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DOCTRINE OF FAIR USE IN COPYRIGHT LAW: A COMPARATIVE STUDY OF INDIA, THE US, AND THE UK IN THE DIGITAL AGE

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CHAPTER 1

INTRODUCTION TO COPYRIGHT AND FAIR USE

1.1 Background and Evolution of Copyright Law

Copyright law functions as a protective system which safeguards human creative works while enabling public access to knowledge and cultural resources. The system started because society needed to control how people replicated and shared artistic creations after the printing press became available during the fifteen hundreds. The development of printing technology brought about a complete shift because it enabled people to spread information more quickly and broadly which created a need for legal solutions to protect the rights of authors and publishers and public access to their work.¹

The Statute of Anne 1710 stands as the first modern copyright law because it provides the earliest legal definition of copyright. The law brought a major transformation which shifted protection rights from printers and publishers to authors who became the main beneficiaries of copyright law. The law established time-limited exclusive rights which marked the beginning of copyright as a temporary protection system that would

¹ L. RAY PATTERSON & STANLEY W. LINDBERG, *THE NATURE OF COPYRIGHT: A LAW OF USERS' RIGHTS* 23–25 (1991).

encourage creative work while increasing public domain resources.² The Statute of Anne established the initial framework which subsequent modern copyright systems developed throughout the world including India and the United States and the United Kingdom. Copyright exists to protect creators' rights according to two main philosophical theories: natural rights theory and utilitarian theory. The natural rights approach which John Locke and other philosophers established grants all people the fundamental right to own everything which they create through their work including their intellectual property. The system recognizes copyright as a legal right that people possess to their personal creative works. The utilitarian theory which has shaped Anglo-American legal systems explains copyright through its ability to support scientific advancement and artistic development by giving financial rewards to artists.³ The two opposing philosophies still determine how legislators and judges handle copyright protection matters. Copyright law in the United States derives from the Constitution which allows Congress to give authors temporary exclusive rights for their works to encourage societal progress. The constitutional requirement establishes copyright as an essential tool which society needs to advance its development instead of serving as a personal achievement reward. The Copyright Act of 1976 established a complete copyright framework which included fair use as a flexible restriction on exclusive rights while modernizing and unifying existing U.S. copyright law.⁴

The Copyright, Designs and Patents Act of 1988 functions as the main copyright legislation which governs copyright protection in the United Kingdom following a series of statutory developments. The UK legal system uses fair dealing as its main legal principle which allows particular exceptions to be used for designated purposes, including research activities and news gathering and critical analysis. The United States fair use doctrine allows broader usage rights compared to the traditional fair dealing system which establishes strict usage limitations through its defined exception framework.⁵

² Statute of Anne, 1710, 8 Ann., c. 19 (Eng.).

³ William M. Landes & Richard A. Posner, An Economic Analysis of Copyright Law, 18 J. LEGAL STUD. 325, 326–27 (1989).

⁴ U.S. CONST. art. I, § 8, cl. 8; Copyright Act of 1976, 17 U.S.C. § 107 (2018).

⁵ Copyright, Designs and Patents Act 1988, c. 48 (UK).

India's copyright system represents a combination of its colonial past and its subsequent legal progress. The Copyright Act 1957 serves as the fundamental law of Indian copyright which combined British legal elements and international legal practices. The Act has undergone multiple amendments throughout its history to incorporate new technological developments and to comply with international treaty obligations which include the Berne Convention and the TRIPS Agreement. The Indian copyright system uses its fair dealing doctrine to create a hybrid system that combines precise legal rules with judicial decision making.⁶

The development of copyright law has continued throughout history because legal experts need to update their regulations according to new technology developments. The introduction of new technologies from the printing press to the phonograph and radio and television and current internet technologies creates fresh challenges for existing copyright laws. The current digital era enables people to communicate instantly with anyone around the world while they can easily duplicate any content, which creates major difficulties for existing legal systems. The fundamental concepts of legal foundations have undergone necessary evaluation because their essential elements need to be examined again.

1.2 Concept and Rationale of Fair Use / Fair Dealing

Copyright law establishes exclusive rights, which fair use and fair dealing doctrines limit. Absolute control over creative works would decrease innovation and block public access to knowledge, which would violate the fundamental purpose of copyright protection. The system exists to maintain creator rights together with public interests, which both sides need.⁷

The United States developed fair use as a flexible Copyright Act 1976 Section 107 doctrine which allows people to use copyrighted materials without permission under specific situations. The system permits copyright material usage without gaining consent through a four-factor test which evaluates the usage purpose and character together with the copyrighted work's nature and the used quantity and its market impact.

⁶ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957.

⁷ Pierre N. Leval, Toward a Fair Use Standard, 103 HARV. L. REV. 1105, 1107–08 (1990).

The doctrine maintains its dynamic nature because courts use its flexible base to implement new technologies and emerging situations.⁸

However, fair dealing in places such as the UK and India has a narrower scope of application. Under fair dealing laws, copyrighted works can only be used for specified purposes under the statute, which include private study, research, criticism, review, and news reporting among others. Although fair dealing offers greater certainty, it does not necessarily offer the necessary flexibility to deal with new applications that cannot be accommodated by the listed purposes. On the other hand, it should be noted that the courts of these nations have made an effort to give a wider interpretation of the fair dealing provisions so as to meet emerging societal demands.

The underlying rationale behind fair use and fair dealing doctrines is basically similar in that copyright law may restrict free education, discussion, comment, criticism, research, or any other activity critical to a democratic nation when applied in strictness. The doctrine of fair use is therefore meant to limit copyright protection from being oppressive.

The concept of “transformative use” represents an important aspect of the doctrine of fair use. According to the definition of transformative use, one must ask whether the new use has transformed the original with new expression, meaning or message. Transformative use has proved very useful in defining the parameters of fair use especially regarding parody, satire, and digital remix culture.⁹

In India, the judiciary has employed a purposive approach while applying fair dealing clauses in case laws. The Indian courts have always considered the balance between copyright owners' rights and the general public's interests, especially concerning knowledge and education. For instance, in case laws involving the reproduction of copyrighted work for educational purposes, the Indian court has favored the general public interests to promote the dissemination of knowledge to society.

Like in India, the doctrine of fair dealing in the United Kingdom has been used to establish a balance between conflicting interests. However, unlike in India, the UK

⁸ 17 U.S.C. § 107 (2018).

⁹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

courts have used the concept of fairness when applying fair dealing rules in case laws. In the UK courts, the concept of fairness considers several factors like the nature of the use, its extent, the purpose of the use, and how the use affects the market. As such, although fair dealing applies only for specified purposes, there exists a certain level of flexibility in its application through judicial interpretations.

Finally, the doctrines of fair use and fair dealing reflect that copyright law should achieve broader social purposes. They provide the basis for ensuring that copyright law protects intellectual properties from exploitation and misuse, thus promoting creativity, innovation, and ideas exchange.

1.3 Emergence of Fair Use in the Digital Age

The digital age has greatly influenced the evolution of copyright law in terms of the doctrines of fair use and fair dealing. The emergence of digital technologies has resulted in new ways of creating, reproducing, and distributing creative works. Consequently, digital technologies have led to an increase in the amount of information available. Therefore, copyright law in the digital age has become a complex area of legislation.

A key feature in the digital age is that it enables the copying and distribution of content easily. Unlike analog technologies, it is impossible to limit the number of copies made since digital copies have no deterioration issues. The development has been challenging for the copyright system because it makes the use of exceptions necessary.¹⁰

The appearance of the internet and digital platforms has also led to the emergence of various novel forms of creative expression. User-generated content, memes, remixes, and mash-ups, in particular, can be mentioned. Some of these types of works are created by using existing copyrighted material. That is why there is no surprise that courts have used the concept of fair use, which is very flexible, to allow this kind of practice to be legal in the USA.

¹⁰ Neil Weinstock Netanel, Copyright and a Democratic Civil Society, 106 YALE L.J. 283, 285–87 (1996).

Nevertheless, other countries that apply the fair dealing doctrine face certain difficulties since this concept is enumerated-based. For example, the UK and India may require some changes in their copyright laws due to the emergence of the digital age.

Another complicating element that emerged in the digital era is related to the emergence of technology companies, whose activities are related to providing people with access to the internet. Social networks and content-sharing sites often deal with user-generated content, which poses new legal problems for liability and reliance on the principle of safe harbor. In the USA, this issue is addressed via special legislation called the Digital Millennium Copyright Act (DMCA), which includes notice-and-takedown procedures.

Artificial intelligence and machine learning are yet another phenomenon of the digital age, which is important to discuss when addressing the topic of fair use and fair dealing. Training artificial intelligence and machine learning algorithms requires extensive databases of content, which may involve copyrighted works. It leads to a question whether the usage of this type of data falls under fair use or fair dealing.

While some claim that the usage of copyrighted material in machine learning is transformative and does not hurt the original market, others disagree with them arguing that it may harm copyright owners. The emergence of the digital age blurs the line between producers and consumers as individuals become active participants in creating and sharing content.

In India, the digital age contributed to increasing people's access to educational materials, entertainment products, and information. At the same time, it also intensified problems regarding piracy and illegal distribution. Therefore, the Indian legal framework has been amended, and certain principles of fair dealing have been interpreted.

In turn, the United Kingdom has also introduced numerous changes to its copyright legislation in order to solve emerging problems associated with the digital era. For instance, exceptions to text and data mining, as well as exceptions for digital archiving, have been introduced recently.

In conclusion, it is possible to state that the arrival of the digital age has highlighted the importance of fair use and fair dealing concepts in copyright law. The emergence of the digital era makes these concepts even more vital as they help balance the interests of copyright owners and people who use this material for their purposes.

1.4 Scope and Significance of the Study

The research at hand takes an in-depth look into the doctrinal and comparative analysis of the principles of fair use and fair dealing within the wider realm of copyright laws in regard to three specific jurisdictions, namely India, the United States of America, and the United Kingdom. The focus of the research has been specifically selected in order to provide a thorough analysis of not only the legal framework of copyright exceptions in the respective countries but also its evolving interpretation within the current digital reality and corresponding policy implications. It should be noted that the research will strictly be limited to the legal dimension of fair use and fair dealing principles and will not extend beyond the boundaries of copyright exceptions in the modern digital age of Internet usage and the emergence of various artificial intelligence systems.

From the outset, it becomes evident that the study is aimed at examining how the copyright legislation, traditionally concerned about the rights of the authors, can keep up with the times of a dramatically developing technology and the resulting changes in the way people create and share their ideas. Namely, the modern reality dictates the need for rethinking the principles of copyright laws given the emergence of user-created content, social media platforms, the increase in Internet-based education, and artificial intelligence systems using copyrighted materials. In this case, fair use and fair dealing become highly relevant as a method of securing knowledge access for people in spite of certain limitations on copyright use.¹¹

The scope of the geographical area will be limited to the following three countries: India, the US, and the UK. On the one hand, these states demonstrate unique approaches concerning the introduction of exceptions. However, on the other hand, the analysis of the approaches to introducing exceptions used in these states may reveal some similarities which can be helpful in formulating certain recommendations for the further

¹¹ Pierre N. Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105, 1107–08 (1990).

work in this field. For example, the US offers an approach based on the doctrine of the fair use while the UK uses the concept of the fair dealing. India, however, combines the concepts offered by these two jurisdictions.

The definition of the subject matter scope is based on the fact that the research should concentrate on digital environments. While there are plenty of examples when the fair use or fair dealing has been applied in terms of publishing literature or broadcasts, today the issue becomes especially relevant in relation to digital content. Therefore, in addition to the traditional approaches, it will be important to pay attention to the new types of fair use and fair dealing which have appeared due to the development of digital technologies, data mining, and machine learning.

Significance of the study is associated with its potential to make certain contributions to the discourse about copyright exceptions and reforms in general. At present time, the discussion on how to establish and maintain the right balance between interests of users and copyright owners becomes especially topical. While excessive restriction may result in impeding the process of innovation and access to necessary information resources, overly liberal attitudes may also do harm because they will not allow maintaining necessary economic stimuli.¹²

From an academic point of view, the paper would be significant in bridging the gap between the theoretical principles and practical approaches to copyright law. Through the combination of statutory provisions and judicial decisions, it gives a holistic picture of how the concept of fair use operates in practice. Moreover, the comparative methodology allows us to gain insight into the ways in which various legal systems approach similar issues, thus contributing to the development of intellectual property law overall.

