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Indian Copyright Act and new communication technologies: A special focus on webcasting

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The main aim of this paper is to consider whether the Indian Copyright Act 1957 (ICA) gives protection to future technologies. It follows an earlier paper on Webcaster's protection under copyright published in [2011] 27 CLSR 479–496. By way of asking that question it is sensible to examine whether webcasting/streaming is protected by ICA or not. In order to enquire the same, we need to study the penetration of streaming/webcasting technology into the Indian market and its application. Since the technology is linked with the Internet, it is also essential to examine its penetration and the availability of bandwidth and the potential market for such communications. All these aspects are studied in the first part of this paper. In the second part a brief outline is offered of the relevant provisions of the Act. At issue is whether they give protection to the future technologies or not. This will be considered in part three. The same will be examined with the proposed amendment to the Act too. The paper concludes that the Act fails to give protection to future technologies and therefore that streaming/webcasting is not protected in India under the copyright regime.

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1. Introduction

India is one of the countries with a huge market for the entertainment industry. India is identified as the second largest TV market in the world.¹ Despite the fact that per capita income is very low (i.e., around Rs. 50,000/- per annum)², nearly 130 million households out of 230 million households have TV³. Most of the households are connected by cable. This means that analogue cable services are still predominant in India⁴. However digital transmissions are slowly penetrating into India. In the last five years,

tremendous changes have taken place in the communication technology field especially in the broadcasting context. Within a short period, satellite analogue transmission has been penetrating in the wide context through Set top box and dish instruments etc. Digital transmission is gradually taking over.

In the case of Internet Protocol Television (IPTV), Mahanagar Telecom Nigam Ltd⁵ started its first transmission in 2006 in Mumbai and Delhi. It commenced its Calcutta transmission in 2007⁶. At present most of the mobile phone service providers are engaged with IPTV business which allows users to obtain triple benefits on a single connection such as

¹ Standing committee on copyright and related rights, 19th session, 2009's study paper on "Socio economic dimension of the unauthorized use of signals: Current market and technology trends in the broadcasting sector" available at www.wipo.int/edocs/mdocs/copyright/en/sccr_19/sccr_19_12.doc (June 26, 2011) at page 40.

² *Ibid.*, at 41.

³ *Id.*,

⁴ *Id.*,

⁵ It is also known as MTNL.

⁶ <http://explore.oneindia.in/Internet/iptv/> (March 22, 2010).

Television (Live & Video on Demand), Voice over IP or Digital Phone and Internet connection. They are also known as triple play⁷.

Approximately 8.5% of the Indian population is using the Internet.⁸ This is 4.7% of global Internet users. Only 3% of the households are currently connected with broadband.⁹ The total number of broadband connections was around 7.83 million in December 2009 and 8.03 million by January, 2010.¹⁰ The 0.2 m increase in the total connections shows a growth of 2.42% within one month. It is expected that by the end of 2010¹¹, it will be around 20 million. However, this may grow to 100 million within the next five years.¹² It implies that a significant market for online broadcasting and other Internet activities has yet to develop in India. However, we can infer from the above that over a period of time India will become an important market for online transmission.

In India, some of the sites are offering both on-demand and live streaming. 16 frames.com, 24 frames.com and vsworld.com are few examples of the same.¹³ They offer on-demand services and live streaming of live shows, conferences, road shows, exhibitions, hot shows and product launches etc., Webcast%20gov.in offers live streaming of budget, Republic day celebrations, Independence Day celebrations and president address in the Parliament to the media.¹⁴ The same contents are available for the on-demand services also. In addition to the streaming sites, most of the TV channels are simultaneously re-transmitting their program through the Internet. Some of them are providing on-demand services also.

Most of the television channels are transmitting copy-rightable contents. They transmit their content through a new platform i.e., the Internet along with the traditional broadcasting technologies. Some of them provide interactive transmissions i.e., on-demand transmissions. Generally, in the copyright context, on-demand transmissions are not considered as broadcasting because they are entirely different from traditional broadcasting characteristics. Therefore, such transmissions cannot be treated as broadcasting. TV channel transmissions via traditional broadcasting technologies such as wireless diffusion, cable and satellite transmissions are well protected under copyright law provided the contents are protected as works. In the digital context, the issue which needs to be addressed is 'whether the Indian Copyright Act gives protection to so called 'webcasting' (Live Streaming) also?'

⁷ <http://www.mahesh.com/2007/11/07/iptv-in-india> (June 26, 2011).

⁸ See <http://www.Internetworldstats.com/stats3.htm> (July 4, 2011).

⁹ See www.wipo.int/edocs/mdocs/copyright/en/sccr_19/sccr_19_12.doc (July 4, 2011).

¹⁰ See <http://www.medianama.com/2010/02/223-jan-2010-india-crosses-8m-broadband-connections-adds-19-90-m-wireless/> (July 4, 2011).

¹¹ See <http://www.cellular-news.com/story/27496.php> (July 4, 2011).

¹² See <http://ashokhindocha.blogspot.com/2010/01/india-may-have-100-mn-broad-band.html> (July 4, 2011).

¹³ See <http://www.24framesdigital.com/>, <http://www.16frames.com/Default.aspx> and <http://www.vsworld.com/>. See also <http://www.chennaistream.com/main.asp?fl=home> (July 5, 2011).

¹⁴ See <http://webcast.gov.in/> (July 5, 2011).

2. Provisions related to broadcasting

Unlike UK Copyright Designs and Patents Act 1988 (CDPA) the ICA¹⁵ does not recognize that a broadcast is an independent work.¹⁶ However, the broadcast reproduction right has been recognized as a neighbouring right under the Act for protecting the interests of the broadcasting organizations.¹⁷

According to section 2 (dd)¹⁸ of the Act 'broadcast' is defined as:

Broadcast means communication to the public-

(i) by any means of wireless diffusion whether in any one or more of the forms of signs, sounds, or visual images; or

(ii) by wire, and includes a re-broadcast.

Here the definition says that broadcast means 'communication to the public' by way of wireless or wire diffusion and it includes re-broadcast. The Act further defines 'communication to the public'. It reads¹⁹:

"communication to the public" means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation.-For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public;

Here the definition states that 'communication to the public' means making available of any work for the purpose of being heard or seen either directly or through any means of display or diffusion. However, making it available does not include issuing copies of such work. Therefore, it is clear that the communication to the public covers electronic communications which are very similar to the public performance, instead of issuing original copies of the works. It also includes

¹⁵ Here after it will be referred to as "the Act".

¹⁶ UK CDPA, 1988, Section 1 says that broadcast is also a work just like literary, dramatic and musical works. Even UK copyright Act 1956 had recognized the broadcast as work. However 1956 ACT had two types' work. See for the detailed reference, UK copyright Act 1956 Part I and Part II Sections 1–16. With respect to Indian copyright Act, 1957, it does not consider broadcast as a work. Because section 2 (y) of the Act defines the term 'work'. As per the definition work means any of the following works, namely :-(i) a literary, dramatic, musical or artistic work; (ii) a cinematograph film; (iii) a sound recording. From this it is very clear that broadcast is not a work.

¹⁷ See Copyright Act 1957, Sec 37. The special right is known as 'broadcasters' reproduction right'. However these rights are subjected to the section 39A of the Act.

¹⁸ Section 2(dd) was inserted by 1984 amendment.

¹⁹ Copyright Act 1957, Sec. 2 (ff).

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