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Live Streaming and Broadcasting Rights under Copyright

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ABSTRACT

Intellectual Property Rights, popularly known as IPR, form a part of law in India which has been gaining recognition since not long. It deals with rights associated with the talent of a person in the form of protection of trademarks, copyrights, patents and any other property which is the outcome of the intellect of a person.

The researcher in this article has dealt with one of the aspects of copyrights under the Intellectual Property Rights, which is the live streaming and broadcasting rights under copyrights. The concept of live streaming and broadcasting emerged in India with cricket and thus, it is not a new development under the Intellectual Property Rights. But, dynamicity of the society has also led to enormous changes in the field of live streaming and broadcasting leading to different platforms, and also widening of the scope for people to utilise these aspects.

Dealing with the historical aspects of live streaming and broadcasting, discussing how the rights were protected for the ones who used the technology for the same, to the changes leading to the various disadvantages brought with advancement in technology, such as online piracy has been elaborated by the Researcher in this research work.

The researcher has tried to elaborate on the rights of the broadcasting organisations and discuss the constitutional perspective of the same, following which the aspects of webcasting has been elaborated on the basis of Indian and International laws.

Keywords: *Intellectual Property Rights, Live Streaming, broadcasting, webcasting.*

I. INTRODUCTION

The Indian Cricket dates back to an era when the people of India were under the clutches of British rule, mostly unaware of developments and technology. Yet, the craze and enthusiasm of cricket touched the hearts of the people and in an attempt to make the cricket matches recognised in every corner of the nation, the concept of broadcasting came into existence. It was more of live broadcasting through televisions. The technology involved transmission of

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audio and visual waves by the broadcasting organisations to the public through channels like televisions and radio which were commonly used at that time.

The technology of broadcasting gained enormous fame and soon became a medium for telecasting programs in the Television and daily soaps became a form of entertainment for the public. Apart from this, live broadcasting also paved way for news channels to telecast live news on televisions and radio channels by transmission of audio and visual waves by the broadcasting organisations. Thus, broadcasting, either live or not, became a major medium of communication to the public at large. The classic example in this regard can be the national channel used in India known as Doordarshan and All India Radio, which was the most common medium of transmission of communication in India.

The term 'Broadcast' has been defined under Section 2 (dd) of the Copyrights Act, 1957 states as– 'broadcast means communication to the public –

- a. By any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images; or
- b. By wire and includes a rebroadcast.²

Thus, the concept of broadcasting has been given legal protection through the Copyrights Act in India and also at the international level through the various agreements and conventions of which India is a signatory to.

With modernisation and technological advancements, the advent of internet took a new turn on the way of life and almost touched every aspect of civilisation. People began to use internet for browsing the global world and eventually the world became a much smaller place to connect with. Basically, everything has been made available online over the internet with a simple process of few clicks here and there. Such is the process of live-streaming where live telecast is made over the internet and anyone can access the same through the specified network. The illustration for enunciating live streaming would be the Indian Premier League which is live streamed on Star India Hotstar and anyone having access over the Hotstar VIP can watch the Indian Premier League.

Similarly, the process of having access to programs via the internet on different platforms, referring to the common ones such as Netflix, Amazon Prime, Voot, Alt Balaji, Hotstar and many more, which is not broadcasted live but are available on the platforms with the usage of net is known as webcasting. They are available to users on-demand and as per the choice

²Copyrights Act, Sec 2 (dd) (1957).

expressed by the user. As the content is used by the user on web by the help of internet, it is rightly termed as webcasting. They differ from live streaming in the sense that they are not live telecasted on the internet unlike live streaming where the program is shown live.

II. PROTECTION OF BROADCASTING, LIVE-STREAMING AND WEBCASTING UNDER COPYRIGHT LAW

(A) Rights of Broadcasting Organisations in India

India is the third largest broadcasting market in the world, and it constitutes a great chunk of the mass-media industry of the world,³ making the broadcasting organisations more valuable than ever. The term broadcast has already been discussed previously by the author, but the term ‘broadcasting organisation’ is not defined under the Copyright Act. However, if viewed from the laymen aspect, broadcasting organisation would simply mean any individual having access over the internet and transmitting audio and visual information to the public at large. Such a person can be said to be a broadcaster or the broadcasting organisation in form of a Company. In India, one can possibly state that the broadcasting was initiated through the organisation of Doordarshan and All India Radio.

