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**FAIR USE DOCTRINE: LEGAL AND ETHICAL CONSIDERATIONS IN
COPYRIGHT LAW AND ITS DETERMINATION IN METAVERSE**- Sadhika Gupta¹**ABSTRACT**

The Fair Use Doctrine, a cornerstone of copyright law, plays a pivotal role in the delicate balance between promoting creativity and protecting IP rights. This article delves into the multifaceted dimensions of fair use, exploring its historical origins, legal interpretations, and ethical implications within the evolving landscape of the Metaverse. Tracing the lineage of fair use from landmark cases such as *Folsom v. Marsh*, this article unpacks the fundamental principles that underpin this doctrine. It dissects the four-factor test - purpose, nature, amount, and effect - that courts employ to ascertain whether a use qualifies as fair. This analysis forms the groundwork for evaluating how fair use operates in the burgeoning realm of the Metaverse. As digital realities reshape the boundaries of creative expression, the article navigates through various contexts within the Metaverse where fair use finds application. Through these lenses, the ethical considerations of striking a balance between user freedom and the rights of copyright holders come into sharp focus. Furthermore, the article addresses critical questions that arise in the Metaverse context: What constitutes a fair return for authors? Under what circumstances does excessive control impede creativity, originality, and freedom of expression? How does fair use operate within the virtual dimensions of the Metaverse?

KEYWORDS

¹ Student at Amity Law School, Noida

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Fair Use Doctrine, Copyright Law, Intellectual Property Rights, Metaverse, Freedom of Expression.

RESEARCH METHODOLOGY

There are two kinds of sources of research: Primary sources and Secondary sources. Primary sources include surveys, sample tests, questionnaires, etc. while secondary sources include books, reports, journals, articles, publications, etc. In the present article, the researchers have relied on secondary sources of research like books, reports, journals, articles, publications, etc.

INTRODUCTION TO FAIR USE DOCTRINE

Copyright is a monopoly which fetters competition and distorts trade, and the question arises as to whether this is justified by the benefits which it also brings to society at large, especially when the further extension of copyright is under consideration. This is considered in the context of the protection of industrial designs, the length of the copyright term, Crown copyright, scientific research, the criminality of certain infringements of copyright, and the limitations of fair use exceptions to copyright.²What is fair dealing or fair use? While copyright protection is granted to the person's original work as an exclusive right, fair use permits limited use of that copyrighted work intending to balance the public interest and the interest of the copyright holders without acquiring permission. In copyright law, the term "fair dealing" is not defined, but courts have repeatedly attempted to determine its scope. In simpler words, it is the legalized way of copying others' work without constituting infringement. The doctrine "fair use" derives its origin back from the popular 1841 case of *Folsom v. Marsh* that ruled an equitable and legitimate abridgement of an original work is not in breach of the author's copyright. The judgement laid down four factors to determine the infringement of the copyrighted material. Firstly, the purpose and the character of the use followed by the nature of the copyrighted material, and the amount or substantiality used, lastly, the effect of use on the potential market for a value of the work.³

²Laddie H, "Copyright: Over-Strength, Over-Regulated, Over-Rated?" in Edinburgh University Press (eds), *Innovation, Incentive, and Reward*, (1997)

³ *Folsom V. Marsh* [1841] 9 F. Cas. 342, C.C.D. Mass

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The concept of fair dealing was brought about to function as one of the defences to this exclusive right granted through a copyright to the author of a creative work.⁴ the concept of fair dealing has also been recognized in the Berne Convention⁵ as well as the TRIPS Agreement.⁶ the rationale or justification for allowing the exception of fair dealing is that on certain specific occasions an also been recognized in the Berne Convention⁷ as well as the TRIPS Agreement.⁸ the rationale or justification for allowing the exception of fair dealing is that on certain specific occasions an infringing use of the copyrighted work may bring about greater public good than its absolute denial.⁹

This article aims to analyze the legal and ethical considerations of fair use doctrine in copyright law. It focuses on the USA's, UK's judicial interpretation on the fair use doctrine and lays down its usage followed by Indian judiciary. It also seeks to answer the question of what constitutes a fair return for authors and under what circumstances control over subsequent use is detrimental to creativity, originality of copyrighted material, and freedom of expression. It also aims to highlight the challenges copyright laws, more specifically fair use doctrine face in metaverse.

