

ILLICIT MARKETS- A THREAT TO OUR NATIONAL INTERESTS

A REPORT ON THE BROADCASTING INDUSTRY IN INDIA



About this report:

This report has been prepared by Thought Arbitrage Research Institute (TARI) for FICCI Committee Against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE).

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Due to changes in the data collection and enumeration techniques of the Ministry of Statistics and Planning Implementation (MoSPI) of the Government of India, ASI 2012 data and NSS 68th round data are not entirely comparable with ASI 2010 and 2008 data and NSS 66th and NSS 64th round data respectively, used for ascertaining value and percentage of illicit markets in the previous FICCI-TARI study. To ensure consistency of results across years we have reclassified / re-ascertained certain supply / consumption values for 2010 and 2008.

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- Whistleblowing / Vigil Mechanism
- CSR & Sustainability
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TARI was founded by Kaushik Dutta and Kshama V Kaushik.

Research Team - Thought Arbitrage Research Institute

Research Conceptualisation and Industry Interface:

Kaushik Dutta

Principal Authors:

Kshama V Kaushik

Rosanna M. Vetticad

Principal Researchers:

Rosanna M. Vetticad

Research Support:

Saumya Sah

Vitul Gupta

Report Editors:

Souvik Sanyal

E-mail: contactus@tari.co.in, gayathri.venkatraman@tari.co.in

Address:

Thought Arbitrage Research Institute
C-16, Qutab Institutional Area, New Delhi - 110016, India
Tel: 011 41022447 / 41022448
Website: www.tari.co.in



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A REPORT ON THE BROADCASTING INDUSTRY IN INDIA



Foreword

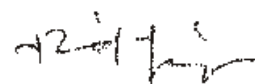


The broadcasting industry, which forms a large part of the media and entertainment sector in India, has evolved over the last decade against the backdrop of shifting consumer preferences toward niche content, digital delivery platforms and a highly competitive market. However, several studies indicate losses to this industry on account of piracy. To the broadcasting industry, counterfeiting essentially means 'content theft'. Piracy of this content is the unauthorized usage of copyrighted content that is then sold at substantially lower prices in the 'grey' market. It is extremely vital to safeguard broadcasters and curb unauthorized transmission. Concerted efforts and better co-ordination among Governments, industry and enforcement agency is imperative to curb this menace through suitable legislative amendments, stricter enforcement of laws and widespread awareness generation on the subject.

FICCI has been at the forefront of advocating policy framework on various aspects affecting the industry. In 2012, FICCI CASCADE had released a study titled "Socio-Economic Impact of Counterfeiting, Smuggling and Tax Evasion in Seven Key Indian Industry Sectors" which was the first ever compilation of facts and figures on counterfeiting, smuggling and tax evasion in seven key industry sectors in India. Subsequent to this comprehensive study, which not only estimated the size of the grey market in the select industry sectors, but also highlighted the losses to the industry in sales and Government revenue, we have now gone a step further and developed 10 sector specific reports on 'Illicit Markets - A Threat to Our National interests'. This report is specific to the broadcasting industry and aims at assessing the impact of piracy and copyright infringement in the broadcasting industry.

I would like to thank and congratulate all the committee members and stakeholders who have contributed towards this project, particularly Thought Arbitrage Research Institute (TARI). It is hoped that this study would provoke further debate on the extent of this problem and ways and means to mitigate the challenge.

I wish FICCI-CASCADE success in its future initiatives.



Dr. A. Didar Singh
Secretary General
FICCI



Chair's Message



I am pleased to present the report on 'Illicit Market: A Threat to Our National Interest' which is specific to the broadcasting industry.

Illicit markets have broad economy-wide effects on trade, investment, employment, innovation, criminality, environment, and on customer satisfaction. Over and above, it also has a negative impact on the brand image and loss of revenue for industry and governments.

Signal piracy and content theft is one of the major concerns of the broadcasting industry. It further takes physical form in recordings of broadcasts on video tapes, DVDs or USB sticks, or it can be virtual, such as the unauthorized redistribution of signals over the air or online. Broadcasters claim that signal piracy of all kinds is costing them crores of rupees in TV subscriptions along with advertising revenues, affecting investment decisions and competitiveness.

Given the thrust on economic development in the country; a key requirement would be to provide a conducive milieu for various sectors to grow and thrive. However, piracy issues in the broadcasting industry will threaten the growth of one of India's fastest growing industries - the media and entertainment industry. Content theft or piracy works in a vicious cycle within the economy having detrimental results - affecting the creator of copyrighted materials, the distributors and broadcasters, and ultimately the economy as a whole.

