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Nature and Scope of Copyright Challenges on OTT Platforms

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Nature and Scope of Copyright Challenges on OTT Platforms

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Abstract

The rapid proliferation of Over-the-Top (OTT) platforms has transformed the global media and entertainment landscape, enabling unprecedented access to digital content while simultaneously intensifying complex copyright challenges. This research paper examines the nature and scope of copyright issues arising within OTT ecosystems, with particular reference to the legal framework under the Copyright Act, 1957 and evolving international standards. It explores key concerns such as unauthorized reproduction, digital piracy, cross-border content distribution, licensing complexities, and the liability of intermediaries. The paper also evaluates the role of technological advancements, including digital streaming and algorithm-driven content dissemination, in complicating traditional notions of authorship, ownership, and fair use/fair dealing.

*Further, the study analyses significant judicial developments and regulatory responses, including the impact of decisions like *Super Cassettes Industries Ltd. v. MySpace Inc.*, which address intermediary liability and enforcement in the digital domain. It highlights the tension between protecting creators' rights and ensuring public access to content, especially in a rapidly digitizing economy. The paper argues that while existing copyright laws provide a foundational framework, they remain inadequate to fully address the dynamic challenges posed by OTT platforms. It concludes by recommending a balanced and adaptive legal approach that integrates stronger enforcement mechanisms, clearer licensing norms, international cooperation, and technological safeguards to effectively regulate copyright in the OTT era.*

Keywords

OTT Platforms, Copyright Law, Digital Piracy, Intermediary Liability, Streaming Services, Intellectual Property, Fair Dealing, Licensing, Digital Content Regulation

Overview and Emergence of OTT Platforms

The rise of Over-the-Top (OTT) platforms signifies a profound transformation in the entertainment sector, challenging traditional media distribution frameworks and altering audience content consumption patterns. These platforms have profoundly transformed the delivery of films, television shows, and other media to the public.¹ They are frequently acknowledged for democratising access to material, enabling users to stream media on-demand from any location at any time. To completely comprehend this digital revolution, it is essential to analyse the history of OTT platforms and their transformation from niche services to industry behemoths within a brief period.

The notion of OTT media originated in the early 2000s, coinciding with the maturation of internet streaming technology. Prior to this period, the distribution of television and movies was dominated by cable and satellite companies, who regulated content delivery via costly subscription structures. Viewers were constrained by rigid timetables, possessing less autonomy about their viewing choices and timing. The digital era, however, facilitated more adaptable viewing alternatives. The initial OTT services predominantly concentrated on providing pre-existing material online, enabling customers to rent or acquire digital copies of films and television series. The advent of YouTube in 2005 marked a significant milestone in the history of OTT, enabling users to publish, distribute, and view videos online at no cost. YouTube's user-generated content did not initially contest established broadcasters, yet it showcased the possibility of broadcasting video via the internet. Concurrently, organisations such as Netflix, first established as a DVD rental service, commenced experimentation with digital distribution formats.

In 2007, Netflix launched its streaming service, allowing customers to see films and television shows on-demand on the internet. This represented a pivotal moment in the OTT sector, as it was among the initial platforms to provide an extensive archive of content available for instantaneous streaming, eliminating the necessity for physical media. Subsequent early OTT pioneers, like as Hulu and Amazon Prime Video, rapidly expanded their offers, hence attracting a larger user base to their platforms. The initial services primarily relied on licensed material from conventional media enterprises, however they established the foundation for what would ultimately evolve into a substantial business.

With advancements in streaming technologies and enhanced internet speeds, OTT services become increasingly sophisticated. A significant milestone was reached when these services commenced investing in unique content creation. In 2013, Netflix garnered significant attention with the debut of "House of Cards," its inaugural major original series. This audacious decision indicated a transition in approach from solely disseminating material to actively engaging in content

¹ "OTT Platforms in Digital Entertainment and Legal Issues," *Woxsen Law Review* (Woxsen University), available at OTT Platforms in Digital Entertainment and Legal Issues (last visited Apr. 10, 2026).

