COPYRIGHT, STREAMING PLATFORMS AND COMPETITION LAW: THE ANTI- COMPETITIVE EFFECTS OF EXCLUSIVE CONTENT LICENSING

Rijul Goel, LL.M. (Master of Law), Amity Law School,
Amity University, Noida, Uttar Pradesh, India

ABSTRACT

The delivery and consumption of movies, music, sports and other digital material have changed dramatically as a result of the quick growth of OTT streaming services. Exclusive Content Licensing has been a key business tactic for drawing customers, bolstering market position and distinguishing platforms in the fiercely competitive streaming industry. Although exclusivity is a valid result of copyright safeguarding and can encourage investment, innovation and creativity its widespread or deliberate usage may also give rise to issues under competition law. With special reference to the Competition Act of 2002 and the Copyright Act of 1957, this particular study tries to find the intersection and explores relationship between copyright protection and competition law in the context of streaming platforms' exclusive content licensing. It tries to examine the potential effects of exclusive licensing on consumer choice and welfare and competitor costs, entry obstacles, market foreclosure and strategic content acquisition.

Keywords: Exclusive Content Licensing, streaming Platforms, Competition Law, Copyright Law, Entertainment Industry.

Introduction

Storytelling has traditionally been one of the most rudimentary kinds of entertainment since the very dawn of mankind. Traditionally, stories were told via a mix of spoken words, noises, visuals and physical expressions. Storytelling has been a vital part of cultural knowledge diffusion and preservation for ages. People have continued to tell stories in ways that have maintained remarkable continuity across time, whether they are shared over a campfire or used to explain customs and practices to outsiders. It was historically an essential oral practice used to transmit experiences, values and customs that can be traced back prior to the actual invention of print and visual media. From live gigs and publications in print to radio, film and television transmission the entertainment business has experienced a tremendous metamorphosis since its inception with television and movies forming the most popular kinds of source of entertainment for a greater portion of 20th century.[1] But this environment underwent a drastic shift with the arrival of so called digital age. The advent of digital streaming platforms and OTT (Over the Top) services, such as Netflix, Amazon Prime, and Hulu was seen possible by the widespread availability of internet sources radically altering how viewers access and consume entertainment. The shift took a major turn when the world at large was hit the Covid-19 Pandemic leaving people with just internet and OTT at homes.[2]

India too have become a popular home for the rise of OTT and streaming platforms paving way for Indian users to access and consume news, entertainment and other media heavily through platforms like Netflix, Amazon, Prime Vedio, Disney+ Hotstar, SonyLIV, ZEE5 and many more. These platforms have decreased dependency on conventional distribution channels like cable and satellite television.

The Indian streaming industry is highly marked by aggressive competition and quickly evolving strategies among key companies. These Indian platforms like AltBalaji, ZEE5, Voot compete with global platforms like Netflix, Prime and Hotstar creating a fiercely competitive and dynamic industry. The amalgamation of creative and unique material is one of the main areas of this increasing competition.[3] To develop and grow a distinctive brand and draw in

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1 Antitrust Issues in Entertainment and Film Industry (Part 1), *available at* https://www.mondaq.com/india/antitrust-eu-competition/1161082/antitrust-issues-in-entertainment-and-film-industry-part-1 (last visited on 28 August 2026)

2 The Evolution of The Entertainment and Media Industry: From Print to Streaming, available at: https://www.theceo.in/blogs/the-evolution-of-the-entertainment-and-media-industry-from-print-to-streaming (last visited on 26 August, 2026)

3 OTT Platforms in Digital Entertainment and Legal Issues, *available at*: https://sl1nk.com/1hm83ph (last visited

viewers, platforms spend a lot of money creating original movies, TV shows and other content. Additionally, a variety of monetization tactics are used such as advertising supported models and subscription based plans with different price levels intended to strike a balance between income creation and consumer affordability and accessibility thereby leading the same to a quickly evolving market majorly influenced by elements like reasonable pricing, value propositions, creative content and successful integration of new technology.[4]

On one hand, in order to draw viewers and grow their content libraries, streaming services heavily rely on copyrighted material. However these platforms may be subject to legal action and substantial financial consequences if such content is distributed or reproduced without authorization on the other hand, competition law seeks to prevent monopolistic behaviour and protect fair market practices. Streaming platforms that get exclusive content deals or have significant negotiation power with content suppliers and producers may find it difficult to achieve this goal. So as this continues to play a growing multidimensional role it becomes utmost important to deep dive into the growing complexities and tension between the two statutes.[5]

Copyright Concept for the Digital Content

In the very purview of streaming platforms, copyright law encompasses a wide range of intricately linked issues, including the ones concerning ownership of creative works, licensing and digital rights management. Before providing the consumers with access to copyrighted content, streaming services often need to get the necessary permits. Before disseminating copyrighted works to the public, streaming platforms in India are mandated to adhere to the relevant copyright regulations and have the necessary authorization.[6] The main legal basis for protecting the copyright is detailed by the Copyright Act of 1957, which also outlines the rights granted to copyright holders. Its evolution is a reflection of both the evolving nature of communication technology and growing awareness of writers' rights and responsibilities. Streaming platforms may sign distribution or license agreements with content producers in order to distribute material legally. Legal issues, liability and severe financial fines may arise from non compliance with these regulations.

