
MICRO-CLIPS AND COPYRIGHT: A COMPARATIVE STUDY OF INDIA, THE UNITED STATES AND THE EUROPEAN UNION

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ABSTRACT

The exponential rise of short-form digital content has revealed the structural weaknesses in the Indian copyright regime. The current framework of copyright exceptions under §52 of the Copyright Act, 1957, sets out a number of specific exceptions to fair dealing, but it was never intended to deal with the fragmented nature of digital copyright infringement in the form of brief audiovisual “micro-clips” of content through platform-based systems of content distribution. The aim of the paper is to assess whether the current regime of copyright law maintains a proper balance between proprietary rights and constitutional freedoms of speech provided under Article 19(1)(a) of the Constitution of India.

The paper begins with the doctrinal basis of Indian fair dealing principles. The methodology to be adopted for the research in the paper would include a doctrinal and comparative law research on Indian cases on fair dealing and substantiality, proportionality of constitutional freedoms of speech as assessed by the Indian Supreme Court, and comparative law on fair use cases in the United States and copyright law in Europe. Furthermore, it examines the relevant literature and highlights the analytical gap in the context of micro-clips. Then it analyzes the judicial approach to excerpt-based infringement and market harm. Later in the paper it considers the constitutional aspect through proportionality. Finally, the paper outlines a calibrated two-tier model of micro-licensing. The paper argues that a structured recalibration of this nature will be beneficial for doctrinal clarity, continue giving economic incentives, and align copyright enforcement with constitutional free speech norms in India's digitally evolving public sphere.

Keywords: Copyright law, Fair dealing, Micro-clips, Performers’ rights, De minimis doctrine, Safe harbour.

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1. INTRODUCTION

The emergence of extremely short videos, otherwise known as micro-clips has revolutionised the digital media ecosystem in India. They are film segments, usually under half a minute in duration, that are shared quickly on such platforms as YouTube Shorts, Instagram Reels, and digital news summaries. They have already become the way young people consume news and comment on culture and have influenced political dialogue, entertainment, and popular discussion. However, their legal position by Indian copyright law is debatable and questionable.

The copyright act of 1957² India was composed in a media industry that was heavily dominated by the cinema, radio and print media. Its main exception of non-infringing use fair dealing under section 52 was in the form of a comprehensive list of uses that were acceptable including criticism, review, research, and reporting of current events. In contrast to the American doctrine of fair use, which offers a four-factor test that can only be open-ended, the Indian closed list does not grant the judiciary much discretion with regard to adapting to technological realities.³ This inflexibility is especially intense when it comes to micro-clips, which as a rule incorporate various functions news analysis, education, and satire and do not fit into statutory boxes.

This issue is made worse by the increased rights of the performers by the Copyright Amendment of 2012, Section 38A and section 38B⁴ provide the performers with strong economic and moral rights on the usage of their performance including royalty in the event of commercially exploiting performances, and was meant to adhere to the international standards of the WIPO Performances and Phonograms Treaty. They fail to deal with the discontinuousness, viral flow of performances in a myriad of micro-clips on digital platforms. The outcome is a paradox: on one hand the rights of performers are theoretically wide but in practice they are impossible to enforce in this new environment.⁵

The reason why reform is urgent is indicated in recent litigation. This case of ANI Media Pvt. Ltd. v. Mohak Mangal⁶ exemplifies the unfairness in the disproportionate risk to digital creators

² The Copyright Act, No. 14 of 1957, § 52, INDIA CODE (1957).

³ 17 U.S.C. § 107 (2018).

⁴ Copyright (Amendment) Act, No. 27 of 2012, §§ 6–7, INDIA CODE (2012).

⁵ WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 2186 U.N.T.S. 245

⁶ *ANI Media Pvt. Ltd. v. Mohak Mangal*, O.M.P. (I) (COMM) 52/2023 (Del. HC 2023).

who use short snippets of news in journalistic or critical commentaries. ANI has long demanded high licensing fees, which highlights the unfairness of its position. In interim proceedings, the Delhi High Court ordered the removal of allegedly defamatory material but did not determine that question on a broader copyright basis, so creators throughout India remain unsure whether they should receive a royalty payment on the massive consumption of their work in short-form videos.⁷

Indian courts have tried to relax this inflexibility by referring to the de minimis doctrine. In *India TV v. The Delhi High Court*⁸ stated that there are five things to consider in deciding whether minor uses would be excused as trivial (*Yashraj Films*). Subsequently, in *Saregama v. The Supreme Court* recognised that even a seven-second clip might be covered by this doctrine.⁹ *Viacom18*, however, in such judicial interventions, is discretionary and ad hoc. In the absence of codified thresholds, creators and platforms would not have ex ante confidence over whether their applications are legal.

It is against this background that this paper presents a simple but organised argument; India needs an organisational recalibration of fair dealing in order to counter the micro-clip phenomenon. The methodological approach of the paper is a mix of statutory and case-law doctrinal analysis of the statutes and the comparison of the U.S. and EU frameworks, complemented by policy arguments.

The paper further elaborates the philosophical and policy foundation of this two-level strategy. First, a safe harbour should be subject to rebuttal by transformative micro-clips that are under a set duration that is 30 seconds or less, 5 percent or less of the original work but which are on legitimate uses such as criticism, commentary or reporting. Secondly, the use of the above threshold, not substituting the market, should be licensed in a simplified regime operated by collective management organizations. This approach combines the predictability of the bright line rules with the equity of collective compensation, reducing transactional costs on the platform, and providing the performers with a royalty. This paper has sought to put the debate on the regulation of micro-clips in India within a comparative context and the constitution to illustrate the importance of the future of micro-clip regulation as not only a technical aspect of

⁷ *Ibid.*

⁸ *India TV Indep. News Serv. v. Yashraj Films Pvt. Ltd.*, 2009 SCC OnLine Del 3226.

⁹ *Saregama India Ltd. v. Viacom 18 Motion Pictures*, (2019) 14 SCC 1 (India).

copyright law, but as a very significant aspect of the future of digital speech. It is the contention of the current paper that the current system of fair dealing under section 52¹⁰ is, in theory, under-inclusive in its structure for fragmentary digital use and constitutionally questionable in its application in the absence of any threshold. The dual structure model provides a measure of consistency and proportionality requirements.

