
PROTECTION TO BROADCASTERS FROM SIGNAL PIRACY UNDER INDIAN COPYRIGHT ACT AND OTHER INTERNATIONAL LEGAL INSTRUMENTS

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INTRODUCTION

The entertainment industry has only been growing every day¹, and so has Broadcasting. Transborder Broadcasting has only been surging with the rapid technological development, and so there is a need for the laws to keep pace with it. With the rapidly developing technology, satellite broadcasting is becoming common, causing Piracy in the signals.² There are 4,550 satellites, as of September 1, 2021, in orbit around Earth at present. While there is some awareness about Piracy in other areas, such as films, artistic works, etc., this is a kind of Piracy that most common people are unaware of. 'Signal Piracy' or 'Signal Theft' is the Piracy or unauthorized use and transmission of signal-carrying programs. Signal Piracy has been causing significant financial losses to the Broadcasters; the broadcasters in developing and least developed countries have been affected. This practice of Piracy makes it difficult for broadcasters to sell content in a foreign market. Talking about Signal Piracy, this not only causes financial losses to states and broadcasters but also discourages broadcasters from producing good content. "Direct to home" and "Peer to Peer" are some present-day broadcasting mediums, Piracy of which is very common and needs protection. These thefts also pose questions about the copyright of the broadcasters.

There are several Broadcasting rights protected in India irrespective of their global status. Copyright Act, 1957, Trade Mark Act, 1999, etc. talk about Broadcasting and rights related to the same. India has a large broadcasting market as it has a big Media industry. Talking about

¹ ("Digital Dawn - The Metamorphosis Begins," n.d.)

² "Chapter 2 Technological Advancements in Communication to Public of Works: From Radio-Diffusion to Streaming in: Broadcasters' Rights in the Digital Era."

the International arena, Rome Convention³, Brussels Convention⁴, also known as the satellite Convention and TRIPS Agreement⁵, deal with the protection of the broadcasters. The protection offered by the Rome Convention is very limited as it does not talk about satellite-based transmission. Still, there are regional agreements that cover such areas, which makes the Rome convention less efficient.

Brussels Convention Relating to the distribution of Programme-Carrying Signals Transmitted by satellite is one International Instrument that deals with satellites Broadcasting. This Convention was introduced to supplement the Rome Convention. The protection conferred by Rome Convention does not cover program-carrying signals, transmission, and distribution by satellite. This Convention extends the protection to unauthorized distribution of signals, i.e., to say Piracy of the signals. We also have the TRIPS Agreement, which is one instrument that talks about various Rights of the Broadcasters, such as the Right to fixation.

RIGHTS OF BROADCASTERS IN INDIA:

India's broadcasting market is one of the largest in the world⁶, and so is a need for protection for broadcasters in the local laws. Governing bodies such as the Ministry of Information and Broadcasting, Central Board of Film Certification, etc. govern Broadcasting in India. Besides, there are laws in India that deal with Broadcasting, i.e., Cinematography Act requires a certificate by the censor board for Broadcasting the film. Similarly, Trademark Act provides protection to titles, artworks, etc. Copyright Act, 1957 defines 'Broadcast' and covers the Rights of Broadcasters. The rights protected by Copyright Act 1957 include;

³ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, done at Rome on October 26, 1961, hereinafter Rome Convention. South Korea's accession date and in-force date to the Rome Convention is December 18, 2008 and March 18, 2009, respectively. Information available at

http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=17/

⁴ The Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite Done at Brussels on May 21, 1974 (hereinafter the Brussels Convention or Satellite Convention) South Korea's accession date and in-force date to the Satellite Convention is December 19, 2011 and March 19, 2012, respectively. Information available at

http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=19/

⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125, 1197 (1994) (hereinafter TRIPS Agreement). South Korea's in-force date for the TRIPS Agreement is January 1, 1995. Information available at http://www.wipo.int/wipolex/en/other_treaties/parties.jsp?treaty_id=231&group_id=22/ 8 As of February 6, 2017.

⁶ (Jain 2008)

1. Right to Reproduction(Jain 2008): The Right to reproduction is a broadcasting organization's right protected under section 37 of the Act. The Section protects the Broadcaster's exclusive rights against any rebroadcasting by any other party without a license. This Section also protects broadcasters against sound recording or video recording of a broadcast which is a prevalent practice. Moreover, the Section covers protection against selling, renting, or such offer to sell or rent such recordings, etc.⁷

2. Section 39 of the Act allows fair use of the broadcast. Similarly, the Act provides statutory licensing wherein broadcasting organizations can grant rebroadcasting licenses. One can rebroadcast by attaining the license and fulfilling the conditions specified by the Act.