QUESTIONS THE AUTHOR TRIED TO RESOLVE THROUGH THIS ARTICLE

1. What constitutes a fair return for authors and under what circumstances control over subsequent use is detrimental to creativity, originality of copyrighted material, and freedom of expression?
2. How does Fair use Doctrine apply to the metaverse, in what context do users use copyrighted material that falls under the fair dealing exception?

HISTORY OF FAIR USE DOCTRINE

⁴McJohn SM, "Fair Use and Privatization in Copyright" (1998) Vol.35 San Diego Law Review, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=991181 accessed 5 June 2007

⁵The Berne Convention for the Protection of Literary and Artistic Works, 1886.

⁶TRIPS Agreement, Art. 13.

⁷The Berne Convention for the Protection of Literary and Artistic Works, 1886.

⁸TRIPS Agreement, Art. 13.

⁹B.J. Damstedt, "Limiting Locke: A Natural Law Justification for the Fair Use Doctrine" (2003) Vol.112 The Yale Law Journal https://www.yalelawjournal.org/pdf/276_23xeg9oz.pdf accessed by 5 March 2003

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The statute of Anne, also known as copyright act 1710 of the Great Britain was the initial statute to provide for government and courts regulated copyright instead of private parties.¹⁰ However, the statute failed to recognize the legal unauthorized use of copy-protected material. The court of chancery of England in *Gyles v. Wilcox*¹¹ established the concept of “fair abridgement” and which is generally regarded as the forerunner to the broader doctrine of ‘fair use’ developed in the courts throughout the nineteenth century.¹² The idea eventually evolved into the modern notions of fair use and fair dealing. The advent of the terminology ‘Fair use’ was incorporated in 1976 into the copyright law in the United States of America, followed by the the judgement of *Folsom v. Marsh* that turned out to be the source of the inception of the four fair use factors where Justice Joseph Story discussed the requirements for finding infringement : “It is certainly not necessary, to constitute an invasion of copyright, that the whole of a work should be copied, or even a large portion of it, in form or in substance.” Quantity alone was not determinative, Story declared; the value and importance of the portion taken are relevant.”¹³ As the expansion of the fair use doctrine in the 1990’s, several organizations such as American civil liberties union, the national coalition against censorship, and American Library association began to add fair use cases to their concerns. In 2006, Stanford center for internet and society at Stanford Law School came up with an initiative of “Fair use project” to provide legal support to a range of projects designed to clarify, and extend, the boundaries of fair use in order to enhance creative freedom and protect important public rights.¹⁴

UNITED KINGDOM’S INTERPRETATION ON FAIR DEALING.

¹⁰Rose M, “3. The Public Sphere and the Emergence of Copyright: Areopagitica, the Stationers’ Company, and the Statute of Anne” 2009 Vol.12 Tulane Journal of Technology and Intellectual Property <https://journals.tulane.edu/TIP/article/view/2575> accessed by 6 January 2010

¹¹*Gyles V. Wilcox* (1740) 3 Atk 143; 26 ER 489

¹²Ronan Deazely, “Commentary on *Gyles v. Wilcox* (1741)” L. Bently & M. Kretschmer (eds), *Primary sources on copyright* (2008)

¹³Boyden BE, “The Surprisingly Confused History of Fair Use: Is It a Limit or a Defense or Both?” (Marquette University Law School Faculty Blog, 9 October 2022) <https://law.marquette.edu/facultyblog/2022/10/the-surprisingly-confused-history-of-fair-use-is-it-a-limit-or-a-defense-or-both/>

¹⁴The center for Internet and Society, “Copyright and fair use” (Stanford Law School, 2006) <https://cyberlaw.stanford.edu/focus-areas/copyright-and-fair-use>

