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BROADCAST REPRODUCTION RIGHTS VERSUS OTT PLATFORMS: A DOCTRINAL STUDY OF STATUTORY INTERPRETATION GAPS UNDER SECTION 31D AND CHAPTER VIII OF THE COPYRIGHT ACT, 1957

AUTHORED BY - PUVIYA KEERTHI

Abstract

Copyright's neighbouring rights regime has long rested on a distinction between the creator of a work and the intermediary who transmits it to the public — a distinction codified in India through the broadcast reproduction right under Section 37 of the Copyright Act, 1957. This right, alongside the statutory licensing mechanism under Section 31D, was drafted for an era of linear, one-to-many transmission and has strained visibly under the growth of Over-The-Top (OTT) platforms, which deliver content on a non-linear, user-directed basis that the statutory text does not squarely address.

The Bombay High Court's decision in *Tips Industries Ltd v Wynk Music Ltd*, and its affirmance on appeal, settled the immediate legal question by holding that Section 31D's compulsory licensing scheme is confined to conventional radio and television broadcasting and does not extend to on-demand internet streaming. What the litigation leaves unexamined is the trajectory that preceded it: the Department of Industrial Policy and Promotion had, in 2016, taken the opposite interpretive position, reading "broadcasting organisation" to include internet broadcasters, a view the Rajya Sabha's 161st Standing Committee Report endorsed in 2021 as necessary to maintain parity between digital and legacy platforms. Both positions were subsequently abandoned — the proposed 2019 amendment to the Copyright Rules was dropped in 2021, and the 2016 Memorandum was formally withdrawn in 2024 — leaving the exclusionary judicial reading as the operative law by default rather than by legislative design.

This paper argues that the resulting position cannot be understood in isolation. It is mirrored internationally by the WIPO Broadcasting Treaty negotiations, which have excluded webcasting and simulcasting from binding protection since 2006, suggesting the problem is one of unresolved doctrinal architecture rather than a peculiarly Indian oversight. It is also contradicted domestically: the draft Broadcasting Services (Regulation) Bill defines "Broadcaster" to expressly include OTT platforms, producing a situation in which the same entity is a broadcaster for regulatory purposes and not a broadcaster for copyright-licensing

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purposes. Beyond mapping this inconsistency, the paper interrogates a more fundamental question the existing literature has largely bypassed: whether the broadcast reproduction right — a doctrine built to protect the transmission of a signal rather than the content it carries — is conceptually capable of accommodating OTT platforms, which function principally as licensees of content rather than originators of a broadcast signal, regardless of how expansively "broadcasting" is defined.

Introduction

The statutory framework governing broadcasting in intellectual property law was designed for an era defined by linear, schedule-driven, and point-to-multipoint signal transmissions. Under **Section 37 of the Indian Copyright Act, 1957**, "Broadcast Reproduction Rights" (BRR) were created to protect the substantial economic and technical investments of traditional terrestrial and satellite broadcasting organizations (*The Copyright Act, 1957*, s. 37). This special neighboring right functions independently of the copyright in the underlying content, granting broadcasters exclusive control over the re-broadcasting, recording, or commercial exploitation of their transmitted signals (*Ministry of Information & Broadcasting v. Cricket Association of Bengal*, 1995).

However, the rapid digital proliferation of Over-The-Top (OTT) platforms—such as Netflix, Disney+ Hotstar, Amazon Prime Video, and Spotify—has fundamentally disrupted this paradigm. OTT services deliver non-linear, interactive, on-demand, and point-to-point digital content directly over the internet, completely bypassing traditional broadcasting infrastructure like cable or satellite feeds (Chaturvedi, 2024). This technological transition has exposed severe statutory interpretation gaps within copyright law:

1. **The Ambiguity of "Broadcasting Organization":** The Copyright Act defines broadcasting primarily through concepts like "communication to the public" via "wireless diffusion" or "wire" (*The Copyright Act, 1957*, s. 2(ff)). Courts and legal scholars remain divided over whether internet-based streaming platforms can legally qualify as "broadcasting organizations" under Section 37 (Chaturvedi, 2024).
2. **The "Signal" vs. "Data" Dichotomy:** Traditional BRR protects the physical transmission signal rather than the underlying work. On OTT platforms, content is broken into digital packets, cached across local servers, and pulled on-demand by individual users—making it difficult to pin down what constitutes the "broadcast signal" worthy of protection.

