

BALANCING COMMERCIAL RIGHTS, LIMITATIONS AND EXCEPTIONS IN A SUSTAINABLE COPYRIGHT ECOSYSTEM

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Abstract

The commercialization of copyright has become increasingly important in the modern digital era for the continued growth of the creative industries. However, a balance must be struck between the competing interests of fostering creativity on the one hand and enforcing the interests of authors, the public, and intermediaries to fully capture the dynamics of copyright commercialization. The topic "Balancing Commercial Rights, Limitations and Exceptions in a Sustainable Copyright Ecosystem" aims to examine this intricate interplay and offer a framework for a more harmonious, sustainable copyright ecosystem. The rules governing the commercialization of copyrighted works must be reviewed as the world prepares to enter a new era of digital technology and artificial intelligence. By ensuring that creators may profit financially from their creativity, the commercial parts of copyright, which are often rooted in providing creators exclusive rights, do stimulate creativity. To avoid monopolisation and promote information diffusion and cross-cultural interchange, it also highlights the need for well-stated restrictions and exceptions. The paper attempts to investigate several facets of this subject, such as the economic theories supporting copyright commercialization and the effects of current copyright regulations on both producers and users. Additionally, it emphasizes how crucial it is to provide exceptions that permit the lawful use of copyrighted materials without jeopardizing the financial interests of rights holders. Since they allow for the construction of new creations on top of already existing ones, constraints and exceptions are considered both a legal need and a tool to promote creativity. There has to be a harmonized framework that promotes commercialization while accepting appropriate constraints and exceptions.

Keywords: *Sustainable Copyright Ecosystem, commercialization of copyright, Limitations and Exceptions*

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Introduction

Copyright refers to a bundle of exclusive rights conferred by law on authors/creators of original works for commercially exploiting the work. It is a property right which subsists in certain specified types of creative work conferred by statute to an author. In this context, copyright is referred to as the 'right of diversity'. It governs the commercial exploitation of products born out of culture in the course of day-to-day human activity.¹

The fundamental purpose of copyright is to confer upon authors the exclusive rights to their creative works, so bestowing upon them legal jurisdiction over the reproduction, distribution, adaptation, and public performance of their creations. The underlying justification for the implementation of this system is twofold: firstly, to acknowledge and safeguard the ethical and financial entitlements of creators, and secondly, to foster more advancements in both cultural and technological domains. However, beyond these fundamental principles, there exists a powerful mechanism for commercialization that has undergone tremendous transformation, particularly in the context of our contemporary digital age.

The commercialization of copyright entails the conversion of copyrighted works into marketable goods that can be capitalized upon, whether through direct sales, licencing arrangements, syndication, or other means of producing cash. The commercialization of intellectual works has given rise to lucrative sectors worth billions of dollars, encompassing publishing houses, film studios, music labels, and software corporations. These particular sectors rely significantly on the protection offered by copyright legislation to recover their investments and generate financial gains. With the advent of the internet, there has been a significant increase in the range of economic options available. Digital platforms, such as streaming services (e.g., Prime Videos, Netflix, Hotstar), e-commerce sites that offer digital content (e.g., Amazon, Flipkart), and content-sharing platforms that operate under licencing models (e.g., Shutterstock, Getty Images), are all founded on the monetization of copyrighted assets. These platforms have facilitated the democratization of content accessibility, concurrently generating novel sources of money for content creators.

Nevertheless, the presence of a business necessity has also engendered discussions and disputes. There is contention among scholars that the forceful commodification of copyright, frequently exemplified by the elongation of copyright lengths and rigorous enforcement tactics, has the potential to impede creativity and restrict the public availability of cultural knowledge.

¹ S. Sivakumar and Lisa P. Lukose, *Broadcasting Reproduction Right In India: Copyright and Neighbouring Rights Issues* 18 (Indian Law Institute Publication, New Delhi, 2013).

