
FAIR USE IN FLUX: NAVIGATING CREATIVITY, OWNERSHIP, AND DIGITAL CULTURE

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ABSTRACT

The fast proliferation of digital media has altered how creative works are created, shared, and consumed. Memes, remixes, mashups, and fan fiction are examples of user-generated content, which represents a new era of participatory culture while simultaneously challenging old concepts of copyright ownership. The paper investigates the changing dimensions of fair use as a legal and cultural concept, with an emphasis on the contradiction between safeguarding artists' rights and allowing transformative speech in the digital environment. The paper investigates whether existing fair use and fair dealing regimes effectively satisfy the demands of digital creativity by examining major judicial developments, statutory frameworks, and comparative viewpoints from countries including the United States, India, and the European Union. It also takes into account the role of technological platforms, algorithmic copyright enforcement, and new challenges such as AI-generated material and NFTs. The paper advocates for a more adaptable view of fair use that balances economic interests with public interest in promoting creativity, free expression, and cultural innovation.

Keywords: Fair use, copyright, digital media, transformative works, memes, remixes, fan fiction, participatory culture, intellectual property law.

Introduction

In today's digital landscape, creativity no longer moves in a simple, one-way path from the mind of an author to a passive audience. Instead, culture is fluid, collaborative, and endlessly recyclable. A song uploaded online can quickly turn into a remix, a short film clip can transform into a viral meme, and a best-selling novel can inspire entire worlds of fan fiction. These offshoots are not side notes—they have become central to how people express themselves, form communities, and interact with art in the twenty-first century. The internet, functioning both as a creative canvas and as a powerful distribution tool, has blurred the boundaries between creator and consumer, turning every share, remix, or reinterpretation into a potential act of creation¹.

Yet this vibrant culture of participation collides with one of the oldest pillars of intellectual property law: copyright. Designed to protect creators from unauthorized use or exploitation² copyright ensures that original works remain under the control of their authors. But the very qualities that define digital culture—its speed, openness, and interactivity—are straining the limits of this legal framework. The central question that arises is whether a new work unlawfully borrows from the original or whether it qualifies as a legitimate transformation³. This is where the doctrine of fair use steps in, situated at the crossroads of creativity, ownership, and freedom of expression.

Fair use is less a strict rule than a flexible principle. It permits the limited use of copyrighted material for socially valuable purposes like commentary, parody, criticism, news, or education. In practice, it has acted both as a shield for transformative creators and as a flashpoint for legal battles. Courts often examine whether a work merely replicates the original or adds new layers of meaning, commentary, or expression⁴. In this sense, fair use operates as more than a legal tool—it is a cultural dialogue reflecting society's evolving views on authorship and creativity.

The rise of digital platforms such as YouTube, TikTok, and Instagram has pushed this negotiation even further. These platforms thrive on remix culture, where snippets of songs,

¹ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* 17-22 (Penguin Press 2008).

² U.S. Copyright Office, *Copyright Basics*, <https://www.copyright.gov/circs/circ01.pdf>

³ Guilda Rostama, *Remix Culture and Amateur Creativity: A Copyright Dilemma*, WIPO Magazine (June 2015), https://www.wipo.int/wipo_magazine/en/2015/03/article_0006.html

⁴ Peter S. Menell, *Remixing Copyright Law*, Brooklyn Sports & Entertainment Law Blog (May 25, 2025), <https://sports-entertainment.brooklaw.edu/music/remixing-copyright-law/>

videos, and images are endlessly reshaped into new forms of storytelling. What might once have been dismissed as copyright infringement now often emerges as a fresh kind of artistic expression⁵. At the same time, copyright holders—whether individual artists or large corporations—remain vigilant, relying on automated systems to monitor and remove unauthorized uses of their content. This tug-of-war underscores fair use's fragile position: celebrated as a safeguard for cultural innovation, but also criticized as a loophole that undermines ownership rights.

Ultimately, the shifting boundaries of fair use raise deeper questions about how we understand creativity in the digital era. Should we think of authorship as the work of a solitary individual, or as a collaborative process of building on what came before? Fair use lies at the heart of this debate, serving not only as a legal doctrine but also as a mirror of society's ongoing attempt to balance preservation, participation, and progress in an ever-evolving cultural landscape.

Conceptual Framework of Fair Use

The concept of fair use represents a pivotal exception within copyright law, allowing limited use of copyrighted material without requiring permission from the rights holder. At its core, fair use seeks to balance the exclusive rights granted to creators with the broader public interest in fostering creativity, education, and discourse. This doctrine acknowledges that absolute control over intellectual property could stifle innovation and free expression, thus permitting activities such as criticism, commentary, news reporting, teaching, scholarship, and research under certain conditions⁶.

The historical roots of fair use trace back to Anglo-American legal traditions, emerging as a response to the rigidities of early copyright statutes. In England, the Statute of Anne in 1710 marked the inception of modern copyright law, granting authors exclusive rights for a limited period⁷. However, it was in the 19th century that notions akin to fair use began to crystallize. A landmark case, **Folsom v. Marsh (1841)** in the United States, articulated by Justice Joseph Story, laid foundational principles⁸. In this dispute involving the unauthorized use of George

⁵ Peter Jaszi & Patricia Aufderheide, *Code of Best Practices in Fair Use for Online Video* (n.4).

⁶ 17 U.S.C. § 107 (1976)

⁷ An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of such Copies, During the Times Therein Mentioned, 1710, 8 Ann. c. 19 (Eng.), https://avalon.law.yale.edu/18th_century/anne_1710.asp

⁸ *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841) (No. 4901).

Washington's letters in a biography, Story emphasized the need to consider the purpose, amount, and impact of the use, effectively introducing a balancing test that would evolve into modern fair use.