1.1. Research Questions

1. Whether the existing framework of fair dealing under §52 of the Copyright Act, 1957 adequately regulates short-form digital excerpts “micro-clips” in contemporary platform-based ecosystems.
2. What has been the position taken by the Indian courts on the issues of substantiality, qualitative taking, and market harm in copyright infringement cases based on excerpts? And has such position been enough to provide doctrinal clarity for the inherently fragmentary nature of digital reuse?
3. What degree of alignment exists between the current methods of copyright enforcement and the constitutional protection of ‘free speech’ under Article 19(1)(a) of the Constitution of India, especially if the proportionality test is applied ?
4. Whether a two-tier regulatory structure, where a quantitative safe harbour for minimal-duration excerpts acts alongside a collective micro-licensing structure for the more extensive, systematic, and commercial-scale reuse of such content, could provide a doctrinally clear and constitutionally acceptable reform pathway for the Indian copyright regime ?

1.2. Objectives of the Study

1. To critically examine the statutory architecture of fair dealing under §52 of the Copyright Act, 1957 in light of emerging digital reuse practices.
2. To analyse Indian judicial decisions concerning excerpt-based infringement in order to assess how courts evaluate substantiality and market substitution.
3. To evaluate the constitutional implications of copyright enforcement through application of the proportionality analysis method under Article 19(1)(a).

¹⁰ Supra note. Pg 1

4. To Develop and justify a coherent reform proposal aimed at increasing doctrinal certainty, maintaining the economic incentives for rights holders, as well as protecting the expressive freedoms in the digital environment.

1.3 Scope of the Study

The scope of this study is limited to the Indian copyright law regime, specifically the interpretation and application of fair dealing as provided under §52 of the Copyright Act, 1957. This study is specifically limited to the fragmentary use of digital content in the form of “micro-clips” and does not include the larger concept of piracy and infringement of copyright. While references to United States fair use and European Union digital copyright law are included in the study, they are limited to an analytical and illustrative purpose. Similarly, the constitutional aspect of the study is limited to freedom of speech and expression under Article 19(1)(a) and does not include other fundamental rights and platform governance models except to the extent to which they relate to the enforcement of copyright law.

1.4 Limitations of the Study

This research has a doctrinal and normative nature, not reflecting any empirical data on the economic displacement that might be caused by short form digital excerpts. The comparison between US and European law is partial, focusing on finding conceptual alternatives rather than conducting a comprehensive jurisdictional survey. The suggested two-tier reform model is of a theoretical nature and requires deliberation at the legislative level, assessment of economic feasibility, and administrative design for implementation. Moreover, in light of the dynamic nature of digital platforms and content consumption, technological changes may progress beyond doctrinal analysis, and some of the observations may become outdated over time.

1.5 Research Methodology

The research methodology that shall be used in this research is a qualitative doctrinal research methodology. First, the research shall involve a statutory research on the Copyright Act of 1957, specifically on Section 52 and other provisions regarding fair dealing and the rights of performers. Second, the research shall also involve a case law research on Indian court

decisions to assess their approach in determining the substantiality of the excerpted material, qualitative taking, and market harm in excerpt-based copyright infringement. Third, the research shall also involve a constitutional research using the proportionality test set forth in the decision of the Supreme Court of India on Article 19(1)(a) to assess if the enforcement practices in India are imposing a disproportionate restriction on expressive activity. Finally, the research shall also involve a limited comparative research on the fair use doctrine in the USA and digital copyright law in Europe to assess if there are any regulatory insights that could be used in the Indian context.

2. LITERATURE REVIEW

The current debate surrounding copyright limitations has been characterized by an increasing focus on the interplay between certainty in copyright law and technological disruption. In all jurisdictions, copyright scholars have been engaged in an exploration of whether the current fair use/fair dealing framework is equipped to deal with the issue of fragmented consumption, platform economy, and algorithmic dissemination. Nevertheless, while the literature extensively explores the themes of ambiguity, economic displacement, and comparison, it does not appear to have addressed the issue of micro-clips in the Indian copyright framework that is conceptualized in this paper.

2.1. Doctrinal Uncertainty in Fair Use and Fair Dealing

A significant body of literature points to the structural indeterminacy that exists in open-ended copyright exceptions. The US fair use doctrine, especially in the post-Campbell v. Acuff-Rose Music, Inc. era, has been characterised as economically flexible but predictively unstable. It has been suggested that although the four-factor balancing test is good for adaptive judicial reasoning, it also engenders ex ante uncertainty for all the parties involved. The test for "transformative use," although important, is based on the judgments that courts make about purpose and market substitution.¹¹

The same problems have been identified in common law fair dealing systems. Fair dealing is statutorily defined, but it has been applied in different contexts in a flexible manner, which

¹¹ Gary L. Francione, *Facing the Nation: The Standards for Copyright, Infringement, and Fair Use of Factual Works*, 134 U. PA. L. REV. 519 (1986). <https://doi.org/10.2307/3312112>.

engenders a certain level of tension between constraint and flexibility. Indian courts, in particular, have tended to adopt a relatively conservative reading of §52 of the Copyright Act, frequently emphasising qualitative substantiality and market impact. This, of course, maintains the author's control, but at the same time, it creates confusion, especially in the emerging digital environment, where the level of reproduction is technically insignificant, yet economically significant.¹²

The literature, therefore, indicates that there exists a common problem, where the rigid approach to exceptions might become obsolete, while the flexible approach might become unpredictable.

2.2. Digital Fragmentation and News Aggregation

Another strand of scholarship examines the impact of digital aggregation and excerpt-based dissemination on copyright markets. Research on news aggregation models in the U.S. and Europe indicates that short excerpts, such as "headlining," "thumbnails," and "preview clips," may at the same time increase public access and undermine the traditional licensing business model. In the economic literature, there are different views on the issue.¹³

The European regulation, including the introduction of neighboring rights for press publishers, can be seen as an attempt to rebalance the bargaining power between the platforms and the rights holders. However, the results of the implementation, as shown in the empirical research, are mixed, and there are concerns about the risk of over-enforcement and chilling effects on free online expression.¹⁴

In India, the focus of the literature has been on piracy and full-scale infringement rather than excerpt practices at the micro-level. In the judicial decisions of the cases of broadcast clips and music excerpt infringement, qualitative substantiality has been taken into account, but there are

¹² *Giuseppina D'Agostino, Healing Fair Dealing: A Comparative Copyright Analysis of Canada's Fair Dealing to U.K. Fair Dealing and U.S. Fair Use*, 53 MCGILL L.J. 309 (2008). <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/mcgil53&i=315>

¹³ *Prakash Kumar & Kumari Diksha Chandra, Infringement of Copyright in India: Critical Study of the Doctrine of Fair Use and Imperative Need for Reform*, 1 LAWFOYER INT'L J. DOCTRINAL LEGAL RES. 421 (2024). <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/lwfyri1&i=1376>

¹⁴ *Monica I. Jasiewicz, Copyright Protection in an Opt-Out World: Implied License Doctrine and News Aggregators*, 122 YALE L.J. 837 (2012). <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/ylr122&i=868>

no clear structured quantitative standards. Therefore, the issue of short-form digital reuse remains case-specific.