For example, Disney has experienced significant advantages through the commercialization of its copyrighted characters and narratives. However, the company's lobbying endeavours have also resulted in the lengthening of copyright periods, a development that opponents contend impedes the accessibility of creative works to the public domain.

Furthermore, the process of commercialization has significant ramifications for both the production and consumption of content. The appeal of highly profitable markets may occasionally overshadow niche genres or experimental works. Furthermore, it is worth noting that in areas where copyright enforcement is robust, buyers frequently encounter elevated prices for copyrighted goods, spanning from literary works to software applications.

Nevertheless, an alternative perspective exists about this account. The process of commercialization, which is facilitated by copyright, plays a crucial role in enabling authors to consistently generate content sustainably. The system of rewarding creativity ensures that individuals engaged in creative pursuits, such as artists, writers, and other creators, receive appropriate compensation for their endeavours, thereby contributing to the sustainability and viability of creative industries.

The commodification of intellectual property rights has both advantages and disadvantages. While it is indisputable that it stimulates economic expansion, provides motivation for the production of content, and nurtures the development of creative sectors, it also raises significant inquiries about accessibility, cultural inclusivity, and the availability of public resources. The persistent struggle persists to find the appropriate equilibrium between commercial interests and broader societal requirements as the digital ecosystem continues to revolutionize content production and consumption.

Commercialization of Copyrighted Work Under the Indian Copyright Act, 1957

The Indian Copyright Act of 1957 plays a pivotal role in the establishment of copyright protection and its subsequent commercialization within the Indian context. The complex structure in question not only aims to safeguard the intellectual contributions made by authors but also outlines the methods via which these rights might be financially capitalised upon. The legislation provides legal safeguards for several forms of creative expression, including literature, theatre, music, and visual art. These protections extend for the duration of the author's life, and an extra 60 years², aligning with international standards and allowing ample opportunity for commercial use. The assignment³ or licencing of copyrights⁴ is a significant

² The Copyright Act, 1957, s. 22.

³ *Id.*, s.18.

⁴ *Id.*, s.31.

route for facilitating economic endeavours. In contrast to an ambiguous oral agreement, the Act requires that these assignments be documented in writing, providing comprehensive information regarding the rights being conveyed, the term of the transfer, and the geographical extent of the transfer.⁵ In the legal matter of *Dharam Dutt Dhawan v. Ram Lal Suri*,⁶ the plaintiff engaged in a contractual arrangement with the defendants, who are publishers, to publish a book authored by the defendants. This agreement was structured on a royalty basis. The agreement stipulates that the author has consented to the publishers being granted and retaining the rights to publish and sell the work. The preamble was designed in such a way as to encompass the parties involved, together with their respective heirs, executors, administrators, or assignees. It was determined that the arrangement in question constituted a partial assignment of publication rights rather than a mere licence.⁷

The aforementioned clarity promotes a commercial climate that is characterized by enhanced organization and increased transparency. Expanding upon the topic of remuneration, the 2012 amendment⁸ to the aforementioned legislation established a distinct provision for individuals involved in creative endeavours, particularly those operating within the music sector, such as lyricists and composers. By including a compulsory royalty provision, it guarantees that the authors are justifiably entitled to receive royalties for certain uses of their works, regardless of any previous contractual arrangements. This strategic decision guarantees a consistent flow of income and fair allocation of financial gains. The Court in *Super Cassette Industries Ltd. v. Entertainment Network (India) Ltd.*,⁹ asserted that the issuance of a compulsory licence would only occur in cases where the artistic work had been withheld from the public. The issuance of a compulsory licence is not required for all applicants who submit an application and are willing to pay the associated fee for obtaining such a permit. The Court also clarified that when a copyright enters the public domain, it becomes a commercial nature, and any denial of a licence must be based on legitimate justifications. When placing orders, the Board must carefully navigate the tension between the copyright owner's private rights and the public interest.

Within the domain of digital rights, although the Act does not explicitly tackle Technological Protection Measures (TPMs), it indirectly enhances their commercial importance. Any

⁵ *Id.*, s.19.