The doctrine's formal codification occurred in the United States with the Copyright Act of 1976, which enshrined fair use in Section 107⁹. This development was influenced by earlier common law precedents and reflected a growing recognition of the need for flexibility in an era of rapid technological and cultural change. Prior to this, fair use had been a judge-made doctrine, evolving through case law in both the U.S. and the United Kingdom. In the UK, the concept manifested as "fair dealing," first appearing in the Copyright Act of 1911, which permitted limited uses for purposes like private study, criticism, or review. This Anglo-American foundation stemmed from shared legal heritage, with the U.S. Constitution's Article I, Section 8, empowering Congress to promote the progress of science and useful arts, mirroring Enlightenment ideals of knowledge dissemination.

Globally, the spread of fair use and its variants has been uneven, often shaped by colonial legacies, international treaties, and national policy priorities. The Berne Convention for the Protection of Literary and Artistic Works (1886), to which over 180 countries are party, does not mandate fair use but allows exceptions under the "three-step test" in Article 9(2): limitations must be confined to certain special cases, not conflict with normal exploitation, and not unreasonably prejudice the legitimate interests of the author¹⁰. This framework influenced the adoption of fair use-like provisions worldwide.

In the post-colonial era, countries like Canada adopted fair dealing through its Copyright Act of 1921, initially mirroring the UK model but later expanding it in 2012 to include education, parody, and satire. India, inheriting British legal traditions, incorporated fair dealing in its Copyright Act of 1957, emphasizing purposes such as criticism, review, and reporting¹¹. More recently, nations outside the Anglo-American sphere have embraced fair use. Israel adopted a U.S.-style fair use provision in 2007, while South Korea introduced a similar flexible system in 2012. Even in civil law jurisdictions like Japan, amendments in 2018 introduced more

⁹ Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (codified as amended at 17 U.S.C. §§ 101 et seq.).

¹⁰ Berne Convention for the Protection of Literary and Artistic Works, opened for signature Sept. 9, 1886, as revised at Paris on July 24, 1971, and amended on Sept. 28, 1979, art. 9(2), 828 U.N.T.S. 221, <https://www.wipo.int/treaties/en/ip/berne/>.

¹¹ Copyright Act, 1957, No. 14 of 1957, § 52 (India), https://www.indiacode.nic.in/handle/123456789/1367?sam_handle=123456789/1362

permissive exceptions for non-commercial uses, reflecting a global convergence toward balancing creator rights with societal benefits. This evolution underscores fair use's adaptability, from its 19th-century origins in print media disputes to contemporary applications in digital realms, such as search engines and user-generated content.

Core Principles of Fair Use and Fair Dealing

In the United States, fair use is governed by a four-factor test outlined in Section 107 of the Copyright Act. This test provides a flexible framework for courts to evaluate whether a particular use qualifies as fair, considering the specific circumstances of each case. The first factor examines the purpose and character of the use, including whether it is commercial or nonprofit educational, and whether it is transformative—adding new expression, meaning, or message to the original work. For instance, a parody that critiques the original is more likely to be deemed fair than a mere reproduction.

The second factor assesses the nature of the copyrighted work, favoring uses of factual or published works over creative or unpublished ones. Highly creative expressions, such as novels or artworks, receive stronger protection, making fair use claims more challenging. The third factor evaluates the amount and substantiality of the portion used in relation to the whole, both quantitatively and qualitatively. Using a small excerpt might be fair, but copying the "heart" of the work, even if minor in volume, could tip against it.

Finally, the fourth factor considers the effect of the use on the potential market for or value of the copyrighted work. If the use substitutes for the original or harms its commercial viability, it is less likely to be fair. These factors are weighed holistically, with no single one being determinative, allowing for nuanced judicial discretion. This approach has been applied in seminal cases like **Campbell v. Acuff-Rose Music (1994)**, where the Supreme Court upheld 2 Live Crew's parody of "Oh, Pretty Woman" as transformative, emphasizing the doctrine's role in promoting artistic freedom¹².

In contrast, fair dealing regimes in countries like the United Kingdom, Canada, and India operate within a more structured framework, listing specific permitted purposes exhaustively. In the UK, under the Copyright, Designs and Patents Act 1988 (as amended), fair dealing allows uses for criticism, review, quotation, news reporting, caricature, parody, pastiche,

¹² Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569 (1994)

research, private study, and certain educational or library activities. The dealing must be "fair," assessed by factors such as the amount used and its impact on the market, but only if it fits one of the enumerated categories.

Canada's Copyright Act similarly enumerates purposes including research, private study, education, parody, satire, criticism, review, and news reporting. A notable expansion occurred with the Copyright Modernization Act of 2012, which added education, parody, and satire, broadening access for teachers and creators. Fairness is evaluated through a six-factor test established in **CCH Canadian Ltd. v. Law Society of Upper Canada (2004)**, considering purpose, character, amount, alternatives, nature, and effect—echoing but not identical to the U.S. model¹³.

In India, Section 52 of the Copyright Act 1957 permits fair dealing for private or personal use, criticism, review, reporting current events, judicial proceedings, and certain educational or performance contexts. Indian courts have interpreted "fair" by considering proportionality and good faith, as seen in cases like **Super Cassettes Industries Ltd. v. Myspace Inc. (2011)**, where the Delhi High Court balanced online platform liabilities with fair dealing defenses. Across these jurisdictions, fair dealing emphasizes fairness in dealing with the work, requiring that the use not be excessive or detrimental to the owner's interests, while adhering strictly to predefined exceptions¹⁴.

