COPYRIGHT INFRINGEMENT IN INDIA: EVALUATING THE ROLE OF FAIR USE AND THE URGENT NEED FOR LEGAL REFORM

Tusshar Sharma, Guru Gobind Singh Indraprastha University

I. INTRODUCTION

1.1 Defining Copyright Infringement in India

The infringement of copyright is the unauthorized use of any of the exclusive rights that a copyright holder has in accordance with It includes the acts of reproduction, communication to the public, adapting and commercial exploitation of the works which are protected without the legal authorization.[1] There are both primary infringement in which an infringer performs the restricted acts directly and secondary infringement in which infringing acts involve importing, distributing and possessing infringing copies with commercial intent.[2] Jurisprudence underlines the fact that infringement should not be evaluated only in quantitative terms but also in qualitative terms, that is, whether a significant and material part of the work is used.[3]

1.2 The Doctrine of Fair Dealing: Structure and Contemporary Challenges

The doctrine of fair dealing is enshrouded in the Act under section 52, as a statutory defence, to legitimise the right owner to some uses of the copyrighted material without the authorisation of the rights holder. As opposed to the open-ended fair use test used in America,[4] the Indian test uses a closed-list of allowable uses, namely, under private or personal use, under research, under criticism, under review, and under reporting of current events, therefore the legal certainty over the orthodox variability. This limits the ability of the law to keep up with new

[1]Shyamkrishna Balganesh, The Questionable Origins of the Copyright Infringement Analysis, 68 STAN. L. REV. 791 (2016).
[2]Samrat Bandopadhyay & Abdur Rahman Mallick, Copyright Infringement from Prism of Comparative Law: A Judicial Precedent and Statutory Perspective, 3 E-J. ACAD. INNOVATION & RES. INTELL. PROP. ASSETS 87 (2022).
[3] Shyamkrishna Balganesh, The Normativity of Copying in Copyright Law, 62 DUKE L.J. 203 (2012).
[4] Pranesh Prakash, Exhaustion: Imports, Exports, and the Doctrine of First Sale in Indian Copyright Law, 6 NUJSLAWREVIEW 1 (2013).

manifestation of creativity and technological invention. The digital revolution has altered the process of content creation, distribution and consumption to making the conventional paradigms more and more obsolete. [5]The streaming, the social media, and user-created content disrupt the traditional ideas of authorship and originality. Further, generative artificial intelligence raises some very fundamental questions concerning the copyrightability of AI-generated output, whether it is permissible to use copyrighted content to train machine-learning models and whether the fair-dealing exceptions can be applied to algorithmic work. These tensions are described in the Delhi High Court case pitting ANI Media and OpenAI where courts struggle to figure out whether the consumption of copyrighted news content submitted into AI training would be regarded as infringement or transformative fair use.[6] Lastly, digital content enables one to see the constraint of locally confined regimes owing to its borderless nature thereby necessitating applicable coordination to international norms without sacrificing the domestic policy goals.

II. STATUTORY ARCHITECTURE OF COPYRIGHT INFRINGEMENT IN INDIA

2.1 Defining Copyright Infringement and Exclusive Rights

In Copyright Act, 1957[7], infringement of copyright is defined in Section 51 which states it as the unauthorized performance of acts which were the exclusive preservation of the owner of the copyright under Section 14. These exclusive rights depend upon the type of work such as literature, drama, music, art, and both the motion picture and sound recording works and comprise reproduction, distribution publicly, performance, communicating to the public, adapting and translating.[8] Indian courts have emphasised on the fact that infringement cannot just be limited to literal infringement but also to substantial infringement of expressive meaningful, structural, and creative components making the work it represents acquire its distinctive originality.[9] This highlights the qualitative and not the quantitative aspect of copyright infringement.[10]

[5] M.P. Ram Mohan, Right to Research and Copyright Law: From Photocopying to Shadow Libraries, 62 INDIAN J. L. & TECH. 1 (2022).
[6] ibid at 2 .
[7] ibid at 1.
[8] J.P.M. Singh, Evolution of Copyright Law: The Indian Journey, 12 INDIAN J.L. & TECH. 45 (2020).
[9] Charu Sawlani, A Jurisprudential Analysis of Fair Dealing in India, 28 J. INTELL. PROP. RTS. 200 (2023).
[10] Eashan Ghosh, Fundamental Errors in Fundamental Places: A Case for Setting Aside the Delhi University Photocopying Judgment, 9 NUJS L. REV. 112 (2016).

