

# Combating Signal Piracy- A Shift From The Signal Based Approach

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## ARTICLE INFO

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### Dates:

Received: 23-04-2023

Accepted: 11-05-2023

Published: 30-06-2023

### Keywords:

signal piracy, broadcasting organizations, signal based approach, public interest, right based approach

### How to Cite:

Sree, G.V. (2023) Combating Signal Piracy- A Shift From The Signal Based Approach. DME Journal of Law, 4(1), 78-86.  
doi: 10.53361/dmejl.v4i01.10

## Abstract

Broadcasting organization can be defined as an entity which shoulders the complete responsibility for broadcasting the signal. This would also include assembling and scheduling the programmes. The entities which delivers the signal exclusively by means of a computer network are also brought under the purview of the broadcasting organization.<sup>1</sup> Several international conventions were drafted intending to confer effective protection to the broadcasting organizations against illegal use of the program- carrying signals. In spite of all these legal instruments, infringements are happening in the form of signal thefts which is disadvantageous to the broadcasting organizations. Signal piracy, if left unchecked can cause a serious concern for the proliferation of the entertainment industry. This can affect the marketability as well as the profitability of the broadcasting organizations This will eventually affect public interest, in case if the broadcasters restrict broadcasting programmes of public importance. Traditional broadcasters and in most cases the public broadcasting organizations in developing and least developed countries are the worst affected. Signal piracy, not only affects the interests of broadcasting organizations, but also it affects the rights of the copyright holders of the content which is being broadcasted. In this paper, the author intends to analyze the scope of the existing national as well as international legislations in combating signal piracy and to the extent in which they could protect the rights of the broadcasting organizations. While analyzing the legislations, the paper intends to demarcate signal based and right based approach in protecting the broadcasting organizations.

<sup>1</sup> The Revised draft text for the WIPO Broadcasting organizations treaty 2022, Article 2(d)

## INTRODUCTION

The broadcasting organizations play a pivotal role in furthering knowledge dissemination to the general public. With the advancements in all the fields of technology, dissemination has become much easier and sophisticated. The era of recorded broadcasts is slowly getting replaced with the advent of live streaming technologies. This facilitates the real time view of any content on air. These technical advancements also paves way for real time infringements easier and it in turn promotes piracy in a few clicks of a mouse.

In order to protect the interest of the broadcasting organizations, several international conventions were passed like The Berne convention (1886), The Rome Convention (1961), The Brussels convention (1974), The WIPO Copyright Treaty (1996), The WIPO Performances and Phonograms treaty (1996), The Beijing Treaty(2012).

Apart from this, The World Intellectual Property Organization's worldwide Symposium on Broadcasters' Rights that was held in 1997 debated regarding conferring increased safeguards for protecting the broadcasting organizations. Later, it became an agenda of WIPO after the establishment of the Standing Committee on Copyright and Related Rights (SCCR) in 1998. Thereafter in 2007, when WIPO was confronted with a task for drafting a new treaty, it decided to adopt a "signal based approach". This would ensure that provisions regarding signal theft does not give the broadcasters additional rights over the content. Further, a work plan was also drafted in 2011.<sup>1</sup> All these efforts have eventually lead to The Revised Draft Text For the "WIPO Broadcasting Organizations Treaty" published on March 4<sup>th</sup>, 2022 hereinafter referred by the author as "The Proposed Broadcast Treaty of WIPO".

In this paper, the author has explained about different forms of signal piracy and their negative impacts on the interest of the broadcasting organizations and on public in general. Also, the author has elucidated the legislative safeguards and various privileges that are available for the broadcasting organizations under The Indian Copyright Act, 1957 as well as under several international conventions. Towards the end, the author has discussed about the intricacies connected with the signal based approach as well as the right based approach.

## **DIFFERENT FORMS OF SIGNAL PIRACY**

signal piracy can be defined as an unauthorized interception of broadcasters signals for private or in most cases for commercial benefits. This can

also be termed as Signal theft because it eventually involves stealing of the intellectual property rights that is being conferred on the copyrighted works contained in the signal.