Differences Between Fair Use and Fair Dealing

The primary distinction between fair use and fair dealing lies in their structural approaches: fair use is open-ended and flexible, while fair dealing relies on exhaustive, enumerated exceptions. In the U.S., fair use's four-factor test permits courts to consider any purpose, provided the balancing favors the user. This adaptability has enabled its application to emerging technologies, such as in **Authors Guild v. Google (2015)**, where the Second Circuit Court of Appeals ruled that Google's book-scanning project for searchable snippets was transformative and fair, despite not fitting a traditional category¹⁵. The open-ended nature fosters innovation, allowing unforeseen uses like data mining or AI training to potentially qualify, as long as they

¹³ CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13, [2004] 1 S.C.R. 339 (Can.).

¹⁴ Super Cassettes Industries Ltd. v. Myspace Inc., 2011 (47) PTC 49 (Del.) (India).

¹⁵ Authors Guild, Inc. v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).

meet the factors.

Fair dealing, however, is more restrictive, confining exceptions to a closed list of purposes. If a use falls outside these categories, it cannot be defended as fair dealing, regardless of its fairness. This predictability benefits rights holders by limiting uncertainty but may constrain creativity. For example, in the UK case of **Ashdown v. Telegraph Group Ltd. (2001)**, the House of Lords rejected a fair dealing defense for publishing excerpts from a politician's diary in news reporting, as it exceeded the permitted scope and impacted the market, illustrating the exhaustive list's rigidity¹⁶.

Canadian jurisprudence highlights this difference through cases like **Alberta (Education) v. Canadian Copyright Licensing Agency (2012)**, where the Supreme Court expanded educational fair dealing to include photocopying for classroom use, but only within the enumerated education purpose¹⁷. Had it not fit, no defense would apply, unlike in the U.S., where a similar use might be evaluated under the open-ended test.

In India, the contrast is evident in **Academy of General Education v. B. Malini & Co. (1980)**, where the Karnataka High Court upheld fair dealing for criticism but strictly limited it to the specified purpose, denying broader applications¹⁸. A hypothetical transformative use, like remixing music for social commentary, might succeed under U.S. fair use but fail in India if not explicitly listed as criticism or review.

These differences reflect philosophical underpinnings: fair use embodies a common law tradition of judicial flexibility, promoting dynamic cultural exchange, whereas fair dealing aligns with statutory precision, offering clearer boundaries but potentially less room for evolution. Globally, some nations, like Australia, are debating shifts toward fair use to enhance competitiveness in digital economies, as recommended by the 2016 Productivity Commission report. Nonetheless, both doctrines serve the essential goal of harmonizing copyright protection with public access, adapting to societal needs while respecting creators' rights.

¹⁶ Ashdown v. Telegraph Group Ltd., [2002] Ch 149 (CA) (UK).

¹⁷ Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright), 2012 SCC 37, [2012] 2 S.C.R. 345 (Can.).

¹⁸ Academy of General Education v. B. Malini Mallya, AIR 1980 Kant H.C. 141 (India).

The Nature of Transformative Works in Digital Culture

The digital age has given birth to a thriving ecosystem of transformative works—creative content that repurposes, reinterprets, or expands on prior works to create something new. These works frequently challenge traditional concepts of authorship and copyright, posing crucial questions about ownership, innovation, and cultural involvement. Transformative works rely on collaboration, reinterpretation, and communal engagement, as opposed to traditional productions, which often come from a single author. They are socially significant because they allow viewers to actively participate in culture, changing stories, music, and visuals to represent various points of view, commentary, or humour. At the same time, they are legally problematic because they typically rely on copyrighted material without explicit permission, causing a conflict between creative freedom and intellectual property rights.

Memes: Satire, Parody, and Commentary

Memes are probably the most familiar example of digital transformative works. These brief, often funny images, videos, or snippets of text spread quickly across social media, offering commentary on culture, politics, or everyday experiences¹⁹. They often function as satire or parody, taking existing media—like movie scenes, celebrity photos, or viral clips—and giving them new meaning. For example, a well-known movie moment might be turned into a meme to reflect social anxiety, political issues, or current trends²⁰.

What makes memes socially significant is how accessible and immediate they are. Anyone with an internet connection can join in, turning what might have been passive viewing into active participation. Memes create a shared cultural language, spark conversations about social issues, and provide humor, critique, and connection. Legally, though, memes occupy a tricky space. Since they often use copyrighted material without permission, they could be considered infringing. Yet, in many cases, courts recognize them as fair use if they are transformative, non-commercial, and offer commentary or critique—though the outcome can vary depending on the situation.

¹⁹ Gowling WLG. (2019). *Social Media Law: Memes*. Retrieved from <https://gowlingwlg.com/en/insights-resources/articles/2019/social-media-law-memes>

²⁰ Ibid

Remixes & Mashups: Reimagining Media

Remixes and mashups are a vibrant form of digital creativity, taking pieces of existing songs, videos, or movies and combining them into entirely new works. Unlike simple copying, these creations transform the original material, often changing its meaning, tone, or impact. For example, a DJ might remix a familiar track, layering beats and vocals in new ways to produce a fresh sound, while a YouTuber might stitch together unrelated video clips to tell a story that wasn't in the original footage²¹. Fans sometimes go even further, re-editing cinematic scenes to emphasize new themes, create alternate endings, or highlight social commentary. This ability to reinterpret content is what makes remixes and mashups truly transformative—they turn old material into something with new significance.

On a social level, remixes and mashups have a democratizing effect. They allow anyone with basic digital tools to become a creator, experimenting with media in ways that were once limited to professionals. These works can spark conversations, bring attention to social or political issues, and offer new perspectives on familiar content. They also foster creativity in unexpected ways; for instance, a remix might inspire other artists to explore different styles, while a mashup could lead audiences to discover new genres, films, or creators²². Essentially, these works turn audiences into participants, not just consumers, in the cultural conversation.

