Need for the Reform of Copyright Laws with Regards to OTT Platforms in India

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Abstract

The rapid proliferation and profound influence of Over-The-Top (OTT) streaming services have reshaped India's digital media landscape, presenting significant challenges to the existing copyright legal framework. The Indian Copyright Act, 1957, predating the digital streaming era, exhibits considerable inadequacies in addressing the unique complexities arising from OTT operations, including content licensing, the scope of communication to the public, intermediary liability, and enforcement against digital piracy. This paper critically analyzes these shortcomings, arguing for the pressing need for legislative and regulatory reform. By examining key legal ambiguities, analyzing landmark case law such as *Tips Industries Ltd. v. Wynk Music Ltd.*, and discussing real-world enforcement challenges exemplified by actions against platforms like Bollyzone.TV and Thop TV, the paper identifies specific gaps in the current regime. It proposes concrete reforms, including amendments to the Copyright Act to define digital services, establish tailored licensing mechanisms, clarify intermediary liability, strengthen anti-piracy measures, and enhance the role of collective management organizations. The objective is to foster a balanced copyright environment that protects creators, supports OTT innovation, and ensures public access to content within the dynamic Indian digital ecosystem.

Keywords: Copyright Act 1957, OTT Platforms, Digital Streaming, Copyright Reform, India, Statutory Licensing, Intermediary Liability, Piracy, Tips v. Wynk.

1. Introduction

India is witnessing an unprecedented surge in the adoption and influence of Over-the-Top (OTT) digital streaming platforms. Services like Netflix, Amazon Prime Video, Disney+ Hotstar, SonyLIV, ZEE5, and numerous others have fundamentally altered how Indians consume entertainment, news, and other media content. Delivering vast libraries of films, television series, original productions, and live events directly to consumers via the internet, these platforms bypass traditional distribution channels like cable and satellite television. This digital transformation, while offering consumers unparalleled choice and convenience, has simultaneously exposed significant strains and inadequacies within India's existing legal framework for copyright protection, primarily the Copyright Act, 1957.

The core problem lies in the fact that the Copyright Act, 1957, even with subsequent amendments (notably in 2012), was conceived in an era vastly different from today's digital, on-demand environment. Consequently, it struggles to effectively address the novel copyright challenges posed specifically by OTT platforms. These challenges span a wide spectrum, including the interpretation of exclusive rights like "communication to the public" in the context of on-demand streaming, the complexities of multi-territorial licensing in a borderless digital world, the determination of liability for platforms when infringing content appears on their service, the efficacy of technological protection measures (TPMs), and the persistent battle against sophisticated digital piracy.

This paper seeks to address critical research questions: What specific ambiguities, gaps, and inconsistencies exist within the Indian Copyright Act, 1957, when applied to the operational realities of OTT platforms? Why do these deficiencies necessitate legislative and regulatory reform? What potential reforms could establish a more robust, clear, and balanced copyright regime tailored to the Indian OTT sector, safeguarding creators' rights while fostering innovation and consumer access?

The scope of this research is focused specifically on the intersection of Indian copyright law and the challenges presented by OTT streaming services operating within India. Its objectives are to: (i) analyze the relevant provisions of the existing Copyright Act, 1957, and associated legal doctrines; (ii) identify and critically examine the key legal challenges and gaps faced by creators, OTT platforms, and users; (iii) evaluate significant case law and real-world examples that illustrate these challenges; and (iv) propose concrete, actionable reforms for updating the legal framework.

This paper is structured as follows: Section 2 provides background on the rise of OTT platforms in India and outlines the relevant aspects of the Indian copyright landscape. Section 3 delves into a detailed analysis of the specific legal challenges and gaps identified. Section 4 discusses pertinent case studies and real-world examples that highlight these issues in practice. Section 5 proposes specific reforms and recommendations for legislative and regulatory action. Finally, Section 6 offers concluding remarks, summarizing the key arguments and emphasizing the need for timely adaptation of India's copyright laws to the digital age.

2. Background: OTT Platforms and the Indian Copyright Landscape

The Indian OTT market has experienced exponential growth, driven by increasing internet penetration, affordable data plans, rising smartphone adoption, and a growing appetite for diverse digital content. Platforms offer a mix of international and domestic films, original series, sports, and regional content, catering to a vast and varied audience. This rapid expansion has positioned India as one of the world's most significant and competitive OTT markets.

