

**DETERMINATION OF PIRACY/UNAUTHORIZED
TRANSMISSION IN ANALOG REGIME & WILL
PIRACY LOOSE ITS RELEVANCE IN DAS REGIME?**



PIRATES OF THE SIGNALS

What is Piracy?

Piracy would literally mean -

- *The practice of attacking and robbing ships at sea.*
- *The unauthorized use or reproduction of another's work.*
- *Theft committed with an intent to have undue gains at the cost of owner of the property.*

What is Piracy of Channel?

In broadcasting industry, piracy of channel(s) would mean -

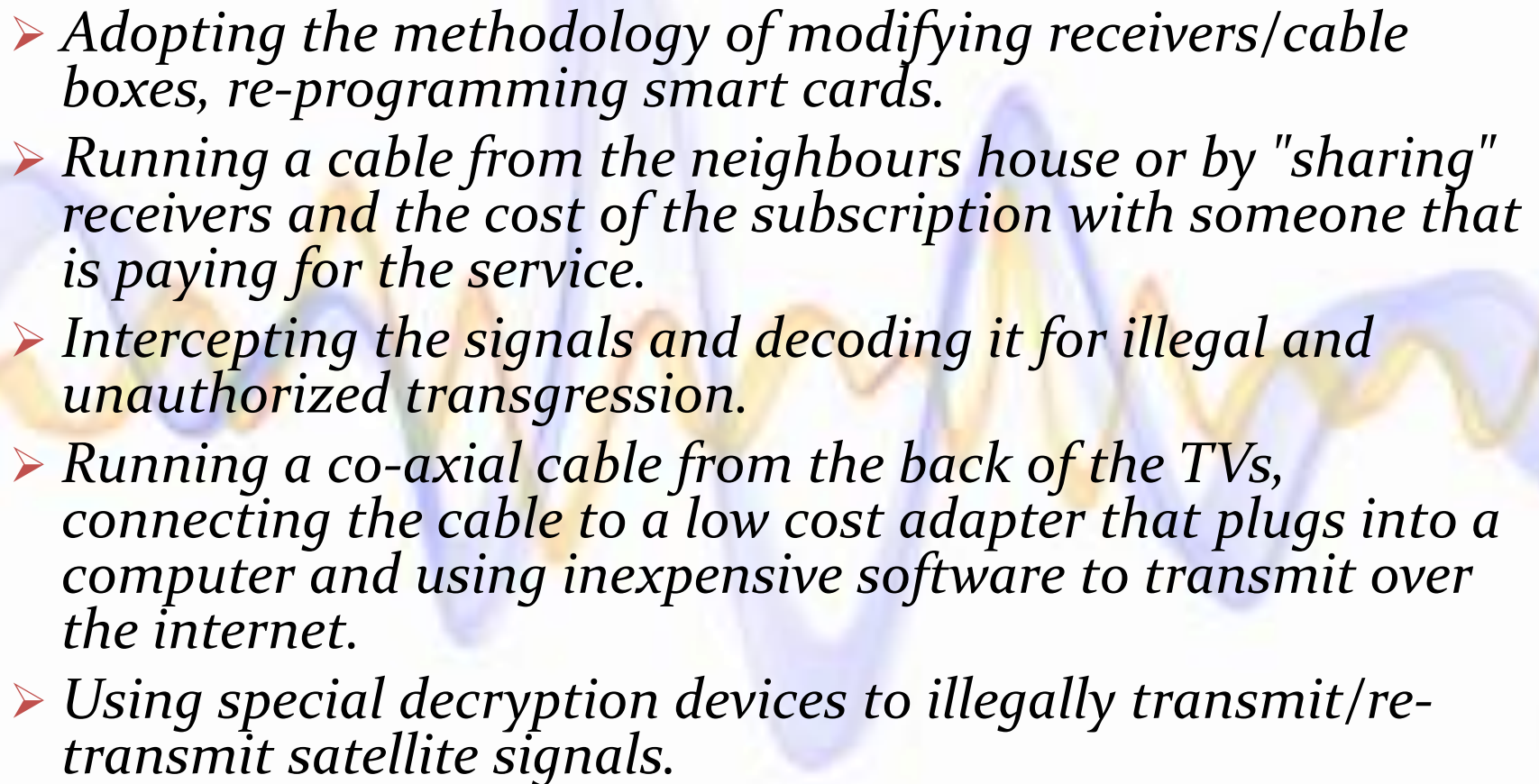
- *Unauthorized use of channel(s), illegal transgression of channel(s) for which specific fee is liable to be paid; or*
- *Retransmitting channel(s) in un-authorized territory.*
- *Re-transmission of signals without having an agreement in writing*

Meaning of Piracy under Copyright Act, 1957

- *Transmission/re-transmission of copyrighted work without a licence,*
- *Contravention of conditions of licence,*
- *If anyone Permits for profit, any place to be used for communication of signals to the public without an authorisation.*

How is piracy done?

