

Copyright and Competition: A Legal Tightrope for Streaming Services

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Abstract

The rise of streaming services has transformed the entertainment industry, providing users with easy access to a wide range of content. However, the industry faces legal challenges in balancing copyright and competition laws. This article provides an overview of the current copyright and competition landscape for streaming services, highlighting the legal issues that arise when copyrighted content is distributed without proper authorization, and exploring anti-competitive practices in the industry. The article also discusses successful strategies and best practices for streaming services in major jurisdictions, including obtaining licenses and authorizations, offering original and licensed content, providing low-cost subscriptions, and partnering with telecom operators. Ultimately, this article emphasizes the importance of complying with copyright and competition laws to promote fair competition and protect the rights of copyright holders.

Keywords: competition issues, copyright infringement, DRM, licensing agreements, online streaming

1. Introduction

Over the past decade, streaming services have become increasingly popular in consumer media. With the rise of platforms like Netflix, Amazon Prime Video, and Disney+, viewers can now access a vast library of movies, TV shows, and original content that can be streamed on demand. However, as streaming services have grown in popularity, they have faced significant legal challenges, particularly in balancing copyright and competition laws (Riis and Schovsbo, 2017).

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On one hand, streaming services rely heavily on copyrighted content to attract viewers and build their libraries. However, the unauthorized distribution of copyrighted material can result in legal action and financial penalties for streaming services (Atanasova, 2019). On the other hand, competition law seeks to promote fair competition and prevent monopolies, which can be challenging for streaming services that offer exclusive content deals or have significant bargaining power in negotiations with content providers.

As streaming services continue to dominate the media landscape, it is crucial to understand the legal challenges they face in balancing copyright and competition laws. This article will provide an overview of copyright and competition law for streaming services, discuss the legal issues that arise when balancing these two areas of law, and provide examples of successful strategies for navigating the legal tightrope of copyright and competition in the streaming industry.

2. Copyright Law for Streaming Services

Copyright law for streaming services is complex and multifaceted. It encompasses a range of legal issues, including the rights of copyright owners, licensing agreements, and digital rights management. In general, streaming services must obtain proper authorization to distribute copyrighted content (Loren, 2019). This can involve obtaining licenses from copyright owners, entering into distribution agreements with content providers, or creating original content that does not infringe on the rights of others. Failure to obtain proper authorization can result in legal action and significant financial penalties.

In addition to obtaining proper authorization, streaming services ensure that they have the right to stream content to viewers. This can involve implementing Digital Rights Management (DRM) technologies to prevent unauthorized distribution and protect users' privacy and security (Zimmer *et al.*, 2017). As streaming services continue to grow in popularity, copyright law will play a critical role in regulating the distribution and use of copyrighted content. Streaming services must navigate the legal complexities of copyright law to ensure that they operate within the law's bounds and provide valuable service to users.

Distributing copyrighted content without proper authorization can lead to various legal issues for streaming services (Cohen *et al.*, 2019). Copyright infringement is the most significant legal issue, as copyright owners have the exclusive right to distribute, reproduce, and create derivative works of their copyrighted material. When streaming services distribute copyrighted content without permission, they may infringe on the rights of copyright owners. This can result in legal action and financial penalties.

The Delhi High Court, while granting an interim injunction against the unauthorized streaming of copyrighted materials, noted that the plaintiff relies heavily on its works for royalties and further investments. The plaintiff would face more inconvenience if its works were exploited for profit without permission, and irreparable loss may occur if the works are made public on the internet for profit. In contrast, the defendants claim that users on the internet are a trivial part of their business model and would lose little compared to the plaintiff (*Super Cassettes Industries Limited v. Myspace Inc. & Anr.* 2011).

Piracy is another legal issue when copyrighted content is distributed without proper authorization (Rai, 2020). In *Warner Bros. Entertainment Inc. v. Moviesflix.Net & Ors.* Delhi High Court applied the test established in the UTV Software and considering the documents and averments in the plaint, which remained uncontested, it is evident that the defendants are “Rogue Websites” whose primary purpose is to commit and facilitate copyright infringement of the plaintiff’s works. Therefore, the plaintiff is entitled to a decree by their prayers. In the UTV Software case, the Court also addressed the issue of dynamic injunctions and allowed subsequent impleadment of mirror/redirect/alphanumeric websites that provide access to rogue websites.