Simultaneously, the legal framework governing content creation and distribution is primarily the Indian Copyright Act, 1957. This Act grants creators exclusive rights over their literary, dramatic, musical, and artistic works, as well as sound recordings and cinematograph films (Section 14). Key rights relevant to OTT platforms include the right of reproduction, the right to issue copies, and crucially, the right of "communication to the public." The 2012 amendments to the Act attempted to address digital issues, notably by clarifying rights related to digital storage and communication and introducing provisions for statutory licensing (Section 31D) and TPMs (Section 65A).

However, applying these provisions to OTT platforms raises questions. The right of "communication to the public" [Section 2(ff)] means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion. Whether this adequately covers on-demand streaming initiated by individual users, as opposed to traditional broadcasting's simultaneous transmission, remains a point of interpretation. Furthermore, the interplay between the Copyright Act and the Information Technology Act, 2000 (specifically Section 79 regarding intermediary liability and safe harbors) is critical, as OTT platforms often function as intermediaries distributing content created by others, alongside their original productions.

3. Legal Challenges and Gaps in Existing Copyright Law

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The rapid proliferation of Over-the-Top (OTT) streaming services in India has fundamentally reshaped the media and entertainment landscape, presenting significant challenges to the existing legal framework, primarily the Copyright Act, 1957. Enacted long before the advent of digital streaming, the Act struggles to adequately address the unique operational models and copyright complexities inherent in the OTT ecosystem. Several critical legal challenges and gaps have emerged, necessitating urgent consideration for reform.

One of the most prominent issues revolves around the definition and classification of OTT services under the Act. The landmark case, *Tips Industries Ltd. v. Wynk Music Ltd.* (2019, Bombay High Court), brought this ambiguity to the forefront. The court addressed whether internet-based streaming services like

Wynk Music qualify as "broadcasting organisations" under the Act and are thus eligible for statutory licensing under Section 31D. Section 31D, introduced by the 2012 amendments, allows broadcasting organisations to communicate works to the public upon payment of royalties fixed by the Copyright Board, bypassing direct negotiations with copyright holders. This provision was primarily aimed at traditional radio and television broadcasters. Wynk argued that its streaming service constituted broadcasting, seeking to avail the benefits of Section 31D. However, the Bombay High Court ruled decisively against this interpretation. It held that the definition of "broadcast" under Section 2(dd) – "communication to the public by any means of wireless diffusion… or by wire" – traditionally implies linear, scheduled transmission. OTT platforms, conversely, operate on an on-demand, user-controlled model, fundamentally differing from traditional broadcasting. The court concluded that OTT platforms are not broadcasting organisations and therefore cannot claim statutory licenses under Section 31D. This ruling clarifies that OTT services must secure direct, voluntary licenses from copyright owners, but it also highlights a significant gap: the Act lacks a specific framework tailored to the licensing needs and operational realities of digital streaming services, potentially leading to complex and costly negotiations.

Relatedly, the concept of "communication to the public" under Section 14(1)(e) requires re-evaluation in the context of OTT. While the definition includes making works available to be seen or heard directly or by any means of display or diffusion, its application to on-demand streaming, where the user initiates the transmission, remains a point of legal interpretation. The existing framework, designed for simultaneous reception by the public (like traditional broadcasts), may not perfectly capture the individualized, asynchronous nature of OTT consumption, creating potential ambiguities in rights management and infringement analysis.

The issue of intermediary liability further complicates the legal landscape for OTT platforms. While some OTT services primarily host curated, licensed content, others might incorporate user-generated content or operate in ways that could inadvertently facilitate infringement. The extent to which OTT platforms can claim safe harbor protections under Section 79 of the Information Technology Act, 2000 (read with the IT Rules, 2021) for infringing content hosted or transmitted through their services is often unclear. Unlike passive intermediaries, OTT platforms often exercise significant control over content selection, curation, and presentation, potentially blurring the lines of liability. The legal framework needs clearer guidelines on the responsibilities and liabilities of OTT platforms concerning copyright infringement, balancing the need to curb piracy with the promotion of digital innovation. Cases like *Zee Entertainment Enterprises Ltd. v. Bollyzone.TV* and the action against *Thop TV* by Viacom18 underscore the persistent problem of piracy facilitated by rogue websites and apps, highlighting the enforcement challenges faced by legitimate OTT platforms and copyright holders. The current laws, as noted in legal commentary, require modernization to effectively address these new forms of infringement and the associated lack of clarity which impacts platform revenues and incentives.

Furthermore, the application of fair dealing exceptions (Section 52) in the OTT context presents challenges. Determining whether activities like creating short promotional clips, using snippets in reviews or commentary, or the handling of user-generated content incorporating copyrighted material fall within the ambit of fair dealing requires careful consideration of the specific nature of OTT services and digital consumption patterns. The existing provisions may not offer sufficient clarity for platforms seeking to innovate while respecting copyright boundaries.