⁶ AIR 1953 Punj 279 (280).

⁷ BL Wadehra, *Law relating to Intellectual Property* 315 (Universal Lexis Nexis, Gurgaon, 5th ed., 2020).

⁸ Available at : https://copyright.gov.in/Documents/Notification/Copyright_Amendment_2012.pdf. (Last Visited 26th September,2023).

⁹ AIR 2004 Del 326.

attempts to circumvent the technological measures implemented to protect rights are considered to be infringing, therefore providing an additional level of precaution in an ever-growing digital landscape. Broadcasters, as stipulated by the Act, are granted a distinctive privilege that grants them exclusive rights to their content for twenty-five years. This provision serves to protect their commercial interests by preventing unauthorised re-broadcasting. Nevertheless, the Act does not solely function as a stronghold for economic purposes. At its fundamental essence, it encapsulates the concept of enforcement. Using provisions that address infringement, it equips rights holders with a range of remedies, including injunctions and claims for damages. In addition to its legislative licencing rules, the system concurrently streamlines the complex procedure of obtaining licences, so facilitating greater accessibility to copyrighted works for broadcasting or public performance. However, despite being driven by economic concerns, the Act does not neglect the artist. The act of venerating moral rights grants creators the opportunity to contest any form of adulteration of their work that could potentially damage their reputation, irrespective of any previous assignments. For example in the case of *Raj Rewal v. Union of India & Ors.*¹⁰, the Delhi High Court addressed an architect's moral rights to his destroyed project, the Hall of Nations. The case brought up the issue of whether an architect has the right to protest alterations or demolitions to a structure they designed. Section 57 of the Copyright Act, which safeguards the rights of paternity and the integrity of the author's work, was taken into consideration by the court while addressing moral rights. The court ruled that an architect's moral rights under Section 57 of the Copyright Act are superseded by property rights and cannot be used to stop the destruction of their creations. India's growing prominence as a hub of creativity is closely intertwined with the enduring significance of the Indian Copyright Act of 1957, which plays a pivotal role in shaping the dynamic commercial environment of the country.

Limitations and Exceptions to Copyright

The foundation of copyright law is predicated on the notion that the proprietor of a copyright possesses exclusive entitlements to various applications of safeguarded works, such as the right to replicate, disseminate, create derivative works, and publicly exhibit or execute said work. Nevertheless, it is important to note that these rights are never without limitations. Restrictions are implemented through a variety of means. Rights are typically subject to temporal limitations, whereby the creator may have their exclusive rights revoked but is granted a right to compensation through statutory licencing or compulsory work. Additionally, the creator may

¹⁰ CS(COMM) 3/2018, with IA Nos. 90 and 92 of 2018.

be left without an exclusive right or a statutory right to compensation using "permitted acts." The primary emphasis of this study is on the last limitation. The misappropriation of copyrighted works is prohibited by copyright law. However, there are certain circumstances in which the use of copyrighted works is allowed without the creator's consent. This is commonly referred to as "fair use,"¹¹ "fair dealing,"¹² "exceptions," "limitations," "restrictions," or "permitted acts" in various national legislations. The concept initially emerged as an equitable doctrine that allowed for the use of specific works that would have otherwise been barred under copyright law. The prohibition of such uses would impede the fostering of creativity that the law aims to encourage. Typically, it serves to maintain the fundamental rights of freedom of expression and the protection of intellectual property, ensure fair competition, facilitate the transmission of knowledge, and address instances of market inefficiencies. The inclusion of these authorised actions serves the purpose of mitigating potential conflicts between creators, disseminators, and society, while also guaranteeing that the advantages of creation are shared with the broader community.

