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TECHNICAL, LEGAL AND JUDICIAL ASPECTS OF THE ILLEGAL RETRANSMISSION OF LIVE BROADCASTS THROUGH INTERNET STREAMING – EXECUTIVE SUMMARY

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ABSTRACT

This study examines the technical and legal aspects and judicial treatment of live broadcasts illegally transmitted through Internet streaming. First, it scrutinizes the nature of illegally retransmitted live broadcasts and investigates the challenges this presents to broadcasters, event organizers, and the entertainment industry. Second, it investigates whether there is copyright or related rights protection for live content and/or the broadcast separate from the underlying content by explaining the types of copyright and related rights protection found in national systems. Third, it examines the different licenses required for a broadcaster to comply with copyright laws and secure the necessary rights from content owners. Fourth, the study examines the diverse models employed by unauthorized streamers when retransmitting live broadcasts. It highlights how these illegal methods capture and retransmit live content without authorization. It then reviews the legislative and regulatory measures implemented globally to combat illegal live streaming, including current remedies, and assesses the effectiveness of these strategies in deterring copyright infringement. Finally, the study identifies the potential limitations of the current remedies, including unresolved legal, technical, and operational challenges. This study stresses the urgent importance of implementing effective enforcement measures and establishing a widely agreed-upon set of rules to combat the illegal retransmission of live events through Internet streaming.

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I. INTRODUCTION

1. Live streaming has transformed the digital landscape, offering content creators and audiences exceptional avenues to connect in real time. Live streaming provides consumers with a vast array of content, ranging from news broadcasts to sports events, from movies to music concerts and festivals, and from gaming and e-sports to podcasts. Despite these benefits, the illegal retransmission of live events has surged in recent years. The easy access, swell in viewership, technological advances, widespread availability of illegal live-streaming platforms, and increased use of mobile devices have become powerful catalysts for the global spread of illegal live streaming. This not only means legitimate live broadcasters face significant losses, but it also erodes the long-term sustainability of live streaming.

II. ILLEGAL STREAMING AND CHALLENGES THAT BROADCASTERS FACE

2. Broadcasting of live events demands significant financial investment because its delivery is multifaceted and resource-intensive. Expenditures include high-quality video and audio equipment, strong server infrastructure, and sufficient bandwidth to accommodate a large viewership. When unauthorized streaming platforms offer the same content for free, however, a significant portion of the audience is diverted away from legitimate channels, resulting in reduced viewership and falling revenues. This weakens the broadcasting industry's economic sustainability. Along with the financial impact, unauthorized streaming lessens the value of broadcasting rights and the integrity of creative works, challenging creators' exclusive rights to distribute and profit from their work. Protecting the rights of broadcasters and content creators is thus paramount to monetizing their creative works so they can receive fair compensation for their efforts and investments.

III. PROTECTION OF BROADCASTS

3. How broadcasters' rights are protected varies among countries. The United States of America (USA), for instance, has no explicit copyright protection for broadcasters. However, broadcasters often rely on inclusive protection where their broadcasts are protected under copyright law. Some jurisdictions, such as Australia, protect broadcasters' rights as "subject matter other than works," which complements the traditional copyright protection authors and creators are afforded, and recognizes the unique investment and effort that broadcasting activities involve. Hence, reproducing, distributing, and communicating to the public without the broadcaster's consent is illegal. Other countries – such as India, Japan, and China – recognize broadcasters' rights as neighboring rights, which are akin to copyright where broadcasters are given exclusive rights to control how their broadcasts are used and disseminated. These varying approaches reflect the global diversity in how broadcasters' rights are treated.

IV. DEBATE OVER COPYRIGHT PROTECTION FOR LIVE BROADCASTS

4. With live broadcasts, the content's nature is often "transient": data is transmitted in real time without creating a fixed or permanent copy. The question of whether a broadcast's "live content" is protected under copyright remains a subject of extensive academic and judicial debates, however, because the issue is unresolved, Article 2(2) of the Berne Convention leaves the requirement of fixation open for Member States to determine. In section 17(6) of the United Kingdom's (UK's) *Copyright, Designs, and Patents Act 1988*, a "transient" copy of a work amounts to copyright infringement, although whether the act of buffering in a device's RAM constitutes a copyright infringement still remains unresolved at the global level.

