
COPYRIGHT IN THE DIGITAL AGE: CHALLENGES, REFORMS, AND THE WAY FORWARD

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ABSTRACT

This research paper explores the evolving dimensions of copyright law in the digital era, with a particular emphasis on the multifaceted challenges and emerging opportunities presented by rapid technological advancements. Authored by **Aryan Asthana**, a postgraduate student of LL.M. at Amity University (Amity Law School) (Enrollment No. **A8101824024**), under the esteemed supervision of **Dr. Shova Devi**, this study undertakes a comprehensive inquiry into the fundamental legal principles, legislative frameworks, and judicial interpretations that govern copyright law both within India and on the global stage.

In an age where digital platforms have become the primary medium for content creation, distribution, and consumption, traditional notions of copyright are being tested like never before. This paper investigates the critical tension that exists between the protection of creators' intellectual property rights and the public's right to access knowledge, particularly in contexts shaped by internet proliferation, online content sharing, artificial intelligence, and user-generated content. The study evaluates how digital tools have facilitated mass reproduction and dissemination of creative works, thereby necessitating a re-evaluation of the scope, enforcement, and exceptions within the copyright regime.

The research adopts a doctrinal and comparative legal methodology, drawing on domestic statutes such as the Copyright Act, 1957 (as amended), international treaties including the Berne Convention and TRIPS Agreement, as well as case laws from Indian and foreign jurisdictions. Particular attention is paid to landmark Indian judicial decisions that have redefined concepts such as originality, fair dealing, transformative use, and intermediary liability in the context of digital copyright infringement.

Additionally, the paper critically examines policy developments, including the role of statutory licensing in digital broadcasting, the implications of blockchain for rights management, and the treatment of AI-generated works under current legal frameworks. By identifying doctrinal inconsistencies and

regulatory gaps, the study proposes practical recommendations aimed at fostering a more adaptive, equitable, and forward-looking copyright system.

Ultimately, this research seeks to contribute meaningfully to academic discourse and policy formulation by offering insights that are both legally sound and technologically informed. It underscores the pressing need for copyright law to evolve in step with innovation, while upholding the delicate balance between incentivizing creativity and ensuring equitable public access in a rapidly transforming global digital landscape.

Introduction

Copyright is a legal concept that grants the creator of an original work exclusive rights to its use and distribution. These rights are intended to protect the creator's intellectual property and prevent others from using, reproducing, or distributing the work without permission.

Copyright protects many different kinds of creative works, such as:

- Literary works (articles, books, poetry)
- Music compositions
- Visual arts (photographs, sculptures, paintings)
- Dramatic works (plays, choreography)
- Films, sound recordings, and broadcasts
- Software and databases

The purpose of copyright is to incentivize creativity by ensuring that creators can benefit from their work for a certain period, typically the creator's life plus a number of years (e.g., 70 years in many jurisdictions). After this period, the work typically enters the public domain, meaning it can be freely used by anyone.

Copyright does not cover ideas or facts themselves, but only the way those ideas are communicated or presented in a fixed medium (like a written document or recorded performance).

The key elements of **copyright** are as follows:

1. Originality:

- a. The work must be original, meaning it must be the result of the creator's independent effort and creativity. It cannot be a direct copy of someone else's work. However, it doesn't need to be novel or groundbreaking; even simple or common ideas can be copyrighted if they are expressed in a unique way.

2. Fixation:

- a. The work must be fixed in a tangible medium of expression. This means it has to be recorded or written in some physical form (such as written down, recorded, or digitally saved). Works that exist solely in the creator's mind and are not fixed are not eligible for copyright protection.

3. Ownership:

- a. The creator of the work automatically owns the copyright unless they have transferred or assigned their rights to someone else. This means that the creator has the exclusive right to use, distribute, and control how the work is used.

4. Exclusive Rights:

- a. Copyright grants the creator certain exclusive rights over their work. These rights typically include:
 - **Reproduction:** The ability to produce duplicates of the original work.
 - **Distribution:** The permission to share or sell copies of the work to the public.
 - **Public performance:** The right to present or perform the work in front of an audience.
 - **Derivative works:** The authority to develop new creations based on the original piece.
 - **Public display:** The right to showcase the work in public spaces (such as visual art or photographs).