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Statutory Licensing Frictions under Section 31D:

While statutory licensing regimes under Section 31D were intended to give traditional radio and TV broadcasters access to copyrighted works at regulated rates, courts have strictly excluded internet streaming platforms from these statutory protections (*Tips Industries Ltd. v. Wynk Music Ltd.*, 2019; *Wynk Ltd. v. Tips Industries Ltd.*, 2022). Furthermore, legislative proposals and parliamentary committees continue to advocate for reforming Section 31D to bridge this statutory disconnect (*Parliamentary Standing Committee on Commerce*, 2022)

Concept of Performers Rights and Broadcasters' Right

Concept of Performers' Rights

Performers' rights protect the interests of individuals who perform literary, dramatic, musical, or artistic works. These rights recognise that a performance involves creativity, labour, and personal skill, independent of the underlying copyright in the work being performed. A performer may not be the author of the script or song, but the act of performance itself generates a distinct legal interest. Performers' rights aim to ensure that performances are not recorded, reproduced, broadcast, or commercially exploited without the consent of the performer. These rights also safeguard the personal connection between the performer and the performance through moral rights.

Concept of Broadcasters' Rights

Broadcasters' rights protect the broadcast signal transmitted to the public. Broadcasting organisations incur substantial costs in acquiring content, producing programmes, and maintaining transmission infrastructure. Without legal protection, broadcast signals could be freely intercepted, recorded, or retransmitted, undermining the broadcaster's investment. Broadcast reproduction rights do not protect the underlying content, such as the song or film, but protect the broadcast itself. These rights ensure that only authorised parties can rebroadcast, record, or commercially exploit a broadcast.

Performers' Rights under the Copyright Act, 1957

Under Section 2(qq), a *performer* includes:

1. An actor
2. A singer or musician
3. A dancer

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4. An acrobat, juggler, conjurer, or snake charmer
5. A lecturer
6. Any other person who makes a performance

The definition is inclusive and intentionally broad, covering both traditional and non-traditional performers.

Section 2(q) defines a *performance* as any live visual or acoustic presentation made by one or more performers. Judicial interpretation has clarified that a performance recorded for the first time in a studio is also treated as a live performance for the purpose of performers' rights.

Section 38: Performer's Special Right

Nature of the Right

Section 38 grants every performer a special right in relation to a performance. This right arises automatically upon performance and exists independently of copyright in the underlying work. It protects the act of performance itself.

Duration of Protection

The performer's right subsists for 50 years, calculated from the beginning of the calendar year following the year in which the performance was made.

Section 38A: Economic Rights of Performers

Scope of Economic Rights

Section 38A(1) grants exclusive economic rights to performers. These include the right to:

i. Make or authorise the making of sound or visual recordings of the performance
ii. Reproduce the performance recording in any material form, including digital formats
iii. Issue copies of the recording to the public
iv. Communicate the performance or recording to the public by broadcast or other means
v. Sell or commercially rent copies of the performance recording

These rights allow performers to control and monetise the commercial use of their performances.

Performances in Cinematograph Films

Section 38A(2) addresses performances incorporated in cinematograph films. Once a performer gives written consent to include the performance in a film, the producer is entitled to exploit the performance as part of that film. However, the provision ensures that performers

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remain entitled to **royalties for commercial exploitation**, safeguarding their financial interests even after consent is given. **Broadcasters' Rights under the Copyright Act, 1957.** Broadcasting refers to communication of content to the public by wireless diffusion or by wire, including satellite transmission. Broadcast reproduction rights protect the broadcast signal transmitted by broadcasting organisations. These rights are distinct from copyright and performers' rights and focus on protecting the investment made in broadcasting.

Section 37: Broadcast Reproduction Right

Nature of the Right

Section 37 grants broadcasting organisations a special right known as the broadcast reproduction right. This right exists independently of copyright in the content being broadcast.

Section 38B: Moral Rights of Performers

Right of Attribution

The performer has the right to be identified as the performer of the performance. This ensures recognition and credit. Attribution may be omitted only where identification is impractical.

Right of Integrity

The performer has the right to prevent distortion, mutilation, or modification of the performance that would harm reputation. Technical edits or shortening of duration for practical reasons are not considered violations. Moral rights remain with the performer even after assignment of economic rights.

Duration of Protection

The broadcast reproduction right subsists for **25 years**, calculated from the beginning of the calendar year following the year in which the broadcast was made.