Technological Protection Measures (TPMs) and Digital Rights Management (DRM) systems are crucial for OTT platforms to protect content from unauthorized access and copying. While the Copyright Act provides protection against the circumvention of TPMs (Section 65A), the effectiveness of these provisions against increasingly sophisticated piracy techniques remains a concern. Moreover, the legal framework must balance TPM protection with legitimate user rights and exceptions like fair dealing.

Jurisdictional complexities also arise frequently, given that many major OTT platforms operating in India are international entities. Enforcing Indian court orders and copyright laws against platforms headquartered overseas can be challenging, requiring robust international cooperation and potentially specific domestic legislation to address cross-border infringement effectively.

Finally, ensuring fair remuneration for authors, composers, performers, and producers within the complex OTT value chain is a persistent challenge. The intricate licensing arrangements, revenue-sharing models, and difficulties in tracking usage across global platforms necessitate a transparent and equitable system for royalty collection and distribution, potentially requiring enhanced roles for Collective Management Organizations (CMOs) adapted to the digital environment.

In essence, the Indian Copyright Act, 1957, while amended over the years, was not designed for the intricacies of the on-demand, digital streaming era dominated by OTT platforms. The existing framework suffers from definitional ambiguities, gaps in licensing mechanisms, uncertainties regarding intermediary liability, and challenges in enforcement and fair remuneration. These shortcomings underscore the critical need for legislative and regulatory reforms to create a balanced, clear, and effective copyright regime for the burgeoning OTT sector in India.

4. Case Studies and Real-World Examples

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The theoretical legal challenges and gaps within India's copyright framework concerning OTT platforms are vividly illustrated by several real-world disputes and enforcement actions. These cases highlight the practical difficulties faced by copyright holders, OTT services, and the judicial system in navigating the complexities of digital content distribution.

1. *Tips Industries Ltd. v. Wynk Music Ltd.* (2019, Bombay High Court): The Statutory Licensing Conundrum

As previously analyzed, this case is pivotal in understanding the legal status of OTT platforms under the Copyright Act, 1957. Wynk Music, an internet streaming service owned by Bharti Airtel, sought to operate under a statutory license pursuant to Section 31D after its voluntary license agreement with Tips Industries, a major music label, expired. Wynk argued it qualified as a "broadcasting organisation" and thus was entitled to stream Tips' music repertoire by paying government-fixed royalties. Tips contested this, arguing that Wynk's on-demand streaming model was fundamentally different from the linear transmission characteristic of traditional broadcasting, for which Section 31D was intended. The Bombay High Court sided with Tips, meticulously analyzing the definition of "broadcast" (Section 2(dd)) and the legislative intent behind Section 31D. The court concluded that services offering interactive, on-demand access, where users choose what and when to listen, do not fall under the definition of broadcasting. Consequently, Wynk was denied the ability to invoke Section 31D and was required to obtain a direct, negotiated license from Tips. This case exemplifies the significant gap in the law regarding licensing for digital music and video services. While clarifying that OTTs are not broadcasters for Section 31D purposes, it leaves them reliant on potentially complex and costly direct negotiations, highlighting the need for a more tailored licensing framework for the digital era.

2. *Zee Entertainment Enterprises Ltd. v. Bollyzone.TV & Others* (2023, Delhi High Court): Combating Large-Scale Piracy by Rogue Websites

This case demonstrates the persistent challenge of online piracy targeting exclusive OTT content. Zee Entertainment filed a suit against numerous websites (like Bollyzone.TV) that were illegally streaming movies and web series exclusively available on its platform, ZEE5. These websites operated anonymously, making identification and direct legal action against the operators difficult. They generated revenue through advertisements displayed alongside the pirated content. Zee argued that this unauthorized reproduction and communication to the public constituted blatant copyright infringement under the Copyright Act, 1957, causing significant financial losses and undermining its investment in original content. The Delhi High Court, recognizing the prima facie evidence of infringement and the irreparable harm caused, granted an interim injunction, directing Internet Service Providers (ISPs) to block access to these rogue websites. This case underscores several challenges: the ease with which infringing websites can be set up, the anonymity shielding operators, the jurisdictional issues in tackling globally accessible sites, and the reliance on dynamic injunctions and website blocking as primary enforcement tools. It highlights the need for more effective mechanisms to identify and penalize operators of such sites and potentially clearer intermediary liability rules for entities facilitating access.

