
BALANCING FAIR DEALING AND DIGITAL RIGHTS MANAGEMENT SYSTEMS IN THE DIGITAL ERA

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ABSTRACT

This research article explores the complex interplay between the doctrine of fair dealing, as a statutory exception that is granted under the Indian Copyright Law and the operation of automated Digital Rights Management systems deployed by digital platforms. The digital era has revolutionized the creation, consumption and distribution of content, enabling individuals to share diverse perspectives through short excerpts from broadcasts, public discourse and other copyrighted works. Content creation, commentary and critique are increasingly regulated by algorithmic enforcement mechanisms. Copyright ensures a balance between incentivizing author's creation and promoting public access to creative works, while also allowing for fair use of copyrighted works under Section 52 of The Copyright Act, 1957. However, the proliferation of user generated content on digital platforms has blurred traditional lines, making it challenging to determine what constitutes fair use. The article also examines the complexities due to the evolving landscape of digital media in safeguarding intellectual property, balancing user rights and implementing effective technological protections.

Keywords: Fair dealing, Digital Rights Management systems, Intellectual Property Rights, Copyright.

I. INTRODUCTION

Intellectual Property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols; names and images used in commerce.¹ The digital age has drastically transformed the landscape of intellectual property law. With the rapid expansion of platforms such as YouTube, Instagram, Facebook, Twitter; content is created, distributed and consumed, often incorporating fragments of existing copyrighted works. The rise in user generated content has given prominence to debates around fair dealing and the automated enforcement of copyright through Digital Rights Management (DRM) tools. This research article critically evaluates the legal friction between fair dealing framework under The Copyright Act, 1957 and the enforcement of copyright via automated content recognition systems.

II. UNDERSTANDING THE DOCTRINE OF FAIR DEALING IN INDIA

Black's Law Dictionary defines fair use as "a reasonable and limited use of a copyrighted work without the author's permission, such as quoting from book for a book review or using parts of it in a parody".²

Fair dealing is an exception to copyright infringement, allowing limited use of copyrighted works without prior permission from the copyright owner. It applies only to those uses or exceptions mentioned in the law whereas, fair use provides the list that is illustrative and very subjective. In India, the doctrine of fair dealing is not absolute and the determination of fair dealing must be evaluated on a case-by-case basis.³ There is no precise definition of "fair dealing" under The Copyright Act, 1957. However, Section 52 deals with fair dealing and outlines specific acts that do not constitute copyright infringement.

Section 52 of The Copyright Act, 1957 lays down an exhaustive list of acts that do not amount to infringement of copyright, often termed as fair dealing. These acts, not being a computer program include:

¹ World Intellectual Property Organization, About Intellectual Property, WIPO (2020), <https://www.wipo.int/en/web/about-ip>

² Use of Traditional Cultural Expressions/Traditional Knowledge, Asia InCH – Encyclopedia of Intangible Cultural Heritage, <https://asiainch.org/glossary/use-of-traditional-cultural-expressions-traditional-knowledge/> (23rd Jun. 2025)

³ ESPN Star Sports v. Global Broadcast News Ltd., 2008 (36) PTC 492 (Del.)

- i. Use of any work for the purpose of private or personal use for research or education;
- ii. Use for criticism or review;
- iii. Reporting of current events and affairs including the coverage of lecture given in the public;
- iv. The reading or recitation in public of reasonable extracts from an already published literary or dramatic works;
- v. Any judgment or order by court, tribunal or other judicial authority.
- vi. Reproduction for the purpose of any research work or private study with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution that is accessible to the public at large;
- vii. Reproduction or publication of any Act of a legislature or set of rules or orders in a language that is not already translated in or published or produced by the government.⁴

Section 52(1)(zb) also provides an exception to copyright infringement for the reproduction of original works for the benefit of persons with disability. Visually impaired persons rely on the text-to-speech technology and DRM implementation restricts such benefits for persons with disabilities by blocking the use of such technologies.⁵

In the case of *Civic Chandran v. Ammini Amma*, the Kerala High Court held that, “it may be reasonable to hold that the reproduction of the whole or a substantial portion of it as such will not normally be permitted and only extracts or quotations from the work will alone be permitted even as fair dealing”. The Kerala High Court, in the same case, laid down certain factors to consider if the reproduction constituted infringement:

- i. The quantum and value of the matter taken in relation to the comments or criticism;
- ii. The purpose for which it is taken; and

⁴ The Copyright Act, 1957, No. 14, § 52, No. 14, Acts of Parliament, 1957 (India). [hereinafter “Copyright”]

⁵ Id. § 52(1)(zb).

iii. The likelihood of competition between the two works.⁶

Thus, while attempting to identify whether any work fall under the fair dealing, courts would have to take these factors into consideration. Indian courts have generally held that use of protected material for the purposes of education is not a violation of copyright. The main intention of this provision was to foster scientific growth, by helping the spread of information for research.

