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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

NAVIGATING THE LABYRINTH OF CREATIVITY AND CONTROL: A COMPREHENSIVE ANALYSIS OF COPYRIGHT LAW IN INDIA

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ABSTRACT

The tension between creative freedom and regulatory control lies at the heart of copyright jurisprudence in India. This paper, titled “Navigating the Labyrinth of Creativity and Control: A Comprehensive Analysis of Copyright Law in India,” undertakes a critical and doctrinal examination of the Indian copyright framework, primarily governed by the Copyright Act, 1957, in light of evolving technological, economic, and socio-legal realities. It explores how the law seeks to strike a balance between incentivizing authorship and ensuring public access to knowledge, particularly within the context of digital dissemination, artificial intelligence, and platform economies. The study analyses key judicial pronouncements and legislative amendments that have shaped the contours of copyright protection, including doctrines such as fair dealing, originality, and moral rights. It further interrogates the challenges posed by rampant digital piracy, intermediary liability, and cross-border enforcement issues, highlighting the inadequacies of existing enforcement mechanisms. Special attention is given to the role of international obligations under TRIPS and WIPO treaties in influencing domestic legal standards. The paper concludes by proposing reforms aimed at enhancing clarity, strengthening enforcement, and fostering a more equitable copyright ecosystem that aligns with the demands of the digital age while preserving the foundational objective of promoting creativity.

Introduction

Background and Evolution of Copyright Law in India

The trajectory of copyright jurisprudence in India represents a complex oscillation between the protection of proprietary interests and the safeguarding of public access to knowledge. This legal evolution is not merely a chronological sequence of statutes but a reflection of India's shifting socio-political identity—from a colonial outpost managing imperial trade interests to a sovereign digital power balancing global treaty obligations with domestic developmental needs.

Historically, the concept of copyright in India was not an indigenous legal tradition but a transplant from the British colonial administration. The genesis of statutory copyright in India can be traced back to the Indian Copyright Act of 1914¹. This legislation was essentially an extension of the British Copyright Act of 1911 to the Indian dominion.¹ The 1914 Act embedded the principles of common law copyright into the Indian legal ethos, prioritizing the economic rights of British authors and publishers. It established a framework that viewed intellectual property primarily through the lens of trade and commerce, rather than cultural enrichment or authorial rights. While it provided a rudimentary structure for protection, it was fundamentally misaligned with the realities of a newly independent nation striving for literacy and cultural renaissance.

The post-independence era necessitated a radical recalibration of these laws. The Copyright Act of 1957, which came into force on January 21, 1958, marked the first sovereign attempt to codify copyright laws in independent India.² Unlike its colonial predecessor, the 1957 Act was designed with a dual imperative: to encourage creativity by rewarding authors and to ensure that the fruits of such creativity were accessible to society at large. This legislation introduced a more nuanced understanding of rights, distinguishing between the economic rights of reproduction and distribution, and the moral rights of the author—a concept heavily influenced by the *droit d'auteur* tradition of civil law countries, despite India's common law heritage.

Over the subsequent decades, the Act has demonstrated remarkable dynamism, undergoing six significant amendments to keep pace with technological advancements and international obligations.³

Year of Amendment	Key Focus Area	Strategic Intent
1983	Penalty Enhancement	Strengthened penalties to deter piracy in the wake of the cassette revolution. ³
1994	TRIPS Compliance	Major overhaul to align with the Berne Convention and TRIPS Agreement; introduced performer's rights. ³
2012	Digital & Artist Rights	Addressed digital rights management (DRM), statutory licensing, and royalty rights for authors/composers. ³
2014	Process Simplification	Clarified fair use for educational institutions and addressed ISP liability. ³⁴

The 1994 Amendment was a watershed moment, primarily driven by the external pressure of globalization. As India integrated into the World Trade Organization (WTO), it was compelled to harmonize its intellectual property regime with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This amendment introduced the concept of "performer's rights" for the first time, acknowledging the contributions of actors and musicians independent of the copyright in the underlying work.³ It also strengthened the definitions regarding the rental of computer programs and sound recordings, reflecting the nascent software boom in India that would later define its economic trajectory.

However, the most transformative update to the Indian copyright system arrived with the Copyright (Amendment) Act, 2012. This legislation was born out of a domestic struggle for equity within the entertainment industry. Prior to 2012, film producers often coerced authors and lyricists into assigning all rights, leaving creators with no royalties from the subsequent monetization of their work. Celebrated by Indian musicians and lyricists like Javed Akhtar, this amendment introduced a non-assignable right to receive royalties, ensuring that creators could claim ongoing financial

benefits even after selling their works to producers or publishers.³ This shift fundamentally altered the power dynamics of the Indian creative economy, prioritizing the vulnerable individual creator over the corporate aggregator.

