

TACKLING ILLEGAL SPORTS STREAMING: TIME TO STRENGTHEN THE COPYRIGHT REGIME?

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A*bstract*—The online viewing of sporting events has been on a rise in India since the advent of several domestic sporting leagues such as the Indian Premier League, Premier Badminton League, Kabaddi League, Indian Super League etc. India is a sports enthusiast nation and hence, pirated content which is available easily and completely free of cost, appeals to many fans.. As Congressman Lamar Smith once said, “Why buy the cow if you can get the milk for free? Why pay for the sporting event when you can watch it on line for free?” Star India, which owns the exclusive digital rights of the Indian Premier League witnessed significant soar in viewership on the online streaming application ‘Hotstar’. This rise in engagement on the online streaming platforms demonstrates the sense of ease and comfort with which the users utilize the digital medium. As a consequence, illegal streaming, telecasting on unique servers and online piracy has become prevalent, causing irreparable losses to the individuals investing in securing the exclusive rights to broadcast. A 12 % increase in signal piracy on an annual basis was estimated in 2007, yet the Indian copyright landscape seems to be lackadaisical on the issue of broadcast piracy. This essay elaborately discusses vital issues regarding provisions for broadcaster’s rights in India and in major international jurisdictions like the US, UK, EU, Australia and China. Additionally, the authors have laid out certain suggestive recourses which can be implemented to foster the sports industry which has a potential to touch 4 billion U.S dollars in the coming years.

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INTRODUCTION

The rapid development of digital communication has certainly provided for remarkable utilitarian benefits to the society, not just with regards to accessibility, but also in terms of reinforcing the freedom of expression. Some of the aspects which are worth paying attention to are the ways in which sports are watched and transmitted. Live streaming has been acknowledged as the modern era in the broadcasting of sports, concurrently paving routes for individuals to defy the law and acquire unauthorised and pirated broadcasts of live sports. This has posed challenges in the protection of intellectual property, especially on the copyright front, due to the online nature of content-sharing. As a consequence, organisations making substantial investments in securing exclusive broadcasting rights suffer significant losses as various pirated websites and applications illegally stream, host, retransmit, and broadcast the illegitimately procured content.¹²⁷ According to MUSO, a UK based company known for providing anti-piracy solutions, India is one of the countries which is profusely associated with unauthorised streaming of football matches.¹²⁸ In 2018, as high as 1,700 unique URLs were illegally streaming the Indian Premier League matches through 23 infrastructure providers, 51 hosting sites, 122 pirate streams and 211 unique servers.¹²⁹ Additionally, the menace of piracy has escalated due to the advent of applications like Meerkat and Periscope which allow users to record live footage of sports events and share such content online.¹³⁰ Hereunder are the basic techniques resorted to for broadcasting of pirated sports content—illegal streaming through pirated set-top boxes whose interface

¹²⁷ *Star India (P) Ltd v Haneeth Ujwal* (2014) 7 HCC 333.

¹²⁸ InsideSport Desk, 'Pirated Feed Costs EPL £ 1 Mn a Match; India 4th in Illegal Streaming: Report' (*InsideSport*, 7 November 2019) <<https://insidesport.com/pirated-feed-costs-epl-1-mn-a-match-india-4th-in-illegal-streaming-report/>> accessed 7 January 2020.

¹²⁹ Indiantelevision.com Team, 'IPL 2017: The Piracy Conundrum' (*Indian television*, 20 April 2017) <<https://indiantelevision.com/television/tv-channels/sports/ipl-2017-the-piracy-conundrum-170420>> accessed 7 January 2020.

¹³⁰ Samuel Gibbs, Julia Powels and Sam Thielman, 'What Do Periscope and Meerkat Mean for Broadcasting Copyright?' *The Guardian* (London, 11 May 2015) <<https://the-guardian.com/technology/2015/may/11/periscope-meerkat-broadcast-copyright-premier-league>> accessed 7 January 2020.

resembles the services provided by the legitimate cable companies¹³¹; direct streaming through web servers¹³²; versions uploaded on file sharing networks after recording, like Freakshare, Bitshare and Letitbit; highlights available on the user-generated-content like Webcast On and Youtube.¹³³

