
REDEFINING THE COMPLEXITIES BETWEEN COPYRIGHT AND COMPETITION LAW - A SOCIO-LEGAL ANALYSIS IN THE AGE OF DIGITAL MARKETS

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ABSTRACT

This paper explores the evolving intersection of Copyright Law and Competition (Antitrust) Law, tracing their transition from a mid-20th-century Theory of Conflict to a modern Theory of Convergence. Historically viewed as antagonistic, these legal regimes were once defined by a zero-sum struggle between the individual creator's legal monopoly and the collective consumer's right to a free market. However, modern legal theory now recognizes them as complementary forces: copyright provides the essential incentive for innovation by granting temporary exclusivity, while competition law ensures the widespread diffusion of that innovation by dismantling structural barriers. The analysis focuses on the unique challenges posed by the Fourth Industrial Revolution, specifically the role of big data and generative AI. In the current landscape, the concentration of data has allowed dominant firms to leverage copyrighted content to train algorithms that eventually compete with original creators. This presents a critical regulatory dilemma where strict enforcement may lead to data bottlenecks, while total deregulation could stifle creative incentives.

By conducting a comparative analysis of three major jurisdictions, the study examines distinct regulatory philosophies: the United States' flexible, court-centric model utilizing Fair Use and the Rule of Reason; the European Union's proactive stance through the Digital Markets Act (DMA); and India's balanced framework via Section 3(5) of the Competition Act. The paper further investigates core complexities, including the Essential Facilities Doctrine and the lock-in effects of Digital Rights Management (DRM). It concludes by recommending FRAND licensing for AI training data to ensure intellectual property remains a catalyst for progress.

Keywords: Interoperability, Market Dominance, Generative AI, Fair Use, Gatekeeper Regulation.

I. Introduction

1.1 Background: The Philosophical Convergence of Incentives and Markets

The legal architectures of copyright and competition law were historically viewed as distinct, parallel tracks of regulation. Copyright law serves as the primary engine for the protection of expression, operating on the premise that creators require a period of exclusivity to recoup their intellectual investments. By granting authors the power to prevent unauthorized reproduction, the state fosters a marketplace of ideas.¹ Conversely, competition law or antitrust functions to prevent market distortion. Its mandate is to dismantle barriers to entry and ensure that no single entity can manipulate price or output to the detriment of consumer welfare.²

While early jurisprudence often characterized copyright as a legal monopoly that existed as an exception to the free-market mandate of competition law, modern legal theory has evolved. There is an increasing recognition that both regimes share a common destination: the promotion of innovation. Copyright promotes the creation of the new, while competition law ensures the diffusion of the new. In the current global economy, these two fields are no longer merely parallel; they are deeply intertwined, with the boundaries of one frequently defining the limits of the other.³

1.2 Problem Statement: The Erosion of Traditional Boundaries in the Digital Era

The arrival of the fourth industrial revolution, characterized by big data, machine learning, and generative artificial intelligence, has fundamentally challenged the traditional view of copyright as a mere exception to competition. In this era, the concentration of data has created a new type of market power. Dominant technology firms utilize vast repositories of copyrighted content often generated by third parties to train sophisticated algorithms that can eventually compete with the original creators.⁴

This presents a critical regulatory dilemma: if copyright is enforced too strictly against AI developers, it may create a bottleneck that allows only a few data-rich firms to dominate the

¹ Mazer v. Stein, 347 U.S. 201 (1954).

² Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911).

³ Reto M. Hilty, IP and Competition Law: Challenges in the Digital Economy, Max Planck Institute for Innovation and Competition Research Paper No. 20-01 (2025).

