the new Treaty because they believe that the purpose of the WIPO Proposed Treaty is to update the rights of broadcasting organisations in their broadcast signals not to protect the content.

Second, it creates new rights. A broadcast signal is an electronic signal carrying radio and television programmes for public reception, irrespective of the origin of such programmes or the ownership of the content.<sup>813</sup> The broadcaster pays a significant sum of money to broadcast, for example, a football match.<sup>814</sup> The competitor can use signals for live or deferred transmission, in full or in summary form, also by cable, satellite without having to ask permission or to pay a fee.

#### *d. Contrary Arguments*

The WIPO Proposed Treaty imposes several restrictions. It restricts the freedom of expression and the free flow of information<sup>815</sup> in following aspects.<sup>816</sup> First, the Treaty will allow broadcasters to restrict access to public domain works by broadcasting them and controlling the fixation and subsequent use of the broadcast. The Treaty will give webcasters broad rights which is parallel with technological measures, could prevent or restrict the flow of information with respect to materials which may not be protected by copyright, such as news of the day, or which are in the public domain, because their term of protection has expired. For example, a broadcast of a speech by a public official may be covered by the scope of the proposed Treaty<sup>817</sup> and a lecture Creative Common

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<sup>812</sup> For example, V. Munoz & A. C. Waitara, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), South Centre, 26.

<sup>813</sup> 25 Questions and Answers on the Proposed Treaty for the Protection of Broadcasting Organisations, (24<sup>th</sup> September 2004), 4.

<sup>814</sup> Broadcast pay a huge amount but what about the prime beneficiary of advertisement.

<sup>815</sup> As currently draft treaty, It extent to the internet, giving broadcasters and cablecasters the exclusive right to control any re-transmissions of a recorded broadcast or cablecast over the internet. Prior draft gives these rights to webcasters.

G. Hinze, 'The WIPO Broadcasting Treaty: why granting intellectual property rights to information distributors will harm innovation and the free flow of information on the internet' (2009), Computer and Telecommunication Law Review, 172.

<sup>816</sup> D. Sehgal., and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), Journal of Intellectual Property Rights, 408.

<sup>817</sup> P. Akester, 'The draft WIPO Treaty Broadcasting and its impact on freedom of expression' (April-June 2006), UNESCO e-Copyright Bulletin, 32.

licensed video is broadcasted. They will obtain broadcasting right after transmission. In this way, it would also restrict education and research which rely on access to public domain material.<sup>818</sup> Second, USA and many countries, consumers can enjoy time-shift and retransmission of television programmes under national copyright law. Broadcast, cablecast and internet transmission can be used in consumer's home and personal networking entertainment. The WIPO Proposed Treaty creates an additional layer of rights which protect broadcasting (already discussed above b). Protections of broadcaster restrict the development of new invention (TiVo digital box and the Slingbox), home networking devices and restrict consumers' lawful activity.<sup>819</sup>

The WIPO Proposed Treaty is not focused on signal protection and it creates an additional layer of rights to copyright.<sup>820</sup> It is submitted that an entirely new monopoly right over internet transmission should not be created. Granting broadcasters and cablecasters exclusive rights to authorise retransmissions of broadcasts over the internet will harm competition and innovation. In this way broadcasters can control the type of devices that can receive transmission.<sup>821</sup>

The US and EU broadcasters, who have strongly backed the negotiations, argue that they need protection against signal piracy,<sup>822</sup> even though, the US is one of the countries which did not sign the Rome Convention.<sup>823</sup> Several non-governmental organisations (NGOs) and major multinational companies, including Dell, Intel, Sony,<sup>824</sup> Google, eBay, Amazon, Microsoft and Yahoo are against the WIPO Proposed Treaty.<sup>825</sup>

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<sup>818</sup> ICTSD, 'WIPO committee approves Broadcast Treaty amidst disagreement' (2006), Bridges Weekly Trade News Digest, V. 10, No.30, 1.

<sup>819</sup> G. Hinze, 'The WIPO Broadcasting Treaty: why granting intellectual property rights to information distributors will harm innovation and the free flow of information on the internet' (2009), Computer and Telecommunication Law Review, 173-4.

<sup>820</sup> D. Sehgal., and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), Journal of Intellectual Property Rights, 404

<sup>821</sup> G. Hinze, and R. Esguerra., 'It's back: WIPO Broadcasting Treaty returns the Grave, (2011), Electronic Frontier Foundation (EFF), 1.

<sup>822</sup> ICTSD, 'WIPO committee approves Broadcast Treaty amidst disagreement' (2006), Bridges Weekly Trade News Digest, V. 10, No.30, 1.

<sup>823</sup> W. Rumphorsit., 'The Broadcasters' neighbouring rights: Impossible to understand?' (2005), European Broadcasting Union, 1.

<sup>824</sup> ICTSD, 'WIPO committee approves Broadcast Treaty amidst disagreement' (2006), Bridges Weekly Trade News Digest, V. 10, No.30, 1.

<sup>825</sup> D. Sehgal., and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), Journal of Intellectual Property Rights, 404.

**e.                    *Arguments in Favour***

The WIPO Proposed Treaty seeks to give broadcasting organisations the exclusive right to authorise the fixation, transmission, retransmission, reproduction, distribution and dissemination of a broadcast.<sup>826</sup> The Rome Convention did not protect the broadcasters because the Convention only applies to the wireless transmission of analogue signals and does not cover digital signals.<sup>827</sup> However, transmissions via cable and satellite and analogue have already been replaced by digital signals.<sup>828</sup>

In the last few decades, broadcasting piracy has increased very quickly. Broadcasters want to protect their investments, so that they can authorise and protect their signals in upstream and downstream markets. In this manner, they can protect the technical, financial and organisational investment. For example, broadcasters acquire exclusive rights from sports event organisers. Some channels broadcast them without any authorisation in different ways such as TV channels and internet.

Broadcasters claim that they need a treaty to deal with signal piracy. The Proposed Treaty grants protection of their programmes to broadcasters for a fixed term and redistribution of transmission without authorisation.<sup>829</sup>

Broadcasters have right on their own productions. They have no rights on other productions except broadcasting. This Treaty is about protecting broadcaster's rights in their signals regardless of contents.

**5.5.1                    Webcasting**

Webcasting is the part of the WIPO Proposed Treaty and is the most controversial issue.<sup>830</sup> The section below discusses the term 'webcasting' in detail from

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<sup>826</sup> L. Mak, "Signaling" 'New barriers: implications of the WIPO broadcasting treaty for public use of information' (Spring 2008), *Hastings Communications and Entertainment Law journal*, 534.

<sup>827</sup> L. Mak, "Signaling" 'New barriers: implications of the WIPO broadcasting treaty for public use of information' (Spring 2008), *Hastings Communications and Entertainment Law journal*, 539.

<sup>828</sup> M. D. Asbell., 'Progress on the WIPO broadcast and webcasting treaty' (2006), *Cardozo and Entertainment Law Journal*, 350.

<sup>829</sup> Live sports broadcasts is one of the example of unauthorized retransmission on the Internet. Webcasting is excluding from the scope of the Proposed Treaty.

different perspectives. It first explains the webcasting service and then identifies the differences between Webcasting, TV casting and Internet Protocol Television (IPTV). Through this explanation, it is easier to understand the terminology. The last part of the section explores future prospects of webcasting.

Webcasting is one of the various modes of communication. A media server and a fast connection are useful for webcasting. Webcasting development relates to the telecommunication or Internet sectors. This is one of the most rapidly developing areas in any sector of media technology in the world. The number of Internet users' increases day by day with 32.7% population of the world already using the internet,<sup>831</sup> out of which 44.8 % users are in Asia and 15.5 % in Pakistan.<sup>832</sup> In the near future, the internet will be almost an integral part of everyone's life.

### ***The Concept of Webcasting***

The internet is mainly based on telecommunication networks through wire but it can also be accessed through wireless and cable modems. Similarly, Internet TV is also accessible by wireless means such as; satellite, cellular telephone, and microwave distribution systems. Webcasting usually refers to on-demand as well as real-time streaming.<sup>833</sup>

### ***Streaming***

There are two types of streaming: on-demand transmission and real-time streaming. On-demand transmission stores data and distributes it through a server. The user can play a saved audio or video recording after downloading the whole file from a server to his computer. With real time streaming, the user

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<sup>830</sup> M. Viviana, and C. W. Andrew, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), South Centre, 49.

<sup>831</sup> Internet Stats World (ISW), 'Internet usage statistics' (2012) Published at <http://www.internetworldstats.com/stats.htm>. Last visited on 27 August 2012.

<sup>832</sup> Internet Stats World (ISW), 'Internet usage in Asia' (2012) Published at <http://www.internetworldstats.com/stats3.htm#asia>. Last visited on 27th August 2012.

<sup>833</sup> Report on the Standing Committee on Copyright and Related Rights (SCCR) 7/8, (WIPO April 2002), 11

receives the content when it is transmitted, but without retaining a copy of it. In real time streaming or live streaming the content is delivered in real time from a single source to multiple users simultaneously. This form of transmission is also called webcasting.<sup>834</sup> It is suitable for live broadcasting.

Streaming on-demand is related to traditional broadcasting on websites such as BBC iPlayer services. Through this means the consumer can watch previous broadcasted programmes on demand. Video on demand service is also available through different networks like Internet Protocol Television (IPTV), cable and satellite.<sup>835</sup>

### ***Comparative Analyses***

In order to understand the concept of webcasting it is essential to examine the differences between webcasting and some other ways of communication.

### ***Differences between Web and TV Casting***

In webcasting, the transmission takes place through a computer server while in television broadcasting, the transmission is received directly. This is a fundamental difference. Webcasts can be accessed globally from anywhere<sup>836</sup> through the internet while television broadcast can be accessed only through satellite, cable or over the air.<sup>837</sup>

Webcasters are not recognised in any national copyright law as broadcasting organisations,<sup>838</sup> while television broadcasting (traditional broadcasting) is recognised in the Rome Convention. Both are similar to a certain degree. The viewer can watch the same TV transmission on the internet as for example

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<sup>834</sup> M. Borghi., 'Chasing copyright infringement in the streaming landscape' (2011), International Review of Intellectual Property and Competition Law, 318.

<sup>835</sup> I. Onay., 'Regulating webcasting: An analysis of the audiovisual media services directive and the current broadcasting law in the UK' (2009), Computer Law and Security Review, 337.

<sup>836</sup> Sometimes, there are geographical limits on this, e.g. a block on watching football on the RAI website if it is accessed from the UK.

<sup>837</sup> Report on the 7/8 Session of the SCCR, (WIPO May 2002), 12

<sup>838</sup> Report on the 7/8 Session of the SCCR, (WIPO May 2002), 18

Independent Televisions' (ITV) four channels online.<sup>839</sup> TV casting can also be accessed through downloading and streaming.

The current technology for webcasting is less developed or clear than TV broadcasting as compared to age, live programme and results prospects. The number of viewers is limited in webcasting; it is potentially unlimited in TV broadcasting. Viewer requires a certain amount of bandwidth. Mostly, the bandwidth from a server restricts the number of viewers through webcasting. Although, there are no limits of viewership through TV signals (terrestrial TV broadcasting).

### ***Difference between IPTV and Webcasting***

There is a difference between IPTV (Internet Protocol Television) and webcasting. In webcasting the user can access the service from a PC rather than from a television. IPTV is a digital television service through special set-top boxes, using the internet protocol network.<sup>840</sup> Most of the time webcasting is free<sup>841</sup> while IPTV operates on subscription.<sup>842</sup>

Television broadcasting is a pure example of traditional broadcasting while webcasting is just a replication of the traditional television. As a result, it is also part of traditional broadcasting. Practically, there is only one main difference, TV and internet deal with different technologies, laws and authorities.

### ***WIPO Proposed Treaty and Webcasting***

The word 'webcasting' was used in the first session of the SCCR Committee in Geneva in respect of technology development.<sup>843</sup> In the eighth session, the

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<sup>839</sup> I. Onay., 'Regulating webcasting: An analysis of the audiovisual media services directive and the current broadcasting law in the UK' (2009), Computer Law and Security Review, 336.

<sup>840</sup> Organisation for Economic Co-operation and Development (OECD), IPTV: Market Developments and Regulatory Treatment published at [www.oecd.org/dataoecd/11/23/39869088.pdf](http://www.oecd.org/dataoecd/11/23/39869088.pdf). Last visited on 27th August 2012.

