

Page

FAIR USE DEFENCE FOR REELS AND MEMES: BALANCING CREATIVITY WITH COPYRIGHTS

*Surya Gayathri**

Abstract

*The exponential growth of memes and reels has transformed how individuals engage with humour and creativity in the digital age. With short videos and pictures now dominating social media platforms, using copyrighted material has raised complex questions about the protections copyright law offers. This paper explores the intersection of copyright law and digital expression, focusing on the 'fair use' (or fair dealing) defence to copyright infringement in India. The paper begins by tracing the evolution of memes and reels, followed by an overview of how the Indian Copyright Act, 1957, regulates artistic and musical works often used in such content. It then explains the legality of memes and how the Copyright Act governs the use of 'musical works on social media platforms through reels and shorts. Further, this paper evaluates the statutory fair-dealing exception under Section 52 in depth and judicial perspectives of fair use, concerning the four-factor test developed in *Campbell v. Acuff-Rose*. A comparative analysis of the U.S. and U.K. frameworks is also undertaken. Next, the paper examines how commercialisation influences the applicability of fair use. It further analyses intermediary liability under Section 79 of the IT Act, highlighting its dual role as a 'safe harbour provision' and its interplay with copyright enforcement. Beyond legalities, the paper engages with ethical concerns. It concludes by advocating for better legal standards and ethical content creation practices that balance copyright protection with the value of digital creativity.*

Keywords: *memes and reels, digital age, fair use, digital expression, social media.*

INTRODUCTION

The early 2000s witnessed a dramatic transformation with the advent of the Internet, which made the spread of information fast, accessible and virtually a 'child's play.'¹This digital

* Second Year BALLB (Hons.) Student at NALSAR University of Law, Hyderabad, Telangana.

¹ Intepat Team, "Internet Intermediaries And Contributory Copyright Infringement," *Mondaq Blog*, January 26, 2024, available at: <https://www.mondaq.com/india/copyright/1412180/internet-intermediaries-and-contributory-copyright-infringement>. (last visited on June 20 2025).

evolution gave rise to the ‘culture’ of memes and reels, now popular mediums for expressing emotions and providing entertainment. While an average Indian dedicates 30 minutes daily to meme consumption, reels now account for more than 50% of the time users spend on Instagram.²³

Although memes have surged in popularity with the rise of social media, their origins date long before the internet existed. In fact, Richard Dawkins first coined this term in 1976 in his book *The Selfish Gene*. He used it to describe any “*unit of cultural transmission*” that survives by “*leaping from brain to brain.*”²⁴ Memes are often considered the ‘cultural counterpart’ to genes as they represent an ‘*idea, behaviour, style or usage*’ that spreads from person to person. For example, memes like ‘*socially awkward penguin*’ and ‘*grumpy cat*’ have become key elements of online humour. Reels, conversely, are ‘attention-grabbing’ short videos up to one-minute-long introduced by Instagram in 2020. Having more than 2.5 billion active users, reels have become a popular medium for creating trends as users chase fame through challenges and gimmicks.⁵

I. LEGALITY OF REELS AND MEMES: NAVIGATING COPYRIGHT IN THE DIGITAL AGE

Memes: Culture, Comedy And Copyright

Memes frequently serve as parodies of pre-existing copyrighted works, using original materials as a reference or framework to create something new and distinct. While memes are often considered artefacts that incorporate creative expression, they typically rely on an underlying content that is not the creator’s original work but a copyrighted work.⁶ This can lead to **copyright infringement** as the original image used in the background, which the meme modifies humorously, comes under the ambit of ‘*artistic works*’ as defined in Section 2(c) of

² Sindhu Hariharan, “Indians spent average 30 minutes per day consuming memes: Report,” *The Times of India*, September 1, 2022, available at: <https://timesofindia.indiatimes.com/business/india-business/indians-spent-average-30-minutes-per-day-consuming-memes-report/articleshow/93919788.cms> (last visited on June 20 2025).

³ “Delivering impact: The rise of Reels,” *Performance Marketing World*, January 6, 2024, available at: <https://www.performancemarketingworld.com/article/1875803/delivering-impact-rise-reels>. (last visited on June 20 2025).

⁴ Richard Dawkins, *The Selfish Gene* 249 (Oxford University Press, 40th ed. 2016).

⁵ Aditya Chandra, “Subscriber Writes: The rise of Instagram reels — exploring its impact on society,” *The Print*, July 6, 2023, available at: <https://theprint.in/yourturn/subscriberwrites-the-rise-of-instagram-reels-exploring-its-impact-on-society/1657349/>. (last visited on June 20 2025).