2.3. Economic Harm and Market Substitution

A further dimension of the literature interrogates the concept of market harm. Economic studies also warn against the assumption that unlicensed activity per se constitutes substitution. Instead, the effect of harm has to be assessed vis-à-vis hypothetical markets for licensing, consumer behavior, and transaction costs. In some economic studies, the threat of circular reasoning has also been highlighted. This occurs when the threat of licensing is cited to establish market harm.¹⁵ This is especially pertinent with regard to the digital world and the micro-content phenomenon.

For example, audiovisual micro-forms distributed via social media do not compete in the strictest sense with feature-length forms. However, the overall effect could be revolutionary from a behavioral perspective.¹⁶ The existing literature suggests that the current system fails to sufficiently distinguish between quotational expression and market substitution.

Indian commentaries have acknowledged the need for a balance between incentive schemes for authors and constitutional obligations regarding the protection of free expression. However, the economic analysis of short-duration content reuse in the Indian market has not yet been fully explored.

2.4. Constitutional Dimensions and Proportionality

Scholars who have engaged with the constitutional values of free speech have opined that the copyright regime has to be read in consonance with the values of free speech. In the Indian context, the values of Article 19(1)(a) have underlined the importance of proportionate regulation of speech regulation. There was also an academic opinion that the rigid application of the copyright rules without proportionate regulation has the potential for a chilling effect,

¹⁵ N. V. Menon, Kalyan Roy & G. R. Parvathy, *Unravelling the Differences Between Fair Use and Fair Dealing: Limitations to Copyright*, 3 *INDIAN J. INTEGRATED RES. L.* 1 (2023).

<https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/injloitd4&i=385>

¹⁶ Hansika, *Critical Analysis of the Fair Dealing in Copyright*, 4 *INDIAN J. L. & LEGAL RES.* 1 (2022).

<https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/injlolw8&i=1073>

especially with regard to media commentaries.¹⁷

The proportionality approach has been emphasized under comparative constitutionalism with regard to the regulation of the balance between the copyright and free speech interests.

There was not a proportionality analysis with regard to the evaluation of the copyright exceptions under the Indian copyright regime.¹⁸

This gap becomes more pronounced in digital micro-content scenarios, where the expressive value of short excerpts may be high while economic harm remains context-dependent.

2.5. Identified Gap in the Literature

Overall, existing literature covers four main areas: the uncertainty of fair use and fair dealing; economic disruption in digital aggregation; market substitution; and balancing. However, none of the existing literature addresses the issue of the regulation of short-form digital excerpts from a direct perspective under the Indian legal regime.¹⁹

More particularly, the literature fails to suggest a twin-track approach in which there is (i) a well-specified quantitative safe harbour for minimal duration extracts and (ii) a micro-licensing approach for systemic/commercial use. There is also no assessment of the model's compatibility with Indian constitutional proportionality requirements and the maintenance of economic incentives for authors and performers.²⁰

The absence of a structured doctrinal response to micro-clips within Indian copyright law therefore constitutes a significant analytical lacuna.

This paper seeks to fill that gap by creating a framework which reconciles legal certainty,

¹⁷ William W. Fisher III, *Reconstructing the Fair Use Doctrine*, 101 HARV. L. REV. 1659 (1988). <https://doi.org/10.2307/1341435>

¹⁸ Mina Kim, *Show Me the Money: The Economics of Copyright in Online News*, 58 J. COPYRIGHT SOC'Y U.S.A. 301 (2010). <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/jocoso58&i=323>

¹⁹ Robert T. Holte, *Restricting Fair Use to Save the News: Proposed Change in Copyright Law to Bring More Profit to News Reporting*, 13 J. TECH. L. & POL'Y 1 (2008). <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/jt1p13&i=9>

²⁰ Brian Buckley, *SueTube: Web 2.0 and Copyright Infringement*, 31 COLUM. J.L. & ARTS 235 (2008). <https://heinonline-org-christuniversity.knimbus.com/HOL/P?h=hein.journals/cjla31&i=243>

economic viability, and the constitutional value of freedom of speech in the context of partial digital reuse.

3. LEGAL FRAMEWORK AND JUDICIAL RESPONSES IN INDIA

3.1. The Statutory Framework: Fair Dealing under Section 52

The main source of copyright exceptions in India is Section 52 of the Copyright Act of 1957.²¹ This section follows a closed-list approach, where specific uses of copyrighted works have been laid out for which the copyright owner cannot sue for infringement. These uses include personal use, criticism, review, and reporting of news. This differs from the fair use doctrine in the United States, which considers the permissibility of using copyrighted works for certain purposes through a flexible four-factor test.²²

This structure may have been suitable for the time of its enactment, but in today's environment, where digital content is taking an increasingly central role in society, it may prove problematic. This is particularly true with the proliferation of micro-clips of audiovisual content, where a single piece of content may have multiple uses. For example, a micro-clip of a political speech may have uses for criticism, information, and socio-political commentary. However, under a strictly enumerated approach, such hybrid uses need to be clearly classified under one of the established statutory categories in order for fair dealing to apply. Thus, the lack of a clear transformative use doctrine or a balancing approach may cause interpretive difficulties where the courts are faced with partial digital usage.

The problem with Section 52 is not that it is inherently incompatible with digital usage; rather, its application to multi-purpose and platform-mediated communication is dependent on judicial interpretation. Without a structured approach on how excerpts should be evaluated, the statutory approach may cause inconsistent decisions and risk-averse enforcement.

3.2 Performers' Rights under Sections 38A & 38B

Copyright (Amendment) Act 2012 has substantially strengthened the rights of the performer

²¹ The Copyright Act, No. 14 of 1957, § 52, INDIA CODE (1957).