<sup>841</sup> It is not compulsory. Some time there are condition of country as well.

<sup>842</sup> I. Onay., 'Regulating webcasting: An analysis of the audiovisual media services directive and the current broadcasting law in the UK' (2009), Computer Law and Security Review, 336.

<sup>843</sup> "New broadcasting technologies had appeared, such as satellite broadcasting, cable distribution, encryption and webcasting"  
Report on the 1/9 Session of the SCCR, (WIPO November 1998), paragraph 175.

USA,<sup>844</sup> for first time, proposed protection for webcasters<sup>845</sup> and this was revised in the next session.<sup>846</sup> In May 2006, the United States submitted its third proposal as an appendix to the WIPO Proposed Treaty.<sup>847</sup> Most of the countries including India and Brazil rejected this new proposal because the discussion would include the key issue of traditional broadcasting along with webcasting;<sup>848</sup> thus the proposal has been excluded from the WIPO Revised Proposed Treaty.<sup>849</sup> Summing up, webcasting was the part of the WIPO Proposed Treaty but excluded finally.<sup>850</sup>

Once again, there are some proposals to expand the scope of the treaty to webcasting. In 2011, a South African Delegation<sup>851</sup> has proposed a new informal draft both advocate the need to account for "technological developments" and proposed a "technology-neutral" approach.<sup>852</sup> Although, Japan,<sup>853</sup> South Africa and Mexico<sup>854</sup> proposed a new Proposed Treaty, in which they excluded neutral approach.

### ***Proposed Definitions***

The first proposed definition of Webcasting in the SCCR<sup>855</sup> submitted by the United States of America was as follows:

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<sup>844</sup> Since 1998, the United States has been pushing for the adoption of a new treaty that would grant broadcasters independent property rights in their transmission signals. S. Balganes, 'The social costs of property rights in broadcast (and cable) signals' (Fall 2007), Berkeley Technology Law Journal, 1306.

<sup>845</sup> Proposal submitted by the United States of America.

Report on the 8/7 Session of the SCCR, (WIPO November 2002)

<sup>846</sup> Revised Proposal submitted by the United States of America.

Report on the 9/4 Session of the SCCR, (WIPO June 2003)

<sup>847</sup> Report on the 15/INF/2 Session of the SCCR, (WIPO September 2006)

<sup>848</sup> M. Sakthivel., 'Indian Copyright Act and new communication technologies: A special focus on webcasting' (2012), Computer Law & Security Review, 81.

<sup>849</sup> M. Viviana, and C. W. Andrew, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), South Centre, 49.

<sup>850</sup> We are disappointed that the government is not defending US legal traditions. US government had changed its position on the treaty, first supporting an Internet-based approach that include webcasting, then opposing the treaty last year after webcasting was excluded.

Quoted by D. Clark, and J. Love., 'Support in US for WIPO Broadcasting Treaty Appears to Wane' Intellectual Property Watch, 21 May 2007.

<sup>851</sup> Prepared by the Chair of the Informal Consultations on the Protection of Broadcasting Organizations held in Geneva on April 14 and 15, 2011.

<sup>852</sup> G. Hinze, and R. Esguerra., 'It's back: WIPO Broadcasting Treaty returns the Grave, (2011), Electronic Frontier Foundation (EFF), 1.

<sup>853</sup> Report on the 24/3 Session of the SCCR, (WIPO June 2012).

<sup>854</sup> Report on the 23/6 Session of the SCCR, (WIPO November 2011).

<sup>855</sup> Proposal submitted by the United States of America.



“Webcasting means the making accessible for public reception of transmissions of sounds, images, or sounds and images or the representations thereof, by wire or wireless means over a computer network. Such transmissions, when encrypted, shall be considered as webcasting where the means for decrypting are provided to the public by the webcasting organisation or with its consent. Webcasting and other computer network transmissions, whether by wire or wireless means, shall not be understood as broadcasting or cablecasting.”<sup>856</sup>

There are no national or international legal measures for the protection of webcasting. To date 2012, the UK, New Zealand and India also do not protect webcasting.<sup>857</sup> The US proposal for protection of webcasting is unprecedented. Webcasting is in an early stage of development. There is no consensus of opinion in the world about it.

In June 2003, based on discussions within the earlier Standing Committee meetings, the United States submitted a revised proposal in which the word webcasting has been defined with minor change:

‘broadcasting means the making accessible of transmissions of the same sounds, images, or sounds and images or the representations thereof, by wire or wireless means over a computer network at substantially the same time. Such transmissions, when encrypted, shall be considered as “webcasting” where the means for decrypting are provided to the public by the webcasting organisation or with its consent. Webcasting and other computer network transmissions, whether by wire or wireless means, shall not be understood as broadcasting or cablecasting.’<sup>858</sup>

The word ‘public reception’ is excluded and the word computer ‘transmission’ replaced by ‘network’. The USA was very keen to have webcasting included in

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<sup>856</sup> Report on the 8/7 Session of the SCCR, (WIPO November 2002), 3.

Proposal submitted by the United States of America for Draft WIPO Treaty for the Protection of the Rights of Broadcasting, Cablecasting and Webcasting Organisations, *ARTICLE 2, (c)*.

<sup>857</sup> India is second largest TV industry in the world.

M. Sakthivel., ‘Indian Copyright Act and new communication technologies: A special focus on webcasting’ (2012), *Computer Law & Security Review*, 80 and 81.

<sup>858</sup> Revised proposal submitted by the United States of America for WIPO Treaty for the Protection of the Rights of Broadcasting, Cablecasting and Webcasting Organisations, *Article 2 (c)*.

Report on the 9/4 Rev Session of the SCCR, (WIPO June 2003), 3.

the WIPO Proposed Treaty in the above two sessions and had tried to link it to simulcasting (transmitting simultaneously via traditional broadcasting over the air and on the internet), the inclusion of which was supported by the European Union.

In the fourteenth session, a new revised consolidated text was tabled.<sup>859</sup> It comprised two separate parts. 'A Draft Basic Proposal contained 'a clean text' of a draft treaty without presentation of alternative provisions and it included a solution in relation to webcasting, in the form of an appendix.'<sup>860</sup> The appendix contained all the alternative provisions that were removed from the body of the Draft Basic Proposal.<sup>861</sup>

'Webcasting' means the transmission by wire or wireless means over a computer network for the reception by the public, of sounds or of images or of images and sounds or of the representations thereof, by means of a program-carrying signal which is accessible for members of the public at substantially the same time. Such transmissions, when encrypted, shall be considered as 'webcasting' where the means for decrypting are provided to the public by the webcasting organisation or with its consent.'<sup>862</sup>

The definition narrows down and specifies the area of protection in respect of webcasting. Only traditional broadcasting falls within the scope of webcasting protection.<sup>863</sup> In fifteenth session the appendix was deleted from the WIPO Proposed Treaty.<sup>864</sup>

Broadcasting has already been established as a principal communication medium worldwide and substantially regulated by national laws. Broadcasters have sufficient capacity to gather a wide variety of information and produce high

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<sup>859</sup> Prepared by the Chair of the Standing Committee on Copyright and Related Rights in cooperation with the Secretariat of WIPO.

<sup>860</sup> Report on the 14/2 Session of the SCCR, (WIPO May 2006), 2.

<sup>861</sup> Report on the 15/2 Session of the SCCR, (WIPO September 2006), 2.

<sup>862</sup> Report on the 14/2 Session of the SCCR, (WIPO May 2006), 75.

Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations Including Non-Mandatory Appendix on the Protection in Relation to Webcasting to the WIPO Treaty on the Protection of Broadcasting Organisations, Article 2 (a).

<sup>863</sup> Report on the 15/INF/2 Session of the SCCR, (WIPO September 2006), 3.

<sup>864</sup> Report on the 15/2 Session of the SCCR, (WIPO September 2006), 3.

quality programmes. There is no proper regulation for webcasting.<sup>865</sup> Webcasting is still a new concept for developing countries<sup>866</sup> and its initial stage of development. There is no sufficient experience earned either in legislative or judicial spheres at the national level all over the world.<sup>867</sup> The WIPO should discuss the protection of webcasting on later stage.<sup>868</sup> The Chairman of SCCR stated that the issue of webcasting will remain on the future agenda of the Committee.<sup>869</sup>

The US used a new term, 'netcasting', to describe computer-based transmission of signals instead of webcasting.<sup>870</sup> The new term replaced webcasting in its latest proposal. The definition modifies the term as used in United Kingdom law protecting broadcasting organisations.<sup>871</sup>

'Netcasting means the transmission by wire or wireless means over a computer network, such as through Internet protocol or any successor protocol, for simultaneous or near-simultaneous reception by members of the public, at a time determined solely by the netcasting organisation, of sounds or of images or of images and sounds or of the representation thereof,

- (1) that are of a program or programs consisting of pre-recorded, scheduled audio, visual or audiovisual content of the type that can be carried by the program-carrying signal of a broadcast or cablecast; or
- (2) that are of an organized live event transmitted concurrently where the organizer of such event has granted permission to transmit the event; or
- (3) that are also being cablecast or broadcast at the same time.

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<sup>865</sup> Comments by the Delegation of the National Association of Commercial Broadcasters in Japan (NAB Japan).

Report on the 9/11 Session of the SCCR, (WIPO June 2003).

Report on the 9/11 Session of the SCCR, (WIPO June 2003), 21.

<sup>866</sup> The Delegation of China supported the concern expressed by the Delegation of India.

Report on the 9/11 Session of the SCCR, (WIPO June 2003), 25.

<sup>867</sup> Comments by the representative of the National Association of Broadcasters (NAB).

Report on the 9/11 Session of the SCCR, (WIPO June 2003), 18.

<sup>868</sup> Comments by the representative of the European Broadcasting Union (EBU),

<sup>869</sup> Report on the 9/11 Session of the SCCR, (WIPO June 2003), 22-23.

<sup>870</sup> This is intended to avoid confusion with the old term "webcasting", which unnecessarily implied that ordinary activity on the World Wide Web would be covered by the definition.

<sup>871</sup> Report on the 15/INF/2 Session of the SCCR, (WIPO September 2006), 3.

If encrypted, such transmissions shall be considered netcasting where the means for decrypting are provided to the public by the netcasting organisation or with its consent.<sup>872</sup>

No national parliament or legislature in the world has granted webcasting rights. Therefore, it is submitted that it would be premature for an international treaty to be concluded recognising webcasting rights without actual experience of regulation in the national context. WIPO is not an elected body to authorise to create a new legal right that does not exist at national level. To include a provision on webcasting in an international treaty as an “optional feature” is not yet appropriate. States are free to enact webcasting measures in their national law. An optional provision in an international treaty creates disharmony.<sup>873</sup>

On the bases of SCCR fourteen session<sup>874</sup> and contracting state’s proposals,<sup>875</sup> the Secretariat was asked to prepare a revised document on webcasting. Afterwards, this revised document was discussed in the Committee. The revised document took the form of a ‘Revised Draft Basic Proposal for a WIPO Instrument on the Protection in Relation to Webcasting.’<sup>876</sup>

According to the definition, broadcasting and webcasting are separate concepts.<sup>877</sup> However, most of the members of the SCCR rejected this new proposal because it was a change from the previously discussed issues.<sup>878</sup> Thus, this definition has been excluded from the WIPO Revised Proposed Treaty.<sup>879</sup>

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<sup>872</sup> United States of America, Submission to the World Intellectual Property Organisation Standing Committee on Copyright and Related Rights August 1, 2006.

Report on the 15/INF/2 Session of the SCCR, (WIPO September 2006), 2.

<sup>873</sup> IP Justice Statement in Report on the 15/4 Session of the SCCR, (WIPO July 2006), 39.

<sup>874</sup> Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organisations. Report on the 14/2 Session of the SCCR, (WIPO May 2006).

<sup>875</sup> Member States could submit the proposal until 2 August 2006.

<sup>876</sup> M. Viviana, and C. W. Andrew, ‘A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations’ (January 2007), South Centre, 49.

<sup>877</sup> M. Sakthivel., ‘Indian Copyright Act and new communication technologies: A special focus on webcasting’ (2012), Computer Law & Security Review, 81.

<sup>878</sup> The main focus was on broadcasting Organisations. Due to webcasting, the previous discussed issue (Broadcasting Organisations) were not focused.

