

**WELCOMING THE EUROPEAN AUDIOVISUAL OBSERVATORY'S
REPORT ON NATIONAL REMEDIES AGAINST ONLINE PIRACY OF
SPORTS CONTENT – LESSONS FOR INDIA**

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MARCH 2022

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Introduction

1.1 Sports Media Industry and the Digital Environment – “Understanding the disease that needs to be treated”

The traditional broadcast market has observed significant changes in its landscape owing to the popularity of over-the-top (“OTT”) viewing. This transition is facilitated by the penetration of affordable internet accessible devices such as smartphones- India had 448 million smartphone users in 2020¹- and cheap data, which costs on an average \$0.68 per GB². Ardent cricket fans can now easily stream any match during the IPL season on the go to support their team of choice. Live streaming platforms such as Twitch and easily consumable short form video applications like Instagram reels have further driven user engagement and swelled virtual audiences to more than ever before.

While these developments have led to the growing consumption and viewership of online content such as sports and music, they have also led to a simultaneous rise in the availability of illegal content. Online piracy of copyrighted content occurs via unauthorised file sharing through peer-to-peer networks, uploading of content on ‘User Generated Content’ services, illegal ‘Internet Protocol Television’ (IPTV) etc.

The insidious nature of online piracy is such that even if some illegal streams on websites get taken down swiftly, new streams/websites pop up instantaneously.³ Such a situation has proliferated blatant copyright infringement. According to data from the Infront Lab, about 39% of all content on OTT platforms is pirated and the lockdowns during the Covid-19 pandemic have only boosted this phenomenon.⁴ Further, globally, more than 360 million people a month visit pirate broadcast sites.⁵ Apart from the ease of indulging in piracy as discussed in the preceding paragraph, its steady rise is also due to the illegal revenue generated from it. As per a study, pirate sites earn over \$1.3 billion a year in ad generated revenues.⁶ Another example is the shocking result of an analysis conducted by the Infront Lab of a Premier League game between Manchester United and Liverpool which revealed that more than a million and a half online broadcasts were illegal, causing massive losses for broadcasters worldwide.⁷

1.2 Sports Broadcasting in the EU

Sports play a key role in the social, cultural and economic prosperity of the European Union while also promoting common values of solidarity, diversity and social inclusion. Sports related sectors represent 2.12% of GDP and 2.72% of employment in the EU. Importantly, smaller sports clubs constitute the backbone of European grassroots sport and 35 million

¹ EY FICCC Media & Entertainment Report 2021

² <https://www.cable.co.uk/mobiles/worldwide-data-pricing/>.

³ “OK Google – It’s Time to Remove Sports Piracy Streams from Your Search Results” ~ CreativeFuture.

⁴ [How to solve the problem of piracy in sports broadcasts? - CTech \(calcalistech.com\)](#).

⁵ Ibid.

⁶ [Illegal Streaming Sites Earn Over a Billion a Year in Ad Revenue / Digital Information World](#).

⁷ Ibid.

amateurs contribute to the development of mass-participation in sport and the dissemination of sports' values.⁸

It is apposite to state herein that the life of a sports event is as short as the duration of the game and, therefore, its value lies mainly in its being watched live. Thus, the piracy of live sports event broadcasts causes immediate and unrecoverable losses in terms of audience and revenues. Online piracy not only effects live sports broadcasts but also the overall creative sector. For instance, in Spain, creative industries reported that 60% of internet users accessed illegal content up to 11 times a month in 2019, with an estimated loss of € 2.43 billion to the creative sector.⁹

1.3 The EAO Study and its relevance in the EU Sports Broadcasting Sector

Recently, the European Audiovisual Observatory (“EAO”) collaborated with the European Commission to specifically highlight the urgent need for discussing the national remedies in place against online piracy of sports content in the European Union and the UK. This collaboration led to the conception of the EAO’s report titled “*Mapping Report on national remedies against online piracy of sports content*” (“EU Report”).¹⁰ Given that the aforesaid Report’s key objective is to comprehensively analyse available national remedies against “*online piracy*” of sports content, this study is a welcome step in addressing the broader issue of online piracy for the media and entertainment sector as a whole.