Legally, however, remixes and mashups often exist in a gray area. Copyright law protects the original works, and owners may see these adaptations as unauthorized reproductions. At the same time, courts have sometimes recognized the transformative nature of such works as fair use. The landmark case *Campbell v. Acuff-Rose Music*²³ is a prime example, where a commercial parody was deemed fair use because it added new expression and commentary. Today, similar disputes play out online when platforms must decide whether to remove remixes or mashups under copyright rules, balancing the rights of original creators with the public's interest in creative expression. This ongoing tension reflects the broader challenge of adapting old legal frameworks to the fast-moving, participatory culture of the digital age.

²¹ Katie Charleston Law. (2025). *Fair Use vs. Infringement: Legal Advice for Influencers in 2025*. Retrieved from <https://www.katiecharlestonlaw.com/blog/2025/march/fair-use-vs-infringement-legal-advice-for-influencers>

²² Ibid

²³ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

Fan Fiction & Fan Art: Expanding Imagined Worlds

Fan fiction and fan art showcase the most immersive side of participatory digital culture, where fans don't just consume media—they actively reshape and expand it. They take beloved fictional universes from books, movies, TV shows, or video games and create entirely new narratives, illustrations, or interpretations that explore untold stories, hidden character dynamics, or alternative plotlines²⁴. For example, a fan might imagine what happens to a side character after the main story ends, write about relationships that the original author never explored, or produce artwork that reimagines key scenes in a different style or setting. Some fans even develop crossover works, blending characters and worlds from different franchises, creating mashups that are both inventive and transformative.

The social importance of fan works goes beyond creativity—they foster vibrant communities where fans can connect over shared interests. Writing or drawing in these spaces encourages literacy, storytelling skills, and artistic development. Moreover, fan creations often amplify voices that mainstream media overlooks, allowing marginalized communities to reinterpret familiar stories in ways that resonate with their own experiences²⁵. Online platforms, forums, and fan conventions provide spaces for these exchanges, making fan culture a powerful form of social engagement as well as artistic expression.

Legally, fan fiction and fan art exist in a gray area. Because they use copyrighted characters, settings, and story elements without permission, they could technically infringe copyright. Yet, many courts and copyright holders take a more permissive view, especially when the works are non-commercial and clearly transformative. Fan creations are often tolerated because they contribute to the cultural conversation and, in some cases, even influence official media. For example, popular fan interpretations have inspired TV show episodes, film adaptations, or merchandising ideas, blurring the line between “original” and “derivative” creativity. This dynamic demonstrates how digital culture allows audiences to participate in storytelling in ways that were unimaginable before the internet.

²⁴ LegalZoom. (2024). *Fair Use and Fair Dealing in Social Media*. Retrieved from <https://www.legalzoom.com/articles/fair-use-and-fair-dealing-in-social-media>

²⁵ Ibid

Social Significance and Legal Tensions

Transformative works—whether memes, remixes, mashups, or fan creations—highlight the ongoing tension between public creativity and intellectual property laws. They matter socially because they make creativity accessible to everyone, provide space for commentary and critique, and help build shared cultural experiences. At the same time, they raise legal questions, since they often use copyrighted material without formal permission. Courts increasingly turn to concepts like fair use to address these challenges, but outcomes can be unpredictable, especially in a global digital world where content spreads instantly and crosses multiple legal jurisdictions²⁶.

In the end, transformative works challenge the traditional notion of fixed authorship and point to a new cultural model: one where creativity thrives through collaboration, reinterpretation, and active engagement. They are more than just entertainment—they reflect a society in which participation, remixing, and dialogue are central to how culture evolves and is experienced.

Copyright Holders' Concerns

The growth of digital culture has created a multifaceted landscape for copyright holders, raising concerns that span both financial interests and creative control. One of the foremost issues is the potential **loss of revenue and authority over derivative works**²⁷. When fans or other creators produce content based on existing works—such as memes, remixes, or fan fiction—the original creators often receive no monetary benefit. Even non-commercial adaptations can affect how the original work is perceived, potentially diminishing its uniqueness or value. For example, a widely circulated fan-made video or remixed music track may substitute for the original experience, leaving creators feeling that their intellectual efforts are being used without recognition or compensation²⁸. Beyond financial concerns, creators also worry about **losing control over how their work is portrayed**, as derivative creations can present the material in ways they never intended.

²⁶ Authors Guild, Inc. v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).

²⁷ Peter Jaszi & Patricia Aufderheide, *Code of Best Practices in Fair Use for Online Video* (American Univ. Ctr. for Social Media 2008), https://digitalcommons.wcl.american.edu/pijip_copyright/1/

²⁸ Peter S. Menell, *Remixing Copyright Law*, Brooklyn Sports & Entertainment Law Blog (May 25, 2025), <https://sports-entertainment.brooklaw.edu/music/remixing-copyright-law/>

Another critical concern is **market substitution**, where derivative works could reduce demand for the original, either directly or indirectly. A viral remix of a hit song, for instance, might satisfy audience interest in a way that reduces streams or sales of the original tracks²⁹. Likewise, fan-created adaptations of books or films could offer alternate narratives that compete for attention. While some studies indicate that fan works can actually boost engagement with the source material, the risk of economic impact remains a significant concern for creators and publishers. Courts frequently consider such market effects when evaluating fair use, highlighting the tension between protecting creators' rights and fostering cultural participation.

Reputation risks present another major challenge. By their nature, derivative works reinterpret or transform the original content. While this can be a form of creative expression, it can also result in portrayals that the original creator finds objectionable, misleading, or damaging to their brand³⁰. A meme that depicts a beloved character negatively or a remix that changes the tone of a song or film could influence public perception and harm the integrity of the work. In industries where intellectual property and branding are tightly managed, these risks extend beyond mere aesthetics, potentially affecting commercial partnerships, audience loyalty, and public reputation.

