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CULTURAL LOSS IN THE SHADOW OF COPYRIGHT: PIRACY AND THE PRESERVATION OF LOST MEDIA IN INDIA

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Abstract

This Paper attempts to examine the relationship between Copyright Law and its role in shaping the cultural memory of India by focusing on how Piracy has today become an informal yet significant mechanism for preserving lost and inaccessible cultural works. As multiple forms of media like, films, TV programs, music and other digital media vanish or degrade due to neglect, format obsolescence, institutional failures, or restrictive rights regimes, Copyright frameworks often concentrate on ownership and commercial control over maintaining cultural access in the long term. In response to this, pirates ranging from informal collectors to online archives have assumed the role of de facto custodians of endangered media. Through the analysis of Indian Copyright Law, media history, and case studies of lost or unavailable works, this paper makes an argument for piracy in the Indian context cannot be viewed as solely as a crime. Instead, it functions within a complex ecosystem of weak archival infrastructure uneven digitization, and economic and linguistic diversity. This study will attempt to highlight the tension between legal frameworks designed to protect creators of copyrighted works and copyright holders and the need to preserve and circulate cultural heritage. Ultimately the paper seeks to bring in a reimaging of the copyright policy and archival practices in India and advocates for preservation-oriented exceptions and public-interest approaches that synchronises cultural continuity with legal protection.

I. Introduction

India is home to one of the largest and the most diverse audiovisual and digital landscapes in the world.²²³³ This includes cinema, television, music, software, and early forms of digital media ranging from silent films of the early 1910s²²³⁴ to the regional television, educational software and the Internet based content, India's media production has historically reflected the multilingualism of the country, especially when showcasing social transformation, and technological change. In spite of this large

number of pieces of media being created, a majority of these pieces of digital heritage are either lost or remain inaccessible to the public. More specifically, India has lost more than 90% of the total media produced in the silent era.²²³⁵

Lost Media can be defined as digital artefacts that are disappearing or are at risk of being lost due to technological obsolescence and/or lack of archival recognition.²²³⁶ In broader terms, it refers to any media like films, music,

²²³³ MINISTRY OF INFORMATION AND BROADCASTING, GOVT. OF INDIA, A STUDIO CALLED INDIA: CONTENT AND MEDIA SERVICES FOR THE WORLD 11 (2025), https://mib.gov.in/sites/default/files/2025-06/a-studio-called-india_0.pdf

²²³⁴ BRITANNICA, DADASAHEB PHALKE, <https://www.britannica.com/biography/Dadasaheb-Phalke>

²²³⁵ FILM HERITAGE FOUNDATION, PRESERVING OUR FILM HERITAGE (2025), <https://filmheritagefoundation.co.in/preserving-our-film-heritage/>

²²³⁶ Veronika Hanáková, LOST MEDIA: COLLECTING AND ARCHIVING OF ARTEFACTS FROM THE DIGITAL ERA (Bachelor thesis, Charles University 2022), <https://dspace.cuni.cz/bitstream/handle/20.500.11956/175778/120427589.pdf?sequence=1>

broadcasts, software, written material etc, that are no longer existing in any formats that are accessible or that no copies of the said media can be located anymore.²²³⁷ The phenomenon of *lost media* in the Indian context extends well beyond early cinema. The early film history was destroyed due to neglect, decay and inadequate archiving, in a similar vein, there has been a loss of television archives, particularly broadcasts produced during the monopoly era of state television and the early years of private satellite channels. The same extends to early Indian-made software, video games, educational CD-ROMs, and web-based content from the 1990s and early 2000s. This is mainly due to the rapid technological obsolescence, lack of preservation mandates, and the absence of institutional responsibility for preservation of digital heritage.

This paper puts forth the thesis that when India's copyright regime is applied without adequate preservation-oriented exceptions, will contribute to cultural loss by hampering lawful archiving and circulation of endangered audiovisual and digital media. It argues that, even though legally impermissible, piracy has functioned as a parallel preservation system, compensating for the deficiencies of the framework, both institutional and legal. Rather than viewing it solely as a crime, this paper places it within the broader cultural and infrastructural failure to safeguard media heritage.