²² 17 U.S.C. § 107 (2018).

by the addition of sections 38A and 38B. Section 38A²³ grants the performer the exclusive economic right to make sound or visual recordings of the performance and communicate the same to the public. Section 38B²⁴ recognises moral rights, including the right to be identified as the performer and to object to distortion or mutilation of the performance. These provisions were introduced in order to align Indian law with international instruments such as the WIPO Performances and Phonograms Treaty and the Rome Convention.²⁵

Although these reforms have formalized the protection, the implementation of the same in the context of the micro-exploitation of digital content poses many complex issues. In the present context of the digital ecosystem, parts of the performances, especially the musical works, are often integrated into short-form videos that spread rapidly across multiple digital media.

In theory, every instance of the use of the short-form videos can attract the economic rights of the performer. However, the enforcement of the obligation to license the economic rights at such a micro-level can create significant transactional costs, thereby making such enforcement economically unviable.²⁶

The collective management organizations, such as the Indian Performing Rights Society (IPRS), are structurally organized to deal with the payment of royalties for the traditional forms of exploitation, such as broadcasting and public performance. However, the mechanism of such organizations is not suited for the enforcement of the rights of the performer at the level of micro-exploitation of the content. In this context, the economic rights of the performer are formalized, but the enforcement of the same at the level of micro-exploitation of the content poses significant issues.

3.3 The De Minimis Doctrine in Indian Copyright Jurisprudence

Indian courts have, on occasion, relied upon the de minimis doctrine to address trivial or insubstantial instances of copying. Derived from the maxim *de minimis non curat lex* (the law does not concern itself with trifles), the doctrine permits courts to excuse negligible infringements where the harm caused is minimal and disproportionate to the cost of

²³ Copyright (Amendment) Act, No. 27 of 2012, § 6, INDIA CODE (2012).

²⁴ Id. § 7 (inserting § 38A).

²⁵ Id. § 7 (inserting § 38B).

²⁶ WIPO Performances and Phonograms Treaty, Dec. 20, 1996, 2186 U.N.T.S. 245; International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), Oct. 26, 1961, 496 U.N.T.S. 43

adjudication.

In a case decided by the Delhi High Court in India, *TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*²⁷, a five-factor test was propounded to determine the applicability of the de minimis principle.

These five factors are:

- (i) the magnitude and character of the harm,
- (ii) the cost of adjudication,
- (iii) the purpose of the violated norm,
- (iv) the impact of the infringement on third-party rights, and
- (v) the intent of the infringing party.

In a more recent case, *Saregama India Ltd. v. Viacom 18 Motion Pictures*²⁸, the Supreme Court of India was called upon to decide the issue of infringement of a cinematographic work by incorporating a small musical piece. Though no clear parameters were laid down, the Supreme Court recognized that the duration of the infringement and the absence of substitutability are relevant issues that need to be considered.

However, the de minimis principle is still evolving and is dependent on the facts and circumstances of the particular case. Though not quantified, the concept is applicable with regard to audiovisual material.²⁹ Thus, the Indian jurisdiction acknowledges the possibility of trivial copying with a degree of justification; however, there is no particular approach with regard to micro-clips in the digital age.

3.4 ANI v. Mohak Mangal: Contemporary Tensions in Digital Reuse.

This was demonstrated in the case of *ANI Media Pvt. Ltd. v. Mohak Mangal*³⁰, where the conflict between copyright protection and online comments was highlighted. This case began with a claim of infringement of a small portion of a video, nine seconds of a news broadcast,

²⁷ *India TV Indep. News Serv. v. Yashraj Films Pvt. Ltd.*, 2009 SCC OnLine Del 3226.

²⁸ *Saregama India Ltd. v. Viacom 18 Motion Pictures*, (2019) 14 SCC 1 (India).

²⁹ Gideon Parchomovsky & Alex Stein, *Originality*, 95 Va. L. Rev. 1505 (2009).

³⁰ *ANI Media Pvt. Ltd. v. Mohak Mangal*, O.M.P. (I) (COMM) 52/2023 (Del. HC 2023).

which was used in a video analyzing the ways of the media on YouTube. In this case, the claimant initiated a claim of copyright infringement and a substantial claim of licensing. At the interim stage, the Delhi High Court considered some of the issues in the dispute, such as the claim of defamation, but not definitively on the claim of fair dealing in respect of the excerpt of the video.

The dispute is substantively unresolved, but it is pertinent to note that there are broader issues of a structural kind. In such a situation, the use of a short excerpt of a video in a larger context of analyzing and critiquing is often in a gray area of interpretation. In such a situation, there are often limitations of enforcement, particularly platform-based takedown, before a judicial determination of a claim of fair dealing.

Thus, the significance of the case is not so much its precedential value as its demonstration of the ambiguity of the relevant doctrine in the digital space. It serves to reinforce the need for more clearly articulated norms with respect to fragmentary use, especially where the fragment is embedded in commentary or criticism. Any such reform will need to balance the economic concerns of rights holders with the constitutional imperative of freedom of expression.

4. COMPARATIVE PERSPECTIVE: LESSONS FROM ABROAD

4.1 The United States: Flexible Fair Use and Transformative Purpose

The United States' copyright regime provides a vastly different model of fair use, which is different from the closed-list model of fair dealing that is followed in India. Section 107 of the United States Copyright Act³¹ provides that fair use of a copyrighted work is not an infringement of copyright. Four non-exclusive factors are to be considered for the determination of fair use: (i) the purpose and character of use, (ii) the nature of the copyrighted work, (iii) the amount and substantiality of the portion used, and (iv) the effect of the use upon the potential market for or value of the copyrighted work. These four factors are to be considered in a non-exhaustive manner, which is a key difference from the Indian model of fair dealing.³²

³¹ 17 U.S.C. § 107 (2018).

³² *Ibid.*

A notable development in the United States is the “transformational use” of copyrighted works. In the landmark case of *Campbell v. Acuff-Rose Music, Inc.*³³, the Supreme Court of the United States held that a commercial parody of a song by the artist Roy Orbison, “Oh, Pretty Woman,” constituted fair use if the new expression, meaning, or message is actually new.³⁴

The Court also clarified that the weightage given to the character of transformation is in favour of fair use.