<sup>879</sup> M. Sakthivel., ‘Indian Copyright Act and new communication technologies: A special focus on webcasting’ (2012), Computer Law & Security Review, 81.

Report on the 15/2 Session of the SCCR, (WIPO September 2006).

The internet content remains subject to self-regulatory regime. This self-regulatory regime can be converted into regulatory regime.<sup>880</sup>

### ***Critical Approaches to Webcasting***

There are two concepts relevant to the relationship between traditional broadcasting and webcasting. First, some critics do not consider webcasting as a form of broadcasting. Webcasting or internet broadcasting receives transmission through a user request. It does not fall under the definition of the Rome Convention on broadcasting as ‘the transmission by wireless means ‘for public reception’ of sounds or of images and sounds’<sup>881</sup>. However, Internet broadcasting transmits signals work on the request of the user. In this way, they cannot be considered within the scope of broadcasting.<sup>882</sup>

TV Broadcasting has already been established as a principal medium of communication worldwide. This type of broadcasting is properly regulated by national laws. While, there is no system and regulation exist to regulate the webcasting. TV broadcasters had responsibility to collect and transmit the information to the public. Although, professional Webcasters did exist, they are not responsible for formal public role in making information available.

The regulation of webcasters has not been established worldwide. In one way, many websites infringes others’ rights arisen and provides inaccurate information and harmful content.<sup>883</sup> In another way, WIPO is trying to stop this practice. Even though, there is no unanimous decision about the protection of broadcasters only under Proposed Treaty. WIPO is trying to impose a new layer of protection rights which is not created by any national legislative body.

By including webcasting, the WIPO Proposed Treaty goes beyond its stated objective and purpose. In this manner the Treaty will not be in the interests of consumer activity, innovation and freedom of expression on the Internet.<sup>884</sup> The

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<sup>880</sup> I. Onay., ‘Regulating webcasting: An analysis of the audiovisual media services directive and the current broadcasting law in the UK’ (2009), Computer Law and Security Review, 337.

<sup>881</sup> Rome Convention, Article 3 (f).

<sup>882</sup> M. Ogawa., *Protection of Broadcasters’ Rights* (Leiden/Boston: Martinus Nijhoff Publishers, 2006), 69.

<sup>883</sup> Report on the 9/11 Session of the SCCR, (WIPO June 2003), 14.

<sup>884</sup> As discussed in Chapter 2.1.5 (d).

WIPO Proposed Treaty should not include digital and web-based broadcasting signals, as demanded by several developing countries.<sup>885</sup>

WIPO Broadcasting Treaty creates entirely new rights, that currently do not exist in any national law (such as Internet transmission rights and anti-circumvention rights for broadcasters). WIPO is not an elected body authorized to create new legal rights that no national parliament or legislature has ever voted to create.

Most delegations, Non- Government Organisations and consumer groups as well as several broadcasting unions, artists and performers' associations rejected this new webcasting proposal because it would change the protection of broadcasting organisations. Thus, it was excluded from the WIPO Revised Proposed Treaty.<sup>886</sup> Broadcasting is a critical means of communications while webcasting is a newly emerging service. So it requires a separate discussion.<sup>887</sup> Consequently, webcasting was part of this WIPO Proposed Treaty but it was excluded from the WIPO Revised Proposed Treaty now.<sup>888</sup>

A second view is that there is no major difference between TV and webcasting transmission. The minor difference is in the ways of communication. Some traditional TV broadcasting distributes their transmission through the web. Webcasting consists of two components TV and Internet. Both terms are technologically related. Television over the Internet is a future technology but a reality and growing rapidly. As a result, both should be considered similar.

There are technical differences between broadcasting and webcasting. But, just on these bases, these terms cannot be separated. The method of transmission is changing rapidly given that more than one fourth of the world's population enjoy

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<sup>885</sup> N. Kotthapally, 'From World Intellectual Property Organisation (WIPO) to World Innovation Promotion Organisation (WIPO)? Whiter WIPO?' (2012), WIPO Journal, 59.

<sup>886</sup> M. Viviana, and C. W. Andrew, 'A development analysis of the proposed WIPO treaty on the protection of broadcasting and cablecasting organisations' (January 2007), South Centre, 50.

<sup>887</sup> Report on the 9/11 Session of the SCCR, (WIPO June 2003), 14.

<sup>888</sup> "We are disappointed that the government is not defending US legal traditions." US government had changed its position on the treaty, first supporting an Internet-based approach that includes webcasting, then opposing the treaty last year after webcasting was excluded. Quoted by D. Clark, and J. Love., 'Support in US for WIPO Broadcasting Treaty Appears to Wane' Intellectual Property Watch, 21 May 2007.

access to the Internet.<sup>889</sup> Now, the technology is more developed. Some traditional channels also broadcast their transmission through the Internet.

In summing up, a majority of the delegations were not ready to discuss webcasting and broadcasting together when negotiating the WIPO Proposed Treaty.<sup>890</sup> So, webcasting should be discussed later on separately.<sup>891</sup> It means that most of the countries are willing to discuss separate documents.<sup>892</sup>

Internet traditional TV broadcasting neither violates any right of consumers nor other kind of rights. Even, it is protecting the right of traditional broadcasting on the Internet.

It has already been decided that the work of WIPO will concentrate on the protection of traditional TV broadcasting and cablecasting.<sup>893</sup> There are some new proposals to expand the scope of the treaty to webcasting. South African Delegation<sup>894</sup> has proposed a new informal draft propose a "technology-neutral" approach.<sup>895</sup> These delegations wanted to include webcasting once again. However, Japan,<sup>896</sup> South Africa and Mexico<sup>897</sup> proposed a same Treaty, in which they excluded this discussion again. The United State has already proposed that webcasting is not intended to protect the ordinary use of the Internet or World Wide Web, such as through e-mail, blogs, websites and the like. It only covers the traditional broadcasting on Internet.<sup>898</sup> In this way, both TV broadcasting and webcasting seek to protect single subject matter 'traditional broadcasting' using different technology.

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<sup>889</sup> World Internet Stats, Internet Usage Statistics Published at <http://www.internetworldstats.com/stats.htm>. Last visited on 27th August 2012.

<sup>890</sup> Report on the 16/3 Session of the SCCR, (WIPO March 2008), 27.

<sup>891</sup> Report on the 17/INF/1 Session of the SCCR, (WIPO November 2008), 2.

<sup>892</sup> Report on the 9/11 Session of the SCCR, (WIPO June 2003), 10.

<sup>893</sup> Report on the 17/INF/1 Session of the SCCR, (WIPO November 2008), 2.

<sup>894</sup> Prepared by the Chair of the Informal Consultations on the Protection of Broadcasting Organizations held in Geneva on April 14 and 15, 2011.

<sup>895</sup> G. Hinze, and R. Esguerra., 'It's back: WIPO Broadcasting Treaty returns the Grave, (2011), Electronic Frontier Foundation (EFF), 1.

<sup>896</sup> Report on the 24/3 Session of the SCCR, (WIPO June 2012).

<sup>897</sup> Report on the 23/6 Session of the SCCR, (WIPO November 201).

<sup>898</sup> Report on the 15/INF/2 Session of the SCCR, (WIPO September 2006), 3.

The Proposed treaty should protect the existing technology (TV broadcasters) not future technology (webcasting).<sup>899</sup> The internet content remains subject to self-regulatory regime.<sup>900</sup> This self-regulatory regime can convert into regulatory regime<sup>901</sup> but in future. Now, the main propriety should be broadcasters to protect their rights first.

## 5.6 Conclusion

The section analysed the international development of broadcasting and discussed the relevant international agreements namely the Berne Convention, the Rome Convention and the Brussels Satellite Convention. It also discussed the WIPO Proposed Treaty.

It elaborated a general understanding of the agreement and a specific understanding with regard to broadcasting. It also provided a comparative study of broadcasting agreements. In this way, the chapter analysed the international development of protection of rights in broadcasting.

This section explained critically the key objections to the WIPO Proposed Treaty and the arguments for the exclusion of webcasting. New norms are needed as only a small number of states have signed the Rome Convention which, therefore, cannot be used to create an effective impact on the development of related rights, even though, it is the first step towards to the development of broadcaster rights.

However, the internet has no geographical boundaries.<sup>902</sup> So, it is difficult for any state to adopt laws to regulate the market. It is a new international phenomenon. Technical protection cannot safeguard webcasting content without

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<sup>899</sup> M. Sakthivel., 'Indian Copyright Act and new communication technologies: A special focus on webcasting' (2012), *Computer Law & Security Review*, 81.

<sup>900</sup> I. Onay., 'Regulating webcasting: An analysis of the audiovisual media services directive and the current broadcasting law in the UK' (2009), *Computer Law and Security Review*, 337

<sup>901</sup> I. Onay., 'Regulating webcasting: An analysis of the audiovisual media services directive and the current broadcasting law in the UK' (2009), *Computer Law and Security Review*, 337.

<sup>902</sup> H. Wang, et al., 'Communications of the ACM', (New York: Publisher Association of Computing Machinery 1998), 70.



the harmonised legal environment.<sup>903</sup> And that harmonization should be at international level.

The key issue here is the scope of the WIPO Proposed Treaty. Broadcasters claim that they need a new treaty to deal with signal piracy.<sup>904</sup> It is accepted that signal piracy is a serious issue that needs to be addressed. The disagreement is how to address this problem. There are three possibilities. First, the Rome Convention should revise the existing law in accordance with the needs of broadcasters as there has been no serious revision of the Convention since its adoption in 1961. The Rome Convention failed<sup>905</sup> due to its limited membership, low level of international acceptance and revision.<sup>906</sup> Second, many organisations and companies are against the WIPO Proposed Treaty because; the Proposed Treaty creates an additional layer of rights in addition to copyright. Several major international organisations<sup>907</sup> are already against the WIPO Proposed Treaty.<sup>908</sup> Third, WIPO Proposed Treaty should recognised future law but with some exception.<sup>909</sup> WIPO countries are agreed to recognize this proposed treaty but with some changes or exceptions (as discussed above) such as freedom of expression, free flow of information, education, research and some others.

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<sup>903</sup> L. E. Gillies and A. Morrison, 'Securing webcast content in the European Union: Copyright technical protection and problems of jurisdiction on the internet' (2002) *European Intellectual Property Review*, 74.

<sup>904</sup> As discussed in Chapter 2.1.5 (e)

<sup>905</sup> Rome Convention failed due to the opposition of American broadcasting entities to article 12 of the Rome Convention.

A. Bercovitz, 'Copyright and related rights, in intellectual property and international trade: the TRIPS agreement' (1998), Kluwer Law International, 145-149.

<sup>906</sup> R. G. Barbosa, 'Revisiting international copyright law' (Spring 2007), *Barry Law Review*, 69

<sup>907</sup> ICTSD, 'WIPO committee approves Broadcast Treaty amidst disagreement' (2006), *Bridges Weekly Trade News Digest*, V. 10, No.30, 1.

<sup>908</sup> D. Sehgal., and S. Mathur., 'Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations' (2011), *Journal of Intellectual Property Rights*, 404.

<sup>909</sup> As discussed in Chapter 2.5.1 (a, b, c and d)

## Chapter 6 Conclusions and Recommendations

After the opening up of the market to the private sector in 1997, the TV media industry developed very quickly in Pakistan. PEMRA issued licences for 85 satellite TV channels, 26 landing right permissions,<sup>910</sup> 2500 cable TV distribution,<sup>911</sup> 2 mobile TV and 1 IPTV licences up to 2010.<sup>912</sup>

As a result, significant enforcement and regulatory challenges have emerged. The thesis reaches some conclusions and recommendations to meet these challenges.

### 6.1 Key Findings of the Research

There is consensus that at national level the enforcement rate in the Pakistan TV broadcasting sector<sup>913</sup> is very low. PEMRA is facing enforcement issues in Pakistan.<sup>914</sup> Pakistan has promulgated media laws but the enforcement of these laws remains weak.

There is also general agreement that private and public television media sectors in Pakistan are facing enforcement and regulation related problems, particularly in respect of anti-siphoning sports law, state aids, mobile TV regulation and IPTV smartness. These were considered and evaluated in chapters 3 and 4.

However, this reflects a situation with specific characteristics of the enforcement and regulation practices in Pakistan. The research undertaken for the thesis and the analysis show that domestic and international efforts to strengthen enforcement of broadcasting regulations can have some significance impact on Pakistan's enforcement environment and thus it is submitted that if

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<sup>910</sup> PEMRA, Annual Report 2010, p 16.