Methodologically, the study will adopt a doctrinal and critical approach. The doctrinal analysis will examine the Indian Copyright Act, relevant case laws, and international copyright norms in relation to preservation, access and archival exceptions. The critical analysis will be of media studies, archival theory, and cultural history to gain insights into how law operates in practice within conditions of scarcity, technological obsolescence, and uneven institutional capacity. Through this

interdisciplinary lens, the paper seeks to illuminate the structural tensions between copyright enforcement and cultural preservation in contemporary India.

II. Conceptualising Lost Media in India: Decay and Bureaucracy

The concept of Lost Media in India requires careful clarification, i.e., not all media that is unavailable to the public can be considered as lost media, nor all media is lost due to physical destruction. In India, media can be lost on for several reasons, ranging from works that are materially destroyed or irreparably degraded, to those that technically survive but remain inaccessible due to legal, institutional, or bureaucratic barriers. Understanding this distinction is the key to analysing the structural failures that shape cultural loss in India.

As defined above, lost media refers to media that is lost due to copies of works being rendered unreadable due to obsolete formats or due to them being not recorded in the first place, like Radio and TV broadcasts. In contrast, Unavailable Media can be defined as media that is unavailable to the public or scholars but survives in some form. This comprises of media held in state archives without public viewing facilities, television content locked in private broadcaster vaults, or digital works constrained by copyright uncertainty. In India, the latter surpasses the former in number and converts the latter to the former as well due to poor practices.²²³⁸

The fault is shared between state archives and private ownership. India has established an institution for the purpose of preserving India's cinematic heritage, called the National Film Archive of India (NFAI),²²³⁹ yet its ability to do so is structurally limited.²²⁴⁰ Much of the media

²²³⁷ WIKIPEDIA, LOST MEDIA, https://en.wikipedia.org/wiki/Lost_media (last visited Dec. 28, 2025).

²²³⁸ OVER 600 RARE FILMS REDUCED TO ASHES IN FIRE MISHAP AT NATIONAL FILM ARCHIVES OF INDIA, INDIA TODAY (Jan. 27, 2003), <https://www.indiatoday.in/magazine/society-and-the-arts/story/20030127-over-600-rare-films-reduced-to-ashes-in-fire-mishap-at-national-film-archives-of-india-793659-2003-01-26>

²²³⁹ NATIONAL FILM ARCHIVE OF INDIA (NFAI), NFDC – NATIONAL FILM ARCHIVE OF INDIA, <https://www.nfdcindia.com/national-film-archive-of-india-nfai/en> (last visited Dec. 28, 2025)

²²⁴⁰ Sudipto Sanyal, SAVING INDIA'S HISTORY: ARCHIVE MERGER POSES NUMEROUS PROBLEMS, DOCUMENTARY.ORG (Aug. 18,

deposited with these organisations is inaccessible due to the absence of digitisation, fragile physical condition²²⁴¹, loss of media to due to inadequate safety measures²²⁴² or unresolved rights issues. This is unlike other jurisdictions like the US and the UK where deposit is coupled with public access mandates.²²⁴³

The issue is further complicated by private ownership, as a large proportion of Indian audiovisual works are held by production houses, broadcasters, or individual rights-holders who lack the incentive or resources to preserve them. It is exasperated when companies go through M&A procedures or lose records leading to ownership becoming untraceable giving rise to a special kind of work called Orphan Works. These are the works whose copyright owners cannot be identified or located.²²⁴⁴ These works are particularly vulnerable to becoming lost media. Although archives may physically hold copies, the legal risk associated with reproducing or digitising such works often leads to institutional paralysis.

The effect of this is well documented in archival practice as well. The NCBS Archives Guidebook highlights how Indian archivists avoid digitising of Orphan works in the fear of being hit by a Copyright Infringement litigation. Archivists are forced to prioritise legal caution over cultural responsibility in the absence of strong statutory exceptions or safe-harbour provisions. The result of this is a situation where the works are lost only because institutions are complying with copyright law.