The evolution of copyright law in India cannot be viewed in isolation from the global intellectual property regime. India's accession to the Berne Convention in 1886 (while under British rule) and its subsequent ratification of the Universal Copyright Convention (1951) and TRIPS (1995) fundamentally altered its domestic legal landscape.⁵ The friction between international harmonization—often driven by the Global North's desire for stronger enforcement—and India's domestic priority of affordable education and cultural dissemination has been the defining characteristic of this evolutionary path. For instance, while TRIPS mandated a minimum term of protection of "Life plus 50 years," India chose to grant "Life plus 60 years," signaling a strong commitment to protectionism.⁵ Yet, simultaneously, India has fought vehemently in international forums to protect its Traditional Knowledge Digital Library (TKDL) against biopiracy, showcasing a sophisticated, multi-faceted approach to IP sovereignty.⁶

Relevance in the Digital and Technological Era

The advent of the digital age has precipitated a paradigm shift in how copyright is conceived, administered, and enforced. The digitization of content, coupled with the ubiquity of the internet, has dissolved traditional barriers to reproduction and distribution. In the analog era, copyright infringement required physical infrastructure—printing presses or cassette duplicators—acting as a natural barrier to entry for pirates.

Today, infringement can occur with a single click, rendering the "right to copy" continuously vulnerable and transforming every consumer into a potential distributor.⁷

The relevance of copyright law in this era is underscored by the emergence of new asset classes and dissemination models. Over-the-Top (OTT) platforms, streaming services, and digital libraries have replaced physical sales as the primary revenue generators for the creative industries. The shift from ownership models (buying a DVD) to access models (subscribing to Netflix) has necessitated

a complete rethinking of licensing frameworks. Section 31D of the Act, designed for radio and television broadcasting, is now at the center of a fierce legal battle regarding its applicability to internet streaming services,⁸ highlighting the lag between statute and technology.⁹

Simultaneously, the rise of user-generated content (UGC) on social media platforms has blurred the lines between creator and consumer. The "prosumer"—a consumer who produces content—challenges the binary definitions of the 1957 Act. The legal system is now tasked with regulating algorithms, defining the liability of digital intermediaries, and determining the authorship of works generated by Artificial Intelligence (AI). The 2012 Amendment anticipated some of these challenges by introducing provisions for Digital Rights Management (DRM) and criminalizing the circumvention of technological protection measures (TPMs).¹⁰ This alignment with WIPO Internet Treaties reflects India's intent to create a secure environment for digital commerce, yet it raises concerns about the erosion of fair use rights.

Furthermore, the digital era has amplified the tension between TPMs and the doctrine of Fair Dealing. As publishers employ encryption to lock content, the statutory exceptions granted to students and researchers under Section 52 of the Act face potential erosion. If a student cannot access a digitally locked book to extract a quote for a thesis, the fair dealing exception becomes nugatory. Thus, the contemporary relevance of Indian copyright law lies in its ability to adapt to a borderless digital economy while preserving the "constitutional ecosystem" of free speech and access to knowledge. The law must now act as a mediator not just between authors and publishers, but between proprietary code and public interest.

Objectives, Research Questions, and Methodology

Objectives:

This report aims to provide an exhaustive, expert-level analysis of the Indian copyright regime. It seeks to move beyond a mere descriptive account of the law to offer a critical evaluation of its socio-economic impact. The specific objectives are:

- 1. Evaluate Legislative Efficacy:** To assess the effectiveness of the Copyright Act, 1957, and its amendments, particularly the 2012 Amendment, in addressing the complex challenges

of the digital economy and the equitable distribution of royalties.

2. **Analyze Judicial Trends:** To critically analyze the judicial interpretation of "Fair Dealing" vis-à-vis the "Fair Use" doctrine, tracing the shift from a rigid statutory approach to a more flexible, purpose-driven jurisprudence.
3. **Investigate Emerging Frontiers:** To investigate the legal status of AI-generated works and the protection of Traditional Knowledge, identifying gaps in the current framework that leave Indian innovation and heritage vulnerable.
4. **Propose Policy Reforms:** To propose actionable policy reforms to enhance enforcement mechanisms, streamline administrative processes, and resolve the ambiguity surrounding statutory licensing for internet broadcasters.

Research Questions:

- How has the Copyright (Amendment) Act, 2012 altered the balance of power between authors, producers, and the public, and has it succeeded in its goal of ensuring royalty flows to creators?
- To what extent do Indian safe harbor provisions under the IT Act and Copyright Act protect digital intermediaries compared to global standards like the US DMCA, and what constitutes "due diligence" in the post-*MySpace* era?
- Does the current legal framework, predicated on human authorship, adequately address the questions of ownership and originality arising from Generative AI, as evidenced by the *RAGHAV* case?
- What are the socio-legal implications of landmark judgments like *DU Photocopy* and *Civic Chandran* on the future of Indian copyright, particularly regarding the tension between educational access and proprietary rights?

Methodology:

This report employs a doctrinal legal research methodology, supplemented by a socio-legal analysis. The core analysis is grounded in primary sources, including the text of the Copyright Act, 1957, its subsequent amendments, and the Copyright Rules. A significant portion of the research focuses on landmark judicial pronouncements from the Supreme Court of India and various High

Courts (Delhi, Bombay, Kerala), treating case law as a primary driver of legal evolution.