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The UK's "fair dealing" is conventionally regarded as giving much more narrowly defined defences, rather than giving a general defence in an action for infringement.¹⁵ The concept of fair dealing was embodied briefly in the 1911 UK Copyright Act and then spelled out more fully in the 1956 Copyright Act. The limited use of copyrighted material for purposes like research, private study, criticism, and reviews is permissible without infringement except due acknowledgement is given to the author. The Copyright, Designs and Patents Act 1988 (CDPA), §§ 28-76, details several exceptions to copyright infringement,¹⁶ which the Gowers Review (2006, p.12) and judges¹⁷ have described as striking a balance between the rights of copyright owners and the benefits of a wider public use of the IP. The exceptions are typically of a noncommercial and not-for-profit nature, although they may be conducted by commercial entities given that a substantial amount of news reporting and criticism is conducted for profit. The fair dealing defence, or exception to copyright infringement, is based on three enumerated purposes listed in the CDPA §§29 and 30 and is a particularly clearly defined part of the longer list of exceptions (§§28 – 76)¹⁸ listed in the Act. Fair dealing allows takings for:¹⁹

1. Private research and study, excluding broadcasts and sound recordings (§29(1))
2. Criticism and review and news reporting (§30(1))
3. News reporting of current affairs (§30(2))

As Lord denning compared assessing fair dealing:

"It is impossible to define what is fair dealing. It must be a question of degree. ...consider ...the extent of the quotations and extracts. ... Then you must consider the use made of them. ...comment, criticism or review ... may be a fair dealing. If they are used ... for a rival purpose, that may be unfair. ... To take long extracts and attach short comments may be unfair. ...short extracts and long comments may be fair. ...it must be a matter of impression. As with fair

¹⁵Antony Dnes, "A Law and Economics Analysis of Fair Use Differences Comparing the US and UK" (2010)Hargreaves Review of Intellectual Property and Growth https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1858704 accessed by 6 June 2011

¹⁶Id

¹⁷Pro Sieben Media AG v Carlton UK Television Ltd [1999] 1 WLR 605, [1999] FSR 610, and NLA &Ors. v. Meltwater BV & Ors. [2010] EWHC 3099 (Ch), [115].

¹⁸Copyright, Design and patents Act1988,s 28-76.

¹⁹Copyright, Design and patents Act 1988, s 48.

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comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide.”²⁰

In assessing whether a defense of fair dealing would succeed, includes whether the copied work was published, how much amount is copied, the nature of the use, the intention of the author, and most importantly whether due acknowledgement is present or not.

In *ProSieben Media AG v. Carlton UK Television Ltd.*²¹, it was pointed out by the court that English fair dealing provisions “define with extraordinary precision and rigidity the ambit of various exceptions to copyright protection”. It makes clear that as per the law in place in the UK, for a fair dealing defence to be successful there is a two-step test : the purpose must, to begin with, be enumerated in statute, and then, if it is enumerated in the statute, it must be shown to be fair — if either of the two condition is not met or complied with, the defence falls flat.²² It can be noticed from a bare reading of the relevant provisions that copyright infringements are only exculpated for very specific and clear uses. There is absolutely no room provided for judicial discretion at all for situations when use of a work may otherwise give the impression of being reasonable.²³ The concept of fair dealing in United Kingdom’s copyright framework is very restrictive and inflexible in nature. However, this inflexibility should not be overestimated the simplicity evaluating the fair dealing in UK merely because the extent of defence is limited or restricted. It is generally not easy to maintain a balance between the rights of the copyholder and public interest. In *Pro Sieben Media AG v. Carlton Television Limited*²⁴ it was held that the terms underlying the enumerated purposes of CDPA §§29-30, such as „criticism,“ „review“ and „current events,“ are capable of many considerably different interpretations. Therefore, even without recourse to equity considerations, the United Kingdom's courts have a substantial interpretive role that can generate uncertainty. In practice, the UK courts have not radically disagreed over fair dealing, and little use appears to have been made in

²⁰Hubbard and another v Vosper and another [1972] 2 Q.B. 84

²¹*Pro Sieben Media AG v. Carlton UK Television Ltd* [1997]EMLR 509, 516.