5. Duration:

- a. Copyright is not indefinite. It lasts for a certain period, typically the lifetime of the author plus an additional number of years (e.g., 70 years in many countries). After this period, the work enters the public domain, and anyone can use it without permission.

6. Infringement:

- a. Copyright infringement occurs when someone uses, reproduces, or distributes a copyrighted work without permission from the copyright holder. The copyright holder has the right to enforce their rights and seek legal remedies for infringement.

7. Exceptions and Limitations:

- a. Certain uses of copyrighted works are allowed without permission under the doctrine of **fair use** (in the U.S.) or **fair dealing** (in other jurisdictions). These exceptions often apply to activities like criticism, news reporting, teaching, or research, and are meant to balance the interests of creators with the public's access to knowledge and culture.¹

These elements combine to form a legal framework that encourages creators by ensuring their work is protected, while also allowing the public access under specific circumstances once copyright expires.

Literature Review

The subject of copyright law has been extensively explored by scholars, legal practitioners, and policymakers, particularly in the context of the digital revolution and globalization. This literature review examines the key academic contributions and perspectives that form the foundation for understanding the evolution, application, and challenges of copyright law in the 21st century.

¹ World Intellectual Property Organization. *Understanding Copyright and Related Rights*. WIPO, n.d., <https://www.wipo.int/publications/en/details.jsp?id=4084>.

One of the seminal works in the field is “*Copyright Law: A Practitioner’s Guide*” by Michael D. Scott, which offers a comprehensive understanding of the principles, enforcement mechanisms, and legal interpretations of copyright. Scott underscores the need for dynamic legal frameworks that keep pace with technological changes, a theme echoed by many contemporary scholars.

Lawrence Lessig, in his influential book “*Free Culture*”, argues that rigid copyright enforcement can stifle creativity and innovation. He advocates for a more balanced approach that protects the interests of both creators and users, especially in the digital environment where content sharing is widespread. His work has inspired a broader discourse on the need for reform in copyright regimes.

In the Indian context, Dr. Vandana Shiva and N.S. Gopalakrishnan have made notable contributions. Their research emphasizes the importance of tailoring copyright laws to suit local socio-economic realities and promoting access to knowledge, particularly in developing countries. Gopalakrishnan's analysis of the Indian Copyright Act, 1957 and its amendments highlights the tension between international obligations under TRIPS and national interest.

The World Intellectual Property Organization (WIPO) has also played a significant role in shaping global discourse on copyrights. Various WIPO reports emphasize the economic and cultural significance of copyright protection, particularly in creative industries. However, they also acknowledge the challenges posed by digital technologies, including online piracy and the unauthorized distribution of content.

Recent scholarly articles have focused on emerging issues such as copyright in artificial intelligence-generated works, the role of blockchain in copyright management, and the implications of streaming services for copyright enforcement. Authors like Rebecca Giblin and Jane Ginsburg have explored these topics, calling for nuanced legal responses that consider both innovation and creator protection.

Judicial pronouncements, especially those by the Supreme Court of India and High Courts, have further shaped the interpretation of copyright laws. Landmark cases such as *Eastern Book Company v. D.B. Modak* and *Indian Performing Rights Society v. Aditya Pandey* have clarified key principles like originality, fair dealing, and public performance rights.

In summary, the existing literature reflects a rich and diverse body of knowledge that underscores the dynamic nature of copyright law. While there is consensus on the importance of protecting creators' rights, there is also growing recognition of the need to balance these rights with public access and technological advancements.

