

Copyright and Related Rights Law

Dr. Rohan Cherian Thomas

Faculty of Law

NALSAR University of Law, Hyderabad

WEEK - 08

LECTURE – 36

Statutory Definitions of Broadcasting

Welcome back to this course on copyright and related rights law. In the previous weeks, we have understood what works are, what authors' rights are, what performance is, what performers' rights are, what originality is, and how there can be unoriginal works in which copyright can still subsist. This week, we will look at certain other rights that are found within the Copyright Act. These are broadcasters' rights, resale royalty rights, and the right to receive royalties. In the first portion of this week's study, we will focus on broadcasters' rights. Before we look at what broadcasters' rights are in detail, we must first understand how broadcasting fits within the sphere of what copyright and related rights seek to protect.

To do this, let us look at the definition of broadcasting and how it is considered under the UK Copyright Act, and we will then compare it with how the Indian Copyright Act defines broadcasting. Let us first understand what broadcasting is. When we hear the term "on air," our minds immediately connect to radio broadcasting or even television broadcasting. We are used to hearing radio stations on FM.

When we are driving and when we are at home. The communication through radio or television is something that is often referred to as broadcasting. Broadcast is defined as transmitting a program or some information by radio or television. What does the term "transmit" mean? Transmit means to send out a signal either by radio waves or through a wire. In other words, signals are sent from one location to another, from a transmitter to a receiver.

In terms of geography, we can understand this as being within a particular country. We can also understand this as being located in different countries. We can imagine the transmitter to effectively be one entity and the recipients to be millions of recipients. What it also tells us is that if an entity is going to be responsible for sending out a signal that is going to be received by numerous people, There must be a certain kind of

transmission quality and reception quality that must be maintained. In other words, the technological equipment that is being used by the transmitter and the connection that is present with respect to the transmission of that particular signal must also be secure.

This is so because to acquire equipment, to maintain equipment, to provide programs that are capable of being consumed by the receiving public, and not just being capable of being consumed - A quality being maintained with respect to such consumption requires a huge amount of investment. Can we then connect broadcasting and the act of broadcasting with the responsibility of producers of films and sound recordings? Why are we considering such a connection? Because, in terms of acquiring equipment, maintaining equipment, and ensuring transmission, there isn't any creative effort that we can see. But one thing is certain: this is not just any signal. This is a signal which is carrying content. When we understood the basic meaning of broadcast, we considered how we connected it with the content that we hear on the radio or that we see on television.

Therefore, the signal is a medium for carrying the content. You would realize that the content itself has its own author and its own rights holder. Therefore, we are saying that the signal and the content can be separated. The content itself is protected under copyright. And the signal, the transmission of which requires its own investment, can be the subject of piracy.

And therefore, the signal itself, which is carrying the content that is being brought within the ambit of the Copyright Act. But you would ask, does broadcasting always include content that is copyrighted? For instance, we have all watched some sport on TV at some point; say you are watching a cricket match. A cricket match by itself doesn't involve any work. It would not be right to say that a cricket match is based on a dramatic work. What happens on the cricket field is completely unpredictable.

Surely there is a plan that the coaches have in mind, and the players have in mind when they step out onto the field. But a lot of what happens on the field is based on instinct. It's unpredictable. And therefore, we cannot say that there is any work connected to such a match. We cannot say that such kinds of sports, such as cricket, are considered under performer's rights because of their very unpredictable nature.

Therefore, when such a broadcast, say of a cricket match, is made, then there is no copyrighted content; there are no performers' rights connected. But does it still contain some content? It is. Therefore, we can say that broadcasting can be of an item that is not a work and that is not a performance. But could it be? It could. With that foundational understanding, let us now look at the UK Copyright Act.

