



# **COPYRIGHT PROTECTION IN THE DIGITAL AGE: BALANCING FREEDOM OF EXPRESSION BETWEEN CREATORS RIGHTS AND PUBLIC ACCESS**

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**Abstract:** This discourse critically interrogates the evolution of Indian copyright statutes vis-à-vis international obligations, scrutinises the operational efficacy of legal doctrines in mediating the tension between proprietary control and expressive freedoms, and evaluates the ramifications of emergent technological modalities-such as artificial intelligence and automated enforcement-on both enforcement paradigms and user rights. While the monopoly of intellectual property is designed to incentivise creative endeavour and ensure just remuneration for intellectual labor, it has become increasingly contentious in the digital age, where technological advancements facilitate effortless replication, instantaneous global dissemination, and the emergence of new forms of creative expression.

By illuminating the intricate interplay between intellectual property entitlements, monopolistic privileges, and expressive liberties, this inquiry aspires to delineate cogent pathways toward a sophisticated synthesis that duly incentivises creative innovation while safeguarding the democratic imperative of participatory cultural engagement in the digital commons. Ultimately, the paper seeks to articulate forward-looking recommendations for recalibrating India's legal and regulatory frameworks, ensuring that copyright protection remains robust yet responsive to the imperatives of freedom of expression and equitable public access in the digital age.

## **INTRODUCTION**

In the rapidly evolving digital landscape, the Indian Copyright Act, 1957-substantially amended in 2012 to align with international intellectual property regimes-faces formidable challenges in safeguarding creators' proprietary rights while simultaneously upholding the constitutional guarantee of freedom of expression under Article 19(1)(a). This delicate balance is further complicated by jurisdictional ambiguities. Consequently, there is an urgent need to recalibrate India's legal, regulatory, and technological framework.

## **RESEARCH QUESTIONS**

- 1.How has the trajectory of Indian copyright legislation evolved to address the multifarious challenges introduced by digital content creation, distribution, and enforcement?
- 2.In what manner does the interplay between creators' proprietary entitlements and public accessibility unfold within the Indian digital context, and where do extant legal provisions exhibit deficiencies?
- 3.What are the predominant technological, legal, and jurisdictional impediments undermining effective copyright enforcement in India's digital milieu?

4. How do doctrines such as fair use and statutory licensing function within India's digital copyright framework to mediate the tension between innovation and protection?

5. Which prospective legislative or policy innovations could engender a sustainable equilibrium between proprietary rights and the public interest amidst accelerating technological advancements?

## RESEARCH OBJECTIVES

1. To critically analyse the evolution of Indian copyright law in the digital era, with particular emphasis on its consonance with international standards and its impact on freedom of expression.

2. To examine the intricate interplay between proprietary rights and public access, identifying the limitations and lacunae in current Indian legal frameworks vis-à-vis expressive freedoms.

3. To elucidate the multifaceted challenges-technological, cross-jurisdictional, and regulatory-that impede the effective enforcement of copyright while safeguarding freedom of expression in the digital age.

4. To propose forward-looking, contextually relevant reforms and policy recommendations that harmonise the interests of creators and the public, ensuring a vibrant, equitable, and expression-friendly digital copyright regime in India.

## 1. CONCEPTUAL UNDERPINNINGS AND DIGITAL TRANSFORMATION

### 1.1 THE EVOLUTION OF COPYRIGHT IN THE DIGITAL ERA

**From Tangible Creations to Intangible Realms: Legislative Metamorphosis:** The trajectory of copyright law in India is emblematic of a legal system endeavouring to keep pace with the relentless march of technological innovation. Rooted in the Copyright Act of 1957, a statute originally conceived to regulate the protection of tangible literary, artistic, musical, and cinematographic works, Indian copyright jurisprudence has undergone profound transformation to accommodate the ethereal nature of digital content. The advent of the internet and digital technologies has precipitated a seismic shift-from the era of print and physical media to an epoch dominated by intangible, easily replicable digital artifacts.