## **TRADITIONAL FORMS**

Earlier days, when technology was least developed and when Internet was in its infancy, Signal piracy was done in physical forms, where the infringer makes unauthorized recordings of the broadcasts on Digital Video Recorders (DVD), video tapes or on USB sticks. In traditional downloading aspect, the infringer was required to download the entire content on a hard disk to have access over it.

## **MODERN FORMS**

Technology is indeed a double sided knife. With the advancement in technology, the broadcasting organizations and the associated stakeholders made a significant contribution by adopting virtual and real time streaming facilities. On the other hand, the technological improvements also paved way for the infringers to get indulged in online signal piracy. As, Signal piracy took virtual forms. Infringers started to make unauthorized reproduction of signals over the air i.e. it was made online. Different methodologies were adopted in signal piracy such as hacking into the encrypted pay TV signals with modern equipments that were designed in such a way to circumvent the security measures in the set-top boxes. This is a common method of infringement, whereby infringers usually pay a regular subscription, so that they could view the content. They will in turn send the contents to other servers and will sell it at a cheaper rate. Viewers are in turn able to view the similar content at a cheaper price.

This resulted in development of sophisticated protection measures and commoditization of knowledge goods on the one hand and proliferation of circumventing technologies on the other hand, which led to the enactment of "The WIPO Internet Treaties, 1996" (The WIPO Copyright Treaty as well as The WIPO Performers and Phonograms Treaty are collectively called as The WIPO Internet Treaties). This was considered as an initiative by the international community to enforce anti circumvention measures.

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<sup>1</sup> 'Protection of broadcasting organizations- background brief', available at: <https://www.wipo.int/pressroom/en/briefs/broadcasting.html> (Visited on October 1, 2022).

It also offered significant protection to the rights management information. The WIPO Internet Treaty was responsible for the enactment of The Digital Millennium copyright Act which amended the US Copyright Act, 1976. It was also the reason behind some significant amendments in The Indian Copyright Act, 1957.

Aftermath of which, broadcasters demanded a TECHNOLOGY NEUTRAL PROTECTION and they wanted all means and forms of signal transmission to be protected. They demanded complete protection for modern technologies such as Internet Protocol TV (IPTV), digital programme recording devices, on-demand video services etc., that has got the ability to transmit programmes not just to televisions but also to computers and mobile phones. These technological advancements also includes webcasting wherein broadcasting will be done over the Internet or the video content will be used for Internet streaming.

## LIVE STREAMING

Nowadays, live streaming technology is considered to be yet another milestone for transmission of contents. Live streaming involves audio or video content delivered over a network based on internet protocols. In streaming, content need not be saved. Here, the data is buffered for a few seconds and the gets automatically replaced by the next set of data, replacing the earlier one.

Inception of live streaming technology is indeed a boon for sports broadcasting organizations as well as for the people. This could facilitate people to view their favorite sports in real time. It also helps the live sports broadcasters to reap humungous profits. But, these live sports broadcasts are increasingly becoming prey for unauthorized retransmissions on the internet. The piracy of these live streaming eventually leads to huge loss on the part of the broadcasters. Apart from this, it also has hampered the interest of sponsors, which can ultimately attack the public interest.

In India, due to increasing consumption of digital content, sports broadcasters' rights are regularly undermined by unauthorized online transmission of cricket matches. The problem is particularly serious for Star India, the official broadcaster for Indian Premier League. During the 2017 season,

indiantelelevision.com estimated that matches were illegally telecast by more than 1,700 unique URLs via 211 unique servers, 122 pirate streams, 51 hosting sites and 23 infrastructure providers via remote servers. Similarly, The China Central Television (CCTV), China's state television broadcaster, has suffered repeated piracy of its broadcasts, including of sporting events both within China and beyond. As the sole provider of broadcast content for the 2008 Beijing Summer Olympic Games, CCTV successfully combated the unauthorized retransmission of sports telecasts over the Internet. This, however, was not the case during the 2016 Rio Summer Olympic Games. During the closing ceremony of the latter, CCTV's broadcasts were pirated at a rate of around 35 percent via online video websites.<sup>2</sup>

In the case of *The Department of electronics and Information Technology v. Star India Pvt Ltd*,<sup>3</sup> the court has issued injunction against the Internet Service Providers for blocking all the 73 websites involved in unauthorized online streaming of the test matches of the Indo- Australian cricket series. It was an ex-parte order.