Finally, **monitoring infringements in the digital era** has become increasingly difficult. Unlike traditional physical media, digital content spreads almost instantaneously across the globe. Platforms like YouTube, TikTok, and Instagram host millions of user-generated works every day, making it nearly impossible for copyright holders to track all instances of content reuse³¹. Automated enforcement tools, such as content ID systems, can help but are often imprecise, sometimes flagging lawful, transformative works incorrectly. Manual monitoring, meanwhile, is resource-intensive and costly. As a result, copyright holders must constantly navigate the challenge of **protecting their rights without suppressing the creative engagement** that fuels modern digital culture³².

²⁹ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* 17–22 (Penguin Press 2008)

³⁰ Amy Harmon, *Fan Culture and Market Effects*, Digital Media Studies, <https://www.digitalmedialaw.org/fan-culture-market-effects/>

³¹ S. M. Lemley, *Intellectual Property in the Digital Age*, 58 Stan. L. Rev. 1173 (2006), <https://www.stanfordlawreview.org/online/intellectual-property-digital-age/>

³² *Ibid*

Ultimately, these concerns reflect the **delicate balance between creative freedom and intellectual property protection**³³. Transformative works enrich cultural discourse, enable broad participation, and foster dialogue, yet they also pose economic and reputational challenges for original creators. Addressing these tensions requires a combination of legal mechanisms, like fair use and fair dealing, and practical strategies, including platform policies and collaboration with fan communities, ensuring that culture can continue to evolve while respecting the rights of creators.

Free Expression and Public Interest

Fair use has long acted as an essential protector of creative expression, preventing copyright law from restricting commentary, parody, educational purposes, and other activities that serve the public good. At its heart, fair use acknowledges that engaging with copyrighted material is not always about mere replication; it can involve transformation that adds value to culture and knowledge³⁴. Parody, for instance, builds on existing works to offer new perspectives, humor, or critique. Similarly, educational uses allow teachers and students to study, reference, or illustrate ideas without constantly seeking permission, fostering a space for inquiry and learning. These exceptions strike a balance between the rights of creators and the wider interests of society, ensuring that copyright law does not become a barrier to expression or cultural growth³⁵.

Transformative works also play a vital role in **political commentary and social activism**. On social media, memes, remixes, and short videos have emerged as powerful tools for satire, critique, and public engagement³⁶. For example, during elections, political memes can simplify complex issues into formats that are humorous, provocative, and easily shareable, resonating with large audiences. Similarly, fan-made videos or remixed music can be repurposed to address social issues, environmental concerns, or human rights, giving voice to perspectives that might otherwise struggle to reach the public. These digital expressions go beyond

³³ Ibid

³⁴ U.S. Copyright Office, *Fair Use*, <https://www.copyright.gov/fair-use/>

³⁵ Peter Jaszi & Patricia Aufderheide, *Code of Best Practices in Fair Use for Online Video* (American Univ. Ctr. for Social Media 2008), https://digitalcommons.wcl.american.edu/pijip_copyright/1/

³⁶ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* 17–22 (Penguin Press 2008)

entertainment—they are instruments of civic participation, enabling people to challenge authority, spotlight inequalities, and mobilize communities around shared causes³⁷.

Fair use also plays a key role in **democratizing culture**. Digital platforms allow ordinary individuals—not just professional artists or large corporations—to create, share, and engage with cultural content. Whether it's a student remixing a song to highlight a social issue, a fan producing artwork inspired by a novel, or a meme designer offering political commentary, these activities contribute to a cultural conversation that was once restricted to institutional creators³⁸. Protecting these transformative acts empowers people to participate in cultural production, breaking down traditional divides between creators and audiences. This democratization fosters creativity, encourages diverse viewpoints, and builds a more inclusive cultural ecosystem, where a variety of voices can be heard and valued.

In short, fair use and transformative works serve the **public interest** by promoting free expression, facilitating social dialogue, and expanding access to knowledge and culture. They ensure that copyright law supports innovation, experimentation, and critique rather than hindering them³⁹. By providing legal space for parody, commentary, and education, fair use helps maintain a dynamic cultural landscape where creativity is accessible to everyone and ordinary individuals can actively contribute to shaping the stories, ideas, and conversations that define society.

Comparative Legal Perspectives

The understanding of fair use and its equivalents around the world differs widely, shaped by each country's legal traditions, cultural perspectives on copyright, and approaches to balancing the rights of creators with the public interest. Examining these frameworks reveals how nations manage the tension between safeguarding intellectual property and promoting creativity, education, and civic engagement.

In the **United States**, the fair use doctrine is notably flexible and broad. Under Section 107 of the Copyright Act, courts evaluate factors such as purpose, nature, amount, and market impact

³⁷ Ibid

³⁸ S. M. Lemley, *Intellectual Property in the Digital Age*, 58 Stan. L. Rev. 1173 (2006), <https://www.stanfordlawreview.org/online/intellectual-property-digital-age/>

³⁹ Ibid

to determine whether a particular use qualifies as fair⁴⁰. This flexibility allows the law to adapt to emerging technologies, new media formats, and evolving social practices. Landmark decisions like *Campbell v. Acuff-Rose Music, Inc.* (1994) demonstrate this adaptability, where the Supreme Court held that a commercial parody of “Oh, Pretty Woman” was fair use because it added transformative meaning and expression⁴¹. More recently, cases involving memes, fan videos, and remixes have further tested fair use, showing its capacity to accommodate contemporary digital culture. The U.S. approach emphasizes transformation, commentary, and societal benefit over a rigid list of permitted uses, offering creators and audiences substantial room to innovate.