As far as policy implications are concerned, the paper is particularly relevant to India. As the legal system in question is constantly adapting to changes brought about by technological advancements and new international obligations, the insights gained through this study could prove quite useful in helping policymakers design the necessary reforms to make the existing law more efficient and at the same time keep its

¹² LIONEL BENTLY, BRAD SHERMAN, DEV GANGJEE & PHILLIPJOHNSON, *INTELLECTUAL PROPERTY LAW* 35–38 (5th ed. 2018).

essential features intact. In fact, the goal is to introduce reforms that would ensure greater adaptability and clearer definition of Indian copyright law while remaining true to its core.

The importance of the issue under discussion is also enhanced by the growing need to find the most efficient ways to facilitate equitable access to information and enable technology to contribute to socio-economic development. Thus, the research could be considered as a contribution to discussions on the topic of digital education and other issues of equal concern to policymakers today.

To sum up, one might say that the paper offers a comprehensive and comparative analysis of the concepts of fair use and fair dealing in the context of the rapid modern technological developments.

1.5 Research Objectives

The current study shall be steered towards the achievement of objectives which will guide and provide direction to the research. The objectives are established against the backdrop of the main subject of discussion in the dissertation, which will seek to understand the doctrine of fair use and fair dealing, both conceptually and comparatively.

The first objective is to carry out an analysis of the legal framework of the law of copyright with focus on the doctrines of fair use and fair dealing. The objective will cover aspects of the doctrine including the history, principles, and its place within the law of copyright.

The second objective is to carry out a statutory and judicial review of the concepts of fair use and fair dealing within the jurisdictions of the Indian, American, and British legal systems. The objective will require a close look at laws governing the issue of fair use and fair dealing and landmark court cases in relation to this aspect.

The third objective of the study is to conduct a comparative analysis of the legal systems with respect to the regulation of copyright exceptions in these jurisdictions. The study will explore similarities and differences in the regulation of copyright exceptions in order to evaluate them.

The fourth objective of the research is to analyze the impact of the use of technology on copyright exception regimes, including online content sharing and digital learning as well as newer issues arising from the development of emerging technologies like artificial intelligence.

The fifth objective of the study is to suggest recommendations regarding the improvement of copyright law within India.

1.6 Research Questions

The research will be based on the following central research questions that will help guide the analysis and discussion:

The first research question investigates the nature of fair use and fair dealing in order to explore: What is the difference between the concepts and legal rules of fair use and fair dealing?

The second research question focuses on the comparative analysis: In what way does India differ from the United States and the UK concerning copyright exceptions, particularly regarding flexibility and scope?

The third research question is focused on the role of technology: How has the advent of the digital era impacted on fair use and fair dealing in these countries?

The fourth research question deals with practical implications: What are the main challenges and problems associated with fair use and fair dealing in India, the United States, and the United Kingdom in the digital age?

The fifth research question is related to the development of solutions: What legal reforms should be implemented in order to adapt copyright laws to the requirements of the digital age?

1.7 Hypothesis

The research conducted within this paper will be based both on a primary and several secondary hypotheses.

Accordingly, the main hypothesis of this study states that the open-ended and flexible doctrine of fair use developed in the United States works better than the relatively strict concept of fair dealing in India and the United Kingdom due to its greater capacity to adapt to the challenges of the digital era.

The first secondary hypothesis postulates that despite being inspired by the British experience, fair dealing rules in India have developed in a judicial manner and have become more flexible and adaptive than those used in the UK.

The second secondary hypothesis concerns the increased role of emerging technologies, such as artificial intelligence, in creating a new digital environment that requires reevaluation of copyright exceptions in order to introduce more clear-cut rules.

These hypotheses will be verified during the analysis process.

1.8 Research Methodology

The research methodology adopted for this study is primarily doctrinal and comparative in nature. The doctrinal approach involves a systematic analysis of legal principles, statutes, and case law related to copyright and its exceptions. The method enables detailed examination of legal doctrines through its functional capabilities which provide study researchers with tools to assess how legal rules and principles operate under different usage scenarios.

The comparative method is employed to analyze the similarities and differences between the legal systems of India, the United States, and the United Kingdom. The study aims to find best practices through comparisons between these jurisdictions while identifying areas that need development. Different legal traditions show different ways of dealing with common problems which legal traditions handle through comparative analysis.

The research project uses primary sources and secondary materials as its data sources. Primary sources consist of statutory provisions, judicial decisions, and international treaties, while secondary sources include academic writings, journal articles, and

commentaries on copyright law. The study uses authoritative and credible sources to establish accurate and reliable findings.¹³

Moreover, it will involve an assessment of the effectiveness of existing legal provisions. For instance, one can compare different models of laws, identify their pros and cons, and assess the feasibility of their implementation based on current challenges.

The research is qualitative in nature since it deals with the analysis of the legal texts. It does not aim at collecting and analyzing data related to some phenomenon. In such cases, researchers tend to adopt a more theoretical approach. However, when needed, the study will consider some practical issues associated with the subject matter.

Finally, the analysis of the legal issues should be objective, coherent, and logically consistent. For example, the researcher needs to take into account the interests of all stakeholders involved in the copyright protection process. Moreover, the arguments should be convincing and supported by evidence. Finally, the conclusions should be logical.

1.9 Chapterisation

As noted above, the dissertation will be structured into five chapters. Each chapter will focus on the particular issue associated with the subject matter. Below is a brief description of each chapter's content.

Chapter One will introduce the reader to the problem and provide an overview of copyright law. Then, it will discuss the theories and history of the doctrines of fair use and fair dealing. Next, it will explain how these doctrines emerged in the digital age and analyze their scope, objectives, research questions, hypotheses, and methods.

Chapter Two will focus on the doctrine of fair dealing in India. It will review the legislative acts that define fair dealings in this country and interpret judicial decisions that refer to the relevant provisions of the Copyright Act, 1957. Then, it will discuss how the mentioned provisions can be applied in the digital world. Finally, it will highlight their main challenges and limitations.

¹³ Copyright, Designs and Patents Act 1988, c. 48 (UK).

Chapter Three will explore the doctrine of fair use in the United States. It will explain the four-factor test and analyze major judicial decisions concerning the use of the provisions described above. Finally, it will discuss how this doctrine helps address emerging digital problems.

Chapter Four will explore the doctrine of fair dealings in the United Kingdom. It will also make a comparative analysis of fair use and fair dealing doctrines and their application in the United States, India, and the United Kingdom. Finally, it will highlight the differences and similarities between these doctrines, as well as their advantages and disadvantages.

Chapter Five will conclude the research and present its main findings and recommendations. It will also analyze emerging challenges in the digital world and recommend measures that can increase the effectiveness of copyright protection.

CHAPTER 2

DOCTRINE OF FAIR USE IN INDIA

2.1 Overview of Copyright Law in India

The Indian copyright law establishes a comprehensive legal system which safeguards creator rights while making knowledge and information available to all members of society. The Copyright Act of 1957 serves as the fundamental legal foundation which governs copyright laws throughout India. The Act which passed shortly after independence reflects both local legal developments and international copyright standards that emerged from the Berne Convention and other worldwide agreements. The Act has received multiple updates throughout its history to meet new technological needs and to adapt to changing global copyright standards.¹⁴

The Indian perspective on the copyright is based on the notion that all intellectual productions are forms of personal property and therefore must be accorded legal protection. Nonetheless, it should be noted that, as opposed to other forms of personal property, the period of copyright protection is limited and has its restrictions and exceptions. Under the Copyright Act, 1957, the owner of a work gains exclusive right to reproduction, distribution, performance, communication, and adaptation of his work. As in any law, there are certain restrictions and exceptions to this rule.

The Copyright Act protects many kinds of works such as literary works, artistic works, dramatic works, musical works, cinematograph films, and sound recordings among others. It provides for protection of various forms of intellectual production including computer programs and any other form of digital content. In addition to the listed works, the act also protects adaptations and translations of original works. This means that once the work is created and published, copyright extends not only to it but also to any form of its modification and translation.

It should be pointed out that one of the distinctive features of Indian copyright law is that it has two goals: stimulating creation of works by rewarding authors financially and providing public access to the intellectual works produced. The latter goal is

¹⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957.

especially important because copyright in India has a lot of exceptions which serve as safeguards for freedom of information exchange in order to stimulate scientific development.¹⁵

The colonial legacy of India provides the primary basis for shaping its current copyright law framework. The British Copyright Act of 1911 established copyright regulations in India which the Indian Copyright Act of 1914 extended to the country until Indians gained independence. The Copyright Act of 1957 created a complete and independent legal system which Indian authorities required after the country achieved independence. The British law system which existed before India gained independence maintained multiple elements from the British system but introduced new features which matched India's current social and economic conditions. The Act required amendments because technology changes and global market expansion created new obstacles for its implementation. The 1994 and 2012 amendments brought new rules which addressed computer software digital content protection and performer rights. The 2012 amendment modernized Indian copyright law through its digital content regulation and its alignment with international treaties including the TRIPS Agreement and the WIPO Copyright Treaty.¹⁶

It is noteworthy that judicial interpretation of the statute has been one of the principal determinants of copyright law evolution in India. Courts have repeatedly pointed out that a proper balance between the right to protect authors' property interests and the interests of the general public needs to be maintained in all situations. In other words, courts favor taking into account the purpose of each statutory provision while interpreting it.

An additional issue that deserves discussion in relation to the Indian copyright regime pertains to the means of enforcing copyrights. Although it is possible to use both civil and criminal measures in dealing with violations of intellectual property rights, their application may prove rather complicated because of the peculiarities of the modern digital environment and the rapid emergence of piracy cases online. The difficulty of

¹⁵ LIONEL BENTLY, BRAD SHERMAN, DEV GANGJEE & PHILLIPJOHNSON, *INTELLECTUAL PROPERTY LAW* 34–38 (5th ed. 2018).

¹⁶ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994.

enforcing copyrights in practice is that overzealous actions by the authorities and other stakeholders may lead to the abuse of copyrighted materials.

Finally, it should be admitted that the digital revolution has had a number of far-reaching consequences for the Indian copyright framework. First of all, it should be mentioned that the growing popularity of the Internet and increased accessibility of this medium can be linked to the rise in the number of legitimate and illegitimate uses of copyrighted works. In this connection, the current framework should provide for specific legal mechanisms regulating such issues as online piracy and intermediary liability.

Under these circumstances, the doctrine of fair dealing seems particularly pertinent since it provides statutory exemptions to the exclusive rights enjoyed by authors of literary works.

2.2 Concept of Fair Dealing under Indian Law

The doctrine of fair dealing constitutes one of the most important exceptions to copyright protection under Indian law. The Indian legal system establishes fair dealing as a specific rule which defines permitted uses of copyrighted material through its statutory framework. Section 52 of the Copyright Act 1957 serves as the main rule for fair dealing because it describes multiple activities which do not qualify as copyright violations. These include uses for purposes such as private or personal use research criticism review and reporting of current events.

The concept of fair dealing is grounded in the principle that certain uses of copyrighted material are necessary for the functioning of a democratic and knowledge-based society. Existing works need to be used by educational institutions academic researchers journalists and public speakers during their professional activities. The activities would face excessive limitations without proper exceptions which would prevent them from achieving the copyright law objectives.¹⁷

The legislative attempt of Section 52 aims to create an equilibrium between the copyright rights of owners and the requirements of users. The actual determination of

¹⁷ P. Narayanan, *Copyright and Industrial Designs* 291–95 (4th ed. 2007).

fair dealing eligibility for specific cases needs to assess their particular facts and circumstances. Indian courts have played a crucial role in interpreting this provision, often adopting a liberal and purposive approach to ensure that the law remains responsive to societal needs. The legal system in India defines its fair dealing rights through a purpose-based framework. Indian law permits fair dealing through specified purposes, which differ from the multi-factor test used by the U.S. fair use doctrine. The categories define the general parameters, but judges possess broad authority to define what "fairness" entails. The doctrine has maintained operational flexibility through its implementation, which enables it to adjust according to different situational demands.

