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# A COMPARATIVE ANALYSIS OF FAIR USE AND FAIR DEALING UNDER THE COPYRIGHT LAW OF INDIA, USA AND NIGERIA

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## ABSTRACT

Copyright law grants exclusive rights to authors over the use and exploitation of their original works including the right to license such works for consideration. However to balance these exclusive rights with public interest copyright law recognises certain limitations and exceptions most notably the doctrine of fair use and fair dealing. This research paper presents a comparative analysis of the doctrine of fair use under the copyright law of India, the United States and Nigeria. The study examines the open-ended and flexible fair use framework adopted in the United States, the closed and purpose specific fair dealing regime under Indian law and the hybrid approach introduced by Nigeria through its Copyright Act, 2022. It highlights the structural limitations of the Indian fair dealing framework particularly its rigidity and inadequate response to digital and technological developments. By contrast the emphasis on transformative use in the United States and Nigeria's modernised approach provide useful insights. The paper concludes by suggesting reforms to Indian copyright law to ensure greater flexibility and alignment with contemporary digital realities.

**Keywords:** Fair use, Fair dealing, copyright law, comparative analysis, digital era, copyright exception.

## D) INTRODUCTION

Intellectual Property Rights (IPR) encompass a set of legal rights that protect creations of the human mind, providing economic and moral incentives to creators while promoting innovation, creativity, and dissemination of knowledge. IPR broadly includes copyright, patents, trademarks, designs, and geographical indications, each serving to protect different types of intellectual output. Among these, copyright law specifically protects original literary, artistic, musical, and dramatic works, granting authors exclusive rights to reproduce, distribute, adapt, perform, or publicly display their works<sup>1</sup>.

While copyright provides exclusive right to the creator, it also recognises that unrestricted enforcement could limit access to knowledge, research, education, and creativity. To address this, legal systems worldwide have introduced limitations and exceptions, the most significant being the doctrine of fair use and fair dealing. These doctrines serve as exceptions to copyright exclusivity, allowing the use of copyrighted works for socially beneficial purposes without the prior consent of the copyright holder.

Fair use and fair dealing operate within the framework of IPR by balancing private and public interests. They are critical in fostering education, research, innovation, and cultural development, ensuring that copyright law does not become a barrier to access and dissemination of knowledge. In the modern era of digital technology, online content creation, and information sharing, these doctrines have gained increasing importance. They allow users, researchers, educators, and innovators to utilise copyrighted works in ways that contribute to public knowledge while still protecting the economic and moral rights of the original author.

Internationally, the importance of these exceptions is recognised under instruments such as the Berne Convention for the Protection of Literary and Artistic Works (1886)<sup>2</sup> and the TRIPS Agreement (1994)<sup>3</sup>, which emphasise that copyright limitations must balance the rights of authors with the broader societal interest. In this context, the doctrines of fair use and fair dealing not only operationalise this balance but also provide flexibility to adapt copyright law

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<sup>1</sup>World Intellectual Property Organisation (WIPO), *What is Intellectual Property?* (WIPO Publication No. 450, 2020).

<sup>2</sup>Berne Convention for the Protection of Literary and Artistic Works, 1886.

<sup>3</sup>Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994..

to evolving technological and social realities<sup>4</sup>.

The comparative study of these doctrines in different jurisdictions, such as the United States, India, and Nigeria, illustrates how countries implement these IPR exceptions differently. While the United States employs a flexible, open-ended fair use model allowing transformative and commercial uses, India follows a more rigid, closed fair dealing approach, and Nigeria has recently adopted a hybrid framework to incorporate both flexibility and statutory certainty.