By contrast, **India** adopts a narrower model under the **Copyright Act, 1957**, where fair dealing is confined to specific purposes such as private study, research, criticism, review, or reporting of current events⁴². Indian courts have interpreted these provisions to address modern contexts, but the scope remains limited. For example, in *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*, the Delhi High Court examined the boundaries of fair dealing in broadcasting copyrighted music. The judgment clarified that while limited use for critique or review is allowed, commercial exploitation beyond the enumerated purposes constitutes infringement⁴³. India’s prescriptive approach provides predictability and clarity but lacks the flexibility found in the U.S., often requiring users to carefully navigate the permitted boundaries.

The **European Union** has modernized copyright for the digital age through the **Directive on Copyright in the Digital Single Market (DSM Directive, 2019)**⁴⁴. This legislation harmonizes rules across member states, addressing the liability of online platforms and user-generated content while introducing exceptions for activities like text and data mining, education, and digital libraries. Although less open-ended than U.S. fair use, the DSM Directive seeks to balance the rights of creators with public access to knowledge and creative expression online. Platforms such as YouTube and Instagram must comply with these guidelines, though

⁴⁰ 17 U.S.C. § 107

⁴¹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

⁴² Copyright Act, 1957 (India), §§ 52(1)(a)-(h)

⁴³ *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*, 2011 SCC OnLine Del 1983 (Delhi High Court)

⁴⁴ Directive (EU) 2019/790 on Copyright in the Digital Single Market, 2019 O.J. (L 130) 92

enforcement and licensing requirements present practical challenges⁴⁵.

In **Japan and South Korea**, copyright systems use hybrid models, combining limited statutory exceptions with licensing schemes to facilitate lawful use. Japanese law permits certain uses for research, education, and quotation, but broader transformative works generally require licensing⁴⁶. South Korea similarly encourages user-generated content through defined exceptions while maintaining licensing frameworks to ensure creators receive compensation⁴⁷. These hybrid approaches reflect a pragmatic balance between promoting innovation and protecting economic rights, especially in markets reliant on licensing revenue.

Overall, these comparative perspectives reveal the variety of global approaches to copyright and transformative works. The U.S. emphasizes flexibility and social benefit, India focuses on clarity and restricted purposes, the EU promotes harmonization and platform accountability, and Japan and South Korea blend exceptions with licensing. Understanding these distinctions is essential for creators, educators, and policymakers operating across borders, as legal frameworks shape the opportunities for cultural participation and creative expression in an interconnected world.

Role of Technology and Platforms

Technology's influence on copyright debates extends far beyond simple filtering tools or monetization schemes—it actively shapes how culture is produced, shared, and experienced in the digital era. Platforms like TikTok highlight this transformation, where snippets of songs, video clips, or sound bites can spread virally as users adapt them into dances, skits, or memes⁴⁸. This not only boosts the visibility of the original work but can even revive older content, showing how participatory creativity has become central to online culture. At the same time, such practices raise thorny legal questions: are these viral adaptations a form of free publicity for copyright owners, or do they amount to unauthorized exploitation of protected material?⁴⁹

⁴⁵ European Commission, *Copyright in the Digital Single Market*, https://ec.europa.eu/digital-strategy/our-policies/copyright-digital-single-market_en

⁴⁶ Act on Copyright, Japan (Law No. 48 of 1970, as amended)

⁴⁷ Copyright Act, South Korea (Law No. 435, 1957, as amended), arts. 22–24

⁴⁸ *TikTok and Copyright Law: A Guide for Creators and Businesses*, World Intellectual Property Organization (WIPO), https://www.wipo.int/wipo_magazine/en/2021/first-quarter/article_0007.html

⁴⁹ Ibid

Platforms often find themselves pulled in two directions—encouraging user engagement while also addressing the concerns of rights holders.

A significant challenge lies in the unequal dynamics created by automated enforcement systems like YouTube’s Content ID. Major corporations can afford licensing deals and can easily upload their entire catalogs into these systems, securing control and revenue. Independent creators and smaller rights holders, however, often lack such access, leaving them more exposed to infringement without reliable remedies. On the flip side, grassroots creators are vulnerable to takedowns even when their work arguably falls within fair use or fair dealing⁵⁰. This disparity underscores a troubling reality: technological enforcement often ends up reinforcing existing industry hierarchies instead of leveling the playing field for all.

Global copyright compliance adds yet another layer of complexity. In the European Union, the Digital Single Market Directive (2019) places heavier liability on platforms, pushing them to adopt stricter monitoring systems. By contrast, in the United States, the Digital Millennium Copyright Act (DMCA) offers safe-harbor protections to intermediaries, provided they act promptly on takedown requests. As a result, platforms must juggle multiple, sometimes conflicting, legal regimes across jurisdictions. This turns copyright enforcement into a global balancing act shaped as much by geopolitics as by technology.

Meanwhile, the relationship between creators and platforms is continuously evolving, driven in part by audience expectations. The rise of the “creator economy” on YouTube, Twitch, and TikTok reveals that audiences value remixing, parody, and commentary as legitimate forms of cultural expression. Platforms, therefore, are under pressure to develop systems that allow such creativity to thrive without alienating copyright owners^{51,52}. Experiments with expanded revenue-sharing, collective licensing agreements, and even AI tools that guide creators toward lawful practices point toward new possibilities for coexistence.

Ultimately, technology platforms are no longer neutral conduits for content but have become powerful cultural gatekeepers. Their algorithmic choices, licensing policies, and enforcement

⁵⁰ Marketa Trimble, *Content ID and the Inequality of Copyright Enforcement*, 23 Nev. L.J. 455 (2023), <https://scholars.law.unlv.edu/facpub/1522>

⁵¹ European Commission, *Copyright in the Digital Single Market*, https://ec.europa.eu/digital-strategy/our-policies/copyright-digital-single-market_en

⁵² Directive (EU) 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92.

systems determine where the balance falls between protecting intellectual property and fostering creative freedom⁵³. If they lean too heavily toward restriction, they risk suppressing grassroots voices; if too lenient, they may undermine the rights and livelihoods of original creators. The challenge lies in striking a middle ground that sustains a digital cultural space that is both vibrant and inclusive.