Chapter 1 - Historical Background

The history of **copyright** spans centuries, evolving from early efforts to protect creators' rights to the modern legal frameworks we have today. Here's a brief overview of the historical background of copyright:

1. Early Beginnings (Pre-Statutory Protection)

- **Ancient and Medieval Periods:** In ancient cultures, intellectual property was not protected by law as we understand it today. However, there were some rudimentary systems in place to ensure creators could benefit from their works. For example, in ancient Greece and Rome, poets and playwrights could claim a form of recognition for their creations, though they had limited legal protections.
- **Medieval Guilds:** In the Middle Ages, craft guilds and scribes often protected their work, particularly in the context of books. Scribes and manuscript makers in monasteries, for instance, would often create original copies of religious texts and would have control over those manuscripts.²

2. The Birth of Copyright (15th to 17th Century)

- **The Printing Press (15th Century):** The invention of the printing press by Johannes Gutenberg in the mid-15th century revolutionized the dissemination of knowledge and creative works. The ability to mass-produce books meant that writers and publishers could be deprived of the economic benefits of their work due to unauthorized reproductions.

² Sherman, Brad, and Lionel Bently explore the development of modern intellectual property law in Britain between 1760 and 1911 in their book *The Making of Modern Intellectual Property Law*, published by Cambridge University Press in 1999.

- **The Statute of Anne (1710):** The first modern copyright law is widely considered to be the **Statute of Anne** in 1710, passed in England. This law granted authors the exclusive right to print and sell copies of their works for a limited time (14 years, extendable for another 14 years if the author was still alive). The Statute of Anne was the first law that recognized the rights of authors rather than just printers or publishers, and it laid the foundation for future copyright laws by balancing the interests of authors and the public. It is often referred to as the birth of modern copyright law.³

3. Spread and Evolution of Copyright (18th to 19th Century)

- **International Adoption:** In the 18th and 19th centuries, other countries began to adopt copyright laws inspired by the Statute of Anne. For example:
 - In the United States, the first copyright law was passed in 1790, granting authors protection for their works for 14 years, with the possibility of renewal. The U.S. joined the global trend of establishing legal protections for authors and creators.
 - France enacted its own copyright law in 1793, rooted in revolutionary ideals of personal property and artistic freedom.
- **The Berne Convention (1886):** In the late 19th century, international cooperation began to take shape. The **Berne Convention for the Protection of Literary and Artistic Works** was established in 1886, creating the first international framework for copyright. It aimed to standardize copyright protections across member countries, ensuring that authors would receive similar protections for their works in different nations. The convention still serves as the foundation for much of international copyright law today.⁴

³ **1. The Printing Press:**

Eisenstein, E. L. (1980). *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early-Modern Europe* (Vols. 1–2). Cambridge University Press.

2. The Statute of Anne (1710):

Patterson, L. R., & Lindberg, S. W. (1991). *The Nature of Copyright: A Law of Users' Rights*. University of Georgia Press.

⁴ World Intellectual Property Organization. *Berne Convention for the Protection of Literary and Artistic Works (1886)*. WIPO, <https://www.wipo.int/treaties/en/ip/berne/>

4. Modern Developments (20th Century and Beyond)

- **Expansion of Copyrightable Works:** In the 20th century, copyright protection expanded beyond traditional works like books and music to include new forms of creative expression, such as film, sound recordings, and even software. The rise of new technologies, such as film and radio broadcasting, led to further refinements in copyright law to address these new media.
- **The U.S. Copyright Act of 1976:** In the United States, the **Copyright Act of 1976** modernized copyright law, bringing it into alignment with the needs of the 20th century. The Act recognized the importance of protecting creators in the rapidly expanding fields of motion pictures, recordings, and broadcasting. It also established the concept of “fair use” as an important exception to copyright protection, allowing for certain uses of copyrighted material without permission in cases like criticism, comment, teaching, and research.
- **The Digital Age (Late 20th Century to Present):** The rise of the internet and digital technologies introduced significant challenges for copyright law, making it much simpler to copy and share content worldwide without permission. To combat problems such as digital piracy and online copyright violations, legislation like the U.S. Digital Millennium Copyright Act (DMCA) of 1998 was enacted.
- **International Treaties and Harmonization:** As the digital age progressed, there was a global push for greater harmonization of copyright laws to address international issues like online piracy and cross-border copyright enforcement. Treaties like the **WIPO Copyright Treaty (1996)** and the **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1995)** helped standardize copyright protections internationally.