²²Aditya Vats Sharma, “Doctrine of Fair Dealing – Balance of Conflicting Interests” (Legis Sententia, 3 September, 2020) <https://medium.com/legis-sententia/doctrine-of-fair-dealing-balance-of-conflicting-interests-ac2ae02c7f7b> accessed 3 September 2020

²³ Id.

²⁴Op cit at p.64

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Hubbard v. Vospar. After a period in which cases like that of Carlton emphasized a liberal interpretation of fair dealing, there have been recent indications of a tightening in the interpretation of fair dealing, as demonstrated by the controversial Meltwater²⁵ decision.²⁶

UNITED STATES OF AMERICA INTERPRETATION ON FAIR USE

Copyright law in the US descends from origins in the common law as well as the Copyright Clause of the Constitution.²⁷ Originating in the U.S., this doctrine was considered as a “Fairness Abridgement” landmark case of Gyles v. Wilcox.²⁸ Further, Section 107 of the copyright act of 1976 codified an exception : Fair use doctrine which was a judicially pronounced doctrine in the case of Folsom v. Marsh²⁹ (1841) and laying down the “four factor test”. The courts in this case formed the basic considerations for fair use which are still relevant i.e. nature and the objects of the material, quantity and the value of the materials used, degree in which it may diminish/supersede the original work. ³⁰ In 1853, the judgement pronounced in Stowe v. Thomas³¹ interpreted Once an author has published his work and shared his ideas, feelings, knowledge, or discoveries with the world, he can no longer claim exclusive ownership over them. The United States has generally emphasized the significance of the "Four-Factor Test" in determining cases of fair use;

- Factor 1: Purpose and Character of Work
- Factor 2: Characteristics/Nature of Copyrighted work
- Factor 3: Quantity and Substantiality of the used portion.

²⁵Luke McDonagh, “Headlines and Hyperlinks: UK Copyright Law Post-Infopaq - Newspaper Licensing Agency Ltd and Others v Meltwater Holding BV and Other Companies” (2011) Queen Mary Journal of Intellectual Property Law 1(2) , 184-187, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2216707 accessed by 15 February 2013

²⁶Antony Dnes, “A Law and Economics Analysis of Fair Use Differences Comparing the US and UK” (2010) Hargreaves Review of Intellectual Property and Growth https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1858704 accessed by 6 June 2011

²⁷ US Constitution, Article I, §8, clause 8:,,The Congress shall have power ... to promote ... the useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.”

²⁸Gyles V. Wilcox (1740) 3 Atk 143; 26 ER 489

²⁹Folsom V. Marsh [1841] 9 F. Cas. 342, C.C.D. Mass

³⁰ Id.

³¹Stowe v. Thomas, 23 F. Cas. 201 (C.C.E.D. Pa. 1853)

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- Factor 4: Effect on the market value of the original³²

1. Purpose and Character of work (Also known as Transformative Test)

The whole purpose of fair use doctrine is to use copyrighted material for a non-profit educational purpose over commercial purposes.³³To justify the use as fair, one must demonstrate how the addition of something new advances either knowledge or artistic progress. In the 1841 copyright case *Folsom v. Marsh*, Justice Joseph Story wrote:

“A reviewer may fairly cite largely from the original work if his design be really and truly to use the passages for the purposes of fair and reasonable criticism. On the other hand, it is as clear, that if he thus cites the most important parts of the work, with a view, not to criticize, but to supersede the use of the original work, and substitute the review for it, such a use will be deemed in law a piracy.”³⁴

In the 1994 judgement of *Campbell v. Acuff-Rose Music Inc.*,³⁵ the U.S. Supreme Court has determined that when the purpose of the use is transformative, the first factor tends to favour fair use.³⁶ Another case of *Blanch v. Koons* is an examples of transformative test in which Jef Koons used a photograph in a collage painting taken by some other commercial photographer Andrea Blanch. Koons prevailed, however, in part because his use was deemed transformative under the first fair use factor.³⁷In a previous case, *Sony Corporation of America v. Universal City Studios, Inc.*, the Supreme Court ruled that "every commercial use of copyrighted material is presumptively unjust. In *Campbell*, the court reaffirmed that this is not a "hard evidentiary assumption" and that even the tendency that commercial intent will "weigh against a finding of fair use... will vary with the context."³⁸ The *Campbell* court ruled that hip-hop group 2 Live Crew's parody of the song "Oh, Pretty Woman" was permissible, despite the fact that it was sold

