

## **12.DOCTRINE OF FAIR USE AND FAIR DEALING: NEWS MEDIA REPORTING**

*Himanshu Rajpurohit\**

### **Abstract**

*This essay examines the nuances of the Fair Use and Fair Dealing Doctrine in relation to news media coverage, with a focus on India. It addresses how these theories can strike a balance between the public's access to information and the rights of intellectual property creators. An extensive introduction to intellectual property rights (IPR) and the protections provided to creators open the analysis. The text highlights the importance of the U.S.-based Doctrine of Fair Use and its Indian equivalent, Fair Dealing, as delineated in Section 52 of the 1957 Copyright Act. The study examines a number of court rulings, emphasising instances in which the validity of these theories has been questioned, particularly in connection with copyright violations involving news media. Further, it examines the difficulties of upholding copyright on websites like YouTube while preserving the right to free speech. The study also considers the intellectual foundations of fair use and fair dealing, arguing that although these doctrines seek to promote greater benefit for society, they may unintentionally violate the rights of individual artists. Ultimately, the research calls for a nuanced interpretation of these principles by the judiciary, highlighting the necessity for case-by-case judgments to preserve a fair equilibrium between individual and public interests in the shifting environment of intellectual property law.*

*Keywords: Fair Use, Fair Dealing, Intellectual Property Rights, Copyright Infringement, and News Media Reporting.*

*"He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me." ~ Thomas Jefferson*

---

\* Himanshi Rajpurohit is a Final-year student pursuing BA LLB (Hons.) from National Law University and Judicial Academy, Assam.

## INTRODUCTION

Intellectual Property Rights (IPR) are the rights that are given to the person who creates something original by using his/her intellect or mind. All the inventions we see today are nothing but ideas that were transformed into real things. Intellectual Property Rights provide security to an individual's creation based on his/her intellect. Different kinds of IPR protection are given to the creators, such as Copyright, Patent, Geographical Indication Tag, etc. The main question that arises is to what extent the individual's intellectual property right is protected. To deal with this question, various courts use the "Doctrine of Fair Use." The doctrine of fair use is nothing but a tool to decide whether someone's copyright is infringed or not. The doctrine of Fair use gives power to other people to use the copyrighted work without seeking permission from the author. However, It would be incorrect to infer that by using the doctrine of fair use, anyone can use the copyrighted work without the due permission of the author. According to the Doctrine of Fair Use, there are several criteria to be followed to get the advantage of it, such as the purpose and nature of copyrighted work, the portion used from the work, and the effect of use on the market regarding the value of copyrighted work. While deciding whether the doctrine of fair use is applicable or not, the courts at different levels use multiple factors for setting the ground of fair use.

India is a country where the concept of Intellectual Property rights is emerging and evolving at a very rapid pace due to the increase in innovation and start-up rates in the country. In India, there was an 11.62% increase in the filing of copyright applications and a 2.3% rise in copyright registrations from 2019-20 to 2020-21.<sup>55</sup> Along with the increasing rate of application and registration of copyright in India, the disputes regarding infringement of copyright are also increasing. To decide whether there is an infringement of copyright or not is a very difficult task. The courts at different levels use

---

<sup>55</sup> Office of the Controller General of Patents, Designs and Trade Marks, 'Annual Report 2020-2021' (*IP India*, 2021) <[https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1\\_112\\_1\\_Final\\_English\\_AR\\_2020-21\\_for\\_Net.pdf](https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_112_1_Final_English_AR_2020-21_for_Net.pdf)> accessed 24 September 2024.

the Doctrine of Fair Use principle to decide the pertinent question. The doctrine of fair use is not explicitly mentioned anywhere in the Indian statutes, but in accordance with the provisions outlined in Section 52 of the Copyright Act of 1957<sup>56</sup>, the term “Fair Dealing” is similar to the “Doctrine of Fair Use” The concept of 'fair dealing' signifies that there won't be any copyright infringement if an individual uses the copyrighted material for personal or private purposes, including research, critique, or review of the work, along with reporting on contemporary events and affairs, including the coverage of public lectures.

The terms Fair Use and Fair dealing might seem simple in language; their application becomes much more complicated when deciding disputes of copyright infringement. Prior to the year 2012, cinematographic work was not included in the ambit of the Fair dealing principle, but after the Amendment Act of 2012<sup>57</sup>, the cinematographic work was also included under the same. After the Amendment, there has been an increased number of cases regarding whether using a portion of copyrighted cinematographic work without the due permission of the copyright holder is an infringement of copyright or not. To deal with this question, the courts of adjudication use the principle of “fair dealing” and “fair use”.