Recognising the exigencies of this new paradigm, the Indian legislature enacted the Copyright (Amendment) Act, 2012, a legislative watershed that infused the statute with provisions tailored to the digital milieu. This amendment introduced comprehensive safeguards for digital rights management (DRM), explicit anti-circumvention clauses, and reinforced penalties for online piracy, thereby erecting formidable bulwarks against unauthorised exploitation in cyberspace.

Further refinement came with the 2021 Amendment, which institutionalised the regulation of Online Content Sharing Platforms (OCSPs), delineating their intermediary liabilities and mandating compliance mechanisms that harmonise with global intellectual property norms. These legislative innovations collectively signify a paradigmatic recalibration-transmuting copyright protection from a framework designed for physical media into a sophisticated legal architecture attuned to the protean and borderless digital ecosystem.

#### 1.1.1 Judicial Exegesis and the Digital Conundrum: Navigating Novel Challenges

The judiciary has emerged as a crucible wherein the abstract principles of copyright law are tempered by the practical exigencies of the digital age. Landmark adjudications have elucidated the contours of liability, fair use, and enforcement within this complex terrain. In the seminal case of *Super Cassettes Industries Ltd. v. MySpace Inc.*, the Delhi High Court confronted the nebulous question of intermediary liability in the context of user-generated content on digital platforms. The Court's pronouncement underscored the imperative for platforms to act expeditiously upon notification of infringement, thereby enshrining a duty of care that balances the protection of creators' rights with the operational realities of digital intermediaries.

Similarly, the Bombay High Court's ruling in *Tips Industries Ltd. v. Wynk Music Ltd.* crystallised the legal principles governing digital licensing and statutory licensing regimes for online streaming services. The judgment

affirmed that digital platforms must secure appropriate licenses before disseminating copyrighted works, reinforcing the sanctity of creators' exclusive rights while recognising the evolving modalities of content consumption.

These judicial interventions, in concert with legislative reforms, reflect an ongoing dialectic between the imperatives of copyright protection and the fluid dynamics of digital innovation. While the legal framework has been significantly fortified to deter infringement and empower rights holders, it simultaneously grapples with the complexities of fair use exceptions, equitable access, and the potential chilling effects on creativity and innovation. The evolution of copyright law in India thus epitomises a delicate balancing act-striving to safeguard proprietary interests without stifling the democratic ethos of information exchange and cultural participation that the digital era so profoundly enables.

### 1.1.2 The myth of “value creation”: The Jurisprudential challenge

John Locke's defence of private property as a major justification for the Enclosure Movement and foundation of the reified culture of property. Locke reasoned that farmers could privatise land from the “commons” if they improved it (e.g. converting swamp land into productive farm land). Yet, big plantation farms of the day were based on the labor of appropriation through which the owners, not the individual labourers who worked for them, received all credit for improving the land, and hence for creating value. Industrial capitalism extended this idea that individual labourers are less important to the production of value than the owners of the means of production.

But today's Digitized “participatory culture” is undermining this logic by valourizing labourers once again as producers of value. Through platforms like YouTube and Wikipedia, everyone is a creator of content, and thus, value. This forces the central argument of the capitalist economic model into question; how is value produced, distributed, and owned?

IPR shows exactly how the ideology of free market and private property fails in modern times because digitisation and globalisation have produced new means of production and creation of value that do not require ownership or capitalist labor relations. It is an invention created to maintain the property rights of the elite in a world where their ideology is being undermined. Ironically, the more that aspects of culture fall under IPR protection, the more opportunities emerge for piracy, threatening both ownership and the legitimacy of the state protecting these unequal rights.

**THE ISSUE OF PIRACY:** For instance, We may analyse the issue of global copyright piracy, such as local producers selling pirated DVDs in Ecuador or counterfeit blue jeans in Bolivia. Because capitalist production is based on appropriated labor (in this case, from the global South), the foreign (global North) owners claim the value and rewards of the labor of their workers by virtue of owning the brand names. This reveals the hierarchical nature of these labor relations and shows how global piracy can be seen, at least in some cases, as a rebellion against capitalist expropriation of direct producers in the global South.