The subsequent jurisprudence has extended this rationale to digital and audiovisual works, enabling courts to consider the evaluation of excerpts on their utility to perform a different expressive purpose from the original material. While the US courts continue to consider market harm and substantiality, the doctrine of transformative use enables courts to have analytical flexibility to consider fragmentary and comment-based digital uses without legislative change. This is in contrast to India’s textually limited model.

4.2 The European Union: Specific Exceptions and Platform Responsibility.

The European Union takes a different structural approach in this regard, which balances the concept of exceptions with that of platform accountability. Directive (EU) 2019/790³⁵ on Copyright in the Digital Single Market maintains the closed-list system of exceptions that includes quotation, criticism, review, caricature, parody, and pastiche. These are specific-purpose exceptions that have to be fulfilled in accordance with the law in the European Union. At the same time, the introduction of Article 17³⁶ in the Directive has also established the concept of platform responsibility in that it obligates online content-sharing service providers to make their best efforts to acquire authorization for the copyright material and to ensure that infringing material is not made available on their platforms. However, the Directive also ensures that there are complaint and redress systems in place to ensure that legitimate material that falls within the ambit of the exceptions is not automatically filtered.

The European Union model is therefore one that balances the concept of exceptions with that

³³ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

³⁴ *Authors Guild v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015)

³⁵ Directive 2019/790, of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market, 2019 O.J. (L 130) 92.

³⁶ *Id.* art. 17(7).

of platform responsibility. Unlike the United States model, it is not based on any judicial balancing test; unlike the Indian model, it has incorporated user protection in the very structure of the law.

4.3 Collective Licensing Models Worldwide

Another important change in the comparative governance of copyright is the evolution of collective licensing systems with the aim of lowering transaction costs in the digital marketplace. For example, the Music Modernization Act 2018³⁷ in the US introduced a blanket licensing approach for digital streaming services. The Act created a Mechanical Licensing Collective (MLC)³⁸, which is responsible for the management of compulsory licenses for the utilization of digital music and the payment of royalties. This approach minimizes transaction costs in digital markets.

Nordic states have also adopted extended collective licensing (ECL), which permits a collective management organisation to grant a license on behalf of its members and non-members for a particular sector with the authorisation of the relevant authorities and on the condition of fair compensation.³⁹

In the case of India, collective licensing practices assume particular importance in the context of micro-clips and short-form digital use. Instead of the creator having to deal with multiple rights owners, a formal system of micro-licensing can be put in place, with the Indian Performing Rights Society, a recognized collective management organization, facilitating the payment of royalties. However, the experience of different jurisdictions indicates that such collective licensing practices must be backed by legislation for them to be effective.

4.4. Lessons for India

The comparative analysis provides three key insights. Firstly, the U.S. model provides evidence of the utility of flexibility in copyright law, particularly through the transformative use test.

³⁷ Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018).

³⁸ Daniel Gervais, Collective Management of Copyright and Related Rights in Nordic Countries, 34 COLUM. J.L. & ARTS 1, 3–5 (2010).

³⁹ Martin Senftleben & João Pedro Quintais, *The Generative AI Paradox: Copyright Law Between Human Authorship and Autonomous Creativity* (Oct. 2022) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4210278.

Secondly, the EU model provides evidence of the utility of exceptions and the co-existence of platform-based obligations and safeguards. Thirdly, the micro-licensing model provides evidence of the utility of collective licensing for the distribution of remuneration in a market characterized by high-volume low-value transactions.⁴⁰

With respect to India, the key issue is not to replicate any of the models but to combine elements which are compatible with India's constitutional framework. Thus, a safe harbour for minimal excerpts would provide greater legal certainty and yet preserve the qualitative assessment of substantiality.⁴¹ At the same time, micro-licensing and collective management organisations would provide solutions to remuneration issues without imposing undue transaction costs. Lastly, procedural safeguards to ensure that lawful fair dealing is not suppressed would ensure greater alignment with India's constitutional commitment to freedom of expression.⁴²

Such comparative experience therefore offers evidence of the usefulness of targeted structural reforms rather than replication.⁴³ The aim is to seek a form of reconciliation between economic protection and proportionality under the existing legal framework.

5. CONSTITUTIONAL, ECONOMIC & MARKET ANALYSIS

5.1 Constitutional Scrutiny: Proportionality and Article 19(1)(a).

The enforceability of copyrights in the online world is subject to the constitutional provision of freedom of speech and expression, which is guaranteed under Article 19(1)(a) of the Constitution of India.⁴⁴ While the object of copyright law is legitimate, being the protection of creative labor, the encouragement of authorship, and the prevention of substitution, the effect of copyright law, if it restricts expression, is subject to the proportionality test, which is applicable in this context, as established by the Supreme Court of India.

The test of proportionality has four components, and the first, legitimate aim, is fulfilled because the economic well-being of authors and performers is a legitimate objective. The

⁴⁰ Christophe Geiger, *The EU Copyright Reform: Between Policy Scylla and Political Charybdis*, CEPS Special Report No. 120 (Nov. 2015), https://cdn.ceps.eu/wp-content/uploads/2015/11/SR120_0.pdf.

⁴¹ Parchomovsky & Stein, *supra* note 17.

⁴² Sepehr Shahshahani, *The Nirvana Fallacy in Fair Use Reform*, 16 *Minn. J.L. Sci. & Tech.* 327 (2015).

⁴³ William McGeeveran, *Disclosure, Endorsement, and Identity in Social Marketing*, 2009 *B.U. L. Rev.* 1321.

⁴⁴ INDIA CONST. art. 19(1)(a).

second element of the test is suitability, which is fulfilled if the enforcement of copyrights is rational. Injunctions are generally rational, but there is a problem in the context of small excerpts, which are not substitutable, whether such a measure is rational.⁴⁵

The third requirement, that of necessity, entails that there should be no other measure that is “less restrictive” but “equally effective.” In terms of micro-clips, strict takedowns might not always be the “less restrictive” but “equally effective” solution to balancing copyright interests.⁴⁶ This is particularly so if the excerpts are of a minimal duration and do not implicate primary markets.

Lastly, the requirement of proportionality entails that the value of the restriction to speech be weighed against the value of the restriction to the exercise of the right. In terms of strict takedowns, the value of restricting speech might be considered to be too great, particularly if the economic value of restricting micro-clips is considered to be relatively small.⁴⁷ In this context, a balanced regime of micro-clips might be a more effective solution to balancing the need to protect economic interests with the need to protect expressive freedom.