³²U.S Copyright Act 1976, s 107

³³Justine Pila, "An Intentional View of the Copyright Work" (2008)Vol.71 No.4 The Modern Law Review https://papers.ssrn.com/sol3/papers.cfm?abstract_id=982419 accessed by 11 September 2007

³⁴*Ibid* 26

³⁵*Campbell V. Acuff – Rose Music, Inc.*, (92-1292), 510 U.S. 569 (1994)

³⁶Pamela Samuelson, "Unbundling Fair Uses" (2009) Vol.77/Issue 5 Fordham Law Review <https://ir.lawnet.fordham.edu/flr/vol77/iss5/16> accessed by 28 May 2011

³⁷*Blanch v. Koons* 467 F.3d 244 (2d Cir. 2006)

³⁸ *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)

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for monetary gain. Thus, having a commercial intended use does not preclude a use from being deemed reasonable, although it makes it less probable.³⁹

AUTHOR'S FAIR RETURN

The logic underlying the exception (to promote knowledge) to fair use doctrine is fundamental. However, it causes lack of predictability both for rightholders and users. Taking account of the four conditions can be a difficult task. (Purpose of the intended use, nature of the work, length of the extract and, above all, the effect on the market). How can one be certain that the interpretations of these parameters will constitute a fair return for authors?⁴⁰

Copyright laws grant authors exclusive rights over their works for a limited period. During this time, authors have the right to control the reproduction, distribution, and public display of their creations. Copyright in various jurisdictions, including United States, is governed by specific sections of U.S. Copyright Act (Title 17 of the United States Code)⁴¹. As per Section 102 of U.S. Copyright Act which⁴² (subject matter of copyright), this section defines the subject matter eligible for copyright protection which includes inter alia literary works, musical works, pictorial, graphics, sculptural works, motion pictures and sound recordings along with Section 106 of U.S. Copyright Act⁴³ (exclusive rights) outlines the exclusive rights granted to copyright holders, including the rights to reproduce, distribute, perform, display, and create derivative works based on the original work. The Supreme Court of United States in the prominent case of *The Authors Guild, ET AL., versus Google Inc.*,⁴⁴ answered some questions, whether the verbatim copying of works for a different, non-expressive purpose can be a transformative fair use? Authors Guild in this case sued google for digitizing books as part of the google book search program through which google intended to scan books, index the contents, and provide both library users and the public with the ability to search through books. The petitioners alleged that

³⁹ Ibid 32

⁴⁰ Pierre Sirinelli, "Exceptions and Limits to Copyright and Neighboring Rights" (WIPO Workshop on Implementation issues of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty WPPT, Geneva, December 1999)

