Neighbouring Rights Protection in India

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It is not possible to segregate copyright and neighbouring rights so as to provide a separate legal regime for protection of neighboring rights. International developments in this area of intellectual property have created so much trade interest that World Intellectual Property Organization (WIPO), and World Trade Organization (WTO) stand together on the issues of protection and compel the member-countries to bring their domestic laws in conformity with international commitment that facilitates trade. This shows that neighbouring rights have acquired a status, from which no relegation is possible now, what is left is to move further and devise stringent legal regime to strengthen these intermediary rights. Both the treaties, WCT and WPPT, particularly deal with the use of copyright protected works, performances and sound recordings in digital networks, such as the Internet. Authors, performers and phonogram (i.e. record) producers are granted a broadly worded exclusive right of communication to the public, covering interactive services and delivery on demand. Still a lot needs to be done to cope up with the developing aspects of neighbouring rights. The world looks ahead to WIPO webcasting treaty in order to see a bright dawn of the neighbouring rights protection regime. In this paper, an attempt has been made to highlight and identify protection regime for the neighbouring rights under the Copyright Act, 1957, in India. The paper also explains the concept of neighbouring rights, its Indian context and the protection regime, loopholes and remedies.

Keywords: Webcasting, performers’ rights, neighbouring rights, legal regime, trade perspective

In India, the Copyright Act, 1957 (as amended in 1999), the rules made there under and the international copyright order, 1999, govern copyright and neighbouring rights. Before disclosing the nice ties of neighbouring rights protection in India, it is pertinent to note that Indian law might require closer scrutiny and re-looking in the light of recently concluded WIPO treaty on broadcasters’ right1. The WIPO’s Standing Committee on Copyright and Related Rights has given shape to the world’s first ‘webcasting treaty’ that reinforces mandates of Rome Convention in widest possible language. The Copyright Act, 1957, gives the creators of literary, dramatic, musical and artistic works, cinematograph films and sound recordings exclusive rights to reproduce, perform, translate and communicate their works to the public. It also gives broadcasting organizations ‘broadcast reproduction right’2 and bestows on performers ‘performer’s right’3. Chapter VIII of the

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Copyright Act elucidates broadcasters’ and performers’ rights, which is also called the neighbouring rights. The term of ‘protection of performer’s rights has been extended to 50 years through the Copyright (Amendment) Act, 1999. The Act also provides the authors certain moral rights like the right to claim authorship and to restrain or claim damages in respect of any distortion, mutilation, etc. of their works. The Copyright Act provides a Copyright Board to settle copyright disputes, a Copyright office for registration of copyright works, and setting up of copyright societies to do copyright business.

Indian copyright protection regime owes a lot to international development in this area. International approach to the copyright protection provides that authors of literary and artistic works shall enjoy the exclusive right of authorizing, the making available to the public of the original and copies of their works through sale or other transfer of ownership. Thus, copyright can be defined as a person’s exclusive right to authorize certain acts, (such as reproduction, publication, public performance, adaptation, etc.) in relation to his or her original work of authorship. Though the creator of the work owns the copyright initially, but it might be sold or assigned licence on mutually agreed terms and conditions, in whole or in part, to a commercial publisher, a filmmaker, a recording studio or to someone else who could exploit the work commercially. As a consequence, copyright often benefits commercial interests more than individual authors, however, this depends entirely on the terms of agreement between the creator of work and the exploiter of the work. A legal regime is designed only to ensure the sanctity of the rights that proliferates creation of work. In this context, copyright is classified as a private right regime where the State has a minimal role to play.

But looking at the philosophy of copyright, which imperatively reveals that protection of intellectual creation against unauthorized exploitation ensures freedom of knowledge creation, it would be correct to state that copyright law has long emphasized that copyright protection does not exist for its own sake but rather to serve the public interest. The Constitution of the United States declares that the purpose of copyright in that country is to promote the progress of science and useful arts, by securing for limited time-period to authors and inventors, the exclusive right to their respective writings and discoveries. Similarly, the world’s first copyright law, the English Statute of Anne (1710) stated that its purpose was to ‘encourage learning.’