18 August, 2026)

4 *Ibid*

5 Atanasova, Irina. "Copyright Infringement in Digital Environment." 1 *Economics & Law*, 13-22 (2019).

6 Loren, Lydia Pallas. "Copyright jumps the shark: The music modernization act." 99*BUL Rev* 2519 (2019).

The film, music, streaming services and digital distribution chains all play a major role in bolstering India's creative economy. Composers, performers, producers, lyricist and investors now need to have a thorough grasp of Indian music and cinema copyright law as these industries continue to grow. The financial worth and sustainability of creative works are determined by the distribution of rights, methods for distributing royalties and efficient copyright enforcement.[7] A substantial portion of information delivered through streaming platforms is made up of literary, dramatic, artistic, musical and cinematographic works, all of which are protected by the Copyright legislation under section 13 of the Copyright Act, 1957[8]. Therefore if the legal conditions are met, musical compositions sound recordings, movies and other protected property accessible via OTT services may be protected by copyright. When their creative works are delivered via digital streaming platforms, these people may safeguard them.[9]

Streaming services face significant legal and business difficulties when copyrighted content is distributed without proper authorization. Streaming or sharing such content without authorization may be considered infringement as copyright holders often have sole rights over the copying, distribution and modification of their works. The Delhi High Court acknowledged in the *Super Cassettes Industries vs. MySpace INC*[10], that commercial online exploitation of copyrighted material without the owner's agreement might result in significant and lasting harm. Additionally, the Court granted temporary protection against unapproved streaming and recognised the significance of royalties and licensing income for ongoing investments in creative works.[11]

Online piracy is still a big problem, especially when it comes to illicit streaming services, minor sites and peer to peer networks which result in large revenue losses and put customers at further danger. The Delhi HC has approved dynamic injunctions to allow action against mirror and redirected websites in response to such infringements, drawing on the grounds established in the *UTV Software* case[12]. The strategy used in instances like *Warner Bros. case*[13] shows how flexible court remedies are being used more frequently to improve copyright enforcement and

[7] Vishnu, S. "Copyright and Competition: A legal tightrope for streaming services." *Competition Commission of India Journal on Competition Law and Policy* 27-40 (2023).
[8] The Copyright Act, 1957 (Act 14 of 1957)
[9] *Supra* note 7.
[10] 2011 (48) PTC 49 (Del).
[11] Ibid
[12] *UTV Software Communication Ltd. v. 1337X.to*, AIRONLINE 2019 Del 773.
[13] *Warner Bros. Entertainment Inc. Vs Moviesflix.Net & Ors*. CS(COMM) 457/2019.

deal with the problems caused by digital piracy in the streaming context.[14]

Copyright Licensing: A Glimpse

A copyright license is a legal tool use by the owner of a copyrighted work to provide permission to another person or organisation to use certain rights over that work. These licenses are especially significant in the arena of streaming platforms since they set the conditions for digital distribution of movies, music television shows and other protected content. The extent, length, region and mode of permissible use including the rights to reproduction, distribution, broadcasting, public communication and digital streaming may be putlines in licensing agreements. By allowing streaming platforms to legally access and profit from protected material, these agreements allow copyright holders to maintain control over their intellectual property.[15]

The Indian Copyright Act's where on one hand under Section 30[16] acknowledges voluntary licensing which allows the owner of copyright in an existing work or a potential owner of copyright in a future work to give an interest in the copyright in a future work to give an interest in the copyright by a written license signed by the owner of an existing work as well as a potential owner of copyright in a future work. However in case of future work, the license only takes effect upon the actual creation of work. On the opposite hand Section 31[17] addresses mandatory or compulsory licensing. It refers to a statutory license that allows someone to use specific rights related to a work protected by copyright without first getting the owner's permission. In situations where a copyrighted work is kept secret from the public the clause permits mandatory licensing.

An exclusive license is the one that gives the licensee or a person designated by the licensee the exclusive rights to use certain copyright rights to the exclusion of everyone else, including the copyright owner As stated in Section 2(j)[18], a person who receives such rights is known as an exclusive licensee. A non exclusive license on the other hand does not stop from giving other licensees comparable rights. Additionally, the copyright owner may offer another party

[14] *Ibid*
[15] Shrimant Singh and Samridh Ahuja, 'Evolution of IP Laws in OTT Platforms in India' *LiveLaw, (*30 July 2022), https://www.livelaw.in/law-firms/law-firm-articles-/ip-laws-ott-platforms-amazon-prime-netflix-hotstar-information-technology-act-sa-law-offices-205217 (last visited on 12 August 2026)
[16] The Copyright Act, 1957 (Act 14 of 1957), s. 30
[17] *Supra* note 8 at s. 31
[18] *Supra* note 8 at s.2(j)

a non- exclusive license while still exercising their own rights.