⁴¹ U.S. Copyright Act 1976

⁴² U.S. Copyright Act 1976, s 102

⁴³ U.S. Copyright Act 1976, s 106

⁴⁴ *The Authors Guild, ET AL., v Google Inc.*, [2015] 804 F.3d 202

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google was engaged in copyright infringement. However, google took the defense of Section 107 of U.S. Copyright Law claiming fair use. The court ruled that Google's use of copyrighted books for indexing, searching, and snippet view constituted fair use. In India Copyright protection is governed under Copyright Act, 1957 providing legal safeguards to authors. Relevant sections of Indian copyright law consist of Section 13 of Copyright Act, 1957 which defines the classes of work eligible for copyright protection. Section 14 of Copyright Act, 1957 defines the exclusive rights granted to copyright owners. In the case of "IPRS v. Aditya Pandey &Ors.,"⁴⁵IPRS likely took legal action against Aditya Pandey and others for unauthorized public performances of copyrighted music. Public performances of copyrighted music, such as playing songs in restaurants, bars, clubs, or public events, require licenses from the copyright owners to ensure that the creators receive fair royalties for their work. The outcome of this case demonstrated how artists and copyright owners are compensated for the use of their music in public settings. Cases like these are crucial for any specialized industry as they highlight the need to protect the rights of the creators and ensure that they receive fair compensation for their work. Along with financial benefits, authors also receive recognition and credit for their works. Proper attribution ensures that authors are acknowledged for their creativity and originality, which can be personally rewarding and enhance their reputation in their respective fields. Authors can also license their works to others, granting specific permissions for use in exchange for fees or royalties. Licensing enables authors to earn from their works while allowing others to use them in a controlled and regulated manner. In some legal systems, authors are granted moral rights, which protect their reputation and integrity as creators. Moral rights allow authors to object to any modifications or uses of their works that might be detrimental to their reputation or artistic vision. In the case of *Amarnath Sehgal versus Union of India*⁴⁶ the issue of whether the author had the rights over the display of his work post-sale under moral rights provisions. The court recognized the right of an artist to protect the integrity of their work and ruled that altering or mutilating an artist's work without permission constitutes an infringement of the artist's moral rights.

⁴⁵Indian Performing Right Society Ltd. v. Aditya Pandey &Ors. (2012) 50 PTC 460

⁴⁶Amarnath Sehgal v Union of India (2005) 30 PTC 253 (Del)

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When control over subsequent use excessively restricts the ability of others to build upon, alter, or transform existing works, it becomes detrimental to creativity, originality of copyrighted materials, and freedom of expression. Such conditions impede the natural progression of ideas and limit the potential for innovative new creations. When copyright holders exert strict control over derivative works, it stifles the development of new artistic expressions. Derivative works, such as adaptations, remixes, and parodies, contribute to cultural diversity and creative evolution. If creators face legal barriers to creating derivative works, it limits their ability to explore new ideas and impairs the growth of a vibrant creative ecosystem. The *Rogers v. Koons*⁴⁷ decision from 1992 emphasizes the significance of transformative use in derivative works and the potential repercussions of failing to obtain permission or credit from the original author. It emphasizes the need for artists and creators to consider the transformative character of their work and to respect the rights of the original copyright holder when creating derivative works. Fair use provisions and works in the public domain play crucial roles in enabling creativity and freedom of expression. Nonetheless, if copyright holders impose excessive restrictions on fair use, it can hinder educational uses, critical commentary, and transformative works. Similarly, when copyright terms are extended indefinitely, it restricts the availability of works in the public domain that could otherwise inspire new creations. It is commonly seen when copyright holders demand exclusive control over cultural elements present in their works, it may discourage others from incorporating or adapting those elements into their own works leading to lack of cultural exchange and limiting the potential for cross cultural creative expressions and promoting monopolization of ideas stifling diversity. Creators also engage in self-censorship when, out of fear of potential legal repercussions or other forms of retaliation, they choose not to create or express certain works or ideas they believe may violate copyright or other legal rights.

INTRODUCTION TO THE DETERMINATION OF INTELLECTUAL PROPERTY LAWS IN METAVERSE

“The metaverse is not just another technology fad; it is cultural and technological phenomenon that will redefine how we experience and interact with digital realm”. The emergence of the

⁴⁷*Blanch v. Koons* 467 F.3d 244 (2d Cir. 2006)

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Metaverse represents a revolutionary technological advancement that has captivated the imaginations of innumerable visionaries, creators, and users around the world. The Metaverse has evolved from a mundane concept into a tangible virtual reality where digital realms and interconnected experiences transcend the boundaries of our physical universe. As technology progressed, virtual reality, augmented reality, and other digital innovations paved the way for the creation of this expansive and interconnected virtual universe. The Metaverse has become a canvas where users can create, explore, socialize, and conduct business in unprecedented ways as a result of a convergence of technological advancements. As this digital landscape expands, the intersection between it and laws governing intellectual property rights (IPR) becomes more significant. The intertwined nature of the Metaverse and IPR laws raises several intriguing concerns and impediments. The dichotomy between originality, creativity, and intellectual property ownership are blurred in this ever-expanding virtual world. Creators within the Metaverse must navigate the treacherous terrain of copyright, trademarks, and patents to safeguard their digital assets while respecting the rights of others. It is vital to strike a balance between the freedom of users to create and interact in this shared virtual domain and the preservation of creators' and owners' rights. This investigation of the Metaverse and intellectual property laws examines the dynamic realm of virtual realities and the legal frameworks that guide and regulate this digital frontier. As the Metaverse continues to evolve, its profound impact on our daily lives and the global economy will undoubtedly ignite new debates, reconfigure legal landscapes, and redefine the contours of intellectual property in a world that is becoming increasingly interconnected.