## II) CONCEPTUALISATION OF DOCTRINE OF FAIR USE :

The historical foundation of copyright was initially absolute, granting authors total control via the Statute of Anne 1710<sup>5</sup>. However, English courts soon realised that strict enforcement hindered the "progress of science." By the mid-1700s, the judiciary introduced the concept of "Fair Abridgement." In cases like *Gyles v. Wilcox* (1740)<sup>6</sup>, the court ruled that creating a concise summary of a long work required "labour and judgment," making it a new intellectual product rather than a mere copy. This era marked the first time the law prioritised social utility over the absolute monopoly of the original creator.

The modern American doctrine of Fair Use was not born in a legislature, but in a courtroom. In 1841, Justice Joseph Story faced a dilemma in *Folsom v. Marsh*<sup>7</sup>, where a biographer had used George Washington's private letters. Story argued that the law must look at the "nature and objects of the selections made" and the "degree in which they may prejudice the sale" of the original. This created the four-factor framework—purpose, nature, amount, and market effect—which remained an informal judicial guide for over a century until it was finally codified into section 107 of the Copyright Act of 1976<sup>8</sup>.

While the U.S. moved toward a flexible standard, the United Kingdom and its former colonies developed the Fair Dealing doctrine. This historical path was more rigid, established firmly in the UK Copyright Act of 1911. Unlike Fair Use, which is an open-ended concept, Fair Dealing requires the user to fit their actions into a specific statutory category, such as research, private study, or criticism. This "closed-list" approach was adopted by India in the Copyright Act of

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<sup>4</sup>Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (Stanford University Press, 2nd edn., 2003)

<sup>5</sup>Statute of Anne 1710: Formally titled "An Act for the Encouragement of Learning,"

<sup>6</sup>*Gyles v. Wilcox* (1740) 26 ER 489

<sup>7</sup>*Folsom v. Marsh* (1841) 9 F. Cas. 342

<sup>8</sup>17 U.S.C. § 107

1957 ensuring that "fairness" was only a defence if the use served a pre-approved public purpose.

As international trade expanded, the world needed a unified way to handle copyright exceptions. This led to the inclusion of the "Three-Step Test" in the Berne Convention and later the TRIPS Agreement. This international historical milestone dictated that any national exception to copyright must be limited to special cases, must not interfere with the normal exploitation of the work, and must not unreasonably harm the author. This test serves as the global "check and balance" that prevents Fair Use from becoming a loophole for mass piracy.

The most recent historical shift occurred in the late 20th century with the rise of transformative use. Starting with the landmark *Campbell v. Acuff-Rose Music* (1994)<sup>9</sup> case involving a parody of "Pretty Woman," courts began to focus less on how much was copied and more on whether the copy serves a new purpose. This historical pivot has allowed the law to protect modern technological advancements, such as search engine thumbnails and data mining, by arguing that these uses provide a public benefit that does not replace the original work's market.

### III) USA: THE "OPEN" FAIR USE DOCTRINE

#### *a. Overview of copyright law in USA :*

The United States' current copyright regime is governed by the Copyright Act of 1976, which became effective on January 1, 1978. This legislation protects a wide range of works, including literary, musical, dramatic, and choreographic works, as well as photographs, visual and sculptural works, motion pictures, sound recordings, and architectural designs<sup>10</sup>.

The authority for copyright in the U.S. stems from Article I, Section 8, Clause 8<sup>11</sup> of the Constitution, commonly known as the Copyright Clause. Under this provision, Congress is empowered "to promote the progress of science and useful arts by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries."

To qualify for copyright protection under the Act, a work must satisfy two fundamental requirements: originality and fixation. Originality entails that the work is independently

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<sup>9</sup> *Campbell v. Acuff-Rose Music, Inc.* (1994) 510 U.S. 569

<sup>10</sup> Copyright Act of 1976

<sup>11</sup> U.S. Const. art. I, § 8, cl. 8.

created, not copied, and reflects a minimal degree of creativity. Fixation, as defined in Section 101 of the Act<sup>12</sup>, requires that the work be embodied in a tangible form that is sufficiently stable to be perceived, reproduced, or otherwise communicated, ensuring the work's existence in a concrete medium