The EU Report is a testament to the European Commission’s acknowledgement of the importance of sports events organisations and their role in financing of sport activities within the Union as also its commitment to “*assess the challenges of sport event organisers in the digital environment, in particular issues related to the illegal online transmissions of sport broadcasts*”. This Report is also a result of the European Parliament’s resolution issued in May 2021 calling the Commission to clarify and adapt existing legislation, including the possibility of issuing injunctions requesting for real-time blocking of access to or removal of unauthorised online content.

The nature of the rights held by organisers, clubs, leagues or broadcasters has a direct impact on their entitlement to take legal action and on the different types of protection that can be granted. Therefore, analysing the remedies becomes important for putting an end to the proliferation of online piracy. To assess the applicability, scope and protection of the remedies available in the EU and UK, this EU Report undertakes a comprehensive analysis into points such as: individual legal framework of each member state, applicability of national rules to audiovisual sports content, remedies applicable and sanctions for infringement. These discussion points have been backed by relevant case law and academic data.

1.4 Challenges faced in the EU juxtaposed with India

⁸https://www.europarl.europa.eu/doceo/document/TA-9-2021-0236_EN.html.

⁹ EU Commission STAFF WORKING DOCUMENT - Counterfeit and Piracy Watch List 2020

¹⁰<https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c>.

Similar to the EU, India has a thriving sports broadcast sector. The market for sports broadcasting rights in India was worth USD 1.1 billion in 2019 and is expected to grow to USD 1.3 billion by 2024.¹¹ However, the sector faces identical challenges in terms of protecting broadcasting rights in the digital space.

Therefore, there is certainly an urgent need for reviewing and ramping up measures to curb online piracy for live sports content as also for other segments of the media and entertainment industry as a whole in India.

The detailed study on remedial measures against online piracy released by the European Commission and the EU Audiovisual Observatory provides a goldmine of data from which certain best practices can be identified in tackling digital piracy. This Note further serves as a clarion call for the sports and the creative sectors to unite forces to advocate for best measures in treating piracy as a common festering disease plaguing the media and entertainment industry in India.

Remedies identified in the EU Report and its Comparative analysis in the Indian context

The EU Report provides for some valuable insights into the current trends regarding types of protection and applicability of such measures available in the case of sports content in the EU. This Report has extensively analysed the commonalities and differences in terms of available national remedies against online piracy of sports content amongst all EU member states including the UK. Particular emphasis has been placed on the functionality of the following remedies:

1. Notice Take-down procedure;
2. Permanent and interim injunctions;
3. Administrative remedies;
4. Voluntary cooperation mechanisms;
5. Alliance with police forces;
6. Copyright protection technology.

The aforesaid remedies have been discussed in the following paragraphs while drawing appropriate comparisons to their scope and applicability in the Indian scenario.

A. Notice and take-down procedures (“NTD”)

Notice and takedown is a process whereby rights holders require online hosts to expeditiously remove or disable access to hosted content that is notified as being infringing in nature.

EU Perspective

¹¹Media Partners Asia - ASIA PACIFIC SPORTS MEDIA 2020 Report.

NTD procedures are enforced amongst EU member states by virtue of statutory provisions or, alternatively, have been identified and developed through case law in national courts. Members which developed their NTD procedures via case law have further relied on Court opinion for the requirements to be satisfied for a “Notice”.

While the requirements of a ‘Notice’ differ amongst various member states, generally, such a Notice includes exact identification of the content through an indication of relevant URLs.

For example, the Courts in Belgium require compulsory suspension or restriction of access to the flagged content unless an ISP establishes its legality within three business days.