2022), <https://www.documentary.org/feature/saving-indias-history-archive-merger-poses-numerous-problems>

²²⁴¹ M. Edge et al., DEGRADATION OF MAGNETIC TAPE: SUPPORT AND BINDER STABILITY, 39 POLYMER DEGRADATION & STABILITY 207, 207–14 (1993), [https://doi.org/10.1016/0141-3910\(93\)90097-3](https://doi.org/10.1016/0141-3910(93)90097-3)

²²⁴² OVER 600 RARE FILMS REDUCED TO ASHES IN FIRE MISHAP AT NATIONAL FILM ARCHIVES OF INDIA, INDIA TODAY (Jan. 27, 2003), <https://www.indiatoday.in/magazine/society-and-the-arts/story/20030127-over-600-rare-films-reduced-to-ashes-in-fire-mishap-at-national-film-archives-of-india-793659-2003-01-26>

²²⁴³ LIBRARY OF CONGRESS, CURRENT STATE OF AMERICAN FILM PRESERVATION STUDY, <https://www.loc.gov/programs/national-film-preservation-board/preservation-research/film-preservation-study/current-state-of-american-film-preservation-study/> (last visited Dec. 28, 2025).

²²⁴⁴ COPYRIGHT ACT, 1957, § 31A, No. 14, Acts of Parliament, 1957 (India).

The loss of works is further intensified by language and regional marginalisation. Works from smaller languages having smaller audiences are far less likely to be preserved by either state or private institutions as archival priorities have historically privileged Hindi and a handful of dominant regional industries.²²⁴⁵ Early digital content like regional websites, software, and community media created in the 1990s and early 2000s face an even greater risk, as these materials often fall outside formal archival mandates.

Indian cultural preservation has been recognised in the Indian constitutional discourse and through judicial references to culture, education, and heritage as public values²²⁴⁶ but it has not yet been seriously pursued as a robust state obligation in the audiovisual domain. Preservation remains secondary to other state priorities, and this imbalance has historical roots. An example of this is the state investing in the Bureau of Film Censors (established in the colonial era via the passing of The Indian Cinematograph Act and maintained post-independence) to shape the nation's morality but did not establish a national archive until 1964. By this time the majority of the silent era was already lost. This legacy persists even today where resources are spent on censorship and enforcement, whereas, archives remain underfunded, understaffed, and procedurally constrained.

In conceptualising lost media in India, it becomes evident that cultural loss is less about absence than about access. There is a failure of institutions to create an environment of coexistence between preservation and accessibility. As long as the Indian Copyright regime prioritizes exclusive control without adequate accommodation for orphan works and public-interest archiving, India's audiovisual and digital heritage will continue to perish.

²²⁴⁵ Akshya Saxena, WHEN LANGUAGES IN INDIA DISAPPEAR, THEY TAKE MORE THAN WORDS WITH THEM, VOGUE INDIA (July 16, 2025), <https://www.vogue.in/content/when-languages-in-india-disappear-they-take-more-than-words-with-them>

²²⁴⁶ INDIA CONST. arts. 29, cl. 1; 51A, cl. (f); 59.

III. Judicial Interpretation and Its Limits

Indian laws and the courts have consistently approached piracy through the lens of enforcement, deterrence, and market protection like the 1337x.to case,²²⁴⁷ and the Jio Hot star case.^{2248 2249} The courts have established piracy as an economic harm to rights holders, treating infringement as a threat rather than as a symptom of structural failures in access, distribution or preservation. This approach has produced case laws that condemns piracy freely but is strikingly silent on questions of cultural preservation and long-term access on the body of works the courts aim to protect.

The Supreme Court and the High Courts have repeatedly stressed that copyright law must be interpreted in a manner that discourages unauthorised copying and protects investment in creative industries.²²⁵⁰ While they do occasionally acknowledge the public interest and the accessibility of knowledge, especially for education and compulsory licensing,²²⁵¹ these considerations are not extended to audiovisual works or questions of archival preservation.

As a result, the courts have paid little attention to the fact that piracy happens from inaccessibility rather than access being merely inconvenient. It is assumed that legal ways to access media exist or will continue to exist and that the pirates have wilfully bypassed the market. However, this is not the whole truth. In practice, once a movie is taken out of the box office, it frequently vanishes from the legal market. The same is true for older films, and television content from the earlier years.