<sup>911</sup> PEMRA, Annual Report 2010, p 20.

<sup>912</sup> PEMRA, Annual Report 2010, p 23.

<sup>913</sup> M. Aftab., 'Broadcast Regulation in Pakistan: The Need for an Enabling Regulatory Regime ' The Institute of Social and Policy Sciences (ISAPS), Islamabad, Pakistan, The Institute of Social and Policy Sciences (ISAPS), Islamabad, Pakistan, 3.

<sup>914</sup> Internews, Essentials about PEMRA: The who, what, where, when and why of the broadcast regulator, Issue 3, Vol.1, (Jan - Mar 2004), Media Law Bulletin, 15.

some or all of the actions recommended in this thesis are adopted, the situation in Pakistan will improve significantly.

## 6.2 Recommendations

The opening-up of the media TV sector to private undertakings and the adoption of facilitating legislation is a recent phenomenon in Pakistan. The enforcement problems facing the Pakistan TV media industry were discussed in chapters 3 and 4. It is conceded that due to the lack of a comprehensive study on the enforcement of electronic media in Pakistan, it is not easy for the Pakistan enforcement authorities to identify what is needed to strengthen the broadcasting on electronic media regime. Based on this scenario, some recommendations will be put forward which, hopefully, will assist the media industry of Pakistan.

The first recommendation is to strengthen the judicial system as discussed above in Chapter 2. A robust judicial system to allow for proper enforcement of the regulations in the media sector is essential.

The Council of Complaint is a recommendatory body assisting<sup>915</sup> the Authority (PEMRA). But, as a recommendatory body, the Council gives only recommendations to the Authority and it is the Authority that takes the decisions. So, ultimately all the Council recommendations are directly under control of the Authority. The Chairman of PEMRA is appointed by President of Pakistan.<sup>916</sup> The Chairman therefore is not independent. The decisions taken by the Authority are easily influenced by public sector policy.

There are two recommendations proposed to improve this situation. First, PEMRA should adopt the proper judicial system which already prevails in Pakistan. Second, a specialist tribunal rather than a recommendatory body, with competence to resolve media issues, is required to speed up the currently lengthy procedures. Special courts already exist in Pakistan in areas such as the Special Banking Court, Special Custom Court, Taxation and Anti-corruption, Income Tax (Appellate) Tribunal, Insurance Appellate Tribunal and several

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<sup>915</sup> The Council submits monthly reports to the Authority, in which they include the number of complaints received and disposed of by the Council.

<sup>916</sup> PEMRA Act, 2007, s 6 (1).

others. So the establishment of a new tribunal with competence on media issues is not a radical proposal. The setting up of such a specialist tribunal will improve the enforcement environment in the media TV sector. The specialist tribunal should also be given competence over all matters relating to the media sector as for example cablecasting, satellite and terrestrial broadcasting as highlighted in chapter 2.4.

In addition, there are other improvements that are required in Pakistan to assist media enforcement in being more effective. This includes the removal of regulations that restrict judicial procedures. The Government of Pakistan needs to amend such regulations as they hinder the efficiency of the judicial procedure. An example is section 34 of the PEMRA 2007 Act which was discussed in chapter 2.

It will be recalled that under section 34, an aggrieved party has no direct access to the courts.<sup>917</sup> As it is stated in the PEMRA Act, no court shall take cognizance of any offence under sub-section (1) or (2) of section 33<sup>918</sup> except on a complaint in writing by PEMRA or any officer so authorised by it.<sup>919</sup> It means a citizen does not have direct access to a court. First the party has to complain to the Council of Complaint<sup>920</sup> or to PEMRA,<sup>921</sup> and secondly, they have access to a court only with the approval of the Authority.

The Government of Pakistan needs to repeal section 34 of the Pakistan Electronic Media Regulation Authority (Amendment) Act 2007 and enact legislation to enable those affected by unlawful market activity to seek directly to the protection of a court of law.

The second and main recommendation is that a robust regulatory framework needs to be adopted. This would result in a strengthening of the regulating measures which is important for the improvement of the enforcement of media laws in Pakistan.

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<sup>917</sup> Already discussed in Chapter 2.2.3.2.

<sup>918</sup> World “sub-section (1) or (2) of section 33 of” inserted by the section 33A inserted by the PEMRA (Amendment) Act 2007 (Act No. II of 2007).

<sup>919</sup> PEMRA Act, 2007, s 34.

<sup>920</sup> PEMRA Act, 2007, s 26 (2), CTV Regulations, 2002, Part-III r 16 (1 and 2) and Broadcasting Regulations, 2002, Part-III r 18 (1 and 2).

<sup>921</sup> PEMRA Act, 2007, s 34.

As demonstrated in Chapter 3, there are five ways of broadcasting in Pakistan that is cable, satellite, territorial and Mobile and IPTV. The regulatory and enforcement mechanism for each mode of broadcasting needs to be strengthened. Regulatory weaknesses need to be removed in the first mode of transmission cablecasting such as, for example, inability to effectively tackle unauthorised broadcasting of programmes and advertisements, unregistered TV channels, monopoly and unauthorised cable TV access.

These problems can be resolved with a more rigorous media regulatory framework. PEMRA can play an important role in this regard. PEMRA has no permanent task force in Pakistan to investigate and enforce the regulations. Thus, actions are not taken often enough nor are they consistently taken. Whenever PEMRA receives a large number of complaints, it has authority under the PEMRA Act to establish an enforcement team<sup>922</sup> and take action against these illegal activities. Permanent task forces all over the country should replace the current temporary teams. This would enable swift action. The task forces should be well resourced and equipped with modern equipment and facilities to deal with the unlawful activities discussed above. The equipment and facilities will help the task forces to respond more effectively. At the very least, a well equipped task force will be in a stronger position to handle to these issues.

Some problems with the second mode of transmission, that is satellite, were also highlighted. Two issues cause particular difficulties, that is state ‘sovereignty’ while transmitting signals to one country to another, and restrictions on the ‘free flow of information’ in Pakistan.

The Pakistan Government has imposed bans on some TV channels on the name of sovereignty which also restricts free flow of information even though sovereignty of the state and free flow of information are protected by the Pakistani constitution and media laws. In Pakistan, the constitution underpins freedom of speech and expression and the freedom of the press as fundamental rights. The PEMRA Act ensures sovereignty. At the same time, the Constitution proclaims to safeguard national sovereignty, democracy, freedom, equality, tolerance and

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<sup>922</sup> PEMRA Act, 2007, s 29.

social justice: thus, the Constitution of Pakistan upholds both the concept of sovereignty and the protection of the free flow of information.

As far as third mode of transmission is concerned, that is terrestrial broadcasting, the key issues are financial resources.

It is necessary for the independence of the Pakistan terrestrial TV broadcasting that the public sector should not depend on commercial and government resources. Terrestrial and public broadcasting in Pakistan depend on licence fees, advertisements, sponsorship, government grants and subsidies. There are some public TV broadcasters who do not depend on government funds. In Germany, the public broadcasting sector (ARD) has set up a private law subsidiary company to sell airtime to the private sector.<sup>923</sup> In Estonia, public service broadcasters are financed by fees collected from private broadcasters.<sup>924</sup> In Jamaica, cable operators are required to pay five per cent of their gross income as a licence fee.<sup>925</sup> In this way, the Government of Pakistan should consider depending on these sources of income for the independence and credibility of public sector broadcaster.

There are also other challenges due to the advancements in the technology as for example Mobile TV and IPTV. New ways of communication have been introduced and more will surface in the future.

The triple play service is available for Mobile and IPTV services. The two regulatory authorities in Pakistan (PTA and PEMRA) jointly regulate these services. The PTA regulates mobile and landline phones whilst PEMRA regulates only private TV. Mobile and IPTV are therefore regulated by two authorities in Pakistan. Licences are required from PTA for phone and from PEMRA for TV transmission. Therefore, there is no regulatory coherence between the two organisations and this causes confusion and complaints.

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<sup>923</sup> S. Nikoltchev., *The Public Service Broadcasting Culture* (Strasbourg: European Audiovisual Observatory, 2007), 42.

<sup>924</sup> S. Buckley., et al., *Broadcasting, Voice and Accountability* (Michigan: The University of Michigan Press, 2008), 204.

<sup>925</sup> I. Banerjee. and K. Seneviratne., *Public Service Broadcasting: A Best Practices Sourcebook* (Paris: UNESCO, 2005), 123.

It is recommended that there should be one single and specialised organisation to replace all the existing regulatory organisations and so to ensure consistent and effective regulation of issues as they arise in the future. This will also help to promote the development of the media industry in Pakistan.

Similar arrangements already exist in other countries, It was mentioned in chapter 4 that the Office of Communications (Ofcom) in the United Kingdom has statutory responsibility for telecom, radio, telecoms and wireless communications services.<sup>926</sup> In India, Telecom Regulatory Authority of India (TRAI) regulates telecommunication, broadcasting (IPTV)<sup>927</sup> and Cable TV.<sup>928</sup> Furthermore, in India, a specialised sector tribunal (Telecom Dispute Settlement and Appellate Tribunal (TDSAT) was set up to adjudicate disagreements between service providers.

In Pakistan, there is an urgent need for one organisation to be responsible for licensing new providers. In this way, not only will regulatory efficiency increase, but the enforcement situation will also improve in Pakistan.

The third and equally important recommendation is that a new legislative provision is required for effective regulatory enforcement. These measures would fill the gaps identified in media regulation such as sports broadcasting and State aid rules which were considered in Chapter 4.

The specific challenge of siphoning needs to be addressed, by the adoption of specific law to regulate the siphoning of cricket.

Cricket has always been an emblem of national pride in Pakistan. 'Cricket serves as a metaphor for the assertion of Pakistani identity, expression of cultural nationalism or feeling of emotional commonality'.<sup>929</sup> Pakistani cricket is an integral part of the sub-continental cricket culture.<sup>930</sup> Cricket is the most famous

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<sup>926</sup> L. Srivastava, et al., 'Key Issues in the evolution to always-on mobile multimedia environments (Part-2)' (2006), Computer and Telecommunication Law Review, 279.

<sup>927</sup> Telecom Regulatory Authority of India (TRAI), 'Rates of pay TV channels' (2010) Published at <http://www.trai.gov.in/Rates.asp>. Last Visited on 15th April 2012.

<sup>928</sup> Telecom Regulatory Authority of India (TRAI), 'Our mission' (2012), Published at <http://www.trai.gov.in/Default.asp>. Last Visited on 27th August 2012.

<sup>929</sup> K. Bandyopadhyay., 'Pakistani cricket at crossroads: An outsider's perspective' (2007), Sport in Society, 101.

<sup>930</sup> K. Bandyopadhyay., 'Pakistani cricket at crossroads: An outsider's perspective' (2007), Sport in Society, 102.

game in Pakistan.<sup>931</sup> It is the de facto national game of Pakistan.<sup>932</sup> So it is an important part of its culture.

Traditionally, cricket was always broadcast by public channels as no private channels existed in Pakistan before 1997. After the opening up of the market to the private channels, public viewing moved towards private channels. Even though, the public sector offers TV broadcasting to around 150 million<sup>933</sup> (89 %) of all Pakistan population that is over 178 million,<sup>934</sup> while in private sector just covers 40 million (24 %) viewers that watch cable television.<sup>935</sup>

It is recommended that the Pakistan government should follow the Australian example. In Australia, legislation empowered the Minister to authorise the broadcast of certain types of televised sport events free to the general public. This should be achieved by the adoption of an anti-siphoning list.<sup>936</sup> Under the Australian Broadcasting Services Act 1992 section 115(1)<sup>937</sup> no private subscription television broadcaster can acquire the right to broadcast events are specified in the list annexed to the Act. The European Union has similarly granted free viewing to public TV channels for certain sport events. The majority of important sporting features (Football World Cup and European football championships) are available on free TV.<sup>938</sup> To date, Article 14 of the Audiovisual Media Services (AVMS) Directive allows Member States to draw up a list of events 'which it considers to be of major importance for society'.<sup>939</sup> Some

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<sup>931</sup> K. Bashir., 'Prodigies, politics and Pakistan cricket' (2011) TheNation, published at <http://www.thenational.ae/thenationalconversation/sport-comment/prodigies-politics-and-pakistan-cricket>. Last visited on 24th June 2012.

