

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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“LICENSING VS OWNERSHIP: RETHINKING RIGHTS IN THE AGE OF STREAMING”

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Introduction

Copyright law has traditionally been based on the concept of ownership, allowing artists exclusive rights to control how their works are used, reproduced, distributed, and publicly performed. Under the Indian Copyright Act of 1957, ownership grants complete control over a work, including the power to transfer or lease such rights to others.¹ Historically, this concept was based on physical copies of works, such as books, CDs, or DVDs, where ownership signified tangible possession and the freedom to sell or rent the thing without violating copyright.²

The rapid advancement of digital technologies has changed the way content is accessed and consumed. The introduction of streaming services like Netflix, Amazon Prime, and Spotify represents a change from ownership to access-based consumption, in which customers pay for subscription licenses rather than purchasing a physical or digital copy outright.³ While simple and economical, this strategy calls into question traditional concepts of copyright ownership and raises critical questions about users' and authors' rights in the digital era.

The conflict between licensing and ownership: Streaming services give customers temporary, conditional licenses rather than permanent ownership rights, which frequently limit their ability to transfer, resell, or utilize the content beyond the platform's conditions. This shift impacts consumer expectations, legal safeguards, and the economic interests of artists and intermediaries.⁴ Understanding this relationship is critical as streaming becomes the major way of content delivery in India and beyond.

¹ *Copyright Act, 1957*, § 14 (granting authors exclusive rights)

² *First Sale Doctrine and Copyright Exhaustion* under Indian law, Bar & Bench commentary

³ LiveLaw, *Rise of Streaming Platforms and Digital Access Models*

⁴ SCC Online, *Licensing vs. Ownership in Digital Content*

Legal foundations

A. Definition and nature of ownership rights in copyright.

In India, the Copyright Act of 1957 allows creators a slew of exclusive rights under Section 14, including reproduction, distribution, public performance or transmission to the public, and adaptation into derivative works. These rights give creators control over how their work is utilized, providing acknowledgment and financial remuneration.⁵ For example, the right of "communication to the public" includes digital streaming and online performance, which reflect current usage habits.

B. First Sale Doctrine and Copyright Exhaustion.

The first sale concept, often known as the doctrine of exhaustion, allows a buyer of a valid copy to resell or distribute it without violating copyright. Although not explicitly codified, Indian courts have recognized this principle through Section 14's distribution rights limitations⁶ and affirmed its validity in cases like *John Wiley & Sons, Inc. v. Prabhat Chandra* (2020), where the Delhi High Court upheld resale of imported textbooks as permissible under the doctrine.⁷ However, this doctrine obviously applies only to tangible copies such as books or CDs, and not to digital products. Digital work is often provided through licensing schemes that clearly forbid resale or transfer, allowing the copyright owner to retain control even after the initial access.⁸

C. Copyright Licensing: Exclusive or Non-Exclusive Licenses

1. Exclusive vs. Non-Exclusive Licenses

Section 30 specifies how the copyright owner may give rights through a license. An exclusive license, as defined in Section 2(j), grants the licensee rights to the exclusion of all other parties, including the owner.⁹ In contrast, a non-exclusive license simply enables permitted uses without exclusivity, allowing the owner to grant identical licenses to various parties.

Other complex versions include co-exclusive licenses, in which limited licensees share exclusivity, and sole licenses, which involve only the owner and licensee. There is also a implied permission, which can be inferred from action or context even when it is not

⁵ Supra note 1

⁶ *Doctrine of first sale inferred via Section 14 limitations*, LegalServiceIndia

⁷ *John Wiley & Sons, Inc. v. Prabhat Chandra* (Delhi HC, 2020)

⁸ *Digital licensing prevents exhaustion*, Chambers & Partners copyright guide

⁹ *Copyright Act, 1957*, § 2(j); exclusive license defined. Legal Vidhiya's commentary

legally recorded.¹⁰

2. Contractual Limitations on Users' Rights

To be legitimate, licenses must be in writing and signed, and they frequently include details such as length, territory, approved uses, and royalty terms. These contracts may prevent consumers from offline downloads, sharing, or reselling the content, even if they believe they "own" it.¹¹ For example, when a user streams a video or song, they do so under contractual conditions that prohibit further distribution or transfer.

3. Assignment versus Licensing.

While assignment provides ownership of copyright (subject to writing, terms, and territorial limits as outlined in Sections 18-19), licensing only offers usage rights; the owner retains control and title. This distinction is critical: in streaming circumstances, platforms obtain licenses rather than ownership, which means that access can be terminated but larger rights are safeguarded by the owner.