3. The Act also has a provision for strengthening the enforcement of rights. Section 53 of the Act provides broader measures for controlling the import of infringing copies.

Therefore, the Copyright Act does not explicitly provide protection against Signal piracy to the broadcasters but provides for other rights of the broadcasters.

BROADCASTER'S RIGHTS IN THE INTERNATIONAL FRAMEWORK:

Three International instruments majorly protect the rights of Broadcasters, namely;

ROME CONVENTION⁸

Rome Convention is the first international instrument that dealt with the rights of Broadcasters. It is administered by WIPO and protects performers' performances, producers' phonograms, etc. Other instruments were brought later in date to supplement the Rome Convention. There are a few protection that the Convention extends to the Broadcasters. Section 2 of the Convention requires equal protection for the rights owners in all the member countries, and the Section talks about the principle of National treatment.

Section 13 of the Convention talks about various rights of broadcasting organizations. It says the broadcasting organizations have the Right to authorize or prohibit the rebroadcasting,

⁷ Jadhav Amey, "BROADCASTING RIGHTS IN INDIA UNDER COPYRIGHT ACT | Law Column."

⁸ It establishes that broadcasters have the right to prohibit but not to 'authorize' the fixation, reproduction of fixation, and the re-broadcasting by wireless means of broadcasts.

fixation of broadcasts, reproduction, and communication to the public of their television broadcasts if made in places accessible to the public against payment of an entrance fee. The Convention defines 'Broadcasting' under section 3(f) as transmission by wireless means; the definition nowhere talks about satellite Broadcasting. This shows the gap in the Convention because Broadcasting today needs to include satellite broadcasting and not just wireless transmission.⁹ And also, the Convention failed to consider discrepancies regarding the distribution, including the Piracy or theft of signals for distribution. It fails to cover the essential areas as it was drafted when the technology was still progressing. Also, the Convention does not recognize reproduction of the broadcast as there was no such technology for it then. The definition of 'rebroadcasting' seems quite different than what we would understand in the present-day scenario. And this ambiguity is because the technology was not as advanced and many things to be considered now were unimaginable.

BRUSSELS CONVENTION / SATELLITE CONVENTION:

The Brussels Convention was established as a supplement to the Rome Convention and secured protection to the program-carrying signals. Rome Convention only introduced wireless transmission of broadcast but not about the signals that carry programs. This is the first instrument to include a program-carrying signal in the ambit of protection. Unlike the Rome Convention, Brussels Convention defines signals and covers the transmission of programs, i.e., recorded material or live material consisting of images and sound¹⁰. A signal is a carrier useful for distributing programs i.e live or recorded pieces of materials. The Convention is not meant to deal with intellectual property rights, so it does not provide copyright to broadcasting organizations; what it does is impose an obligation on the member states not to exploit and protect the program-carrying signal. The Convention protects the interest of Performers, producers, etc. The Convention still does not talk about signals to be directly received by the public; it fails to comply with the technological status today as Piracy and theft of signals by individuals are common, and organizations need not involve in activities like these.

The Satellite Convention is both protective and preventive as it duly regards the Right of authors, performers, and producers (Broadcasting Organization). The Convention also talks about the prevention of unauthorized distribution of program-carrying signals. The preamble

⁹ Technologies do not fall within the definition of 'broadcasting' under article 3 (f) but are broadcasting. Mechanisms of it are mechanism of cable distribution, satellite broadcasting, teletext and Internet Broadcasting.

¹⁰ See article 3 of Rome Convention.

of the Convention says there is no such system for the prevention of the unauthorized distribution of satellite signals. It says international instruments already in force are not to be vitiated. This being the only instrument dealing with program-carrying signals closely, it might be helpful to discuss about the relevant articles.

