Copyright's Hidden Power over Culture and Knowledge

Examining the Legal Foundations of Creativity and Cultural Expression

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CHAPTER 1: COPYRIGHT AS A TOOL OF KNOWLEDGE GOVERNANCE: WHO CONTROLS WHAT WE CAN LEARN?

BY SHRAVANI SOMNATH MOTGI

INTRODUCTION

Copyright law is designed to inspire creation and innovation by ensuring creators can have exclusive access to their work, whether it is music, movie scripts, NFTs or digital art. That's not helpful in knowledge management. However, copyright can create conflicts. While innovation can give birth to new ideas, it also can block people from accessing the information that they already have.

It is this relationship between copyrights law and knowledge governance that I investigate in this chapter. It explores how legal theories, court rulings and technology change access to information and the way we understand and use knowledge. The chapter also analyses the ownership and sharing dichotomy with respect to knowledge, describing comparative issues and cases in various countries.

UNDERSTANDING KNOWLEDGE GOVERNANCE THROUGH COPYRIGHT

Copyright governance is not only about safeguarding the financial interests of artists; it also involves organizing the ways in which knowledge is accessible, disseminated, and repurposed

within society. The Copyright Act of 1957 embodies a compromise between property rights and public interest considerations.[1]

Section 14[2] gives creators the exclusive right to reproduce, distribute and share their work, but the law goes beyond this by giving in some exceptions, one of which, **Section 52(1)(i)**[3] is basically the fair use clause, allowing educators, researchers and the general public to use it without running into a minefield of lawsuits. There's a continuous discussion about who owns knowledge.

The creator or everyone else, and the Indian law seems to believe that knowledge is both a public good and private property, as evident in **Section 17(d)**[4] which keeps some government documents locked away, drawing a line between what's free and what's not.

India's copyright structure is influenced by international commitments under the Berne Convention and the TRIPS Agreement, which require robust author protection while allowing for public interest exceptions. These documents affect the lifespan of copyright and the extent of allowable limits, incorporating access-to-knowledge principles into domestic legislation[5].

COPYRIGHT AS GATEKEEPING

While Copyright encourages creation, it also serves as a gatekeeper, limiting access to information, especially in education. Large publishing corporations that control the academic publishing sector frequently set high textbook pricing and journal subscription fees[6]. This economic concentration disproportionately affects students and institutions in underdeveloped countries like India[7].

[1] Copyright Act, 1957
[2] Copyright Act 1957, s 14 (India)
[3] Copyright Act 1957, s 52 (1)(i) (India)
[4] Copyright Act 1957, s 17 (d) (India).
[5] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
[6] Peter Drahos, Information Feudalism (Earthscan 2002).
[7] Amy Kapczynski, 'The Access to Knowledge Mobilization' (2008) 117 Yale LJ 804.

In the current digital era, the manipulation of information is well controlled by using instruments such as DRM and rigid licensing regulations. These digital rights management systems and contracts prevent legal copying, sharing, or preservation of knowledge even in situations where the copyright law permits some such use to be made with educational purposes. Further, the academic journals and online libraries are enclosed with paywalls that restrict access to research, and universities have to decide on whether to pay to access the latest studies or to simply deny students the latest studies.

The access to knowledge in India displays the power, which is possessed by some. The case of Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services,[8] revealed that tough copyright regulations can render education very costly. The court stressed that fair use of the materials in the process of education is imperative to the learning of each person. The controversies surrounding the amendments to NCERT school textbooks are another example of how information that students learn can be determined by the control of school resources. Such examples show that stringent copyright laws may limit the knowledge of people in the world.

JUDICIAL INTERPRETATIONS: BALANCING OWNERSHIP AND PUBLIC ACCESS

The courts have played an important role in shaping copyright laws to manage knowledge. They try to balance the rights of creators to control their work with the public's right to access information. Different legal systems work to protect authors' financial interests while making sure copyright does not block education, research, and sharing of information.

Indian Judicial Approach

The Indian courts have traditionally construed copyright exceptions rather liberally in favour of the public interest and educational or access-to-knowledge issues in particular. **Section 52**[9]: The

[8] The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services 2016 SCC OnLine Del 6229
[9] Copyright Act 1957, s 52 (India)

fair- dealing provision empowers limited use for purposes such as private study, research, criticism, review or instruction.

A leading statement of this position can be found in ***The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services***[10], also known as the Delhi University Photocopy Case. The making of course packs for students was held by the Delhi High Court to satisfy fair dealing requirements for educational purposes. The Court stressed that copyright should be construed so as to serve the constitutional interest of education and not to allow publishers' claims to override a reasonable right of students to unimpeded access to educational material. It was a turning point in the direction of understanding education as a public benefit rather than as a market commodity.

In the same manner, Kerala High Court in ***Civic Chandran v. Ammini Amma*** [11]recognized the fact that fair dealing is a matter of context vis-à-vis public interest however substantial reproduction may be permissible if it were to serve a socially useful purpose, including critic or academic engagement. It is true that the Indian courts have displayed a tendency of giving precedence to transformative and academic use over dogmatic proprietary monopoly.

But the courts haven't always interpreted them so broadly. In decisions such as ***Super Cassettes Industries Ltd. v. Hamar Television Network***[12], courts have suggested a more limited interpretation of fair dealing, with significant weight being given to the interest of copyright owners in commercial settings. These competing approaches reflect judicial reluctance to expand exceptions that have their origins in educational or non-commercial uses, leaving educators and institutions with legal uncertainty.

International judicial perspectives

Operating in stark contrast to the enumerated Indian framework of fair dealing are systems, such as that of the United States, which allow for courts to apply the more flexible doctrine of fair use. And the U.S. Supreme Court itself, in ***Campbell v. Acuff-Rose Music***[13], created a doctrine of

[10] The Chancellor, Masters & Scholars of the University of Oxford v Rameshwari Photocopy Services (2016) 235 DLT 409 (Del HC)
[11] Civic Chandran v Ammini Amma 1996 (16) PTC 329 (Kerala)
[12] Super Cassettes Industries Ltd v Hamar Television Network MANU/DE/1128/2010 (Del HC)
[13] Campbell v Acuff-Rose Music Inc 510 US 569 (1994).

transformative use under which uses that provide new significance or message to the original copyrighted work are fair use even if those uses are commercial. This has made copyrighted material quite widely available in an educational and research environment.

The principle of transformative use was later reinforced in ***Authors Guild v. Google (2015)***[14], which saw the US court of appeals affirm the legality of Google's project to digitize millions of books for its search engine. The Court did recognize that, permitting keyword searches and limited excerpts amounted to serving a public knowledge purpose but not a replacement for the original work. This ruling highlights the role of copyright exceptions in enabling large scale access to information in the digital age.

International courts have also recognized the rights of marginalized groups in accessing knowledge. This commitment to promotion of accessibility and inclusivity is reflected universally when courts consider fair use and copyright applies to systems like Bookshare (See ***Authors Guild v. HathiTrust 2014***[15]) by affirming that the law of copyright must embrace questions of access and inclusion. Implications for Educators and Knowledge Governance The decisions issued by various courts in different jurisdictions demonstrate that copyright cannot be regarded as an instrument isolated from society-at-large. In other words, courts are coming to view teachers, libraries and universities as essential intermediaries in access-to-knowledge rather than simply infringers.

Conversely, the lack of uniform standards—especially in the narrowly defined regime of fair dealing in India—might lead to legal uncertainty and stifle innovation in teaching methods. In all, judicial engagement with fair dealing and fair use demonstrates that courts are central actors in determining who controls access to knowledge. Through interpretive flexibility or restraint, courts effectively shape the boundaries of what society is permitted to learn, reproduce, and share, rendering judicial interpretation a critical site of knowledge governance within copyright law.

[14] Authors Guild v Google Inc 804 F3d 202 (2d Cir 2015)
[15] Authors Guild v HathiTrust 755 F3d 87 (2d Cir 2014).

PRACTICAL PROBLEMS IN INDIA

Difficulties Faced by Government Schools and Low-Income Students

In India an unequal educational system shapes the operation of copyright law. It is the government schools, public universities, and economically less well-off students who are most injured by restrictive copyright regimes. While the Copyright Act, 1957 includes educational exceptions in **Section 52**[16], their actual scope is limited and unclear so that on the ground they become practical obstacles in pedagogy heavily dependent upon shared resources. Of the many Government schools located in rural areas around our country, most must make do today with insufficient copies of prescribed textbooks and reference materials. However, constraints on the budget force both teachers and students to resort to shared notes or photocopied resources. In practice, according to copyright, teachers are not allowed to produce course packs for students containing chapters from various books. Such teaching is essential and should not be regarded as against the law.

In the **Delhi University Photocopy case**[17] it was clear that even non-commercial educational practice can be subjected to protracted litigation. This kind of uncertainty has a chilling effect on all educational institutions. Students from low-income families have added obstacles put in front of them because books are so expensive. Especially for professional and technical courses international publishers control the Indian academic market; in no small measure they price textbooks beyond what many students can afford. Thus with no affordable alternatives available or an open-access system in operation, copyright becomes an indirect barrier to education, tending instead of alleviating those social disparities that are as much the reality today in education as ever before.

Barriers to Digital Learning

The growing expansion of digital education, spurred by the COVID-19 pandemic, has increased copyright-related demands on educational institutions. Journal articles, audiovisual information,

[16] Copyright Act 1957, s 52 (India)
[17] The Chancellor, Masters & Scholars of the University of Oxford v Rameshwari Photocopy Services (2016) 235 DLT 409 (Del HC)

photographs, and historical resources are all examples of copyrighted items that are now used in everyday digital teaching. However, Indian copyright law has not advanced at the same rate as these technological and pedagogical innovations, resulting in ongoing contradictions between modern instructional needs and the rights granted to copyright holders[18].

Copyright constraints frequently hinder instructors from uploading readings to learning management systems, recording lectures containing copyrighted images or videos, or sharing photocopied chapters with students. These difficulties are exacerbated by digitizing libraries and archives, particularly when works are orphaned or out of print, and copyright clearance becomes dubious or unattainable[19]. Such legal ambiguity hinders preservation and access initiatives, which are essential to digital education[20].

In addition, technological protection measures (TPMs) and digital rights management systems make it difficult to make legitimate uses that might otherwise be considered fair dealing. Even when there is a legal basis for educational use, digital locks keep people out. This renders statutory exceptions meaningless in practice and thus undermines the nature of fair dealing provisions themselves--and leaves teachers and students caught between the law's provisions on one hand and necessity on the other.

Grey Areas

Uncertainties persist over copyright's place in knowledge governance, and several questions are yet to be answered. One central question here is whether materials used for pedagogical purposes should be treated differentially under copyright law, in light of their public function. Although there are exceptions, their extent is debatable.

And the term of copyright is another source of dispute. Long terms keep works out of the public domain and thus limit access to them for use in education. Detractors say that such long-term protection advantages middlemen more than those who create the works.

[18] World Intellectual Property Organization (WIPO), Copyright and Distance Education (WIPO 2020).
[19] Kenneth D Crews, Copyright Law for Librarians and Educators (3rd edn, American Library Association 2020).
[20] Pamela Samuelson, 'Digital Libraries and Copyright' (2010) 24 Communications of the ACM 17.

Artificial intelligence poses new challenges, particularly in relation to the copyrighted status of works used as training data and the copyrightability of outputs produced by AI. The existing legal regimes are not particularly clear, and courts resolve these matters gradually over time.

Discrimination on the basis of disability, though it is fortified against by the **Marrakesh Treaty**[21], still meets real-life obstacles on the ground. Finally, the increased presence of private educational platforms raises questions as to whether copyright and licensing are underpinning a new form of market concentration within education.

CONTEMPORARY DEVELOPMENTS

Technological Impact on Knowledge Access involves -

Artificial Intelligence and Copyrighted Data

The rise of AI systems capable of generating text, pictures, and educational materials has disrupted traditional ideas about who owns the copyrights of these items and how they can be used. AI models are trained on large data sets that often contain copyrighted books, articles, images and audio-visual material. This is raising critical questions about whether such training processes are legal - especially when the data is scraped from rights holders who have not given their express consent. From a governance of knowledge standpoint, the problem extends beyond infringement to how power is distributed.

Larger AI models are controlled by corporations which skew the balance of production and transmission of educational content. Here, it is important to note that while AI has the potential for leveling access to information over time, restrictive licenses and proprietary algorithms are likely to reinforce prevailing inequalities in knowledge distribution instead of eliminating them more widely.

Digital Libraries and Mass Digitization

[21] Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (adopted 27 June 2013).

Digital libraries provide an essential way for extending access to learning resources, particularly in communities lacking resources. Programs to digitize large numbers of books and archival material will bring wider access to education but are still embroiled in copyright disputes. Litigation over digital libraries has brought to the fore the many contradictions between preservation, access rights and copyrights.

A good example of this double-sidedness in litigation is represented by the Internet Archive (IA)-controlled digital lending dispute. On one hand proponents argue that digitization serves the public interest since it maintains and provides books on a one-for-one basis; on the other, publishers maintain that such practices conflict with their exclusive distribution rights. So these disputes show just how copyright law struggles to deal with digital lending which carries out traditional library functions in an electronically conveyed environment.

NFTs, Blockchain, and Licensing Models

New modes of ownership and licensing of creative and educational content have been made possible by Blockchain technology and non-fungible tokens (NFTs). Beneficiaries say that blockchain-based licensing should provide greater transparency, attribution and reward for creators. But NFTs' actual function tends to be quite the opposite: they make access to digital knowledge assets a commodity.

In the educational context, tokenized content may transform learning materials into speculative assets and further restrict access for people who are marginalized learners. In lieu of making knowledge more open, these new technologies might only strengthen enclosure by impressing copyright control into immutable digital architectures while at an early stage.

Rise of Open Educational Resources (OER)

Open educational resources (OER for short) represent a sharp contrast to proprietary models. OER efforts focus on producing free, openly licensed educational resources which can be made to view with or without customization as well they're redistributable. Governments, universities and international organizations are also more and more inclined to support the spread of OER in order not just to touch stones but make plains themselves.

Growth in OER also calls into question traditional views of copyright. Being open does not mean that there is no room for creativity or innovation to coexist with OER, but it does constitute a challenge for our century-old assumptions about where the boundaries of free culture might lie. However, since open licensing is voluntary, funding for OER may be insufficient and the material does not have statutory protection of the kind that would ensure its widespread use in areas without a supportive legal framework.

COMPARATIVE ANALYSIS OF FAIR DEALING AND FAIR USE

Fair Use in the United States

The U.S. implements a fair use model, which is primarily a judge-made doctrine, regulated by law through four factors - the purpose and character of the use, the nature of the copyrighted work, the amount used, and the effect of the use on the potential market. This flexible structure gives courts the opportunity to apply copyright rules to new technologies like search engines, digital libraries, and AI training datasets.

Courts' acceptance of transformative use has allowed practices like bulk digitization, text, and data mining, and accessibility efforts to flourish, thus improving public access to knowledge to a great extent.

Nevertheless, the very nature of fair use decisions being made from case to case results in legal ambiguities and gives a preference to those who have sufficient resources and are thus able to endure a lengthy lawsuit, hence it being of limited practical use to smaller institutions and individual educators.

Fair Dealing in India

On the other hand, India implements a restricted and listed fair dealing policy as outlined in **Section 52**[22] of the Copyright Act of 1957. The Indian courts are limited to the particular categories mentioned in the statutes, and this restricts the flexibility of the judiciary in keeping up with the technology changes. Even though the exceptional judicial rulings have increased the

[22] Section 57, The Copyright Act, 1957.

scope of the educational exceptions, the lack of a fairness test like the US one makes it difficult to adapt to the digital learning environments. As a result, educators and institutions are still in doubt as to what copyright material can be used in online classrooms, digital libraries, and learning management systems. This inflexibility stifles inventiveness in teaching and puts more barriers to getting access to knowledge in a rapidly digitizing education sector.

European Union

The European Union has taken a different path, with the Copyright Directive 2019. Most online services are directly liable under this regulation. **Article 17**[23] obliges platforms such as YouTube to obtain licenses or to block uploads of content infringing copyright and, therefore, shifts enforcement from the courts onto private platforms.

Although the objective is indeed to protect rights holders, the means have certainly raised many eyebrows. There will likely be over-censoring by platforms, over-reliance on automated systems, and limitations in accessibility for educational and informational materials. In giving the platforms powers to police copyright, the EU model runs the real risk of privatizing information and limiting sanctioned educational use.

GLOBAL SOUTH PERSPECTIVE

Access to Knowledge in Developing Countries

The Access to Knowledge (A2K) movement in developing countries stresses that knowledge should be shared openly for education, innovation, and development. In many Global South countries, the high cost of textbooks, academic journals, and digital resources makes access difficult for students and researchers. To address this problem, open-access publishing, open educational resources, and alternative licensing models are becoming more common. These efforts aim to reduce the gap between those who can afford knowledge and those who cannot.

Copyright as an obstacle to innovation and local research

[23] Treaty on European Union art 17

By placing excessive limitations on copyrights, these are the main reasons why new ideas in the South may be held back when old published works become too expensive for schools to buy. Fair dealing is meaningless if everyone is afraid of using any portion of a copyrighted work without being sued; this fear will limit translation and adaptation of foreign works within local culture and eventually slow down formation of new knowledge internally.

THE ROLE OF THE WIPO TREATIES

According to **WIPO**[24] administered treaties of the **Berne Convention**[25] and **TRIPS**[26] **a**re the basis for international copyright regimes and their variations. These leave a very small room for manoeuvre for the developing world in so far as his access to knowledge is concerned. Despite various endeavours like **Marrakesh Treaty**[27]WIPO Development Agenda that attempts to align protection with public interest, implementation gap persists, leading to the concern on equitable knowledge governance amongst Global South.

CHALLENGES & SUGGESTIONS

Key Challenges

Copyright plays an important role in deciding who can access knowledge, but in practice it often works against students, teachers, and researchers. One of the major concern is that the excessive control exercised by the publishers over academic books and journals. High prices and restrictive licensing means that many educational institutions, especially in India, cannot afford such essential learning materials. Recognising this imbalance, the Delhi High Court in ***The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy***

[24] WIPO Copyright Treaty 1996
[25] Berne Convention for the Protection of Literary and Artistic Works 1886
[26] Agreement on Trade-Related Aspects of Intellectual Property Rights 1994
[27] Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (adopted 27 June 2013).

***Services* (2016)** [28]held that copyright should not be enforced in a way which blocks the spreading of education.

Another difficulty arises from the narrow scope of educational exceptions under the Indian copyright law. **Section 52 of the Copyright Act** [29]lists specific situations where fair dealing is allowed, but it does not clearly guide the teachers on what is "fair" and "what isn't fair." The courts have often interpreted these exceptions strictly, as seen in ***Super Cassettes Industries Ltd. v. Hamar Television Network* (2011)**[30]. As a result, many educators always try to avoid using copyrighted materials altogether, even when their use may be lawful, due to fear of legal action.

The problem is worsened by high costs involved in litigation process. Many Universities and researchers rarely have the resources to defend themselves in matters of copyright disputes, leading to self-censorship and reduced access to learning materials. In this digital age, digital rights management (DRM) tools further limits the access. Even where the law permits for a fair dealing, digital locks on e-books and online journals can make copying or sharing impossible, rendering legal rights ineffective in practice.

Suggestions

In order to make copyright laws friendlier to education, India should adopt a more flexible fair use doctrine, as is followed in the US, which was upheld in the case of ***Campbell v. Acuff-Rose Music in 1994***[31]. This will enable the court to balance public interests, purposes of education, and fairness.

There is also a pressing need for a special legal exemption for online and digital learning in accordance with the realities of the modern classroom. The government should actively promote the concept of Open Educational Resources and ensure that publicly funded research is freely available, since public knowledge should be for everyone's use.

[28] The Chancellor, Masters & Scholars of the University of Oxford v Rameshwari Photocopy Services (2016) 235 DLT 409 (Del HC)
[29] Copyright Act 1957, s 52 (India)
[30] Super Cassettes Industries Ltd v Hamar Television Network MANU/DE/1128/2010 (Del HC)
[31] Campbell v Acuff-Rose Music Inc 510 US 569 (1994).

In addition, simplified systems of compulsory licensing could facilitate the availability of textbooks and scholarly works at an affordable cost. Moreover, copying restrictions imposed by DRM systems could also be eased so that the rights guaranteed by law are not precluded by digital rights management systems. Lastly, the copyright term of life + sixty years could be reassessed so that works could freely pass into the public domain after the said period.

CONCLUSION

The role of copyright is critical in determining what knowledge society can learn from, share, and build on. As illustrated in this chapter, copyright is more than an exclusive right that serves the interests of those who create knowledge. It is an influential knowledge governance mechanism that shapes whose voices are heard and which knowledge is accessible to learners and researchers. Furthermore, it shapes knowledge flows within society.

However, excessive regulation and insufficient flexibility in the enforcement of copyright can have the opposite effect. Overly restrictive publishers, narrow educational exemptions, high compliance costs, and technological hurdles such as DRM have contributed to denying access to educational materials, affecting students, teachers, and researchers in developing countries. Such diminished access to learning not only impacts education, innovation, academic freedom, and equality but also undermines the purpose of copyright.

On the other hand, the interests of authors and creators should not be overlooked. An effective copyright system must incentivize authors to create and ensure that knowledge, and more importantly knowledge that benefits education or the public, remains publicly shareable. Courts and lawmakers play a crucial role in achieving that.

Ultimately, however, the future of knowledge governance will rely on transforming the law of copyright to suit the realities of the digital age. In this way, a more inclusive and malleable approach to copyright can transform it from an access control mechanism into a prospective learning and innovation tool.

CHAPTER 2: THE CREATOR- PLATFORM- AUDIENCE TRIANGLE: POWER, MONEY, AND ALGORITHMS IN DIGITAL CREATIVITY

BY VANSHIKA AKHAND

INTRODUCTION

The digital revolution was hailed as a paradigm shift and a liberational event for the cultural classes. The dominant narrative can be summarized as follows: On the one hand, the internet was said to disrupt the traditional, hierarchical structure of the 20th century cultural industry, in which authors would be the sovereign ones to intervene directly with a worldwide sovereign audience. On the other hand, the 'analog' gatekeepers imagine that the big recording companies, traditional publishers, or Hollywood studios would be turned into fossils of the past in a globally networked environment. However, with the progression of the digital paradigm to the "Web 2.0" era and beyond, there is growing evidence that the old gatekeepers are not only disintermediated but also that a novel, more entrenched form of power has emerged: the power of digital platforms. The triangle form of this complex power relationship will be explained in the following chapter as the "Creator-Platform-Audience Triangle."

Within this current setup, the copyright regime is no longer the straightforward bilateral mediator between the innovator's drive and the public's access. Instead, the copyright regime has evolved into an instrument of the hidden power that, more often than not, operates in the structural background to validate the economic hegemony of the mediational platform. These mediational platforms, including social networks such as TikTok, Instagram, Spotify, or YouTube, intervene in virtually every instance within this conceptual triangle. These have the following dominant levers of influence within this conceptual apparatus: the Unification of Infrastructural Power, as the gatekeepers of attention, the Extraction of Money through proprietary, algorithmically driven business models that commodify both the content creation processes and the content usage practices, or the Enforcement of Order through opaque, algorithmically automated processes.

This chapter, therefore, will discuss the implications of this conceptual triangle on the ethics of creation, the economies of authorship, and the public right to culture, with an examination of the adjudicatory approaches that have enabled or subverted this new form of digital sovereignty.

CONCEPTUAL BACKGROUND: THE PLATFORM AS A NEW SOVEREIGN

The Traditional Copyright Bargain and its Digital Dissolution

Historically, the philosophical foundation of copyright law was built upon a bilateral bargain intended to strike a balance between private gain and the public good. The state granted authors a limited bundle of exclusive rights to reproduce, distribute, and perform their works – for a fixed duration. In exchange, society obtained access to the "progress of science and useful arts" and, ultimately, those works became part of the public domain. The standard, reflected in legislations like the U.S. Copyright Act of 1976[32] or the Indian Copyright Act of 1957,[33] suggests that the fundamental conflict is a zero, sum game between the author's property right and the user's right to access the work. The measure of protection involved originality, a term that has been definitively clarified by the U.S. Supreme Court in *Feist Publications, Inc. vs. Rural Telephone Service Co*.[34] In this instance, in a case involving the reproduction of white-pages listings in a directory, the Court repudiated the "*Sweat of the Brow*" doctrine. It held that hard work alone does not warrant copyright; facts are not copyrightable, and originality requires at least a modicum of creativity.[35] This judgment ensured that the raw facts of the world remained in the public domain, preventing the monopolization of basic information.

However, the emergence of the digital platform has ensured that this two-party bargain is no longer in place and has instead introduced a third party, which is better equipped and has its own motivations and interests. These businesses, according to the analysis in "Platform Capitalism" by Nick Srnicek[36] and other scholars, should not be considered as just passive providers of

[32]The Copyright Act, 1976 (17 U.S.C. §§ 101 et.seq.).
[33]The Copyright Act, 1957 (Act 14 of 1957).
[34]*Feist Publications, Inc. vs. Rural Telephone Service Co*., 499 U.S. 340 (1991).
[35]*Eastern Book Company v. D.B. Modak,* AIR 2008 SC 803.
[36]Nick Srnicek, *Platform Capitalism* 45-50 (Polity Press, Cambridge, 2017).

services, as they usually are. Rather, they are the engine that runs the whole digital world. These platforms are not simply the hosts of culture but are actually the ones that set the agenda for culture and its visibility, as they control these search and discovery algorithms. The platform has thereby introduced the agenda of the third party into this equation between the author and the user of their work, which has the technical capability of circumventing copyright laws as defined in its Terms of Service (TOS) and search algorithms. These firms are thereby in a position of copyright inequality, wherein the advantage of the law is enjoyed by the party that owns the means of transmission and not those who actually produce the content.

TECHNOLOGICAL DISRUPTION AND THE LIABILITY SHIELD

The shift in media consumption and distribution changed the decentralized nature of the internet into a 'hub and spoke' system, where it is controlled and dominated by a few main hubs. A pivotal case in the legal history of this change was *Sony Corp. vs. Universal City Studios*,[37] commonly referred to as the 'Betamax case.' It occurred in 1984. When film studios sued Sony for manufacturing VCRs that enabled "time-shifting" of television shows, the Supreme Court had to decide if a technology provider should be held liable for the infringing acts of its customers. The Court ruled in favor of Sony, establishing that a device is not infringing if it is capable of substantial non-infringing uses. This "*Sony doctrine*" provided the early legal breathing room for the hardware and software industries to innovate without the constant threat of copyright liability for the actions of their users.

As the internet evolved over time, protection was formalized into "Safe Harbour" provisions, such as Section 512 of the Digital Millennium Copyright Act[38] (DMCA) and Section 79 of India's Information Technology Act.[39] These laws were first created to protect neutral conduits from the liability of user-uploaded content, thus allowing the internet to expand without the risk of being hindered by litigation. Nevertheless, this neutrality is increasingly becoming a legal fiction. In fact, platforms are now publishers who actively curate, rank, and monetize content, but they still claim the protections of the safe harbor shield. The strengthening of this legal shield

[37] *Sony Corp. vs. Universal City Studios*, 464 U.S. 417 (1984).
[38] The Digital Millennium Copyright Act, 1998, s. 512.
[39] The Information Technology Act, 2000 (Act 21 of 2000), s. 79.

was confirmed in the landmark case of *Viacom vs. YouTube*,[40] in which Viacom accused YouTube of being aware of the infringement that was going on and not taking any action. The Court held that the DMCA necessitates knowledge of specific and identifiable infringements rather than just general awareness for a platform to forfeit its immunity. This decision, along with *Capitol Records vs. Vimeo*,[41] which held that general employee awareness of music in user videos did not constitute a "red flag" of infringement, effectively insulated platforms from proactive monitoring duties, placing the entire burden of enforcement back onto the creators.

THE SHIFT TOWARD ALGORITHMIC ENCLOSURE

The algorithm is the link that connects the platform's role as a passive host on the one hand and its reality as an active gatekeeper on the other. Since platforms handle billions of uploads every day, they have outsourced copyright enforcement to automated systems, such as YouTube's Content ID. This algorithmic enforcement means that legal adjudication is handed over to proprietary software, which does not have the human ability to understand the nuances of legal concepts such as fair use, parody, or fair dealing. In her examination of Content ID, Rebecca Giblin points out that this leads to a system of private governance where the platform's code becomes the de facto law.[42] By removing or demonetizing content through automated processes, platforms place the entire burden of proof on the creator. This bypassing of judicial review is crucial for the platform's operation, but it is also a way to silence cultural commentary that happens to be in the grey areas of the law, thus creating a setting where automated censorship is the default.

DISSECTING THE CREATOR–PLATFORM–AUDIENCE TRIANGLE

The Creator- Platform Axis: Power Asymmetry and User Labour

[40] *Viacom vs. YouTube*, 676 F.3d 19 (2d Cir. 2012).
[41] *Capitol Records vs. Vimeo*, 826 F.3d 78 (2d Cir. 2016).
[42] Rebecca Giblin, "YouTube and the Politics of Content ID" 2 *Journal of Intellectual Property* 145 (2018).

On the axis between the creator and the platform, the primary conflict is a fundamental mismatch in power and a struggle over the value of what is termed "user labour." The end of the wild west era of digital sharing was marked by *A&M Records vs. Napster*.[43] Major labels sued the peer-to-peer (P2P) service for facilitating mass infringement. The Court found Napster liable because it had the right and ability to supervise its users and a direct financial interest in the infringement. While this was a victory for rightsholders against unlicensed sharing, it set a precedent that allowed centralized platforms to demand total control over their networks as a condition of legality.

Today, platforms use this control to extract "user labour" – the creative output of millions who provide the content that drives platform engagement and data collection. Pretending to give exposure, platforms usually put creators in a position where they have to accept unprofitable revenue splits that would have been unimaginable in the analog era. In addition, the algorithmic character of these platforms leads to what can be called a presumption of infringement. For example, if a creator uses a snippet of a song for a parody – a use protected under the transformative use standard set in *Campbell vs. Acuff-Rose Music, Inc.*[44] – the algorithm may block it automatically. In *Campbell*, the Supreme Court established that the "transformative" nature of a work – adding new meaning, character, or message – is the core of fair use. However, an algorithm is essentially a pattern-matching tool without any literary judgment; it can only recognize similarity and not transformation. As a result, a chilling effect arises whereby creators self-censor in order to escape algorithmic punishments, thus reducing the range of creatively possible works and changing the power to determine "acceptable" creativity from the law to the platform.

The Platform- Audience Axis: DRM, Surveillance, and the End of Ownership

The platform's relationship with the audience is characterized by a gradual loss of user autonomy that is typically imposed through Digital Rights Management (DRM) and restrictive licensing. In their book The End of Ownership, Aaron Perzanowski and Jason Schultz,[45] among other things, point out that the digital transition has substituted "buying" with "licensing", which is a step that takes away the audience's traditional property rights. In the real world, the "First Sale Doctrine"

[43] *A&M Records vs. Napster*, 239 F.3d 1004 (9th Cir. 2001).
[44] *Campbell vs. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).
[45] Aaron Perzanowski and Jason Schultz, *The End of Ownership: Personal Property in the Digital Economy* 120 (MIT Press, Cambridge, 2016).

allows the person who buys a book to resell, lend, or give it away. On the other hand, in the digital world, platforms implement DRM and Terms of Service to make sure users never have actual ownership of the content they are paying for, thus resulting in a continual dependence on the survival and permission of the platform.

This loss of autonomy was legally highlighted in *MDY Industries vs. Blizzard Entertainment*.[46] The Court upheld Blizzard's position that bypassing software limits in the game *World of Warcraft*, specifically through the use of bots, violated the DMCA, essentially ruling that a software license can define user rights as mere access rather than ownership. This technological control is frequently combined with the concept of DRM as Surveillance,[47] which means that platforms keep track of the manner, time, and place an audience uses the content, thus converting the use of culture into a device for data extraction. Furthermore, *RealNetworks vs. DVD-CCA*[48] affirmed that circumventing DRM is illegal even for private, non-infringing use, such as making a backup copy of a legally owned DVD. This strict liability for circumvention has effectively killed the audience's traditional right to format-shifting, ensuring that the platform retains technical control over the audience's cultural experience long after the transaction is complete.

The Creator- Audience Axis: Remix Culture and Semiotic Democracy

The axis between the creator and the audience is where the future of culture is negotiated. This is the realm of "Remix Culture," where the audience repurposes existing works to create new meaning. This semiotic democracy, the ability of citizens to participate in the creation of cultural meaning rather than being passive recipients, is frequently at odds with the creator's strict property rights. In the Indian context, *R.G. Anand vs. Deluxe Films*[49] established an essential protection for this axis: the Idea-Expression dichotomy. The Supreme Court of India decided that a film sharing the same theme as a play (provincialism) was not a copyright infringement, as copyright doesn't protect general ideas, but only the specific form of their expression. Thus, the decision safeguards the building blocks of culture to be accessible for the coming generations.

However, creators also hold the right of first publication, which can be a barrier to public access if used as a tool of total control. In *Harper & Row vs. Nation Enterprises*,[50] The U.S. The

[46]*MDY Industries vs. Blizzard Entertainment*, 629 F.3d 928 (9th Cir. 2010).
[47]Julie Cohen, "Digital Rights Management and Surveillance" 25 *Georgetown Law Faculty Publications* 854 (2003).
[48]*RealNetworks vs. DVD-CCA*, 641 F. Supp. 2d 913 (N.D. Cal. 2009).
[49]*R.G. Anand vs. Deluxe Films*, AIR 1978 SC 1613.
[50]*Harper & Row vs. Nation Enterprises*, 471 U.S. 539 (1985).

Supreme Court ruled that a magazine publishing a "scoop" of Gerald Ford's unpublished memoirs was not fair use. The Court highlighted that the originator retains the authority to determine when and how a creation is made available to the market. However, this authority is gradually being exercised through platforms that function as indexers and curators. In *Authors Guild vs. Google*,[51] the Court held that Google's large-scale digitization of books for search purposes constituted a transformative fair use. While this was a victory for audience access, it reinforced the platform-as-indexer model, where the public's access to knowledge is contingent upon the platform's ability to display snippets of information, making the platform the ultimate librarian of the digital age.

CONTEMPORARY DEVELOPMENTS AND GLOBAL PERSPECTIVES

Competition Law as a Check on IP Monopolies

As platforms have evolved into digital gatekeepers, the main point of copyright regulation has been redirected towards competition law. Within the European Union, the *Magill TV Guide Case*[52] was the first of its kind to have a worldwide impact. The broadcasters had refused to license their weekly television listings to a company that wanted to create a guide that would be comprehensive. The European Court of Justice judged that such a refusal constituted an abuse of dominant position as it impinged on the creation of a new product under consumer demand, and at the same time, it monopolized an indispensable raw material. This is the underlying reason for the EU's Digital Markets Act (DMA), which is still going to be implemented in the Union. The legislation aims to prevent gatekeeper platforms from using their control over data and content to hinder competition or unfairly exploit creators. The move implies that the exclusive right of copyright in the platform economy is not an absolute safeguard[53] against antitrust intervention anymore.

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[51] *Authors Guild vs. Google*, 804 F.3d 202 (2d Cir. 2015).
[52] *Magill TV Guide Case (Radio Telefis Eireann v. EC Commission)* (C-241/91), [1995] ECR I-743.
[53] Mark Lemley, "Copyright and Market Structure" 121 *Harvard Law Review* 2907 (2025).

THE INDIAN PERSPECTIVE: BALANCING MONEY AND ACCESS

India is a singular example of the conflict over the *Money* vertex of the triangle. The Court in *Tips Industries vs. Wynk Music*[54] examined the question of whether online streaming services could by themselves use statutory licenses, which were meant for traditional radio and TV, under Section 31D of the Copyright Act.[55] It held that Section 31D is a provision that defines traditional broadcasting only and cannot, therefore, be applied to digital streaming. The decision played a major role in the reversal of the *Creator* vertex situation, which subsequently allowed music labels and artists to keep enjoying the liberty of selecting regular market licenses with the platforms, instead of being forced to take government imposed tariff rates.

Conversely, on the *Access* side, the *DU Photocopy Case*[56] represented a significant victory for the audience. The Court ruled that the creation of course packs by a photocopy shop for university students was a privileged educational use under Section 52 of the Indian Copyright Act.[57] This ruling upheld the concept that copyright in emerging markets should not be considered an absolute property right, but rather one that should be subordinate to the social need for access to knowledge, especially in the field of education. It reflects a local legal system's determination to prioritize the *Access* side of the triangle over the *Money* side when the latter is represented by global publishing conglomerates.

THE NEW VERTEX: ARTIFICIAL INTELLIGENCE AND DATA COLONIALISM

[54] *Tips Industries vs. Wynk Music*, 2019 SCC OnLine Bom 13087.
[55] The Copyright Act, 1957 (Act 14 of 1957), s. 31D.
[56] *Chancellor Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*, 2016 SCC OnLine Del 5128.
[57] The Copyright Act, 1957 (Act 14 of 1957), s. 52.

The triangle is currently expanding to include a fourth, disruptive element: Generative Artificial Intelligence (AI). Generative models are developed using massive datasets that are composed of copyrighted works, and in many cases, the creators have not given their consent. Pam Samuelson[58] and others have described the situation as leading to very important issues of data ownership and user labour that require much more in-depth consideration. The training of AI on human creativity has been described by Couldry and Mejias as a form of "Data Colonialism,"[59] where human life and creative output are treated as raw material for extraction and profit by platform-driven AI systems. The *Infopaq case*[60] in Europe, which held that even 11-word extracts can be copyrighted if they represent the author's intellectual creation, suggests that the granular training of AI may eventually face significant legal challenges. This new dimension threatens to collapse the *Creator-Audience* axis, as AI becomes an automated "competitor" to the very humans whose data it extracted.

CHALLENGES AND SUGGESTIONS

The Crisis of Algorithmic Transparency

The most significant challenge in the Creator-Platform-Audience triangle is the issue of algorithmic governance being largely opaque. The rules that determine what content is seen, what is monetized, and what is removed are, at present, black boxes proprietary software that is protected as trade secrets. This lack of transparency results in over-enforcement, making it almost impossible for creators and audiences to challenge the mistakes. When the logic of the law is intertwined with a platform's code, the procedural fairness and accountability that are key to the rule of law are not there. Creators have to guess the intent of the algorithm, which results in a standardized, risk-averse culture that is more focused on platform compatibility than on artistic innovation.

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[58]Pam Samuelson, "Generative AI and Copyright: Data Ownership and Labour" (2023) (Unpublished Research Paper, University of California, Berkeley).
[59]Couldry & Mejias, "Data Colonialism: Rethinking Big Data Through a Postcolonial Lens" 21 *Media, Culture & Society* 336 (2019).
[60]*Infopaq International A/S v. Danske Dagblades Forening* (C-5/08), [2009] ECR I-6569.

Pathways for Structural Reform

To rebalance the triangle, copyright law must move beyond the bilateral bargain and address the platform's infrastructural power.

i. **Algorithmic Accountability and Due Process:** Platforms should be statutorily required to provide transparent, human-led appeals processes for copyright claims. The "presumption of infringement" created by automated systems must be replaced by a system that recognizes the context of a work, particularly in cases of parody, education, and commentary.

ii. **Statutory Interoperability:** In order to successfully challenge a platform's monopoly over the 'Audience, ' laws ought to require that users have the ability to transfer their data and social graph. When users are allowed to carry their content and relationships from one platform to another, the 'lock-in' phenomenon is weakened, creating a more competitive market where creators gain increased power to negotiate more favorable conditions.

iii. **Reform of Anti-Circumvention Laws:** The "hidden power" of DRM must be curtailed. Anti-circumvention provisions should be strictly limited to preventing actual copyright infringement and should never be used to block legitimate acts of fair use, research, or private format-shifting. The law must distinguish between breaking a lock to steal and breaking a lock to use what one has legally acquired.

iv. **Collective Rights and Benefit Sharing:** Inspired by models like the *Hoodia Cactus* agreement in South Africa, we should explore benefit-sharing models for digital creativity.[61] Where platforms profit from the collective creative output of a community – or from training AI on that output – there should be a mechanism for collective remuneration that bypasses the "take-it-or-leave-it" individual license, ensuring that the *Money* axis supports the community of creators rather than just the platform owners.

CONCLUSION

The Creator Platform Audience Triangle is now the primary framework that describes how culture operates in the modern world. Within this framework, the hidden power of copyright is

[61]Graham Dutfield, "Indigenous Knowledge and Intellectual Property" 12 *SSRN* 1308 (2009).

often used to empower the intermediary rather than the innovator. Platforms have successfully weaponized safe harbor laws, algorithms, and DRM to govern the creative process for profit, frequently at the expense of both the author's fair remuneration and the audience's meaningful access to culture.

The future of culture and knowledge depends on our ability to re-sovereignize the creator and the audience. This requires a legal shift from policing the boundary between creators and audiences to actively regulating the automated power of the platforms that stand between them. We can uphold copyright law as a means of human progress and not as a device for wealth extraction at the platform level by advocating for algorithmic transparency, promoting digital interoperability, and reinstating the fair use principle in the digital environment. It is not only a legal necessity to refashion this triangle but also a cultural imperative of the twenty-first century.

CHAPTER 3: COPYING VS. CREATIVITY: RETHINKING ORIGINALITY IN A CULTURE OF IMITATION AND REMIX

BY NISARG SOLANKI

INTRODUCTION

Indian Copyright Law primarily governs copying, creativity and remixing through the Copyright Act, 1957[62], which protects the original and creative work and art while also defining infringement and exceptions. Copying and Creativity are completely different by nature and definition, but can also be connected with one another when viewing them from a broad perspective. Copying is a process of imitating an existing art, work or skill. In contrast, creativity is making something new and original from nothing by oneself. They both sound different and opposite; however, they can also be connected to one another, as copying can be a step of the learning process towards creativity.

From birth, we learn to copy and imitate. We crawl to learn to walk, and we make noises to learn how to speak. All the actions come from copying those around us. Not just humans, but also animals, birds and other species. They learn from copying and imitating those around them. Babies get habits of doing certain actions from their parents, like doing some expression or food habits, as they have copied their parents from birth. Even writing is learnt from copying and repetition of the same activity. Copying plays a big part in our lives. It helps us understand and learn something new.

Creativity means making something unique or new by oneself. Something that is original to the creator. Such as the word selfie, which originated in 2002 around Australia by Nathan Hope. The

[62] Copyright Act, 1957.

word was something that originated solely from Nathan, and then the whole world started using it. Same as the number 0 originated by Aryabhata. Creativity means making something out of the ordinary from existing ones. However, in Copyright Law, proving creativity is a complex issue. Like you can take inspiration from others' work, but while making something, calculating or proving that the work is creative is a tough thing.

Imitation means reproduction or a deceptive copy of an original work. Stealing someone's work and showing it as your own. However, Remix means altering the original work and making some changes while keeping the new work still reliant on the original. Remix is mainly used in the music industry and is often done by DJs. Popular old songs are mashed up with beats and combined with the new songs, creating a different one consisting of the originals while giving a different feel to it.

COPYING VS CREATIVITY

Copying

In general the term 'Copying' means an act of reproducing, duplicating or imitating something that already exists, either wholly or partly, without creativity or originality.[63]'

The meaning of copying is simply stealing someone's work and making it look like your own.

Copying may sound negative but throughout history copying has been a part of creativity. From well known Artists like Van Gogh and Shakespeare[64]. Van Gogh, the well-known artist from the 80s. He used to copy the art of other artists and often made collages from art out of newspapers. He also copied nearly 20-30 artworks of Rembrandt, Delacroix and Gustave Doré. Shakespeare used to borrow plots, dialogues and characters from others' work when creating his own work. All artists learn from copying someone better. The work that inspires them into creating something creative, original and unique only to them.

[63] The Indian Copyright Act, 1957.
[64] Ronan Deazley, Copying, Creativity and Copyright, Queen's University Belfast, CREATe Working Paper Stories, February 2016.

Section 51 of the Copyright Act deems copyright infringement when someone reproduces, sells or distributes copies of protected works like literary, dramatic, musical or artistic creations without any license.

In **Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.**[65]The plaintiff Super Cassettes Limited was a well-established music company for producing and distributing musical works and cinematographic films under the banner of T-series. The conflict arose when the Hamar Television Network, which was primarily in the Bhojpuri language market, began using the plaintiff's copyrighted content without obtaining necessary licenses. The issue before the court was whether the use of the plaintiff's copyrighted content by the defendant was qualified as a 'fair use[66]' under the exceptions of sections 3 and 52 of the Copyright Act. After the evidence provided by both parties, the Delhi High Court delivered a comprehensive judgment that examined the intricate relationship between copyright protection and fair use exceptions for broadcasting. The court rejected the defendant's claim of 'fair use'. The court further said that on musical works, the test of "**lay hearer**" would apply, and even a single note could constitute infringement if it represented an essential element of the copyrighted content.

This case made a significant contribution to India's copyright jurisprudence, mainly focusing on broadcasting and fair use.

In **R G Anand v. Delux Films**[67] case. **Facts:** The plaintiff wrote a stage play called 'Hum Hindustani' which was first enacted in February 1954 in New Delhi. The play was popular and was restaged many times. In November 1954, the second defendant, Mohan Sehgal, the Director of Delux Films, contacted the plaintiff expressing interest in potentially making a film based on the play. In January 1955, the plaintiff met with the defendant and narrated the entire play to him. The second defendant did not make any commitment but said that he would inform the plaintiff of his reaction after some time. In May 1955, the second defendant announced production of a film called "New Delhi" under Deluxe Films. The plaintiff wrote to the Second

[65] Super Cassettes Industries Ltd. Vs Hamar Television Network Pvt. Ltd. and Anr., IA No. 12926/2009 in CS(OS) 1889/2009 & IA No. 13058/2009 in CS(OS) 1906/2009., [Alongwith IA No. 13058/2009 in CS(OS) 1906/2009]. High Court of Delhi (India)
[66] The Indian Copyright Act,1957. s. 3 s. 52.
[67] R G Anand v. Delux Films AIR 1978 SC 1613.

defendant about any connection of the film to his play, but the defendant denied. After watching the film the plaintiff sued the defendant for copyright infringement for copying his play. The **issue** before the court was whether the defendants' film 'New Delhi' infringed the copyright of the plaintiff's play 'Hum Hindustani'? and what are the legal tests and principles to determine copyright infringement in such cases? After the observation, the court gave **Judgement** dismissing the appeal and upheld the lower courts' findings of no copyright infringement, as there were substantial differences between the play and film in theme and presentation. The dissimilarities outweighed the similarities. As a whole, the film can not be called a copy of the play. The Supreme Court's decision in this case reaffirms the principle that ideas themselves are not protected by copyright, but rather their specific expression.