2.2 Secondary Infringement and Knowledge Requirement

In addition to the direct infringement, Section 51 provides the liability to secondary acts of infringement, namely, importation of infringing copies into India, ownership of infringing copies used commercially or permitting use of premises to infringe performances to the community. This recognizes that infringement is commonly accomplished with the help of complicated distribution systems and commercial exploitation. [11]The liability of secondary infringement is dependent on the actual or constructive knowledge- on whether their infringer knew or should have known that they were copying an unlicensed work. This is measured by the court, according to industry standards, the type of business dealings, and would alert any sane person that the copies were infringing. This will ensure that innocent facilitating parties are not held accountable; the willful facilitators are instead held accountable. These provisions constitute a part of an all-encompassing statutory and judicial strategy relating to direct copying and the wider commercial ecosystem that makes possible infringing exploitation, in the sense of substantiality of taking and responsibility of knowledge.

III. THE DOCTRINE OF FAIR DEALING: STATUTORY FRAMEWORK AND JUDICIAL INTERPRETATION

3.1 Legislative Framework and Scope

Section 52 of the copyright Act, 1957[12] declares the doctrine of fair dealing in India, and it contains a closed list of the permitted use of the copyrighted works that are unrelated to infringement.[13] The Indian law placed more emphasis on the clarity given by the legislations as opposed to the adaptable, open-ended nature of the American fair use doctrine by implying that certain purpose will be mentioned as being eligible, which are:

1) private or personal use (not including computer programs)

2) research

[11] C. S. Sharma, Fair Dealing in India: An Analysis vis-à-vis Fair Use in the U.S., 27 J. INTELL. PROP. RTS. 158 (2022).
[12] The Copyright Act, 1957, No. 14 of 1957, § 52.
[13] C. J. Ginsburg, Fair Use in the United States: Transformed, Distorted, and Mended by Technological Change, 2020 SING. J. LEGAL STUD. 265 (2020).

3) critique

4) review, and reporting current events. **Section 52(1)(i)**[14] which permits teachers or students to reproduce work in the course of instruction or in examination is aimed at finding a balance between access to knowledge on one hand, with the rights of creators on the other.[15]

3.2 Judicial Interpretation and Emerging Trends.

The judicial adjudications have increasingly elaborated the concept of fair dealing fairness and have taken into consideration such aspects as the purpose of the use, the nature of the work which is the subject of the copyright, the quantity and the significantness of the used part and the economic impact on the market of the right holder.[16] Cases like the Delhi University photocopying case have examined the limits of educational fair dealing and have accepted that fair dealing should access but in reasonable proportions to ensure that the market is not harmed. Even though transformative use is not directly codified, Indian courts have started perceiving the uses which provide a new meaning or purpose as potentially fair, despite limited freedom of judicial adjudication of extending the status of fair dealing given the closed-list statutory provisions. It is against this legal background that there is a pressing requirement to reform in order to have a more comprehensive, flexible fair dealing provisions more in tandem with the digital environment and the changing creative practices.[17]

IV. COMPARATIVE ANALYSIS: FAIR USE ACROSS JURISDICTIONS

4.1 United States: Flexible Fair Use Doctrine

The American copyright system follows a flexible approach of balancing the right of creators with the rights of the population based on a four-factor test by adopting the open-ended fair use doctrine in Section 107 of Copyright Act of 1976. This test measures the intended use and nature of the use, character of the work which has been given copyright, volume and substantiality of the copy used and impact on the market. The landmark cases such as Campbell v. focused on a transformative use concept. Acuff-Rose Music recognizes fair use protection to

[14] The Copyright Act, 1957, No. 14 of 1957, §52(i).
[15] K. K. Sharma, Secondary Infringement and the Knowledge Requirement under the Indian Copyright Act, 1957, 17 NALSAR L. REV. 89 (2023).
[16] Sanya Arora, Fair Dealing and the Scope of Section 52 of the Indian Copyright Act, 1957, 6 INDIAN L. REV. 214 (2021).
[17] J. C. Ginsburg, Transforming Fair Use, 12 N.Y.U. J. INTELL. PROP. & ENT. L. 301 (2025).

the works which give a new expression and meaning. American courts have used the doctrine in a liberal way to concede technology like search engine preview, data digitization to be searchable, and software interoperability and thereby allowing [18]

