
PARODY AS FAIR USE: A CRITICAL LEGAL INQUIRY ACROSS COPYRIGHT REGIMES

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ABSTRACT

The digital landscape has elevated parody as a significant instrument for both social critique and artistic expression through memes and remixed videos and other user-created content. The rise of parody in user-generated social media content has led to a legal conflict between copyright holders' exclusive rights and user freedom of expression. Traditional copyright systems are facing difficulties when trying to modify their frameworks for this new digital communication environment. The study examines how different legal systems approach parody protection through their copyright regulations. The continuous conflict between copyright enforcement and digital creativity, particularly concerning the expansion of user-generated content led us to select this topic for our study. This paper dives into how different places deal with parody under copyright law. Aspects of global discourse around fair use and fair dealing have become increasingly contentious in recent years. Think *Campbell v. Acuff-Rose Music Inc.* and the changing usage of the term fair dealing under the EU InfoSoc Directive. However, there remains a sparse number of comprehensive comparative research which include both Western and non-Western countries. South Africa and Singapore are significant participants in the discourse on the globalisation of copyright practices because they have hybrid legal systems. This study employs a qualitative comparative approach using case studies and literature reviews with doctrinal analysis of statutes, case law, and regulatory regimes. The study aims to clarify the legal status of parody, unpack its suitability for the digital environment, and draw best practices from multiple jurisdictions.

Keywords: Parody, Fair dealing, Copyright infringement, digital media

Introduction:

Parody in the age of the internet has emerged as a powerful weapon of critique, satire, and social commentary. It comes in the guise of memes, remixed films, and user-generated videos that spread far and wide on sites such as YouTube, Instagram, and Twitter. Such works interact with already existing copyrighted content in order to bring into existence new meaning, frequently in a playful manner. But this creates inherent legal conflicts that how can copyright law protect the owners of copyrighted works while giving right to parody the copyrighted works. Parody is one of the burning topics in copyright law today.¹ Historically, parody is a form of art used to present a comical and satirical version of some other works. Hutcheon calls parody is one of the major forms of self-reflexivity in twentieth-century art forms, making the intersection of creation and re-creation, of invention and critique. In contemporary culture, parody is recognised as an important expressive tool, capable of conveying socio-political views. It serves as a form of entertainment, criticises source works, acts as a means of expressing social and political views of public concern, and adds to the continuing development of art and literature. the intention of humor is generally seen as preferable to requiring a specific humorous effect, especially when considering the fundamental right to freedom of expression.² In contemporary society, particularly with the rapid proliferation of digital technology, parody has become a powerful weapon for social critique, satire, and commentary. The societal contributions of parody are immense. It is a potent instrument for freedom of expression and social criticism, often used to criticise the original work, its author, or other unrelated matters.³ The paper focuses on resolving issues critical to parody and copyright, specifically addressing the determination of commercial competition between the parody and the original work.⁴

Background of the study:

Parody has been safeguarded in most jurisdictions as a valid means of expression for a long. In the United States was the landmark case⁵ that held parody to be a fair use, even if commercial. The European Union, by the InfoSoc Directive (2001/29/EC), identifies parody as a copyright exception but leaves it to be interpreted by member states, and hence there is diversity in

¹ Nidhi Sinha & Priyank Jagawanshi, *The Stance of Parody under Copyright Law*, 3 INT'L J.L. MGMT. & HUMAN. 50 (2020).

² Christophe Geiger, *Parody and Copyright in the European Union Law*, Max Planck Institute for Innovation and Competition Research Paper No. 14-10 (2014).

³ *Ibid* 2

⁴ *Supra* note 1

⁵ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

judicial application. Singapore's Copyright Act 2021 formally includes parody in exceptions allowed, whereas South Africa, through statutory laws and reading of the constitution, is inclined to have parody covered under freedom of expression. By contrast, India's Copyright Act, 1957, lacks an explicit exception of parody. Section 52(1)(a), the exception of "fair dealing," is unclear and does not refer to parody. This judicial vacuum leads to uncertainty among artists, comedians, and internet surfers who tend to get threatened legally for copyright infringement. The author Alan J Yogyaveedu in *Nuisance in as fair dealing or an illegal infringement from the distinct exclusive rights of a copyright owner* remains the subject of this study. The article illustrates how copyright infringement can be identified and how some uses, such as parody, may be forgiven by referencing certain statutory provisions, for example, Sections 13, 14, 51, and 52 of the Indian Copyright Act. The U.S. Supreme Court in *Campbell v. Acuff-Rose Music Inc*⁶ upheld parody as fair use for commercial use, and defines parody as a transformative commentary on prior works. Whereas India has a more limited fair dealing standard as per Section 52 of the Copyright Act, 1957, it demonstrates the United States' comparatively large and flexible fair use doctrine. This paper observes that Indian courts have to develop standards for finding out parody.⁷ This paper *Fair Dealing Under the Copyright Law: A Critical Analysis* authored by Radhika Bhusari aims to examine the legal framework that governs fair dealing under copyright act, 1957 and to examine whether Indian copyright act, 1957 harmonizes the interest of copyright holders with public interest. This paper seeks to study the comparison of parody under Indian copyright and international regimes. It shows the evolution of British Copyright Act, 1911 to Indian Copyright Act, 1957 with amendments. Unlike the broad and flexible idea of "fair use" as outlined in the U.S. law, the author clarifies that Section 52 of Copyright Act, 1957 has a closed set of limitations. This paper deeply examined landmark case laws like *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*,⁸ and *Civic Chandran v. Ammini Amma*⁹. which demonstrates different usage of fair dealing by the courts that often leads to legal uncertainty.¹⁰ This paper *Role of Copyright law in Education and Educational Institution* focuses on the cross-section between IP and the right to education. This research examines statutory mechanisms—particularly exceptions and limitations—that facilitate access to educational material for students, teachers

⁶ Ibid 5

⁷ Alan J. Yogyaveedu, *Nuisance in the Parody and Copyright Infringement in the Indian Context*, 1 LEXFORTI LEGAL J. 8 (2019-2020)

⁸ *Super Cassettes Indus. Ltd. v. Hamar Television Network Pvt. Ltd.*, 2011 SCC OnLine Del 2062.