Further, in the case of *Wiley Eastern Ltd. v. Indian Institute Of Management*, the Delhi High Court observed that the basic purpose of Section 52 is to protect the freedom of expression under Article 19(1)(a) of the Constitution of India, so that research, private study, criticism or review or reporting of current events could be protected.⁷ Thus, when it comes to cases relating to research and education in India, a liberal interpretation of the provisions of fair dealings is used, so as to not stifle scientific progress in the nation.

III. DIGITAL RIGHTS MANAGEMENT SYSTEMS

Digital Rights Management (DRM) is the use of technology to control and manage access to copyrighted works. It aims to protect the copyright holders' rights and prevents content from unauthorised distribution and modification in the digital age.⁸ DRM system secures digital content through a multi-step process by encrypting content to protect it from unauthorized access, securely distributing it to authorized users, controlling access through authorization and authentication and then monitoring user activity to ensure compliance with licensing terms.

WIPO Copyright Treaty (WCT) and Section 65A of the Indian Copyright Act, 1957 and the U.S Digital Millennium Copyright Act (DMCA) have provided legal backing for DRM. These provisions aim to protect copyrighted works in the digital environment by addressing the circumvention of technological protection measures.⁹

With the increase in sharing of knowledge and technology, DRM is designed to be transparent to users unless they attempt to violate the usage rules that they agreed to when they purchased

⁶ Chandran v. Ammini Amma 1996 PTC 670 (Ker HC) 675-677.

⁷ Wiley Eastern Ltd. v. Indian Inst. of Mgmt., MANU/DE/0694/1995 (Del. High Ct. Feb. 1, 1995)

⁸ What is Digital Rights Management (DRM), Fortinet, <https://www.fortinet.com/resources/cyberglossary/digital-rights-management-drm> (22nd Jun. 2025)

⁹ WIPO Copyright Treaty, Dec. 20, 1996, S. Treaty Doc. No. 105-17, 36 I.L.M. 65

the digital content.¹⁰ From the copyright holder's perspective, DRM helps to safeguard digital content such as books, music, films or software from piracy, contribute to preserve the integrity and authenticity of software and creative works by preventing unauthorized alterations, offer controlled distribution, ensuring that access is granted only to licensed or paying users. DRM Systems grant copyright holders' the ability to:

- i. Control and prevent users from altering, saving, sharing, downloading, forwarding, printing, or capturing screenshots of their content or products.
- ii. Setting expiration dates on media or limit number of times users can access it.
- iii. Restrict access based on device identity, Internet Protocol (IP) address, or geographical location.
- iv. Apply watermarks to documents and images to affirm ownership and authorship.

While DRM helps to protect digital content, it is often criticized for restricting legitimate uses like research, education, criticism, etc. It can obstruct the exercise of fair use exceptions. Additionally, DRM technologies often restrict interoperability, thereby stifling innovation and reducing market competition in hardware and software development. The anti-circumvention laws may even criminalize activities that would otherwise be legally permitted under the copyright law, overriding user rights. While DRM aligns closely with Intellectual Property Rights in protecting creators, a balance must be struck to avoid undermining user freedom and fair dealing exceptions.

Copyright protection is an important part of how modern YouTube operates. With the launch of the platform in 2005 and its subsequent rapid growth, it became clear that there was no way for employees to manually review thousands of hours of videos. Therefore, in 2007, YouTube developers introduced the Content ID tool, an automated tool to protect copyrights that automatically examines videos by their digital fingerprints and makes a decision about possible copyright violations.

Platforms like Netflix rely heavily on DRM to secure content against piracy and unauthorized

¹⁰ Digital Rights Management, Microsoft Learn, <https://learn.microsoft.com/en-us/windows-hardware/drivers/audio/digital-rights-management> (22nd Jun. 2025)

distribution. Through encryption and digital watermarking, Netflix ensures that only authorized users can access its content, while also tracking and identifying sources of piracy. This reflects the broader utility of DRM in safeguarding digital content, enforcing licenses and enhancing revenue models.