V. COPYRIGHT INFRINGEMENT REMEDIES UNDER INDIAN LAW

5.1 Civil Remedies and Judicial Precedents

The Indian Copyright Act, 1957 establishes an extensive civil remedial framework under **Section 55**[19] to address copyright infringement. Remedies include injunctions to restrain further infringement, compensatory damages for economic losses, accounts of profits requiring infringers to disgorge unlawful gains, and delivery of infringing copies for destruction. Injunctions remain a potent interim tool; courts grant them upon showing a prima facie case, balance of convenience in favor of the plaintiff, and irreparable injury.[20] The Supreme Court, in cases like ***Midas Hygiene Industries Pvt. Ltd. v. Sudhir Bhatia***[21], reinforced that copyright infringement inherently causes irreparable harm that money damages cannot fully remedy. Damages pose complexities, as losses are often indirect or difficult to quantify. Courts accordingly award actual damages based on proved loss, statutory damages when losses are indeterminate, and reasonable royalties reflecting hypothetical licensing fees. The account of profits remedy further prevents unjust enrichment but demands careful apportionment to isolate infringement-related gains from legitimate profits. Landmark cases such as ***Super Cassettes Industries Ltd. v. Nirala Traders***[22] illuminate courts' increasing focus on deterrence, awarding heavy damages for willful commercial piracy. The Delhi University photocopying case also exemplifies judicial balancing between copyright protection and equitable educational access, demonstrating the nuanced application of pecuniary remedies.

5.2 Criminal Remedies and Enforcement Jurisprudence

Each of them is criminalized by Section 63 through 70 of the Copyright Act[23] to deal with the

[18] A. K. Malhotra, Comparative Study of Copyright Exceptions: Fair Dealing and Fair Use under Indian and U.S. Jurisdictions, 12 ASIAN J. COMP. L. 78 (2024).
[19]The Copyright Act, 1957, No. 14 of 1957, § 55, INDIA CODE (1957).
[20] A. Bhardwaj, Copyright Infringement and Enforcement Remedies under the Copyright Act, 1957, 44 NLU J. LEGAL STUD. 56 (2025).
[21] Midas Hygiene Indus. (P) Ltd. v. Sudhir Bhatia, (2004) 3 SCC 90 (India).
[22] Super Cassettes Indus. Ltd. v. Hamar Television Network Pvt. Ltd., CS(OS) No. 2322/2009, 2010 SCC OnLine Del 2204 (India).
[23] The Copyright Act, 1957, No. 14 of 1957, §§ 63-70, INDIA CODE (1957).

social harm beyond personal loss above heinous breaches of copyright. 63 requires imprisonment of between six months and three years and fines between fifty thousand to two lakh rupees in case of knowing infringement. Section 63A provides heavier punishment on repeat offenders such as one year custody. The design in this legislation emphasizes the determination of the state to promote the creative business sector and also insure the financial interests that are negatively impacted by piracy.[24] ***State of Andhra Pradesh v. Supreme Court***. Nagoti Venkatarama Naidu ratified the cognizable and non-bailable aspect of copyright violations, which permits police to start investigation and warrantless seizures once it is possible to understand that reasonable grounds exist under the provisions of **Section 64.** It is a proactive enforcement scheme as seen in the case of ***Saregama India Ltd. v. Balaji Recording Pvt. Ltd.*** which is stronger in deterring offending but requires scrutiny by the court to ensure that it is not abused. There are still difficulties in prosecution of transnational sophisticated digital piracy networks. Such challenges notwithstanding, criminal enforcement plays an essential part in supplementing civil redressing methods, which defines the multifaceted nature of India toward the war on copyright infringement by fully exhausting statutory safeguards and developing jurisprudence.

VI. TECHNOLOGICAL PROTECTION MEASURES AND DIGITAL RIGHTS MANAGEMENT.

Section 65A and 65B of the Copyright Amendment Act of 2012[25] on technological protection and rights management information in relation to the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty helped to bring Indian law into parity. **Section 65A** forbids the circumvention of technology protection which is used by the copyright owners so that other users or individuals cannot access or enjoy these works without their knowledge. The provision outlines the technological protection measures to be technologies, or devices or components that during the ordinary working condition regulate the access to the works in protection or guard any copyright or other related rights.[26]The anti-circumventions provisions imply calculation by the legislation of the technological measures being magnified as necessary instruments of copyright protection in the digital realm in which flawless copying and