International understanding and domestic protection developed since Rome Convention of 1961 emphasized the protection of neighbouring rights, which are considered ancillary to the copyright regime.

Neighbouring Rights
In addition to copyright, there are other neighbouring rights that may attach to a work. Such a protection has been given a framework through the Rome Convention, 1961, but there are domestic legislations speaking specifically on this
point. In India, Chapter VIII (Broadcasters’ and Performers’ Right) of Copyright Act, 1957, too provides for the same. The Dutch Neighbouring Rights Act, (Wet op de Naburige Rechten) grants exclusive exploitation rights to performing artists, such as musicians and actors, recording companies and broadcasters. Performing artists are also entitled to moral rights. There is no formality that has to be undergone to acquire neighbouring rights. The rights are acquired by the act of performing, recording or broadcasting, similarly as copyright exists the moment pen leaves the paper.

In Canada, the same is accomplished and strengthened through the Neighbouring Rights Collective of Canada (NRCC). NRCC, established in 1997, is a collective umbrella that collects a percentage of advertising revenue (as mandated by the Copyright Board), from commercial radio stations across Canada. It is the body designated by the Copyright Board to administer equitable remuneration.

In United States, there is strong movement now to balance competing interests of protection and freedom of knowledge. The Digital Millennium Copyright Act, 1998, has provided for the most possible stringent protection of copyright and neighbouring rights. The history of neighbouring rights in United States is not as old as US copyright regime, but since 1976, neighbouring rights have become a feature of US copyright protection.

India has for long accepted the international obligations in regard to copyright protection. India is a member-state of the following international conventions on copyright and neighbouring rights:

(i) Berne Convention, 1886, for the protection of literary and artistic works since 1 April 1928 (The convention concluded in 1886 was revised in 1896, 1908, 1928, 1948, 1967, 1971 and was amended in 1979).

(ii) Universal Copyright Convention (UCC), under the auspices of UNESCO, since 20 October 1957 (The UCC was adopted at Geneva in 1952, came into force from 16 September 1955 and was revised at Paris in July 1971).

(iii) Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, since 12 February 1975 (the convention was adopted at Geneva in October 1971 and came into force from 18 April 1973).

(iv) Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties and Additional Protocol, since 31 October 1983, with some reservations.

(v) WIPO Performances and Phonograms Treaty, adopted by the Diplomatic Conference on 20 December 1996

(vi) WIPO Copyright Treaty, adopted by the Diplomatic Conference on 20 December 1996

At the international level, related rights are conferred by the International
Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, better known as the Rome Convention. This Convention was adopted in 1961. It is jointly administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Labour Organization (ILO) and WIPO. Copyright and neighbouring rights now form part of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement 1994, which came into force on 1 January 1995.

The membership of these Conventions and Agreements ensures that Indian copyright holders get rights in those other countries which are members of these treaties. India is a member of WIPO, a specialized agency of the United Nations, which deals with copyright and other intellectual property rights, and plays an important role in all its deliberations.

**Trade Perspective of Neighbouring Rights**

There is an international trade perspective of neighbouring rights as well. This is so because after coming into force of WTO administered agreements, ‘trade and intellectual property’ have shown a direct nexus and it could be seen that in appropriate cases this nexus might show directly or inversely proportionate relationship between ‘trade’ and ‘intellectual property’. As stated by now, neighbouring rights have been considered a facet of copyright and legal recognition of a copyright has three consequences. Firstly, it establishes a barrier to the free flow of trade (in information), this could be in the sense when a legal regime puts a check on the trade of pirated information material. Secondly, the ownership of an intellectual product and the corresponding right to income from that product in much the same way as ownership of something physical entitles one to its benefits. The third consequence is the fundamental nature of private property, and is appropriate to a capitalist economy. This ownership imposes restrictions on the free availability of the product to others, so that they have to pay the price demanded by the owner in order to obtain it. Copyright ownership is important in determining the level of output of the good in question, and therefore the extent of its dissemination. From the international perspective, this ownership determines the gains from cross-border flows to the concerned countries. Finally, copyright bestows upon the creator of a work, a moral right to be associated with a work (or to remain anonymous) and to maintain the integrity of a work. Moral rights remain with the author, subject to waiver, even after the economic rights are transferred. This pedagogy of logical derivation is equally applicable to neighbouring rights.