IV. THE CONFLICT: WHEN DIGITAL RIGHTS MANAGEMENT SYSTEMS OVERRIDE FAIR DEALING

Section 52 (Fair Dealing) of The Copyright Act, 1957 not only acts as a legal exception but as a medium of right to expression, safeguarded by Article 19(1)(a) of the Indian Constitution. As noted above, these exceptions include private or personal use for research or education, criticism or review, news reporting or public lectures, reproduction for disabled persons and limited library copying. The provision intends to promote scientific advancement and free expression by allowing legitimate sharing of ideas. The legislature inserted “fair dealing” provision to ensure that certain acts done by users are not deemed copyright infringement.

The Copyright (Amendment) Act of 2012 has tried to bring the Indian Copyright regime in sync with the technological advances and international developments. The Copyright (Amendment) Act of 2012 has tried to bring the Indian Copyright regime in sync with the technological advances and international developments. The Amendment introduced Section 65A and 65B to promote and penalize bypassing DRM. Section 65A (1) makes it an offence to “circumvent an effective technological measure” with the intention of infringing any copyright. Offenders shall be punishable with imprisonment which may extend to two years and shall also be liable to fine. Section 65A(2)(a) also provides a general exception that one may circumvent if it is for “a purpose not expressly prohibited” by the Act, but must keep detailed records of each step. Other narrow exceptions (for encryption research, security testing, etc.) appear in 65A(2)(b)-(g). Further, Section 65B defines “Rights Management Information” and criminalizes altering it without authority. Notably, none of the exceptions explicitly include educational or fair dealing uses.¹¹

The interplay between Sections 52 and 65A is complex and unsettled. While Section 52 provide exceptions to copyright infringement, Section 65A protects against the circumvention of Technological Protection Measures (TPMs). Similarly, Section 65A(2)(a)’s broad language

¹¹ Copyright, *supra* note 4, § 65A and 65B.

could be read as to allow any circumvention for lawful purposes since fair dealing is “not expressly prohibited” by the Act. However, that exception imposes onerous record-keeping requirements and the law offers no guidance on how to prove in court that a circumvention served only a fair purpose. Unless courts read 65A narrowly, users might effectively need a license to exercise any fair dealing right that DRM would otherwise prevent.

In India, fair dealing evolves through the judicial interpretation. However, DRM acts as a technological gatekeeper that blocks the use of content before courts have a chance to determine whether it constitutes fair dealing. This prevents the natural evolution of copyright jurisprudence, leaving users subject to private enforcement technologies rather than public law.

In the absence of DRM restrictions, the doctrine of fair dealing typically evolves through a process wherein a creator utilizes a copyrighted work under the belief that such use falls within the ambit of fair use. If the copyright holder objects, the matter may be adjudicated by courts. However, when DRM measures obstruct this process from the beginning, it prevents the natural evolution of fair use. This limits fair dealing to only those uses previously upheld by the courts, thereby impeding the recognition of new legitimate uses and constraining the natural progression of copyright exceptions in the digital environment.

DRM tools such as YouTube’s Content ID and others are designed to automatically flag, block, demonetize, or remove content based on a match with copyrighted works. As a result, legitimate uses such as criticism, parody, educational commentary, or reporting of current events may get misidentified as copyright violations. This undermines the statutory right to fair dealing and raises concerns about censorship and freedom of expression under Article 19(1)(a) of the Constitution of India. While platforms may offer dispute resolution processes, these are often opaque, time-consuming and ultimately biased in favour of copyright holders.

Fair dealing and TPMs were meant to co-exist in some harmony so long as the dealing is fair but the law on DRM versus fair dealing in India remains unsettled. The anti-circumvention provisions were introduced to comply with international norms, but India is not obligated under TRIPS to adopt them. Thus, Courts and lawmakers may need to clarify that exceptions under Section 52 survive even in the digital realm. This could mean interpreting Section 65A’s intention to infringe and general exception so as to carve out genuine fair dealing or amend the Act to state the point. The debate centers on preserving the doctrinal balance i.e. ensuring

robust copyright protection without undermining the public's right to information and access to knowledge in the digital space.