The protection to the broadcasting organisations is granted for a span of 25 years from the next calendar year in which the broadcast is made, through a special right known as the ‘broadcast reproduction right’ in its broadcasts. During this period the broadcasting organization’s exclusive rights are said to be infringed if any person, without license:

- Rebroadcasts the broadcast; or
- Causes the broadcast to be heard or seen by the public on payment of any charges; or
- makes any sound recording or visual recording of the broadcast; or
- makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or
- sells or gives on commercial rental or offer for sale or of such rental, any such recording or visual recording referred to clause (c) or clause (d).

However, Section 39 provides for fair use of the broadcast like reporting of news, bona fide research and also includes all the other fair use cases referred to in Section 52.⁴

³ Girish Kumar R, Relfi Paul, “Rights of Broadcasting Organizations: Do We Need Legal Reform?” *Indian Journal of Intellectual Property Law* 5, 7 (2009).

⁴ Atharva Sontakke, Himaja Bhatt, *Scope of Rights of Broadcasting Organisations under Copyright Act, 1957*, RGNUL S. L. Rev. 102, 105 (2014).

The statutory amendment of 2012 which inserted Section 31D grants a statutory license to broadcasting organisations desirous of broadcasting already 'published' literary or musical works and sound recordings.

The Delhi High Court has stated that as per Clause 11 of the *Statement of Objects and Reasons of the Copyright Act*, the broadcasting reproduction rights were akin to the rights of a copyright holder.⁵

(B) Constitutional Perspective and Judicial Dictum

The Hon'ble Supreme Court, in the landmark judgment in *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal*,⁶ has asserted that the freedom of speech and expression includes the right to acquire and disseminate information. Therefore, the right to communicate can be said to mean any medium available including electronic media.

The broadcasting organisations serve as an intermediary to accessing the information by the users which are provided by the owners of the information. The judgments in the case stated above determines a dual right of freedom of speech and expression as it provides rights to the owners of the information to provide broadcasting rights for disseminating the information out to the public and on the other hand, also gives rights to the users for accessing of the information broadcasted by the broadcasting organisation. Thus, the Court established that the organisations have the right to provide information using broadcast and the users have the right to access the information by use of electronic media.

(C) Internet Broadcasting

Apart from the traditional technology of transmitting information to the public, that is, through the method of broadcasting via the broadcasting organisations, there has been extreme technological growth for faster and smoother communication, with much lesser hassles. The usage of internet, as discussed previously, has made the world a smaller place to connect with and thus, broadcasting also has become technologically improved, with faster streaming methods, simultaneous reception by the public, passive audience and fixation of time and content for transmissions.

Further, the internet broadcasting is not only used for public communication with time fixation, but also provides on-demand streaming options depending upon the convenience of the user. Therefore, in general term, it can be considered as user-friendly method of streaming signals to the persons having access to the particular channel. Internet broadcasting also serves as a

⁵ABC Inc. v. Prime Time 24 Joint Venture, 67 F. Supp. 2d 558 (M.D.N.C. 1999).

⁶Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal (1995) 2 SCC 161.

better medium as the amount of data consumption is decided by the user of the information according to his/her choice. It can be said that the user can access the information with minimum usage of internet. Therefore, multicast live streaming can alone be considered as internet broadcasting or webcasting.

(D) Protection of webcasting- Indian versus International framework

In India, the protection of the broadcasting organisation extends to a period of 25 years from the next calendar year from which the broadcast has been made as stated under Section 37 of the Copyrights Act, 1957. Therefore, if an organisation broadcasts a show on the month of June, 2020, the protection of that show under Indian Copyrights Act, 1957 shall be available till next 25 years from 1st January, 2021.

On the other hand, when an International perspective is seen on this aspect, the Rome Convention grants protection for a span of 20 years calculated from the end of the year on which the broadcast was made. This has been specified under Article 14 of the Rome Convention.

