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**EXCEPTIONS WITH RESPECT TO COPYRIGHT INFRINGEMENT: A COMPARATIVE
STUDY**

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INTRODUCTION

Copyright is a set of exclusive rights granted by Governments that curtail the usage of a particular idea and how the same is expressed. Copyright never arises by virtue of an idea but in the manner in which the aforesaid idea is expressed, the form of material expression. The right of Copyright protection is granted for a specific time period, subject to exceptions. Copyright laws are set of simple, detailed yet highly complex pieces of legislation, whose interpretation cannot be done through a straight jacket formula.

Each case presents its own unique facts and circumstances and accordingly, merits a new analysis of the violation or not. Come what may, the governing principle not just in common law countries, but in other countries as well is always the betterment of the society. Indian copyright jurisprudence has evolved over the years, however, the fundamental goal is not lost and should not be lost.

Amongst analysis of various copyright provisions one which will be also dealt with by the authors will be the difference between, as to what constitutes Fair use and fair dealing. Authors at the beginning will provide an overview of the Indian Copyright Act, covering in the process few key provisions and the landmark judgements by the Hon'ble Courts such as the *Modak Case*.

The recent *Youtube* copyright menace is also discussed briefly, to study the growing nuances of the Copyright Regime Further, the aim is to study the set of guidelines laid down by different legislations of countries like the United States and United Kingdom vis-a-vis the Indian Context. The authors would further disseminate this broad concept into the limb of exceptions to the general rules of copyright infringement, that of 'Specific Exemption', as provided for by these three countries and study the similarities and variations of the respective

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aspects. A few of these are discussed hereunder:

A host of ‘Specific exemptions,’ have also been provided for by the legislatures of these three countries. To enumerate a few, the law in the United Kingdom entails the concept of Reproduction for the blind and disabled. Specifically carved out provisions in the US law are inclusive of, Sound-alike recordings and etc. Indian Law covers in the ambit of exceptions a host of works like, media recording and works of architecture to name a few.

Lastly the authors would study as to how the jurisprudence with respect to copyright law has evolved over time in different countries, with an attempt to strike a balance between two necessities, one being right of copyright owner and fair usage for the betterment of the society at large.

II. INDIAN COPYRIGHT ACT OF 1957: A BRIEF OVERVIEW

Copyright is a territorial concept consisting of provisions differing from nation to nation, derived from international obligations, development and advancements and further by amendment of the laws, thus making it a scheme of constitutional guarantee. The Indian Copyright Act, 1957 came into effect in 1958, and has been amended 5 times in 1983, 1984, 1992, 1994, and 1999 to keep up with the international standards.

In recent times, the 2012 amendment brought the Indian Copyright law into compliance with “Internet Treaties” – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) of World Intellectual Property Organization, ensuring the survival of the ‘fair usage’ clause in the digital world. Under the Indian Constitution, copyright falls under Schedule 7, List I Entry 49² of the Union List. The Act defines different categories of copyrighted materials³ and sheds light on the exclusive rights which provides the right to copyright protection under different categories of work.

“WORKS” PROTECTED IN INDIA

According to Section 13 of the Indian Copyright Act 1957, “copyright for work includes:

- a. Original literary, musical, dramatics and artistic works;
- b. Cinematography films
- c. Sound recordings”

² The Constitution of India 1950, sch 7, List I Entry 49.

³ Indian Copyright Act 1957, s 2.

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Copyright is defined as an exclusive right of the author and prohibiting its misuse through reproducing, issuing copies, adaptation of the work, or commercial renting or offer for sale of such works.

Section 2 of the Act interprets the meaning of the works protected under the act, wherein *artistic work* denotes “painting, drawing, sculpture, photograph or a work of architecture” or of artistic craftsmanship. *Dramatic work* means “any piece of choreographic or entertainment work”, in writing or otherwise. Section 3(o) states that *literary work* includes “computer programmes and compilations” and *musical work* under Section 2(p) means “work consisting of music and any graphical notation of such work”.