5.2 Identifying Market Failures in the Current System.

From the economic perspective, the current legal uncertainty with regard to micro-clips creates a number of identifiable market inefficiencies. Firstly, transaction costs are excessively large. Negotiating the licences for the multitude of micro-clips would necessitate identifying the holders of the relevant rights, determining the appropriate fees applicable, and enforcing the relevant contractual provisions.⁴⁸ Transaction costs are frequently disproportionately large compared with the economic value of the particular instances of use.

Secondly, the enforcement systems on the platforms may cause the over-removal of content.

⁴⁵ Shamnad Basheer, *SpicyIP Tidbit: Saregama Loses Copyright Infringement Suit against Viacom 18*, SpicyIP (Mar. 13, 2013), <https://spicyip.com/2013/03/spicyip-tidbit-saregama-loses-copyright.html>.

⁴⁶ Directorate-General for Internal Policies, European Parliament, Study, *Generative AI and EU Copyright Law* (PE 774.095, Feb. 2025), [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU\(2025\)774095_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/774095/IUST_STU(2025)774095_EN.pdf).

⁴⁷ Lucian A. Bebchuk, *The Case for Increasing Shareholder Power*, Eur. Corp. Governance Inst., Law Working Paper No. 136/2009 (2009), https://www.ecgi.global/sites/default/files/working_papers/documents/ssrn-id536682.pdf.

⁴⁸ Roberta Romano, *The Market for Corporate Law*, 47 Ariz. L. Rev. 61 (2005), <https://arizonalawreview.org/pdf/47-1/47arizrev61.pdf>.

In order to avoid any potential liabilities, the platforms frequently utilise content detection systems for the removal of content.⁴⁹ However, these systems frequently do not have the capacity to differentiate between instances of infringement and instances of legal use, especially where the micro-clips are utilised for the purpose of commentary or analysis.

Thirdly, the performers may be under-compensated for their work despite the presence of the economic and moral rights under Sections 38A and 38B.⁵⁰ The lack of micro-licensing infrastructure makes it difficult for the performers to collect the relevant royalties for the micro-clips.

Finally, reliance on case-by-case judicial resolution imposes institutional costs. Litigation over minimal-duration excerpts consumes judicial resources disproportionate to the economic stakes involved.⁵¹ While doctrines such as *de minimis* provide relief in individual cases, they do not supply systemic clarity capable of reducing future disputes.

5.3 Comparative Economic Evidence and Aggregated Value.

The experience in other jurisdictions indicates that the problem of such inefficiencies in digital environments could be mitigated through the implementation of collective licensing models. If individual negotiations prove to be impractical in these environments, the implementation of statutorily supported systems of collective management has shown their potential to reduce transaction costs and ensure the remuneration of rights holders.⁵²

The growing digital video market in India is another area that could potentially benefit from the implementation of more efficient models of collective management. Short-form video platforms have considerable user engagement and advertising revenue potential.⁵³ The present proposal is designed to offer more certainty to users *ex ante* and maintain judicial oversight *ex*

⁴⁹ Institute of Company Secretaries of India, *Intellectual Property Rights and Laws Relating to Intellectual Property* (Feb. 2020), https://www.icsi.edu/media/webmodules/FINAL_IPR&LP_BOOK_10022020.pdf.

⁵⁰ *Ibid.*

⁵¹ *Intellectual Property in the Digital Age* (Vincenzo Zeno-Zencovich & Irene Calboli eds., Roma Tre Press 2024), <https://romatrepress.uniroma3.it/wp-content/uploads/2024/09/EBOOK-Intellectual-Property-in-the-Digital-Age.pdf>.

⁵² Peter Mezei & István Harkai, End-User Flexibilities in Digital Copyright Law: An Empirical Analysis of End-User License Agreements, 2022 *Interactive Ent. L. Rev.* 15, <https://doi.org/10.4337/ielr.2022.0003>.

⁵³ Haochen Sun, Copyright and Human Flourishing, Sept. 2023 *Sing. J. Legal Stud.* 256, <https://law1a.nus.edu.sg/sjls/articles/SJLS-Sep-23-256.pdf>.

post. This approach is consistent with the principles of comparative law on the impact of transformative use on the right to freedom of expression. However, without effective licensing systems, the economic benefits of partial or fragmentary use may not be shared equitably between the performer and the creator.⁵⁴ A compromise approach considering both safe harbors and collective micro-licensing might eventually result in a better resource allocation without putting very heavy burdens on the users.

Quantification is dependent on empirical evidence from platforms, but aggregate micropayment revenues have been proven to have great potential in the global world if handled systematically.⁵⁵ While the goal is not to monetize fragmented uses in general, the goal is to develop a system that can effectively balance economic and expressive values.

5.4 Potential Market Benefits of Reform.

The formulation of a framework that controls the deployment of micro-clips is likely to produce a number of market advantages. First and foremost, the formulation of clear legislative guidelines is anticipated to reduce ambiguity in the law that is presently impeding innovation in the production of short-form content.⁵⁶ Second, a collective micro-licensing model is likely to reduce transactional costs, which are currently a barrier to content creation. Third, this model is likely to provide artists with a new avenue of compensation, bridging the gap between legal and actual compensation.

While the actual revenue generated will depend on the platform, empirical evidence of the digital music market suggests that a micropayment system, while small, is likely to generate substantial revenue.⁵⁷ While empirical evidence is required to determine the fee structure, a comparison of the digital music market suggests that a micropayment system is likely to be effective.

⁵⁴ Tianxiang He, Online Content Platforms, Copyright Decision-Making Algorithms and Fundamental Rights Protection in China, 14 *Law, Innovation & Tech.* 1 (2022), <https://doi.org/10.1080/17579961.2022.2047519>.

⁵⁵ Peter Mezei & István Harkai, End-User Flexibilities in Digital Copyright Law: An Empirical Analysis of End-User License Agreements, 2022 *Interactive Ent. L. Rev.* 15, <https://doi.org/10.4337/ielr.2022.0003>.

⁵⁶ Generative AI and EU Copyright Law: A Cross-Border Perspective, 55 *IIC: Int'l Rev. Intell. Prop. & Competition L.*(2024), <https://doi.org/10.1007/s40319-024-01481-5>.

⁵⁷ World Intellectual Property Organization, *Collective Management of Text- and Image-Based Works*, WIPO Publication No. 924 (2023), <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-924-2023-en-collective-management-of-text-and-image-based-works.pdf>.

