



Toward a Broadcasting Treaty dealing with Signal Piracy

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What is signal piracy?

- When you hear the word “Piracy” or “Pirate” the image that may first come to mind may be a...



- Signal piracy is not that kind of piracy, but it still involves looting...in this case the unauthorised interception of Free to-air or Pay TV programme-carrying signals for private or commercial benefit, and in doing so stealing the intellectual property of the copyrighted works contained in the signal.

- Signal Piracy in Africa can take many forms, amongst others there are...
 - Unauthorised simultaneous or deferred re-transmission of the encrypted or un-encrypted signal on other platforms on a commercial basis;
 - Selling, advertising, possessing or using illicit devices to circumvent encryption measures to access TV services without permission or payment;
 - Use of TV services without being a subscriber of the service provider (unauthorised connection to the network) or viewing free-to-view TV services that shouldn't be available for your geographic area .

Why is it done?

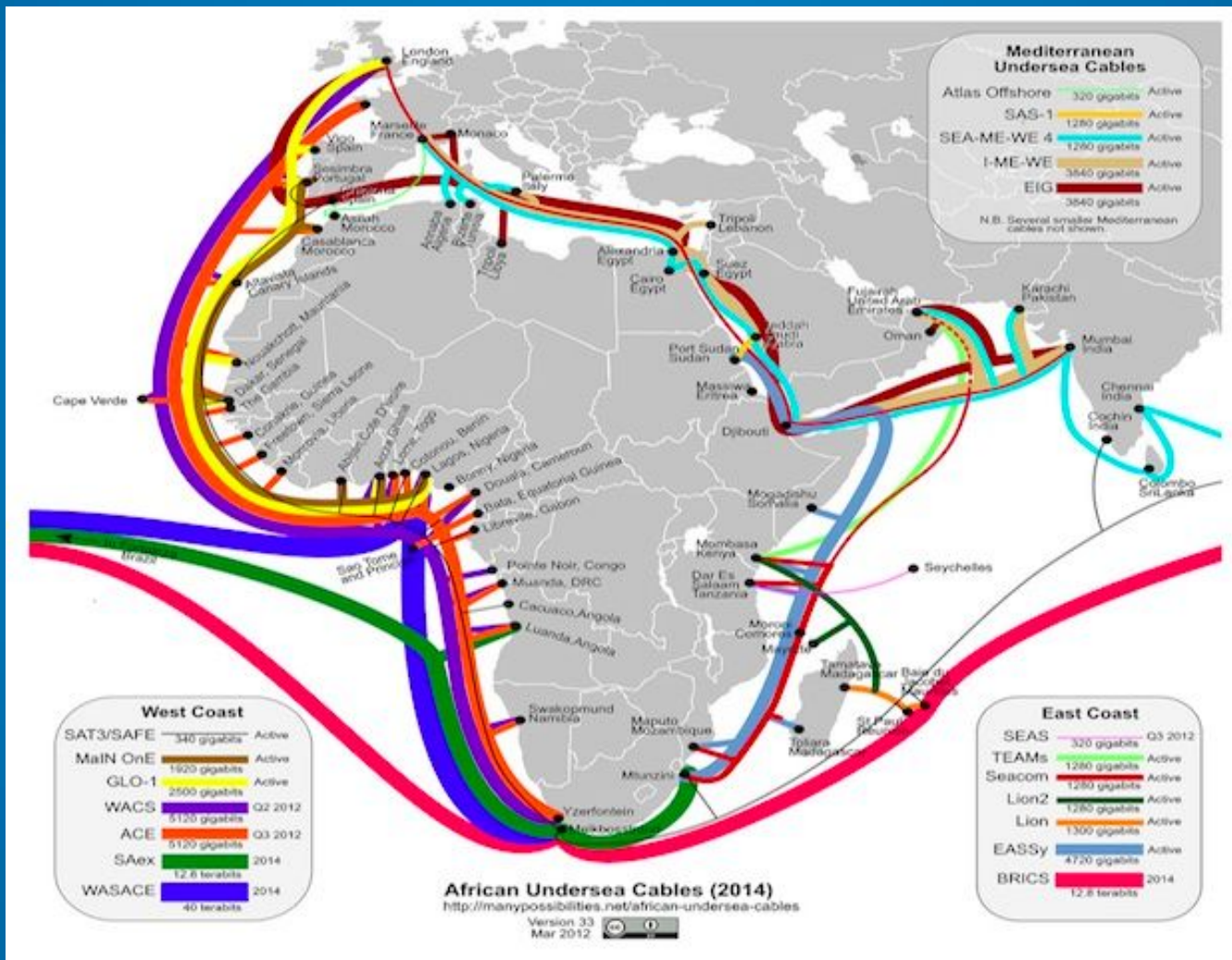
- It is important to keep in mind is that there is almost always a commercial motive behind signal piracy – it is not accidental!
- There is always another broadcaster, cable operator, website operator, or a device manufacturer somewhere who makes money, living off the investment and efforts and creativity of legitimate broadcasters and content rights holders.