[24] Rahul S. K. & Raj Kumar Yadav, The Copyright Quandary: Criminalization and Judicial Backlog in India, 30 J. INTELL. PROP. RTS. 188 (2025).
[25] The Copyright Act, 1957, No. 14 of 1957, §§ 65A, 65B, INDIA CODE (as amended 2012).
[26] Swaraj Paul Barooah, Examining TPMs and Anti-Circumvention Laws in the Copyright (Amendment) Act, 2012, 5 NUJS L. REV. 583 (2012).

simultaneous worldwide dissemination significantly raise the likelihood of infringement.[27] Access controls and use controls are identified by statutory regulation including the prevention of unauthorized access and use of works, respectively, and the end of copying or other uses of works that have been received. Both types enjoy protection by Section 65A though it contains significant exceptions that the technological protection measures must not override fair dealing rights.[28]

6.1 Legislative Framework: Technological Protection and Rights Management.

The exceptions and restrictions that were included in **Section 65A** demonstrate a very reasonable legislative balancing between the need to safeguard the technological processes and the right to maintain the rights of the users. **Section 65A(2)** expressly allows circumventing of those purposes that, even without infringement of the copyright law, do not breach the copyright, making certain that technological protection is not able to remove the right of fair dealing as well as other statutory exceptions. This clause performs the work of implementing the idea that technology cannot be used by the owner of copyright to be provided more control than the Copyright Act itself provides, avoiding the result of the digital lock defeating the equilibrium between original rights and user rights that the law enforcement carefully regulates. Particularly, the Standing Committee that reviewed the 2010 Copyright Amendment Bill [29]made it clear that exceptions facilitating fair dealing would make no sense in the digital space, as a lack of copying and circumventing opportunities available because of technological discoveries would keep a case under control even in instances of legitimate use. The clause also mandates that circumvention facilitating entities keep full records of individuals and the reasons why circumvention was facilitated, establishing accountability measures that will help avoid misuse, but still support legitimate activity.

Section 65B[30] covers the rights management information protection, which comprises electronic data containing information on owners of copyrights, works, terms and conditions of its use, and authentication codes. The provision outlaws the act of unauthorized eradication and distortion of rights management information and dissemination of works of which a rights

[27] Arul George Scaria, Does India Need Digital Rights Management Provisions or Better Digital Business Management Strategies?, 17 J. INTELL. PROP. RTS. 463 (2012).
[28] The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs., 2016 SCC OnLine Del 5128 (India).
[29] T. Krishnakumar, India's New Copyright Law: The Good, the Bad and the DRM, 8 J. INTELL. PROP. L. & PRAC. 15 (2013).
[30] The Copyright Act, 1957, No. 14 of 1957, § 65B, INDIA CODE (as amended 2012).

administration information has been cleared out unlicensed. [31]The management of rights information plays a vital role in the digital copyright ecosystem by allowing automated licensing, supporting the collection of royalty and attributing the creators. The copyright protection of the rights management information is written in law, which marks the acknowledgement of the fact that digital watermarks, metadata, and identification codes are the necessary infrastructures to run copyright administration in the networked environments. The criminal sanctions provided by **Section 65B**, such as a maximum sentence of two years along with fines, indicate the desire of the lawmakers to discourage a strong urge to interfere with rights management systems. The success of the provision relies heavily on the ongoing adoption of the rights management systems by the owners of copyright and development of technological standards that will provide interoperability across various platforms and using devices.

6.2 Judicial Interpretation and Policy Challenges

The Indian courts began to consider the balance between the laws protecting technology and fair dealing exception, fancied scenarios where circumvention is needed to make the use of the technology lawful (such as criticism, personal study or research). Cases like ***Super Cassettes industries Ltd. versus MySpace Inc.***[32] and Chancellor, Masters and Scholars of the University of Oxford versus. have been recently made. The question deliberated upon by Rameshwari Photocopy Services is whether digital locks and metadata limitations will frustrate statutory public rights, prompting more judicial aggressiveness against unreasonable technological interventions. Matters of practice continue to trouble them: due to the complexity of circumvention tools, fair dealing is often inhibited even when legalized in law. [33]Copyright offices and technology agencies have been commissioned by the government to possess the chance of safe harbor mechanisms and compulsory licensing models to ensure a characteristic access with guardianship of digital rights management. With the technological advancement and regulation coexisting, the statutory provisions of India aim to reinforce the idea of copyrights at the expense of denying citizens and users of their basic needs of accessibility and