The Indian laws extend the term of copyright to the “lifetime of author until 60 years from the beginning of the calendar year next the following year in which the author dies”. Most importantly, Section 57 protects two basic moral rights of an author, namely: - right of paternity and right of integrity. In *Smt. Mannu Bhandari v Kala Vikas Pictures Ltd.*⁴, the Bench observed that “Section 57 is a special provision protecting the special rights of the author.

It puts intellectual property on a higher footing that the normal objects of Copyright and the language of Section 57 should be of widest amplitude.” Foreign works are also offered copyright protection in India. India being a signatory of Berne Convention, Universal Copyright Convention, Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties, offers protection against copyright infringement to works of all the foreign nations who are a part of these Conventions, and vice-versa secures protection to Indian works in these signatory nations through International Copyright Order, 1999.”

The most recent insertion the Indian Copyright Laws was made in the year 2012, with the parliament introducing the “*Copyright Amendment Act, 2012*”. Through this amendment two new sections were inserted to the Copyright Act, 1957, namely section 65A and 65B which seeks to substantiate backing of law to the “Technological Protection Measures” (TPMs). Section 65A punishes any person who circumvents the effective technological measures with a “criminal intention of infringing such rights shall be punishable with imprisonment of two years and penalty”.

Provision of Section 65B makes the act an offense against the individual to alter the digital rights information without any authorization and to distribute such work. Interpretation of

⁴ *Mannu Bhandari v Kala Vikas Pictures Pvt Ltd* AIR 1987 Del 13.

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both the statutes should be based on 'primary design theory'⁵, which depends on the capability of technology for substantial non-infringing uses.

A HUMAN RIGHT OF THE AUTHOR

In the professional world, research and writings form a significant part. In particular, people engaged in the legal and medical field are continuously involved in researching and writing papers. Original creative writing is different from the idea of novels and stories. It intensively deals in reviewing the current scenarios and suggesting the further. This knowledge belongs exclusively to the author and becomes equally important to protect their unique research works. Consequently, Article 27(2) of Universal Declaration of Human Rights, 1948 and Article 15(1) (c) of the International Covenant on Economic, Social and Cultural Rights, 1966 protects the material interests of the authors resulting from any literary, artistic or scientific production.

No work ever erupts out of a black hole. Previous academic works inspire the existing works as fundamental concepts. However, all creative contents cannot be copyrighted, if such works fall within the domain of public interests. The Hon'ble Supreme Court in *Eastern Book Co. v DB Modak*⁶ held that the raw text of court orders and judgments are not subject to copyright protection, and adopted the test "minimal degree of creativity"⁷ as the brink of protection under copyright laws and a mere editing of a work would not qualify the author to claim copyright.

III. THE YOUTUBE MENACE

Copyright infringement has become a serious bone of contention for the video-media platform giant "YouTube" in 2019. In the latter half of 2018, YouTube had entered into a tussle with European Union over the Copyright Policies and has arising consequences for its users in succeeding years. EU's Copyright Directives are an attempt to strengthen the copyright laws and efficient implementation of the same.

The abysmal attempt by the YouTube has raised the problems for the music industry. Several artists have claimed that the media companies are extracting the profit out of their

⁵ Sheetal Chopra, 'Inadequate Protection Against Piracy: Copyright Amendments Inadequate' (2012) 5 IJPL.

⁶ *Eastern Book Company v DB Modak* (2008) 1 SCC 1.

⁷ Lisa P Lukosh, 'Copyright Issues in Legal Research and Writing' (2016) 21 JIPR.

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copyrighted projects without fairly compensating the artists⁸. YouTube, however is not directly responsible and extracts responsibility as platform provider for contents. Upon the claims of copyright owners, YouTube has responded by redecorating its policies and introducing new tools to aid the ease of original creators of the work. *Article 13 of the new European Copyright Directive* seeks to hold media companies along with YouTube liable for infringement of copyright contents.

Nevertheless, from July 9, 2019 the Copyright owners are expected to provide the exact time slabs for all the new content ID claims in reference to the copyright-infringement claims submitted manually under YouTube's Content ID system. YouTube will also frequently scan the details of the Copyright owners and those who fail to furnish the data details, their access to manual claims would be revoked.