Secondary sources, including reports from the Law Commission of India, Parliamentary Standing Committee reports, international treaty texts (Berne, TRIPS, WIPO), and academic literature, are analyzed to provide critical context. The report also utilizes a comparative analysis framework, juxtaposing Indian provisions with US and UK laws to highlight structural divergences and convergences. This comparative approach is particularly useful in the sections dealing with Fair Dealing and Intermediary Liability, where international jurisprudence often informs domestic interpretation.¹¹ The synthesis of these sources aims to produce a holistic narrative that is legally rigorous and policy-relevant.

Legal Framework of Copyright in India

Overview of Copyright Act, 1957 and Subsequent Amendments

The Copyright Act, 1957 serves as the bedrock of intellectual property protection for literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings.¹ It confers exclusive rights upon the copyright owner, including the rights of reproduction, communication to the public, adaptation, and translation.¹⁰ However, the Act is not a static document; its vitality lies in its responsiveness to the changing needs of the creative ecosystem.

The 1994 Amendment: Globalization and Performance Rights

The 1994 Amendment was a direct response to India's economic liberalization and the necessity to align with international trade standards. It was the first major overhaul that introduced the concept of "performer's rights" (Section 38), granting actors, singers, and dancers specific rights over their live performances.³ This was a crucial recognition that a performance is a distinct creative act, separate from the underlying script or composition. The amendment also refined the definition of "computer programmes" as literary works, thereby extending copyright protection to software code—a move that laid the legal foundation for India's IT services boom.

The 2012 Amendment: A Victory for Creators

Widely regarded as the most transformative update, the Copyright (Amendment) Act, 2012,

addressed long-standing inequities in the entertainment industry. The amendment was driven by a powerful lobby of lyricists and composers who argued that the standard industry practice of "buyout contracts" (where producers bought all rights for a lump sum) was exploitative.

- **Inalienable Royalty Rights:** The 2012 Amendment introduced a prohibition on the assignment of royalty rights for the utilization of works in any form other than as part of the cinematograph film in a cinema hall. This means that while a producer owns the film, the lyricist and composer retain the right to collect royalties when the song is played on radio, streaming platforms, or performed live. This right cannot be waived, ensuring a continuous income stream for creators.³
- **Technological Protection Measures (TPMs):** To align with the WIPO Internet Treaties, the amendment introduced Section 65A (Protection of Technological Measures) and Section 65B (Protection of Rights Management Information). These sections criminalize the circumvention of digital locks used by copyright owners to protect their content, effectively bringing the "anti-circumvention" regime to India.³ However, mindful of public interest, the Act provides exceptions for encryption research, security testing, and—crucially—access for legitimate fair dealing purposes, though the mechanism for this access remains practically difficult to enforce.
- **Statutory Licensing for Cover Versions:** Section 31C was introduced to regulate the business of "cover versions" or "remixes." It mandates that anyone wishing to make a cover version must pay a statutory royalty to the owner of the original recording and give prior notice, thereby curbing the rampant unauthorized remix culture while allowing for legal creative reinterpretation.³

International Obligations: Berne Convention, TRIPS, WIPO Internet Treaties

India's domestic copyright policy is deeply intertwined with its international treaty obligations, reflecting a strategy of active engagement with global IP norms while retaining policy space for domestic priorities.

The Berne Convention (1886):

India has been a signatory to the Berne Convention since its colonial days. The Convention's core

principle of "national treatment" ensures that works originating in one member country must be given the same protection in India as domestic works. This principle simplifies cross-border protection, as no separate registration is required for foreign works to enjoy copyright in India.¹¹ Furthermore, the Convention mandates the protection of "moral rights"—the right to claim authorship (paternity) and the right against distortion (integrity). These are codified in Section 57 of the Indian Act, which allows authors to sue for damages if their work is mutilated in a way that prejudices their honor or reputation, a right that exists even after the economic rights have been assigned.¹

TRIPS Agreement (1995):

The TRIPS Agreement integrated intellectual property into the global trade system under the WTO. It mandated minimum standards of protection and, crucially, effective enforcement procedures. TRIPS required India to protect computer programs as literary works and to provide rental rights for computer programs and cinematograph films. It also set the minimum term of protection at "Life + 50 years," which India exceeds by providing "Life + 60 years".⁵ The TRIPS agreement forced India to tighten its patent and copyright regimes to avoid trade sanctions, leading to the substantial 1994 amendments.¹² It linked IP protection directly to trade leverage, making copyright a matter of economic diplomacy.¹²

WIPO Internet Treaties (WCT and WPPT):

In 2018, India acceded to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), collectively known as the "Internet Treaties".⁵

- **WCT:** This treaty updates the Berne Convention for the digital age. It requires member countries to provide legal remedies against the circumvention of TPMs and to protect Rights Management Information (RMI). It explicitly addresses the "communication to the public" right in the digital environment, covering on-demand access.⁷
- **WPPT:** This treaty protects the rights of performers and producers of phonograms in the digital medium. It grants performers economic rights in their fixed performances (e.g., sound recordings) and moral rights.⁷

India's accession signaled its commitment to protecting digital content, crucial for its booming IT

and entertainment sectors. It allows Indian creators to claim reciprocal protection in other member countries for their digital works, ensuring that an Indian song streamed in France receives the same protection as a French song.¹³

Institutional and Administrative Mechanisms

The administration of copyright in India has recently undergone a drastic structural overhaul, reflecting a government push towards rationalizing tribunals and streamlining justice delivery.