The judicial system of the country asserts that copyright law needs to treat fairness as a principle that should be assessed through its complete copyright objectives. The assessment of fairness usually involves evaluating four factors: work nature, usage purpose, material quantity used, and market effect on original content. Indian law lacks formal codification of these factors, but courts have established them through their legal reasoning and by comparing them to laws in other countries.¹⁸

There is an example of the application of the concept of fair dealing in India related to education. There are certain educational needs of students and learners, which should be satisfied in the course of copyright legislation. Therefore, there have been many decisions of courts that consider fair dealing provisions in order to satisfy those needs and allow the usage of materials for educational purposes.

Digital technologies have also become a significant field for applying fair dealing provisions in India. The use of Internet and various digital technologies for sharing copyright materials and reproducing them has become quite common practice and raised questions about legality of such activity. The problem of reproducing materials for education on the web is one of the examples. Indian courts have considered many cases that relate to digital technologies, but they are still guided by the principles of international judicial practice and statutory laws of India.

Nevertheless, the concept of fair dealing in India suffers from some problems and issues that can affect its application in future. It should be noted that fair dealing is more

¹⁸ Civic Chandran v. Ammini Amma, 1996 PTC 329 (Ker.).

purpose-oriented when compared to other concepts. As in the U.S., this term allows applying copyright law to many spheres of activity. However, the enumerated character of Indian exception list is limiting fair dealing provision in the process of using modern technology.

At present, it is difficult to predict possible future changes of fair dealing in the context of technological changes. In the case of the U.S., courts were always willing to make decisions based on particular cases. However, in India, there is a certain list of exceptions. Moreover, fair dealing does not give any clear guidelines of how to apply copyright law to certain cases. The lack of a comprehensive set of principles creates a great deal of uncertainty for all parties involved in cases of copyright violation.

However, it is worth noting that the Indian concept of fair dealing is much more developed now than it was at its creation. Through judicial practice, courts were able to interpret this term in a way that would allow adapting it to the current technological reality. Although it may seem that this is impossible, Indian courts showed their ability to do so successfully.

It seems that nowadays India experiences a great need to amend the existing provisions related to fair dealing. Globalization processes and the importance of digital technologies force legislators to consider new opportunities to expand the scope of the use of copyright materials without violation of the interests of their authors.

To conclude, the doctrine of fair dealing in India is very important since it represents the bridge between copyrights and the interests of users. Even though this doctrine is less flexible than U.S. fair use provision, it is quite flexible due to judicial practice.

2.3 Judicial Interpretation of Fair Dealing in India

The development of the fair dealing doctrine within Indian copyright law is largely a result of judicial interpretation. Although Section 52 of the Copyright Act of 1957 sets out provisions regarding permitted uses of copyrighted works, it is clear that the judiciary plays a central part in interpreting what can be deemed fair. The courts of India have taken a principled and balanced stance in regard to copyright enforcement, making sure that copyright does not hinder creativity, education, or freedom of speech.

With the passage of time, much case law has emerged, representing principles which have been formulated through many years of legal precedent.

One of the earliest cases which addressed issues of fair dealing in Indian law was the *Civic Chandran v. Ammini Amma*. This case, which is now viewed as a landmark one in relation to fair dealing in India, addressed the issue of whether a play infringed upon the copyright of another work of art. In the course of this case, the Kerala High Court ruled that the defendant produced a fair dealing because he criticized and reviewed an earlier production of a play. More importantly, in the case, it was noted that the intention and purpose of creating new work is critical for judging whether dealing can be considered fair.¹⁹

The Court in *Civic Chandran* established guiding factors which help assess fairness through three criteria: the total amount of material used and its worth and the reasons for which it was used and the impact on the market for the original work. The Indian judiciary has adopted these factors in their judicial analysis despite the fact that they lack explicit mention in the statute. The ruling established a new approach toward evaluating fair dealing which permits flexible assessment based on specific circumstances while bringing Indian law into harmony with international legal practices.

The *R.G. Anand v. Delux Films* case represents an important development which shaped the legal framework for fair dealing. The Supreme Court addressed the main legal question about substantial similarity and copyright infringement but delivered crucial commentary on how to achieve the right balance between safeguarding intellectual property and fostering artistic expression. The Court determined that copyright law provides protection only for the specific way people choose to express their thoughts because copyright law does not safeguard abstract concepts. This principle provides indirect backing to the fair dealing doctrine because it restricts copyright protection from covering the actual concepts and central themes and fundamental ideas that exist within a creative work.²⁰

¹⁹ *Civic Chandran v. Ammini Amma*, 1996 PTC 329 (Ker.).

²⁰ *R.G. Anand v. Delux Films*, (1978) 4 SCC 118.

The Supreme Court in *R.G. Anand* established that artists must use elements from existing works for their creative endeavors because this practice constitutes essential artistic development which only becomes infringement when artists take significant parts from the original piece. This reasoning has been instrumental in shaping subsequent interpretations of fair dealing, particularly in cases involving adaptation, parody, and transformative use.

The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services, which people know as the Delhi University Photocopy case, stands as a vital court decision that expanded Indian jurisprudence on fair dealing rights. The case determined whether educational institutions could reproduce copyrighted materials for teaching purposes without violating copyright laws. The defendants, a photocopy shop operating within Delhi University, prepared course packs containing excerpts from various textbooks for students.

The Delhi High Court ruled that such reproductions qualified as fair dealing under Section 52 because they served educational purposes. The Court emphasized that access to educational materials is a fundamental aspect of the right to education and should not be unduly restricted by copyright law. The court dismissed the claim that course pack preparation created economic benefits because it existed to serve educational objectives instead of generating income.²¹

There are several important factors about the DU Photocopy decision. Firstly, it significantly expands the meaning of fair dealing by including systematic reproductions for the purpose of education. Secondly, the public interest factor played an important part in its interpretation of copyright exceptions. Thirdly, the case shows how the court is willing to modify the law to accommodate the unique needs of the developing nation.

This decision has been subject to extensive discussion both inside India and abroad. Those who criticize the decision argue that it harms the economic interests of publishers. However, supporters praise it for helping promote access to knowledge and education. Nevertheless, the case can be described as a major milestone in copyright

²¹ *The Chancellor, Masters & Scholars of the Univ. of Oxford v. Rameshwari Photocopy Servs.*, 2016 SCC OnLine Del 6229.

jurisprudence of the nation, especially when considering the dynamic nature of fair dealing.

Another important case which should be considered in relation to the evolution of the court's thinking is *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*. In the case at hand, the court had to decide whether the use of copyrighted music clips for review purposes in a television program fell under fair dealing. The court ruled that use was allowed under such circumstances provided that the purpose for the use was legitimate.

As stated above, the court placed a lot of emphasis on the concept of fairness. Namely, it said that fairness in any given situation depends on its purpose and context. Moreover, the Court recognized that modern media technologies sometimes require reproducing copyrighted works in order to properly evaluate them. Therefore, the decision is extremely relevant to modern times when audiovisual media play an important role in information dissemination.²²

Through the decision of the Indian court, the way in which the Indian courts have modified their approach toward the traditional concepts of fair dealing in relation to modern media forms is reflected. As a result of recognizing the validity of using copyrighted materials in television productions, the Indian court recognized that copyright laws should adapt to the changes while respecting the interests of content creators.

Over the past few decades, there has been an increase in the number of cases in which the courts have further modified the fair dealing doctrine based on the changes in technology. One of the examples is the case of *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.*, in which the plaintiff claimed the copyright infringement regarding the use of a film clip in a news program.

The High Court of Delhi ruled that use of short clips of films in news reports could be considered fair dealing if it was justifiable and had no negative effect on the market for the work used. As a rule, determination whether the use of the copyrighted material

²² *Super Cassettes Indus. Ltd. v. Hamar Television Network Pvt. Ltd.*, 2012 SCC OnLine Del 3285.

could be considered fair was made on a case-by-case basis considering all circumstances of a particular situation.²³

Another significant trend in Indian fair dealing jurisprudence is the gradual recognition of the notion of transformative use. Although it does not appear to be enshrined in any of the statutes regulating copyrights in India, it has become a useful criterion used by judges to determine whether the newly created work enriches or changes the value of the copyrighted piece. Thus, Indian courts seem to be keeping pace with international developments concerning copyright law.

There is also room for improvement regarding the interpretation of fair dealing doctrine in India. For instance, there is no clear list of criteria to evaluate whether the use of copyright-protected works is fair or unfair, which creates problems and uncertainties. On the other hand, the case-by-case approach adopted by courts provides valuable guidelines but can make prediction of the outcome impossible.

One can hardly fail to note that the rapid evolution of technology poses a challenge for the interpretation of the Indian law concerning fair dealing. Digital platforms and user-generated content become increasingly popular in recent years. Moreover, artificial intelligence has started to affect many industries including entertainment and media, thus making copyright protection even more complex. In such situations, the judicial function becomes especially crucial in keeping laws up-to-date and applicable.

It is noteworthy that Indian courts demonstrate great adaptability in addressing challenges related to copyright laws. First, they are careful in interpreting existing provisions of these statutes in ways that would allow the judiciary to respond to the ever-changing reality. Furthermore, the courts try to maintain a fine balance between rights of owners of intellectual property and the benefits that people could derive from such practices as sharing. Finally, they pay much attention to the public interest and freedom of speech.

Concluding this discussion, one should note that the Indian judiciary shows great adaptability and flexibility in addressing challenges posed by the constantly evolving field of copyright law. It demonstrates particular attention to the issue of fair dealing as

²³ India TV Indep. News Serv. Pvt. Ltd. v. Yashraj Films Pvt. Ltd., 2012 SCC OnLine Del 3739.

evidenced in *Civic Chandran* and the *DU Photocopy* case. Despite rather limited statutory provision, the case-by-case approach makes fair dealing doctrine applicable in modern times.

2.4 Fair Use in the Digital Context (India)

Undeniably, the quick development of digital technologies has made a drastic change to the legal field of copyright law in India, including fair dealing as a part of the doctrine. As per the provisions of the Copyright Act, 1957, the definition of copyright law was created specifically for the analog world; thus, its implementation into the digital realm poses specific challenges. The fast development of technology and the emergence of various innovations create new opportunities for the use of copyrighted materials both for authors themselves and other third-party individuals who may have some interest in these products. Thus, the interpretation of copyright law needs to undergo some changes.

In fact, the modern era of the digitalization of almost all spheres of our life makes it possible for individuals to become active participants in the processes of producing various kinds of creative works. With the appearance of numerous internet sites devoted to social networking, publishing articles, and video creation, more and more users start producing their own creative works based on those owned by others. Activities like writing articles with quotations from other sources, making films with citations from some movie scenes, or discussing various news topics are considered to be examples of such activity.

Thus, Indian courts try to find a way out of this situation by interpreting the provisions of fair dealing to make them more relevant for the modern times. Despite the fact that the Copyright Act, 1957 does not directly mention anything about digital technologies in its section dedicated to the concept of fair dealing, the broad meaning of Section 52 helps apply this doctrine to different digital cases.²⁴

It would be correct to admit that the importance of digital education cannot be underestimated when discussing the role of fair dealing in India. As the number of people who prefer using online platforms to learn increased due to global problems like

²⁴ The Copyright Act, 1957, No. 14, Acts of Parliament, 1957.

the COVID-19 pandemic, one should pay attention to the right to access educational materials. For instance, it has become possible for educational institutions and teachers to use digital versions of textbooks, articles, and other materials to ensure that learning becomes easier. As far as fair dealing is concerned, the principles outlined in *The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services* should be regarded as examples.

When considering the switch from physical to digital course materials, one can notice that it is not always easy to distinguish when copying something qualifies as fair dealing. It would be appropriate to claim that judges try to adopt a liberal approach in favor of educational needs. However, it becomes difficult to assess whether copying has exceeded its limits because the number of potential users increases. Digital copies differ from physical ones in that way. Therefore, the market of original works gets affected to some extent, which requires careful analysis in terms of balancing education and the rights of authors.