On the other hand, it is also argued that undermining DRM under the guise of the Doctrine of Fair Dealing could lead to rampant copying of copyrighted works without proper authorization. Merely invoking public interest to justify such copying for public interest would dilute the rights of copyright holders. A key case illustrating this tension is *Authors Guild v. Google Inc.*, where Google digitalized library books without authorization i.e. obtaining prior consent from copyright owners and made them accessible via Google Books. Although it was challenged by the Authors Guild, the Court ultimately ruled in the favour of Google, finding the act permissible under the Doctrine of Fair Use. This case underscores the need to strike a balance between ensuring access to knowledge and information as well as protecting intellectual property rights.¹²

V. STRIKING A BALANCE: HARMONIZING DRM AND FAIR DEALING WITHIN THE INDIAN LEGAL FRAMEWORK

The existing DRM regime arguably conflicts with the principles of Fair Dealing, indicating the necessity for a revised framework for its implementation. As India transitions deeper into the digital economy, it becomes imperative to harmonize user rights with technological enforcement mechanisms. The current copyright regime under the Indian Copyright Act, 1957 specifically the juxtaposition of Section 52 (fair dealing) and Section 65A (anti-circumvention) presents a fragmented framework that fails to offer clarity, certainty or balance. A coherent legal response is required to ensure that DRM does not unjustly override legitimate public interest uses permitted under the law. Reforming DRM enforcement to better align with the objectives of The Copyright Act, 1957 and the spirit of Fair Dealing would contribute to a more equitable and effective copyright system. India can implement a balanced approach through law and several recommendations can be made:

i. Legislative Clarification and Amendment:

One of the foremost steps toward harmonization is amending Section 65A to explicitly exempt fair dealing uses from penal liability when DRM systems are circumvented without intent to

¹² Authors Guild, Inc. v. Google Inc., No. 13-4829-cv (2d Cir. Oct. 16, 2015).

infringe copyright. A clause similar to the U.S. DMCA's "triennial exemption" model or an express reference to Section 52 can help align both provisions. This would offer legal certainty to educators, students, researchers and disabled users who need to access DRM protected content for lawful purposes.

ii. Judicial Interpretation with Constitutional Values:

Indian courts when faced with this conflict, should adopt a rights based interpretation of the law. Section 52 must be read in light of Article 21 (right to life and personal liberty), Article 19(1)(a) (freedom of speech) and Article 14 (equality before law) to ensure that access to knowledge and expression is not unduly burdened by restrictive TPMs. Courts can draw from comparative jurisprudence to emphasize a liberal interpretation of fair dealing in digital contexts.

iii. Institutional Oversight for Fair Use in Digital Licensing:

The Government of India may consider setting up a regulatory oversight mechanism or tribunal that can certify fair use exemptions to TPM enforcement, review complaints where DRM unreasonably restricts legal access, enforce transparency in digital licensing agreements, especially in the education and research sectors. Such oversight would act as a bridge between rigid enforcement and practical access, especially where publishers or platforms unreasonably restrict legitimate public-interest use.

iv. Promoting fair DRM Practices:

Copyright holders, especially in education, publishing and software sectors, must be encouraged legally and normatively to adopt DRM systems that are sensitive to user rights. For instance, allowing time-bound educational access, facilitating screen-reader compatibility for the visually impaired and providing "copy and paste" allowances for quotes under fair dealing. The adoption of voluntary, rights-respecting DRM systems can reduce the need for litigation and legislative intervention.

v. Public Awareness and Digital Literacy:

There is a pressing need for educational initiatives and legal awareness campaigns among students, researchers and creators to understand their rights under fair dealing as well as risks

associated with violating DRM laws. Legal literacy empowers users to assert their rights and can also drive demand for more balanced content access models.

Legislative reform, judicial interpretation, regulatory oversight, promotion of fair DRM practices and widespread digital literacy can collectively ensure that copyright system in India remains equitable, progressive, and aligned with the constitutional values. By implementing these recommendations, India can take significant steps towards striking a balance towards harmonization between DRM and fair dealing, improving the enforcement of IPR and creating a more favourable environment for innovation and creativity.

VI. CONCLUSION

The evolving digital landscape presents new challenges in safeguarding intellectual property rights while ensuring that users rights are not unduly compromised. To maintain the integrity of fair dealing in the digital age, a balanced and harmonized approach is essential that upholds the rights of creators without compromising users' freedom of expression guaranteed under the Indian Constitution. While creative endeavours should be incentivized and protected, such protections must ultimately promote the wide public dissemination and accessibility of literature, music and the arts. Ultimately, striking the right balance between DRM and fair dealing is imperative for fostering a digital environment that encourages both innovation and inclusivity.