Acts Constituting Infringement

Without authorisation, the following acts are prohibited:

- Rebroadcasting the broadcast
- Charging fees for viewing or hearing the broadcast
- Making sound or visual recordings of the broadcast

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- Reproducing such recordings
- Selling or renting copies of the recordings

Section 39: Acts Not Constituting Infringement of Broadcast Reproduction Rights

Permitted acts include:

- Recording for private domestic use
- Use for teaching or research
- Fair dealing for reporting news or criticism
- Use by educational institutions or non-profit organisation.

Section 39A: Application of Other Provisions

Section 39A applies general copyright provisions, such as compulsory licensing and enforcement mechanisms, to performers' rights and broadcast reproduction rights. This ensures procedural consistency across different categories of rights.

Relationship Between Performers' Rights and Broadcasters' Rights

Performers' rights and broadcasters' rights often operate simultaneously but protect different interests. A single broadcast may involve:

- Performers' rights in the performance
- Broadcast reproduction rights in the transmitted signal
- Copyright in the underlying work

Each right requires separate authorisation. Use without consent of any right holder may amount to infringement.

Infringement and Remedies

Civil Remedies

Under Section 55, performers and broadcasters may seek:

- Temporary or permanent injunctions
- Damages or account of profits
- Delivery of infringing copies

Criminal Remedies

Sections 63 to 70 provide criminal penalties, including imprisonment and fines, for

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unauthorised exploitation of performances or broadcasts.

Administrative Measures

Authorities may seize infringing material, block illegal streams, or take preventive measures, particularly in cases of live-event piracy.

Challenges in the Digital Era

Digital technology has increased unauthorised recording, streaming, and redistribution of performances and broadcasts. Performers often face difficulties in enforcing royalty claims, while broadcasters face large-scale online piracy. The rise of OTT platforms, social media clips, and instant sharing has blurred traditional boundaries, making enforcement more complex and resource-intensive.

Evolution Of IP Laws In OTT Platforms In India

The Indian Entertainment Industry

"The Indian media and entertainment industry is one of the fastest growing media industries in the world and is projected to reach USD 100 billion by 2030." - Mr. Apurva Chandra, Secretary, Ministry of Information and Broadcasting (MIB) The entertainment industry in India is one of the largest in the world producing approximately 1,500 to 2,000 films each year in over 20 different languages. As of March 2022, the Indian media and entertainment industry is valued at USD 28 billion and it is projected to reach USD 100 billion by the year 2030, growing at a cumulative growth rate of 12 per cent. With this phenomenal growth, the role of Intellectual Property Laws has become more than ever important for the Indian Entertainment Industry.

Age of the NEW: Emergence of OTT platform in India

An 'over-the-top' (OTT) is a media platform that provides video, movies, series, audios, etc. With theatres being shut due to Covid 19 led Lockdown, OTT platforms like Amazon Prime, Netflix, Hotstar and many others saw a stark rise of 30% in the number of paid subscribers. Earlier, OTT platforms were streaming content which was already released, however in the recent times there is shift in the trend. The OTT platforms are now producing their own content, which includes feature films, documentaries, web series, etc. such as- Made In Heaven, Delhi Crime, Sacred Games, She, Leila, and the like. In India, Amazon Prime Video, Disney+ Hotstar and Netflix dominate the OTT market, followed by other competitors

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namely, Sony Liv, Voot, etc. As per the PwC's Global Entertainment & Media Outlook 2022-2026, India's OTT Video services are expected to become a Rs 21,031 crore industry in the next four years by 2026, in which Rs 19,973 crore would come from subscription-based services and Rs 1,058 crore from Transactional VOD (video on demand). "It is subscription services that are driving this rapid growth, accounting for 90.5 per cent of revenue in 2021 and set to account for 95 per cent in 2026." With exponential growth of internet and ease of data access, storage and transfer, it has become imperative for the content creators as well as consumers to know about intellectual property rights on such new-age platforms like OTT. OTT content and consumption (viz., user creation, authentication and data storage/usage) leads to convergence of intellectual property laws and information technology laws.

