
COPYRIGHT IN THE AGE OF SOCIAL MEDIA INFLUENCERS: INDIAN CONTEXT

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In the vibrant digital bazaar of contemporary India, where a 15-second reel can catapult a small-town creator to national stardom overnight, the traditional boundaries of intellectual property are being tested like never before. The Indian creator economy, projected to reach a staggering ₹10,750 crore by 2027, has outpaced the legal frameworks designed to govern it. At the heart of this gold rush lies the Indian Copyright Act of 1957, a piece of legislation drafted in an era of printing presses and celluloid film, now forced to adjudicate the complex world of viral memes, reaction videos, and branded "day-in-the-life" vlogs. For the modern social media influencer, copyright is no longer a dry legal concept relegated to the backrooms of publishing houses; it is a live-wire issue that dictates their revenue, their reputation, and their right to remain on the platforms that host them.

The fundamental tension in the Indian influencer landscape arises from the "remix culture" that platforms like Instagram and YouTube actively encourage. While these apps provide built-in libraries of popular music and "remix" tools for video clips, many creators labour under the dangerous misconception that the existence of these tools grants them legal immunity. In the eyes of Indian law, copyright is a bundle of exclusive rights—the right to reproduce, perform, and communicate a work to the public. When an influencer uses a Bollywood track or a snippet from a trending web series, they are technically engaging in a "communication to the public" of a copyrighted work. The platform's license with a music label often covers personal, non-commercial use, but the moment that content becomes part of a paid brand collaboration, the legal landscape shifts. This is the "Commercial Use Trap." A creator might safely dance to a T-Series track in a casual video, but if they do so while holding a branded protein shake, they may find themselves on the receiving end of a copyright strike or a cease-and-desist notice, as the brand's commercial intent nullifies the platform's standard licensing agreement.

Navigating the nuances of Section 52 of the Copyright Act—the provision dealing with "Fair Dealing"—has become the primary survival skill for Indian digital creators. Unlike the broad "Fair Use" doctrine in the United States, India employs a narrower "Fair Dealing" approach,

which provides an exhaustive list of exceptions to infringement. Historically, these included private use, research, criticism, and review. However, the 2025 legal battle between Asian News International (ANI) and prominent YouTuber Mohak Mangal signaled a watershed moment for the industry. The dispute, which centred on the use of short news clips in commentary videos, highlighted the precarious nature of the "criticism or review" defence. While creators argued that their transformative use of the footage fell under fair dealing.

The courts have been increasingly rigorous in examining whether the amount of content borrowed is "reasonable" and whether the new work competes with the market for the original. Attribution is a moral right, not a get-out-of-jail-free card for copyright infringement.

This brings us to the thorny issue of content ownership in brand-influencer partnerships. By default, under Section 17 of the Copyright Act, the "author" of a work—the person who creates it—is the first owner of the copyright. For an influencer filming a reel on their own phone, editing it on their own laptop, and posting it from their own account, ownership is clear-cut. However, when a brand enters the frame, the relationship is often governed by a contract that creators frequently sign without fully understanding. Many brand agreements contain "work made for hire" clauses or broad assignment language that effectively strips the influencer of their intellectual property rights in perpetuity. If an influencer unknowingly assigns their copyright to a brand, they lose the right to reuse their own footage, port it to other platforms, or even keep the video on their feed if the brand decides otherwise. In the current 2026 market, "licensing" has emerged as the more creator-friendly alternative. Savvy influencers are now negotiating for limited licenses—granting the brand the right to use the content for a specific duration (e.g., six months) and on specific platforms—while retaining the underlying copyright themselves.

The rise of the "Meme Economy" has added another layer of complexity to the Indian IP landscape. Memes are, by definition, derivative. They rely on the audience's recognition of a pre-existing image or video clip, which is then re-contextualized with humor or irony. While many legacy brands were once content to ignore "meme-jacking," the commercialization of memes has forced a reckoning. The Delhi High Court's recent focus on "transformative use" offers some hope, suggesting that if a meme adds a significant new meaning or message that is distinct from the original work, it might be protected. Yet, the distinction remains subjective. A meme created for pure entertainment might be overlooked, but a "branded meme" used to

sell a subscription service is viewed by the Indian judiciary as a commercial exploitation of someone else's creative labour.

Beyond the technicalities of copyright, the 2025 judgment in *San Nutrition v. Arpit Mangal* introduced a critical intersection between intellectual property and product disparagement. This case involved influencers posting critical reviews of health supplements based on independent laboratory reports. The court's decision to uphold the influencer's right to criticize—provided the claims were backed by credible data—reinforced the idea that "free speech" under Article 19(1)(a) of the Constitution can sometimes provide a shield when copyright or trademark laws are used as a cudgel to silence dissent. This is particularly relevant for the growing community of "fin-fluencers" and "health-fluencers" who often use screenshots of company reports or clips of brand advertisements to debunk misinformation. For these creators, the defence of "reporting current events" or "criticism and review" is not just a legal technicality; it is a prerequisite for their credibility and their public-service function.

The administrative burden on influencers has also increased with the tightening of the Advertising Standards Council of India (ASCI) guidelines and the Consumer Protection Act of 2019. In the eyes of the law, an influencer is now often viewed similarly to a traditional "endorser" or "brand ambassador.". Failure to do so can lead to hefty fines from the Central Consumer Protection Authority (CCPA), which in 2024 and 2025 began actively monitoring digital creators for "surreptitious advertising." From a copyright perspective, this is significant because it makes the "commercial nature" of the content undeniable, making it even harder for creators to claim "fair dealing" for any third-party assets used within that content. To thrive in this increasingly regulated environment, the Indian creator must transition from being a casual "uploader" to a professional "publisher." This transition involves a proactive intellectual property strategy: using royalty-free music libraries, securing written releases from anyone appearing in their videos, and, most importantly, viewing every brand contract as a negotiation of their most valuable asset—their IP. Registration of copyright, while not mandatory in India, is becoming a strategic move for high-value content, as it provides *prima facie* evidence of ownership in court.

Ultimately, the goal of the Indian legal system should be to strike a balance between protecting the legitimate rights of legacy copyright owners—like music labels and film studios—and fostering a space where new-age creators can innovate without the constant fear of litigation.

As we move deeper into 2026, the demand for a "Digital-First" amendment to the Copyright Act is growing. Such an amendment would ideally codify "transformative use" and provide clearer safe-harbour protections for creators who use copyrighted snippets for the purposes of parody, satire, and social commentary. Until then, the onus remains on the influencer to be their own first line of legal defence. In the world of social media, where trends last a day but a copyright strike lasts forever, understanding the law is no longer optional—it is the very foundation of a sustainable creative career.