Despite this being the reality, the law operates as though every copyrighted work is perpetually available for purchase and that copyright law is merely regulating the terms and conditions of the access. These assumptions reveal a fundamental limitation, i.e., there exists a functioning market for all media, as a baseline condition. Therefore, when reality fails this assumption, there exists no meaningful legal alternative for access or preservation.

This limitation is highlighted in cases where copying is essential for non-commercial or preservation-oriented purposes like in **Section 52(1)** of the Copyrights Act, which lists fair dealing purposes like private/personal use including research, criticism/review, reporting current events; and specific library/preservation clauses like **52(1)(n)** and **52(1)(o)**.²²⁵² Indian Courts interpret the exceptions narrowly, they focus on whether an action falls within enumerated uses such as private study, research, or education.²²⁵³ There is little judicial engagement about the idea that copying is necessary for the prevention of cultural loss, especially when the rights holders are unidentifiable or where the work is no longer commercially used as Orphan works in India are pushed into administrative compulsory licensing rather than accommodating a preservation-oriented system. The absence of any sort of jurisprudence on the above-mentioned topics, does not reflect neutrality of the judiciary but rather, judicial reluctance to expand copyright exceptions beyond commercial contexts.

If one must take a critical view, this kind of enforcement-first orientation produces a paradox, i.e., if the law prevents the copying of a work that is no longer available via legal channels, the law effectively is mandating its disappearance. The bar on reproduction

²²⁴⁷ UTV SOFTWARE COMMUNICATION LTD. v. 1337X.TO, AIR ONLINE 2019 DEL 773 (India).

²²⁴⁸ JIOSTAR INDIA PVT. LTD. v. CRICLK.COM, 2025 SCC OnLine Del 4608 (India).

²²⁴⁹ Arunima, DELHI HIGH COURT GRANTS DYNAMIC+ INJUNCTION TO JIOSTAR AGAINST ROGUE WEBSITES FOR STREAMING INDIA-ENGLAND 2025 SERIES WITHOUT AUTHORIZATION, SCCONLINE.COM (July 2, 2025).

²²⁵⁰ R.G. ANAND v. M/S. DELUX FILMS & ORS., (1978) 4 SCC 118 (India).

²²⁵¹ THE CHANCELLOR, MASTERS & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS. v. RAMESHWARI PHOTOCOPY SERVICES & ORS., RFA (OS) 81/2016 (Del. H.C. Dec. 9, 2016) (India).

²²⁵² ETHICS-LAW.ARCHIVES.NCBS.RES.IN, ARCHIVES, ETHICS AND THE LAW IN INDIA: CHAPTER 2 – ACCESS AND USE OF ARCHIVAL RECORDS – COPYRIGHT, <https://ethics-law.archives.ncbs.res.in/docs/chapter-2> (last visited Dec. 28, 2025).

²²⁵³ THE CHANCELLOR, MASTERS & SCHOLARS OF THE UNIVERSITY OF OXFORD & ORS. v. RAMESHWARI PHOTOCOPY SERVICES & ORS., RFA (OS) 81/2016 (Del. H.C. Dec. 9, 2016) (India).

combined with the lack of access to a particular work in the market mutates copyright from a system that regulates circulation to a mechanism of enforced forgetting. Yet this consequence is largely unexamined and the courts do not question whether perpetual exclusivity without corresponding availability undermines the values the law was meant to serve.

In conclusion, it is revealed that there are clear limits to the Indian copyright laws when it comes to the problem of lost and inaccessible media. By prioritising protection of rights holders and deterrence, the courts are reinforcing a legal fiction of perpetual availability that does not reflect the reality of Indian media. The result of this is a framework that is unequipped to address cultural loss and one that treats piracy as a wrong regardless of the context or circumstances.

IV. Piracy as a *De Facto* Preservation Mechanism in India

Any and all discussion of piracy in the Indian context requires careful framing. This paper does not question the legality of piracy, nor does it seek to question its moral standing. Instead, this paper attempts to examine piracy functionally i.e., what are the roles played by it in the Indian context and what conditions have enabled it to assume this role? When viewed from these standpoints, it emerges not as copying, but as a set of extra-legal archiving practices that operate in the absence and absence of formal preservation mechanisms.