Similarly, in the case of *Sony Pictures Networks India Ltd & Anr. V. Home Cable Network Pvt. Ltd. & Ors.*,<sup>4</sup> The Delhi high court restricted the unauthorized retransmission of the 2017 IPL season. In this case, the exclusive broadcasting rights was held by Sony. The court on understanding the gravity of the issue along with granting exparte injunction, also appointed local commissioners for preventing various forms of piracy over the internet,

## PEER TO PEER LIVE STREAMING

There are numerous ways to access unauthorized live streaming. One such method is through a peer to peer (P2P) network. Here, all the computers are linked together and they can communicate independently without the presence of a third-party server. This method was first used in music file sharing and now we could witness this in almost all fields of entertainment. P2P technologies are

2 Seemantani Sharma, "SIGNAL PIRACY: A THREAT TO ASIA PACIFIC BROADCASTERS" WIPO magazine (February 2018).

3 R.P. 131/2011IN FAO (OS) 57/2015.

4 CS(COMM)239/2017.

considered to be a serious threat for the broadcasting organizations. Here, it offers an opportunity to stream the content to multiple receivers over the internet. There are two ways in accomplishing P2P sharing

- The end user would capture the content discretely and then could distribute it through the Internet.
- The end user would access to a live streaming event through the Internet and then could re-distribute it to the peers or in cases, to the public with the help of other platforms from the grey market.

Through, this process of redistribution using illegal streaming methods, the infringers are making dissemination of the protected content to the general public.

## UNICAST STREAMING

In this method, the content that is live streamed will be saved on a server and then it will be made available in a website. Users who have paid a subscription fee could watch the content. This method often requires more bandwidth and computer processing than the P2P technology.

## NEGATIVE IMPACTS OF SIGNAL PIRACY

Signal piracy makes it significantly more difficult for public service broadcasters to sell their local content in foreign markets, especially when viewers in those markets already have access to the content through illegal websites. Moreover, beyond the economic losses suffered by broadcasters and governments alike, evidence also suggests that signal piracy may be linked to other illegal activities including money laundering and violation of foreign exchange regulations.

## PROLIFERATION OF OVER-THE-TOP (OTT) PLATFORMS

Broadcasting high- profile sporting events live is a core income generator for traditional broadcasters. As far as developing and least developed countries are concerned, the primary means of mass communication is only through broadcasts and therefore, their legitimate rights must be upheld. If

not, that would severely affect their ability to provide these services to the citizens of these countries. Eventually, the people will have no choice but to resort to alternative platforms such as over-the-top (OTT) players. Only because of their inability to combat losses, broadcasters are suffering and OTT platforms are booming and are likely to become more popular in coming years. OTT players deliver audio, video and other media content over the Internet. The problem here is that given the digital divide that exists between developing and industrialized countries, the knowledge gap will deepen because those who do not have access to the Internet will not be able to access these new digital platforms.

## PUBLIC INTEREST

Public service broadcasters in many countries in the Asia-Pacific region are dying a slow death. As these countries move towards the information society, they cannot afford to let their public broadcasters fall. Revenue generated by traditional broadcasters generally depends upon their ability to invest in the development and procurement of quality content. However, loss of revenues resulting from signal piracy impedes their ability to produce quality content. As a consequence, in the long run, the general public loses out because viewers are deprived of access to quality content and information.

## RIGHTS OF BROADCASTING ORGANIZATIONS

### The indian copyright act, 1957

The Indian Copyright Act, 1957 lacked explicit provisions regarding broadcasting and the rights of the broadcasting organizations. Only after the amendment made in the year 1983, the Act as such started recognizing all these aspects.