The development of the Internet resulted in the appearance of new types of content such as memes, remixes, or even parody videos. They are usually created based on copyrighted works; however, their nature differs in that way. The concept of "transformative use" does not exist in Indian law as it does in the United States. Nevertheless, courts can analyze the purpose and nature of the use to define how much copying is allowed and determine whether it is fair dealing. In this case, digital expressions become possible.

The problem of intermediary liability becomes topical since it is essential for regulating activities related to fair dealing. In general, online platforms that host copyrighted material need to take steps to eliminate its unlawful distribution to avoid liability. At the same time, such restrictions should not affect the growth of online businesses and freedom of speech. The issue is being addressed in India due to the existence of several provisions that provide safe harbor to intermediaries but only if some conditions are fulfilled.²⁵

²⁵ Information Technology Act, 2000, No. 21, Acts of Parliament, 2000.

The advent of streaming services has also contributed to complicating the application of fair dealing rules. In light of their massive content bases, there are many more instances of legitimate and illicit use of works. Creating reaction videos, sharing clips, or inserting extracts into commentaries – all of these activities leave open the question whether they should be treated as fair dealing. While some of these uses may fall under the justification of criticism or review, in other instances, they may cross the threshold of what is deemed acceptable if they significantly impact the market position of the original works.

The advent of artificial intelligence is yet another field where the issue of applying the fair dealing rule arises. Machine learning systems may rely on huge datasets, which often involve copyrighted works. The problem with using copyrighted material in machine learning is similar to using such works in research; in any case, it is not explicitly prohibited by the copyright law. On one hand, some may claim that the use of copyrighted data in machine learning constitutes research and can be justified. Yet, others may argue that machine learning is a form of exploitation of copyrighted material and cannot be classified as fair use.

Finally, the digital library and archive domain also plays a significant role in the application of fair dealing rules. Digitalization of books or papers serves the purpose of making them available for research and study. Fair dealing principles in this regard imply the balance between making sure that works are preserved and available for research and the interests of copyright owners. For the most part, Indian courts have ruled in favor of copyright users' interests and supported using copyrighted material in research and private study.

Overall, the evolution of technology has made the application of fair dealing principles a highly complex endeavor. Absence of explicit statutory guidelines covering digital uses has placed an excessive burden on the Indian judiciary to interpret applicable laws.

2.5 Challenges and Limitations in Indian Framework

The Indian doctrine of fair dealing has shown some ability to adapt through court decisions but still encounters multiple difficulties that restrict its operation in the modern digital world. The existing problems arise from two basic sources which

combine structural elements of the legal system with operational difficulties in implementing and using the system.

The Indian legal system suffers from its first major restriction because it defines fair dealing rights too narrowly while the United States system allows greater flexibility through its fair use doctrine. The Copyright Act 1957 Section 52 uses its purpose-based approach to limit permitted uses to three specific fields research and criticism and current event reporting. The law provides clear rules about permissible activities, but this approach restricts future legal developments because it requires new uses to fit existing categories. The digital world produces new content creation methods which create difficulties for the existing system because it cannot adapt to these innovations.²⁶

Another important problem facing Indian fair dealing legislation is the ambiguity of guidelines that define what constitutes fairness. Unlike American fair use doctrine that is subject to an extensively detailed list of factors, Indian copyright law allows judges to determine what constitutes fairness. Such ambiguity and variability are a double-edged sword: while, on the one hand, it allows for great judicial flexibility and discretion, it creates a number of challenges in defining the boundaries of lawful use. It might create problems for rights holders who want to understand the limits of their property rights.

Digital piracy is another issue that faces Indian copyright law. Internet piracy is a serious threat to the copyright regime and the economic interests of creators, as it leads to the availability of copyrightable material on the web without payment. Although Indian copyright legislation allows for both civil and criminal sanctions for infringement, the enforcement of these rules is problematic because of the technical nature of the violation. At the same time, overly aggressive enforcement measures risk stifling lawful uses of copyrightable material.

Intermediary liability is a challenge faced by many copyright regimes in the modern era, including that of India. The introduction of safe harbor provisions in relation to intermediary liability protects providers from responsibility for the actions of their

²⁶ P. Narayanan, *Copyright and Industrial Designs* 295–300 (4th ed. 2007).

customers, but the application of this protection can become a problem. Namely, intermediaries are forced to remove any notices of infringement without considering whether the content could be considered fair use.

A further difficulty faced by Indian copyright legislation lies in its conservative approach to changes and amendments. Although the act was updated to address some challenges posed by new technologies, the law fails to provide guidelines regarding the use of copyrighted materials in connection with artificial intelligence or data mining. Consequently, the issue needs to be addressed in future court decisions.

Another factor that might contribute to the complexity of application of fair dealing rules is the lack of knowledge and awareness among users. Many people do not fully comprehend the boundaries and requirements of fair use, resulting in accidental violations and underuse of fair use provisions.

Economic considerations represent another challenge for fair dealing rules because they need to be balanced against the interests of creators who wish to earn money for their creations. At the same time, access to copyrighted materials is important, especially in developing countries with insufficient availability of educational materials. Economic issues create additional challenges for copyright regimes in developing countries.

Judicial inconsistency represents another obstacle in creating an effective fair dealing policy. Some court decisions favor a broad interpretation of the rule, whereas other decisions tend to narrow its applicability. Inconsistent judicial decisions lead to uncertainty and create obstacles to developing the relevant jurisprudence.

International character of digital content makes it difficult to address many problems created by new technologies through existing domestic law. Therefore, it is necessary to consider international cooperation and possible means of harmonizing national policies.²⁷

The Indian fair dealing doctrine has developed through court decisions but still encounters various challenges. The solution to these problems needs both new laws and

²⁷ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994.

judicial advancements and public policy changes. India needs to adopt a flexible approach to copyright because it will help the country maintain copyright protection in modern digital times.

CHAPTER 3

DOCTRINE OF FAIR USE IN THE UNITED STATES

3.1 Overview of U.S. Copyright Law

Copyright law in the United States serves as one of the most powerful and highly developed intellectual property protection systems worldwide. The U.S. Constitution serves as its foundation because it enables Congress to grant authors and inventors exclusive rights over their creations to promote scientific and artistic progress. The constitutional foundation demonstrates a practical approach to copyright because it treats copyright as a tool for achieving societal goals instead of recognizing it as a fundamental human entitlement.²⁸

The statutory law concerning copyright protection in the US finds its origin in the Copyright Act of 1976. As such, it is important to understand that the Copyright Act of 1976 represents a significant improvement of previous copyright acts and serves as the primary source of law concerning copyright protection in the country. Under this act, copyright protection is granted to all original works of authorship, including literary works, music, movies, plays, sculptures, drawings, paintings, photographs, and computer software.

In addition, U.S. copyright law demands the originality of the copyrighted work. It is important to point out that the degree of originality that is required by copyright law in the US is very low and requires only minimal creativity from the author. In other words, under U.S. copyright law, the work in question needs to be independently created and include minimum creativity to qualify for protection.

Accordingly, copyright protection entails the grant of a series of exclusive rights to the author of the work. These rights allow for reproduction, distribution, display, performance, and creation of derivative works. The exclusive rights that the author possesses are instrumental in allowing for effective copyright protection because they enable the author to exercise full control over his or her work.

²⁸ U.S. CONST. art. I, § 8, cl. 8.

It is worth mentioning that copyrights have a limited duration under which the copyright owner can exercise exclusive rights. The duration of copyrights is the life of the author plus seventy years after his or her death. For work made for hire, the duration equals seventy-five years from publication or ninety-five years from creation of the work, whichever is shorter.

U.S. copyright law has been developed to address the challenges brought about by different technological innovations in the area of communications and media. The development of new forms of communication, starting from the invention of the printing press and ending with the Internet and mobile applications, was instrumental in shaping the development of copyright law.

Among the most significant pieces of legislation related to copyright protection in the era of technology development is the Digital Millennium Copyright Act (DMCA). The enactment of this piece of legislation was an answer to the rapid development of digital technology and the emergence of challenges that the latter raised in terms of copyright protection.²⁹

Another characteristic feature of the American copyright system is that it has a very strong element of judicial interpretation. Indeed, the court plays an important role in applying the law concerning the application of the rules regarding the limits of copyright law. One of these, the doctrine of fair use, becomes very significant as it can be applied in some cases.

It is necessary to note the importance of the doctrine of fair use in the U.S. copyright system. Indeed, the doctrine became an extremely important exception as it helped to prevent overprotection and ensure creativity, innovations, and freedom of speech. In this way, the doctrine of fair use allowed using the material under some conditions without getting permission from copyright owners.

Thus, statutory law and judicial interpretation made possible development of the complex system of the copyright law in the USA. In particular, the judges often interpreted the law so that the public interest was respected and copyrights could be preserved at the same time. This especially refers to the application of the doctrine of

²⁹ Digital Millennium Copyright Act, Pub. L. No. 105–304, 112 Stat. 2860 (1998).

fair use, which became more flexible as it was applied to digital and new types of creation.

3.2 Doctrine of Fair Use under U.S. Law

The doctrine of fair use became one of the key characteristics of U.S. copyright law. It is regulated by Section 107 of the Copyright Act of 1976 and provides a very flexible exception to the exclusive right to the copyrighted materials. Unlike the doctrine of fair dealing existing in countries like India and the United Kingdom, the U.S. doctrine of fair use is not restricted to any number of purposes. Rather, the process relies on several factors which help to determine the fairness of the usage of copyrighted materials.³⁰

There are four factors laid down in section 107 which can be taken into account in deciding whether a particular use is a fair use or not. The first one is the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; the second factor refers to the nature of the copyrighted work; the third factor deals with the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the fourth factor concerns the effect of the use upon the potential market for or value of the copyrighted work.

The first factor in determining whether a particular use is fair use or not is probably the most crucial factor which is being used by courts while making judgments about what is a fair use. According to the courts' judgments, the purpose and character of the use will make a very important difference to the fair use analysis. Moreover, according to the courts, whether the use is a transformative use or not, should be of prime importance. As per the landmark case of *Campbell v. Acuff-Rose Music, Inc.*, it was stated that a parody of copyrighted work could be considered a fair use of the copyrighted work.³¹

The second factor takes into account the nature of the copyrighted work in question. The use of factual works is more often considered as fair use since they are closer to the very essence of copyrights – the spread of information. Creative works, like novels,

³⁰ 17 U.S.C. § 107 (2018).

³¹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

movies, music, receive more legal protection; therefore, their unauthorized uses would be considered illegal.

The third factor deals with the amount and substantiality of the used portion. Both quantitative and qualitative characteristics of the utilized material should be accounted for. Although a rather insignificant fragment of the work could be considered substantial if it was a part of its heart. However, the courts also take into consideration the relation between the amount of copied material and the nature of its intended use. As an example, one could mention a parody, which needs the use of characteristic pieces from the copyrighted work.

The fourth factor deals with the effect of the use on the potential market of the copyrighted work. This factor seems to be the most significant since it is related to the interests of copyright holders. Namely, the use will be considered unlawful if it substitutes for the original work. However, courts understand that not all forms of damage to the copyrighted product's market should be counted; only the ones resulting from the kind of use forbidden by copyright law are relevant.

Flexible nature of the principle of fair use makes it suitable for the modern digital age. Thus, courts can apply it to many cases dealing with digital materials, including indexing and searching. Moreover, the application of this principle to user-generated content or digital libraries proves to be quite efficient due to their transformative nature. Namely, these uses do not coincide with the initial purpose of the work but enhance its informational role.³²

The second benefit of fair use lies in the protection of freedom of expression. The doctrine allows for the exploitation of copyrighted works in the process of criticism, commentary, and parody. Thus, the copyright holder cannot use his legal rights to suppress any speech. It is especially significant in a democratic society where the free exchange of opinions and ideas should prevail.