In India, piracy mainly functions as a stand in for institutional archiving, rather than as a competitor to the legal market.²²⁵⁴ This distinction is crucial as, piracy is filling in gaps where awful access is absent, intermittent, or economically unviable. These are not organized rings alone; many are collectors, enthusiasts and communities seeking to preserve access to

media that would otherwise disappear.²²⁵⁵ Describing these practices as ‘informal preservation networks’ allows one to analyse the cultural function of piracy without collapsing that function into questions of legal compliance or ethical justification.

A. Regional Cinema and Informal Circulation

The preservative role of privacy shines most in the context of regional cinema. India’s film history is diverse, yet archival and commercial infra disproportionately favours a limited number of dominant industries. Films made in smaller languages or for local audiences often receive minimal theatrical runs at theatres only local to the language, limited documentation, and no home video or digital releases, making it so that once these films exit cinemas, they most likely vanish from the legal market altogether.

In this scenario, informal circulation in the form of ripped DVDs, hard drives, torrent communities and private online repositories become the only means through which such movies survive.²²⁵⁶ This may be technically an infringement of Copyright law, but, these copies will be the only ones available to researchers, students, and diaspora communities. Here, the alternative is no longer lawful access, but a total disappearance of the works. More importantly, these networks often prioritise completeness over quality, because preserving the film itself is priority (in degraded or incomplete form) rather than quality which is required for commercial exploitation.²²⁵⁷

The significance of these networks becomes clearer when contrasted with official archives. These networks ensure that films remain watchable, discussable, and culturally alive, even if the conditions of preservation are imperfect. Whereas the state institutions render

²²⁵⁴ Joe Karaganis ed., MEDIA PIRACY IN EMERGING ECONOMIES (Social Science Research Council 2011), https://s3.amazonaws.com/ssrc-cdn1/crmuploads/new_publication_3/%7BC4A69B1C-8051-E011-9A1B-001CC477EC84%7D.pdf

²²⁵⁵ Abigail De Kosnik, ROGUE ARCHIVES: DIGITAL CULTURAL MEMORY AND MEDIA FANDOM (MIT Press 2016).

²²⁵⁶ Mustafa Kayyali, THE ROLE OF INFORMAL ARCHIVES IN PRESERVING PERSONAL AND CULTURAL MEMORY, in UNDERSTANDING AND UTILIZING INFORMAL ARCHIVES 145, 145–66 (IGI Global 2025), <https://doi.org/10.4018/979-8-3373-0412-0.ch006>

²²⁵⁷ INTERNATIONAL FEDERATION OF FILM ARCHIVES (FIAP), CODE OF ETHICS, <https://www.fiafnet.org/pages/community/code-of-ethics.html> (last visited Dec. 28, 2025).

the movies unwatchable sure to legal uncertainty, resource constraints, and access restrictions. Therefore, from a functional perspective piracy seems to fill an archival hole where formal institutions have been unable or unwilling to fulfil.

B. Obsolete Software and Early Digital Works

The preservation gap is even more highlighted when it comes to preservation of obsolete software and early digital media.²²⁵⁸ Locally produced educational software's, digital encyclopaedias and video games which were usually published in CDs and DVDs and other early multimedia projects from the 1990s and early 2000s have almost entirely fallen outside formal preservation efforts. These works were most often made by educational institutions or small companies that no longer exist today, and their copyright ownership is frequently unclear or undocumented.

As technology evolves and older tech becomes obsolete, these works face a different kind of extinction, a functional one. While movies may survive in different forms, both physically and digitally. These digital works require active migration and emulation to remain usable. In the absence of any state responsibility for such migration, informal networks have filled this space.²²⁵⁹ Abandonware communities, enthusiast forums and private collectors are routinely archiving installation files, patches for software, user manuals, and emulation instructions allowing obsolete software to be accessed and studied long after its commercial run has stopped.

Once again, the function of what is technically piracy has been preservation rather than substitution. These works are not available for purchase, licensing, or authorised download,

yet, the Copyright framework prohibits reproduction while providing no mechanism for ensuring survival of the works. Therefore, the Informal archivers operate in a legal vacuum. The fact that these practices are extra-legal does not diminish their cultural significance; rather, it underscores the inadequacy of existing legal frameworks to address technological obsolescence.