***b. Doctrine of fair use in USA :***

Under the Copyright Act of 1976, the U.S. Congress codified an exception to copyright protection known as the Fair Use Doctrine in Section 107. This doctrine, however, had already been developed by the courts, with its earliest mention dating back to 1841 in *Folsom v. Marsh*<sup>13</sup>

In that case, the defendant had incorporated expert from George Washington's private letters into a fictionalised biography of the President without obtaining the owner's permission. The court held that this use did not constitute copyright infringement, noting that only a small portion of the letters was used and that the purpose was semi-scholarly. In determining that the use was fair, the court emphasised that it is necessary to consider the nature and purpose of the selection, the quantity and value of the material used, and the extent to which the use might harm the market for, or diminish the profits from, the original work. These factors continue to serve as the foundational criteria for assessing fair use under U.S. copyright law. de the objects, of the original work. These criteria still form the basic considerations for Fair Use.

Courts in the United States have long recognised the tension inherent in copyright law between protecting authors' rights and serving the public interest. In the absence of a congressional solution, it fell to the judiciary to strike a balance between these competing interests. This issue was addressed by an American district court in *Storm Impact, Inc. v. Software of the Month Club*<sup>14</sup> where the court observed that while incentivise individual creativity through personal gain is essential for public welfare, progress also requires that others be allowed to build upon the work of previous creators. Consequently, there exists an inherent conflict between the need to safeguard copyrighted material and the need to allow further innovation.

Under Section 102 of the Copyright Act<sup>15</sup>, works are protected if they are "original works of

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<sup>12</sup>17 U.S.C. § 101

<sup>13</sup> *Folsom v. Marsh* 9 F. Cas. 342 (C.C.D. Mass. 1841) (No. 4,901).

<sup>14</sup>*Storm Impact, Inc. v. Software of the Month Club* 13 F. Supp. 2d 782 (N.D. Ill. 1998).

<sup>15</sup>17 U.S.C. § 102

authorship fixed in any tangible medium of expression,” and unauthorised use of such works constitutes infringement unless an exception applies. Fair use is one such exception and functions as an affirmative defence to claims of copyright infringement. The *Storm Impact* court noted that fair use permits individuals to utilise copyrighted works reasonably without the copyright owner’s consent, particularly in ways that provide public benefit beyond the contribution of the original work<sup>16</sup>.

When Congress codified the Fair Use doctrine in 1976, its House Report acknowledged that fair use had long been invoked as a defence in countless copyright cases, with substantial judicial precedent recognising and applying the doctrine. Although no precise definition of fair use had previously existed, courts had developed a set of guiding factors, which Congress formalised in Section 107 of the Copyright<sup>17</sup>.

### ***C) THE FOUR FACTOR TEST***

In finding a use fair, courts have to weigh the four factors set out by section 107<sup>18</sup>.

The first factor, "the purpose and character of the work," distinguishes between commercial and non-profit use and asks how much the new works differs from the original (transformative use).

The second factor is that the Courts interpret the second factor, "the nature of the copyrighted work," as meaning that the more creative the original work, the more it enjoys copyright protection. Therefore, copyright protection of derivative work or compilations is thinner than of those who are original and creative.

The third factor is that the amount and substantiality of the portion used is the third factor, and the test courts apply is how much of the "heart of the copyrighted work" has been used.

Finally, the fourth factor, "the effect on the market value for the original," is considered the most important one of the four factors.

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<sup>16</sup> *Storm Impact, Inc. v. Software of the Month Club* 13 F. Supp. 2d 782 (N.D. Ill. 1998).

<sup>17</sup> Holger Postel, "The Fair use Doctrine in the U.S. American Copyright Act and Similar Regulations in the German Law", CHI-KENJ.Intell.Prop.142, 2006 Publication.

<sup>18</sup> *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

The defendant has to show that the new work does not have an impact on either the actual or on the potential market.