⁶ Tejaswi D. Shetty, “Copyright Provisions pertaining to ‘Internet Memes’ in India,” *NLIU Cell for Studies in Intellectual Property Rights*, Cell for Studies in Intellectual Property Rights (CSIPR) BLOG, April 15, 2025, available at: <https://csipr.nliu.ac.in/copyright/copyright-provisions-pertaining-to-internet-memes-in-india/>. (last visited on June 20 2025).

the Indian Copyright Act.⁷ If, for instance, a meme creator uses another person's image or video without prior approval, the 'reproduction' of such content in any material form may constitute copyright infringement. The circulated image or video, in such a scenario, qualifies as an 'infringing copy' under copyright law.

Section 13(1) of the Act defines the 'original' artistic works where copyright requirements shall subsist. However, while the exact requirements of originality are not laid down in the statute, it is a universally accepted principle that copyright protects the expression, not the idea or thought. As affirmed in *London Press v University of Tutorial Press*, originality requires that a work originate from the author; otherwise, it may infringe the artistic rights under Section 14(c) of the Copyright Act.⁸

Memes can be of two types: one where the creator uses copyrighted images or videos from existing works, which may amount to infringement if substantial copying is proven (creating memes). The other involves sharing memes created by a meme creator without permission (sharing memes).

Suppose the subsequent meme does not evolve an "*exact or substantial reproduction of the original matter*" but rather reflects an 'independent creation' derived from the original. In that case, it will not be considered an infringement.⁹ The key questions to be asked are, first, whether the meme unlawfully appropriates a substantial portion of the original work, and second, whether it reproduces an 'essential element' or 'heart' of the author's original vision to a significant extent.¹⁰¹¹

Copyrighted Music and Social Media Platforms

The rise of micro-entertainment platforms like Instagram Reels, YouTube Shorts, and Facebook Reels has significantly transformed how users engage with musical content. Still, it has also brought complex legal challenges under copyright law. ***Reels and Shorts*** let users

⁷The Copyright Act, 1957 (Act No. 14 of 1957), s 2(c) (Ind.).

⁸ Ashutosh Bhagchi, "The legality of Meme creation under Indian Copyright Law," *Your Legal Coach*, March 8, 2025, <https://www.yourlegalcareercoach.com/the-legality-of-meme-creation-under-indian-copyright-law/&sa=D&source=docs&ust=1749319561953865&usg=AOvVaw0dOwWUG-F-eH1CfU5nEsSG>. (last visited on June 20 2025).

⁹ TR Srinivasa Iyengar, *Commentary on the Copyright Act* 302 (Universal Law Publishing, 2010).

¹⁰ Suchismita Debnath, "Protecting memes vis-a-vis Copyright: A way forward," *The Times of India*, October 26, 2022, available at: <https://timesofindia.indiatimes.com/readersblog/oped-by-manvee/protecting-memes-vis-a-vis-copyright-a-way-forward-46001/>. (last visited on June 20 2025).

¹¹ *Hindustan Pencil Pvt. Ltd. v. Universal Trading Company*, AIR 2001 (NOC) 42 (DEL). Also, in *Harper and Row v. Nation Enterprises*, the court held that the meme was not protected under fair-use as it involved the 'heart' of the memoir copied.

easily create short videos with music and effects, but their frequent use of copyrighted songs without necessary permission raises major infringement concerns.¹²

Short videos are brief digital clips, typically lasting 15 seconds to 5 minutes, created and shared via mobile devices. Often termed "short videos" or "instant clips," they fall under the broader category of '*microcontent*,' which is concise digital media.¹³

Short-form video rose to prominence with Vine's six-second loops, gaining popularity even after Vine's shutdown in 2016. Instagram introduced one-minute videos. Meanwhile, TikTok surged, reaching over 2 billion downloads by 2020.¹⁴ In response, Instagram and YouTube launched Reels and Shorts, mirroring TikTok's format.

Due to the feature of short videos allowing users to do lip-syncing, dance, comedy, tutorials, and fitness, it has gained popularity with more users creating and sharing them across Instagram, Facebook and YouTube. Despite built-in policies and features like licensed audio libraries, many users unknowingly or carelessly upload content using copyrighted tracks, leading to violations of the Indian Copyright Act, 1957.