Estonia, Greece, Italy, Lithuania, Spain, etc. have implemented an administrative procedure. For instance, in Spain, the lack of a response from the ISP to a properly sent notice would entail the involvement of their ‘Intellectual Property Commission’

Estonia, on the other hand, has a procedure whereby the rightsholder approaches the Estonian Copyright Protection Organisation to contact an ISP for removal of illegal content within a deadline set by the said administrative authority.

As observed from the examples stated above, the entitlement to submit the necessary notice can lie with the rightsholder, the appropriate administrative authority or even with interested third parties.

Further, it is important to note that the new Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive) puts an obligation on online content service providers to expeditiously disable access or remove the unauthorised content on being notified and additionally, make their best efforts to prevent the future uploading of such content.

Indian Perspective

A rightsholder/copyright owner or exclusive licensee is required under Section 52(1)(c) of the Copyright Act, 1957, to issue a notice to the intermediary on whose platform the infringed content is accessible. Further, Rule 75 of the Copyright Rules, 2013, sets out the essentials of such notice and its procedure. The window for taking down such content is set at 36 hours; however, the intermediary is not obliged to refrain from facilitating such access for upto 21 days from the receipt of such complaint unless an order from the competent court is served to that effect.

Further, Section 79 of the Information Technology Act, 2000, provides “safe harbour” provision that protects intermediaries from liability if they prove a lack of personal knowledge. Further, Rule 3 of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, provides for due diligence by intermediaries and a grievance redressal mechanism. Under Rule 3(2) of the aforesaid Rules, the intermediary is liable to acknowledge the complaint within 24 hours and dispose off such complaints within a period of 15 days from the date of receiving any notice from a complainant.

Comments

The existing notice and takedown mechanism prevailing in India is not an adequate remedy for rights holders. Rightsowners have to approach the Courts in order to have the infringing content taken down permanently. Further, once the content is taken down, there is no mechanism to

ensure that such content does not come up again. This leads to a watered-down system that acts as no real deterrent for further infringement. Implementation of a meaningful and robust content removal process is required to ensure that infringing content does not reappear on the same service once it is taken down, thereby putting an end to the 'whack-a-mole' era of UGC services. Therefore, the introduction of a “notice-and-staydown” mechanism as part of the existing safe harbour regime is crucial.

B. Permanent and interim injunctions

Injunctions are a commonly used remedy against third party infringements and have been covered widely by different legal instruments in the EU. These include Article 8(3) of the InfoSoc Directive as also Articles 9 and 11 of IPRED wherein Article 9 additionally provides for interlocutory injunctions applicable on a provisional basis. Depending on the stage of legal proceedings, injunctions may be permanent or interim. Whereas permanent injunctions are issued after the conclusion of a case, interim injunctions can be issued subject to certain pre-conditions. It is pertinent to note that certain jurisdictions do not require any proof of urgency to be established before issuing interim orders for injunction. Yet another urgency measure, albeit exceptionally permitted, includes *ex parte* proceedings¹² requiring only the furnishing of prima facie evidence.

Broadly, there are four types of injunctions as discussed hereunder:

a. Removal or blocking injunctions

These are injunctions that require intermediaries (usually ISPs) to block or disable access to infringing content made available through any online platform by putting appropriate technical measures in place.

Most EU member states don't require a joinder of parties in a lawsuit (i.e.) an ISP can be sued without involving the direct copyright infringer.

These injunctions are subject to the principle of proportionality and it is to be noted that they do not have a negative impact on conflicting rights such as the freedom of speech and the freedom to conduct business. In this context, the *FAPL v. BT* case (UK)¹³ provides some relevant insights:

- Injunction orders do not impair an ISP's freedom to conduct business insofar as the order doesn't require the defendants to acquire new technology or cease provision of services generally;
- Organisers of an event and licensees have a legitimate interest in curtailing copyright infringement;
- There exists a public interest in combating infringements of the rights of event organisers and licensees of audio-visual recordings owing to the role they play in supporting sports; and

¹²"ex parte" refers to an instance wherein a decree is passed in the absence of a defendant.