IP Regulation in OTT Platforms

As per prevailing commercial practices, the OTT Platforms like Netflix, Amazon Prime, etc. enter into agreements with production houses for creation of content with exclusive rights to host, broadcast, and distribute over internet or digital media such content. There are two types of intellectual property deals with respect to the content so created and produced through such production houses: (a) licensing deals – where the production houses license out their IP to the broadcaster or an advertising agency to create the finished product and (b) co-production deals - where the production houses work with broadcasters who control what type of content they want to produce and when they want it produced. In the recent times, many of the Indian production houses as well have entered the OTT landscape such as- Red Chillies Entertainment and Dharmatic (i.e. Digital Wing of Dharma Productions) which have struck a long term deal with Netflix for big production projects.

Infringement of OTT content and relevant IP laws in India

A direct infringement of OTT content comes under the purview of Copyright Act, 1957, amounting to Copyright Infringement. Section 2(m) of the Copyright Act defines 'infringing copy'. Sections 26, 27 and 29 of the Act are applicable to define term of copyrights, namely in films, sound recordings, and works of international organization, which are also applicable to the contents posted on OTT platforms. A direct infringement by an OTT service provider is when the content is offered over a platform that could lead to civil and/or criminal liability as enshrined under Section 51 of the Copyright Act- which considers the unauthorized reproduction or deliberate storing of the work as infringements.

Another important statue regulating the content over and functioning of OTT platforms

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is Information Technology Act, 2000 (the "IT Act"). The IT Act takes into consideration unauthorized distribution of copyrighted content as an offense and makes the intermediaries (including OTT content platforms) responsible with respect to infringing content. The intermediaries/ OTT platforms are required to have set procedures for attending to copyright infringement notices form the right holder and making sure to act as per the guidelines to safeguard, where required, the rights of the copyright holder. After receiving the notice of infringement, the intermediaries are to ensure that no infringing contents remain posted on the OTT platforms as per the Intermediary Rules of 2011. New guidelines concerning OTT Platforms came into effect from 26-May-2021 by way of Information Technology Rules 2021. Said Rules mandate strict Grievance Redressal Mechanism whereby every Publisher must appoint a Grievance Officer based in India for receiving and redressing grievances and such Officer shall respond to the complaint within 24 hrs. and pass an order or resolve the complaint within 15 days from its receipt.

Way to tackle infringements over OTT Platforms What can be done once you find an infringing copy of your work on an OTT Platform?

Cease & Desist Notice / Complaint: In addition to cease and desist notice to opposite/infringing party, the owner of copyright can also address the notice to intermediaries notifying them about infringing content on their OTT platform and asking them to immediately pull down the infringing content from their platform.

John Doe orders: In cases where the origin of the infringing content is not known, an injunction against unknown/unnamed persons can be obtained by moving a request in form of John Doe Orders from the Hon'ble Courts.

Dynamic injunctions: injunction orders which allow addition of respondents through administrative process thereby giving more flexibility and speed.

Liability of the Intermediaries in IP Infringement Matters

In matter of Sun TV Network Limited v. Amazon[1], Sun TV sought permanent injunction with respect to its 28 movies (copyrighted content) exhibited by Amazon in its OTT platform. The Hon'bel Madras High Court observed that- "It is germane to point out that the producer shall be the first copyright owner of a cinematography film and the plaintiff (Sun TV) had acquired the rights from such competent person. Naturally they expect they can exploit the rights without any infringement." Order of Interim Injunction was accordingly granted by the Court. In another case of Jagran Prakashan Limited v. Telegram FZ LLC[2], the Hon'ble Delhi High Court directed the defendants (Telegram) to take down within forty-eight (48) hours

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certain channels in which the users were reproducing and distributing the copyrighted content of the plaintiff corporation which provides a digital e-paper to its subscribers.

The rise in number of streaming services available on the internet and resultant increase in the content will lead to more occurrences of piracy/ infringement at/by such video streaming services. While it is true that there are certain laws that tackle such infringement and define responsibilities of OTT platforms, it is necessary to detail further the provisions dealing particularly with digital content made available over multiple OTT platforms at times unknown to the rightful owner of the copyrighted subject matter. Clarity specifically in procedure is required and also regarding liability and extent thereof on respective parties involved in such infringement cases. Such steps going forward will ensure that the rights of creators of copyrighted work are protected which will subsequently lead to a decrease in OTT video piracy/infringement. Further, OTT platforms need to be more proactive in identifying whether certain content should be blocked or removed from its channel or not.