The Copyright Office:

The Copyright Office, functioning under the Department for Promotion of Industry and Internal Trade (DPIIT), handles the registration of copyrights. While registration is not mandatory for protection (as per the Berne Convention's "no formalities" rule), it serves as prima facie evidence of ownership in courts, shifting the burden of proof to the challenger.¹¹ The 2014 Amendment simplified this process, allowing for online filing and tracking, which has significantly reduced the backlog of applications.³

Abolition of the Intellectual Property Appellate Board (IPAB):

Until 2021, the IPAB was the specialized quasi-judicial body tasked with hearing appeals against the decisions of the Copyright Registrar and determining royalty rates.¹⁴ It was intended to be a domain-expert body that could handle technical IP matters faster than the traditional courts. However, in April 2021, the government promulgated the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, which was later enacted as an Act, abolishing the IPAB.¹⁴

- **Rationale:** The government cited systemic delays, lack of staff, heavy vacancies, and the slow pace of justice as reasons for the abolition. The IPAB was often dysfunctional due to the non-appointment of chairpersons or technical members.¹⁵
- **Impact:** Jurisdiction has now transferred to the Commercial Divisions of the High Courts. While this may potentially expedite cases due to the robust infrastructure of High Courts, critics argue it leads to a loss of subject-matter expertise. The IPAB included technical members who understood the nuances of royalty calculations and industry standards, a specialized skill set that generalist judges may lack.¹⁴

- **Emergence of IP Divisions:** In a proactive response to this transfer of jurisdiction, the Delhi High Court established a dedicated Intellectual Property Division (IPD) to manage the influx of transferred cases.¹⁶ The IPD has framed its own rules to govern proceedings, aiming to combine judicial efficiency with domain expertise. This model is being watched closely, with calls for other High Courts to emulate it to prevent an "IP backlog" in the judiciary.¹⁷

Copyright Societies:

The administration of rights is also carried out by Copyright Societies like the Indian Performing Right Society (IPRS) and Phonographic Performance Limited (PPL). These collective management organizations (CMOs) collect royalties on behalf of members and distribute them. The 2012 Amendment mandated the re-registration of these societies to ensure transparency and required that authors be represented on their governing boards—a move designed to break the monopoly of music labels over these societies.¹⁸ This structural change has empowered authors to have a say in how their royalties are collected and distributed, although friction between societies and users regarding tariff rates remains a constant administrative challenge.

Copyright and the Digital Economy

Online Infringement, OTT Content, and Intermediary Liability

The digital economy thrives on the rapid dissemination of content, creating inherent friction with traditional copyright boundaries. Online infringement has evolved from the early days of peer-to-peer file sharing to sophisticated operations involving unauthorized streaming, "stream-ripping," and mirror sites.

OTT Regulation and the IT Rules, 2021:

Over-the-Top (OTT) platforms (e.g., Netflix, Hotstar, Amazon Prime) occupy a complex legal space. Unlike traditional broadcasters who are subject to the Cinematograph Act or Cable Television Networks Regulation Act, OTT platforms were largely unregulated until the introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

- **Self-Classification:** The Rules mandate a three-tier grievance redressal mechanism and require OTT platforms to self-classify content into age-based categories: U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult).¹⁹This classification system forces platforms to act as gatekeepers, implementing parental locks and reliable age verification mechanisms for adult content.
- **Copyright Implications:** While primarily focused on content standards (ethics) and national security, these rules indirectly impact copyright by imposing strict due diligence requirements on platforms. Failure to comply with the "Ethics Code" or the grievance mechanism can strip them of their "safe harbor" protection under Section 79 of the IT Act. This makes the platform liable for third-party content hosted on their servers, potentially exposing them to lawsuits for copyright infringement if they fail to act on user complaints.²⁰
- **Criticism:** Critics argue that the three-tier mechanism, which culminates in an Inter-Departmental Committee of the government, introduces a "soft censorship" regime. The fear is that platforms, to avoid liability and government scrutiny, will over-censor content, removing anything that might be remotely controversial or infringing, thus chilling creative expression.²¹

Case Study: Super Cassettes Industries Ltd. v. MySpace Inc.

The litigation between *Super Cassettes Industries Ltd. (T-Series)* and *MySpace Inc.* is the cornerstone of Indian intermediary liability jurisprudence regarding copyright. It highlights the conflict between the "Notice and Takedown" regime and the demand for pre-emptive filtering by rights holders.

Phase 1: The Single Judge Decision (2011)

T-Series alleged that MySpace allowed users to upload infringing copies of its music and cinematograph works. T-Series argued that MySpace was not a passive intermediary because it profited from the content via advertisements and modified the works for streaming. The Single Judge ruled against MySpace, holding that:

- MySpace profited from the content and thus could not claim to be a passive intermediary.