## 1.2 THE INTERPLAY OF CREATORS' RIGHTS AND PUBLIC ACCESS

The Indian copyright regime is a sophisticated legal edifice, meticulously crafted to foster a symbiotic relationship between the proprietary interests of creators and the collective rights of society. The Copyright Act, 1957, as amended, confers upon authors and copyright holders a suite of exclusive rights-ranging from reproduction and communication to the public, to adaptation and translation-serving as both an incentive for creative endeavour and a mechanism for economic reward.

These rights are further buttressed by the doctrine of moral rights (Section 57), which safeguards the creator's honour and reputation, ensuring that the integrity of their work remains inviolate even after economic rights have been transferred.

Yet, the law is acutely aware that unchecked exclusivity can ossify into cultural gatekeeping, stifling the very innovation it seeks to encourage. To counterbalance this, the Act is interspersed with a series of nuanced exceptions and limitations. The doctrine of fair dealing, enshrined in Section 52, is a linchpin in this balancing act. It allows for the use of copyrighted material without permission in contexts such as private study, research, criticism, review, reporting of current events, and certain educational purposes. This statutory carve-out is not merely a concession, but a deliberate legislative strategy to prevent the privatisation of knowledge and ensure the vibrancy of public discourse.

Additionally, the Act provides for both voluntary and statutory licensing mechanisms. Voluntary licensing empowers copyright owners to negotiate terms and conditions for the use of their works, fostering a market-oriented



approach to dissemination. Statutory licensing, as articulated in Sections 31 to 32B, serves as a corrective measure where market failures or public interest imperatives necessitate broader access-such as in the case of works withheld from the public or for the benefit of persons with disabilities. These provisions collectively ensure that copyright law in India remains a dynamic and responsive framework, capable of reconciling individual rights with societal imperatives.

### 1.2.1. Critique: Challenges and the Path Forward

Despite the elaborate architecture designed to harmonise private and public interests, the practical realisation of this equilibrium is fraught with complexities and inefficiencies. One persistent critique centres on the procedural hurdles associated with relinquishing copyright or dedicating works to the public domain. The Copyright Rules, 2013, for instance, prescribe a labyrinthine process involving public notices and formal declarations, which can deter creators-especially in the digital context, where content is generated and shared at an unprecedented scale-from voluntarily expanding the commons.

Moreover, the fair dealing provisions, though foundational, have been criticized for their limited scope and lack of clarity, particularly when juxtaposed with the more expansive fair use doctrine in jurisdictions such as the United States.

Indian courts, while generally progressive, have often been called upon to interpret these provisions in light of new technological realities, such as user-generated content, remix culture, and digital archiving. The absence of clear statutory guidance on transformative uses has led to uncertainty and, at times, a chilling effect on lawful creativity and expression.

The Delhi High Court's decision in *Universal studios v. DotMovies.Baby* (2023), websites were streaming copyrighted content without authorisation. Recognising the evolving tactics of piracy sites-such as frequently changing domain names and IP addresses to evade detection-the court introduced the concept of a "Dynamic+ injunction." This innovative legal remedy empowered rights holders to swiftly block not only the infringing website but also any mirror or clone sites that emerged subsequently, without the need for repeated court filings. Justice Prathiba Singh's ruling marked a significant advancement in India's legal arsenal against digital copyright infringement, ensuring that enforcement mechanisms remain effective in a rapidly changing technological environment.

The issue of access is further complicated by the digital divide and socio-economic disparities prevalent in India. While statutory licensing has facilitated access to copyrighted works for educational and public welfare purposes, questions remain about its effectiveness in reaching marginalised communities and bridging the gap between content availability and actual accessibility.

Certain Judicial pronouncements have underscored the necessity of maintaining a balance between the rights of creators and the public interest. In cases such as *Academy of General Education, Manipal v. B. Malini Mallya* and *Civic Chandran v. Ammini Amma*, the courts have affirmed that copyright should not be wielded as a tool of suppression but must be interpreted to foster creativity, learning, and the dissemination of ideas. Nonetheless, the rapidly evolving digital ecosystem demands that the law remain agile and receptive to reform.