➤ *Use of DTH boxes by Cable Operators is the easiest and cost efficient way to engage in piracy since, DTH boxes are easily available in the market to carry channels without paying to the Broadcasters. Cable Operators use DTH boxes as IRD/Decoder Box in their head-end and can re-transmit all or one channel from such DTH box to all its subscribers, with the help of technology. In case Broadcaster manages to switch-off DTH box of one DTH player, the Cable Operator will use another DTH box of the same or another DTH player and so on.*

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- *Adopting the methodology of modifying receivers/cable boxes, re-programming smart cards.*
 - *Running a cable from the neighbours house or by "sharing" receivers and the cost of the subscription with someone that is paying for the service.*
 - *Intercepting the signals and decoding it for illegal and unauthorized transgression.*
 - *Running a co-axial cable from the back of the TVs, connecting the cable to a low cost adapter that plugs into a computer and using inexpensive software to transmit over the internet.*
 - *Using special decryption devices to illegally transmit/re-transmit satellite signals.*

What are the remedies available under the law?

Under the TRAI Act and Regulations:

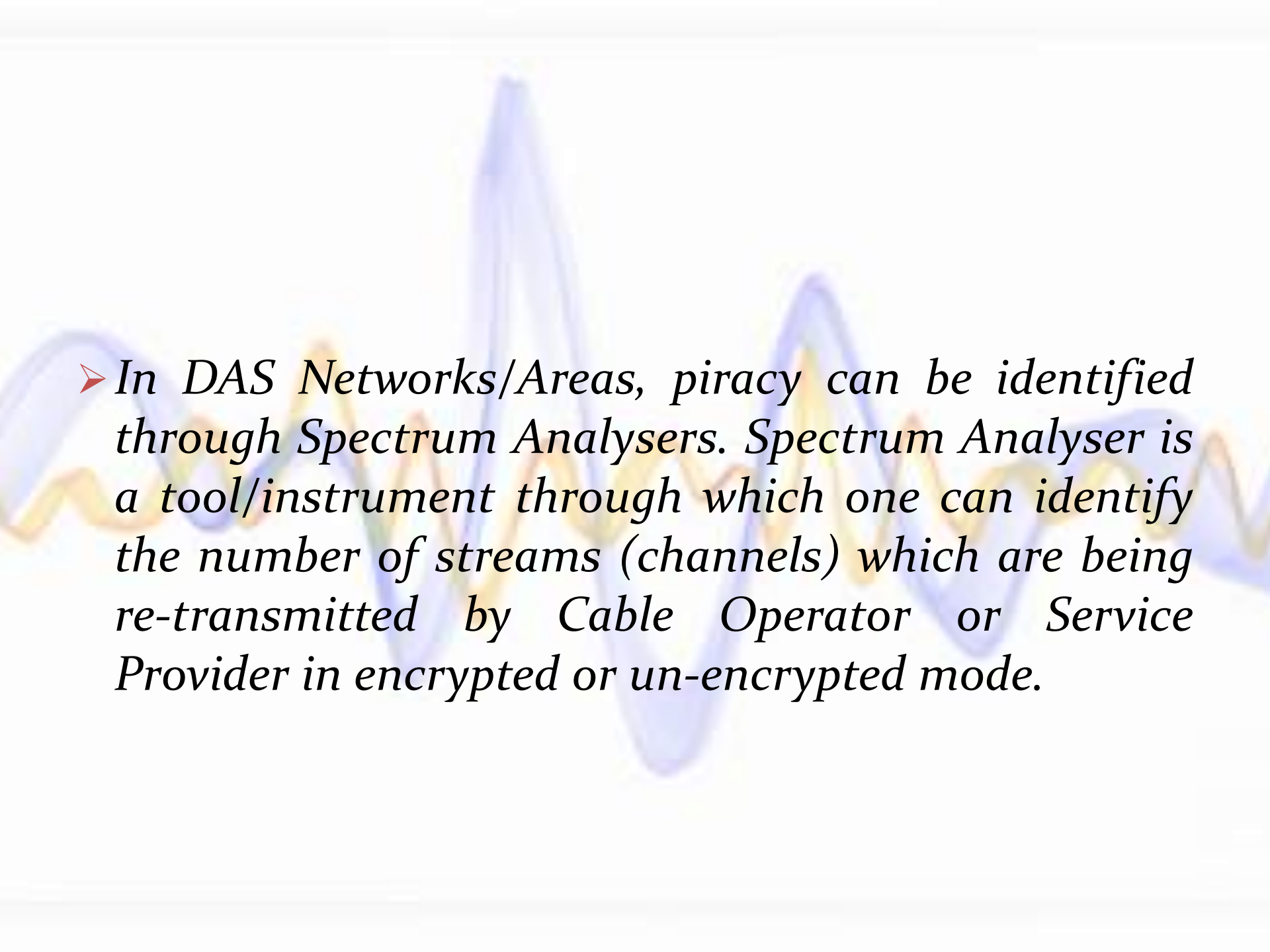
- Piracy can be a reason for denial of signals under Clause 3.2 of the Inter-connect Regulations dated 10.12.2004.
- Piracy can be a reason for award of damages.
- Piracy can be a reason for disconnection of signals of the network from where piracy originates as abetment to pirate is also an offence.