⁴ Bartz et al. v. Anthropic PBC (2025).

future of technology.⁵ However, if competition concerns lead to the total deregulation of data access, the creative incentive for individual authors may be completely stifled. The central challenge for contemporary legal systems is to determine how to regulate these data-rich monopolies without destroying the economic foundation upon which original expression is built.⁶ The traditional monopoly granted by copyright is now being leveraged not just to protect a single book or song, but to control the very infrastructure of digital intelligence.⁷

2. The Evolutionary Jurisprudence of IPR-Antitrust

2.1 The Theory of Conflict: The Early 20th-Century Paradigm

During the early 20th century, the legal relationship between intellectual property and antitrust was defined by a zero-sum philosophical struggle. This Theory of Conflict posited that copyright and patent protections were inherently antagonistic to the goals of competition law. Intellectual property was characterized as a state-granted "legal monopoly" that carved out exceptions to the free market, while antitrust law was the corrective force meant to dismantle such concentrations of power.⁸ Consequently, any expansion of a creator's exclusive rights was viewed as a proportional contraction of market competition.

Judicial scrutiny during this era was often hostile toward restrictive licensing agreements. Courts feared that the right to exclude would inevitably be leveraged to control adjacent markets or to fix prices, thereby frustrating the Sherman Act's mandate to protect the competitive process.⁹ The prevailing jurisprudence treated these two fields as parallel lines that could never meet; the protection of the individual creator was seen as a structural obstacle to the welfare of the collective consumer.¹⁰

2.2 The Theory of Convergence: Modern Pro-Competitive Perspectives

As economic theory transitioned into the late 20th and early 21st centuries, a paradigm shift occurred. Modern legal thought replaced the conflict model with the Theory of Convergence. This perspective argues that copyright and competition law are actually "complementary"

⁵ European Union's Digital Markets Act (Regulation 2022/1925).

⁶ The Deepfakes Dilemma: Safeguarding Dignity in the AI Era, Expert Webinar Proceedings (April 2026).

⁷ Google LLC v. Oracle America, Inc., 593 U.S. (2021).

⁸ United States v. Line Material Co., 333 U.S. 287 (1948).

⁹ Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20 (1912).

¹⁰ Ward Bowman, Jr., Patent and Antitrust Law: A Legal and Economic Appraisal (1973).

because both aim to encourage innovation and maximize consumer welfare. Under this view, the exclusivity granted by copyright does not destroy competition; rather, it shifts the nature of competition from "price" to "innovation."

When a creator holds a copyright, it incentivizes competitors to "innovate around" the protected expression. Instead of mere imitation, rivals are forced to develop superior, distinct works to capture market share, thereby increasing the diversity and quality of offerings available to the public.¹¹ Modern courts now recognize that without the temporary exclusivity of intellectual property, the "free-rider" problem would lead to chronic under-investment in creative works. Therefore, a robust copyright regime is seen as a pro-competitive mechanism that fuels the long-term vitality of the marketplace.¹²

2.3 Statutory Frameworks: Comparative Analysis

The global regulation of the IPR-Antitrust interface is anchored by three primary statutory frameworks that navigate this convergence.

In the United States, the Sherman Act serves as the constitutional baseline for competition. Section 2, in particular, prohibits the abuse of monopoly power. [7] While U.S. law generally allows a copyright holder to enjoy the fruits of their exclusivity, it intervenes under the "Rule of Reason" when that power is used to engage in exclusionary conduct that lacks a legitimate business justification.

The European Union utilizes Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Article 101 targets anti-competitive agreements, while Article 102 addresses the abuse of a dominant position. The EU jurisprudence has been particularly instrumental in defining the "Essential Facilities Doctrine," which suggests that in exceptional circumstances, a dominant firm may be compelled to license its copyrighted data if it is indispensable for a downstream market.

In India, the Competition Act, 2002, provides a sophisticated balance through Section 3. While Section 3(1) prohibits agreements that cause an appreciable adverse effect on competition, Section 3(5) provides a specific savings clause. This clause ensures that the Act does not restrict

¹¹ Atari Games Corp. v. Nintendo of America Inc., 897 F.2d 1572 (Fed. Cir. 1990).

¹² Trinko, LLP v. Verizon Communications, Inc., 540 U.S. 398 (2004).

the right of any person to restrain infringement of their intellectual property or to impose reasonable conditions necessary for protecting those rights. However, the Competition Commission of India (CCI) maintains the power to ensure that these reasonable conditions do not devolve into an abuse of dominance under Section 4.¹³

3. Core Areas of Complexity

3.1 Refusal to License: The Essential Facilities Doctrine

The most contentious point of intersection between copyright and competition law occurs when a dominant firm refuses to license its proprietary intellectual property to competitors. Under the essential facilities doctrine, a refusal to deal may be deemed an abuse of dominance if the copyrighted material such as a proprietary API, software code, or a comprehensive database is indispensable for operating in a downstream market.¹⁴ The legal complexity arises in determining the threshold for indispensability and whether the copyrighted work is truly non-substitutable.

