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# Password Sharing Laws with Respect to OTT Subscriptions: An Overview

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## ABSTRACT

*The sharing of passwords for over-the-top subscription services has become the norm with users willfully sharing their passwords with family and friends in order to save money in pursuance of careful economical spending. These users however, in the due process of saving money are restricting the growth of these services. The prominent reason behind this mass mentality phenomena is a preset concept of budgeting that has become a commonplace and uncoordinated action among consumers. With the share capital as well as the subscribers of the major players, namely Netflix and Disney+ Hotstar, plummeting down the trend, a significant need arises to reevaluate and reassess the situation of sharing such subscriptions. There is still significant lacuna and a grey area with respect to the legality of the said acts in the Indian Subcontinent. This paper provides an overview of the current situation of password sharing in OTT platforms.*

**Keywords:** Netflix, OTT, GDPR, IT Act.

## I. INTRODUCTION

Generally, it is the government who is constantly paving the way for companies to alter their legalities by bringing in new country specific laws which force the companies to alter their terms and conditions as well as their privacy policy<sup>3</sup>. Contrary to that, there exists an industry, OTT (over-the-top) namely, which is the exact opposite. In this industry, the major contributors/stakeholders seem to rather pray and look forward to countries to have a unified procedural code in the area of their service being provided. The major reasoning and rationale behind such a preachment is the fact that almost every individual tends to share such subscriptions among friends and acquaintances. Whether it is your friend or your family, such subscriptions are hardly kept by an individual under his own pocket and rather shared as much similar to a food or a stationery item. With the share capital as well as the subscribers of the

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<sup>3</sup> Marc Davis, *Government Regulations: Do They Help Businesses?*, INVESTOPEDIA (2022), <https://www.investopedia.com/articles/economics/11/government-regulations.asp> (last visited Dec 11, 2022).

major players, namely Netflix<sup>4</sup> and Disney+ Hotstar<sup>5</sup>, plummeting down the trend, a significant need arises to reevaluate and reassess the situation of sharing such subscriptions.

## II. WHAT ARE THE LAWS WITH RESPECT TO GDPR

The GDPR laws are a set of rules laid down to set a standard for consumer protection rights when it comes to their private data, of the European Union. Since the General Data Protection Regulation (GDPR) was implemented, personalised data has been at the centre of the privacy movement, closely followed by the CCPA and other privacy regulations. These legislations, as well as internet behemoths like Apple and Google, have established guidelines for how individualised data is collected, stored, and used. Publishers and advertisers should consider not only website privacy, but also how to apply consent policies across mobile devices and apps.

These rules might restrict the companies performing under the OTT sector, making them a challenge to follow. The GDPR has a broad jurisdiction targeting the data controllers (OTT providers) and the data processors (data partners).

These OTT providers have to pay special attention to the data provided and the device ID attached to it. These IDs are used to identify the user, his behavior which further helps in creating personalized content and target interest-based advertising.

This new method of content distribution enables more imaginative and tailored delivery of hyper-targeted material to users. However, it complicates the processing of consumers' personal data.

## III. INDIAN SCENARIO

India is a hub of digital content. Irrespective of the laws governing the content and its censorship, it still is a grey area when it comes to any such implementations and goes outside the purview of Central Board of Film Certification. The Ministry of Information and Broadcasting has repeatedly hinted at bringing these platforms under a structured monitoring<sup>6</sup>.

As far as the piracy and other online data sharing laws are concerned, it comes under the virtue

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<sup>4</sup> Lauren Forristal, *Netflix loses 970,000 subscribers, its largest quarterly loss ever* | TechCrunch, TECHCRUNCH (2022), <https://techcrunch.com/2022/07/19/netflix-loses-970000-subscribers-its-largest-quarterly-loss-ever/> (last visited Dec 11, 2022).

<sup>5</sup> Gargi Sarkar, *Disney+ Hotstar's ARPU Declines Due To Lower Per-Subscriber Ad Revenue*, INC42 (2022), <https://inc42.com/buzz/disneyhotstar-overall-subscription-reaches-61-3-mn-achieves-5-qoq-growth/> (last visited Dec 11, 2022).

<sup>6</sup> Sobhana K. Nair, *CBFC chief for regulating OTT platforms* - The Hindu, THE HINDU (2022), <https://www.thehindu.com/news/national/cbfc-chief-for-regulating-ott-platforms/article33570379.ece> (last visited Dec 11, 2022).

of The Information Technology Act, 2000<sup>7</sup> alongwith the Copyright Act, 1957<sup>8</sup> and such kind of illicit and illegitimate copying/distributing/burning of the content of such OTT service providers have been considered a stringent punishable crime and several artists have personally vouched for the same.