Creativity and Originality

Indian Copyright Law subsists only in original works under Section 13 of the Act, requiring the author's hard work, skill, judgment, and minimal creativity beyond mere copying. Any work that lacks creativity can not be termed as original as per the Act. Creativity means making something new and unique from the existing that wasn't there and is original. **Creativity** and **Originality** are connected with one another. Something must be creative for it to be the original. Various concepts are used to check the creative spark in the work.

- **Sweat of the Brow[68] –**

  According to this doctrine, an author can copyright their work as long as they have invested their time and skill in the work, even for factual complications like databases or directories. As per this doctrine, if a person has put in hard work, then they deserve copyright, regardless of high creativity. This doctrine was followed from the UK's Copyright Act to protect complications based on diligence.
- **Modicum of Creativity[69] –**

  Unlike Sweat of Brow, this doctrine requires a minimum degree of intellectual creativity, innovation or originality in work. It gives direction to the hard work in making something unique and new. Just hard work isn't enough but the direction of the hard work matters. This doctrine focuses on the creative spark and intellectual contribution.

[68] The Indian Copyright Act, 1957. S.13
[69] The Indian Copyright Act, 1957. S.13(i)(a)

- **Skill and Judgement –**

  This doctrine is a middle ground between 'sweat' and 'creativity'. It says that originality comes from applying skills and judgement results in minimal creativity. The Supreme Court found copy-edited judgments original as the editors' contribution involves minimal creativity, even if the judgment is copied.

  With the new trends and technology, creativity is a major element for copyright. Just hard work does not consist of copyrighting the spark, or originality and creativity are a must now.

In the **Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber**[70] case. **Facts:** Burlington created a TV serial 'Phone-in' listing products with prices and availability, compiled via extensive calls and research. Rajnish copied the format, lists and details in his competing program. Burlington sued for infringement of their literary work under section 13 of the Copyright Act. The **issue** before the court was whether substantial effort was put in while compiling factual product data ('sweat of brow'), which grants copyright protection absent high creativity, if copying lists constituted reproduction of original expression. In the **Judgement** Delhi High Court granted an injunction, holding compilation copyrightable due to 'devotion of time, labour and skill', even if facts alone are uncopyrightable. It followed pre-feist English precedents, rewarding industriousness without requiring a modicum of creativity. Which was changed by the Eastern Book Company case.

In **Eastern Book Company & Ors vs D.B. Modak & Anr.**[71] Case **Facts** The petitioners, Eastern Book Company, a partnership firm, and EBC Publishing Private Limited, were engaged in the business of printing and publishing various legal books together. One of such publications was the SSC (Supreme Court Cases). This publication has existed since 1969 and consists of non-reportable, reportable and short judgements. They published copy-edited versions of judgments along with certain additional numbering, formatting and other changes to make it easier for people to understand, making it user-friendly. In 2004, the Respondents put out a software titled 'Grand Jurix' and 'The Laws'. This software has copied the entire modules of SCC onto CD-ROMs, thereby infringing the appellants' IP rights. **Issues** before the court were

[70] Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber 1995 PTC (15) 278 (Delhi High Court) October 20,1995.
[71] Eastern Book Company & Ors vs D.B. Modak & Anr. Civil Appeal No. 6472 of 2004 in the Supreme Court of India.

whether the petitioner's work is eligible for protection under the Copyright Law? Whether the Defendants infringe the Petitioners' Copyrights? Whether individual elements added by the petitioners suffice to receive copyright protection over the entire work? After the final arguments court held the **Judgement** that the petitioners have given their hard labor and skills in their work however the modicum of creativity was too high of a standard to determine the originality and sweat of brow test was too low of a standard, thus the court decided to apply the Canadian test of "**Skill and judgment**". According to the court, the petitioners have put substantial effort and skill into their work, and the respondents have copied their work without room for creativity; thus, the respondents were ordered to refrain from copying the work of the petitioners for their software. This case created a benchmark for the interpretation of originality as a concept by defining a balance between 'sweat of brow' and the 'modicum of creativity'.

Imitation and Remixes

Imitation means reproducing and distributing the work of someone else as your own. As per Section 51 of the Copyright Act, mere ideas or styles are uncopyrightable, but substantial reproduction of original work violates the law. Parodies are also an imitation of the original work.

In the **Humans of Bombay v. People of India** case[72]The Humans of Bombay (HoB) sued People of India (PoI), a comparable online storytelling portal, in the Delhi High Court for violating their copyright. The HoB requested an injunction to stop the violations of its copyright on various kinds of content. PoI was accused by HoB for 'completely replicating its business model and even the stories themselves', claiming to have established an 'imitative' platform. The main issues before the court in this case were whether the copyright infringement was valid. Who owns the copyright? Are the agreements between the parties valid or not? And one of the main issues was the jurisdiction, as it could overturn the case. After the evidence and arguments, the court held that both parties refrain from using each other's content ever again. No damages or costs were awarded to either party. The court provided the clarification that the materials that users have submitted themselves as opposed to having the platforms commission it, do not carry a copyright claim.

[72] Humans of Bombay v. People of India 2023 Livelaw (Del) 947 CS (COMM) 646/2023, October 11, 2023.

In **Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah and Ors.**[73] Case **Facts:** The case was about the appeal involving a dispute over an interim injunction granted by the lower court. The injunction was granted for the copyright infringement of the Bengali film "Poran Jaye Joliya Rae" and the Hindi film "Namastey London". The **issue** before the court was whether the infringement occurred in the work of making a cinematographic film. The court conducted a detailed scene-by-scene comparison of both the films and found that the Bengali film was substantially similar to the Hindi Film. Thus the court gave the **Judgement** that the interim order by the lower court is valid. The court affirmed the interim order, which included directives for the collection of box office revenues and protection of rights until the case's resolution.

Remixes qualify as derivative or adaptation works under Section 14, granting owners exclusive rights to create alterations, arrangements, or versions of originals like musical works. However, unauthorised remixes infringe unless falling under fair use exceptions in Section 52 of the Act for private use, criticism or review, but transformative works like parodies may still require court assessments. Remixes are mostly used by DJs at parties or functions. With the globalization and internet boom, now anyone can create a remix and post it; however, they have to be aware of the copyright laws.

In the **Star India v. Leo Burnett**[74] case, Star India commissioned Balaji Telefilms to produce the serial under a 2000 agreement, owning copyrights per section 17 as the first owner. Leo Burnett created the Tide Detergent ad mimicking a dramatic serial scene from the serial in the ad with titles 'kyunki bahu bhi kabhi saas banegi' using similar dialogue structure and visuals as the original 'kyuki saas bhi kabhi bahu thi'. The **Issue** before the court in this case was whether the ad constituted a 'copy' of the serial under Section 14(d)(i), infringing by photographing and reproducing images, if the logo and title were original and created public confusion. The Judgement court granted an interim injunction to Star, restraining Leo Burnett from airing the ad. As it held substantial similarities to the original scenes and dialogues, it encompasses material resemblance and not mere technical imitation. Artistic work should be original and not a parody of an existing work.

[73] Shree Venkatesh Films Pvt. Ltd. v. Vipul Amrutlal Shah and Ors. AIR 2010 (NOC) 610 (CAL.) 1st September, 2009, High Court of Calcutta.
[74] Star India v. Leo Burnett (India), 2002 (2) Bom CR 492 (Bombay High Court)

In **Trimurti Films Pvt. Ltd. v. Super Cassettes Industries Pvt. Ltd. and Ors.**[75] As the plaintiff, Trimurti telefilms produced the film '**Deewar'** in 1975. Super Cassettes Industries made a movie in 2017 called **'Baadshaho',** which had a remixed version of the song **"**Keh Doon Tumhe**"** from the original Deewar film without obtaining authorisation from Trimurti Films. The super cassette industry acquired rights from Universal Music who purchased the rights to the song in 1974. The issue before the court was whether the purchased right acquired by the Super Cassettes Industries gave them the power to alter or change it or not. The Bombay High Court declared the case in Trimurti Films' favour and further said that the Agreement with Universal Music only covered mechanical reproduction rights and not any right to alter, modify or adapt the original lyrics and tune for a new film. Thus, the court told the Producers to launch the movie without using the song.

CHALLENGES AND SUGGESTIONS

Technology is changing day by day, and it affects everything. To cope with the new trends and technologies, new policies are a must. AI has taken over the world right now. Everywhere you see, there is AI. From studying in classrooms to making complex codes for the programmes, AI is everywhere. And with this new technology the question of creativity and originality in copyright law has become more complex. AI nowadays can even replicate your handwriting and voice just like you. Which has also raised safety concerns. An example of such use of AI is the trending song 'Saiyaara', the title track of the movie, which was uploaded on Youtube by a creator using AI in the voice of Legendary singer Late Kishore Kumar, adding drums and beats of the 90s era. This version broke the internet as people preferred this version of the song over the original and also called the original a cheap copy of Kishore Kumar's song, the song was written in 2025 only. Such confusion arises because of AI as it can replicate the voice of someone who's not alive anymore and make people believe that it's the real deal. This shows how dangerous the AI really is and it's necessary to amend policies and laws to safeguard the real talent and artists from the AI.

[75] Trimurti Films Pvt. Ltd. v. Super Cassettes Industries Pvt. Ltd. and Ors. 2018 (1) Bom CR 156

In the **Getty Images v. Stability AI**[76] case. The case played a big role in the copyright law. As Getty Images sued Stability AI for using images from their portal, however, the UK court in the judgement held that the pictures that were used by Stability AI were to teach it art, and it can not replicate the same exact one, thus the copyright infringement issue was invalid, and the Stability AI can keep on using images to train their AI module. This case makes a big change in the Copyright law as the court allows the use of art of others to train AI, and it is not infringement unless they make the same art. Same as the paintings have different colour grading and number of brush strokes.

In **Arijit Singh v. Codible Ventures LLP**[77]As one of the most revered singers of India, Arijit Singh became engulfed in a legal battle when he discovered that Codible Ventures LLP created a software that can mimic the voice of the singer, The AI allows anyone to generate new songs in the singer's voice without his consent. The Codible Ventures in the court argued that their invention is new and innovative and does not violate any right of the Singer. The issue before the court was whether a personality right violation had occurred with the use of AI ethics in fair use? The case brings the urgency of AI regulations in India to protect the real art and talent from the AI. The court held the **Judgement** granting a dynamic ad-interim injunction restraining the defendant from using the Singer's name, voice, image, singing style or persona commercially.

This case shows the urgency in the Copyright Act with the increasing use of AI modules to protect the real talents and artists.

CONCLUSION

Copying and creativity are different from one another and have different elements in it. With the changing trends and technologies, as well as policies, the issue of creativity has become complex to differentiate creativity from copying. One can use copying to gain insight and create something unique and original. Copying is not necessarily a bad thing, but it shouldn't be the end result of something and should be part of learning and understanding. Creativity should be

[76] Getty Images (US), Inc. v. Stability AI Ltd., EWHC 2863 (Ch) UK High Court.
[77] Arijit Singh v. Codible Ventures LLP COM IPR SUIT (L) NO> 23443 OF 2024. Bombay High Court July 26, 2024.

something original and unique to you from existing art. Creativity does not have a certain definition; it is just unique in the way it is different from the rest.

The original work will always be unique from the rest. Such as Micheal Jackson's dance, the famous art of 'Monalisa' by Leonardo da Vinci, the 'doha' of port Kabir, the Marvel heroes art of the legendary artist late Stan Lee who created various super heroes and villains such as Spiderman, Ironman, Captain America and many more. Art should be creative in a way that it will be remembered forever. In the everchanging trend and fashion in the world, originality and creativity should be sustained and appreciated. As the time goes, remixed songs and music have become trendy these days and with the era of TikTok anything can become popular these days. Remixes and imitations are good as long as they sustain some sort of creative spark in it which differentiate it from the original, it shouldn't rely solely on the original. Originality however will always be superior and unique. And in the modern times people have accepted the new and unique creative pieces in all the fields from new types of music, songs, films and shows. People these days look for original and new content which also encourages artists to go beyond the normal and create something new and unique. The Kantara movie of 2022 is the prime example of creativity in cinematography. A kannada language film of local folklore broke the records in 2022 and earned a lot in box office and created a new precedent that if the story is original and unique people will love it and appreciate it.

CHAPTER 4: COPYRIGHT AND INEQUALITY: MARGINALISED VOICES, LANGUAGE BARRIERS, AND GATEKEEPING IN CREATIVITY

BY DEVESH DHASMANA

INTRODUCTION

Copyright is a form of intellectual property which grants creators exclusive legal rights to their original works, such as books, music, art, software, and films which enables them to control how their work is reproduced, distributed, and displayed in rem. It protects the unique expression of an idea rather than the idea itself. Protection usually applies automatically once a work is fixed in a tangible form. The Indian laws have a particular way of defining what is copyright and according to Section 14[78] of the Copyright Act of 1957, copyright means that the owner or creator of a work has exclusive rights to do certain things with it. The copyright legislation groups the following works into groups:

- Literature, plays, or music (but not computer programs)
- Program for a computer
- Artistic Work
- Movies with a Cinematograph
- Recordings of Sound

[78] The Copyright Act, 1957 (Act No. 14 of 1957) Section 14.

Copyright and Inequality

Copyright and inequality are linked through class and culture:

- **Class Inequality -** Copyright protection has rendered books too expensive for people in developing countries with lesser incomes, which has slowed their growth. The paradox is that rich individuals can enjoy a wide range of high-quality creative works, while impoverished people have to deal with high expenditures. This causes differences in education and culture, which makes it harder for people to grow personally and professionally.
- **Cultural Inequality**- Copyright protects only the most common languages and ignores the less common or unpopular ones. The neglected language makes it hard for impoverished people to get books in popular languages, which makes them feel left out.
- **Market Failures** - Copyright legislation makes it hard for marginalised populations to get things and makes costs higher[79].

The development of Non-Governmental Organisations (NGOs) can bridge this divide by dismantling the economic and social barriers imposed by legislative intent. The legal framework of copyright law should also be modified to support marginalised languages and social barriers for comprehensive development for all. The voices of those who are outside of the human-made system, such Dalits, tribal people, and indigenous people, are often the ones that make up the core group of marginalized voices. Their voices and community traditions are not protected by copyright law, so they are not included. The issue persists due to insufficient acknowledgement of marginalised cultures over notions of "authorship" and "originality." There is a bias in copyright law[80].

Creativity Gatekeeping

Gatekeeping in copyright and creativity is controlling who can see and use a certain creative work by using tools and methods like exclusive rights and access to information. Limiting the definitions of "authentic" and "original" and utilising copyright law to control the competition. Copyright law was designed to protect creators and give them a safe place to work, but it has

[79] Prathiba M. Singh, "Evolution of Copyright Law: The Indian Journey" 16 Indian Journal of Law and Technology 38 (2020).
[80] Shaver, Lea. " Copyright and Inequality." *Washington University Law Review*, vol. 92, no. 1, 2014, pp. 117–168.

also given rise to gatekeeping practices that limit innovation and control writers' content. This has led to the oppression of new artists and creators[81].

THE HISTORY AND GROWTH OF COPYRIGHT IN INDIA

The East India Company brought copyright law to India in 1847. It said that the copyright period would last for the author's lifetime, plus seven years after their death, but no more than 42 years. If the owner of the copyright refuses to publish even after the author's death, the government could also give out forced licenses. Selling, printing, hiring, or showing something for hire or sale without permission. In 1914, another version of the Copyright Act went into effect. This one expanded the UK Copyright Act of 1911. It changed the punishments for breaking copyright laws. It also said that translations could only last for 10 years. In 1983, 1984, 1992, 1994, and 1999, the 1957 Act was changed. The Copyright Amendment Bill of 2012 brought Indian copyright law in line with the WIPO Treaties. It dealt with problems with digital technology and gave authors more rights, such as royalties and assignment provisions. It also helped people get access to works by giving them licenses, allowing fair use, and making sure that disabled people could use them[82].

THE SIGNIFICANCE OF COPYRIGHT LAW IN THE MODERN WORLD: LEGAL, SOCIAL, AND TECHNOLOGICAL ASPECTS

In today's world, language obstacles and gatekeeping mechanisms make it hard for disadvantaged groups to access, create, and share information. Inequality and marginalisation are also problems that make it harder for these groups to do these things.

[81] Snehee, Rishabh. "Comparative Study of Copyright in India, US and UK." *IPR & Information Technology in Internet Age*, Indian Law Institute, Delhi.
[82] Prathiba M. Singh, “Evolution of Copyright Law: The Indian Journey” 16 Indian Journal of Law and Technology 38 (2020).

Legal Significance

Copyright laws are mainly based on the Euro-American model, which focuses on authorship and fixed, tangible works. It doesn't include traditional knowledge and art from indigenous people. A strong copyright protection is helpful for the individual who has it, but it makes works too expensive for poor or marginalised people in developing countries to buy. People who don't have a lot of money find it hard to enforce their rights and pay for legal help, which makes them a target for well-funded businesses. The Marrakesh Treaty was agreed to give individuals with disabilities access to works, but more changes are needed to fix the digital divide[83].

Social Significance

If copyright systems don't respect cultural manifestations, mainstream society could take over and erase minority cultures. Publishers, authors, and big media outlets often use traditional gatekeeping methods to favour information in the dominant language, such English, which leaves out voices and works in minority or indigenous languages. Because of social inequality, many individuals can't purchase copyrighted works or the instruments to make their own, which keeps them from being able to participate fully in cultural and democratic life in society. When popular content is given to vulnerable populations, it is often stigmatised by negative or stereotypical portrayals instead of being seen with real self-representations[84].

Technological Significance

The gap is common when it comes to access to technology (computers, the internet, and digital skills) based on gender, socio-economic position, and location. All of this makes it harder for marginalised groups to create, share, and make money from their work in the digital realm. Most of the content on the internet is in the dominant language. This makes it hard for people who speak native or neglected languages to locate the information they need or take part. As we can

[83] Shaver, Lea. " Copyright and Inequality." *Washington University Law Review*, vol. 92, no. 1, 2014, pp. 117–168.
[84] Prathiba Snehee, Rishabh. " Comparative Study of Copyright in India, US and UK." *IPR & Information Technology in Internet Age*, Indian Law Institute, Delhi.

see, algorithms in the media support the mainstream prevailing language, which is what makes them money. This shows that technology can be used as a weapon for control and administration. Due to this, the language barrier gets bigger and drowns out the real, less popular, and marginalised voices. Digital Rights Management (DRM) is typically more about keeping people from stealing than stopping piracy. This makes it harder for anyone who want to use works for non-commercial or educational purposes to access them, which further pushes out marginalised voices[85].

BASIC IDEAS AND RULES OF COPYRIGHT LAW AND INTERNATIONAL AGREEMENTS

Copyright law protects the way an idea is expressed in a physical form, not the idea or notion itself. For example, a song, a book, a painting, etc. The work must be original and not derived from any other source. It should be real art that came from that person's mind. The copyright work that is being done should be in a form that can be touched, such as writing, saving it digitally, or protecting it. The purpose of copyright law is to safeguard the person's exclusive rights, such as the right to reproduce, adapt, translate, perform publicly, or share the work in any other way. Copyright law automatically comes into effect when a person creates a work, and the work is protected without the need for registration. When you need to provide proof, you should register such work to avoid any problems in the future.

Analysis of Indian Copyright Law

The Copyright Act of 1957[86] is the main law in India that governs copyright. Section 13 of the

[85] Gaurav Rao, 'Ownership of Copyright in UK, US and India', Indian Journal of Integrated Research in Law, Vol. II, No. VI (2022).
[86] The Copyright Act, 1957 (Act No. 14 of 1957)

Copyright Act says that copyright applies to real works. Section 14 lays out the basic rules governing the exclusive rights that copyright holders have.

Important Parts of the Copyright Act

Part 2: Interpretation—This part explains important words like "author," "work," and "publication."

Section 13[87]: Works that are protected by copyright—This section lists the categories of original works that are protected, such as literary, dramatic, musical, and artistic works, as well as sound recordings and cinematograph films.

Section 14[88]: What copyright means—This section explains the exclusive rights that copyright owners have, such as the ability to copy, change, and share the work.

Section 17[89]: initial owner of copyright—This says that the author is usually the initial owner, but there are some exceptions for works made while working or under certain contract terms.

Section 19[90]: Assignment of copyright—This section says that copyright must be assigned in writing.

Section 51[91]: Infringement of copyright—This section lists the actions that are considered copyright infringement, such as making copies without permission or sharing copyrighted information.

Section 52[92]: Certain activities not to be infringement of copyright - Lists exceptions to infringement, usually known as "fair dealing" or "fair use" rules, which authorise certain uses for purposes including research, criticism, and education.

[87] The Copyright Act, 1957 (Act No. 14 of 1957) Section 13.
[88] The Copyright Act, 1957 (Act No. 14 of 1957) Section 14.
[89] The Copyright Act, 1957 (Act No. 14 of 1957) Section 17.
[90] The Copyright Act, 1957 (Act No. 14 of 1957) Section 19.
[91] The Copyright Act, 1957 (Act No. 14 of 1957) Section 51.
[92] The Copyright Act, 1957 (Act No. 14 of 1957) Section 52.

Section 57[93]: Author's special rights—This gives authors some "moral rights," like the right to claim authorship and the right to stop their work from being changed or damaged in a way that would hurt their reputation.

Section 63: Penalties for infringement - This section lists the sanctions for breaking copyright law, which can include fines and jail time[94].

International Instruments

The Berne Convention laid the groundwork for international copyright law by outlining three key principles which were

- National treatment when member countries treat and defend each other in the same way.
- Automatic protection means that the protection is given without any procedures, like registering and Independent protection which means self-protection.
- The TRIPS Agreement on Trade-Related Aspects of IPR has mandated the World Trade Organisation member countries to follow the Berne Convention and give a minimum level of copyright protection to all.

JUDICIAL INTERPRETATION AND CASE LAW

This chapter provides an overview of landmark judicial decisions that have shaped the interpretation and application of copyright law in India. These cases address critical issues such as copyright infringement, fair use, originality, intermediary liability, and the balance between intellectual property rights and public access.

[93] The Copyright Act, 1957 (Act No. 14 of 1957) Section 57.
[94] The Copyright Act, 1957 (Act No. 14 of 1957) Section 63.

The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services (2016)[95]

Facts: Leading publishers, including Oxford University Press, Cambridge University Press, and Taylor & Francis, filed a lawsuit against Rameshwari Photocopy Services and Delhi University, alleging copyright infringement. The publishers claimed that the creation of course packs containing excerpts from their works violated their exclusive rights. The defendants argued that the photocopying was permissible under the educational exception in Section 52(1)(i) of the Copyright Act, 1957, as the course packs were part of the university syllabus and used for educational purposes.

Issues:

- Whether reproducing copyrighted works for educational purposes constitutes "fair use."
- Whether creating course packs and photocopying entire books is permissible under the educational exception.

Judgement: The Hon'ble Court ruled in favour of the defendants making it clear that the reproduction of copyrighted works for educational purposes is within the ambit of fair use and justified if being used for non-commercial purpose. The court emphasized that educational exceptions are not merely "exceptions" but an integral part of copyright law, ensuring equitable access to knowledge, especially in a country like India with significant income disparities.

Impact: The judgment was celebrated as a triumph for the right to education and public access to knowledge. Critics of the case have expressed concerns that it might discourage publishers and authors from collaborating with Indian academia. The court observed that increased literacy and income levels could expand the market for copyrighted works in the long term.

Eastern Book Company v. D.B. Modak (2007)[96]

[95] (The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services , 2016) 227 DLT 354 (Delhi High Court)
[96] Eastern Book Company and Others vs. D.B. Modak and Anr. (2008) 1 SCC 1

Facts: Eastern Book Company (EBC) claimed that copyright over its versions of copy-edited Supreme Court judgments includes its formatting, cross-references, and editorial notes, made by its team. Respondents have allegedly copied their work verbatim onto their software packages without consent and it is in violation of copyright act.

Issues:

- Whether copy-edited judgments qualify as original literary works under copyright law?
- Whether EBC's creative inputs in the judgments are eligible for copyright protection?

Judgement: The court ruled that Supreme Court judgments fall under the definition of "Government Work" under Section 2(k) of the Copyright Act, 1957, and are in the public domain. However, EBC's creative inputs, such as headnotes, editorial notes, and paragraph numbering, were deemed original and eligible for copyright protection. The Court, rejecting the "sweat of the brow" doctrine, emphasized that originality requires creativity, not just effort.

Impact: The decision elucidates upon the standard of originality for derivative works under Indian copyright law, aligning it with international norms. It brought a balance in public access to legal information with the protection of creative contributions while ensuring that judgments remain accessible while safeguarding publishers' rights.

R.G. Anand v. Delux Films (1978)[97]

Facts: R.G. Anand alleged that the film "New Delhi" was a copy of his copyrighted play "Hum Hindustani," which explored themes of provincialism and parochialism. The respondents argued that while both works shared similar themes, the film differed significantly in content, spirit, and climax.

Issues:

- Whether the film infringed the copyright of the play?
- Whether the appellant was entitled to damages or other relief?

[97] R.G. Anand v. Delux Films , AIR 1978 SC 1613

Judgement: The Hon'ble Supreme Court ruled that copyright law protects the expression of ideas, not the ideas themselves. The Court observed that the film did not infringe the play's copyright as it presented the theme of provincialism differently while incorporating additional social issues like caste and dowry. The court emphasized that for infringement to occur, there must be substantial and material copying, and mere similarities in ideas are insufficient.

Impact: Court's ruling reinforced the principle that copyright protects the unique expression of ideas rather than the ideas themselves. The ruling encouraged creators to explore various themes and address social issues along with promoting innovation and raising awareness about inequality in the field of work.

MySpace Inc. v. Super Cassettes Industries Limited (2016)[98]

Facts: Super Cassettes Industries Ltd. (SCIL) accused MySpace of hosting copyrighted content uploaded by users without authorization. SCIL sought damages and a permanent injunction, while MySpace claimed safe harbor protection as an intermediary under Section 79 of the IT Act.

Issues:

- Whether MySpace had "actual knowledge" of copyright infringement?
- Whether MySpace could claim safe harbor protection under the IT Act?

Judgement: The Delhi High Court ruled in favor of MySpace, stating that intermediaries are protected under Section 79 of the IT Act as long as they follow due diligence and remove infringing content upon receiving specific notice. The court clarified that intermediaries are not liable for copyright infringement unless they have actual knowledge of specific infringing content.

Impact: The ruling of the court provided observation on creating a balance between the rights of copyright holders and the need to protect intermediaries in the digital economy. It highlighted the significance of clear reporting mechanisms for copyright infringement and safeguarding of

[98] (MySpace Inc. v. Super Cassettes Industries Limited , 2017) 236 DLT 478 (DB)

intermediaries from excessive liability which would lead to fostering innovation and creativity in the online space.

Tiffany (NJ) Inc. v. eBay Inc. (2010) [99]

Facts: Tiffany alleging that the eBay platform facilitated the sale of counterfeit Tiffany products sued eBay. Claiming that eBay was liable for trademark infringement, dilution, and misleading advertising Tiffany sued the platform and asked for relief. eBay argued it was an intermediary and had implemented anti-counterfeiting measures.

Issues:

- Whether eBay was liable for contributory trademark infringement?
- Whether eBay's use of Tiffany's trademark in ads was misleading?

Judgement: The court ruled that eBay was not liable for contributory trademark infringement as the latter did not have direct knowledge of specific infringing activities thus eBay's use of Tiffany's trademark was deemed nominative fair use, and its efforts of using anti-counterfeiting measures were found sufficient. The court rejected claims of trademark dilution and misleading advertising.

Impact: The case highlighted the difficulties of protecting intellectual property in online marketplaces while safeguarding intermediaries from excessive liability. It brought up the significance of balancing intellectual property rights with the growth of e-commerce and innovation.

Perfect 10 v. Visa (2007)[100]

Facts: Perfect 10, a company publishing copyrighted images, sued Visa and MasterCard, claiming their payment processing services enabled websites to profit from selling infringing content. Perfect 10 argued that the payment processors knowingly facilitated copyright infringement by processing payments for these websites.

[99] Tiffany (NJ) Inc. v. eBay Inc., 600 F.3d 93 (2d Cir. 2010)
[100] Perfect 10 v. Visa: The F: The Future of Contributory Copyright Infringement , 494 F.3d 788 (9th Cir. 2007)

Issues:

- Can payment processors be held liable for contributory copyright infringement?
- Does providing payment services constitute a "material contribution" to infringement?

Judgement: The Ninth Circuit ruled that Visa and MasterCard were not liable for contributory copyright infringement. The court stated that payment services were not directly connected to the act of infringement, such as copying or distributing copyrighted works. It also found no evidence that the payment processors actively encouraged infringement.

Impact: The decision of the court narrowed the scope of contributory copyright infringement which would make it difficult for copyright holders to hold third parties accountable. It brought into light the challenges of enforcing copyright in the digital era, especially against indirect facilitators of infringement which would create the economic imbalance between large corporations and smaller copyright holders.

Inox India Limited v. Cryogas Equipment Private Limited (2025)[101]

Facts: Inox India Limited alleged that Cryogas Equipment Private Limited and LNG Express India Private Limited infringed its copyright by using proprietary engineering drawings of LNG semi-trailers and cryogenic storage tanks. The defendants argued that the drawings were "designs" under the Designs Act, 2000, and not eligible for copyright protection under Section 15(2) of the Copyright Act, 1957.

Issues:

- Are the engineering drawings "artistic works" under the Copyright Act or "designs" under the Designs Act?
- Was the Commercial Court correct in dismissing Inox's plaint prematurely?

Judgement: The Hon'ble Supreme Court clarified the distinction between "artistic works" under the Copyright Act and "designs" under the Designs Act. It established a two-step test to determine whether a work qualifies for copyright or design protection. The court decided that a

[101] Inox India Limited vs. Cryogas Equipment Private Limited , SCC OnLine SC 780.

complete trial was necessary in order to decide the nature of the drawings and also overturned the Commercial Court's premature dismissal of the plaintiff in the case.

Impact: The decision of the Hon'ble court provided clarity on the interplay between the Copyright Act and the Designs Act, ensuring consistent application of intellectual property laws. It emphasized the need for thorough trials in complex IP disputes, promoting fairness and preventing misuse of legal provisions.

COMPARATIVE ANALYSIS OF COPYRIGHT LAW AND INEQUALITY IN INDIA, UNITED STATES, AND UNITED KINGDOM

The copyright systems of India, the US, and the UK are all different because of their histories and laws.

India

The Copyright Act of 1957, which replaced the British Imperial Copyright Act of 1911 after India became independent, is the law of India. It protects literary, theatrical, musical, and creative works for the life of the author and 60 years after their death. Indian copyright law protects films, sound recordings, computer programs, and works of literature, drama, music, art, and cinema. The Ministry of Human Resource Development is in charge of the Copyright Office, Copyright Board, and Copyright Societies. The Act has been changed six times, with big changes in 2012 to deal with digital rights and other issues that are important today[102].

United States

The Copyright Act of 1790, which George Washington signed, was the first law. It gave workers 14 years of protection with the opportunity to extend for another 14 years. It has been changed several times, including the Digital Millennium Copyright Act (DMCA), which protects digital works. The protection lasts for the author's life plus 70 years after they die. It includes works of

[102] Gaurav Rao, 'Ownership of Copyright in UK, US and India', Indian Journal of Integrated Research in Law, Vol. II, No. VI (2022).

literature, art, music, performances, sound recordings, and computer applications. The US joined the Berne Convention in 1989, which protects authors' rights around the world[103].

Britain

The Statute of Anne in 1710 made the UK the first country to have copyright laws. The Copyright, Designs, and Patents Act 1988 is what controls the existing structure. The protection lasts for the author's lifetime and 70 years after their death. It includes works of literature, art, music, performances, sound recordings, broadcasts, and computer applications. The UK has had copyright laws for a long time. The Statute of Anne, for example, gave authors exclusive rights for 14 years, which could be extended for another 14 years.

Main Differences

India protects works for 60 years after the author's death, while the US and UK protect them for 70 years. India has a copyright office, a Board, and Societies that are all separate from each other. The US and UK have various ways of running things. The Statute of Anne was the earliest copyright legislation which was legislated in the UK. Later, the United States and India legislated similar laws, India being the first following British rules while it was a colony. The US has laws like the DMCA that protect digital works. India added digital rights to its laws in 2012. The framework of any country is shaped by its own history, culture, and technology[104].

CONCLUSION AND REFORMS

This analysis shows how big the holes are in copyright legislation that make inequality worse and make it harder for disadvantaged voices to be heard, especially in developing nations like India. The analysis shows that current copyright laws generally favour the interests of wealthy groups and dominant cultures, which hurts vulnerable groups, indigenous communities, and

[103] Snehee, Rishabh. " Comparative Study of Copyright in India, US and UK." *IPR & Information Technology in Internet Age*, Indian Law Institute, Delhi.
[104] Snehee, Rishabh. " Comparative Study of Copyright in India, US and UK."

inventors of less popular languages. Technological hurdles and gatekeeping tactics make these imbalances even worse.

Suggestions

To fix these problems, the following changes and further steps are suggested:

Change copyright rules to safeguard and recognise traditional knowledge, indigenous art, and works in languages that are not widely spoken. This would make sure that creative sectors are diverse and that everyone has an equal say. Create rules that make copyrighted works easier for those with low incomes to get, such as lower prices, more fair use clauses, and mandatory licensing for educational purposes. Close the digital gap by making it easier for underprivileged groups to get to technology, the internet, and learn how to use it. This will let students make, share, and profit from their creative work in the digital economy. Change the gatekeeping rules in copyright law to make it easier for new authors to get started and to stimulate fresh ideas. This includes changing the concepts of "authenticity" and "originality" to incorporate different kinds of creative work. Make sure that intermediaries are protected by safe harbour laws while also protecting the rights of copyright holders. To stop abuse and encourage fairness, there should be clear rules for reporting and taking down anything that violates copyright. Make sure that national copyright laws are in line with international conventions like the Marrakesh Treaty and the Berne Convention. This will safeguard creators around the world and make sure that everyone has fair access to knowledge.

Key Takeaways

Current copyright laws often make class and cultural inequities worse by making creative works hard to get for people who are already on the outside and ignoring less prevalent languages and traditional knowledge. Exclusive rights and narrow definitions of originality stifle innovation and silence the voices of new and underprivileged innovators.

Important cases in India, such Rameshwari Photocopy Services and Eastern Book Company v. D.B. Modak, have stressed the need for fair use and access to information. This has moved the focus away from property-based methods and towards commons-based ones. Global Comparisons such as India, the US, and the UK all have strong copyright laws, but the fact that they have different lengths, administration, and digital rights shows that adjustments need to be

made to fit different social, economic, and cultural situations. Copyright laws need to change to make sure that everyone can use them, that they are fair, and that they are affordable. They also need to balance the needs of creators, middlemen, and the public. By fixing these problems and making changes, copyright law may help promote equality, cultural variety, and new ideas. It can also make sure that everyone can be creative, irrespective of their social or cultural background.

CHAPTER 5: BEYOND OWNERSHIP: COMMUNITY RIGHTS, COLLECTIVE AUTHORSHIP, AND SHARED CREATIVITY

BY GARV YADAV

INTRODUCTION

The Indian copyright law is based on the concept of ownership, whereby anything one writes or creates is their property.[105] It is more of a general law according to which whoever is the only author is the owner. This is fine when the person creating a book or a painting is an individual, but when multiple cultures unite to raise something, it becomes a poor idea. Consider a folk song that has been held by the village longer than anyone has lived there - then it seems wrong to say that it belongs now, to the individual, whoever he is.[106]

In India, the contributors of so many creative things are not individuals but through collective practices. There is folk art, oral storytelling, indigenous knowledge, collective digital efforts, remixes, and everything that engages culture in forms that do not single out a creator. That is not an exception, but that is how the work of culture has always been done, even before copyright. But still, the law considers such traditions as a sideshow.

According to this chapter, the Indian Copyright Act should drop its antiquated copyright approach of considering one person the owner of it and allow more forms of authorship. We are not indicating that we should remove all copyright safeguards, but instead repackage it as a broader legal framework that also offers protection to group rights, community, and the common

[105] M.P. Jain, *Indian Constitutional Law* 1148–1150 (Kamal Law House, Delhi, 8th edn., 2018)
[106] S.K. Verma and Raman Mittal (eds.), *Intellectual Property Rights: A Global Vision* 38–42 (Indian Law Institute, Delhi, 2004)

creative life. That change would finally align the law with the existing culture and constitution in India.

AUTHORSHIP AND OWNERSHIP UNDER INDIAN COPYRIGHT LAW

The copyright law of 1957 specifies the authors, and this usually presupposes a name or a company.[107] The law permits a plurality of authors, though not when they are separated and when they are working simultaneously. The limitations are evident once you make attempts to force the group traditions into the single-author boxes.[108]

The individual style is also adhered to in courts. They constantly discuss innovation as the ability, hard work, and discretion of a person.[109] However much that is more liberal than other stricter methods, it all hinges on the individual. And thus, when no individual, formal, signed contract exists behind a piece produced by a collective, it is technically invisible to the law.

Collective Authorship as a Conceptual Challenge

When we have a group author, we do the fundamental law concept wrong, which is that we can give credit to a single individual. There was a time when nobody in most cultures claimed to be the author; instead, it was about the group working together.[110] Imposing a single-ownership tag only makes that tradition progressively smaller.

Indian courts have indicated towards the community aspect, particularly in the traditional knowledge area, they seldom establish concrete rules.[111] Communities are yet to defend, not to receive affirmative rights.

It is better to take the road of shifting Who Owns it to Who Looks after it. Under this perception, copyright would establish regulations for using works in a way that would remain friendly to the community and prevent exploitation. This implies transcending mere private and public

[107] The Copyright Act, 1957 (Act 14 of 1957), ss. 2(d), 17
[108] V.K. Ahuja, *Law of Copyright and Industrial Designs* 87–90 (LexisNexis, Gurgaon, 3rd edn., 2016)
[109] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1
[110] Upendra Baxi, "The Constitutional Future of Collective Rights", 32 *Journal of Indian Law Institute* 151 (1990)
[111] Law Commission of India, "246th Report on Amendments to the Copyright Act" (2014)

differences. People get concerned with all the paperwork and the manner in which the group will govern itself, yet other laws operating under group systems do it.

CREATIVITY AS A SHARED CULTURAL PROCESS

When it comes to creativity, it is influenced by where you are, the language you speak and the memories you share. In India, creativity is enhanced to assist in ceremonies, learning, or community life and not as an income-generating activity.[112] Folk performances, religious imagery and oral narratives reside within the collective cultural existence where monopoly appears to go and is poisonous.

Placing tough intellectual property on such works may cut people out.[113] By locking it up, the only people who will have a share are the right holders; the rest of the group will have been denied that cultural feel. It is possible to observe the point of conflict when the contemporary market forces run into common traditions.

The fact that creativity is a collective process does not imply that we abandon protection. It simply implies that we ought to establish rules that suit making the work and being a member of the community. Such a course conforms to the vows of cultural diversity and expressive freedom of the Constitution.

Remix Culture and Transformative Creativity

Recently, objects have been created by repurposing and modifying the efforts of other individuals rather than creating something new. People parody, re-spin or re-interpret previous songs, films or even tales and spin them about.

[112] B.K. Matilal, *Tradition, Rationality and Interpretation* 211 (Oxford University Press, Delhi, 1992)
[113] Amartya Sen, *Identity and Violence* 112–115 (Penguin, New Delhi, 2006)

Borrowing can be a new story and not stealing, as remix culture observes.[114] Remixing a copy is sometimes referred to as remixing in the law, but can be a type of authorship in its own category in the event of a change of meaning. It is a misconception that is detrimental to creators who are interested in contributing to the conversation rather than simply selling copycats. In India, the Copyright Act attempts to retain certain conditions towards doing so.[115] Remixing officially is only possible with a licence. Otherwise, you may face a lawsuit that you endure, even though your new mix has given the song a completely different feel. The law is very controlled, and so, creative individuals find it hard to share and make improvements on the work that already exists.

ORIGINALITY AND THE IDEA- EXPRESSION DICHOTOMY

It is the principle of originality that is the primary doorway to acquire copyright protection, but claiming to be creative enough is a tangle when it comes to massive group projects. Courts in India are seeking ability, toil and discretion rather than a novel idea.[116] That opens the doors to an awful number of people, though again concentrates on the solitary genius.

In many cases, group projects can be developed in small increments by large groups of people. Nothing in particular will be overly original, but when the entire output is complete, it could be distinctive and innovative. When the courts continue to demand the one pioneer spark of one individual, they are still empty.[117] It is also difficult to separate an idea from the way to present it. Copyright allows you to freely use ideas, but safeguards the manner in which you document them or film them. The concept and how it is articulated are combined in cultures that place high emphasis on tradition. When you own the expression, you have the result of shutting down a common base of culturally rich content. The courts have endeavoured to make off the total ownership by sustaining the idea-expression gap.

[114] Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* 56–60 (Penguin Press, New York, 2004), available at https://www.ibiblio.org/ebooks/Lessig/Free_Culture/Free%20Culture2.htm
[115] The Copyright Act, 1957 (Act 14 of 1957), ss. 14, 51
[116] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1, para 40
[117] P. Narayanan, *Law of Copyright and Industrial Designs* 74–76 (Eastern Law House, Kolkata, 4th edn., 2010)

COLLECTIVE CREATIVITY IN CONTEMPORARY CONTEXTS

Old styles are not the only forms of group creativity, but now can be found in movies, music or on the internet. Projects are made by teams of writers, artists and fans. This disputes the previous paradigm whereby ownership of a piece is vested in the hands of one individual. The copyright in India still requires a single author and a separate work. Consequently, group projects will be out of place and feel unprotected. That is a victim of the flexibility of the law in present times. Unless that is included in the law, it will fall out of step with that very measure of creativity which we do actually conceive.

COMMUNITY RIGHTS AND TRADITIONAL CULTURAL EXPRESSIONS

Indian copyright barely touches on community rights, even though the group culture pop is immense. Traditions are not unitary in copying, transmitting, or storing the product of one or a few authors. They evolve and develop between generations; it is very difficult to attach them to one individual. The requirement of the law that the author be named implies that communities have no source of ceasing abuse and demanding equitable agreements.

It is not about the matters of legal technicality that are problematic; it is something more philosophical that implies the ideas of art that is the property that can be sold or bought. The Indian law has attempted to reach to this by such aspects as geographical names and biodiversity[118], but they approach them as trade goods, not as creative works. The courts are very cautious about these traditional works. They know that it is back-stage cooperation, and they do not issue copyright in the case that the law does not. This reveals the boundaries of the courts where there are no laws to govern such types of collective items.

Indigenous Knowledge and Collective Ownership

[118] The Biological Diversity Act, 2002 (Act 18 of 2003)

The constraints of the traditional copyright schemes are seen in indigenous knowledge systems. This kind of knowledge is cumulative, oral and cannot be separated from cultural identity. Copyright safeguards have not worked very effectively in this regard because they have formal prerequisites of originality and fixation.

The fact that indigenous knowledge is not subject to copyright protection does not make it unprotected, but exposes it to the risk of being pirated. Such knowledge can be extracted, adapted and commercialised by external actors who profess originality. This imbalance depicts the structural imbalances in the intellectual property law. Defensive protection has been the major reaction of India in terms of documentation and database.[119] Even though such tools eliminate improper claims by third parties, they fail to empower the communities as holders of rights. Defensive protection is like a shield and not like an agency mechanism.

Designating Aboriginal people as shared authors would be a major change.[120] This would be a recognition of creative agency and allow benefit-sharing models that would respect cultural autonomy. It would also refute the belief that individualistic models require the conformity of creativity to be granted protection.

Benefit Sharing and Cultural Equity

Another practical alternative to individual ownership, where collective attributes are encouraged, is benefit sharing. Instead of giving out monopolistic power, benefit sharing focuses on the community to make sure that they get fair returns whenever their cultural expressions are employed commercially. This style corresponds to the group character of authorship and does not limit it too much.

To share benefits in an effective manner, there are institutional mechanisms to negotiate benefits, collect them, and distribute them. These procedures should be visible and responsible to the

[119] Government of India, *Traditional Knowledge Digital Library Overview* (CSIR, 2019)
[120] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295 (Sept. 13, 2007), arts. 11, 31

communities that they serve. In the absence of these guarantees, the benefits sharing will tend to replicate the preexisting power disparities.

The Indian law has applied the concept of benefit sharing in restricted situations, especially regarding biological resources. It would be necessary to reconceptualise copyright as a relationship process, not an absolute, when it is extended to cultural expression. Rights would be construed as supporting fair exchange as opposed to monopolising.

Equity in culture requires value and reward. In communities, they want recognition of their creative input and appreciation of cultural values. The legal frameworks that emphasise the economic value solely may cause the misrepresentation of the cultural meaning.

COLLECTIVE LICENSING AND RIGHTS MANAGEMENT

Collective licensing is a workable tool in balancing the copyright law and collective creativity. The collective licensing of rights would allow sharing of rights instead of the general hierarchy by selecting representatives to negotiate with individual authors on behalf of the collective rights. The model lowers transaction costs and enables the community to have an influence over the utilisation of their creative works.

Collective licensing presents a certain prospect in the Indian context in relation to the cultural expressions with numerous involved contributors/diffuse authorship. Communities are able to acculturate rights in order to negotiate with the users on more favourable terms. This method does not allow breaking the ownership, which can lead to weak enforcement and sharing of benefits.

Nevertheless, collective licensing is sensitive to institutional design. Rights management organisations need to work openly and represent the interests of their members impartially. In India, the issues related to governance and accountability have traditionally eroded confidence in

group control. These issues need to be addressed in order to have collective licensing as a valid substitute for exclusive ownership.

There is also collective licensing that entails the legal recognition of a collective right. In the absence of this recognition, licensing arrangements have no enforceability. A reform in statute to recognise collective authorship would offer a basis for more inclusive rights of managerial composition.