- The concept of "Safe Harbor" under Section 79 of the IT Act did not apply to copyright infringement due to the proviso in Section 81, which states that nothing in the IT Act shall restrict the rights under the Copyright Act.
- **Order:** MySpace was ordered to *pre-screen* all content before uploading to ensure no infringement occurred. This imposed an impossible technological burden on the platform, essentially requiring it to audit millions of daily uploads.²²

Phase 2: The Division Bench Ruling (2016)

On appeal, the Division Bench of the Delhi High Court overturned the Single Judge's order, establishing the current precedent which is far more balanced and technology- friendly:

- **Safe Harbor Applicability:** The Court held that Section 79 (Safe Harbor) *does* apply to copyright infringement cases, provided the intermediary exercises due diligence. The proviso in Section 81 was interpreted to mean that the IT Act cannot strip a copyright owner of their rights, but it does not bar the safe harbor defense for intermediaries.²³
- **Actual Knowledge:** The Court ruled that intermediaries cannot be held liable unless they have "actual knowledge" of the specific infringing content. A general awareness that infringement occurs on the platform is insufficient to trigger liability.²⁴
- **Notice and Takedown:** The Court rejected the pre-screening requirement, noting that it restricts free speech and is technologically unfeasible²⁵. Instead, it mandated that upon receiving a specific URL or notice of infringement (Specific Knowledge), the intermediary must remove the content within 36 hours.²⁶

Significance:

This judgment harmonized the Copyright Act with the IT Act, preventing a chilling effect on the digital economy. It relieved platforms of the duty to act as "internet police" while ensuring a mechanism for rights holders to remove infringing content. It aligns India closer to the global standard where specific notice triggers liability, rather than a general duty to monitor.

Role of DMCA-like Provisions and Safe Harbors

The Indian approach mirrors the US Digital Millennium Copyright Act (DMCA) but with distinct variations that reflect its specific legal environment.

- **Safe Harbor (Section 79, IT Act):** Similar to DMCA Section 512, Section 79 protects intermediaries from liability for third-party acts. However, unlike the DMCA, which has detailed statutory "counter-notice" procedures allowing users to challenge a takedown, India relies heavily on the 2021 Rules and judicial precedents like *Shreya Singhal* and *MySpace* to define the contours of "take down".²² The *Shreya Singhal* judgment initially limited "actual knowledge" to a court order, but *MySpace* clarified that for copyright, a specific notice from the rights holder is sufficient to trigger the takedown obligation.
- **Transient Storage:** Section 52(1)(b) and (c) of the Copyright Act provides exceptions for the "transient or incidental storage" of a work (caching) necessary for technical transmission. In the *MySpace* case, the court clarified that this exception applies to ISPs providing access, but not necessarily to platforms permanently hosting content for public display. This distinction ensures that mere conduits (like Airtel or Jio) are not liable for the data passing through their networks, while hosting platforms (like YouTube or MySpace) have a higher duty of care once notified.²³

Section 31D and Internet Broadcasting:

A critical conflict in the digital economy is the interpretation of Statutory Licensing under Section 31D. This section allows broadcasters to use musical works by paying a royalty fixed by the Copyright Board (now Commercial Court), preventing owners from withholding popular music.²⁷

- **The Controversy:** Does the term "broadcasting" in Section 31D include internet streaming?
- **Judicial View:** In landmark cases like *Tips Industries v. Wynk Music* and *Warner/Chappell v. Spotify*, the Bombay High Court ruled that Section 31D applies only to radio and television broadcasting, *not* internet streaming. The Court reasoned that statutory exceptions must be strictly interpreted and that the legislative intent was not to cover on-demand internet streaming.⁸
- **Impact:** This interpretation means streaming services (Spotify, Wynk) must negotiate voluntary commercial licenses with owners (T-Series, Sony) rather than relying on statutory rates. This has shifted leverage back to copyright owners, leading to high-stakes licensing battles and occasional removal of catalogs from streaming services when

negotiations fail.²⁸

Fair Use and Public Interest

Scope of Exceptions under Section 52

India follows a "Fair Dealing" regime, which is distinct from the US "Fair Use" doctrine. While "Fair Use" is an open-ended concept determined by factors like market effect and purpose, "Fair Dealing" in India is technically limited to specific purposes enumerated in Section 52 of the Copyright Act, 1957. This creates a "pigeonhole" approach: if a use does not fit into one of the specific sub-clauses of Section 52, it is technically an infringement, regardless of how "fair" it might seem.

Section 52(1)(a) lists the core fair dealing exceptions:

1. Private or personal use, including research.
2. Criticism or review, whether of that work or of any other work.
3. Reporting of current events and current affairs, including the reporting of a lecture delivered in public.²⁹

However, the interpretation of these clauses by Indian courts has been remarkably expansive, often converging with the broader principles of Fair Use. The judiciary has recognized that in a developing country with high literacy aspirations, a rigid interpretation would stifle creativity and education³⁰.

Judicial Interpretations: Civic Chandran and R.G. Anand

Civic Chandran v. Ammini Amma (1996): Freedom of Critique

This Kerala High Court case is a landmark in establishing the right to criticize via reproduction, effectively expanding the "criticism or review" exception.