creation. By creating premium, exclusive content, Netflix and subsequently other platforms such as Amazon and Hulu successfully distinguished themselves from conventional broadcasters and cable providers. The inclination towards original content production intensified during the 2010s, as platforms invested billions of dollars in the creation of films, documentaries, and series exclusively available through their services. This not only increased subscriber counts but also resulted in an influx of high-quality, diverse content that appealed to a global audience. By providing original programming, OTT platforms become independent of third-party licenses, enabling them to dictate their own trajectories and retain a larger share of the earnings from their content. A significant milestone in the development of OTT platforms was their worldwide growth. Initially, early OTT services concentrated on the U.S. market; however, platforms quickly acknowledged the prospects for global expansion. Netflix, for instance, vigorously expanded across Europe, Latin America, and Asia, adapting its material to resonate with local viewers. This global initiative solidified OTT platforms as dominant forces in entertainment, accommodating a wide array of tastes and inclinations. Furthermore, the advancement of mobile technologies significantly accelerated the evolution of OTT. With the globalisation of smartphones and the advancement of mobile networks, consumers may now stream information directly to their devices at any time and from any location. This liberty revolutionised media consumption from a sedentary, domestic activity into a fluid, mobile experience. OTT platforms evolved by designing mobile-compatible interfaces, providing offline viewing capabilities, and developing applications that facilitated user access to content across several devices.

The transition from traditional media to OTT streaming was gradual but unavoidable due to developments in digital technologies and evolving consumer behaviours. Traditional broadcasters and cable providers initially underestimated the danger posed by OTT platforms, assuming that their dominance over premium content and the live television experience would retain people within their services. The increasing convenience and affordability of OTT services, along with their expanding content libraries, has contributed to a consistent decrease in traditional TV subscriptions. The "cord-cutting" movement became prevalent, with millions of homes globally terminating their cable subscriptions in favour of OTT platforms. OTT streaming enabled consumers to consume content according to their preferences. Freed from rigid timetables, individuals might binge-watch complete seasons of series in a single sitting or view a movie at their convenience. The intuitive interfaces of services such as Netflix, featuring personalised suggestions derived from viewing history, facilitate the discovery of new material aligned with audience preferences.

A significant aspect in the shift to OTT was the economic efficiency of these platforms. Cable subscriptions frequently encompassed numerous channels that remained unviewed, whereas OTT platforms enabled customers to pay solely for

the desired content. Subscription rates for platforms such as Netflix or Disney+ were far lower than the average cable bill, rendering them an appealing choice for consumers seeking to reduce expenses without compromising entertainment. The emergence of OTT has significantly influenced content creation. In contrast to conventional television networks, which are subject to specific limitations, OTT platforms possess enhanced creative autonomy. They impose fewer constraints on duration, format, and substance, facilitating a broader range of diverse and experimental narratives. Consequently, audiences have encountered a broader spectrum of voices and narratives that may not have been represented in conventional television.

Legal Challenges in Existing Copyright Law

The swift expansion of Over-the-Top (OTT) streaming services in India has fundamentally transformed the media and entertainment sector, posing considerable challenges to the current legal framework, chiefly the Copyright Act of 1957. The Act, established prior to the emergence of digital streaming, fails to effectively tackle the distinctive operational frameworks and copyright intricacies present in the OTT landscape.² Numerous significant legal concerns and deficiencies have arisen, requiring immediate attention for correction.

A significant concern pertains to the definition and classification of OTT services under the Act. The pivotal case, *Tips Industries Ltd. v. Wynk Music Ltd*³. (2019, Bombay High Court), highlighted this ambiguity. The court examined whether online streaming services such as Wynk Music qualified as "broadcasting organisations" under the Act, so making them eligible for statutory licensing under Section 31D. Section 31D, established by the 2012 revisions, permits broadcasting companies to disseminate works to the public upon remitting payments determined by the Copyright Board, circumventing direct discussions with copyright owners. This rule was principally directed at conventional radio and television broadcasters. Wynk contended that its streaming service qualified as broadcasting, aiming to utilise the advantages of Section 31D. The Bombay High Court unequivocally rejected this interpretation. The term of "broadcast" under Section 2(dd)- "communication to the public by any means of wireless diffusion... or by wire" – typically denotes linear, scheduled broadcasting. OTT systems, in contrast, function on an on-demand, user-directed basis, fundamentally distinct from conventional broadcasting. The court determined that OTT platforms do not qualify as broadcasting companies and, hence, are ineligible to assert statutory licenses under Section 31D. This ruling elucidates that OTT services are required to obtain direct, voluntary licenses from copyright proprietors; however, it also underscores a notable deficiency: the Act does not provide a specific framework designed to address the licensing requirements and

² <https://techlawforum.nalsar.ac.in/emergence-of-ott-market-in-india-regulatory-and-censorship-issues/>

³ AIRONLINE 2019 BOM 1452

operational realities of digital streaming services, which may result in intricate and expensive negotiations.