**Proposed Protection: The 2003 Broadcasters’ Rights Treaty**

Neighbouring rights have taken a new dimension with easy accessibility of technology to the world at large. In day to day affairs, it could be seen that people are indulging in public large-screen showing of live broadcasts of international sports events; showing of unauthorized copies of television programmes to customers in various
types of shops, or to the public at fairs or exhibitions; sale of unauthorized recordings of broadcast programmes by a dealer in radio or television equipment to the public; broadcasting or cable distribution of pre-broadcast satellite signals, which carry sports or entertainment programmes; publication in newspapers, magazines and books of still photos taken from the television screen, particularly of broadcasts of news and sports programmes, there are numerous other instances that perpetuate 2003 treaty. All this was not so perceived when Rome Convention was conceptualized. Forty years ago, the notion of a neighbouring right was all but revolutionary. Perhaps understandably, certain authors' representatives were not really at ease with the prospect of authors having neighbouring rights on their own rights, but, in the light of recent developments, all such notions have undergone a sea change and the world is moving closer to a new regime of neighbouring rights.

It is a fact that broadcasters have enjoyed international protection for their broadcasts since the adoption of the Rome Convention, 1961. However, despite huge technological developments (FM, stereo, audio and video recorders, DVD-CD recorders and players, satellite, cable, digital and on-demand delivery), this protection has not been revised. The WIPO Standing Committee on Copyright and Related Rights has advanced initiatives to streamline neighbouring rights regime in the context of technological developments. According to draft WIPO Treaty on the Protection of Broadcasting Organizations, these organizations would enjoy the right to authorize or prohibit fixations of broadcasts, including broadcasts made by wire; the right to authorize or prohibit the reproduction of such fixed broadcasts; the right to authorize or prohibit the retransmission of broadcasts; the right of making available to the public of fixed broadcasts, if such communication was made in places accessible to the public against payment of an entrance fee, and the right to authorize or prohibit the distribution of fixed broadcasts. The draft Treaty addresses the issue of signal piracy by introducing a provision on the protection of signals prior to their broadcasting. Moreover, the draft also provides for provisions on the protection of technological measures and rights management systems. The proposal also takes into account the need to safeguard the balance with the rights of other categories of rights holders, and particularly those who contribute to programmes, such as authors, and the interests of users and the public at large.

It is to be noted that for any protection regime, it is important that it must not liquidate rights as to freedom of information and access to knowledge. In the present proposed treaty ‘broadcast’ has been much more widened and the rights protected sought to include sounds, images or sounds and images, or of the representations thereof, with additional terms that address the issue of how the material is disseminated. Seen on these terms, it appears that this treaty comes
closer to engulf even database protection. This view is substantiated by the US proposal\textsuperscript{15} to exclude from the definition of broadcast transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public. The definition\textsuperscript{16} of ‘broadcasting’ in the WIPO treaty is significant on the point that it does include mere retransmission by cable of broadcasts of a broadcasting organization or the making available of fixations of broadcasts as set out in Article 7\textsuperscript{17} of the EU proposal to the draft treaty. However, this limitation does not appear in the US definition for webcasting. Instead, there is only a requirement that the webcaster makes the material accessible to the public at the same time. If the threshold is simply making accessible the materials at the same time, then plausibly the entire world wide web is covered, including every image and sound on the Internet. If text is included under images or sounds (or representations thereof), if the treaty does not intend this then it can and should be clarified.