INTERMEDIARIES AND ECONOMIC ASYMMETRIES

The intermediaries are the key to the circulation and monetisation processes of the creative works. Access between creators and audiences occurs through publishers, record labels, digital platforms and collecting societies. In group settings, intermediaries tend to have excessive power.

Societies that practise collective creativity often have no bargaining power or legal knowledge. Consequently, this can be a disadvantage to the intermediaries as contractual arrangements can be skewed in favour of the intermediaries, hence inequitable benefits allocation. The emphasis on individuals as the authors of a piece of writing in the copyright law contributes to this imbalance in that it does not acknowledge the communities as negotiating bodies.

Regulatory intervention is necessary to deal with economic asymmetries. Community participation can be increased with the help of standardised contractual protection, disclosure regulations, and collective bargaining. Collective authorship gives the law a chance to empower the voices of the community and minimise exploitation.

The mediating role can also be performed by such public institutions as archives, museums, and cultural centres. These institutions can play a role in the capacity of custodians and not proprietors in order to offer access without blocking the interests of the community.

MARKET ACCESS AND CULTURAL COMMODIFICATION

Access to the market is a major issue for the communities that are involved in the development of shared creativity. Legal protection of the publishing house will not be very useful without distributor routes. The copyright law should then be accompanied by policies that help ensure that players in the market contribute fairly.

Commercialisation will be an opportunity and a risk. Engaging in the market gives opportunities to raise such resources through culture preservation; however, it might also commodify culture so that the meaning of it is distorted. Cultural expressions can easily lose their social and ritual purposes when they have been altered with the sole purpose of profitability.

This is depicted by Indian cultural industries. The conventional arts are going to be familiarised to the masses, repackaged without any serious community participation. The protection of copyright is not a problem that guarantees fair results; systems of governance and mechanisms of participation are as well crucial.

Sustainable cultural economies can be encouraged through supporting cooperative branding practices, community-led businesses and open licensing models. These methods indicate that economic feasibility does not entail exclusive ownership.

JUDICIAL RESPONSES AND DOCTRINAL GAPS

At this place, judges largely consider a piece made by looking through one individual. Even in a case where they recognise teamwork, they continue to stick to the fact that one would have to possess it.[121] That is simply the old way of thinking, not what is really taking place in real life.

When a group of individuals operate it normally becomes clear to the courts which among them did the most. In case one individual cannot be identified, they are not keen on providing any

[121] R.G. Anand v. Deluxe Films, (1978) 4 SCC 118

protection. That essentially drives away collaborative efforts that are gathered not by a few hands alone but by many hands.

Slowing down of judges occurs as per the laws that compel the judges to give preference to one individual. That is causing it to be difficult to keep pace with contemporary art-making. The divergence between actual creative practices and what the law formally recognises is widening.

The largest gaps manifest themselves in individuals importing old culture and community activities. According to courts, it is a thing but does not give out rights. Get them to nod but no help, and leave them hanging round the edges.

Constitutional Dimensions of Collective Creativity

Copyright is literally enshrined in the constitution which purports that we are all about free speech, culture and fairness. The culture of the teams is impaired when their recognition becomes unachievable.

In article 19(1)(a), it has everything on the freedom of speech and expression, and that is creative material.[122] Strict copyright can strangle that freedom, particularly when it prevents remixing or collaging. There is a need for us to strike a balance between the possession of rights and allowing the people to speak.

Culture stuff is not marketed or shopped but concealed in the promise of a multicultural and decentered society. Cultural creativity entails group creativity. That is dangerous since laws that only empower people are likely to degrade that.

The equality issue becomes tricky since the groups lacking money and legal expertise are struck more savagely by strict copyright laws.[123] Authentic equality is the fact that the law is supposed to consider the poor, the beginning of such groups of people, and not provide all people with the same thing.

[122] The Constitution of India, art 19(1)(a), available at https://indiankanoon.org/doc/1218090/
[123] The Constitution of India, art. 14, available at https://indiankanoon.org/doc/367586/

Policy Hesitation and Reform Imperatives

The reason why lawmakers have been reluctant to acknowledge collective authorship is that they become concerned with all the legal ambiguity, the challenges of enforcement and that this may just end up deterring future investment. But when the law does not even pay the nod to group creativity, it goes on to lay down actual structural inequities. In fact, by doing a ton of the cultural production, the communities end up being left out under official copyright protection, which essentially allows middlemen or large commercial actors to pat themselves on the back for their creative work and does not provide them with proper acknowledgement or any respectable pay.

The case in point actually demonstrates that Indian judges are fairly conscious of the cooperative component of creativity, even though the laws are still quite individualistic. Take the R.G. Anand v. Deluxe Films case in which the Supreme Court emphasised the fact that, no matter the creative works, it is essential to separate ideas from how they are manifested. Then there's the Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association decisions that point out all the tangled relationships between authors, performers, and producers in the creative industries. These decisions appear to indicate that the judiciary understands the potential of collaborative creative processes, though the relevant statutes may not be up to date.

There should therefore be policy reform in stages, which will make a difference. First, simply conferring collective or community authorship onto the pieces of law may place a legal basis to safeguard those works which are the result of collective cultural performance. Second, one would have a big victory by making fair dealing rules more comprehensible to encompass other concepts, such as parody, remixing, and reinterpretation, the concepts already receiving some recognition in court, such as in Civic Chandran v. Ammini Amma. Third, instituting systematic benefit-sharing may ensure that communities are, in fact, receiving a just portion of the riches when their cultural manifestations are commercialised.

These are not concepts of dismantling the entire copyright system; they are of giving it a fine-tuning to make it address the modern aspects of art. By introducing community rights,

infusing constitutional values of cultural diversity and integrating the manner in which the courts are changing, Indian copyright law may become a more complementary regime, which in fact represents the way collective cultural production actually functions.

Towards an Inclusive Copyright Framework

A reasonable copyright scheme would not entail a single author, but would also suit various forms of authorship and also suit most creative forms. Reading about the dumping of individual rights, it is not about leaving them alone; it is about placing them in the context of a larger epidemic, wherein all can partake.

Legal pluralism makes us realise that we can coexist with different rules. That then allows us to admire the way communities do but retain the system consistently. It is we want to get some flexibility, not one set policy fits all.

We require legislators, adjudicators and community spokesmen to converse. Otherwise, we will simply repeat the hierarchies of the past. We will ensure that changes are based on what people really experience, but not mere theory.

Normative Synthesis: Beyond Proprietary Authorship

What we have scraped up here reveals that the current system of copyright construction is not in keeping with how individuals create in the current generation. The traditional stock-picking ownership structure obscures the true meaning of creativity and drives creativity through group efforts. That is all too evident in India, where art is generally completed collectively, repeated, and communally distributed.

The fact that we are dropping the old sole-owner rule does not imply that we are losing copyright. It simply involves changing the item of priority. Copyright has to do with managing the relationship between creators, groups and users, rather than locking out.[124] This move equalises the culture and equitable sharing with the financial motive. The problem of group authorship makes us recognise a creative work as originating in a network, and not of an

[124] Upendra Baxi, "Justice Is a Secret", 28 *Journal of Indian Law Institute* 1 (1986)

individual. The law will do so if the law observes that it is happening that way. It does not take away the effort of individuals; instead, it puts them within a larger network.

FUTURE DIRECTIONS FOR INDIAN COPYRIGHT LAW

The copyright in India is at a crossroads. The new rules are being stretched by tech, online platforms and community-led projects. Small adjustments will not do the trick; we should know where to go. The initiatives of change in the future should target three things. First, position collective authorship legally in order to have revenge against groups. Second, expand fair use, which officially includes remixing and group work. Third, ensure that all people share the gains through the sharing of benefits. The courts, registries, and rights groups, too, must get to know how to handle collective creativity. Unless we develop that ability, any reform will be merely a paper show and not something to happen.

REIMAGINING AUTHORSHIP IN THE DIGITAL AGE

The internet has completely inverted creative activities. We are all able to cooperate, exchange our work, and engage in communities as never before. Due to it, the antique system of saying that one individual is the owner of all things is becoming difficult to maintain.

Digital creativity is informing us that we require legal regulations that are more relaxed. Open licences, a decision-making process based on teamwork, and ensuring that platforms are accountable can assist in ensuring that we not only have access to all of it but credit as well. India must keep pace with these changes, and to do so, its copyright laws must change.

Just because that is so does not mean we should simply leave digital sites to supersede real laws. Big companies are usually more advantaged by the terms of the service, which we sign, as opposed to individuals. It is still within the government that the big rules have to be established.

CONCLUSION

It is not difficult to see how the constraints of the ownership-based system of copyright come into play when considering cultural practices all about cooperation. The model of copyright law in India continues to follow an approach that anticipates there to be one, distinctly identifiable author. And in certain instances, that may suffice, but when you come to incorporate creativity which arises out of group participation, transmitting traditions down the line and community interaction, it fails miserably. Consequently, a massive portion of Indian culture simply falls outside the legal debate.

Appreciating team creativity does not imply discarding the entire concept of copyright. Instead, it signifies that we must revisit those values to make them come to be consistent with how the creative individuals are functioning today and constitutional motives. Court rulings Eastern Book Company v. D.B. Modak and R.G. Anand v. Deluxe Films already demonstrate that Indian courts are recognising that creativity is changing and they must strike the right balance between protection and access. Through these developments, a springboard is provided for future reforms to introduce community rights, a share of benefits and broader rules on fair dealing.

A comprehensive copyright system would, in a nutshell, appreciate the various types of authorship and also provide the human race with the motivation to continue creating and innovating. It may introduce collective licensing practices, provide community chairs on the rights-management table and establish institutional processes that ensure that all people receive equitable representation in the cultural economy. The shift towards this direction would bring the copyright law away towards the inflexible proprietary approach and the more relationships-oriented perspective of the creative production.

Finally, aligning copyright legislation and the pluralist cultural reality in India would lead to increased legal validity and cultural fairness. A system that acknowledges group creativity safeguards the communities as well as beautifies the broad creative ecosystem. After properly designed reforms, the Indian copyright law can ensure that constitutional commitments relating to freedom of expression, the diversity of cultural activities, and real equality are kept up to date and still catch up with how the co-operative creation of culture actually functions in practice.

CHAPTER 6: COPYRIGHT IN THE AGE OF AI (AUTHORSHIP, DATA EXTRACTION AND INVISIBLE LABOR)

BY LEKSHMY G RAJ

INTRODUCTION

Copyright law has transformed through the rapid growth of artificial intelligence including raising doctrinal, policy, and practical questions that must be addressed by contemporary legal education. Throughout the years, copyright laws have been implemented in the creation made by human authors, exercising judgement, skill and creativity which is core in the area of protected works. The implementation has been challenged by artificial intelligence threatening its ownership, where the machines that reproduce outputs through prompts which resemble human made work are traditionally owned by such creators in the first instance. In the recent years, development of such technology has led to grey areas arising in the field of law and through precedents major questions posing its implementation and legal framework has been covered one by one.

India has always celebrated human creativity, drawing inspiration from its rich cultural heritage and young population. With the rapid growth of the middle class, improved access to education, and heavy digital penetration,[125] which has significantly promoted the rise of content creation in our nation. At an age where access to the internet has been made extremely easy, anyone can create and tell their stories through such a medium leading to a boom in the creative industry.

[125] department for promotion of industry and internal trade & ministry of commerce and industry & government of India, “one nation one license one payment”, (December 2025)

Being a very foundational pillar in this growing and evolving economy of India, our Hon'ble Prime Minister, in his speech at the WAGES Summit in Mumbai emphasized that "This is the period of rise of Orange Economy in India"[126] In which the concept consists of three pillars, being Content, Creativity and culture. Therefore, with the parallel rising of AI, and our infant steps in content creation and a voice made where anyone could express themselves which has been ridden years ago, where does AI generated stand here? Does it limit one's voice, or does it pave a way for information to be more accessible.

The copyright system exists to ensure that economic incentives for humans aren't disrupted due to the generation of content made through stolen work. AI is here to stay and it is crucial that we recognize the technology and mitigate the law for a smooth functioning.

BACKGROUND

Since the beginning of technological advancement varying from printing press to photography, sound recording, broadcast, and digital reproduction, each required the law to mitigate and maintain decorum between creators and promote general public access to knowledge. Thus, copyright law has been triggered and evolved to the change. As in each medium, copyright law was tested in different ways to accommodate the law into it. AI systems stand out to be the one of the fastest ever growing and developing forms of Technology till date, thereby challenging the grounds of copyrights.

Though it may seem like AI became mainstream in the last few years, the groundwork goes back to the Early 1900s. After WWII, a number of people independently started to work on intelligent machines. The English mathematician Alan Turing may have been the first. He gave a lecture on it in 1947. He also may have been the first to decide that AI was best researched by programming computers rather than by building machines.[127]By the late 1950s, there were many researchers on AI, and most of them were basing their work on programming computers. The first use of the word "Artificial Intelligence" became popular after a workshop held at Dartmouth

[126] (Hon'ble Prime Minister Narendra Modi, World Audio Visual & Entertainment Summit, Held on May 2025, Mumbai) available at https://www.youtube.com/live/8KGQNB0Ki14?si=mpeth83_XNnA0h5c)
[127] Artificial intelligence, Prof. Emeritus, *available at* <http://jmc.stanford.edu/index.html> (last visited on December 20, 2025)

by John McCarthy, the Father of Artificial intelligence. For which he defined Artificial Intelligence as "the science and engineering of making intelligent machines"[128]

Throughout the years since then, various scholars and mathematicians have made developments in the field, contributing to its maturation. In the current age there is no precise allocated legal framework that governs AI or as to how copyright laws would be applied to its programming, being extremely unexpected as to its application and jurisprudence. The Indian copyright act, 1957[129]exists being one of the domain IPR laws in India,

The Indian copyright act, 1957 defines the term author under section 2(d); "author" means,—
(i) in relation to a literary or dramatic work, the author of the work;
(ii) in relation to a musical work, the composer;
(iii) in relation to an artistic work other than a photograph, the artist;
(iv) in relation to a photograph, the person taking the photograph;
(v) in relation to a cinematograph film or sound recording, the producer; and
(vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created;
(dd) "broadcast" means communication to the public and includes a re-broadcast [130]
Patents Act, 1970, wherein AI systems have been excluded from the ambit of applicability of the Act, thereby restricting the rights of the 'person'. As evident in Section 2 (1) (p), Section 2 (1) (t), where the patentee is referred to as a person, and Section 6 (1) (a), which states that an application for a patent can be filed by 'any person', and also in Section 2 (1) (ja), which defines 'inventive step', an essential requirement for an invention to be patentable, that such invention must not be 'obvious to a person skilled in the art'. Livelaw and it is recognized that AI is not a person [131]
The way AI works is it uses Text and Data mining (TDM) which refers to the automated extraction by the programmers to train Large Language Models (LLMs) and analyses large

[128] (Prof.Christopher Manning, "Artificial Intelligence definitions", September 2020, *available at* < https://hai-production.s3.amazonaws.com/files/2020-09/AI-Definitions-HAI.pdf>)
[129] (The Indian Copyright Act, 1957 (Act 14 of 1957)
[130] The Indian Copyright Act, 1957 (Act 14 of 1957), s.2
[131] Rajiv Sharma & Ninad Mittal, Artificial Intelligence, Intellectual Property, Indian Copyright Act, LiveLaw (22 September 2023)
https://www.livelaw.in/law-firms/law-firm-articles-/artificial-intelligence-intellectual-property-indian-copyright-act-singhania-co-llp-238401 (Last visited on December 20, 2025)

quantities of text, images to generate that correlate to the prompt given. Gen AI models heavily rely on these TDM, which coincidently often uses pre-existing copyrighted works.

With further reference, section 52 [132](gives exception to copyright infringement under the doctrine of Fair use that permits the limited use of the said copyrighted works as long as the purpose of such reproduction is for private use, research, review, criticism and reporting. However most generated work is commercialised and not necessarily pertaining to private purposes as large volumes of this data is being used.

COPYRIGHT LAWS WITH INTERFERENCE TO OWNERSHIP ISSUES

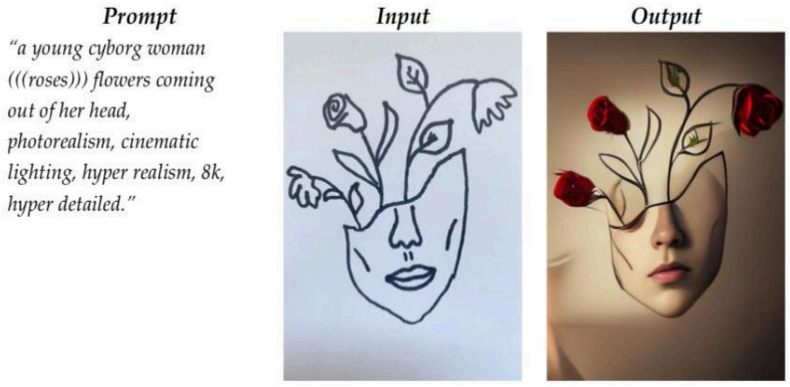
Ownership and AI is a concept which becomes a slip of the tongue when you find an answer to a scenario, however it brings momentum in the development of technology, acting as a catalyst. Generative AI e.g, ChatGPT, Gemini, etc. aid humans to create pieces of work that provide incentives to the prompt writer, due to the demand that exists in the general public to consume the work being music or any artistic pieces. With such production of work and business, raises its legal protection queries, therefore can they receive such copyright protection or does it belong to the original art work that the GenAI sources it from or who can be claimed as the author here? Unnatural authorship has made its appearance before, in the case of Naruto vs. Slater, **[133].** a male macaque named Naruto achieved fame after taking pictures with the camera that he picked up from the forest floor, which is now widely known as the "monkey selfie". A lawsuit was filed against the owner of the camera and his company by the PETA as incentives were made through the publication of the photos taken by Naruto. The case was dismissed on the factor that the copyright law does not protect creations made by non-human entities, further a decision upheld this stating that animals lack standing under the Act.

So what is the standing of AI here, gaining its authorship? - for any work to be qualified for copyright protection, it must have a human author to be eligible for the process. While AI can function as a tool to aid in the creative process, it cannot serve as the sole creator of a copyrightable work nor can any work generated by AI, as it was clarified by the Copyrightability

[132] The Indian Copyright Act, 1957 (Act 14 of 1957), s.52
[133] Naruto v. Slater, 888 F.3d 418 (9th Cir. 2018)

report produced in January 2025, that authorship entails original expression created through human decision-making.

The whole mechanism of AI is that the machine learns the data that is being fed to it and generates responses or reacts to its environment based on that data. But that does not entail it receiving the status of a legal person, therefore it does not possess any rights of ownership. For one to be capable of receiving copyright protection, it must be the original creation of the author, and currently it does not fulfil the criterion of a human creation.



There are instances where AI generated work can be considered as a copyrightable work, for example, the below attached image (the input) is a drawing with expressive elements clearly perceptible in the output. These inputs are not a form of prompts but they are used to communicate the desired outcomes. As the need for the AI to fill in the gaps for any creative work to give out the output is minimal which poses a higher likelihood of the work gaining protection and authorship rights.

Image from **(U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (January 29, 2025)**

COPYRIGHT LAWS WITH INTERFERENCE TO DATA EXTRACTION

The purpose of copyright is to ensure there is a balance in the market between the three main stakeholder groups being the author, the commercial intermediary, and the customer. It exists to prevent the unauthorized use of copyright works by any third party to generate profits from

stolen works. In such event of copyright infringement, the generative AI tools (large language models trained to generate products with pre-existing readily available data on the internet) that are trained on copyright protected material, the copies of the input data made by such AI tools may be seen as "reproductions" of such data, constituting to copyright infringement. [134]

The way in which these A.I systems use such material was illustrated in the case of New York Times vs. OpenAI, the suit showed that Browse With Bing, a Microsoft search feature powered by ChatGPT, reproduced almost verbatim results from Wirecutter, The Times's product review site. The test results from Bing, however, did not link to the Wirecutter article, and they stripped away the referral links in the text that Wirecutter uses to generate commissions from sales based on its recommendations.[135]

The lawsuit highlights the potentiality of ending "independent journalism" while it also hinges on the application of the doctrine of fair use; which the copying may be allowed if the purpose is justified, intending to serve the public's interest. 'AI plaintiffs argue on the fact that training data is non transformative, further adding to it, even if the contents are commercial, the purpose of such marketing was completely different." - **Authors Guild vs. Google.inc**[136] Therefore, the market effect of a challenged use is sometimes said to be the most important fair use factor. [137]**.** However, extraction of such data is not considered to be transformative but instead its substantial, in different terms, we humans also read a piece of information, understand what is being written and come to an understanding and as a result, learning something new. However "LLMs don't have the ability to do that since they are machines, meaning the models absorb the expression of the facts, not the facts themselves, which should be considered copyright infringement, according to the legal counsel of New York Times." [138] AI copies data and does not

[134] CMS LawNow, Belgium, available at: https://cms-lawnow.com/en/ealerts/2024/10/artificial-intelligence-and-copyright-what-are-ai-companies-allowed-to-do (last visited on December 28, 2025)
[135] Michael M. Grynbaum and Ryan Mac, ' The Times Sues OpenAI and Microsoft Over A.I. Use of Copyrighted Work,' The New York Times available at https://www.rose-hulman.edu/class/cs/csse313/schedule/day9/NewYorkTimesSuesOpenAI.pdf
[136] 954 F. Supp. 2d 282 (S.D.N.Y. 2013)
[137] Pamela Samuelson, Generative AI Meets Copyright, Science, Vol. 381, No. 6654, pp. 158–161 (14 July 2023)
[138] Digiday, OpenAI, The New York Times debate copyright infringement of AI tech companies in first trial arguments (15 Jan. 2025),available at:

recreate anything new or innovate.[139] ANI vs OpenAI[140], the first ever case where generative AI has set foot on the jurisprudential issues of copyright infringement allegation in India. This ongoing litigation is appointed by various divided opinions by experts before the court. One of the experts states that the "storing of copyrighted materials" is permissible under the India copyright right laws, although it is not the sole argument underlying the case making it difficult to come to a proper standpoint.

As in any legal case, the intent of the course of action matters. Fair use does not apply to data being copied in order to make a competing product nor generate revenue through stolen work. - Thomson Reuters vs ROSS[141] and using copyrighted data to train LLMs directly infringes their copyrights of the plaintiffs. - Nazemian and Dubus v. NVIDIA.[142]

COPYRIGHT LAWS WITH INTERFERENCE TO INVISIBLE LABOR

In the economical aspect, it is rather tricky to determine how it would affect the labor classification, whether or not it is of a good or bad impact. "Research is beginning to to empathize which jobs are most likely to be affected rather than lost (8). For example, classification tasks such as image recognition can be done with AI will workers whose jobs involve classification tasks such as radiologists.[143]

Another dimension of invisible labor comes from the data annotation, meaning the standard requirement needed to label and classify data which could be interpreted by the LLMs. They are

https://digiday.com/media/openai-the-new-york-times-debate-copyright-infringement-of-ai-tech-companies-in-first-trial-arguments/ (last visited on December 24, 2025)

[139] Pauline Iakubova, 'The New York Times v OpenAI: The Case That Could End Journalism or Break AI', The Gazelle, 20 October 2023 <https://www.thegazelle.org/issue/275/journalism-ai> (last visited on 29 December 2025.)

[140] ANI Media Pvt Ltd v. OpenAI Inc & Anr, Delhi High Court (Copyright Infringement Suit), 2025

[141] (Thomson Reuters Enterprise Centre GmbH v. Ross Intelligence, Inc., No. 1:20-cv-00613-SB (D. Del. February 11, 2025)

[142] (Nazemian et al. v. NVIDIA Corporation, No. 4:24-cv-01454 (N.D. Cal. March 8, 2024)

[143] Pamela Samuelson, Generative AI Meets Copyright, Science, Vol. 381, No. 6654, pp. 158–161 (14 July 2023)

called ghost workers, who are often outsourced to perform essential tasks required to run the AI system but are paid poorly. The International Labor Organization has recorded the model of "human-in-the-loop", where these workers without receiving any legal and societal protections.

Corresponding to the argument given by AI plaintiffs for transformative use, and usage of the doctrine of "sweat of the brow", would not necessarily apply, despite being a core input to machine learning and the works generated by AI. Annotations and micro-task workers do not qualify the meaning of "author" under the copyright law, since their contributions are merely mechanical and lack sufficient creativity needed to be attributed as one.

The monetary worth and meaning of a piece depends on the creative input by the author. With generative AI, pieces are illustrated or made with the combination of multiple other pieces and copied. Datasets like LAION-5B or those trained to Stable Diffusion are massive archives of scraped online art. As Goetze puts it "the aesthetic value of AI-generated image is not created ex nihilo; it is extracted from a distributed archive of human labor"[144], being labor theft. Therefore, it diminishes the quality of an artistic piece, and its value as well.

INTERNATIONAL JURISPRUDENCE

The rise of Artificial intelligence has diversified in various countries according to its culture and lifestyle, which changed the application of copyright law. Different countries have their private laws to mitigate and mold to its trends while maintaining harmony with foreign countries. The international copyright law is primarily governed by the Berne convention For Protection Of literary and artistic works, the TRIPS agreement [145] and WIPO copyright Treaty [146] With a sudden emergence of AI posing Copyright issues and where it stands in the legal world with no

[144] (Trystan S. Goetze, "AI Art is Theft: Labour, Extraction, and Exploitation, Or, On the Dangers of Stochastic Pollocks", in The 2024 ACM Conference on Fairness, Accountability and Transparency (FAccT '24), Rio de Janeiro, Brazil, 3–6 June 2024, DOI:10.1145/3630106.3658898.)
[145] (Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.)
[146] (Convention Establishing the World Intellectual Property Organization, July 14, 1967, as amended Sept. 28, 1979, 828 U.N.T.S. 3)

binding standard causing chaos. Various working papers and discussions have been initiated by countries like India And the US.

India

A very prominent step that's been made recently with reference to AI governance in India, the central government has started reviewing the existing legislation being the copyright act, 1957. An eight member expert committee was constituted and set up on April 28th 2025, by the department for promotion of industry and internal trade in response to the question raised in the Lok Sabha by the congress MP Shashi Tharoor related to the "impact of generative artificial intelligence on copyright law, mainly concerning the authorship, ownership, licensing and liability in cases of AI generated works"[147] The working paper titled "one nation one license one payment" intending to produce a 'Hybrid Model' addresses the issues raised by Shashi Tharoor in two parts. Furthermore, the minister of state in the ministry of commerce and industry Shri Jitin Prasada stated that " the committee has finalized part 1 of the working paper named on the issue of use of copyright content in AI training. It has been published for stakeholders feedback. The issues on authorship and copyrightability of AI generated works which would be covered in part 2 if the paper are under review." [148]

A hybrid model is proposed to conserve cultural evolution while providing room for innovation, to preserve incentives for human creators and hand in hand develop efficient AI systems. Standing as a sustainable framework in development of AI in copyright law.[149]

[147] S N Thyagarajan, 'Copyright Act being reviewed to address challenges posed by generative AI: Centre in Lok Sabha', Bar and Bench (17 December 2025) available at: <https://www.barandbench.com/news/law-policy/copyright-act-being-reviewed-to-address-challenges-posed-by-generative-ai-centre-in-lok-sabha> (last visited on 29 December 2025).

[148] (Government of India, Ministry of Commerce & Industry, Department for Promotion of Industry and Internal Trade, Lok Sabha Unstarred Question No. 2699 (answered 16 December 2025): Generative AI and Copyright Act, sansad.in/getFile/loksabhaquestions/annex/186/AU2699_Q5lh0b.pdf (last visited on 28 December 2025).

[149] (department for promotion of industry and internal trade & ministry of commerce and industry & government of India, "one nation one license one payment", (December 2025)

United States

The U.S. Copyright Office took a proactive approach responding to the cases related to AI with correlation to its copyright spectrum. The main aim of the authorities conducting sessions to gather input from the stakeholders was to explore how the copyright law must change to the implications of AI. Activities culminating in August 2023, the report was finally published in January 2025 - "copyright and Artificial Intelligence; PART 2: Copyrightability"[150] by the copyright office of the US. In this report, the commenters and stakeholders alike, opined that "AI generated content would discourage human authorship"[151]. leading to an unfair advantage is the market. In the view of the office, there exists a law that enables the developers of AI to enjoy incentives generated through AI. "If authors cannot make a living from their craft, they are likely to produce fewer works. [152]" The US therefore stands on the point that there is a need for human input for a work to be considered as a copyrightable work.

United Kingdom

The United Kingdom has always been a pioneer in the field of copyright, so much so that it introduced the world's first copyright Act, the statue of Anne in the year 1710. [153] and unlike other countries, the UK protects computer generated works being enumerated in the current act that governs copyright law, the Copyright, Designs, and Patents Act, 1988 (CDPA) , there exists a balance between innovation and copyright protection which has been adopted. A copyright exemption for training AI models for text and data mining was established in 2022 proposed by the Intellectual Property Office aiming to support the development of UK's AI industry[154]. This caused an uproar as data was being stolen and infringed the creative rights of creators. Due to criticisms, the minister of creative industries, arts and tourism Chris Bryant said the government would not proceed with the proposals in the consultation before an effective system of rights reservation was in place.

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[150] (U.S. Copyright Office, Copyright and Artificial Intelligence, Part 2: Copyrightability (January 29, 2025)
[151] ibid
[152] ibid
[153] (M.Mohit Prem Kumar, " On Treating Artificial Intelligence as a legal person to hold intellectual property under the Indian Legal framework and ethical analysis" 5 Indian Journal of Integrated Research in Law 1052 (2024)
[154] House of Lords Communications and Digital Committee, "Large Language Models and Generative AI" (1st Report of Session 2023–24, HL Paper 54, ordered to be printed 29 January 2024 and published 2 February 2024) <https://publications.parliament.uk/pa/ld5804/ldselect/ldcomm/54/54.pdf> (last visited on 29 December 2025.)

ISSUES WITH RESPECT TO THIS FIELD

The effective regulation of copyright in the context of AI is still hindered by an array of structural and doctrinal challenges, and despite ongoing policy discussions and comparative learning from other jurisdictions from various countries.

The systematic chilling effect on human creators, especially upcoming authors and artists, is a problem that is most commonly ignored. The widespread availability of AI- generated alternatives which are frequently simpler, cheaper and uncredited , poses a threat to the value of original human labor. The incentive structure that copyright law is intended to maintain is threatened by this decline in market confidence, particularly in developing creative economies like India's where institutional assistance for artists is still developing.

Due to litigation and legislative amendment, copyright law is by itself reactive. In contrast, AI is developing at an exponential rate as we speak.as a result there is a continuous regulatory lag, meaning that by the time legal solutions are put into effect they are out of date.

CONCLUSION

In the age of AI, challenges arose in the field of copyright law which inevitably disrupted the language standing assumptions about human authorship, ethical data mining and recognition of ghost workers. While technological change was a trigger to the evolution of copyright, due to the autonomous functioning including collection and dependence on huge volumes of existing creative data on the internet, generative AI stands out as a challenge. Existing copyright frameworks that govern authorship and fair use, fail to address machine generated outputs and their locus standi without risking the foundational principles to be diluted as they are not human centric.

The legality of data extraction further threatens the very core aspect that copyright law aims to preserve being the economic incentives that surround the activity of generative AI. With rapid

change in the international jurisdictions and change in the growing trends of how these countries approach it, it continues to reform the legislative outstrip.

Moving forward, is the way, a carefully conducted study and discussions initiated by countries to mitigate signals the effort put to balance innovation with the protection of creator's rights. Like the hybrid model and AI act instituted are stepping stones for Copyright in the Age of AI.

CHAPTER 7: SURVEILLANCE AS ENFORCEMENT: DIGITAL POLICING, DRM, AND LOSS OF AUTONOMY

BY DIYA SABAPATHY

INTRODUCTION

Digital technologies are quietly transforming how we experience the law. Regulation, once mediated through human judgement, is now increasingly embedded directed into software and code. It no longer waits for violations. Rather, it pre-empts it. This chapter examines this transformation. It aims to explore how copyright enforcement has begun to resemble surveillance by producing a model of digital policing. We will understand the legal basis for platforms to monitor activity, detect violations, impose sanctions, etc without procedural safeguards typically associated with public law.

At the center of this shift lies the concern of the potential erosion of user autonomy. By tracing the convergence of surveillance, digital policing and copyright enforcement, this chapter draws on comparative jurisprudence, statutory frameworks and real-world enforcement practices. It interrogates how automated systems operate and ultimately asks whether copyright can retain its legitimacy in digital society when constraint isn't a conscious choice, but constraint.

SURVEILLANCE AS ENFORCEMENT

‘Big brother is watching you.’ The Cambridge Dictionary defines surveillance[155] as “the careful watching of a person or place, especially by the police or army, because of a crime that has happened or is expected.”

In George Orwell’s 1984[156] This phrase helps paint the picture of surveillance as a constant reminder that lies in uncertainty rather than perpetual suffocation. Citizens were not sure when they would be watched and for what purpose. As a result, self-regulation[157] infiltrated daily habits, small talk and advocacy. A confusion between what qualifies as deviancy and what is permissible is born, creating a routine that is stable and predictable which is preferable for those who monitor but does not capture the essence of humanity- expression.

Surveillance[158] does not need individuals to be accused in a courtroom or confronted by the state. But it enforces swift and certain discipline. It is enforcement that does not announce itself as enforcement. It presents itself as a notification, malfunction or temporary inconvenience. Most importantly, it does not look like power so it can be absorbed as general practice.

Contemporary surveillance is embedded in everyday tools and is framed as convenience or safety. Those subject to it are told it enhances the experience. Originally, surveillance existed to observe wrongdoing and needed reason to be in effect but today’s reality shows us it maps behavior and attempts to predict risk with its goal being to anticipate action, not correct it.

If this is what surveillance feels like, what does it mean when copyright enforcement adopts the same architecture?

At first, surveillance and copyright[159] seem worlds apart. Intellectual property is traditionally enforced through statutory remedies while surveillance, by contrast, evokes images of intelligence agencies and security cameras. However, in the digital enforcement within which most of us operate now, surveillance has become one of the primary mechanisms by which intellectual property rights are enforced.

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[155] Cambridge Dictionary, *“Surveillance”*, online: https://dictionary.cambridge.org/us/dictionary/learner-english/surveillance
[156] George Orwell, *1984* (Secker & Warburg, 1949) at 3.
[157] Kiley Seymour, Jarrod McNicoll & Roger Koenig-Robert, *Big Brother: the effects of surveillance on fundamental aspects of social vision*, *Neuroscience of Consciousness* (2024)
[158] David Lyon, *Surveillance*, *Internet Policy Review* 11(4) (2022), https://policyreview.info/concepts/surveillance
[159] GreyB Services, *IP Infringement Detection for Market Surveillance*, *XRAY* (2025), https://xray.greyb.com/intellectual-property/infringement-monitoring-and-detection

FROM COURTS TO CODE: DIGITAL POLICING IN COPYRIGHT ENFORCEMENT

Digital policing[160] refers to technological systems and private intermediaries exercising enforcement functions that include monitoring and sanctions without public law safeguards, rather than by courts or state authorities. It is carried out by online platforms, content hosting services, DRM systems or algorithmic tools that set rules, detect violations and impose penalties - effectively acting as regulators, enforcers and adjudicators. Something to note is that infringement used to be alleged and legality was determined through adjudication. Digital enforcement moves away from this by relocating enforcement. It is now in codes and not courts.

In the context of Intellectual Property, digital policing takes forms such as-

i) Automated System Takedowns: This is when a site scans the material one uploads onto it against a database of copyrighted material to enforce copyright. For example, YouTube videos[161] are scanned before or immediately after uploading them and matches trigger automatic actions like takedown, muting or monetization transfer. This may impact videos using short clips for criticism, parody, education- reasonable usages. Content ID enforces copyright without evaluating fair use although fair use is legally protected.

ii) Content Filtering[162] Strategies: Content filters generally assess content sources and web or device users. Information from the content one uploads must pass through a (copyright, in this context) filter and be approved to reach users. The impact this has is quite profound because speech is filtered pre-emptively in cases of small businesses, educators or activists when background music is detected and their videos are muted or blocked on Instagram or Facebook.

iii) Account Strikes & Suspension: This refers to entire accounts being terminated or suspended when copyright claims arise for certain posts. For instance, YouTube's three-strike policy[163] deletes a channel when there are three copyright strikes and years of content is lost. Appeals

[160] Leidos, *The Future of Policing: Digital Policing. Building 21st Century Systems*
[161] Nikhil Pahwa, *Are YouTube's content takedowns in accordance with Indian law?*, *Media Nama* (26 June 2025)
[162] Darktrace, *Content Filtering*, Cyber AI Glossary
[163] YouTube Help, *Understand copyright strikes*, https://support.google.com/youtube/answer/2814000

often remain unresolved and something to note here is the fact that some argue that this punishment is disproportionate to individual violations and affects future participation, not only past conduct.

iv) Demonetization[164] and Shadow-Banning: Creators that earn money from their content on an online platform losing that revenue because their content used copyright material is demonetization. These platforms typically redirect those earnings to the actual copyright holder, thereby removing the creator's income in these cases. Shadow-banning[165], on the other hand, is when a user is blocked from a site without their knowledge and reflects in the fact that their posts and comments are no longer visible to other users. This can be seen in Amazon's Kindle E-Book ecosystem when Amazon uses DRM to monitor how e-books are accessed, the devices that use them and account activity patterns leading to accounts being locked or restricted. Readers have been locked out of their E-libraries due to alleged 'terms violations and authors have had their books removed or suspended due to algorithmic flags[166] like similarity. This is a version of demonetization and shadow-banning because the books are not publicly banned but rather just unavailable, making royalties stop and visibility drop.

Those who engage in this sort of digital policing often talk of its advantages along with its necessity which are only fair to explore. One could hold the view that in an atmosphere so open to all, the chances of a gaping hole letting in the unfiltered rays of illegal re-use of intellectual property are incredibly high which warrants real-time, immediate detection across platforms, protects original creators' economic interests, allows more efficient dispute resolution and cross-border enforcement. All of this is important because it helps rightsholders protect works in an era of potential mass digital copying and aligns with the essence of the existence of copyright.

However, it may have an alarming effect on free speech.[167] Algorithms do not understand context. Lawful uses like fair dealing, parody, criticism, review and educational use are often misunderstood and taken down. There is also an apparent lack of due process because content is often removed before hearing the user- appeals are slow and opaque. Procedural due process is notably absent in such systems. This makes enforcement private and platform-driven more than

[164] Nicolo Zingales & Catalina Goanta, *Demonetization*, in Belli, L.; Zingales, N. & Curzi, Y. (eds), *Glossary of Platform Law and Policy Terms* (2021), https://platformglossary.info/demonetization/
[165] The Economist, *What is "Shadowbanning"?* (1 Aug. 2018)
[166] Abhimanyu Agarwal, *Algorithmic Content Moderation and Copyright Law*, *The Digital Future* (26 Oct. 2020)
[167] The Greenwich Daily, *When Tweets Become Evidence: Free Speech and Digital Policing* (2025)

judicial, which is debatable in itself. Apart from these, one of the most important concerns is privacy. Continuous monitoring of user behavior and content paired with data collection without informed consent hardly spells out solitary freedom.

DIGITAL RIGHTS MANAGEMENT: OWNERSHIP, LICENSING, AND THE ARCHITECTURE OF CONTROL

When enforcement operates through code before courts, the question may traverse plains of ownership itself. Digital Rights Management[168] exemplifies this shift because it allows copyright to transform from a legal entitlement to a technologically enforced condition of access. Legally, it is recognized as a technological protection measure.

It refers to a set of technological measures used to control access and use of digital content. It is a code that enforces copyright rules automatically. It decides who can access digital work, how it can be used and for how long along with on what device or platform. It enforces these decisions before any dispute arises, which often makes certain actions technically impossible rather than legally contestable. It commonly operates through encryption wherein content is locked and only opens with authorized keys. It links content access to user accounts and limits use to specific hardware with the power of disabling copying, printing, sharing or screenshotting. It allows content to be withdrawn after purchase and altered in use. The primary principle to understand here is that these controls are interwoven and embedded into the software or platform itself and are not applied through courts or the police.

Common examples of DRM are Netflix not allowing you to share your screen in a meeting or e-books not allowing you to copy the text on it. As these examples portray, DRM intervenes before copyright is infringed, which is at the point of access itself. This is an incredibly intriguing position to take because of the nuances it highlights in ownership and licensing.

[168] GeeksforGeeks, *Understanding Digital Rights Management*, https://www.geeksforgeeks.org/computer-organization-architecture/understanding-digital-rights-management/

Historically, ownership of a copyrighted work permitted a lot of residual freedoms. Owning a book meant possessing the ability to re-read it multiple times, annotate, re-sell, lend or preserve it for future use. Copyright law justly imposed limits on reproduction and exploitation but did not regulate ordinary consumption. Ordinary consumption as a concept is quite ambiguous now.

DRM offers us a delicate situation within which the otherwise clear lines of demarcation between licensing and ownership are blurred. Digital works are no longer 'sold'. Instead, they are accessed under conditions. When a user purchases digital content, they do not 'acquire ownership' in a meaningful sense. They procure non-negotiable licenses instead, which are embedded in terms of service and enforced by code. This shift is subtle but needs to be inspected further because ownership typically implies autonomy over a product but licensing implies permission. DRM ensures that permission can be withdrawn, modified or constrained freely.

The stress between ownership and access has been addressed in a variety of areas. In *Used Soft GmbH v. Oracle International Corp*[169] *The* Court of Justice of the European Union recognized the principle of digital exhaustion. It held that software licenses accompanied by a one-time payment could amount to a sale. While this decision restores user autonomy momentarily, its limited scope shows how rare such judicial recognition is in the broader DRM-dominated ecosystem.

This model extends to market structure as well, as was made evident by the *Apple iTunes DRM Antitrust Litigation,*[170] where Apple's FairPlay DRM was challenged for restricting interoperability and locking consumers into the iTunes iPod ecosystem. The case highlighted another interesting angle and talked about how DRM can be deployed to suppress competition and not only prevent infringement. In doing so, DRM was used as a mechanism of behavioral and market control. User autonomy was, in this case, constrained at the level of economic participation.

With specific regard to licensing, Courts have also endorsed the use of licensing agreements to curtail user autonomy beyond traditional copyright limits. In *MDY Industries v. Blizzard*

[169] Osborne Clarke, *The End of the UsedSoft Case and Its Implications for "Used" Software Licences* (11 May 2015), https://www.osborneclarke.com/insights/the-end-of-the-usedsoft-case-and-its-implications-for-used-software-licences

[170] Order in *The Apple iPod iTunes Antitrust Litigation* (U.S. Dist. Ct., N.D. Cal., No. 5:05-cv-00037, Oct. 30 2009)

Entertainment[171] The Ninth Circuit upheld restrictions imposed through terms of service. It treated violations of license conditions as grounds for enforcement despite no actual infringement. The decision shows how contracts can redefine lawful use and subject user discretion to private rule-making when involved with DRM.

Indian copyright law recognizes technological protection measures most notably through statutory backing under Section 65A of the Copyright Act, 1957.[172] It states: "Nothing in sub-section (1) shall prevent any person from,— (a) doing anything referred to therein for a purpose not expressly prohibited by this Act: Provided that any person facilitating circumvention by another person of a technological measure for such a purpose shall maintain a complete record of such other person including his name, address and all relevant particulars necessary to identify him and the purpose for which he has been facilitated; or

(b) doing anything necessary to conduct encryption research using a lawfully obtained encrypted copy; or

(c) conducting any lawful investigation; or

(d) doing anything necessary for the purpose of testing the security of a computer system or a computer network with the authorization of its owner; or

(e) operator; or

(f) doing anything necessary to circumvent technological measures intended for identification or surveillance of a user; or

(g) taking measures necessary in the interest of national security."

This section criminalizes the circumvention of DRM and applies even if the underlying use is lawful. Exceptions to this are narrow and procedural. In effect, technological protection is prioritized over user rights even where the intended use may be lawful. This raises concerns about the absence of a balance between creators' interests and user rights.

[171] MDY Industries, LLC v. Blizzard Entertainment, Inc., No. 09-15932 (U.S. Ct. App., 9th Cir., Feb. 25 2011)
[172] Copyright Act, 1957 (India), Sec. 65A

Judicial approaches reflect similar prioritization of technology over user rights. In *RealNetworks v. DVD Copy Control Association*[173] The Ninth Circuit held that circumvention of DRM was unlawful even where users had lawfully purchased the DVDs and sought to make personal backup copies. The court's reasoning made clear that ownership of content does not translate into autonomy over its use once technological protection measures are in place. The decision reinforces a model of legality where compliance with code determines permissible use over the scope of lawful ownership,

One of the doctrinal principles most affected by DRM is the First Sale Doctrine.[174] This doctrine enabled free, standard use (not exploitation) of works which proved to be essential in cultural exchange and knowledge dissemination. As a legal concept, it rests on the core idea that once the copyright owner is compensated, control over that copy ends and perpetual downstream control would be unreasonable. It works best for physical goods but is increasingly weak in digital environments. Digital goods are infinitely reproducible, don't degrade, *require* copying to transfer and are mediated by platforms so courts fear resale equals uncontrolled and potentially unfair reuse. This doctrine is still conceptually correct in the sense that copyright need not create endless control over lawful copies but the issue may be that technology has been designed to bypass it.

Reluctance to extend ownership to digital goods is further illustrated in *Capitol Records, LLC v. ReDigi Inc*[175]., in which case the court rejected the applicability of the first sale doctrine to digital music files. Despite users having lawfully purchased the content, resale was prohibited due to the technical necessity of reproduction. This decision reinforces the idea that digital ownership is structurally incompatible with traditional notions of autonomy. This provides the basis for the reasoning that DRM is a restrictive but legitimate practice.