Broadcasting is changing





Internet streaming has become more accessible in Africa



- TV content, whether on free-to-air or subscription platforms, is not free. Artists, performers, writers and producers of TV content earn their living by being creative and charging TV channels for the right to show their content. These fees are known as copyright fees.
- TV channels recoup this investment in TV content either through advertising or a mix of advertising and subscription. In some cases TV channels own the copyright to the TV content and earn further revenue by selling the rights to broadcast the content to TV channels in other countries.
- The revenue that is raised around TV content also covers the day-to-day cost of operating, maintaining and upgrading the network over which this content is made available

Costs of Signal Piracy (2)

- When broadcasting signals are pirated it results in revenue losses across the entire TV content distribution chain from the content producers to the TV platform companies. The eBotswana case in 2011/12 illustrated the damages in loss of advertising that can occur to a free-to-air broadcaster when pirate devices enable access to free-to-air broadcasts from a neighbouring country.
- The irony in this case of course is that damages were not awarded against the pirates, but against the state owned signal distributor in South Africa for failing to update its encryption once it was aware it had been hacked in 2009.

Costs of Signal Piracy (3)

- The pirated satellite signal of the Sentech VIVID platform enabled the viewing of SABC 1, 2, 3 and etv in neighbouring Southern African states where they were not licensed. This not only resulted in lost advertising revenue for eBotswana, it also harmed local content production.
- The SA FTA broadcasters and production companies were also losing revenue as it was not possible to sell rights to popular shows such as Generations, Muvhango, Isidingo and Rhythm City to broadcasters in these countries where they were already being viewed.

Broader impacts on Countries

- Piracy damages national objectives, amongst others:
 - Investment Environment – investors are reluctant to invest in countries if they cannot earn a decent return because of competition from pirates who have no costs.
 - Creative Environment – piracy impairs the development of indigenous content production and job creation in the sector.
 - Rule of Law – Pirates are usually not licensed and may be broadcasting content that has not been authorised for distribution in that country (cross-border piracy). This means they are not in line with most regulations on broadcasting and in some cases are even enabling access to porn channels which are banned in some countries.
 - Government Finances – Signal pirates don't pay taxes, which can amount in some cases to millions of dollars. That's money that could be going for schools, housing, health care or even encouraging further growth in the communications sector.
 - Growing the sector - Broadcasters in developing countries are harmed the most by piracy as they don't have the economies of scale of international broadcasting organisations

- Countries can put in place strong enforcement measures to deal with signal piracy in their own territories.
- However, the cross-border nature of signal piracy requires that countries need to agree at international level to accord broadcasters in other countries treatment no less favourable than they accord their own broadcasters on matters relating to signal piracy.
- Recognising that there is a problem and that the solution to that problem requires international co-operation is the reason for the focus at WIPO since 1998 on developing a Treaty for the Protection of Broadcasting Organisations.

Progress on Draft Treaty

- The SCCR 30 meeting held from 29 June to 3 July this year made substantial progress and requested the Chair to prepare for the next session a consolidated text with respect to definitions, object of protection and rights to be granted.
- In October 2015, WIPO GA directed SCCR to continue its work and that the topic of protection of broadcasting organizations will be maintained on the agenda of the 31st session of the SCCR

Progress on Draft Treaty (2)

- To make it possible for GA 2016 to convene the DipCon for the Broadcasting Treaty in 2017, work at the SCCR on the Draft Treaty for protection of Broadcasting needs to continue to be part of a balanced work programme that includes exceptions and limitations for libraries and archives; and exceptions and limitations for education and research institutions and for persons with disabilities.
- These are important issues and members need to consider putting in place a roadmap that will deliver appropriate legal instruments timeously on these issues

Key element going forward

- Broadcasting has changed dramatically over the past few years due to migrating to digital production and signal transmission.
- It now engages in 360 degree commissioning of content to deliver to multiple platforms and different devices. This includes adding features to content such as different language audio tracks and features that benefit people with disabilities such as subtitling and audio description.
- The scope of protection of the Treaty can no longer be limited to broadcasting in the traditional sense. As broadband capacity increases signal theft and retransmission over the internet pose an obvious threat to TV and independent producers revenue .

Scope and object of Protection

- The Chair in his summary for SCCR 30 noted that with the exception of one delegation, there was consensus that effective legal protection needed to be granted to broadcasting organisations to prohibit the unauthorised use of broadcast signals in the course of transmission over any technological platform.
- This is an issue which has been contentious and it is recommended that there should be workshops, as part of the balanced work programme on the 3 issues before SCCR, next year on the Broadcasting Treaty to expedite work on the draft text for SCCR 31 and GA 2016.

- Finalising the Broadcasting Treaty should be treated as urgent, as the threat of signal piracy is increasing and has potential to harm broadcasters in Africa engaged in digital migration and who are bearing the cost of filling multiple channels in the new DTT environment.
- A major threat to revenues of broadcasters as broadband penetration increases is piracy through the internet.
- Whilst its acknowledged that webcasting will be dealt with in another Treaty, piracy of broadcasts on the internet should be dealt with in the Broadcasting Treaty.