The proposed broadcasters' treaty at WIPO seeks to give broadcasters, cablecasters and webcasters ten more additional rights\textsuperscript{18} (given below) to the three mentioned in the TRIPS Agreement\textsuperscript{19}. But their suitability to particular member country shall have to be analysed with respect to existing legal regime and requirement of the member country as to the protection of neighbouring rights.

1. Fixation,
2. Reproduction of fixations,
3. Distribution of fixations,
4. Rebroadcasting (simultaneous),
5. Cable retransmission (simultaneous),
6. Retransmission over the Internet (simultaneous),
7. Deferred broadcasting/cable/Internet transmission based on fixation,
8. Making available of fixed broadcasts,
9. Communication to the public (in places accessible to the public against entrance fee),
10. Obligations regarding technological measures of protection and rights management information.

All these have been proposed by the WIPO treaty to be included by the member countries in their domestic statutes. In furtherance thereof some more suggestions of the member countries have been added to this list, which includes, decryption of encrypted broadcasts, rental of fixations and making available of unfixed broadcasts\textsuperscript{20}.

**Neighbouring Rights: Indian Context**

The history of copyright is the history of the response of law to technological developments. Since 1971, when the Berne Convention was last amended, and the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations) in 1961, there have been sweeping technological changes. The advent of digital technologies has posed serious challenges to the copyright regime. To examine the impact of the new technologies on
copyright and neighbouring rights, the WIPO had set up two committees of experts on possible (i) Protocol to the Berne Convention in September 1991 and (ii) instrument for protection of the rights of performers and producers of phonograms in September 1992. These committees, after exhaustive discussions, in which India was an active participant, drafted basic proposals for three new treaties, viz.,

(i) Treaty for Protection of Literary and Artistic Works,
(ii) Treaty for Protection of the Rights of Performers and Producers of Phonograms, and
(iii) Treaty on sui generis Protection for Databases.

The conference adopted two treaties, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty. In the area of copyright and neighbouring rights, Indian law has shown a significant advance and protection term for these multiple rights has been enhanced to provide wider protection. According to international commitments, the term of protection for copyrights and right of performers and producers of phonograms is not less than 50 years. In case of broadcasting organizations, the term of protection is at least 20 years. India being a signatory to the Berne Convention has streamlined the Indian copyright laws in order to conform to WTO requirements. In fact, Indian copyright laws provide for greater protection to copyrights than is required under WTO obligations in some matters such as period of copyright protection (60 years in India). The law was amended in December 1999 to grant a 25-year term of protection for (Broadcasters’ right) neighbouring rights.

It could be seen that just as the concept of copyright had been established in response to the advent of printing press technology, it may also appear that the concept of neighboring rights emerged in line with rapid developments in various information technologies. Even in countries, where there is no concept of neighboring rights as such, technological adaptations of copyright works such as sound recordings and broadcasts are granted copyright protection with some limitations on the copyright. As it becomes easy and cheap, with the aid of information technologies like audio/video recorders and computers, to make mechanical reproductions of performances by popular performers of musical or dramatic works, there are also growing demands for protecting performances by performers who add original and creative contribution to the existing works.

Although Copyright Act, 1957, has identified performers right in Section 38, yet moral rights of the performers are not explicitly incorporated. Moral right of a performer states that a performer has the moral right to claim, when reasonably practicable, to be identified as the performer of his performance and to prohibit any distortion, mutilation, or other modification of his performance that would be prejudicial to his reputation.
Operational Regime of Neighbouring Rights

Neighbouring rights (also called related rights) protect the rights of performers, producers of phonograms (sound recordings), and broadcasting organizations. Phonograms are sound recordings such as audiotapes, records, or music CDs. Some of the problems addressed by the TRIPS Agreement include the unauthorized copying or broadcasting of live performances and the unauthorized reproduction of recordings or of radio and television broadcasts. Under the TRIPS Agreement, nations must provide a legal protection regime by which performers, broadcasters, and producers of phonograms can prevent such acts except with their authorization. Inspite of technological advancement, there is no dirth of instruments in the market that can be used efficiently prejudicing rights of performers and broadcasters. The term neighbouring rights furthermore implies that in many respects the right itself is similar to the author's copyright. This particularly concerns the basic individual rights granted (such as the right of reproduction or of rebroadcasting), the fact that the right is limited in time, and the various legal remedies are there in case of infringement of the rights.

