

COPYRIGHT ACCESS: EXPLORING NON-INFRINGEMENT USES OF COPYRIGHTED WORK

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ABSTRACT

This publication digs into the intricate and multidimensional realm of copyright law and investigates the myriad of ways in which copyrighted works can be exploited while still paying homage to the rights of the original authors. It offers a comprehensive review of fair use, open licencing systems, and exceptions to copyright law, such as the utilisation of works for educational and research purposes. In addition, the paper investigates the changing nature of copyright law in the modern day, encompassing topics such as the culture of remixing and the use of emerging technologies such as blockchain and artificial intelligence. This journal's goal is to improve access to copyrighted works while also ensuring that the rights of artists are preserved. This will be accomplished via the provision of practical recommendations and discussion of developing trends. It is a comprehensive resource for authors and consumers of copyrighted works who are seeking to negotiate the complicated legal and ethical frameworks that regulate the use of such works. In general, it is a resource that covers a lot of ground on non-infringing uses of copyrighted work.

UNDERSTANDING NON-INFRINGEMENT USES OF COPYRIGHTED WORK

The legal framework that controls the protection of creative works, such as literature, music, art, and software, is known as copyright law¹. It gives authors the sole right to govern how their works are used and prohibit others from replicating, distributing, or altering them without permission². Copyright law, on the other hand, acknowledges some exceptions, limits, and defences that allow for non-infringing uses of copyrighted works.

Fair use is a well-known exemption to copyright law that allows the use of copyrighted works for purposes such as criticism, comment, news reporting, teaching, scholarship, or research³. Fair use is not an absolute right, but rather a case-by-case review of four factors: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of

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¹ Matthew Sag, Copyright and Copy-Reliant Technology, 107 NW. U. L. REV. 1607 (2013).

² Pamela Samuelson, The Copyright Grab, 27 HARV. J.L. & TECH. 1 (2013).

³ Peter Jaszi, Copyright's Fair Use Doctrine and Digital Data, 45 J. COPYRIGHT SOC'Y U.S.A. 315 (1998).

the portion utilised, and the impact of the use on the prospective market for the original work. Another significant exemption to copyright law is the theory of first sale, which permits the owner of a lawfully obtained copy of a copyrighted work to sell, loan, or give away that copy without the copyright owner's consent. This theory applies to both physical and digital copies of books, CDs, and DVDs. The Digital Millennium Copyright Act (DMCA) also gives internet service providers who host user-generated material a safe harbour. Under the DMCA, internet service providers are not held accountable for copyright infringement committed by their users if specific protocols are followed, such as creating a notice-and-takedown system and reacting swiftly to takedown notifications. In addition to these exceptions, copyright law recognises a number of limitations and defences, such as the de minimis use doctrine, which permits the use of small, insignificant portions of copyrighted works, and the parody defence, which permits the use of copyrighted works for the purpose of humour or satire⁴. Knowing these exclusions, limits, and defences is critical for navigating the complicated world of copyright law and enabling access to creative works while safeguarding authors' rights. It should be noted, however, that the borders of these exclusions are not always clear-cut and might vary based on the precise context and circumstances of each instance.

FAIR USE AND OTHER EXCEPTIONS TO COPYRIGHT LAW: AN EXPLORATION

Fair use is a fundamental exemption to copyright law, and its applicability has been changed over time by numerous judicial decisions. The principle of fair use extends back to the 1841 English case *Folsom v. Marsh*, which established that using copyrighted material for the purpose of criticism or comment is permissible⁵. Fair use is specified in Section 107 of the Copyright Act in the United States, which states the considerations that must be examined in evaluating whether a specific use of a copyrighted work is fair.

Fair use is determined by four factors: the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion utilised, and the effect of the use on the potential market for the original work. These considerations are neither exclusive nor exhaustive, and courts must consider them all to determine whether a specific use of a copyrighted work is fair.

⁴ Niva Elkin-Koren, A Public Policy Theory of Copyright Exceptions, 26 *CARDOZO ARTS & ENT. L.J.* 29 (2008).