5. Copyright Today

Today, copyright law continues to evolve in response to technological advancements, new forms of creative work, and international challenges. For example, ongoing debates surround digital media, software piracy, and the use of copyrighted works on platforms like YouTube

and social media. Despite these challenges, the core principles of copyright—protecting creators' rights and balancing those with the public interest—remain central to copyright law.

In essence, copyright has developed from early informal protections for creators into a complex legal system designed to foster creativity and innovation, while also enabling public access and use of creative works after a certain period.

Chapter 2 - Copyright Protection

Copyright law provides protection for a wide range of creative works, each with specific provisions depending on the type of work. Here's an overview of how copyright applies to **literary works, dramatic works, musical works, sound recordings, cinematographic films, and computer programs**:⁵

1. Literary Works

- **Definition:** Literary works include books, articles, essays, poems, plays, lectures, computer programs (under certain conditions), and other written content.
- **Protection:** The creator of a literary piece holds exclusive rights to copy, share, and modify the work. These rights cover different formats (such as print editions and digital books) and include the authority to produce derivative versions, like film or theatrical adaptations.

Example: A novel, short story, academic article, or research paper.

2. Dramatic Works

- **Definition:** Dramatic works include plays, scripts for theatre, and works intended for performance that contain dialogue or action. This category also includes choreographic works (if notated or recorded in some form).
- **Protection:** The author of a dramatic work has exclusive rights over the performance and reproduction of the work, including adaptations into other forms (e.g., film or

⁵ World Intellectual Property Organization. *Copyright: Overview*. WIPO, n.d., <https://www.wipo.int/copyright/en/>.

television adaptations). This protection can also extend to the right to control how the work is staged or performed.

- **Example:** A play, musical script, or dance choreography.

3. Musical Works

- **Definition:** Musical works encompass the musical composition (melody, harmony, and rhythm) along with any accompanying lyrics. This includes both vocal and instrumental music.
- **Protection:** Copyright protects the composition (the notes, melody, harmony) and the lyrics (if any). It provides the author exclusive rights to perform, reproduce, distribute, and make derivative works of the music. These rights also cover recording the music and licensing it for commercial use (e.g., in films, ads, etc.).
- **Example:** A song, orchestral composition, or opera.

4. Sound Recordings

- **Definition:** Sound recordings refer to the recorded version of a musical work, speech, or any other sound. This could include recordings of music, podcasts, radio broadcasts, or other spoken word recordings.
- **Protection:** The copyright for a sound recording typically belongs to the **producer** or **recording artist**, not the original creator of the music or speech (who may have their own copyright for the underlying composition). The protection covers the right to reproduce, distribute, perform, and make derivative works from the recording.
- **Example:** A music album, a podcast episode, or a radio broadcast recording.

5. Cinematographic Films (Films)

- **Definition:** Cinematographic works or films include motion pictures, video recordings, and animations that consist of a series of images intended to be shown in succession to create the illusion of movement.

- **Protection:** Copyright protects the film as a whole, including the visual images, script, music, and any other creative elements. The director, screenwriter, producers, and actors typically hold copyright on different aspects of the film. In addition to the film's script and visual elements, it may also protect the underlying sound recordings (e.g., the soundtrack or dialogue).
- **Example:** A Hollywood movie, an animated film, or a short film.

6. Computer Programs (Software)

- **Definition:** A computer program is a set of instructions that directs a computer to perform a particular task. This includes both the source code and the object code (machine-readable code).
- **Protection:** Copyright protection for computer programs extends to the expression of the program (i.e., the specific lines of code), but **not the underlying ideas, algorithms, or methods**. The developer holds exclusive rights to copy, share, and modify the software. This protection also extends to programs integrated into hardware (such as embedded software in devices) and content related to the software.

Example: Operating systems, mobile apps, video games, or any application software.

Key Considerations for Copyright in These Works:

- **Authorship and Ownership:** Copyright protection generally belongs to the creator of the work, but in the case of works created as part of employment or through commissioned work, the employer or commissioning party may own the copyright.
- **Exclusive Rights:** Copyright gives the creator exclusive rights to use, distribute, and license the work. These rights are typically for a limited period (often the creator's life plus a set number of years, such as 70 years in many jurisdictions).
- **Moral Rights:** In addition to economic rights, certain jurisdictions recognize **moral rights** (especially in artistic and literary works). These rights protect the author's personal connection to the work, such as the right to attribution and the right to prevent derogatory treatment of the work.