It protects its users well but partially. It works well in libraries, second-hand markets, archives and more but tends to fail users with e-books, software, streaming media and cloud-based access. Users pay for use but acquire no transferable interest, making it conserve traditional ownership

[173] RealNetworks, Inc. v. DVD Copy Control Ass'n, N.D. Cal., No. C 08-04548 HRL (7 Oct. 2008), *RealDVD* TRO extended (Harvard JOLT Digest), https://jolt.law.harvard.edu/digest/realnetworks-v-dvd-copy-control
[174] Sumeet Guha & Shreya Matilal, *First Sale Doctrine in India with Special Reference to Digital Copyright Works*, *NLUA Journal of Intellectual Property Rights* Vol 2, Issue 2 (202?)
[175] Capitol Records v. ReDigi, No. 16-2321 (2d Cir. 12 Dec. 2018), affirming infringement finding that first-sale doctrine and fair use do not protect digital resale of copyrighted music, https://law.justia.com/cases/federal/appellate-courts/ca2/16-2321/16-2321-2018-12-12.html

but give out when it comes to platform-mediated access models. Courts may hesitate to extend this doctrine easily digitally because digital resale could amount to perfect piracy. Circumvention of DRM risks copying far and wide. Thus, they are institutional risk calculations rather than bad-faith concerns.

THE EROSION OF YOUR AUTONOMY

However, the most significant cost of all of these copyright enforcement methods coming to light is not inconvenience. It is the gradual erosion of user autonomy.[176] Autonomy is the freedom to make your own decisions- the ability to make informed choices so they are valuable. In law, it is not satisfied by the mere presence of options but by the existence of purposeful choice. Choice that can be exercised with awareness and the ability to refuse without disproportionate cost. Autonomy matters because every individual is entitled to options. It preserves the distinction between regulation and control- it operates in guidance and is not overridden by design. Individuals decide for themselves while systems that pre-empt possible illegal decisions collapse that capacity completely.

Tools like Digital Rights Management alters the idea of autonomy quite fundamentally when it is just a part of our general daily routines. They operate on preclusion. Under traditional copyright, the law regulated outcomes in the sense that certain acts were prohibited, others permitted and disputes were resolved post-conflict. DRM reverses this logic. It regulates the possibility itself.

When a film-maker cannot screenshare a legally licensed film to present and critique or a purchaser loses access to a digital library due to unclear terms of violation, this issue goes from access to disappearance of choice. Acts that copyright law might permit may be curtailed by DRM and make them invisible, or non-existent, rather to the realms of real judgement altogether.

The effect of such structure is behavioral. Much like the aforementioned surveillance (that is established to cause automatic self-regulation), DRM conditions users to anticipate consequences

[176] Molly S. Van Houweling, *Author Autonomy and Atomism in Copyright Law*, *Virginia Law Review* Vol 96 (2010), 551–? (available via UC Berkeley Law)
https://www.law.berkeley.edu/center-article/author-autonomy-and-atomism-in-copyright-law/

as well. Users adapt by internalizing the platform's limitations and not understanding the law. The risks this bears are risk-averse participation which narrows creativity and mild self-censorship. It is an issue when it mainly impacts creators, educators and researchers who bank on lawful exceptions like fair use.

A scary fact is DRM can become surveillance. The convergence of the two is not only conceptual. It materialized in the Sony BMG "rootkit" controversy.[177] In this case, DRM software embedded in music CDs covertly installed spyware on users' computers to monitor usage and restrict copying. The issue here was whether an attempt at protecting copyright went too far and invaded privacy. The resulting settlement portrayed how copyright enforcement technologies can overlap with invasive surveillance and operate without user knowledge or consent. This illustrates how enforcement framed as protection can undermine privacy and autonomy in a chilling manner.

This loss of autonomy seeps into general expectation. What is concerning is that it occurs without transparency- or felt transparency, rather. Decisions regarding access are made by private entities and their automated systems without explanation or effective appeal. The user is now restricted without recourse. It is worrying that a user may become a managed participant whose freedoms exist to the extent of a code permitting them over a lawful user having their own rights to lawful use.

All of this raises a deeper theoretical question. Is compliance of more value when it arises from the impossibility of deviation or conscious adherence to law? And, does compliance have to be meaningful at all? Legal order has always relied on the presupposition that one has the capacity to disobey- it sets rules and punishes when broken. To create a system wherein there is no possibility of breaking the law, conduct becomes uniformly lawful- but at what cost? When structures eliminate disobedience by constraint, legality could become functionality. Achieving order at the price of the very agency that gives law meaning may not be 'achieving' order at all, it is just foisting it. Therefore, the question is not whether DRM reduces infringement but whether it is just.

[177] *Sony BMG settles 'rootkit' case*, *Pinsent Masons Out-Law News* (20 Dec. 2006)

The nuanced nature of this concept, as any tricky matter in law, has ongoing debates about it. There are policy concerns globally regarding this. One of them is algorithmic over-blocking. Content recognition systems operate on patterns that match rather than understanding context. Due to this, they frequently make mistakes and flag lawful usage of copyrighted works as infringement. A case that addresses this is *Lenz v. Universal Music Corp*[178]., wherein the court emphasized that lawful uses such as fair use must be considered before enforcement action is taken. This tendency is not accidental as platforms are incentivized to avoid liability and minimize risk. Algorithms with this sort of dynamic have intensified in the post-*Viacom International Inc. v. YouTube, Inc.* landscape. The consequence is arguably a silencing effect on speech because lawful expression may be suppressed pre-emptively in anticipation that it might resemble content that is protected. Similar concerns were echoed in *Shreya Singhal v. Union of India.* Over-blocking, as a result, can transform copyright enforcement from a corrective model to a preventive one. This will restrict expression before its legality can be evaluated at all.

The risk we are exploring has been central to criticisms of automated filtering systems[179] under the EU's Article 17[180] and was directly examined in *Poland v. European Parliament and Council*. Tensions between automated enforcement, user rights and platform governance are actively being discussed in another ongoing debate surrounding Article 17[181] of the EU's copyright in the Digital Single Market Directive (DSM). The DSM refers to the EU's attempt at unifying and harmonizing digital trade, services and content regulation across the countries by removing legal and territorial barriers online. It encapsulates a lot of these concerns at a policy level. The article places direct liability on online content-sharing service providers for copyrighted material uploaded by users that make it a requirement for platforms to implement such mechanisms.

[178] Lenz v. Universal Music Corp., Ninth Circuit Requires Analysis of Fair Use Before Issuing of Takedown Notices, 129 Harv. L. Rev. 2289 (June 2016)
[179] Christoph Schmon, Filip Lukáš & Corynne McSherry, *The EU's Copyright Directive Is Still About Filters, But EU's Top Court Limits Its Use*, *Electronic Frontier Foundation* (4 May 2022), https://www.eff.org/deeplinks/2022/05/eus-copyright-directive-still-about-filters-eus-top-court-limits-its-use
[180] Felipe Romero Moreno, *'Upload filters' and human rights: implementing Article 17 of the Directive on Copyright in the Digital Single Market*, *International Review of Law, Computers & Technology* 34(2) (2020), https://www.tandfonline.com/doi/full/10.1080/13600869.2020.1733760
[181] Eva Simon, *Academics Push for Copyright Safeguards Against Over-Blocking*, *Liberties* (12 Nov. 2019)

While the provision also acknowledges the importance of safeguarding lawful uses, platforms have to rely on automated upload filters in practice. This has led to concerns about over-blocking and the privatization of enforcement resurfacing. Supporters view Article 17 as what is needed to rebalance power in favor of users. On the other hand, opposers of this view warn that it normalizes surveillance-based enforcement and places restrictions into infrastructure rather than law. This conversation shows the unresolved, building middle ground between copyright protection and the preservation of user rights within the aforementioned automated systems.

ADDRESSING GAPS AND SOLUTIONS IN COPYRIGHT ENFORCEMENT

Identifying gaps in the modern copyright world is essential because we can explore how law, technology and governance meet- and with the right solutions, shake hands. It is necessary to recalibrate enforcement. With proper mechanisms and safeguards, they can be dealt with. The most notable gaps are-

i) Enforcement without due process

Problem - Here, it is automated takedowns without hearing any party out. The outcome of this issue is that content can be removed and accounts can be penalized before its legality is assessed. Pre-emptive enforcement undermines procedural fairness.

Solution - It can be fixed by platforms providing mandatory notices, coming to reasoned conclusions and addressing appeals quickly. Introducing time-bound appeal mechanisms and a certain level of minimum human review would help prevent unfairness in these matters.

ii) Private governance potentially replacing courts in this matter

Problem - Platforms act as judges and executioners when they have a different set of authorities outside of these ones. The decisions are made through internal rules and not publicly accountable standards.

Solution - This gap needs clearer intermediary obligations and regulatory oversight instead of overbearing corrections before mistakes happen. Establishing definite limits on discretion and subjecting enforcement practices to external review would help.

iii) Overriding lawful exceptions

Problem - Fair use is valid in law, according to our Acts but is hard to observe in digital practice. Automated systems are unable to assess context or intent, leading to lawful exceptions being overridden.

Solution - Statutory DRM exceptions and designing sites to assess even further may be the best solution to this. Mandating that DRM systems include lawful uses and creating designs aware of exceptions could help bridge this gap.

CONCLUSION

This chapter is ultimately about autonomy. As copyright enforcement becomes embedded in digital infrastructure, the space for lawful judgment, dissent and creativity narrows quietly. Decisions once mediated by human discretion are increasingly replaced by automated systems that operate before expression can occur. Understanding this shift is essential- not merely to critique technical efficiency, but to ensure that enforcement does not come at the cost of the agency that gives legal rights their meaning. Without autonomy, compliance is not reasoned and copyright risks transforming from a framework that regulates conduct into one that governs expressive behavior itself.

Therefore, what is at stake is the legitimacy of copyright law in a digital society. When technological systems try to predict conduct within legal bounds, the law no longer functions as a set of norms open to interpretation. Instead, it becomes a concept of constraint. This shift conceals accountability, limits contestation and repositions users. We may shift from rights-bearing participants to passive subjects of regulation. Thus, preserving autonomy within copyright enforcement is essential to maintaining the balance between protection and freedom. We must ensure that copyright remains a legal instrument grounded in choice and judgment.

CHAPTER 8: THE FUTURE OF LIBRARIES, ARCHIVES, AND CULTURAL MEMORY UNDER STRICT COPYRIGHT REGIMES

BY PARWATI PRAJAPATI

INTRODUCTION

Libraries have traditionally played a crucial role in disseminating knowledge, and digital libraries continue to fulfil this function in the current information environment. Recognizing their importance, the Indian Copyright Act, (1957) grants particular rights to libraries and digital libraries. This involves the ability to create limited copies of copyrighted works and to provide access to information for students, universities, scholars, and researchers without the need to pay royalties to authors or creators.[182] However, these benefits also raise concerns regarding the protection of creators' rights and interests. To address this, the Act permits these activities exclusively for educational, research, and societal development purposes, without any profit or commercial benefit. The permitted activities are classified as "Lawful Use" under the Indian Copyright Act, 1957, balancing public access to information with the protection of creators' intellectual property rights.

Libraries and archives have traditionally served as institutions dedicated to providing public access to information for the benefit of society. They are crucial for systematically maintaining substantial amounts of data and for protecting historical records and cultural heritage. Owing to rapid advancements in technology and the global rise in internet connectivity, numerous digitization initiatives have emerged worldwide.

The objective of these projects is to transform books, records, research articles, theses, dissertations, manuscripts, government documents, parliamentary records, case files, and various

[182] T C James, "Copyright Law of India and the Academic Community" 9 *Journal of Intellectual Property Rights* (2004).

other materials into digital formats. The main goal of digitization is to save large volumes of data in small physical spaces while providing users with easy and constant access at any time and from anywhere. Digital conversion greatly eases the tasks of safeguarding and managing information[183].

The digitization of library and archival collections naturally includes tasks like copying, scanning, uploading, and offering public access—activities that are governed by copyright holders. Copyright legislation provides creators and authors with legal claims concerning the replicating and digital dispersion of work. As a result, libraries and archives must legally secure permission from copyright holders before digitizing materials. Obtaining these permissions is frequently lengthy, expensive, and complicated, especially when it's challenging to find the rights holders. This legal obligation presents a significant obstacle for libraries and archives in the contemporary technological age, restricting their capacity to digitize and grant open access to information.

The key difficulties encountered by libraries and archives in accomplishing their primary roles of safeguarding information and ensuring public access can be outlined as follows:

1. Complexities in Digitization Due to Copyright Law

The digitization of documents, papers, and books has been more complicated under Indian copyright legislation. Libraries and archives are required to secure the prior approval of the creator or copyright owner before undertaking any digitization activities. This process often involves creating official agreements and securing required permits. In many cases, determining the actual author or rights holder is difficult, particularly for older or orphaned works, resulting in significant delays and legal uncertainty.[184]

2. Copyright Restrictions Hindering Access to Knowledge

Copyright limitations can hinder the main role of libraries and archives, which is to guarantee the accessibility of information resources for educational and research objectives. Often, the stipulations set by copyright holders are very limiting or costly, posing challenges for organizations that seek to offer free or affordable access to students, universities, academics, and researchers.

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[183] Digitisation of information resources for libraries, archives and information centres *available at:* https://www.researchgate.net/publication/376315372_Digitisation_of_information_resources_for_libraries_archives_and_information_centres (last visited on November 21, 2025).

[184] T C James, "Copyright Law of India and the Academic Community" 9 *Journal of Intellectual Property Rights* (2004).

3. Challenges in Cross-Border Distribution of Knowledge

When sharing materials internationally, libraries and archives need to adhere to the diverse copyright laws and regulations of various nations. These legal variances render the international exchange of information more lengthy, expensive, and administratively complicated. The absence of uniformity in copyright systems remains a significant obstacle to worldwide access to information.[185]

HISTORICAL BACKGROUND OF COPYRIGHT LAW IN THE CASE OF LIBRARIES, ARCHIVES AND CULTURAL MEMORY

The roots of contemporary copyright law can be linked to the passage of the Statute of Anne in 1710, which is also referred to as the British Copyright Act of 1710. This significant legislation is broadly considered the essential structure on which modern copyright systems globally have been established[186]. The Act provided authors with the sole authority to manage the publication of their creations, while publishers received a restricted-term right to replicate and disseminate the works for which they had secured a legitimate license. Sanctions and fees were applied in instances of violation or unlawful duplication.

Nevertheless, the Statute of Anne lacked specific provisions or exceptions for libraries, archives, or organizations tasked with safeguarding cultural heritage. Its main emphasis was on managing the rights of creators and publishers, while also protecting the interests of the reading audience. The absence of distinct library or archival exceptions during this development stage impacted the early evolution of copyright law, emphasizing ownership and control over access and preservation

International copyright agreements that India is a participant in are vital for creating multilateral benchmarks among member nations and guaranteeing a unified worldwide copyright system.

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[185] Copyright Conundrum: Exploring Legal Challenges and Solutions in Public Libraries, *available at:* https://www.researchgate.net/profile/Rubi-Acherjya-Manna-3/publication/381613527_Copyright_Conundrum_Exploring_Legal_Challenges_and_Solutions_in_Public_Libraries_Sanjoy_Mondal_Sajal_Kumar_Mondal/links/66767a001846ca33b845024e/Copyright-Conundrum-Exploring-Legal-Challenges-and-Solutions-in-Public-Libraries-Sanjoy-Mondal-Sajal-Kumar-Mondal.pdf (last visited on November 21, 2025).

[186] See The British Copyright Act, 1710.

These global agreements have also formed the basis for the modern copyright system in India. The main conventions consists:

The Berne Convention for the Protection of Literary and Artistic Works (1886) mainly seeks to establish minimum standards that member countries are required to follow in formulating their national copyright laws[187]. While the Berne Convention does not specifically mention exceptions or limitations for libraries, archives, or institutions preserving cultural memory, it allows member countries to implement their own domestic exceptions and limitations while following the three-step test[188]. The Universal Copyright Convention (1951), revised later in 1971, included a provision in Article 5 permitting developing nations to execute reasonable exemptions to copyright shielding based on their developmental requirements[189]. The 1961 Rome Convention provides considerable flexibility in Article 15, particularly in clause (d). While not explicitly mentioning libraries or archives, it allows member states to incorporate exceptions in their national laws for utilizing protected works solely for research or educational purposes, in accordance with the defined limits of copyright protection[190]. The 1994 TRIPS Agreement includes principles similar to those found in the other Conventions. As per Art. 13, member nations may establish limitations or exceptions to copyright provided they follow the three-step test, guaranteeing that these actions are clearly outlined and compliant with international norms[191].

The WIPO Copyright Treaty establishes international standards, but it lacks specific provisions for libraries and archives as a general exception. Nonetheless, aiming to enhance access-supportive mechanisms, the Treaty introduced the concept of an efficient and secure rights clearance (SRRC) framework to facilitate the legal use of copyrighted material within the permitted limits[192].

ANALYSIS OF COPYRIGHT LAWS RELATING TO EXCEPTIONS FOR LIBRARIES, ARCHIVES AND CULTURAL MEMORY

[187] See The Berne Convention for the Protection of Literary and Artistic Works, 1886.
[188] Ibid.
[189] The Universal Copyright Convention, 1951, art. 5.
[190] The Rome Convention on Copyright Law, 1961, art.15.
[191]The TRIPS Agreement on Copyright Law, 1994, art.13.
[192]See The WIPO Copyright Treaty, 1996.

In India, the primary legislation regulating copyright protection is the Indian Copyright Act, 1957. Since its implementation, the Act has experienced six major amendments—in 1983, 1984, 1992, 1994, 1999, and 2012—to respond to new issues, especially those stemming from swift technological progress[193]. The fundamental structure of the 1957 Act was derived from the earlier Indian Copyright Act of 1914, which was mainly shaped by the British Copyright Act of 1911[194]. The legislation encompasses specific provisions regarding limitations and exceptions for libraries, archives, and cultural organizations, as detailed in Section 52, subsections (n), (o), and (p)[195]. These rules permit non-profit public libraries to create and keep digital copies of works solely for preservation, and only if the library has a tangible version of that work. Additionally, the Act permits non-profit public libraries to create up to three copies of a book (along with pamphlets, maps, charts, or musical scores) when these items are unavailable for purchase in India. Additionally, the Act allows libraries, museums, and other similar organizations to duplicate unpublished works for research, personal study, or publication, provided they ensure public access to these resources[196]. Initially, the Indian Copyright Act did not include a specific provision granting libraries and archives any distinctive exception to copyright restrictions. Instead, it merely contained general restrictions and exceptions concerning the reproduction of works for research or educational purposes. The significant changes to the Act occurred with the 2012 amendment, which introduced a new clause, Section 52(p). This clause specifically permitted libraries and archives to duplicate works for personal study and research undertaken by students and researchers. Conversely, the UK's Copyright Act of 1956 was the initial legislation to clearly define specific exceptions for libraries and archives. It enabled these organizations to create copies for safekeeping and to loan those replicas to people when asked. This method was

[193] Lalitha Aswath and Anjaneya Reddy.N.M "Copyright law and the Academic Libraries: a perspective" 8(2), Trends in Information Management (TRIM), (2012).
[194] Ibid.
[195] The Indian Copyright Act, 1957, S. 52.
[196] Copyright Conundrum: Exploring Legal Challenges and Solutions in Public Libraries, *available at:* https://www.researchgate.net/profile/Rubi-Acherjya-Manna-3/publication/381613527_Copyright_Conundrum_Exploring_Legal_Challenges_and_Solutions_in_Public_Libraries_Sanjoy_Mondal_Sajal_Kumar_Mondal/links/66767a001846ca33b845024e/Copyright-Conundrum-Exploring-Legal-Challenges-and-Solutions-in-Public-Libraries-Sanjoy-Mondal-Sajal-Kumar-Mondal.pdf (last visited on November 21, 2025).

implemented, acknowledging that the fair dealing doctrine by itself was inadequate to tackle the real challenges encountered by libraries and archives under the prior system.

The latest update to the Indian Copyright Act, 1957, broadened fair dealing to allow libraries, archives, and cultural organizations to reproduce works for research, study, and preservation; however, these provisions are still constrained by specific limitations outlined in Sec. 52(n), (o), and (p) of the Indian Copyright Act, 1957. These legal limitations have, over time, sparked considerable discussion about the balance between the public's interest and the rights of authors. Judicial decisions have been crucial in clarifying the intent of these provisions, detailing their application, and assessing whether specific situations involving reproduction by libraries or archives adhere to legal limits or violate copyright.

DETERMINING WHETHER A SITUATION FALLS WITHIN STATUTORY LIMITATIONS

Before analyzing how courts establish if a specific case falls under statutory limits, it is essential to grasp two key concepts: purposive interpretation and the mischief rule.

Purposive Interpretation

Purposive interpretation is a judicial approach where courts interpret laws based not only on their literal or grammatical meanings but also by considering the intent and objectives of the legislation[197]. Judges review external materials like committee reports, legislative drafts, and pre-enactment documents to grasp the historical context and legislative purpose of the statute[198]. This method—which aims to fulfil the intent of the law—originated from *Heydon's Case* (1584), establishing the foundation for the mischief rule

Facts of the Case

[197] Interpretation of Statutes - The Purposive Approach available at: https://www.legalservicesindia.com/article/1223/Interpretation-of-Statutes---The-Purposive-Approach.html (last visited on November 23, 2025).

[198] Vijay Awana, "Jurisprudential Aspects and Significance of Rule of Purposive Interpretation" 2 *International Journal of Legal Science and Innovation* (2020)

Heydon's Case arose from the Separation of Religious Houses Act of 1535, which was enacted to eliminate minor religious institutions and reallocate their properties to the Crown. The Act contained a safeguard clause stating that grants given more than a year before the Act would remain valid. In this case, the grounds of Ottery College, a place of worship, were first granted to a father and son (Ware) under copyhold tenure for the lifetime of the tenant. Subsequently, the identical property was leased to Hayden for a period of 80 years. Ware and Hayden each asserted the validity of their personal claims to the property[199].

The court has faced a variety of difficult issues in this case:

1. The first issue was the proper construction of the 1535 Act for the Separation of Religious Houses. This is determined by the record of how it has been construed and applied since that time, as well as by reference to any future grants made under that same act.
2. The second issue is to consider the nature of the problem or deficiency in common law that the Parliament was attempting to rectify or address by enacting the Separations of Religious Houses Act.
3. The third issue relates to Parliament's intention regarding the protective clause found in the Act, as it relates to both prior and subsequent Grants.

Judgment

The Court adopted a purposive view when reviewing legislation. Based on the statute as a whole, we were able to establish the intention of Parliament when enacting this statute. The purposive view led to the creation of the Mischief Rule, which required judges, when interpreting a statute, to consider four elements: the legal principles that were in place before the statute's implementation; the issues or shortcomings that the common law couldn't address; the solution that Parliament provided to address the mischief/defect; and the purpose for providing that remedy[200]. The Court held that Ware's previous lease, which was entered into more than a year prior to the date that the law became valid, was legally valid under the applicable statute. Conversely, Hayden's lease, which was entered into during that same time frame, is invalid according to the statute. The Court found that Parliament's clear intention in creating this law was to eliminate potential abuses that could result from allegedly fraudulent or rushed

[199] Heydon's Case (1584), *available at*: https://lawbhoomi.com/heydons-case-1584/ (last visited on November 24, 2025)
[200] *Heydon's Case* (1584) 3 Co Rep 7a.

agreements that would occur just before the effectiveness of the law. Therefore, the Court held that Ware's existing tenancy had been preserved, while Hayden's new lease was ruled unenforceable[201].

Textualist Approach

Textualism focuses on the literal interpretation of statutes and does not include consideration of the broader legislative intent or purpose of the statutes. As indicated by Justice Antonin Scalia, the concept of "New Textualism" holds that judges are required to interpret statutes using the sense of understanding of what those words would have communicated to the average, reasonably informed individual at the time the statute was passed. This approach uses standard rules of grammar, syntax, and semantics when constructed, but emphasizes the importance of the enacted text itself as the only law.

A.N. Roy, Commissioner of Police and Another v. Suresh Sham Singh.

As incidents of human trafficking increased exponentially in Mumbai at the end of the 20th century, the Government of Maharashtra enacted stronger administrative measures through the (CrPC). On October 1, 1999, the State Government published a notification giving the Commissioner of Police, Mumbai, the same powers as a District Magistrate to execute Sec. 18 and 20 of the Immoral Traffic (Prevention) Act, 1956[202]. Using the newly granted power, the Commissioner created an anti-trafficking specialized task force, executed multiple raids on premises identified as brothels, ordered the closure of those brothels, and began proceedings to evict the brothel keepers. These actions led to a dramatic decrease in trafficking activity in the region. In one instance, an eviction order was issued against a respondent, who later challenged the legality of the eviction order as well as the October 1, 1999, notification from the State Government.

Issues of the case

[201] Ibid.
[202] Section 18 / 20 ITPA – A.N. Roy, Commissioner of Police & Anr. v Suresh Sham Singh, Appeal (Crl.) 702 of 2006, available at: https://nlrd.org/section-18-20-itpa-a-n-roy-commissioner-of-police-anr-v-suresh-sham-singh-appeal-crl-702-of-2006/ (last visited on November 24, 2025).

Whether the notification of 1999, which provided for the Commissioner of Police to be equivalent to a District Magistrate under certain provisions of the Act, was validly issued under the relevant statutory framework?

Judgment

The Supreme Court has ruled the Notification to be Valid. According to the Court, the authority given to the Governor by Section 20 of the CrPC gives the State Government the power to appoint a Police Commissioner within the Metropolitan region, acting as the Administrator Magistrate[203]. Furthermore, the Commissioner is also an ADM and has been assigned the role of the District Magistrate according to Sec. 18 and 20 of the Immoral Traffic (Prevention) Act[204]. The Court has confirmed that when the text of the statute is clear and unequivocal, it is necessary only to rely upon the content of that statutory language and nothing else in determining whether or not a person meets the requirements for an Executive Magistrate.

JUDICIAL CRITERIA FOR ASSESSING LIBRARY AND ARCHIVE EXCEPTIONS IN COPYRIGHT LAW

Hubbard v. Vosper (1972)

Cyril Vosper, who used to be a member of the Church of Scientology, wrote a book named The Mind of Benders, where the book was written with the main purpose of exposing Scientology, which, according to the Church, was not allowed to do so. And it was also claimed by the respondent side that the book infringed the copyright law since the book copied parts of L.Ron Hubbard's writings[205].

Issue of the Case

[203] *A.N. Roy, Commissioner of Police and Another v. Suresh Sham Singh* [2006] SUPP. 3 S.C.R. 165.

[204] Ibid.

[205] Ilayanambi B. and Nadu Athish E, "Concept of fair dealing – A co-relative analysis" 5 *International Journal of Advanced Research, Ideas and Innovations in Technology* (2019).

Was Vosper's application of information from Scientology allowed as part of the Fair Dealing criteria concerning Criticism or Review using Copyright?

Judgement

The Court ruled that the use of Scientology-related material by Vosper was allowed because it had been deemed to fall under Fair Dealing and therefore, Vosper did not infringe the Copyright Act in creating a guide. In determining whether there was fair use or fair dealing, Lord Denning identified four aspects for evaluating whether Fair Dealing exists in a given instance or not. The first aspect considered by judges is the total number of copies of the original book produced by the opposing party; the second aspect assessed by judges is what purpose the copying of the original was created; the third aspect considered by judges, was how much percentage of content was selected from the original; and fourth, that the all judges should take into consideration each case's specific facts and circumstances so that appropriate judgments are given; consequently, there will be substantial differences between cases and therefore judges need to take into account all these factors before they decide an individual case.[206]

The Academy of General Education, Manipal and Ors. v. B. Malini Mallya (2009)

Dr. Karanth developed a distinctive dance form named Yaksharanga. Dr Karanth will transfer the copyright of this artistic creation to Ms B. Malini Mallya. Following his death, the Academy performed the Yaksharanga dance without consent from the copyright holder. Consequently, Ms. Mallya filed a lawsuit alleging copyright infringement.[207]

Issues Brought Before the Court

1. Whether a choreographed dance form, such as Yaksharanga, qualifies as a textual work under the ICA of 1957?
2. If the Academy's performance of the dance was protected by the fair use provisions specified in Section 52 of the Copyright Act?

Judgement

The Court concluded that a dance form is an artistic or theatrical creation, not a literary piece, according to the Copyright Act. The Court also mentioned that the Academy's behaviours could

[206] *Hubbard v Vosper*, (1971) 2 QB 84.
[207] Ishita Goel, "Distinction Between Literary and Dramatic Works and the Application of Section 52 Of Copyright Act" 2 *Indian Journal of Law and Legal Research* (2021).

be classified under Section 52, provided that the legal standards for the applicable exceptions were satisfied[208].

Relevant Concept

This decision emphasizes the interpretative approach adopted by Indian courts, which do not consider statutory exceptions rigidly or mechanically. Particularly when it relates to educational, cultural, or socially beneficial objectives.

Eastern Book Company v. D.B. Modak

The EBC shares SC verdicts on its platform, but these verdicts undergo significant editorial enhancement before publication. Instead of stating the text word for word, EBC engages in thorough efforts to improve the content by rectifying mistakes, reorganizing and formatting the rulings for better understanding, and adding headnotes, footnotes, citations, and additional helpful information[209].hese editorial activities improve the clarity and understanding of the rulings for legal professionals, academics, and students. Consequently, the material released by EBC includes both public-domain court rulings and unique works stemming from the expertise, commitment, and discernment of its editorial staff.

Grand Jurix and The Laws copied the modified decisions straight from EBC's website without prior approval, leading EBC to pursue legal action for copyright violation[210].

Issue Being Raised by the Court

The improved and updated versions of public-domain rulings released by EBC were classified as "newly created work" that qualifies for copyright protection under the Indian Copyright Act of 1957.

Judgement

The improved and updated versions of public-domain rulings released by EBC were considered "newly created work" that qualifies for copyright protection under the Indian Copyright Act of 1957.

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[208] *The Academy of General Education, Manipal and Ors. v. B. Malini Mallya,* AIR 2009 SC 198.
[209] Eastern Book Company v DB Modak, 2008 (36) PTC 1 (SC), *available at*: https://lawbhoomi.com/eastern-book-company-v-db-modak/ (last visited on November 25, 2025).
[210] *Eastern Book Company v. D.B. Modak*, 2008 (36) PTC 1 (SC).

The Court stated that only segments of the decisions demonstrating the publisher's individual talent, effort, and slight creativity—like formatting, editing, headnotes, and additional commentary—qualify for copyright protection. Thus, reproducing EBC's modified content without permission constituted a violation of copyright[211].

Relevant Principle

The decision emphasizes that while judicial statements belong to the public domain, editorial enhancements that enhance accessibility and understanding warrant protection. It also shows the judiciary's recognition that public awareness, transparency, and accessibility remain essential principles, even while safeguarding creative editorial efforts.

DRM, TPM, AND THEIR EFFECT ON THE FAIRNESS TEST OF LIBRARIES, ARCHIVES, AND CULTURAL MEMORY

Digital Rights Management (DRM) is a type of legal system that controls the access, use, copying or distribution of digital content[212]. Technological Protection Measures (TPMs) are the technical tools that are more precisely, encryption, password protection, access-control mechanisms and licensing systems, employed to impose DRM restrictions[213]. DRM and TPM jointly shield legal claims of the creators, especially with regard to digital resources. In India, legal provisions that cover DRM and TPM are mainly regulated by sec. 65A and 65B of the Copyright Act, 1957, which have been added with the 2012 amendment as per the WIPO Copyright treaty[214]. These clauses make it a crime to circumvent technological protection and disallow the removal or manipulation of rights-management information[215]. Although digital technologies have greatly broadened access to information and enabled the creation of digital libraries, archives, and repositories of cultural memory, they have brought about new challenges.

[211] Ibid.
[212]SoLS, Babu Banarasi Das University, Lucknow, *Digital Rights Management: The New Copyrights* (SoLS BBDU, LUCKNOW, 2022).
[213] Ibid.
[214] See at Indian Copyright Act, 1957.
[215] See at Indian Copyright Act, 1957, S. 65A and S. 65B.

Now, public libraries are allowed to keep information in digital form, and this may require scanning and copying of works. But these activities are often curtailed by DRM and TPM that determine who can access the material, the amount of replications that can be generated and the circumstances under which the material can be utilized. Such limitations tend to be direct impediments to the capacity of libraries and archives to achieve their public interest role of maintaining and sharing knowledge. One of the foremost issues is that DRM and TPM succeed in transferring a lot of power to the copyright owners-way more than the classical copyright law offered. The holders of copyright can now control how their works can be accessed, how many copies can be created, how long they can be accessed and the fees that libraries and archives will pay. The price of acquiring a digital material license in most instances is much higher compared to the price of acquiring physical copies[216]. Moreover, the terms of licensing agreements can contain significant restrictions that severely restrict the use of the material, and the rights of a contract can be enforced even in situations where they contradict statutory exceptions[217]. Limited authority should exist where the courts can intervene in these negotiated agreements. As a result, these two models (DRM and TPM) that were meant to safeguard intellectual properties in the digital world have had the unintended effect of placing enormous burdens on libraries, archives, and other cultural institutions focused on preserving cultural memories and ensuring fair access to knowledge.

RESTRICTIVE COPYRIGHT LAW OVER LIBRARIES, ARCHIVES AND CULTURAL MEMORY V. FUNDAMENTAL AND HUMAN RIGHTS

One of the long-standing debates is whether copyright law, especially in its application to libraries, archives and cultural memory institutions, clashes with basic HR, including the freedom of expressing ideas, the legal claim to learn, the privilege to have information, and the

[216] CREATe Centre, University of Glasgow, Survey on Technological Protection Measures (CREATe, UK, 2024).
[217] Every Library's Nightmare? Digital Rights Management and Licensed Scholarly Digital Resources, available at: *https://repository.arizona.edu/bitstream/handle/10150/105892/everylibrarynightmare_tpml.pdf?sequence=1* (last visited on November 25, 2025).

right to cultural life. While dealing with these issues, ***Super Cassettes Industries Ltd. v. Myspace Inc.*** offers useful interpretative advice.

Facts of the Case

Here, T-Series accused Myspace, which was an online intermediary site, of allowing its users to upload videos that violated its copyrighted material. T-Series claimed that Myspace was liable to copyright infringement because of such user uploads[218].

Issue Involved

Whether an online platform like Myspace could be held responsible for copyright infringement actions committed by its users.

Judgment

It was believed, Myspace could not be directly liable in a copyright infringement case because it did not have actual knowledge of the infringing material. In addition, the Court focused on the fact that Sec 79 and 81 of the IT Act should be interpreted in harmony along Sec 51 of the Indian Copyright Act, 1957, when intermediary liability is established[219].

Relevant Principle

Though the case specifically does not comment on how libraries and archives operate, it supports the application of a purposive approach of interpretation in copyright cases. Another area of challenge that has been pointed out in the judgment is striking a harmony between copyright safeguarding and fundamental rights, particularly the right to express oneself and the right for the public to access information.

[218] Amritha, "CASE COMMENT: MY SPACE VS SUPER CASSETTES INDUSTRIES LTD, LANDMARK JUDGEMENT REGARDING SAFE HARBOUR IMMUNITY OF INTERMEDIARIES AND INTERPRETATION OF VARIOUS PROVISIONS OF IT ACT 2000 AND COPYRIGHT ACT 1957" *3 Journal of Legal Research and Juridical Sciences* (2024).
[219] *Super Cassettes Industries Ltd. v. Myspace Inc.* (2017) 236 DLT 478 (DB).

CHALLENGES AND SUGGESTIONS

As explained in this research paper, the main issues that libraries, archives, and cultural memory institutions have to grapple with are the new technological developments, especially the emergence of (DRM) and (TPM). These instruments place serious limitations on the flow of information and seriously curtail the capacity of libraries and archives to execute their work of social benefit. It is thus necessary to limit these limitations to lessen their negative effects on information access, while also protecting the rightful interests of copyright owners. The main aim of copyright law is to preserve a just balance between the interests of creators and the requirements of the public; thus, both copyright owners and users, such as libraries and archives, are legally and ethically required to follow the guidelines set by the legislative body. Another concern emerges from the swift progress of artificial intelligence, which has, in certain ways, enabled a bypassing of copyright safeguards. Copyright laws have, in turn, acted more stringently in response, posing even more impediments to scholars and students. Access to digitally stored information has become very expensive, and the cost of accessing it has become so high that most learners can no longer access certain essential research materials, thereby restricting access to academic resources. Such problems can be mitigated by introducing legal changes that put sensible restrictions on the discretionary ability of copyright holders so that access to knowledge can be affordable and fair yet without infringing on the rights of creators.

CONCLUSION

Technological development over time has greatly contributed to the dissemination of knowledge, which is one key objective of libraries, archives, and cultural memory institutions, while safeguarding the legal claim of copyright holders. The copyright law in India, as well as at the international level, has been changing to accommodate the emerging challenges as well as to offer mechanisms for resolving the challenges. Nonetheless, the judicial system remains central

to this development. The copyright law and its interpretation is ultimately at the discretion of the judiciary, whether taking a purposive interpretation strategy that encourages wider access or a strict textualist strategy that favors the literal approach. The general purpose should always be to promote the cause of justice in society, and judicial rulings of the years have tended to favor the principles of lawful use, which have balanced the legal claim of the creators and the interest of the public.

CHAPTER 9: DIGITAL PATRONAGE: NFTs, CROWDFUNDING, SUBSCRIPTIONS, AND NEW MODELS OF SUPPORTING CREATIVITY

BY RAJVARDHAN SINGH

INTRODUCTION

Patronage has always been the lifeblood of creativity. From the Renaissance, when artists like Leonardo da Vinci and Michelangelo relied on wealthy benefactors, to the 20th century, when record labels, publishers, and film studios acted as a gatekeeper, creative work has required support. Digital patronage represents a transformative shift in how creativity is supported and monetized. NFTs, crowdfunding, and subscription models empower creators but also raise complex legal and policy challenges. It is about reimagining the relationship between creators and audiences in a digital-first world. It allows creators to monetize their work through NFTs (Non-Fungible Tokens), Crowdfunding platforms, Subscription services, and hybrid models that blend copyright licensing with digital innovation.

Digital patronage today combines blockchain-based assets, online crowdfunding, subscription platforms, and hybrid community models to fund creative work while partially bypassing traditional intermediaries such as publishers, labels, and studios.[220] These models promise more control and recurring income for authors and artists, but they also create fresh copyright, contract, and regulatory puzzles for law and policy.

Copyright still determines who owns the underlying work and who can reproduce, distribute, or adapt it, even if the creator is funded by patrons rather than by sales or licensing alone.[221]

[220] Normand Burgos, "The New Patronage: How NFTs are Reshaping the Economics of Digital Art" 03.11.2025 https://wolfstreetnft.com/nfts-digital-art-new-patronage-era/?utm

[221] Jaci McDole, "End the Archaic Argument That Copyright is only for the Rich", 14.12.2022 https://itif.org/publications/2022/12/14/end-the-archaic-argument-that-copyright-is-only-for-the-rich/?utm

Patronage income is generally treated as a revenue stream that supplements the creator's copyright-based rights, not as a legal substitute for those rights.[222] When creators upload content to patronage platforms, they usually grant the platform a broad license to host, distribute, and sometimes use that content for platform-related purposes. These licenses are typically non-exclusive, so the creator keeps copyright and can still exploit the work elsewhere, subject to any separate agreements or exclusivity promises made to patrons.

The shift from analogue to networked digital culture has destabilised older patronage systems based on state grants, institutional funding, and advances from intermediaries, pushing creators to experiment with NFTs, crowdfunding, and subscription platforms as direct-to-fan revenue streams. This chapter examines "digital patronage" as a legal and economic phenomenon, focusing on how these models interact with copyright law, contractual arrangements, and platform governance in India and comparative jurisdictions. Digital patronage represents both an opportunity and a challenge: it empowers creators to connect directly with audiences while requiring copyright law to adapt to new realities of ownership, originality, and enforcement.

Conceptual Background

Patronage historically involved elite or institutional sponsors directly supporting authors in exchange for prestige, exclusivity, or control, with copyright later emerging to secure market-based rewards through exclusive rights of reproduction and communication to the public. Creators gained global reach in the digital world but faced piracy and unauthorised distribution. Digital patronage (Blockchain, crowdfunding platforms, and subscription services) emerged as alternatives to traditional publishing and licensing and also reconfigures relationships by converting attention, community, and symbolic affiliation into micro-payments, subscriptions, and token purchases that can function as "micro-patronage" at scale.

Crowdfunding, NFTs, and subscription platforms still rely on copyright's bundle of rights, because the economic value of access, exclusivity, or community around a work is anchored in the author's capacity to authorise or withhold uses. Yet in many digital patronage models, the visible transaction is framed as "support" or "membership" rather than a conventional licence, which can obscure the underlying allocation of rights and liabilities.

[222] Ryan Safner, "My Art Crowdfunding and Intellectual Property Rights Complements or Substitutes?" 13.07.2020 https://gamef21.classes.ryansafner.com/readings/Safner-2021b.pdf

NFTs AS DIGITAL PATRONAGE

Non-fungible tokens (NFTs) are unique cryptographic tokens recorded on a blockchain that can be associated with a digital work such as an artwork, music file, video, or literary text, enabling provable scarcity and traceable transactions.[223] In patronage terms, an NFT can represent a kind of public, on-chain badge of support, conferring social status, access, or future benefits rather than full copyright ownership in the underlying work. Under English Law crypto assets are recognized as property capable of being subject to proprietary injunctions.

From a copyright perspective, minting an NFT ordinarily does not transfer the copyright in the associated work unless there is an explicit contractual assignment or licence; the token records ownership of the token itself and perhaps ancillary contractual rights, but copyright typically remains with the creator under default rules in most jurisdictions, including India. [224]In other words purchasing an NFT does not transfer copyright; it grants proof of ownership of a tokenized asset.[225] This distinction is crucial because unauthorised tokenisation of existing works (for example, minting NFTs of someone else's art) can amount to infringement under provisions equivalent to unauthorised reproduction and communication to the public, even though the transaction occurs on a decentralised blockchain. NFT creators must avoid deceptive practices; parody defences are limited when commercial exploitation is involved.

NFTs also enable new royalty structures through smart contracts that automatically pay creators a percentage of secondary sales, effectively embedding resale royalties into code and partially overcoming the limitations of the first-sale doctrine for digital works. However, enforcement of such royalties depends on platform design and market norms rather than copyright law itself, and governance gaps can lead to non-enforcement, fraud, and disputes about the binding force of off-chain terms and marketplace policies.

[223] Boobesh S, "Copyright Law in The Age of NFTs: Ownership & Licensing Challenges in the Indian Market" Indian Journal of Legal Review (IJLR), 4(4) of 2024, PG.653-664
[224] "The Emerging Prominence of Non-Fungible Tokens (NFTs) and Copyright 03.10.2025 https://www.iiprd.com/the-emerging-prominence-of-non-fungible-tokens-nfts-and-copyright/
[225] Boobesh S, "Copyright Law in The Age of NFTs: Ownership & Licensing Challenges in the Indian Market" Indian Journal of Legal Review (IJLR), 4(4) of 2024, PG.654

In India, there is currently no NFT-specific statute; issues are addressed through the Copyright Act 1957, the Information Technology Act 2000, and general contract and consumer law, with commentators emphasising that unauthorised minting or online communication of works as NFTs would fall within existing infringement provisions.[226] The door for NFT and crypto-based patronage models is open in India, though regulatory uncertainty remains. Comparative experience from the United States, European Union, and China shows regulators and courts treating NFTs as objects or assets whose trading can trigger financial, consumer protection, and IP obligations, while underlining that buying a token does not automatically confer copyright unless expressly agreed.

CROWDFUNDING AS MICRO- PATRONAGE

Crowdfunding is the practice of raising small contributions from a large number of funders via online platforms, using models such as donation-based, reward-based, equity, and debt crowdfunding. In the creative and cultural industries, reward-based and donation-based models have become important forms of "direct-to-fan" financing that allow artists, filmmakers, and writers to pre-sell works, offer exclusive editions, and convert audience enthusiasm into working capital.[227]

Crowdfunding functions as micro-patronage because backers often support projects not merely for financial return but to enable the creation of culturally valuable works, participate in a community, or obtain symbolic recognition such as name credits or limited-edition items.[228] This can partially substitute for or complement traditional patronage and grant systems, especially for independent creators and early-career artists whose work does not fit conventional institutional criteria.

Legal questions arise around the clarity of promises made to backers (for example, whether they are purchasing a copy, receiving a licence, or merely donating), compliance with securities

[226] *Ibid.*
[227] Jann Tosatto, "Crowdfunding in the Creative and Cultural Industry" https://pure.port.ac.uk/ws/portalfiles/portal/67009551/UoP_PhD_Final.pdf
[228] Carolina Dalla Chiesa & Erwin Dekker, "Socio-Economic Review, vol.19, Issue 4, October2021, Pg. 1265-1290

regulation in equity or debt-based models, allocation of copyright and moral rights when projects involve multiple collaborators and user-generated contributions.

In India, equity crowdfunding for unlisted companies faces significant regulatory restrictions, whereas donation and reward-based models operate under general contract, consumer, and fund-raising law, with platforms expected to maintain due diligence and transparency. For authors and artists, this means structuring campaigns to avoid inadvertently offering unregistered securities, ensuring that promises about delivery and rights are precise, and aligning platform terms with copyright licences granted to backers.[229]

SUBSCRIPTIONS AND PLATFORMISED PATRONAGE

Subscription-based patronage platforms such as "creator membership" or "fan subscription" services allow supporters to pay recurring amounts in exchange for ongoing access to content, early releases, community interaction, or tiered benefits.[230] This model converts the traditional concept of a long-term patron into a distributed base of subscribers, stabilising income for creators but also binding them to intensive platform labour and audience management.

Legally, subscription models hinge on platform terms of service, revenue sharing arrangements, and copyright licences that specify whether creators grant the platform non-exclusive rights to host and distribute works and what rights subscribers receive (for example, streaming access versus download and reuse rights).[231] Unlike NFTs, subscriptions typically do not create transferable property-like tokens; instead, they grant time-bound access controlled by contract and technological measures such as paywalls and DRM, which can complicate traditional notions of exhaustion and personal copying.[232]

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[229] Rohit Sharma, "Is Crowdfunding Legal in India: SEBI Guidelines" 09.05.2016 https://www.lawyered.in/legal-disrupt/articles/crowdfunding-in-india/
[230] Drevets, Joseph K., "Spotify, Piracy and Patronage: How Consumers Make Decisions Regarding Musical Consumption on Streaming Age" 2017 University Honors Theses Paper 427 https://doi.org/10.15760/honors.423
[231] TODD A CARPENTER, "NFT Technology versus Subscriptions- The Battle for Ownership of Digital Content" 22.03.2021 https://scholarlykitchen.sspnet.org/2021/03/22/nft-technology-versus-subscriptions/?
[232] *Ibid.*

Subscription patronage can empower creators from marginalized groups or niche genres by enabling sustainable, community-backed careers, but it also raises concerns around content moderation, de-platforming, and opaque algorithmic visibility that may disproportionately affect some creators. Where sexual or politically sensitive content is involved, creators face the combined pressures of copyright enforcement, payment processor rules, and platform content standards, creating a precarious environment despite the promise of direct patronage.