Broadcasting and Media rights are the primary source of revenue for the sports organizations in order to host sporting events, build stadiums and maintain the community interest.¹³⁴ Since the sporting events can be broadcasted and streamed anywhere in the world, providing millions of fans the opportunity to indulge in the intense fervor of the event, most of the countries have formulated legislations or thorough case laws which have established that the exclusive rights to broadcasts are copyrightable. For example, in Australia, copyright protection is conferred on the broadcast by the mere transmission of the signal, irrespective of the 'work'.¹³⁵ In India, Section 37 of the Copyrights Act, 1957 vests every broadcasting organization with a special right called the 'broadcasting reproduction right' with respect to its broadcasts.¹³⁶ This right shall continue for 25 years from the year following the year of broadcasting.¹³⁷ Any person, who during the subsistence of this period without the licence of the owner of the right, re-broadcasts or causes the broadcast to be accessible or available to the public by means of hearing or watching, shall be deemed to have committed copyright infringement.¹³⁸

BROADCASTER'S RIGHTS IN INDIA AGAINST SPORTS PIRACY

India's struggle with digital sports piracy can be pinned back to the 2002 Football World Cup. In *Taj Television Ltd v Rajan Mandal*,¹³⁹ the

¹³¹ Jon Brodtkin, 'Pirate TV Services are Taking a Bite out of Cable Company Revenue' (*Ars Technica*, 11 February 2015) <<https://arstechnica.com/information-technology/2017/11/pirate-tv-services-are-taking-a-bite-out-of-cable-company-revenue/>> accessed 11 January 2020.

¹³² Robert Silverman, 'Inside the World of Pirated Streams, And What it takes to Stop Them' (*Front Office Sports*, 15 April 2019) <<https://frntofficesport.com/illegal-reddit-streams-sports/>> accessed 11 January 2020.

¹³³ Seemantani Sharma, 'Online Piracy of Live Sports Telecasts in India' (2018) 28 *Marquette Sports L Rev* 433.

¹³⁴ 'Report on Leveraging Intellectual Property in the Global Sports Economy' (*Global Innovation Policy Centre*, 20 June 2018) <<https://theglobalipcenter.com/introducing-leveraging-intellectual-property-in-the-global-sports-economy/>> accessed 13 January 2020.

¹³⁵ The Copyright Act 1968 (Aus), s 25.

¹³⁶ The Copyright Act 1957 (CA 1957), s 37.

¹³⁷ CA 1957, s 37(2).

¹³⁸ CA 1957, s 37(2).

¹³⁹ *Taj Television Ltd v Rajan Mandal* IA No 5628 of 2002 in CS (OS) 1072 of 2002, decided on 10-8-2006 (Del).

channel Tens Sports had bought the exclusive rights to broadcast some of the major sporting events and in particular to the FIFA World Cup, 2002. Tens Sports sued a number of defendants involved in the unauthorised transmission of the same resulting in loss of revenues in terms of licence fees and the worsening of their ties with the existing licensees who did not see the requirement to pay the licence fees anymore when they could transmit the signal unauthorised. The contention of the plaintiffs was that the collection of evidence against such delinquents tends to become difficult owing to the unstructured nature of cable piracy which merely takes a few minutes to destroy the evidence. The court in this landmark judgment passed the first John Doe order in India to protect the interests of Tens Sports. John Doe orders are served upon such miscreants of law whose identity is unknown to the plaintiff, yet their activities are such that they fall within the scope of action.¹⁴⁰ In the Indian context, the order has come to be known as the ‘Ashok Kumar orders’.¹⁴¹ Such orders provide protection to the original owners of the rights and assure them that the offenders do not go scot-free in case of a breach. Similarly, Sony Television on June 20, 2014 sought orders from the court seeking to restrain 400 rogue websites which had violated Section 37 of the Copyrights Act, 1957 and were illegally streaming footages of the FIFA World Cup. The court awarded John Doe injunction and directed the Department of telecommunication and information technology to look into the implementation of the order.¹⁴² In *Star India (P) Ltd v Roy MA.*,¹⁴³ the Delhi High court passed an ad-interim injunction restricting 150 rogue websites which were offering pirated content of various international and domestic cricket matches organized by BCCI. Otherwise, Star India which had the exclusive television rights and had substantially invested to build the website starsports.com to offer Internet and mobile broadcasting services would have suffered irreparable losses. In another case, a suit was filed by Star India which owned the exclusive broadcast rights of India-Australia Test match series and as a result, seventeen defendants were awarded an ex parte injunction by the Delhi High Court in order to restrain them from unauthorised online streaming.¹⁴⁴ As a

¹⁴⁰ Amruta Mahuli, Abhijeet Deshmukh and Abhishek Pandurangi, ‘India: Dealing with John Doe Orders in India’ (*Mondaq*, 4 July 2017) <<http://mondaq.com/india/x/607546/broadcasting+film+television+radio/Dealing+with+John+Doe+Order+s+in+India>> accessed 12 January 2020.