¹³FA Premier League v BT [2017] EWHC 480 (Ch): <https://www.bailii.org/ew/cases/EWHC/Ch/2017/480.html>

- The freedom of internet users to “impart and receive” information does not extend to engaging in copyright infringement.

While impressing upon the onus of the ISPs to implement the blocking orders, the French Court of Cassation has even concluded¹⁴ that the E-Commerce Directive and the InfoSoc Directive do not preclude the cost of these measures being borne by ISPs. This is because these access and hosting providers are “*legally compelled to contribute to the fight against illegal content and, more specifically, against infringement of copyright and related, if these intermediaries are in the best position to put an end to these infringements*”.

Indian Perspective: Section 55 of the Copyright Act, 1957, provides for interlocutory injunctions as a civil remedy subject to fulfilment of three conditions: existence of a prima facie case;¹⁵ balance of convenience;¹⁶ and threat or existence of irreparable injury¹⁷ to the rightsholder.

Generally, court ordered interim and permanent injunctions in India function much in the same way as they operate in EU member states.

b. Dynamic injunctions

Dynamic injunctions are flexible orders that can be issued in cases where, materially, the same website becomes available immediately after issuing the injunction albeit with a different IP address or URL. These injunction orders are drafted in a way that allows for the same order to be extended to new IP addresses or URLs without the need for a new judicial procedure.¹⁸

The flexible nature of dynamic injunction orders coupled with the reduced judicial intervention they require make them suitable for cases involving recurring infringements.

EU Perspective

The CJEU in the landmark *Telekabel* case stated that fundamental rights recognised by EU law do not preclude injunctions that prohibit ISPs from allowing its customers access to websites that host unauthorised subject-matter.

The *Mc Fadden* case, also decided by the CJEU, reinstated those dynamic injunctions are compatible with EU law.¹⁹

In Spain, the Commercial Court of Madrid ordered nine ISPs to block illegal access to multiple web pages that made soccer matches available for public broadcasts and retransmissions

¹⁴ Court of Cassation, 6 July 2017, No. 909.

https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/909_6_37275.html.

¹⁵a case in its initial stage where the evidence produced is sufficient to enable a decision or verdict to be made unless the evidence is rebutted.

¹⁶The court must be satisfied that the comparative mischief, hardship or the inconvenience which is likely to be caused to the applicant by refusing injunction will be greater than that which is likely to be caused to the opposite party by granting it. *Yogesh Agarwal v. Sri. Rajendra Goyel*, 2014(3) ARC 427.

¹⁷‘Irreparable injury’ means such injury which cannot be adequately remedied by damages

¹⁸Communication from the Commission to the Institutions on Guidance on certain aspects of Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property rights, <https://ec.europa.eu/docsroom/documents/26582>.

¹⁹*Tobias Mc Fadden v. Sony Music Entertainment Germany GmbH*, C-484/14, EU:C:2016:689 (Mc Fadden), paragraph 79.

without authorisation from the rightsholders. The blocking order involved 44 websites to be blocked by the access providers within 72 hours. Additionally, ISPs were ordered to block new websites, with different domain names, within three hours of the notification by the claimant party which sent the ISPs an updated list of URLs, DNS, IP addresses and via access in HTTP and HTTPs protocols to be blocked. The claimant had to be notified about the exact time at which these newly added resources were blocked. Interesting to note is that this order was extended to cover three seasons of La Liga.

Going a step further is Sweden wherein the adopted approach as developed via case law is that dynamic injunctions are extended to “services which have special characteristics”. This means that orders are not limited to a list of URLs notified before the trial or in a subsequent period fixed by the court. Instead, the aim is to extend the orders enough to ensure that access is prevented to all locations whose sole purpose is to enable illegal file-sharing.

Lastly but significantly, France’s new law regulating access to cultural works empowers ARCOM (a new administrative authority) to extend a court’s dynamic blocking order to related domain names and mirror sites.