YouTube has also agreed to introduce 'algorithm filtering' through which the material which has used a copyrighted material would be automatically struck down from being uploaded. In the end, the concept of "upload filter" has enraged the users of the YouTube Community, due to the over-broad results of this algorithm mechanism. In response to all the copyright claims placed before the media-giant, it has taken the abovementioned actions to maintain a balance between copyright creators and owners. Conclusively, it can be said that the tremors of the YouTube's Copyright Policies in 2019 has become the new essence of rising copyright evolution.

IV. FAIR USE AND FAIR DEALING

(a). Fair Use under United States Law

The Four Statutory Factors

The fair use of a copyrighted work for purposes such as criticism, comment, newsreporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, courts consider four factors.

The four factors of analysis for fair use derive from the classic opinion of Justice Story in

⁸ Mason Sands, 'Why Copyright will be the Biggest Issue for YouTube in 2019' (2018) Forbes <<https://www.forbes.com/sites/masonsands/2018/12/30/why-copyright-will-be-the-biggest-issue-for-youtube-2019/#3f74ad001c12>> accessed 12 may 2021. in-

*Folsom v. Marsh*⁹, in which “the defendant had copied 353 pages from the plaintiff's 12-volume biography of George Washington in order to produce a separate two-volume work of his own”. The court rejected the defendant's fair use defence with the following explanation:

“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 criticise, but to supersede the use of the original work, and substitute thereview for it, such a use will be deemed in law a piracy”

PURPOSE AND CHARACTER

The primary or the first factor for consideration is to ascertain whether the use under consideration helps fulfill the intention of copyright law to further creativity for the welfare or advancement of the common people, or whether it aims to only "supersede the objects" of the original creation of work for selfish goals. To save oneself from copyright violation the onus is on the person copying the work to prove or explain as to the work enhances the knowledge or the growth of art through the addition of something new. “A key consideration is the extent to which the use is interpreted as *transformative*, opposed to as merely derivative”¹⁰.

NATURE OF THE COPYRIGHTED WORK

The second factor analyzed in review of the fair use defence is the nature of the copyrighted work. Under this factor, greater protection is provided to creative works¹¹. In this vein, courts generally recognize fictional work as being more "creative" than a factual work. The Apex Court has observed that the scope of protection through of copyright must not rely upon the artistic quality or merit of the work at hand. Regardless of this, a fair use analysis does take into account certain factors of the work that is copied work. For instance, if the work is “fictional or non-fictional, to be germane”.

AMOUNT AND SUBSTANTIALITY OF THE PORTION USED

⁹ *Folsom v Marsh* [1841] 9 F Cas 342.

¹⁰ *Mattel Inc v Walking Mountain Prods* [2003] 353 F 3d 792.

¹¹ *Amsinck v Columbia Pictures Industries Inc* [1994] 862 F Supp 1044.

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The third factor entails a review of the amount and substantiality of the portion used in relation to the copyrighted work as a whole. As this language indicates, the court looks at the quantity of the material used, along with the value of that material. Notably, the amount and substantiality of the portion used is not based upon a "percentage" of the copied work with respect to the allegedly infringing work; it is done with respect to the copyrighted work itself¹². **"There are no absolute rules as to how much of a copyrighted work may be copied and still be considered a fair use."**¹³ Courts often engage in a "word count" or "percentage" comparison. The court will literally count the number of words copied and compare that to the total number of words contained in the copyrighted material. Courts will usually find that a use is not fair when the copied material forms a "substantial percentage" of the copyrighted work. Obviously, where defendant copied the entirety of the copyrighted work, this factor will weigh against fair use¹⁴.

Fair use is unavailable to a defendant who, while only copying what is otherwise a "minuscule" amount of the copyrighted work, copies the "heart" of the copyrighted work. For example, in *Harper & Row*, defendant, a magazine publisher, had taken some 300 words out of President Ford's soon-to-be-published memoirs. While the 300 words were only a small amount of the overall copyrighted work, the "Supreme Court held that the third factor weighed against a finding of fair use as the importance of words taken amounted to the heart of the book."¹⁵

EFFECT ON THE MARKET FOR THE COPYRIGHTED WORK

The fourth factor, market effect, has been widely held as the "single most important element of fair use." In evaluating this factor, "a court must consider not only the primary market for the copyrighted work, but the current and potential market for derivative works"¹⁶.