Most creator-platform-subscriber relationships use copyright licenses embedded in the platform's Terms of Service (ToS) and subscriber agreements: the creator usually retains ownership, grants the platform a broad license to host and commercialise the works, and either the subscriber gets a limited viewing/ usage right (streaming, reading, listening) or, in some cases, a further license to reuse under specified conditions.

CASE LAW ANALYSIS

The case of Eastern Book Company v. D.B. Modak [233] is a cornerstone in defining digital patronage in India. It struck a careful balance which ensures that digital publishers can sustain themselves through patronage while society retains free access to essential public information. This case directly speaks to the tension: Public Access vs. Publisher Rights; the court clears that judgments must remain freely accessible as part of democratic transparency and publisher's work enhancements to summaries, headnotes, formatting are intellectual contributions deserving recognition and protection, also clarify that protection for publisher's ability to monetize their creative labour without restricting public access to raw legal information. EBC's editorial work transforms raw judgments into usable knowledge products (searchable databases, annotated reports).

The ruling set the tone for how Digital Legal Databases and knowledge repositories are treated in India. It legitimized copyright claims over curated, annotated, and enhanced digital content-critical for platforms like SCC Online, Manupatra, and other e-libraries. Editorial work is not

[233] Eastern Book Company & Ors v. D.B. Modak, AIR 2008 SC 809

"mere-effort" but creative contribution deserving patronage. Publishers can invest in digital tools knowing their enhancements are protected.

The court recognized that value-added creativity deserves protection and patronage. Editorial work transforms raw material into a copyrightable product.

The court in the R.G. Anand v. M/S. Delux Films & Ors. [234] laid the groundwork for digital patronage earlier by clarifying that: Ideas belong to the commons., Expressions belong to creators. This principle ensures that in today's digital economy, creators can freely draw on the shared ideas but still secure patronage and protection for their unique creative outputs- whether in films, blogs, podcasts, or digital art.

Super Cassettes Industries Ltd. V. MySpace Inc.[235] is a pivotal case for understanding how copyright law interacts with digital patronage and online platforms. Super Cassettes Industries Ltd. (popularly known as T-Series), a major Indian music label claimed MySpace Inc., a social networking platform that allowed users to upload and share content, facilitated infringement by providing tools for uploading and streaming copyrighted works.

The court held that MySpace could not claim blanket immunity, it had the duty to exercise due diligence and remove infringing content once notified. This case sits at the intersection of copyright enforcement and the digital patronage model. Platforms like MySpace (and later YouTube, Patreon, Spotify) act as intermediaries enabling creators to reach audiences. The case raised the question: should platforms bear responsibility for protecting creator's rights, or simply provide the infrastructure? In digital patronage terms, platforms are both Patrons of creativity (by enabling distribution) and potential infringers (if they fail to protect rights).

The case is a milestone in shaping digital patronage through copyright in India. It clarified that: Platforms are not passive conduits-they must protect creator's rights. Creators deserve patronage through copyright enforcement. Users can share and participate, but within a framework that sustains creative labour. This balance is the backbone of today's digital patronage economy, where platforms like YouTube, Spotify, and Patreon thrive by enabling distribution while safeguarding creator's rights.

[234] R.G.Anand v. M/S. Delux Films & Ors, 1978 AIR 1613
[235] Super Cassettes Industries Ltd. V. MySpace Inc., 2011 (276) DLT 519 / 236 (2017) DLT 478;

The case of Tips Industries Ltd. v. Wynk Music Ltd [236] is crucial for understanding how digital patronage works in the music industry specially in licensing disputes in digital music. It reinforced that creators and rights-holders must be fairly compensated in the digital economy, and platforms cannot bypass licensing obligations by claiming broad statutory rights.

The Court emphasized that digital platforms must respect copyright and cannot exploit statutory loopholes. Section 31D, Copyright Act, 1957 applies to traditional broadcasting (Radio/TV), not to interactive online streaming services.[237]

It is a milestone in defining digital patronage for music streaming in India. It established that: Digital platforms must negotiate licenses, Creators deserve fair compensation, and Patronage thrives when platforms act responsibly. This ruling ensured that India's digital music ecosystem aligns with global norms, where streaming services sustain creators through royalties and licensing rather than relying on outdated statutory provisions.

Hermes International & Hermes of Paris, Inc. v. Rothschild, case[238] illustrates how digital patronage in the Web3 era collides with trademark law. It shows that while artists can seek patronage through NFTs and digital art, they cannot exploit established brand goodwill without authorization.

This case is a landmark in defining digital patronage boundaries in the age of NFTs and blockchain art; Whether Rothschild's NFTs infringed Hermès' trademark rights in the Birkin name and trade dress, or whether they were protected artistic expression under the First Amendment? The court found Rothschild liable for trademark infringement, dilution, and cybersquatting. Hermès was awarded damages, affirming that brand rights extend into digital and NFT spaces.

The Hermes v. Rothschild[239] The case is a watershed moment for digital patronage in the NFT era. lt teaches that: Patronage cannot justify trademark infringement, Artists must innovate

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[236] Tips Industries Ltd. v. Wynk Music Ltd., 2019 SCC Online Bom 13087, 23-04-2019

[237] https://www.indiacode.nic.in/showdata?actid=AC_CEN_9_30_00006_195714_1517807321712&orderno=38

[238] Hermes International & Hermes of Paris, Inc. v. Rothschild, No. 22-CV-384-JSR, 2023 WL 1458126 (S.D.N.Y. Feb. 2, 2023)

[239] Hermes Int'l v. Rothschild, No. 22-CV-384-JSR,2023 WL 1458126 (S.D.N.Y. Feb. 2,2023) https://www.wipo.int/wipolex/en/judgments/details/1841

within legal boundaries, and Brands can defend their goodwill in digital spaces. This balance ensures that digital patronage sustains creativity while respecting intellectual property, shaping the future of Web3 art, NFTS, and brand engagement.

COMPARATIVE LEGAL & POLICY PERSPECTIVES

Across jurisdictions, legislatures and courts have largely tried to fit NFTs, crowdfunding, and subscription patronage within existing copyright, contract, and financial regulation frameworks rather than building entirely new regimes. The prevailing view is that unauthorised digital reproduction or communication of works, whether through NFT minting, crowdfunding campaign materials, or subscription content leaks, can be addressed by standard infringement doctrines, with platform liability shaped by safe‑harbour and notice‑and‑takedown rules.

At the same time, policymakers recognise that digital patronage intensifies power asymmetries between creators and platforms, especially where smart contracts, royalties, and data access are concerned, leading to calls for greater transparency, fair remuneration rules, and clearer default licences for online uses. In India, scholarly commentary urges interpretive clarity on how the Copyright Act 1957 should apply to tokenised works, cross‑border NFT marketplaces, and platform‑based patronage, with suggestions that soft‑law guidance and sectoral codes of conduct could mitigate uncertainty while more comprehensive reforms are considered.

CHALLENGES AND GREY AREAS

Digital Patronage models (NFTs, Crowdfunding, Subscriptions, and Platform-based patronage) all sit on top of copyright law but create different, recurring problems around ownership, licensing, enforcement, and platform power. The core difficulty is that backers and patrons often believe they “own” more rights than copyright actually gives them, while platform’s terms and fragmented laws leave creators exposed to infringement and loss of control.

Buying an NFT rarely transfers copyright; it usually transfers only the token plus whatever licence is written in the smart contracts of terms, leading to disputes when buyers assume they can reproduce, merchandise, or adapt the work. Third parties mint NFTs from others' works without permission, while the pseudonymous, cross-border nature of chains makes DMCA-style enforcement and identification of infringers difficult.

Key challenges across digital patronage models include legal uncertainty about the status of NFTs as property, securities, or pure contractual claims, affecting taxation, consumer remedies, and cross‑border enforcement; market volatility and speculative bubbles that can leave creators and patrons exposed to sharp value fluctuations and fraud; widespread misunderstanding about what rights patrons receive, particularly the false assumption that owning an NFT or backing a project confers copyright.[240]

In addition, technological barriers and the digital divide exclude many potential creators and patrons from actively participating in NFT and advanced crowdfunding ecosystems, reinforcing existing inequalities in cultural production. Environmental concerns relating to the energy consumption of some blockchains, though partially mitigated by newer consensus mechanisms, also raise normative questions about whether NFT‑based patronage is compatible with sustainable cultural policy.

For subscription platforms, issues of lock‑in, unilateral changes to terms, and revenue share reductions can undermine the promised stability of patronage, as creators may be forced to adapt to shifting algorithmic incentives or migrate communities across platforms at considerable cost. These concerns suggest that formal legal rights need to be complemented by bargaining power, collective organisation, and possibly sector‑specific regulatory safeguards.

NORMATIVE EVALUATION AND POLICY SUGGESTIONS

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[240] Brett Hemenway Falk, Gerry Tsoukalas, Niuniu Zhang, “Economics of NFTs: The Values of Creator Royalties” 22.11,2022 https://arxiv.org/pdf/2212.00292

Digital patronage can enhance author autonomy by enabling creators to retain copyright while monetising access, social affiliation, and secondary market activity, rather than surrendering rights wholesale to intermediaries. It can also diversify funding sources for cultural production and expand opportunities for experimental, community-driven projects that might not attract traditional investment or institutional patronage. However, without legal and contractual safeguards, digital patronage risks reproducing or exacerbating existing inequities, as platforms, marketplaces, and early adopters capture disproportionate value, while less digitally literate or marginalised creators bear the risks of volatility, regulatory ambiguity, and exploitation. Policymakers and courts should therefore; clarify the default allocation of copyright and contract rights in NFTs, crowdfunding rewards, and subscription content, mandate transparent disclosures to patrons about what rights they receive and what risks they bear, and consider fair‑remuneration and transparency obligations for major platforms to prevent unfair terms and opaque algorithmic discrimination.

In India, focused guidance on how the Copyright Act 1957, the IT Act 2000, and consumer protection rules apply to NFT marketplaces, creative crowdfunding platforms, and subscription services would provide much‑needed certainty, while leaving room for innovation in business models. Soft‑law instruments, industry codes, and judicial reasoning in early cases can play a crucial bridging role until more comprehensive reforms, if needed, are debated and enacted.

CONCLUSION

Digital patronage redefines how creativity is funded and sustained in the twenty‑first century. By leveraging NFTs, crowdfunding, and subscription platforms, it enables creators to reach audiences directly, diversify income, and retain control over their intellectual property. However, this empowerment coexists with challenges of copyright ambiguity, contractual complexity, and platform dependence. Copyright remains the cornerstone of digital patronage, anchoring ownership and licensing rights across emerging models. Judicial decisions such as Eastern Book Company v. D.B. Modak, Tips Industries v. Wynk Music, and Hermès v. Rothschild illustrate the law’s evolving balance between creator rights, public access, and platform responsibility globally

and in India, regulators have adapted existing copyright and contract frameworks to digital patronage rather than build new regimes. Yet uncertainties—over NFT ownership, smart contracts, and platform power—demand clearer rules and fairer governance. A transparent, inclusive, and well-regulated system can transform digital patronage into a sustainable ecosystem that rewards creativity, ensures fair compensation, and aligns innovation with legal and ethical safeguards.

CHAPTER 10: COURTS AS CULTURAL ACTORS: HOW THE JUDICIARY SHAPES CREATIVITY AND PUBLIC ACCESS

BY SHIVESHWAR YADAV

INTRODUCTION

The role of the judiciary is to deliver justice—Nyaya—to society and thereby help build a just social order in consonance with the legislative framework. While courts are often viewed merely as institutions that interpret and apply statutes enacted by the legislature, their function is much broader as explained by Justice William J. Brennan Jr.[241]

> "The genius of the Constitution rests not in any static meaning but in the adaptability of its great principles to cope with current problems.".

Citizens approach courts not only for technical enforcement of rights but with the expectation of substantive justice as "The judiciary is not merely an interpreter of the law but a vehicle of social justice.[242]" Thus, the judiciary acts as the guardian of the Constitution and ensures that the rule of law aligns with constitutional morality.

ROLE OF COURTS

[241] 1 William J Brennan Jr, "The Constitution of the United States: Contemporary Ratification" (Speech at Georgetown University, 12 October 1985) *available at* https://www.thirteen.org/wnet/supremecourt/democracy/sources_document7.html

[242] SP Gupta v Union of India AIR 1982 SC 149, 219 (per Bhagwati J).

Courts operate at three institutional levels: the Supreme Court, High Courts, and District Courts-

- Central level- decision delivered is implemented in the whole nation
- State level- decision delivered here is applicable only in the state where that body of justice is situated.
- District level- decision delivered here is applied only in that district.

The above-mentioned level is functioned by supreme court, high courts and district courts respectively where every set has different power to adjudicate and cultivate the law. Among these, Power of judicial review of legislative and administrative action is vested in the Supreme Court and High Courts only[243]. This power of review appendages itself with the power of 'interpretation' of statute which influences not mere legal outcomes but also social values and cultural norms.

Courts in India have always acted in the beneficial interest of its citizens rather than being puppet to the government which can be proved by innumerable precedents of court wherein it has acted prejudicial to parity's Interest leaning towards benefiting the whole nation so that justice may be upheld. Indian constitutional history demonstrates this role vividly. In Kesavananda Bharati v. State of Kerala[244] The Supreme Court evolved the Basic Structure doctrine to protect constitutional identity. Similarly, Indira Nehru Gandhi v. Raj Narain, 1975[245]and Minerva Mills Ltd. v. Union of India[246], (1980) 3 SCC 625 reaffirmed judicial review and limited state power. These judgments show that courts shape the political and cultural consciousness of the nation. The core idea of what the cultural actor means for a court is-

Courts as cultural actors refer to the idea that courts do not merely interpret and apply law, but also actively shape, reflect, and transform the social values, moral norms, and cultural meanings of a society through their judgments and reasoning.

In this sense, courts function not only as legal institutions, but also as agents of cultural construction, influencing how society understands concepts such as justice, equality, dignity, liberty, gender roles, privacy, and morality.

[243] L Chandra Kumar v Union of India (1997) 3 SCC 261,
[244] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225
[245] Indira Nehru Gandhi v Raj Narain AIR 1975 SC 2299.
[246] Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625

COPYRIGHT AND CREATIVE EXPRESSION

One of the biggest abilities that humans have been blessed with is the power of creation and expression of their thoughts into words. With the process of writing we as humans collectively have been developing from hunter and gatherer to a civilization to a more civilized and advanced society but there are things, like, ownership and possession, never changing howsoever advance we become and for future also we need to make sure that one is given what one owns meaning that if one has created something he, being the owner of that thing must be one to control the use of that, and with such thought emerges the concept of copyright which is literal transcription of these ideas of protecting ownership into the legal field, widely accepted and ratified by the almost every nation on continent after a series of hard pushes for global recognition by multinational and international organizations.

The Indian landscape has also witnessed this trend of copyright way back to the Gupta period where inscriptions of king Harihara forbid anyone to copy any play without prior permission of the poet.[247] Further in 12thcentury's work of kalhan mentions that king Jayapada of Kashmir punished a poet for plagiarizing another poem.[248]

Before delving into the technicalities of fair dealing, one must understand that the Indian judiciary does not view a creative work merely as a commercial "product." In consonance with the spirit of *Nyaya*, the courts have recognized that an author's work is the child of their intellect.[249] This brings us to the concept of moral rights (droit moral) that exists independently of economic copyright, and even after an author has sold or licensed economic rights, the law allows them to object to any distortion, mutilation, modification or other act prejudicial to their honor or reputation.[250] In Amar Nath Sehgal v Union of India[251]The Delhi High Court upheld the

[247] *Epigraphia Indica*, Vol. 1, No. 23 (J.F. Fleet ed., 1892).
[248] Kalhana, *Rajatarangini* (M.A. Stein trans., Book IV, Taraṅga IV, vv. 704–712)
[249] Gramophone Co of India Ltd v Saregama India Ltd AIR 1991 SC 1908 (per Chinnappa Reddy J)
[250] The Copyright Act, 1957 (Act 14 of 1957), s 57.
Berne Convention for the Protection of Literary and Artistic Works, Berne, 9 September 1886,
[251] *Amar Nath Sehgal v. Union of India*, (2005) 30 PTC 253 (Del)

artist's right of integrity under Section 57, holding that the harm to the work's integrity violated the author's moral rights, thereby affirming the judiciary's role in protecting the personal and reputational value of creative works.

This judicial philosophy was most profoundly articulated in the case of Amar Nath Sehgal v. Union of India[252] In this instance, a magnificent bronze mural created for the Vigyan Bhavan was pulled down and relegated to a storeroom. The court did not merely look at the contract; it looked at the cultural soul of the nation. It was held that an artist has a right to preserve the integrity of their work. By doing so, the court established that it is a cultural actor responsible for protecting the national heritage and the dignity of the artist. This perspective ensures that creativity is not trampled by the administrative or legislative machinery of the State.

THE JUDICIAL INTERPRETATION OF 'ORIGINALITY'

Furthermore, the courts have been instrumental in defining what constitutes a "creative act." For decades, the legal standard was the "sweat of the brow" doctrine, which suggested that if someone worked hard to compile data, they deserved protection. [253]

However, the judiciary, evolving alongside global standards from cases like Feist Publications Inc v Rural Telephone Service Co[254], shifted toward the "modicum of creativity" standard in Eastern Book Company v. D.B. Modak.[255] The Supreme Court held that for a work to be protected, it must show a "minimal degree of creativity" and not just hard labor.

Creativity is a fundamental human attribute, and the law of copyright seeks to protect the ownership of intellectual creations. India follows international standards such as the Berne Convention and regulates copyright through the Copyright Act, 1957[256].

The judiciary recognizes that creative works are not merely commercial products but extensions of the author's personality. This recognition is reflected in the protection of moral rights. In

[252] Ibid 278.
[253] Govindan v Gopalakrishna AIR 1955 Mad 391.
[254] Feist Publications Inc v Rural Telephone Service Co 499 US 340 (1991).
[255] *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.
[256] Copyright Act, 1957 (Act 14 of 1957).

Amar Nath Sehgal v. Union of India[257]The Delhi High Court upheld the artist's moral right to protect the integrity of his mural, treating it as part of national cultural heritage. The court thereby acted as a cultural guardian.

HOW JUDICIARY SHAPED CREATIVITY AND PUBLIC ACCESS IN COPYRIGHT

The traditional role of the court to uphold the rule of law does seem engaging very much when the matter of copyright is raised as not only the rules of the act are constantly straightened and upheld but also it has gone proactive and laid various rules and regulations that find absence in the copyright law. But. In the case of copyright, the court has gone pro-actively paving the way further from what has been given in the copyright act in various fields ranging from artistic freedom, fair dealing, obscenity, censorship, films, literature, music, and online art. In Eastern Book Company v D.B. Modak, the Supreme Court reformulated the originality standard by requiring a "modicum of creativity," thereby defining the scope of protectable works. Conversely, in University of Oxford v Rameshwari Photocopy Services[258], the Delhi High Court expanded fair dealing to facilitate access to educational materials, prioritising dissemination of knowledge over strict proprietary control.

In furtherance to shaping modicum of creativity the SC in the recent case of Cryogas Equipment Pvt. Ltd. & LNG Express India Pvt. Ltd. v. Inox India Ltd[259] The Supreme Court furthered its proactive role by clarifying the intersection of copyright and industrial application. The Court affirmed with the two-part test that while technical engineering drawings merit protection under the "modicum of creativity" standard, such protection cannot be used to circumvent the limitations of the Designs Act. By distinguishing between purely "artistic" intent and "industrial" utility, the ruling prevents perpetual monopolies on functional equipment designs. Ultimately, the Court acted as a policy bridge, ensuring that the Copyright Act evolved to address the

[257] Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253
[258] The Chancellor Masters and Scholars of the University of Oxford v Rameshwari Photocopy Services 2016 SCC OnLine Del 5528.
[259] Cryogas Equipment Pvt. Ltd & LNG Express India Pvt. Ltd v Inox India Ltd (2025)

complexities of modern engineering and industrial reproduction. And define the modicum of creativity in the field of technology.

In the Indian context, the judiciary has often looked beyond the literal word of the statute to protect the "transformative" nature of art. While the Act provides for "Fair Dealing" under Section 52[260]It is the courts that have defined its cultural boundaries. For instance, the courts have recognized that a parody or a satirical take on an existing work is not a "theft" but a form of social commentary. By protecting the right of an artist to critique existing cultural symbols, the court ensures that culture does not become stagnant or monopolized by those who arrived first.

The courts have consistently held that the freedom of speech and expression, as guaranteed under Article 19(1)(a) of the Constitution, must be read into the Copyright Act. In the landmark case of Civic Chandran v. AmminiAmma[261] The court established that even if a work borrows significantly from the original, it is not an infringement if the purpose is to criticize or provide a different perspective. This judicial stance directly influences how playwrights, novelists, and filmmakers engage with contemporary issues without the constant fear of litigation stifling their "Kala" (art).

Shaping Public Access

The "Public Access" aspect of the judiciary's role is perhaps where its identity as a cultural actor is most shown. In a society striving for "Samanata" (equality), the court views access to books and research not as a luxury, but as a fundamental necessity for progress.

The judiciary has acted as a bridge between the exclusive rights of authors and the inclusive needs of the public. This is most evident in decisions regarding the "digitization of works." In the digital age, where a single physical copy can be transformed into a billion digital ones, the courts have had to decide if "access" is a threat to "ownership." By leaning towards the public's interest in matters of education and research, the courts have ensured that the digital divide does not become a cultural divide. The Delhi High Court held that preparation of course packs for students constitutes fair dealing for educational purposes under section 52 of the Copyright Act. The Court emphasized that copyright law must promote dissemination of knowledge rather than

[260] The Copyright Act, 1957 (Act 14 of 1957).
[261] *Civic Chandran v. Ammini Amma*, 1996 (16) PTC 329 (Ker).

restricting access to education. The decision thus strengthened public access to academic materials over strict proprietary control.[262]

TECHNOLOGY AND THE NEW FRONTIERS OF EXPRESSION

With the advent of streaming, AI-generated content, and online art, the judiciary is now facing a landscape where the "creator" might not even be human. The Indian courts have begun to grapple with these complexities, ensuring that the law does not lag behind the "Chaitanya" (intelligence/consciousness) of technological advancement. Whether it is protecting the rights of performers in the digital space or determining the liability of internet service providers, the judiciary is effectively writing the code for how future generations will consume and create culture.

CASE LAWS: THE IMPACT OF JUDGMENTS ON CULTURAL DEVELOPMENT

To understand how the courts act as a sculptor of culture, we must look at specific instances where judicial intervention changed the way society interacts with creativity.

A- The Remix and parody Culture" In the case of RG Anand v..Delux Films[263], the Supreme Court laid down the "test of the common observer." This test determines if a work is a copy or a new creative expression. Focusing on the "spirit" and "treatment" of the work rather than just the plot, the court allowed for the growth of a vibrant film industry where themes can be revisited and reimagined, fostering a rich tapestry of cinematic storytelling.

B- Education as a Priority: The DU Photocopy Case Perhaps the most significant instance of a court acting as a cultural actor is The Chancellor, Masters & Scholars of University of

[262] The Chancellor Masters and Scholars of the University of Oxford v Rameshwari Photocopy Services 2016 SCC OnLine Del 5528.

[263] *R.G. Anand v. Delux Films*, (1978) 4 SCC 118

Oxford v. Rameshwari Photocopy Services[264]. Here, the Delhi High Court ruled that the making of course packs by a university for its students does not constitute copyright infringement. The court famously remarked that "copyright is not an inevitable, divine, or natural right." This judgment prioritized "Access to Knowledge" for students, ensuring that the pursuit of "Vidya" (knowledge) is not hampered by the commercial interests of global publishing giants.

C- Censorship and Film Bans The judiciary has frequently intervened when the state or private groups have attempted to ban books or films on the grounds of "obscenity" or "offending sentiments." In S. Rangarajan v. P. Jagjivan Ram[265], the court held that the state cannot suppress a film simply because it anticipates a violent reaction. This decision protected the "Artistic Freedom" of filmmakers to tackle sensitive social issues, thereby shaping a more mature and resilient public culture.

D- The Google Books Case (International Context with Indian Relevance) While an American precedent, the Authors Guild v. Google, Inc[266] The case has influenced Indian legal thought. The court ruled that Google's digitization of millions of books for "snippet view" was fair use. This has set a global tone for how digitization projects by libraries and archives are viewed, pushing for a world where the entirety of human knowledge is searchable and accessible.

CONCLUSION

In conclusion, the judiciary in India has moved far beyond its role as a mere "referee" in legal disputes. It has become a primary "Cultural Actor," defining the rules of engagement between the creator and the consumer. By balancing the "Swatantra" (freedom) of the artist with the "Adhikara" (right) of the public to access knowledge, the courts ensure that the cultural stream of the nation remains perennial and unblocked.

[264] The Chancellor Masters and Scholars of the University of Oxford v Rameshwari Photocopy Services 2016 SCC OnLine Del 5528.
[265] S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 SCC 574.
[266] *Authors Guild v. Google Inc.*, 804 F.3d 202 (2d Cir. 2015).

CHAPTER 11: IMAGINING A POST-COPYRIGHT FUTURE: LAW REFORM, DECENTRALISED AUTHORSHIP, AND DIGITAL COMMONS

BY SARA CHARAN

INTRODUCTION

The architecture of copyright law is at a critical inflection point in the face of ever growing technological advancements. The authenticity of ownership and authorship is also under scrutiny due to the digitally created content and individuals producing and sharing things collaboratively on the Internet. In India, where the colonial legacies of intellectual property coexist with a rapidly expanding digital ecosystem, this friction really comes to the surface in this day and age. The earlier copyright systems were set up to safeguard single owners, and they are currently being confronted with new methods of content generation, including editing and mixing already existing content. These modern creative practices do not fit well with the traditional rules. This chapter advances a conceptual and forward looking inquiry into what a post copyright future might entail through three interlinked lenses: law reform, decentralized authorship, and the digital commons. The Supreme Court of India has long recognized that copyright is not an absolute right; in *Entertainment Network (India) Ltd. v. Super Cassettes Industries Ltd.*[267]The Court emphasized that while the rights of the copyright owner are important, they must be balanced against the public interest and the promotion of creativity.

Instead of suggesting changes to the law's wording, this analysis explores the bigger picture of how copyright is evolving through shifts in ideas, the economy, and society. We begin by describing the need to reform the law, and follow the evolution of the world and the Indian

[267] *Entertainment Network (India) Ltd. v. Super Cassettes Industries Ltd., (2008) 13 SCC 30.*

copyright regimes as they face structural stress in the digitization and globalization conditions. The second section shifts to decentralised authorship, doubting the ongoing feasibility of the exclusive rights paradigm in the environment of the digital commons. In the third section, the author explores the idea of digital commons as an institutional and normative order of fair access and collaborative creativity. All through, comparative considerations of the copyright harmonisation of the European Union, especially Copyright in the Digital Single Market, are used to show the trends of supranational reform and how it may apply to India. Our central objective is to crystallize the conceptual underpinnings of a post copyright regime rather than propose an immediately operable legislative text.

THE IMPERATIVE FOR LAW REFORM

Since the early 1990s, numerous jurisdictions, particularly in the European Union, have increasingly moved the copyright policy to the supranational level,[268] as they have acknowledged that digital technologies have transformed the way in which the protected works are produced, distributed, and consumed.[269] The copyright regime in India is still territorially defined, but due to cross border streaming, platform publication, and algorithmic remixing, the exclusivity of national enforcement has already been undermined.

Traditional copyright rests upon a tripartite equilibrium: (i) the author, granted exclusive rights; (ii) the intermediary, who commercialises the work; and (iii) the user, who consumes it. The logic is that exclusive rights promote the creation and facilitate economic circulation of cultural products. However, the digital era breaks all the connections of this chain. Authorship is more and more collective, derivative, or algorithmic; intermediaries have become data driven platforms; and users have become not consumers but remixers and participants. As a result, the normative agreement that copyright is inherently a way to encourage innovation and cultural prosperity has been undermined. As it is stated by one commentator, centuries old writing is not

[268] European Commission DSM Impact Assessment.
[269] WIPO Copyright Treaty (WCT), 1996.

specific, and no progress seems to be achieved in the direction of achieving the optimal level of protection. This friction is acute in India. The state aims at the same time to drive a competitive, creative economy and to make knowledge widely available to society. Reform of law has to be creative in its incentives, but must put moral and socio economic demands on dissemination and equity.[270] In the landmark case of *Eastern Book Company v. D.B. Modak*[271]The Supreme Court moved away from the English "sweat of the brow" doctrine (which rewarded mere effort) toward a standard requiring a minimal degree of creative selection or arrangement.[272] This shift acknowledges that as data becomes ubiquitous, the law must protect the *creative* layer rather than the information itself.[273]

Indian reform has to work through several levels of constraint. A pivotal contemporary example is *ANI Media Pvt. Ltd. v. OpenAI*[274], currently before the Delhi High Court. In this case, news agency ANI alleged that OpenAI's ChatGPT was trained on its copyrighted content without authorization, often reproducing its reports nearly verbatim. To start with, the Indian Copyright Act, 1957[275], along with the subsequent amendments, was designed in an analogue context of print, broadcasting, and hardcopy distribution, and not the decentralised, iterative networks of the digital age.[276] Second, constitutional and developmental commitments in India put a premium on education, linguistic pluralism, and popular access to knowledge pressures which place pressure on the logic of pure markets of copyright. Third, the international responsibility of India in the treaties and trade agreements of the World Intellectual Property Organisation[277], restricts radical deviations in the international standards.[278] Fourth, the creative environment of the country is not unitary, including informal, community based creators as well as large platform enterprises. What emerges is a disjointed ecosystem with ideals of rights, use, and value drifting apart. Therefore, reform should not merely fine tune the rights and restrictions already in place, but should indeed spell out a coherent set of objectives: what in the digital age is copyright about?

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[270] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.
[271] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1.
[272] See Walter v Lane [1900] AC 539 (HL) (establishing the 'sweat of the brow' doctrine); Eastern Book Company v D.B. Modak, (2008) 1 SCC 1 (rejecting the doctrine in favour of the 'modicum of creativity' standard).
[273] *EBC v D.B. Modak (2008).*
[274] *ANI Media Pvt. Ltd. v. OpenAI OPCo LLC, CS (COMM) 1032/2024 (Delhi High Court).*
[275] The Copyright Act, 1957 (Act No. 14 of 1957), as amended by the Copyright (Amendment) Act, 2012.
[276] WIPO Copyright Treaty (WCT), 1996.
[277] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.
[278] Berne Convention for the Protection of Literary and Artistic Works, 1886.

And how can the law be redesigned to facilitate the decentralised authorship and the digital commons without killing the creative life?

A forward looking reform agenda might include several conceptual pillars:

Graduated protection: Rights might be of different degrees, periods, and enforceability depending on the creation mode, economic and social significance.

Use based regulation: Protection could attach less to authorship per se and more to acts of dissemination, curation, and transformation reflecting how value now arises through usage.

Functional exceptions: Considering the scale and magnitude of digital applications, exceptions should not be carved out but rather part of the rights regime.

Attribution and tracking over exclusion: With the process of creation becoming more collaborative, open attribution and equitable compensation can be more effective than absolute exclusionary rights.

The DSM Directive in the EU[279] presented exactly these recalibrations, including text and data mining exceptions, press publisher rights, and platform liability provisions. The Indian pathway can be inspired by these reforms, but it needs to be based on local realities: the variety of languages, the informality of creative labour, and the platform based distribution patterns that require a socially responsible lawmaking.

DECENTRALISED AUTHORSHIP AND THE END OF EXCLUSIVITY

In the traditional copyright, one assumes that there is a recognisable and human author who creates a fixed work which can be the subject of protection. But digital creation is more and more opposed to such singularity.[280] Authorship has been diffused and iterative through remixing, algorithmic generation, and collective co-creation. In India, the traditions of folk expression,

[279] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (the DSM Directive). (Note: Article 17 refers to the liability of Online Content-Sharing Service Providers).
[280] Berne Convention for the Protection of Literary and Artistic Works, 1886.

hybrid media, and participatory digital culture are also rich and make the solitary author paradigm even more unstable.[281] Decentralised authorship acknowledges that creative labour is currently networked, distributed, and fluid. Cultural products may be co-produced by communities, algorithms, or crowds. Such a setting would seem conceptually incompatible with the realities of creativity because of exclusive, individualised rights.

The principles of exclusivity are undermined by decentralisation. Authorship is rendered uncertain, rights distribution difficult, and enforcement prohibitively expensive, especially in the high use, low value applications of digital culture. For example, in *R.G. Anand v. Deluxe Films*[282]The Supreme Court established that there can be no copyright in an "idea," only in the "expression" of that idea. In a decentralized world, where expressions are constantly remixed, the line between idea and expression blurs. Exclusive rights may discourage transformative and derivative creativity that contributes to the innovation of culture. These tensions were tried to be resolved by the DSM Directive of the EU[283]. Article 17, about platform liability, transferred the liability of the user to the liability of the platform for user uploaded content.[284] However, researchers argue that the reform is still attached to the logic of property and does not adopt the distributed authorship concept completely. The inertia of the rights of exclusivity shows a disconnect between the legal form and technological service.

A post exclusivity model would shift towards attribution, transparency, and compensation.[285] Practically, this implies:

- Compulsory attribution mechanisms, potentially secured through blockchain or interoperable metadata registries.
- Continuous, micro based remuneration reflecting ongoing value generation through streaming, reuse, or adaptation.

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[281] WIPO Copyright Treaty (WCT), 1996.
[282] *R.G. Anand v. Deluxe Films, (1978) 4 SCC 118.*
[283] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (the DSM Directive). (Note: Article 17 refers to the liability of Online Content-Sharing Service Providers).
[284] See European Commission, Impact Assessment on the Modernisation of EU Copyright Rules (Digital Single Market Strategy); Lucie Guibault, 'Why Cherry-Picking Never Leads to Harmonisation: The Case of the Limitations on Copyright under Directive 2001/29/EC' (2003); Bernt Hugenholtz, 'Copyright and Freedom of Expression in Europe' (2000).
[285] WIPO Performances and Phonograms Treaty (WPPT), 1996.

- Platform transparency obligations to ensure that creators individual or collective retain visibility over exploitation and data flows.

The tension between individual monopoly and collaborative digital expression was recently addressed in *Saregama India Ltd. v. Emami Ltd.*[286]. Here, the court issued an interim order regarding the unauthorized use of a song in an advertisement. While the case seems traditional, it highlights the "remix culture" friction: the defendant initially sought a license but later challenged the plaintiff's very ownership of the work in the digital domain. In India, such systems could provide equitable value distribution within informal creative economies, circumventing the barriers of formal rights enforcement.[287] Furthermore, emerging models such as Decentralised Autonomous Organisations could facilitate community based management and reward distribution.

3.1 Legal Challenges and Opportunities

Doctrinally, the decentralised authorship needs to be acknowledged, which would necessitate a reassessment of moral rights, derivative art, and the seat of ownership. The current laws are still stuck to the concept of individual authorship. However, this is also an opportunity: to redefine copyright as a network of the common good and no longer as a monopoly. In *Amar Nath Sehgal v. Union of India*[288]The Delhi High Court upheld the "moral rights" of an artist to protect the integrity of their work even after the copyright had been assigned. Legislation in the future might enforce opt-in exclusivity: creators do not relinquish traditional rights, but default systems encourage open or collaborative ones. Equally, fairer ecosystems might be operationalised by compulsory transparency language and platform governance terms which replicate EU contractual fairness terms to authors and performers. In India, these reforms may be in the form of amendments to the Copyright Act[289] or a separate "Digital Creators Act" that entrench platform responsibilities and decentralised registries within the statutory framework.

DIGITAL COMMONS AND SOCIETAL ACCESS

[286] *Saregama India Ltd. v. Emami Ltd., 2024 SCC OnLine Cal 4725.*
[287] WIPO Performances and Phonograms Treaty (WPPT), 1996.
[288] *Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (Del).*
[289] The Copyright Act, 1957 (Act No. 14 of 1957), as amended by the Copyright (Amendment) Act, 2012.

There is a deeper normative question beyond ownership structures, namely, what is the interest of the people in cultural and informational goods? The digital commons as an idea holds that some knowledge and other creative works should be shared, collectively managed, and made available to everyone.[290] This was most famously defended in *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services*[291], known as the "Delhi University Photocopy Case." The Court ruled that making "course packs" for students was not an infringement, stating that "Copyright is intended to increase and not to impede the harvest of knowledge." More recently, in *Addala Sitamahalakshmi v. State of Andhra Pradesh*[292], the Andhra Pradesh High Court held that no copyright vests in mathematical or science textbooks based on a government syllabus, as these represent "laws of nature." The court reiterated that "educational use for the benefit of students" is a protected "fair use," further solidifying the legal foundation for a digital knowledge commons in India. The exclusionary logic of copyright seems to be becoming more fragile in a digital economy in which reproduction expenses are already close to zero. In the case of India, where individuals are characterised by linguistic diversity, disparity in education, and where digital divides are still persistent, the commons is not only an ideal but also a requirement. The ability to make culture and knowledge accessible is in line with the constitutional perspectives of equality and social justice.

The digital commons is not a place of anarchy, but a system of institutional stewardship. Core components include:

- Open licensing (Creative Commons and regional equivalents) allowing reuse, transformation, and attribution.[293]
- Platform intermediaries designed to facilitate sharing rather than restrict it, embedding automated attribution, micropayments, and tracking.

[290] See Yochai Benkler, The Wealth of Networks: How Social Production Transforms Markets and Freedom (Yale University Press 2006); Lawrence Lessig, The Future of Ideas: The Fate of the Commons in a Connected World (Random House 2001)
[291] *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services, 2016 (68) PTC 1 (Del).*
[292] *Addala Sitamahalakshmi v. State of Andhra Pradesh, 2024 SCC OnLine AP 124*.
[293] Creative Commons is a non-profit organisation that provides standardised public copyright licences enabling creators to permit reuse, modification, and sharing of works subject to specified conditions.

- Governance bodies, cooperatives of creators, institutions, and users tasked with overseeing transparency, metadata integrity, and public domain protection.

Legal frameworks must underwrite these arrangements. Open licences should be supported by statute, platform requirements concerning metadata disclosure, and protection of the public domain. EU experiments of orphan works, cross border portability, and text and data mining carve outs give valuable precedents.

The digital commons increase the spread of innovations and cultural engagement. Lower access barriers economically encourage creative production and alternative monetisation approaches freemium systems, collective funding, or micro licensing. More socially, the commons maintains linguistic and cultural plurality, in which there is active participation and not passive consumption. These advantages are multiplied in India: the commons are able to reduce the distance between city and countryside, increase access to education and knowledge, and prevent the monopolisation of knowledge by large scale platforms. The normative case, therefore, goes beyond efficiency; it is about justice, inclusivity, and empowerment.

The major legal issue is how to reconcile exclusive rights and commons based sharing. Possible solutions include:

- Time limited exclusivity: works enter pro commons status after a defined period unless commercial exploitation is renewed.
- Mandatory metadata and attribution: transparency as a default legal duty.
- Safe harbour regimes for sharing platforms, combined with equitable remuneration obligations.
- Flexible licensing enables creators to toggle between commons and exclusivity.

India's law could operationalise these concepts by creating a digital public domain registry, institutionalising open licences within statute, and mandating data sharing by platforms and public institutions.

MAPPING THE TRANSITION: FROM EXCLUSIVITY TO PLURALISM

A viable transition model envisions two coexisting regimes[294]:
(a) a reformed exclusivity based system calibrated for commercial markets, and
(b) a strengthened commons regime anchored in open access and collaborative authorship.[295]

Creators would choose which regime they would like to reside in, and the legislation would make it easier to migrate between the two. This pluralism is an indication of cultural and economic diversity. In India, the commercial sectors could be left to maintain a monopoly like the film or publishing industry, whereas the commons based governance would support art in the vernacular, education, and open knowledge projects. This mirrors the logic in *Academy of General Education, Manipal v. B. Malini Mallya*[296]*,* where the Supreme Court recognized the copyright in dramatic works but maintained that such rights should not impede fair use or educational activities.

A post copyright system should protect the rewards of creative work. The proposed mechanisms are:

- Micro licensing enables low cost lawful reuse.
- Subscription or membership models sustaining sharing communities.
- Public funding or cultural trust subsidies for open licensed works of high social value.
- Smart contract based revenue flows ensuring fair distribution with minimal enforcement cost.[297]

For India, state co-funding or cultural councils could support open works, particularly in regional languages. Hybrid licences exclusive for commercial use but open for educational reuse would enhance flexibility. Decentralised creativity relies on technological infrastructure, right metadata systems, attribution registries, interoperable licences, and micropayment engines. Law should then transform into exclusion regulation, rather than enforcing it: data quality, platform disclosure, and rights of creators in algorithm mediation. Examples of this infrastructural turn are the EU endeavours in cross border portability and platform liability. A reform of legislation in India should consider the following direction: creating digital rights registries, requiring that

[294] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.
[295] *Benkler (2006); Lessig (2001).*
[296] *Academy of General Education, Manipal v. B. Malini Mallya, (2009) 4 SCC 256.*
[297] WIPO Performances and Phonograms Treaty (WPPT), 1996.

metadata standards be set, and that open licences be considered as valid as any other legal framework.

Cultural change is also necessary in a sustainable post copyright order. The education systems and creative institutions need to reorient creation to participatory instead of proprietary. The collaboration, reuse, and open creativity should be rewarded in the curriculum, grants, and recognition schemes. Such a shift is in accordance with cultural realities in the multilingual and community based environment in India. Local creators, folk artists, and social media innovators can thrive in safe and open sharing environments.

RISKS, TENSIONS, AND SAFEGUARDS

The erosion of exclusivity can deter investment in expensive creative projects.[298] There are industries like film and music that continue to exploit territories exclusively.[299] In *Neetu Singh v. Telegram*[300]The Delhi High Court dealt with the widespread sharing of educational videos on Telegram. The court famously rejected the platform's "privacy" defense (based on the **Puttaswamy** judgment), ruling that the right to privacy cannot be used to shield copyright infringers. The court ordered Telegram to disclose the mobile numbers and IP addresses of channel creators, proving that in a post-copyright world, attribution and tracking become the primary tools of enforcement rather than absolute exclusion. Reform should therefore maintain commercial feasibility by the dual regime model: exclusivity where it makes economic sense, but openness where it is not.[301] Although decentralisation promises democratisation, digital platforms often reproduce inequality and the "superstar effect" concentrates attention and revenue. Law must bring transparency requirements, fair revenue sharing mechanisms, and collective bargaining frameworks. EU contractual regulation has been criticised for locking in current inequalities. The "safe harbour" of intermediaries established in *Shreya Singhal v. Union of India*[302] is being re-evaluated. India should not copy such partial reforms by institutionalising

[298] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.
[299] WIPO Performances and Phonograms Treaty (WPPT), 1996.
[300] *Neetu Singh v. Telegram FZ LLC, 2022 SCC OnLine Del 2637.*
[301] Berne Convention for the Protection of Literary and Artistic Works, 1886.
[302] *Shreya Singhal v. Union of India, (2015) 5 SCC 1.*

collective management and data transparency. In *X Corp v. Union of India*[303]The Karnataka High Court scrutinized whether platforms must make "reasonable efforts" to prevent copyright infringement proactively, rather than waiting for a court order. This shift indicates a move toward a "Platform Governance" model where intermediaries are no longer passive pipes but active stewards of the digital ecosystem.

Platforms are today's major gatekeepers of cultural access. Without oversight, they are allowed to manipulate visibility, impose exploitative terms, and appropriate value. Legal reform must therefore address platform governance: algorithmic transparency, anti dominance regulation, and open standard requirements for metadata and interoperability. The EU's digital competition frameworks for useful comparators. Digital culture transcends borders; platforms operate globally under fragmented national laws.[304] The EU's harmonisation project underscores both the necessity and difficulty of cross border coherence. Stanford Law School India must design reforms that ensure interoperability, engage in multilateral dialogue on open knowledge, and anticipate global platform operations. The "rogue website" litigation, such as *Star India Pvt. Ltd. v. Moviestrunk*[305], shows that while the law can block piracy, it must also provide legitimate, affordable pathways for access to prevent the total breakdown of the creative economy.

TOWARDS AN INDIAN POST- COPYRIGHT AGENDA

The Indian copyright reform should start with the establishment of its normative objectives. Is it economic growth, equitable access, cultural diversity, or all three? Lack of vision makes it difficult to blend reform. It is based on the experience of EU policy that India should formulate a Digital Copyright Vision Statement that would include inclusive access, innovation, and sustainable creative livelihoods.

Key components of such an agenda could include:

[303] *X Corp v. Union of India, 2025.*
[304] WIPO Copyright Treaty (WCT), 1996.
[305] *Star India Pvt. Ltd. v. Moviestrunk, (2019) 78 PTC 427 (Del).*

- Open licence[306] regimes recognised in or in addition to the Copyright Act[307].
- Implementation of the attribution and remuneration system of decentralised creators.
- Platform governance specifications, metadata standards, transparency audits, and opt-in licensing pools.
- Time limited exclusivity will automatically switch to open licensing unless renewed.
- Relaxed statutory exceptions to text and data mining, digital remixing, educational reuse, and archiving.
- Open licensed works in underrepresented and vernacular languages are subsidised by cultural trust.

Implementation would require new institutions:

- A *National Digital Rights Registry* to record works, licences, and attribution data.
- Expansion of *Creative Commons India* and similar vernacular licensing frameworks.
- A *Platform Oversight Committee* empowered to audit algorithmic fairness and revenue distribution.
- Specialised *Collective Management Organisations (CMOs)* for digital and decentralised creators.
- *Periodic review clauses* mandating reassessment of legal frameworks every five years to align with technological evolution.