In the digital environment, fair use contributes to the facilitation of innovation and technological progress. Many innovations in the field of data mining, machine learning, and digital technology require the use of copyrighted material in ways not foreseen by

³² Authors Guild v. Google, Inc., 804 F.3d 202 (2d Cir. 2015).

the copyright act. The flexible approach taken by the court in evaluating fair use cases allows to consider such uses based on their purpose and potential consequences instead of trying to force them into the statutory scheme.

The first challenge posed by the fair use doctrine is related to its flexible nature. The doctrine does not define a single criterion for the evaluation of uses but leaves it to the discretion of courts to assess the case based on its unique facts and circumstances. Therefore, it results in a certain level of uncertainty and unpredictability when trying to determine whether a particular use constitutes fair use. Nonetheless, it is considered a trade-off that is necessary for the application of the doctrine.

The second drawback of fair use is that there is no uniformity in applying the principle. Indeed, courts may interpret it in various ways. Despite that, the substantial case law that was formed in the process allowed establishing some principles and rules to ensure predictability.

To conclude, the doctrine of fair use is one of the pillars of U.S. copyright law. The flexibility of the approach it takes makes it possible to address modern technological and cultural developments in a proper manner.

3.3 Judicial Interpretation and Landmark Cases

The fair use doctrine has evolved largely as a result of judicial interpretation and application of the statute. In fact, it is judges who have provided guidance on what qualifies as fair use and how courts should apply the four-factor test in their assessment. The reason why the doctrine remains flexible lies in the broad language of the statutory provisions, which leaves much space for judicial interpretation. Indeed, many judicial decisions have contributed to developing an extensive body of law, demonstrating how the four-factor test can be applied by courts to various scenarios.

For instance, the early case *Folsom v. Marsh* is a highly influential precedent in the area under discussion. It predated the enactment of the statutory provision on fair use and did not refer to the latter, but the principles set forth in that case played an important role in shaping the fair use doctrine. Justice Story explained that the question whether the use of certain materials was fair depended on such factors as the objects for which

they were selected; the quantity and value of those materials; and the effect their selection had on sales or profitability of the copyrighted work.³³

The evolution of fair use jurisprudence reached its highest point through the Supreme Court decision of *Sony Corp. of America v. Universal City Studios, Inc.* The “Betamax case” addressed whether people violated copyright law by using video cassette recorders to make recordings of television shows for later viewing. The Court ruled that “time-shifting” qualified as fair use because users engaged in non-commercial activities which did not damage the original works’ market value.³⁴

The Sony decision holds special importance because it produced two major outcomes. The first outcome showed that people who use copyrighted material for personal purposes without making money from it will probably win fair use protection. The second outcome showed that technological progress has vital value which copyright law should protect to prevent users from developing upcoming inventions. The third outcome established that manufacturers receive protection against liability when their technology can potentially create major uses that do not violate copyrights. This reasoning has had a lasting impact on the development of copyright law in the digital age.

Another landmark case that profoundly shaped the doctrine of fair use is *Campbell v. Acuff-Rose Music, Inc.*. This case involved a parody of the song “Oh, Pretty Woman” by the rap group 2 Live Crew. The Supreme Court held that parody can qualify as fair use, even if it is created for commercial purposes. The Court defined transformative use as an essential element of assessment which became more important than other commercial elements when a new work presented more transformative content than existing work.³⁵

The Campbell decision established a new standard for determining fair use through its requirement that all assessments must contain transformative elements as their fundamental basis. The court determined that new artistic works which provide additional value to existing artworks should be eligible for fair use protection because

³³ *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841).

³⁴ *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417 (1984).

³⁵ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

they contribute to cultural knowledge development. The analysis of fair use now relies on transformation as its main element according to current legal standards that apply to digital media and artistic remixing rights. The application of fair use in the digital context has been further developed in cases involving search engines and digital libraries. *Authors Guild v. Google Inc.* serves as a significant case that judged whether Google could legally operate its book digitization system. Google had scanned millions of books and made them searchable online, displaying only snippets of text in response to user queries. The court determined that the transformative use of the materials constituted fair use because it delivered public advantages while serving a different function than the original content.³⁶

The *Authors Guild v. Google* decision demonstrates how fair use can support large digital projects through its evaluation of fair use. The court found that a searchable database system which provides better information access to users cannot function as a replacement for the original works. The fair use doctrine demonstrates its capacity to deal with all digital technology challenges through this reasoning.

A&M Records Inc v. Napster Inc represents another important legal case because it dealt with a file-sharing service which permitted users to distribute copyrighted music. The court ruled against Napster's fair use defense because the unauthorized distribution of copyrighted material throughout the market had negative consequences which affected the market for those copyrighted materials.³⁷

The Napster ruling demonstrates how fair use rights become limited when someone uses a protected work to compete against its original content which results in financial losses for the copyright holder. The flexible nature of fair use exists because it permits multiple uses yet copyright holders need their rights protected through proper application of this rule.

Judicial interpretation of fair use has expanded its application to cases which involve appropriation art and visual works. The court in *Cariou v Prince* assessed whether artists could legally use photographs from distinct artworks through their subsequent creation of new artistic work. The court determined that most artworks qualified as

³⁶ *Authors Guild v. Google, Inc.*, 804 F.3d 202 (2d Cir. 2015).

³⁷ *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001).

transformative because artists created new artistic work through their use of original images to create entirely different visual presentations. The ruling established transformation as a key factor which determines whether an artwork becomes transformative because original content does not need to be referenced by the new work.³⁸

The above-mentioned Cariou case demonstrates how far the application of fair use in the judicial practice may go nowadays. The judges have realized that artistic expression usually means reinterpreting and altering works by other people in some way; moreover, such practices make a useful contribution to culture.

Nevertheless, there are further tendencies in the interpretation of fair use, which can be considered both positive and negative for its consistent application. Courts nowadays face various problems associated with digital sampling, Internet resources, and artificial intelligence. In spite of the fact that all basic principles formulated in precedent cases are used as the guidelines in analyzing similar problems, many legal questions remain open.

One of the main tendencies in the current judicial practice regarding fair use is that courts take into account the necessity of adding new value to the original work when assessing whether the use of copyrighted material is fair. Moreover, the question about market impact becomes more and more important, especially for commercial purposes.

It should be noted that in addition to this, the courts also take into consideration the cultural role of fair use. They acknowledge that fair use plays an important role as far as the promotion of freedom of expression, information access, and innovation in technologies are concerned.

However, despite the progress made in the area, there are still some inconsistencies connected with the assessment of particular uses by the court on a case-by-case basis. However, thanks to the accumulation of precedent cases, there appear some guiding principles that can be used when evaluating specific situations.

³⁸ Cariou v. Prince, 714 F.3d 694 (2d Cir. 2013).

Summarizing everything that has been said above, one should note that the judicial interpretation of fair use in the US demonstrates how dynamically this issue evolves over the years, thus ensuring balance between creators' rights and society's needs. The landmark cases of *Folsom v. Marsh*, *Sony*, *Campbell*, *Authors Guild v. Google*, *Napster*, and *Cariou* have laid down the foundation of fair use as the doctrine that is rather flexible but consistent in most cases.

3.4 Fair Use in the Digital Age (U.S. Perspective)

The digital era has changed how people use and understand fair use rights in the United States. The Copyright Act of 1976 Section 107 establishes fair use through statutory law but courts have developed its operational execution through their judicial rulings which address the unique factors that come with present-day digital content production and distribution. The digital technology transition has created new avenues for artistic creation while increasing the possibility of copyright violations which results in fair use becoming the main topic of current copyright discussions.

The digital space enables users to duplicate and alter and distribute content with complete simplicity. Digital media enables users to make unlimited copies of content without any decrease in quality which results in minimal distribution expenses. The system now allows users to both legally access and illegally access protected content at higher levels than before. The fair use doctrine establishes a vital system that helps identify between proper copyright usage and copyright violations which become particularly essential for new artistic works and technological developments.³⁹

The appearance of the internet gave birth to the participatory culture when users do not only consume any information available but also actively contribute to its creation. Blog posts, video recordings, memes, and remixes are types of user-generated content that often include copyright protected materials. In order to regulate such an activity, a more flexible system of laws had to be elaborated to cover the broad spectrum of activities that were involved. The doctrine of transformative use became one of the essential elements of the law in this regard as it made it possible to determine the legitimacy of any use based on the criteria of adding any value or meaning to the original work.

³⁹ 17 U.S.C. § 107 (2018).

The process of digitizing any information and indexing it in order to facilitate people's access can be considered another example of fair use in the digital world. Search engines, among other tools, work with large volumes of data and create copies of copyrighted materials. This process is considered transformative due to the fact that such copies serve another purpose and provide a benefit for society. Courts supported this idea while examining the projects of digitizing libraries when they ruled that the creation of searchable databases was allowed to be done.

In addition, another important issue is related to intermediaries, including social networks, websites, etc., hosting massive volumes of user-generated content containing copyright-protected material. Applying the doctrine of fair use to such content is often connected to issues of intermediary liability regulated by law. For instance, the Digital Millennium Copyright Act includes safe harbor provisions according to which internet service providers are not liable for users' actions if some requirements, such as implementing notice-and-takedown procedures, are fulfilled.⁴⁰

As for the DMCA interaction with fair use, it also creates interesting problems. On the one hand, the DMCA makes it easier to remove any potentially infringing material from the web. On the other hand, this might create a problem in terms of suppressing lawful use of the materials protected by copyrights that may constitute fair use. The issue of freedom of speech will be infringed upon by automated takedown systems and content filters since the latter can accidentally take down legally permissible content. It seems that in order to protect the interests of all parties involved, the right balance needs to be achieved here.

The development of the digital space has led to a further expansion of the area where fair use can take place. Thus, nowadays, the activity associated with the creation of reaction videos, content, and reviews, which usually includes using copyrighted material in some form, is viewed rather favorably. Courts tend to be favorable towards such cases because such activity involves a certain degree of criticism and commentary that helps contribute to public discourse. However, the problem here is that a lot of such

⁴⁰ Digital Millennium Copyright Act, Pub. L. No. 105–304, 112 Stat. 2860 (1998).

cases happen under commercial conditions when there is an opportunity to earn money on someone else's product, which may undermine fair use.

One more area where fair use plays an essential role is connected to the use of copyrighted material for the development of different kinds of digital technologies, for example, AI. The development of data-driven tools requires a lot of data to train algorithms; at times, this training dataset will include copyrighted materials. In that case, the question emerges whether the use of copyrighted materials to develop software is considered transformative and thus, falls within the category of fair use. There are two conflicting positions on the matter: some say that the extraction of information is not reproducing an expressive work.

Moreover, another sphere where fair use has found its practical applications has to do with online learning platforms that became even more popular due to pandemics. As such, it should be recognized that copyrighted materials can also be used for academic purposes. In fact, the use of such materials is a common practice since there is no way to conduct digital learning without copyrighted materials; in such cases, fair use applies.

Overall, it should be stated that the development of new digital technologies poses challenges for the application of fair use. Thus, the courts are often required to address legal issues related to the development of technologies and interpret principles of law accordingly.

3.5 Strengths and Criticism of the U.S. Fair Use Model

The U.S. fair use system stands as the most flexible copyright exception framework among existing systems. The system functions because judges interpret its open-ended rules to handle both technological advancements and cultural shifts. The system's flexibility provides multiple benefits to users but creates challenges because it makes outcomes less predictable and consistent.

The fair use doctrine delivers its main advantage through its capacity to adjust to different situations. Fair use allows courts to evaluate multiple parameters through its open framework that extends beyond fixed statutory usage limits. The digital era needs this particular feature because it enables people to create new ways of expressing

themselves and developing fresh ideas. The doctrine permits its use for activities that existed at the time of its enactment through its assessment of use purpose and character.⁴¹

In addition, another important advantage of the fair use system is that it places great weight on the transformation principle. With this principle in place, courts have managed to find ways to differentiate between copying the initial creation of someone else and transforming it in order to move the culture forward and contribute to the advancement of knowledge in various fields. This way, the fair use system helps accomplish the main goals of copyright legislation and stimulates further creative developments.