This report has estimated the size of the illicit market and its associated issues. I am certain that the findings from this report would increase consumer awareness, drive support from policy makers for required legislative amendments and their stricter enforcement. This will help facilitate provision of better content and services by the broadcasters, which in turn will encourage industries engaged in providing instruments and technology to the broadcasting sector towards greater investment in R&D and innovation.

I hope that this research will be useful for all stakeholders including consumers, industry, policy makers and researchers on the issues in the broadcasting industry, and the challenges ahead if concerted efforts are not taken to curb this menace.



Anil Rajput
Chairman
FICCI CASCADE



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Executive Summary



The existence of illicit markets is a matter of serious concern for any economy, more so in India where rapid technological advancement and economic liberalisation seem to have opened up avenues for the growth of a parallel economy dominated by counterfeited products and unlawful copying of intellectual property. In a 2012 FICCI CASCADE study titled “Socio-Economic Impact of Counterfeiting, Smuggling and Tax Evasion in Seven Key Indian Industry Sectors” the existence of such markets was established by estimating its size in seven key industry sectors and the consequent losses to the industry in sales and the government in revenue for 2008 and 2010. The present study, commissioned by FICCI's Committee Against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE), aims at updating the estimates of grey markets in selected sectors, projecting the resultant losses to the industry and assessing their impact on innovation and investment. This report is specific to the broadcasting industry in India.

Size of the Illicit Market

According to industry experts, generally there is no counterfeiting in the broadcasting industry. There may be some cases of unauthorised recording of broadcasts or sale of DVDs, USB sticks etc., as if these are done by the broadcaster. However, this is not known to be prevalent in the Indian broadcasting industry. Cable operators do not produce any channel signals and sell them under the broadcaster name without authorisation. The loosely defined term “piracy” in the broadcasting industry are acts of theft/ criminal breach of trust which also result in infringement of copyright as distinguished from counterfeiting in the film industry, garment industry, software industry etc., where imitation goods are produced and sold. Counterfeiting in this industry only results in infringement of copyright and cannot qualify as theft/ criminal breach of trust.



Thus, going by the industry perspective and definition of counterfeiting under Indian Penal Code, there is no physical 'good' that is being fraudulently imitated and sold in the broadcasting sector. Under-declaration of subscription may certainly qualify as theft, which results in loss to the broadcasters (in terms of subscription fee) and loss to the government (in terms of entertainment tax and service tax). However, this may not qualify as piracy under Indian Copyright Act. Retransmission of signals without any authorisation would result in a case of theft apart from infringement of copyright. Similarly, area transgression (providing signals beyond territory) and providing un-encrypted feed in DAS area would result in the offence of criminal breach of trust apart from infringement of copyright.

As a result, one of the significant hurdles in estimating the illicit markets in this industry was the absence of a definition of the term piracy/counterfeiting, since theft and counterfeiting are two different things. Furthermore government data on this industry appears to be limited to production and consumption of equipment, and not signals, hence it is not possible to make an estimation of the size of the illicit markets in the industry based on the methodology used for other sectors covered in the FICCI-CASCADE study.

Illicit Markets, Terror Organisations and Criminal Networks

While statistical data is available for the number of terrorist attacks that have taken place in India, it is difficult to directly correlate it to the grey market data in the absence of sufficient information and research, which are lacking at present, especially in the Indian context.

Furthermore, despite the existence of requisite laws in India and arrests of suspected criminals by the police, the scale of illicit markets is huge and the criminal networks and illicit markets organisations continue to thrive. Clearly, the existing laws and police operations are not resulting in the desired outcome and do not act as a deterrent. This could be due to the low conviction rates in India.

The lack of adequate data based on search and seizure in India makes it difficult to link the increase in illicit markets to terror funding. Establishment and determination of the extent of such a link calls for strategic intelligence gathering and preparation of robust databases, which are clearly missing at present. Given the security implications, if not outright financial considerations, there is little to argue against carrying out such exercises. This would be the first step to contain counterfeiting and its corollary, terror and ensure that genuine business interests do not suffer.

Conclusion & Way Forward

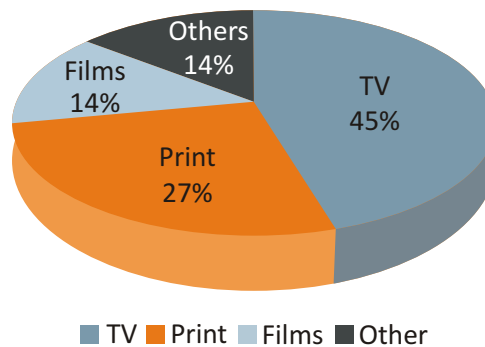
Keeping the ambiguities discussed in mind, going forward it is important to define by law the term counterfeiting/piracy in the context of the industry, since what is involved are intangible products or works that are protected by copyright. Other measures towards protecting the

industry, government and other stakeholders from related losses include stringent KYC norms for purchase of set-top boxes or obtaining cable connections, standardisation of norms for equipment, periodic reporting by distributors to regulators, increased civil and criminal sanctions for crimes related to intellectual property infringement, improving policy, providing technical assistance and enhancing awareness, etc.