⁹ *Civic Chandran v. Ammini Amma*, 1996 SCC OnLine Ker 36.

¹⁰ Radhika Bhusari, *Fair Dealing under the Copyright Law: A Critical Analysis*, 5 INT'L J.L. MGMT. & HUMAN. 1077 (2022)

and institutions, as well as the protective role for artists of copyright law. It is devoted to the analysis of Section 52(1)(i) of the Act which permits the reproduction of copyright material for the purposes of education, involving the reproduction of short extracts from published works, the performance of a literary or dramatic work in class, and reproducing a performance by a teacher or student during the course of instruction. The DU Photocopy Case¹¹, in which the Delhi High Court ruled fairly for educational institutions' use, also receives superb discussion within the paper. This decision just goes to show that even with potential intellectual property rights, courts are able to interpret so they protect educational access. The findings of the research reflect this growing emphasis on online learning environments, digital education and e-learning resources, especially in a post-COVID-19 world. The fact that copyright material is being copied, distributed and communicated in digital and often cross-border contexts raises some concern about the extent to which the existing legal system can respond to changes in technology.¹² This research "From Laughter to Litigation: A Study of Copyright Law and The Right to Free Speech in the Context of The Limits of Parodies," examines the complexities of copyright infringement, the constitutional right to free speech, and parody as a legitimate form of expression. The study has a main question that seeks to learn if parody is in fact legally protected by Indian copyright law plus how this then impacts free speech under Article 19(1) of The Indian Constitution. The article begins by examining parody artistically as well as legally. It uses court rulings and legal dictionary definitions. It examines how parody functions as creativity that imitates the original work and/or makes fun of the original work for the purpose of commentary, often to highlight important societal issues. The author notes that parody is not entrenched in Indian copyright law, especially since there is no equivalent "fair use" theory comparable to the US. Rather, the Indian legal system is governed by the fair dealing provision and also that provision is more stringent under section 52 of the Copyright Act of 1957. The paper skillfully navigates through the tension between copyright holders' exclusive rights and artists' creative liberties. Parody should have stronger legal protection since it expresses democratic ideas.¹³ The Author Graeme W Austin analyzes how the two legal systems US and EU interpret and regulate the use of copyrighted works for parody and satire in this paper EU and US Perspectives on Fair Dealing for the Purpose of Parody or Satire. A

¹¹ The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs., 2016 SCC OnLine Del 5336.

¹² Ravinder Kumar, *Role of Copyright Law in Education and Educational Institutions*, 5 J. Intell. Prop. Rts. 315 (2000)

¹³ Clarissa Marie M. Gozos, *From Laughter to Litigation: examining the legal limits of Parodies in relation to Copyright law and the right to free speech*, (2024)

primary purpose of the paper is to explore the scope and limitations of the fair dealing (of the EU) and fair use (of the US) exceptions in relation to satirical and parodic artworks, which often utilize paintings and other works in a derivative way. It undertakes a comparative analysis of how each state both protects the rights of copyright holders as well as the freedom of expression, in order to determine whether either system offers a better legal landscape for artistic freedoms. The article studies *Campbell v. Acuff-Rose Music Inc.* (1994), a landmark case, regarding expanding parody's definition under the fair use doctrine in U.S. law. It is unclear whether or not the legal basis of the arguments is weakened by the absence of this case law research. The U.S. model, which utilizes a four-factor test which includes the purpose, nature, amount, and marketplace impact of the use, is described as more flexible. The EU framework is formal and is especially so with respect to the InfoSoc Directive (2001/29/EC)¹⁴. Although Article 5(3)(k) of the Directive makes provisions for parody exclusions, the lack of uniformity by member states results in differences on the scope of use. The *Deckmyn v. Vandersteen* (CJEU, 2014)¹⁵ decision, in which the Court recognized parody as an acceptable exemption from copyright protection but cautioned that, among other considerations, parody needed to consider the copyright holder's rights and freedom of expression, is discussed in this paper. The paper notes the EU's clear but limited predictability on fair dealing is in contrast to the flexibility at work in U.S. fair use, whilst revealing the restraints of EU Moral Rights.¹⁶ The paper *The Stance of Parody under Copyright Law* considers the legal position of parody as an expression and its relationship with copyright protection. The author seeks to establish whether parody, which frequently involves replicating copyright protected works for the purpose of entertainment, or critique, is fair use under copyright law, or constitutes infringement. The study does feature some references to international regimes but is focused on Indian copyright law. The paper first establishes a definition of parody, once again, both legally and creatively so that parody may be distinguished from satire, and other forms of criticism.¹⁷ As an exception to copyright protections, *Parody as a Means to Advance the Objectives of Copyright Law* shares one key focus with its title, how parody functions as a form of artistic expression that furthers the goals of copyright law instead of undermining them by transforming work into new expression, criticism, or meaning instead of merely reproducing the original. In this sense, this

¹⁴ InfoSoc Directive (2001/29/EC)

¹⁵ Case C-201/13, *Deckmyn v. Vandersteen*, ECLI:EU:C:2014:2132 (CJEU Sept. 3, 2014).