3. *Viacom18 Media Pvt. Ltd. v. Thop TV* (Ongoing Investigation/Action): Targeting Rogue Applications

Similar to the Zee case, Viacom18 took action against Thop TV, a mobile application that provided unauthorized access to content from various OTT platforms, including Viacom18's Voot. Thop TV allegedly used APIs to illegally stream copyrighted movies, TV shows, and live sports, attracting millions of users, including paid subscribers. Following a complaint by Viacom18, the Maharashtra Cyber Crime Cell investigated and arrested the alleged developer of the app. The case involves charges under the Copyright Act, the Information Technology Act (for offences related to computer systems and data), and the Indian Penal Code. This example illustrates the shift of piracy from websites to dedicated applications, which can be harder to detect and remove from app stores. It also shows the multi-pronged legal approach required, involving copyright law, IT law, and criminal law enforcement. The case highlights the technical sophistication of modern piracy operations and the significant financial damage inflicted on legitimate content creators and distributors. It reinforces the need for robust enforcement, cooperation between industry players and law enforcement, and potentially stricter regulations for app stores regarding the hosting of infringing applications.

These cases collectively demonstrate that while Indian courts are actively addressing copyright infringement in the digital space, the existing legal framework faces significant strain. The *Tips v. Wynk* case reveals fundamental definitional and licensing gaps concerning the core business models of OTT platforms. The *Zee* and *Viacom18* examples showcase the practical difficulties in combating rampant online piracy facilitated by anonymous websites and sophisticated applications. They underscore the limitations of traditional enforcement methods and point towards the necessity for legislative reforms that specifically address the nuances of OTT operations, intermediary liability in the digital context, and more effective anti-piracy measures.

5. Proposed Reforms and Recommendations

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The analysis of legal challenges and the examination of real-world case studies clearly indicate that India's current copyright framework, primarily the Copyright Act, 1957, requires significant adaptation to effectively govern the dynamic Over-the-Top (OTT) sector. To foster a balanced ecosystem that protects creators' rights, encourages innovation by platforms, and ensures reasonable public access, the following reforms and recommendations are proposed:

1. Legislative Amendments to the Copyright Act, 1957:

- **Introduce a Specific Definition and Category for Online Content Services:** The Act should be amended to explicitly define and categorize digital on-demand services like OTT platforms, distinguishing them from traditional "broadcasting organisations." This would eliminate the ambiguity highlighted in the *Tips v. Wynk* case and provide a clear legal basis for their operation and regulation.
- **Develop a Tailored Licensing Framework for Digital Services:** Instead of forcing OTT platforms into the ill-fitting statutory license model of Section 31D or leaving them solely to complex voluntary negotiations, consider introducing a new statutory licensing scheme specifically designed for digital on-demand services. This could involve:
  - Establishing clear criteria for eligibility.
  - Setting royalty rates through an expert body (like the Copyright Board, potentially reformed or specialized) that considers the unique economics of streaming.

   – Ensuring mechanisms for efficient royalty collection and distribution, possibly leveraging technology. Alternatively, clear guidelines for voluntary licensing negotiations could be established to promote transparency and fairness.

- **Clarify "Communication to the Public" for On-Demand Services:** Amend Section 2(ff) or provide explicit clarification (perhaps through legislative notes or rules) that making works available for on-demand access constitutes "communication to the public," removing any lingering ambiguity regarding the application of exclusive rights under Section 14 to OTT streaming.
- **Refine Intermediary Liability Provisions:** While the IT Act addresses intermediary liability, specific amendments or guidelines under the Copyright Act could clarify the obligations of OTT platforms concerning infringing content. This should consider the varying degrees of control platforms exercise over content (curated vs. user-generated) and establish clear 'notice-and-takedown' procedures tailored to the OTT context, potentially incorporating 'notice-and-staydown' principles for repeat infringements, while maintaining safe harbor protections for platforms acting diligently.
- **Strengthen Anti-Piracy Measures:** Enhance provisions related to Technological Protection Measures (TPMs) (Section 65A) and Rights Management Information (Section 65B). Consider introducing more robust measures against the facilitation of infringement, potentially incorporating elements similar to the 'doctrine of inducement' (as referenced in the Biswajit Sarkar blog post concerning US law) where platforms actively encourage or profit significantly from infringement could face stricter liability. Introduce specific provisions to tackle piracy through dedicated apps and websites, possibly streamlining the process for obtaining dynamic injunctions against persistent infringers.
- **Modernize Fair Dealing Provisions (Section 52):** Review and potentially update fair dealing exceptions to provide clearer guidance on their application in the digital environment, considering uses specific to OTT platforms like previews, algorithmic recommendations incorporating snippets, and user interactions, while ensuring the core rights of creators are not unduly harmed.