The future trajectory of Indian copyright law will depend on its ability to adapt to technological advancements, democratize access, and uphold the constitutional commitment to freedom of expression-ensuring that the interplay between private rights and public good remains robust, equitable, and forward-looking.

## 1.3 LEGAL FRAMEWORKS: NATIONAL AND INTERNATIONAL DIMENSIONS

Harmonisation versus National Identity, The Ongoing Balancing Act: Indian copyright law, while rooted in its own constitutional and developmental priorities, has evolved under the shadow of international harmonisation. The Copyright Act of 1957, though initially a product of colonial legacy, has been fundamentally reshaped by India's commitments under the Berne Convention and the TRIPS Agreement. These treaties have required India to adopt principles such as automatic protection, national treatment, and minimum standards for enforcement, thereby embedding Indian copyright within a global legal order.

Yet, the process of harmonisation is fraught with tension. International case law, such as *Lucasfilm Ltd. v. Ainsworth* (UKSC, 2011), highlights the principle of territoriality and the practical limits of cross-border enforcement, even in an era of globalised content. Similarly, the US case *Itar-Tass Russian News Agency v. Russian Kurier, Inc.* (2nd

Cir. 1998) underscores the complexities of determining applicable law and rights in transnational copyright disputes. Indian courts, too, have faced these challenges.

In *Eastern Book Company v. D.B. Modak* (2008), the Supreme Court adopted a “modicum of creativity” standard for originality, aligning Indian law with international trends but carefully tailoring the doctrine to reflect domestic realities and the need to foster both innovation and access.

This jurisprudential balancing act demonstrates that, while India has adopted the architecture of international copyright, it continues to assert its legislative sovereignty in areas such as moral rights, fair dealing, and the protection of traditional knowledge.

## **1.4 THE IMPACT OF DIGITAL TECHNOLOGY ON COPYRIGHT ENFORCEMENT AND LEGAL CHALLENGES**

**JURISDICTIONAL CHALLENGES:** The relentless march of digital technology has upended the very foundations of copyright enforcement, transforming what was once a localised legal skirmish into a sprawling, borderless contest of rights and remedies. In India, the proliferation of streaming platforms, social media, and generative AI has rendered traditional enforcement mechanisms increasingly anachronistic and, at times, wholly ineffectual.

Digital content can be pirated, remixed, and redistributed at a velocity and scale unimaginable in the analog age. Torrent sites, illegal streaming hubs, and even mainstream platforms are awash with infringing works, often hosted in jurisdictions that are impervious to Indian court orders. The anonymity and agility of digital infringers—armed with VPNs, mirror sites, and ever-evolving evasion tactics—have exposed the inadequacy of conventional notice-and-takedown regimes and the territorial limitations of Indian law.

However, in *Ramdev v. Facebook* case, where the Delhi High Court, after finding certain content defamatory, ordered global takedown of the offending material, not just geo-blocking within India. The Court’s insistence on worldwide removal of content, despite objections from global digital platforms about jurisdiction and the principle of territoriality, demonstrates the judiciary’s willingness to assert expansive powers in the digital realm. This approach has sparked debate about the limits of Indian courts’ reach and the potential chilling effect on free expression and intermediary liability.

Even where the law provides for swift remedies, the practical reality is a Sisyphean struggle: as soon as one infringing link is removed, dozens more spring up in its place. The courts, though increasingly responsive, are often outpaced by the sheer dynamism of digital infringement, and enforcement agencies are left grappling with a hydra-headed adversary.

### **1.4.1 The New Legal Labyrinth: AI, Intermediaries, and Uncharted Frontiers**

If digital piracy is the old foe in new garb, artificial intelligence is the legal system’s uncharted wilderness. Generative AI models now create music, art, and literature by ingesting vast swathes of copyrighted material, raising profound questions about authorship, originality, and liability. Who owns an AI-generated work? Can an algorithm infringe copyright, or is liability always human? These are not merely academic puzzles but urgent, unresolved dilemmas, as evidenced by the Indian government’s formation of a high-level committee to interrogate whether the Copyright Act, 1957, is even fit for purpose in this brave new world.