Indian Industry Landscape

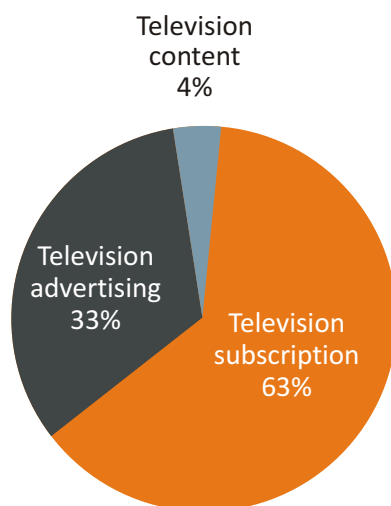


The television broadcasting industry in India forms part of the larger Indian Media and Entertainment (M&E) industry. The M&E industry is one of the fastest growing industries in the country according to CII. The television broadcasting companies consisting of General Entertainment Channels (GEC) and/or news broadcasting channels comprise almost 45% of the total M&E industry in India, according to a recent FICCI-KPMG report.¹ It has retained this approximate market share since as far back as 2008. The following chart broadly depicts the structure of the M&E industry comprising the television industry, print media, films, and others (i.e. radio, music, animation and vfx, gaming and digital advertising).



According to this FICCI-KPMG report the television industry grew by approximately 12.7% from ₹ 370.1 billion in 2012 to ₹ 417.2 billion in 2013. This segment is projected to grow to ₹ 885 billion in 2018 at a CAGR of 16.2% from 2013 to 2018. This growth is primarily driven by advertising revenue and increase in subscription, though advertising revenue in the past year has been sluggish primarily due to slow GDP growth and the weakening of the Rupee.

As per a 2011 Deloitte-ASSOCHAM study², the revenue streams of the broadcasting market are depicted in the chart below:



Source: Deloitte-ASSOCHAM study - Media and Entertainment India, Digital Road Ahead

With the process of digitisation since the year 2011 in accordance with the Telecom Regulatory Authority of India ('TRAI')'s recommendation to the Ministry of Information and Broadcasting (MIB), of 'sunset of analogue transmission on the cable' by December 2014, subscription revenues have also been increasing. According to these recommendations, the entire country is required to be digitised in a phased manner, with digitisation to be completed by December 2014. Subsequently broadcasting will not be through analogue cables which remains plagued by under-declaration of subscriber base even now.