### Definitions

The term 'Broadcast' can be defined as a communication to the public by wire or by any means of wireless diffusion, which can be in forms of signs, sounds, visual images and a combination of all or any one of them.<sup>5</sup> This definition clause

5 The Indian Copyright Act 1957, Section 2(dd).



contained in Section 2(dd) of The Indian Copyright Act, 1957 also includes re-broadcast. Further, to resolve the ambiguity, it is essential to look into Section 2(ff) of The Indian Copyright Act, 1957, which was substituted by virtue of 2012 Amendment Act and it defines the term “communication to the public” as making of the work available to be seen or heard or enjoyed by the public either directly or by diffusion whether simultaneously or at times and places chosen individually. This doesn’t include issuance of physical copies. It is also immaterial as to whether any member of the public actually enjoys or pays attention to such work by way of seeing or listening it.<sup>6</sup>

The explanation annexed to S. 2(ff) further states that communication through satellite or cable or through other means of simultaneous communication to more than a household or more than one place of residence will be considered to be communication made to the public. The place of residence includes residential rooms of any hotel or hostel. Prior to 2012 Amendment, the definition clause of S. 2(ff) didn’t provide the aspect of making the work available simultaneously or at places and times chosen individually.

## Rights conferred

Chapter VIII of The Indian Copyright Act, 1957, provides a detailed explanation regarding the rights of broadcasting organizations. Section 37 (1) of the Act confers a special right known as the “broadcast reproduction right” to every broadcasting organizations with respect to its broadcasts and such right shall subsist for a period of 25 years from the beginning of the calendar year next following the year in which the concerned broadcast is made.<sup>7</sup> Provided, if that broadcast is proved to be an infringement of copyright in any work contained in such broadcast, the reproduction right will not subsist in such broadcast.<sup>8</sup> The broadcast reproduction right will not operate in such a way to affect the separate copyright in any work with respect to which the concerned broadcast is made.<sup>9</sup>

6 The Indian Copyright Act 1957, Section 2(ff).

7 The Indian Copyright Act 1957, Section 37(2).

8 The Indian Copyright Act 1957, Second proviso to Section 39A(1).

9 The Indian Copyright Act 1957, Section 39 A(2).

Now, it is to conclude that the Act confers protection to a broadcasting organization for a period of 25 years. Further, during the period of continuance of broadcast reproduction right, few other privileges are also conferred upon the broadcasting organizations and also to the authorized licensee. License to reproduce a broadcast should be granted only with the consent of the copyright owner if the broadcast contains any work in which the copyright subsists.<sup>10</sup>

They include

- Right to rebroadcast the broadcasted signal
- Right to make available the broadcast by way of communicating it to the public on payment of charges- This includes collection of charges by way of subscription amount for making the broadcast making available to the public. Therefore, any act of causing the broadcast to be heard or seen by public free of charge may escape liability, subject to provisions of Section 39
- Right to make or facilitate in the making of any sound or visual recording of the broadcast
- Right to make reproduction of such recording, provided if such initial recording was done without license or if it was done for any purpose other than the purpose for which the license was granted, it amounts to infringement of the broadcast reproduction right. There are few acts which if found violative of Section 37(3) will not amount to infringement by virtue of Section 39.
- Right to sell or to make an offer for sale or give such broadcast, sound recording or visual recording on commercial rental.<sup>11</sup> This was inserted by way of 2012 Amendment Act

In the case of *Taj TV v. Rajan Mandal*,<sup>12</sup> the Delhi High Court has passed the first “John Doe” order (A John Doe order is a kind of injunction given by the courts where the state of affairs is such that an anonymous person is violating the IP rights and the concerned infringer cannot be identified at the time of filing of the suit)forbidding the illegal broadcast of the 2002 FIFA World Cup. There after a wide array of John Doe orders were passed by the Indian judiciary to protect the interests of the broadcasting organizations.

10 The Indian Copyright Act 1957, First proviso to Section 39 A(1).

11 The Indian Copyright Act 1957, Section 37(3).

12 CS(OS) 1072/2002.



One such instance is the case of *Star India Pvt. Ltd &Anr. V. Haneeth Ujwal&Ors*,<sup>13</sup> wherein the websites hosting, broadcasting and transmitting the infringing contents were instructed to be blocked completely, instead of just blocking one URL alone. This was the case connected with the live telecasting of cricket matches. Further on, the infringers were made liable under Section 65 B of The Indian Copyright Act, 1957 which provides that, any person who knowingly and without authorization broadcasts or thereby communicates to the general public, distributes or get involved in the act of importation for the purpose of distribution, shall be punishable with imprisonment up to two years along with fine.