When Congress introduced section 107 of the Copyright Act, it was aware of the development of new technology. In its **House report** it stated that the *intention of section 107 is not to "freeze" the existing judicial doctrine*<sup>19</sup>

#### **IV) INDIA: THE “CLOSED” FAIR DEALING DOCTRINE;**

##### ***a. The Copyright law in India:***

The principal legislation governing copyright law in India is the Copyright Act, 1957<sup>20</sup>, which is supplemented by the Copyright Rules, 1958. Together, these instruments constitute the legal framework for the protection of copyright in India. The Act is a comprehensive statute designed to safeguard the rights of creators over their intellectual property. It delineates the categories of works eligible for copyright protection, including literary, musical, artistic, and cinematographic works<sup>21</sup>, and grants authors exclusive rights to reproduce, distribute, and communicate their works to the public<sup>22</sup>.

For a work to qualify for protection under the Act, it must be original in character and exhibit a degree of novelty. The Act identifies various acts that amount to copyright infringement, such as unauthorised copying, issuing copies of the work to the public, renting or lending the work, publicly displaying the work, communicating it to the public, and adapting the work without permission. In addition, the Act recognises forms of secondary infringement, which include the sale or distribution of infringing copies for commercial purposes, public exhibition in the course of trade, and other related activities that violate the rights of the copyright owner<sup>23</sup>.

##### ***b) The concept of fair dealing in India :***

In India, the doctrine of fair dealing is expressly provided for under Section 52 of the Copyright Act, 1957. Prior to the enactment of copyright legislation, the Bombay High Court in

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<sup>19</sup>H.R. REP. No. 94-1476.

<sup>20</sup>The Copyright Act, 1957: Act No. 14 of 1957

<sup>21</sup>Section 13 of the Copyright Act, 1957

<sup>22</sup>Section 14 of the Copyright Act, 1957

<sup>23</sup>Section 51 of the Copyright Act, 1957

*McMillan v. Khan Bahadur Shamsul Ulama Zaka*<sup>24</sup> held that the English Copyright Act of 1842 was applicable in India, despite the absence of any express provision extending its operation to the country. Subsequently, in 1914, the Indian legislature enacted the Copyright Act, 1914, following which copyright law in India came to be governed by the Imperial Copyright Act of 1911, which was largely a continuation of the British Copyright Act of 1911. However, the powers of the Indian legislature to introduce substantive modifications or additions under this framework were considerably restricted.

The present copyright regime in India was established with the enactment of the Copyright Act, 1957, which was intended to operate as an independent and self-contained statute.

Section 52<sup>25</sup>, which constitutes fair dealing, has been amended thrice.

1. The first minor amendment brought to Section 52 was by the Copyright Amendment Act, 1983 (23 of 1983) whereby an explanation below sub-clause (ii) of clause (b) has been inserted<sup>26</sup>.

2. The Section was, however, comprehensively amended by the Copyright Amendment Act, 1994. Activities like private research and dealing with computer programmes and their copying by a lawful possessor were incorporated into the provision and making sound recordings of any literary, dramatic and musical works in certain circumstances were declared to constitute fair dealing<sup>27</sup>.

3. The latest amendment brought to Section 52 was in the year 2012<sup>28</sup>, which again sought to address issues relating to computer programmes<sup>29</sup>.

### *c. Role of judiciary:*

In **Eastern Book Company v DB Modak**<sup>30</sup> the Supreme Court was called upon to determine whether the defendant's reproduction of copy-edited judicial decisions published in the

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<sup>24</sup>*McMillan v. Khan Bahadur Shamsul Ulama Zaka* (1895) ILR 19 Bom 557.

<sup>25</sup>Section 52, Indian Copyright Act, 1957.