<sup>932</sup> K. Bandyopadhyay., 'Pakistani cricket at crossroads: An outsider's perspective' (2007), *Sport in Society*, 102.

<sup>933</sup> PTV Home covers 89 % population while PTV news 78 %.

Pakistan Television Corporation Limited, 'Introduction' (2012), published at <http://www.ptv.com.pk/introduction.asp>. Last visited on 15th April 2012.

<sup>934</sup> Pakistan population till 25<sup>th</sup> February 2012 is 180,584,995 published at <http://www.census.gov.pk/>. Last visited on 27th August 2012.

<sup>935</sup> PEMRA Annual Report 2009, p 35.

<sup>936</sup> T. Humphrey, 'The politics of sports: the why, when and how of sports law development and implementation' (2008), *International Sports Law Review*, 34

<sup>937</sup> R. Redman, and J. Dwyer., 'Sports broadcasting in Australia - Government signals significant legislative changes' (2006), *Sports Law Administration & Practice*, 15.

<sup>938</sup> The Television without Frontiers Directive (89/552) was amended in 1997 (97/36) to include new Article 3A enabling member states to view the major sports event on free TV.

S. Clover, 'Confused signals - satellite broadcasting and premiership football' (2007), *Entertainment Law Review*, 128.

<sup>939</sup> Article 14(1) of the Codified AVMS Directive.



countries, such as Germany and Switzerland, have only sport events on the list, but some other EU countries have included cultural events.<sup>940</sup>

In the UK, these events are called 'Listed Events'. The Broadcasting Act 1996 empowers the Secretary of State to designate key sporting and other events as 'listed events'. These events are categorised either as Group A or Group B events. Group A consists of live events such as Olympics, FIFA World Cup, Wimbledon and European Football Championship and highlights in the case of Group B events such as Cricket Test Matches, Six Nations Rugby or Commonwealth Games.<sup>941</sup>

The Government of Pakistan should take action in this area and adopt an anti-siphoning sports law in the general public interest or in the name of cultural identity.

For this purpose, the Government of Pakistan needs to amend the relevant section in the Pakistan Electronic Media Regulation Authority (Amendment) Act 2007. This section should protect the public interest. For present purposes, the term "public interest" means the interest of people as citizens rather than as consumers.

As discussed in Chapter 4, Pakistan does not have State aid rules. However, it is recommended that State aid rules be enacted along the lines of those operating on the EU market.

The Pakistan government provides financial support for the public broadcasting sector, and, in this manner, creates unfair competition between the public and private broadcasting sectors. The Government of Pakistan supports the PTV in different ways such as grants, loans and bank loan etc. The PTV income and different sources of benefit through Government support creates an advantageous position in respect of competitors. In the communication sector a mature competition environment is required.

There is no section in Pakistani laws which directly regulate 'State aid' as provided in EU State aids rules Article 107(1) TFEU. To fill this gap, the

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<sup>940</sup> P. Hettich, 'You tube to be regulated? The FCC sits tight, while European broadcast regulation make the grab for the internet' (Fall 2008), Saint John's Law Review, 1485.

<sup>941</sup> The Broadcasting Act 1996, Part IV.

Government should adopt a specific law on the granting of State aid to both public and private broadcasters.

The final set of recommendations concerns internet broadcasting where only few countries have signed the Rome Convention and thus the Convention cannot create an effective impact on the development of related rights. Even though, the Convention is the first step towards development of broadcaster rights, WIPO is trying to promote gradually a body of related rights. First, WIPO developed producer and phonogram related rights through the WIPO Performance and Phonograms Treaty. Now, WIPO is also encouraging the development of third party beneficiaries of the Rome Convention, i.e. the “broadcaster”, in its WIPO Proposed Treaty as discussed in Chapter 5.

There are two possible recommendations in regard of the WIPO Proposed Treaty. First to improve the current broadcasting treaty that is the Rome Convention itself given that many organisations and companies are against the new Proposed Treaty. The Proposed Treaty creates an additional layer of rights to the copyright regime. Several non-governmental organisations (NGO) and major multinational companies, including Dell, Intel, Sony,<sup>942</sup> Google, eBay, Amazon, Microsoft and Yahoo were against the WIPO Proposed Treaty.<sup>943</sup>

The Rome Convention should also improve existing law according to the updates requirement of broadcasters. Because, there has been no serious revision of this Convention since its adoption in 1961. The Rome Convention failed<sup>944</sup> due to its limited membership, low level of international acceptance and revision.<sup>945</sup>

Second and lastly, the WIPO Proposed Treaty should be ratified but with some exceptions.<sup>946</sup> These exceptions will facilitate the ratification of the Treaty by a larger number of countries. WIPO countries are agreed to recognize this

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<sup>942</sup> ICTSD, ‘WIPO committee approves Broadcast Treaty amidst disagreement’ (2006), Bridges Weekly Trade News Digest, V. 10, No.30, 1.

<sup>943</sup> D. Sehgal., and S. Mathur., ‘Rights and duties of broadcasting organisations: Analysis of WIPO treaty on the protection of broadcasting organisations’ (2011), Journal of Intellectual Property Rights , 404.

<sup>944</sup> Rome Convention failed due to the opposition of American broadcasting entities to article 12 of the Rome Convention.

A. Bercovitz, ‘Copyright and related rights, in intellectual property and international trade: the TRIPS agreement’ (1998), Kluwer Law International, 145-149.

<sup>945</sup> R. G. Barbosa, ‘Revisiting international copyright law’ (Spring 2007), Barry Law Review, 69

<sup>946</sup> As discussed in Chapter 2.5.1 (a, b, c and d)

proposed treaty but with some changes or exceptions (as discussed above) such as freedom of expression, free flow of information, education, research and some others.

## 6.3 Further Study

The objective of the thesis was to examine media enforcement and regulation in Pakistan. The examination has been limited to certain selected issues given the breath of the active enforcement in the media sector. There are therefore several other equally important aspects of the topic which need to be researched further such as:

First, the research for the thesis has been limited to the examination of the enforcement of TV broadcasting in Pakistan, particularly focusing on current and future challenges and on the WIPO Proposed Treaty. The thesis has not considered the private audio sector, which is also newly developed in Pakistan and regulated by PEMRA. There are similar legal challenges and legal issues such as Ant-Siphoning Law, State Aid, Webcasting, Mobile Radio, Unauthorised Programmes, Unregistered Radio Channels and Advertisements. In addition, further development is required in the public (Pakistan Broadcasting Corporation) and private audio sectors (Commercial FM Radio).<sup>947</sup> Both matters illustrate that there is a need for further research on whether enforcement could also be introduced or be strengthened by the adoption of laws to regulate the audio media sector.

Second, this thesis discuss only sport events broadcasting in the context of free viewing for general public viewing via public television. Further developments in digital television and other ways of transmissions have created new issues for sports broadcasting regulators. The broadcasting of sport events is already available through different modes like mobile Phone, IPTV, Webcasting and through different ways such as live, video on demand, personalised video

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<sup>947</sup> More than one hundred commercial radios are working in Pakistan.  
PEMRA, 'List of Commercial FM Radio Licences Issued by Pakistan Electronic Media Regulatory Authority' (2010), Published at  
[http://www.pemra.gov.pk/pemra/images/docs/fm/List\\_Of\\_Commercial\\_FM\\_Radio.pdf](http://www.pemra.gov.pk/pemra/images/docs/fm/List_Of_Commercial_FM_Radio.pdf). Last visited on 27th August 2012.

recorders and others. These different modes and ways of broadcasting give rise new legal challenges.

Third, the thesis explores broadcasting enforcement from a legal perspective. The economic aspects which are mentioned in the thesis are purely for comparative purposes.

Fourth, the thesis focuses only on the enforcement of broadcasting but attention should also be given to the implementation and further development of other related rights. Therefore, further national research is needed in regard to producers and phonograms and how they should be regulated in Pakistan.

## **6.4 Contribution of the Thesis**

The thesis has contributed to academic debate and policy making.

First, it has mapped out the administrative bodies that regulate broadcasting in Pakistan, described the various legislative measures that have been adopted and focused on some domestic and international issues.

Before this research was undertaken hardly any assessment of broadcasting enforcement in Pakistan had been carried out. Thus, the thesis is original in being the first comprehensive study of this new industry taking roots rapidly in Pakistan. It has therefore filled a gap in the literature and also will assist policy makers in Pakistan to understand the problems that are arise in broadcasting regulations and enforcements.

Second, this research has exposed a new competitive market for public and private TV broadcasters. This is the only research that has been carried out regarding this issue to-date. One of the reasons why there is a lack of research in this area is probably due to the interdisciplinary character of the topic. It combines competition law and broadcasting laws.

The thesis could be a platform for further research on the South Asian region, which has started to allow private operators to participate on the broadcasting market. This research is also relevant to this region, because a large number of

the population migrated all over the world and provides recommendations that, if adopted, would benefit these countries' media industry.

## Appendix

### Annexure I

#### Comparison between the Definition of Broadcasting provided in the Rome Convention, the WIPO Performance and Phonograms Treaty and the WIPO Revised Proposed Treaty

Rome Convention	WIPO Performance and Phonograms Treaty	WIPO Revised Proposed Treaty	Copyright Ordinance, 1962(Pakistan)
Article 3 (f)  Broadcasting:  Transmissions by wireless means for public reception of sounds or images and sounds.	Article 2(f)  Broadcasting:  Transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also 'broadcasting'; transmission of encrypted signals is 'broadcasting' where the means for decrypting are provided to the public by the broadcasting organisation or with its consent.	Article 5 (a)  Broadcasting  Transmission by wireless/wire means for the reception by the public of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also 'broadcasting'/'cablecasting'; transmission of encrypted signals is 'broadcasting'/'cablecasting' where the means for decrypting are provided to the public by the broadcasting organisation or with its consent. "Broadcasting"/"cablecasting" shall not be understood as including transmissions over computer networks;	Section 26 (a)  Broadcasting  Broadcasting means communication to the public of sound or images or both by means of radio diffusion, including communication by telecast, or wire, or by both, or any other means of communications.

## Annexure: II

## Proposed In-House (CD) Tariff

PROPOSED IN-HOUSE IN-HOUSE (CD) TARIFF				
Category	Category A	Category B	Category C	Category D
B-10	450,000	350,000	263,000	175,000
B-9	400,000	315,000	236,000	157,000
B-8	350,000	280,000	210,000	140,000
B-7	310,000	245,000	184,000	122,000
B-6	265,000	210,000	158,000	105,000
B-5	220,000	175,000	130,000	87,000
B-4	175,000	140,000	105,000	70,000
B-3	130,000	105,000	79,000	53,000
B-2	90,000	70,000	53,000	35,000
B-1	45,000	35,000	26,000	17,000
Rural / Hotel	-	-	-	10,000
Category (A)				
Karachi	Lahore	Peshawar	Quetta	Rawalpindi
Islamabad	Faisalabad	Gujranwala	Bahawalpur	Multan
Hyderabad	Sukkur	Sialkot	Bhawalnagar	Sarghoda
Rahim Yar Khan	Nawabshah	Larkana		
Category (B)				
Abbottabad	Gujrat	Jhelum	Vehaari	Kasur
Attock	Khairpur	Thatta	Kohat	Sheikhupura
Sahiwal	Dera Ghazi Khan	Okara	Mansehra	Khanewal
Category (C)				
PUNJAB	Nausheroferoze	Swabi	Pishin	
Bhakkar	Kamber @ Shahdad Kot	Swat	Qilla Abdullah	
Chakwal	Saanghar	Taank	Qilla Saifullah	
Muzaffargarh	Shikarpur	Upper Dir	Sibi	
Hafizabad	Tando Allah Yar	Balochistan	Zhob	
Jhang	Tando Muhammad Khan	Awaran	Ziarat	
Khusab	Tharparkar	Barkhan	Azad Kashmir	
Layyah	Umerkot	Bolan	Muzaffarabad	
Lodhran	NWFP	Chaghi	Mirpur	
Mianwali	Bannu	Dera Bugti	Kotli	
Narowal	Battagram	Gawadar	Bagh	
Nankana Sahib	Buner	Jafferabad	Rawalkot	
Pakpattan	Charsadda	Jhal Magsi	Hijra	
Rajanpur	Chitral	Kalat	Bimber	
Tobateksingh	Dera Ismail Khan	Kech (Turbat)		
Mandi Bahauddin	Hangu	Kharan		
Sindh	Haripur	Khuzdaar		
Badin	Lower Dir	Kohlu		
Daadu	Karrak	Lasbela		
Ghotki	Kohistan	Lora Lai		
Jacobabad	Lakki Marwat	Mastung		
Jamshoro	Malakand	Musa Khel		
Kashmore	Mardan	Naseerabad		
Mafiar	Nowshera	Nushki		
Mirpur Khas	Shaangla	Panigur		
Category (D)				
All Tehsil Headquarters and Rural Towns				