Highlights of the Draft Bill

i. Multiple types of broadcasters and broadcast network operators will be regulated under the draft Bill. The regulation will depend on their type. Television broadcasting networks will have to register with the central government, while OTT platforms must provide an intimation after meeting a certain threshold of subscribers.
ii. The draft Bill also seeks to regulate broadcast of news and current affairs programmes (excluding print news). Such programmes will have to comply with the prescribed programme code and advertisement code.
iii. The draft Bill provides for a self-regulatory structure to ensure compliance with the programme and advertisement codes. This includes: (i) self-regulation,
iv. (ii) constituting self-regulatory organisations, and (iii) establishing a Broadcast Advisory Council.
v. Each broadcaster will have to also set up an internal Content Evaluation Committee (CEC). All broadcast content must be certified by the CEC.

Context

Broadcasting involves transmission of content for wider consumption by the public. This may include audio, visual, or audio-visual content broadcasted over mediums such as television or radio. With evolving technology, the broadcasting sector has evolved and new mediums are used to transmit content. For instance, television has evolved from cable to

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satellite television and Internet Protocol Television (IPTV). The internet has also allowed for online video streaming. Broadcasting was formerly governed by the Indian Telegraph Act, 1885. Currently, different aspects of broadcasting are governed by different sets of regulations (see Table 1).

Broadcasting service	**Regulation**
Television (Content)	Cable Television Networks (Regulation) Act, 1995.
OTT services and digital news (Content)	Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021under the Information Technology Act, 2000.
Radio (Content)	Permission agreements with radio stations.
Carriage of broadcasting content (except OTT)	Telecom Regulatory Authority of India via: (i) Tariff Orders, (ii) Interconnection Regulations, and (iii) Quality of Service Regulations, issued under the Telecom Regulatory Authority of India Act, 1997.
Uplinking and Downlinking of content for television	Uplinking and Downlinking Guidelines of the Ministry of Information and Broadcasting.

The Ministry of Information and Broadcasting observed that a streamlined and cohesive broadcasting regulatory framework will help bring consistency and clarity to regulations. In 2020, the Ministry had proposed amendments to the 1995 Act. The draft Broadcasting Services (Regulation) Bill, 2023, was released on November 10, 2023 for public comments.[13] It seeks to replace the Cable Television Networks (Regulation) Act, 1995 (CTN Act), and consolidate various regulations governing the broadcasting sector into a single law. In April 2024, the Telecom Regulatory Authority of India (TRAI) released a consultation paper seeking comments on the formulation of a National Broadcasting Policy.

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Statutory and Case Law Analysis

Provision	Text/Effect
Section 2(dd)	Defines 'broadcast' 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 re-broadcast
Section 2(ff)	Defines 'communication to the public' broadly, including making a work available for being seen/heard by the public, whether simultaneously or at times chosen individually by members of the public
Section 2(dc)	Defines 'broadcasting organisation' with reference to an organisation providing the service of broadcasting
Section 31D(1)	Grants a statutory licence to a broadcasting organisation 'desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published', on giving prior notice and paying prescribed royalties
Section 37	Confers the Broadcast Reproduction Right on every broadcasting organisation in respect of its broadcasts, subsisting for twenty-five years from the year of making the broadcast
Section 38	Confers Performers' Rights, a related but distinct neighbouring right

Neighbouring Rights and the Rationale for Broadcast Protection

Legal literature on neighbouring rights traces the Broadcast Reproduction Right to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention, 1961), to which India is not a signatory but which nonetheless significantly influenced the drafting of Chapter VIII of the Copyright Act, 1957 following its 1994 insertion. Commentators emphasise that the right protects the broadcaster's investment in the signal and its transmission infrastructure, independent of any copyright in the underlying content — a rationale historically tied to the technical and capital-intensive nature of terrestrial radio and television transmission.

The Statutory Licensing Regime under Section 31D

Section 31D was inserted by the Copyright (Amendment) Act, 2012, following recommendations aimed at balancing the interests of broadcasters (who required efficient

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access to a repertoire of works) against those of rights holders (who required fair remuneration without protracted individual negotiation). Commentary on the 2010 Copyright (Amendment) Bill and the accompanying 227th Report of the Rajya Sabha Parliamentary Standing Committee indicates that although digital technologies including streaming and downloads existed at the time of the 2012 amendment, the Legislature did not extend Section 31D to internet broadcasting, a point later relied upon by the Bombay High Court as evidence of deliberate legislative choice rather than inadvertent omission.