Copyright in Reels and Musical Works

Copyright law is considered the "*guardian of all authorial rights*."¹⁵ Under Section 13 of the Copyright Act, 1957, copyright subsists in original literary, dramatic, musical, and artistic works, cinematograph films, and sound recordings.¹⁶ A Reel or Short video falls within the definition of a '*cinematograph film*' under Section 2(f), since it is a visual recording capable of being reproduced and communicated to the public.¹⁷

Section 2(p) of the Copyright Act defines a 'musical work' as a '*musical composition, excluding lyrics or performance*.'¹⁸ In contrast, Section 2(ffa) identifies the 'composer' as the

¹² Perna Shree, "Impact Of Copyright Law On Usage Of Musical Work And Sound Recordings On Micro-Entertainment Platforms Like Instagram Reels And Youtube Shorts," *Mondaq Blog*, October 16, 2024, <https://www.mondaq.com/india/copyright/1531312/impact-of-copyright-law-on-usage-of-musical-work-and-sound-recordings-on-micro-entertainment-platforms-like-instagram-reels-and-youtube-shorts>. (last visited on June 20 2025).

¹³ N. F. I. Team, "What Is Social Media? - Everything You Need To Know," *NFI* (2022), <https://www.nfi.edu/whatis-social-media/> (last visited on June 20 2025).

¹⁴ Mike Hao Jiang, "Enlightened: Can short-form news videos open minds?", *Massachusetts Institute of Technology*, June 2021, <https://dspace.mit.edu/handle/1721.1/140989>. (last visited on June 20 2025).

¹⁵ *Supra* note 12 at 4.

¹⁶ The Copyright Act, 1957 (Act No. 14 of 1957), s 13 (Ind..).

¹⁷ The Copyright Act, 1957 (Act No. 14 of 1957), s 2(f) (Ind..).

¹⁸ The Copyright Act, 1957 (Act No. 14 of 1957), s 2(p) (Ind..).

creator of such music, regardless of notation.¹⁹ The Copyright (Amendment) Act, 2012, further strengthened the position of authors by ensuring that composers and lyricists retain the right to royalties for uses beyond films and sound recordings, with transfer limited to heirs or copyright societies.

However, enforcement has struggled amid widespread unauthorised use on platforms like Instagram Reels and YouTube Shorts. At the same time, the 2012 amendment introduced measures like statutory licensing and ISP liability, and rapid digital innovation continues to outpace regulation, highlighting the need for updated, tech-responsive copyright frameworks.

User Infringement in Reels and Platform Enforcement

The law is clear that the unauthorised use of copyrighted music, even in clips as short as 20–30 seconds, constitutes infringement under Section 51. Accordingly, incorporating copyrighted soundtracks into Reels without obtaining permission or a valid license remains *prima facie* infringement, regardless of the duration of the extract. The judiciary has repeatedly upheld that the most reliable test for determining copyright infringement is whether a reasonable observer, after comparing both works, is left with an “*unmistakable impression*” that the latter is a copy of the former.²⁰ In *Hindustan Pencil Pvt. Ltd. v. Universal Trading Company* (1990), the Delhi High Court held that even minor alterations to an allegedly copied artistic work do not absolve liability if the core or essential elements of the original have been reproduced.²¹ By analogy, the unauthorised use of the “heart” of a song or soundtrack in a Reel may trigger infringement, notwithstanding brevity.

At the contractual level, Instagram’s Terms of Use stipulate that while users retain ownership of content they post, they simultaneously grant Instagram a ‘non-exclusive, royalty-free, transferable, and sub-licensable worldwide license’ to host, use, and distribute such content.²² This license, however, operates only between the user and Instagram and does not affect the rights of third-party copyright holders whose works may be incorporated without consent. Instagram’s Community Guidelines further prohibit posting content that infringes intellectual property rights, and its mechanisms allow rights-holders to report and request takedowns.²³

¹⁹ The Copyright Act, 1957 (Act No. 14 of 1957), s 2(ff) (Ind..).

²⁰ *R.G. Anand v. Deluxe Films*, AIR 1978 SC 1613.

²¹ *Supra* note 11 at 3.

²² “Instagram and Copyright- What are the terms of use?” *Copyrightlaws.com*, August 10 2022, <https://www.copyrightlaws.com/instagram-and-copyright/> (last visited on June 20 2025).

²³ “What is Fair Use in Copyright Law in India? Explained,” *Lawfluencers BLOG*, <https://lawfluencers.com/fair-use-in-copyright-law-in-india/>. (last visited on June 20 2025).

While such measures provide a degree of platform-level enforcement, they do not completely protect users from statutory liability under the Copyright Act. And thus, repeated violations may result in both account suspension and civil or criminal proceedings.