Piracy involves illegally distributing copyrighted material through peer-to-peer networks or illegal streaming websites. Piracy can result in significant financial losses for copyright owners and pose a risk to user privacy and security. Implementing Digital Rights Management (DRM), technologies are essential to protect copyrighted material from unauthorized distribution (Hassan *et al.*, 2020). Streaming services failing to implement proper DRM measures may distribute copyrighted content

without proper authorization. This can result in legal action and financial penalties.

In India, streaming services must obtain proper authorization to distribute copyrighted content. In India, the Copyright Act, of 1957 provides for the protection of copyrighted material and establishes the rights of copyright owners. The Act was enacted to address the growing public consciousness of authors' rights and obligations, as well as advancements in communication technologies. Broadcasting authorities were granted certain rights akin to copyright for programs broadcast by them (*Star India Private Limited v. Department of Industrial Policy and Promotion*, 2018). Failure to obtain appropriate authorization can lead to legal action and financial penalties (Copyright Act, 1957). India also has laws to combat piracy, such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which establish rules and regulations for online content providers.

3. Competition Law for Streaming Services

The application of competition law is another aspect that streaming services must consider. In many countries, including India, competition laws exist to ensure fair competition among businesses and to prevent anti-competitive practices. Streaming services must ensure that they do not engage in practices that may harm competition or give them an unfair advantage over their competitors (Pakula, 2021). One of the key areas of competition law that streaming services must consider is market dominance. Streaming services that dominate the market may be subject to additional regulations and scrutiny to prevent anti-competitive practices. They may also be required to share their platform with other content providers to promote fair competition (Bougette, 2022).

Another area of competition law that streaming services must consider is pricing. Streaming services must ensure that their pricing practices are fair and do not harm competition (Haucap and Stühmeier, 2016). They must also ensure that their pricing practices do not discriminate against certain types of content or content providers. In India, the Competition Act, of 2002, governs competition law. The Competition Commission of India (CCI) is responsible for enforcing the Act and ensuring fair competition

among businesses. Streaming services must comply with the Act and any regulations or guidelines issued by the CCI to promote fair competition.

Competition Act, 2002 defines “dominant position” as a position of strength in the relevant market that allows an enterprise to operate independently of competition. Once an entity is identified as dominant, it has a special responsibility to avoid engaging in conducts listed in Section 4(2) of the Act. If a dominant enterprise imposes unfair or discriminatory conditions, it would be considered as contravening the Act. This principle applies to other instances of abuse as outlined in Section 4(2) as well (*XYZ (Confidential) and Ors. v. Alphabet Inc. and Ors.* 2022). In the absence of any dominant position being enjoyed in the relevant market, the question of examining the alleged abuse does not arise (*C. Shanmugam & Ors. v. Reliance Jio Infocomm Limited & Ors.* 2017).

Apple’s proprietary apps competing with third-party apps on the iOS platform may have negative consequences, including high fees that could impact the competitiveness of Apple’s competitors. This could result in increased subscription fees, reduced premium offers, and limitations on payment processing solutions for app developers, leading to potential effects on user experience, costs, and innovation, and potential harm to consumer interests. Additionally, there is a concern regarding Apple’s access to data collected from users of its downstream competitors, which could give it a competitive advantage by improving its services, while denying access to the same data for competitors to innovate their apps (*Together We Fight Society v. Apple Inc. and Ors.* 2021).

Anti-competitive practices in the streaming industry refer to any actions taken by streaming services that harm competition or give them an unfair advantage over their competitors. These practices may be illegal under competition law in many countries, including India. One of the most common anti-competitive practices in the streaming industry is exclusive content deals (Mandrescu, 2021). Streaming services may enter into exclusive agreements with content providers to offer certain content exclusively on their platform. This can harm competition by limiting consumer choice and preventing competitors from offering the same content. Exclusive content deals can also make it difficult for new players to enter the market, further reducing competition (Vishnu, 2018).

CCI while directing the Director General (DG) to investigate allegations against Google LLC regarding the pre-installation of its proprietary apps on Android devices in *Kshitiz Arya & Ors. v. Google LLC & Ors.* (2021) pointed out that Google's requirement of Android Compatibility Commitments (ACC) for pre-installing its apps has limited the ability of device manufacturers to develop and sell alternative versions of Android, which is detrimental to consumers and violates the Competition Act. The ACC also prevents OEMs from selling devices with competing forked Android operating systems, denying market access to developers, and violating the Act. The CCI has determined that no separate directions are needed for the alleged anti-competitive impact related to the refusal to deal and exclusive supply agreements.