Undoubtedly, webcasting has been a great source to increase creativity and talent across the globe, but the process being a newer approach, needs to be properly studied and applied in the law of the land as the process of transmission of data through webcasting has become unregulated and excessively prone to piracy attacks. The main reason also being that anyone can be the broadcaster of their own content, without the requirement of some strict guidelines, which results in excessive mis-use of the Copyright laws. Thus, there is a need to protect the technology as well as the data transmission by regulating the same to stop the evil of piracy.

Apart from this, the protection measure formed at the International level through the Rome Convention of 1961 can be appreciated as it has defined the term 'broadcast' in a wider sense to include air transmissions of signals but exclude cable signals. It aims to provide exclusive right to authorise or prohibit certain activities in the realm of broadcasting, thus, providing a detailed protection to the broadcasting organisation. Certain prohibitions are also entailed by the TRIPS Agreement on the broadcasting organisations, thus, regulating the activities of the same, subject to the provisions of the Berne Convention.

III. ONLINE PIRACY: THREAT TO COPYRIGHT LAW AND COMBATting THE ISSUE

Technology has its own set of advantages and curse at the same time. The researcher has already stated about the evil of piracy which co-exists with copyright and with advancement in technology, as everything has been made available online, the problem of online piracy has

also increased to a great extent. The problem mainly comprises of stealing of data and then mis-using the same for personal benefits, without the proper consent of the real owner or authoriser of the data.

A proper and simple illustration for online piracy can be to state the stealing or theft of movies available at particular website and then posting the same to illegal websites open to users for free access. This creates a situation of loss for the actual or authentic websites as users often prefer free access of movies rather than paying for the same.

Keeping aside these financial threats posed by the online piracy, severe threats can also be caused as it can quite simple to clone and reproduce the signals once received digitally. These contents which can be copied and mis-used can often result in serious consequences, making broadcasting and webcasting highly vulnerable to piracy issues. Thus, they make use of the encryption technology so that only the viewers they authorize could access the programming content. But piracy could affect the market for encrypted transmissions too, making the requirement for higher level of security more necessary than ever.⁷

The practice of retransmission of terrestrial radio stations' over-the-air broadcasts via the Internet has also raised copyright concerns. In *National Football League et al v. iCraveTV.com*,⁸ a case brought by UnitedStates and Canadian motion picture and broadcasting companies, the Court issued a permanent injunction to prevent iCraveTV.com, a Canadian website, from converting copyrighted television material from 17 North American television stations into digital Web broadcasts and streaming them over the Internet. The unauthorized re-transmission was found to be an infringement of the plaintiffs' exclusive right to perform and display their works in the United States.

Thus, it is impertinent to have proper and restrictive laws for ensuring the protection of broadcasting and webcasting and curbing piracy which, if exists for a longer time shall prove to be a hindrance to the creativity of the people and also be a great financial loss for the society as a whole.

IV. CONCLUSION AND SUGGESTIONS

The idea of broadcasting, as studies in the paper, is an age-old concept which was initiated in India with the emergence of Cricket as a national level game. With the passage of time, technological growth gave way to better modes of transmission of audio and visual waves via

⁷Sakthivel Mani, Webcasters' protection under copyright – A comparative study, Computer Law and Security Rev., 10 (2011).

⁸National Football League et al v. iCraveTV.com, 53 U.S.P.Q.2D (BNA) 1831.

the internet and thus, the concept of live streaming and webcasting developed.

Since, there lies certain disadvantages with developments, online piracy has now become a major issue to be dealt with alongside the process of webcasting and broadcasting as people have started online theft for easy and cheaper access to data, even breaking into the encrypted systems, thus making it very difficult to curb the menace.

The author would like to suggest that proper and stricter laws should be developed for the menace of online piracy and the encryption systems should be enhanced for ensuring better protection of the data available over the internet. It is utmost necessary that an evil as such of online piracy is brought to an end as this not only creates financial loss for the original workers of the content but also discourages people to come up with better and more creative works. Further, the menace can always result in severe consequences and disrupt the harmony of a state. Thus, it is absolutely inevitable to get rid of such a problem and in fact, enjoy the advantages which the broadcasting technology has brought to the people, with the aspects of live-streaming and webcasting.

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