The notion of "communication to the public" as delineated in Section 14(1)(e) necessitates reassessment in the context of OTT. The term encompasses the provision of works for direct seeing or auditory experience through any method of display or dissemination; nonetheless, its relevance to on-demand streaming, initiated by the user, continues to be a matter of legal interpretation. The current approach, intended for simultaneous public reception (such as traditional broadcasts), may inadequately address the individualised, asynchronous characteristics of OTT consumption, leading to significant issues in rights management and infringement assessment.

The matter of intermediary liability further complicates the legal framework for OTT services. Some OTT services primarily include curated, licensed content, while others may include user-generated content or function in manners that could unintentionally enable infringement. The degree to which OTT platforms can assert safe harbour protections under Section 79 of the Information Technology Act, 2000 (in conjunction with the IT Rules, 2021) for infringing content hosted or transmitted over their services remains ambiguous. In contrast to passive intermediaries, OTT platforms frequently exert considerable authority over content selection, curation, and display, which may obscure the boundaries of accountability. The legal system requires more explicit instructions regarding the obligations and liabilities of OTT platforms in relation to copyright infringement, balancing the necessity to combat piracy with the encouragement of digital innovation. Instances such as *Zed Entertainment Enterprises Ltd. v. Bollyzone*⁴. The conflict between Viacom18 and Thop TV emphasises the ongoing issue of piracy enabled by illicit websites and applications, illustrating the enforcement difficulties encountered by legal OTT platforms and copyright proprietors. The existing legislation, as highlighted in legal analyses, necessitates modernisation to adequately tackle these novel forms of infringement and the resultant ambiguity that affects platform income and incentives.

Moreover, the implementation of fair dealing exceptions (Section 52) within the OTT environment poses difficulties. Assessing whether activities such as producing brief promotional videos, utilising excerpts in critiques or commentary, or managing user-generated content that includes copyrighted material align with fair dealing necessitates meticulous evaluation of the distinct characteristics of OTT services and digital consumption trends. The current regulations may lack adequate clarity for platforms aiming to innovate while adhering to copyright limitations.

Technological Protection Measures (TPMs) and Digital Rights Management (DRM) solutions are essential for Over-The-Top (OTT) services to safeguard material from unauthorised access and duplication. The Copyright Act offers

⁴ (CS(COMM) 937/2024)

protection against the circumvention of technological protection measures (Section 65A), although the efficacy of these provisions in combating increasingly advanced piracy methods is a matter of concern. Furthermore, the legal structure must reconcile TPM protection with legitimate user rights and exceptions such as fair dealing. Jurisdictional issues often emerge, as numerous prominent OTT platforms functioning in India are multinational corporations. Enforcing Indian court decisions and copyright laws against foreign-based platforms presents challenges, necessitating strong international collaboration and possibly tailored home legislation to effectively tackle cross-border infringement.

Ultimately, guaranteeing equitable compensation for authors, composers, performers, and producers within the intricate OTT value chain is a continual struggle. The complex licensing agreements, revenue-sharing frameworks, and challenges in monitoring usage across international platforms demand a transparent and fair system for royalty collection and distribution, possibly necessitating augmented functions for Collective Management Organisations (CMOs) tailored to the digital landscape. The Indian Copyright Act of 1957, despite subsequent amendments, was not created to address the complexities of the on-demand digital streaming landscape dominated by OTT platforms. The current structure is plagued by definitional ambiguities, deficiencies in licensing processes, concerns surrounding intermediary liability, and difficulties in enforcement and equitable compensation. These deficiencies highlight the urgent necessity for legislative and regulatory reforms to provide a balanced, transparent, and efficient copyright framework for the expanding OTT sector in India.

Licensing and Territorial Rights Issues

Content licensing in India has grown significantly more complex than it was a decade ago. Due to the rapid expansion of OTT platforms, streaming services, and digital publication, licensing agreements now encompass more than merely the rights to broadcast or distribute. They must now contend with complex concerns including copyright ownership, data privacy responsibilities under the Digital Personal Data Protection Act (DPDP), 2023, and formal takedown service-level agreements (SLAs) to combat piracy and unlawful uploads.

Copyright is fundamental to every content licensing agreement in India. The Indian Copyright Act of 1957 stipulates that the creator or rights holder maintains ownership unless a definitive assignment or licence is established. Contracts must be meticulously negotiated, particularly when international studios or distributors collaborate with Indian platforms. Standard provisions delineate the extent of rights indicating whether the license is exclusive or non-exclusive, confined to a certain country (India, South Asia, or global), and limited to specific media modes such as streaming, theatrical, or broadcast. Precise delineation of duration is essential, as Indian courts rigorously construe time-sensitive obligations.