<sup>26</sup>Copyright (Amendment) Act, 1983

<sup>27</sup>Copyright (Amendment) Act, 1994

<sup>28</sup>Copyright (Amendment) Act, 2012

<sup>29</sup>Pushpanjali Sood, "Fair Dealing in India: An Analysis vis-a-vis Fair Use in the United States, Vol 28, Journal of Intellectual Property Rights, Published on 23<sup>rd</sup> December 2023

<sup>30</sup>*Eastern Book Company v DB Modak* (2008) 1 SCC 1.

plaintiff's law reports amounted to copyright infringement, and whether such reproduction could be justified as fair dealing under Section 52(1)(q)(iv) of the Copyright Act, which excludes the reproduction or publication of judgments, orders, or decisions of courts, tribunals, or other judicial authorities from the ambit of copyright infringement. Relying on the reasoning adopted by the Supreme Court of Canada in *CCH Canadian Ltd v. Law Society of Upper Canada*, the Court rejected the "sweat of the brow" doctrine and held that originality requires the exercise of skill and judgment through the selection, coordination, or arrangement of pre-existing material, resulting in a work that is sufficiently distinct in character from the original sources<sup>31</sup>.

**In Wiley Eastern Ltd and Ors v Indian Institute of Management Wiley Eastern Ltd and Ors v Indian Institute of Management**<sup>32</sup> The Court explicitly linked the rationale underlying the defence of fair dealing to the Indian Constitution. It observed that the primary objective of Section 52 is to safeguard the freedom of expression guaranteed under Article 19(1) of the Constitution of India, thereby ensuring protection for activities such as research, private study, criticism, review, and the reporting of current events.

**In RG Anand v Delux Films and Ors**<sup>33</sup>, The Supreme Court of India, while affirming the idea-expression dichotomy, held that copyright protection does not extend to ideas, subject matter, themes, plots, or historical and legendary facts. Any infringement in such cases is limited to the specific form, structure, arrangement, and manner in which the idea is expressed by the author. The Court further observed that when a common idea is developed differently, some degree of similarity is inevitable due to the shared source. Accordingly, courts must assess whether the similarities relate to the fundamental or substantial elements of the expression adopted in the copyrighted work.

**In V Ramaiah v K Lakshmaiah**<sup>34</sup>, the court while determining whether the respondent's act of authoring the guide amounted to copyright infringement, the courts were cautioned that a defendant invoking the defence of fair dealing must demonstrate more than mere reproduction of the original work. The use should involve an independent intellectual contribution, meaning

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<sup>31</sup>CCH Canadian Ltd v. Law Society of Upper Canada [2004] 1 S.C.R. 339, 2004 SCC 13.

<sup>32</sup>Wiley Eastern Ltd and Ors v Indian Institute of Management 61 (1996) DLT 281.

<sup>33</sup> RG Anand v Delux Films and Ors (1978) 4 SCC 118; AIR 1978 SC 1613.

<sup>34</sup> V Ramaiah v K Lakshmaiah, 1989 (1) ALT 310; 1989 (2) APLJ 171.

that the resulting work must be transformative in nature rather than a simple replication.<sup>35</sup>

## V) NIGERIA: THE MODERNISING FAIR DEALING DOCTRINE

### a) Overview of copyright law of Nigeria:

In Nigeria, a work must come under the category of subject matter listed in Section 1(1) of the Act in order to qualify for copyright protection. Literary works, artistic works, cinematographic films, sound recordings, and broadcasts are the six categories of works so defined. Section 51 of the Act elaborates on the definition and extent of these diverse works. The dual requirements of originality and fixation apply to creative works that fall into the first three categories: literary, musical, and artistic works (Nigerian Copyright Act, 2004). Additionally, these pieces must have the necessary ties to Nigeria. For their part, works in the final three categories—sound recordings, broadcasts, and cinematographic films—better meet the definition of entrepreneurial works. These later categories are frequently made up of derivative works whose survival is mostly dependent on the commercial or other exploitation of creative works. The Nigerian Act considers computer programs in addition to literary works.