5.5 Safeguards and Regulatory Coordination.

It is also important to ensure that any system of safe harbors or licenses issued through such systems includes procedural elements. For example, any system using machines to identify infringing uses may also identify legitimate uses as infringing. Such false positives could have the effect of suppressing legitimate uses. For this reason, it is important to ensure that platforms have accessible grievance redress systems that allow users to challenge wrongful suppressions.⁵⁸

Furthermore, any change to copyright law must be consistent with the provisions regarding intermediary liability in the Information Technology Act.⁵⁹ If copyright law and intermediary liability standards are not aligned, this could lead to a situation in which there is uncertainty regarding compliance.

5.6 A Balanced Assessment

The suggested model is not without its implementation hurdles. Developing a scalable micro-licensing model calls for administrative capability, technological integration, and cooperation from rights holders and platforms.⁶⁰ There is also a possibility that resistance from established stakeholders could emerge. However, this is not dissimilar from the alternative: rigid statutory exceptions and ad hoc judicial decision-making. The balanced approach aims at reconciling the principles of constitutional proportionality with the principles of economic efficiency and practicality.⁶¹ The balanced approach does not intend to water down the copyright law; rather, it is focused on improving the application of the copyright law with the realities of the digital market and the core principles of the constitution.

6. SUGGESTED DIRECTIONS FOR REFORM IN INDIA

The above analysis shows that the current copyright regime, as applied to the realities of the

⁵⁸ European Audiovisual Observatory, *Fair Remuneration for Creators in Exploitation Contracts: Regulatory Options at International, European and National Level*, IRIS Plus 2023-3 (Council of Eur., 2023), <https://rm.coe.int/iris-plus-2023-03en-fair-remuneration-for-creators-in-exploitation-con/1680addf8c>.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Centre for Internet & Soc'y, *Comparative Transparency Review of Collective Management Organisations in India, UK, USA*, CIS Blog (July 15, 2019), <https://cis-india.org/a2k/blogs/comparative-transparency-review-of-collective-management-organisations-in-india-uk-usa>.

micro-clip economy, is not well-tailored. First, the closed-list approach to the exceptions set out in section 52 of the Copyright Act, 1957, limits judicial discretion. Second, the provisions on the rights of performers contained in section 38A-B are ineffective.⁶² Finally, the judicial approach to the application of the de minimis rule offers only limited and inconsistent protection. A careful approach to amending the law, therefore, appears to be called for.

It may be that a dual approach, involving the creation of a rebuttable presumption for transformative micro-uses and a micro-licensing regime, can strike the appropriate balance between the First Amendment and economic protection.⁶³

6.1 Towards a Rebuttable Safe Harbour for Micro-Clips.

One of the reforms that may be adopted in this context is to provide for a rebuttable statutory safe harbour for short transformative uses.⁶⁴ This may be achieved by providing clear legislative guidance that the use of an excerpt of an original work of less than an indicative amount of thirty seconds or five percent of the original work, whichever is less, for criticism, review, reporting of current events, parody, or other transformative uses, shall normally be presumed to fall within the concept of fair dealing.⁶⁵

Quantitative parameters of this nature should not be treated as hard and fast limits, but rather as presumptive tests, to be subject to empirical validation and review. The presumption should remain open to challenge if the excerpt incorporates the qualitative "heart" of the original work, or if it substitutes for it in the market.⁶⁶

This proposal intends to give users more certainty beforehand and still allow courts to have control afterward.⁶⁷ This approach is according to the jurisprudence of other countries on the

⁶² *Supra* note pg.4.

⁶³ World Intellectual Property Organization, *Study on the Impact of the Digital Environment on Copyright and Related Rights*, Standing Comm. on Copyright & Related Rights, SCCR/41/3 (2019), https://www.wipo.int/edocs/mdocs/copyright/en/sccr_41/sccr_41_3.pdf.

⁶⁴ Forum on Information & Democracy Observatory, *Rapport of the Forum on Information & Democracy* (June 2025), https://observatory.informationdemocracy.org/wp-content/uploads/2025/06/rapport_forum_information_democracy_2025-1.pdf.

⁶⁵ Durga Priya Manda & Anant Narayan Misra, *India To Replace Information Technology Act with the Proposed Digital India Act: Out with the Old, in with the New?*, 5 *Glob. Priv. L. Rev.* 50 (2024), <https://doi.org/10.54648/GPLR2024002>.

⁶⁶ *Safe Harbour at Risk: The Hindu Editorial on the Impact of the Proposed Digital India Act 2023*, *The Hindu* (Mar. 10, 2023), <https://www.thehindu.com/opinion/editorial/safe-harbour-at-risk-the-hindu-editorial-on-the-impact-of-the-proposed-digital-india-act-2023/article66611045.ece>.

⁶⁷ Lucie Guibault & Stef van Gompel, *Study on Collective Management of Copyright and Related Rights in the*

importance of transformative use in freedom of expression.

It would also respond to the constitutional necessity requirement under the proportionality standard by adopting a less speech-restrictive alternative to blanket enforcement.

6.2 Exploring a Micro-Licensing Pathway through Collective Management Organisations.

This can be achieved through a micro-licensing structure, which exceeds the 'Safe Harbor' threshold but does not achieve market substitution, and can be achieved through a structured micro-licensing system under the aegis of Collective Management Organisations (CMOs).⁶⁸

In the context of the Indian music market, the registered CMOs like the Indian Performing Rights Society (IPRS) can be considered to act as such a micro-licensing system, which is subject to appropriate 'regulatory oversight' and transparency.⁶⁹

In the global review of the blanket and extended collective licensing framework, it was noted that in cases where individual licensing is not practicable, transactional costs can be minimized through the adoption of the framework, but it should be noted that the framework should be subject to appropriate regulatory oversight to ensure that issues of governance opacity, power, and royalty distribution do not undermine the micro-licensing framework.⁷⁰

6.3 The Role of Digital Platforms in Implementation

Digital platforms are central to the circulation of micro-clips and therefore have to be incorporated in any reform model. Current forms of automated content recognition technologies show that it is technically feasible to classify and monetise these short-form

Digital Environment (Inst. for Info. L., Univ. of Amsterdam 2012), https://www.ivir.nl/publicaties/download/Study_on_collective_practices_in_the_digital_environment.pdf.

⁶⁸ Organisation for Economic Co-operation & Dev., *OECD Science, Technology and Innovation Outlook 2023* (2023), https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/03/oecd-science-technology-and-innovation-outlook-2023_fb6e6c20/0b55736e-en.pdf.