Berne Convention reserves to authors of dramatic works, dramatic-musical works, and musical works, the exclusive right to authorize their public performance or communication to the public, and any translations thereof. Berne Article 1 ibis provides that authors of literary works have the exclusive right to authorize the broadcasting or communication to the public of their works by wire, rebroadcasting, loud speakers, or similar methods and permission to broadcast does not include permission to record the work broadcast. Similarly, Berne Convention also provides that authors of literary rights also have the exclusive right to authorize their public recitation, any communication to the public of the recitation, and the same rights with respect to translations. It also provides that authors of literary or artistic works enjoy the exclusive right of authorizing adaptations, arrangements, and other alterations of their works.

It could be seen that in almost all domestic legislation the rights provided by copyright apply to authors, related rights, known as neighbouring rights, concern other categories of owners of rights, namely, performers, the producers of phonograms and broadcasting organizations. Related rights could be more succinctly defined as the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcast respectively.

Although neighbouring rights flow out of copyright regime, still some difference could be identified between them. Related rights or neighbouring rights differ from copyright in that they belong to owners regarded as intermediaries in the production, recording or diffusion of works. The link with copyright is due to the fact that the three categories of related rights owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the
communication of the latter’s works to the public. A musician performs a musical work written by a composer; an actor performs a role in a play written by a playwright; producers of phonograms – or more commonly the record industry – record and produce songs and music written by authors and composers, played by musicians or sung by performers; broadcasting organizations broadcast works and phonograms on their stations. This basic characteristic of neighbouring rights as intermediary rights makes them distinct from copyright.

**Operational Regime in Info-Tech Age**

Overall design of neighbouring rights in India has a positive correlation with the developing information technology as well. This implies that neighbouring rights enforcement regime has to be modified keeping in view technological developments. In considering neighbouring rights in the perspective of information technology developments, it is worth noting that copyright protection for films, sound recording and allied matters under the Indian Copyright Act has a peculiar stance in the middle of traditional concept of copyright and civil law concept of neighboring right. Although the Indian Copyright Act does not specifically name the rights of film producers as the neighbouring rights, it has clearly assimilated the film producers’ rights to the concept of neighbouring rights. It is to be noted that amendments made in 1999 to the Copyright Act (table on p. 365), has not brought very significant changes in the fundamental structure that the film producers’ exploitation of their own films still depends upon the scope of licences granted by the copyright owner whose copyright works are incorporated in the film.

The concept of neighbouring rights originated from analogue technologies, it faces a substantial change in its scope in response to rapid developments in digital technologies which consist of computers, digital on-line communications, satellite communications and so on. Since digital technologies brought about new concepts like digital reproduction, on-line transmission, satellite broadcasting, public performance connected to computer network and the like, it is highly uncertain whether these new concepts fit into existing neighbouring rights system or whether amendments should be made to existing copyright statute. A classical case on the need of broadcasters’ right in hi-tech era could be illustrated as the broadcasting organization's entrepreneurial efforts can be thwarted not only by direct use of its broadcast but also by unauthorized use of a pre-broadcast programme carrying signal transmitted via a terrestrial or satellite telecommunications link and intended only for the broadcaster itself for use in its broadcast. An example would be a cricket match played in country A; the live coverage (picture and international sound) is sent simultaneously via a communications satellite to the authorized broadcaster in country B; a competitor or cable operator in country B intercepts the satellite signal and uses it himself, probably even adding his own advertising.