¹⁶ Graeme W. Austin, *EU and US Perspectives on Fair Dealing for the Purpose of Parody or Satire*, 39 U.N.S.W.L.J. 684 (July 2016)

¹⁷ Nidhi Sinha & Priyank Jagawanshi, *The Stance of Parody under Copyright Law*, 3 INT'L J.L. MGMT. & HUMAN. 50 (2020).

article seeks to understand whether parody's inclusion in copyright exceptions supports and furthers the constitutional aims of promoting the creative arts, free expression, and access to knowledge. Parody as an exception to copyright, the article promotes creativity and freedom of expression where copyright protects free expression, although limited by copyright. In addition to examining Indian copyright law, the study also takes a comparative approach, with a focus on South African law. The contribution of South Africa's constitutional approach, where parody is evaluated through the lens of freedom of expression from Section 16 of the South African Constitution, is one of the paper's primary contributions. The Constitutional Court found that the right to parody is a legitimate form of democratic social critique in the 2005 case of *Laugh It Off Promotions CC v. SAB International (Finance) BV*.¹⁸ The study posits that countries like India may benefit by partaking in the same rights-based approach to include freedom of expression in the copyright exceptions.¹⁹ The article "Fair Use for Parody, Satire, Caricature, and Pastiche" thoughtfully assesses the legal possibilities under the doctrine of fair use or fair dealing for transformative forms of expression, namely parody, satire, caricature, and pastiche, and their relationship with copyright. The article's main purpose is to consider the position of these expressive works in the law, specifically examining Singapore's recent amendments to its copyright law that attempts to balance copyright enforcement, freedom of expression, and the public good. One of the most significant parts of the paper is its detailed consideration of Singapore's Copyright Act 2021, which established a specific exception that allowed for the use of a copyright work for parody, satire, caricature, or pastiche under Section 243. This is quite a fundamental change from Singapore's previous position under the 2006 Act that did not generally allow for these kinds of exceptions. The paper states that the change was a result of comparative legal research and public engagement, aligning Singapore's approach with international trends in allowing transformational use. The author highlights the 2021 amendment as a legislative advancement which promotes new artistic expressions particularly within online environments and broadens democratic discourse and creative freedom.²⁰ The study, "Parody and Copyright in the European Union Law", explores the legal definition of parody under EU copyright law. The study is concerned with the implementation of Article 5(3)(k) of Directive 2001/29/EC (the InfoSoc Directive), which allows member states the option of allowing the use of copyrighted works in the name of

¹⁸ *Laugh It Off Promotions CC v. S. African Breweries Int'l (Finance) BV*, 2005 (8) BCLR 743 (CC) (S. Afr.).

¹⁹ A. J. Van der Walt & R. M. Shay, *Parody as a Means to Advance the Objectives of Copyright Law*, 25 S. AFR. MERCANTILE L.J. 1 (2013)

²⁰ Wee Liang Tan, *Fair Use for Parody, Satire, Caricature, and Pastiche*, 39 SING. L. REV. 136 (2021-2022).

caricature, parody or pastiche, as its aim is to provide insight into the role of parody as statutory legal exception under EU Copyright directives. The study provides detailed examinations of the historic case of *Deckmyn v. Vandersteen* (C-201/13)²¹ as ruled upon by the Court of Justice of the European Union (CJEU) which set out the parameters around the parody exception. According to the CJEU, a parody must "evoke" (be distinct) an existing work, and demonstrate a "humorous or mocking" use, as discussed in the article. Importantly, the Court emphasized the need to reach a fair balance between freedom of expression and copyright beneficiaries' rights. The study also discusses how parody is upheld under the parody limitation in a variety of EU member states, and noted that the national approaches differed dramatically and led to inconsistent legal results in EU member states.²² In the article "The Treatment of Parodies under Copyright Law in Seven Jurisdictions," a comparative legal analysis of the treatment of parodies under copyright regimes in seven countries such as the United States, the United Kingdom, France, Germany, Canada, Australia and New Zealand was provided by both the authors. The central purpose of the article was to investigate whether and how different countries recognize parody as a legitimate exception or defense to copyright infringement, while focusing on how best to balance protecting the rights of authors with ensuring that the right to freedom of expression is protected. The first step in the article was to create a conceptual framework outlining parody and its cultural role as a particular type of satire, commentary, and critique. Subsequently, the copyright framework of each jurisdiction was explored methodically, highlighting relevant statutes, case law, and judicial development. This paper's comparative framework demonstrates how the legal cultures and constitutional prescriptions, like freedom of expression, artistic freedom, and moral rights, affect the legal status of parody. Although the public interest issues of each jurisdiction are essentially the same, it clearly illustrates that there has been no international harmonisation.²³

Statement of the problem:

While parody has emerged as a leading form of online expression and cultural critique, it remains not expressly exempted under Indian copyright law. Artists risk censure and legal recourse because neither Section 52 of the Copyright Act, 1957, nor judicial doctrine offers