Moreover, the fair use doctrine helps ensure that freedom of expression is maintained even under copyright laws. As people should be allowed to express their opinions about certain matters, including art or politics, this principle enables individuals to make parodies or commentaries related to various copyrighted items.

In addition, the doctrine allows using copyrighted content in connection with news and educational purposes. Thus, people will be able to exchange their thoughts with others without fear of being sued for copyright infringement.

Besides, one of the advantages of this system is that it has proven to be an excellent way to regulate new technological developments in the area. In fact, the doctrine helped to create a proper legal environment for innovations in digital libraries, data mining, and search engine usage.

Finally, another important strength of the doctrine is that it provides some flexibility to copyright law. In this respect, it helps to adapt copyright regulations to rapidly changing reality by adding more details to specific issues that need to be addressed.

On the other hand, the fact that the fair use principle is very flexible turns out to be one of its greatest weaknesses. Namely, when dealing with this principle, there is no exact definition or list of criteria that one needs to follow in each situation.⁴²

⁴¹ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

⁴² Pierre N. Leval, *Toward a Fair Use Standard*, 103 HARV. L. REV. 1105, 1110–12 (1990).

Furthermore, the four-factor test may lead to inconsistent applications of fair use in courts. Although there have been significant developments in the field of copyright law over time, including numerous cases, a certain subjectivity of assessment is an inherent part of the procedure. In other words, different judges may come up with different conclusions in situations similar to each other in many respects.

A high level of complexity is another problem associated with fair use doctrine. The four factors that should be considered when determining whether the use of a work is fair imply that the whole process cannot be easily grasped by a layperson. Such complexity is not necessarily related to the process of understanding what criteria should be used – sometimes, it may prove impossible to provide a clear explanation to justify a particular position.

From the standpoint of economics, critics point to the broad scope of fair use as one of the weaknesses of this legal institution. The possibility to use copyrighted materials in numerous scenarios implies a certain threat to copyright owners who can lose revenue as a result of the widespread unauthorized use. However, those who support the doctrine state that its advantages exceed its downsides by far.

One more problem related to fair use is the issue of applying a flexible legal concept to the digital era where automated content control is becoming a common phenomenon. Since content filtering software does not have the ability to determine whether a particular use of work can be considered fair use, its improper operation leads to the removal of legitimate content.

Overall, the current version of the fair use doctrine implemented in the United States seems to be effective enough in terms of addressing the needs of the community in the digital age. Nevertheless, its potential for improving should not be ignored due to the presence of certain issues and weaknesses described above.

To summarize, the fair use doctrine in the U.S. is a flexible instrument that helps address emerging problems related to copyright infringement in various spheres. Being rather complicated and difficult to predict at times, it allows dealing with the peculiarities of modern society. However, despite these problems, fair use doctrine remains one of the key tools in copyright management today.

CHAPTER 4

DOCTRINE OF FAIR DEALING IN THE UNITED KINGDOM AND COMPARATIVE ANALYSIS

4.1 Overview of UK Copyright Law

Copyright law in the United Kingdom stands as one of the earliest and most significant systems that protects intellectual property rights and has influenced contemporary copyright systems worldwide. The system developed through its history which began with the Statute of Anne adopted in 1710 to establish authorship rights as the main entitlement for creators of intellectual works. The initial laws established copyright protection as a temporary right which exists to encourage educational development and knowledge sharing.⁴³

A contemporary approach to regulating copyrights in the UK can be found in the Copyright, Designs and Patents Act 1988 (CDPA). The CDPA represents an update of existing legislation on the matter, offering a detailed outline of the structure of copyright regulation in the UK. The current legislation provides the framework for the protection of literary, dramatic, musical, and artistic works, films, sound recordings, broadcasts, and typographical arrangements. Moreover, the CDPA aims at balancing the economic and moral interests of the author of a work with the need to provide public access to creative productions.

An interesting feature of UK copyright law is that it focuses on both economic and moral interests of the author. Economic rights give the copyright holder the opportunity to manage the production and dissemination of his or her work and to benefit from it economically. Moral rights relate to the personal interests of the author. The author is entitled to be attributed as the creator of a particular work and to prevent any derogatory use of the work. The latter is a reflection of the fact that the creative process is a combination of a commercial and private undertaking.

⁴³ Statute of Anne, 1710, 8 Ann., c. 19 (Eng.).

Under the Copyright, Designs and Patents Act 1988, a work enjoys copyright protection if it meets the criterion of originality. Traditionally, originality implied that a work was a result of the author's skill, labor, and judgment. Following the EU Court decisions, however, the UK has moved away from the traditional concept of originality to embrace the notion of "the author's own intellectual creation." The shift in the understanding of originality in UK copyright law was dictated by the need to harmonize national legislation with the developments in continental Europe.

The term of copyright protection in the United Kingdom usually equals the life of the author plus seventy years, which is the average international practice. Films and sound recordings enjoy a somewhat shorter period of copyright protection. After the expiration of the copyright term, a work becomes available to the public.

The emergence of new digital technologies has brought about changes in the copyright system of the United Kingdom. Amendments to the CDPA were made to address copyright-related issues that emerged in relation to digital technologies. In particular, the amendments to the CDPA provide for technological protection measures and make it illegal to circumvent them.

Like any other country, the United Kingdom is a signatory to various international conventions on copyright and related matters. In this regard, the United Kingdom is committed to the provisions of the Berne Convention and the TRIPS Agreement. International treaties affect the development of domestic copyright laws in that they set minimal standards for copyright protection.

The doctrine of fair dealing serves as an important limit on the exercise of exclusive rights. While US law recognizes the concept of fair use, in the UK it is replaced by the narrower notion of fair dealing. Fair dealing implies the permissible use of copyrighted materials that falls into a few specific categories and meets the criterion of fairness.

4.2 Fair Dealing under UK Law

UK copyright fair dealing is an exception to copyright infringement contained within the Copyright, Designs and Patents Act 1988 where the usage of the protected content occurs without the authorization of the author. The statutory exception allows the user

of the protected content to employ such without the consent of the right holder where certain conditions are met. Fair dealing may be made for various purposes including research and private study, criticism and review, news reporting, parody, caricature and pastiche.

The application of fair dealing is distinguished by the fact that it allows the use only for the purposes specifically listed in the Act while fair use is more comprehensive and does not limit the court to only consider such uses of the protected material in their determination. The limitation of uses in the case of fair dealing ensures that there is clarity within the law although it restricts it in some manner.

In the case of fair dealing, the use needs to be deemed as 'fair'. There is no clear definition of what constitutes as fair in the Act although there are criteria set out by the UK courts. Some of these criteria include the portion taken, the purpose of the copying, alternative uses of the material, and whether the copying affects the market for the work.⁴⁴

Fair dealing, however, cannot be misused because of the requirement of fairness. Thus, even in the case when the activity falls into one of the categories specified in the statute, it can be considered as not falling under the provision if there are too many copies made, and if the use significantly harms the commercial potential of the original work. On the contrary, activities which involve a modest number of copied items and are aimed at achieving a valid objective will be regarded as fair dealing.

One of the exceptions which are used quite widely relates to the right to use the copyrighted material for research and private study purposes. This right allows using copyrighted material for research and private study purposes without breaching any obligations established by the Act. The provision is essential from the viewpoint of ensuring that the knowledge is accessible in a full range and that educational processes are promoted.

Criticism or review allows using the work for reviewing and criticizing the item which was created by another author. The provision refers to using the copyrighted material in the course of discussing its content in an article or in a speech, etc. According to the

⁴⁴ Copyright, Designs and Patents Act 1988, c. 48 (UK).

Act, the use should be accompanied by the acknowledgment of the author's contribution.

Reporting the events allows using the copyrighted materials as well, but under certain conditions. In particular, the Act states that the copyrighted items may be used for reporting news and events without breaking the copyright law. However, it does not apply to photographs, indicating the limitation to be followed when applying the rule.

In recent times, the scope of the provision was extended by adding such exceptions as parody, caricature, and pastiche. This indicates a more progressive attitude toward copyright issues. As for criticism and parody, they both allow the use of copyrighted items for entertainment and critical purposes.

Although there are quite a few exceptions under the act, they seem to be much less flexible compared to the concept of fair use in the United States. As it has already been mentioned, there is a certain list of purposes where people may use the copyrighted material freely.

4.3 Judicial Interpretation in the United Kingdom

Judicial interpretation has played a significant role in shaping the application of fair dealing in the United Kingdom. The statutory framework establishes fundamental rules but case law establishes specific definitions of fairness and allowable uses. UK courts have consistently emphasized the need to balance the rights of copyright holders with the public interest, adopting a pragmatic and context-sensitive approach.

Hubbard v. Vosper serves as one of the primary cases that define fair dealing because it established a fundamental element of copyright law in the United Kingdom. The Court of Appeal examined whether critical publications could use extracts from copyrighted material according to fair dealing rules. Lord Denning established that fairness exists as a flexible concept which requires case-specific assessment based on all relevant facts.⁴⁵

⁴⁵ *Hubbard v. Vosper* [1972] 2 QB 84 (CA).

The Court in *Hubbard v. Vosper* stated that it is impossible to describe fairness through exact definitions because every situation needs independent assessment. Courts can use this flexible approach to apply the fair dealing principle across various situations although statutory boundaries restrict its use.

Another important case is *Ashdown v. Telegraph Group Ltd.*, which involved the unauthorized publication of a political document. The Court of Appeal determined that the applied work did not meet fair dealing criteria because it required showing complete work and created major effects that decreased market value. The decision established that market impact constitutes a vital element for evaluating fairness while emphasizing the need to safeguard copyright owners' financial rights.⁴⁶

The *Ashdown* case demonstrated how copyright laws create difficulties for people who want to express their opinions freely. The court recognized public interest in political discourse yet it chose to protect copyright holder rights which showed how these cases need careful balancing. The case of *Deckmyn v. Vandersteen* which European authorities decided has created major changes to legal standards in the United Kingdom concerning parody and creative expression. The decision established parody as a legal definition that requires a work to imitate another creation yet show its distinctiveness through humorous elements. The UK legal system uses this interpretation to decide how to apply the parody exception.⁴⁷

The United Kingdom judicial decisions have examined how fair dealing applies to digital situations. The courts face growing demands to resolve disputes about internet materials and digital duplicates and emerging media types. Digital technology requires courts to apply existing legal principles through specific methods which depend on particular situations.

The court rulings create a unified system which establishes fair dealing rules and their implementation throughout the United Kingdom legal system. The system shows more restricted conditions than United States fair use but court decisions enable it to solve current issues through its flexible application.

⁴⁶ *Ashdown v. Telegraph Group Ltd.* [2001] EWCA Civ 1142.

⁴⁷ Case C-201/13, *Deckmyn v. Vandersteen*, 2014 E.C.R. I-0000.

The United Kingdom fair dealing system represents a well-measured solution which combines detailed legal requirements with common law judicial decision-making. The cases of *Hubbard v. Vosper* and *Ashdown v. Telegraph Group Ltd.* and *Deckmyn v. Vandersteen* established important legal principles which guided legal professionals while creating a doctrine that maintained its capacity to evolve. The judiciary maintains its fundamental duty to protect fair dealing through its vital function of managing judicial proceedings during ongoing digital development.

4.4 Fair Dealing in the Digital Environment (United Kingdom)

The advent of the digital environment has brought about many changes that have had a major impact on how the doctrine of fair dealing has been applied and interpreted. The statutory foundation of the doctrine can be traced back to the Copyright, Designs and Patents Act 1988, but its practical significance has grown immensely as a result of digital technology and the emergence of novel forms of content creation and dissemination. The number of copyrighted materials produced and available in the digital environment has increased, and methods of accessing and utilizing such materials have also changed. In addition, the doctrine of fair dealing itself has been put to the test in the digital age and has been adjusted accordingly.

One of the main trends in the UK digital environment involves the growing popularity of online platforms for various activities, including social interaction, learning, and entertainment. Digital social networks, publishing platforms, and streaming services allow people to consume copyrighted materials in ways that would have been impossible in other environments. Individuals can easily share quotations from articles and other writings, embed video clips, create commentaries, produce parodies, and publish satire. Such activities inevitably involve the utilization of copyrighted materials and thus raise concerns about their compliance with the exceptions provided by the doctrine of fair dealing.