Indian Perspective

The High Court of Delhi has been at the forefront in the use of dynamic injunction orders, the first time being in April 10, 2019 while deciding *UTV Software Communication Ltd v 1337X.TO and Ors.* Subsequently, the Delhi High Court relied on the aforesaid order to dictate similar directions while deciding five other batches of petitions. India, therefore, currently has a court-based administrative process for rightsholders to seek approval for dynamic injunctions. However, while securing such orders, the onus is on the rightsholder to prove that the site sought to be blocked is a “Flagrantly Infringing Online Location” based on factors such as following:

- Primary purpose of the website is to commit/facilitate infringement;
- Degree of such flagrancy is high;
- Whether the detail of the registrant is masked and no personal or traceable detail is available either of the Registrant or of the user;
- Silence or inaction by such a website after receipt of take down notices pertaining to copyright infringement;
- Whether the online location makes available or contains directories, indexes or categories of the means to infringe, or facilitate an infringement of, copyright;
- Whether the owner or operator of the online location demonstrates a disregard for copyright generally;
- Whether access to the online location has been disabled by orders from any court of another country or territory on the ground of or related to copyright infringement;
- Whether the website contains guides or instructions to circumvent measures, or any order of any court, that disables access to the website on the ground of or related to copyright infringement; and

- Volume of traffic at or frequency of access to the website.

Comments

The development of dynamic injunctions in India is still at a relatively nascent stage. Therefore, the direction that the judiciary and the legislature take to develop its implementation would be crucial in proving its potential as an effective remedy as also its capability to meaningfully tackle piracy.

Introducing an administrative authority to extend Court orders to facilitate the application of dynamic injunctions is an effective measure to tackle mirror websites. This saves time and reduces burden on the courts. Such administrative action can be taken a step further for the identification of similar rogue websites/flagrantly infringing online locations for similar action.

c. Live blocking injunctions

Live blocking injunctions consist of an order aimed at blocking the illegal broadcasting of a real-time event. It is pertinent to mention herein that Courts in the UK have widely applied such injunctions.

An important case to understand the applicability of live blocking injunctions is UK's precedent of *FAPL v. BT*. The Court, in this case, opined that two technological aspects could significantly and positively affect the application of live blocking orders:

- i) existence of video monitoring technologies that allows the identification of infringing streams with a very high level of accuracy close to the real-time event; and
- ii) On the ISPs' side, blocking systems allow them to block and unblock IP addresses during the course of an event by means of what is often automated technology.

In the above stated case, blocking orders were not addressed to specific websites, but covered specific servers from which the illegal activity was conducted and the corresponding IP addresses. The courts also stated that the live blocking orders were not unduly complicated or costly and that no other equally effective but less expensive measure could be used. Irish courts have followed the same reasoning as the UK courts in the FAPL cases.

In 2018, in a Dutch case involving the ISP 'Ecatel', said ISP was required to block a service no later than 30 minutes after receipt of a notice with an electronic report containing the list of websites to be blocked, and to keep it blocked for the duration of the match. The Court further warned that a failure to comply would lead to a penalty of EUR 15,00,000.

It is important to note that the European Parliament placed a Report before the European Commission on challenges to sports events' organisers in 2021's digital environment. This Report necessitated speedy procedures for live broadcasting sports events by proposing to modify the expression "acts expeditiously" under Article 14 of the E-Commerce Directive to mean "immediately" or "as fast as possible" and "in any event no later than within 30 minutes of the receipt of the notification from rights holders", without the necessity of any court order.

Furthermore, the European Parliament asked for a modification of the IPRED to introduce the possibility of relevant judicial or administrative authorities to issue injunctions that disable real-time access to, or removal of, illegal online live sport events content. The use of temporary blocking injunctions limited to the duration of the live broadcast was also sought.

Indian Perspective

It would not be farfetched to say that the real value of sports lies in its live nature. In the case of *ESPN Star Sports v. Global Broadcast News Ltd.*, the Delhi High Court opined that copyright and broadcast reproduction rights were independent of each other under Section 37 of the Indian Copyright Act. Further, it stated that since the live telecast of a sporting event was nothing but an audio-visual recording, the said element could be protected as a cinematograph film under Section 13(b) of the Act.