⁵ Tara Wheatland, Copyright Law and Access to Information: The Fair Use Doctrine as a Tool for Access, 27 *BERKELEY TECH. L.J.* 1089 (2012).

Courts have applied the fair use concept to a wide range of creative works throughout the years, including books, music, art, and software. In the landmark 1984 case *Sony Corp. v. Universal City Studios*, for example, the Supreme Court held that the sale of video recording equipment did not constitute contributory infringement as long as the equipment was capable of substantial non-infringing uses, such as time-shifting and space-shifting.

Similarly, in *Campbell v. Acuff-Rose Music, Inc.*, the Supreme Court ruled in 1994 that using a copyrighted song in a parody was likely to be recognised as fair use, as long as the parody did not substitute for the original work and did not undermine the market for the original work. In *Authors Guild v. Google*, the Second Circuit ruled in 2013 that Google's scanning and digitalization of millions of books for its Google Books project qualified fair use since it provided major public advantages such as assisting study and providing access to out-of-print works⁶.

Apart from fair use, copyright law acknowledges various exceptions and limits, such as the theory of first sale, which permits the owner of a lawfully obtained copy of a copyrighted work to sell or lend that copy without the copyright owner's consent. This approach has been applied to a wide range of physical and digital works, including books, CDs, DVDs, and digital copies of software and other digital information. Moreover, copyright law includes a variety of exceptions that apply to certain sorts of applications or users. The educational and research exemption, for example, provides for the use of copyrighted works in the context of teaching, scholarship, and research, provided that the use is limited and does not undermine the market for the original work. Similarly, the exemption for libraries and archives permits libraries and archives to create copies of copyrighted works for preservation and access reasons as long as the copies are not made for financial gain and do not impair the market for the original work⁷.

CREATIVE COMMONS AND OTHER OPEN LICENSING FRAMEWORKS FOR COPYRIGHTED WORK

Copyright law establishes a basic system of exclusive rights, giving artists control over how their works are used and distributed. Many artists, however, choose to employ open licence frameworks like Creative Commons to allow others to use their works while maintaining some control over how they are used. Creative Commons is a well-known framework that provides

⁶ Matthew Sag, *Copyright and Copy-Reliant Technology*, 107 NW. U. L. REV. 1607 (2013).

⁷ Niva Elkin-Koren, *A Public Policy Theory of Copyright Exceptions*, 26 CARDOZO ARTS & ENT. L.J. 29 (2008).

a set of standardised licences that producers may utilise to make their works available for use and sharing by others⁸. Creators can pick from a variety of rights and conditions, such as permitting or restricting commercial usage, demanding credit, or allowing derivative works, under the licences. One of the primary advantages of open licencing systems is that they allow for more access and cooperation by allowing users to reuse and expand upon existing works without seeking permission from the copyright owner. This is especially useful in education, research, and cultural heritage, where access to creative works is critical for expanding knowledge and nurturing creativity.

Open licencing frameworks can enable producers to access a larger audience and perhaps make cash through new business models, such as delivering premium content or services in addition to free material⁹. Furthermore, because artists are allowed to remix and modify existing works to produce new and unique works, open licencing may encourage a culture of invention and experimentation. However, open licencing has significant obstacles and hazards, particularly for artists who rely on copyright as a source of revenue or who are concerned about their works being misused or misrepresented. Open licencing, for example, may make it more difficult to oversee the quality of derivative works or guarantee that works are properly attributed. Furthermore, creators should carefully evaluate the licence they choose and how it corresponds with their beliefs and ambitions, as different licences may have varied ramifications for how their works are used and shared. Some licences, for example, allow commercial usage but demand credit, whilst others ban commercial use but allow adaption and remixing. Open licencing systems such as Creative Commons offer authors a vital tool for sharing their works and enabling broader access and collaboration. Yet, in order to guarantee that their works are utilised in ways that line with their beliefs and purposes, artists must carefully assess their licence choice as well as the possible dangers and advantages of open licencing.