²¹ Supra note 13

²² Christophe Geiger, *Parody and Copyright in the European Union Law*, Max Planck Institute for Innovation and Competition Research Paper No. 14-10 (2014)

²³ Reto M. Hilty & Sylvie Nérison eds., *The Treatment of Parodies under Copyright Law in Seven Jurisdictions* (Springer 2019)

assurance.²⁴ The absence of regulative guidance causes repression of satire, degradation of democratic speech, and restriction of artistic liberty, problems especially grievous in the online scenario where parody thrives because successful parody often requires extensive borrowing from the original piece. Comparatively, more formalized models that find a middle ground between copyright protection and freedom of expression are provided by nations such as the US, UK, EU, Singapore, and South Africa. The test of transformative use is at the core of the United States' open-ended fair use under 17 U.S.C. § 107, which distinguishes it.²⁵ The Supreme Court expressly safeguarded parody as transformative speech in *Campbell v. Acuff-Rose Music, Inc.*, and upheld that even commercial parodies can be treated as fair use when they convey a new meaning or message rather than serving as market substitutes.²⁶ Through the addition of Section 30A in 2014, the UK amended its Copyright, Designs and Patents Act 1988 specifically to permit parody, caricature, and pastiche consistent with the EU's InfoSoc Directive.²⁷ In *Deckmyn v. Vandersteen*, the Court of Justice of the European Union explained that, provided it doesn't infringe upon fundamental rights such as nondiscrimination, parody should involve mention of the original but remain humorous or satirical.²⁸ Singapore's Copyright Act 2021 employs a hybrid model in the form of an open-ended fair use provision, which offers a shield of protection under transformative use analysis even though it does not mention parody in particular. Parody is not constitutionally recognized in South Africa, yet the courts have been able to maintain it as per Section 16 of the guarantees of free speech of the Constitution. The Constitutional Court emphasized the connection between intellectual property and freedom of expression in *Laugh It Off Promotions v. S. African Breweries International (Finance) B.V.*, confirming the legitimacy of parody in trademark law.²⁹ However, the absence of a parody exception in India puts creators in the cold, with the need for reform an urgent one to align copyright with the best global practice and constitutional protections of free speech.

Research Questions:

1. What are the doctrinal differences between the EU, Singapore, and South Africa's fair

²⁴ Section 52 of copyrights act, 1957

²⁵ 17 U.S.C. § 107 (2018).

²⁶ Supra 5

²⁷ Copyright, Designs and Patents Act 1988, c. 48, § 30A (U.K.); Directive 2001/29/EC, of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society, 2001 O.J. (L 167) 10 [hereinafter InfoSoc Directive].

²⁸ Supra note 15

²⁹ Supra note 18

dealing provisions and the United States' fair use approach in terms of permitting parody?

2. How has the judicial perception of parody been shaped by case law, specifically decisions such as *Deckmyn v. Vandersteen* (EU) and *Campbell v. Acuff-Rose Music Inc.* (U.S.)?
3. How do hybrid systems, like those found in South Africa and Singapore, adapt global norms of copyright to local conditions?
4. What legal uncertainties related to parody are there in India, and how do these affect authors, especially online?
5. What can India gain from observing other nations' strategies to create a just, technologically adopt, and free-expression-compliant parody exception for copyright law?

Research Objectives:

1. to examine the treatment of parody under Singapore, South Africa, India, the United States, and the European Union copyright law.
2. to assess court interpretations of parody under fair use or fair dealing in these countries, statutes, and case law.
3. to identify the strengths and weaknesses of different legal structures (common law, civil law, and hybrid models) in addressing parody.
4. to examine the interplay among copyright law, moral rights, and freedom of expression in the context of parody.
5. to provide recommendations as to how India can modernise its copyright law to accommodate contemporary digital realities and include international best practices.

Research methodology:

The objective of the research is to compare and critically evaluate the protection of parody

under fair use in different countries, such as the U.S., E.U., Singapore (developed countries), and South Africa (developing country), with India and how these laws balance in the protection of copyright owners and the right to parody the copyrighted works. The methodology used in this dissertation is a Doctrinal study. A comparative research approach will be applicable for the topic, "Parody as Fair Use: A Critical Legal Inquiry Across Copyright Regimes."

PARODY AS FAIR DEALING:

Parody, an art form used since antiquity, is defined as an imitation of work with a comical or satirical touch intended to comment, criticise, ridicule, or trivialise the original work. Parody is a crucial form of self-reflexivity in 12th-century art, representing the intersection of creation and re-creation, invention, and critique. It often serves as an influential tool for social commentary and offers diverse perspectives on popular culture and significant societal issues.

I. USA'S STANCE ON PARODY

Fair Use Doctrine and Its Four-Factor Test

The fair use theory, which defends parody's protection in US copyright law, was incorporated into Section 107 of the Copyright Act of 1976.³⁰ To determine if a particular use constitutes fair use, the statute provides a flexible four-factor balancing test: The nature and intent behind the use, the nature of the copyrighted work, the amount and importance of the material used, and the effect on the original work's marketplace. Since these factors are deliberately vague, the courts can apply each case on a case-by-case basis.

1. Purpose and Character of the Use: Judges prefer transformative uses like educational, social, that transform the original work's meaning or context, adding to social value, even if utilized commercially.
2. Nature of the Copyrighted Work: More protection is afforded to creative, fictional, or original works, but a parody's transformative quality will dominate this to permit limited use of highly creative works for commentary or criticism.
3. Amount and Substantiality: Courts determine both the amount and significance of the

³⁰ Copyright Act of 1976, 17 U.S.C. § 107 (2018).

portion employed; parody frequently rightfully employs familiar elements to stimulate the original work without crossing the line of fair use.