Although there is no precedent that discusses the copyrightability of live sport telecasts in India, the Delhi High Court has shown its inclination to protect live sports telecasts (as discussed in ESPN case above). Therefore, the Indian copyright law and judicial precedents offer relatively limited protection to sports webcasters and organisers as compared to their EU counterparts (e.g. U.K.) in respect of issuing the remedy of live-injunctions as a matter of course.

Comments

Introduction of live injunctions as a matter of course and moderated by relevant administrative bodies would go a long way in ensuring that unlawful broadcasting and circulation of multimillion-dollar sports events is stopped. Such a measure would further redirect consumers towards legitimate sites screening such live-events.

d. De-indexing injunctions

De-indexing requires the search engine to remove from its index of search results those results which lead to pages containing illegal copyrighted content. These injunctions are aimed at de-indexing websites and platforms from search results which illegally broadcast sports events or which host hyperlinks redirecting users to illegal broadcast sports events. This kind of injunction is usually based on similar requirements to those provided for blocking injunctions and is conditioned by reasonableness and appropriateness of the de-indexing.

Comment

This is still a relatively new form of injunction and has not yet been widely applied by EU member states or India. However, having de-indexing measures in place under certain determined set circumstances/within a provided criteria could further redirect consumer behaviour and contribute to the existing anti-piracy infrastructure.

C. Administrative remedies to address the issue of online piracy

Apart from enforcement of copyrights via judicial route, online piracy can be effectively curtailed through administrative copyright enforcement. Administrative copyright enforcement can, thus, be introduced by establishing specific administrative bodies competent to enforce online copyright infringement.

EU Perspective

In the EU, countries such as Greece, Italy, Lithuania, Spain and France have entrusted administrative authorities with the task of addressing IP infringement.

In France, the High Authority for the Distribution of Works and the Protection of Rights on the Internet (HADOPI) is responsible for the administrative copyright enforcement. It is an independent public authority in charge of fighting online IP infringement. The mission of this organization is to promote the development of online legal music offers; observe the legal and illegal use of works protected by copyright or related rights; protect works from IP infringements online; and regulate and monitor technical measures used for IP protection. It is primarily entrusted with addressing internet users with appropriate warnings. It also has the power to impose fines in case the holder of an internet subscription has failed to prevent usage of his services for IP infringement purposes despite warnings, after referring such matters to the judicial authority.

In January 2022, a new audiovisual regulator, “the Audiovisual and Digital Communication Regulatory Authority” (ARCOM) has been constituted. ARCOM is combination of the existing HADOPI and CSA (Conseil supérieur de l’audiovisuel), a French public authority in charge of protecting freedom of expression in the interest of the public. This new regulator primarily aims at combating audio-visual piracy on the internet, specifically illegal videos, and improving the notice and take-down process. ARCOM will have additional powers to identify infringing websites and notify intermediaries, using data transmitted by the rightsholders, for the purposes of blocking access, to request search engines, directories and other indexing services to de-index infringing websites and to extend courts’ dynamic blocking orders to related domain names and mirror sites.

In Greece, the Committee for the Notification of Copyright and Related Rights Infringement (EDPPI) is responsible for the administrative copyright enforcement. EDPI is a committee established under responsible for the Hellenic Copyright Organisation (HCO), an entity placed under the supervision of the Ministry of Culture and Sports. It is responsible for examining complaints of online IP infringements, provided that the same case is not pending before a court. EDPPI has the power to award dynamic injunctions and impose fine in case of non-compliance of the injunction order by the ISPs.