The *ANI v. OpenAI* case, currently before the Delhi High Court, is India’s first major lawsuit against an AI company for using copyrighted news content to train its large language model, ChatGPT. ANI alleges that OpenAI not only stored but also reproduced and generated outputs based on ANI’s proprietary news articles, all without permission or payment. This case raises critical questions: Does using copyrighted data for AI training constitute infringement? Is such use “fair dealing” under Indian law? And can Indian courts assert jurisdiction over a US-based defendant whose servers are located abroad? The outcome will set a precedent for AI practices and copyright law in India and the broader Global South.

Intermediaries—platforms, hosts, and networks—occupy a precarious position at the crossroads of innovation and infringement. While safe harbour provisions offer them some protection, the lack of clear, technology-neutral standards for takedown and proactive monitoring has led to inconsistent enforcement and frequent litigation. The absence of robust, user-friendly notice-and-takedown systems, coupled with the reluctance of some platforms to invest in advanced content recognition technologies, has only exacerbated the enforcement deficit<sup>56</sup>.

### 1.4.2 Critical Fault Lines and the Way Forward

Digital technology has fundamentally disrupted the equilibrium between copyright protection and freedom of expression. The ease with which digital works can be copied, altered, and distributed worldwide has made infringement both trivial and difficult to police, exposing the limitations of traditional legal frameworks and enforcement strategies. Although international agreements like the Berne Convention and WIPO Copyright Treaty have broadened protection to cover digital works, the law often trails behind technological advancements, leaving creators vulnerable to piracy and the public's right to access information in a precarious state.

While copyright law is designed to incentivise creativity by granting exclusive rights, in the digital environment these rights frequently conflict with the public's interest in information access and free speech. Overzealous enforcement measures-such as website blocking and automated takedowns-can suppress legitimate uses, hinder education, and erode the public domain, as demonstrated by experiences in the US and elsewhere. Conversely, lax enforcement undermines incentives for creators and diminishes the economic value of creative works.

A pivotal example is *Super Cassettes Industries Ltd. v. MySpace Inc.* (2011), mandating proactive monitoring and takedown. While this ruling empowered rights holders, it also set a precedent that risks stifling user expression and innovation, imposing heavy burdens on digital intermediaries.

Digital copyright law must be clear, proportionate, and provide robust exceptions for research, education, and transformative use. Only by ensuring that legal protections do not unduly restrict speech or innovation can copyright maintain its legitimacy in the digital age-striking a balance between rewarding creators and safeguarding the public's right to access and share knowledge in a rapidly evolving technological landscape.

## THE DIGITAL DICHOTOMY-TENSIONS AND CHALLENGES

### 2.1 NAVIGATING PROPRIETARY CONTROL VERSUS PUBLIC BENEFIT

The Indian Copyright Act, 1957, as the backbone of the country's copyright regime, is increasingly exposed as insufficient for the digital age's complex realities. While the Act has been amended to recognise computer-generated works and penalise digital infringement, its foundational logic remains rooted in a pre-digital paradigm, struggling to balance proprietary control with the public benefit in a rapidly evolving technological landscape.

The Act's focus on protecting the rights of creators and owners is now under unprecedented strain. Digitalisation has made it trivial to copy, distribute, and monetise creative works without authorisation, multiplying the vulnerability of copyright holders and making enforcement a Sisyphean task. Amendments such as those introducing protection for technological protection measures (TPMs) and computer programs have, in practice, often favoured rights holders and large intermediaries, sometimes at the expense of user rights and innovation. For example, the imposition of liability on intermediaries, as seen in cases like *Super Cassettes Industries Ltd. v. MySpace Inc.*, has led to digital platforms adopting risk-averse, often overly broad takedown practices, chilling legitimate expression and fair use.

#### 2.1.1 Public Benefit: Eroding Access and Stagnant Exceptions

On the flip side, the Act's fair dealing provisions (Section 52) remain rigid and ill-suited to digital realities, offering a narrow set of exceptions that do not adequately accommodate new forms of creativity, such as memes, remixes, or AI-generated content. The lack of clarity around what constitutes "personal use" or transformative use in the digital context has led to uncertainty and, frequently, the suppression of socially valuable uses of copyrighted works. The absence of a robust, flexible fair use doctrine limits the law's ability to adapt to educational, research, and participatory cultural practices that are central to the digital public benefit.