The legal basis for content distribution via OTT platforms is provided by these licensing agreements entailing them with a list of rights namely rights to broadcast, distribute, or alter material without relinquishing ownership of the underpinning intellectual property. These agreements often offer a specific set of rights that specify how, when and where the content may be utilized. Therefore, rather than a full transfer of intellectual property ownership, OTT licensing entails a structured bundle of distinct rights each of which is precisely defined to offer legal certainty. Therefore in order to avoid legal problems and liabilities for the streaming platform, it is imperative that the parties entering into a licensing arrangement have legitimate rights over the content being licensed. Platforms may pursue exclusive streaming and sublicensing rights, and those of authorization for dubbing adapting and recreating material in regional languages in the cutthroat OTT market. As a long lasting consequence, well written and thorough licensing agreements are crucial for safeguarding the parties' interests and lowering the possibility of expensive and drawn out litigation.[19]

Competition Law Concept for Digital Content

Another crucial factor for streaming platforms is how competition legislation is applied. Competition rules in India and other countries are intended to uphold equitable market conditions and stop companies from using strategies that limit or skew competition. Therefore, streaming platforms need to make certain that their business methods don't provide them an unfair competitive edge or negatively impact market competition.[20] Market domination is a major issue in this situation. In order to stop the abuse of their position of power and other anti competitive conduct, streaming platforms with significant market dominance may be subject to increased regulatory scrutiny. In order to preserve a fair and competitive market environment, dominant platforms may occasionally also be obliged to grant alternative content producers access to their infrastructure or services.[21]

A "dominant position" in the relevant market is defined under the Competition Act of 2002[22]

[19] Fran, Alejandra. "Streaming Wars: Navigating the Competitive Landscape." 22 *Global Media Journal* 1-3 (2024).
[20] Pakula, Olivia. "The streaming wars: An analysis of anticompetitive business practices in streaming business." 28 *UCLA Ent. L. Rev.* 147 (2020).
[21] Bougette, Patrice, Oliver Budzinski, and Frédéric Marty. "Self-preferencing and competitive damages: A focus on exploitative abuses." 67 *The Antitrust Bulletin* 190-207 (2022).
[22] The Competition Act, 2002 (Act 12 of 2003)

as a position of strength that permits an organization to function independently of competitive pressures. An organisation in such a position has an extra obligation to make sure it doesn't participate in the types of abuse listed in Section 4(2)[23] of the same Act. Therefore, actions by a dominating form that involve the imposition of unfair or discriminatory conditions may constitute a violation of the Act. However it is not necessary to investigate whether a company has misused its dominating position in the relevant market.

Streaming platforms' actions that limit competition or provide them an unfair competitive edge are considered anti competitive acts in the streaming sector. Such actions can be covered under competition laws in India and other countries. The utilization of exclusive content agreements is a major issue in this industry. Streaming services may make agreements with content producers to reserve specific movies, TV shows or other content just for their platform. Such exclusivity may limit the options available to consumers and make it impossible for other platforms to obtain or provide the same material. By making this even more complex for the newcomers to acquire appealing material and successfully compete in the market, exclusive content agreements may also erect obstacles for them.[24]

Predatory pricing in which platforms provide services at incredibly cheap costs or even for free in order to undermine or eliminate competitors, is another possible anti- competitive conduct in the streaming industry. By making it more difficult for new rivals to enter the market and for established ones to successfully compete, such pricing practices may limit competition. Another activity that might cause issues with competitiveness is bundling. In order to provide themselves an unfair competitive edge, streaming platforms may integrate their services with some different goods or services. By making it more difficult for other platforms to provide similar packaged products, this might limit competition.[25]

In recent years the internet streaming business has faced a number of legal and competition issues, highlighting the significance of efficient regulatory monitoring to preserve fair market competition. Apple's App Store regulations are one of such example. The European Commission[26] claimed that Apple had exploited its dominant market position by mandating In-

[23] *Ibid*
[24] *Supra* note 7
[25] Haucap, Justus, and Torben Stühmeier. "Competition and antitrust in internet markets." *Handbook on the Economics of the Internet, Edward Elgar: Cheltenham* 183-210 (2016).
[26] European Commission, "Apple App Store practices (music streaming)" (decision dated March 4, 2024), imposing a fine of €1.84 billion.

app payments method. In a similar vein, Netflix and Amazon have been accused of anti trust violations in India due to alleged anti-competitive behaviour, such as exclusive content deals that might negatively impact fair competition market.[27]

Copyright- Competition Interface

As already discussed the two legislations although having the same subject matter often find their ways intersecting with each other. The main way that copyright law is giving authors the only authority to use and distribute their works. However, when copyright protection is coupled with substantial market strength, these rights could have an impact on market competitiveness. The ability for copyright holders to have significant influence in pertinent markets has expanded due to the spread of copyright protection across many types of creative output, which may in certain cases, limit competition and innovation. Through regulatory measures intended to stop monopolistic behaviour and excessive market power, competition law aims at maintaining fair and effective competition. Therefore it seeks to address circumstances in which the use of exclusive rights may have a negative impact on efficiency in the market and competitive corridors.[28]