In Italy, online copyright enforcement falls under an independent public regulatory authority called the Italian Communications Authority (AGCOM). It is responsible for the protection and public enforcement of copyright and related rights online. AGCOM is empowered to order ISPs to remove illegal content or disable access to websites hosting such content, within seven days from receipt of a complaint filed by rightsholders or their representatives. In the case of failure to comply with the administrative orders passed, AGCOM has to power to impose administrative fine as well. In addition, it also has the power to conduct fast-track proceedings in the case of massive scale IP infringements and/or repeated infringements. For example, pursuant to a blocking request filed by LaLiga in between October 2020 and January 2021, AGCOM issued a significant blocking order against five illegal websites, which generated a monthly traffic of about 1 million visits in Italy.

In Lithuania, online copyright enforcement falls under an independent body called the Radio and Television Commission of Lithuania (RTCL). It is an independent body accountable to the Seimas (Parliament), which regulates and supervises activities of audiovisual media services and video-sharing platforms. RTCL has the power to grant extrajudicial blocking injunctions for online IP infringements as specified in the Law on Copyright and Related Rights. This

blocking injunction is in the form of elimination or removal of access to information infringing copyright, related rights or sui generis rights.

In Spain, the Second Section of the Commission on Intellectual Property, an administrative body attached to the Ministry of Culture and Sports (hereinafter the Second Section) is in charge of safeguarding intellectual property. The primary function of the Second Section is to restore legality in the digital field with respect to cases of IP infringement. It has the power to issue technical measures required of the infringing provider to prevent resumption of infringement as well as removal or blocking orders against two types of providers. Namely, 1) those Information Society Services (ISS) providers that infringe IP rights on a large scale; and 2) those ISS providers that infringe IP rights by facilitating the description or location of works and services that are offered without authorisation, through an active and non-neutral activity. For example, in the period between 2012 and 2020, the Second Section received a total of 671 complaints from rightsholders, 300 of which were ordered to block or remove infringing content on the Spanish territory.

Indian Perspective

Currently, there exists no administrative body to specifically deal with protection of intellectual properties and IP enforcement.

Comments

To ensure a robust anti-piracy mechanism and IP enforcement in cases where the speedy remedies are essential, it is imperative to urge the government to establish an administrative body. This administrative body would primarily deal with the enforcement of copyrights due to challenges arising from online piracy and IP infringement.

D. Alliance with police forces in addressing IP infringement

Alliance between police departments, rightsholders, stakeholder associations and public bodies is an effective measure in IP enforcement. The role played by law enforcement authorities/police may vary depending on the domestic laws, the structure of the public authorities and institutions, as well as on existing legal relationship between all the different bodies involved in the field of IP protection. For instance, Police authorities may be involved in different phases, namely, taking complaints from the harmed parties, i.e. rightsholders and end-users, initiating proceedings, conducting investigations and execution of court orders.

EU Perspective

In the EU, police forces in charge of IP enforcement operate under a variety of structures that vary from one country to another.

For example, in the UK, the British Police Intellectual Property Crime Unit (PIPCU) is responsible for enforcement of IP crimes. PIPCU is a department of the City of London Police. It was established in 2013 and was granted special investigative powers to deter serious and organised IP crime in the UK. It works in close collaboration with the Federation Against Copyright Theft (FACT), aimed at both illegal providers and consumers.

The role played by law enforcement authorities/ police in the EU also varies from country to country. For example, in Belgium, pursuant to a decision by the Supreme Court, the role of the regional police and the Belgian Federal Computer Crime Unit (FCCU) was to determine a list of domain names to block, to tackle the infringing activities of The Pirate Bay.

While, in Lithuania, the police and public prosecution bodies extend to issuing of injunction orders and impose sanctions in case of IP infringements.

Indian Perspective

Currently, in India, the Maharashtra Intellectual Property Crime Unit (MIPCU) and the Telangana Intellectual Property Crime Unit (TIPCU) have been set up to deal with complaints on online piracy. MIPCU is a unit attached to the Maharashtra Cyber Cell, a nodal agency of cyber police. It has a mandate to protect IP rights on digital platforms and address digital IP issues.