The UK Copyright Act in Section 6 states, "In this part, a broadcast means an electronic transmission of visual images, sounds, or other information which is transmitted for

simultaneous reception by members of the public and is capable of being lawfully received by them." What we understand is that a broadcast is a transmission. This transmission can consist of visual images, sounds, or other information, and this information is transmitted for simultaneous reception, meaning that it is capable of being simultaneously received by members of the public. Now you will realize that this means that the point of transmission is that it is capable of being simultaneously received. It might not be that it is actually seen or heard.

What are we saying here? Considering that all of us have televisions at home. If a broadcast has been made that is capable of being received by all of us on our television, But all of us choose not to turn on our television at that point, or we are simply watching something else. It doesn't mean that no broadcasts have happened. Broadcast simply means that transmission has happened for the purpose of simultaneous reception. Whether it is actually being received in the sense of seeing the visual image or hearing the sound is irrelevant.

You can see Clause B. It says - it is transmitted at a time determined solely by the person making the transmission for presentation to members of the public, and which is not accepted by subsection 1A, and references to broadcasting shall be construed accordingly. The control over the transmission with respect to time is important. The time of reception is not something that is chosen individually by the consumer; rather, it is something that is chosen by the person making the transmission. We can see that what section 6 is saying is that the person who is making the transmission is in complete control of the signal that is being transmitted.

In other words, this person has taken the responsibility for sending out such a signal, for ensuring that the equipment that needs to be present for such a transmission is maintained, there is a quality to the transmission, all of these considerations are present. A significant exception to broadcasting that we find under the UK Act is that of internet transmissions. What this provision says is that excepted from the definition of broadcast, is any internet transmission, unless it is a transmission taking place simultaneously on the internet and by other means, a concurrent transmission of a live event, or a transmission of recorded moving images or sounds forming part, of a program service offered by the person responsible for making the transmission, being a service in which programs are transmitted at scheduled times determined by that person. What we are seeing here is that internet transmission will be considered broadcasting only if the control over such transmission and such reception is effectively with the broadcaster. The point of simultaneous reception is that it is one of the means over the internet, as through other means; so, say for instance, if a cricket match were to be streamed on the internet at the same time as it is being showcased on television.

Then such a transmission is broadcast. A concurrent transmission of a live event, which is also satisfied in terms of a cricket match and a recorded match, is, for example, the time for the transmission of which is chosen by the broadcaster. Then even such transmissions can be covered under broadcasting. With relation to encrypted transmission, the UK Act says that an encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public. By or with the authority of the person making the transmission or the person providing the contents of the transmission.

It is not just a question of transmitting a signal; it is, as we are understanding, also a very important consideration that these signals are capable of being received. And how would this happen if an encrypted transmission cannot be decoded? Now, why encrypt the transmission at all? We understand that signals can be pirated. Which means that signals themselves can be encrypted. And if decoding equipment is present at the reception site, Therefore, if a kind of equipment that is connected to a television, for example, is present in the homes of users, then the signals being captured would be decoded and showcased on the television. Such types of transmissions are also broadcasting.

The Act then explains who a person making a broadcast or a transmission of a broadcast is. It informs the person transmitting the program whether he has any responsibility for its contents and for any person providing the program who makes the necessary arrangements for its transmission with the person transmitting it. And references in this part to a program in the context of broadcasting refer to any item included in a broadcast. Let us see that the UK Act references two very important terms. One, responsibility; and second, arrangement.

Arrangements here are not in reference to the item itself but rather for the purpose of the transmission. Therefore, we are saying that the broadcaster who is transmitting the signal, who is responsible for it, and who is providing this program to be received by the recipients, Such a person, such a broadcasting organization, a legal person, would be considered a person making a broadcast. You would have noted that in this provision it is very clearly stated that in the context of broadcasting, the reference to "program" is a reference to any item. When it is said that a program is any item, it is understood that it can refer to various things.

It could be work. It could be a performance. It need not be work. It need not be a performance. It could simply be broadcasting information. To watch a match would be towards something that is possibly devoid of any kind of copyrightable material.