The abuse or misappropriation of the market power resulting from copyright protection may give rise to issues under competition law, rather than copyright protection itself being intrinsically anti- competitive. By reducing barriers that impede markets from operating efficiently, competition policy aims to advance consumer welfare.[29] It accomplishes this by outlawing cartels that limit production, restrict competition or rig prices, tackling the unfair monopolization of market influence, such as through prohibitive mergers between competitors avoiding the construction of obstacles that prevent new companies from entering the market and limiting the abuse of dominant positions by businesses that already have substantial market power. While most people agree that IP licensing agreements are good for competition, when they are used to support cartel arrangements, limit competition between technologies that are economically comparable, or keeping new technologies from entering the market they may

[27] *Supra* note 7
[28] Pickard, Victor. "Restructuring democratic infrastructures: A policy approach to the journalism crisis." 6 *Digital Journalism* 8 704-719 (2020).
[29] Vishnu, S. "Pervasive effect of Competition Law on copyright societies in India." 28 *Journal of Intellectual Property Rights (JIPR)* , 87-93 (2023).

raise anti- competitive concerns.[30]

Anti- Competitive Effects of Exclusive Content Licensing

To have a detailed explanation of the said intersection between the two legislations it is foremost crucial examining Sections 3 and 4 of the Competition Act[31]. Anti- competitive Agreements including both horizontal and vertical arrangements that may entail actions like limiting output, setting prices or assigning markets are covered in Section 3. In contrast Section 4 addresses the misuse of a dominating position where such behaviour negatively impacts competition in the relevant market. Additionally covered by these restrictions are activities like resale price maintenance, exclusive supply or distribution agreements and tie-in agreements, all of which may result from licensing agreements inside the OTT ecosystem. Consequently licensing methods cannot be shielded from inspection under competition law where they might affect or skew market structure.[32]

In the light of this, certain important questions become apparent. First, by limiting rivals' access to crucial material, might such licensing agreements increase market dominance or make foreclosure easier? Second, do these methods have a negative impact on the welfare of consumers, especially with regard to choice, pricing and content availability? Third, how much might these agreements disrupt the market's general structure and impede effective competition? Do this type of exclusive content arrangements make it difficult for new players to have a front foot in the market and can this exclusivity be used as a strategic weapon against competitors?[33]

Vertical Integration and the Competitive Concerns

In the International film and entertainment sector, vertical integration, where a company controls many stages of the value chain, including production, distribution and exhibition remains major anti- trust problem. Vertical integration by itself is not always illegal under the Sherman Act, according to the historic Paramount ruling in the US. However, it may become

[30] Vishnu, S. "Indian Film Industry's Growth and the Rise of Anticompetitive Practices." *Competition Commission of India Journal on Competition Law and Policy* 199-223 (2024).
[31] *Supra* note 21
[32] Devshree Sharma, 'Geo-Blocking Beyond Copyright: Can Territorial Licensing Become Anti- Competitve?' *LIVELAW*(May 9, 2026), Available at https://www.livelaw.in/lawschool/articles/geoblocking-copyright-territorial-licensing-anticompetitive-533585 (last visited on September 2, 2026).
[33] *Ibid*

illegal when it encourages anti-competitive behaviour such as price fixing, foreclosure of competitors or restrictive control over exhibition channels. To illustrate, vertically integrated businesses may take use of their market access or current position to disadvantage rivals and prospective entrants so reducing competition and restricting customer choice. Therefore, the fundamental goal of such agreements and more crucially their actual or anticipated consequences on competition are crucial factors in determining their validity.[34]

Under the Competition Act of 2002 same rules apply to the Indian film and entertainment industry, especially where major distribution channels and content are controlled by dominant businesses. Conduct including unfair conditions, denying independent filmmakers access to the market or agreements that can encourage cartelization or the misuse of a dominant position may be investigated by the Competition Commission of India (CCI). While vertical integration can improve coordination and create efficiencies across various industry stages, it can also create barriers to entry, limit independence or allow dominant firms to unfairly influence market conditions.[35]

Exclusive Content and Concentration of Market Power

Concerns regarding market power concentration are especially pertinent in the OTT industry. Established platforms with more wealth have an inherent advantage since obtaining excusive or lucrative content licenses sometimes involves significant financial resources. As a result, newcomers may have considerable obstacles to becoming established in the market, either due to their inability to get lucrative content licenses or the need to utilize different tactics such as making large investments in original material. Even if these tactics could make it easier to enter the market, the significant expenditures needed may act as an indirect barrier to successful competition.[36]

Leading media online platforms may also aim to fortify their control over content delivery, generating chances for anti- competitive behaviour and restricted partnerships. However, because streaming services don't need significant physical infrastructure in every nation where they are available, they often enjoy very low obstacles to geographic development. Therefore with relatively additional infrastructure expenditure, a platform may build and run service in

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[34] Thrower, Lola. "Antitrust for the Streaming Era: A Case for Regulating Streaming Giants." (2023).
[35] *Supra* note 32
[36] Pattnaik Baisakhi, "Anti-Trust in Media and Entertainment Industry: Legal Implications of Market Consolidation", 4 IJIRL 880 (2024)

one jurisdiction while having access to audiences across numerous markets. This ease of growth may encourage competition but it may also allow a dominating platform to quickly expand and solidify its market dominance across any jurisdictions if it controls important content.[37]