¹⁴¹ Payel Chatterjee, ‘“What’s in a name”... John Doe arrives in India’ (*Nishith Desai Associates*, 2007) <http://nishithdesai.com/fileadmin/user_upload/pdfs/-What-s_in_a_name_-_John_Doe_arrives_in_India.pdf> accessed 12 January 2020.

¹⁴² *Multi Screen Media (P) Ltd v Sunit Singh* CS (OS) 1860 of 2014, decided on 22-7-2014 (Del).

¹⁴³ 2014 SCC OnLine Del 2300.

¹⁴⁴ *Dept of Electronics and Information Technology v Star India (P) Ltd* 2016 SCC OnLine Del 4160.

matter of fact, the court had pronounced a revised order in July 2016, in this case, causing the blocking of all the seventeen sites, instead of just blocking the URLs. The reasoning behind the order was that, closing an URL would not bring a standstill to the creation of a new delinquent link within the same website.¹⁴⁵ The view shared by Saikrishna, Rajagopal, founding partner of Saikrishna and Associates, regarding the observation rendered by Justice A.K. Pathak and Justice Pradeep Nandrajog in the aforementioned case was that, “*in relation to websites which have hardly any lawful business and which are in entirety or to a large extent indulging in piracy, merely blocking a URL where the infringing content is located is not an effective solution.*”¹⁴⁶ The Delhi High Court in a similar case of *Star India (P) Ltd v Haneeth Ujwal*,¹⁴⁷ filed by the Star India, granted ad interim orders to 107 websites to desist from making available to the public in any matter whatsoever the India-England cricket series, 2014 whose broadcasting rights were bought by the plaintiffs.

While statistics are imminent that by 2022, India is expected to be the largest victim of this broadcast piracy hassle,¹⁴⁸ the Indian contingent has been recurrently opposing the insertion of online signal in the Broadcasters Treaty despite the fact that the predominant share of the piracy of sports content sharing takes place online.¹⁴⁹ Further, the problem in India lies with the non-recognition of the copyrightability of live sports telecasts, although the High Court of Delhi in *ESPN Star Sports v Global Broadcast News Ltd*,¹⁵⁰ had observed that the broadcasting reproduction rights under section 37 of the Act exist independent to copyright of the live footages.

¹⁴⁵ R Parthasarathy, ‘India: No Clear Position on Blocking Injunctions’ (*Managing IP*, 24 August 2016) <<https://www.managingip.com/article/b1kbpfg9q65d84/india-no-clear-position-on-blocking-injunctions>> accessed 13 January 2020; PTI, ‘Delhi HC Orders Blocking of 73 ‘Rogue Websites’ for Piracy’ (*Livemint*, 2 August 2016) <<https://livemint.com/Consumer/Xg7pTahuSsnGa3jXUPQsSL/Delhi-HC-orders-blocking-of-73-rogue-websites-for-piracy.html>> accessed 13 January 2020.

¹⁴⁶ Saikrishna Rajagopal, ‘Delhi High Court Division Bench Upholds Website Blocking for Pirate Websites’ (*Business Wire India*, 1 August 2016) <<https://businesswireindia.com/news/news-details/delhi-high-court/division-bench-upholds-website-blocking-pirate-websites/49586>> accessed 13 January 2020.

¹⁴⁷ *Star India* (n 127).

¹⁴⁸ Jon Brodtkin, ‘Pirate TV Services are Taking a Bite out of Cable Company Revenue’ (*Ars Technica*, 11 February 2015) <<https://arstechnica.com/information-technology/2017/11/pirate-tv-services-are-taking-a-bite-out-of-cable-company-revenue/>> accessed 11 January 2020.