C. Defunct Television Content

TV content presents similar issues for patterns of loss. Indian TV archives, more particularly from the 90s and early 2000s are notoriously incomplete. The Broadcasters either recorded selectively, reused tapes, or outright failed to maintain systematic archives. They treated programming as ephemeral content, retaining material only as long as it retained commercial value.

As a result, vast quantities of works like news broadcasts, regional serials, children's shows, educational programmes, and live cultural events are no longer available officially. If in case a broadcaster retained a copy, public access to these is rare and highly restricted. Like in the case of DD Archives, where to access their archives, one has to submit an application form, rather than having this material be available for free.²²⁶⁰ Therefore, here too informal preservation networks have assumed an unexpected archival role. These consist of recordings made by viewers, later digitised and shared online and often the only surviving record of entire genres of television content.

This is not driven by commercial intent, rather, it reflects an impulse to document everyday media culture that formal archives have overlooked. These low-resolution recordings, incomplete episodes, or unofficial compilations may fall far short of archival standards, but their cultural value lies in survival rather than perfection.

²²⁵⁸ UNESCO/PERSIST CONTENT TASKFORCE, GUIDELINES FOR THE SELECTION OF DIGITAL HERITAGE FOR LONG-TERM PRESERVATION (UNESCO 2016), <https://unesdoc.unesco.org/ark:/48223/pf0000244280>

²²⁵⁹ SOFTWARE PRESERVATION NETWORK, CODE OF BEST PRACTICES FOR FAIR USE IN SOFTWARE PRESERVATION, <https://www.softwarepreservationnetwork.org/code-of-best-practices-for-fair-use-in-software-preservation/> (last visited Dec. 28, 2025).

²²⁶⁰ PRASAR BHARATI, DD ARCHIVES, <https://prasarbharati.gov.in/prasar-bharati-archives/dd-archives/> (last visited Dec. 28, 2025).

D. Digital-Only Releases and Platform Disappearance

The rise of OTTs and digital-only releases have introduced a new form of impermanence. Films and series released online often rely on licensing agreements to stay available on the platforms. When platforms lose rights,²²⁶¹ shutdown, or choose not to host older content, entire catalogues can vanish overnight. Unlike physical media, unless someone pirated a copy of these shows, there may be no residual copies to access them. Here too, informal archiving functions as a safeguard against disappearance via peer-to-peer networks, private archives, and personal collections.

The irony is that digital distribution, often celebrated for its accessibility, can produce more fragile forms of cultural memory than earlier physical formats.

E. Function Without Recognition

Across the above domains, the role of piracy is consistent, i.e., the function on preservation. Yet, this role is not recognized by the Indian Jurisprudence which still continues to treat piracy as a uniform harm divorced from context. On the other hand, acknowledging this function does not require endorsing piracy as a policy solution. Rather, it reveals the structural inadequacies and institutional gaps that are in dire need of addressal, like the underfunded archives, restrictive copyright regimes, unresolved orphan works, and market assumptions that do not reflect Indian realities.

By viewing piracy from a functionality standpoint, it exposes central contradiction in India's copyright regime, i.e., The law wants to stop unauthorized copying of works yet offers no remedy when markets collapse or disappear. In this case, it is not a choice between piracy and lawful access, but between piracy and oblivion.

²²⁶¹ Alexi Horowitz-Ghazi, WHY ARE DOZENS OF TV SHOWS DISAPPEARING FROM STREAMING PLATFORMS LIKE HBO MAX, NPR.ORG (Mar. 17, 2023), <https://www.npr.org/2023/03/17/1164146728/why-are-dozens-of-tv-shows-disappearing-from-streaming-platforms-like-hbo-max>

V. Ethical and Public Interest Analysis

The previous section revealed a tension at the centre of India's copyright laws, and it is one that cannot be resolved through interpretation of logic alone. Therefore, this section turns to an ethical and public interest analysis, asking the question, whether the continued enforcement of exclusive rights over inaccessible works meaningfully serves the objectives of copyright law. By viewing copyright in the broader context of cultural heritage and access to knowledge, this section attempts to highlight the normative limits of a system designed around assumptions that are no longer valid.