⁶⁹ Organisation for Economic Co-operation & Dev., *National Intellectual Property Systems, Innovation and Economic Development* (2014), https://www.oecd.org/content/dam/oecd/en/publications/reports/2014/01/national-intellectual-property-systems-innovation-and-economic-development_g1g35f7c/9789264204485-en.pdf.

⁷⁰ World Intellectual Property Organization, *Management of Academic Intellectual Property and Early Stage Innovation: Global Perspectives and Lessons from Experience*, WIPO Publication No. EMAT/2016/2 (2016), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_emat_2016_2.pdf.

clips.⁷¹

One model that may be appropriate for implementation within a reformed system involves requiring online platforms to include statutory safe harbor schemes and micro-licensing systems within their copyright management structures.⁷² Where an activity meets presumptive thresholds of transformation, it should not be taken down. If it exceeds these presumptive limits but is eligible for micro-licensing, it could be routed to a monetising pathway rather than a takedown pathway.⁷³

At the same time, any reform model has to be consistent with intermediary liability provisions in Indian information technology law. Any requirement that platforms have to comply with should have procedural protections to ensure that there is no overreach or suppression of free speech.

6.4 Constitutional and Market Considerations.

The proposed dual approach meets the objectives of constitutionality and economic desirability. A rebuttable safe harbor protects expressive activity protected by Article 19(1)(a), and short transformative uses are safeguarded, while micro-licensing ensures that performers and rights holders are compensated for extended use.⁷⁴

Under the proportionality test set out by the Supreme Court, the proposed approach meets the following criteria:

- It must pursue a legitimate aim, such as the protection of creative labour;
- It must be appropriate for rationally pursuing that aim;
- It must satisfy the test of necessity, ensuring that the approach taken is less restrictive than the enforcement of the law; and
- It must balance the economic rights and the freedom of expression.⁷⁵

⁷¹ Pamela Samuelson, *Preliminary Thoughts on Copyright Reform*, 7 Utah L. Rev. 551, 564–66 (2007)

⁷² Annemarie Bridy, *Copyright's Digital Deputies: DMCA-Plus Enforcement by Internet Intermediaries*, 95 B.U. L. Rev. 63, 83–86 (2015).

⁷³ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 Apr. 2019 on Copyright and Related Rights in the Digital Single Market art. 17, 2019 O.J. (L 130) 92.

⁷⁴ India Const. art. 19(1)(a); *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1, 43–46 (India).

⁷⁵ William M. Landes & Richard A. Posner, *An Economic Analysis of Copyright Law*, 18 J. Legal Stud. 325, 326–30 (1989).

From an economic perspective, the clarification of the law would minimize transactional costs, limit the abuse of the law, and create economic incentives for performers who are currently exploited in the viral nature of the digital environment.⁷⁶ Although the nature of the fees to be charged must be subject to economic analysis, the experience of many jurisdictions indicates that micropayments can create economic incentives for content creators.

6.5 A Cautious and Incremental Path Forward.

These suggestions are not prescriptive directives; rather, they offer a framework for change. India does not need to adopt foreign models; rather, it may apply the transformative use doctrine, the accountability mechanism, and the collective licensing model to its own unique constitutional and market context.⁷⁷

Such a clearly delineated and rebuttable safe harbor would provide much-needed certainty for journalists, critics, and digital content creators. Tight control of the micro-licensing process would ensure that artists are fairly compensated.⁷⁸ This approach would provide a comprehensive solution to the problem of the conflict between the commitment to free speech expressed through the Constitution and the commitment to the protection of creative labor expressed through the statute.

Before any legislative change is enacted, a pilot approach and empirical testing, especially through the analysis of data from the platforms and royalty distribution patterns, would be beneficial.⁷⁹ Such a piecemeal approach is a practical solution for finding the appropriate balance between innovation, free speech, and economic justice.

7. CONCLUSION AND SUGGESTIONS

7.1 Conclusion

The micro-clips of the copyright regime of India illustrate the inherent contradiction between

⁷⁶ Robert P. Merges, *Contracting into Liability Rules: Intellectual Property Rights and Collective Rights Organizations*, 84 Calif. L. Rev. 1293, 1297–1302 (1996).

⁷⁷ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* 187–90 (2004).

⁷⁸ Neil Weinstock Netanel, *Copyright and a Democratic Civil Society*, 106 Yale L.J. 283, 347–50 (1996).

⁷⁹ World Intell. Prop. Org., *Copyright in the Digital Environment: Economic and Policy Issues* 27–30 (2002).

the static nature of the law and the fluidity of modern expression. Inasmuch as the Copyright Act of 1957⁸⁰ successfully fulfills the legitimate objective of protecting the product of creative labor, the extension of the regime into the fragmented and short-form usage of the work is theoretically unclear and economically unproductive. Judicial decisions based upon qualitative substantiality and the de minimis rule have failed to provide a clear standard for assessing the use of minimal extracts, and the enforcement of the regime upon automated media threatens the proportionality of the freedom of expression provided by Article 19(1)(a).⁸¹

In a digital environment that embraces the values of participatory culture and the extensive dissemination of short-form audiovisual content, the indeterminacy of the law creates chilling effects, transactional inefficiencies, and the under-compensation of performers. A recalibrated approach to the regulation of short-form content must balance economic protection with the requirement of proportionality.

7.2 Suggestions

The balanced reform might make it a point of two prongs. To start with, the establishment of a rebuttable safe harbour for short transformative excerpts might give illustration of the point that the matter be decided at the trial stage by judges having confining qualities, i.e. the selection of the most relevant criterion or the substitution of the market. It would make the enforcement of copyright more in line with the principle of proportionality in constitutional review. Secondly, a regulated micro-licensing system through Collective Management Organisations could be used to solve the situations going beyond safe harbour limits without being dependent on the removal. This could not only be beneficial for the reduction of the transaction costs but also for the regular payment of the performers' remuneration.⁸²

The reform process should be gradual, in harmony with intermediary liability provisions in Indian digital governance law, and based on an empirical evaluation of administrative practicability. By gradualist statutory intervention, India could build on expressive freedom and the economic viability of creative labour in the digital age

⁸⁰ Copyright Act, 1957, §§ 13–14 (India).

⁸¹ India Const. art. 19(1)(a).

⁸² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3 (India).