Legal reforms must be embedded within a supportive cultural ecosystem. The learning programmes are to promote the knowledge of open creation, remix culture, and co-authorship. Creators who are involved in commons based initiatives should be rewarded by the state funding programmes. The public archives, libraries, and broadcasters must be at the forefront to be exemplary users of open licences and be custodians of the commons.

CONCLUSION

[306] Creative Commons (CC) licences.
[307] The Copyright Act, 1957 (Act No. 14 of 1957), as amended by the Copyright (Amendment) Act, 2012.

The post copyright future is not the end of rights but their transformation into the plural, networked regimes of creation, ownership, and sharing. The contradiction between exclusivity and openness should be resolved by law reform; authorship must be rethought as decentralised and collective; and the digital commons must be institutionalised as a stable system of equitable access. This is a massive stake in the case of India. The country, with its massive creative workforce and developmental needs, must shed the colonial inheritance and align the copyright with the realities of digital engagement. Culture can flourish in an inclusive and sustainable manner when it is co-extensive with common sensibilities, and the creators are empowered by being transparent and attributing them fairly. Knowledge and culture are not commodities, but at the end of the day, they are human heritage. Enclosure does not promote creativity; connection does. As seen in the journey from R.G. In the DU Photocopy Case, Indian jurisprudence is already leaning toward a model that values access and social utility alongside the creator's effort. Our legal challenge is to develop structures that can contribute to maintaining this vitality of collaboration to safeguard creators, to empower users, and to build robust digital commons. In sum, the journey toward a post-copyright regime is not a retreat from copyright but its renewal for a networked, twenty-first century world. The three elements of the law reform are decentralised authorship and the digital commons in which this transformation occurs. India must find a way to harmonise the rights, markets, and sharing in a manner that is precise, purposeful, and brave as India carves its way.

CHAPTER 12: COPYRIGHT AND SCIENTIFIC RESEARCH: DATA MINING, TEXT ANALYSIS, AND THE ETHICS OF RESTRICTED KNOWLEDGE

BY KUNAL PRATAP SINGH

INTRODUCTION

Contemporary scientific research increasingly relies on the extensive dataset, often obtained for the purpose of minimising the temporal and labour investment. Which is ordinarily procured by conventional methods of scientific research over the past few years and which, in the current state of affairs, digitalized into an analytical instrument that traverses an extensive analytical pipeline.[308]

Which is constrained within the ambit of massive datasets by training it on the colossal of unstructured data sets, which in this contemporary world, renowned for revolutionize advancement in research methodology particularly designated at artificial intelligence.[309]

"Which is engineered to be trained on intricate constructs of massive data sets, including an incepted initial phase as a generative adversarial network (GAN).[310]"

It unambiguously encompasses through sophisticated and complex technology framework such as machine learning and other technology computational methods, capital of expansive research computation data-driven methodologies is systematically trained on the extensive mountain of

[308] OECD, Data-Driven Innovation: Big Data for Growth and Well-Being, 2015, https://www.oecd.org.
[309] Stuart Russell & Peter Norvig, Artificial Intelligence: A Modern Approach,3rd ed., 2010.
[310] Ian Goodfellow et., "Generative Adversarial Nets", 27 Advances in Neural Information Processing Systems (2014).

data sets, and being reluctant about its framework from its initial inception days, even after all, it is advancing toward a revolutionary transformation, contemporary world of data driven research.

However, as a legitimate revolution by changing the pace of the task, it also manifests instances of unscrupulous distortion, with the parameter constituting the dilemma of moral and immoral consideration concerning its equitable utilisation from the commencement of its deployment in multifaceted directions.[311] Which draws an ambiguous distinction between the innovation and judicial jurisprudence, which functions as a protective mechanism of distinct judicial questions, and the interpretation.

Which serves as a restrictive wall. While innovation must align with restrictive measure, where it not transgress the boundaries of fair use of literary work [312] and as a copyright exclusively emerge as a remedial perquisites for literary work, which is the emergence of books, poems, articles, code and it is constituted to granting the creator entitlement of their work[313], which emerged as an artistic output, an innovator with the entitlement of its copyrighted work, the ethical dilemma emerged that the right full access of copyrighted work for the public welfare, should constitute infringement of copyright ?

As (TDM) operate entirely on the extraction of data from already pre-published work and by intricate its process through deep analytical traversal and extraction antecedent anterior work beyond the legal challenges confronted by ethical use of disposable research work and through its legal complication there is another dimension which expounded upon the ethical and a fundamental question that need to be raised.[314]

That, should knowledge be restricted on mere basis of economic disparities that bifurcated the society into two segments which is separated by a figurative lock – gate, that is accessible only upon the payment of a substantial sum of capital, and that creates an invisible pay wall.[315]

[311] UNESCO, Recommendation on the Ethics of Artificial Intelligence, 2021, https://unesco.org.
[312] The Copyright Act, 1957: 52.
[313] WIPO, Understanding Copyright and Related Rights, 2016, https://www.wipo.int.
[314] European Commission, text and Data Mining and EU Copyright Law, 2020, https://ec.europa.eu.
[315] OECD, Enabling Access to Data for Research, 2021, https://www.oecd.org.

This chapter deals with the ethical & traditional copyright framework, which exists solely in theory by fulfilling its operational objective only on paper, as in section 52. Which delineates that any work that falls within the ambit of fair dealing should not be penalised in the courtyard of copyright infringement, and this chapter deliberately determines its fundamental aim by navigating the data, collectively analysed by various governing bodies and today artificial intelligence.[316]

Its later inception is seen to be exasperating and disconcerting rather than its intended function of intricating, and as it becomes tremendously vexing to distinguish between an individual who has dedicated a lifetime of unwavering dedication to producing that scholarly work and, on the other hand, an aspiring scholar who aspires to realise his ambition by embarking on a qualified researcher through the pathway that transcends the paywall of an exorbitant journey by instigating the use of TDM and other computational methods.

DOCTRINAL ANALYSIS OF COPYRIGHT LAW IN THE CONTEXT OF TDM

Copyright embedded with the remedial spell that intricately preserve an idea cable of evolving into a social welfare, facilitate the creativity arising from the boundless expense of human intellect, and provides incentive to intellectual endeavour, encouraging ideas emerging from ocean of intellect by endowing them with a fundamental economic under pinning such as economical capital.[317]

That principal finding it foundation footing under section 52[318], and come to face certain restrictions that operate to minimise the utilisation of disseminated work for scientific research purpose need to absorb millions of disseminated works and analyse them in order to arrive at a

[316] Civic Chandran v. Ammini Amma, (1996) 16 PTC 329 (ker).
[317] William Fisher, "Theories of Intellectual Property", in New Essays in the Legal and Political Theory of Property (2010).
[318] The Copyright Act, 1957: 52.

conclusion and accessing and reproducing existing work through TDM[319]. But it is not feasible for an ordinary human to access and process such vast quantities of data. In order to intricately pursue the research trajectory and this renders the process, contemporary scientific research cannot be intricately pursued without prior access to disseminated work.

This section fails to offer a clear framework and exert only a narrow impact and as discussed in the earlier paper that the act of mass copying, susceptible to falling within the ambit of copyright infringement.[320] As it exceeded the doctrine of fair dealing by surpassing the threshold of reasonable use of publicly disseminated materials.[321]

Which is not even recognised under the traditional framework of copyright law. The exception describes its place for educational, research and other academic purposes and remains imprecise and affords only a narrowly circumscribed scope. When applied to contemporary scientific research.[322]

However, lawful mining must be construed as computational mining strictly, circumscribed by exclusive right and statutory exception. Such that it remains within the ambit of fair dealing and does not transgress the threshold of ethical use.[323] As discussed earlier in this chapter, text and data mining operate fundamentally on the repetitive reproduction of a vast data set, necessitating the copying of entire work multiple times in order to extract, process, and derive the desired analytical outcome.[324]

This set of processes surpasses the ethical threshold of exclusive right under the fair dealing, which is intended merely for reading, consultation and limited engagement and not for crossing into exhaustive reproduction. It not only adversely affects the author's legal right but also infringes the proprietary rights and economic rights of the publisher through mass reproduction.

[319] European Commission, Copyright in the Digital Single Market Direction, 2019, https://eur-lex.europa.eu.
[320] R.G. Anand v. Deluxe Films, (1978) 4 SCC 118.
[321] Civic Chandran v. Ammini Amma, (1996) 16 PTC 329 (Ker).
[322] WIPO, Limitations and Exceptions to Copyright, 2018, https://www.wipo.int (last visited Mar. 23, 2026).
[323] European Parliament, Directive on Copyright in the Digital Single Market, 2019, https://eur-lex.europa.eu (last visited Mar. 23, 2026)
[324] OECD, Text and Data Mining for Research and Innovation, 2020, https://www.oecd.org (last visited Mar. 23, 2026).

This model also fundamentally revolves around the publisher delegated authority and the capital generated from commercial exploitation of the work.[325]

INDIAN JUDICIAL APPROACH TO COPYRIGHT AND FAIR DEALING

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1. University of Oxford v Rameshwari Photocopy Services (Delhi High Court, 2016)[326]

This precedent altered the trajectory of judicial perspective as a case concerning Rameshwari Photocopy Services, which operates under the jurisdiction of the University of Delhi. The matter arose due to the reproduction of educational material.[327]

Which is covered with the thick stratum of copyright protection. But as the matter advanced towards its legal denouement. It became unequivocally clear that such conduct prima facie falls within the ambit of copyright infringement, as it implicated the core principals. As this material subjected to photocopying constituted "literary work", and the act of reproduction of material without any prior authorisation from the creator attracted the operation of section 51.

Thereby this act of photocopying amounted to a violation of fundamental copyright protection. Through unauthorised copying and photographic reproduction. Rameshwari Photocopy Services did not undertake the reproduction for commercial exploitation. Thereby satisfying the requirement of non-commercial use.

The court exercised its discretionary power to direct the nature of this case towards the right directive. By dropping this case in the mould of the Rameshwari Photocopy Services. The court exercised its judicial discretion to dismiss the proceedings by situating the act within the contours of educational use and fair dealing. As education cannot be narrowly confined to profit-orientated commercial frameworks, it decisively repudiates the notion of luxury and stands entrenched as a fundamental right.

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[325] The Copyright Act, 1957, §§ 13–14.
[326] University of Oxford v. Rameshwari Photocopy Services, (2016) 65 PTC 1 (Del).
[327] Shamnad Basheer, “The Delhi University Photocopy Case”, 2016.

The court provided a clear and cogent reasoning. That the one who cannot afford prohibitively expensive academic material cannot be deprived of education merely on the basis of economic incapacity and splashed. An ambiguous response that educational entitlements do not fall within the arena of luxury pleasure.

Yet, at the confluence of this discourse, the fundamental question resurfaces that there exists no explicit statutory provision that unequivocally clarifies whether the entire reproduction of a book per se constitutes copyright infringement, and the dilemma persists that while the exception of fair dealing is ostensibly justified. It simultaneously raises a paradoxical concern as to whether such an exception self-restricts its own doctrinal foundation of fair use when the act transgresses the permissible threshold through the wholesale reproduction of an entire textbook.

2. Eastern Book Company v DB Modak[328] (Supreme Court of India, 2008 — Originality and databases)

The Supreme Court examined the core and explicit idea of derivative work. By laying down the foundational principle of "sweat of the brow". That should be enhanced at some level with creativity and originality thereafter. The case progressed with the disclosure of its legal determinations, as EBC publishes case reports of the Supreme Court, with some augmentation, such as copy editing, formatting, paragraph numbering, headnotes, and footnotes. As EBC is a legally authorised entity duly recognised by the Supreme Court to disseminate its judicial work. The matter coming to annihilated existence when responded to by D.B. Modak, who used disseminated work of EBC without any approval.

So, the question that consequently arose was that a work of derivative creation must fall within the juridical ambit of the original literary work. The work from which such derivation is made is itself available in the public domain, and the authority clearly delineated that no individual can assert exclusive proprietary rights over court judgements. As such works are expressly preserved under Section 52(1)(q)(iv).[329] However, such disseminated material must embody a discernible degree of creativity or originality, coupled with an investment of intellectual labour.

[328] Eastern Book Company v. D.B. Modal, (2008) 1 SCC 1.
[329] The Copyright Act, 1957, §§ 52(1) (q)

"The Supreme Court clarified that not all edited or enhanced works automatically fall within the umbrella of copyright protection."

Further elucidated that mere investment of labour or capital by itself is insufficient to qualify a work as copyrighted. For a work to attain copyright ability, it must embody a discernible degree of creativity and intellectual input. Also incorporate the fundamental ingredients of originality and creative expression.

"Thereby sufficiently distancing itself from disseminated works. So, what does the Supreme Court really examine?"

The Supreme Court concluded by partially allowing the EBC appeal that the respondent was restricted from copying the enhanced version of EBC, such as headnotes, footnotes, and certain paragraph versions. But they are legally authorised to use the court judgement. Which does not[330] go through the process of augmentation and preserve both sets of rights by articulating a clear doctrinal framework governing derivative works.

3. Super Cassettes Industries Ltd v MySpace Inc[331] (Delhi High Court, 2016)

A pivotal regulatory framework in the context of television broadcasting. This regime elucidates the manner in which the fair dealing exception operates within the television market. The nature of this judicature attracted copyright infringement, and the central question binding this case is whether the exception of fair dealing is attracted in the context of the television industry.[332]

Secondly, did the broadcasting disseminate the work of Super Cassettes Industries Ltd, and is broadcasting another person's work without prior authorisation legally permissible under the Copyright Act?[333] So, the judiciary interprets that the plaintiff possessed lawful authorisation over the disseminated work. And the court, upon evaluating the prima facie evidence on record, arrived at the conclusion that. The defendant had used the said work without obtaining any prior approval.[334] The existence of welfare intent must be affirmatively established; however, the

[330] Id.
[331] Super Cassettes Industries Ltd. v. MySpace Inc., 2016 SCC Online Del 6382.
[332] Id.
[333] The Copyright Act, 1957, §§ 51.
[334] Id.

impugned work failed to satisfy the threshold of the fair dealing exception, since the scope of fair dealing is confined to purposes such as literary criticism or review.[335]

The defendant's use did not fall within the fair dealing category. The just brevity use of the disseminated work was also set aside by the Delhi High Court. And the court clarified its instance by observing the amount of work copied and that even after reproduction, it exceeded the permissible threshold. Even if it is legally permissible, it should pass the purpose-based test, which determines its purpose of fair use.[336]

4. Academy of General Education v B Malini Mallya[337] (Supreme Court of India, 2009 — educational use and fair dealing)

The Supreme Court analysed that the educational institution does not fall outside the ambit of copyright infringement. And the legal issue arises as to whether the dramatic work satisfies the test of fair dealing and remains confined within the scope of copyright infringement as per the section.

It's an ingredient as a literary and dramatic work, which has duly emerged as a purpose of educational instruction. And here the court also examined the sensitive contours of the Copyright Act and arrived at a conclusion of favouring the educational institution's argument by construing the fact in a manner that the act of intricating the dramatic work is used with the statutory framework of educational purpose and unambiguous intent of non-commercial use.

After a meticulous examination of all pertinent ingredients, the court held that the matter is encompassed within the ambit of fair dealing. This chapter addresses the virtuous application of TDM, as it generates output strictly for non-commercial purposes,[338] by going through the nature of copyright law. As it's evident from various judicial pronouncements and as it's construed through the prism of multiple judicial precedents, reflecting the interpretative essence of each ruling.

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[335] The Copyright Act, 1957, §§ 52.
[336] Civic Chandran v. Ammini Amma, (1996) 16 PTC 329 (Ker).
[337] Academy of General Education v. B. Malini Mallya, (2009) 4 SCC 256.
[338] The Copyright Act, 1957, § 52(1)(i).

FOREIGN JUDICIAL PERSPECTIVES ON COPYRIGHT AND DATA MINING

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1. Authors Guild, Inc. v. Google, Inc [339]

The landmark precedent in the context of the United States copyright regime is this case, which raises a critical doctrinal dilemma. As to whether transformative works ought to fall within the ambit of fair use cemented under 17 USC .107.[340] So, around this contested matter, we must examine the preliminary aspect of this precedent. The matter came into existence when the plaintiff authors' guild sued Google for scanning, storing, indexing and displaying snippets from the copyrighted book.[341]

These are preserved in the entitlement of major research libraries, and the court examined that the Google decision is markedly transformative in nature, and it substantially enhances accessibility for libraries holding disseminated work. Thereby facilitating expiring scholar engagement and enabling research to drive deeper inside.

So, at the preliminary stage, court ascertains that work embroidered with a specific purpose and just merely republishing the disseminated work do not immunise the propagated work from copyright work. As Google initiated advancement through transformative use. The court emphasises that the act of copying an entire digitalised book doesn't sanctify the conduct under fair dealing, and rather it redirects toward an enhancement mode of accessibility.[342]

It should not be used for the purpose of commercial use, as the Google work does not affect the financial market[343] of buying books; rather, it creates the opportunities for the user to discover books, and this chapter concentrates its entire analytical focus on the utilisation of TDM in

[339] Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).
[340] 17 U.S.C. § 107 (2012).
[341] Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).

[342] Authors Guild v. Google, Inc., 804 F. 3d 202 (2d Cir. 2015).
[343] 17 U.S.C. § 107.

scientific research. Wherein the court has laid down a foundational jurisprudential framework recognising the permissible scope of TDM usage through clear reasoning.

This covers all the layers of the database, and as we conventionally examine the utility of TDM. It involves the reproduction and transformation of unstructured data into a systematically structured format. An intricacy in itself as a transformative work, by changing the nature of earlier scholarly output in a better way through adding new expression.[344]

It should be embarked upon with a distinct feature from the earlier intellectual contribution, and it is not merely reproducing it. But republishing it in an enhanced and more refined form, yielding a superior outcome in a structured format. And when examined in the context of the Authors Guild judgement, it becomes imperative to understand that Google did not publish her book.

Rather, it created a pathway to access material output in a more flexible way, and in fact, it's orientated toward an economically profit-driven framework. And today, transformative work emerges as a novel instrument for enhancing productivity; however, it emerges with a distinctive characteristic, where TDM does not provide any royalty for the underlying work, which renders its classification with the doctrine of fair use but marginally comparatively complex.

2. Authors Guild v. Hathi Trust Digital Library [345]

The case drew judicial attention by delineating it into four structural pillars. This highlighted the elevation of transformative utility as a core determinant in a fair dealing analysis.

This brought into focus an interrogative determinant that worked as the implantation of a copyrighted book by the research libraries for the impetus of research work for the entitlement of accessibility. But despite having its transformative legal compulsion. The court recalibrated its empirical lens of evaluation toward the HathiTrust digital library in the prior judicial determination based on a cursory examination. Where the court crystallised this precedent into heterogeneous, fundamentally divergent pillars.

[344] Authors Guild v. HathiTrust, 755 F.3d 87 (2d Cir. 2014).
[345] Authors Guild v. HathiTrust, 755 F. 3d 87 (2d Cir. 2014).

The evaluation factor upon which the court premised its judgement was assessed. Through a careful examination. The court held that the work undertaken by the HTDL was profoundly transformative.

It digitalised the traditional library search mechanism by reorienting the trajectory of the search engine by rendering knowledge accessible to the wider public. In fact, it did not even displace the locality of disseminated work.

In fact, it fulfilled its intended objective by formalising its way towards meliorating the side, as illustrated earlier, that all action was performed under welfare intent and executed with the objective of non-commercial utilisation.

This is intrinsically aligned with the nature of TDM, wherein the process involves reproducing the entire database. This primarily functions as intended to advance accessibility to serve the public by enabling work that has the capacity to transform the domain of scientific research, strictly without any commercial exploitation. TDM ought to be circumscribed within the ambit of fair use, particularly as transformative work.

When executed in the public interest for research purposes. Then it should be safeguarded, and by all this, Indian jurisprudence must recognise the digitisation of scientific research within the Indian copyright framework. While preserving the transformative intellectual output derived from the sweat and toil of prolonged hardship over the tools which are used only for the purpose of restriction measures.

The 2009 precedent was drawn from its empirical vision toward the infringement of copyright. Where it charts as a new trajectory within the domain of transformative work, and by originating a fresh contextual paradigm of originality threshold.

The Court examined whether reproduction for the impetus of analysing the text for the aim of accessibility of work despite having its de Minimis reproduction of the copyrighted work. The question that looms as an insurmountable obstacle is whether it is commensurate with the nature of the work and falls within the ambit of copyright violation or not.

The court at this junction shifted its direction of analytical trajectory. By ruling that even the smallest part of disseminated work should be derived from the depth of the creator's own intellect. And it should be encapsulated with the trajectory of innovative original literary work. However, an examination of the European copyright framework reveals. It should be enshrined within the exception of fair dealing for ephemeral use arising in the course of computation.

The court also emphasises that the snippet must be equipped with the ingredient of the author's intellectual application and creative input, and merely just republishing the work without any inventive analytical standpoint does not fall for the protection of copyright.

It should be assessed in light of the minimum threshold of originality vested in the author's work, and when we look out toward the trajectory of European[346] copyright law, which articulates that it constitutes a more restrictive limitation on permissible use of TDM.

In contrast the US copyright regime, which historically exhibited greater leniency toward transformative work, over time European jurisdictions have introduced explicit statutory provisions regulating TDM.[347] For the purpose of scientific research, however, it must not transgress the restrictive contour of fair use but rather, it should be firmly anchored in a public positive entitlement.

AI AND CONTEMPORARY DEVELOPMENT

Artificial intelligence has emerged as a powerful mechanism of accessibility and functions as an enabling mechanism for enhanced access and efficiency; it's also simultaneously manifest as a potential catalyst for disruption and immense ethical concern. As we arrive at the culmination of this chapter.

It becomes evident how AI has progressively evolved into a significant societal concern, while simultaneously functioning as a societal benefactor through its role as a tool of accessibility.

[346] Directive (EU) 2019/790 of the European Parliament and of the Council (DSM Directive), arts. 3-4.
[347] 17 U.S.C. § 107.

From its inception, initially AI, was not perceived in the manner in which it is scrutinised today, as its contemporary implications have unfolded gradually with technological expansion.

However, an author who errs in research based on their own intellect may be held accountable for the mistake or misrepresentation. But what of AI search, which predominantly depends on the reproduction and processing of vast datasets of TDM. As Indian copyright jurisdiction doesn't conclude any angle of fair use of TDM.

Who bears responsibility when the text is generated primarily from the machine learning algorithm, and it becomes difficult to summarise how this complex computational algorithm works as centric power by working on textual data?

You understand the essence of linguistic tone by going through the millions of books, articles, and scientific papers available across the digital domain by analysing them, as its training extends across multiple domains, including the field of image processing. It carries distinct implications when examined through a judicial approach in codifying the concept of TDM. As the court spread its gaze across the purpose of copying rather than how much of a segment has been imitated.

The court categorised the purpose of utilisation into two overarching categories, where one purpose delineates its scope as a consumptive use and is intended to fulfil its function by permitting the lawful reproduction of material for private study.[348] While conversely the other facet demonstrates its capacity as an analysis, search and interoperability as an expressive medium of use and formalisation. Its copying is used to facilitate the creation of a new transformative output, and such copying may be justified where its sole purpose is to advance the research ecosystem by offering a novel perspective through transformative use.

Consequently, the ethical dilemma emerges amid a vast sphere of confusion as a contemporary conundrum: after transcending the initial phase of the work, when the generative output produced is an artificial intelligence work, who holds ownership of that work?

[348] The Copyright Act, 1957, § 52(1)(a).

Is it the user, who prompted the AI for that work, or the programmer, or was there no one who initiated this process, making it exist without attribution?

This question becomes even more pressing when the computation process of the AI regulatory framework appears as a limited yet significant disruption exemplified by ChatGPT.[349] This operates on the fundamental element of generating results through reproducing the unstructured multifaceted data into a format that can be easily processed and understood by a computational system by making it into a structured format. And, as discussed in the preceding section of this chapter, the traditional copyright regime fails to provide a definite and organised legal framework that encompasses results from large-scale dataset reproduction through analysing the voluminous number of datasets; instead, it offers merely a provision as an exemption applicable to users that may be categorised under fair dealing.

INTERNATIONAL APPROACH TO TDM AND COPYRIGHT

The rationale behind undertaking a comparative analysis of global copyright frameworks lies in the necessity to delineate and differentiate each copyright regime. So as to comprehend their foundational ethos and the distinct jurisprudential lenses through which they perceive and regulate copyright law within the evolving arena of artificial intelligence and allied technological domains.

As we need to understand the trajectory along which the contemporary copyright regime is progressively advancing. It is evident that copyright law across jurisdictions is evolving on a case-by-case basis; hence, we cannot confine our analysis to a single contemporary copyright regime and must instead broaden our horizon to encompass global jurisdictions, and when we extend our perspective to the United States copyright regimes.

The European Union copyright framework became a critical dilemma as text and data mining (TDM) operates entirely on full-scale reproduction. That act of reproducing the entire work is

[349] Open AI, GPT-4 Technical Report, 2023.

permissible through the lens of the United States copyright framework.[350] But as we move toward the European copyright framework, it becomes evident that it treats the copy reproduced through TDM and the research work which is derived from the commencing phase of computational methods such as AI as a copyright infringement.

Subsequently, the European Union revised its stance and incorporated TDM and AI-generated works into statutory exceptions, treating them as non-infringing uses, and this shift changed the landscape with the introduction of the Digital Single Market Directive (2019).[351]

This expressly provided a statutory exemption for TDM and softened the rigidity of the European copyright framework. That amendment formalised the European amendment distinct from other copyright rights frameworks. As it analysed the different copyright judicature through case by case and came up to the terminal to determine its balanced approach toward the copyright framework.

After examining the jurisprudence of other copyright regimes, it is the time to look out toward the certain provisions that can be discerned when viewed through the lens of the Indian copyright framework as there is an absence of statutory provisions explicitly recognising the use of TDM. It has been seen to be a more under-developed provision across all jurisdictions and even when we seek recognition from the given provisions, as they completely rely on section 52 as a remedial shield for copyright protection.[352]

ETHICAL ARGUMENT

This ultimately brings the chapter to a conclusion by foregrounding the ethical dimension of copyright, wherein copyright functions as a safeguarding mechanism that protects the creator both morally and economically and wherein TDM and AI completely rely upon copying the broad excess of knowledge, and by respecting the use of such computational algorithms, they can

[350] 17 U.S.C. § 107.
[351] Directive (EU) 2019/790 of the European Parliament and of the Council (DSM Directive), arts. 3-4.
[352] The Copyright Act, 1957, § 52.

exclusively control the monopoly by restricting research and social progression, and this again gives rise to an ethical conundrum: while safeguarding the right of a creator who has invested years of intellectual labour in pursuit of recognition and economic reward is imperative, an equal concern emerges for those researchers who, lacking sufficient capital, are unable to adequately finance or sustain their scholarly pursuit.

However, there must be a synchronisation of accountability regarding AI output, as they sometimes raise concerns of bias and misinformation and with this in mind every step in their utilisation should be undertaken judiciously.

Moreover, the advancement of research concurrently elevates society, as the cumulative insights from rigorous inquiry provide diverse perspectives and a broader lens through which societal issues can be understood, as discussed earlier that there are some economical barriers also which restrain progression of research and furthermore. An examination of AI training mechanism reveals that such systems are inevitably trained on copyrighted works, which gives rise to a profound ethical dilemma concerning accountability and responsibility for such utilization.

There are moral rights also which worked as a shield to protect the connection to their work that establish a direct connection with that piece of work and this solely intended to confer due respect and to preserve the integrity of the author for that particular work by providing them a fair means of reputation and such societal progression should be understood as the advancement of society through enhanced productivity in research and technological developments.

It is often cautioned and should not be so restrictive that it suppresses research at its very root. Instead, the legal framework should nurture research like a growing plant which allows it to develop freely and sustainably, so that it can contribute to long-term societal progress and technological advancement.

CONCLUSION

The intersection of the traditional copyright regime with TDM and AI stands out as a paramount challenge and legal dilemma in the contemporary modern era. The traditional copyright regime is intended solely to serve the purpose of protecting work from infringement and unauthorised

interference and provides only a limited and narrowly defined exception for fair dealing under section 52 of the copyright framework. [353]

This framework is designed in that way to solve its purpose in a very narrow manner, which is gradually grounded primarily in a human-centric perspective. This traditional copyright framework remains largely ill-suited to recognising technological advancement. This particularly undermines the cornerstone to the unmarshalled use of machine learning algorithms for scientific research purposes. Moreover, this traditional framework also fails to recognise the utilisation of text and data mining (TDM) and AI-driven mechanisms within the domain of scientific research activity.

The study reveals that while copyright protection is a crucial branch that safeguards the preservation of the interest of the creator and innovator. Functioning as a protective mechanism. When infringement occurs, on the other hand, we see a critical dilemma arise wherein such a restrictive measure operates as a suppressive constraint that impedes technological advancement and decelerates the progress of scientific research in the contemporary world.

Through a comparative analysis of the international approach toward the landscape of TDM in AI mechanisms, we arrive at the conclusion. That copyright frameworks across all global jurisdictions must be examined and aligned toward a harmonized and balanced approach, uniformly applicable worldwide, in order to eradicate ambiguities surrounding computational mechanisms.

In this context, there is a pressing need for a clear and precise copyright framework through the legislation reform, which creates a bridge for a clear comprehensive and formal recognition TDM. Other AI mechanisms in the context of research purpose within the ambit of fair dealing. An ambiguous policy approach which worked as an amplifier to balance the innovator and creator rights, at the same time it must adopt a lenient approach, while preserving the public interest for the sake of a harmonized approach.

This would serve as a catalyst ignite for knowledge dissemination for the public good in the era of technology advancement. While promoting mankind through cultivating ingenuity and

[353] The Copyright Act, 1957, § 52.

scholarly insights and permissive constraints on the replication of disseminated work in this modern contemporary world by preserving a balanced approach with societal progression in the era of artificial intelligence.

CHAPTER 13: THE GOVERNANCE OF METADATA: ATTRIBUTION, DIGITAL IDENTITY, AND BEING ACKNOWLEDGED AS AN AUTHOR

BY SWAYAMPRAVA ROUT

INTRODUCTION

"Data about data" is what is used to define the term metadata. On the other hand, the term refers to the information used to identify a digital piece of content and enable its location and understanding. In determining the origin of different pieces of digital content, the term acknowledges the important role metadata plays in identifying the authors of content that can be classified into categories such as academic and social media content. When metadata used to represent the authors of different pieces of content is neglected, copyright authorities in the U.S. report that the ease of altering the content itself can enable the metadata used to represent the authors to be altered to inaccurate details.

This chapter explores the legal and ethical governance of metadata, with a focus on authorship and identity. It mainly looks at academic publishing but will also consider social media, virtual art, and open-source platforms when examining the implications.

METADATA, POWER, AND THE ORGANISATION OF DIGITAL KNOWLEDGE

Metadata is the digital knowledge economy infrastructure. It is widely described as the information on the information, or data that describes, explains and organizes the digital content but that does not make up part of the content itself. Metadata gives digital resources some background and allows it to be recognized, administered, and utilized within systems of digital components. It is usually categorized into three broad types namely descriptive, administrative and structural metadata[354].

Title, author, keywords and subject classification are some of the elements of descriptive metadata. Its main activity is to facilitate the identification and access of information as a catalogue record in a conventional library. Administrative metadata on the other hand includes technical and management oriented information such as file format, creation date, access control, and provenance information[355]. Structural metadata describes the organization of various sections of a digital object, e.g. how the chapters of an e-book are divided or how the tracks of a digital music album are sequenced.

Metadata serves a purpose beyond mere description. It facilitates search, interoperability, and functionality of digital content in an information system of considerable scale. In the modern knowledge economy, where search engines like Google, YouTube, and scholarly repositories deal with immense amounts of data, metadata is how unstructured information is turned into useful and valuable resources. Search engines are based on metadata to rank and retrieve content, recommendation systems are based on metadata to personalise user experiences and emerging technologies like blockchain are based on metadata to capture authenticity and provenance[356].

Metadata should always be differentiated with content it describes. Whereas digital content conveys expressive or substantive meaning, metadata is simply another layer that exists in conjunction with it. An example is that a digital image stores visual data, however, the metadata that may be attached to it can contain information like the place where the picture was shot, time, and pieces of equipment. Such a division implies that metadata is, in theory, a neutral

[354] Anne J. Gilliland, "Setting the Stage", in *Introduction to Metadata* (Getty Research Institute 2016).
[355] Murtha Baca (ed.), *Introduction to Metadata* (Getty Research Institute 2016).
[356] Christine L. Borgman, *Scholarship in the Digital Age: Information, Infrastructure, and the Internet* (MIT Press 2007).

infrastructure that is meant to assist in the efficient exchange of information, in compliance with the law and cross-platform compatibility[357].

Yet, this seems to be a false image of impartiality. Practically, metadata acts as a place of authority and control. Metadata schemas and technical standards are usually influenced by economical and political agendas. Powerful metadata systems created by giant technology firms influence the particular way knowledge is defined and brought into view, often marginalizing other or communal systems of knowledge. Metadata is also controlled by digital platforms which transform, delete or substitute attribution and provenance data in the processing, compression, or algorithmic moderation of content. This type of practice can interfere with the authorship and blot out the sources of creative work.

In this sense, metadata can not be perceived as a technical tool only. It has a decisive influence on the process of assigning authorship, representing identities, and distributing values in the digital space. Consequently, metadata governance occupies the space between copyright law, power of platforms, and identity politics, so it is one of the core issues in the management of the digital knowledge economy.

METADATA AND ATTRIBUTION: FROM TRADITIONAL CREDIT TO DIGITAL IDENTIFICATION

One principle of authorship and intellectual property never had to alter its attribution. It had been preserved in conventional systems by standard social and legal conventions like footnotes, bibliographies, acknowledgements and copyright notices. These mechanisms mostly relied on the judgments of human beings, professional norms, and conventions of discipline. Within the academic field the use of citation had guaranteed credit, whereas in artistic circles attribution was typically given by means of conspicuous credits or copyright. These types of attribution were

[357] Paul Edwards et al., "Understanding Infrastructure: Dynamics, Tensions, and Design", (2009) *Journal of the Association for Information Systems* 365.

unchanged in the work, although they were legally significant, and were not about the work itself[358].

The digital space has tremendously transformed the functioning of attribution. It is no longer the ethical practice or legal requirement but is being incorporated more in digital content in form of metadata[359]. Such information as names of authors, files created dates, version records, and identifiers are now encoded into files and databases and even web sites. Consequently, attribution is no longer located on footnotes and margins but within the technical framework of how digital material is stored, shared, and found.

The key to this transformation is metadata. Digital systems can also be linked to the specific individuals of the works through author name tags, which can be later aggregated and linked across different platforms. Records of the creation and modification of content are called timestamps, and they are used to set precedence, define the duration of copyright, and assist in enforcement. The version histories found in the academic repositories and open-source software platforms record the contributions made by the team over the years and assist in understanding who is responsible and who authored in case a dispute arises[360].

The use of persistent identifiers, such as Digital Object Identifiers (DOIs) of works and ORCID identifiers of authors, is one of the developments of especial significance[361]. These identifiers are used to differentiate between people of similar names, continuity in the face of institutional or professional change, and permit attribution information to be treated with predictable accuracy using machines. Attribution is therefore a dynamic system that traverses databases, indexing services, and digital platforms, instead of a static recognition that is affixed on one publication. In spite of these developments, metadata-based attribution is still susceptible.

Content can often be lost in translation between platform changes, formatting changes, or be shared on social media and thus attribution data is often lost. Metadata can be eliminated to make works circulate without explicit reference to the authors. These losses are not easily noticed and fixed as compared to the traditional citation errors.

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[358] Anthony Grafton, *The Footnote: A Curious History* (Harvard University Press 1997).
[359] Lawrence Lessig, *Code and Other Laws of Cyberspace* (Basic Books 1999).
[360] Yochai Benkler, *The Wealth of Networks* (Yale University Press 2006).
[361] Laurel L. Haak et al., "ORCID: A System to Uniquely Identify Researchers", (2012) 13 *Learned Publishing* 259.

Professional norms or good faith no longer form the foundation of attribution as much as it is increasingly being influenced by technical design and platform governance which serves as a consequence. The way metadata is made, maintained or deleted directly influences whether or not the authors of the work are credited. It is also metadata governance that has occupied the center of the governance of attribution itself.

DIGITAL IDENTITY AND AUTHORSHIP IN NETWORKED ENVIRONMENTS

Authorship in digital and networked space is highly linked with digital identity. Digital identity does not belong to a name or a personal profile to the authors and creators. It is generated with metadata records, platform databases, algorithmic measures and circulation patterns. Recent theory accepts digital identity as being relational and infrastructural. It evolves by the manner in which information of an author is stored, indexed and utilized across platforms as opposed to self- description per se.

A digital identity of an author consists of various factors. They include authors and their variations, institutional affiliations, publication records, time-related information, identifiers and reputational signs, like citations, downloads, or followers. Digital identity can be continuously updated with metadata unlike print-based authorship when identity was connected to a stable byline. Information science studies reveal that writers are nowadays widely recognised with machine-readable documentation. Visibility is based on consistency among databases as opposed to narrative self-presentation[362][363].

Networked settings also make identity more difficult with anonymity and pseudonymity. False identities are also used by numerous authors, especially in the field of open-source development, political scholarship, and online creative communities. Pseudonymity may embrace privacy,

[362] Louise Amoore, *Cloud Ethics: Algorithms and the Attributes of Ourselves and Others* (Duke University Press 2020).
[363] Julie E. Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press 2019).

political expression and creative freedom. Simultaneously, it is able to disintegrate identity across platforms. A writer can even use other names in scholarly publications, in code libraries, and in social networks. The recognition and credit are undermined when metadata systems do not connect such identities. This fragmentation is frequently the case with researchers in their initial phases of work and with marginalised creators of work circulating in contentious ways but with uneven attribution[364].

Identification systems based on metadata have tried to minimize this fragmentation by forming author identities which are stable[365]. Associations between publications, affiliations, and contributions within platforms are achieved through the identifiers like ORCID. Such systems operate based on unique and machine-read identifiers, on which databases track an author even when they change their name or move institution[366]. Whereas this method enhances uniformity, it formalises identity and links recognition to conformity to technical and institutional standards[367].

This development causes tension among various kinds of identity. Personal identity is concerned with the way personalities are being represented by the authors. The field definitions, verification mechanisms, and naming policies imposed by publishers and digital platforms define platform-defined identity. Algorithms identity comes in the form of quantitative indices like number of citations, level of engagement and ranking. The most powerful force is typically algorithmic identity since it dictates the visibility and power without actually considering individual intent[368].

The main conflict is identity control. As much as authors play a role in shaping their digital identity, platforms are also gaining more influence in shaping this identity, the way it is structured, judged and maintained . Authorship no longer belongs to the authors in the networked environments. It is generated by synthesizing metadata systems, platform design and algorithmic power[369].

LEGAL RECOGNITION OF AUTHORSHIP THROUGH METADATA

[364] David Beer, *Metric Power* (Palgrave Macmillan 2016).
[365] danah boyd, *It's Complicated: The Social Lives of Networked Teens* (Yale University Press 2014).
[366] Laurel L. Haak et al., "ORCID: A System to Uniquely Identify Researchers", (2012) 13 *Learned Publishing* 259.
[367] Michel Foucault, "What Is an Author?", in *Language, Counter-Memory, Practice* (Cornell University Press 1977).
[368] Tarleton Gillespie, "The Relevance of Algorithms", (2014) 20 *Media Technologies* 167.
[369] Julie E. Cohen, "Law for the Platform Economy", (2017) 51 *University of California Davis Law Review* 133.

Metadata and the Evidentiary Role of Metadata in Copyright Law.

Metadata plays a significant role as an evidentiary process in copyright legislation because it facilitates claims of authorship and proves when and how it was created. Included metadata, like names and dates of creation, file formats and change history can be used to prove who created a work and when. Metadata (extracted by source files, such as photographic EXIF data or document revision histories) when used in the context of a digital work dispute may offer objective evidence of creativity and development as an author. In various jurisdictions, metadata has been admitted by the court as pertinent electronic evidence provided it is rightfully authenticated and maintained. The judicial criteria of admissibility of electronically stored information stipulate that metadata must comply with the demands of relevance, authenticity and reliability.

Courts also have stressed on the necessity to preserve the proper preservation practice. Metadata whose metadata is modified, left incomplete or gathered in unsound ways can have its evidentiary value diminished or obviated altogether[370]. Consequently, metadata is of legal importance, however, it must be backed by suitable levels of technical integrity and chain-of-custody records[371].

Creator metadata is compatible with formal registration of copyright, but not in lieu of the formal registration. Registration is still a major legal condition of enforcement in the jurisdictions including the United States and India. Metadata reinforces claims of this nature by having technical evidence on how it was created and at the time it was created. In India, metadata documentation can be used to support copyright registration under the copyright act, 1957, but registration is at the center of the enforcement process[372].

The Right of Attribution and the Moral Rights.

[370] George L. Paul and Jason R. Baron, "Information Inflation: Can the Legal System Adapt?", (2007) 13 *Richmond Journal of Law and Technology* 1.
[371] Paul Goldstein, *Goldstein on Copyright* (Wolters Kluwer 3rd edn., 2019).
[372] Copyright Act, 1957, ss. 45–48 (India).

The moral rights are distinguished by international copyright law as economic rights. The Berne Convention of the Protection of Literary and Artistic works defines two basic moral rights[373]. These are the right of integrity and the right of attribution[374]. The right of attribution permits the authors to assert their authorship to their work in spite of whether the economic rights have been transferred or not. The principle is especially applicable in the digital context whereby metadata is playing a greater role in attribution.

The right of integrity ensures that the authors are not distorted or changed in a manner that will tarnish their honour or reputation. Online, any act of deleting attribution metadata, alterations to content by algorithms or unauthorised changes may compromise both attribution and integrity[375]. Such dangers are increased when platforms update or treat content without the knowledge of creators. Moral rights, though being essential, have limits of enforcement.

The TRIPS Agreement does not introduce moral rights to its protection framework and this has created an imbalance on the protection of the economic and moral interests[376]. The protection of moral rights in the United States is quite limited and nonexistent except in some visual works. Section 57 of the copyright act 1957 offers wider recognition in India by protecting the attribution and integrity of works in a variety of works. Nevertheless, it is a challenging aspect to enforce practically in practice where attribution metadata is removed or disregarded by platforms.

Metadata as a Link Between Copyright and Moral Rights

Metadata is an effective intermediation between a claim of copyright and enforcement of moral rights. Although copyright law regulates the rights to ownership and exploitation, the moral rights concern the authorship and personal relationship to the work. Data that are abstract rights in the form of creator identity, creation dates and modification histories documented in metadata are converted into verifiable facts. Metadata can be used as evidence in instances where there is

[373] Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 6bis.
[374] Gillian Davies and Kevin Garnett, *Moral Rights* (Sweet & Maxwell 2010).
[375] Christophe Geiger, "The Constitutional Dimension of Moral Rights", (2009) *International Review of Intellectual Property and Competition Law* 371.
[376] Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994, art. 9(1).

an alleged misattribution or unauthorised modification with timestamps, version records and attribution fields. This is a role that is solely brought about by preservation[377].

The legal principles on evidence preservation mandate that the parties uphold metadata when litigation is reasonably anticipated. Destruction or alteration of metadata has been considered by the courts as a significant failure to provide evidence[378]. When this happens, the burden can be moved onto the party that caused the loss of data in order to prove that the lost data were not connected to the metadata that was lost[379]. This practice indicates that courts realize that the loss of metadata may result in a direct impairment of authorship claims. International and Comparative Approaches.

International and Comparative Approaches

International instruments are more concerned with metadata protection. WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty demand a legal safeguard to the electronic rights management information[380]. These requirements acknowledge metadata as a part of authorship and rights enforcement. The European Union has also embraced transparency requirements on platforms, which mandate digital services to keep proper attribution information and audit logs with automated content systems[381].

Relatively, metadata is explicitly identified as admissible in copyright cases by a number of jurisdictions. India considers metadata conservation as pertaining to enforcement of moral rights, but procedural arrangements are still not extensive[382]. These progressions are indicative of increased sensitivity that authorship in the digital world relies on metadata regulation.

Evidentiary Challenges and Emerging Limits

Metadata enhances authorship, but introduces problems. Attribution metadata is frequently not present in artificial intelligence disputes since there is no metadata describing the creator of

[377] Pamela Samuelson, "Allocating Ownership Rights in Computer-Generated Works", (1986) 47 *University of Pittsburgh Law Review* 1185.
[378] Zubulake v. UBS Warburg LLC, 220 F.R.D. 212 (S.D.N.Y. 2003).
[379] Silvestri v. General Motors Corp., 271 F.3d 583 (4th Cir. 2001).
[380] WIPO Performances and Phonograms Treaty, 1996, art. 19.
[381] European Union, *Digital Services Act*, Regulation (EU) 2022/2065.
[382] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

training data. This poses gaps of evidence on part of original authors[383]. Metadata also becomes tricky in the privacy law because excessive collection can be considered opposition to the requirement to protect data.

Courts weigh the metadata as evidence more heavily and proportionality considerations against the former. In the case where metadata production has undue burdens, the courts can restrict disclosure despite relevance[384]. Consequently, metadata is an effective and flawed tool that can be effective based on technical design, legal norms, and institutional procedures.

PLATFORM GOVERNANCE AND THE POLITICS OF ATTRIBUTION

Platform Control Over Metadata and Attribution

Metadata of creators on digital platforms are controlled on a very broad scale by contractual and technical means. In cases of upload, Terms of Service implemented by creators demand that they license both content and metadata of the content on a broad basis. Whereas creators maintain formal ownership of copyright rights, platforms have a practical control over metadata of attribution storage, editing, or deletion.

Platforms have the technical capacity to manipulate metadata using automated processing systems. The information of attribution on uploaded files can be rewritten, stripped, and overwritten without the involvement of the creators[385]. . This generates an imbalance in the structure whereby creators are no longer in control of the metadata that describes their authorship and digital identity in an effective way[386].Though platform algorithms sort the content by metadata tags, such as topic, type of audience, and metrics of engagement, creators receive minimal clarity in the ways such categories affect visibility[387].

