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# **INTERMEDIARY LIABILITY AND COPYRIGHT INFRINGEMENT ON OTT PLATFORMS IN INDIA: A CRITICAL ANALYSIS**

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## **ABSTRACT**

*The exponential proliferation of Over-the-Top (OTT) streaming platforms in India has fundamentally transformed the media and entertainment landscape, enabling unprecedented access to digital content across geographical and technological boundaries. This transformation, while fostering innovation and consumer choice, has simultaneously created complex legal challenges pertaining to copyright enforcement and intermediary liability. The Indian legal regime, primarily consisting of the Copyright Act, 1957 and the Information Technology Act, 2000, was not originally designed to regulate modern digital distribution models. As a result, courts, policymakers, and digital platforms are confronted with unresolved questions regarding the status of OTT platforms: whether they are passive intermediaries entitled to safe harbour protection or active participants with heightened responsibility for infringing content distributed on their services.*

*This paper critically examines intermediary liability and copyright infringement in the OTT ecosystem within India. It analyses statutory provisions, discusses pivotal judicial decisions, evaluates the applicability of safe harbour protection under Section 79 of the IT Act, explores the role of digital rights management in anti-piracy efforts, and conducts a comparative study of international legal frameworks in the United States, European Union, and United Kingdom. The study reveals that despite judicial attempts to adapt legal doctrine to technological realities, India lacks a coherent and comprehensive regulatory framework suited to streaming-age copyright enforcement. The paper argues that India requires targeted legislative reform to clarify standards of intermediary responsibility, update safe harbour mechanisms, regulate platform obligations, and ensure fair protection of both creators and digital innovation.*

## **1. INTRODUCTION**

### **1.1 The Rise of OTT Platforms and the Transformation of Media Consumption in India**

The advent of high-speed internet, affordable smartphones, and increasing digital literacy has catalysed the rapid growth of Over-the-Top (OTT) platforms in India. Services such as Netflix, Amazon Prime Video, Disney+ Hotstar, Sony LIV, ZEE5, and JioCinema have fundamentally altered content creation, distribution, and consumption patterns. Traditionally, cinematic releases and broadcast television dominated entertainment access, operating under stringent regulatory frameworks and geographical constraints. OTT platforms, by contrast, operate on on-demand models that allow users to access content instantaneously, transcending territorial limitations and offering diverse catalogues ranging from international films and series to original Indian productions.

India's OTT sector has emerged as one of the fastest-growing digital markets globally, driven by both domestic and foreign investment. The post-COVID era accelerated this trajectory as lockdowns forced audiences into digital spaces, making streaming services a primary form of entertainment. Data from industry reports consistently indicates that India's OTT user base and subscription revenues continue to rise, creating both opportunities and challenges for content governance. While OTT platforms have democratized content distribution and encouraged creative experimentation, they have also exposed vulnerabilities in India's copyright enforcement framework, particularly concerning unauthorized distribution, screen recording, digital piracy, and intermediary responsibility.

The legal tensions arise from the fact that most Indian copyright laws were conceived in an analogue era and assume structural models of content dissemination that differ profoundly from the digital streaming environment. This discrepancy has generated significant uncertainty regarding the extent to which OTT platforms are liable for third-party uploads, unauthorized broadcasts, mirror sites, and the circulation of infringing material facilitated through or associated with their digital architectures.

### **1.2 Intermediary Liability: Conceptual Foundations and Emerging Controversies**

Intermediary liability refers to the legal responsibility of service providers that act as conduits or hosts for information created, stored, or transmitted by third parties. In the context of OTT platforms, intermediary liability assumes a complex character because platforms may simultaneously host original content, licensed content, and user-generated material. The legal question arises whether OTT platforms are engaged merely in technical facilitation or whether

they exercise sufficient editorial control to be classified as active publishers. This distinction is pivotal because safe harbour protections under Section 79 of the Information Technology Act are available only to intermediaries that remain neutral and do not initiate or modify the transmission of information.

OTT platforms, unlike purely user-generated content platforms such as YouTube, are often deeply involved in content selection, production, curation, and distribution. This dual role blurs the lines between intermediaries and publishers, complicating the application of intermediary liability doctrines in copyright disputes. Copyright owners argue that OTT platforms benefit commercially from content dissemination and should therefore bear heightened responsibility to prevent infringement. Conversely, platforms contend that imposing proactive monitoring obligations would be technologically infeasible, economically burdensome, and constitutionally problematic due to potential implications for free expression.