Emerging Challenges

1. AI-Generated Works and the Question of Fair Use

Artificial intelligence is rapidly reshaping the creative sector, raising difficult questions about authorship and originality. Programs like MidJourney, OpenAI's Jukebox, and advanced voice-synthesis models can now generate songs, images, or parodies that sound and look nearly indistinguishable from human-made works. A well-known case was the viral AI-generated track *Heart on My Sleeve* (2023), which convincingly imitated the voices of Drake and The Weeknd, gaining millions of plays before Universal Music Group demanded its removal⁵⁴. This incident highlights the legal dilemmas courts must resolve: was the work a form of parody or commentary that could qualify as fair use, or was it simply unauthorized exploitation of an artist's identity?

Traditionally, fair use analysis depends on factors such as purpose, transformation, and the impact on markets. Yet applying these standards to AI output is complex. Unlike human creators, AI models lack intent or conscious creativity; they generate works by processing and recombining huge datasets of existing material⁵⁵. This makes it difficult to establish whether their outputs are "transformative" in the legal sense or merely statistical mimicry. For rights holders, AI poses risks not only to revenue but also to artistic identity, as their voices, likenesses, and styles can be endlessly replicated. For audiences, however, AI offers fresh ways to remix culture, parody icons, and engage in playful creativity⁵⁶. The current lack of clear legal

⁵³ Tarleton Gillespie, *Platforms Are Not Intermediaries*, 2 Geo. L. Tech. Rev. 198 (2018), <https://georgetownlawtechreview.org/wp-content/uploads/2018/07/2.2-Gillespie.pdf>

⁵⁴ *Heart on My Sleeve: The AI-Generated Song That Went Viral—And Raised Legal Questions*, BBC News (Apr. 19, 2023), <https://www.bbc.com/news/entertainment-arts-65335344>

⁵⁵ *Artificial Intelligence and Copyright*, U.S. Copyright Office (Mar. 16, 2023), <https://www.copyright.gov/ai/>

⁵⁶ Daniel Gervais, *The Machine as Author*, 105 Iowa L. Rev. 2053 (2020), <https://ilr.law.uiowa.edu/print/volume-105-issue-5/the-machine-as-author>

frameworks leaves courts, platforms, and artists in a grey zone, struggling to balance technological innovation with the protection of human expression.

2. NFTs, Memes, and the Commercialization of Remix Culture

The emergence of NFTs and blockchain has shifted digital culture into a commercial space, where memes and remixes—once shared freely as community artifacts—are now sold as unique digital assets. In some instances, this has worked in favor of creators. The “Disaster Girl” meme, for example, was sold as an NFT for nearly \$500,000 in 2021, enabling both the photographer and the meme’s subject to profit from an image that had circulated for years without compensation⁵⁷. Yet many NFT transactions raise thorny issues. Often, memes or clips minted as NFTs are based on copyrighted material from films, songs, or television shows, with no legal rights granted to the sellers.

Unlike remixes or parodies, which may sometimes qualify as fair use if they add commentary or criticism, NFTs typically aim to capture financial value without necessarily transforming the work’s meaning. This trend directly threatens copyright holders, who see their intellectual property turned into profit by third parties without authorization. At the same time, NFTs also represent a form of cultural recognition, where grassroots digital creations finally acquire financial worth⁵⁸. This tension—between empowerment and exploitation—shows how blockchain technology complicates the fragile balance between cultural participation and intellectual property enforcement.

3. Global Enforcement and Jurisdictional Conflicts

One of the most enduring problems in digital copyright law is cross-border enforcement. Online culture spreads globally in seconds, but copyright regimes remain tied to national laws. A remix uploaded in India might quickly reach audiences in the U.S. or Europe, triggering entirely different legal frameworks⁵⁹. In the United States, the flexible doctrine of fair use could protect such a remix as transformative commentary, while Indian law restricts fair dealing to narrow categories like criticism, education, or reporting, leaving little space for experimental

⁵⁷ Jon Porter, *Disaster Girl Meme NFT Sells for \$500,000*, The Verge (Apr. 29, 2021), <https://www.theverge.com/2021/4/29/22409795/disaster-girl-meme-nft-sells-ethereuem-blockchain>

⁵⁸ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92.

⁵⁹ European Commission, *Copyright in the Digital Single Market*, <https://digital-strategy.ec.europa.eu/en/policies/copyright>

artistry. The EU adds another layer of complexity: its 2019 DSM Directive requires platforms to preemptively filter copyrighted content, which risks over-blocking lawful expression⁶⁰.

The **YouTube v. Viacom**⁶¹ litigation illustrates this problem. Viacom sued YouTube in the U.S. for hosting clips of its shows, but American courts shielded YouTube under the DMCA's safe harbor provisions so long as takedown requests were honored. In contrast, the same videos might have been ruled unlawful in Germany, where exceptions are narrower. This patchwork of legal standards forces global platforms to take overly cautious approaches, often removing content that would be legal in one jurisdiction but risky in another. For creators, this results in unpredictable takedowns and loss of revenue, while copyright owners face loopholes that allow infringement to persist across borders. These jurisdictional conflicts demonstrate the pressing need for greater international alignment—or at least partial harmonization—if copyright law is to remain effective in a world of instantaneous cultural exchange.