Jurisprudence, particularly in the European Union, has established that a refusal to license constitutes an anti-competitive practice when three conditions are met: the refusal prevents the emergence of a new product for which there is potential consumer demand, the refusal is not justified by objective considerations, and the refusal excludes all competition in a secondary market. In the digital age, where software interoperability is the backbone of the economy, courts are increasingly treating technical interfaces as essential facilities. If a firm uses copyright to gatekeep the only viable pathway for a competitor to function, the right to exclude granted by copyright may be overridden by the duty to deal imposed by competition law.

3.2 Standard Essential Patents (SEPs) and Copyright: The Software Nexus

While the debate surrounding Standard Essential Patents (SEPs) is traditionally rooted in patent law, the essentiality of software standards creates significant copyright-based barriers to entry. In the modern tech ecosystem, industry standards such as data compression formats or communication protocols often rely on specific software code that is protected by copyright. When a particular set of code becomes the industry standard, it becomes essential for any firm

¹³ Entertainment Network (India) Limited v. Super Cassette Industries Ltd. (2008) 13 SCC 30.

¹⁴ MCI Communications Corp. v. AT&T, 708 F.2d 1081 (7th Cir. 1983).

wishing to create compatible products.

The complexity lies in the fact that unlike patents, which have a clear disclosure and fair, reasonable, and non-discriminatory (FRAND) licensing framework, copyright is often less transparent. If a firm holds copyright over the only functional code required to achieve interoperability with a standard, they can effectively block competitors from the market.¹⁵ This has led to high-stakes litigation over the copyrightability of APIs. Modern judicial trends, notably in the United States, suggest that the fair use doctrine may serve as a competitive safeguard, allowing rivals to use essential software interfaces to ensure that a copyright holder does not gain an unintended monopoly over an entire industry standard.

3.3 Digital Rights Management (DRM): The Lock-in Effect and Aftermarkets

Digital Rights Management (DRM) systems are designed to protect copyrighted content from unauthorized access or reproduction. However, DRM is increasingly being leveraged as a tool for anti-competitive consumer lock-in. By using technical protection measures that are legally shielded by statutes, manufacturers can control secondary markets, including repairs, updates, and replacement parts.

This creates a walled garden where a consumer who purchases a product ranging from a smartphone to a tractor is forced to return to the original manufacturer for all subsequent services because the underlying software is locked via DRM. Competition authorities are now examining these aftermarkets to determine if the use of DRM exceeds its legitimate purpose of protecting expression and instead serves to eliminate independent repair providers. The friction here is between the copyright holder's right to secure their digital property and the consumer's right to repair and market competition in secondary services.

4. Comparative International Perspectives

4.1 The EU Approach: Ex-Ante Regulation and the Digital Markets Act

The European Union has shifted from a reactive to a proactive regulatory stance with the enactment of the Digital Markets Act (DMA). Unlike traditional competition law, which relies on *ex-post* enforcement acting only after a market abuse has occurred the DMA introduces an

¹⁵ *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297 (3d Cir. 2007).

ex-ante framework.¹⁶ It targets large systemic platforms, designated as gatekeepers, and imposes a set of affirmative obligations to ensure market contestability.

Specifically, the DMA mandates data portability and vertical interoperability, which fundamentally limits a gatekeeper's ability to use copyrighted software or proprietary data as a barrier to entry for third-party developers.¹⁷ By treating digital platforms as essential infrastructure, the EU approach subordinates the absolute nature of copyright to the broader objective of maintaining a fair and open digital ecosystem.¹⁸

4.2 The US Approach: Judicial Fair Use and the Rule of Reason

The United States maintains a more flexible, court-centric model that relies on the Sherman Antitrust Act and the judicial doctrine of the Rule of Reason.¹⁹ Rather than imposing broad statutory regulations on technology firms, U.S. antitrust authorities and courts evaluate whether the exercise of a copyright has an anti-competitive effect that outweighs its pro-competitive benefits.