And therefore, the broadcaster is simply broadcasting information. But that does not mean that the broadcasting effort, the broadcasting investment, should be something that is not given protection of its own. Let us see a very important grouping of subject matter

that we find in the UK Act. In the UK Act, broadcasting is a subject matter of copyright law.

It is not seen as a related right. So, broadcast is a subject matter of copyright, and how is it grouped? You can see Section 1. Where it says copyright is a property right that subsists in accordance with this part in the following descriptions over original literary, dramatic, musical, or artistic works, sound recordings, films, or broadcasts. In the previous sessions, we have understood that works like literary, dramatic, musical, or artistic works can be grouped because they are creative efforts and therefore they will have to be considered on the anvil of originality. We had also understood that there are those kinds of subject matters that are not original themselves, but because of the effort that goes into creating these works in terms of the investment, in terms of the risk and the fact that if not for such an investment and such a risk the work would not be made available to the public at large, A serious benefit would be disregarded in terms of the public. Therefore, the Copyright Act also provides protection to sound recordings and films, and similarly, under the UK Copyright Act, broadcasts are included in the grouping they have made with sound recordings and films.

Therefore, we understood that in terms of unoriginal works, a fact is not original. Why? Because an author claiming copyright is not the originator of the fact. Therefore, when a broadcaster is broadcasting a match, the match itself is not originating from the broadcaster. The broadcaster is simply carrying forward that expression. We note that, with respect to literary works and artistic works, the expression is created by the author, but with respect to sound recordings, the expression is simply fixed.

Similarly, broadcasting carries the content, and it is not the expression itself. So if we were to ask the question, "What is the expression in a sound recording?" We had considered that sound recordings were in fact composite works. There are several types of work that are part of a sound recording. Therefore, sound recording is something we understand to be a medium of fixation. We are making this revision to connect how sound recordings and the copyright in sound recordings, or the copyright in films, are similar to the kind of justification for considering broadcasting as a kind of work as well.

Can we now say that broadcasting is the carrying of the work? Is there no creative expression in the broadcasting itself? And the use of the words "responsibility" and "arrangement"—where have we seen this before? Responsibility and the initiative of making a work is something that we have seen with respect to producers, producers of sound recordings and films. I am sure now you are able to clearly connect how broadcasting, and the justification for copyright in broadcasting are similar to the justification of copyright in sound recordings, and films. With that, let us now come to our understanding of broadcasting within the Indian Copyright Act. Let us look at the definition first. Under section 2, broadcast is referred to as communication to the public

by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds, or visual images, or by wire, and includes a rebroadcast.

Since broadcast means communication to the public, we must see what communication to the public means. But before that, we must understand that unlike the UK, where broadcast is a subject matter of copyright and is a work, under the Indian Copyright Act, there are only six types of works. What are these six types? Literary work, dramatic work, musical work, artistic work, sound recordings, and cinematographic films. Broadcasting is not work in India. Broadcasting is a type of related right in India.

Let us then look at what communication to the public means. It is also defined in section 2; it states that communication to the public means making any work or performance available to be seen, heard, or otherwise enjoyed by the public directly or by any means of display or diffusion other than issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears, or otherwise enjoys the work or performance made available. The explanation reads, for the purposes of this clause, communication through satellite or cable, or by any other means of simultaneous communication to more than one household or place of residence, including the residential rooms of any hotel or hostel, shall be deemed to be communication to the public. Therefore, as we have seen under the UK Act, a lot of commonality is something that we can observe with respect to understanding broadcasting in India as well. The consideration of why a broadcast should be brought within the ambit of copyright and its connection to copyrightable content is something that we can see in communication to the public.

But instead of saying any item that can be communicated as in the UK Copyright Act. In the Indian Copyright Act, it states that communication to the public requires making any work or performance available to be seen, heard, or otherwise enjoyed. With that, hopefully, we have a foundational understanding of broadcasting. In the next session, we will take a look at what the broadcast reproduction right is.

Thank you for joining me. See you all in the next session. Thank you.