METaverse AND COPYRIGHT LAW

To facilitate the comprehension of the fair use doctrine, it is necessary to understand a broader relationship between the metaverse and copyright laws. One of the complex and significant legal issue that arises is whether the copyright license granted for the work for real world extends to protection in the virtual world? This question's answer may comprise plausible challenges.

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However, it depends on the specific terms and conditions of the copyright license, the nature of the copyrighted works, and the applicable copyright laws in the relevant jurisdictions.⁴⁸

- 1) Scope of the License: The language and scope of the copyright license are crucial in determining whether it covers use in virtual environments like the Metaverse. If the license explicitly mentions virtual or digital use, it may provide protection in the virtual world. However, if the license is limited to specific formats or platforms, it might not automatically extend to virtual worlds.
- 2) Territorial Scope: Copyright laws and licenses may vary between countries, and the protection granted under a license might be limited to certain territories. In such cases, the license might not automatically cover virtual use in regions where it was not initially intended to apply.
- 3) New Technologies Clause: Some copyright licenses may include provisions that anticipate future technologies or distribution methods. If the license contains a “new technology” or “future media” clause, it could extend protection to virtual worlds if they fall under the defined categories.
- 4) Transformative Use: If users in the Metaverse incorporate copyrighted works in a transformative manner, the use might not be covered by the original license. Fair use or fair dealing principles might come into play if the new use is significantly different from the intended use specified in the license.

FAIR USE DOCTRINE AND METAVERSE

The Berne Convention requires signatories to provide copyright protection for literary and artistic work. In this context, literary works include computer programs. Original artistic works created in the metaverse, and computer programs (source and object code) running the metaverse, may therefore be copyright-protectable works.⁴⁹ The Metaverse, a virtual universe that transcends

⁴⁸Peter Mezei, Gunjan Chawla Arora, “Copyright and Metaverse” in Michel Cannarsa & Larry Alan Di Matteo (eds) (Research Handbook on Metaverse and the Law, Edward Elgar, 10 May 2023)

⁴⁹Jake Palmer, “Copyright in the Metaverse” (Lexology, 6 October 2022) <https://www.lexology.com/library/detail.aspx?g=9232e4d0-596b-4de3-bf5c-15c127d59427>

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physical boundaries, has developed into a captivating arena for creativity, interaction, and commerce. As users immerse themselves in this digital universe, they frequently encounter copyrighted materials from the physical world, which raises questions regarding the applicability of the Fair Use Doctrine (Fair Dealing in some jurisdictions). Fair use is a legal principle that permits the limited use of copy-protected material without the owner's express permission. This doctrine governs the boundaries of creative expression, the preservation of intellectual property, and the delicate balance between user freedom and copyright enforcement in the context of the Metaverse.

The context of parody and satire within the Metaverse, users wield creative freedom to produce content that parodies or satirizes copyrighted works from the real world. This context finds its roots in the First Amendment right to freedom of expression. By humorously imitating or critiquing original works, users may rely on the fair use doctrine to shield themselves from copyright infringement claims. However, courts must evaluate whether such transformative use enhances the public discourse, and its impact on the market value of the original work. The educational and research landscape within the Metaverse often involves users incorporating copyrighted material for non-commercial educational purposes. Virtual classrooms, tutorials, and research activities may draw upon copyrighted content, with users hoping to fall under the fair use umbrella. Evaluating the fair use exception in this context requires assessing whether the use is transformative, adds educational value, and does not significantly diminish the market potential of the original work. Perhaps one of the most prevalent contexts in the Metaverse, transformative use revolves around users creating content that significantly alters or repurposes copyrighted material from the real world. By introducing new contexts or meanings, users create virtual content with a distinct purpose and character, making the fair use doctrine a potential defense against copyright infringement claims. The transformative nature of the work, combined with the potential impact on the market for the original work, becomes a critical factor in this analysis. The dynamic nature of the Metaverse enables users to also organize virtual concerts, performances, and events that incorporate copyrighted music or visuals from the real world. The