The essential rules of exception to copyright as per Article 13 of the TRIPS Agreement stations a 'three-step test'¹⁷: "work should be a special exception; must not prejudice the legitimate interest of owners; must not conflict with normal exploitation". Lately, the Courts

¹² *New Era Publications International ApS v Carol Publishing Group* [1990] 904 F 2d 152, 158 2d Cir.

¹³ *Maxtone Graham v Burtchael* [1986] 803 F 2d 1253, 1263 2d Cir.

¹⁴ *American Geophysical Union v Texaco Inc* [1992] 60 F 3d 921.

¹⁵ *Harper and Row v Nation Enterprises* [1985] 471 US 539, 566.

¹⁶ *Lewis Galoob Toys Inc v Nintendo of America Inc* [1992] 964 F 2d 965, 971 9th Cir.

¹⁷ Fisor M, 'How much of what? Three-step test and its application in recent WTO dispute settlement cases' (2002) 192 RIDA 111.

have adopted 'the four factor test' from the infamous *American Pretty Woman case*¹⁸ to characterize the usage as a fair dealing. However, these indicators are considered more illustrative than definitive.

THE PRETTY WOMAN CASE

Acuff Rose Music (Respondent) filed an infringement suit against the music group 2 Live Crew claiming infringement of their song "Oh, Pretty Woman", which was used by the music group in their parody, "Pretty Woman". The US Supreme Court held that the Live Crew's Commercial Parody can qualify as a just-and-fair usage looking into the nature of selection made. They established the four factors to be considered as fair use:

The purpose of the usage, i.e., whether it is used for educational and non-profitable purpose or for commercial purposes;

1. Nature of the disputed work, i.e., its overall worth, cultural or scientific importance;
2. Whether infringement of substantial portion of the copyright work;
3. The after-effect on the value of the original work or upon the potential audience. "

The US Supreme Court back-peddled the order of the Court of Appeals and explained that in general, parodies will scarcely substitute for the original work, since they both are concerned with different market functions. And it was highly unlikely that any artist would perceive parody as a lucrative derived market, when artists "ask for criticism, but only want praise."

With respect to the fourth factor, the focus is on whether the allegedly infringing use tends to interfere with the sales of the copyrighted article. Thus, where a defendant's work is sold in a market that the plaintiff has no interest in occupying, the fourth factor will weigh in favour of fair use. Notably, actual present harm is not the required showing. Instead, the copyright owner need only show that if the use becomes widespread, the potential market for the copyrighted work would be adversely affected."

Courts have generally reviewed the market effect factor by determining whether the purpose or character of the alleged use is commercial¹⁹. However, this narrow focus is not entirely correct."

(b). FAIR DEALING IN THE UNITED KINGDOM

¹⁸ *Campbell v Acuff Rose Music* [1994] 510 US 569.

¹⁹ *National Rifle Association of America v Handgun Control Federation of Ohio* [1994] 15 F 3d 559, 561 6th Cir.

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The United Kingdom copyright law entails a list of exceptions to claims of copyright violations known as “fair dealing”. The scope of fair dealing is pretty narrow when compared to the concept of “fair use” followed in the United States of American. It only applies in tightly defined instances, and beyond those circumstances it provides no relaxations and is not a defence at all against charges of copyright or database right infringement. Under the *Copyright, Design and Patents Act (1988) (CDPA)*, fair dealing is defined as "private study and criticism and review and news reporting"²⁰

Under the 1988 Act, “it was originally the case that any research use was fair dealing. However in late 2003 the 1988 Act was amended to exclude commercial use from the definition of fair dealing”²¹. CDPA permits individuals to make a single copy of a "reasonable proportion" of literary, dramatic, musical and artistic works for "research and private study" and "criticism, review and news reporting"²² under the terms of "fair dealing". The extent of "reasonable proportion" is not defined in the act.