It must be noted that there exists a defined set of law for unlawful data dissemination on the internet via the IT act for **body corporates and enterprises and for individuals who act in a fraudulent and/or dissentful manner.**

Under section 43A of the (Indian) Information Technology Act, 2000<sup>9</sup>, a body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. It is important to note that there is no upper limit specified for the compensation that can be claimed by the affected party in such circumstances.

Under section 66C of the (Indian) Information Technology Act, 2000<sup>10</sup>, whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh. It must be noted that due to the special jurisdiction of IT Act, provisions of IPC will not be adjudicated under general criminal laws<sup>11</sup>.

Readers' utmost attention is invited to the fact that there exists no clear cut law with respect to consensual password sharing of such OTT platforms willingly and in consonance with consent, written or implied.

We already are aware of the voluminous amount of people who are involved in such 'consensual password sharing activities' but there is still remains a lacuna or a grey area with respect to the legality of the said acts in the Indian Subcontinent.

There is no such laws preventing an individual or body corporate from mutually sharing these subscriptions. It is preassumed that such services, although maybe coming under the purview of personal data are still not considered to be a part of the sensitive data. Consider this for an example, you and close ally are working on something together and at certain point of time your

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<sup>7</sup> INFORMATION TECHNOLOGY ACT, (2000), <https://eprocure.gov.in/cppp/rulesandprocs/kbadqkdlcswfjdelrquehwuxcfmijmuixngudufgbuubgubfugbububjxcgfvvsbdihbgfGhdfgFHtyhRtMjk4NzY=>.

<sup>8</sup> THE COPYRIGHT ACT, (1957), <https://copyright.gov.in/documents/copyrightrules1957.pdf>.

<sup>9</sup> Section 43A, *Supra* at 5.

<sup>10</sup> Section 66C, *Supra* at 5.

<sup>11</sup> SCC, Sharat Babu Digumarti v Government (NCT of Delhi), 2 18 (2017).

ally needs to use a pen for a brief moment to write down something with regards to your mutual work. Instead of getting his own pen, he may ask the other person to lend him his pen for a brief moment instead of looking out for the same in his own belongings and making it a cumbersome process. In this way, there is a preconceived common notion and an uncoordinated mass mentality phenomenon and password sharing of OTT subscriptions become an easily shareable commodity.

The very lacuna with respect to legality of the same becomes the subject matter of concern. Many service providers like Netflix have accepted their consumers behavior of consensually and mutually sharing their accounts in good faith but there is no backing of the judiciary or the law for the same. There exists no statutory law or judgement backed analysis if it comes under the purview of privacy infringement since it is not dealing with sensitive data to such an extent but mere utilization of a service for entertainment, that too most importantly, with consent.

#### IV. COMPANY MEASURES

However, Netflix in particular have started working to manage such sharing. Officially, the platform's Terms of Service state that your account "may not be shared with individuals beyond your household," but the rule has never been enforced.<sup>12</sup> Netflix started sending out a warning message telling limited streamers to create their own account if they're not living with the primary account holder.<sup>13</sup> In a letter to its investors in first quarter of 2022, Netflix made the following assertions:

*The big COVID boost to streaming obscured the picture until recently. While we work to reaccelerate our revenue growth through improvements to our service and more effective monetization of multi-household sharing — we'll be holding our operating margin at around 20%.<sup>14</sup>*

The Netflix has decided to test its practice for paid password sharing for members in Chile, Costa Rica, and Peru.<sup>15</sup> The company is also set to roll out advertisements in its platform in order to curb losses arising out of such viewership losses. Disney+ is following in the footsteps of Netflix. It recently conducted a survey among subscribers in Spain, seeking to know the

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<sup>12</sup> Adanya Sharma, *Netflix account sharing: Everything you need to know*, ANDROID AUTHORITY (2022), <https://www.androidauthority.com/netflix-account-sharing-1006693/> (last visited Dec 11, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> Adanya Sharma, *Netflix wants you to pay extra for account and password sharing (Updated)*, ANDROID AUTHORITY (2022), <https://www.androidauthority.com/netflix-paid-password-sharing-3138967/> (last visited Dec 11, 2022).

<sup>15</sup> Chengyi Long, *An Update to Paid Sharing - About Netflix*, NETFLIX (2022), <https://about.netflix.com/en/news/update-to-paid-sharing> (last visited Dec 11, 2022).

reasons for sharing their Disney+ passwords.<sup>16</sup>

But the big question which is imposed is the veracity and reliability of such tests being conducted and whether it could become a bane of flooded consumer complaints rather than a boon. Moreover, with respect to country specific providers, there is not much solutions that entities are able to find with respect to such concerns.

## V. STATISTICS

According to an Eros Now-KPMG report, an over-the-top (OTT) viewer in India spends approximately 70 minutes per day on video streaming platforms, with a consumption frequency of 12.5 times a week!<sup>17</sup>

As of August 2022, the share of OTT subscribers in India<sup>18</sup> are as follows:

Platform	Subscribers
Disney+ Hotstar	4.29 crore
Amazon Prime	2.1 crore
Sony Liv	1.2 crore
Zee5	0.75 crore
Netflix	0.55 crore

In a survey conducted by *Android Authority*, it was found that 52.45% tend to share passwords of OTT platforms with others<sup>19</sup>.