At its core, copyright law is balancing between private rights and public benefit. Exclusivity was granted only as a means to promote creativity, dissemination, and cultural development rather than simply encouraging monopoly. Ethically, this assumption concentrates only on protection of works so that they may be created, distributed, and ultimately accessed. But when works become unavailable to be accessed due to market failure, institutional neglect, or legal uncertainty, this ethical foundation begins to erode. The enforcement of exclusivity in such situations raises valid questions about whether the law continues to still serve the public?

Access to knowledge further sharpens this dilemma. In India, access to media is shaped by economic inequality, linguistic diversity, and uneven digital infrastructure. Older works like movies, television programs are not merely entertainment commodities but are vehicles of cultural transmission, research materials, and teaching resources. Preventing access to these in the absence of legal channels disproportionately affects scholars, students, regional communities, and diasporic audiences. The ethical cost of such exclusion is borne by the society, not by the market.

Public interest limitations within copyright law are meant to address precisely such concerns. The exception for education, research, libraries, and archives showcase that exclusive rights

must yield where broader societal interests are at stake. But the interpretation of these is narrow. As a result, public interest is considered but only on paper but is marginalised in practice.

Therefore, the ethical question is whether enforcement of exclusive rights over inaccessible works is defensible and not whether piracy is defensible. If copyright laws objective is to promote creativity, cultural production and dissemination, then enforcing rules that lead to disappearance rather than circulation appears to be normatively incoherent. The law, in this case does not simply fail to advance public interest but actively denies it justice.

This does not mean that Copyright should be abandoned and informal preservations should replace formal legal, structures. Rather, It means that there is a need for recalibration of the ethics governing this area and that Preservation-oriented exceptions, orphan works frameworks, and public-interest digitisation policies should be considered as affirmations of copyright's underlying purpose, rather than concessions to infringement.

VI. Counter arguments and Constraints

Any argument recognising the preservation function of piracy must confront a set of well-established counter argument comprising of economic harm, creator incentives, and enforcement feasibility. Piracy is unlawful and cannot override the rights of creators, no matter however culturally valuable.

The main argument against piracy is that it is financially detrimental to rights-holders and the creative industries at large, with the most recent report by the Confederation of Indian Industry putting the projected losses at 10% of revenue by 2029.²²⁶² This is especially prevalent in the music and film industry. From the perspective of

the film and music industry any tolerance of privacy risks normalising infringement. The fear is that once copying is permitted in one context, it becomes difficult to contain in others, undermining lawful distribution channels and investment.

Closely linked to this concern is the argument of creator incentives. The whole framework resides on the premise of exclusive rights which motivate creators by allowing them to make their money back from the profits. The argument is that diluting these rights will reduce incentive to create works, especially in high investment areas like film and TV.

The third constraint is the challenge faced while enforcing any new exceptions. These exceptions create new grey areas that will be difficult to police, making it difficult to both the courts and regulators to decipher whether if an act of copying is genuinely for archival purposes or a pretext for mass distribution.

These arguments establish clear doctrinal limits. Piracy is unlawful and any framework ignoring that principle will be unsustainable. However, acknowledging these constraints will not solve the core problem identified here. The critique is not of the exclusive rights, but of the absence of nuanced preservation pathways within Indian copyright law. The current model fails to account for untraceable, inactive, or uninterested rights holders and areas where market access has effectively collapsed. The economic harm argument falls flat when addressing works that are presently not generating any revenue and are unavailable through legal channels. Here piracy is not replacing a marketplace, it is merely substituting for one that does not exist.

Ultimately, the argument the paper is making is not that copyright law protects rights too strongly, but that it protects them too bluntly. By not distinguishing between commercially active works and dormant works (that are culturally significant) Indian copyright doctrine collapses preservation into infringement.

²²⁶² MINISTRY OF INFORMATION AND BROADCASTING, GOVT. OF INDIA, THE IMPACT OF PIRACY ON INDIA'S VIDEO SECTOR & CREATIVE ECONOMY (2025), https://mib.gov.in/sites/default/files/2025-06/the-impact-of-piracy-on-india-s-video-sector-creative-economy-ip-house-x-mpa-x-cii_compressed_0.pdf

In this way, piracy does not challenge copyrights legitimacy but rather holds a mirror to its limitations. Therefore, continuing the present path ensures that the conflict between exclusive rights and cultural survival remains unresolved.