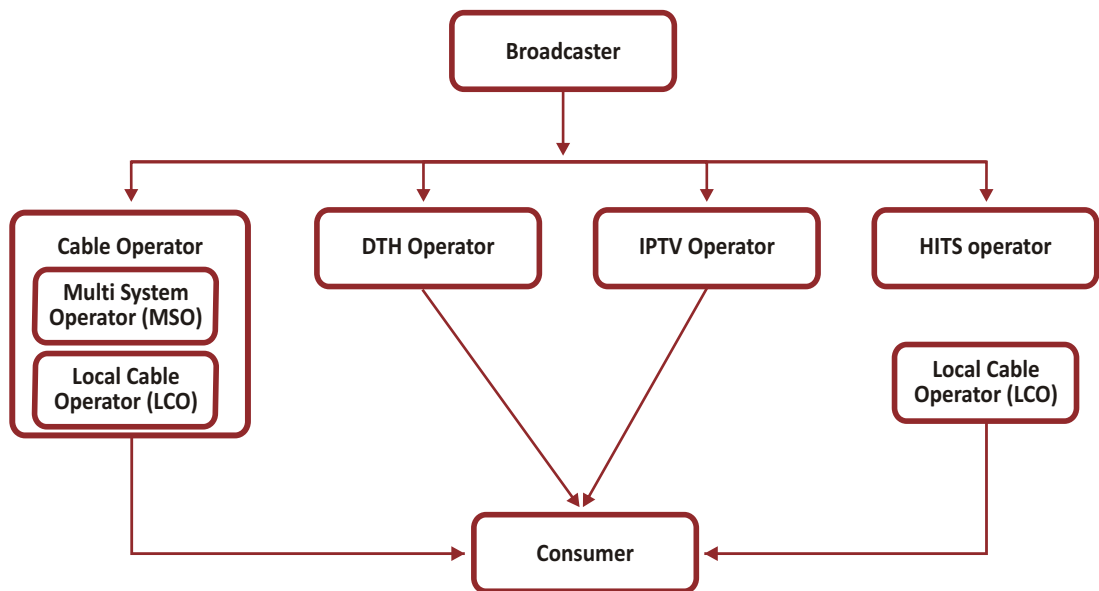
Operation of the Industry

Broadly speaking the key stakeholders in the television industry are the broadcaster, aggregators, Multi System Operators (MSO) and Local Cable Operators (LCO). The broadcasters own the TV content themselves or source them from a third party which is procured through license agreements with content providers. This is received and viewed by the end-consumers. Broadcasters transmit or uplink the content signals to the satellite from where they are further down linked by the distributors of such TV content. The aggregator acts like a distribution agent of TV channels for one or more broadcasters and provides bundling services and even negotiates the subscription revenue on behalf of the broadcasters. MSOs downlink the broadcaster's signals, decrypt encrypted channels (if any) and provide bundled signals (multiple channels) to the LCOs. The LCO receives such bundled feed and re-transmits them to the subscribers in the area of operation via cable network.

Distributors operate through five main platforms, namely:

- Terrestrial TV,
- Digital cable,
- Direct-to-Home or DTH,
- HITS; and
- IPTV.

Terrestrial TV (Free to Air-FTA) is available to the consumers without any subscription fee. IPTV is a very new platform in India and is therefore not widely available. HITS is also just starting operation as a distribution platform. Currently therefore the two most common modes of TV viewing are digital cable and DTH. Digitisation is increasing the subscriber base of the DTH platform owing to factors such as better picture and sound quality, flexible programming, modern technology and method of access.



Source:http://traf.gov.in/WriteReaddata/ConsultationPaper/Document/C_Paper_Cable_monopoly__3rd%20JuneFINAL.pdf

Potential Areas of Revenue Leakage for the Industry

Based on our understanding of the industry and discussions with industry, the following table identifies and describes the potential areas of revenue leakage in the broadcasting industry for various stakeholders.

S. No.	Reasons	LCO	MSO	Broadcaster	Government
1.	Use of single connection in multiple systems by a single subscriber (specific to analogue signals)	*	✓	✓	✓
		Loss of subscription	Loss of Subscription	Loss of Subscription	Loss of entertainment tax and service tax
2.	Non/under declaration of number of subscribers by LCOs to multi system operator (MSO).	*	*	✓	✓
			Loss of Subscription	Loss of Subscription	Loss of entertainment tax and service tax
3.	Providing service out of the territory by MSO may cause revenue loss to broadcaster (also known as area transgression).	*	*	✓	✓
				Loss of Subscription	Loss of entertainment tax
				Loss of advertisement fees	Loss of entertainment and service tax
4	Signal theft by MSOs	*	*	✓	✓
				Loss of subscription	Loss of entertainment tax and service tax
5	MSO/ LCO in a DAS area provide un-encrypted signals to its subscriber	*	*	✓	✓
				Loss of subscription	Loss of entertainment tax and service tax

Illicit Markets & the Broadcasting Industry



According to the Oxford dictionary counterfeiting means to imitate fraudulently.³ The International Trademark Association defines counterfeiting as the practice of manufacturing goods, often of inferior quality, and selling them under a brand name without the brand owner's authorisation. Generally, counterfeit goods are sold under a trademark that is identical to or substantially indistinguishable from the brand owner's trademark for the same goods, without the approval or oversight of the trademark owner. Many well-known brands, spanning various industries, are victims of counterfeiting.⁴

Several studies talk of losses on account of piracy, and define piracy; however, globally there are no studies that quantify the extent of counterfeiting in the broadcasting industry. Such data is unavailable in India as well. In fact, in India, there is no specific law regulating the television broadcasting industry which is currently regulated by the Telecom Regulatory Authority of India.

In the context of defining the illicit markets and counterfeiting in the broadcasting industry, industry experts have stated that generally, there is no counterfeiting in the broadcasting industry. There may be some cases of unauthorised recording of broadcasts or sale of DVDs, USB sticks etc., as if these are done by the broadcaster. However, this is not known to be prevalent in the Indian broadcasting industry. Cable operators do not produce any channel signals and sell them under the broadcaster name without authorisation. The loosely defined termed "piracy" in the broadcasting industry are acts of theft/ criminal breach of trust which also result in infringement of copyright as distinguished from counterfeiting in the film industry, garment industry, software industry etc., where imitation goods are produced and sold. Counterfeiting in this industry only results in infringement of copyright and cannot qualify as theft/ criminal breach of trust.