The ruling in FICCI Multiplex Association of India v. United Producers/Distributors Forum[38], which connected the formation of a cartel to the exercise of a market power, may also be used to analyse the concept of cartelization. Concerns about coordinated and restrictive market practices were raised in that instance by the actions of the Association of Motion Picture and Television Program Producers and the Film and Television Producers Guild of India Ltd. Collective agreements within the entertainment business can negatively impact market competition as evidenced by agreements between operators and producers or distributors that aimed to limit the availability of films.[39]

Consumer Lock-In

Another major issue in digital marketplace is consumer lock-in. For instance, the Amazon ecosystem offers customers a variety of linked services, with the taken subscription model for digital content serving as an extra part of the bigger platform. Instead of switching to new competitors, these integrated or tie in arrangements could persuade customers to stay in an existing ecosystem. Because knowledge asymmetry persists in digital marketplaces, this raises questions about safeguarding consumer interests. In order to analyse customer behaviour and impact market norms in ways that might limit consumer choice, service providers are using even more advanced versions of technology. Additionally, a fictitious paucity of digital resources may result from restrictive licensing methods and the erosion of concept of digital fatigue, leaving customers with little or no options.[40]

Additionally, content producers may sign exclusive license contracts with certain streaming services which might limit their material's accessibility to rival services and jeopardize fair competition. Such exclusivity might lead to fewer options for customers and increased subscription fees. Streaming services that transmit copyrighted content without the required

[37] Dave, Sakshi, and Pakhar Mani Tripathi. "Cartelization in the OTT Sector in India: A Legal Panorama." *NUJS J. Regul. Stud.* 6 (2021): 52.
[38] (25.05.2011 – CCI), Case No.01/2009.
[39] *Ibid*
[40] *Supra* note 30

authority may also be subject to infringement procedures which might result in monetary fines harm to their reputation and other legal repercussions.

In this context in some way or the other the free and fair access to the digital content is often hit by content fragmentation where moving of content between various platforms make it hard for the users to track the correct platform to watch their favourite show or series. This kind of cartel formation or monopolisation often diverts the streaming platforms from improving the video quality or app performance to actually being struck with customer acquisition and reducing content availability and tapping the consumers in closed ecosystems and restrictive device compatibility. For say many platforms these days have converted their subscription models to one screen at a time when the customers have already developed an addiction often leading them to get stuck in a loop with these platforms.[41]

Content Acquisition: A Source of preventing Competitors access

As explained in the above points that exclusive content licensing causes excess cartelization and monopolies in the market it is consequently creates a barrier in the market for other competing businesses. In order to prevent rivals, dominating OTT platforms frequently purchase content specifically changing strategy from simple exploitation to purposeful market foreclosure. Market leaders create artificial bottlenecks that deprive competitors of crucial programming and increase entry barriers throughout the digital ecosystem by sealing up intergenerational intellectual property and requiring libraries to operate under exclusive conditions.[42]

Therefore, it is absolutely true that dominating OTT platforms purchase content not just to profit from it but also to prevent competitors from entering the market. Obtaining enormous back libraries or joining together with established studios to remove well known films from the open licensing market. Raising content costs to the point that they are unaffordable for smaller rivals, hence driving out new competitors or local platforms. Obtaining permanent or long term monopoly that makes IP a complete market bottleneck.[43]

Significant worries about the competition distortion may arise from these tactics. The rapidly

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[41] Singh, Anushka. "Interplay of the Growing Digital Media and Entertainment Industry with Competition Laws." 30 *Supremo Amicus* 502 (2022).
[42] *Supra* note 39
[43] *Supra* note 39

changing nature of contemporary digital markets and the exclusive rights granted by copyright law may contribute to the fusion of market power, possibly allowing dominant businesses to engage in discriminatory practices and exert more control over pricing. Such tactics may eventually have long term and perhaps permanent consequences on market structures, choice of customers and the everlasting competitive circumstances if they persist without sufficient regulatory control.

Competition & IPR: The Never Ending Tussle

Although monopolies resulting from IPR are not intrinsically anti- competitive, they may give rise to competition issues when IPR holders try to use their exclusive rights to impede the creation of new goods and services or expand the scope of their rights beyond what is legally protected. Because they allow licensees to pool complementary resources, lower production costs, promote innovation and lessen the dangers of free riding, licensing agreements are typically seen as pro-competitive. However license agreements can also raise issues with competition, especially when rival companies use them to divide markets, conceal collusive agreements, limit competition or assign clients. Therefore, when horizontal licensing is utilized to coordinate the actions of otherwise competing companies, it may encourage anti-competitive behaviour even if it might result in enormous economic efficiencies.[44]

Section 3 of the Competition Act, 2002[45] has a mixed stance on agreements that might impact competition. An agreement may be considered to have anti- competitive implications in some circumstances, thus the parties involved must prove that the agreement has no negative impact on competition. In other situations, it is the responsibility of the competition authorities to prove that the agreement has anti competitive effects. Whereas 3(1) provides a general denial of entering into any such agreement that creates and adverse effect on competition in the market 3(4) specifically mentions about the exclusive supply agreements and exclusive distribution agreements as being anti competitive in nature and having and adverse effect on the competition in India. This leads to a clear picture in mind that if these agreements are used beyond the certain permissible limits they can definitely lead to creating an adverse effect on competition thereby creating market foreclosures, introducing several barriers to the entry of competitors and ultimately creating a monopolistic market completely eliminating the role of

[44] Quintais, João Pedro. "The new copyright in the digital single market directive: A critical look." *European Intellectual Property Review* (2020).
[45] *Supra* note 21

competitors and competition.