### **1.3 Research Objectives**

This research aims to provide a comprehensive doctrinal analysis of intermediary liability in the context of copyright infringement on OTT platforms in India. Specifically, it seeks to examine the legal status of OTT platforms under the Copyright Act, 1957; analyse the applicability and scope of safe harbour immunity under the Information Technology Act, 2000; study judicial developments shaping intermediary obligations; explore technological and practical challenges associated with digital copyright enforcement; compare India's regulatory approach with international models; and offer policy recommendations for creating a balanced framework that protects copyright while encouraging innovation and consumer rights in the digital economy.

## **2. UNDERSTANDING OTT PLATFORMS AND DIGITAL COPYRIGHT CHALLENGES**

### **2.1 Defining OTT Platforms and Their Functionality**

OTT platforms deliver audio-visual content directly over the internet, bypassing traditional cable and satellite television distribution channels. These platforms encompass subscription-based services, ad-supported streaming services, hybrid models, and user-generated content platforms. The technological architecture of OTT services involves data compression technologies, content delivery networks, encryption layers, digital rights management systems, and algorithmic interfaces that personalize user experience. This infrastructure

differentiates OTT platforms from conventional broadcasters, whose operations are subject to stricter government licensing, spectrum regulation, and content control measures.

OTT platforms frequently engage in multiple functions including content acquisition, commissioning original productions, hosting licensed works, regulating community guidelines, and facilitating user interaction through features such as comments, reviews, and watch-lists. As a result, determining their legal character under the Indian regulatory framework requires a more nuanced analysis than traditional categories of intermediaries.

## **2.2 Nature of Copyright Infringement in the OTT Environment**

The digital nature of OTT platforms makes copyrighted works particularly vulnerable to unauthorized reproduction and dissemination. Piracy occurs through screen recording, ripping of digital streams, unauthorized uploads to video-sharing platforms, distribution through torrent networks, redistribution via mirror sites, and illicit live streaming of sports and entertainment events. These forms of infringement cause substantial revenue loss to rights holders and undermine legitimate distribution channels. Digital piracy is especially pervasive in India where numerous rogue websites operate outside domestic jurisdiction, making enforcement challenging.

OTT platforms face indirect consequences of such infringement because their subscription revenues and licensing values diminish when illegally circulated content becomes readily accessible. Additionally, some OTT platforms may inadvertently host content uploaded by users or associated third parties without proper licensing, exposing them to claims of direct or secondary copyright infringement.

## **2.3 Intermediaries Under Indian Law: Conceptual Interpretation**

The Information Technology Act, 2000 defines an intermediary as any entity that receives, stores, or transmits information on behalf of another person or provides services related to the transmission of information. Examples include internet service providers, search engines, social media platforms, e-commerce marketplaces, and content-hosting platforms. Section 79 of the Act grants qualified immunity to intermediaries, shielding them from liability for third-party content provided that they observe due diligence, do not initiate the transmission, and take prompt action upon receiving actual knowledge of unlawful content.

The classification of OTT platforms under this definition remains contentious. While user-generated content segments of certain platforms may clearly fall within intermediary status, platforms that curate, commission, and edit content may exceed intermediary functions and

assume the role of content publishers. Indian courts have not yet established uniform criteria for determining intermediary status in the context of streaming platforms.

### **3. INDIAN COPYRIGHT FRAMEWORK GOVERNING OTT LIABILITY**

#### **3.1 The Copyright Act, 1957: Statutory Provisions Relevant to OTT Platforms**

The Copyright Act, 1957 establishes the exclusive rights granted to authors and creators of literary, artistic, musical, dramatic, and cinematographic works. Section 14 defines the scope of copyright, including rights of reproduction, communication to the public, distribution, adaptation, and translation. Section 51 identifies acts that constitute infringement, including unauthorized reproduction or communication of copyrighted works. Section 52 outlines exceptions under the doctrine of fair dealing for research, education, criticism, reporting, and other public interest activities.

For OTT platforms, the statutory concept of “communication to the public” is of particular relevance. Courts have consistently interpreted this term broadly to include the transmission of content to multiple users through digital networks. OTT streaming clearly falls within this definition, triggering copyright obligations that require valid licensing arrangements for all distributed works. Unauthorized hosting or streaming of content on OTT platforms constitutes infringement regardless of whether the platform intended such dissemination.