Another facet of neighbouring rights infringement could be seen in Indian
<table>
<thead>
<tr>
<th>Provisions of the Copyright Act, 1957 as amended in 1999</th>
<th>Impact/outcome/infringement etc of neighbouring rights of copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 18</td>
<td>Owner of neighbouring right may assign rights under the work to any one provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.</td>
</tr>
<tr>
<td>Section 19</td>
<td>Mode of assignment of neighbouring rights, which requires that no assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized agent.</td>
</tr>
<tr>
<td>Section 30</td>
<td>The owner of the neighbouring rights in any existing work or the prospective owner of the neighbouring right in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorized agent: Provided that in the case of a licence relating to neighbouring right in any future work, the licence shall take effect only when the work comes into existence.</td>
</tr>
<tr>
<td>Section 53</td>
<td>This section regulates importation of copies in India of work having neighbouring right/copyright in them.</td>
</tr>
<tr>
<td>Section 55</td>
<td>Civil remedies for infringement of neighbouring rights, e.g. injunction, damages, accounts, etc.</td>
</tr>
<tr>
<td>Section 58</td>
<td>Rights of owner against persons possessing or dealing with infringing copies; such infringing copies shall be deemed to be property of the owner of neighbouring right.</td>
</tr>
<tr>
<td>Section 64</td>
<td>Power of police to seize infringing copies of the work having neighbouring rights. Although Section 39A does not make applicable Section 63 of the Act, but Section 64 requires that the police officer may, if he is satisfied that an offence under Section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of the work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate.</td>
</tr>
<tr>
<td>Section 65</td>
<td>Punishes possession of plates for the purpose of making infringing copies. It reads, person who knowingly makes, or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment, which may extend to two years and shall also be liable to fine.</td>
</tr>
<tr>
<td>Section 66</td>
<td>Disposal of infringing copies or plates used, to be used for purpose of making infringing copies. Such materials to be handed over to the owner of copyright-neighbouring rights.</td>
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</tbody>
</table>
scenario where CDs are rampantly copied. This demands some sort of technological evolution for instance making CDs single user or changing the law in such a way as to devise a fee levying mechanism on CDs. This could be concluded with general propositions that, with substantial developments in information technologies and rapid growth of entertainment business in India, specific contents and scope of neighbouring rights under the current Copyright Act might well be amended and, also, that copyright protection of underlying works like music and novel should not be affected by strengthened protection of neighbouring rights in the course of interpretation of licensing agreements between the copyright owners and neighbouring rights owners vis-à-vis users of such work.

Being aware of the considerable and increasing harm that a lack of protection, on the one hand, and new piracy practices in the digital environment, on the other hand, cause to the interests of authors, publishers, performers, producers and broadcasters, as well as to the cultural professions and related industries as a whole, it is therefore required to have a look on the entire perspective of neighbouring rights’ enforcement regime in India and evolve a system that protects neighbouring rights in legally protected copyright regime.

Protection Regime

Legal regime cannot protect in absolute sense any rights and this fits for copyright-neighbouring rights protection as well. As a sequel to this, some limitations do exist on the protection regime of neighbouring rights, which has to be accepted as an integral part of the copyright system. Because such limitations are recognized in positive as users’ legitimate interests in making certain unauthorized uses of copyrighted material\textsuperscript{29}. Generally speaking, Chapter VIII of the Copyright Act, 1957 encompasses right as well as protection paraphernalia of neighbouring rights in India. Section 37 ensures broadcasts reproduction right, however, Section 38 defines and explains performer’s right. Section 39 of the Act identifies those instances when an act shall not amount to infringement of neighbouring rights (broadcasters’ and performers’ rights). Section 39A\textsuperscript{30}, that came into force on 10.05.1995 by amendment Act of 1994 makes applicable other specific provisions of the Copyright Act, 1957. Before this, it could be pertinent noted that Section 53A has not been made available to those holding neighbouring rights, which creates a presumption that in cases of neighbouring rights either there is no possibility of resale or such works have no economic value so that owners could get something during resale.