The 2016 DIPP Office Memorandum

On 5 September 2016, the Department of Industrial Policy and Promotion issued an Office Memorandum clarifying that the term 'broadcasting organisation' under Section 31D included internet broadcasting organisations, in response to representations from online streaming platforms seeking regulatory certainty. Literature has questioned the constitutional propriety of this clarification, noting that authoritative interpretation of an enacted statute is a judicial function, and that an executive department lacks the institutional competence to expand a Parliamentary enactment through an internal memorandum.

Tips Industries Ltd. v. Wynk Music Ltd.: The Litigation

The dispute arose when Wynk Music Ltd., an OTT audio-streaming platform, having failed to conclude a fresh licensing agreement with Tips Industries Ltd. (owner of a repertoire exceeding 25,000 sound recordings) after the expiry of an earlier agreement, invoked Section 31D and the 2016 Memorandum to claim a statutory licence entitling it to continue streaming and enabling downloads of Tips' repertoire. Tips sued for copyright infringement and sought to restrain Wynk's reliance on Section 31D. A closely related dispute arose contemporaneously in Warner/Chappell Music Ltd. v. Spotify AB, where Spotify sought a statutory licence from the erstwhile Intellectual Property Appellate Board (IPAB) on comparable grounds shortly after its India launch.

Judicial Reasoning: Single Judge and Division Bench

Justice S.J. Kathawalla, ruling at first instance in 2019, held that Section 31D's statutory licensing regime was restricted to traditional, non-internet-based radio and television broadcasting, and had no application to internet-based offerings such as Wynk's on-demand streaming and download service. The learned Judge reasoned that permitting internet platforms

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to invoke Section 31D would strip copyright owners of the contractual freedom to negotiate royalties on their own terms — a freedom Parliament had preserved by confining the statutory licence to linear broadcasting. On appeal, the Division Bench of the Bombay High Court, in its 2023 ruling in Tips Industries Ltd. v. Wynk Music Ltd. (Commercial Appeal Nos. 424 and 425 of 2019), reaffirmed this position, holding that Section 31D's statutory licensing applies solely to linear broadcasting mediums and explicitly excludes non-linear, on-demand streaming services. Notably, the Division Bench expressly referred to the 227th Report of the Parliamentary Standing Committee to conclude that the Legislature, despite the presence of digital streaming and download technologies at the time of the 2012 amendment, had intentionally declined to bring internet broadcasting within Section 31D. The matter concluded with a final settlement in June 2024, under which Wynk (by then renamed Xtelify Ltd.) agreed to pay Tips Industries ₹12 crore in full and final settlement.

Distinguishing Linear and Non-Linear Transmission: A Doctrinal Test

Synthesising the case law, a workable doctrinal test emerges for distinguishing a 'broadcast' attracting Chapter VIII/Section 31D protection from an OTT/on-demand offering that does not: (i) whether transmission is simultaneous and scheduled (linear) or accessible at a time of the recipient's choosing (non-linear); (ii) whether the broadcaster transmits identical content to an undifferentiated public audience at a fixed time, or provides individualised, on-demand access to a content library; and (iii) whether the recipient can pause, rewind, or select content, indicating user control inconsistent with the 'broadcast' model. Applying this test, mainstream subscription video/audio-on-demand OTT platforms fall outside Chapter VIII, whereas a live-streamed simulcast of a scheduled television broadcast arguably remains within it, since it replicates the linear, real-time character Parliament had in view.

Consequences of the Present Gap

- OTT platforms cannot compel rights holders to grant a statutory licence under Section 31D, and must instead negotiate content licences bilaterally, at commercially negotiated (and often significantly higher) rates.
- OTT platforms do not enjoy an independent Broadcast Reproduction Right under Section 37 over their own transmissions, limiting their ability to restrain unauthorised re-transmission or recording of their streams as a 'broadcast' infringement, as distinct from copyright infringement in the underlying work.

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- Persistent asymmetry between traditional broadcasters (who enjoy both statutory licensing and BRR protection) and OTT platforms (who enjoy neither), notwithstanding the Parliamentary Standing Committee's view that no principled basis exists for this asymmetry.
- Continued reliance on litigation (rather than legislative clarity) to resolve individual disputes, as seen in the protracted and ultimately privately settled Tips v. Wynk proceedings.