A vital component is royalties and revenue distribution. Indian law mandates that writers of literary and musical works incorporated in sound recordings or films are entitled to ongoing income, even after rights have been transferred. U.S. content firms frequently neglect this legal requirement, resulting in conflicts with Indian collecting bodies. Moreover, contracts typically incorporate warranty and liability clauses to guarantee that the licensed content does not violate third-party rights. Platforms increasingly require clarifications about moral rights, dubbing, and adaptation permissions domains where ambiguity may lead to expensive litigation.

Compliance with DPDP in Media Contracts

The Digital Personal Data Protection Act, 2023 (DPDP) expands content licensing in India beyond copyright to include data privacy considerations. Platforms frequently gather sensitive personal data, including viewing behaviours, device IDs, and payment information. Contracts must consequently delineate the methods of data processing, storage, and sharing. For US content firms, DPDP compliance in media contracts necessitates that Indian partners establish lawful justifications for processing, secure valid user permission, and adhere to data minimisation guidelines⁵. Contracts increasingly mandate that platforms verify that the personal data of Indian users will not be transmitted outside India without adherence to the Act's regulations on cross-border data transfers. Security measures constitute another contractual emphasis. Contracts frequently delineate encryption protocols, breach reporting periods, and indemnification for data breaches. Content licensors now require regular compliance reports and the authority to inspect platform operations. By incorporating DPDP duties into license agreements, rights holders mitigate the risk of regulatory penalties in India and convey to users that their personal information is managed with due diligence.

Licensing is the essential element that enables OTT services to thrive. It ascertains:

- Which nations are granted access to a performance,
- Duration of the rights
- What types of usage are permitted (download, offline access, or streaming exclusively), and
- Revenue-sharing frameworks between rights holders and platforms.

Consider, for instance, the widely recognised content agreement between ZEE5 and ALTBalaji. Initially, content was exchanged between the two platforms for a predetermined licensing fee. Disputes emerged when content was geo-blocked or

⁵ <https://www.lexology.com/library/detail.aspx?g=99c47d6c-94ad-4cee-9c77-d612b678650d>

monetised outside of the agreed boundaries, ultimately leading to a legal impasse that impacted viewers throughout South Asia.

Another example is Amazon Prime Video's exclusive rights to the IPL (Indian Premier League) in some areas. The content could not be broadcast in India due to the territorial rights held by Sony or JioCinema. For users unfamiliar with licensing frameworks, this appeared to be illogical content concealment; however, it was, in fact, a quintessential illustration of regional licensing restrictions.

Principal Licensing Models⁶:

- **Exclusive License:** Solely one platform has the rights (similar to Netflix Originals).
- **Non-Exclusive License:** Various platforms may concurrently stream the identical program.
- **Syndicated Licensing:** Acquisition of rights in bulk across many areas, such as HBO distributing episodes to Hotstar in India (until 2023).

Conclusion

The rapid expansion of OTT platforms has fundamentally transformed the creation, distribution, and consumption of copyrighted content, while simultaneously intensifying complex legal challenges that traditional copyright frameworks struggle to address. In India, the Copyright Act, 1957 provides a foundational structure for protection, yet it is increasingly tested by issues such as digital piracy, unauthorized streaming, cross-border dissemination, algorithm-driven content circulation, and the ambiguous liability of intermediaries. Landmark judicial developments, including *Shreya Singhal v. Union of India*, have clarified aspects of intermediary liability, but significant gaps remain in addressing real-time infringement and enforcement in the OTT ecosystem. Comparative insights from jurisdictions like the United States and the United Kingdom demonstrate more evolved mechanisms, including stronger notice-and-takedown regimes, digital rights management systems, and clearer platform accountability standards. The research finds that the nature of copyright challenges on OTT platforms is not merely legal but also technological and jurisdictional, requiring a multi-dimensional regulatory approach. It emphasizes the need for legislative modernization, harmonization with international standards, enhanced technological enforcement tools, and clearer delineation of platform responsibilities. Ultimately, strengthening copyright protection in the OTT domain must strike a balance between safeguarding creators' rights, ensuring platform innovation, and protecting users' access to content, thereby fostering a fair, efficient, and sustainable digital entertainment ecosystem.

⁶ <https://satyakilegal.com/streaming-and-stealing-the-role-of-copyright-in-the-ott-industrys-fight-for-fair-play/>

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