

THE NEWSLETTER

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

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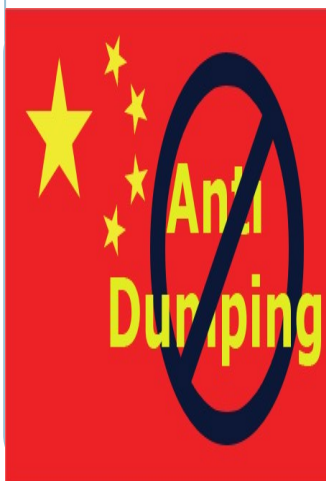
SEBI has notified SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Listing Regulations**") on September 2, 2015, after following the consultation process.

The Listing Regulations would consolidate and streamline the provisions of existing listing agreements for different segments of the capital market viz. equity (including convertibles) issued by entities listed on the Main Board of the Stock Exchanges, Small and Medium Enterprises ("**SME**") listed on SME Exchange and Institutional Trading Platform, Non-Convertible Debt Securities, Non Convertible Redeemable Preference Shares, Indian Depository Receipts, Securitized Debt Instruments and Units issued by Mutual Fund Schemes.

The Regulations have thus been structured to provide ease of reference by consolidating into one single document across various types of securities listed on the stock exchanges. The salient features of the Regulations are as follows:

- 1.Guiding principles for disclosures.
- 2.Common obligations applicable to all listed entities.
- 3.Obligations which are applicable to specific types of securities.
- 4.Obligations of Stock Exchanges and provisions in case of default.
- 5.A shorter version of the listing agreement.





GOVT RENEWS IT ANTI-DUMPING POLICY ON SPECIFIED GOODS IMPORTED FROM KOREA PR

The Govt. of India has imposed an anti-dumping duty on Phosphoric Acid of all grades imported from Korea PR at the rates specified vide its Notification No. 15/7/2014-DGAD, dated the 20.06.2015. The Govt. had initiated a review in the matter of continuation of anti-dumping duty on imports Phosphoric Acid of all grades originating in or exported from Korea PR on 2014. The step was taken in light of the continued dumping of Phosphoric Acid from Korea PR which are causing injury to the domestic market. The Govt. felt that such a step was required to discourage any such dumping in the Indian market so that the domestic industries could thrive.

FOREIGN DIRECT INVESTMENT- E-BIZ PLATFORM TO FACILITATE FDI REPORTING

Reserve Bank of India (“RBI”) vide notification No. FEMA 20/2000-RB, dated 3.05.2000 under the aegis of the e-Biz project has enabled online filing of the Foreign Currency Transfer of Shares (“FCTRS”) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a person resident outside India or vice versa. The new online reporting platform enables the customer to login into the e-Biz portal, download the reporting form, complete the form and then upload the same onto the portal using their digitally signed certificates. The Authorized Dealer Banks (ADs) will be required to download the completed forms, verify the contents and then upload the same for RBI to process and allot the Unique Identification Number (UIN). The online reporting on the e-Biz platform was made operational from August 24, 2015, as an additional facility and the manual system of reporting is still functional.

DELAY IN FURNISHING REPLY TO THE QUERIES/CLARIFICATIONS RAISED BY THE CUSTOMS DEPARTMENT

Central Board of Excise and Customs (“CBEC”) observed that during re-assessment of Bill of Entry the officers seek clarification from importer(s)/ exporter(s) in a piecemeal manner which delays the entire assessment process. Taking this into account the CBEC vide its circular no. 22/2015-



Customs dated 03.09.2015 has ordered the officers (i) To seek clarification from importer(s)/exporter(s) in one go and not in a piece meal manner. (ii) To list queries frequently raised in course of assessment and disseminate them through Public Notice, so that importers could take preventive action to avoid such queries or be better prepared to reply to such queries.

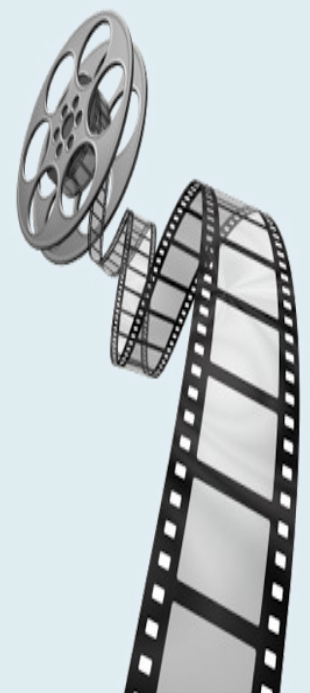
RAJ HC VERDICT THAT BANNED SANTHARA STAYED BY SC

The Hon'ble Supreme Court in the case of *Dhawal Jiwan Mehta v. Nikhil Soni* (SLP CC No. 15592/2015) restored the Jain religious practice of a ritualistic fast unto death by staying an order of the Rajasthan High Court, which compared it to an act of suicide. A three-judge Bench, headed by Chief Justice of India H.L. Dattu, stayed the order dated 10.08.2015 of a Division Bench of the High Court on the basis of petitions filed by members of the Jain community.

The petitioners contended that the Rajasthan High Court, based on incorrect observations on Jainism, criminalised the philosophy and "essential" practice of Sallekhana/Santhara, a fundamental component of the Jain principle of ahimsa (non-violence). The petitioners contended that the Rajasthan High Court order infringed the principles of secularism. It criminalised Santhara without even consulting any scholars of Jainism or findings to substantiate that the practice was against public health, morality and order. The Hon'ble Supreme Court issued notice to the Centre and Government of Rajasthan on the question raised in the petitions whether "essential and integral parts of a religion can be restricted by the State".