Understanding Counterfeiting and Piracy: Counterfeiting & Piracy under Indian Law

As per the India Penal Code 1860 (IPC) a person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practiced. According to the explanation to this definition:

- It is not essential to counterfeiting that the imitation should be exact; and
- When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

Cable Television Network Regulation Act, 1995 does not define the terms piracy or counterfeiting. However under this act a person shall be punishable with the fine up to ₹ 1,000/- or with imprisonment for term up to two years or both if he/she operates a cable television network without obtaining requisite registration.

Copyright Act, 1957 defines “Infringing Copy” in section 2 (m) as:

- i. in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;
- ii. in relation to a cinematographic film, a copy of the film made on any medium by any means;
- iii. in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- iv. in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act;

According to Article 51 of the TRIPS agreement:⁵ "Pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

The World Intellectual Property Organisation⁶ states that: Signal piracy can take physical form, such as unauthorised recordings of broadcasts on video tapes, DVDs or USB sticks, or it can be virtual, such as the unauthorised redistribution of signals over the air or online. Hacking into



existence. There is broad agreement in principle that broadcasters should have updated international protection from theft of their signals; WIPO members have however so far failed to agree on how this should be done and what further rights, if any, broadcasters should be given. On the other end of the spectrum civil society critics and a number of governments argue that broadcasters do not need strong near-copyright protection for their broadcasts in addition to protection from signal theft. They point out that half of WIPO's membership have not joined the Rome Convention. According to critics, giving broadcasters a range of exclusive rights would hinder access to copyrighted material by requiring permission to use it not only from the copyright owner (such as the producer of a TV show or documentary) but also from the broadcaster. This could also diminish the rights of copyright owners by giving broadcasters the power to determine the conditions (and exact a licensing fee) under which a work could be used. There are also concerns that giving broadcasters exclusive rights over their broadcasts could “privatise” material in the public domain, such as films that are out of copyright or sporting or news events that are not subject to copyright (because they are not creative works).”⁷

The above clearly indicates, that even at the international level an agreement is yet to be reached on what constitutes piracy and whether additional protection needs to be given to broadcasters.

Thus, going by the definition of counterfeiting under Indian Penal Code, there is no physical 'good' that is being fraudulently imitated and sold in the broadcasting sector. Under-declaration of subscription may certainly qualify as theft, which results in loss to the broadcasters (in terms of subscription fee) and loss to the government (in terms of entertainment tax and service tax). However, this may not qualify as piracy under Indian Copyright Act. Retransmission of signals without any authorisation would result in a case of theft apart from infringement of copyright. Similarly, area transgression (providing signals beyond territory) and providing un-encrypted feed in DAS area would result in the offence of criminal breach of trust apart from infringement of copyright.

At the outset therefore, the need is to define piracy and counterfeiting in the broadcast industry, thereby holding those responsible for piracy accountable to the law as well as enabling measurement of the extent of piracy or counterfeiting.

The confusion between theft and piracy therefore continues.

Our discussions with the broadcast industry indicated that clarity on the definition of piracy in the broadcasting industry is one of the first steps necessary to curbing possible losses due to piracy. An amendment is proposed to the Copyright Act in this regard where piracy could be defined as:

Reproduction, retransmission and distribution or the communication to the public; and making available on communication networks, the copies of copyright-protected material, without the authorization of the right owner(s) where such authorization is required by law.

The rationale for this definition is provided below:

- Copyright is negative right i.e. the copyright holder can stop others from exploiting his/her work without his consent.
- The primary objective of the Copyright Act is not only to encourage the creation of new work but also to strike a balance between private incentives to create new works, and public access to the work created.
- Balance is struck by mandating access of work through written agreements, delineating:
 - ❖ Specific work
 - ❖ Consideration
 - ❖ Period
 - ❖ Territory
 - ❖ Mode

Estimating the Illicit Market - Associated Issues



As has been done for other industries in the 2012 FICCI CASCADE study and the current series of industry specific studies for FICCI-CASCADE, we attempted to ascertain whether the extent of piracy/counterfeiting can be quantified for the broadcasting industry. One of the significant hurdles to this end however was the absence of a definition of the term, since, as has been reiterated earlier, theft and counterfeiting are two different things.

For our estimates of counterfeiting in other industry sectors, we have been using government data sources- ASI data to determine the supply side of the equation and NSSO data for the consumption side. ASI provides the total factory production of different industries across the country. The consumption side of the equation from NSS data provides information on household consumption of various products across the country. However, our analysis of the two databases indicates that this method of estimating the illicit markets does not appear to work for the broadcasting industry.