The concept of copyright has evolved significantly from its inception as a legal protection for the reproduction of literary and artistic creations. The instrument has demonstrated its versatility in adapting to diverse technical advancements and a wide range of tasks. One of the prominent debates in the field of copyright legislation revolves around the inclusion of copyright exceptions, permitted acts, or fair use provisions, which are privileges granted to users within most copyright systems. These provisions allow users to engage in specific activities without seeking the consent of the person who owns the copyright, activities that would otherwise be considered copyright infringement. This specific controversy underscores a broader conflict between proponents of copyright expansion and advocates for the limitation of copyright protection.¹³

Furthermore, the accumulation of wealth in society must be accompanied by ensuring the citizens' entitlement to access this acquired money, thus facilitating their active engagement in civic associations. One of the key concerns in copyright law pertains to the delicate balance that needs to be struck between the copyright holder's inclination to limit access to copyrighted

¹¹ Under the United States Copyright Regime.

¹² Under the Commonwealth Nations Copyright Regime like the UK, India.

¹³ Robert Burrell and Allison Coleman, *Copyright Exceptions: The Digital Impact 3* (Cambridge University Press, UK, 2009).

materials exclusively to those who are ready to pay for such access, and the public's interest in being able to freely utilise the protected work.¹⁴

The inclusion of the notion of 'fair use' or 'fair dealing' is a fundamental component within the framework of copyright law in India. Section 52 of the Copyright Act of 1957 delineates several exemptions commonly known as 'certain activities not constituting copyright infringement'. Section 39 of the legislation delineates several exemptions to both the broadcast reproduction right and the performer's right. These sections contain a set of closed-ended lists that can be flexibly construed to accommodate the requirements of unique circumstances. Furthermore, the Copyright Amendment Act of 2012 introduced several significant modifications to this particular section. The significant modifications that were made include the broadening of the fair dealing clause to encompass cinematograph films and sound recordings¹⁵, the introduction of a specific exemption for individuals with disabilities¹⁶, the inclusion of an exception for public libraries¹⁷, and the addition of new exclusions to address technological improvements¹⁸.

The International Framework on Limitations and Exceptions in Copyright

The extent to which the laws of fair use have effectively mitigated such conflicts and harmonised divergent and disparate interests has consistently been a subject of scholarly discourse. While international agreements about copyright law have consistently included provisions addressing this particular element, the discretion to establish copyright exceptions has largely been granted to individual governments and legislatures. Since its establishment in 1886, the Berne Convention for the Protection of Literary and Artistic Works has allowed for copyright exceptions. Initially, it provided two limited restrictions, one of which was voluntary, allowing for the extraction of portions from copyrighted works for educational publications. The evolution of copyright exceptions has been a continuous process. The Stockholm Act of 1967 brought about revisions to the convention and introduced the current provision, Article 9(2), which is based on the 'three-step' test. This test allows for the reproduction of works in specific exceptional circumstances, as long as it does not interfere with the ordinary exploitation of the work and does not unjustifiably harm the author's legitimate interests. The general exception, which is formulated similarly, is also referenced in Article 10 of the

¹⁴ Alka Chawla, *Copyright and Related Rights: National and International Perspectives* 6 (Macmillan India Ltd., Delhi, 2008).

¹⁵ The Copyright Act, 1957, s. 52 (1) (a).

¹⁶ *Id.*, s.52 (1) (zb).

¹⁷ *Id.* s. 52 (1) (n).

¹⁸ *Id.* s. 52 (1) (b), 52 (1) (c), 52 (1) (w) and 52 (1) (zc).

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995; Article 10 of the WIPO Copyright Treaty, 1996; and Article 16 of the WIPO Performances and Phonograms Treaty, 1996.

Commercialisation v/s Limitations and Exceptions: The Need to Create a Balance

The delicate equilibrium between the concerns of content providers and the broader public is consistently challenged in the ever-changing digital environment of contemporary times. At the core of this conflict lies the notion of copyright. The primary purpose of copyright laws is to establish economic incentives for creators, therefore acknowledging and compensating them for their intellectual endeavours. Simultaneously, their objective is to cater to the wider public interest through the facilitation of unrestricted dissemination of ideas and information. Attaining this equilibrium necessitates careful consideration of the significance of commercialization about the imperative requirement for certain constraints and exemptions.