- **Fair Use/Dealing:** In some cases, the use of copyrighted works is permitted without the copyright holder's permission under the doctrines of **fair use** (U.S.) or **fair dealing** (UK, Canada, etc.), particularly for purposes like commentary, education, or research.

Summary:

- **Literary Works:** Written works like books and articles.
- **Dramatic Works:** Works intended for performance, like plays and choreography.
- **Musical Works:** Compositions and songs (including lyrics).
- **Sound Recordings:** Recorded versions of music, speech, or other sounds.
- **Cinematographic Films:** Motion pictures and videos.
- **Computer Programs:** Software and code.

Each of these types of works is protected under copyright law, providing the creators with exclusive rights over their works for a certain duration, which allows them to control how their works are used and distributed.

Chapter 3 – Case Studies

Here's a selection of **important Indian case studies on copyright**, along with brief explanations of their significance. These cases can be used to strengthen your research on copyright law in India, especially in areas like originality, fair use, and digital content:

1. Eastern Book Company v. D.B. Modak⁶

Citation: (2008) 1 SCC 1

Key Issue: Originality of compilations (law reports)

Summary:

⁶ *Eastern Book Company v. D.B. Modak*, (2008) 1 SCC 1.

The Supreme Court held that headnotes and editorial notes prepared by Eastern Book Company did qualify for copyright protection, but the actual text of judgments did not, as they are in the public domain. The Court introduced the “modicum of creativity” standard for originality, moving away from the older “sweat of the brow” doctrine.

Significance:

This case is crucial for understanding how Indian courts define "originality" in copyright, aligning Indian law more closely with global standards like in *Feist v. Rural* (U.S.).

2. Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association⁷

Citation: AIR 1977 SC 1443

Key Issue: Rights of authors vs. producers in cinematographic works

Summary:

The Court held that once a composer assigns his copyright to a producer for use in a film, he cannot claim performance rights separately. The producer becomes the first owner of the copyright in the film, including its musical components.

Significance:

This case clarified the distinction between moral rights and economic rights, and the implications of assignment and licensing in the entertainment industry.

3. Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.⁸

Citation: 2010 (44) PTC 469 (Del)

Key Issue: Unauthorized broadcast of copyrighted content

Summary:

Super Cassettes (T-Series) sued a TV channel for playing its songs without a license. The Delhi

⁷ *Indian Performing Right Society Ltd. v. Eastern India Motion Pictures Association*, AIR 1977 SC 1443.

⁸ *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*, 2010 (44) PTC 469 (Del).

High Court held that mere ownership of the broadcast platform does not grant rights to use copyrighted content.

Significance:

This case reinforced the importance of obtaining proper licenses and clarified that broadcast rights are separate from ownership of the medium.

4. Civic Chandran v. Ammini Amma⁹

Citation: AIR 1996 Ker 291

Key Issue: Fair use and transformative work

Summary:

The Kerala High Court ruled in favor of the defendant who used parts of a play to create a new dramatic work with a different message. The Court found it to be fair dealing for the purpose of criticism and comment.

Significance:

This is one of India's earliest recognitions of **fair dealing** and **transformative use**, important concepts in copyright law.

5. Tips Industries Ltd. v. Wynk Music Ltd.¹⁰

Citation: 2019 SCC OnLine Bom 63

Key Issue: Digital streaming and copyright licenses

Summary:

The Bombay High Court ruled that digital streaming platforms like Wynk must obtain separate licenses from music labels and cannot rely solely on statutory licensing under Section 31D of

⁹ *Civic Chandran v. Ammini Amma*, AIR 1996 Ker 291.

¹⁰ *Tips Industries Ltd. v. Wynk Music Ltd.*, 2019 SCC OnLine Bom 63.

the Copyright Act.

Significance:

This case clarified the scope of statutory licensing in the age of digital music platforms and reinforced the control of copyright holders over streaming rights.