4. Impact on the Market: Parody relies on whether the parody injures the market for, or future derivatives of, the original work; negative criticism does not usually legally erode the market value of the original.

A. The Transformative Use Test: *Campbell v. Acuff-Rose Music, Inc.*

The groundbreaking decision in *Campbell v. Acuff-Rose Music, Inc.* (1994)³¹ by the Supreme Court is an example of these concepts in the context of parody. The commercial parody of Roy Orbison's "Oh, Pretty Woman" by 2 Live Crew was involved in this case.³² The Court held that, instead of merely substituting the original, commercial parodies would also qualify as fair use if they are transformative, injecting new expression, meaning, or message.³³ Commerciality is not necessarily precluded by fair use, which is only one of its considerations. *Campbell* therefore differentiated parody from mere copying for entertainment or profit and recognized it as a form of critical commentary permitted by free speech ideals. In parody, amount and market impact factors-three and four are extremely complicated. To ensure audience comprehension, parodists can copy recognizable elements from the original, but only to the extent necessary for criticism. The tune and form of *Campbell* were successfully duplicated by 2 Live Crew to signify the original song without completely supplanting it. On the market impact level, courts draw a distinction between demand suppression, which would be prohibited as an infringement, and demand substitution, permitted due to free expression considerations. The Supreme Court underscored that parody's democratic and expressive functions would be undermined if derivative criticism marketplaces were insulated. Therefore, the fair use approach favors the distinctive status of parody as a transformative, socially significant variety of criticism permitted under U.S. copyright law.

C. The Amount and Market Effect Factors in Parody

Parody also sits uniquely with the third standard, which is amount and substantiality. Parody

³¹ *Supra* note 5

³² *Acuff-Rose Music, Inc.* was the copyright holder of Roy Orbison's *Oh, Pretty Woman*. See *Campbell*, 510 U.S. at 571–72.

³³ *Id.* at 579 (“The central purpose of this investigation is to see... whether the new work merely ‘supersede[s] the objects’ of the original creation... or instead adds something new, with a further purpose or different character...”).

often involves copying a substantial or recognizable aspect of the original because the parodist depends upon the reader's familiarity with the origin work in order to understand the criticism. Courts continue, however, to require the amount copied to be as limited as necessary to "call up" the origin work. To deny the owners of copyrights the right to prevent parodies, the Supreme Court emphasized in the decision that there cannot be a derivative criticism market that is protected by the law. The free speech and the critical importance of the role of a parody would suffer if they were empowered to limit or prevent parodies. As the original's market inevitably gets undermined by criticism, this market impact analysis supports the defense of parody as a criticism form tolerated by the law.

II. PRESPECTIVE OF THE UK ON PARODY

The treatment of parody under UK copyright law has been greatly altered in recent times. Historically, parody was not specifically recognized by the UK as an exception to copyright infringement. Parody cases were assessed on an as-needed basis before 2014 either by invoking existing principles like "criticism or review," or by invoking the general premise of whether a "substantial part" of a work had been borrowed. This vagueness often worked to the advantage of copyright holders and created great legal uncertainty. But the UK legislatively embraced a parody, caricature, and pastiche exception in 2014 when it adopted Section 30A of the Copyright, Designs and Patents Act 1988³⁴ (CDPA), aligning it closer to global trends and EU law.

The Pre-2014 Legal Landscape

Prior to 2014, the substantial part test, which assessed whether a significant portion of a work had been infringed, or generic principles like "criticism or review" under Section 30(1) of the Copyright, Designs and Patents Act 1988³⁵ (CDPA) were employed in resolving parody cases. This limiting framework often benefited copyright owners, particularly when dealing with "weapon parodies," which restricted creative freedom and produced legal uncertainty by aiming at topics other than the original work. When substantial components of the original work were replicated, UK courts hesitated to protect works that were transformative or satirical in nature, compared to the broad fair use concept in the US.

³⁴Copyright, Designs and Patents Act 1988, c. 48 (UK).

³⁵Copyright, Designs and Patents Act 1988, c. 48, § 30(1) (UK)

Section 30A CDPA: The Statutory Exception for Parody

One major transformation was caused by Section 30A CDPA³⁶ introduced on June 1, 2014, that exempted specifically the fair dealing for parody, caricature, or pastiche from copyright infringement. The European Union's InfoSoc Directive³⁷, which provided for member states to implement optional exceptions on parody, pastiche, and caricature, was brought into line with UK law through this legislative reform. By extending rights that had formerly been limited to critique or review, Section 30A provides writers with a solid legal foundation for utilizing copyrighted work in comedic or satirical situations.

The Influence of EU Law: The *Deckmyn* Decision

EU case law, specifically the Court of Justice of the European Union in *Deckmyn v. Vandersteen* (2014),³⁸ still impacts UK courts. The CJEU defined parody as an independent notion with a focus on two fundamental characteristics: the work must evoke a pre-existing work while being easily distinguishable, and it should adopt a mocking or humorous attitude. *Deckmyn* further clarified that parody need not exclusively target the original work, thereby expanding the protective scope to cover a range of satirical and humorous expression. UK courts are likely to reference *Deckmyn* when interpreting Section 30A, ensuring consistency with EU standards even post-Brexit.