¹⁴⁹ The Secreteriat, ‘Standing Committee on Copyright and Related Rights, at Thirtieth Session’ (SCCR/30/6, World Intellectual Property Organisation, 14 September 2015) <http://wipo.int/edocs/mdocs/copyright/en/scrr_30/scrr_30_6.pdf> accessed 13 January 2020.

¹⁵⁰ *ESPN Star Sports v Global Broadcast News Ltd* 2008 SCC OnLine Del 1385.

INTERNATIONAL STANDARDS ON ILLEGAL SPORTS STREAMING

According to a statistic provided by the China Internet Network Information Center, China recorded the number of its active internet users to be at 800 million.¹⁵¹ Likewise, United States (hereinafter 'US') has witnessed internet users amounting upto 300 million.¹⁵² The figures of active internet uses in densely populated countries like India and China are now on a similar level to developed countries like the US. Given the global following of sports events, it is streamed across the world, leaving it exposed to piracy on an international scale. The increasing accessibility of internet worldwide will possibly expose a massive section of audience to unauthorised streaming. In such circumstances it is pertinent to take note of the rights given to copyright holders with regards to sports streaming and the tools at their disposal to counter illegal streaming. Provided hereunder is an elaborate discussion with regard to copyrightability of live streaming of sports in certain major international jurisdictions such as the US, the United Kingdom (hereinafter 'UK'), the European Union (hereinafter 'EU'), China and Australia.

US

The US has seen a spike in the number of sports enthusiasts resorting to online streaming to quench their thirst of watching their favourite sports teams.¹⁵³ Many streaming platforms provide such broadcasting on a paid subscription basis such as ESPN+, Hulu Live, Sling TV, CBS All Access and YouTube TV.¹⁵⁴ In a study conducted by Centre for the Digital Future at USC Annenberg, it was found out that 56% of all sports fan were willing to pay for streaming services instead of traditional TV channels. Despite the marked rise of legal subscription based streaming, the pirates have not held back. In a study conducted by Global Innovation Centre it was uncovered that there was an unforeseen and concerning rise in the pirated streams in the US. The study made an

¹⁵¹ Niall McCarthy, 'China Now Boasts more than 800 Million Internet Users and 98% of them are Mobile (Infographic)' (*Forbes*, 23 August 2018) <<https://forbes.com/sites/niallmccarthy/2018/08/23/china-now-boasts-more-than-800-million-internet-users-and-98-of-them-are-mobile-infographic/#189605347092>> accessed 20 March 2020.

¹⁵² Secreteriat (n 149).

¹⁵³ Jen Booton, '30 Percent of Fans Now Stream Sports to their Phones, Tablets' (*SportTechie*, 12 February 2018) <<https://sporttechie.com/30-percent-fans-now-stream-sports-phones-tablets/>> accessed 13 January 2020.

¹⁵⁴ Ben Moore, 'The Best Sports Streaming Services for 2019' (*PCMag*, 3 October 2019) <<https://in.pcmag.com/software/132088/the-best-sports-streaming-services>> accessed 14 January 2020.

estimation that visits made to pirated websites containing sports content had increased by a staggering 20% from 2015 to 2016 with an estimated 6.5% of North American households doing so.¹⁵⁵ It also affected the US economy resulting in large scale losses to the tune of \$ 229 billion.¹⁵⁶ The US' efforts to stop copyright infringing websites can be traced back to 2008. The Congress passed the Prioritising Resources and Organization for Intellectual Property Act (hereinafter 'PRO-IP Act')¹⁵⁷ in 2008 which enabled the US officials to ban domain names with the help of ex-parte orders. The PRO-IP Act also shored up the penalties for various copyright offences and set up an 'IP-Czar' branch. The PRO-IP Act proved to be effective and it helped the US Government to seize various accused pirate websites.¹⁵⁸ During the presidency of Barack Obama, the Government put pressure on ISPs to harbour more copyright friendly norms. In accordance with that, ISPs adopted a 'graduated response' system that helped in negating piracy.¹⁵⁹ Recently the lawmakers in the US are in the process of curbing individuals from profiting unjustly off of the legal loopholes in the copyright provisions to stop illegal streaming of sports events.¹⁶⁰ These efforts have been synchronised by taking suggestions from senior heads of sports organizations such as National Basketball Association (hereinafter 'NBA') and Ultimate Fighting Championship (hereinafter 'UFC'). In a senate hearing earlier this year, NBA and UFC representatives offered some solutions to tackle piracy:

1. To make it mandatory for social media websites to ban links to illegal streaming websites;
2. Digital organisations should send out copyright notices to users that engross themselves in illegal steaming;

¹⁵⁵ 'Report on Leveraging Intellectual Property in the Global Sports Economy' (*Global Innovation Policy Centre*, 20 June 2018) <<https://theglobalipcenter.com/introducing-leveraging-intellectual-property-in-the-global-sports-economy/>> accessed 13 January 2020.

¹⁵⁶ David Blackburn, Jeffrey Eisenach and David Harrison, 'Report on Impacts of Digital Video Piracy on the US Economy' (*Global Innovation Policy Center and NERA Economic Consulting*, June 2019) <<https://theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>> accessed 14 January 2020.

¹⁵⁷ Prioritizing Resources and Organization for Intellectual Property Act 2008, 122 STAT 4256 (US).

¹⁵⁸ Karen Kopel, 'Operation Seizing Our Sites: How the Federal Government is Taking Domain Names without Prior Notice' (2013) 28 Berkeley Tech LJ 860.

¹⁵⁹ Greg Sandoval, 'Exclusive: Top ISPs Poised to Adopt Graduated Response to Piracy' (*CNET*, 22 June 2011) <<https://cnet.com/news/exclusive-top-isps-poised-to-adopt-graduated-response-to-piracy>> accessed 14 January 2020.

¹⁶⁰ Troy Point Editor, 'US Lawmakers Push to Criminalize Streaming' (*TroyPoint*) <<https://troypoint.com/u-s-lawmakers-push-to-criminalize-streaming/>> accessed 15 January 2020.

3. To criminalise online piracy streaming.¹⁶¹

They stated that criminalising piracy should target operations and not the users.¹⁶² These events paint a positive outlook on the concerted efforts of the US lawmakers and the sports organisation to stop illegal piracy.

UK

The Copyright, Designs and Patents Act lays down the law and punishment for copyright infringement in the UK.¹⁶³ In the year of 2003, vide an amendment to the act, anti-piracy provisions were inserted with the introduction of the section 97A.¹⁶⁴ The Act now provides for an injunction that can be filed against an ISP, if it is proved that the ISP had knowledge of a person using its resources to infringe copyright.¹⁶⁵ This section has been used multiple times since 2010.¹⁶⁶

Football and its broadcast hold utmost popularity in the UK.¹⁶⁷ English Premier League, its premier football competition is watched not only in the UK but worldwide by live broadcasting & streaming. This has however, been plagued by piracy with thousands of ‘rogue websites’ running illegal streams of ongoing matches.¹⁶⁸ The UK High Court has come down hard on the piracy of football matches and granted ISPs the permission to block access to entire servers and the use the technique of ‘live-blocking’.¹⁶⁹ The UK also passed the Digital Economy Act in 2017.¹⁷⁰ It states that online copyright infringers would be tried on the same level

¹⁶¹ Daniel Sanchez, ‘NBA, UFC Urge Congress to Impose Stricter Laws Against Streaming Piracy’ (*Digital Music News*, 8 May 2019) <<https://digitalmusicnews.com/2019/05/08/nba-ufc-v-livestream-piracy/>> accessed 15 January 2020.

¹⁶² Ernesto, ‘NBA and UFC Urge US Lawmakers to Criminalize Streaming Piracy’ (*TorrentFreak*, 7 May 2020) <<https://torrentfreak.com/nba-and-ufc-urge-u-s-lawmakers-to-criminalize-streaming-piracy-190507/>> accessed 16 January 2020.

¹⁶³ The Copyright, Designs and Patents Act 1988 (CDPA 1988) (UK).

¹⁶⁴ The Copyright and Related Rights Regulations 2003, ss 27(1), 31-40 (UK).

¹⁶⁵ CDPA 1988, s 97-A.

¹⁶⁶ *Twentieth Century Fox Film Corpn v Newzbin Ltd* 2010 EMLR 17; *Cartier International AG v British Sky Broadcasting Ltd* 2014 EWHC 3354; *Twentieth Century Fox Film Corpn v Harris* 2014 EWHC 1568; *Queensberry Promotions Ltd v British Telecommunications Plc* 2018 EWHC 3273.