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[383] Andres Guadamuz, "Artificial Intelligence and Copyright", (2017) 13 *WIPO Journal* 1.
[384] Sedona Conference, *The Sedona Principles on Electronic Document Production* (2018).
[385] Julie E. Cohen, "Law for the Platform Economy", (2017) 51 *University of California Davis Law Review* 133.
[386] Rebecca Tushnet, "Copy This Essay: How Fair Use Doctrine Harms Free Speech and How Copying Serves It", (2004) 114 *Yale Law Journal* 535.
[387] Tarleton Gillespie, "The Relevance of Algorithms", (2014) 20 *Media Technologies* 167.

The engagement metrics of videos, including views, watch time, and interaction rate, decide the promotion or suppression of content on the short-form video platforms. The creators also tend to lose access to audiences without any apparent explanation. Since the processing of metadata is not revealed by platforms, creators have no option but to reuse until they regain visibility, and therefore this puts the stress of navigating opaque systems on them[388].

Terms of Service as Private Governance

Platform Terms of Service are part of the private regulative tools that regulate attribution and copyright without any legislative control or any meaningful negotiation. Such take-it-or-leave-it deals enable platforms to come up with their own systems of copyright enforcement outside the court and outside the law[389].

Another common type of such contracts permits platforms to make derivative uses of uploaded materials by processing them in an algorithmic manner. Social systems of classification, monetization, or restrictions define the way works are organized, and creators are left with little more than a name on the work. All risks of copyright infringement are passed onto the creators that have to certify the legality of all content and metadata. When creators are identified as infringing under automated systems, they are penalized with an instant message including the adoption of demonetization or a decrease in visibility[390].

The resolution of disputes is in-house and platform-based. Designers have to defy automatized judgments in rigid schedules and platform-based processes. When the disputes have no result, the only option is litigation, which in most cases is not financially accessible. This designation is a successful substitute of judicial checks with the platform checks[391].

Algorithmic Visibility and Attribution Suppression

Attributes are highly affected by platform algorithms. Recommendation systems are designed to give priority on the metadata of engagement than the metadata of creator, hence the attribution

[388] Evelyn Douek, "Content Moderation as Administration", (2020) 136 *Harvard Law Review* 136.
[389] Frank Pasquale, "Two Narratives of Platform Capitalism", (2016) 35 *Yale Law & Policy Review* 309.
[390] Margot E. Kaminski, "Binary Governance: Lessons from the GDPR's Approach to Algorithmic Accountability", (2019) 92 *Southern California Law Review* 1529.
[391] Kate Klonick, "The New Governors: The People, Rules, and Processes Governing Online Speech", (2018) 131 *Harvard Law Review* 1598.

metadata is secondary to performance indicators[392]. Consequently, the content can be spread and the author can go unnoticed.

The use of algorithmic ranking can downplay attribution remarks or author replies and upscale other exchanges, breaking down the connection between artwork and the creator. Video content is organised by metadata tags giving priority to topical similarity and engagement, in many cases without prioritising authorship[393].

This is erased as structural by creators. Their identity is hidden in the platform systems without making it available and elucidated. In the meantime, platforms can gain economic advantages through metadata created by creator activity, both by advertising and analytics, and creators can learn very little about the mechanisms of such systems[394].

Private Regulation and the Lack of External Oversight

Platform governance of attribution falls mostly outside the conventional legal control. Platforms establish their regulations, compliance procedures, and appeal. Scale attribution and copyright Decisions are made by automated systems, but the logic, error rates and training data are not publicly available[395].

As observed by scholars, automated moderation systems have no sure use in evaluating such intricate legal issues as the concept of fair use, as they index on pattern matching[396]. Although it is known to have certain limitations, platforms tolerate error as a necessary cost of automation. Platform contracts often deny responsibility for such erroneous acts and provide the only solution in internal review. This leads to platform exceptionalism, in which attribution and copyright enforcement are not performed in accordance with statutory standards without any accountability

[392] Safiya Umoja Noble, *Algorithms of Oppression* (New York University Press 2018).
[393] Sarah T. Roberts, *Behind the Screen: Content Moderation in the Shadows of Social Media* (Yale University Press 2019).
[394] Shoshana Zuboff, *The Age of Surveillance Capitalism* (Profile Books 2019).
[395] Cary Coglianese & David Lehr, "Regulating by Robot: Administrative Decision Making in the Machine Learning Era", (2017) 105 *Georgetown Law Journal* 1147.
[396] Julie E. Cohen, "Between Truth and Power: The Legal Constructions of Informational Capitalism", (2019) 3 *Law, Culture and the Humanities* 1.

CHALLENGES TO AUTHORIAL RECOGNITION IN THE AGE OF AI AND AUTOMATION

The emergence of artificial intelligence and robots pose significant threats to the authorial identity in the virtual world. The existing copyright law is founded on the belief that authorship is a human activity, which is founded on creativity, intent, and originality. This is another assumption that was embodied in international law like the Berne Convention and seen in the fact that copyright protection is restricted to works that are produced by a human author. The systems of generative AI break this paradigm by creating text, image, music, and other expressional art, but without human creation in the traditional meaning of the term. This tension is evident in recent developments in the law[397].

The United States Copyright Office has explained that a copyright cannot be granted to a work that was fully produced through artificial intelligence because it lacks the authorship of a human being[398]. Meanwhile, guidance acknowledges that AI assisted works can be considered under protection in cases where human beings have meaningful creative control and meet the minimum originality requirement.This uniqueness brings in a new governance issue to metadata systems. Metadata has now to point to how a work was created as well as by whom it was created. Current metadata standards do not have uniform fields to differentiate human authored, AI assisted or all AI generated works and attribution continues to be less reliable.[399].

There exists a more profound issue on the data of AI training. Generative AI systems work on large volumes of copyright information with millions of works that their authors are not notified or credited. Creative work is converted into numbers in the course of training, eliminating any available attribution metadata. The original works, even though they represent a guarded authorship, are viewed as indifferent information inputs. This process disconnects creative labour

[397] Berne Convention for the Protection of Literary and Artistic Works, 1886, art. 2.
[398] *Thaler v. Perlmutter*, 2023 WL 5333236 (U.S. District Court for the District of Columbia).
[399] U.S. Copyright Office, *Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence* (2023).

with the recognition such that a large-scale erasure of attribution occurs. Adding creators to an aggregated dataset does not recognize creators or give them a channel towards compensation.[400].

The platform practices also increase the erosion of authorship. When uploading and compressing content in social media and other sites that share content, metadata including name of the author and copyright information is regularly removed. Although it is posed as technical optimisation, it practices to eliminate the digital identifiers that link works to their authors. The legislation providing protection against the removal of metadata is available but has a very limited interpretation. Courts have frequently demanded evidence that metadata deletion was done to promote infringement, which leaves a loophole whereby systematic attrition loss is permitted without liability[401].

Another attribution problem is posed by large language models. These systems are conditioned to huge amounts of human text and produce outputs that bear an averaged style and not author signatures. Stylistic analysis has proven to be ineffective in traditional methods of authorship attribution, with regard to such outputs.[402]. Metadata systems cannot also accurately signal whether text was authored by a human, authored by an AI, or by a mixture of the two. This ambiguity forms incentives towards misrepresentation and distrust with academic, journalistic, and creative backgrounds.

Solutions like metadata of rights embedded in it are severely limited[403]. The metadata standards are not unified, the embedded data is frequently removed by the platforms, and there is no mandatory requirement among AI developers to do so. Regulatory reaction on the international level is still fragmented and incomplete[404]. Although certain jurisdictions mandate some transparency to training data, none of them create binding frameworks to maintain attribution throughout pipelines of AI[405].

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[400] World Intellectual Property Organization, *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence* (WIPO 2020).
[401] Andres Guadamuz, "Artificial Intelligence and Copyright", (2017) 13 *WIPO Journal* 1.
[402] *Victor Elias Photography LLC v. Ice Portal Inc.*, 43 F.4th 1313 (11th Cir. 2022).
[403] Digital Millennium Copyright Act, 1998, § 1202 (United States).
[404] Emily M. Bender et al., "On the Dangers of Stochastic Parrots: Can Language Models Be Too Big?", (2021) *Proceedings of the ACM Conference on Fairness, Accountability, and Transparency* 610.
[405] James Grimmelmann, "There's No Such Thing as a Computer-Authored Work", (2016) 39 *Columbia Journal of Law & the Arts* 403.

Combined, these trends cause the domino effect of critical authorial acknowledgment. Attribution, credit, and moral rights are becoming weak in the digital knowledge economy as metadata cannot maintain the identity of the authorship, and the AI systems transform the creation of content, eroding the legal and technical premises of attribution and credit. Ethical issues in metadata governance[406].

ETHICAL CHALLENGES IN METADATA GOVERNANCE

Metadata governance brings about significant ethical issues that go beyond legal compliance and especially concerning fairness, transparency, and power[407]. Since metadata influences the way authorship is stored and presented, the metadata practices may lead to ethical failures, which directly can influence recognition, accountability, and trust toward digital knowledge systems.[408].

Attribution fairness is one of these issues[409]. Academic publishing is one of the fields where decisions regarding giving credit and the way to do so are often disputed. [410] Such practices like ghost authorship where the contributors are not mentioned, and honorary authorship where the non contributors are mentioned, do not uphold ethical standards[411]. Despite the fact that the professional standards require the presence of an open attribution of contributions, most of the systems continue to use limited metadata, which captures author names and order only[412]. The lack of extensive metadata on contribution may lead to improper giving out of credit and responsibility[413]. Indexing systems can be compromised by incorrect or insufficient metadata to

[406] Gillian Davies and Kevin Garnett, *Moral Rights* (Sweet & Maxwell 2010).
[407] Bernd Carsten Stahl et al, "The role of ethics in data governance of large neuro-ICT projects" 18(3) Dialogues in Clinical Neuroscience 245-254 (2018).
[408] David Haynes, "A View of the Interface Between Ethics and Metadata" (Edinburgh Napier University, 2020)
[409] Gelaw Alemneh et al, "A Metadata Approach to Preservation of Digital Resources" 7(8) First Monday (2002).
[410] O.C. Osifo, "Ethical Issues in Digital Scholarship" 21(2) Journal of Information, Communication and Ethics in Society (2023).
[411] International Committee of Medical Journal Editors, "Defining the Role of Authors and Contributors" available at: http://www.icmje.org/recommendations (last visited January 14, 2026).
[412] Committee on Publication Ethics, "Principles of Transparency and Best Practice in Scholarly Publishing" available at: https://www.oaspa.org/news/principles-of-transparency-and-best-practice-in-scholarly-publishing
[413] Angela Dappert & Markus Enders, "Digital Preservation and Metadata Standards" 22(2) ISQ Information Standards Quarterly 2-13 (2010).

facilitate recognition and reputations can be overstated by including data that has not been earned. [414].

Digital erasure is another moral issue. Metadata is easily transmitted and can be deleted or modified to remain undetected, thus works can be distributed without the owner being credited. This allows plagiarism, anonymity re-distribution, and lack of authorship integrity. Platforms also can delete or cover metadata in processing content on technical or policy grounds, and in most cases may not inform users[415] . Although such data protection principles as the right to be forgotten enable a person to delete the traces of his/her online presence, they may contradict academic standards of citation and preservation[416].

Metadata consequences are also determined by power relations. More visibility is also usually favoured to established authors since algorithms are usually biased towards metadata, including citation numbers or numbers of followers. These systems are more likely to support hierarchies in place and marginalise the new or other minority voices. Creators may not know the causes of decreased visibility since the mechanisms of algorithmic decisions are not transparent, which compromises fairness and accountability[417].

Lastly, trust needs transparency. Metadata may be forged, damaged, or altered without any explicit supervision. Ethical governance requirements consist of the requirement of clear provenance, auditability, and disclosure of who created or changed metadata, etc. In the absence of such protection, authorship and knowledge systems are undermined[418].

CONCLUSION

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[414] Velmurugan & Kannan, "Requisite of Digital Preservation for Shifting of Print Media to Digitalised One" International Journal of Library and Information Studies (2020).
[415] "Publisher preferences for a journal transparency tool" (2025).
[416] Bernd Carsten Stahl et al, "The role of ethics in data governance of large neuro-ICT projects" 18(3) Dialogues in Clinical Neuroscience 245-254 (2018).
[417] David G. Alemneh, "Exploration of Adoption of Preservation Metadata in Cultural Heritage Institutions" 47(1) Proceedings of the American Society for Information Science and Technology 1-10 (2010).
[418] "Ethics and Information Technology" 5 Springer Science+Business Media (2024).

The article has revealed that metadata is not an apolitical technological supplement but a pivotal process by which authorship, attribution and identity are created and mediated in digital space. With attribution moving more and more towards being generated by social conventions to being generated by embedded and machine-readable systems, whether or not metadata can be controlled has become a determining factor in whether metadata will be visible, credited and accounted for. Metadata has become a locus of infrastructural convergence of the rules of law and ethical principles and the power of a platform.

It has been analysed that, although the copyright and moral rights models formally acknowledge the structure of authorship and attribution, their success relies on metadata maintenance and governance practices, which are mainly dominated by one-sided platforms. Content moderation, copyright, and recommendation systems and automated systems redefine attribution results without a material level of transparency and external control. Such systems tend to value scale, efficiency and commercial interests more than reflecting on the true recognition of creative labour.

The new technologies also threaten the existing authorship standards. Generative artificial intelligence threatens to require human authorship, and massive training regimes are systematically disconnecting creative works with their creators. Simultaneously, even human-created content experiences attribution loss due to such routine practices of the platform as metadata stripping and algorithmic ranking. Ethical issues of fairness, bias, and accountability cannot be considered distinct of the technical design decisions then. Comprehensively, the results indicate an increasing lack of connection between the significance of metadata in authorship identification and the lack of strong legal and ethical measures to regulate its usage. Due to the existence of this gap, platforms need to enhance the transparency of metadata, develop interoperable standards of attribution, and focus more on the protection of authorship in the digital and AI-mediated environments. Unless these interventions are implemented, the ability of digital knowledge systems to facilitate valuable attribution and innovative identification will keep on being undermined.

CHAPTER 14: COPYRIGHT IN THE SHADOW OF TRADE SECRETS: WHEN CONFIDENTIALITY OVERRIDES PUBLIC INTEREST ACCESS

BY KASTURI PARKHEDKAR

INTRODUCTION

Copyright and trade secret protection stand as two powerful pillars of intellectual property laws. Both the concepts aim to encourage innovation, but operate on almost opposite philosophies. Copyright rewards creativity by publicly disclosing and circulating the work,[419] and the creator is granted exclusive rights for a limited period.[420] On the other hand, trade secret law protects commercially valuable information by maintaining confidentiality of such information, generally for an indefinite period of time.[421] Business strategies, algorithms and sensitive data are all protected under the umbrella of trade secret law. Innovation is supported by both the systems while adopting conflicting mechanisms, i.e. copyright through disclosure and trade secrets through confidentiality.

The tension between accessibility and secrecy rises significantly in the digital world. It is common for a single resource to contain copyrightable expressions as well as confidential elements. A classic example for this is software. The code may receive copyright as a literary original work while its design and utility are protected under trade secret law as confidential information. This leads to a copyright claim which further extends into a functional barrier as confidentiality prevents scrutiny. This results in a scenario where secrecy thrives in the shadow of copyright.

[419] World Intellectual Property Organization, Understanding Copyright and Related Rights, *available at* https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf (last visited on December 30, 2025).
[420] Copyright act, 1957 (14 of 1957), s. 22.
[421] Ritika Verma, "Protecting Trade Secrets in India: Applicable Laws and Benefits", 9 *IJNRD* 112 (2024).

Indian jurisprudence clearly reflects this friction. For instance, the Copyright Act of 1957 contains public-oriented machinery like compulsory licensing[422] and fair dealing[423]. Courts have acknowledged that copyright serves as the instrument to promote culture and not merely protect the rights of authors. The same was held in Eastern Book Company v. D. B. Modak.[424] However, as no trade secret laws exist in India, Courts largely depend on contractual confidentiality and equity.[425] This has sometimes led to private commercial interests overriding demands for transparency, even in matters concerning public accountability, safety of pharmaceuticals, and access to information in the possession of government departments.

Internationally, the same tensions emerge. Article 39 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS)[426] Agreement obliges States to protect undisclosed information, yet global copyright norms simultaneously promote the spread of knowledge. The European Union's Trade Secrets Directive[427] protects confidential business information, and the United States' discussions[428] focus on making algorithms (like those used in AI or automated systems) more transparent. Together, they illustrate that when companies hide how their automated systems work, it weakens democracy and public trust as it becomes harder for the public to hold them accountable.

In such a dynamic legal landscape, the thin line between justified protection and unjustified secrecy becomes more vulnerable and indistinct. In this case, examining how and to what extent the confidentiality should be allowed to stretch, and at what point the legal system needs to step in becomes important.

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[422] Copyright Act, 1957 (14 of 1957), s. 31.
[423] Chahat Bhatia & Rishiraj Sharma, "Challenges of Copyright Protection in the Contemporary Age: The Indian Perspective", 1 *IPR J MNLU Nagpur* 123 (2023).
[424] 2008 (36) PTC 1(SC).
[425] *Gujarat Bottling Co. Ltd. v. Coca Cola Co*., 1995 AIR 2372.
[426] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), art. 39 (1994), *available at*: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf (last visited on December 30, 2025).
[427] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) [2016] OJ L157/1, *available at:* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0943 (last visited December 30, 2025).
[428] Future of Privacy Forum, "FPF U.S. State AI Legislation Report", *available at:* https://fpf.org/wp-content/uploads/2024/09/FINAL-State-AI-Legislation-Report-webpage.pdf (last visited on December 30, 2025).

THEORETICAL FRAMEWORK: COPYRIGHT V. TRADE SECRETS

A clear understanding of differences between copyright and trade secret laws is necessary before examining situations where confidentiality claims operate alongside copyright protection. This can be understood by going through the theoretical framework surrounding the concepts.

Copyright is a statutory right granted to original works of authorship expressed in tangible form. Its extent is limited to expression and excludes ideas, facts or information as such.[429] This limitation is intentional and is based on the core idea that no one should have exclusive control over raw materials of knowledge.[430] Copyright protection is therefore selective and conditional. It grants exclusive rights for a limited duration[431] subject to the rights to statutory exceptions and limitations in favour of public interest.

Trade secret protection, on the contrary, does not arise from statute in India but is enforced through contract and principles of equity and confidence.[432] A trade secret extends to the information that has commercial value, is not generally disclosed and is subject to reasonable efforts to preserve confidentiality.[433] It does not, unlike copyright, depend on originality or creativity. It is defined by its core feature of secrecy. As long as confidentiality is maintained, protection may continue.

The distinction between the two concepts is based on their differing objectives. The objective of copyright is to give creators exclusive rights over their original works for a limited time.[434] These rights allow them to control reproduction, distribution, performance, adaptation and other uses of their works, in order to avoid unfair economic benefit and unauthorized use.[435] At the same time, copyright law seeks to balance private and public interests by allowing fair use subject to some

[429] World Intellectual Property Organization, *Protection of Copyright* (WIPO), *available at*: https://www.wipo.int/en/web/copyright/protection (last visited on December 30, 2025).
[430] Christopher M. Holman, *Copyright Law: Cases and Materials* (CALI Langdell Press, 5th edn., 2025).
[431] Copyright act, 1957 (14 of 1957), ss 22-29.
[432] *Gujarat Bottling Co. Ltd. v. Coca Cola Co*., 1995 AIR 2372.
[433] World Intellectual Property Organization, "Part III: Basics of Trade Secret Protection (WIPO Guide to Trade Secrets and Innovation)", *available at*: https://www.wipo.int/web-publications/wipo-guide-to-trade-secrets-and-innovation/en/part-iii-basics-of-trade-secret-protection.html (last visited on December 30, 2025).
[434] V K Ahuja, *Intellectual Property Rights in India* (LexisNexis, 2nd edn., 2015).
[435] *Ibid.*

statutory exceptions.[436] This ensures that society is encouraged to build upon ideas freely and information delivered by a work

On the other hand, trade secret law serves a very different purpose. The objective of trade secrets is to promote commercially valuable information and maintain its confidentiality to prevent misuse of such information to ensure fairness.[437] It protects business' technical data, formulas and other confidential information.[438] The protection is granted for a continuous timeline as long as the secrecy is maintained.

Therefore, in essence, copyright rewards creativity and contributes to the dispersal of knowledge, while trade secret protection encourages innovation which thrives on confidentiality. Although the two concepts seem to be conflicting, they often intersect when it comes to practice. Copyright is closely aligned with trade secrets and has significant implications. Copyright may be invoked not only to protect creative expression but also to assert control over information that is treated as confidential. Understanding where one regime ends and the other begins is crucial in order to balance transparency, innovation and fair commercial competition within the framework of intellectual property.

HISTORICAL EVOLUTION

The theoretical distinction and tensions between the concepts of copyright and trade secret did not develop in isolation. It evolved legally and gradually by changing the conceptions of knowledge, commerce and public interest. The origin of copyright lies in the need of regulating dissemination of creative works.[439] On the other hand, the principles of confidentiality arose from doctrines aimed at preventing misuse of trust and ensuring fair commercial conduct.[440] The manner of evolution of the two legal concepts explains why the current legal system continues to struggle when they collide. Developing an understanding of the historical evolution of these

[436] Copyright Act, 1957 (14 of 1957), s 52.
[437] World Intellectual Property Organization, *Guide on Trade Secrets and Innovation* (2008), available at: https://www.wipo.int/web-publications/wipo-guide-to-trade-secrets-and-innovation/assets/69771/2008_WIPO_Guide_on_Trade_Secrets_and_Innovation_det03_WEB.pdf (last visited on December 30, 2025).
[438] *Ibid.*
[439] Khalid Shamim & Aqa Raza, "The Copyright and Her History", 11 *NTUT J Intell Prop L & Mgmt* 1 (2022).
[440] Pooja Devi, "Intellectual History of Trade Secret Law", 4 *Int J Legal Dev & Allied Issues* 296 (2018).

concepts is essential to understand how confidentiality acquired a place in the IP framework which is capable of superseding access-oriented objectives associated with copyright.

Copyright developed in Europe as a mechanism to prevent printing and distribution by third parties. The concept of copyright earlier was concerned more with controlling reproduction and circulation of works rather than the authorial or commercial reward earned out of it.[441] With time, copyright came to be justified as a tool to encourage and promote creativity and ensure public access to learning, art and literature.[442] The public domain that emerged then became the core feature of copyright laws, recognizing that creative works must be freely accessible.

Conversely, the law of confidence, i.e. law of trade secrets, did not originate within the statutory intellectual property framework. It developed as a doctrine to restrain the misuse of information disclosed during circumstances including obligations of trust.[443] Early cases were concerned with personal relationships, commercial duties and dealings which needed the information to be shared for limited purposes. Courts began to recognise such confidential business information over time and granted protection to such intellectual property.[444] This led to the foundation of modern trade secret protection, focusing not on disclosure but on secrecy.

International frameworks further shaped these concepts. Trade secrets were recognized as an intellectual property and included within the TRIPS Agreement marking a significant moment in formal recognition of trade secrets under the IP regime. However, TRIPS intentionally did not prescribe a uniform model and allowed states to rely upon equity, contract and principles of unfair competition.[445] This preserved the trade secrets' orientation towards secrecy and integration of the same into international economic and intellectual property law.

The copyright regime in India adopted the characteristic feature of common law tradition of disclosure and was essentially oriented to publication.[446] The philosophy of copyright is reflected

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[441] Khalid Shamim & Aqa Raza, "The Copyright and Her History", 11 *NTUT J Intell Prop L & Mgmt* 1 (2022).
[442] *Ibid.*
[443] ASSOCHAM & SAM, "Joint Knowledge Report on Trade Secrets" (ASSOCHAM 2023).
[444] Anil Kumar K T, *Intellectual Property Rights: Trade Secrets Law* (G Pullaiah College of Engineering & Technology Lecture Notes, 2018) 84–104, available at: https://www.gpcet.ac.in/wp-content/uploads/2018/02/INTELLECTUAL-PROPERTY-RIGHTS-ANIL-84-104.pdf (last visited on December 30, 2025).
[445]Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), art. 39 (1994), *available at*: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf (last visited on December 30, 2025).
[446] Copyright Act, 1957 (14 of 1957), s 14.

by the Copyright Act, 1957 which grants protection through limited duration[447] and public interest exceptions.[448] Confidentiality, however, has emerged through Courts and not legislation. Indian Courts started off by relying upon principles of equity to protect confidential information in commercial and professional contracts.

As commerce became more information-driven, the two streams of copyright and trade secrets crossed each other more frequently. Courts were compelled to resolve conflicts over expressive but confidential information. Also, the fact that India has no specific statute of trade secrets made it more complex for Courts to decide upon such matters uniformly. This historical convergence in the realm of intellectual property led to the question of confidentiality becoming as important as, if not more than, copyright in present-day conflicts.

Therefore, in simpler terms, this historical journey shows that copyright and confidentiality grew out of two very different concerns. However, with the evolving nature of society and the cases it presents, the two concepts began to intersect with each other, especially as the economy became more dependent on information and technology. This point of overlap led to the contemporary nature of disputes, especially where the push for openness meets the pull of secrecy. The further sections explore how these tensions play out in practice and how Courts and legislation try to navigate through the constantly evolving complex space.

LEGAL POSITION IN INDIA

The legal position of IP laws in India, particularly regarding copyright and trade secrets, must be understood against the constant theme of encouraging creativity and preserving commercially valuable information. However, such protection should not be granted at the cost of broader public interest.[449] In India, copyright is governed by statute while trade secret remains a product of contract and other principles like equity. With the overlapping laws, Courts have been

[447] Copyright act, 1957 (14 of 1957), ss 22-29.
[448] Copyright Act, 1957 (14 of 1957), s 52.
[449] *Entertainment Network (India) Ltd v Super Cassette Industries Ltd*, 2008 INSC 708.

repeatedly required to interpret and determine the extent of such rights for transparency, accountability and public access of knowledge to prevail.

Copyright protection in India is governed by the Copyright Act, 1957. The Act set out the works eligible for protection and exclusive rights of the authors.[450] Section 22 imposes limited terms for protection, and hence highlights the idea that creative works must eventually return to the public domain.[451] The public interest is safeguarded through doctrines such as fair dealing,[452] compulsory licensing[453] and exclusion of ideas[454] from protection. These mechanisms for protection reflect that copyright is not watertight. The Supreme Court has emphasized that copyright is only for expression and not ideas or information.[455] This line is drawn on the basis of the principle of keeping the foundations of knowledge open to all and keeping them public at large.

The principle of confidentiality in trade secret law, however, follows a different path. There exist no dedicated statutes to protect trade secrets. The concept of confidentiality primarily arises through principles of equity, trust, fairness and contractual obligations. Courts have constantly held that confidential information can be protected when it is not publicly disclosed, when it derives value from secrecy and there is an expectation that the data will not be misused. Trade secret protection is necessary in business and commercial fields to ensure integrity and fair competition. However, it also raises questions about the extent of secrecy when public interest demands disclosure or openness.

In the case of Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd.,[456] The Bombay High Court clearly articulated the duality of IP laws. It was held that while ideas cannot be copyrighted, confidential ideas may be protected if disclosed in circumstances importing an obligation of confidence. The Court recognised the broader reach of confidentiality. However, it also noted that such protection must not be used to secure monopolies over knowledge, which

[450] Copyright act, 1957 (14 of 1957), ss 13-14.
[451] Copyright act, 1957 (14 of 1957), s 22.
[452] Chahat Bhatia & Rishiraj Sharma, "Challenges of Copyright Protection in the Contemporary Age: The Indian Perspective", 1 *IPR J MNLU Nagpur* 123 (2023).
[453] Copyright Act, 1957 (14 of 1957), s. 31.
[454] World Intellectual Property Organization, *Protection of Copyright* (WIPO), *available at*: https://www.wipo.int/en/web/copyright/protection (last visited on December 30, 2025).
[455] *R. G. Anand v. M/S. Delux Films & Ors.*, 1978 AIR 1613.
[456] Zee Telefilms Ltd. v. Sundial Communications Pvt. Ltd 2003 (5) BOMCR 404.

ought to remain public. Therefore, the Court balanced secrecy with public interest in creative freedom and access to ideas.

The Delhi High Court In the case of Diljeet Titus v. Alfred A. Adebare[457] approach the matter from a professional-ethics perspective. The case concerned sensitive information held by advocates. The Court granted protection based on confidentiality; however , it also acknowledged that public interest obligations with regards to legal practice, including duties under the Evidence Act and professional rules, should not be sidelined. The Court, in this context, made it clear that confidentiality cannot be used as a tool to shield misconduct or suppress any information that is required to be disclosed by law.

A similar approach is adopted in disputes related to trade secrets. The Madras High Court in 2017 recognized trade secrets as protectable interests, but reiterated that plaintiffs need to establish secrecy, commercial value and misuse.[458] The Court's reasoning reflects a careful balance. Protection is justified where commercial value is genuine at stake, but Courts remain reluctant to impose secrecy claims that would unduly restrict employee mobility, fair competition or public scrutiny.

The Court has also stressed, in the case of Navigators Logistics Ltd. V. Kashif Qureshi,[459] that not all business information is confidential. The nature of the information, its secrecy and the efforts made to keep information confidential must be examined in disputes related to trade secrets. This ensures that the defendants are protected from overboard confidentiality claims while public interest in open competition and access to general commercial knowledge is preserved.

In totality, these cases reflect a consistent judicial approach. Courts encourage protection of confidentiality in legitimate cases but also remain cautious about secrecy that may obstruct the public interest.[460] Copyright includes public-interest safeguards by its very nature. On the other hand, confidentiality doesn't necessarily come with such provisions, which is why the judiciary often functions as the last resort in making sure that secrecy is not allowed to outsmart its rightful limits.

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[457] Diljeet Titus v. Alfred A. Adebare 130 (2006) DLT 330.
[458] *Trivitron Healthcare Pvt. Ltd. v. Shivram Iyer,* [2018(1) CTC 430].
[459] Navigators Logistics Ltd. V. Kashif Qureshi 2018 SCC ONLINE DEL 11321.
[460] *S. P. Gupta v. Union of India and Anr.,* 1982 AIR SC 149.

The Indian position thus shows a multi-layered structure. It illustrates that copyright is a tool of the government for the diffusion of knowledge while at the same time providing the authors with a limited period of exclusive rights. Confidentiality is a tool of the government for the conservation of knowledge but it must be weighed against the public interest. When such regimes overlap, the judiciary is entrusted with the critical task of deciding if the protection that is being granted is for legitimate purposes or is merely an unwarranted perpetuation of secrecy in the manner the law never intended. A similar balance between secrecy and openness is evident in other legal systems, which provides valuable comparative insights.

COMPARATIVE JURISDICTION STUDY

A comparative assessment of the European Union and the United States uncovers that the tension between copyright protection and confidentiality is not unique to India. In both the jurisdictions, private and commercial interests have been balanced with public interests through legislations and precedents, despite different techniques and emphasis on various aspects. What appears to be the common pattern is that trade secrets and confidential information are well protected but at the same time statutory or judicial safeguards prevent secrecy from eroding public accountability and public welfare.

In the US, copyright protection emerges from the Constitution's directive "to promote the progress of Science and useful Arts".[461] This objective shapes the system's commitment to public access, which is illustrated by the doctrines of fair use and the concept of expression of ideas. The US's Digital Millennium Copyright Act (DMCA) adds more layers to this situation by implementing anti-circumvention measures aimed at enforcing measures regarding technological protection.[462] Such measures give more power over digital works. However, there are worries about the possibility of these measures restricting legitimate access to research, security testing and other public interest uses. To mitigate this, the US Copyright Office periodically grants exemptions for purposes including accessibility, security research, and preservation, thus

[461] Constitution of the United States, art I, s 8, cl 8.
[462] Digital Millenium Copyright Act (17 U.S.C. s 1201(a)(1)(A)).

implicitly recognizing the need to keep the public interest central even in a technologically controlled environment.[463]

Trade secret protection in the US is primarily governed by the Uniform Trade Secrets Act (UTSA), and by the Defend Trade Secrets Act (DTSA) at the federal level.[464] The scope of both the acts is very broad as they protect a wide range of confidential information in the business and commercial world.[465] Nonetheless, the acts include the express provision of whistle-blowing and reporting misconduct as the main ideas in the scope of protection.[466] The DTSA assures that a person who discloses trade to government authorities with the intent of reporting violations of law shall be immune to penalties in any form.[467] This feature reflects the commitment of the US legal system to ensuring that trade secret law does not obstruct accountability, public safety or legitimate interest disclosures.

The EU has opted for a harmonised mechanism governing IP rights. Copyright protection is based on the Information Society Directive[468] and subsequent legal measures aimed at unifying rights in the different member States. The EU regulation gives strong protection to authors, however, it also recognises certain mandatory exceptions. These exceptions reflect wider public interest objectives and include education, news reporting and preservation. The Court of Justice of the European Union (CJEU) has repeatedly emphasized that copyright should be interpreted with the EU Charter of Fundamental Rights in mind, especially the rights to freedom of expression and information.[469] This pushes public interest considerations to the very core of copyright interpretation.

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[463] Digital Millenium Copyright Act (17 U.S.C. s 1201(a)(1)(C)).
[464] Seth J Welner & John Michael Marra, "Defend Trade Secrets Act vs. Uniform Trade Secrets Act: Reasonable Security Measures as Objective or Subjective?" *Holland & Knight Trade Secrets Blog* (6 August 2018), available at: https://www.hklaw.com/en/insights/publications/2018/08/defend-trade-secrets-act-vs-uniform-trade-secrets (last visited on December 30, 2025).
[465] *Ibid.*
[466] Robert P Merges & Peter S Menell, "Misconstruing Whistleblower Immunity Under the Defend Trade Secrets Act" (UC Berkeley School of Law Working Paper 2017), *available at*: https://www.law.berkeley.edu/wp-content/uploads/2017/05/Menell-Misconstruing-Whistleblower-Immunity-Under-the-Defend-Trade-Secrets-Act.pdf (last visited on December 30, 2025).
[467] 18 U.S.C. s 1833(b)(1).
[468] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10.
[469] Promusicae v Telefónica de España SAU, Case C-275/06, [2008] ECR I-271.

The EU's approach to trade secret protection was unified through the Trade Secrets Directives.[470] It follows the global standards closely and defines trade secrets as information with economic value due to their secrecy and requiring reasonable steps to maintain confidentiality. Additionally, unlike purely commercial instruments, the Directive provides protection against disclosure in favour of the public interest. It exempts whistleblowing,[471] media reporting and investigation into misconduct,[472] thereby recognizing that secrecy cannot impede democratic accountability. It also makes it clear that an employee should not be deprived of mobility or legitimate academic research due to trade secrets.

In digital markets, the overlap of copyright and trade secrets has become significant in both the US and the EU. Generally, dual forms of protection are carried by software, algorithmic decision-making systems and large-scale datasets. While trade secret law is used to protect functional logic, training data and proprietary processes, copyright enables companies to control access to their expression. However, this protection raises public interest concerns regarding transparency, especially when automated systems affect fundamental rights of individuals. The US and EU have both increasingly recognised these concerns. While the US has debated algorithmic accountability through legislation, the EU has committed to transparency obligations under the Digital Services Act and the AI Act, arguing that trade secret claims cannot be used to protect systems that significantly affect public welfare.

Taken together, the US and EU experiences demonstrate that confidentiality and trade secrets shall be protected but must be constrained by safeguards preserving transparency, competition and democratic oversight. Public interest, therefore, operates as a limiting principle. The comparative insights emphasize the need for India to ensure that reliance on breach of confidence does not erode public-oriented objectives of its copyright system.

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[470] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) [2016] OJ L157/1, *available at:* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0943 (last visited December 30, 2025)..

[471] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law [2019] OJ L305/17.

[472] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets), art 5, [2016] OJ L157/1.

CONTEMPORARY DIGITAL CHALLENGES

Digital technologies have amplified the conflict between the access-oriented copyright framework and the secrecy-oriented trade secret protection. Modern information systems interweave the legally protected expressive works under copyright, like software code, documentation and the designs for user interfaces,[473] with the non-expressive elements like algorithms, datasets, and system architectures which companies/firms increasingly classify as confidential. This complex protection scheme creates a degree of opacity that exceeds what copyright law alone would justify.

In India, this lack of transparency leads to adverse consequences as both public and private institutions increasingly depend on digital mechanisms for their essential functions. Majorly, licensed systems built by private vendors are used for carrying out government functions like welfare delivery, tax administration, policing, credit scoring and identity verification.[474] These vendors usually invoke the confidentiality clause and trade secret claims to avoid revelation of the used dataset, even when the rights and entitlements of citizens are at stake. These issues are made public especially by multiple legal battles over Aadhar-linked authentication[475] and automated welfare exclusion. However, Courts still have not tackled the trade secret aspect directly. The circumstances reappear in digital public infrastructure projects where system design documents, performance data or audit reports are kept confidential under trade secret claims, which thereby limit transparency and independent scrutiny.

Data protection law intersects with this issue. The Digital Personal Data Protection Act, 2023 allows individuals to access their personal data[476] but does not provide a right to explanation when it comes to the automated decision-making process. As a result, firms routinely cite

[473] Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), art 10 (1994), available at: https://www.wto.org/english/docs_e/legal_e/27-trips.pdf (last visited on December 30, 2025).
[474] Kate Crawford et al, *AI Now 2019 Report* (AI Now Institute 2019), available at: https://ainowinstitute.org/wp-content/uploads/2023/04/AI_Now_2019_Report.pdf (last visited on December 30, 2025).
[475] Debanjan Sadhya, "A Critical Survey of the Security and Privacy Aspects of the Aadhaar Framework", 140 *Computers & Security* 103782 (2024).
[476] Digital Personal Data Protection Act, 2023 (22 of 2023).

confidentiality when they refuse to share how profiles or risk scores are generated. Public needs could be easily overshadowed by the secrecy claims especially in absence of statutory transparency obligations for high-impact systems,

These challenges reflect how confidentiality claims can limit the inspection of technologies that materially affect people's life, especially in a rapidly digitising economy like India. Unless proportionate and circumscribed limits are imposed, the secrecy will keep on expanding in ways that will diminish public accountability, procedural fairness and democratic values embedded within the IP framework.

POLICY GAPS AND RECOMMENDATIONS

The most remarkable policy gap in India is not the absence of a statutory framework for protection of trade secrets but the fact that there is no defined line between legitimate confidentiality and secrecy that threatens public interest. Courts usually analyse and rule the cases regarding trade secrets through equitable doctrines offering flexibility. However, such doctrines lack structured tests as those used in EU and other jurisdictions. Therefore, India needs a legal framework that would not only define trade secrets but also embed a mandatory public-interest override. This would ensure that confidentiality is not used as a reason for withholding information essential for ensuring democratic accountability, health, safety and other public interests.

Another measure that India is in dire need of is introducing a Transparency Impact Assessment (TIA) for high-tech systems employed by public authorities or used in essential services. A TIA is a structured evaluation requiring an organization to justify each of their confidentiality claims by illustrating why secrecy is required and whether it obstructs the public's right to access information. Much like proportionality analysis in constitutional law, a TIA would obligate stakeholders to (i) reveal the information withheld under trade secret or confidentiality claims, (ii) illustrate concrete harm from disclosure, (iii) weigh the public interest in transparency against the harm caused, (iv) explore proportionate alternatives such as supervised audits or limited

disclosure. This process prevents blanket confidentiality and ensures that secrecy is permitted only when strictly necessary.

India should also adopt a dual-audit model for high-risk AI and automated decision-making systems, which would include a technical audit to analyse accuracy and security, and an independent public-interest audit to gauge justice, non-discrimination and rights implication. Both the audits must supersede contractual confidentiality where required.

Additionally, India needs whistleblower immunity in trade secret disputes, as provided by the EU.[477] This would ensure that the one making disclosures to regulators, Courts, journalists and civil society is protected where the purpose is to expose wrongdoing or prevent harm.

Lastly, statutory clarification of the boundary between expression and confidentiality would curb the increasing practice of layering rights to establish de facto perpetual secrecy.

CONCLUSION

In India, the interplay between copyright and trade secret protection exposes a profound structural conflict between two opposing legal priorities. On one hand, the access and dissemination of information are promoted, and on the other, secrecy and competition are preserved. The emergence of digital technologies has heightened the tension between the two contradicting legal priorities. Hence, confidentiality claims now are not just limited to traditional commercial contexts but expanded to public accountability. The proposed policy and mechanism reforms like statutory public interest override, Transparency Impact Assessment for high-risk systems, dual auditing mechanisms and whistleblower protections reflect how innovation and creativity can be protected while balancing secrecy. Eventually, India's dilemma is not to make a choice between openness and confidentiality but to ensure that confidentiality is justified, proportionate and not permitted to diminish democratic oversight, procedural fairness, or foundational public-interest commitments that are embedded within the framework of copyright laws, or the IP mechanism in general.

[477] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law [2019] OJ L305/17

CHAPTER 15: MORAL RIGHTS IN THE DIGITAL AGE: PROTECTING INTEGRITY AND RECOGNITION OF CREATORS

BY DISHA CHAUHAN

INTRODUCTION

"A work of authorship is not merely a commodity; it is an extension of the author's personality."[478]

Human beings are blessed with the intellect to help in the development of themselves and the society at large. This continual process of learning and creation of new knowledge and ideas with an appropriate and adequate protection to the creator along with the accessibility of his work to the public forms the basis of a contemporary dynamic society.

This formal framework for the "ownership" of the knowledge and the "sharing of benefits" among the creators and users of knowledge is provided by a system of intellectual property rights (IPRs). Globally, there is a growing recognition of the fact that IP is the knowledge or information with a commercial value. It is also being realized that future prosperity of nations will depend more upon their IP and less upon their natural resources and physical assets such as factories, machines and office buildings as the economy of the twenty-first century will be knowledge based.[479]

[478] Georg Wilhelm Friedrich Hegel, *Philosophy of Right* (Oxford University Press 1952).

[479] In the United States of America tangible assets formed 62% of the value of industrial companies in 1982 whereas in 1992 it got reduced to 38%. Similarly the share of knowledge intensive industries increased from 21% of GNP in 1982 to 27% in 1992 in USA: Michael K. Kirk, *Intellectual Property – A Development Perspective. The Role of Intellectual Property System in Promoting Creativity, Technology Development and Transfer, Trade and Investment* , paper presented at WIPO Asia – Pacific Regional Forum on Policy Imperatives and Role of Institutions in Implementing a Public Outreach Strategy for Intellectual Property organized by Ministry of Commerce *et.al* , *WIPO/IP/DEC/02/6 (d) ii, 2* (September 4 – 6, 2002).

Copyright law is a branch of IPR associated with informative and entertainment value and include, inter alia, publishing, music, film, radio, television and other broadcasting organizations and computer software.

General Principles governing copyright law –

(a) Statutory right

The copyright law is governed by a statute. The statutory law on copyright in India is contained in the Copyright Act, 1957. All statute references in this book are to the 1957 Act as amended in 2012. Section 16 of the Act specifies that no person shall be entitled to copyright or any similar right in any literary, dramatic, musical, artistic work whether published or unpublished, otherwise than under and in accordance with the provisions of this statute.[480]

(b) Formalities for obtaining copyright

In India, copyright comes into existence as soon as a work is created and no formality is required for acquiring copyright. The vesting of copyright in a work is thus automatic. The procedure for registration is optional and not mandatory. [481]Registration is only intended to provide a *prima facie* evidence of the particulars entered in the Register.[482]There is a Register of Copyright at the Copyright Office. [483]Published and unpublished works can be registered under the Act. Copyright in works published before 21st January, 1958 i.e. before the Copyright Act, 1957 came into force can also be registered, provided the work still enjoys copyright.

CONCEPTUAL UNDERSTANDING

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[480] *Gramophone Company of India Ltd.* v. *D.B.Pandey* (1984) 2 SCC 534
[481] The Copyright Act 1957, s 45
[482] Ibid., s 48
[483] Ibid.,s44

The philosophical advent of moral rights is rooted in the personality theory particularly associated with Hegel and Kant. They perceived creative works as extensions of the author's personality.[484]

This perception particularly contrasts with the utilitarian approach that prioritizes economic incentives.

Moral rights flow from the fact that a literary or artistic work reflects the personality of the creator, just as much as the economic rights reflect the author's need to keep body and soul together.[485]

Moral rights of the authors have been recognised in most of the countries and there are mainly two moral rights:

(i) Right of paternity (Droit de paternite)

The right of paternity means that an author has a right to claim authorship of his work and can prevent all others from claiming authorship of his work. The author also has a right to demand that his name should appear in all copies of his work at the appropriate place. He can also prevent others from using his name in their works.

(ii) Right of integrity (Droit de respect de l'oeuvre)

Right of integrity means that an author has a right to prevent distortion, mutilation or other alteration of his work, or any other action in relation to the said work which would be prejudicial to his honour or reputation. This right is important particularly where a licence or assignment has been granted to adapt or alter the work in some way, e.g. novel into play, play into film, etc. It is for the courts to decide the borderline between the adaptation and distortion.

There is no recognition of right to withdrawal/retraction on account of non-satisfaction of the author under section 57. Rather, explanation appended to section 57 states that the failure to display the work or display it to the satisfaction of the author shall not be deemed to be infringement of the right conferred by section 57. Thus, the legislative intent behind section 57 is clear in this regard. It is noteworthy that right of retraction is recognized internationally only

[484] Hegel, Philosophy of Right
[485] Stephen M. Stewart, INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS (1983), p. 59

with the condition of the author to indemnify the publisher and also gives the right of first preference to the existing publisher. No such exception or condition exists in section 57. Such right of retraction or withdrawal does not exist in Berne Convention also.[486]

DISCUSSION

Moral Rights under the Berne Convention

The Berne Convention was revised in 1928, and this amendment became the first concrete step in incorporation and recognition of moral rights, this amendment made it obligatory for the contracting parties (states) to provide certain protections in regards to the right of attribution and integrity of the author.[487]

Article 6bis made it mandatory for all the contracting parties to provide protection in regards to moral right, and such protection was required to be provided under their respective domestic judicial frameworks but the question of determination of method of complying with their obligations, was left to the discretion of the state.[488]

This led to some states placing these rights to owners not under copyright law, but under tort or contract law.

Exemption of Moral Rights from TRIPS

The year 1995 marked the time when the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) became operational, by then moral rights legislation was part of two economically important common law countries- United Kingdom (U.K.[489]) and United States[490] and the harmonization of copyright was well underway.