[31] Aishwarya Chaturvedi, Rights of Internet Broadcasters in India, 30 J. INTELL. PROP. RTS. 314 (2025).
[32] Super Cassettes Indus. Ltd. v. MySpace Inc., 2016 SCC OnLine Del 6717 (India).
[33] The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs., 2016 SCC OnLine Del 5128 (India).

freedom of expression and speech.[34]

VII. COMPULSORY LICENSING AND STATUTORY LICENSING MECHANISMS.

7.1 Mandatory licensing regime under section 31 and the reason why this would be logical in society.

The mandatory licensing as it is stated in the copyright act of 1957, Section 31 is one of the most important legislative tools to make sure that works of intellectual and cultural interest are not unduly unavailable, when the holders of the copyright refuse to license it on reasonable terms, or the works of intellectual and cultural interest are not left without publication even when there is a publicly proven demand. The essence of it is the idea that the provision of exclusivity embodied in copyright is moderated by a more comprehensive social and educational benefit: the societal and educational progress that would be manifested through the proliferation of knowledge and culture. The Copyright Board under the historical regime was able to require creators or publishers who refused to license their work on commercial terms reasonably acceptable to themselves to lead third parties to use their work under specific conditions, or to pay royalty to the Copyright Board. Even with the abolition of the Intellectual Property Appellate Board and its duties transferred to particular chambers within the High Courts, the statutory structure still operates, maintaining the safety-valve nature of the compulsory licensing.

The necessary conditions in order to obtain a **Section 31** compulsory license are as follows: a good faith request seeking permission to use the work should have been made and refused, or the work must not have been published or there should have been adequate public inquiry; The use must also have a purpose, which must be found to be socially beneficial, the use in case of a visual impaired individual or translation into a vernacular, etc. When such requirements are fulfilled, applicants can request the agency in charge to assess aspects of the justification of the refusal of the owner, the possible market effect of the proposed use and the need of access to support the education or the public interest. Royalties are afterwards calculated based on common licensing charges, economic worth of the work, and payment ability of the applicant which ensures the creators will get fair compensation and ensure the work is used socially

[34] Kartik Chawla, Oxford University v. Rameshwari Photocopy Services - Reshaping the Copyright Discourse, 13 INDIAN J.L. & TECH. 1 (2017).

appropriately.

The policy purposes of mandatory licensing are also two-fold: to avoid an unnatural shortage or monopoly of access, and to ensure continued incentive of creatively producing works as it ensures authors and publishers receive a compensation fee on works they would not otherwise permit to be used. By working the access and pricing problems into an organised administrative process, compulsory licensing saves transaction costs and circumvents the inefficiencies of piecemeal negotiations especially in markets where such negotiations would otherwise over thousands of works be impossible. Additionally, through provision of clear refusal and royalty computing norms and purposes criteria, Section 31[35] facilitates transparency and predictability, steering the rights holders and the potential users in seeking fair resolutions that meet the ownership and the needs of the people.

7.2 Statutory Licensing in Broadcasting and Education: Sections 31D and 32.

Besides the broad-based compulsory licensing, the Act proposes specialized statutory licensing regimes to broadcasting organisations and educational translators where transaction-cost and access speciality issues in these segments are identified. **Section 31D**,[36] which has been introduced by ***the Copyright Amendment Act, 2012,*** affords broadcasters the right to make availed publication literature, musical, as well as sound recordings available to the people without any individual bargaining, on the condition that they supply notice to the right holders and pay royalty at the rates which are provided by the relevant authority or otherwise agreed upon. This model recognizes the inevitable diffusion of content that broadcasting is intrinsically, and that licensing of individual broadcasts would be prohibitively administratively burdensome. Section 31D[37] encourages vibrant public discourse within radio and television sectors through standardization of royalties and simplifying the process of granting rights, whereas protection of economic interests of creators is promoted through the clear, predictable, system of royalties.