2. Enhance the Role and Efficiency of Collective Management Organizations (CMOs): Strengthen the framework for CMOs to operate effectively in the digital domain. This includes promoting transparency in their operations, ensuring accurate tracking of digital usage, and facilitating efficient collection and distribution of royalties from OTT platforms to the rightful owners (authors, composers, performers, producers). Technology-driven solutions for reporting and royalty distribution should be encouraged.

3. Establish Specialized Dispute Resolution Mechanisms: Given the technical and commercial complexities of OTT copyright disputes, consider establishing specialized tribunals or fast-track arbitration/mediation mechanisms. This would allow for quicker, more expert resolution of conflicts related to licensing, infringement, and royalty payments, reducing the burden on traditional courts.

4. Promote International Cooperation and Harmonization: Actively engage in international forums and bilateral agreements to address cross-border copyright infringement effectively. Harmonizing Indian law with international best practices and treaties (like the WIPO Internet Treaties) concerning digital copyright issues will strengthen enforcement against foreign-based infringing services targeting Indian audiences.

5. Foster Stakeholder Collaboration and Awareness: Encourage regular dialogue between copyright owners, OTT platforms, technology providers, and government bodies to collaboratively address emerging challenges. Promote public awareness campaigns regarding the value of copyright and the negative impacts of piracy to foster a culture of respect for intellectual property.

Implementing these reforms requires a careful balancing act. The goal should be to create a legal environment that is clear, adaptable, and fair. It must incentivize the creation and dissemination of diverse content through legitimate OTT channels, provide effective remedies against infringement, ensure creators are fairly compensated, and ultimately benefit the Indian digital economy and consumers.

6. Conclusion

The rise of OTT platforms represents a paradigm shift in content distribution and consumption in India. However, this digital revolution has significantly outpaced the evolution of the country's copyright laws. The Indian Copyright Act, 1957, despite amendments, exhibits critical gaps and ambiguities when applied to the unique characteristics of OTT services. Issues surrounding the definition of broadcasting, the applicability of statutory licensing, the scope of communication to the public, intermediary liability, and the enforcement against sophisticated digital piracy create uncertainty and hinder the development of a fair and efficient digital media ecosystem.

Landmark cases like *Tips v. Wynk* and ongoing battles against piracy platforms like Bollyzone.TV and Thop TV vividly illustrate these challenges. They underscore the urgent need for a forward-looking legal framework specifically tailored to the digital age. This paper argues strongly for comprehensive reforms, including targeted legislative amendments to the Copyright Act, the development of appropriate licensing mechanisms for digital services, clarification of intermediary responsibilities, strengthening of anti-piracy tools, and enhancement of collective management and dispute resolution processes.

Adapting India's copyright law is not merely a legal necessity but an economic imperative. Well-calibrated reforms can foster innovation, attract investment in original content creation, ensure fair compensation for creators and rights holders, provide legal certainty for OTT platforms, and ultimately enrich the choices available to Indian consumers. Striking the right balance between protecting intellectual property and facilitating access in the digital realm is crucial for the continued growth and vibrancy of India's creative industries and digital economy.

References

1. *Indian Journal of Law and Legal Research (IJLLR)* article on OTT Platforms and Broadcasting Organisations (PDF accessed): https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_5fb62cccebaf4cdf9e53682d913d9eca.pdf (Original post URL: https://www.ijllr.com/post/ott-platforms-and-broadcasting-organisations-under-the-copyright-act-1957-a-legal-analysis-with-re)
2. Biswajit Sarkar Blog: *Copyright Infringement OTT – Legal Risks & Prevention*. https://www.biswajitsarkar.com/blog/copyright-infringement-on-ott-platforms.html
3. The Copyright Act, 1957 (India).
4. The Information Technology Act, 2000 (India).
5. *Tips Industries Ltd. v. Wynk Music Ltd.*, AIR Online 2019 Bom 1452 / 2022 SCC OnLine Bom 2781.
6. References to *Zee Entertainment Enterprises Ltd. v. Bollyzone.TV* and *Viacom18 Media Pvt. Ltd. v. Thop TV* as discussed in the Biswajit Sarkar blog post.

(Note: A full academic paper would require more extensive citations following a specific style like APA or Bluebook, referencing specific sections of the sources and potentially including additional scholarly articles, books, and reports found through further research.)