A critical safety valve in the U.S. system is the Fair Use doctrine. In cases involving software and digital markets, U.S. courts have increasingly applied fair use to permit the copying of functional elements, such as APIs, to ensure that copyright does not become a tool for lock-in or market foreclosure.²⁰ This judicial approach allows for a case-by-case balancing of interests, ensuring that intellectual property rights are protected only insofar as they do not stifle the process of competition.

4.3 The Indian Approach: The Role of the CCI and Section 3(5) Exemptions

India provides a unique statutory balance through the Competition Act, 2002, which acknowledges the necessity of intellectual property while preventing its misuse. The primary mechanism is Section 3(5), which provides a safe harbor for IP holders, stating that the

¹⁶ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act), OJ L 243.

¹⁷ P. Akman, The Digital Markets Act: A New Era for Digital Regulation, 45(3) European Law Review 328–351 (2024).

¹⁸ T. Wu, The Master Switch: The Rise and Fall of Information Empires 302–315 (Knopf, 2010) (discussing the Separation Principle in digital infrastructure).

¹⁹ Sherman Antitrust Act, 15 U.S.C. §§ 1–7; see also *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911).

²⁰ *Google LLC v. Oracle America, Inc.*, 593 U.S. (2021) (holding that the use of a proprietary API to create a new platform constitutes fair use).

prohibition of anti-competitive agreements does not restrict a person's right to restrain infringement or impose reasonable conditions for IPR protection.

However, the Competition Commission of India (CCI) has clarified that this exemption is not absolute. The CCI holds the authority to determine what constitutes a reasonable condition. If a copyright holder's licensing terms are found to be exploitative or exclusionary, the CCI may intervene under Section 4, which prohibits the abuse of a dominant position. Indian jurisprudence emphasizes that intellectual property rights are not higher than competition law; rather, both must be harmonized to serve the overarching public interest and foster industrial innovation.²¹

5. Conclusion and Recommendations

5.1 Conclusion

The historical friction between copyright's right to exclude and competition law's mandate to open has reached a critical juncture in the era of artificial intelligence and big data. This analysis demonstrates that the traditional view of copyright as a static monopoly is no longer sustainable. Instead, a symbiotic relationship has emerged where copyright provides the necessary incentive for creation, while competition law ensures that these incentives do not transform into structural barriers that stifle the next generation of innovators. The shift from protecting the individual product to safeguarding the process of competition represents a maturing of legal theory, recognizing that market health is predicated on both the protection of expression and the fluidity of data.

5.2 Recommendations

1. **Implementation of Compulsory Licensing for AI:** Regulatory bodies should develop a Compulsory Licensing framework specifically for AI training data. When a dataset is deemed an essential facility and is controlled by a dominant firm, that firm should be required to license the data to competitors under Fair, Reasonable, and Non-Discriminatory (FRAND) terms to prevent market foreclosure.
2. **Expansion of Interoperability Safe Harbors:** Legislators should explicitly expand Fair

²¹ Entertainment Network (India) Limited v. Super Cassette Industries Ltd., (2008) 13 SCC 30 (establishing that the Copyright Act and Competition Act must be read in harmony).

Use and Reasonable Condition provisions to include acts of copying necessary for software interoperability. This ensures that proprietary code cannot be used to lock-in consumers or prevent third-party maintenance and secondary services.

3. **Enhanced Role for the CCI:** In the Indian context, the Competition Commission of India should issue specific guidelines clarifying the Reasonable Conditions under Section 3(5). Clearer parameters would reduce litigation and provide a predictable environment for both tech startups and established intellectual property holders.
4. **Ex-Ante Oversight for Digital Gatekeepers:** Following the EU's Digital Markets Act model, other jurisdictions should consider ex-ante regulations for systemic platforms. This proactive approach prevents anti-competitive data-hoarding before it causes irreparable harm to the competitive landscape of the digital economy.