¹⁶⁷ Andrew Cave and Alex Miller, ‘The Popularity and Power of Football’ *The Telegraph* (London, 23 June 2015) <<https://telegraph.co.uk/investing/business-of-sport/January-2020-of-football/>> accessed 15 January 2020.

¹⁶⁸ Sean Ingle, ‘Premier League Clubs Warned of Revenue Fall Unless Piracy is Tackled’ *The Guardian* (London, 8 October 2019) <www.theguardian.com/football/2019/oct/08/premier-league-clubs-tv-rights-piracy> accessed 16 January 2020.

¹⁶⁹ *Football Assn Premier League Ltd v British Sky Broadcasting Ltd* 2013 EWHC 2058.

¹⁷⁰ The Digital Economy Act 2017 (DEA 2017) (UK).

as physical copyright infringers and has set a prison sentence of up to 10 years for infringers.¹⁷¹

The UK has also brought into play a distinctive weapon to curtail piracy which is its police force. With funding from UK Intellectual Property Office, a special branch of the City of London Police named as The Police Intellectual Property Crime Unit (hereinafter ‘PIPCU’) was set up in 2013.¹⁷² With its notable campaign against pirated websites named as Operation Creative, PIPCU has taken a tough stand against piracy.¹⁷³

EU

The Court of Justice for the European Union (hereinafter ‘CJEU’), which is the chief judicial authority of the European Union, was faced with the challenge of copyright infringement of a live telecast of a sports event in *Football Assn Premier League v QC Leisure and Murphy v Media Protection Services Ltd*.¹⁷⁴ The aforementioned case was joined with another case and the court adjudged the subsistence of copyright in the telecast which could be maintained either by the author of the work or even the broadcasters.¹⁷⁵ CJEU has explicitly upheld the same verdict in *C More Entertainment AB v Sandberg*, observing that the digital sports broadcasters, who provide live telecasts of sports to be granted intellectual property rights.¹⁷⁶ This case was initially adjudicated by the Swedish Supreme court, which was of the view that live telecasts of hockey games are not copyrightable as they did not meet the requisites of an ‘intellectual creation’.¹⁷⁷ Therefore, the work of the broadcasters which was primarily driven due to the events in the game could only be vested with related rights in these telecasts, such as, instant replay of the game, etc. Thus, the scope of protection for live streaming is still limited in the EU.

¹⁷¹ DEA 2017, s 32(UK).

¹⁷² ‘About PIPCU’ (*City of London Police*) <<https://www.cityoflondon.police.uk/>> accessed 15 January 2020.

¹⁷³ About PIPCU (n 172).

¹⁷⁴ *Football Assn Premier League v QC Leisure* 2011 ECR I-09083.

¹⁷⁵ *Murphy v Media Protection Services Ltd* (2012) 1 CMRL 29.

¹⁷⁶ *C More Entertainment AB v Sandberg* (2015) EUR-Lex CELEX LEXIS, 2015 ECDR 15.

¹⁷⁷ Advokatfirman Lindahl, ‘No Copyright Protection for Sports Broadcasts’ (*Lexology*, 3 October 2016) <<https://lexology.com/library/detail.aspx?g=bb9fc252-28d7-45c3-8225-506dab93b42c>> accessed 17 January 2020.

CHINA

Quite identical to the Indian situation, the Chinese copyright law is ambiguous as to whether the live telecasts are a subject of neighbouring rights protection or of copyrights protection. Article 3 of Copyright Law of People's Republic of China (hereinafter 'PRC Copyright Law') does not provide explicit protection to live telecasts of sports,¹⁷⁸ yet in a notable decision in 2015, a court in Beijing granted copyright to live sports telecast referring it as adequately creative to be covered within the scope of copyrightable subject.¹⁷⁹ However, in a number of cases adjudicated by the Beijing IP court, plaintiffs with exclusive rights to live stream have been denied judicial remedies as the live streams or live broadcasts of sports events did not qualify the definition of 'work' mentioned in Article 10 (11) of PRC Copyright Law.¹⁸⁰ This has mostly resulted in large scale piracy of sports streaming in China. One of the most notable victims has once again been the English Premier League. According to a report by Muso and GumGum Sports, Premier League clubs make losses of around £1 million per match due to illegal streaming in China.¹⁸¹ The Chinese Government has taken notice of the same and currently there are proposals to amend the PRC Copyright Law.¹⁸² These amendments would be the first amendment to the law since 2010 and is expected to include provisions to curb live broadcasting. This would go a long way in putting a restraint on the rogue websites offering illegal streaming in China.