## EXCEPTIONS

The Indian Copyright Act, 1957 confers a wide array of rights for a broadcasting organizations and it also explicitly states that any person if violates those rights will be liable as a infringer. But, also S. 39 of the Act provides for certain exceptional acts which even found violative of the rights conferred qualifies to be a non-violation.

In following case, a person could escape the liability,

- If any person for the purpose of private use or solely for the purpose of bonafide research or teaching makes any such sound or visual recording
- If a person uses excerpts of the broadcast in the reporting of the current events or for the purpose of bonafide review

In the case of *Star India Pvt. Ltd v. Piyush Agarwal*,<sup>14</sup> the Delhi High Court has laid down two important tests to qualify reporting of current sporting events as an exception. The reporting must not be result oriented and also it must be in the nature of analysis or review

- If a person, does any act, with necessary adaptations and modifications and if those acts fall within the purview of S. 52 of The Indian Copyright Act, 1957.

<sup>13</sup> CS(OS)2243/2014.

<sup>14</sup> 2014(58) PTC 169(Del) at pp.187-88,189.

## OTHER PROVISIONS THAT SUPPORTS BROADCAST REPRODUCTION RIGHT

Section 39 A of The Indian Copyright Act, 1957 makes many provisions of the Act applicable with respect to the broadcast reproduction right in any broadcast with necessary changes. Those include the acts connected with assignment of copyright along with acceptable modes of assignment and licensing of the copyrighted work. Apart from this, all provisions connected with the copyright society is also brought under this purview. Few provisions connected with civil remedies, infringement, possession of infringing copies and Rights Management Information are also available along with the conferred procedural safeguards.

In the case of *ESPN Star Sports v. Global Broadcast News Ltd*,<sup>15</sup> the court was confronted with the question as to applicability of Section 61 with respect to broadcasting rights, since it was not included explicitly under Section 39 A.

## INTERNATIONAL CONVENTIONS

There are several international conventions such as, The Berne convention (1886), The Rome Convention (1961), The Brussels convention (1974) commonly known as the satellite convention , The WIPO Copyright Treaty (1996), The WIPO Performances and Phonograms treaty(1996) (WCT and WPPT are together known as "The Internet Treaties"), The Beijing Treaty(2012) and finally The proposed Broadcast Treaty of WIPO which confers protection for the broadcasting organizations. On critical analysis of the above mentioned conventions, following perspectives can be drawn.

## RIGHT OF COMMUNICATION TO THE PUBLIC

The right of communication to the public includes the right of making the signal with contents available to the general public for the purpose of their enjoyment. The broadcasting organizations are conferred with an exclusive right to authorize the communication of broadcasts through any means. This can also include

<sup>15</sup> [2008] 36 PTC 492 (Del) [507].



transmission over computer networks. Such an exclusive right is recognized by The Rome Convention as well when the broadcast is made in selected public places that are accessible by the public on payment of a fee.<sup>16</sup> Apart from this the Berne Convention also confers authors of literary and artistic workers to authorize the broadcasting as well as communication of their work to the public by any means including rebroadcasting.<sup>17</sup> All these aspects are implemented in the WIPO Copyright Treaty as well.<sup>18</sup>

But, on the other hand, as per The Brussels Convention, if the signal is emitted by or on behalf of the originating organization and if those signals are intended for direct reception from the satellite by the general public, a different approach is followed. It basically limits such right.<sup>19</sup>

## RIGHT OF RETRANSMISSION

Retransmission can also be defined as simultaneous transmission to the general public by any means of a programme carrying signal by any other third party than the original broadcasting organizations.<sup>20</sup> Under the proposed Broadcast Treaty, broadcasting organizations are conferred with an unfettered exclusive right of retransmission of their broadcast by any means. This including rebroadcasting, simultaneous retransmission as well as retransmission over computer networks.<sup>21</sup> This is similar to right conferred under The Rome convention. The Brussels Convention has an upper hand and it instructs the member countries to take adequate measures so as to prevent the distribution of any Programme-carrying signal by any distributor without lawful authorization.<sup>22</sup>