- **Facts:** The defendant wrote a counter-drama titled *Ningal Are Communistakki* (Who Made You a Communist?) as a direct critique of the famous play *Ningalenne Communistakki* (You Made Me a Communist). The plaintiff alleged copyright infringement due to substantial copying of plot, characters, and dialogue.
- **Ruling:** The Court held that the copying was for the purpose of *criticism* and political discourse. It ruled that even substantial copying is permissible if the intention is to critique

the ideology of the original work. The Court noted that the counter-drama did not compete with the original commercially but offered a different perspective.³¹

- **Significance:** This judgment prioritized Freedom of Speech (Article 19(1)(a)) over copyright. It established that copyright cannot be used to silence dissent or parody. The court looked at the *purpose* of the work rather than just the quantity copied, moving closer to the US Fair Use model.³²

R.G. Anand v. Deluxe Films (1978): The Lay Observer Test

This Supreme Court judgment clarified the "Idea-Expression Dichotomy," a fundamental principle of copyright law.

- **Facts:** The plaintiff claimed the movie *New Delhi* infringed his play *Hum Hindustani*. Both works dealt with the theme of provincialism and inter-caste marriage in the context of a changing India.³³
- **Ruling:** The Court held there was no infringement. It established that copyright protects the *expression* of an idea, not the *idea* itself. Since the theme of provincialism was a common social topic, no one could monopolize it.³⁴
- **The Test:** The Court formulated the **Lay Observer Test**: "Whether the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original".³⁵
- **Significance:** This remains the standard test for infringement in India. It ensures that broad themes, plots, and historical facts remain in the public domain, allowing different artists to explore the same subjects without fear of litigation, provided their execution is original.

The Delhi University Photocopy Case (2016): Education vs. Property

The Chancellor, Masters & Scholars of University of Oxford v. Rameshwari Photocopy Services is arguably the most significant recent case globally regarding educational exceptions.

- **Facts:** International publishers (Oxford, Cambridge, Taylor & Francis) sued a photocopy shop located in the Delhi University campus for creating "course packs"—compilations of photocopied book chapters prescribed in the syllabus—and selling them to students at cost.
- **Ruling:** The Delhi High Court (Justice Endlaw) dismissed the suit. It held that Section 52(1)(i), which allows reproduction by a "teacher or pupil in the course of instruction," is not limited to a physical classroom or an individual teacher. It extends to institutional

reproduction for educational needs. The court reasoned that the photocopy shop was merely an extension of the teacher's arm.³⁶

- **Philosophy:** The Court declared that copyright is a statutory right, not a natural right or a divine entitlement. In a developing country, the constitutional right to education warrants a broad interpretation of exceptions to ensure affordable access to learning materials. The court prioritized the student's right to know over the publisher's right to profit.³⁷
- **Impact:** This judgment legitimized the creation of course packs, a massive victory for access-to-knowledge activists.³⁸ It was heavily criticized by the Global North and publisher associations as legitimizing piracy, but it stands as a robust example of India asserting its developmental priorities within the TRIPS flexibility framework.³⁹

Comparative Study with U.S. “Fair Use” and U.K. “Fair Dealing”

The table below summarizes the structural and interpretive differences between the Indian system and its Anglo-American counterparts.

Feature	India (Fair Dealing)	U.S. (Fair Use)	U.K. (Fair Dealing)
Statutory Basis	Section 52, Copyright Act 1957	17 U.S.C. § 107	Copyright, Designs and Patents Act 1988
Structure	Exhaustive list of specific acts (e.g., education, criticism).	Open-ended illustrative list.	Exhaustive list (similar to India).
Determination	Must fall within a specific enumerated purpose.	Based on 4 factors: Purpose, Nature, Amount, Market Effect.	Purpose-driven; strictly construed compared to US.

Educational Use	Extremely broad (<i>DU Photocopy</i> case); covers course packs.	Subject to "Amount" and "Market Effect" tests (often stricter).	Limited; specific licensing schemes usually required.
Flexibility	Rigid statute, but liberal judicial interpretation (<i>Civic Chandran</i>).	Highly flexible; adapts to new technologies (e.g., Google Books).	Less flexible than US; stricter adherence to statute.

Analysis:

While India follows the UK's rigid statutory structure (Fair Dealing), its judiciary has applied principles akin to the US "Fair Use" doctrine. In *Civic Chandran*, the court implicitly used the US four-factor test (purpose, nature, amount, effect) to determine fairness, even though the Indian statute does not explicitly prescribe it.³⁰ Similarly, the *DU Photocopy* judgment's focus on the purpose of the use (education) rather than the commercial impact on publishers mirrors the transformative use analysis in the US. This hybrid approach allows India to maintain a strict civil law-style code while exercising common law equity to protect public interest.⁴⁰ It represents a "best of both worlds" strategy, provided the judiciary continues to be progressive.⁴¹

Emerging Challenges

AI-Generated Works and Authorship Debates

The rapid ascent of Generative AI (e.g., ChatGPT, Midjourney) has posed a fundamental ontological question to copyright law: Can an AI be an author? Section 2(d) of the Indian Copyright Act defines an "author" as a person, which has traditionally been interpreted as a human being.