In the realm of neighbouring rights in India, it could be seen that Chapter VIII has segregated the entire conceptual framework of neighbouring rights from the awesome enforcement of Copyright Act, 1957. This is so because Section 39A has identified provisions of the Copyright Act, which are applicable to neighbouring rights with suitable adaptations. An argument might be
advanced that Section 39A has limited the scope of Copyright Act in relation to neighbouring rights. In this analogy Section 63 that elucidates the penal provision in relation to copyright infringement would have been ousted, but for clause (b) of Section 63 has become applicable to infringement of neighbouring rights (broadcasters’ rights). Thus, this provides impetus to the argument that Copyright Act, 1957, needs to be revisited so as to incorporate changes injected by the technological development.

In order to strengthen the neighbouring rights regime in India reference could be had from the recommendations of the Committee of Ministers for the Council of Europe. These recommendations emphasized the following points, which could give impetus to protection regime for the neighbouring rights:

(a) Recognition of rights
(b) Remedies and sanctions
(c) Technological measures and rights management
(d) Cooperation between public authorities and between such authorities and rights owners
(e) Cooperation between member states and ratification of treaties

Conclusion
Taking reference from the international protection regime of copyright and related rights (neighbouring rights) it becomes pertinent to state that on the international level, the intergovernmental discussions within the framework of WIPO have led to a series of three treaties (copyright, neighbouring rights and database protection) of which, two, namely, Copyright Treaty and a Performances and Phonograms Treaty have already acquired international compliance status. This shows that neighbouring rights have acquired a status from which no relegation is possible now, what is left is to move further and devise domestic legal regime to strengthen these intermediary rights. Both treaties particularly deal with the use of copyright protected works, performances and sound recordings in digital networks, such as the Internet. Authors, performers and phonogram (i.e. record) producers are granted a broadly worded exclusive right of communication to the public, covering interactive services and delivery on demand. One area that is still open and craves attention is to reach an agreement at the international level on a proposal to extend the exclusive right of reproduction to include the temporary storage of a work in computer memory. Another area that calls for noteworthy attention is the need of specific provisions for the circumvention of anti-copying devices in the light of recognition of access to information as a basic human right.

The area of neighbouring rights needs enhanced protection under the Indian legal regime of copyright and related rights. It is manifest that proposed WIPO treaty on webcasting would definitely influence the Indian legal regime on parameters of neighbouring rights protection and Indian law shall accommodate the changes perpetuated by technological development through passage of time.
References

1 See wipo.org

2 Section 37 Broadcast reproduction right: (1) Every broadcasting organization shall have a special right to be known as broadcast reproduction right in respect of its broadcasts, (2) The broadcast reproduction right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the broadcast is made, (3) During the continuance of a broadcast reproduction right in relation to any broadcast, any person who, without the licence of the owner of the right does any of the following acts of the broadcast or any substantial part thereof, (a) rebroadcasts the broadcasts, or (b) causes the broadcast to be heard or seen by the public on payment of any charges, or (c) makes any sound recording or visual recording of the broadcast, or (d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence, or (e) sells or hires to the public, or offers for such sale or hire, any such sound recording or visual recording referred to in clause (c) or clause (d), shall, subject to the provisions of Section 39, be deemed to have infringed the broadcast reproduction right.

3 Section 38 Performers’ right: (1) Where any performer appears or engages in any performance, he shall have a special right to be known as the ‘performers’ right’ in relation to such performance, (2) The performers’ right shall subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made, (3) During the continuance of a performers’ right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, namely, (a) makes a sound recording or visual recording of the performance, or (b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was- (i) made without the performer’s consent; or (ii) made for purposes different from those for which the performer gave his consent; or (iii) made for purposes different from those referred to in Section 39 from a sound recording or visual recording which was made in accordance with Section 39, or (c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with Section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performers’ right, or (d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast, shall, subject to the provisions of Section 39, be deemed to have infringed the performers’ right. (4) Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance.