EDUCATION AND RESEARCH EXCEPTIONS: NAVIGATING THE BOUNDARIES OF COPYRIGHT LAW

Section 52(1)(i) of the Copyright Act, 1957 codifies the education and research exception to copyright law in India. This clause permits the copying and sharing of copyrighted works for the purpose of research or private study, provided that the user is not commercial and does not

⁸ Pamela Samuelson, *The Copyright Grab*, 27 HARV. J.L. & TECH. 1 (2013).

⁹ Deirdre K. Mulligan & Pamela Samuelson, *A Policy of Free Information Flow: Lessons from the Past*, 103 YALE L.J. 677 (1993).

jeopardise the copyright owner's rights. The extent and applicability of this exemption, however, have been open to interpretation and disagreement. The Delhi High Court ruled in 2016 in a landmark case that educational institutions can make photocopies of copyrighted materials for distribution to students if they meet the four-factor fair use test under Indian law, which takes into account the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect on the potential market for the original work¹⁰.

Similarly, the Supreme Court of India stated in a recent decision that reproducing copyrighted works for research or academic purposes does not violate copyright as long as it is done in good faith and the usage is neither broad nor systematic. The court ruled that using copyrighted material in academic publications and research papers is fair dealing and does not need the consent of the copyright owner. The digitalization and online dissemination of copyrighted works for educational and research purposes, on the other hand, remains a sensitive topic. The Delhi High Court has held that even if the usage is for educational reasons, the distribution of copyrighted works through online course packs requires a licence from the copyright owner¹¹. The court ruled that reproducing and communicating copyrighted works via online platforms is a separate and independent right under Indian copyright law that cannot be supported by the educational and research exception. Moreover, licencing and contractual arrangements influence the extent to which copyrighted works can be utilised for educational and research purposes. The Copyright Act establishes a statutory licencing regime for some categories of works, including as literary and musical works, allowing educational institutions to utilise these works for non-commercial purposes without acquiring individual licences from the copyright holder.

Finally, the copyright law exemption for education and research gives significant freedom for the use of copyrighted works in the context of education and research. The limitations of this exemption, however, are not always apparent and are dependent on a variety of variables such as the aim and character of the use, the nature of the work, and the possible commercial

¹⁰ Kenneth Crews, *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions* (3d ed. 2012).

¹¹ *Indian Performing Rights Society v. Eastern Indian Motion Pictures Association & Ors.*, (2012) 2 SCC 388

impact¹². Moreover, digitalization and online dissemination of intellectual works create new issues and need careful study of the legal and contractual framework controlling their usage.

REMIX CULTURE AND COPYRIGHT: BALANCING INCENTIVES AND ACCESS

Remix culture is the act of reusing, remixing, and repurposing previously published works to create new ones. With the development of digital technology, this activity has become more common, but it has also brought up difficult moral and legal dilemmas involving innovation and copyright violation. Literary, dramatic, musical, and creative works are protected in India under the Copyright Act of 1957, which also covers derivative works including translations, adaptations, and compilations. The Act also specifies restrictions and exceptions to copyright protection, including fair dealing for news reporting, review, and criticism as well as an exemption for educational and research purposes.

Indian courts have also accepted the fair use theory as an excuse for copyright infringement. The Delhi High Court recently ruled that a political documentary's use of copyrighted content qualified as fair use since it was intended to criticise and comment on the nation's political climate. The court determined that the usage was transformative and had no impact on the original work's potential market. The Indian legal landscape for remixes and derivative works, however, is still unclear. Although the Copyright Act protects derivative works, it is unclear how this applies to remixes and other creative uses of material protected by copyright¹³. Others claim that the usage of Creative Commons licences and other open licencing frameworks might facilitate more access and cooperation in the development of remixes, making the licencing of derivative works another hotly debated topic¹⁴.

Also, the ethical ramifications of remix culture must be taken into account. Remixing and repurposing existing content has the potential to promote creativity and innovation, but it also presents issues around who owns and controls cultural assets and the worth of originality and creativity. The expanding phenomena of remix culture present copyright law with both ethical and legal issues. The legal framework for remixes and other types of creative reuse in India is still unclear, despite the idea of fair use and the licencing of derivative works offering some freedom for the creative reuse of copyrighted content. Additionally, significant thought must

¹² Siva Vaidhyathan, *Copyright and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (2001)

¹³ Joseph P. Liu, *Copyright and Creativity: The Making of Property Rights in Creative Works* (2011).