The primary objective of copyright legislation is to provide artists with incentives. By granting creators exclusive rights to their creations, these rules enable them to commercialize their intellectual property.

The provision of exclusive rights to creators serves as an economic incentive, guaranteeing appropriate remuneration for their endeavours, establishing a reliable source of income, and fostering increased productivity. The promotion of economic growth can be achieved through the stimulation of industries that heavily rely on intellectual properties, such as the film, music, publishing, and software sectors. These industries experience substantial advantages from the implementation of strong copyright laws, which in turn contribute to the creation of employment opportunities and overall economic expansion. The pursuit of creativity in driving economic growth is fueled by the possibility of profitability, which serves as a strong incentive for creators. This motivation results in a wide array of products and services being introduced into the market, contributing to its diversity.

There are many disadvantages associated with excessive commercialization too which cannot be ignored: In the pursuit of profit maximisation, the expenses related to obtaining copyrighted information can pose significant barriers for a wide range of individuals, particularly those in educational environments or economically disadvantaged areas. The potential for monopolistic behaviour arises when copyright rules are excessively restrictive, resulting in a situation where a few corporations exert significant influence over the bulk of content within a market. This phenomenon has the effect of impeding competition and limiting the presence of diverse offerings.

To acknowledge the possible drawbacks associated with an overly commercialised environment, copyright laws implemented globally incorporate specific limitations and exceptions. These provisions are intended to facilitate the use of intellectual content under specified conditions, thereby obviating the requirement for obtaining permission.

To create a balance in society, the Limitations and Exceptions serve many important functions:

- a. Enabling Education and Research: Granting permission for the utilisation of copyrighted works in academic contexts guarantees that students and researchers can readily access the necessary information.
- b. The promotion of creativity and cultural development is frequently facilitated by artists who derive inspiration from preexisting artistic works. Limitations and exceptions afford individuals the opportunity to recontextualize, satirise, or provide critical analysis of protected materials, thus maintaining a dynamic cultural milieu.
- c. To guarantee public access, exceptions are particularly crucial in instances when copyrighted materials hold public significance, such as news or public affairs, as they prevent the public from being uninformed.

The present discourse concerns the difficulties associated with limitations and exceptions. The lack of clarity surrounding the parameters of “fair use”, or “fair dealing” might give rise to ambiguity, hence increasing the likelihood of improper utilisation or legal disputes. The excessive utilisation of exceptions has the potential to diminish the economic worth of copyrighted goods, hence reducing the motivation for authors. A significant ruling in the *Rameshwari Photocopy Shop case*¹⁹ highlighted the importance of educational access over copyright enforcement in scholarly settings. The Delhi High Court's ruling, which cited fair dealing under Section 52(1)(i) of the Copyright Act, 1957 to allow the photocopying of course packs for educational purposes, reflected a progressive interpretation that sought to strike a balance between the economic interests of copyright holders and the public's right to education and knowledge dissemination. The decision posed a challenge to established copyright rules for the plaintiffs, who are prominent academic publishers. This led them to reassess their approaches to engaging with educational institutions and may have an impact on their copyright licencing policies in India. Despite being a blow to their legal strategy, the plaintiffs' decision

¹⁹ *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Anr.* 2016 SCC Online Del 6229

to drop the case recognised the nuanced relationships between copyright protection and educational requirements.

Considering the advantages and disadvantages of commercialization, as well as the instances where it may not apply, the objective is to identify a balanced and mutually beneficial approach.

- a. Revising Legislation for the Digital Era: In light of the Internet's facilitation of seamless content sharing, laws must be adapted to align with these emerging realities. The advent of digital rights management, online streaming revenues, and content-sharing platforms has presented novel obstacles and prospects.
- b. The examination of regional and economic disparities is crucial for assessing the suitability of certain approaches across different countries or regions. It is important to recognise that what may be effective in one context may not be applicable or suitable in another, particularly when taking into account variations in economic conditions and resource availability.
- c. Continuous discussion is essential for creators, industry representatives, legislators, and the public to engage in, to ensure that copyright laws adapt and develop by the changing requirements of society and advancements in technology.