However, the Copyright Act does not specifically address the liability of digital intermediaries or streaming platforms for third-party uploads or automated hosting, making it necessary to read the Act alongside the IT Act for a comprehensive understanding of platform obligations.

#### **3.2 The Information Technology Act, 2000 and Safe Harbour Protection**

The IT Act introduced a safe harbour framework to encourage the growth of digital intermediaries by limiting their liability for third-party content. Section 79 grants immunity to intermediaries provided they do not initiate the transmission, select the receiver, or modify the information. Moreover, intermediaries must observe due diligence, comply with government-issued guidelines, and remove illegal content upon receiving actual knowledge through court orders or government notifications.

The landmark Supreme Court judgment in *Shreya Singhal v. Union of India* clarified that actual knowledge arises only upon receipt of a court order or government directive, protecting intermediaries from arbitrary censorship pressure by private complainants. This interpretation

significantly influences the liability of platforms hosting user-uploaded content.

OTT platforms, however, may not neatly fall within the intermediary category if they exercise editorial control or engage in original content creation. The Intermediary Guidelines and Digital Media Ethics Code Rules, 2021 further complicate this landscape by imposing stricter obligations on digital publishers of news and curated content, indicating that the government does not regard OTT platforms as passive intermediaries.

### **3.3 Intermediary Guidelines Rules, 2021 and Impact on OTT Regulation**

The 2021 Rules establish a three-tier mechanism for grievance redressal, mandate appointment of compliance officers, require prompt content removal upon notification, and impose due diligence obligations on social media intermediaries. Part III of the Rules provides a separate framework for publishers of online curated content, including OTT platforms, requiring them to classify content by age, implement parental controls, and adhere to a code of ethics aligned with Indian constitutional values.

These rules reflect the government's evolving perception of OTT platforms as active content curators rather than mere intermediaries. Consequently, OTT platforms bear distinct obligations beyond the traditional safe harbour framework applicable to neutral intermediaries. However, these developments have generated constitutional debate, with critics arguing that the Rules impose excessive control over digital expression and platform autonomy.

### **3.4 Digital Rights Management and Technological Measures**

Modern OTT platforms rely heavily on digital rights management technologies, including encryption, watermarking, tokenization, and geo-blocking to prevent unauthorized copying and distribution of content. The 2012 amendments to the Copyright Act introduced Section 65A and 65B, criminalizing the circumvention of technological protection measures and unauthorized removal of rights management information. These provisions strengthen the legal tools available to OTT platforms to combat piracy.

Nonetheless, DRM systems are frequently circumvented by sophisticated piracy networks, indicating that technological measures alone cannot sufficiently prevent infringement. Legal remedies including injunctions, dynamic website blocking orders, and cooperation with law enforcement agencies remain essential to complement technological protection systems.

## **4. JUDICIAL APPROACH TO INTERMEDIARY LIABILITY AND OTT COPYRIGHT ENFORCEMENT**

### **4.1 Super Cassettes Industries Ltd. v. MySpace Inc.**

The Delhi High Court's decision in *Super Cassettes v. MySpace* remains a seminal judgment on intermediary liability in India. MySpace, a user-generated content platform, was accused of enabling the unauthorized upload and dissemination of copyrighted songs. The Court held that intermediaries cannot claim absolute safe harbour protection and must undertake reasonable measures to prevent infringement once notified. It emphasized that if a platform derives commercial benefit from infringing content or plays an active role in organizing or promoting such content, it may lose intermediary protection.

This case introduced a functional test distinguishing passive intermediaries from active participants. While MySpace is not an OTT platform, the reasoning is instructive: streaming services that exercise editorial control or derive direct benefit from content circulation may be held responsible for preventing infringement.

### **4.2 Viacom18 Media Pvt. Ltd. v. YouTube, LLC**

In this case, Viacom alleged that YouTube hosted unauthorized clips of its copyrighted works. The Delhi High Court recognized YouTube's intermediary status but required prompt removal of infringing material upon specific notice. The Court clarified that generalized awareness of infringement is insufficient to impose liability; platforms must act upon concrete and item-specific information. This reinforces the need for detailed takedown notices in copyright disputes.

The case demonstrates judicial reluctance to impose broad proactive monitoring obligations on intermediaries. Although YouTube's architecture differs from vertically curated OTT platforms, the principles articulated provide indirect guidance for evaluating liability in the streaming context.