Fair Dealing and the IPO's Guidance

The UK Intellectual Property Office advises on implementing the fair dealing test under Section 30A, highlighting three factors: market effect, the degree of use of the original work, and transformative purpose. Parody will be less likely to be considered fair dealing when it has a negative impact on the commercial or licensing market for the original work. Though more copying may be permissible in order to create a comedic or satirical effect, it must still be proportionate in order to maintain fairness. Courts will also look at whether the new work adds something new in terms of expression or meaning, although UK law is less strictly bound by the doctrine of transformative use than U.S. law. Moral rights, such as protection from

³⁶Copyright, Designs and Patents Act 1988, c. 48, § 30A (UK), inserted by The Copyright and Rights in Performances (Quotation and Parody) Regulations 2014, SI 2014/2356.

³⁷Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society, art. 5(3)(k), 2001 O.J. (L 167) 10.

³⁸Case C-201/13, *Deckmyn v. Vandersteen*, 2014 E.C.R. I-0000

defamatory or prejudicial representations, are still in force even if the parody exception applies.

Beyond Criticism or Review

Section 30A significantly enlarges the scope of admissible uses, both for direct parodies and more general humorous works like pastiche and caricature. This legislative recognition underscores parody's role in social commentary, political discourse, and cultural production, providing writers with stronger legal ground while striking a balance between copyright protection and creative freedom. Despite still being more limited than U.S. fair use, the statutory acknowledgment and EU-considered interpretation are a marked improvement, making parody more legitimate for democratic communication and creative art.

III. PARODY AS FAIR USE IN SINGAPORE

Singapore's copyright system saw a dramatic shift with the enactment of the Copyright Act 2021,³⁹ coming into force on November 21, 2021, and particularly with parody, satire, caricature, and pastiche works (hereinafter abbreviated as PSCP works), together. The Act provided a general fair use provision under Section 190,⁴⁰ unlike the former stringent fair dealing regime with permissible use being restricted to expressly specified purposes of news reporting, criticism, research, and education. Singapore aligns further with the US flexible fair use approach with this provision allowing judges a greater discretion of examining a broader spectrum of innovative and transformative works beyond rigid classification. Traditional specific exceptions remain operational while cooperating with the fair use provision of an open-ended nature providing judges greater leeway of balancing the copyright protection with the public interest.

An integral part of this assessment is the transformative use principle. Whereas the original work gets replaced with no more use of the work than what's required of a replaceable article of commerce, transformative use takes place when a new work presents a new expression, meaning, or message. When done through the original as a vehicle of criticism, parody as a definition alters intent and injects new artistic or social commentary. Parodies are likely then to become fair use, as an example of a musical spoof that sends a message about the lyrical words of the original song. However, satire or caricature that merely coincidentally uses the

³⁹Copyright Act 2021 (Act 22 of 2021) (Sing.).

⁴⁰Copyright Act 2021 (Sing.) § 190.

original to suggest a broader social comment may require a greater body of evidence supporting use and potential impact upon the market.

From Fair Dealing to Fair Use: A Fundamental Shift

Prior to 2021, Singapore employed an approach based on fair dealing, wherein exceptions relating to copyright infringement were introduced towards specified purposes, such as news reporting, criticism, research, and education, and they were strictly delineated. Although this format left little space for creative use, it was strict, especially when applied to non-traditional pieces that were not neatly one or the other, such as satire or non-critical parody. This is altered by the Copyright Act 2021 that inserts an open-ended fair use provision under Section 190. Due to this provision, courts are at liberty to analyze a greater range of creative, transformative, and socially useful uses like parody, satire, and caricature without the strict classifications being imposed on them. Certain permitted uses continue to apply in Singapore, for instance, for research and education, but they enhance the general argument of fair use and not supplant it. There are more possibilities for courts and producers due to this hybrid model. An incomplete four-factor test modeled from the U.S. theory of fair use has been created under Section 191 of the Copyright Act of 2021⁴¹ in order to determine whether a particular use is fair. These factors are as follows: (i) the nature of the original work; (ii) the nature and magnitude of the part utilized with regard to the work as a whole; (iii) the nature and purpose of the utilization, e.g., educational use, non-profit use, or use that is commercially driven; and (iv) the effect of utilization upon the market for or value of the original work. Not one of these factors is determinative; instead, courts are required to consider each of them individually as a whole while enabling a context-dependent investigation suitable for complex artistic works like parody.

Transformative Use as a Guiding Principle

An integral part of this assessment is the transformative use principle. Whereas the original work gets replaced with no more use of the work than what's required of a replaceable article of commerce, transformative use takes place when a new work presents a new expression, meaning, or message. When done through the original as a vehicle of criticism, parody as a definition alters intent and injects new artistic or social commentary. Parodies are likely then

⁴¹Copyright Act 2021 (Sing.) § 191.

to become fair use, as an example of a musical spoof that sends a message about the lyrical words of the original song. However, satire or caricature that merely coincidentally uses the original to suggest a broader social comment may require a greater body of evidence supporting use and potential impact upon the market.

Commerciality and Market Impact

Singapore's system has a unique approach to dealing with commerciality. Section 191 instructs judges to consider whether a work has a profit motive as one of many factors, but not as a deciding one. If a parody's transformative nature tilts the balance against commercial considerations, a work may still receive fair dealing status. This practice differs from numerous Commonwealth jurisdictions where commercial exploitation overwhelmingly tips the scales against fair dealing and aligns with the U.S. practice of acknowledging the real-world fact that the majority of parodic productions are created with a view to operating commercially.