Production:

The ASI code list was closely scrutinised to identify codes likely to represent the broadcasting industry. The following codes were correspondingly identified:

ASICC Code	Code Description	Possible Industry Classification
78171	TV BROADCAST TRANSMITTER	Broadcasting
78172	BROADCAST EQUIPMENT	Broadcasting
78179	TELEPHONY/TRANSMISSION EQUIPMENT & PARTS, N.E.C	Broadcasting
78211	CABLE T V EQUIPMENT	Broadcasting
78246	SET TOP BOX (CABLE)	Broadcasting

As clearly indicated above, there appear to be no codes that solely represent broadcasting signals. These codes appear to represent broadcast related hardware.

Consumption:

On the consumption side there is only one NSS code that could broadly and remotely represent broadcasting: code 437 which is 'cable tv.' It appears also that even the codes/data on the consumption side does not fully represent consumption in this sector, as it essentially includes expenditure on set top boxes and other incidental expenditure on buying cable TV equipment rather than purely monthly usage charges for cable TV. NSS captures a consolidated amount of cable TV which would include both the cost of monthly charges and the equipment.

Based on the above we can conclude, that currently in India there is no reliable data available to ascertain the value of counterfeiting in the broadcasting industry. This is also further impaired by lack of reporting norms for LCOs/MSOs and distributors to the broadcasting regulator.

Industry Perspectives on Counterfeiting & its Impact on the Broadcasting Industry



To the broadcasting industry counterfeiting essentially means 'content theft'. Content theft is the illegal duplication, distribution and/or sale of copyrighted material. It includes:

- Unauthorised/unlicensed reproduction/ storing of content.
- Unauthorised /unlicensed "communicating to the public" of content.
- Unauthorised/unlicensed "distribution of copies" of content also called "downloading" in the digital context.

Industry experts also suggest that counterfeiting in broadcasting happens to a significant extent on the audio - visual quality of signals. A large part of this occurs in the form of downgraded HD channels or a scaled up version of SD channel. Operators claim that they provide an array of HD channels whereas in reality such channels are merely up-scaled SD channels that masquerade as HD channels. Also HD channels are dumbed down to ensure that a SD feed can be generated as well through the same, in neither cases are any licenses taken and broadcasters get paid for both the HD as well as its downgraded versions.⁸

Impact of Piracy/Counterfeiting in the Broadcasting Industry



Piracy has a chain effect within the economy. It affects the creator of copyrighted materials, the distributors/broadcasters and ultimately the economy as a whole. Broadly listed below is the impact of piracy in the broadcasting industry

Economic Impact:

- Disincentive for investments - higher costs, lower revenue
- Disincentive for innovation and growth.
- Decrease in sale of legal copies
- Adverse impact on employment- losses to business from revenue diversion
- Loss to national exchequer - tax revenue
- Increased costs incurred by State & IP Owners on anti-piracy enforcement.
- Effects on rights' holders on sales volume and prices, brand value and firm reputation, royalties, firm-level, investment, costs and the scope of operations.
- Adverse effect on consumer utility

Social Impact:

- Clandestine labour - lack of regulations and safeguards
- Disincentive to engaging in generation of creative works

Illicit Markets, Organised Crime, Terror Organisations and Criminal Networks



Terrorism in India

Terrorism, in all its forms, constitutes a grave threat to peace and security of a nation. Those indulging in it use disruption and violence as the weapons of intimidation against the civilian population, the government to influence public policies or even effect a regime change. By its very nature, terrorism is against the established order of the day. There is, however, no universally accepted definition of the word. Different countries fighting the menace define it differently. In India, the Unlawful Activities (Prevention) Act of 1967, amended in 2004 to fight terrorism, uses the word "unlawful activity" instead of terrorism and defines it as "any action...intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; and which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India."⁹

Terrorist Attacks and its Financing: Need for Funding & Costs Incurred

Running a terrorist organisation requires substantial financial resources which are transferred to the groups through clandestine and often illegal channels. Terror expert Jean-Charles Brisard argues that 90 per cent of terror financing goes toward general maintenance of cells and equipment. Less than 10 per cent actually finances the execution of operations.¹⁰ Costs incurred by terrorist organisations include materials such as bombs, vehicles, weapons and communication equipment and those related to planning and execution of attacks and expenses for running terrorist outfits.