VII. Policy-Oriented Recommendations for India

The analysis so far shows that cultural loss in India is not due to a single point of failure, but due to gaps that have accumulated over the years in the law, institutional limitations, and technological reality. Addressing these gaps does not mean to legalise piracy, but rather to implement incremental, preservation-oriented reforms that balance public interest in access with being consistent with copyright's core structure. The following recommendations focus on realistic interventions that can be implemented within India's existing legal and administrative framework.

A. Expanded Preservation Exceptions

First and foremost is that clearer and broader preservation exceptions are to be incorporated for libraries, archives, and public institutions. The current exceptions are narrow and restrictive, offering little to no protection to archivists engaged in digitisation or format migration. If carefully drafted, the exception could permit copying for non-commercial archival purposes in cases where the works are at risk of deterioration, technological obsolescence, or disappearance from the legal market. Additionally, such exceptions should be technologically agnostic rather than format specific/medium specific. This will allow archives to adapt to future technological change without repeated legislative amendment. This reform would legitimise the basic act of preservation that is currently being chilled by legal uncertainty.

B. Statutory Recognition of Orphan Works

Presently, India does not have specific legislation governing orphan works. Section 31A governs it indirectly but the term 'Orphan works' itself is not used anywhere in the act. This

section only provides for the compulsory licensing of such works without touching on the preservation of these works. Therefore, introducing an orphan works regime could allow designated institutions to digitise and preserve such works after conducting a documented, reasonable search for the owner. The regime can also include safeguards such as attribution requirements, takedown mechanisms, and compensation provisions if in case the rights holder later comes forward to claim it. Without such recognition, orphan works will remain legally frozen, and inaccessible.

C. Mandatory Digital Deposit Requirements

India can strengthen its preservation mechanism by mandating digital deposit of audiovisual works. Currently there exist no such mandates unlike the other jurisdictions like USA and the UK which require mandatory deposition.²²⁶³ A forward-looking framework would require producers and broadcasters to submit a digital preservation copy to a designated public archive within a defined period after release. This approach will shift the burden of preservation on the producer and the state itself, reducing reliance on informal networks and preventing future loss before it occurs.

D. Conditional Access Frameworks

Policy should shift towards conditional access frameworks rather than the current all-or-nothing model. Access to these works could be tiered i.e., on-site viewing for research, delayed public access after a specified period, or access triggered by market unavailability. Such a framework will ensure that exclusivity isn't perpetual to the point of disappearance. By linking access conditions to availability rather than ownership alone, the law can better align with copyright's incentive rationale while preventing enforced disappearance.

²²⁶³ UNITED STATES COPYRIGHT OFFICE, MANDATORY DEPOSIT, <https://www.copyright.gov/mandatory/> (last visited Dec. 28, 2025).

E. Institutional Capacity building and coordination

The above-mentioned legal reforms must be implemented along with targeted investment in archival institutions. The new exceptions will be rendered meaningless if the institutions are lacking the infrastructure or expertise to act on them. This along with coordination between various ministries, archives, and broadcasters can ensure preservation of content that reflects the culture of the society.

VIII. Conclusion

This paper has argued that the problem of lost media is a result of structural failure rooted in doctrinal inadequacy and institutional inertia. The current Indian jurisprudence is poorly equipped to handle the reality of long-term cultural preservation. The cultural cost of this inadequacy is far reaching and substantial. Disproportionately affecting marginal communities and languages and the media connected to them. These works never achieved sustained commercial circulation to be archived by the state archives.

Within this vacuum, piracy has emerged as a functional solution to a multitude of problems. These informal networks have ensured that there is public access to media that the law neither preserves nor permits to circulate. This paper has not defended piracy as lawful or ethical, but only as a symptom of systemic failure.

Until copyright doctrine and policy meaningfully engage with preservation as a public interest objective, India's cultural heritage preservation will continue to rest on these extra-legal practices. Ultimately, the persistence of piracy in preserving lost media reflects not defiance of Indian copyright law, but its silence on digital cultural survival.

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