Section 31D has been a subject of extensive litigation, especially on whether it applies to streaming platforms found online. The traditional broadcasters, who transmit content on a terrestrial, satellite, or cable network are not only evidently covered, but on-demand and

[35] The Copyright Act, 1957, No. 14 of 1957, § 31, INDIA CODE (1957).
[36] The Copyright Act, 1957, No. 14 of 1957, § 31D, INDIA CODE (as amended 2012).
[37] ibid.

interactive streaming services have generally stayed out of the range of these High Court decisions, which focus on the statutory wording that defines the organization of the broadcasting. The reason behind such rulings is the judicial apprehension that a broad statutory license to digital streaming would subvert the rights holder in their capacity to negotiate the compensation they merit in the basis of the new forms of digital revenue. As a result, there is divergent usage of streaming services as they obtain direct licenses, maintaining negotiations on the market with traditional broadcasts enjoying the statutory regime.

Section 32[38] offers equivalent statutory licensing in educational usage, allowing translators and adapters to issue a translation or an adaption of a work with the use of it in educational institutions as it would otherwise not be allowed and with payment of royalties, in this instance, after the course of waiting specified in the sections. It is created to put into practice the educational oriented appendix of the Berne Convention and enables translation of works into Hindi or English or into other principal languages of India after two years since the first publication and into other less popular languages after 3 years but at a reasonable licensing fee that is set by the licensing authority. This stepped pyramid is a fact of the market: Voluntary licensing is generally pro-cyclically offered sooner on works in widely spoken languages, and on the translations into regional or minority languages the waiting period would be longer to bring into consideration compulsory intervention. **Section 32** allows fair access to academic content, as translation and adaptation allows educational institutions to offer curriculum in the native language of the students without incurring prohibitive licensing fees or by the publishers rejecting permission.[39]

Although this has theoretical strength as a statutory licensing provision, there has been little practical application of this provision. The obstacles are the complexity of the procedures to be followed in order to apply to the licensing authority, the confusion regarding the calculation of the relevant royalties when there were no up to date rate making guidelines, and the tendency of institutional users to order original material or make voluntary license.[40] To cope with these issues, it might be necessary to simplify application procedures, revise royalty-setting conditions with reference to the existing market rates, and increase the level of awareness about the possibilities and advantages of using the statutory licenses among educational and

[38] The Copyright Act, 1957, No. 14 of 1957, § 32, INDIA CODE (1957).
[39] Amoha Sharma & Jahnavi Mitra, Digital Rights Management and Fair Use, 4 NLIU L. REV. 243 (2018).
[40] Adarsh Ramanujan & Arul George Scaria, Indian Copyright Law and Generative AI, SSRN SCHOLARLY PAPER (Nov. 21, 2024), https://ssrn.com/abstract=5028835.

broadcasting stakeholders.[41] These reforms would support the balancing goal of the Act: maintaining the right of the owners of copyright revenues and the principle of access of important cultural and educational materials to the diverse populations relying on them. [42]

VIII. EMERGING CHALLENGES: ARTIFICIAL INTELLIGENCE, DIGITAL PLATFORMS, AND REFORM IMPERATIVES

8.1 AI and Copyright Infringement: The ANI Media v. OpenAI Litigation.

With the emergence of generative ***artificial intelligence (AI)***, new and challenging issues emerge regarding traditional doctrines of copyright law. The case of ***ANI Media Pvt. Ltd. v. OpenAI*** in the Delhi High Court of India is the first effort to thoroughly address the intersection of AI and copyright law infringement in courts. ANI claims that it was training its copyrighted news content on OpenAI large language model, ChatGPT, without permission and without any payment, as it argues that this use infringes the reproduction and communication rights of Section 14. ANI further alleges that the generated responses based on AI do recreate or closely replicate the original ANI works and this is a direct infringement on the rights of derivation and reproduction rights. The legal issues involved in the case are the following: does AI training that includes storage and ingestion of data that is also under copyright amount to infringement; does AI-generated work that uses or asserts similarity to copyrighted work qualify as unlawful derivative works; and can Indian courts competently exercise jurisdiction over OpenAI since its servers are located out of India despite affecting operations in Indian territory.[43]

OpenAI justifies its activities on the basis of fair dealing principles, and the fact that machine learning algorithms not only do not create or consume works in an expressive way, but also identify statistical tendencies to translate the input data into specific outputs.[44] Based on the comparison to exceptions to Japanese copyright regarding non-enjoyment use and the emergent European laws distinguishing between informational extraction and expressive copying,

[41] The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, INDIA EXTRAORDINARY GAZETTE, Notification No. F. No. P-24017/28/2021-IPR-I (Apr. 4, 2021).
[42] Christophe Geiger, Giancarlo Frosio, Oleksandr Bulayenko & Axel Metzger, Platform Liability Under Article 17 of the Copyright in the Digital Single Market Directive, Automated Filtering and Fundamental Rights: An Impossible Match, 70 GRUR INT'L 517 (2021).
[43] Navdeep Kour Sasan, TRIPS and Copyright Protection in India: An Overview, 1 PARIPEX—INDIAN J. RES. 98 (2012).
[44] Ayush Sharma, Indian Perspective of Fair Dealing under Copyright Law: Lex Lata or Lex Ferenda?, 14 J. INTELL. PROP. RTS. 523 (2009).