While it is relatively easy to provide historical data citing an observational link between counterfeiting and terrorism, it is much less so to analyse the aggregate effects of the illicit markets industry on terror crimes in general. **Moreover, lack of reliable data on terrorist financing leads to an enormous mismatch between the costs of a single attack and the supposed costs of running and maintaining a terror organisation.** At the same time, estimates of actual financial flows among the parties involved in terrorist activities appear rather preliminary. However this information is essential in order to develop a sound cost-benefit analysis of anti-terrorist measures associated with terror funding.

It is important to note that while statistical data is available for the number of attacks that have taken place in India, it is difficult to directly correlate it to the grey market data in absence of sufficient information and research, which are lacking at present, especially in the Indian context.

Furthermore, despite the existence of requisite laws in India and arrests of suspected criminals by the police, the scale of illicit markets is huge and the criminal networks and illicit markets organisations continue to thrive. Clearly, this means that the existing laws and police operations are not resulting in the desired outcome and are unable to act as a deterrent. This could be due to the low conviction rates in India.

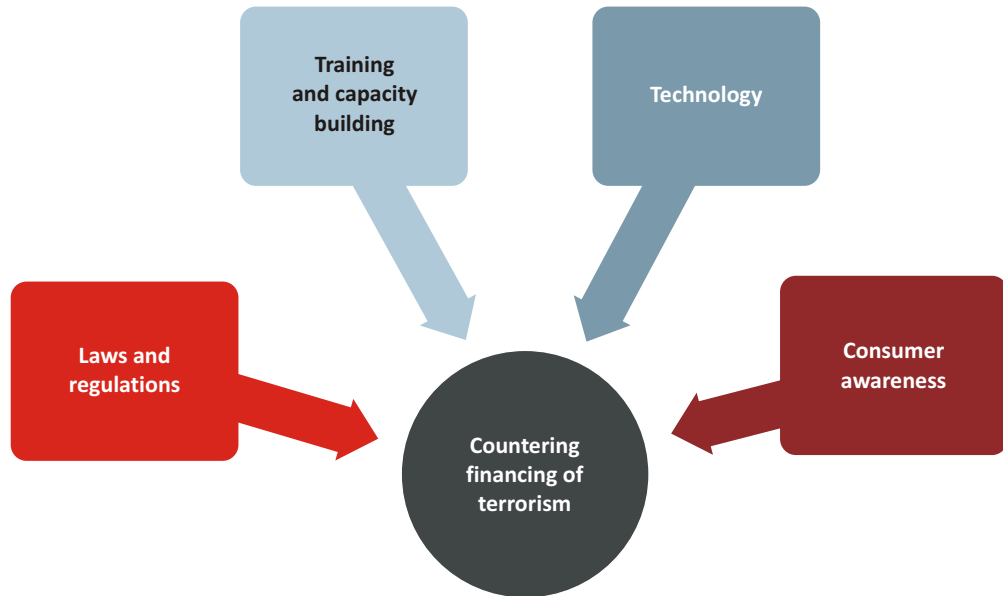
The scenario in other jurisdictions is not very different, although, credible data on seizures may be more easily available. The UK government in their Report of October 2014, has estimated that they lose about 1.3 % of their total tax collection due to criminal networks, mainly from smuggling.

A number of international studies have been conducted in the past which highlight the involvement of counterfeiting and piracy in financing of terrorist activities, for example, Al Qaeda¹¹ has been linked to the counterfeit industry through the sales of fake perfumes and shampoos. Also, Al Qaeda training modules recovered in 2002 reveal recommendation of sale of fake goods as a means to raise funds for cells.

The illicit markets have grown exponentially across the world, not only costing the industry and governments dear but also promoting criminal enterprises and generating funds for terror activities. Inadequate laws, poor governance and information gaps have aggravated the problem. It is, therefore, crucial to tackle the menace on a global footing in which all countries share information and join forces in creating a legal and regulatory framework, backed by effective enforcement.



So far as India is concerned, lack of adequate data based on search and seizure makes it difficult to link or correlate the increase in illicit markets to terror funding. Establishment and determination of the extent of such a link calls for strategic intelligence gathering and preparation of robust databases, which are clearly missing at present. Given the security implications, if not outright financial considerations, there is little to argue against carrying out such exercises. This would be the first step to contain counterfeiting and its corollary, terror and ensure that genuine business interests do not suffer. It is therefore imperative to build a framework for prevention of terrorist financing which not only tracks down their financing hubs but also acts as a deterrent for them to ultimately bring down the threat of terrorism. The framework must deal with financing of terrorism from the following perspectives:



Way Forward: Conclusion

Clearly, there's ambiguity on what constitutes piracy in the broadcasting industry. Thus it is important to define the term in the context of the industry, since what is involved are intangible products or works that are protected by copyright. The magnitude and effect of content theft and piracy are of such significance that they compel strong and sustained action from all stakeholders including governments, business and consumers.