## RIGHT OF REPRODUCTION

Reproduction right can be exercised in any manner. It can be direct or indirect reproduction. The form of

fixation also could vary with needs and requirements. The proposed Broadcast Treaty confers the exclusive right on the broadcasting organizations to authorize reproductions of their broadcast. The right of authorization also includes the right to prohibit those reproductions that are unlawfully made without authorization. The Rome Convention also confers similar right on the broadcasting organization.<sup>23</sup> The Berne convention on the other hand grants the right to make adaptation and alteration to the authors of literary and artistic works. They also enjoy exclusive right to authorize reproduction of their work.<sup>24</sup>

## RIGHT OF DISTRIBUTION

The broadcasting organizations along with the enjoyment of the exclusive right of communication to the public and reproduction, also has been vested with the unfettered right to distribute the originals and copies of the fixations. Such distribution would facilitate the public to have access to them at any place and time chosen by them. The broadcasting organizations can also make these lawfully reproduced fixations available through sale or any other forms of transfer of ownership. The WCT, on the other hand confers such an exclusive right of distribution of lawfully reproduced copyrighted works with their authors.<sup>25</sup>

## PROTECTION OF RIGHTS MANAGEMENT INFORMATION (RMI)

RMI in usual parlance, refers to any information that helps in identifying the broadcasting organization and the broadcast. It also conveys reliable information about the rightful owner of any right in the concerned broadcast. RMI also contains information about the terms and conditions of use of the broadcast and it also refers to any numbers or codes that represent such information when any of these items of information is attached to or associated with the broadcast or the pre broadcast signal.<sup>26</sup> This definition is similar to the definition

16 The Rome Convention 1961, Art 13(d).

17 The Berne Convention 1884, Art 11 bis.

18 The WCT 1996, Art 8.

19 The Brussels Convention 1974, Art 3.

20 The Revised draft text for the WIPO Broadcasting organizations treaty 2022, Art 2(e).

21 The Revised draft text for the WIPO Broadcasting organizations treaty 2022, Art 6.

22 The Brussels Convention 1974, Art 2(1).

23 The Rome Convention 1961, Art 7(1)(c).

24 The Berne Convention 1884, Art 9 and 12.

25 WCT 1996, Art 6.

26 The Revised draft text for the WIPO Broadcasting organizations treaty 2022, Art 13(2).

adopted in WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), except for the inclusion of the RMI attached to the pre- broadcast signal. Thus, RMI is any such information that is connected with the broadcast or the signal prior to broadcast, the retransmission, the transmission after fixation of the broadcast making available of a fixed broadcast or a copy of it.

All the draft texts prepared by SCCR collectively confers a duty on the member states to provide an effective legal protection against the following acts:

- Unauthorized circumvention of any technological protection measure that is intended to protect the broadcast. The act of circumvention would facilitate decrypting the encrypted broadcast and gain access to it.
- Unauthorized manufacture or sale of a device or system capable of decrypting an encrypted broadcast. This also includes importation of a device or a system that facilitates circumvention.
- Unauthorized removal, tampering or alteration of the electronic RMI that is associated with the broadcasting organization<sup>27</sup>

## RIGHT OF PUBLIC PERFORMANCE

As per The Berne Convention, as discussed earlier, all the exclusive rights including the right of public performance and of communication to the public of a performance rests with the copyright holder with respect to dramatic or musical works.<sup>28</sup> The Rome Convention, on the other hand gives importance to the performers right, whereby it states that broadcasting and communication to the public of their performances has to be made with their consent. In case, if the performance used in the broadcasting or the public communication is already a broadcast performance or is made from a fixation, all these exclusive rights of performers will not subsist.<sup>29</sup> Similarly, with respect to unfixed performances which are not already broadcasted performances, the WPPT also confers performers the exclusive right of authorizing the broadcasting and communication to the public.<sup>30</sup> The Beijing

27 The Revised draft text for the WIPO Broadcasting organizations treaty 2022 .

28 The Berne Convention 1884, Art 11.

29 The Rome Convention 1961, Art 7(1)(a).

30 The WPPT 1996, Art 6(i).

Treaty also confers the performers exclusive right of authorizing the broadcasting and communication to the public of their unfixed performances other than an already broadcasted performance where their performances can be fixed in audiovisual fixations.<sup>31</sup> The broadcasting organizations are now insisting for an exclusive right to authorize public performance.