Balancing Copyright and Public Interest

Ultimately, Copyright Act 2021 embodies Singapore's policy aim of promoting innovation, cultural exchange, and creative production and balancing with the right of copyright owners to exclusive rights. In adopting an adaptive fair use system and placing transformative purpose at the forefront, the law achieves a conscious equilibrium of balancing public interest against copyright protection. Parody thus sits at the fulcrum of Singaporean copyright law and affords an environment of freedom of creation of socially relevant and commercially exploited works with minimal inhibition of a likely infringement. Reforms guarantee parody remains an important device of commentary and satire and cultural expression as part of a legally vigorous and innovation-linked approach.

IV. SOUTH AFRICA'S PERSPECTIVE ON PARODY UNDER COPYRIGHT LAW

South Africa offers a unique location in the international debate regarding parody and copyright. Despite an active culture of satirical sketch material, political cartoons, and musical remixed versions, no clear recognition of parody as an acceptable exception from copyright infringement appears in the Copyright Act 98 of 1978.⁴² Statutory exceptions exist almost entirely for fair dealing under restricted circumstances, such as research, private study,

⁴²Copyright Act 98 of 1978 (S. Afr.).

criticism, review, and reporting of news. These exceptions do not squarely embrace works involving sarcasm, comic imitations, or transformative critique and therefore expose their authors to claims of infringement where substantial parts of copyrighted material are copied. Artists are consequently often forced to obtain prior permission from right-holders, and effectively a veto over works criticizing right-holders is accorded. Review and critique are conceptual cousins of parody and yet are strictly interpreted by the South African courts. Protection under the law requires intense interaction with the original work and clear identification of the source, requirements with which parody cannot always comply. Parodic works often transcend the direct commentary upon an original work and target a wider social, political, or cultural phenomenon. For instance, a musical parody may simultaneously satirize an artist and comment upon injustice in society and yet such use is beyond the exceptions granted. Rigor at law thus restricts creative production and increases the danger of liability and encourages widespread disinvolvement with transformative and critical works.

Constitutional Dimension: Freedom of Expression

Section 16 of the Constitution of the Republic of South Africa Act of 1996⁴³ secures freedom of expression, making the lack of a parody exception especially consequential. Parody acts as a crucial type of protected speech, enriching democratic deliberation, social criticism, and cultural participation. Parody's accessibility also enables sophisticated commentary using relatable cultural allusions with greater audiences reached compared with traditional critique. Prioritizing bulk copyright holders' rights at the expense of individual authors undermines critical speech and the expressive and transformative promise residing in parody. Copyright law aims at supporting artistic production and enabling public use of cultural works. From this viewpoint, parody accords with the policy aim of stimulating creation and innovation. Around the world, parody has become a fair defence under US fair use, UK statutory exceptions and Australian law to show an international tendency towards the protection of transformative speech. Failure of South African law to adopt a special parody exception puts it at odds with modern-day copyright norms and restricts constitutional liberties.

Calls for Reform

Current controversy surrounding the Copyright Amendment Bill⁴⁴ shows a growing

⁴³S. Afr. Const., 1996, § 16.

⁴⁴Copyright Amendment Bill B13B-2017 (S. Afr.).

appreciation of a requirement of supporting transformative uses such as parody. Freedom of speech features as a bill priority and indicates that a purposive interpretation of current fair dealing provisions may allow a coverage of parody by the courts. Also, constitutional supremacy could still allow a reconciliation of statutory restrictions with Section 16 entitlements and lessen the current one-sided-ness. Without express protection, authors are subject to an elevated risk of litigation and possible censorship at the hands of rights holders and are hindered from innovative creation. Introducing a statutory parody exception would bring the law of South Africa into line with international best practice and protect the constitutional right of vibrant public commentary through ensuring that copyright acts as a catalyst of cultural growth rather than an instrument of cultural repression.

Parody as Fair Use in India: A Comparative and Critical Analysis

The Role of Parody in Democratic Disclosure:

Parody acts as a crucial form of cultural expression that enables democratic input, social critique, and political commentary. By blurring satire with humor and critique, parody enables creators to approach issues of society and tap the populace through subtle means. Parody acts as much more than entertainment and yet as a platform through which one may challenge authority, bring attention to social injustice, and aid cultural commentary. Across the world, jurisdictions as varied as the United States of America, the United Kingdom, Singapore, and South Africa have each acknowledged parody as a legitimate means of balancing freedom of expression with the interests of copyright holders and demonstrated parody's contribution towards public commentary. Within India, the lack of express law providing parody as a permitted exception under copyright law presents real doubts.

India's Current Legal Position

India's copyright regime, as administered through the Copyright Act, 1957⁴⁵, neither mentions parody as an exception wittingly permitted nor makes it expressly clear. Courts are thus forced to read parody through the narrow and prescribed purposes of Section 52⁴⁶ of fair dealing provisions, and although parody may possibly fit one of the purposes of criticism or review, neither of these are expressly named nor adequately safeguarded. The gap has forced the

⁴⁵Copyright Act, No. 14 of 1957, India Code (1957).

⁴⁶Id. § 52(1)(a).

judiciary into creating exegetical methods of balancing contending interests, especially the author's right vis-à-vis the interest of the populace in freedom of expression and socio-political commentary.