V. LICENSES FOR INTERNET STREAMING OF LIVE BROADCASTS

5. Retransmitting a live broadcast by Internet streaming, especially when broadcasting to the public in multiple territories, typically requires the broadcaster to obtain licenses to ensure they comply with copyright laws and secure the necessary rights from content owners. What specific licenses they need depends on factors such as the type of content being broadcasted, the territories involved, and the respective countries' legal frameworks. A valid license could be either a legislation-mandated compulsory license or the copyright owner's consent. Licenses needed to stream live broadcasts over the Internet primarily include broadcast licenses, performance rights licenses, copyright licenses, territory-specific licenses, and digital performance rights licenses.

VI. UNLAWFUL RETRANSMISSION MODELS IN LIVE BROADCAST STREAMING

6. When illegally retransmitting live broadcasts through Internet streaming, infringers exploit methods such as unicast, multicast, user-generated content, and virtual private networks (VPNs). Unicast, a one-to-one streaming model, sends content directly from a server to an individual user, while multicast diverts content to multiple recipients simultaneously, facilitating the unauthorized distribution of copyrighted material. Increasingly popular are user-generated content platforms, onto which individuals upload copyrighted material without authorization – this creates significant challenges for content creators and distributors. Although VPNs are lawful to use, VPNs have become a means to circumvent geographical restrictions and access region-locked content. Not only do these models undermine broadcasters' rights and intellectual property (IP) rights, but they also result in significant financial losses for broadcasters.

VII. RECENT LEGISLATIVE AND JUDICIAL INSIGHTS TO COMBAT ILLEGAL STREAMING OF LIVE BROADCASTS

7. Illegal live streaming poses significant copyright enforcement challenges. In the USA, for example, the recent introduction of the Protecting Lawful Streaming Act (PLSA) makes it a felony to engage in the large-scale streaming of copyrighted material, which is now punishable by up to five years imprisonment (10 years for subsequent offenses). According to the PLSA, it is "unlawful to willfully, and for the purpose of commercial advantage or private financial gain, offer or provide to the public illegal digital transmission service." In the 2023 *United States v. Joshua Streit* case, Joshua Streit's website was responsible for illegally live streaming copyrighted content from major professional sports leagues. Streit was the first person to be charged and convicted under the PLSA and was sentenced to three years of supervised release, and ordered to pay USD \$2,995,272.64 in restitution and USD \$500,000 in forfeiture.

8. In Italy, the law 93/2023, titled *Provisions for the Prevention and Suppression of the Unlawful Dissemination of Content Protected by Copyright via Electronic Communications Networks*, came into force on August 8, 2023. This law is a crucial step in attempting to mitigate illegal live streaming. In Law 93/2023, people who illegally distribute films, TV series, sports, and football matches face fines extending up to EUR 15,000 and criminal convictions ranging from six months to three years. A fine of up to EUR 5,000 extends for those who "consume" a "substantial quantity of protected work or material." Apart from legislative measures, the Italian judiciary has been proactive in granting injunctions and blocking websites, via administrative orders from the Authority for Communications Guarantees (AGCOM).

9. In Canada, the *Act to amend the Broadcasting Act and to make related and consequential amendments to other Acts* received the Royal assent on April 20, 2023. Subsection 2(3) of the Act prohibits a person from transmitting online live presentations of performing arts theaters, concert halls, or other venues. In its July 28, 2023, verdict on the case *Roger Media Inc Group TVA Inc v. John Doe 1, John Doe 2 and others*, the Federal Court of Canada ordered Canadian Internet service providers (ISPs) to block the pirated live streams of Major League Baseball (MLB) games. Likewise, France and China have made judicial pronouncements and enacted legislation to curb the menace that illegally retransmitted live streaming poses.

10. In its September 27, 2023, verdict on the case *Star India Private Limited v. Jio Live TV*, the Delhi High Court restrained Jio Live TV and other rogue websites from streaming the ICC Men's Cricket World Cup 2023 matches. The courts ordered ISPs to block pirated websites that stream illegal live content and levy heavy fines on people involved in illegal live streaming. These recent legislative and judicial developments are positive steps in the battle against illegal live streaming.