Comments

Digital piracy causes a significant loss of revenues ultimately hampering the investments made by rights holders. Therefore, it is essential to support the establishment of departments to enforce intellectual property rights similar to the Maharashtra Intellectual Property Cyber Unit (MIPCU)²⁰ and Telangana Intellectual Property Cyber Unit (TIPCU) model in all states and Union Territories.

E. Copyright protection technology

Online piracy relies heavily on a large range of technologies. Therefore, it is necessary for rightsholders to adopt various preventive strategies which involves the use of sophisticated technologies aimed at protecting IP rights such as encryption, monitoring, content watermarking, geolocation, and content take-down technologies to elaborate,

1. Encryption is a process by which rightsholders or broadcasters encode information so that only the intended public can view it, i.e. subscribers of the services or purchasers of the single transmitted event. For example, the British Telecom (BT) in furtherance to combat the piracy of its premium subscription-based content initiated a partnership with leading video infrastructure company, ATEME. This strategy included the BT's use of ATEME's sophisticated encryption techniques to protect satellite uplinked content.²¹
2. Watermarking is an invisible digital signature which helps rightsholders identify the source of content for the purpose of taking effective anti-piracy actions. For example, in 2012, in order to fight against the growing online sports piracy, the Premier League started adding a watermark logo to its broadcasts.²²

²⁰Maharashtra Intellectual Property Crime Unit (MIPCU) is a public-private initiative, set up under the aegis of Maharashtra Cyber, which engages with Anti-Piracy groups, law enforcement agencies (Indian and global) for integrated tactical response against IP related crimes.

²¹<https://newsroom.bt.com/bt-takes-action-to-combat-tv-broadcasting-piracy/>.

²² In 2012, in order to fight against the escalating online piracy of its games, the Premier League started adding a watermark logo to its broadcasts.

3. Fingerprinting uses special algorithms to extract and compress characteristic components of a video to help track illegal copies by comparing matching fingerprints.²³For example, since 2017, LaLiga has submitted over 600 000 claims of illegal content every year through Content ID.²⁴

Technology protection measures is as important as other remedies. The main aim of these technologies is to ensure preventive measures are taken in order to avoid digital piracy.

The Way Forward

This EU Report marks the first time that a comparative mapping of legal remedies in case of piracy has been conducted in such comprehensive manner by covering national frameworks of all 27 EU member states and the UK. Needless to say, it is indicative of the seriousness and urgency required to tackle the growing scourge of online piracy. The remedies pertaining to copyrighted content which have been extensively discussed and analysed by the European Audiovisual Observatory are not only confined to live sports broadcast industry but have similar application to all other segments of the media & entertainment industry.

Therefore, an entente is the need of the hour for the creative community and the sports community alongside all stakeholders to come together to fight the piracy menace abetted by technology. With growth in TV households, smart phone penetration and cheap data, the problem is going to get exacerbated. With content creation costs rising and an estimated 150 percentage²⁵ hike in the sports broadcast rights to be seen in the upcoming IPL media rights auction, checks if not put in place right now will have grave economic consequences not only for the rights holders but also for the national exchequer and sports federations. But with adequate checks in place, broadcast revenues for smaller sports and regional content will see an exponential increase which will super charge this sports and regional content to the national level. Once that is achieved then the world is a stage for national sports like kabaddi and regional content across India. Cricket and Bollywood are the perfect examples showcasing India's economic power and soft power on the global stage. Therefore, taking the EU Report as the guiding spirit, we urge icons from the sports and creative sector in India to champion high standards of IP enforcement and best practices in order to curb the menace of growing digital piracy.

²³EUIPO, Automated Content Recognition: Discussion Paper – Phase 1 “Existing technologies and their impact on IP”, November 2020.

²⁴ 7 LaLiga, “LaLiga incorporates YouTube's Content ID tool into anti-piracy campaign”, 20 May 2017.

²⁵ <https://www.news18.com/cricketnext/news/bcci-to-hold-e-auction-for-ipl-media-rights-in-february-dates-likely-to-coincide-with-mega-auction-4718879.html>.