In fact, the statutory framework of the Copyright, Designs and Patents Act 1988 has been modified several times to account for some aspects of the digital environment. Exceptions for the use of copyrighted materials for the purposes of parody, caricature, and pastiche have been added recently to reflect changes in society. These additions may be viewed as particularly significant in terms of internet culture, where parodying

copyrighted materials has become popular. The incorporation of exceptions into the doctrine of fair dealing allows the UK legal system to introduce some flexibility in a rather rigid legal framework.⁴⁸

An important aspect related to the emergence of the UK's digital environment is the establishment of exceptions to copyright for text and data mining (TDM). In other words, researchers and innovators can analyze vast amounts of data, including copyrighted information, in order to carry out non-commercial activities in their fields of expertise. For example, TDM is often applied by scientists who work in areas like artificial intelligence or machine learning. However, there are criticisms to the limited use of TDM to non-commercial purposes only.

Fair dealing in relation to the sphere of education should also be addressed, especially since the phenomenon of digital education continues to evolve. The growth in popularity of online learning tools requires teachers and students to reproduce copyrighted materials through digital means. The exception related to fair dealing for research and private study includes digital materials, thus allowing educators and learners to work with copyrighted items in an online setting. The problem lies in the potential negative impact of digital reproduction and the high degree of its scale.

Intermediary liability is another complication that emerges in connection with fair dealing in the digital environment. Websites providing users with an opportunity to generate content require special attention because of the delicate balance between copyright enforcement and lawful uses of copyrighted materials. Safe harbor provisions do protect online intermediaries from any liability in such cases. Yet, the removal of allegedly infringed content is one of the conditions for being protected.

Judicial decision-making on the matter of fair dealing has proven to be rather effective in helping the country to adapt to the changing realities of the modern world. Specifically, judges take into account the nature of contemporary technology while assessing whether a certain use was fair. In general, a balanced approach is taken when deciding what types of uses are permissible under the concept of fair dealing.

⁴⁸ Copyright, Designs and Patents Act 1988, c. 48 (UK)

Nevertheless, the rigid structure of fair dealing remains a challenging element in the context of the UK's digital environment. For instance, unlike the U.S. doctrine of fair use, fair dealing has specific purposes. It means that some innovations in the field of using copyrighted materials may simply be beyond the scope of applicability of this concept.

Another challenge in the sphere of copyright issues in a digital environment is connected with the need for greater internationalization of rules. Namely, the fact that the Internet makes it possible to disseminate copyrighted items beyond national borders requires the introduction of global solutions.

To sum up, the process of adopting fair dealing in the digital environment in the UK has been taking place in stages. There were legislative amendments to the current legislation and judicial interpretations, and all that contributed to the creation of additional flexibility in the field. At the same time, challenges and problems remain.

4.5 Comparative Analysis: India, United States, and United Kingdom

The comparison between fair use and fair dealing doctrines which exist in India and the United States and the United Kingdom shows both substantial similarities and critical dissimilarities regarding their methods of handling copyright exceptions. The three legal systems work to protect copyright owners while safeguarding public rights but their methods and legal interpretations lead to different outcomes. The two systems have their most important difference because they use different operational systems which include the United States flexible fair use doctrine and the India and United Kingdom fixed fair dealing framework. The U.S. Copyright Act of 1976 Section 107 establishes general assessment criteria which enable courts to evaluate whether a particular use qualifies as fair use through individual case examinations. The fair dealing rules at India and the United Kingdom permit only designated activities which include research and criticism and current events reporting.⁴⁹

Moreover, greater flexibility of the model makes it possible for this system to adapt to new technologies and forms of creative activities. Courts can take into account a wide variety of different uses and even those which were not anticipated by the time of statute

⁴⁹ 17 U.S.C. § 107 (2018).

adoption. Flexibility of this model has become especially valuable during recent decades when rapid changes in the sphere of information technologies brought new challenges to copyright law. In order to deal with such issues, fair dealing may require additional legislation, thus making it less flexible compared to fair use.

India finds itself in an interesting situation from the perspective of comparative study as the system of fair dealing there combines features of both English and American models. Namely, the statutory base of Indian legislation is quite close to that of the UK but Indian courts adopt a more flexible and purposive interpretation of the law. Thus, India managed to develop its doctrine in accordance with modern conditions and to make necessary changes in order to provide better protection of rights in the field of education and knowledge.

The importance of judicial interpretation is yet another aspect that deserves closer attention. Fair use doctrine in the United States was developed largely through court decisions and it is courts that continue to shape this doctrine, creating important criteria for it. Even though judicial interpretation plays a significant role in the UK, courts still work under the umbrella of relatively rigid statutory scheme. In contrast to this, Indian judges demonstrate more liberal attitude towards fair dealing provisions.

Digital technologies represent an important aspect that requires consideration from different perspectives of fair dealing/fair use. US fair use doctrine proves to be quite suitable for addressing the issue of digital use because of special emphasis on transformation and purpose. In the UK, it is more difficult to incorporate new technologies into the system because of rigidity of statutory rules and categories of permissible use. Yet, UK law has managed to overcome some difficulties with the help of legislative amendments and judicial interpretations.

Finally, one cannot ignore economic considerations, which play an important part in copyright exceptions. The criterion of economic significance of fair use/dealing appears in all three jurisdictions, and courts consider the impact of such activity on the market of the original work. Still, the importance of this factor may differ, and US courts seem to give it special consideration.

The following table provides a descriptive comparison of key aspects of fair use and fair dealing in the three jurisdictions:

Comparative Table: India, United States, and United Kingdom

Aspect	India	United States	United Kingdom
Legal Framework	Copyright Act, 1957	Copyright Act of 1976	Copyright, Designs and Patents Act 1988
Nature of Exception	Fair Dealing (purpose-based)	Fair Use (open-ended, flexible)	Fair Dealing (purpose-based)
Scope of Permissible Uses	Limited to specific purposes (Section 52)	Broad, guided by four-factor test	Limited to enumerated purposes
Flexibility	Moderate (enhanced by judicial interpretation)	High (case-by-case analysis)	Limited (structured statutory categories)
Judicial Role	Expansive and purposive interpretation	Central role in shaping doctrine	Important but within statutory limits
Digital Adaptability	Developing; relies on courts	Highly adaptable	Moderate; requires legislative updates
Transformative Use	Not explicitly recognized but implied	Central principle	Limited recognition
Market Impact Consideration	Considered alongside public interest	Highly significant factor	Important factor in determining fairness
Certainty vs. Flexibility	Balanced but sometimes uncertain	Flexible but unpredictable	More certain but less flexible

Policy Orientation	Access to knowledge and education	Innovation and free expression	Balance between rights and certainty
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The comparative analysis demonstrates that while the U.S. fair use model offers greater flexibility and adaptability, it also introduces a degree of uncertainty. The UK and Indian fair dealing models, by contrast, provide clearer guidelines but may struggle to keep pace with technological change. Each system reflects a different balance between certainty and flexibility, shaped by historical, cultural, and legal considerations.

In conclusion, the comparative study of fair use and fair dealing highlights the diversity of approaches to copyright exceptions and underscores the importance of context in shaping legal frameworks. While no single model is without limitations, the interplay between these systems offers valuable insights for future reforms, particularly in the context of the digital age.

CHAPTER 5

CHALLENGES, REFORMS, AND CONCLUSION

5.1 Emerging Challenges in the Digital Age

The digital era has brought complete changes to copyright law which now presents multiple complicated problems that evaluate how well current legal systems can handle these issues. The fair use and fair dealing doctrines which originated in a period when reproduction capacity remained limited face new challenges because of current technological advancements. The new technologies which emerged in this time period have created new methods for content creation and distribution which now enable people to create and distribute content at unprecedented speeds and volumes while they establish new rules for authorship and ownership and access rights. The traditional system which protects creator rights while allowing user access rights faces increasing challenges to maintain its established equilibrium.

Digital technologies enable people to create exact copies of copyrighted material which they can distribute using global networks and digital systems. Digital technologies enable people to create exact copies of content which they can share across international networks without any decrease in original quality. The number of authorized and unauthorized instances of copyright material usage has undergone a significant increase during this period. The fair use and fair dealing doctrines establish a system which helps identify acceptable and illegal content usage but digital applications become challenging because online activities exist at both large and complicated scales.⁵⁰

The emergence of user-generated content is another notable challenge to contemporary copyright law. The advent of social media and video-sharing websites has empowered people to create and publish their content in record numbers. Often, such content consists of works incorporating some copyrighted work in a creative way, for instance, as a parody, remix, or commentary. Although such usage may be considered legal according to fair use and fair dealing standards, the massive amount of published data complicates its assessment and leads to the use of automated content moderation

⁵⁰ 17 U.S.C. § 107 (2018).

systems that do not provide an accurate distinction between legal and illegal uses of copyrighted work.

Another area where copyright issues arise is the emergence of artificial intelligence and machine learning. Algorithms behind AI and ML processes require extensive input data from which patterns and data can be derived. Training a system with copyrighted work can be regarded as a transformative process since patterns are created out of information instead of reproducing the expressive work itself. Yet, the large scale of the process and its business value create serious copyright issues since such processes can lead to using copyrighted content without paying sufficient royalty to the owner.

One of the more common areas where copyright issues arise is piracy. It refers to distributing content online without permission from the copyright holder. Piracy remains popular even though there are several mechanisms in place aimed at limiting it due to the lack of incentive for creators and distributors to produce copyrighted works. Nevertheless, strict enforcement measures related to piracy can hinder users' access to legal uses of copyrighted works, which leads to the need to find balance in copyright enforcement.

The globalization of digital content creates new challenges to copyright law enforcement. Since the Internet goes beyond the borders of any single country, it becomes increasingly harder to control the distribution of copyrighted works. Differences in legislation across different countries make enforcing copyright law even more difficult since a unified fair use standard does not exist yet.

Finally, intermediaries who distribute digital content become a significant challenge to copyright laws in the modern world. Since intermediaries do not have exclusive copyright in their content, it becomes harder for them to deal with the copyright-related content posted by third parties on their website. Implementing notice-and-takedown systems became effective in addressing this issue after the creation of the Digital Millennium Copyright Act. Yet, automatic takedown notices can take away works considered fair use and harm freedom of expression.⁵¹

⁵¹ Digital Millennium Copyright Act, Pub. L. No. 105–304, 112 Stat. 2860 (1998).

Similarly, the significance of online education has brought out the problems that arise in relation to the exceptions in copyright law. Digital learning resources have become an important aspect of contemporary education systems, even more in today's global disruption. This has made it necessary to determine what extent fair use and fair dealings may apply in relation to digital education materials that get distributed online. Though court rulings have generally favored educational use of copyrighted materials, the lines continue to remain blurred in many instances.

There also exists a challenge with regard to users' awareness about copyright laws and their exceptions. Many people fail to understand the boundaries set by fair use and fair dealings doctrines, which results in unintentional infringements or failure to make full use of the allowed activities. It is therefore important to enhance the public awareness on copyright laws and their provisions.

Economic factors have also posed several challenges to copyright law. The evolution of digital technology has made changes in the way content gets created and sold online. There is need to incorporate the concepts of fair use and fair dealings in order to balance between the interest of copyright owners and fostering innovation and development.

Another significant challenge faced by copyright law is the problem of technology evolving at a faster pace than laws. Legal provisions normally get updated in response to changes in technology and innovations, hence making it difficult for courts to interpret laws according to contemporary technological realities.