AUSTRALIA

The Australian law bestows copyright protection on broadcast of a sporting event, even though the sporting event itself is not copyrightable

¹⁷⁸ Seagull Song, 'How Should China Respond to Online Piracy of Live Sports Telecasts? A Comparative Study of Chinese Copyright Legislation to U.S. and European Legislation' (2010) U of Denver Sports and Entertainment LJ.

¹⁷⁹ China IPR, 'Beijing IP Court Rules on Copyright Protection for Sports Broadcasts' (*China IPR*, 1 April 2018) <<https://chinaipr.com/2018/04/01/beijing-ip-court-rules-on-copyright-protection-for-sports-broadcasts/>> accessed 17 January 2020.

¹⁸⁰ Guo Cai, 'Why Sports Broadcasters in China Cannot Currently Rely on Copyright Law to Protect Against Unauthorised Livestreams (and Possible Solutions)' (*LawInSport*, 14 June 2019) <<https://www.lawinsport.com/topics/item/why-sports-broadcasters-in-china-cannot-currently-rely-on-copyright-law-to-protect-against-unauthorised-livestreams-and-possible-solutions>> accessed 17 January 2020.

¹⁸¹ Imogen Watson, 'Illegal Streaming Sees Premier League Clubs Lose Out on £1m in Sponsorship Revenue Every Game' (*The Drum*, 10 July 2019) <<https://thedrum.com/news/2019/07/10/illegal-streaming-sees-premier-league-clubs-lose-out-1m-sponsorship-revenue-every>> accessed 17 January 2020.

¹⁸² Zhang Yanfei, 'China to Further Refine Intellectual Property Laws' *China Daily* (Beijing, 25 April 2019) <<https://chinadaily.com.cn/a/201904/25/WS5cc14987a3104842260b8519.html>> accessed 17 January 2020.

as it does not amount to a ‘dramatic work’ as contemplated under Section 31 of the Copyright Act, 1968.¹⁸³ By virtue of section 91 of the Act, copyright can be conferred to sound and television broadcasts, notwithstanding the fact that the fundamental material is not protected. Therefore, as long as they are fixated in any material form i.e. being recorded onto a film, videotape, or other media format at the time of their dissemination, they’ll be protected by virtue of section 10 of the Act.

Moving on, with respect to the subject matter of live streaming, the Full Federal Court in 2013 ruled that an internet simulcast would not constitute to be broadcast. The judgment effectively renders live streaming out of the scope of the definition of ‘broadcasting’. Further, Section 135 ZZJA(1) of the Act particularly rules out ‘internet retransmission’ from the purview of retransmissions which are free-to-air broadcasts. Additionally, a ministerial resolution pertaining to Broadcasting Services Act, 1992, also clarified that streaming of television programmes cannot be covered under the scope of ‘broadcasting’.¹⁸⁴ In *Win Corpn Pty Ltd v Nine Network Australia Pty Ltd*,¹⁸⁵ the court was of the opinion that broadcasting will not include ‘live streaming’.

IMPORTANCE OF PROTECTING LIVE STREAMING IN INDIA

The significance of protecting live streaming of sports in India can be explained by the theory of neighbouring rights, which stipulates that the effort, skill and creativity dispensed by the broadcasters in assembling, scheduling programs and packaging should be duly granted recognition.¹⁸⁶ Taking into account the current judicial findings by the courts in India, though, broadcasters are being endowed with broadcasting rights, yet, it is not adequate to redress the issue of live online piracy.¹⁸⁷

It is essential for proper definition to be provided to the term ‘broadcasting organisations’, occurring in Section 37 of the Copyrights Act, 1957 to ascertain whether it encompasses both the traditional and

¹⁸³ *Australian Olympic Committee v Big Fights Inc* 1999 FCA 1042.

