



# Intellectual Property Appellate Board

Delhi Registry –Cum-Bench

G-62 to 67 & 196 to 204, August Kranti Bhawan, Bhikaji Cama Place, New Delhi – 110 066.

Tele No: 011-26180613/14

Website: <http://www.ipabindia.org>

Dated: 03-12-2018

**ORIGINAL APPLICATION No.-CR/31-D/1/2018/DEL 17904**

**BETWEEN**

**APPLICANT / APPELLANT**

**REPRESENTATIVE**

- 1) RADIONEXT WEBCASTING PVT. LTD  
303, LINK ROAD, NAGRA COMPLEX,  
MOTI BAGH COLONY, LUDHIANA-141013

SAGAR CHANDRA & ASSOCIATES.  
2/48, LOWER GROUND FLOOR, SARVAPRIYA VIHAR,  
NEW DELHI- 110016

Vs.

**RESPONDENT**

**REPRESENTATIVE**

- 1) INTERNET BROADCASTING ORGANISATION

I am sending herewith the certified copy of the **Order Sheet** passed by the Hon'ble Board on 01<sup>st</sup> November, 2018 in respect of **CR/31-D/1/2018/DEL.**

-Sd-

**For DEPUTY REGISTRAR**

**Copy forwarded to:**

- 1) SAGAR CHANDRA & ASSOCIATES.  
2/48, LOWER GROUND FLOOR,  
SARVAPRIYA VIHAR,  
NEW DELHI- 110016



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Original Application No.

CR/31-D/1/2018/DEL

RADIONEXT WEBCASTING PVT. LTD.

APPLICANT

Versus

INTERNET BROADCASTING ORGANISATION  
THE REGISTRAR OF TRADE MARKS

RESPONDENT

CORAM

HON'BLE SHRI JUSTICE MANMOHAN SINGH  
HON'BLE SHRI SANJEEV KUMAR CHASWAL

CHAIRMAN  
TECHNICAL MEMBER (Trade Marks)

### ORDER SHEET

01/11/2018

Counsel for the Applicant : Sagar Chandra  
Counsel for the Respondent : None



1. The learned counsel for the applicant has placed the order before us, passed by the Hon'ble High Court of Delhi, New Delhi in W.P.(C)5893/2018 dated 27/09/2018. The operative part of the order is re-produced hereunder.

10. *Having stated the above, it may be opposite for the respondent to also appoint a member technical (copyright), however, a vacancy in this regard does not in any manner impinge upon the jurisdiction of the Appellate Board as constituted under Section 83 of the Trade Marks Act.*

11. *A conjoint reading of Section 11 of the Copyright Act and Section 83 of the Trade Marks Act clearly indicates that the Appellate Board as constituted under Section 83 of the Trade Marks Act would also have the jurisdiction to perform the functions under the Copyright Act as well. There is no dispute that an Appellate Board has been validly constituted in terms of Section 84 of the Trade Marks Act and is now functional. Thus, it is also required to "exercise the jurisdiction, powers and authority conferred on it by or under this Act (the Copyright Act)".*

12. *In the aforesaid view, the impugned order is unsustainable and is, accordingly, set-aside. It is directed that the petitioner's application be placed before the Appellate Board as is currently constituted. The Appellate Board shall examine the same in accordance with law.*

2. In view of the order passed by the Hon'ble High Court of Delhi, the applicant has moved an application under Section 31D of the Copyright Act, 1957 for fix of royalty, sound recording published by internet broadcasting.

3. As per section 33-D of the Copy Right Act of Rule 31 or the Copy Right Rules 2013 after receipt of this petition the Appellate Board have to give notice of its intention to fixed royalties for communication to the Public of literacy or musical work and sound recording under 31-D.
4. Rule 31 clearly obligates the Appellate Board to determine the royalties as under -
2. *The notice under sub-rule (1) shall be published by the Board in the Official Gazette and shall be re-published in two daily newspapers having circulation in the major part of the country and shall be posted on the website of the Copyright Office and the Board.*
  3. *Any owner of copyright or any broadcasting organization or any other interested person may Within thirty days from the date of publication of public notice under sub rule (1) shall give suggestions with adequate evidence as to the rate of royalties to be fixed including different rates for different works and different formats.*
  4. *The Board shall after giving an opportunity being heard to the persons who made relevant suggestions under sub-rule (3), consider such suggestions, as it deems fit.*
  5. *The Board shall within a period of two months from the last date of receipt of suggestions, determine separate rates of royalty to be paid to the owners of literary or musical work and sound recording for radio and television broadcasting respectively.*
5. The one step has to be initiated by the applicant to get it re-published in the newspaper after having published through the official gazette by the Appellate Board. The copy of notice to be published in the newspaper will be handover to counsel for the applicant to carry on needful.
6. List this matter on 08.02.2019

-Sd-  
Technical Member (Trademarks)



-Sd-  
Chairman

**CERTIFIED / TRUE COPY**

-Sd-  
For Deputy Registrar  
Intellectual Property Appellate Board  
Delhi Registry-cum-Bench