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[486] *PEE PEE Publishers & Distributors (P) Ltd. v. Neena Khanna & Another* , 2010 (44) PTC 45 (Del) at pp. 63, 64 .
[487] Berne Convention, art. 6bis
[488] Ibid
[489] Copyrights, Design and Patents Act 1988, c.48 (Eng.).
[490] Copyright Act of 1976, Pub. L. No. 94553 (codified at 17 U.S.C. §§ 101-810 (1994)); Visual Artists Rights Act of 1990, Pub. L. No. 101–650, § 603(a), Dec. 1, 1990, 104 Stat. 5128.

The TRIPS agreement required the WTO state parties to the Berne Convention with the motto for the Protection of Literary and Artistic Works but to comply with its substantive provisions,[491] it was amended to exclude Article 6bis from its ambit.[492]

Post amendment, Article 9.1 states that members have no rights and obligation under Article 6bis, which implied that members cannot pursue the enforcement of Moral Rights under the WTO[493] dispute settlement mechanism.

It is surprising that despite the fact that both USA and UK have given protection to moral rights in their domestic legal regimes, but Article 6bis is excluded, as TRIPS is considered as a much more persuasive instrument than the Berne Convention, due to its express dispute settlement mechanism under WTO.

This exclusion of 6bis from the TRIPs agreement was largely a USA initiative[494] and the underlying argument was that since moral rights are non-economic and are not related to trade activities in Intellectual property law, which is the sole topic of TRIPS[495], it must be excluded. Moreover, the stand taken by the USA was heavily influenced by powerful interests groups such as Hollywood film industry, which apprehended that if moral rights were recognized within the WTO framework, it would be an impediment to the use of licenses that had already been acquired.[496]

Moral Right Protection in India

There was a trend of emphasizing cultural and artistic prestige more than the commercial value of copyright in developing countries like India and it helped in providing strong protection to moral rights under their domestic legal copyright framework[497]. Interestingly, Section 57 does not use the words moral rights‟ but uses the words Author's Special Rights".

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[491] Berne Convention for the Protection of Literary and Artistic Works, Jan. 29 1970, 1161 U.N.T.S. 30
[492] Agreement Establishing the World Trade Organization,April 15, 1994, 1869 U.N.T.S. 299.
[493] Supra Note 493
[494] 17 U.S.C. § 106(A) (1991)
[495] THE WORLD TRADE ORGANIZATION: LEGAL, ECONOMIC AND POLITICAL ANALYSIS 249 (Arthur E. Appleton, Patrick F. J. Macrory& Michael G. Plummer eds., 2005).
[496] WTO - TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (Peter-Tobias Stoll, Jan Busche&KatrinArendeds., 2014).
[497] EDWARD W. PLOMAN, L. CLARK HAMILTON AND CLARK L. HAMILTON, COPYRIGHT: INTELLECTUAL PROPERTY IN THE INFORMATION AGE 22-25 (1980).

Statutory Recognition under Section 57 of the Copyright Act, 1957

In India, statutory recognition has been provided only to the right of attribution and integrity. The right of retraction has been held to be not in consonance with the legislative intent.[498] The provision encompasses both "positive" and "negative" aspects of right of attribution. When words which are not there in the author's work are added to his work and the whole passage is attributed to the author, there is an infringement of the author's special rights under Section 57.[499]

1994 Amendment to Section 57

In 1994, the scope of Section 57 was narrowed down by an amendment. The original provisions, whereby even distortion, mutilation and modification of the work which are not prejudicial to the author's honor or reputation would violate the author's special rights were incidentally, in excess of the requirement of Berne Convention[500] and thus, these words were qualified with the words "prejudicial to his honor or reputation".

Since the Act is silent, judiciary has evolved two ways to determine if an act prejudices the integrity of an artistic work - "objective" criteria, wherein, the judge determines the efforts of alteration on the reputation of the author and "subjective" criteria where, the author's own perception of the alteration and impact on his reputation is taken into consideration.

Judicial Interpretation of Section 57 post 1994 Amendment

Post-amendment, the author can only claim damages or seek an order of restraint and not any other action. Moral rights after amendment subsists only as long as copyright subsists. An explanation clause was added providing that failure to display a work in accordance with author's wishes would not constitute violation of author's moral rights. The natural consequence of this insertion of explanation is that the artist would be unable to prevent his work from being displayed in an environment alien to the one for which it was created. This change has been criticized for being insensitive to the rights of artists by various artists" forums in India.[501] Consider for example - the use of a popular character from a children's book in a pornographic

[498] Id at 9, pg 03
[499] Noah v.Shuba, (1991) FSR 14
[500] Amar NathSehgalv. Union of India, 2005 (30) PTC 253 (Del).
[501] P. NARAYANAN, LAW OF COPYRIGHT AND INDUSTRIAL DESIGNS 36 (2nded, 1995).

film. Though the use of the character is entirely alien for the purpose for which it was created, yet the author cannot object to it, due to the addition of the explanation in section 57.

Amar Nath Sehgal v. Union of India [502] is considered to be the landmark case for moral rights.

Mr. Sehgal created a bronze sculpture which was displayed in the International Convention hall in Delhi, for two decades, but then was pulled down and dumped in a storeroom. Mr. Sehgal brought an action against the government of India under Section 57. The court ruled that Section 57 should be interpreted in its widest sense to include destruction of a work of art, being the extreme form of mutilation. Destruction of work reduces the volume of the author's creative corpus, thereby affecting his reputation prejudicially. Mutilation is nothing but destruction to render the work imperfect.[503]

The Court reiterated that contents of International Conventions and norms are significant for the purpose of interpretation of the domestic laws[504] and held that if a work of Art acquires the status of the cultural heritage of the nation, India has to honor its declarations in the International Community. The declarations in the International Community imposes various obligations on the States such as to respect, protect and to preserve cultural rights.

2012 Amendment to Section 57

In 2012, a new section 38B, was incorporated which recognizes moral rights of the performers, in sequence with Article 5 of WIPO Performances and Phonograms Treaty (WPPT), 1996. This gives right of authorship and integrity to the performers after taking into consideration the possibility of digital alteration of performances, in a digital environment. The explanation to the section clarifies that editors are free to perform their tasks without the fear of legal consequences.[505] This clarification has been added probably to balance the rights of the producer of a program and the performers. The legal representatives of the performer cannot exercise his moral rights, unlike the legal representatives of the owners of copyright. It is not clear why the legislature has come up with such a discriminatory provision.[506] Apart from these, two alterations

[502] 2005 (30) PTC 253 (Del).
[503] 59T. R. SRINIVASAIYENGAR, COMMENTARY ON THE COPYRIGHT ACT 477-478 (8thed, 2013).
[504] Vishakav. State of Rajasthan and Ors, AIR 1997 SC3011.
[505] Zakir Thomas, *Overview of Changes to the Indian Copyright Law*, 17 J. INTELL. PROP. L. REVIEW324-34 (2012).
[506] ALKA CHAWLA, LAW OF COPYRIGHT COMPARATIVE PERSPECTIVES (1st ed., 2013).

were made in section 57. The words in sub-section 1 which is done before the expiration of the term of copyright were omitted, thereby restoring the original section 57 in this aspect. This means that the author's legal representatives can claim injunction or damages, in case of distortion, mutilation, modification or other act in relation to the work, even if it occurs after the expiry of the term of copyright.

In sub-section 2 the words other than the right to claim authorship of the work were omitted. This implies that the legal representatives of the author may exercise the rights provided to the author in the first clause of section 57 of the Act. The previous provision which drew a distinction between the assertion of the author's moral rights by his descendants or legal representatives on his behalf, and the capacity of these agents to claim authorship of his work,[507] has been done away with.

Inconsistent Approach of the Legislature and Judiciary

In India, the stand taken by the judiciary and the legislature on the compass of moral right has been paradoxical. While the former endorses an expansive approach, the latter strives for a more restrictive one. However, the legislature in 2012 upset the applecart by widening the ambit of Section 57.

The Indian Legislature was initially reluctant in broadening the scope of Section 57. There were various reasons cited by the legislature, for its cautious approach. Firstly, since government owns copyright in the works of important authors,[508] extensive protection may result in hefty sum of liability in the form of financial damages by the courts, accompanied with the intimidating costs of legal defense.

Secondly, the Berne Convention, to which India is a signatory, lays down that when supplementary rights are given to the domestic authors, equivalent rights have to be given to the foreign authors.[509] It will make India a less attractive destination for foreign investment in creative enterprises, such as films, by increasing both the costs of doing business and the prospective liability and would affect India's ability to compete for investment with countries

[507] Id

[508] MIRA SUNDARA T. RAJAN, MORAL RIGHTS: PRINCIPLES, PRACTICE AND NEW TECHNOLOGY (2011).

[509] Berne Convention for the Protection of Literary and Artistic Works, Jan. 29 1970, 1161 U.N.T.S. 30

where moral rights are less important. [510]Thirdly, India is culturally and traditionally a diverse nation. A work created in one part is available in all parts of the country and is often translated into various languages. If the ambit of special rights is broadened, it may augment litigation in the country and would saddle the already burdened judiciary. At the same time, it would be very difficult for small creators to know the intricacies of law and they may be held liable for minor breaches of Moral Rights. Though the concerns are real and significant, it is doubtful if they are logical and practical.

On the other hand, Indian courts have navigated India's move from a traditional, to an industrial society, by weighing the preservation of cultural heritage and maintenance of cultural standards against the economic drive to commercialize and commodify Indian culture, whether for domestic or international audiences.70 In tendering moral rights issues, Indian judges have routinely endeavored as champions of culture and have proven that the cultural heritage is their utmost priority. Through moral rights, their focus on the relationship between authors and their works, has allowed them to avoid pitfalls while attempting to assess artistic quality in the courtroom. Section 57 is thus viewed as a telescope, for legally safeguarding the cultural heritage of India.

MORAL RIGHTS PROTECTION IN DIGITAL AGE

The 1994 amendment provided that the copying or adaptation of computer programs will not lead to a violation of the author's moral rights. The provision seeks to make "debugging" possible without potential infringements of copyright and moral rights, whereby it acts in conjunction with an addition to s 52 of the Copyright Act allowing the copying and adaptation of computer programs as "fair dealing" with computer programs under the Act.[511] The exception applies generally in two kinds of circumstances – first, if the copying or adaptation is done "in order to utilize the computer program for the purpose for which it was supplied" and second, if "back-up copies for temporary protection in order only to utilize the computer program for the purpose for which it was supplied have to be made."

[510] id

[511]S Ahuja*, Latest Amendment to the Indian Copyright Act*, 44 COPYRIGHT WORLD 38(1994).

Recent technological advancements have threatened the very existence of the copyrights law, in the information oriented society.[512] However, copyright law has adapted to the technical innovation, by extending copyright principles to protection of computer software and other similar technologies, [513] allowing copyright principles to enjoy a resurrected prestige in the world of information technology.[514] In contradiction, moral rights have fallen behind, mainly because of its failure to effectively confront challenges emerging due to the digital revolution. Firstly, the dissemination of works of art has become easier, speedier and wider than ever before. It has become very difficult for the author to contain the manner in which it is treated and to restrict its redistribution.[515] Secondly, when works are transmitted through digital medium, the user of the work can easily modify it in such a way that future users are unable to notice the alterations and the scale at which these changes occur is so immense, that an author is unlikely to be aware of most of the modifications to his work.[516] The third challenge which has surfaced is the implementation and enforcement of the author's rights, because of the technological and regulatory obstacles. The technical difficulties were discussed by the French Court in the famous Yahoo ruling.[517] Moreover, the attempt to regulate the flow of information through digital means goes against the idea of a global information society. Further, since moral rights are not a part of the TRIPS agreement, they lack the international baseline uniform standard, as each country has its own legislation providing moral right protection.

Despite the challenges, moral rights continue to be a guardian of the social values and cultural community. Moral rights are in a transitional phase, as they have deviated from the traditional, theoretical basis on fixed notions of authorship, the creative work and creativity. Moral interests have become dependent on understanding public awareness and the goodwill of the public, who enjoy and appreciate art.

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[512] A Christie, *Reconceptualising Copyright in the Digital Era,*EUR. INTELL. PROP. REV.527-530 (1995).
[513] Mira T. SundaraRajan, *Moral Rights in the Digital Age: New Possibilities for the Democratization of Culture*, 16 INT'L.REV. L. COMP.& TECH 2 (2002)
[514]Jane C. Ginsburg, *Four Reasons and a Paradox: The Manifest Superiority of Copyright over Sui Generic Protection of Computer Software*, 94 COLUM. L. REV.8, 2565 (1994).
[515] Id
[516] T Dreier, *Adjustment of Copyright Law to the Requirements of the Information Society*,29 INT'L. REV. IND. PROP. & COPYRIGHT L. 627-630 (1998).
[517] Yahoo!, Inc. v. La LigueContre Le RacismeetL'Antisemitisme, 145 F.Supp. 2d 1168, 1171 (N.D. Cal. 2001).

GLOBAL PERSPECTIVE

1. India

India maintains a creator-protective approach, though enforcement in the digital environment remains inconsistent.

The **Copyright Act, 1957** is the primary governing legislation that governs and protects copyright.

Moral rights are referred to as special rights under section 57 of the Act. It reads:[518]

(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work, and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work [* * *] if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

Explanation. Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.

(2) The right conferred upon an author of a work by sub-section (1), [* * *] may be exercised by the legal representatives of the author.[519]

In ***Mannu Bhandari v. Kala Vikas Pictures (P) Ltd.***[520] the plaintiff had written a novel "Aap ka Bunty" and assigned the filming rights to the defendant who made the film "Samay ki Dhara".

[518] Id at 190, note 481, s. 57
[519] Id., s. 57
[520] *Mannu Bhandari v. Kala Vikas Pictures (P) Ltd., AIR 1987 Del 13*

The plaintiff had a great reputation in the world of Hindi literature and had acquired a special status for the treatment of contemporary social and psychological issues. The novel had been translated in a dozen Indian and foreign languages, published serial wise in a weekly magazine, and prescribed for graduate and post-graduate courses in many universities.

The plaintiff alleged that the characters and theme is mutilated through vulgar dialogues in the film. The court held that since there is a change in the medium from literary to cinematograph film, some changes are inevitable. However, the court ordered deletion of certain dialogues and change in certain scenes keeping in mind the honor and reputation of the author of the novel.

The court observed that the hallmark of any culture is excellence of arts and literature. The quality of creative genius of artists and authors determine the maturity and vitality of any culture. Art needs a healthy environment and adequate protection. The protection which law offers is thus not the protection of the artist or author alone. Enrichment of culture is of vital interest to each society. Law protects this social interest. Section 57 of the Copyright Act is one such example of legal protection. Section 57 lifts authors' status beyond the material gains of copyright and gives it a special status.

Section 57 falls in Chapter XII of the act concerning civil remedies. Section 55 provides for certain remedies where there is infringement of copyright. Section 56 provides for protection of separate rights comprising the copyright in any work. Then comes section 57, providing for authors' special rights, and the remedies for violation of those rights. There is a statutory recognition of the intellectual property of the author and special care with which the intellectual property is protected. Under section 57, the author shall have a right to claim the authorship of the work. He has also a right to restrain the infringement or to claim damages for the infringement. These rights are independent of author's copyright and the remedies open to the author under section 55. The special protection of the intellectual property is emphasized by the fact that the remedies of a restraint order or damages can be claimed "even after the assignment

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work **,** if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.[521]

Courts increasingly recognize moral rights in new media contexts, but legislative clarity on AI and digital platforms is lacking. Although there are recent discussions on Artificial Intelligence, digital art and liability related to platforms that regard doctrinal clarity.

2. European Union

The EU opts a strong robust stance towards moral rights and thus they can be perceived as **inalienable and perpetual** in many member states. France and Germany's legal landscape strongly protects attribution and integrity, even in the scenario of contractual waivers and digital contracts. The EU Copyright Directive and national laws of France and Germany reinforces authors' rights in the digital single market.[522]

3. United States of America

The U.S. adopts a **limited moral rights regime** reflecting a utilitarianism approach. The **Visual Artists Rights Act, 1990 (VARA)[523]** is the sole legislation that protects moral rights with a limited application only for specific categories of visual art.[10] Software, films, music, and digital works largely fall outside its scope, thus reflecting and reaffirming the utilitarian philosophy.[524]

In the landmark case of ***Vargas v Esquire***, the court was of the opinion that moral rights are laws of foreign countries[525].

During the late 1970s State legislations were made which are varied in scope and the judiciary employs the common law theories and restricts the scope of moral rights.[526]

According to critics VARA did not complied with the obligation put forth in the Berne Convention in the true sense as only a limited segment of moral right is recognized. The

[521] The Copyright Act 1957, s 45
[522] Directive (EU)2019/790 of the European Parliament and of the council of 17 April
[523] Visual Artists Rights Act, 1990 (VARA)
[524] Matthew A. Goodin, The Visual Artists Rights Act of 1990: Further Defining the Rights and Duties of Artists and Real Property Owners, 22 Golden Gate U. L. Rev. (1992)
[525] Vargas v. Esquire, Inc., 64 F.2d 522 (7th Cir. 1947)
[526] L. Zemer, "Moral Rights: Limited Edition" 91 Boston Law Review 1527 (2011)

application of these rights is further complicated by the absence of a definitional guidance for crucial terminology. Another reason VARA isn't taken seriously in the creative community is that courts have a tendency to adopt a restrictive interpretation of the law.[527]

4. France

France can be considered as a champion as it recognizes moral rights and follows author centric principles by providing moral rights to authors that are wider in nature, perpetual, non transferrable and cannot be waived.

The advent of moral rights in France can be traced long back to the French revolution that started the discussion of the nature of rights that can be granted to authors. Judicial pronouncements shaped the course of moral rights in France, but the intellectual property laws of France expressly codified moral rights.[528] The French courts started applying the protections in regards to moral rights in the 19th century in essence, despite the fact that they were not specifically named by then.[529]

Although the French code did not allow to sell or transfer moral rights, the courts have paved the way in form of some waivers in regards to contracts for instances when the respective parties to a contract can provide that the waivers are fair and justiciable in nature and does not distort or cause any material change in the original piece of work. However, the code does not specifically provide to enforce a blanket waiver. Unlike US law inalienable Moral rights are also granted to paintings, music, plays and film works. In the case of ***Soc. Le Chant du Monde v. Soc. Fox Europe***[530], the Court allowed the seizure of the film providing the reasoning that the composers suffered moral damages while the US legislation failed to recognise this.

CHALLENGES AND SUGGESTIONS

Moral Rights and Social Network Platforms

[527] Ibid
[528] French intellectual property code
[529] P. Lieme, "On The Origins of Le Droit Moral: How Non-Economic Rights Came to be Protected in French IP Law" 19 Journal of Intellectual Property Law 115 (2011).
[530] Soc. Le Chant du Monde v. Soc. Fox Europe, Cours d'appel, Paris, Dalloz, Jurisprudence, [D. Jur.] 16 (1953)

With the advent of social media, the way of distribution of creative work by authors in exchange of receiving a critical assessment from the audience underwent a huge change.

On one hand these platforms are providing fast distribution channels but on the other they don't provide remedy in instances of misattributed work, unauthorized distortion and altered content.

People now accept as fact that social media endangers privacy and personal rights while accessing private data (Halász, 2020)[531].

Although social media is a contributing factor in infringing matters as they are, it is reasonable to suggest that it also serves as an effective medium to disseminate work and provides a large audience base. It also helps authors in gaining awareness about the way their work is perceived.

Moral Rights and AI

As content produced by artificial intelligence grows more common, safeguarding authors' moral rights—specifically the right of attribution and integrity—needs new regulatory and legal strategies. The below solutions can assist in safeguarding original creators' moral rights while AI tools keep advancing. Strengthening Transparency and Attribution Requirements Create legal requirements that mandate AI developers and users to reveal the origin of data employed in training AI systems. Create automated tracking systems that recognize and reward original authors whose works are used in AI-generated content. Apply metadata tagging or blockchain-based attribution systems to provide appropriate recognition to creators. Permit authors to license their works for AI training specifically in clear terms that establish moral rights protections. Establish an opt-out regime whereby authors may keep their work from being employed in AI-created content where they feel that it might undermine their integrity or reputation. Create remuneration schemes whereby authors are paid monetary rewards when their writings are utilized to train AI or are considerably integrated into AI products. Create collective rights management organizations to manage AI-based copyright use and pay royalties to impacted creators. Encourage ethical industry standards calling for AI creators to uphold copyright and moral rights. Impose on AI businesses to partner with writers to establish equitable

[531] *Social Media and Copyright: A Legal Perspective*, 2020, for a discussion on the balance between infringement risks and promotional benefits in digital content distribution

usage policies and guarantee that content generated through AI does not misrepresent or twist an author's original material.

New legal and regulatory measures are required to protect writers' moral rights, with special attention given to the right of attribution and integrity, as artificial intelligence-generated work is becoming more prevalent and advanced. While AI tools continue to advance, the following measures can be adopted to protect the moral rights of original authors. Establishing automated tracking tools to identify and compensate original authors whose works are incorporated into content produced by AI. Using blockchain-based attribution systems or metadata tagging to give artists the credit they deserve. Give creators permission to license their works for AI training under explicit conditions that guarantee moral rights.[532]

CONCLUSION

Moral rights continue to function as an essential legal safeguard protecting creative dignity in the digital age. No matter how much the modes of creation and dissemination of the ideas evolves regarding the creation of intellectual property, there will always be a personal bond between an author and their work.

Contrary to the popular belief that AI will replace human ideas, the increasing possibility of digital exploitation makes moral rights more relevant and significant than ever.

Thus, it becomes imperative in regards to Indian jurisprudence to continue taking steps that strengthen legal frameworks, enhance law enforcement mechanisms, and adapt to emerging technologies to ensure that creators stay inspired and continue to receive their due recognition and protection of their creative integrity.

[532] Berne Convention for the Protection of Literary and Artistic Works, Jan. 29 1970, 1161 U.N.T.S. 30

CHAPTER 16: COPYRIGHT DISPUTES AND LITIGATION STRATEGY: HOW CONFLICTS SHAPE CREATIVE INDUSTRIES

BY M PRANAV MRUTHYUNJAY

INTRODUCTION

Copyright disputes mainly arise from infringement claims. According to Section 51 of the Copyright Act, 1957[533]Copyright infringement is an act of unlawfully exercising or unfairly competing with a copyright owner's exclusive rights by making, publishing, distributing or selling copies of a copyrighted work without having been authorized by the copyright owner. Such actions will have a negative impact on the copyright owner financially due to loss of income and/or reputation, and therefore, the copyright owner can take legal action against those who engage in copyright infringing activities.[534]

FOUNDATIONS OF COPYRIGHT PROTECTION

Criminal Liability can arise against the infringer of the Copyright. Section 63 of the Act provides that a person who knowingly infringes or abets infringement of a copyright shall be punished for a term between six months to three years and also a fine shall be imposed upon the infringer for an amount between Rs. 50,000 - Rs. 2,00,000/-.[535] In case, an infringer who has been punished under Section 63 of the Act once, commits the same offence again, the infringer shall be

[533] The Copyright Act, 1957 (Act 14 of 1957), s. 51.
[534] SSRANA, "Copyright Litigation", available at: https://ssrana.in/litigation/ip-litigation/copyright-litigation/ (last visited on 3 January 2026).
[535] The Copyright Act, 1957 (Act 14 of 1957), s. 63.

punished for a term between one to three years along with fine between one to two lakhs rupees.[536]

Civil liability is elucidated in Section 55 (1) of the same Act, according to which, where copyright in any work has been infringed, the owner of the copyright shall be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right. If the defendant is able to show that, at the time the infringement occurred, they genuinely did not know and had no reasonable grounds to believe that the work was protected by copyright, then the copyright owner cannot claim full remedies. In such cases, the court may grant merely an injunction to stop the infringement and, in circumstances where the court considers it fair, order the defendant to hand over all or part of the profits earned from selling the infringing copies.[537] The types of injunctions a copyright owner can claim are Anton Piller order, Mareva junction, permanent & interim/interlocutory injunctions. The awarding of cost in favour of any party to the suit shall be within the discretion of the Court.[538]

LITIGATION STRATEGY AND JUDICIAL INFLUENCE

While litigation strategies are often what shape the trajectory and results of copyright dispute proceedings, sometimes the judgments pronounced can have a profound impact on litigation henceforth in the field. One such example is the case of Indian Performing Rights Society Ltd. v. Sanjay Dalia[539], where the Hon'ble Supreme Court of India held that Section 62 of the Copyright Act has to be interpreted in a purposive manner. It was held that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain and that he need not travel to the place where the defendant is residing or cause of action arises wholly or in part, to file a suit. However, if the plaintiff is residing or carrying on business at a place where the cause of action, wholly or in part, has also arisen, he has to file a suit at that

[536] The Copyright Act, 1957 (Act 14 of 1957), s. 63A.
[537] The Copyright Act, 1957 (Act 14 of 1957), s. 55 (1).
[538] *Supra* note 534
[539] Indian Performing Rights Society Ltd. v. Sanjay Dalia 2015 (10) SCC 161.

place.[540] Following this decision, litigators have moulded their strategies accordingly, adapting their approach accordingly, as the Court's judgement has proven extremely favourable and helpful for the claimants. Similarly, the offences under Section 63 were held to be bailable by the Delhi High Court in State Govt. Of Nct Of Delhi Petitioner v. Naresh Kumar Garg on March 20, 2013.[541] Any time a conflict arises and is resolved judicially, it will have a significant impact in shaping litigation strategies and on the creative industries as a whole.

DIGITAL EXPANSION AND NEW FORMS OF INFRINGMENT

The rapid growth of the internet and digital technologies has fundamentally changed the way creative works are accessed and shared. In the contemporary digital landscape, almost anyone can fall within the scope of a "creator" under copyright law, whether it is through sharing a photograph on social media or composing a brief poem online. At the same time, copyright protection extends far beyond traditional creative works. Everyday technologies ranging from smartphones and automobiles to advanced medical devices are all driven by software that is safeguarded by copyright law and regulated through digital rights management systems.[542] While this has made information and content more widely available, it has also made it far easier to copy, reproduce, and circulate protected works without permission. As a result, acts of unauthorised use that were once limited in scale have become widespread and instantaneous. This shift has contributed to a noticeable increase in copyright infringement disputes, especially in areas such as digital piracy, file sharing, and the unauthorised use of online content across social media and digital platforms.[543]

Common forms of copyright infringement in the creative industries take many shapes and are often the result of ease with which creative content can be accessed and reused. One of the most

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[540] *Supra* note 2.
[541] State Govt. Of Nct Of Delhi Petitioner v. Naresh Kumar Garg 2013 PTC DEL 56 282.
[542] Micaela Mantegna, "ARTificial: Why Copyright Is Not the Right Policy Tool to Deal with Generative AI", 133 *THE YALE LAW JOURNAL* 1126 (2024)
[543] LEPPARD LAW, "How Copyright Infringement Affects the Creative Industries", available at: https://leppardlaw.com/federal/white-collar/how-copyright-infringement-affects-the-creative-industries/ (last visited on 4 January 2026).

prevalent forms is unauthorised reproduction, where a creator's work is copied, shared, or circulated without permission, a practice that is most prevalently witnessed in the fields of music, film, and publishing. Another recurring issue is plagiarism, which involves passing off another person's creative expression as one's own. It is particularly problematic in fields such as literature, academia, and digital content creation. The digital age has also intensified digital piracy, where copyrighted material is illegally downloaded, streamed, or shared online, causing significant economic harm and loss of moral rights to creators and rights holders in the creative industries. Unauthorised creation of derivative works remains a concern, as this involves adapting or building upon an existing copyrighted work, such as modifying or expanding or extracting portions of artwork, software, or audiovisual content, without the consent of the copyright owner. Such practices undermine the rights of creators and highlight the continuing challenges of enforcing copyright protection in modern creative industries.[544]

ECONOMIC, EMOTIONAL, AND REPUTATIONAL HARM TO CREATORS

Copyright infringement can have profoundly damaging consequences for artists and creators, affecting them not only in economic terms but also at an emotional level. The financial repercussions are often the most immediate and visible. When a creator's work is exploited without authorisation, they are deprived of legitimate income that could have arisen through sales, licensing arrangements, or collaborative opportunities. Such unauthorised use directly steals from their earnings and can seriously restrict their willingness as well as ability to continuously sustain their creative endeavours. However, the multiple consequences of copyright infringement are far-reaching and extend beyond the immediate loss of revenue for creators. At a broader level, it undermines the foundations of the creative ecosystem by eroding the incentives that sustain artistic and intellectual production. When creative works are routinely exploited, it discourages investment, reduces opportunities for fair remuneration, and ultimately stifles

[544] *Ibid.*

innovation. Creative industries that depend heavily on intellectual property are particularly vulnerable.

The entertainment industry, particularly film, relies largely on the economic viability of theatrical releases, as well as licensing and distribution. When a user downloads or streams unauthorized copies of a film instead of purchasing an original or licensed copy, this results in the loss of potentially significant revenue not only for the film's producer and distributor, but also for the vast pool of professionals associated with the film-making process. Similarly, the music industry also faces the issue of widespread distribution of pirated music and content. The financial impact, while affecting all artists, established or rookies, can be particularly harsh for independent artists who rely heavily on legitimate sales and streaming royalties for their livelihood.

Beyond its economic consequences, copyright infringement gives rise to serious emotional and moral harm for creators, which is often overlooked in legal discourse. Creative works are not merely commercial commodities; they are the result of sustained intellectual labour, personal expression, and emotional investment. When such works are used or exploited without consent, it can amount to a violation of the creator’s personal and professional dignity. The unauthorised appropriation of a work may therefore generate a sense of emotional disconnect and dispossession, as the creator is deprived of control over the use and dissemination of their own expression. Their emotional harm is further aggravated by the harsh realities of enforcing copyright protection. While legal remedies exist in principle, the practical process of legal action is often complex, resource-intensive, and protracted. For individual artists and smaller creators, the prospect of navigating procedural requirements for prolonged periods of time, bearing litigation costs, and confronting institutional and bureaucratic roadblocks can be intimidating. As a result, many creators experience a sense of frustration and powerlessness, which not only discourages them from seeking legal redress but may also seal any interest they have in their future creative output.

The unauthorised exploitation of an artist’s work can also have disastrous reputational consequences. When creative works are circulated without the artist’s consent, they are often done so without the required quality control or appropriate context, which may distort the original vision and intent of the creator. Through such misrepresentations, misconceptions may

arise among audiences and prospective clients, thereby undermining the artist's professional image and building mistrust. These reputational harms often lead to professional setbacks. When an artist's work is widely available without their control, it may foster the impression that their creations are available for free use, diminishing the perceived worth of their labour, dissuading potential collaborators, producers, or clients from entering into formal licensing or contractual arrangements. The lack of perceived exclusivity and professional credibility can significantly restrict an artist's marketability, thus hindering their long-term career growth.[545] [546]

Copyright as a Systemic Industry Concern

Copyright infringement is not just an issue for individual artists; it poses a large-scale systematic threat to the entire creative industry. It can stifle innovation and growth, creating a ripple effect that impacts everything from revenue streams to the overall vitality of the sector. With industries such as entertainment, publishing, and software development relying heavily on intellectual property, it would not be an exaggeration to claim that unchecked infringement will fundamentally disrupt the industry's structural underpinnings, threatening its long-term stability and growth.[547]

At its foundation, copyright law is designed to safeguard the interests of creators by recognising their authority over the use and circulation of their works, while ensuring that they receive fair remuneration for their intellectual effort. It traditionally does so by conferring a bundle of exclusive rights, including the rights to reproduce, distribute, perform, and communicate a work to the public, thereby providing legal protection against unauthorised exploitation.[548]

EXISTING LEGAL FRAMEWORK AND DOCTRINAL TENSIONS

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[545] *Ibid.*
[546] Frontiers in Psychology, "Copyright Issues Impacting Artists' Emotional States", available at: https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2024.1409646/full (last visited on 7 January 2026).
[547] *Supra* note 543.
[548] Aditi Ganesh Patnuskar, Kunal Pradeep Divekar, Jogi Bhagwan Fatru, Durga Naik, Mali Ankita Dilip, "The Impact of Copyright Law on Digital Innovation and Creativity" 3 International Journal of Emerging Technologies and Innovative Research (IJETIR) 248 (2023)

The digital environment has blurred the conventional distinctions between creation, consumption, and dissemination of content. Online platforms allow individuals to both produce and share material with ease, often drawing upon existing copyrighted works through practices such as remixing, sampling, or other forms of transformative engagement. This evolving landscape has given rise to ongoing debates about whether copyright law, in its current form, adequately balances the protection of creators' rights with the need to encourage digital innovation and creative expression. On one hand, copyright law is upheld as an essential safeguard necessary for the protection of the economic interests of creators, thus encouraging the continued production of creative works.

On the other hand, critics contend that the present framework of copyright law may, at times, operate as an obstacle to digital innovation by placing excessive restrictions on the use of pre-existing works. In the contemporary digital environment, creative expression frequently depends on drawing from and reworking existing material, whether in the form of remix culture, parody, fan fiction, or collaborative modes of content creation. Referring to the same examples from above, musicians often sample elements from earlier compositions to produce new musical works while filmmakers may repurpose excerpts or refer to concepts, dialogues, scenes or characters from older films as tributes or for further adaptations. Software developers too, commonly rely on existing pieces of code as building blocks to develop new and efficient applications.

In such contexts, rigid enforcement of copyright norms can inadvertently suppress creative freedom by limiting access to source material that forms the basis of innovation. The practical difficulties associated with copyright compliance such as the costs, procedural complexity, and legal uncertainty involved in obtaining licences or determining the scope of fair use can further intensify this problem and discourage independent creators and emerging start-ups from experimenting with new ideas. As a result, the overall breadth and dynamism of digital creativity may be significantly constrained.[549]

[549] *Ibid.*

In light of these matters, there are multiple judicial decisions with respect to copyright disputes which have had a significant impact in shaping not only the litigation strategies but also the whole creative industries field as a whole. The case Eastern Book Company v D.B. Modak[550] stands as one of such landmark decisions by the Supreme Court of India regarding the scope of copyright protection for derivative works, particularly in the context of legal publications. The Supreme Court noted that the Copyright Act, 1957 grants protection to original works and to derivative works where there is sufficient labour, skills, and capital invested in transforming the original work, e.g. intellectual effort. The Court emphasised that copyright protection is available only to works that demonstrate a minimum level of creativity. It clarified that mere expenditure of labour or capital, though relevant, is not by itself adequate to attract copyright, and that the evidence must reflect some degree of creative expression in the form or presentation of the work. This ruling contrasted previous rulings such as Govindan v E.M. Gopalakrishna Kone and Burlington Home Shipping Pvt Ltd v Rajnish Chibber, which followed the British approach of skill and labor. As a caveat, the Court also warned that the level of creativity required to establish copyright should not be excessively high.

The Court has also given judicial clarity as to the position of various creative forms of art in the copyright law framework. In Academy of General Education Manipal v. Malini Mallya, the Supreme Court acknowledged that a dance form reproduced in literary form can be treated as a dramatic form of choreography. The Court underscored that the artistic expression of a dance, even when recorded in a literary form, continues to possess originality and is entitled to be recognized as a valid form of choreography. It observed that the Act draws a clear distinction between "literary works" and "dramatic works" and, keeping in mind this statutory differentiation, it held that copyright relating to a dance performance is more appropriately classified as a dramatic work than as a literary work.[551]

[550] Eastern Book Company v D.B. Modak 2008 (1) SCC 1.

[551] Academy of General Education Manipal v. Malini Mallya AIR 2009 SC 1982.

The extent of fair dealing was elucidated by the Kerala High Court in yet another landmark decision in the case of Civic Chandran v Ammini Amma.[552] The court examined the statutory provisions under the Copyright Act, especially Sections 14, 51, and 52, focusing on the defence of 'fair dealing' for criticism or review under Section 52(1)(a)(ii)[553]. The judgment held that even substantial copying of copyrighted work is permissible under the fair dealing exception; if the copying is in public interest. The Delhi High Court in a 2010 judgement, held that the qualitative test is as important as the quantitative test, i.e. the essence of the copyrighted work is crucial, not the overall quantity. The court concluded that the motives of the alleged infringer, the extent and purpose of the use are all significant factors that are considered when determining whether the necessity of the news broadcast to report current events. This judgment established certain limits on the doctrine of fair use, restricting it to key fields such as teaching, research, critique, and review.[554]

COMPARATIVE JURISDICTIONS AND GLOBAL STANDARDS

The "fair use" judgements often referred to previous judgements from foreign jurisdictions, such as the United Kingdom and the United States of America. One of the leading precedents is Hubbard v Vosper,[555] where Lord Denning stated, "No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment." The judgement was further expanded upon in the Supreme Court of Canada in CCH Canadian Ltd v Law Society of Upper Canada[556] in a judgement that established the threshold of originality and the bounds of fair dealing. Chief Justice McLachlin remarked that copyright does not protect ideas, but rather their expression. In determining originality of a copyright work, McLachlin took a balanced view that requires both skill and judgment as well as

[552] Civic Chandran v Ammini Amma 1996 KERLT 1 608.
[553] The Copyright Act, 1957 (Act 14 of 1957), s. 52.
[554] Super Cassettes Industries Ltd. v. Hamar Television Network (P) Ltd., 2010 SCC OnLine Del 2086.
[555] Hubbard v Vosper [1972] 2 Q.B. 84.
[556] CCH Canadian Ltd v Law Society of Upper Canada [2004] 1 S.C.R. 3.9.

creative ability or the effort to create. Skill was defined to mean applying your knowledge and developed ability while judgment meant the ability to assess and decide between several options when creating your work. The court stated that the original work should not just be mechanically or trivially produced, but it must have some level of distinctiveness from any other work. The court stated that creativity is not necessary to prove original copyright status. McLachlin noted that fair dealing was to be regarded as an "integral part" of the Copyright Act rather than "simply a defence".[557] The fair dealing exceptions were characterized as a user right, and must be balanced against the rights of copyright owners. McLachlin emphasized the importance of balancing "the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator." It was in the discussion of this provision that she separated the fair dealing test into six factors based on Denning's judgment:

1. The purpose of the dealing
2. The character of the dealing
3. The amount of the dealing
4. Alternatives to the dealing
5. The nature of the work
6. The effect of the dealing on the work

Focussing on the US jurisdiction, its legal framework has 2 main statutes. The Copyright Act of 1976[558] is a federal law that provides authors with exclusive rights to their creations, enabling them to control reproduction, distribution, and public performance.[559] The Digital Millennium Copyright Act[560] serves as a key legislative framework governing copyright protection in the digital environment. Introduced in 1998, it was enacted in response to the growing challenges that digital technologies posed to traditional copyright enforcement. The DMCA criminalizes the production, dissemination or utilization of technology designed to circumvent copyright

[557] The Copyright Act, R.S.C. 1985, c. C-42 (Canada), s. 29.
[558] The Copyright Act of 1976, United States of America.
[559] Federal Criminal Defense Lawyers, "Legal Consequences of Copyright Violations in the Creative Industries", available at: https://federal-criminal.com/white-collar/legal-consequences-of-copyright-violations-in-the-creative-industries/ (last visited on 7 January 2026).
[560] The Digital Millennium Copyright Act, 1998, United States of America.

protection systems such as access-control measures. It also further enhances penalties for online copyright infringement. The Act attempts to strike a balance between safeguarding the rights of copyright holders and preserving public access to information in the digital space.[561]

The U.S. Supreme Court has also upheld parody as coming under the scope of the fair use defence in the case of Campbell v. Acuff-Rose Music, Inc.[562] The Court observed that parodies will rarely compete with or substitute the original, since the two works serve different market functions. This case also established that making money off of a work does not make it impossible for fair use to apply as it is simply one of the components of a fair use analysis.

Similar to the Eastern Books case, the Feist Publications, Inc. v. Rural Telephone Service Co.[563], was a landmark decision by the Supreme Court of the United States which held that factual information alone that doesn't satisfy the minimum threshold of original creativity cannot be protected by copyright. The Court also reiterated that the standard for creativity is extremely low. Novelty isn't an essential necessity as the work only needs to possess a "spark" or "minimal degree" of creativity to be protected by copyright.

At a supranational level, copyright protection is governed by treaties such as the Berne Convention[564] and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)[565], which ensure that member countries recognize and enforce copyright protections for works created in other member countries, promoting a global standard for intellectual property rights.[566]

CONTEMPORARY CHALLENGES: ARTIFICIAL INTELLIGENCE AND AUTHORSHIP

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[561] Federal Criminal Defense Lawyers, "How Federal Laws Protect Intellectual Property in Digital Media", available at: https://federal-criminal.com/white-collar/how-federal-laws-protect-intellectual-property-in-digital-media/ (last visited on 7 January 2026).
[562] Campbell v. Acuff-Rose Music, Inc 510 U.S. 569 (1994).
[563] Feist Publications, Inc. v. Rural Telephone Service Co. 499 U.S. 340 (1991).
[564] The Berne Convention for the Protection of Literary and Artistic Works, 1886.
[565] The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994.
[566] *Supra* note 562.

In recent times, the most pressing issue in copyright law and creative industries, much like every other industry, is the advent of Artificial Intelligence and its extremely wide-spread usage across a plethora of fields. The swift development and growing deployment of generative artificial intelligence give rise to challenging questions surrounding authorship, originality, and the ethical implications of using copyrighted works in the training of AI systems.[567] Creative industries that rely on statutory copyright and the transfer of those rights are built on presumptions such as fixation of the work, originality, and human authorship. Artificial intelligence has the capacity to unsettle these foundational assumptions of copyright, with significant consequences for both individual creators and the industries that depend on their works. In doing so, it also challenges the existing economic structures of creative sectors, compelling participants within the current system to adapt in order to protect their interests and sustain their position. New, sophisticated forms of artificial intelligence (AI) have the potential to challenge the fundamental premise that only humans can create.[568] The disruptive impact of artificial intelligence on copyright law is already evident in the emerging legal debates surrounding its use. Questions have arisen over whether the use of copyrighted material to train AI systems can be justified under the doctrine of fair use, whether works produced entirely by AI can be attributed authorship in the absence of human involvement, and who should bear responsibility when infringement occurs, the individual using the AI or the entity that developed and deployed the technology.[569] [570] [571]

Traditionally, there has not been a great deal of contention around the existence of a human author in most copyright disputes. Generally, disputes have focused on who is the actual author of a given work. However, both the U.S. Copyright Office and American courts have consistently reaffirmed that copyright can only be obtained when the work was created by an identifiable human being. As the law currently stands, works generated by non-human actors, whether animals or machines, are not protected by copyright since there is no clear indication of intentional human authorship required by the copyright regime.[572]

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[567] *Supra* note 542.
[568] Chapter 2, "Artificial Intelligence and the Creative Double Bind", 138 *Harvard Law Review* 1585 (2025).
[569] Getty Images v. Stability AI, [2025] EWHC 2863 (Ch).
[570] Andersen v. Stability AI Ltd., 23-cv-00201-WHO (N.D. Cal. Aug. 12, 2024).
[571] The New York Times Company v. Microsoft Corporation, 1:23-cv-11195, (S.D.N.Y.).
[572] *ibid*.

The meaning of "creativity" has long been contested in both art and scholarship, a debate that becomes especially complex in the context of machine-based creativity. From this perspective, AI-generated outputs can reasonably be viewed as creative, particularly in their ability to combine and explore ideas in ways that meet traditional criteria such as novelty, value, and surprise. Yet the increasing dependence on the old and obsolete constructs of copyright law and digital contracts has revealed how fundamentally unjust systems are within creative markets. The same major corporate copyright holders that lucratively masquerade as protectors of artists, are in fact the ones leveraging systems that leech off artists through exploitation. This tension often gets portrayed as an ethical battle between artists and machines, a tall tale that obscures the base-level political fight between individuals and the market's dominant players. It is often drawn attention to that the application of copyright law alone offers no assurance of fair compensation for artists. Instead, it risks perpetuating existing structural inequalities, highlighting the limits of the current legal framework as a solution to the challenges posed by AI and creativity. [573]

CONCLUSION

Copyright litigation is not only about enforcing rights but also a central driver of litigation strategy, legal doctrine, and the structure of creative industries. Indeed, the arguments surrounding infringement, originality and fair dealing have been long-held ones, just as jurisdiction has determined how creators and rights holders by and large have traversed copyright protection. Strategic litigation and seminal judicial decisions have adjusted the "marketplace of ideas" between the protection of creative labour and lawful access to use, with direct implications for market conduct and industry behaviour. In the digital age, the size and speed of piracy have exacerbated these battles and made them even more costly in many ways including economically, reputationally and emotionally, for creators. The rise of artificial intelligence has added yet another layer of complexity, questioning time-honoured assumptions concerning authorship and originality and prompting both litigants and courts to reconsider old methods. In the end, copyright conflicts serve as one of the key catalysts of change in the creative industries as well as the legal regime governing them.

[573] *Supra* note 542.

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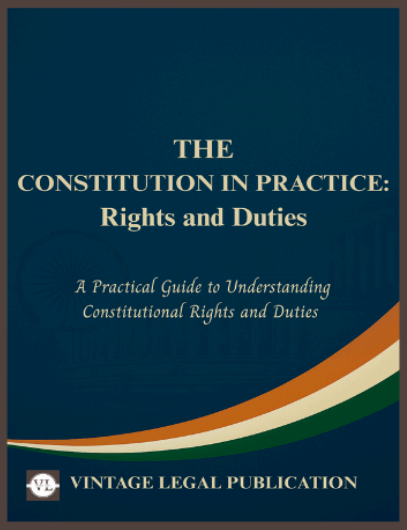

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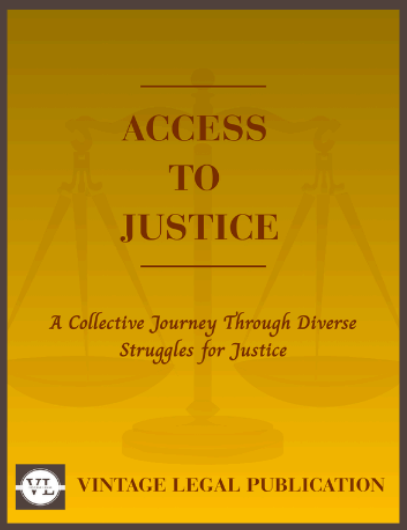

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