The next step in Nigeria is to identify whether a work satisfies the particular requirements that make it eligible for protection under the Act after it has been determined that it belongs to one of the six categories of works eligible for copyright. The Act stipulates that literary, musical, and artistic works must meet the dual criteria of originality and fixation (Nigerian Copyright Act, 2004). Literary, musical or artistic work shall not be eligible for copyright unless sufficient effort has been expended in making the work to give it an original character (Nigerian Copyright Act, 2004)<sup>36</sup>.

According to the case study of **University of London Press v. University Tutorial Press, 1916**<sup>37</sup> the court observed that :

*“the word original does not, in this connection mean that work must be the expression of original or inventive thought... the Act does not be copied from*

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<sup>35</sup>Ayush Sharma, “Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?”, Journal of Intellectual Property Rights, Vol 14, Published on 6<sup>th</sup> August, 2009.

<sup>36</sup> Section 1(1), Copyright Act, Cap C28, Laws of the Federation of Nigeria (LFN) 2004

<sup>37</sup> University of London Press v. University Tutorial Press, [1916] 2 Ch 601.

*another work but it should originate from the author”*

In *Ladbroke (Football) Ltd v. William Hill (Football) Ltd (1964)*<sup>38</sup>, the court similarly observed that originality merely requires that the work be the result of the author’s own creation and not a reproduction of an existing work.

In the Nigerian case of *Masterpiece Investments Ltd v. Worldwide Business Media Ltd & Ors, 1997*<sup>39</sup> the plaintiff had prepared a promotional article relating to its client, the Edinson Group, which was published in the October 1989 issue of a business magazine owned by the defendants. Subsequently, the plaintiff discovered that a substantially similar article appeared in the December 1989 edition of the same magazine. The court examined whether the impugned article was entitled to copyright protection. The defendants argued that the write-up was purely descriptive, employed standard advertising language, and contained facts common to all companies being promoted, thereby lacking originality. Nonetheless, applying the minimal standard of originality recognised in copyright law, the court held that the article constituted a literary work eligible for copyright protection.

#### ***b) Exception elaborated in Nigeria Copyright law***

Under Nigerian copyright law, the exceptions set out in the Second Schedule of the Act apply broadly to literary, musical, artistic works and cinematograph films, while their applicability to sound recordings and broadcasts is comparatively restricted. In addition to the general exceptions contained in the Second Schedule, the Act provides further specific exceptions under the Third Schedule, which relate exclusively to sound recordings of musical works. Moreover, several other exceptions are dispersed throughout various provisions of the Act.

In total, the Second Schedule lists **nineteen exceptions** applicable to copyright works, while the Third Schedule enumerates eight additional exceptions concerning sound recordings of musical works.

The Second Schedule of the Nigerian Copyright Act primarily addresses exceptions to copyright infringement, with paragraph (a) specifically recognising the doctrine of fair dealing.

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<sup>38</sup> *Ladbroke (Football) Ltd v. William Hill (Football) Ltd* [1964] 1 WLR 271 (HL)

<sup>39</sup> *Masterpiece Investments Ltd v. Worldwide Business Media Ltd & Ors*, [1997] 1 FHCLR 473.

The relevant provision is reproduced verbatim below.

***“The doing of any of the Acts mentioned in the said Section 6 by way of fair dealing for purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast. The owner of Copyright is barred from claiming authorship of his work where such work is included incidentally when reporting current event in a broadcast”<sup>40</sup>.***

For a defendant to successfully rely on the defence of fair dealing, it must be established that the use of the copyrighted work falls within any of the recognised purposes, namely

- For research;
- For private use;
- For criticism or review of the reporting of current events<sup>41</sup>.

### ***c) New act to cover digital era***

On 17 March 2023, President Muhammadu Buhari assented to the Copyright Act, 2022, thereby repealing the Copyright Act of Nigeria, 2004 (the “Old Act”)<sup>42</sup>. The new Act establishes a comprehensive framework for the regulation, protection, and administration of copyright in Nigeria. Its enactment was largely necessitated by the inadequacy of the Old Act in responding to the challenges posed by digital technologies in the realm of copyright protection.