As to what constitutes "reasonable proportion" is as follows:

- “One article in a single issue of a periodical or set of conference proceedings.
- An extract from a book amounting to 5% of the whole or a complete chapter.
- A whole poem or short story from a collection provided the item is not more than 10 pages.
- In general, copying of sheet music is not allowed.
- Making more than one copy is also not allowed.”²³

(c). FAIR DEALING IN INDIA

FAIR DEALING AND PERFORMANCES

The term fair dealing is not defined in the Act. Section 52 refers only to fair dealing of work. Fair dealing is a question of fact and impression. In the case of *Blackwood v Parasuraman*²⁴ it was held that while determining whether it is fair dealing or not the court will take into consideration

²⁰ Copyright Designs and Patents Act 1988, s 29(1C).

²¹ Copyright Designs and Patents Act 1988, s 29(1).

²² Copyright Designs and Patents Act 1988, s 30.

²³ Susan George, ‘The Copyright Protection of Literary Characters’ (2013) AUDC.

²⁴ *Messrs Blackwood and Sons Ltd and ors v AN Parasuraman and ors* [1958] AIR1959 Mad 410.

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- (1) In order to constitute unfairness there must be an intention to compete and to derive profit from such competition
- (2) That unless the motive of the infringer were unfair in the sense of being improper or oblique the dealing would be fair.

FAIR DEALING OR USE: SECTION 52 QUALITATIVE ANALYSIS OF THE EXCEPTIONS OF SUBSTANTIALITY DOCTRINE

Section 52(1) of the Act allows uses that could be thought of as "fair" dealing or uses.

Section 52 of the Indian copyright Act, 1957 mentions about various activities that shall not result in an infringement of copyright, as- while dealing with musical, artistic or dramatic work for private use, review criticism, for reporting of latest events in a newspaper or such journals, for report if judicial proceedings, reciting in public, etc.

However, while dealing with exceptions under Section 52, the users are open to use only a substantial portion of the work and ought to respect the protected works and conserve the works from the menaces of infringement. The phrase *de minimus non curat lex* i.e., the law does not concern itself with trifles, does not find any place in copyright laws.

Section 52, however, doesn't confer the right of reproduction of the complete material. Copying of a valuable portion of the work is not justified as fair dealing. It ultimately amounts to infringement. The substantiality clause is not distinctly defined, rather is adjudged upon how crucial the copied portion with respect to the overall work is. Summarily, it is not professionally and ethically fair to copy considerable amount from another's work and acknowledge the source, and earn the credit in one's own name²⁵.

In *Academy of General education Manipal v B. Manini Mallya*²⁶, the Supreme Court applied the "Purposive approach" and clarified that when there is a fair dealing of the original work, for the purpose of private use, such dealing does not constitute copyright infringement. However, if the purpose is not limited to private or academic usage, but is exploited for commercial purpose, the action is not considered as fair dealing²⁷.

DELHI UNIVERSITY PHOTOCOPY CASE 2017²⁸

²⁵ *ibid.*

²⁶ *Academy of General Education Manipal v B Manini Mallya* [2009] 4 SCC 256.

²⁷ Ayush Sharma, 'Indian perspective of fair dealing under Copyright Law: Lex Lata or Lex Ferenda?' (2009)14JIPR 523.

²⁸ *The Chancellor Masters and Scholars of the University of Oxford and ors v Rameshwari Photocopy services and ors* [2016] 235 DLT 409 (DB).

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In May 2017, the Hon'ble Supreme Court of India ended the five years long legal battle between the three academic publishers as appellants, namely: Oxford University Press, Cambridge University Press and Taylor & Francis v. University of Delhi and Rameshwari Photocopy Service being the Defendants, by dismissing an appeal filed by IRRO challenging the judgement of Delhi High Court.

The publishers sought a restraining injunction for the University and the Photocopy Shop from photocopying the course extracts from their material for the students. The course pack in dispute contained excerpts from books on the syllabus at Delhi School of Economics. The Court on analysis found that on average 8.8% of the textbooks from these publishers were used in the photocopied course packs.