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fair use analysis here centers on whether the use is transformative, adds value to the original work, and does not adversely affect the copyright holder's market potential. These virtual performances may further blur the lines between original content and transformative use, necessitating careful evaluation by courts. Within the Metaverse, journalism and news reporting may involve the use of copyrighted material for commentary, critique, or reporting of current events. When such use aligns with transformative⁵⁰ and non-commercial purposes and serves the public interest, the fair use doctrine could potentially shield users from copyright infringement claims. The delicate balance between the freedom of the press and copyright protection becomes essential in this context.⁵¹ As the Metaverse evolves into an immersive digital cultural landscape, users might engage in archiving and preservation efforts to safeguard historical content or cultural heritage. Fair use could be invoked if the use is non-commercial, transformative, and aimed at educational purposes. Preserving and celebrating cultural artifacts while respecting copyright holders' rights is a delicate yet vital consideration in this context. The Metaverse is rife with fan art and fan fiction, where users express their creativity by creating content based on copyrighted characters or words. Non-commercial uses, if transformative and enhancing the value of the original work, may potentially fall under fair use. This context brings forth the delicate balance between fans' freedom of expression and the rights of copyright holders.

The Fair Use Doctrine is essential for navigating copyright issues in the rapidly expanding Metaverse. As users create, interact, and express themselves within this virtual universe, the principles of fair use become essential for preserving a vibrant and innovative digital landscape. However, users and creators must exercise caution and accountability when incorporating copyrighted material, ensuring that their incorporation falls within the legal parameters of fair use.⁵² As technology continues to shape our virtual experiences, the intersection of fair use and the Metaverse will continue to be a complex and evolving legal landscape, requiring ongoing

⁵⁰Fisher III, William W. "Reconstructing the fair use doctrine." (1988) Vol.101 No. 108 The Harvard Law Review <https://www.jstor.org/stable/1341435>

⁵¹Nimmer, Melville B. "Does copyright abridge the first amendment guarantees of free speech and press." (1970) Vol. 17 UCLA L. Rev. 1180 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/uclalr17&div=65&id=&page=>

⁵²Id

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evaluation and adaptation to safeguard creative expression and protect the rights of content creators.

CONCLUSION

The significance of implementing the Fair Use Doctrine holds great weight inside the dynamic realm of the Metaverse, where the realms of virtual and physical realities intersect. The aforementioned legal doctrine, aiming to achieve a harmonious equilibrium between the entitlements of copyright proprietors and the welfare of the general public, plays a crucial role in effectively navigating the intricate realm of artistic ingenuity, communicative articulation, and inventive progress within the Metaverse. The various scenarios present in this digital realm effectively illustrate the intricate nature of the fair use doctrine. When individuals engage in the creation, modification, and utilization of copyrighted material to develop innovative digital encounters, it is imperative for them to be aware of the legal consequences involved. The Metaverse offers a platform for creative exploration, although it is crucial to comprehend the tenets of fair use in order to avoid infringing upon copyright laws. In order to foster a dynamic and harmonious digital ecosystem, it is imperative to establish a delicate equilibrium between the liberty to generate content and the safeguarding of intellectual property.

The role of the Fair Use Doctrine extends beyond legal standards in the context of this rapidly evolving world. It fosters a cultural environment that encourages the creation of responsible content and cultivates a collaborative ethos in which both originality and adaptation are able to coexist harmoniously. The ongoing development of the Metaverse holds significant implications for the interplay between fair use and intellectual property law, as it will have a pivotal role in shaping the trajectory of virtual innovation and safeguarding the interests of both creators and the public.

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