The Copyright Act, 2022 seeks to achieve the following objectives<sup>43</sup>:

- a) Safeguarding the rights of authors while ensuring fair remuneration and recognition

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<sup>40</sup>Paragraph (a), Second Schedule, Copyright Act, Cap C28, Laws of the Federation of Nigeria (LFN) 2004.

<sup>41</sup>Dr. Obaje Enemaku, Assessment of Fair Dealing Provisions in the Nigerian and Namibian Copyright Law, International Journal of Innovative Research and Advanced studies (IJIRAS) , Vol 4 issue 12, Published on Decmeber 2017.

<sup>42</sup>Section 109, Copyright Act 2022 (Act No. 8 of 2023)

<sup>43</sup>Section 1, Copyright Act 2022

for their creative endeavours.

b) introducing suitable limitations and exceptions to promote access to creative works;

c) enabling Nigeria to fulfil its obligations under applicable international copyright treaties and conventions; and

d) strengthening the institutional capacity of the Nigerian Copyright Commission to ensure effective regulation administration, and enforcement.

### ***Changes made in the fair dealing :***

In defining the acts that constitute fair dealing, the Act introduces the listed purposes with the expression “such as,” indicating that the categories mentioned are illustrative rather than exhaustive<sup>44</sup>. Consequently, uses not expressly specified may still qualify as fair dealing, provided the requirement of fairness in the use of the work is satisfied.

The Act expressly recognises non-commercial research and private study as purposes from which fair dealing may be inferred. It further prescribes specific factors to be taken into account when assessing whether a particular use falls within the scope of fair dealing. These include<sup>45</sup>:

(a) purpose and character of usage;

(b) nature of the work;

(c) amount and substantiality of the purpose used in relation to the work as a whole and

(d) effect of the use upon the potential market or value of the work be considered<sup>46</sup>.

## **VI) COMPARATIVE ANALYSIS**

The doctrines of fair use and fair dealing in the United States, India, and Nigeria reveal three distinct models of copyright exceptions, reflecting differing constitutional priorities, legislative

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<sup>44</sup>Section 20(1), Copyright Act 2022

<sup>45</sup>Section 20(1)(a)-(d), Copyright Act 2022

<sup>46</sup> G. Elias , “ A Review of the Nigerian Copyright Act, 2022, published in [www.gelias.com](http://www.gelias.com), visited on 17.01.2026.

techniques, and responses to technological change. While all three jurisdictions seek to balance authors' exclusive rights with public interest, they differ significantly in flexibility, scope, judicial discretion, and adaptability to the digital environment.

### ***1. Nature of the Doctrine: Open vs Closed Framework***

The most fundamental distinction lies in the structural design of the doctrines.

The United States follows an open-ended fair use doctrine under Section 107 of the Copyright Act, 1976. The provision does not restrict fair use to predetermined purposes; instead, it provides illustrative examples such as criticism, comment, news reporting, teaching, scholarship, and research. Courts retain wide discretion to recognise new categories of fair use, making the doctrine inherently flexible.

In contrast, India adopts a closed and exhaustive fair dealing framework under Section 52 of the Copyright Act, 1957. Fair dealing is permissible only if the use falls strictly within the statutorily enumerated purposes. Any use outside this list, regardless of its social utility or fairness, is excluded from protection.

Nigeria, particularly after the enactment of the Copyright Act, 2022, follows a hybrid model. While retaining the fair dealing terminology, the Nigerian statute uses the phrase "such as" before listing purposes, indicating a non-exhaustive approach. This moves Nigerian copyright law closer to the American fair use model while retaining statutory clarity.

### ***2. Statutory Guidance and Balancing Mechanism***

The presence or absence of a balancing test significantly impacts the application of copyright exceptions.