The RAGHAV Case (*Suryast*):

In 2020, the Indian Copyright Office generated global headlines by registering a copyright for an artwork titled "*Suryast*," listing the AI app "RAGHAV" as a co-author alongside Ankit Sahni (the human owner).

- **The Flip-Flop:** This registration was ostensibly a mistake or an oversight. The Copyright Office subsequently issued a withdrawal notice, demanding clarification on the legal status

of the AI. This incident highlighted the confusion within the administrative machinery regarding AI authorship.⁴²

- **Legal Vacuum:** Currently, Indian law requires a human "author." The prevailing view, supported by comparative cases like *Thaler* in the US (where AI authorship was rejected), is that AI lacks the legal personality to hold rights. Rights imply duties and the capacity to be sued, neither of which an AI possesses.⁴³
- **Human Input vs. AI Generation:** The debate now centers on the "Modicum of Creativity" test. If a human inputs highly specific and creative prompts, or significantly edits the AI output, they may claim authorship over the final work. However, raw AI output generated from simple prompts likely falls into the public domain under current Indian law.⁴⁴
- **Policy Gap:** Unlike the UK, which has a specific provision for "computer-generated works" (granting authorship to the person undertaking the arrangements necessary for the creation of the work), India lacks a clear statutory provision for AI-generated content. This leaves the booming AI art and content industry in a legal grey zone.⁴⁵

Copyright and Digital Education / E-Learning Platforms

The COVID-19 pandemic accelerated the shift to e-learning, exacerbating the tension between EdTech platforms and copyright owners.

- **Virtual Classrooms:** Does Section 52(1)(i) (reproduction in the course of instruction) apply to Zoom classes or recorded lectures hosted on servers? The *DU Photocopy* ratio suggests it should, as the "course of instruction" is not limited by physical walls. However, the commercial nature of platforms like Byju's or Unacademy complicates this. Can a for-profit EdTech giant claim the same exceptions as a non-profit university? This remains an untested area of law.⁴⁶
- **Content Ownership:** A new challenge is the ownership of lectures delivered by teachers on these platforms. While Section 17(c) generally assigns copyright to the employer in a contract of service, the extent to which teachers retain moral rights or rights over their unique pedagogical methods in the digital space remains a contentious employment law and copyright issue.⁴⁷

Traditional Knowledge and Community Ownership Issues

India possesses a vast repository of Traditional Knowledge (TK)—medicinal (Ayurveda), artistic (folklore), and cultural. The conventional copyright system, centered on individual authorship, fixed terms, and material fixation, is ill-suited for TK, which is often community-owned, oral, and intergenerational.

Biopiracy and Defensive Protection:

Past instances of "biopiracy"—such as the US patenting of Turmeric and Basmati— alerted India to the need for protection. India's response has been primarily defensive.

- **TKDL (Traditional Knowledge Digital Library):** India created the TKDL, a massive database translating ancient Sanskrit, Urdu, and Tamil texts into international patent classification codes. This acts as "prior art" evidence.⁴⁸
- **Impact:** The TKDL is available to international patent offices (EPO, USPTO) under non-disclosure agreements. It has successfully been used to thwart hundreds of erroneous patent applications abroad by proving that the "invention" was actually pre-existing Indian knowledge.⁶ This is a unique Indian innovation in the IP world, using digital tools to protect ancient wisdom.⁴⁹

Protection of Folklore:

While the Copyright Act protects "original" works, folklore often lacks a single identifiable author. Section 38B protects the "moral rights" of performers of folklore, ensuring they are credited. However, the community ownership of the underlying expression remains inadequately protected by copyright statutes. A weaver community in Varanasi cannot easily copyright a traditional saree design that has been passed down for centuries because it lacks "novelty" in the copyright sense. The proposed Protection of Traditional Knowledge Bill aims to fill this gap but faces challenges regarding enforcement and defining "community".⁵⁰

Enforcement and Policy Recommendations

Effectiveness of Civil, Criminal, and Administrative Remedies

Enforcement remains the Achilles' heel of the Indian copyright regime. Despite strong laws, piracy remains rampant, particularly in the digital sphere.

Civil Remedies (Section 55):

The primary remedy is the injunction. In the digital age, the "John Doe" order (or Ashok Kumar order) has become a potent weapon. Courts grant these orders against unidentified defendants (e.g., "unknown website owners") to block access to pirated content during major film releases.⁵¹

- **Dynamic Injunctions:** The Delhi High Court has evolved the concept of "dynamic injunctions," where a rights holder can add new mirror sites of a pirate website to an existing injunction order without filing a fresh suit. This streamlines enforcement against "hydra-headed" piracy sites that change URLs as soon as one is blocked.⁵²

Criminal Remedies (Section 63):

- Copyright infringement is a cognizable and non-bailable offense punishable by imprisonment of 6 months to 3 years.
- **The "Cognizable" Debate:** There has been judicial conflict on whether infringement is bailable (where bail is a right) or non-bailable (where bail is at the court's discretion). Recent Supreme Court rulings have leaned towards treating it as a serious economic offense, strengthening the deterrent value.⁵³

Administrative Remedies:

The banning of websites by the Department of Telecommunications (DoT) and the takedown mechanisms under the IT Rules, 2021, constitute the administrative enforcement layer. However, "over-blocking" remains a concern, where legitimate content is removed alongside infringing material due to automated filters or over-zealous compliance by ISPs.⁵⁴

Piracy Statistics and Economic Impact:

A 2024 report highlights the staggering scale of the challenge. The Indian media and entertainment sector lost approximately INR 224 billion to piracy in 2023 alone.