D. International Legal Framework.

India is bound by important international treaties such as the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty (WCT). These agreements provide vital safeguards:

- The Berne Convention ensures equal protection and treatment for both domestic and foreign works¹²
- TRIPS incorporates Berne's rights and mandates that member states secure computer programs and data compilations, assuring national treatment and fair use limits through the "three-step test."¹³
- The WCT, implemented by India in 2013, increases protection for digital works by forbidding the circumvention of technological measures (such as DRM) and protecting rights management information.¹⁴

Despite these frameworks, none of them provide specific guidance on the distinction between licensing and ownership in digital contexts; interpretation and regulation are left to national legislation and judicial scrutiny.

¹⁰ Legal Vidhiya, discussing types including co-exclusive, sole, implied

¹¹ *Licensing under the Copyright Act*, Advocate Tanwar blog

¹² AroojLaw Knowledge Base, Berne protection and principles

¹³ TRIPS obligations and incorporation of Berne, AroojLaw Knowledge Base and TRIPS article

¹⁴ WCT protections, anti-circumvention, implemented into Indian law via WCT accession. AroojLaw Knowledge Base

Transition from Ownership to Access.

1. Differences Between Physical and Digital Goods: Legal and Practical

Traditionally, physical media such as books, CDs, and DVDs provided customers with tangible ownership. The first sale theory allows purchasers to freely resell, lend, or transfer these things, as copyright holders' control ends with the initial lawfully authorized distribution.¹⁵ Digital goods, on the other hand, function under licensing models even when sold, which means that customers are granted controlled permission often through End User License Agreements (EULAs) rather than ownership. These digital agreements typically ban resale, sharing, or transfer, fundamentally altering the user's rights and the definition of "purchase."¹⁶

2. The Perception of Ownership in Streaming Services

When people subscribe to sites like Netflix or Spotify, they frequently believe they "own" or "have" the content. However, legally speaking, it is access on a temporary, contractual basis rather than ownership. The service can revoke access at any time, terms can change overnight, and the user has no control or permanence over content, all of which contribute to the "illusion of ownership." The contractual basis of digital licensing obscures this critical distinction from the consumer's perspective.

3. Case Law Analysis

- *United States: Vernor v. Autodesk, Inc.* ("Licensed, Not Sold").

In *Vernor*, the Ninth Circuit affirmed that a customer of Autodesk's AutoCAD software was just a licensee, not an owner. The court employed a three-prong test: the agreement's text, transfer limits, and usage limitations to determine that first-sale doctrine protections did not apply. As a result, the buyer couldn't legally resale the software, demonstrating how licensing can supersede traditional ownership rights. Autodesk retains detailed control under licensing terms, restricting resale freedoms.¹⁷

- *European Union: UsedSoft GmbH v. Oracle (Digital Resale Rights)*.

The European Court of Justice (ECJ) issued a major decision, recognizing that the exhaustion of distribution rights applies even to software acquired online

¹⁵ *First-Sale Doctrine in India*, Chambers & Partners Comparative Guide.

¹⁶ *Licensing vs. Ownership in Digital Content*, Chambers & Partners.

¹⁷ *Vernor v. Autodesk, Inc.*, 621 F.3d 1102 (9th Cir. 2010)

and accompanied by a perpetual license. Copyright holders cannot legally resist resale after the sale, even if the licensing terms state otherwise. There are two important caveats: the original copy must be rendered unusable before selling, and multi-user license subdivisions are not permitted.¹⁸ This paved the way for a second-hand digital software market across the EU.

- **India: Judicial Trends in Ownership and Exhaustion**

Indian courts have treated the first-sale concept with caution. In *John Wiley & Sons v. Prabhat Chandra*, the Delhi High Court concluded that resale of imported textbooks by licensees was not automatically covered by exhaustion; copyright holder rights remain, and licensing arrangements restrict conveyance of ownership.¹⁹ Newer legal studies and opinions reveal that Indian courts do not grant digital licensees ownership rights, especially when EULAs impose tight restrictions, implying a limited application of exhaustion in digital contexts.²⁰

User rights and Limitations in the streaming era

1. **Loss of Resale and Transfer Rights: Impact on Secondary Markets**

Streaming licenses usually limit users from reselling, gifting, or transferring digital content. Unlike traditional media (books, CDs, DVDs), where the first-sale theory permits secondary markets, streaming companies maintain strict control over access through licensing.²¹ This limitation prevents digital content from being traded or resold, thus shutting down secondary markets. For customers, this means paying repeatedly for access without ever gaining permanent transferable ownership.