The US fair use doctrine explicitly incorporates a four-factor balancing test, examining:

1. Purpose and character of the use (including transformative use),
2. Nature of the copyrighted work,
3. Amount and substantiality used, and

#### 4. Effect on the potential market.

This structured yet flexible test ensures that fairness is assessed contextually rather than mechanically. India however lacks a statutory balancing test. Section 52 does not prescribe any guiding factors for determining fairness. As a result, Indian courts often rely on comparative jurisprudence or constitutional principles leading to inconsistent application and uncertainty.

Nigeria's Copyright Act, 2022 expressly incorporates a four-factor test, almost identical to the US framework. This statutory recognition marks a significant advancement, providing both predictability and flexibility in adjudicating fair dealing claims.

### 3. Recognition of Transformative Use

The concept of transformative use is central to modern copyright jurisprudence.

In the United States, transformative use is a dominant consideration following *Campbell v. Acuff-Rose Music*. Uses that add new expression, meaning, or message are more likely to qualify as fair use, even if commercial.

Indian copyright law does not statutorily recognise transformative use. Although courts in cases such as *V. Ramaiah v. K. Lakshmaiah* have indirectly acknowledged the need for independent contribution, the absence of explicit recognition limits doctrinal development and judicial consistency.

Nigeria's 2022 Act implicitly embraces transformative principles through its fairness factors, especially the purpose and character of use. This allows courts to accommodate modern uses such as parody, digital reproduction, and data-driven innovation.

### 4. Treatment of Commercial Use

The jurisdictions also diverge in their approach to commercial exploitation.

In the United States, commercial use does not automatically negate fair use. Courts assess whether the use is transformative and whether it substitutes the original work in the market.

India generally views commercial use with suspicion. Since Section 52 does not clarify the status of commercial fair dealing, courts often err on the side of copyright holders, discouraging

innovative and economically productive uses.

Nigeria's approach is more balanced. While non-commercial use is expressly favoured, commercial use is not per se excluded, provided it satisfies the fairness criteria under the Act.

### ***5. Adaptability to Digital and Technological Developments***

The digital era has tested the resilience of copyright exceptions.

The US fair use doctrine has proven highly adaptable, accommodating search engines, thumbnail images, digital libraries, and data mining through judicial interpretation.

India's closed fair dealing regime has struggled to address digital realities. Amendments to Section 52 have been piecemeal and technology-specific, resulting in legislative lag and doctrinal rigidity.

Nigeria's Copyright Act, 2022 represents a proactive legislative response to digital challenges, explicitly aiming to regulate online exploitation, digital dissemination, and enforcement while preserving access through flexible exceptions.

## **VII) CONCLUSION:**

This comparative study of the copyright regimes of the United States, India, and Nigeria reveals that although all three jurisdictions recognise the need to balance private rights with public interest, they differ significantly in the structure and application of copyright exceptions. The United States follows an open-ended fair use doctrine supported by a four-factor balancing test, allowing courts to adapt copyright law to changing social and technological realities. Nigeria, particularly through its Copyright Act, 2022, has adopted a modernised hybrid approach that blends statutory certainty with flexibility, enabling its copyright framework to respond effectively to challenges posed by digital technologies. In contrast, India's fair dealing regime under Section 52 of the Copyright Act, 1957 remains narrow and purpose-specific.

In light of the comparative findings, it is suggested that India undertake comprehensive legislative reform to modernise its copyright exception regime. Introducing an open-ended fair use clause or relaxing the exhaustive nature of Section 52 would allow courts to recognise new and emerging forms of fair use.

Additionally, greater clarity is required regarding the treatment of commercial uses and digital exploitation of copyrighted works. Legislative amendments addressing online education, digital libraries, user-generated content, and emerging technologies such as artificial intelligence would ensure that copyright law remains relevant in the digital age. Ultimately, a flexible and future-oriented approach to copyright exceptions is essential for promoting creativity, innovation, and equitable access to knowledge in India.

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