5.2 Need for Legal and Policy Reforms

The existing difficulties which we identified together with their corresponding solutions require immediate implementation because they will help develop legal frameworks which maintain copyright laws. Although courts have shown that fair use and fair dealing doctrines can adapt to new situations, the current system requires more efficient solutions because it cannot effectively manage today's complex challenges. Copyright law needs fundamental reform through an approach which enables creators to protect their rights while users and society as a whole receive essential benefits from their work. Copyright exceptions require better flexibility because this represents a crucial area which needs reform. The fair dealing system which India and the United Kingdom use

should implement certain aspects of the more adaptable fair use system to improve its effectiveness. The existing purpose-based approach will receive additional support through the introduction of new guiding principles and factors which will serve as supplementary elements. The legal framework will gain the ability to handle emerging and unpredictable applications which will particularly affect digital technology advancements.⁵²

At the same time, it is necessary to ensure that the increased level of flexibility of the regulations in the sphere under review is combined with legal certainty. To increase predictability, it is possible to develop appropriate guidelines and illustrative examples. In this case, policymakers should try to achieve an optimal compromise and provide users and right holders with a reasonable understanding of what actions are allowed by the copyright law.

Another sphere that requires reforms is the regulation of digital platforms and intermediaries. It is necessary to examine the current regulatory framework in order to address problems related to automated content moderation and massive platforms. Some mechanisms should be developed to ensure the non-blocking of legitimate actions and lawful uses of copyrighted works, especially those that can be qualified as fair use or fair dealing. It can be achieved through the establishment of some safeguard mechanisms.

Another significant challenge that should be taken into account concerns artificial intelligence and data-driven technologies. Policymakers should pay attention to the creation of the corresponding guidelines regulating the usage of protected works for AI training purposes. Here it would be appropriate to establish special exceptions or licenses that would balance the interests of innovation and creators.

In connection with the previous point, it is also important to pay more attention to the adaptation of the law in regard to digital education and access to knowledge. It means that changes should be introduced to make the law more flexible regarding the use of digital resources in education while still guaranteeing proper credit and rewards for copyright owners.

⁵² Copyright, Designs and Patents Act 1988, c. 48 (UK).

It is also possible to discuss the enhancement of enforcement mechanisms. It is very important to address issues associated with digital piracy; however, enforcement measures should be developed carefully. It would be useful to combine legal actions with various technological approaches and awareness-raising campaigns to solve the issue effectively.

Last but not least, it would be relevant to raise awareness regarding copyright issues among Internet users and make sure they understand how the law operates and what their obligations are. In particular, people should be aware of exceptions to copyright rules, such as fair use and fair dealing.

Taking into account the analysis of all the above-mentioned aspects, it is possible to outline the main directions for reforming copyright law in the context of digital age. First, it would be appropriate to reconsider the goals of the copyright law and focus not only on the protection of creators' rights but also on providing free access to knowledge and innovation. At the same time, the doctrines of fair use and fair dealing should be regarded as crucial components of a balanced law rather than mere exceptions. Finally, it seems to be necessary to promote international harmonization in the field under discussion.⁵³

The entire reform process needs both judicial reform and capacity development work as essential elements. Courts function as vital institutions which interpret and enforce copyright law through their judicial functions that handle emerging technologies. The judicial system needs trained judges who possess both technical skills and essential tools to solve intricate legal matters because their expertise is vital for judicial processes.

The legal and policy system requires copyright law reforms because digital technologies have changed the way people create and share their work. The adoption of a flexible balanced approach will enable policymakers to achieve their fundamental goals while making necessary copyright law adjustments for digital age challenges.

⁵³ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994

5.3 Role of Judiciary and Technology

Nowadays, the role of technology in copyright law cannot be underestimated as technological developments are changing the process of creating and distributing copyrightable objects. Courts need to be able to interpret copyright principles in order to keep pace with evolving realities. The issue of copyright law is becoming increasingly complicated because technological advancements are making possible many actions that could never be envisaged before legislation. However, courts are expected to deal with all emerging issues and challenges, thus making sure that the copyright law remains up-to-date, consistent, and relevant.

An important task of the judiciary is connected to the interpretation of fair use and fair dealing doctrines. Fair use can be regarded as a very open and wide-ranging concept according to the Copyright Act of 1976 that enables courts to analyze every situation independently in terms of purpose, impact, and significance. On the contrary, the doctrine of fair dealing is rather strict since it presupposes following particular limitations. However, it is still possible to develop an appropriate interpretation of fair dealing under the Copyright Act, 1957 and the Copyright, Designs and Patents Act 1988. In such a way, courts are responsible for achieving balance between the interests of creators of copyrighted products and general public interests. It should be noted that it is especially challenging to achieve an optimal balance in the digital environment where the borderline between acceptable and unacceptable actions can be hard to trace.

Courts can contribute to the expansion of copyright exceptions in response to changes in technology. Courts are capable of developing a broad jurisprudence as long as copyright law is considered relatively flexible due to its openness and dynamism. Although the concept of transformative use has gained popularity mainly in the US, it is actively discussed in other countries, as well. Thus, courts contribute to the adoption of a flexible interpretation of copyright exceptions by considering different criteria when defining what kind of usage is fair.

In India, the judiciary interprets Section 52 of the Copyright Act, 1957 in light of existing social and economic conditions. Courts strive to promote public interests as long as the principle of fair dealing implies reasonable use. In such a way, Indian courts

follow a liberal interpretation of fair dealing as a means of promoting access to knowledge and education.

In the UK, courts try to provide interpretations that would ensure a balance between the rigidity of the doctrine of fair dealing and its adaptability. According to the Copyright, Designs and Patents Act 1988, some kinds of reproduction can be regarded as copyright infringement, however, they can still qualify as exceptions if they do not exceed certain limitations.

The role of the judiciary includes the development of principles concerning application of copyright law in new environments. Courts need to deal with emerging problems, develop solutions, and create new principles as long as modern reality brings about numerous legal dilemmas. Courts are responsible for dealing with problems associated with online platforms, artificial intelligence, data mining, user-generated content, and others. At the same time, courts are supposed to preserve traditional legal norms while adapting to technological advances.

It is also necessary to mention the influence of technology on the functioning of the judiciary. With the emergence of online resources, case management systems, and virtual courtroom trials, judges face new opportunities. Digital databases and online archives of judgments enable easier access to data. Moreover, the use of computers enhances efficiency, facilitates case management, etc.

However, technology poses new challenges to the judiciary as far as it is necessary to consider carefully the extent to which technology can be used in judicial decision-making. It should be mentioned that even though technology can simplify the analysis of data, interpretation cannot be delegated to computer because it requires making qualitative decisions. The issue of automation in judicial activities remains disputable.

Another important point that should be taken into consideration when analyzing the role of courts is the necessity to preserve and protect fundamental rights. Such freedoms as freedom of expression and access to information should be preserved by providing appropriate interpretations of copyright exceptions. It should be pointed out that digital platform became especially significant for promoting these rights nowadays.

Finally, it should be mentioned that the issue of judges' qualification is becoming increasingly relevant in modern reality due to the complexity of new problems in copyright law. In the era of advanced technologies, courts are expected to make decisions that would contribute to sustainable development of law in this sphere. Thus, judges should be sufficiently prepared.

5.4 Recommendations and Way Forward

The study demonstrates that digital technologies require fair use and fair dealing standards to undergo necessary transformations for their continued operational effectiveness in modern times. The section presents recommendations which create an equitable future-oriented copyright framework that maintains creative rights together with authorization rights of creators while safeguarding their valid rights. The primary recommendation advocates for copyright exceptions to receive increased flexibility which should apply to jurisdictions that currently use fair dealing as their main copyright exception. The United Kingdom and India should adopt fair use elements which include guiding factors that enable assessment of specific situations through their use. The legal framework will obtain new capabilities to handle previously unknown uses which will emerge through the development of digital technologies.⁵⁴

The legal system requires a certain level of operational clarity which enables users and rights holders to determine their legal obligations. Clear guidelines with illustrative examples and explanatory materials will show people how to use copyright exceptions according to their specific needs. The proposed measures will eliminate legal uncertainty which will result in consistent legal enforcement throughout the judicial system. The second key recommendation calls for changes to the existing laws that govern intermediary liability. Digital platforms serve as the primary channels through which content circulates, which requires their regulations to find a middle ground between defending rights and allowing people to use content legally. The implementation of notice-and-takedown procedures needs additional protection measures, which include counter-notice systems and transparency requirements that

⁵⁴ 17 U.S.C. § 107 (2018).

defend fair use and fair dealing rights. The system will stop content from being deleted without cause while protecting users' rights to use content in legitimate ways.⁵⁵

Another important issue related to intellectual property concerns the regulation of artificial intelligence and data-driven technologies. It would be appropriate to work on the creation of guidelines regarding using copyrighted materials for training AI systems. The guidelines have to take into account the necessity of creating incentives for innovations, but also the rights of authors and creators to protect their creations.

Moreover, it seems reasonable to enhance the access to educational resources via adjusting the copyright law accordingly. For instance, it could prove helpful to expand exemptions for educational use in copyright law. At the same time, one should pay particular attention to issues concerning developing countries with limited access to educational resources and opportunities.

Educating people about copyright law and fostering public understanding of copyright legislation would contribute to the proper functioning of the system. In particular, individuals need to be aware of their responsibilities and their right to fair use. They should also understand what fair use and fair dealing entail.

It also appears reasonable to develop new approaches to enforcement in order to combat piracy and illegal downloading and uploading of digital materials. At the same time, one should be careful and ensure that there is no overreach and unintended negative consequences of actions.

Finally, it would be reasonable to focus on enhancing international cooperation and cooperation efforts of international organizations related to copyright law. The goal was to enhance cross-border enforcement, which was complicated by different copyright regimes in various countries.⁵⁶

Capacity building among judges is yet another important element in this regard. Judges should be trained in the necessary areas and provided with the knowledge and skills required to address technological issues. Collaboration with experts and participation

⁵⁵ Digital Millennium Copyright Act, Pub. L. No. 105–304, 112 Stat. 2860 (1998).

⁵⁶ World Trade Organization, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994.

in training programs and workshops can significantly improve judicial capacity and decision-making.

Last but not least, it is imperative to embrace an all-encompassing approach to copyright reform. It is necessary to consider the wider social, economic, and cultural implications of copyright law. Copyright should be approached in relation to technology, education, and public policy. With a balanced approach, it becomes possible to ensure that copyright continues to meet its fundamental aims.

5.5 Conclusion

The concept of fair use and fair dealing is certainly one of the most prominent and dynamic elements of copyright law. This comparative analysis study sought to provide a thorough examination of these doctrines in India, the United States, and the United Kingdom. In doing so, it analyzed their underlying theories, legal frameworks, judicial interpretations, and applications in the digital era.

It appears that despite the similarities between the jurisdictions under consideration, their approaches to copyright law differ. While the United States relies on the flexible and open-ended concept of fair use, the United Kingdom and India opt for the structure of the doctrine of fair dealing. Although both concepts seek to strike a balance between the rights of creators and public interest, they differ in terms of their effectiveness and adaptability to technological change.

The advent of the digital age only accentuated these differences. On the one hand, the flexibility of the doctrine of fair use made it possible to accommodate various online activities, including searching for information, using digital libraries, creating user-generated content, and utilizing artificial intelligence technologies. However, at the same time, it created some uncertainties regarding the scope and limits of fair use.

On the other hand, the relatively rigid structure of fair dealing offers clearer guidance and makes it possible to apply the doctrine consistently across different cases. Nevertheless, its structure is less likely to allow adaptation to fast-changing technological circumstances.

Fortunately, judicial interpretation plays a vital role in resolving many of these issues. Courts in India, the United States, and the United Kingdom adopt a relatively pragmatic and flexible approach to applying exceptions in copyright law. They emphasize the importance of considering the purposes, transformations, and impact on the market when applying these rules.

However, the digital age has also introduced many challenges associated with copyright legislation. User-generated content, artificial intelligence, the persistence of digital piracy, and globalization of creative content make copyright law enforcement increasingly difficult.

This study has offered several recommendations that could facilitate copyright reform in the digital era. First, lawmakers should strive to strike a balance between the interests of creators and users. Second, enforcement tools should be enhanced to reduce piracy. Third, public awareness campaigns could be developed to promote copyright protection among users. Finally, it would be useful to enhance international cooperation in addressing cross-border violations of copyright laws.

In conclusion, the future development of the concepts of fair use and fair dealing hinges on their adaptability to emerging technological and cultural trends.

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