2. **DRM and Technological Protection Measures: Legal Backing and User Restrictions**

Streaming platforms rely heavily on Digital Rights Management (DRM) to enforce license limitations. Widevine, FairPlay, and HDCP encrypt content and associate it with specific devices or accounts.²² DRM implementations may include access expiration, geo-blocking, and restrictions on downloading and sharing.

Legally, India strengthened these controls with Sections 65A and 65B of the Copyright

¹⁸ *UsedSoft GmbH v. Oracle*, C-128/11, ECJ (2012)

¹⁹ *John Wiley & Sons Inc. v. Prabhat Chandra Kumar Jain*, Delhi HC (2020)

²⁰ Supreme Court Recognises Doctrine of Copyright Exhaustion in Software, SpicyIP

²¹ *Exploring first-sale limits in digital content*, LegalServiceIndia

²² "Understanding Digital Rights Management," TheLaw.Institute

(Amendment) Act, 2012. Section 65A makes it illegal to evade effective technological protection measures (TPMs), but Section 65B makes it illegal to remove or modify rights management information (metadata such as author, license conditions, and so on).²³ These rules carry serious consequences, including fines and jail, demonstrating the law's support for DRM enforcement even when it restricts user liberties.

3. Fair Dealing Exceptions in Streaming - Scope under Indian Law Section 52 of the Copyright Act, 1957 allows for fair dealing exceptions, such as private research, criticism, and reporting current events.²⁴ However, DRM frequently restricts even authorized usage.

Indian courts have upheld these exceptions in settings that do not normally involve streaming services.

- In *Civic Chandran v. Ammini Amma*, the Kerala High Court permitted extensive copying for transformative, vital public-interest purposes.²⁵
- In recent digital conflicts, such as *ANI v. Mohak Mangal*, courts continue to examine fairness based on purpose, amount used, and market impact, even as automatic takedowns undermine the effectiveness of fair dealing online.²⁶

As a result, while fair dealing is legal, DRM and platform control can sometimes trump it, limiting users' ability to access content even for legitimate purposes.

4. Perpetual Access Problem: When Licenses Expire or Platforms Shut Down

When a streaming site removes material or goes down, users lose access, often permanently. Even if a user pays for "unlimited access," it ends when the license expires or the platform is closed. DRM can make files unreadable or inaccessible after shutdown, leaving users with nothing to show for their "purchase."

This impermanence stands in stark contrast to tangible ownership, in which a book or CD is permanently accessible once purchased. The reliance on licensing arrangements undermines concepts of permanency and long term access, providing issues for archives, schools, and individuals who rely on ongoing access.

²³ Id

²⁴ "Understanding the Concept of Fair Dealing," Advocatetanwar.com

²⁵ *Civic Chandran v. Ammini Amma* (Kerala HC 1996)

²⁶ "Fair Dealing in the Digital Age," India Corp Law blog

Economic and policy implications

1. Impact on Content Creators: Royalty Structures in Licensing Models

Content creators such as musicians, filmmakers, and authors typically earn money through licensing fees or royalties rather than direct sales. Streaming platforms negotiate sophisticated agreements such as lump-sum payments, per-stream rates, and revenue-sharing structures. Creators frequently receive fractions of a cent per stream under these arrangements, while platforms and intermediaries receive the majority of the revenue. Because licensing agreements are rarely transparent, many artists report ambiguity regarding profits and share distribution, creating concerns about appropriate pay in the digital age.

2. Market Power of Streaming Giants: Monopoly and Exclusivity Concerns

Streaming services such as Netflix, Amazon Prime, and Spotify have dominant positions in the Indian digital ecosystem. Section 4 of the Competition Act of 2002 states that misuse of dominant market position, such as exclusive licensing or unfair tactics, may be subject to regulatory investigation. Indeed, the Competition Commission of India (CCI) has become increasingly involved in issues of platform dominance and exclusionary behavior, particularly in Big Tech ecosystems. Though not limited to streaming, these measures reflect a growing concern about market concentration and anti-competitive behavior by digital incumbents.²⁷ Exclusive arrangements between streaming platforms and content providers have the potential to impede competition, limit customer options, and create licensing oligopolies.