Another common anti-competitive practice is predatory pricing. Streaming services may offer their services at very low prices or even for free to drive competitors out of the market. This can harm competition by making it difficult for new players to enter the market or for existing players to compete effectively. Another anti-competitive practice in the streaming industry is bundling. Streaming services may bundle their services with other products or services to give them an unfair advantage over their competitors. This can harm competition by making it difficult for competitors to offer the same bundled products or services.

The online streaming industry has faced various legal challenges and competition cases in recent years, highlighting the need for regulatory oversight to ensure fair competition. One such example is the case involving Apple and its App Store policies, where the European Commission accused Apple of abusing its dominant position in the market by mandating the use of its payment system for in-app purchases. Another example is the ongoing case of Netflix and Amazon facing antitrust allegations in India, where they are accused of engaging in anti-competitive practices, including exclusive content deals that could harm fair competition in the market.

Additionally, in the United States, there have been ongoing debates over net neutrality and how it affects competition in the streaming industry (Pickard, 2020). The Federal Communications Commission's decision to repeal net neutrality rules has raised concerns that internet service providers could engage in discriminatory practices that harm fair

competition in the industry. These cases demonstrate the legal challenges and competition issues that the online streaming industry faces and the need for regulatory oversight to ensure fair competition.

4. Balancing Copyright and Competition

Balancing copyright and competition in the streaming industry is a challenging task that requires a delicate balance between protecting the intellectual property rights of content creators and promoting fair competition in the market. On one hand, copyright laws are in place to protect the exclusive rights of content creators to control the use and distribution of their work. Streaming services must obtain proper authorization or licenses from copyright holders to distribute their content legally (Vishnu, 2023). On the other hand, competition laws are in place to promote fair competition in the market, prevent monopolies, and protect consumers (Warrier, 2021). Streaming services must compete fairly in the market by offering innovative services, pricing, and content to attract users. However, some streaming services may engage in anti-competitive practices, such as exclusive content deals, that may harm fair competition in the market.

The challenge arises when copyright laws and competition laws come into conflict. For example, some content creators may grant exclusive licenses to certain streaming services, limiting the availability of their content to other services, which can harm fair competition in the market. This could lead to higher prices and reduced choices for consumers. Additionally, streaming services may face copyright infringement lawsuits if they distribute copyrighted content without proper authorization, which can harm their reputation and lead to legal penalties.

To balance copyright and competition in the streaming industry, regulators must find a way to promote fair competition while protecting the intellectual property rights of content creators (Quintais, 2020). One approach is to encourage competition in the market by promoting interoperability between different streaming services, which could allow users to access content from different services without having to switch between platforms (Vishnu, 2020). Additionally, regulators can ensure that streaming services obtain proper licenses and authorization to distribute

copyrighted content, while also enforcing competition laws to prevent anti-competitive practices.

The European Commission has updated its anti-trust case against Apple, stating that the tech giant breached antitrust laws by preventing rival music streaming providers, such as Spotify, from advertising alternative subscription options in their apps. The Commission has accused Apple of abusing its dominant position by imposing its in-app purchase payment technology and restricting app developers from informing iPhone and iPad users about alternative music subscription services. If found guilty, Apple could face fines of up to 10% of its annual worldwide turnover. The Commission had previously stated objections in 2021, outlining potential breaches of antitrust law related to Apple's anti-steering obligations (Indus Business Journal, 2023).

Regulators, including the Department of Justice (DOJ) Antitrust Division Chief have sent out warnings about the potential negative impact of data collection on consumer choice and competition. Some conservative legal thinkers are open to analysing the non-price effects of competition. Privacy advocates have raised concerns about data collection, while others are frustrated with inequality and marketplace exclusion. Regulators may crack down on data collection practices, potentially affecting mergers and acquisitions and forcing data sharing among big tech firms. However, some caution against antitrust intervention, citing concerns about competition, innovation, and privacy. Currently, there is no clear indication of regulatory action beyond reviews of data collection practices. As Hollywood launches new digital platforms, complaints about data collection may become more common, prompting the industry to consider the impact of transparency on data collection practices and business relationships (Gardner, 2020).

The Commission acknowledges the desirability of technical interoperability among DTH service providers but notes feasibility concerns that require closer scrutiny. Interference at this stage of technological evolution may not be appropriate, and efforts for interoperability promotion in other jurisdictions are led by sectoral regulators. In India, existing licensing conditions advocate for interoperability, but technical problems need to be resolved by TRAI and the Government (*Consumer Online Foundation v. Tata Sky Limited*, 2011).