## **FAIR USE**

The Doctrine of Fair Use originated in the United States (US) from the famous landmark case of *Folsom v. Marsh*.<sup>58</sup> In this case, Justice Story stated that “*we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.*” The observation acted as the guiding light to resolve copyright infringement disputes under the defence<sup>59</sup>.

---

<sup>56</sup> Copyright Act 1957, s 52.

<sup>57</sup> Copyright (Amendment) Act 2012.

<sup>58</sup> *Folsom v Marsh* 9 F. Cas. 342 (C.C.D. Mass. 1841).

<sup>59</sup> Copyright Act 1957, s 39.

The provisions regarding fair dealing are nothing but exceptions to infringement of copyright. The Copyright (Amendment) Act of 2012, broadened the ambit of fair dealing to encompass works that are primarily musical or cinematographic. In the case of *Civic Chandran v. Ammini Amma*<sup>60</sup>, it was noted that in the cases of fair dealing, the court takes into account the intended use, the amount or value taken, and the likelihood that the original work and the reproduced work will face competition. There is no single umbrella formula to decide the cases of copyright infringement, whether the dispute comes under the ambit of fair use or not. On the premise of different facts and circumstances, the courts of adjudication reach different conclusions in different cases as mentioned below.

## **JUDICIAL ANALYSIS**

Several Indian news channels have recently faced copyright violation strikes on YouTube, leading to the deletion of thousands of videos, most of which featured footage of natural disasters worldwide. These strikes were initiated by Viral DRM, a US-based digital rights management firm co-owned by weather photographer Brandon Clement, under the Digital Millennium Copyright Act (DMCA). Following an allegedly unsatisfactory response from several channels, Viral DRM filed a lawsuit seeking damages under US copyright law.

News Nation, accused of the most deletions, claims it used the footage under the fair use exception to report on current affairs, while other channels, like TV9 Bharatvarsh and Zee News, faced similar allegations. Viral DRM<sup>61</sup> alleges that the channels not only used copyrighted videos without permission but also edited out copyright management information before re-uploading them.

In response, legal experts emphasise the importance of crediting original creators when claiming fair use. They also note that YouTube's terms of service prohibit the upload of

---

<sup>60</sup> *Civic Chandran v Ammini Amma* [1996] SCC OnLine Ker 63.

<sup>61</sup> Newslaundry, 'Videos deleted, YouTube channels defunct: What happens when Indian TV is accused of copyright violations' (*Newslaundry*, 1 January 2024) <<https://www.newslaundry.com/2024/01/01/videos-deleted-youtube-channels-defunct-what-happens-when-indian-tv-is-accused-of-copyright-violations>> accessed 24 September 2024.

third-party intellectual property without permission. the importance of crediting original creators when claiming fair use. They also note that YouTube's terms of service prohibit the upload of third-party intellectual property without permission.

Viral DRM claims that channels began mass deletions after receiving DMCA notices, suggesting a loophole in the process that allows violators to remove evidence of infringement before penalties are imposed. Clement further alleges that News Nation misrepresented the origins of several videos, including footage from different tornadoes and hurricanes, to create misleading narratives.

The situation underscores the complexities surrounding copyright enforcement in the digital age and the challenges of balancing freedom of expression with intellectual property rights in news media reporting.

Law is a vast area of study, and it has multiple interpretations regarding different subject areas of legal disputes. The codified statutes framed by the legislature are not enough to deal with the various headings of legal disputes. Judicial precedents play a vital role in interpreting the law according to different circumstances, and finally reaching a conclusion.

***Shemaroo Entertainment Limited v. News Nation Network Private Limited<sup>62</sup>***

The plaintiff operated a business related to the production of different cinematographic works and granting licenses for the plaintiff's copyrighted work. The plaintiff contended that the defendant infringed on their copyright by broadcasting the plaintiff's copyrighted work on their channels. The defendant used the doctrine of fair use and provisions related to fair dealing as its ground of defence.

The Hon'ble Bombay High Court held that the defendant's act is not covered under the ambit of fair dealing as it is not covered under the purpose of reporting, and even the defendant wasn't able to deny the contention of the plaintiff that the defendant is using

---

<sup>62</sup>*Shemaroo Entertainment Limited v News Nation Network Private Limited* [2022] SCC OnLine Bom 930.

the content for a commercial purpose. Considering the balance of convenience and the arguments presented by both parties, the court granted injunctive relief in favour of the plaintiff.