Despite periodic amendments, the Act's incremental approach cannot keep pace with disruptive technologies like generative AI, virtual reality, and blockchain, which are rapidly transforming both the creation and consumption of content. The law's failure to clarify ownership and liability for AI-generated works, and its inability to address the realities of cross-border infringement and automated enforcement, leaves both creators and the public in a precarious position. The safe harbour regime for intermediaries, while essential for digital innovation, is now under scrutiny for enabling platforms to shirk responsibility for large-scale infringement or, conversely, for incentivising over-censorship to avoid liability.



The Need for a Digital Copyrights Act: Indian copyright law, as it stands, risks becoming a tool for proprietary overreach, stifling digital creativity and public access while failing to provide meaningful remedies to rights holders in the face of globalised infringement. The urgent need is for a dedicated Digital Copyrights Act that recalibrates the balance: strengthening user rights, modernising fair use exceptions, clarifying intermediary liability, and addressing the unique challenges of AI and cross-border digital content. Without such reform, the law will continue to lag behind technology, undermining both the incentive to create and the public's right to participate in the digital commons.

## **2.2 THE MONOPOLY DEBATE: RESTRICTING ACCESS, INNOVATION, AND MARKET COMPETITION**

The digital era has reignited the classic monopoly debate, but with new urgency and complexity. In India's rapidly evolving digital ecosystem, the intersection of copyright protection, proprietary control, and competition law has produced a landscape where the unchecked dominance of a few digital giants risks stifling access, innovation, and fair market competition.

Digital monopolies-where a single platform or a handful of players control vast swathes of the digital market-have become a defining feature of India's online economy. These entities leverage network effects, data hoarding, and aggressive acquisition strategies to entrench their dominance. Copyright law, intended to incentivise creativity, can inadvertently reinforce these monopolies when exclusive rights are used not just to protect original works but to block interoperability, restrict data access, or lock out competitors from essential digital infrastructure.

### **2.2.1 Restricting Access and Innovation**

The monopoly power of large digital platforms is often exercised through restrictive licensing, proprietary standards, and the use of copyright takedown mechanisms to suppress competition and limit user access. For example, dominant platforms may deny rivals access to APIs or datasets under the pretext of copyright protection, thereby impeding interoperability and innovation. Automated copyright enforcement tools, while designed to combat infringement, can be weaponised to remove competing content or silence critical voices, thus chilling legitimate expression and new market entrants.

### **2.2.2 Market Competition and the Limits of Current Regulation**

India's Competition Act, 2002, and its recent amendments-including the Competition (Amendment) Act, 2023-seek to address these concerns by empowering the Competition Commission of India (CCI) to investigate and penalise abuse of dominance, predatory pricing, and anti-competitive mergers. The new regulations now allow for penalties based on global turnover and mandate reporting of high-value deals, directly targeting Big Tech's acquisition-driven market consolidation. Yet, regulatory fragmentation and the sheer pace of digital innovation have left gaps: multiple sectoral regulators, limited technical expertise, and jurisdictional overlaps hinder effective oversight.

Recognising the limitations of ex-post enforcement, India is now moving toward ex-ante regulation through the proposed Digital Competition Bill, which aims to proactively curb anti-competitive conduct by "systemically important digital intermediaries" (SIDIs).

This approach draws inspiration from the EU's Digital Markets Act and seeks to prevent market tipping before dominance becomes irreversible. The bill's consultative process, involving industry and global best practices, reflects an understanding that unchecked digital monopolies threaten not only competition but also consumer welfare and innovation.

Despite these reforms, the monopoly debate in India's digital sector remains fraught. Overly aggressive regulation risks stifling innovation and deterring investment, while lax oversight allows entrenched players to exploit copyright and data control to the detriment of users and smaller competitors.

The challenge is to strike a balance: copyright law must not be weaponised to cement monopolies, and competition law must evolve to address the unique dynamics of digital markets-where access, interoperability, and data portability are as crucial as price and output.