## Annexure: III

Fee Structure of Cable Television Distribution Services<sup>948</sup>

Duration of Licence: 5 YEARS

Application Processing Fee: (Non-refundable) Rs.5,000 /-

LICENCE CATEGORY	NO. OF.SUBS	LICENCE FEE (Rs)	ANNUALRENEWAL + Rs. 1/- PER SUB PER MONTH	FEE FOR ADDITIONAL HEAD END
R	500	10,000/-	5,000/-	-
H	Up to 25 rooms	15,000/-	7,500/-	-
H-I	Up to 100 rooms	20,000/-	10,000/-	-
H- II	Above 100 rooms	50,000/-	25,000/-	-
B	Up to 500	10,000/-	10,000/-	-
B-1	Up to 1000	60,000/-	30,000/-	30,000/-
B-2	Up to 3000	80,000/-	40,000/-	40,000/-
B-3	Up to 5000	100,000/-	50,000/-	50,000/-
B-4	Up to 7000	150,000/-	75,000/-	75,000/-
B-5	Up to 10000	175,000/-	87,500/-	75,000/-
B-6	Up to 25000	350,000/-	175,000/-	75,000/-
B-7	Up to 50000	525,000/-	262,500/-	75,000/-
B-8	Up to 100000	875,000/-	350,000/-	75,000/-
B-9	Up to 200000	1,400,000/-	700,000/-	100,000/-
B-10	Above 200000	1,750,000/-	875,000/-	100,000/-

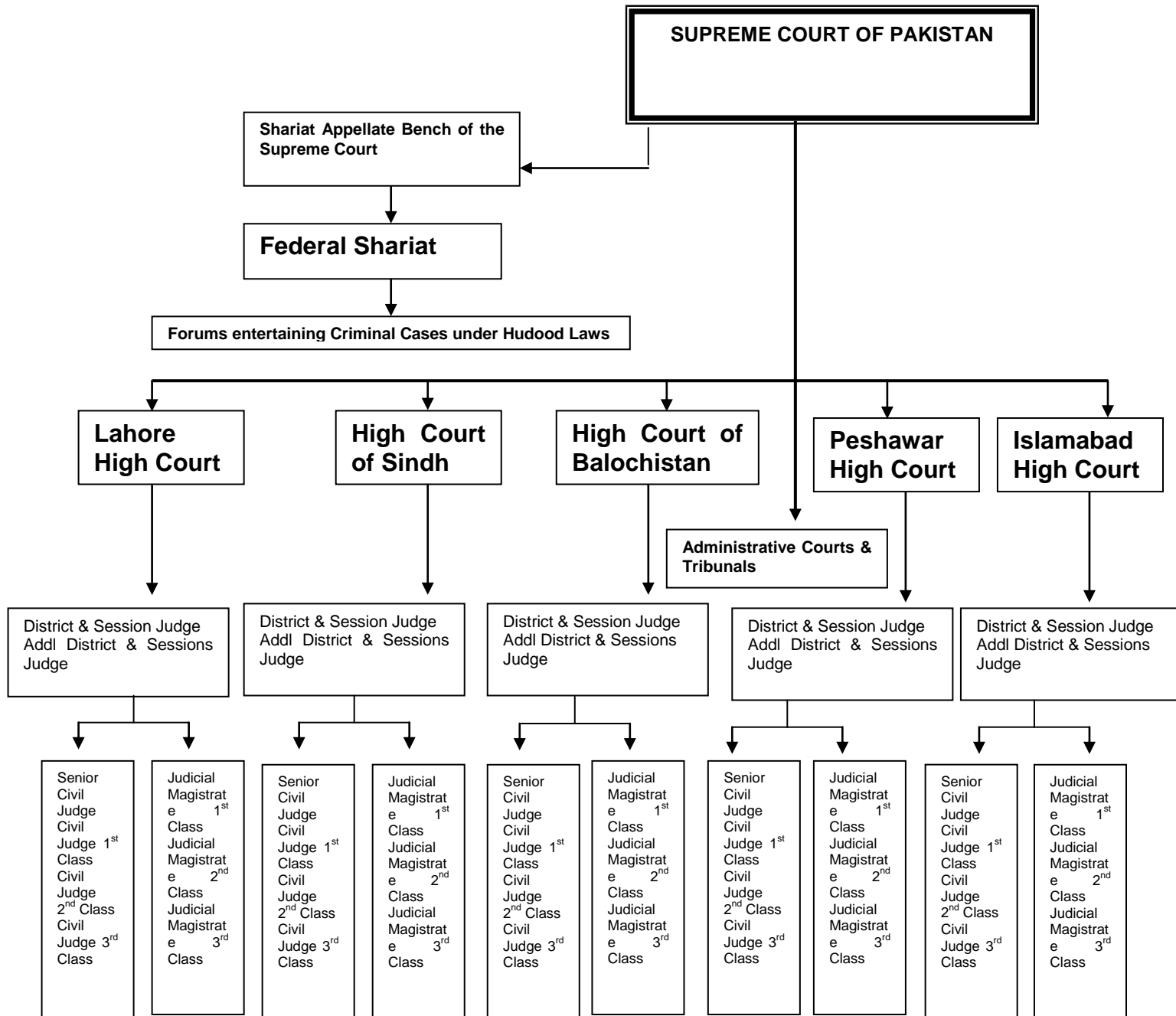
\* R = RURAL

\* H = HOTEL

<sup>948</sup> Pakistan Electronic Media Regulatory Authority, 'Fee structure' (2010), Published at <http://www.pemra.gov.pk/cabletv.html>. Last visited on 13th September 2010.



## Annexure: IV

ORGANISATION AND STRENGTH OF JUDICIAL HIERARCHY<sup>949</sup><sup>949</sup> Law and Justice Commission of Pakistan

## Annexure: V

List of Satellite TV Licence Issued by PEPR<sup>950</sup>

Sr. No.	Name of the Channel	Name of the Company / Address
1.	VTV-1	<b>Virtual University</b> Aiwan-e-Iqbal, Complex Building 1, 3rd Floor, Egerton Road, Lahore Ph: 042-99200408-9, 99202174-75 Fax: 042-99202174, 99200604
2.	VTV-2	
3.	VTV-3	
4.	VTV-4	
5.	Mashriq TV	<b>M/s Mashriq Television (Pvt.) Ltd.</b> House No. 812, Block-Z, Defence Housing Authority, Lahore Ph:042-36309731 Status: Cancelled
6.	Hope	<b>M/s International Marketing &amp; Trading Company (Pvt.) Ltd.</b> 3 <sup>rd</sup> Floor, Jang Building, Fazal-e-Haq Road, Blue Area, Islamabad Ph: 051-2274018, 2870343 Fax: 051-2870341
7.	Indus Vision	<b>M/s Indus TV Network (Pvt.) Ltd.</b> 2 <sup>nd</sup> floor, Shafi Court, Opposite Hotel Meteropole, Merewether Road, Karachi Ph: 021-35693801-05, 35693815 Fax: 021-35693813
8.	Indus Music	
9.	AVT Khyber	
10.	Khyber News	<b>M/s AVT Channels (Pvt.) Ltd.</b> House No. 16, Street No. 85, G-6/4, Islamabad Ph: 051-2271485-6 Fax: 051-2276913
11.	K-2	
12.	ARY News	<b>M/s ARY Communications (Pvt.) Ltd.</b> 6 <sup>th</sup> Floor, Madina City Mall, Abdullah Haroon Road, Saddar, Karachi Ph: 021-35212815-18 Fax: 021-35655700
13.	ARY Digital	
14.	ARY Zouq	
15.	CNBC Pakistan	<b>M/s Vision Networks TV Limited</b> Techno City Corporate Tower, 17/F Altaf Hussain Road, Karachi Ph: 021-32270850 UAN: 021-111 2622 75 Fax: 021-32270852
16.	Play TV	<b>M/s 24-Seven Media Network (Pvt.) Ltd.</b> 84-B, Sindhi Muslim Cooperative Housing Society, Karachi Ph: 021-35426573

<sup>950</sup> Pakistan Electronic Media Regulatory Authority, 'A list of satellite TV licence issued by PEPR<sup>950</sup>' (2012) Published at [http://www.pemra.gov.pk/pemra/images/docs/stv/list\\_of\\_licences\\_issued\\_stv.pdf](http://www.pemra.gov.pk/pemra/images/docs/stv/list_of_licences_issued_stv.pdf). Last visited on 27th August 2012.

17.	Sun Biz	<b>M/s Southern Networks Limited.</b> 19 <sup>th</sup> Floor, Tower A, Saima Trade Tower, I.I. Chundrigar Road, Karachi Ph: 021-32215131 Fax: 021-32215196
18.	Haq TV	<b>M/s Galaxy Broadcast Network (Pvt.) Ltd</b> D-80, Haq TV Studios, Block-2, Clifton, Karachi Ph: 021-35865035 Fax: 021-35361410
19.	Ravi TV	<b>M/s Top End Network (Pvt.) Ltd.</b> Penthouse # 4, Defence Phase-5, Mall Square Building, 8 <sup>th</sup> Floor, Block - B, DHA, Karachi Ph: 021-36038079
20.	Hum TV	<b>M/s Eye TV Limited</b> Plot No. 10/11, Hassan Ali Street, Off. I.I. Chundrigar Road, Karachi Ph: 021-35374258, 32628840 UAN: 021-111 486 111 Fax: 021-32628840
21.	Masala TV	
22.	OYE	
23.	Style 360	
24.	Rohi	<b>M/s Rohi Entertainment Company (Pvt.) Ltd.</b> House No. 6 Street No. 7, F-6/3, Islamabad Ph: 051-2201345 Fax: 051-2201302
25.	AKS TV	<b>M/s Labbaik (Pvt.) Ltd.</b> Labbaik Plaza, C-47/C, 15th Commercial Street, Phase II Extension, D.H.A. Karachi Ph: 021-35883853-4, 35380207-8 Fax: 021-35380208
26.	ATV	<b>M/s Sports Star International (Pvt.) Ltd.</b> 11-F, Model Town, Lahore. Ph: 042-35886195, 042-35880504
27.	A Plus	
28.	Oxygene	<b>M/s Classic Entertainment (Pvt.) Ltd.</b> Office No. 91, Media City Building, Blue Area, Islamabad Ph: 051-2810039
29.	Dunya TV News	<b>M/s National Communications Services (SMC-Pvt) Ltd.</b> 64-E/I, Gulberg-III, Lahore Ph: 042-35870192-6 Fax: 042-35712637
30.	Dunya TV Entertainment	
31.	TV ONE	<b>M/s Air Waves Media (Pvt.) Ltd.</b> 94-Jinnah Co-operative Housing Society, Block 7 & 8, Tipu Sultan Road, Karachi Ph: 021-34559314, 34559320 Fax: 021-34559366
32.	Waseb TV	
33.	News ONE	
34.	Info TV	<b>M/s Tricom Entertainment (Pvt.) Ltd.</b> B-59, Block 2, PECHS, Karachi