The following issues were raised before the Court for judgement:

- Whether the insertion of the copyrighted work of the publishers in the course packs through photocopy is justified?
- Whether the University must obtain a license to allow photocopy from Indian Reprographic Rights Organization (IRRO)?

The Court upon in-depth analysis of Section 52(1)(i) of the Indian Copyright Act, found that the activity fell under the exception for educational purposes and didn't amount to any violation. According to Section 52(1)(i), "the production of any work by a teacher or a pupil in the course of instruction; or as a part of the questions to be answered in an examination; or in answers to such questions' is not copyright infringement". Upon liberal interpretation of the phrase 'course of instruction', Court identified that any instruction of the classroom is not restricted only up to the teaching within the classroom walls and extends to entire course or programme.

Secondly, the Bench held that there was no requirement for the University to procure license to photocopy from IRRO since there was no commercial exploitation of the copyrighted works. The right to education and access to educational materials is an indispensable aspect for promoting education within the developing nations formed the crux of this landmark case.

V. SPECIFIC EXEMPTIONS

(a). US LAW

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Certain exceptions are specifically carved out of enumerated rights as follows:

SOUND-ALIKE RECORDINGS

With respect to sound recordings, the Act limits the reproduction right to duplications that "directly or indirectly recapture the actual sounds fixed in the recording."²⁹ This limitation applies only to the sound recording; it does not abridge the reproduction right in musical compositions. "Nor does it extend to the unauthorized synchronization of a sound recording onto the sound track of a television show or motion picture. In one case, a compact disc containing karaoke (lyrics without music) was deemed an audio-visual work for these purposes.³⁰" Although, sound-alike recordings do not infringe copyright, they may remain actionable under other laws³¹.

EPHEMERAL RECORDINGS

So-called ephemeral recordings are reproductions made by transmitting organizations of licensed performances for delayed broadcast of programs. One exception permits "a transmitting organization entitled to transmit to the public a performance or display of a work", to make a back-up copy as a necessary corollary to the transmission, as long as such copy is later destroyed or retained only for an archival purpose³².

PICTURES OF USEFUL ARTICLES

In terms of useful articles that have been offered for distribution to the public, the Act excludes from the reproduction right "the right to prevent the making, distribution, or display of pictures or photographs of such articles in connection with advertisements . . . or news reports."³³

BROADCASTS ON BUSINESS PREMISES

There are exemptions for certain secondary transmissions embodying a performance or display that fall outside those allowed for non-profit purposes. For instance, the

²⁹ Copyright Act 1976, s 114(b).

³⁰ *Agee v Paramount Communications Inc* [1995] 59 F 3d 317.

³¹ *Midler v Ford Motor Co* [1988] 849 F 2d 460.

³² Copyright Act 1976, s 112.

³³ Copyright Act 1976, s 113(c).

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management of a hotel or apartment house may without charge retransmit broadcast signals to the private lodgings of guests or residents.³⁴

REPRODUCTION FOR THE BLIND AND DISABLED

A 1996 amendment to the Copyright Act exempted reproductions undertaken by authorized entities of works in specialized format for the blind and other persons with disabilities³⁵.

(b). UK LAW

The following uses are allowed, respectively, of artistic works, and of works and programs that are broadcast or cable-cast.

ARTISTIC WORKS

A number of miscellaneous defences apply in relation to artistic works. Sculptures, buildings, models, and works of artistic craftsmanship, if permanently situated in public, may be represented in a graphic work, photographed, filmed, broadcast, or cable-cast without license; likewise buildings, wherever situated. An artistic work may be copied, and those copies issued to the public, when advertising its sale but not for subsequent dealings³⁶.

Thus, for example, it is now permissible, in the course of selling a painting, to make and publish copies of it in a catalogue. Some exceptions facilitate the remaking of works. An artist may copy his own earlier work, even if he does not own copyright in it, provided that he does not repeat or imitate its main design.