PRODUCER RAMGOPAL VARMA FINED RS 10 LACS FOR SHOLAY COPYRIGHT INFRINGEMENT

The Delhi High Court in *Sholay Media and Entertainment Pvt. Ltd. v. Parag Sanghavi and Ors.* (CS(OS) 1892/2006) has penalized Ramgopal Varma and his production house by a sum of Rs 10 lakh as punitive damages in a judgment in favour of Sholay Media and Entertainment. The Court held that the publicity material, movie, similar plot and characters along with the music, lyrics and background score and even dialogues from the original film Sholay, gave "an overall impression that it is a remake of the film Sholay" and, "amounts to infringement of copyright". Further, the Court held the defendants guilty of infringement which is, "a deliberate act to gain profits." The court also said that, "the defendants have distorted and mutilated the original copyright work of the plaintiffs". The court passed the judgment which also barred the defendants permanently from manufacturing, selling, offering for sale or distributing any of materials involved with Sholay or the characters, music or the dialogues on top of the punitive damages and costs to be given to the plaintiff.



SIGNAL PIRACY AND BROADCASTERS RIGHT

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Introduction

Signal piracy is the phenomenon of decoding an encrypted signal which a person is not authorized to receive and has not paid for. Signal piracy is ordinarily committed by individuals for the purpose of using the services for free and by service providers to make illegal gains. It happens when a person isn't able to either afford or access certain broadcasts.

The problem of signal piracy is not something which India is alien to and is a major concern with the technological developments and keeping in view the number of private television channels. In 1990s there were entry barriers in the broadcasting industry but we have come long way from there today. However, the laws regulating broadcasting and more specifically the menace of signal piracy have not developed along with the technology. This article tries to highlight the problem of signal piracy and point out the inadequacy of the existing legal framework in relation thereto.

Indian Law

The recent amendments in the Copyright Act, 1957 ("Act") along with the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 address the problem of signal piracy and safeguard the rights of broadcasters. The said rights were introduced by the 1992 Amendment Act, while the 2012 amendment have extended the scope of their rights.

On perusal of Section 37 of the Act it is evident that every broadcasting organization under the Act has a unique right called "*broadcast reproduction right*" in its broadcasts and the said rights are valid for a period of twenty-five years. During the said period, a broadcasting organization's exclusive rights are said to be infringed if any person, without license: (i) rebroadcasts the broadcast; (ii) causes the broadcast to be heard or seen by the public on payment of any charges; (iii) makes any sound recording or visual recording of the broadcast; (iv) makes any reproduction of such sound recording or visual recording where such initial recording was done without license or, where it was licensed, for any purpose not envisaged by such license; or (v) sells or gives on commercial rental or offer for sale or of such rental, any such recording or visual recording referred to clause (iii) or clause (iv).

The 2012 amendment granted statutory license to broadcasters aspiring to broadcast already published literary, musical works or sound recordings. Under the new section 31D the broadcasters are permitted to do so provided they fulfill the enlisted conditions.

After the said amendments of the Act and realizing the threat of signal piracy, the Courts have dealt with this issue with severity. Though, even before the amendment, Hon'ble Delhi High Court in the case of *Taj Television v. Rajan Mandal* granted injunction against signal piracy of live cricket matches which was a move forward towards curbing the problem of signal piracy. In another case of *Siti Guntur Digital Network Pvt. Ltd. v. Maa Television Network Ltd. and Others*, the Telecom Dispute Settlement Appellate Tribunal restrained Harika (multi-

system operator) from retransmitting any channels of MAA TV in Guntur area since the same were being illegally retransmitted and without actually signing an interconnect or subscription agreement with the broadcaster. As per the Hon'ble Tribunal, Harika had indulged in signal piracy.

Though the Courts have dealt with the matter of signal piracy with sternness, still the need for an amendment in the concerned laws to deal with the problem of signal piracy is apparent. With the advent of internet, broadcasting is no more a monopoly of few players having complicated equipments. Hence, we need a quick but a careful change in concerned laws. The recent amendment in Act though provided rights to "broadcasting organizations", it did not define a 'broadcasting organization'. In today's age practically anyone with internet availability can be deemed to be a broadcaster as one can upload, download, reproduce and record audio-visual content. Moreover, 'broadcast' has been given a wide interpretation and anyone communicating to the public through wireless means or by a wire can be said to be a broadcaster. The definitions of terms like 'broadcast,' 'reproduction,' 'retransmission' and 're-broadcast' need to be carefully defined. We also need to understand that the transmission over internet falls outside the scope of the provisions of the Act. For example, the Copyrights, Designs and Patents Act of United Kingdom specifically exclude internet transmission from the purview of the said Act unless it is used for simultaneous transmission of a live event or the content is being simultaneously broadcasted on other means.

International Law

International rules to protect television broadcasts from piracy have not been updated since the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 was drafted at a time when cable was in its formative years and the internet was not even invented. Though, the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement also addresses the issue of broadcasters' right but the exclusive right approach followed by it instead of the signal right approach has made it unacceptable to a lot of developing countries which generally import information. It is imperative to understand both the approaches. The *exclusive right approach* protects the content which is being broadcasted even though the content is not created by the broadcaster, while the *signal rights* approach just aims to protect the broadcasters against signal theft and just give them rights on the signal that they are transmitting

In 2007, World Intellectual Property Organization's General Assembly agreed to follow a "signal-based approach" for drafting a new treaty keeping in mind that provisions on signal theft did not give the broadcasters additional rights over the content they transmit. There has been a considerable debate on the need of this new treaty as the developing countries have apprehensions that new treaty will give additional rights to broadcasters which is neither correct nor necessary. In this regard, it would be wise if India signs the proposed treaty only when there is a balance between broadcasters' rights and public interest to access information.

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