		Ph: 021-34398663-4, Fax: 021-34555279
35.	<b>Samaa TV</b>	<b>M/s Jaag Broadcasting Systems (Pvt.) Ltd.</b> Techno City, Corporate Tower 16 <sup>th</sup> Floor Off. I.I. Chundrigar Road, Karachi Ph: 021-111-262-275 Fax: 021-32270848
36.	<b>ZAM Television</b>	<b>M/s Zam Television Network (Pvt.) Ltd.</b> LSC, Row 6, Gulshan-e-Iqbal, Block 6, Main Rahsid Minhas Road, Karachi Ph: 021-34818904-5 Fax: 021-34818906 Status: Cancelled
37.	<b>APNA News</b>	<b>M/s APNA TV Channel (Pvt.) Ltd.</b> Corporate Office 12, Mezzanine Floor, West Point Tower, Phase-II, DHA Extension, Karachi Ph: 021-35392596-98 Fax: 021-35888851
38.	<b>APNA Channel</b>	
39.	<b>KOOK</b>	
40.	<b>8XMusic</b>	
41.	<b>KTN News</b>	<b>M/s Kashish Televison Network (Pvt.) Ltd.</b> 6-9 Mezzanine Floor, West Point Tower, D.H.A. Phase-II, Karachi Ph: 021-111-586-111 Fax: 021-35800526
42.	<b>KTN</b>	
43.	<b>Kashish</b>	
44.	<b>Sindh TV News</b>	<b>M/s Dolphin Media (Pvt.) Ltd.</b> 3rd Floor Hanan Centre, North 55, Main Shahrah-e- Faisal, Karachi Ph: 021-34390835-6 Fax: 021-34391713
45.	<b>Sindh TV</b>	
46.	<b>WAQT</b>	<b>M/s Nidai Millat (Pvt.) Ltd.</b> NIPCO House, 4-Shaarey Fatima Jinnah, Lahore Ph: 042-36367551-54 Fax: 042-36367616, 6367583
47.	<b>CHANNEL 5</b>	<b>M/s Interact (Pvt.) Ltd.</b> 12 Lawrence Road, Lahore Ph: 042-36309795-6 Fax: 042-36374343
48.	<b>Punjab TV</b>	<b>M/s IRIS Communications (Pvt.) Ltd.</b> 8th Floor LDA Plaza Edgerton Road, Lahore Ph: 042-111-213-213 Fax: 042-36373762
49.	<b>Star Asia</b>	<b>M/s Star Asia (Pvt.) Ltd.</b> 8th Floor LDA Plaza Edgerton Road, Lahore Ph: 042-111-213-213 Fax: 042-36373762
50.	<b>Dharti TV</b>	<b>M/s Mehran TV (Pvt.) Ltd</b> D-128/1, Block 4, Clifton, Karachi Ph: 021-35639507-8 Fax: 021-35639509

51.	Mehran TV	M/s Indus Link Media Communications (Pvt.) Ltd. 401- Trade Tower, Abdullah Haroon Road, Karachi Ph: 021-35683236 Fax: 021- 35688179
52.	Express News	M/s Television Media Network (Pvt.) Ltd. Plot No. 5, Expressway, Before Defence View Project, Off Korangi Road, Karachi Ph: 021-35800051-58 Fax: 021-35800050 & 66  Status: Non-operational (Express Music only)
53.	Express English	
54.	Express Entertainment	
55.	Express Music	
56.	Din News	M/s Fortune Marketing (Pvt.) Ltd. 15-L, Gulberg-III, Lahore Ph: 042-35883540-9 Fax: 042-35839951-3
57.	AAJ TV	M/s Recorder Television Network (Pvt.) Ltd. Recorder House, 531, Business Road, Karachi Ph: 021-111-010-010 Fax: 021-32237067
58.	AAJ Entertainment	
59.	SabzBaat TV	M/s East Films (Pvt.) Ltd. Zehri Street, Haji Shafiq Colony, Pathra, Hub City, District Lasbella, Baluchistan Cell: 0321-9533929
60.	Royal TV	M/s Royal Media Network (Pvt.) Ltd. 95 Tipu Block, New Garden Town, Lahore Ph: 042-35882144 Fax:042-35861301
61.	Geo English	M/s Independent Newspapers Corporation (Pvt.) Ltd Printing House, I.I. Chundrigar Road, Karachi Ph: 021-32637111-9 Fax: 021-32638000 Status: Cancelled (Only Geo English)
62.	Geo Aur	
63.	Geo News	M/s Independent Media Corporation (Pvt.) Ltd Printing House, I.I. Chundrigar Road, Karachi Ph: 021-32637111-9 Fax: 021-32638000
64.	Geo Entertainment	
65.	City -42	M/s City News Network (Pvt.) Ltd. 4-A/1, Shadman-II, Lahore Ph: 042-36128100 Fax: 042-36672584
66.	N-Vibe	M/s Media Unlimited (Pvt.) Ltd. 1st Floor, Block 111, Shafi Courts, Civil Lines, Karachi Ph: 021-35687479 Fax: 021-35684679
67.	Business Plus	M/s Total Media Limited 47-Industrail Area, Gulberg-II, Lahore Ph: 042-111-603-603 Fax: 042-35870892
68.	ZAIQA	

69.	Jinnah TV	<b>M/s Asia News Network (ANN) (Pvt.) Ltd.</b> 5-J, Sitara Market, G-7, Islamabad Ph: 051-111-44-88-44 Fax: 051-2203025
70.	Sachal TV	<b>M/s Sachal Satellite Communications (Pvt.) Ltd.</b> Plot No. 59-E, Street No. 7, I-10/3, Islamabad Ph: 051-111-373-373 Fax: 051-4446647
71.	Health Channel	<b>M/s Ziauddin Enterprises (Pvt.) Ltd.</b> ST-16, Block-B, North Nazimabad, Karachi Ph: 021-36649700
72.	Aruj TV	<b>M/s Aruj Television (Pvt.) Ltd.</b> Aruj House, 1-KM Raiwind Road, Lahore Ph: 042-35393125-6 Fax: 042-35393127
73.	Roze TV	<b>M/s Roze (Pvt.) Ltd.</b> Patriot Building, Postal Colony, St. No.24, G-8/4, Islamabad Ph: 051-2855961-2 Fax: 051-2855963-4 Status: Cancelled
74.	VSH TV	<b>M/s Visionary Baluchistan Media Corporation (Pvt.) Ltd.</b> The Plaza, Suite # 207, Second Floor, Khayaban-e-Iqbal, Block -9, Clifton, Karachi. Ph: 021-111-947-111 Fax: 021-35824009
75.	Value TV	<b>M/s Central Media Network (Pvt.) Ltd.</b> 56-E/I, Gulberg-III, Lahore. Ph: 042-35763390 Fax: 042-35764643
76.	A-Lite	<b>M/s Fun Infotainment Network (Pvt.) Ltd.</b> 12/F, Model Town, Lahore Ph: 042-35880311 Fax: 042-35837555
77.	Capital TV	<b>M/s HB Media (Pvt.) Ltd.</b> 38-C, Faisal Town, Lahore Ph: 042-35163738, 35165599 Status: Non-operational
78.	Koh-e-Noor TV	<b>M/s Ariel Broadcasting Services (Pvt.) Ltd.</b> Flate No. 1, Street No. 48, Zaib-un-Nisa Plaza, Raja Market, F-11/3, Islamabad. Fax: 051-2225207
79.	Dawn News	<b>M/s Aurora Broadcasting Services (Pvt.) Ltd.</b> 11, Dockyard, Road, West Wharf Industrial Area, Karachi Ph: 021-111-11-44-55 Fax: 021-32330960
80.	Dawn News Urdu	
81.	Herald Entertainment	
82.	Film World	<b>M/s Leo Communication (Pvt.) Ltd</b> 2C/1, Main Boulevard Faisal Town, Lahore

83.	<b>Filmazia</b>	Ph: 042-35162096, Fax:042-35162097
84.	<b>Sohni Dharti</b>	<b>M/s Tilton (Pvt.) Ltd.</b> Office No. 6, 2 <sup>nd</sup> Floor, Shahnawaz Plaza, G-11 Markaz, Islamabad Ph: 051-2211710, 2611892-3, Fax: 051-2611879
85	<b>Awaz TV</b>	<b>M/s Awaz Television Network (Pvt.) Ltd.</b> Suite No. 405, 4 <sup>th</sup> Floor, Panorama Centre-2, Saddar, Karachi Ph: 021-35641019, Fax: 021-35640999
86	<b>Mirror Television Network</b>	<b>M/s Asset Plus (Pvt.) Ltd.</b> 14-X, DHA Lahore Cantt Ph: 042-35749015-21 Fax: 042-35749023 Status: Cancelled
87	<b>Dhoom TV</b>	<b>M/s Dhoom Television Network (Pvt.) Ltd.,</b> Qaumi Akhbar House, I.I. Chundrigar Road, Karachi Fax: 021-32636688
88	<b>Geo Super</b>	<b>M/s Independent Music Group (SMC-Private) Ltd.</b> Printing House, I.I. Chundrigar Road, Karachi Ph: 021-32637111-9, Fax: 021-32638000
89	<b>Metro-One</b>	<b>M/s Multi Plus Corporation (Pvt) Ltd.,</b> Mezzanine Floor, Mashriq Center, Near Civic Center, Karachi Ph: 021-34860892-3 Fax: 021-34860891

## Guideline for Submission of Application for Satellite TV License

### a. Eligibility Criteria

An applicant must fulfil the following eligibility requirements for pre-qualification for grant of Satellite TV Broadcast Station Licence:

- i. It must be a company or a body corporate, incorporated in Pakistan, and not an individual;
- ii. The paid-up capital of the applicant company for single TV channel shall be Rs. 50 million. The company shall enhance the paid-up capital by Rs. 20 million for each additional channel;
- iii. Should not be recipients of funds from a foreign government, organization or individual;
- iv. Should not be a firm or company the majority of whose shares are owned or controlled by foreign national or whose management control is vested in foreign national or companies;

### b. List of Documents to be submitted with the Application

Following documents shall be enclosed with the application of Satellite Television Broadcast Station Licence:

S.No.	Description	Documents
1.	Company Profile	a. Names and CVs of Directors b. Attested copies of CNICs/Passports of the Directors
2.	Company Registration with SECP	a. True attested copy of Certificate of Incorporation b. True attested copies of Memorandum & Articles of Association c. True attested copy of Form-29 d. True attested copy of Form-A/Form-3
3.	National Tax Number	Attested copy of NTN certificate of the company
4.	Financial Viability	a. Project Cost with breakup b. Documentary Evidence to support the project cost ( Bank Statement of the



		Company/Directors and/or any other financial arrangement to support the project) c. Audited Report of the company (if applicable) d. Tax Return of the company/directors for the two most recent years
5.	Technical Expertise	CVs of the professional/technical staff

## Annexure: VI

A List of Companies/Channels Obtained Landing Rights Permission<sup>951</sup>

S.No.	Name of Landing Rights Holder Company/ Address	Name of Channel (S)
1	<b>Information &amp; Systems Corporation Pvt. Ltd.</b> 4-J.C.H.S. Shahra-e-Faysal, Karachi. Ph: 021-4545912,4536348 Fax:021-4545905,4548809	<b>CNN</b> <b>Cartoon Network</b> <b>AXN</b> <b>Discovery</b> <b>Animal Planet</b>
2	<b>ARY Communication Pvt. Ltd.</b> 6 <sup>th</sup> Floor, Madina City Mall ,Abdullah Haroon Road, Saddar, Karachi. Ph: 021-2564724,1259,5496 Fax: 021-2578060,7899,	<b>Nickelodeon</b> <b>(Defaulter)</b> <b>HBO</b> <b>The Musik</b> <b>Fashion TV</b> <b>(Defaulter)</b>
3	<b>Tower Sports Pvt. Ltd.</b> 2 <sup>nd</sup> Floor, 49 Commercial Area, Cavalry Grounds, Lahore Cantt, Lahore, Pakistan Ph: 042-6655422-3 Fax:042-6666833	<b>Ten Sports</b>
4	<b>Max Media Pvt. Ltd.</b> 110, 1 <sup>st</sup> Floor, Clifton Center, Block -5,Khayaban-e-roomi, Clifton, Karachi Ph: 111-7827-88 Fax: 021-5878781	<b>STAR World</b> <b>STAR Movies</b> <b>STAR Sports</b> <b>ESPN</b> <b>National Geographic</b> <b>Adventure 1</b> <b>Channel [V]</b> <b>Sky News</b> <b>Fox News</b>
5	<b>Orbit Advertising Pvt. Ltd.</b> Zafar House, Preedy Street, Saddar, Karachi Ph: 021-2766351 Fax: 021-2733294	<b>BBC World</b>

<sup>951</sup> Pakistan Electronic Media Regulatory Authority, 'A List of Companies/Channels Obtained Landing Rights Permission' (2012) Published at [http://www.pemra.gov.pk/pemra/images/docs/landingright/List\\_of\\_Licences\\_Issued\\_LR.pdf](http://www.pemra.gov.pk/pemra/images/docs/landingright/List_of_Licences_Issued_LR.pdf). Last Visited on 27th August 2012.