3. Consumer Protection Concerns : Transparency and Dispute Resolution

Consumers frequently complain about streaming services' opaque terms, lack of transparent pricing, auto-renewals, and ambiguous cancellation rules. India's Consumer Protection Act, 2019 (CPA, 2019) prohibits "misleading the public" and other unfair trade practices.²⁸ The Central Consumer Protection Authority (CCPA) can prosecute deceptive activities, and consumers can seek remedy through District, State, or National Consumer Disputes Redressal Commissions. Differential treatment and lack of transparency in streaming services may subject platforms to consumer obligations. Furthermore, under India's IT Rules, 2021, each digital publisher (including OTT

²⁷ Karan Jain & Sanya Khurana, *Antitrust Regulators' Crackdown on Big Tech*, LiveLaw

²⁸ Consumer Protection Act, 2019

platforms) must designate a grievance officer, acknowledge complaints within 24 hours, and resolve them within 15 days.²⁹ Streaming consumers have legal options to file complaints and address service faults. However, real awareness and enforcement are still in their early stages.

Reform and future outlook

1. Possible Legal Reforms in India – Amendments to the Copyright Act, 1957

India's current copyright regime, while fundamentally sound, has begun to show its age in the digital era. Policymakers and thought leaders have called for a legislative revision to handle new issues including NFTs, blockchain, AI-generated content, and digital licensing standards.³⁰

Key reform recommendations include explicitly recognizing NFTs and smart contracts inside the statutory framework, requiring formal and signed assignments or licenses for digital assets, and clarifying who owns the rights to a digital token.³¹ Establishing a blockchain-based copyright registry managed by the Copyright Office or another government entity could provide tamper-proof ownership data, boosting trust and lowering disputes.

2. Standardisation of Digital Licensing: Best Practices and Fair Terms

Currently, licensing agreements vary greatly across platforms, keeping creators and consumers in the dark. To solve this, India might implement standardized licensing methods similar to the model agreements used elsewhere. For example, digital purchases of NFTs should be accompanied by unambiguous, written licensing agreements that define whether the buyer receives display, resale, or commercial rights as opposed to simply NFT ownership.³² These standard words should be enforceable and clear, reducing uncertainty and legal ambiguity.

3. Hybrid Models: Combining Purchase Options and Streaming

A viable path is the development of hybrid ownership arrangements, in which users may choose whether to stream content or pay for permanent ownership. Some global

²⁹ *IT (Intermediary Guidelines) Rules, 2021*

³⁰ Devdiscourse, *India Marks 68 Years of Copyright Law with Focus on Digital Era Reforms* (2025)

³¹ RVR Attorneys, *NFTs and Copyright in India*

³² Mondaq, *NFTs and Copyrights*

platforms offer downloaded material or digital "buy-outs" in addition to subscription access, combining convenience and ownership. India may encourage such hybrid models by encouraging platforms through legal recognition or tax breaks, giving customers more flexibility and clearer titles.

4. Technological Innovations: Blockchain and NFTs for Digital Ownership Proof.

Blockchain technology and NFTs have tremendous potential for authenticating digital ownership. Smart contracts can automate royalty payments and track resale using built-in metadata, guaranteeing that creators profit from secondary transfers.³³ Academic and business research support the use of blockchain in copyright management, demonstrating how decentralized systems may anchor metadata, provenance, and licensing in safe, verifiable records.³⁴

Conclusion

The study demonstrates a significant movement away from traditional copyright ownership, in which consumers had tangible control over physical material, and toward a license dominated streaming economy, in which access is conditional and revocable. In the ownership model, concepts such as first sale safeguarded rights like as resale, financing, and long term retention. Streaming platforms, on the other hand, rely on subscription based access, which is governed by complex licensing agreements that frequently override consumer ownership expectations. This evolution has multifaceted effects. For creators, while streaming provides worldwide exposure, royalty systems remain disproportionately low, making long-term earnings challenging. Consumers are concerned about their long-term access to purchased material due to restrictive terms, technological protection measures, and platform shutdowns. The market's domination by a few worldwide platforms raises concerns about monopolistic control, exclusivity agreements, and weakened bargaining power for both users and producers.

Addressing these issues necessitates focused legal reform in India's Copyright Act of 1957 to clearly distinguish between ownership and licensing in the digital domain. This might include hybrid models that include purchase and access rights, regulated licensing methods to ensure transparency, and technology advances like blockchain or NFTs to give verifiable digital ownership.

³³ Supra note 31

³⁴ Academic literature: Roberts García et al., *Semantics and Non-Fungible Tokens for Copyright Management*