- Going ahead, the law needs amendment to state with clarity that when any person without a license granted by the owner / distributor / manager / right-holder of a TV channel, broadcasts / re-broadcasts / transmits / re-transmits the TV Channel shall be deemed to have committed piracy. Piracy must also include such broadcasts / re-broadcasts / transmission / re-transmission in the following cases as well:
 - ❖ Beyond the territory / area as defined in the agreement;
 - ❖ Providing unencrypted signals in DAS (Digital Addressable Cable TV Access System) areas by whatever means;
- KYC norms for purchase of set-top boxes or obtaining a cable connection need to be clearly defined and strictly adopted as most unauthorised access through DTH occurs due to lack of such norms.
- Standard norms should be developed for equipment. In the absence of such norms, it becomes easy for unauthorised decryption of signals by MSOs and LCOs.
- Distributors must be compulsorily required to report to regulators (currently the TRAI) on a periodic basis, say monthly, quarter or half yearly.
- Amendments in the law should also introduce zero tolerance for piracy by including consequences such as huge penalties and imprisonment - i.e. increase civil and criminal sanctions for crimes related to intellectual property infringement.
- Initiatives should be aimed at improving policy, providing technical assistance and enhancing awareness. Consumer indifference to the stigma of intellectual property theft is one of the reasons for the growth of content theft. Awareness should be designed to increase the effectiveness of investigative efforts and prosecutions.
- Establishing a centralised enforcement mechanism.

With regard to terror funding, owing to the extensive research carried out globally on terrorism and its links to proceeds from illicit markets, it is possible to state with certainty that illicit

markets are instrumental in providing the much required funding to such organisations. In addition to the FBI, the former US Customs Service also brought attention to the link between the sale of fake goods and terrorism and has noted that the events of September 11, 2001 "changed the way American law enforcement looks at intellectual property crimes."¹²

Terrorist groups need financial resources to train and support members, maintain and sustain logistics, and meet operational costs. Therefore, if the threat of terrorism is to be nipped, the access to funding has to be choked. The truth is that many countries do not possess the legal and operational wherewithal and technical expertise needed to zero in on terrorist financing sources and initiate prosecution.

It is imperative therefore to build a framework for prevention of terrorist financing which not only tracks down their financing hubs but also acts as a deterrent for them to ultimately bring down the threat of terrorism. The framework will include training and capacity building among enforcement agencies, use of technology to detect and track sources of finance and increasing consumer awareness to empower consumers to take more informed decisions.

Abbreviations

ASI	Annual Survey of Industries
CASCADE	FICCI's Committee Against Smuggling and Counterfeiting Activities Destroying the Economy
CII	Confederation of Indian Industry
DAS	Digital Addressable Cable TV Access System
DTH	Direct to Home
DVD	Digital Video Disk
FICCI	Federation of Indian Chambers of Commerce & Industry
GDP	Gross Domestic Product
GEC	General Entertainment Channels
HD	High Definition
IP	Intellectual Property
IPC	Indian Penal Code
IPTV	Internet Protocol Television
KYC	Know Your Customer
LCO	Local Cable Operator
M&E	Media and Entertainment
MSO	Multi-System Operator
NSS	National Sample Survey
NSSO	National Sample Survey Organisation
SD	Standard Definition
TARI	Thought Arbitrage Research Institute
TRAI	Telecom Regulatory Authority of India
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

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Contact:

FICCI CASCADE

Federation House, Tansen Marg, New Delhi 110001

email: cascade@ficci.com



About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies. FICCI has contributed to this historical process by encouraging debate, articulating the private sector's views and influencing policy.

A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry.

Federation of Indian Chambers of Commerce and Industry

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About FICCI CASCADE

In the recent past India's economic growth story has attracted world's attention bringing new challenges for the domestic economy. One of the challenges currently faced is the growing illicit trade in counterfeits, pass offs and smuggled goods. These activities are also threatening brands not only in every region of the country but across the globe.

Contraband and counterfeit products hurt the integrity of the brand, further diluting the brand owner's reputation. This not only results in erosion of sales of the legitimate product but further [CASCADE]s onto affect the consumers in the form of health and safety hazards.

With the above insight the Federation of Indian Chambers of Commerce and Industry(FICCI) took the initiative to dedicate a forum by establishing the Committee Against Smuggling and Counterfeiting Activities Destroying the Economy - CASCADE on 18th January, 2011 at FICCI Federation House, New Delhi.

FICCI Committee Against Smuggling and Counterfeiting Activities Destroying Economy (CASCADE)

www.ficcicascade.com