Streaming piracy accounts for 63% of this loss, driven by the proliferation of illegal apps and IPTV services. This not only hurts creators but results in an estimated GST loss of INR 43 billion to the state exchequer.⁵⁴ These figures underscore that piracy is not just a legal issue but a massive economic hemorrhage.⁵⁵

Need for Copyright Tribunals or Digital Content Regulation Frameworks

The Void Left by IPAB:

The abolition of the IPAB 14 has pushed technical royalty disputes to High Courts. While High Courts have legal acumen, they may lack the industry-specific economic data required to fix fair royalty rates for radio and internet broadcasting. Determining a royalty rate requires analyzing market data, advertising revenues, and consumer behavior—tasks better suited for a specialized economic tribunal than a civil court.

- **Recommendation:** There is a pressing need for specialized commercial benches within High Courts to be equipped with technical experts or economists to adjudicate rate-setting disputes effectively. The "IP Division" model of the Delhi High Court is a step in the right direction but needs to be scaled nationally.¹⁵

Copyright Societies (IPRS/PPL):

Collective Management Organizations (CMOs) like IPRS (for authors/composers) and PPL (for sound recordings) are crucial for enforcement.

- **Reforms:** The 2012 Amendment mandated the re-registration of these societies to ensure transparency and the inclusion of authors in their governing bodies.
- **Current State:** While revenues have increased (IPRS revenue jumped from ₹45cr to ₹166cr in 2018-19), friction remains between societies and users (hotels, radios) regarding tariff transparency. Strengthening the oversight of these societies is vital to ensure royalties actually reach the individual artists rather than being absorbed in administrative costs.⁵⁶

Suggested Reforms for India's copyright regime

Based on the analysis of reports from the Vidhi Centre for Legal Policy and the Parliamentary Standing Committee⁵⁷, the following reforms are recommended:

1. **AI Amendment:** The Act must be amended to clarify the status of AI-generated works. A *sui generis* category for "computer-generated works" (similar to the UK) with a shorter protection term (e.g., 25 years) could balance innovation and human incentive. This would provide certainty to the AI industry while preserving the sanctity of human creativity.⁵⁷
2. **Statutory Licensing for Streaming:** Section 31D should be amended to explicitly include

"internet broadcasting." The current exclusion creates a monopoly for large labels and stifles new streaming entrants. A statutory rate ensures artists get paid while platforms can operate without prohibitive negotiation costs, fostering a competitive digital music market.⁸

- 3. Decriminalization of Minor Offenses:** To improve the ease of doing business, minor or accidental infringements (e.g., a student blogger using an image) should be decriminalized, reserving criminal liability for large-scale commercial piracy. This would reduce the burden on courts and prevent the harassment of individual users.⁵⁸
- 4. Traditional Knowledge Law:** A standalone *sui generis* law for TK is necessary to move beyond the defensive protection of TKDL to positive protection. This would allow indigenous communities to monetize their heritage equitably, ensuring that if a pharmaceutical company profits from a tribal remedy, the tribe receives a fair share of the benefits.⁵⁰

Conclusion

The evolution of copyright law in India is a testament to the nation's struggle to harmonize its civilizational ethos of knowledge sharing with the capitalist imperatives of a globalized economy. From the colonial shackles of the 1914 Act to the artist-centric liberation of the 2012 Amendment, the law has progressively recognized the rights of the creator while attempting to shield the public from the excesses of monopoly.

However, the digital age poses an existential challenge to this framework. The "Copyright Act, 1957" is essentially an analog statute trying to govern a digital world. The judiciary has performed a heroic task of gap-filling—whether through the *MySpace* judgment balancing intermediary liability or the *DU Photocopy* judgment protecting the right to education. Yet, judicial interpretation has its limits. It cannot create new categories of rights for AI or rewrite statutory licensing provisions for streaming.

The current friction points—AI authorship, streaming royalties, platform liability, and the protection of traditional knowledge—require legislative intervention, not just judicial sticking plasters. India stands at a crossroads: it can either adopt a maximalist IP regime that mirrors the

West, potentially stifling its digital startups and students, or it can continue to forge a unique "Indian way"—one that protects the *livelihood* of the creator without holding the *knowledge* of the society ransom. The future of India's creative economy depends on striking this delicate balance with precision, foresight, and equity. The 2012 Amendment was a step towards equity for authors; the next amendment must be a step towards clarity for the digital age.

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