## Annexure: VII

A List of Mobile TV Licence Issued by PEMRA<sup>952</sup>

S.No.	Name of Company	Date of Award of Licence	Operational Status
1	M/s Brand Promotions Services (Pvt) Ltd. 57- Old Clifton, Adjacent of Park Lane Heart Centre, Karachi Ph: 021-5364980-84	01-05-2007	Operational
2	M/s Cellevision (Pvt) Ltd. Third Floor, Redco Plaza, Blue Area, Islamabad Ph: 051-2879516-9 Fax: 051-2279772	29-08-2007	Operational
3	M/s Dialog Broadband (Pvt) Ltd. First Floor, Asif Plaza, Fazal-e-Haq Road, Blue Area, Islamabad Ph: 051-7100100, 2652507 Fax: 051-2652515	20-07-2010	Non- Operational

<sup>952</sup> Pakistan Electronic Media Regulatory Authority, 'A list of mobile TV (Content Provision Service) licence issued by Pakistan Electronic Media Regulatory Authority' (2012), Published at [http://www.pemra.gov.pk/pemra/images/docs/mobiletv/list\\_of\\_licences\\_issued\\_mobiletv.pdf](http://www.pemra.gov.pk/pemra/images/docs/mobiletv/list_of_licences_issued_mobiletv.pdf). Last Visited on 27th August 2012.

## Guideline for Submission of Qualification for IPTV Channel Distribution Service License

### 1. General

1.1 The interested parties may apply to Pakistan Electronic Media Regulatory Authority [having valid Fixed Local Loop licence for Telecom Region(s) from PTA] for the establishment of IPTV Channel Distribution Service in 14 Zones, indicated below:

#### Category-A

S. No.	Telecom Regions	IPTV Licensing Zones
1	Karachi Telecom Region (KTR)	Sindh Zone-I (Karachi)
2	Lahore Telecom Region (LTR)	Punjab Zone-I (Lahore)
3	Gujranwala Telecom Region (GTR)	Punjab Zone-V
4	Islamabad Telecom Region (ITR)	Islamabad Zone

#### Category-B

S. No.	Telecom Regions	IPTV Licensing Zones
1	Southern Telecom Region (STR-I)	Sindh Zone-II
2	Southern Telecom Region (STR-II)	Sindh Zone-III
3	Central Telecom Region (CTR)	Punjab Zone-II
4	Multan Telecom Region (MTR)	Punjab Zone-III
5	Faisalabad Telecom Region (FTR)	Punjab Zone-IV
6	Rawalpindi Telecom Region (RTR)	Punjab Zone-VI
7	Northern Telecom Region (NTR-I)	NWFP Zone-I
8	Northern Telecom Region (NTR-II)	NWFP Zone-II
9	Hazara Telecom Region (HTR)	NWFP Zone-III
10	Western Telecom Region (WTR) (Baluchistan)	Baluchistan Zone

### 2.2 Category Wise Licensing Fee:

Category A (per Zone): Rs. 1,000,000/-

Category B (per Zone): Rs. 500, 000/-

**2.3 Security Deposit** 10 % of the licence fee (refundable after one year satisfactory operation)

**2.4 Annual Renewal Fee:** 30% of the licence fee  
Plus 5% of the AGR

**2.5 Licensing period** 05 years

**Note:** Only Bank Drafts/Pay Orders in favour of PEMRA are acceptable.

### **3. Prequalification**

#### **3.1 Eligibility Requirement**

In order to be eligible to submit application for the grant of licence to establish IPTV Channel Distribution Service in Pakistan, the applicant must be pre-qualified by the Authority. The applicant must fulfill the following eligibility requirements for pre-qualification.

- a) It must be a company or a body corporate, incorporated in Pakistan. with SECP under Companies Ordinance, 1984
- b) Should not be a company the majority of whose shares are owned or controlled by foreign nationals or whose management control is vested in foreign nationals or companies.
- c) Should fulfil the legal requirement as per PEMRA Ordinance 2002.
- d) Should not be a defaulter of the Government of Pakistan or any of its organizations including PEMRA.
- e) Should have Fixed Local Loop licence from Pakistan Telecommunication Authority (PTA).

#### **3.2 Basis for Disqualification**

The Authority at any time shall disqualify a company for the following reasons, if the company:

- a) fails to submit alongwith the SOQs, the supporting documentation required pursuant to these guidelines, by the due date;
- b) provides any false or misleading information or misrepresents, withholds, conceals any information asked for in the SOQs,
- c) fails to disclose or provide any additional information as may be required by the Authority;
- d) Is involved in any litigation which may have a material adverse effect on its ability to acquire the licence;
- e) fails to inform the Authority of any change in its ownership or control or significant change in the ownership or management;
- f) fails to report about any material change in the information provided by it that occurs at any time prior to the date of issuance of licence.

### **4. Mandatory Information**

#### **4.1 Each SOQ shall include the following information:**

- Organization of the company
- Management and organizational set-up
- Financial Capability - Sources of finance and cash flow;
- Technical Proposal
- Copy of Fixed Local Loop licence in the name of the applicant company.

#### **4.2 Organizational Structure**

The Organizational Structure section of the SOQs shall include the Profile of the company, including Memorandum & Articles of Association, names of the Members/Board of Directors, their respective CVs, photo copies of National Identity Cards, present & permanent addresses, experience, and the nature of their role and responsibilities (company incorporation/registration documents including Form 29 duly attested by the SECP to be provided).

#### **4.3 Management Capability**

The Management capability section of the SOQs shall include the following:

- a) Organizational set-up - names and CVs of key personnel
- b) Experience and capability to efficiently manage the licence to establish and distribute IPTV Channel Distribution Service.

- c) An organizational chart of such personnel of the company who will execute primary management, professional and technical functions together with their curriculum vitae; (the company management must be able to demonstrate adequate managerial capabilities and the required management strength to effectively manage the IPTV Channel Distribution Service);
- d) Other relevant information relating to management experience and capabilities that would be useful for the future management of the IPTV service.

#### **4.4 Financial Capability**

The Financial Capability of the project shall contain:

- a) Details of financial and operating background for the last 3 (three) years demonstrating financial viability, including audited financial statements duly certified by a firm of chartered accountants. (The financial statements should include consolidated balance sheet and income and profit and loss statements. Similar financial and operating information for any parent company, affiliates and associated undertaking/ companies should also be included. The tax returns filed by each Director of the company for the most recent 3 (three) years together with the tax assessment orders of the relevant income tax authorities);
- b) An up-to-date statement showing the outstanding liabilities (both fund based and non-fund based i.e., bank guarantees, letter of credit etc) to banks and financial institutions. (The company and each Members/Directors of the company) will also be required to submit the details of paid-up capital);
- c) Bank credit references from at least 2 (two) banks acceptable to the Authority.
- d) Any other relevant information regarding financial track record and capabilities of the company that it believes would be helpful to the company.
- e) Letter of intent from financier (if involved)

#### **4.5 Technical Proposal**

The Technical Capability section of the SOQs shall include following information:

- a) Technical feasibility of the project;
- b) Hardware and software requirement of the project;
- c) Detailed technical specifications of the proposed system;
- d) Design (diagrammatic view) showing equipment and communication links;
- e) Details of network monitoring facilities and measure for network security;
- f) Technical detail of Set-Top-Box

#### **4.6 Support Services**

- a) Detail of technical support facilities;
- b) Customer support facilities;
- c) Network redundancy or backup system;

#### **4.7 Service Tariff**

- a) Detail of tariff for IPTV Channel Distribution Service;
- b) Detail of Customer Premises equipment cost (Set-top-box etc.)

### **5. Criteria for Evaluation of IPTV Channel Distribution Service Licence Application**

Application for the grant of IPTV Channel Distribution Service Licence shall in the first instance be short listed by using the following criteria:

- a) Economic viability;
- b) Technical competence;
- c) Financial capability;
- d) Credibility and track record;
- e) Extent of Pakistani share in ownership;
- f) Prospects of technical progress and introduction of new technology;

- g) Market advancement, such as improved service features or market concepts;
- h) Contribution of universal service objectives; and
- i) Contribution to other social and economic development objectives.

## **6. SUBMISSION OF SOQs**

### **6.1 Timing, Number of Copies and Filing Requirements**

A company must submit the SOQs original and **three copies** thereof, not later than 1500 hrs Pakistan Standard Time on the due date to the Authority at the following address:

6th Floor, Green Trust Tower,  
Jinnah Avenue, Blue Area  
Islamabad. Pakistan.  
Telephone: 92-51-9219713

### **6.2 Power of Attorney**

Each company must submit a Power of Attorney and company's resolution as evidence for grant of authority vested in the individual submitting the SOQs on behalf of the company. Powers of Attorney must be executed, notarized, witnessed, stamped and authenticated as required by law.

### **6.3 Material Change**

Each company must immediately report to the Authority in writing any material change in the information provided by it in its SOQs before processing of the application. Any failure to report such material change shall constitute grounds for disqualification. The material change itself could also lead to a disqualification of the company.

## **7. Review and Evaluation of SOQs**

### **7.1 Supplementary Information**

Where the Authority deems it convenient or necessary, it may require supplementary information or documentation from a company and each Member/Director of a company for determining eligibility for pre-qualification and whenever such request is made, the company shall provide the same to the Authority by such date as may be specified by the Authority.

### **7.2 Indication of Pre-qualification**

Indication of pre-qualification will be given in writing and delivered to pre-qualified companies by facsimile, mail, E-mail or courier at their specified addresses.

### **7.3 Return of SOQs**

The Authority shall be under no obligation to return any SOQ or supporting materials submitted by a company to reimburse the cost of preparing an SOQ or any other costs incidental thereto.

## **8. Presentation**

The authorized representative/Attorney of a pre-qualified company may be asked by the Authority to make a presentation, prior to the issuance of licence.

## **9. Special Provisions**

**9.1** No suit, prosecution or other legal proceedings shall lie or be brought against the Authority, the Chairman, Members, Consultants, Officers or other employees of the Authority, or its consultants and advisers in respect of anything contained in or arising from this SOQ.

### **9.2 Confidentiality during pre-qualification**

By submitting its SOQs, each company agrees to maintain the confidentiality of all information (whether written or otherwise) supplied to/by it in connection with the pre-qualification process and agrees to keep its own application confidential, whether or not it is among those subsequently pre-qualified by the

Authority. The Authority will maintain the confidentiality of information designated by the companies as confidential, will not release such information for any purpose other than evaluation of the SOQs and will not (unless disclosure is required by mandatory law) release any such information without having first obtained the company's permission. Permission for disclosure of information submitted by the company in connection with this SOQ is not required for the release of information to the Government of Pakistan. Refusal by a company to permit the Authority to make such controlled disclosure of information as is necessary to evaluate the SOQs, may be grounds for the Authority, in its sole discretion, to disregard or discount such information and such refusal may also lead to disqualification of the said company.

**10.** Notwithstanding herein the Authority may in its discretion reject any or all SOQs without assigning any reason whatsoever.



## Annexure: VIII

A List of IPTV Licences Issued by PEMRA<sup>953</sup>

S.No.	Name of Company	Licence Region	Date of Award of Licence	Operational Status
1	Mr. Gul Ahmad Chief Engineer (P&R) M/s Pakistan Telecommunication Company Limited, Headquarters, Islamabad	14 Zones	02-11-2006	Operational
2	Mr Abdul Karim Qureshi Chief Executive M/s Sachal Satellite Communications (Pvt) Ltd 59-E Street No. 7, I-10/3, Islamabad	Sindh Zone-II (Hyderabad)	30-11-2006	Cancelled

<sup>953</sup> Pakistan Electronic Media Regulatory Authority, 'IPTV licences issued by Pakistan Electronic Media Regulatory Authority' (2012), Published at [http://www.pemra.gov.pk/pemra/images/docs/iptv/LICENCES\\_ISSUED\\_IPTV.pdf](http://www.pemra.gov.pk/pemra/images/docs/iptv/LICENCES_ISSUED_IPTV.pdf). Last visited on 27th August 2012.

Annexure: IX

## Vienna Convention on the Law of Treaties 1969

### Section 3. Interpretation of Treaties

#### *Article 31*

##### *General rule of interpretation*

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

#### *Article 32*

##### *Supplementary means of interpretation*

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable.

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