Evaluating the Judicial Approach

The Bombay High Court's reliance on the 227th Standing Committee Report to establish deliberate legislative omission is a defensible application of the mischief rule, but it arguably understates the force of the subsequent, and directly contrary, 161st Standing Committee Report of 2021, which explicitly recommended extending Section 31D to internet platforms. Since the 2021 Report post-dates the original 2012 amendment and reflects a contemporary legislative assessment that the current asymmetry is unjustified, its absence from the Division Bench's 2023 reasoning is a notable doctrinal gap in the judgment's legislative-history analysis, even though procedurally a court is not bound to await legislative reform recommendations before deciding a live dispute.

INTERNATIONAL POSITION PRIOR TO ROME CONVENTION

Prior to Rome convention into some national legislations included neighbouring rights. Italian law, one of the first to recognise these new rights in 1941, called them, diritti conessi (connected rights), German law verwandle schutzrechte, (related rights) French law droit voisins (neighbouring rights). In English Law the term "neigbouring rights" is now most commonly used. The Indian law does not use term "neigbouring rights".

In International law the first move towards neighbouring rights was made in 1928 by the Rome Revision Conference of Berne Convention when Conference, although refusing to grant a copyright to performers, as had been suggested, expressed a voeu at the end of the Conference that members of the Berne Convention should "consider the possibility of measures intended to safeguard the rights of performers". It was envisaged that a Convention or later two Conventions (one for Performers and Producers of Phonograms and one for Broadcasting Organisation) should be "annexed to the revised Berne Convention".

The first copyright owners were 'printers', in modern terminology publishers, of books who combined artistic skills and judgement with technical skills and made the initial

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investment. They were individuals in the 17th and 18th centuries but in the 19th century many became companies. Thus, the copyright resided in the company. When broadcasting was invented 'copyright' legislations had no difficulty in granting a copyright to the broadcasting organisations which were responsible for creating and disseminating the programmes.

Copyright is given for work while Neighbouring rights on the other hand, does not constitute works because they presuppose a pre-existing work. It means that it develops from a work which is already there. Performers are usually only protected if they perform works. Phonograms are nearly always recordings of work (birdsong or sound effect being the unimportant and rare exceptions). Broadcasts consist largely of performances of works (the broadcasting of sporting or public events being some of the notable exceptions). In copyright, works are being protected but in neighbouring rights the beneficiaries are protected.

The scope of copyrights is, also by definition, wider than the scope of neighbouring rights, which encompasses only three categories of rights: the reproduction rights, the public performance rights and the broadcasting rights. The term of neighbouring rights is, again by definition, almost invariably shorter than that of other copyright, as 50 years from the death of the author is always longer than 20 or 30 or even 50 years.

Conclusion

The enduring friction between Broadcast Reproduction Rights (BRR) and Over-The-Top (OTT) streaming platforms represents a fundamental paradigm shift in copyright law, exposing the limitations of legal frameworks built for an analog, spectrum-limited world. Traditional broadcast rights were specifically architected around the mechanics of linear "push" transmissions—where a broadcasting entity sends a continuous, unified signal across fixed geographical territories to passive receivers. In stark contrast, OTT architecture operates on a borderless, interactive "pull" model, fragmenting content into dynamic data packets delivered on-demand via content delivery networks directly to individual end-users. Attempting to forcefully shoehorn modern streaming platforms into legacy statutory broadcasting definitions—or conversely, subjecting them to complex, hyper-fragmented voluntary licensing regimes—creates a volatile legal vacuum that hinders digital innovation while leaving rightsholders vulnerable to modern threats like stream-ripping, API scraping, and dynamic link aggregation.

Resolving this deadlock requires moving past rigid, binary debates over whether OTT services qualify as "broadcasters." Copyright jurisprudence must evolve beyond traditional "signal protection" to establish a dedicated, modern legal framework: an *Interactive Digital*

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Communication Right. The most viable solution lies in a unified hybrid licensing model that reflects operational realities—granting OTT platforms streamlined, statutory access for live, time-sensitive digital broadcasts (such as sports and live news) to ensure regulatory parity with traditional media, while retaining flexible, market-driven negotiations for asynchronous, on-demand entertainment catalogs. By transitioning from outdated territorial signal boundaries toward a tech-agnostic, access-based legal standard, lawmakers can foster a sustainable balance that protects creative IP, incentivizes streaming infrastructure investments, and accommodates the realities of the global internet economy.

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