## **2.3 FAIR USE, INNOVATION, AND THE LIMITS OF PROTECTION**

The doctrine of fair use (or fair dealing) is a cornerstone of copyright law, designed to balance the exclusive rights of creators with the broader public interest in access, innovation, and-crucially-freedom of expression. In India, this

balance is codified in Section 52 of the Copyright Act, 1957, which enumerates specific exceptions allowing limited use of copyrighted material without the owner's permission for purposes such as private study, research, criticism, review, and news reporting. However, the digital age has exposed both the strengths and the limits of this framework.

Fair use is not a blanket license for copying, but it is essential for fostering creativity, knowledge dissemination, and the robust exercise of free speech. Indian law, influenced by international treaties like the Berne Convention and TRIPS, recognises that certain uses-especially those that are “transformative”-should be permitted to encourage new expression and critical engagement.

In *Neetu Singh v. Telegram* (2023), the Delhi High Court was confronted with the issue of copyright infringement on the Telegram platform, where users were distributing infringing educational materials through anonymous channels. Telegram argued that disclosing the identity of channel creators would violate their privacy rights under Article 21 and their freedom of expression under Article 19(1)(a) of the Constitution.

The Court, however, held that neither the right to privacy nor the right to freedom of speech and expression could be used to shield infringers from the consequences of illegal actions. The judgment emphasised that the protection and enforcement of copyright cannot be diminished by the growth of technology, and that the disclosure of personal data in this context was justified, proportionate, and necessary to address the infringement. The Court balanced the competing rights by referencing the proportionality principle, stating that such disclosure must not be excessive and should be limited to what is necessary to remedy the infringement.

**CRITIQUE:** Despite these judicial advances, the Indian fair use doctrine remains limited by its closed list of exceptions. Unlike the flexible “fair use” standard in the United States, Indian law’s “fair dealing” is restricted to specific purposes, leaving many digital and transformative uses in a legal grey area. This rigidity can chill innovation and expressive freedom, particularly in fields like digital media, parody, and data mining, where new forms of speech and creativity often do not fit neatly within statutory categories.

1. Moreover, the rise of digital rights management (DRM) and anti-circumvention provisions (Section 65A) has further narrowed the scope of fair use, especially for libraries, educators, and researchers. DRM can prevent even legally permissible uses, undermining the intent of fair dealing exceptions and raising constitutional concerns under Article 19, which guarantees freedom of speech and expression.

2. Courts in India have considerable discretion in interpreting fair use, weighing factors such as the purpose, amount, and effect of the use on the original work. However, this case-by-case approach can lead to uncertainty, deterring users from engaging in potentially lawful activities out of fear of litigation. The challenge is compounded in the digital context, where the boundaries between inspiration, adaptation, and infringement are often blurred, and where the right to freedom of expression must be vigilantly protected.

## **PATHWAYS TO BALANCE AND SUSTAINABLE SOLUTIONS**

### **3.1 REGULATORY APPROACHES AND THE QUEST FOR EQUILIBRIUM**

The regulatory approach to copyright protection in India is primarily governed by the Copyright Act, 1957, which has been amended periodically to account for technological advancements. Despite these amendments, including the significant Copyright (Amendment) Act, 2012, the law often lags behind the pace of digital innovation. The 2012 amendments introduced provisions for Technological Protection Measures (TPMs) and addressed the liability of intermediaries, but the application of these provisions in the digital context remains ambiguous.

A critical issue is the tension between the protection of creators' rights and the facilitation of public access and freedom of expression. While the law aims to incentivise creativity by granting exclusive rights to authors, excessive enforcement can hinder access to knowledge, education, and cultural participation. For example, the scope of fair dealing exceptions under Indian law is limited, potentially restricting legitimate uses such as research, education, and transformative works. Furthermore, the law is yet to adequately address emerging challenges, such as the copyright status of AI-generated content and the evolving role of digital intermediaries, leading to uncertainty for both creators and users.