### **4.3 UTV Software Communication Ltd. v. 1337X.to**

The Delhi High Court's decision in *UTV Software v. 1337x* represents a significant development in anti-piracy enforcement. The Court introduced the concept of dynamic injunctions allowing rights holders to secure website blocking orders that extend automatically to mirror sites and domain variants. The Court identified rogue websites as entities whose primary purpose is to infringe copyright and circumvent enforcement mechanisms.

This judgment is particularly relevant for OTT platforms because rogue sites frequently host pirated versions of OTT content. Dynamic injunctions provide an efficient remedy to address the hydra-headed nature of piracy networks. However, critics argue that such injunctions risk over-blocking legitimate websites and suppressing lawful online expression.

#### **4.4 Tips Industries Ltd. v. Wynk Music Ltd**

The Bombay High Court's decision in *Tips v. Wynk* clarified that streaming constitutes "communication to the public" requiring appropriate licensing. Wynk's attempt to rely on statutory licensing provisions was rejected, establishing that commercial streaming services must negotiate separate copyrights for public communication.

Although this case pertains to a music streaming platform rather than a video OTT service, the principles remain relevant. OTT platforms must ensure comprehensive licensing for all distribution activities or risk exposure to infringement claims.

#### **4.5 Judicial Trends and Doctrinal Patterns**

Indian courts have displayed increasing assertiveness in addressing digital copyright disputes. A consistent trend emerges across cases: platforms are expected to implement robust due diligence practices, respond expeditiously to takedown notices, and prevent reappearance of previously identified infringing content. However, courts generally avoid imposing general monitoring obligations due to constitutional and practical limitations.

At the same time, judicial interpretations remain fragmented and context-specific, generating inconsistency in intermediary liability standards. This doctrinal fluidity creates legal uncertainty for OTT platforms, rights holders, and users.

## **5. CHALLENGES IN DETERMINING LIABILITY FOR OTT PLATFORMS**

### **5.1 Technological and Operational Complexity**

OTT platforms host vast volumes of content across multiple languages, genres, and formats. Monitoring this content in real time is technologically difficult and financially burdensome. Automated content recognition tools may misidentify legitimate uses, including fair dealing or licensed content, creating risks of over-enforcement. The scale and speed of digital circulation make traditional enforcement mechanisms inadequate.

## **5.2 Cross-Border Infringement and Jurisdictional Barriers**

Piracy networks often operate across borders, hosting servers outside India and using anonymization technologies. Jurisdictional challenges hinder enforcement efforts, requiring international cooperation and mutual legal assistance treaties. OTT platforms may struggle to secure compliance from foreign websites or entities beyond Indian jurisdiction.

## **5.3 Balancing Innovation with Protection of Copyright Holders**

Excessive liability may discourage innovation and deter investment in digital media platforms. OTT platforms contribute significantly to the creative economy by producing original content, supporting emerging creators, and expanding consumer choice. Imposing strict monitoring requirements may increase operational costs and restrict experimentation. On the other hand, insufficient enforcement undermines the rights of content creators, leading to economic loss and discouragement of creative labour.

## **5.4 Risks of Over-Enforcement and Censorship**

Aggressive copyright enforcement may suppress legitimate expression if platforms resort to pre-emptive content removal to avoid liability. India's diverse socio-cultural context makes the risk of censorship particularly concerning. Judicial and regulatory frameworks must ensure that copyright protection does not infringe upon free speech under Article 19(1)(a) or facilitate private censorship by digital platforms.

## **5.5 Privacy and User Rights**

Increasing governmental and judicial pressure on platforms to monitor content may require intrusive surveillance of user activity, raising privacy concerns under Article 21 of the Constitution. As affirmed by the Supreme Court in *Puttaswamy v. Union of India*, privacy is a fundamental right. Any monitoring obligation imposed on OTT platforms must satisfy constitutional principles of legality, necessity, and proportionality.

# **6. COMPARATIVE INTERNATIONAL APPROACHES**

## **6.1 United States: DMCA Safe Harbour and Notice-and-Takedown**

The United States follows the Digital Millennium Copyright Act (DMCA), which grants intermediaries safe harbour protection provided they act expeditiously to remove infringing content upon receiving proper notification. The DMCA requires intermediaries to implement

repeat infringer policies and prohibits platforms from receiving direct financial benefit from infringing activities they control.