Fairness Considerations under Section 52

Section 52 requires fairness of use to be ascertained with reference to the purpose, scope, and market effect of reproduction. For parody, leading considerations are the commercial or non-commercial nature of purpose, whether use constitutes fair criticism or illegal exploitation, and quantum of original material used. Market impact still takes precedence also: whether the parody supersedes or devalues the original. These considerations bring a measure of flexibility in fair dealing treatment of creative and transformative works, though there is no explicit statutory recognition of parody.

Jurisprudential Balancing Tests

Indian courts applied balancing tests while assessing fair dealing with no express parody exceptions. In *Civic Chandran v. Ammini Amma* (1996), the Kerala High Court conceded extensive copying could be acceptable where the aim is permissible criticism.⁴⁷ In *Tata Sons Limited v. Greenpeace International* (2011),⁴⁸ the Delhi High Court used a liberal approach permissible for socio-political commentary and highlighted context rather than applying fixed categories like the U.S. distinction of parody and satire. Such judgments reflect attempts at balancing authors' rights and the public interest and freedom of expression, albeit with restricted doctrinal certainty.

Limitation and Uncertainties in the law

Nonetheless, major uncertainties remain. Section 52 offers no numerical direction regarding acceptable copying, and commercial intentions continue to remain unclear. Section 57 moral rights also shield authors from distortion or mutilation and introduce still further legal risk for parodists. Such legal vagueness opens up the creator to possible infringement action and restricts an effective exercise of parody as a transformative or critical device. Parody therefore requires a much needed statutory reform that will openly acknowledge parody, define fair

⁴⁷*Civic Chandran v. Ammini Amma*, 1996 (16) PTC 670 (Ker).

⁴⁸*Tata Sons Ltd. v. Greenpeace Int'l*, 2011 (45) PTC 275 (Del).

dealing boundaries, and bring copyright protection and freedom of expression into line with one another in India.

COMPARATIVE ANALYSIS OF THE US, UK, SINGAPORE, SOUTH AFRICA, AND INDIA:

Various governments have varying degrees of tolerance and protection for artistic expression towards parody. As outlined in *Campbell v. Acuff-Rose Music Inc.* (1994), where parody was recognised as fair use notwithstanding commerciality, the flexible fair use doctrine under 17 U.S.C. § 107 in the United States focuses on transformative use, recognising that effective parody might involve taking the "heart" of the original. Since 2014, the UK has formally provided a parody exception in Section 30A of the Copyright, Designs and Patents Act, 1988; however, as it is subject to a test of fairness, its application is narrower than US fair use. By blending designated approved purposes with an open-ended fair use provision (Section 190) and applying a four-factor test (Section 191) along the lines of the US, the Singapore Copyright Act 2021 takes on a hybrid approach in which transformative use remains essential and even commercial parodies can qualify. Parody, on the other hand, is not necessarily defined by South Africa's Copyright Act 98 of 1978 but falls under rubrics such as criticism or review. This is condemned as undermining the freedom of expression provided by Section 16 of the nation's Constitution, permitting rights holders to censor critical works. Like the US, Singapore, or the UK, India does not have statutory clarity, but is based on broad interpretations of criticism or review under its Copyright Act, 1957. While courts have on occasion extended protection to satire and parody, the absence of an express exception or a transformative-use test creates uncertainty and dissuades creators. Conversely, parody is not expressly identified by South Africa's Copyright Act 98 of 1978, which instead subsumes it under categories such as "criticism" or "review." This is condemned as undermining the freedom of expression that Section 16 of the nation's Constitution protects, enabling rights holders to censor works of criticism. Just like in the US, Singapore, or the UK, India is devoid of statutory precision and uses expansive interpretations of "criticism or review" under the Copyright Act, 1957. Even though courts have, from time to time extended protection to satire and parody, not having an express exception or a transformative-use test creates uncertainty and deters authors.

Suggestions

Statutory Amendment: Insert a new section in Section 52 that expressly recognizes caricature,

satire, and parody as permissible uses.

The Transformative Use Standard Irrespective of commerciality, enact a test that centers on whether the parody presents new expression, meaning, or message.

Quantum Guidelines: Clarify that though it is permissible to replicate the "heart of the work" if needed for parody, it is against the law to duplicate too much and substitute for the original.

Commerciality Rule: Clarify that commercial exploitation will not kill where transformational value is high.

Balance of Moral Rights: Repeal Section 57 to ensure that parody is not restricted unless it leads to harmful association, immorality, or degradation that is more than justified criticism.

Consideration of Compulsory Licensing: Introduce a voluntary licensing scheme for popular commercial parodies to ensure that creators are compensated without eliminating the right of free speech.

Legal Advice: Issue guidelines recognizing parody as free speech under Article 19(1)(a) and urge courts to continue their liberal reading of criticism or review.

Conclusion

Parody is essential to democratic discourse and cultural self-reflection. India's present dependence upon an imputed exception to criticism or review makes artists ambivalent and susceptible to censorship. In contrast with the US (transformative use model), UK (express statutory exception), Singapore (flexible hybrid model), and South Africa (constitutional critique), India's structure falls behind on certainty and clarity. Reform is long overdue. By clearly codifying parody under Section 52, embracing the transformative use test, and striking a balance between commerciality and moral rights, India can bring its copyright law in line with global best practice. Doing so would not only benefit artists but also meet the constitutional requirement of freedom of expression by ensuring that copyright law is a spur to creativity and not an instrument for capturing ideas.