Subscribers of YouTube TV and DirecTV have accused Disney of driving up the price of their subscriptions due to its ownership of ESPN, which is included in the base package of YouTube TV. Disney's legal team has countered that the plaintiffs have failed to demonstrate a relevant antitrust market where competition has been harmed and that antitrust laws are designed to protect competition, not individual consumers. The plaintiffs' lawyers have contended that many consumers would prefer a lower-cost base package without ESPN. Disney has cited in a 2012 court ruling that purchasing unwanted products does not constitute harm to competition. The case is scheduled to be reviewed by U.S. District Judge Edward Davila in July (*Biddle v. The Walt Disney Co.*).

Balancing copyright and competition in the streaming industry is a complex task that requires a delicate balance between protecting the intellectual property rights of content creators and promoting fair competition in the market. Regulators must work to find a balance between these two objectives to ensure a fair and competitive market for all players in the industry.

5. Navigating the Legal Tightrope

Streaming services face the challenge of balancing copyright and competition laws. They can navigate this challenge by taking the following steps: One way is to obtain proper authorization and licenses for copyrighted music, films, and TV shows before distributing them. They should comply with any restrictions on the use and distribution of content (Gorwa, 2019). Another way is to promote interoperability by allowing users to access content from different services without having to switch between platforms. This can prevent market fragmentation and promote fair competition in the market.

Streaming services should avoid exclusive content deals that limit the availability of content to other services. Such deals can harm fair competition in the market and lead to higher prices and reduced choices for consumers. To avoid legal penalties and reputational damage, streaming services should regularly monitor their platforms for copyright infringement and take prompt action to remove infringing content. Finally, streaming services should comply with competition laws to prevent anti-competitive practices (Mandrescu, 2021), such as monopolies

or price fixing, that can harm fair competition in the market. By following these steps, streaming services can strike a balance between protecting intellectual property rights and promoting fair competition in the market. It is important to ensure a level playing field for all players in the industry.

6. Best Practices

Streaming services have adopted various successful strategies and best practices to navigate the legal tightrope of copyright and competition laws. In the US, streaming services like Netflix and Hulu have successfully negotiated licensing agreements with major studios and production companies, allowing them to legally distribute copyrighted content. They have also invested heavily in producing original content, which has allowed them to attract and retain customers (Kasper, 2022). The European Union has taken a strong stance on antitrust and competition issues in the streaming industry. In 2019, the European Commission fined Disney, NBC Universal, and other major studios a total of €14.3 million for restricting access to their content in certain EU countries. Streaming services operating in the EU must ensure compliance with the EU's competition laws and regulations (Rakhmanova, 2022).

In India, streaming services like Amazon Prime Video and Netflix have faced legal challenges related to censorship and content regulation (Shankar and Ahmad, 2021). To navigate these challenges, these companies have entered into self-regulation agreements with the government and industry bodies to ensure compliance with local laws and regulations. In Australia, streaming services like Netflix and Stan have successfully negotiated licensing agreements with major studios and production companies, allowing them to legally distribute copyrighted content. They have also implemented geo-blocking technology to restrict access to content in regions where they do not have the necessary licensing rights (Ariyaratna, 2022).

In China, streaming services like iQiyi and Tencent Video have faced legal challenges related to copyright infringement and licensing issues. To navigate these challenges, they have entered partnerships with major studios and production companies to obtain licensing rights for content. They have also invested heavily in producing original content to attract and retain customers (Zhu, 2022). Overall, successful strategies for navigating the legal tightrope of copyright and competition in the streaming industry

involve collaboration with regulatory bodies, investment in original content, and the implementation of advanced filtering mechanisms to detect and remove copyrighted content.

7. Concluding Remarks

The streaming industry has transformed the entertainment industry by changing the way people consume media. However, the industry faces legal challenges in balancing copyright and competition laws. To navigate the legal tightrope, streaming services can adopt strategies such as obtaining proper authorizations and licenses, promoting interoperability, avoiding exclusive deals, monitoring for copyright infringement, complying with competition laws, and providing a unique selling point in the market. Examples of successful strategies and best practices for streaming services in major jurisdictions include obtaining licenses and authorizations, offering original and licensed content, providing low-cost subscriptions, partnering with telecom operators, and adopting content recognition technology. These strategies have helped streaming services attract a large user base and succeed in the highly competitive market. Streaming services need to comply with copyright and competition laws to promote fair competition in the market and protect the rights of copyright holders. By adopting best practices and navigating the legal tightrope, streaming services can continue to transform the entertainment industry and provide consumers with a wide range of choices for accessing media.

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