Recommendations & Future Directions

1. Clearer Statutory Recognition of Transformative Uses

A persistent challenge in modern copyright law is the lack of clarity over what counts as a “transformative use.” Courts often handle such cases individually, leaving creators uncertain about the boundary between lawful parody and outright infringement. Explicit statutory recognition of transformative works—such as parody, satire, remixes, and memes—could reduce this ambiguity^{62,63}. By clearly defining what constitutes a transformative use, legislators can ensure that creative reinterpretations are not automatically treated as violations. Such legal clarity would protect artists and digital creators while helping platforms apply consistent rules, reducing reliance on sweeping takedowns. Ultimately, codifying these exceptions would encourage experimentation and innovation, rather than discouraging creative engagement.

2. Flexible Fair Use–Like Provisions in Restrictive Jurisdictions

Not all copyright systems provide the same flexibility for creative expression. The United States, for example, relies on a flexible fair use doctrine that evaluates each case based on

⁶⁰ Ibid

⁶¹ *Viacom Int'l, Inc. v. YouTube, Inc.*, 676 F.3d 19 (2d Cir. 2012)

⁶² *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569

⁶³ Peter Jaszi & Patricia Aufderheide, *Code of Best Practices in Fair Use for Online Video* (American Univ. Ctr. for Social Media 2008), https://digitalcommons.wcl.american.edu/pijip_copyright/1/

purpose, transformation, and market impact, allowing new forms of digital creativity to flourish. In contrast, countries like India and parts of Europe adopt narrower “fair dealing” rules, limiting permitted uses to specific purposes such as criticism, review, or education. This rigidity often leaves creators exposed to infringement claims even for socially valuable or non-commercial works⁶⁴. One potential reform is for these jurisdictions to introduce fair use-style provisions—broad, adaptable, and sensitive to technological innovation⁶⁵. Such changes could harmonize copyright standards globally and reduce uncertainty for creators and platforms operating across multiple legal systems.

3. Licensing Frameworks that Safeguard Creative Freedom

Licensing should be seen as an enabler of creativity rather than a barrier. Platforms like YouTube have experimented with voluntary licensing and revenue-sharing models that allow rights holders to earn income while permitting users to create remixes, parodies, or covers⁶⁶. Expanding these frameworks could provide mutually beneficial outcomes, empowering creators while ensuring copyright owners are compensated. However, careful design is essential. Overly restrictive licensing can act as a form of censorship, discouraging non-commercial or experimental creativity. Thoughtfully structured licensing schemes that respect both economic rights and the cultural value of participation could serve as a cornerstone for a more sustainable and inclusive digital creative ecosystem⁶⁷.

4. Balancing Algorithmic Enforcement with Human Oversight

Algorithms now dominate copyright enforcement, with systems like YouTube’s Content ID automatically flagging potentially infringing content. While efficient, these automated tools can be overly rigid, silencing legitimate uses such as parody, political memes, or educational materials. Future enforcement approaches should integrate meaningful human oversight to differentiate between clear violations and transformative, socially valuable works. Transparency in algorithmic processes and fair appeal mechanisms⁶⁸ are essential to prevent

⁶⁴ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92.

⁶⁵ Ibid

⁶⁶ Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* 90–105 (Penguin Press 2008)

⁶⁷ Rebecca Giblin & Cory Doctorow, *Chokepoint Capitalism: How Big Tech and Big Content Captured Creative Labor Markets and How We’ll Win Them Back* 134–150 (2022)

⁶⁸ Tarleton Gillespie, *Platforms Are Not Intermediaries*, 2 Geo. L. Tech. Rev. 198 (2018), <https://georgetownlawtechreview.org/wp-content/uploads/2018/07/2.2-Gillespie.pdf>

wrongful takedowns. Striking the right balance between technological efficiency and human judgment is key; too much automation risks stifling grassroots creativity, while too little may undermine copyright protections. Achieving this balance will determine whether digital platforms can continue to function as spaces for open, democratic cultural expression⁶⁹.

Conclusion

The balance between protection for copyrights and creative freedom is a core issue of the digital age. On the one hand, artists and right holders merit remembrance, control, and economic recompense for intellectual labor, as their production provides the core for cultural industries. Copyright law guarantees innovation and work are not taken unduly. However, the same measures at times inhibit creativity, notably against the backdrop of a participatory online culture wherein remixing, parodying, and transforming works are endemic modes of expression. Memes, fan fiction, AI content, and remixed songs demonstrate that engaging with pre-existing works is not simply copying but fosters cultural discourse, learning, and innovation. The tension exists because the need for the protection of the rights of creators frequently clashes with the public right of engaging and transforming content, which requires a delicate balance to strike.

The future development of fair use depends on the adoption of a fluid and reactive methodology attuned to the realities of digital culture. Rigid or outdated forms of law threaten creativity, limit grassroots interaction, and force courts and platforms into a perpetual state of reacting against developing technological breakthroughs. Law must acknowledge the transformative nature of contemporary creative practice, granting express protection for parody, criticism, remixes, and products of artificial intelligence, all the while also safeguarding the economic rights of original authors. Efforts like international harmonization, dynamic statutory exceptions, and robust licensing regimes may enable the continued functionality of copyright within a highly interlinked global environment wherein cultural cross-fertilizations happen immediately and without national boundaries. Finally, the copyright laws need to strike a balance: they should give incentives for innovation and investment to encourage the production of original works, but simultaneously encourage transformative uses that enrich cultural life. The recognition of the fact that reinterpretation, as expressed through a form of parody, remix, or satire, represents a creative endeavor of a particular kind makes it possible for a dynamic

⁶⁹ Ibid

and interactive cultural ecosystem to flourish. The main issue is not the right protection but carrying out this protection by supporting innovation, facilitating collaboration, and allowing the creative environment of the Internet to flourish. At this level, fair use goes beyond the level of a mere exception from the law; it becomes an underlying principle guarding the diversity, richness, and inclusivity of the creative spirit for the twenty-first century.