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Protection of Rights of Broadcasting Organizations

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WIPO Regional Workshop on Opportunities and Challenges in
the Implementation of the Beijing and Marrakesh Treaties
by **LAU KOK KENG**

RAJAH & TANN

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Agenda

- What is Broadcasting?
- Rights of Broadcasters
- Threats to Broadcasters
- Concerns Over Proposed New Broadcasting Treaty
- Protection for Broadcasters in Singapore
- What's Next for the Proposed New Treaty?

What is Broadcasting?

WIPO Performances and Phonograms Treaty

“broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent.

What is Broadcasting?

Singapore Copyright Act

- “**Broadcast**” means broadcast by *wireless* telegraphy – ie the emitting or receiving, otherwise than over a path that is provided by a material substance, of electro-magnetic energy.
- May be television or sound broadcasts
 - “**sound broadcast**” means sound broadcast otherwise than as part of a television broadcast
 - “**television broadcast**” means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images”
- One aspect of “*communication*” of a work – the others being inclusion of the work in a cable programme, and making the work accessible on an on-demand basis

Rights of Broadcasters

- Art 13 of International Conventions for Protection of Performers, Producers of Phonograms and Broadcasting Organisations (“**Rome Convention**”) recognizes the rights of broadcasters to prevent reproductions, rebroadcasts and communication to the public of their broadcasts.
- Protection under the treaty is limited to wireless transmission of analog sounds with or without images. This does not capture transmissions via cable and satellite, while analog signals have largely been replaced with digital signals.
- Rome Convention also does not take into account the technological developments that have occurred since its adoption in 1961 – eg. cable television and the internet

Threats to Broadcasters

- Convergence of info-communication technologies and emergence of the new digital environment gave rise to increasing opportunities for unauthorized use of broadcasts within and across borders
- Trend towards conversion from analog to digital terrestrial broadcasts to allow for more efficient use of electromagnetic spectrum - unlike analog broadcast signals, digital signals can be replicated with little to no quality degradation, and can be retransmitted easily on the internet
- Signal misappropriation may be
 - physical – eg. unauthorised recordings of broadcasts on video tapes, DVDs or USB drives
 - virtual – eg. unauthorised rebroadcasts online through live streaming made available on computer or mobile devices, and tapping into encrypted pay TV signals by circumventing security measures in set-top boxes
- Leads to loss of broadcast rights income, pay TV subscriptions and advertising revenue, with knock-on effects on jobs, content creation and community funding

Threats to Broadcasters

- Live streaming of sports events is fastest growing segment of broadcast copyright infringement
- The EPL was watched in 650 million homes in 175 countries in 2013, by a global audience which totalled 4.4 billion. Financially, the PL's revenue from sale of broadcasting and commercial rights in 2013/14 came to £1.9 billion.
- In 2013/14 season, the PL shut down 45,107 illegal football streams online
- During the 2014 World Cup, some 3,200 World Cup live stream take down notices were issued by Viaccess-Orca on behalf of FIFA.
- Piracy data showed that 20 million viewers watched matches on illegal websites during the 32-day event
- Protection of broadcast justified on basis that it involves significant investment in infrastructure and purchase of broadcasting rights

Threats to Broadcasters

- Causes of signal piracy
 - Inability of consumers to afford or access broadcast content
 - Content exclusivity
 - Censorship
 - Weak legal protection for broadcasters
- Discussions on the Protection of Broadcasting Organizations commenced in 1998 at the 1st Session of the WIPO Standing Committee on Copyright and Related Rights (SCCR)
- At 14th session in May 2006, SCCR came up with a Draft Basic Proposal Treaty on the Protection of Broadcasting Organizations, which was revised at its 15th session in September 2006
- Aim of new treaty was to extend Rome Convention protection of broadcasters to cover digital transmissions, and provide broadcasters with certain rights with respect to their transmissions, separate and apart from any copyright in the content of the transmissions

Concerns Over New Treaty

- New treaty was to be signal-based only – webcasting and simulcasting excluded and placed on separate, parallel negotiating track
- Discussions on proposed new treaty has progressed slowly due to highly technical nature and divergences in treatment of broadcasting organizations in different national legal systems
- Delay also due to concerns over new treaty's potential consequences
 - Giving broadcasters a range of exclusive rights may hinder access to copyrighted material by requiring authorization not only from the copyright owner of content but also the broadcaster
 - Content owners may end up having to give broadcasters the power to determine the conditions (and exact a licensing fee) under which a work could be used
 - Copyright in content may have expired or not entitled to copyright (eg. sporting or news events because they are not creative works)
 - Certain events (eg. sporting) may require mandatory coverage by free-to-air broadcasters in some countries

Protection for Broadcasters in S'pore

- Article 14(3) of **TRIPS Agreement** recognizes the right of broadcasters to prohibit the unauthorized fixation (ie recording), reproduction of fixations, wireless rebroadcasts, and communication to the public of television broadcasts.
- Rights given to broadcasters under the **Copyright Act** are:
 - In the case of visual images of a television broadcast, to make a cinematograph film of the broadcast or to make a copy of such a film;
 - In the case of sound broadcast, or a television broadcast, in so far as it consists of sounds, to make a sound recording of the broadcast, or a copy of such a recording;
 - In the case of a television broadcast, to cause it to be seen or heard in public before paying audience;
 - In the case of both television and sound broadcasts, to re-broadcast it or to include it in a cable programme.
 - Copyright in a television or sound broadcast shall subsist for 50 years after year in which the broadcast was made

Protection for Broadcasters in S'pore

- Section 48 of the Broadcasting Act (Cap. 28) states:

Offences relating to unauthorised decoders and unauthorised reception of encrypted programmes

48.—(1) No person shall manufacture, assemble, modify, import, export, sell, offer for sale, let for hire or otherwise distribute any decoder which he knows is an unauthorised decoder.