Article 1 of the Convention defines the word "Programme" along with other terms such as "signal," "satellite", "distributor", etc. Program in the Convention covers audiovisual in its ambit, i.e., images and sound piled for distribution. Similarly, it differentiates emitted and derived signals. Hence, this article is an important one.¹¹

Article 2 talks about the prevention of the distribution of program-carrying signals and not the content that the signal carries. The article also excludes the distribution of the signals derived from the intended recipient.¹²

Article 3 excludes the "direct to home" signals from the ambit of protection provided in the Convention. Article 4 allows the re-distribution of signals carrying short excerpts, reports, excerpts as quotations, etc. This article is an important one as it provides for this exception if the re-distribution is done for teaching or scientific research. This exception is for developing countries. The following important article is Article 6, which talks about interpretation. It says that the Convention is not to be interpreted so as to limit or prejudice protection secured by any other national or international instrument to authors, performers, etc.¹³

TRIPS AGREEMENT¹⁴:

TRIPS is said to be the most comprehensive multilateral treaty. TRIPS Agreement is an instrument that provides protection to intellectual property rights such as copyright, trademark, industrial design, etc. But if we have to talk about Broadcaster's Rights, it is nowhere better than the Rome Convention as both fail to speak about the Broadcaster's rights. However, rights such as the Right of fixation, Right to reproduction, rebroadcasting, etc., are recognized by the treaty but also provide that the states do not have an obligation to recognize the rights of

¹¹ Article 1(ii)- "programme" is a body of live or recorded materials consisting of images, sounds or both, embodied in signals emitted for the purpose of ultimate distribution.

¹² Goldstein and Hugenholtz, *International Copyright*.

¹³ *supra*

¹⁴ Article 14(3), Agreement on the Trade – Related Aspects of Intellectual Property Rights Apr. 14, 1994, 33 I.L.M 1125, provides broadcasting organizations have the right to control the fixation, reproduction, wireless re-broadcasting and communication to the public of broadcasts.

Broadcasters. Section 14 of the Treaty talks about these rights. This does not provide any suggestions regarding satellite broadcasting.

Besides, there also is an instrument on the Rights of audiovisual performers, the Beijing convention.

However, none of the laws talk about protection against signal piracy, even though they sometimes talk about the Rights of Broadcasters. Signal piracy is a contemporary issue that requires attention. It is crucial to discuss how such Piracy affects the broadcasters.

SIGNAL PIRACY AND BROADCASTERS:

Signal piracy, as discussed above, is a situation where the content is distributed by an unauthorized person or party; this causes a considerable amount of loss to the Broadcasters since they have put in lots of effort and money on the content, and somebody else is benefitted from selling the content.¹⁵ To be realistic, Piracy exists because people are unwilling to pay for the content or cannot afford access. Pirates can be individuals who do it for a living and make it available for public use. Still, competitor organizations of the Broadcasting Organization might also be involved in Piracy or theft. Piracy is widespread, especially in cases of exclusive content broadcasting, such as live sports events. Also, there can be several reasons behind such thefts, and Piracy depends on various factors such as accessibility and consumption. Some content might not be accessible in a particular place or may be unaffordable to some people; this might be a result of less consumption. Consumption and accessibility play an essential role as the cost of content might reduce with an increase in consumption, and this might as well contribute to the Broadcasters. Signal Piracy seems to have been lost in the light of other forms of Piracy.

There are not just TV broadcasters but also public service broadcasters, and it is difficult to access the actual loss that the broadcasters incur. And broadcasters, irrespective of their size of business, incur significant losses¹⁶. It's not just economic losses Broadcasters incur; this also discourages further production of quality content in the market. It is not to be missed that Piracy may also be a part of other illegal activities.

¹⁵ Sharma, Seemantani, "Signal Piracy."

¹⁶ Sharma, Seemantani, "Signal Piracy."

CONCLUSION

The considerable development of technology has had a significant impact on all different industries ranging from Media to Manufacturing. This also had a remarkable effect on Broadcasting. Broadcasting with the Internet has drastically brought a change in broadcasting techniques. Internet and technology have clearly brought in great opportunities for the broadcasters, but also it increases the risks of infringement of broadcasts. I have discussed how International Instruments and the Indian Legal system protect Broadcasters against unauthorized distribution, reproduction, etc. of the signals, Piracy of program-carrying signals. Brussels Convention seems to be a 'race between law and technology. Except for the provisions relating to Broadcasters, there is a policy framework for satellite communication, and the framework tries to give an expansive interpretation that the Broadcasting may be licensed by the relevant authority. Establishing acceptable norms of behavior in domestic and international spheres may help to solve the problem.