The advent of the digital era, marked by the widespread presence of the Internet, has introduced additional levels of intricacy to the discourse surrounding copyright. On the one hand, creators now can effortlessly access worldwide audiences. Conversely, the advent of digital technology has facilitated the replication and dissemination of content, hence amplifying the prevalence of copyright infringement. As a reaction, legislative measures such as the Digital Millennium Copyright Act (DMCA) were implemented in the United States. The primary objective of their efforts was to mitigate digital copyright infringement. However, their approach encountered criticism due to perceived excessive restrictions and a failure to adequately handle the intricacies associated with the sharing of digital information.

An illustrative example is the emergence of platforms such as YouTube, which brought about the notion of user-generated content, thereby blurring the distinction between original content and derivative works. The Content ID system of the platform, which is intended to identify and regulate copyright infringements, frequently identifies lawful instances falling within the “fair use” doctrine as potential breaches due to its automated functionality, hence giving rise to contentious situations.

Conclusion

The intricate relationship between the commercialization of copyright and its inherent limitations and exceptions is a crucial aspect of discussions around intellectual property. On the one hand, the process of commercialization provides innovators with crucial economic incentives. By providing creators with the opportunity to generate income from their intellectual endeavours, they are incentivized to consistently engage in innovative activities, so enhancing the cultural and informational milieu. Consequently, this phenomenon catalyzes economic stimulation within several sectors such as movies, music, literature, and software, so making a substantial contribution to the world economy. The text highlights the prominence of the creator's rights and economic viability within the depicted scenario.

Conversely, the presence of limitations and exceptions to copyright, such as the “fair use” doctrines, serves to prevent an excessive degree of restrictiveness within this system. In the absence of these mechanisms of oversight and control, there exists the possibility of information gatekeeping, wherein the ability to obtain essential knowledge becomes excessively costly or completely unattainable for certain portions of society. These aforementioned limits also facilitate the emergence of transformational works, so guaranteeing that creativity does not remain stagnant but rather undergoes continuous evolution, as artists and intellectuals expand upon preexisting concepts.

Nevertheless, achieving this equilibrium is not a trivial task. In the context of our increasingly digitised society, where the copying and transmission of content may be easily accomplished with a single click, copyright rules are confronted with new and unique issues. An excessive focus on economic rights has the potential to impede the unrestricted exchange of ideas, but excessively lenient exceptions may undermine the motivation of inventors.

In summary, the commodification of copyright and its corresponding restrictions and exemptions are interconnected facets of the same phenomenon. Both factors are crucial. The process of commercialization plays a crucial role in fostering the growth and development of creative industries by providing them with economic incentives. However, it is important to recognise that some constraints are necessary to ensure that the broader society is well-informed, educated, and culturally enriched. Policymakers have the ongoing task of continuously refining the delicate equilibrium between fostering a dynamic environment for creators and preserving unrestricted public access to the vast array of human knowledge and creativity. The continual process of reconciling commercial interests with public access is a complex endeavour. A uniform strategy is inadequate. However, it is essential to employ a sophisticated and flexible approach that takes into account ongoing communication and improvements in technology. To begin with, educational activities can have a significant

impact. By fostering an understanding of copyright and its exceptions among the general public, particularly the younger generation of digital natives, it is possible to cultivate a cultural environment that promotes reverence for the rights of artists and the significance of public access.

In addition, fostering global collaboration might be beneficial. The global nature of material dissemination necessitates international collaboration to ensure equitable remuneration for authors, while simultaneously upholding the public's rights within different legal frameworks. Copyright serves two primary objectives: providing incentives for creators and guaranteeing public access to knowledge. Achieving an optimal equilibrium between the process of commercialization and the inherent constraints and exemptions associated with it is a formidable yet important task. The continuous progress of technology and the evolution of society necessitate the ongoing adaptation of interpretations and implementations of copyright laws while maintaining a careful balance.