OpenAI proposes its training operations to be free of infringements.[45] The possible case also raises the issue of the jurisdictional question, where the OpenAI claims that Indian courts do not have any jurisdiction because of its overseas operating base. The risk to the delicate legal and technological issues involved in the case can be seen in the appointment of experts by Amici Curiae by the Delhi High Court as it is an indication that there may be foundational jurisprudential principles that would govern AI, copyright and fair dealing in India.[46]

8.2 Policy and Reform Imperatives Amid AI Evolution.

The ANI-OpenAI case represents international controversies on the so-called value gap, where digital platforms, especially the developers of AI and its content aggregators, are making a lot of economic money out of works that were created by other people when they should not be remunerating such individuals. Article 17 of the Digital Single Market Directive by the Europeans creates even tougher platform liability and licensing requirements. The safe harbor provisions in the Information Technology Act are currently the backup of India, protecting the platforms which lack knowledge of infringement on factual grounds. This is a controversial subject in the copyright community as some believe that it is not sufficient to promote innovation in such a manner without pushing the rights of creators.[47]

The copyright law in India is in great need of a reform to tackle the AI-related challenges and technological change demands and international harmonization. The section 52 narrow closed listing fair dealing approach progressively adversely affects flexibility in response to emerging creative appropriation forms, including AI training and artificial content generation. The fact that the 2025 introduction of an expert committee by the Government of India to investigate the effect of AI on the copyright law indicates that the current statutes are not considered by the Government of India as complete.[48] Reforms would involve statutory definitions of AI training and generated works, to allow increased fair dealing purposes in reflecting modern

[45] Salal Basalamah, Compulsory Licensing for Translation: An Analysis of the Berne Appendix, 40 IDEA 503 (2000).
[46] M. Ficsor, Copyright, Balancing of Interests, and Developing Countries, WIPO PRESENTATION MATERIALS, WIPO/IP/GRTKF/BRA/12 (Aug. 2012), https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ip_grtkf_bra_12/wipo_ip_grtkf_bra_12_topic_11_presentation_ficsor.pdf.
[47] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, art. 17, 2019 O.J. (L 130) 92.
[48] Ragini P. Khubalkar, AI and Intellectual Property in the Digital Age: Emerging Challenges in Indian Copyright and Trademark Law, 2 IPR J. MAHARASHTRA NAT'L L.U. NAGPUR 87 (2024).

research and creative uses (such as data journalism and accessibility), codification of the transformative use tests, and doubling of enforcement as an aid against an advanced form of digital infringement. These reforms would need to strike a balance between India and treaty obligations with the Berne Convention and TRIPS, local support of content creation, educational and research access, and ensuring technological innovation and development of artificial intelligence. The evolving ANI v OpenAI case. The key recommendations to framing this multifaceted legal and policy landscape can be found in this.

9. CONCLUSION: TOWARDS A BALANCED AND ADAPTIVE COPYRIGHT FRAMEWORK

The Indian copyright regime is at an important crossroads between the underlying assumptions that were made for analogue creation and distribution of yet to be produced material, and digital technologies that radically alter the nature of creation, reproduction and distribution. Despite the important roles that fair dealing has fulfilled in ensuring space for criticism, scholarship, and personal use, its definition as being composed of a closed list and having narrow purposive practices has become increasingly apparent. Comparative studies of the global frameworks both show that different alternatives, from US flexible fair use, through Japanese non-enjoyment, to European harmonization strategies, serve as useful models for reform, and point to tradeoffs between predictability and flexibility, creators and users, sovereignty and harmonization.