While Section 3 prohibits anti- competitive agreements, Section 4 of the Same Act gives a detailed explanation about the concept of abuse of dominant position, whereby "dominant position" refers to a position of strength of an enterprise enjoyed in that relevant market. Dominant digital platforms may be considered to misuse their market position by placing unfair or restrictive terms on other market players under Section 4. One such instance is *Kshitiz Arya Ors. V. Google LLC & Ors.*[46], in which Google's policies concerning Android TV devices were questioned. It was discovered that Google has placed restrictions on manufacturers ability to sell smart phones running other android forks and required them to pre- install its apps. Other operating systems may find it more difficult to develop and compete successfully as a result of such activities, which might also raise entrance barriers for other platforms. Additionally linking or bundling Google's apps with the Google Play Store may limit competition and lessen the incentives for innovation in nearby or related areas. This demonstrates how dominant technology corporations' use of market power might possibly alter competitive conditions in linked digital markets and reach beyond their core market.[47]

Additionally, Section 3(5) recognizes that reasonable constraints imposed by an IPR holder may be acceptable where they are required to protect or prevent infringement of such rights, which is significant exemption in the context of IPR. Two important exceptions to IPR are provided by this clause: the right of an IPR holder to prevent infringement and the right to impose reasonable conditions necessary to protect or safeguard rights granted under the applicable intellectual property legislation. The CCI (Competition Commission of India) must decide on a case to case basis as to whether those particular requisites imposed by an IPR holder are truly necessary for protecting the relevant IPR or if they go beyond legitimate protection and have an anti- competitive effect because the Act itself does not specifically define the term "reasonable conditions". So here comes a clear distinction between what is called as legitimate exclusivity and excessive exclusivity.

Global approaches to the dissection of two Legislations

The US Perspective

Since the Sherman Act of 1890[48], the United States has acknowledged the necessity of

[46] (22.06.2021 - CCI): MANU/ CO/0035/2021
[47] *Ibid*
[48] Sherman Antitrust Act, 1890 (U.S.).

necessity of striking a balance between competition legislation and intellectual property protection. Antitrust law aims to stop the abuse of market power and power and limitations on competition, whereas intellectual property law safeguards innovation and promotes investment. In order to detect licensing methods that could be anti- competitive such as typing, package licensing and specific grant back agreements, the US established the "Nine No-Nos" in the 1970s. These regulations were eventually criticized forbearing unduly strict, though.[49]

The Antitrust Guidelines for the Licensing of Intellectual Property[50] took the role of the Nine No- Nos in 1981, signaling a change to a more adaptable and effects- based strategy. The Guidelines concentrate on the actual or expected impact of certain licensing restrictions on competition rather than presuming that they are inherently illegal. They offer crucial assistance to companies and courts in evaluating the connection between intellectual property rights and anti- trust principles even if they are not legally obligatory.

Therefore, the presence of an intellectual property right is not considered evidence of market dominance under the US paradigm. Certain agreements are protected within a "safety zone" if the parties' combined market share is less than 20%. Licensing limitations are often evaluated based on their competitive implications. However, when they undermine competition, behaviours like exclusive dealing and tying may come under anti- trust investigation. In general the US strategy aims to avoid licensing methods from being exploited to weaken competitive markets while maintaining the incentives produced by IP protection.

The EU Perspective

With its Technology Transfer Block Exemption Regulation (TTBER)[51], in example, the European Union has taken a methodical approach to striking a balance between competition legislation and intellectual property protection. The TTBER shifted from a strict licensing structure to a more adaptable and practical approach when it was introduced in 1996 and later amended. The changes promoted technology transfer, information exchange and innovation

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[49] Gilbert, Richard, Carl Shapiro, Louis Kaplow, and Robert Gertner. "Antitrust issues in the licensing of intellectual property: The nine no-no's meet the nineties." 1997 *Brookings Papers on Economic Activity. Microeconomics* 283-349 (1997).
[50] U.S. Department of Justice and Federal Trade Commission, Antitrust Guidelines for the Licensing of Intellectual Property (2017).
[51] Commission Regulation (EU) No. 316/2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements.

while narrowing the scope of forbidden licensing activities.

Businesses have more legal clarity about acceptable licensing agreements since the EU's TTBER is legally binding, unlike the US Guidelines.[52] The European Commission may however, revoke, the exemption in some situations, particularly when licensing agreements give rise to serious competition issues.