Under the Copyright Act, 1957:

- Section 55 provides for civil remedies for injunction, damages and accounts and/or other reliefs as the Court may decide.
- Section 63 provides for criminal liability being imprisonment from 6 (six) months and extending upto 3 (three) years and fine of not less than Rs.50,000/- and which may be extended to Rs.2 Lacs.

How Piracy can be proved before a Court of Law

- *Recording by the Broadcasters or by an independent, outside third party agency.*
- *By appointment of Local Commissioner, appointed by competent Court/Tribunal to visit the affected areas.*
- *Piracy can be identified by Finger Printing Number / Watermark / Channel Mapping / Forensic Watermarking / Local Channel or Logo of Cable Operator or any Service Provider.*



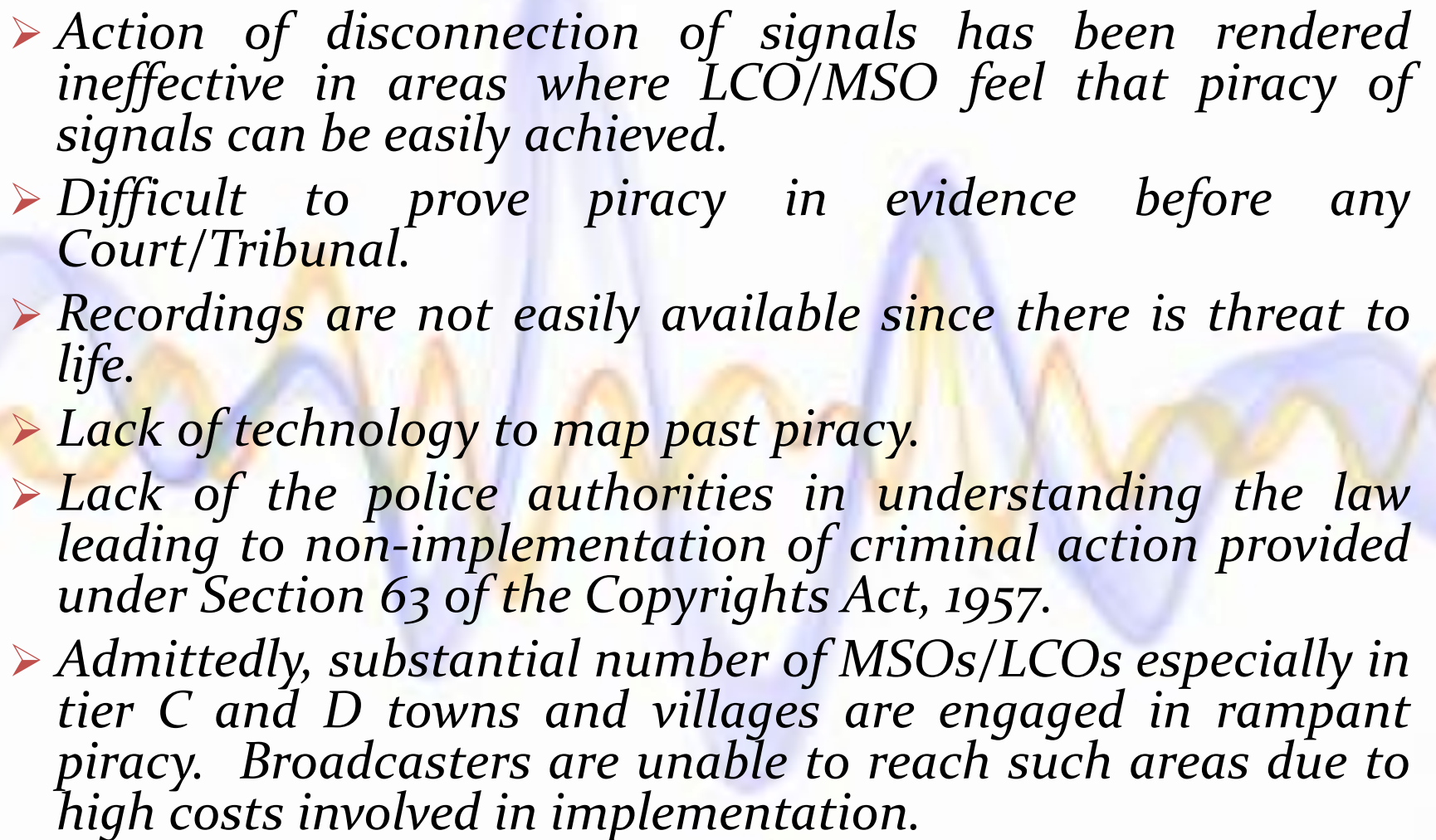
➤ *In DAS Networks/Areas, piracy can be identified through Spectrum Analysers. Spectrum Analyser is a tool/instrument through which one can identify the number of streams (channels) which are being re-transmitted by Cable Operator or Service Provider in encrypted or un-encrypted mode.*