BROADCAST AND CABLE-CAST WORKS AND PROGRAMS

The following exceptions apply here:

(1) Ephemeral and supervisory copies: A person authorized to broadcast or cablecast a work may make an ephemeral recording of it for purposes of broadcasting or cablecasting³⁷. The exemption is subject to conditions that the recording should not be used for any

³⁴ Copyright Act 1976, s 111(a)(1).

³⁵ Copyright Act 1976, s 121(a).

³⁶ Copyright Designs and Patents Act 1988, s 63.

³⁷ Copyright Designs and Patents Act 1988, s 58.

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other purpose and should be destroyed within 28 days of being first used. Supervisory bodies may also make recordings of broadcast or cable programs for the purpose of controlling broadcasting and cable-casting.

(2) Service-area retransmissions: Where a broadcast is made from a place in the United Kingdom, it is “not an infringement of copyright in the broadcast, or of any work included in it”,³⁸ to retransmit it immediately by cable within the area of reception for the broadcast, provided that it is not encrypted or transmitted by satellite. For the defence to apply, the broadcast must be a qualifying service.

(3) Must-carry license: Moreover, where a cable operator is obligated to retransmit a broadcast under a "relevant requirement," 231 but the re-transmission extends outside the original broadcast area, the Act provides that there is no infringement of copyright in the broadcast.

(4) Gratuitous showings: Nor is there infringement where a broadcast or cable program is shown or played to a non-paying audience. Persons are to be treated as having paid for admission if goods or services are supplied at that place at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or program, or at prices exceeding those usually charged there and which are partly attributable to those facilities. Consequently, public houses wishing to have a television on for the benefit of customers only need to obtain licenses from the owners of copyright in literary, dramatic, or musical works included in the broadcast.

(5) Time-shifting: Under the provision concerning time-shifting, a broadcast or cable program may be recorded for private and domestic use in order to view it or listen to it at a more convenient time; the exception extends to works included in the transmission as well as the transmission itself. There is also an exemptions for the making of private photographs from television broadcasts or cable programs.

(c). **INDIAN LAW**

MEDIA REPORTING

Section 52(1) allows the following uses for purposes of public information:

³⁸ Copyright Designs and Patents Act 1988, s 73(3).

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- (1) Under Clause (b), “a fair dealing with a literary, dramatic, musical, or artistic work, for the purpose of reporting current events either (i) in a newspaper, magazine, or similar periodical or (ii) by broadcast, in a cinematograph film, or by means of photographs; 26.
- (2) Under Clause (m), the reproduction, in a newspaper, magazine, or other periodical, of an article on current economic, political, social, or religious topics, unless the author of such an article has expressly reserved to himself the right of such reproduction;
- (3) Under Clause (n), the publication in a newspaper, magazine, or other periodical, of a report of a lecture delivered in public.”

ARTISTIC WORKS

Section 52(1) specifically exempts the following uses of works of artistic works:

- (1) Under Clause (t), “the making or publishing of a painting, drawing, engraving, or photograph of a sculpture or other artistic work if such work is permanently situated in a public place or any premises to which the public has access;
- (2) Under Clause (u), the inclusion in a cinematograph film either of any artistic work penitently situated in a public place or any premises to which the public has access or of any other artistic work if such latter inclusion is only by way of background or is otherwise incidental to the principal matters represented in that film;
- (3) Under Clause (v), the use by the author of an artistic work, if he does not own the pertinent copyright, of any mold, cast, sketch, plan, model, or study made by him for the purposes of the work, provided that such subsequent use does not involve imitating the main design of the work.”

WORKS OF ARCHITECTURE

Section 52(1) also exempts certain uses of works of architecture, as follows:

- (1) Under Clause (s), the making or publishing of a work of painting, drawing, engraving, or photograph of a work of architecture or the display of a work of architecture;

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(2) Under Clause (x), “the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed”³⁹, provided that the original had been built with the license of the owner of copyright in the drawings or plans

SOUND RECORDING

s. 52(l) (j) (a) Making of sound recording in respect of literary dramatic or musical work is permitted:

If the sound recording has previously been made or with the licence or consent of the owner of the copyright in the work,

If notice of intention to make the sound recording has been given, copies of all covers and labels with which the sound recording are to be sold are provided and royalties at the rate fixed by the Copyright Board has been paid to the owner of the copyright.