***The Chancellor, Masters & Scholars of the University and Ors. v. Rameshwari Photocopy Services & Ors.*<sup>63</sup>**

The preparation of "course packs," or collections of photocopies of the relevant portions from various books listed on the curriculum, and their distribution to students by educational institutions, are at the centre of this case.

It was decided that the defendant's work was appropriate or in the ambit of fair use if the inclusion of the photocopied works (regardless of the quantity) was appropriate for educational instruction.

***Super Cassettes Industries Ltd. v M/S Shreya Broadcasting Pvt. Ltd.*<sup>64</sup>**

In this case, the plaintiff contended that the defendant infringed their copyright by playing the copyrighted clips of the plaintiff's works (sound recordings, cinematograph films, etc.) on the defendant's channel, as the picture of the plaintiff was in the news and getting huge appreciation.

According to the Hon'ble Delhi High Court, the use of the plaintiff's copyrighted work was done to improve the defendant's programs rather than to criticise or review it, therefore, will not come under the ambit of "fair dealing". or review it, therefore, will not come under the ambit of "fair dealing".

In a recent American case, *Yang v. Mic Network, Inc.*<sup>65</sup>, A screenshot was taken from an image that was licensed to the New York Post for an article. A portion of the original article's screenshot was taken by Mic Network and used in its publication; The photographer's work was included in the screenshot that was thus taken. The United

---

<sup>63</sup> *The Chancellor, Masters & Scholars of the University and Ors. v Rameshwari Photocopy Services & Ors.* [2016] SCC OnLine Del 6229.

<sup>64</sup> *Super Cassettes Industries Ltd. v M/S Shreya Broadcasting Pvt. Ltd.* [2019] SCC OnLine Del 7314.

<sup>65</sup> *Yang v Mic Network, Inc.* 18-cv-7628 (AJN) (S.D.N.Y. Nov. 9, 2020).

States District Court evaluated the four criteria to decide whether or not the current situation was covered by the fair use doctrine. The fair use doctrine is an immediate byproduct of the copyright concept, which is to advance and safeguard knowledge. Therefore, any subsequent work that transforms the original and adds value in any way is protected by the fair use doctrine. The District Court determined that using the screenshot was fair use because it was "transformative." The screenshot was "significantly cropped" and ultimately served more of a satirical and critical purpose than a commercial one by providing a commentary on the original article.

## **CONCLUSION**

In India, Intellectual Property Rights laws continue to evolve, requiring a careful examination of competing interests between individual ownership and public access. The philosophy of libertarianism, as articulated by thinkers like John Locke and Robert Nozick, asserts that individuals have an inherent right to the property they create through their labour, and any state intervention limiting these rights is unjustified. Locke's labour theory of property emphasises that a person who mixes their labour with natural resources gains rightful ownership, while Nozick expands on this by arguing that any redistribution of property without consent violates individual autonomy. Applied to intellectual property, this philosophy suggests that creators should have full control over their works, as their intellectual labour is a direct extension of their personhood.

On the other hand, the doctrines of fair use and fair dealing align more closely with utilitarianism, a theory famously developed by Jeremy Bentham and later refined by John Stuart Mill. Utilitarianism prioritises actions that generate the greatest good for the greatest number, making room for limited, justified use of copyrighted material when it benefits society at large. In the context of intellectual property, this means allowing news reporting, commentary, and education to use copyrighted works without authorisation when it serves a broader public interest. However, an unregulated or overly broad application of these doctrines risks unfairly disadvantaging intellectual property owners by diluting their exclusive rights and undermining their incentives to create when it serves a broader public interest. However, an unregulated or overly broad application of these

doctrines risks unfairly disadvantaging intellectual property owners by diluting their exclusive rights and undermining their incentives to create.

To strike a fair balance, courts must adopt a structured approach that considers key factors such as the purpose and character of the use, the extent of reproduction, the economic impact on the original owner, and the proportionality of public benefit. A rigid or blanket application of fair use or fair dealing, without weighing these factors, risks infringing upon an individual's property rights, reducing it to mere exploitation rather than justified use. Therefore, judicial interpretation should ensure that fair use and fair dealing serve as safeguards against monopolisation while preventing unjust encroachments on individual ownership. By maintaining a flexible yet principled approach, courts can uphold both the integrity of intellectual property rights and the fundamental role of news media in a democratic society. while preventing unjust encroachments on individual ownership. By maintaining a flexible yet principled approach, courts can uphold both the integrity of intellectual property rights and the fundamental role of news media in a democratic society.