(2) No person shall wilfully receive or rebroadcast any encrypted programme which has been decoded without the authorisation of the lawful provider of a broadcasting service who had broadcast the programme.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$40,000 or to imprisonment for a term not exceeding 3 years or to both, and any unauthorised decoder shall be forfeited to the Authority.

(4) Where it is proved that a person has manufactured, assembled, modified, imported, exported, sold, offered for sale, let for hire or otherwise distributed any unauthorised decoder, it shall be presumed, unless there is evidence to the contrary, that the person knew that the decoder was an unauthorised decoder.

Protection for Broadcasters in S'pore

(5) In this section and section 48A —

“decoder” means any apparatus or device (including a computer program) or any component or part thereof which is designed or adapted to enable (whether on its own or with any other apparatus or device) an encrypted programme to be decoded;

“lawful provider”, in relation to a broadcasting service, means — a person who holds a broadcasting licence; or

in the case of a broadcasting service transmitted from a place outside Singapore, the person who is authorised to provide the broadcasting service in accordance with the laws of that place;

“unauthorised decoder” means a decoder which is designed or adapted to enable an encrypted programme to be viewed in decoded form without the authorisation of the lawful provider of a broadcasting service who had broadcast the programme.

- In September 2013, StarHub raided a storage facility and seized a few hundred illegal set-top boxes which were able to unscramble StarHub's cable TV content. Two dealers of the illegal set-top boxes were charged with offences under the Broadcasting Act in May 2014.

What's Next for the Proposed Treaty?

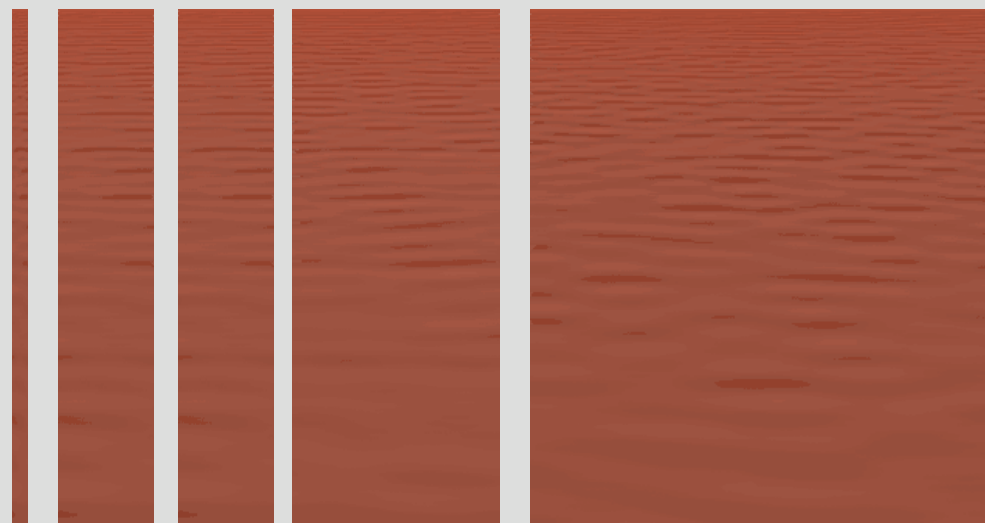
- To-date, after 16 years and 29 sessions in Geneva, no consensus has been reached on a text adequate for a diplomatic conference.
- Are current legal frameworks sufficient, given that they already provide for the enforcement against unauthorized use of a broadcast? Or is a harmonized international system of protection of broadcast signals across the world necessary?
- Comments from Court of Appeal in *RecordTV v Mediacorp*:

“If the law is not clear as to whether the use of improved technology which is beneficial to society constitutes a breach of copyright, should the courts interpret legislative provisions to favour the private rights of the copyright owner or the public's wider interests? ... RecordTV's iDVR is simply a technological advance that is not addressed by the Copyright Act in the context of the copyright owner's exclusive right to copy (ie, reproduce), communicate to the public and authorise the copying and/or the communication to the public of copyright-protected material. Since RecordTV was doing no more than making it more convenient for the aforesaid Registered Users to enjoy the MediaCorp shows ... we are of the view that the public interest is better served by encouraging rather than stifling the use of RecordTV's novel technology...”

What's Next for the Proposed Treaty?

- As of September 2014, the General Assembly could not reach a consensus on the future work of the SCCR on the protection of broadcasting organisations, and left it for the 2015 General Assembly to take a decision on convening a Diplomatic Conference in 2016.
- Outstanding issues which remain:
 - What should be protected? – all means of transmission of signals including digital programme recording devices, on-demand video services and IPTV ?
 - How should broadcast signals be protected? – anti-circumvention provisions
 - What further rights should be given to broadcasters? – extension of Rome rights to new technologies such as to prevent unauthorized retransmission of broadcasts over the Internet
 - What limitations and exceptions should there be to the need to seek authorization for the use of broadcasts?

Thank You!



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