VIII. REMEDIES FOR COMBATting ILLEGAL STREAMING OF LIVE EVENTS

11. An array of legal and technical remedies is available to combat illegal live streaming, including blocking injunctions, graduated response schemes, takedown notices, recurring penalties, geo-blocking, geolocation, encryption, watermarking, and other legal and technology-based solutions to identify and block unauthorized live streams in real time. Graduated response schemes use monitoring, detection, notifications or warnings, and temporary suspensions to target individuals and repeat offenders who are engaged in unauthorized streaming. Illegal infringers also face recurring penalties.

12. Geo-blocking and geolocation are technology-based solutions that restrict access based on users' geographical locations, thus limiting unauthorized viewership. Encryption, conversely, allows content owners and/or broadcasters to encode or obscure data, thus limiting access to the intended audience. Watermarking is an effective tool in identifying the source of illegal streams, assisting authorities in tracing and providing appropriate responses. In addition, many countries have adopted Codes of Conduct and/or Memoranda of Understanding (MoU) against illegal live streaming, encouraging different stakeholders – such as content providers, streaming platforms, law enforcement, and regulatory authorities – to comply with regulations. Despite these remedies, however, combating illegal live streaming faces ongoing challenges.

IX. GAPS IN ADDRESSING ILLEGAL LIVE STREAMING

13. Detecting and verifying real-time illegal streaming content is a time-consuming process. By the time legal actions are taken, the live event might have already concluded or reached a wider community. Enforcement lacking a proactive and “timely” approach has allowed unauthorized live streaming to thrive, encouraging individuals to illegally distribute live copyrighted content over the Internet.

14. Several challenges and limitations reduce the efficiency of “existing remedies” to combat illegal live streaming. Existing remedies such as blocking injunctions, graduated response schemes, geo-blocking, and takedown notices have their own loopholes that test effective enforcement. Injunctions, for instance, are time-consuming and resource-intensive, potentially delaying illegal streams from being blocked in real time. Graduated response schemes, while theoretically effective, lack uniformity and consistency across jurisdictions, resulting in unequal enforcement. Users can circumvent geo-blocking by using VPNs, thus weakening their effectiveness. Takedown notices, although a valuable tool, often place the burden of policing

illegal content onto content owners, who may struggle to keep pace with the sheer volume of infringing material. While these remedies are crucial, addressing their inherent limitations in practical implementation amid evolving technology is a pressing challenge.

15. Globally, the existing legal frameworks that protect broadcasters' rights have significant differences, inconsistencies, and gaps. What one jurisdiction may consider a copyright infringement, another might not treat with the same gravity, leading to incohesive enforcement strategies. The variations in laws and regulations across countries make it difficult to establish a uniform approach to combatting illegal live streaming. So, while cross-border challenges in illegal live streaming are a significant concern, developing a unified or cross-jurisdictional IP framework against illegal live streaming is still important.

16. Ambiguities abound when defining the monitoring responsibilities of "online intermediaries" in preventing illegal live streaming. No uniform mechanisms enforce intermediaries to control copyright infringement, take an active role, or collude with a user to stop sharing illegal live content. Stringent monitoring responsibilities for intermediaries will help regulatory bodies to persuade intermediaries of their legal obligations to thoroughly monitor and review illegal live content passing through their networks to mitigate the magnitude of illegal live content sharing.

17. A major global obstacle is "limited resources and funding" for law enforcement agencies to investigate and prosecute infringers of illegal live streaming. Many law enforcement agencies face constraints in deploying subject-matter expertise, both legal and technical; providing domestic and international training to help law enforcement; and having enough financial support, which hinders their ability to combat illegal live streaming effectively.

18. Integrating cutting-edge technologies into online platforms may significantly enhance their ability to detect and prevent the dissemination of illegal content, ensuring a more proactive and efficient response in real time.

19. Another obstacle is the lack of proposals to strengthen global "penalties" to deter potential offenders from engaging in illegal live retransmissions. Offenders must be sent a clear and unequivocal message. Enacting strict penalties, including criminal penalties such as extending the statute of limitations for crimes involving the illegal live retransmission of copyright content, will ensure infringers face serious repercussions when engaging in illegal live streaming.

20. In sum, there is a critical need for strong legal, technical, and enforcement measures to combat illegal streaming – including technological solutions, legislative reforms, and international and industry cooperation – to ensure the sustainable growth of live broadcast streaming, and safeguard the rights of broadcasters, content creators, and legitimate distributors of real time content.

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