The EU approach also acknowledges that where intellectual property is a necessary capability, refusing to license it might be considered an abuse of power. The court acknowledged in IMS Health that access to an essential IP right can be necessary in extraordinary situations to avoid anti- competitive consequences. Therefore, the EU framework aims to safeguard intellectual property incentives while preventing dominant enterprises from using IP rights to unnecessarily limit competition.[53]

Judicial Approach of Indian Judiciary/CCI

1. ***Tips Industries Ltd. V. Wynk Music Ltd. 2019***[54]

   This case is crucial to comprehending streaming platforms' legal position under the 1957 Copyright Act. Following the expiration of its voluntary license with Tips Industries, Wynk Music attempted to use the statutory licensing under Section 31D. Wynk contended that by paying royalties set by the government it could stream Tip's music since it was a "broadcasting organisation" following within the purview of the said definition. Wynk's interactive on demand concept according to Tips is something what differs from the conventional broadcasting. The Bombay High Court concurred, ruling that services that allow users to select what and when to listen don't qualify as "broadcasting" under 31D. Wynk ended up negotiating a direct licensing with Tips as a result of being unable to secure the statutory license. The case demonstrates the need for a more precise licensing system appropriate for the on demand nature of streaming platforms and draws attention to the gap in copyright licensing for digital services.[55]

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[52] Arts. 6 and 7 TTBER
[53] IMS Health GmbH & Co. OHG v. NDC Health GmbH & Co. KG, Case C-418/01 (CJEU, April 29, 2004)
[54] AIRONLINE 2019 Bom 1452.
[55] *Ibid*

2. *Zee Enteratinment Enterprises Ltd. V. Bollyzone TV & Others*[56]

The ongoing issue of online piracy of exclusive OTT content is brought to light by this case. Bollyzone TV was one of the websites that Zee Entertainment sued for unlawfully viewing films and web series on Zee5. It was challenging to identify the proprietors of these websites because they were anonymous and made money via adds. Zee said that in accordance with the Copyright Act of 1957, such unapproved duplication and public dissemination constituted copyright infringement. The Delhi High Court issued an interim injunction ordering ISPs to prevent access to the infringing websites after concluding that there was a prima facie case of infringement and a danger of irreversible harm. The case emphasizes the challenges posed by anonymous operators, websites that are accessible worldwide and the growing use of dynamic injunctions and websites blocking in the fight against online piracy. It also highlights the need for stronger legal frameworks controlling organizations that enable access to illegal content as well as more efficient methods for identifying and punishing piracy operators.[57]

3. *Viacom 18 Media Pvt. Ltd. V. Thop TV*[58]

Parallel to the Zee case, Viacom 18 filed a lawsuit against Thop TV, an app that purportedly allowed users to access material from OTT services such as Voot, Hotstar, Netflix without any proper authorization. According to reports, the app attracted a lot of users by using APIs to broadcast copyrighted films, television series and live sports. The Maharashtra Cyber Crime Cell looked into the issue when Viacom 18 filed a complaint and they detained the accused developer in accordance with Copyright, IT and criminal laws. The case illustrates how piracy has moved from websites to specialized apps making removal and detection more challenging. It also highlights the necessity of coordinated enforcement of criminal, IT and criminal laws. The case emphasis the technological complexity of contemporary piracy as well as the necessity of more stringent enforcement and collaboration between law enforcement and content owners.[59]

[56] CS(COMM) 937/2024, order dated October 31, 2024 (Del).
[57] *Ibid*
[58] CS(COMM) 181/2021, order dated April 16, 2021 (Del)
[59] *Ibid*

Conclusion

Visual entertainment has continuously influenced audiences in India and throughout the world helping to shape behaviour, global culture and new trends. Families getting together to watch a Sunday night movie on Doordarshan or people planning their daily schedules around their favourite shows like Ramayana or News Hour are familiar recollections that go beyond simple nostalgia. They show the beginnings of a more significant shift in how viewers consume entertainment. The capacity to choose, customize and access material in accordance with their chosen choices of what, where when and how to watch a show has advanced viewers from depending on set television schedules throughout time. This change has not happened suddenly, rather ongoing technical developments have progressively increased the scope of what is feasible in the visual entertainment industry.

Inadequate regulatory attention has contributed to the rise of cartel like activities and expansion of streaming platforms. Because the digital streaming industry is still in its infancy, well funded market players may be able to enter into anti- competitive agreements and make significant profits without sufficient regulatory oversight from the competition authorities. Digital streaming platforms provide unique regulatory issues some of them being with regard to algorithmic transparency, data management, market dominance and discriminatory conduct. These issues need for updated and unambiguous regulatory norms that can handle the unique features of digital marketplaces.