Reason why piracy takes place and difficulties faced in curbing piracy?

- No cost involved in piracy and is easy way to unjustly enrich oneself.
- Lack of implementation of applicable laws.
- Cost involved in the transition phase from analogue to DAS regime is very high.
- High regulatory compliance requirements
- Smaller MSOs/LCOs have a low bargaining power with the broadcasters.
- At times, piracy happens by monopolistic MSOs to brow beat the Broadcasters.
- Cable Operator is not liable to pay the ex-chequer though it enjoys the benefit.

Difficulty in curbing piracy?

- Platforms can blur/mask Finger Printing number of the boxes they use, resulting in un-identification of boxes.
- Platforms can use 'Magical Boxes' which are easily available in the market, which are very difficult to identify, since such hidden networks operates from outside the Country.
- External influence on Police to delay the process of identifying piracy.
- Technology allows signals to be switched-off & on easily, and easy removal of the infrastructure used for piracy.
- Monopoly of the defaulters in their respective local areas.

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- *Action of disconnection of signals has been rendered ineffective in areas where LCO/MSO feel that piracy of signals can be easily achieved.*
 - *Difficult to prove piracy in evidence before any Court/Tribunal.*
 - *Recordings are not easily available since there is threat to life.*
 - *Lack of technology to map past piracy.*
 - *Lack of the police authorities in understanding the law leading to non-implementation of criminal action provided under Section 63 of the Copyrights Act, 1957.*
 - *Admittedly, substantial number of MSOs/LCOs especially in tier C and D towns and villages are engaged in rampant piracy. Broadcasters are unable to reach such areas due to high costs involved in implementation.*

How to curb piracy in Analog?

- *Establishment of Special Tribunal/Special Courts to implement laws related to piracy.*
- *Recognition of certain third party agencies by TRAI, in order to allow presumption in favour of the reports of piracy given by such third party agencies.*
- *A detailed study should be carried out by TRAI regarding piracy, and a specific regulation should be framed to tackle the situation.*
- *Full implementation of DAS regime.*
- *Specialised Courts and Tribunals should be established to tackle piracy related issues.*

Will piracy lose its relevance in DAS?

If there is full and absolute implementation of DAS, then piracy to a large extent can be controlled due to historical logs for running of channels recorded in CAS and SMS, with certain suggestions.

- *Fool proof technology to implement DAS.*
- *Authorities to ensure that DAS signals are not used for analog areas, which will result in widespread piracy.*
- *Covert and Overt Finger Printing to be implemented.*
- *Watermarking of the channels*

Conclusion

Piracy in any field is difficult to curb and causes substantial loss to the person / entity having a right over the property which is being pirated. Imagine a situation, where a person has spent its life and fortune to build up a property and such property is stolen by someone to have undue gains. The loss to such a person / entity, cannot be merely determined monetarily. If we have stringent laws for theft/dacoits, I say that menace of piracy is nothing less draconian than that.

Thus it is important to make laws more stringent, deterrent and presumption of *prima facie* case should be drawn in favour of the person/entity lodging the complaint of piracy.

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Thank You !