4 Chapter II, Section 11
5 Chapter VII, Sections 33 to 36A
6 Article 1 clause 8 of the Constitution of United States
7 See Digital Millennium Copyright Act, 1998
8 First US Copyright Act came into existence in 1790, which provided in its objective an Act for the encouragement of learning, by securing the copies of maps, charts, and books to the authors and proprietors of such copies. This Act was modeled on Statute of Anne (UK) and provided a 14 year (+14 yr renewal) period for copyright protection
9 By this amendment language in the Act was broadened to anticipate technological developments—anticipated future Berne Convention adherence (US ratified Berne Convention in 1988—extended to unpublished works—Preempted all prior copyright law—extended term to life + 50 years (or 75 years for corporation)—fair use and first sale codified
10 Supra note 2 at p 964
11 See also the socialist approach to copyright that prevailed in the erstwhile Soviet Union and eastern block countries. Paul Goldstein, International Copyright: Principles, Law and Practice (Oxford University Press), 2001
Pirated radio station operating in a neighbouring country that retransmission of live or recorded broadcasts; commercial sale to the public of CDs, videocassettes or other devices that are unauthorized copies of an entertainment or sports programme, in the broadcaster's country and abroad; cable distribution of complete broadcast programmes in the broadcaster's neighbouring country; sale of records of a music concert derived from an unauthorized reproduction of the soundtrack of a live television broadcast to the public; rental of unauthorized recordings of a television broadcast by a video club; offering the service of making an unauthorized copy of a pre-selected television programme with a view to the sale thereof in video form; commercial use by a business firm of privately-made copies of a radio broadcast; manufacture, importation and distribution of pirate decoders and/or smart cards specifically designed to permit unauthorized access to encrypted television services; distribution of television and radio broadcasts to hotel rooms by internal hotel cable services; retransmission of live broadcasts of entertainment or sports program via the Internet or cable network, partly ‘framing’ the broadcast images with the pirate's own advertisements; In theatre, video filming of movies and selling them through CDs or cassettes.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961); Article 1 provides protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection.

See for details www.wipo.org, comments were invited from the member countries by 15 September 2003 and a meeting of the Standing Committee on Copyright and Related Rights was held on 3-5 November 2003.

See SCCR/9/4: containing a proposal submitted by the United States of America to WIPO Standing Committee on Copyright and Related Rights, September 2003.

Article 1bis of the treaty (as suggested by the EU): For the purposes of this Treaty, broadcasting means the transmission by wire or over the air, including by cable or satellite, for public reception of sounds or of images and sounds or of the representations thereof; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organisation or with its consent. The mere retransmission by cable of broadcasts of a broadcasting organization or the making available of fixations of broadcasts as set out in Article 7 shall not constitute broadcasting.

Id Article 7: Right of making available of fixed broadcasts: Broadcasting organizations shall enjoy the exclusive right to authorize or prohibit the making available to the public, by wire or wireless means, of fixations of their broadcasts, in such a way that members of the public may access them from a place and at a time individually chosen by them.

See CRP/SCCR/9/1 Rev, available at www.wipo.org

Article 14 of the TRIPS Agreement, broadcasters shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the re-broadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention 1971.


Supra note 6.


Berne Convention Article 11.

Id Article 12.

See WIPO at www.wipo.org.

Supra note 15 at pp 3-11.
27 Ibid
28 Development in technology during 1950’s perpetuated coming into existence of Rome Convention 1961 and at that time the technological upsurge was analogue technique in transmission of data etc
30 Other provisions applying to broadcast reproduction right and performers’ right: Sections 18, 19, 30, 53, 55, 58, 64, 65 and 66 shall, with any necessary adaptations and modifications, apply in relation to the broadcast reproduction right in any broadcast and the performers’ right in any performance as they apply in relation to copyright in a work: proved that where copyright or performers’ right subsists in respect of any work or performance that has been broadcast, no licence to reproduce such broadcast, shall take effect without the consent of the owner of rights or performer, as the case may be, or both of them.
31 Supra note 7
32 Recommendation Rec (2001) 7 of the Committee of Ministers to member states on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment (adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers’ Deputies)