In order to prevent large scale consolidations from avoiding regulatory scrutiny simply because they involve companies with relatively low revenues merger control procedures should be reinforced be implementing suitable digital market and financial criteria. Both structural and behavioural remedies should be taken into consideration when mergers pose a danger to competition. To help local and independent content creators enter the market and expand, more openness in content acquisition and equitable distribution methods should be encouraged. To handle quickly changing digital marketplaces and technology driven forms of anti- competitive behaviour, CCI and other pertinent regulatory authorities should establish specialized teams with multidisciplinary expertise. Successful industry self regulation can support the development of ethical norms of behaviour, openness and collaboration between distributors and content creators in addition to official regulation. Maintaining the legal framework’s responsiveness to new business models and technical advancements requires constant engagement with consumer organizations, industry groups, technology specialists and other stakeholders. These steps can help create a more adaptable and efficient legal framework that safeguards consumer encourages innovation and maintains fair competition as digital streaming platforms gain power and the entertainment and media industry develops. A consistent regulatory framework cannot effectively handle every scenario given the variety of business models used in the digital entertainment industry and the several businesses that provide supplementary online streaming services. Therefore to account for the different structures, practices and competitive situations within the sector a flexible and context specific strategy is required.

Suggestions & Recommendations

Given the increasing popularity of streaming platforms and the importance of exclusive content licensing, a regulatory framework that can reconcile the objectives of competition law with enforceable rights of copyright owners is required. Exclusive licensing shouldn't be viewed as inherently anti- competitive as it may encourage investment in original content, facilitate the recovery of production costs, promote innovation and enable platforms to differentiate their services. However, when a dominant or strategically powerful platform utilizes exclusivity to exclude rivals, restrict market access or deny customers a real choice, competition authorities ought to intervene. In view of these concerns, the following steps are advised.

1. Adopting an Effect Based approach to the Exclusive Content Licensing

It should not be assumed that exclusive content licensing is inherently protected or anti-competitive because it involves copyrighted information. The CCI should examine how the agreement actually impacts competition using an effects- based methodology. The platform's in the market, the importance of the content the duration and scope of exclusivity the availability of alternatives the degree of foreclosure, entry barriers and the effect on customers should all be considered. This would deal with contracts that maintain legitimate commercial exclusivity while severely restricting competition.

2. Exclusive Applicability of Section 3(5) of the Competition Act

Section 3(5), which permit reasonable limitations necessary to protect intellectual property rights, should not be interpreted as providing total exemption from competition laws.

Clarification is needed on what constitutes a "reasonable condition and what is actually necessary for copyright protection. The CCI should distinguish between restrictions that are directly connected to and appropriately necessary for utilizing copyrighted material and those that go beyond legitimate copyright protection and result in substantial market foreclosure. Such a method would prevent IPR protection from being utilized as a means of keeping out competitors, preserving the incentive to create and incentive to create and invest in content.

3. Greater Exploration of Long Term and Extensive Exclusive Agreements

The duration and scope of exclusive licensing agreements should be carefully considered when the leased content has substantial commercial value. Long term agreements covering several projects, areas, platforms or future content may prevent competitors from gaining substantial access to important content for extended periods of time. As a result, the CCI should decide whether the duration and extent of exclusivity are appropriate given the parties' legitimate commercial objectives. It could be necessary to encourage shorter licensing periods, more constrained territorial restrictions or frequent renegotiation in order to prevent unnecessary foreclosure.

4. Specific Focus on "Must Have" and Premium Content

While exclusive access to typical entertainment content may have little competitive value, the rights to very popular films, important sporting events, important franchises or other "must have" content may have a considerable influence on consumer choice and platform competition. Therefore, more regulatory scrutiny should be applied to exclusive agreements that cover material that is economically vital or difficult to replace. Mandatory sharing of all premium content is not always required but where control over such content presents significant challenges for competing platforms pertinent competition law action should be taken into account.

5. Keeping an eye on content hoarding and strategic content acquisition

When dominant or financially powerful streaming platform's acquisition methods suggest that content is being purchased for both commercial exploitation and to prevent competitors from accessing it, it is crucial to keep a watch on them. If significant content rights are often obtained, there may be worries about strategic foreclosure, particularly if the platform lacks the capacity or willingness to utilize all of these rights. Therefore, the CCI should look at the financial rationale, use, period of exclusivity and competitive impacts of large- scale content acquisitions to determine if they are acceptable business strategies or exclusionary behaviour.

6. Building Transparency and Consumer Preferences

Improving consumer transparency can also assist in resolving competitive problems caused by fragmented content. Streaming platforms should be transparent about the availability, duration and geographic limitations of exclusive content, particularly when consumers need to subscribe to several services in order to access related content categories. Enhanced transparency will reduce information asymmetry and enable consumers to make informed choices. When technically and financially feasible, authorities should concurrently encourage interoperability, portability and flexible subscription models to reduce consumer lock- in and switching costs.

7. Creation of Industry Specific Digital Content Licensing Competition Guidelines

Given the rapid growth of OTT marketplaces the CCI and relevant regulatory agencies should consider developing specific standards on exclusive digital content licensing. Such regulations may set indicative criteria for assessing market power, foreclosure, duration, content significance, entrance barriers, consumers implications and efficiency reasons. They should remain flexible enough to accommodate a range of OTT revenue models, including hybrid, subscription and advertising supported platforms. A comprehensive framework would provide streaming services and content creators greater legal security and enable swift action against truly discriminatory behaviour.

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