Roughly two in five online adults have shared passwords to online accounts with friends or family members, according to the Pew Center for Internet and Technology. Among millennials it's even higher: 56% of online adults ages 18- to 29 have shared passwords.

<sup>16</sup> BF Firos, *To share or not to share: A deep dive into the dilemma over OTT password sharing* - Adgully.com, AD GULLY (2022), <https://www.adgully.com/to-share-or-not-to-share-a-deep-dive-into-the-dilemma-over-ott-password-sharing-117861.html> (last visited Dec 11, 2022).

<sup>17</sup> Suhani T, *An Overview of India's Booming OTT Market* | marketfeed, MARKETFEED (2022), <https://marketfeed.com/read/en/an-overview-of-indias-booming-ott-market> (last visited Dec 11, 2022).

<sup>18</sup> *Id.*

<sup>19</sup> DO YOU SHARE YOUR DIGITAL/STREAMING SERVICE LOGIN WITH OTHERS? - INFOGRAM, <https://infogram.com/do-you-share-your-digitalstreaming-service-login-with-others-1h1749vwj5jrj6z> (last visited Dec 11, 2022).

“With the cost of all the streaming platforms bought together equaling a cable bill -- which it was supposed to eliminate -- I think it's a great thing to be able to share your login to help family and friends save a few bucks,” said Ryan Saffell, 39, an IT director from Las Vegas. Sharing or stealing streaming service passwords cost an estimated USD 2.5 billion in revenue in 2019 according to the most recent data from research firm Park Associates, and that's expected to rise to nearly USD 3.5 billion by 2024.<sup>20</sup> Terming password sharing as ‘incredibly common’, **Teresa Cottam, Chief Analyst at Omnisperience**, says that as per Netflix estimates, 100 million household customers worldwide are doing it. Specops conducted a study in 2020 and found that 51.5% of those surveyed admitted to password sharing with family and friends. Amongst Netflix users this rose to 67%, she says.<sup>21</sup>

According to a recent report in Variety, a survey of 1,500 US consumers that said 40 per cent use a streaming login and password that does not belong to them, with roughly a third doing so without permission from the account holder.<sup>22</sup>

## VI. CONCLUSION

The major companies in this sector have themselves taken the command by bringing out techniques and policies which hamper and crackdown the said process of password sharing of their accounts.

The Indian OTT market is currently in the scaling stage, according to a joint analysis by industry group CII and Boston Consulting Group (BCG), with robust subscription growth and considerable investment in premium and original content. With over 40 competitors, the Indian OTT market is one of the most competitive among growing markets. Consumers are more likely to watch a variety of content whenever and wherever they want. According to a survey conducted by Ascent Group India, 68.9% of people prefer watching OTT over traditional forms of entertainment. Furthermore, OTT platform consumption has subsequently increased during the pandemic as people preferred to stay at home. The impressive marketing strategies used by OTT platforms have helped them attract subscribers.

The diversity of India provides enough room for almost every existing OTT player as well as those looking to enter the space beyond entertainment. As a result, OTT platforms are just

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<sup>20</sup> AP, *Netflix, Amazon Prime Mull Stricter Laws To Check Password Sharing Among Users*, OUTLOOK (2021), <https://www.outlookindia.com/website/story/entertainment-news-ott-platforms-netflix-amazon-mull-stricter-laws-to-check-password-sharing-among-users/382851> (last visited Dec 11, 2022).

<sup>21</sup> *Id.*

<sup>22</sup> IANS, *Rampant password sharing hampers OTT players' user growth in India* | *Business Standard News*, BUSINESS STANDARD (2022), [https://www.business-standard.com/article/current-affairs/rampant-password-sharing-hampers-ott-players-user-growth-in-india-122040200363\\_1.html](https://www.business-standard.com/article/current-affairs/rampant-password-sharing-hampers-ott-players-user-growth-in-india-122040200363_1.html) (last visited Dec 11, 2022).

getting started, while traditional content creators and platforms are dying slowly.<sup>23</sup> With the rise of the industry, more and more laws and policies are expected from the companies as well as the governments across the globe. Thus, the advent of these spaces has generated a need to promote and advance modernized entertainment through creation of legal protective safeguards by the government and their implementation amongst the public.

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<sup>23</sup> Zee Media Bureau, *Indian OTT market has a long way to go, says Rromeo | Economy News | Zee News*, ZEE NEWS (2022), <https://zeenews.india.com/economy/indian-ott-market-has-a-long-way-to-go-says-rromeo-2433052.html> (last visited Dec 11, 2022).