¹⁸⁴ Commonwealth of Australia Gazette—Determination under Paragraph (c) of the Definition of ‘Broadcasting Service’, (No 1 of 2000), Commonwealth of Australia Gazette No GN 38, 27.

¹⁸⁵ *Win Corpn Pty Ltd v Nine Network Australia Pty Ltd* 2016 NSWSC 523.

¹⁸⁶ Herman Cohen Jehoram, ‘The Nature of Neighboring Rights of Performing Artists, Phonogram Producers and Broadcasting Organizations’ (1990) 15 Columbia-VLA Journal of Law & the Arts 75.

¹⁸⁷ Seemantani Sharma, ‘Online Piracy of Live Sports Telecasts in India’ (2018) 28 Marquette Sports L Rev 433.

webcasting organisations or not. In the near future, when the transmission of sports events begins taking place via webcasts¹⁸⁸, the webcasters will be left remediless in case of online piracy. Hence, to accommodate such a situation the courts must sanction an expansive interpretation of the term ‘broadcasting organisation’ which will be consonant to the definition in the Broadcasters Treaty.¹⁸⁹ Further, the concept behind proposing copyright status to a live telecast is to ensure protection of an audio-visual work, of a large team of directors, technicians and announcers who put efforts in choosing the subject of the sports event and the camera angles.

The webcasting of sports is no more a remote concept, resulting in rise of the online penetration rate and fall in data tariffs, making online streaming a preferred platform for viewing of sports events rather than the conventional broadcasting. Therefore, granting ‘rights of webcasting organisation’ to pure sports streaming organisations like Hotstar, Sony Liv, and Facebook Live will not only provide them with a legal recourse against online piracy, but also protect the traditional broadcasting organisations. Moving forward, the opposition posed by the Indian contingent with respect to post-fixation rights (making available rights) and online transmission which have been endorsed by Copyrights Act, 1957 is absurd.¹⁹⁰ The inclusion of post-fixation rights and any form of online transmission, as proposed by the Broadcasters Treaty is a futuristic solution to the menace of online piracy by granting the ‘making available right’ to broadcasters.

CONCLUSION

From the discussion above, it can be concluded that countries like the US, Sweden, and the UK have recognised the existence of ‘intellectual creation’ in live sports telecasts and therefore conferred them with copyright protection. On the other hand, certain other nations like Australia and China either require legislative clarity or are manifestly opposed to the idea of copyrightability of live sports telecast. The inherent confusion hindering a tough action against infringers can be pointed out in the dichotomy of public access versus rights conferred on the owners of copyrights. English Premier League for instance is watched by people worldwide, the regulating body Football Association (hereinafter ‘FA’) is lax in enforcing its copyright in other jurisdictions since ultimately the

¹⁸⁸ Alex Hickey, ‘The Future of Sports and Streaming’ (*Morning Brew*, 14 November 2019) <<https://morningbrew.com/daily/stories/2019/11/14/future-sports-live-streaming>> accessed 19 January 2020.

¹⁸⁹ Secreteriat (n 149).

¹⁹⁰ CA 1957, s 37(2).

widely prevalent piracy increases popularity of the competition and acts as free publicity. But within its own country, FA knows the importance of the money earned through streaming. This money is not only spent at the top level, but also filtered down to the lower levels of football which are dependent solely on this source of income. Keeping this in mind, the authorities in the UK have taken strong actions against piracy, both at the legislative and the judiciary level.

In India there exists a sheer lack of effort by regulators to come up with a strong copyright protection to stop illegal streaming. While one can easily overlook the income of sports broadcasters, it is difficult to look past the direct hit such piracy has on various occupations that such broadcasting provides. Further, a legitimately secured official stream is susceptible to re-distribution through other means. The current attempts to put a bar on official online broadcasts are often inadequate to deter infringement. With the gradual increase in the exposure that the right holders seek, they are inadvertently providing pirates with additional source of material for re-distribution. Therefore, the threat of online piracy of sports broadcasts which is widespread across the globe makes the recognition of copyrightability of live sports telecast and post fixation rights imperative to protect the interests of broadcasters and sports organisers. This is because of the fact that success of a lawsuit resulting from a breach will be dependent on the copyright laws of the jurisdiction of the pirate server. Therefore, stronger enforcement of the rights of various stakeholders, like broadcasters and sports leagues is the key to ensure that online sports streaming lives to see its glory days.