### 3.2 TECHNOLOGICAL MEASURES AND POLICY ADAPTATION

The inclusion of TPMs under Section 65A of the Copyright Act was intended to bolster digital copyright enforcement. TPMs, such as Digital Rights Management (DRM) systems, are designed to prevent unauthorised copying and distribution of digital works. However, these measures have drawn criticism for being overly restrictive, sometimes impeding lawful uses like fair dealing, accessibility for the disabled, and educational purposes. The Indian legal framework does not provide clear exceptions for the circumvention of TPMs for legitimate purposes, which can undermine user rights and the broader public interest.

Policy adaptation in India has been slow to keep pace with technological change. The law does not adequately address the complexities introduced by artificial intelligence and machine learning, particularly regarding the ownership and protection of AI-generated works. The lack of clarity on these issues risks both overprotection, which can stifle innovation and limit public access, and under protection, which may fail to reward human creativity. The current regime thus requires a more nuanced approach that recognises the realities of digital content creation and consumption.

### 3.3 FUTURE DIRECTIONS: HARMONISING RIGHTS AND ACCESS IN THE DIGITAL LANDSCAPE

Moving forward, India must develop a more flexible and responsive copyright framework that balances the rights of creators with the public's right to access information and culture. There is an increasing call for a dedicated Digital Copyright Act that revisits safe harbour provisions for intermediaries, clarifies the scope of fair use, and addresses the unique challenges posed by AI and digital platforms. Achieving this balance will require a multi-stakeholder approach, engaging creators, users, intermediaries, and policymakers to ensure that the law is both effective and equitable. For instance, in *Tata Sons Ltd. v. Greenpeace International & Anr.* (2011), where the Delhi High Court held that parody and satire could be a legitimate exercise of freedom of expression, even when it involves the use of copyrighted material. This decision reinforced the idea that copyright law should not be used to stifle criticism or creative expression in the digital age.

A sustainable copyright regime must also prioritise social justice and equity. Overly restrictive copyright laws can exclude marginalised communities from accessing knowledge and participating in cultural life, while insufficient protection can erode incentives for creativity and innovation. The future of Indian copyright law lies in harmonizing these competing interests-providing robust protection for creators, meaningful exceptions for public interest uses, and adaptive governance mechanisms that can respond to technological change.

As noted in the literature, "The policy framework needs to be adaptive to the changes and therefore, needs a multi-stakeholder system wherein interests are not compromised, and resources are efficiently utilised."

### CONCLUSIONS AND SUGGESTIONS

The Indian Copyright Act, 1957, provides a foundational framework for protecting creators' rights, but it struggles to keep pace with rapid digital advancements such as AI, online platforms, and virtual reality. Judicial decisions like *UTV Software v. 1337x.to* and the *DU Photocopy Case* have highlighted the tension between protecting creators and ensuring public access, yet the law's fair dealing provisions remain rigid and ambiguous, especially regarding intermediary liability and AI-generated works. Without comprehensive reform, India risks overprotection that stifles access and innovation, or under protection that weakens incentives for creativity.

In my view, India urgently needs a forward-looking, technology-neutral copyright law that is flexible enough to accommodate future developments. The law should explicitly address AI-generated content, broaden fair dealing to reflect digital realities, and provide clear, balanced rules for intermediary liability. Only then can we achieve a true equilibrium between the rights of creators and the public's right to knowledge and expression in the digital era.

1. Amend the Copyright Act to explicitly address AI-generated content, clarify authorship and ownership, and strengthen digital licensing and cross-border enforcement.
2. Broaden fair dealing exceptions to better accommodate education, research, and transformative digital uses while protecting creators' interests.
3. Clarify intermediary liability with balanced safe harbour rules and streamlined notice-and-takedown procedures to protect both creators and platforms.

4. Regulate Technological Protection Measures (TPMs) to prevent abuse that restricts lawful uses like education and accessibility.
5. Define AI and copyright issues, including ownership of AI-generated works and licensing for AI training datasets, reflecting emerging policy discussions.
6. Enhance enforcement capacity through technology and institutional support, including AI and blockchain tools for tracking infringement.
7. Promote public awareness about copyright rights and ethical digital use among creators, users, and intermediaries.

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