The following conditions should be observed:

- (1) in making the sound recording no alterations or omissions should be made unless alterations or omissions of similar nature have been made in the past. Another instance is when the prior consent or license has been obtained from the, or unless such alterations or omissions are “reasonably necessary for the adaptations of the work” for the purpose of sound recording;
- (2) any attempt to mislead or confuse the public as to the identity with the issuance of a label or identical packaging as a cover of the sound recordings should not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity should not be done;
- (3) no such sound recordings should be made during the period of “two calendar years after the year in which the first sound recording was made”; and
- (4) the agency/organisation/person creating such sound recordings should permit the owner of the right or his duty authorized agent or representative to inspect all records and books of accounts relating to such sound recordings.

Section 52(1)(j)(ii) does not require pre-requisite consent from die owner. The owner is entitled to royalty fixed and a notice of the intention of the respondent to make the cassettes.

³⁹ P Narayanan, *Law of Copyright and Industrial Designs* (4th edn Eastern Law House 2002).

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“Sub-clauses (i) and (ii) of s. 52(1) (j) should be read disjunctively and not co- jointly”⁴⁰. “Version recording it is a sound recording made of an already published song by using another voice or voices and with different musicians and arrangers. Version recording is thus neither copying nor reproduction of the original recording”⁴¹. Only the lyrics are being used. Playing the sound recording—s. 52 (l) (k)⁴² the causing of sound recording to be heard in public by utilizing it is permitted if it is done:

- (1) “in an enclosed room or hall meant for the common use of residents in any residential premises (not being hotel or similar establishment) as part of the amenities provided exclusively or mainly for the residents therein; or
- (2) as part of the activities of a club or similar organization which is not established or conducted for profit.”⁴²

MAKING AN EPHEMERAL RECORDING

S. 52(l)(z) A broadcasting organisation may by using its own facilities make an ephemeral recording or a work which it has the right to “broadcast and retain such recording for archival purposes on the ground of its exceptional documentary character”.

VI. CONCLUSION/ THE WAY FORWARD

The journey of Copyright laws has perpetual and progressive existence in accordance with the technological advancements. It is always under its crafting phase to make idea of Intellectual Property Rights more transparent. In today’s day, copyright is understood as per the uniqueness and distinct creativity of the content of the owners.

Today, India stands on equal footing with the international copyright standards and ensures the strict implementation of the same. However, it has its separate stance when the matter concerns an area of public interest. Indian historically relies its preference on public interest promoting its agenda of socio-economic development. It follows the principle that “protection of author’s rights could not be considered apart from the rights of the users.”

Upon observation of several Conventions and domestic laws of different nations, India incorporates every substantial feature of the foreign standards and is supposedly under its golden period of internet revolution, with high security standards and growth opportunities.

⁴⁰ *Gramophone Co v Mars Recording* [2002] 2 SCC 103.

⁴¹ *ibid.*

⁴² Indian Copyright Act 1957, s 52.

India is considered one among the fastest growing country in sector of digital marketing.

The legal backing for this internet evolution era concludes that technological control mechanism may be appropriate in reference to the piracy menace, however stringent precautions always needs to be taken if such protection comes at the cost of fair usage doctrine. Freedom of expression is a constitutionally guaranteed fundamental right of an individual to express his opinions without any kind of restraint or penalty. The provisions of copyright laws function in a one-way manner by only protecting the interest and benefit of the owners.

The advantage of artistic control boils down as curtailment on freedom of speech and expression as a negative effect. The doctrine of fair dealing thus becomes an undeniable necessity. The US Model is more elaborate and flexible and open to future advancements and amendments. The Indian jurisprudence is more conservative and has adopted a disciplined approach, yet the overall map of Indian copyright remains to be determined.

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- (i) P Narayanan, *Law of Copyright and Industrial Designs* (4th edn Eastern Law House 2002).”