A major deficiency currently in our statutory framework is its inability to hold up to emerging forms of socially beneficial use that do not fit the enumerated categories of use. Parody, pastiche, commentary; data journalism demanding analysis of large bodies of protected material; accessibility projects making content accessible to disabled persons; training artificial intelligence for positive purposes - all of these use cases make strong assertions for fair dealing but are exposed to infringement liability under a narrow reading of Section 52. While theoretically broad, the educational fair dealing provision has uncertain boundaries which allow for choking down of legitimate activities and creating unnecessary litigation as is evidenced by the protracted Delhi University photocopying case. There is no clear definition of quantitative and qualitative restrictions on the amount of copying permitted, which encourages risk aversion on the part of educational institutions that vitiates the policy goals of the provision.

Technological protection schemes and digital rights management systems - If not properly calibrated, such systems may prevent the commission of large scale piracy, but possibly at the expense of creating de facto extinguishment of fair dealing rights. The statutory text allowing circumvention for lawful purposes theoretically saves fair dealing but the combination of practical prohibitive obstacles to circumventing advanced technological barriers, and criminal sanctions for circumvention "chills speech" even when engaging in indisputably lawful conduct. Reform measures should also provide for open systems through which users can get circumvention help for fair dealing purposes, such as designated agencies with mandates to provide such access or compulsory licence provisions in which copyright owners must serve unlocked versions when fair dealing need is proved.

Unless the artificial intelligence conundrum is addressed urgently enough, the potential for years of lack of clarity on the issue may either disincentivize valuable innovation or allow wholesale appropriation of creative works without payment. It is important to strike a balance that acknowledges that some types of technical analysis - especially where outputs are not substituted or infringe substantially on training material - have important societal purposes in the field of technology and that creators must be covered back where works are providing economic value to AI systems. Options to consider include statutory licences where AI training must be paid for through reasonable royalties, transparency requirements where AI companies must reveal training data sources and create opt-out mechanisms and clarification that output substantially reproducing protected works is a derivative work needing authorisation regardless of the generative method used.

Uppermost on the reform agenda is not just fair dealing, artificial intelligence, but structural issues such as enforcement, remedial frameworks and the institutional architecture. The dissolution of the Intellectual Property Appellate Board has resulted in the disappearance of specialized bodies to deal with copyright disputes and the delay in resolution. We would like to see, for example, the establishment of dedicated benches for intellectual property litigation in High Courts, expansion of mechanisms for alternative dispute resolution and the development of light-touch processes for kinetics involving infringement on the internet which will have the greatest impact on achieving enforcement effectiveness and cut down on litigation costs and delays. While criminal provisions play a useful role in deterrence, they need to be recalibrated so as to minimize over-reaching and ensure that there is an appropriate level of sanctions for commercial pirates alongside a lower degree of sanctions on the individual end-

user whose infringement causes minimal harm.

Some Indian reforms will necessarily be shaped by doctrinal trends of European Digital Single Market Directive, US AI litigation, and Japanese flexible exception regimes based on direct treaty commitments and fear of competition for competitiveness of investment. However, India needs to create its own policy that is consistent with its domestic priorities: access to education in a growing population in a developing economy needs to democratize knowledge; to build up local creative industries that are already under threat from better-capitalized foreign content providers and to develop AI and digital innovation where India has human and entrepreneurial assets.

The copyright system ought to be one of where flexibility adaptable to the inevitable advances of technology, clear boundaries, reasonable certainty of creator and user rights and obligations, effective response to commercial piracy without excessive litigation of marginal cases, and equitable balance that promotes creation, yet keeps knowledge and culture accessible to society for the good. The reformulated doctrine of fair dealing, that is, fair use, or else expanded by a group of additional enumerated purposes and principles of flexibility, would have to sit in the middle of this reformed structure as the key way in which copyright law channels the fundamental tension between private goods and public goods.

The way forward involves an ongoing, sustained engagement of many party stakeholders such as creators, publishers, technology companies, educational institutions, libraries, users, legal practitioners and policymakers to find consensus on the right scope and limitations of copyright in the digital age. An important part of the process will be international debate and comparison, but outcomes must be in the final analysis a function of India's own circumstances, values, and developmental aspirations. The difficulty is not a choice between creator protection and public access, between rigid rules and flexible standards, between technological innovation and cultural preservation, but between building measureable schedules for protecting legitimate interests in these various fields while being sufficiently elastic to meet the challenge of an uncertain technological and social future. The imperative to reform is now such that no delay can be made, as each year that copyright law falls behind current reality creates unnecessary litigation, stifles beneficial uses, allows deleterious appropriation, and causes public confidence to-withdraw in the public essential intelligence property systems, which should command large scale legitimacy to function well.