The DMCA's strict notice-based framework provides clarity but has faced criticism for enabling abuse through mass automated takedown notices. OTT platforms operating in the U.S. must maintain detailed compliance protocols to avoid losing safe harbour protection.

## **6.2 European Union: The Copyright Directive and Platform Responsibility**

The EU's Copyright Directive (Directive 2019/790) imposes heightened responsibility on online content-sharing service providers. Article 17 requires platforms to obtain licences for copyrighted works or implement effective content recognition technologies to prevent unauthorized uploads. This shifts the burden of preventing infringement onto platforms, moving beyond reactive takedown models.

Europe's approach is more stringent than the U.S. model and emphasizes proactive monitoring. Critics argue that upload filters risk suppressing lawful expression and disproportionately affect smaller platforms unable to invest in advanced technologies.

## **6.3 United Kingdom: Hybrid Approach and Publisher Liability**

The United Kingdom adopts a hybrid model combining elements of intermediary protection and publisher responsibility. The Copyright, Designs and Patents Act and judicial interpretations emphasize the role of the entity making "necessary arrangements" for content availability. For streaming platforms involved in content selection and editorial oversight, liability may be more stringent than UGC platforms.

The UK's regulatory framework, though shaped by its pre-Brexit alignment with EU law, continues to evolve in response to digital streaming challenges.

## **6.4 Comparative Assessment and Implications for India**

Compared to the U.S., EU, and UK, India lacks a coherent statutory framework specifically addressing OTT platforms. While the IT Act provides general intermediary protection, its applicability to curated digital content remains ambiguous. India's regulatory landscape resembles a hybrid model with elements of safe harbour and public-interest regulation but lacks clarity and consistency. Lessons from international frameworks suggest India must balance protection of rights holders with safeguards for innovation, user rights, and constitutional freedoms.

## **7. NEED FOR LEGAL REFORM IN INDIA**

### **7.1 Inadequacy of the Current Framework**

India's existing statutory provisions do not adequately address the complexities of copyright enforcement in the streaming era. The Copyright Act presupposes traditional broadcasting models and does not address digital intermediaries. The IT Act's safe harbour provisions are insufficiently tailored to the unique operations of OTT platforms. Judicial interpretations, though progressive, cannot substitute for comprehensive legislative reform.

### **7.2 Definitional Clarification of OTT Platforms**

The law must clearly define OTT platforms and differentiate between subscription-based, ad-supported, user-generated content, and hybrid models. This differentiation is essential because liability standards depend on the degree of control platforms exercise over content distribution.

### **7.3 Clarifying the Scope of Safe Harbour Protection**

Legislation must specify whether OTT platforms qualify as intermediaries and under what conditions. It must further clarify actual knowledge, due diligence obligations, and standards for content removal. A balanced safe harbour model should protect platforms that operate neutrally while ensuring accountability for deliberate or negligent infringement.

### **7.4 Strengthening Anti-Piracy Mechanisms**

India requires an updated legal toolkit for combating digital piracy, including real-time blocking systems, improved cooperation between platforms and authorities, cross-border enforcement mechanisms, and streamlined procedures for issuing dynamic injunctions.

### **7.5 Transparency and Accountability Measures**

OTT platforms should be required to disclose content policies, takedown procedures, and grievance mechanisms. Transparency enhances trust, ensures fairness to rights holders, and supports regulatory compliance.

### **7.6 Consumer and Creator Rights**

Reforms must protect user rights, including privacy, fair dealing, and access to knowledge. Simultaneously, creators' rights must be safeguarded through robust licensing frameworks, royalties, and anti-piracy protections.

## **8. CONCLUSION**

OTT platforms have emerged as central actors in India's digital media ecosystem, driving innovation, investment, and cultural production. However, the rise of streaming services has exposed significant gaps in India's copyright and intermediary liability framework. The existing statutes do not adequately address the complex technological and legal challenges associated with digital distribution. Judicial decisions have attempted to fill these gaps, yet interpretations remain inconsistent and context-specific, creating uncertainty for stakeholders across the digital economy.

A coherent legislative framework is urgently required to define the legal status of OTT platforms, clarify intermediary obligations, regulate takedown procedures, and enhance anti-piracy enforcement. At the same time, this framework must protect fundamental rights, encourage innovation, and maintain a balanced ecosystem that respects the interests of creators, platforms, and consumers alike. As India positions itself as a global digital leader, modernizing its copyright and intermediary liability regime is essential for ensuring a fair, competitive, and culturally vibrant digital future.

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