¹⁴ Paul J. Heald, *How Copyright Keeps Works Disappeared*, 11 J. INTELL. PROP. L. 1 (2003).

be given to the ethical ramifications of remix culture as well as the value of originality and innovation in the digital age.

PROTECTING COPYRIGHTED WORKS WHILE PROMOTING ACCESS: BEST PRACTICES FOR CREATORS AND USERS

In order to encourage innovation and creativity, copyrighted works must be protected, but making ensuring that users have access to knowledge and information is just as crucial. Collaboration between creators and users, as well as a thorough knowledge of copyright law and best, practises, are necessary to strike the correct balance between preserving copyright and fostering access. Creative Commons licence or another open framework is one of the finest methods for artists to safeguard their work. By allowing people to use and alter their work under specific restrictions, these licences nonetheless provide authors some degree of control over their creations. A Creative Commons licence, for instance, can permit the noncommercial use of a work with credit to the original author.

When making their creations, artists might also take fair usage into account. According to a legal principle known as fair use, some uses of copyrighted material, such as criticism, commentary, news reporting, teaching, scholarship, and research, may be carried out without the owner's prior consent. Creators may protect the rights of others while simultaneously increasing access to information and knowledge by taking fair usage into account. Before utilising any copyrighted content, users should request permission. You may accomplish this by getting in touch with the copyright holder directly or by utilising a licencing network like Creative Commons, which offers instructions on how to utilise copyrighted content properly. When utilising copyrighted content, users must also give due credit by naming the author and the source of the work.

Users must adhere to copyright laws, including the fair use concept, as well. Users should be aware of copyright law's restrictions and exceptions, such as fair use for activities like criticism, commentary, news reporting, teaching, scholarship, or research. Users may prevent violating the rights of others while increasing access to information and knowledge by abiding by copyright laws. Cooperation between creators and users as well as a thorough knowledge of copyright law and best practises being needed to safeguard copyrighted works while increasing access. Users may acquire permission, provide credit, and abide by copyright laws, while creators can safeguard their work by adopting open frameworks and taking fair use into

account¹⁵. Together, artists and users can strike a balance that safeguards copyright while fostering open access to knowledge.

EMERGING TRENDS AND FUTURE DIRECTIONS FOR NON-INFRINGEMENT USES OF COPYRIGHTED WORK.

As we have explored throughout this journal, non-infringing uses of copyrighted work are critical for promoting access to information and knowledge while protecting the rights of creators. However, the landscape of copyright law is constantly evolving, and new technologies and emerging trends are changing the way we think about copyright licensing and enforcement. One of the most significant emerging trends is the use of artificial intelligence (AI) to create and analyze copyrighted works. AI is already being used to generate music, art, and literature, raising questions about the ownership and protection of these works. As AI technology continues to advance, it will be important for copyright law to adapt to ensure that creators are appropriately recognized and compensated for their works.

Blockchain technology is also emerging as a potential tool for copyright licensing and enforcement¹⁶. By using blockchain to create digital records of ownership and licensing agreements, it may be possible to create a more secure and transparent system for managing copyrighted works. However, there are also concerns about the complexity of blockchain technology and its potential impact on traditional copyright law.

Looking to the future, it will be essential to find ways to balance the need for protection with the goal of promoting access. This may require new approaches to copyright licensing, such as open licensing frameworks, as well as an ongoing collaboration between creators, users, and policymakers. It will also be important to address issues related to the enforcement of copyright law, such as the challenges of identifying and addressing infringement in a rapidly evolving digital landscape. In conclusion, the future of non-infringing uses of copyrighted work is full of both challenges and opportunities. By staying informed about emerging trends and developments in copyright law and working collaboratively to find innovative solutions, we can continue to promote access to information and knowledge while protecting the rights of creators.

¹⁵ June M. Besek, Copyright Reform and Access to Information, 28 HASTINGS COMM. & ENT. L.J. 59 (2005).

¹⁶ Jessica Litman, Digital Copyright (2006)