## RIGHT OF FIXATION

The Rome Convention confers exclusive right to authorize or prohibit the fixation of their broadcasts on broadcasting organizations.<sup>32</sup> The Brussels Convention has an additional reference with respect to derived signals and limits this obligation to prevent distribution of derived signals that are taken from signals which have already been distributed by a distributor for whom the emitted signals were intended.<sup>33</sup>

## TERM OF PROTECTION

The proposed Broadcast Treaty ensures a term of protection for a minimum of 20 years computed from the end of the year in which the programme carrying signal was transmitted.<sup>34</sup> This is comparatively a different approach than many other international conventions like The Rome Convention which provides 20 years term of protection from the year when the first broadcast took place.<sup>35</sup>

## SHIFT FROM A SIGNAL BASED APPROACH TO A RIGHT BASED APPROACH

The initiative to draft a treaty was primarily to protect the signals of broadcasting organizations that transmitted contents. The intention behind was to curb all possible forms of signal piracy. On close perusal of the provisions proposed in the Broadcast Treaty, One could infer that The Proposed Broadcast Treaty is significantly different in many

31 The Beijing Treaty 2012, Art 6 (1).

32 The Rome Convention 1961, Art 13(b).

33 The Brussels convention 1974, Art 1(v).

34 The Revised draft text for the WIPO Broadcasting organizations treaty 2022, Art 35.

35 The Rome Convention 1961, Art 14(c)





aspects. This treaty is found to have deviated from its sole intended objective. It significantly enlarges the scope of protection conferred to The Rights Management Information (RMI) when compared with the existing earlier conventions. The treaty also indirectly confers an extended term of protection for the copyrighted works involved, since the term of protection commences from the last date when the broadcast took place. Thereby contributing to ever greening of copyright.

The treaty also has got several other provisions whereby the methods used for transmission of content is protected and not the signals with the content. More concentration is conferred upon the rights of the broadcasting organizations and not upon the exclusivity of the signals. Thus, we could infer that there exists a significant amount of shift from the signal based approach towards the rights based approach.

## **CONCLUSION**

The primary objective behind conferring of monopoly protection for the copyrighted works and for the broadcasting organizations is not just to incentivize them, but rather to safeguard and uplift the public interest. The privilege that is granted to the creators of the intellectual property will in turn enhance the public knowledge and skill through dissemination of technology. It will result in production of more and more creative works. Thus, the ultimate beneficiary of any legislation must be the general public and the society. The copyright as well as its related right are protected to promote the progress of useful science and art.

Signal piracy posed a serious threat to the broadcasting organizations and on their revenue generation ability. Broadcasting organizations, since

they have a complete and an unfettered right over their signals, demanded protection for it. The WIPO General Assembly initially decided that the focus of the Broadcast Treaty should be to curb signal piracy and they intended to follow a signal based approach. Only a signal based approach will help in keeping the content outside the scope of protection. The object behind this was to protect works that already existed in the public domain and to further the freedom of expression.

Later on, the subsequent negotiations that resulted in the proposed broadcast treaty made a complete shift from the signal based approach to the rights based approach, which is against the interest of the general public. Such a change is indeed against the purpose for which the monopoly rights have been conferred. Public interest must be the touchstone of any legislation. Every legislation that confers monopolistic powers on intellectual creations has an aspect which favors public interest such as fair use, fair dealing etc., Therefore, the author strongly suggests that this shift to a rights based approach must be avoided. The international community must consider the intricacies involved in this during their further negotiations and must come up with a comprehensive piece of legislation that highlights only the signal based approach.

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