II. FAIR USE AS A DEFENCE AGAINST COPYRIGHT INFRINGEMENT

It is an established principle that memes and reels are a kind of “*derivative work*,” and only the copyright owner is given the right to make a derivative work.²⁴ However, it is interesting to note that the owner’s right is not absolute, as per the Indian Copyright Act and that a meme creator can use the powerful shield of “*fair use*” against copyright infringement (also called the fair dealing principle used in the US).

The doctrine of fair use originated in *Gyles v. Wilcox* (1740), where the English Court of Chancery distinguished between “*true abridgements*” and “*colourable shortenings*.” Later, in *Folsom v. Marsh*, the U.S. court clarified that limited use of a work for a genuine critique is permissible. However, reproducing the “*most important parts*” to supersede the original amounts to piracy. These cases laid the groundwork for assessing fairness based on intent and the extent of use. These two essential cases have laid down the framework for the doctrine of fair dealing, which is currently followed in India.²⁵

In India, as stated in section 52 ICA, fair dealing with a literary, dramatic, musical or artistic work (not being a computer program) for purposes such as private or personal use, including research or for *criticism or review* of that work or any other work does not constitute copyright infringement. This statutory defence provision finds its origin in the *Berne Convention*, which allows member states to provide for ‘exceptions to the exclusive right of reproduction.’²⁶

Global practices and Comparative Analysis

While the UK’s fair dealing is seen as restrictive due to limited exceptions, the U.S. fair use doctrine offers ‘substantial conduit.’

²⁴ The Copyright Act, 1957 (Act No. 14 of 1957), s 52 (Ind..).

²⁵ Archi Jain, “Deciphering The Doctrine Of Fair Dealing In The Indian Copyright Context,” *Mondaq Blog*, November 8, 2023, <https://www.mondaq.com/india/copyright/1386520/deciphering-the-doctrine-of-fair-dealing-in-the-indian-copyright-context>. (last visited on June 20 2025).

²⁶ Aishwaria Iyer & Raghav Mehrotra, “Y U No Fair Use? A Critical Analysis of Memes and Fair Use,” 4 *Rostrum’s Law Review*.

The USA recognises memes as parody under fair use based on four statutory factors. UK protects caricature, parody, and pastiche provided they meet legal criteria and avoid commercial use.²⁷

In the U.S., fair use is a flexible, open-ended doctrine assessed through a four-factor test under Section 107 of the Copyright Act. Courts balance public interest and copyright holder rights, allowing a broader range of uses beyond specific categories. Unlike India's narrow fair-dealing provisions, U.S. courts have applied fair use to new technologies and transformative works, as seen in *Campbell v. Acuff-Rose* and *Authors Guild v. Google*. A key significant distinction between the US and Indian legislations is the generality of the US 'fair use' over the specificity of the Indian 'fair dealing.'²⁸

Similarly, the United Kingdom, through Section 30A of the Copyright, Designs and Patents Act, 1988, gives legal protection to the use of “*caricature, parody, and pastiche*” by including them within the scope of fair dealing.²⁹ This provision was introduced in line with the EU Copyright Directive, which mandates such exceptions to promote freedom of expression and creativity. However, this protection applies only when the use is non-commercial and does not unfairly harm the interests or reputation of the original copyright holder.

Judicial Perspectives on 'Fair Use' Defence

Over time, courts have shaped the scope of the fair use defence. The scope of Section 52(1)(a) has been interpreted broadly, allowing for categorising memes into four types: cinematographic stills, rage comics, personal photos, and original works, of which some receive stronger protection under fair use than others.³⁰

In *Campbell v. Acuff-Rose Music, Inc.*, the court laid down a **four-factor test** to be used as a yardstick while determining the defence of fair use.

- First, the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes
- Second, the nature of the copyrighted work

²⁷ Ananyaa Banerjee & Soumya Sehgal, “Memes And Copyright Protection,” *Mondaq Blog*, December 14, 2021, <https://www.mondaq.com/india/copyright/1141606/memes-and-copyright-protection>. (last visited on June 20 2025).

²⁸ Pushpanjali Sood, “Fair Dealing in India: An Analysis Vis-À-Vis Fair Use in the United States,” 8 *Journal of Intellectual Property Rights* (2024).

²⁹ *Supra* note 27 at 7.

³⁰ *Supra* note 26 at 6.

- Third, the amount and substantiality of the portion used in relation to the copyrighted work as a whole
- Fourth, the effect of the use upon the potential market for or value of the copyrighted work³¹

Fair use of memes and reels depends on four key factors. First, if the purpose is non-commercial and transformative (such as for humour or commentary), it is more likely to be protected. On the other hand, commercial use without permission, as seen in the *Nyan Cat* case, may amount to infringement.³² Second, memes based on published works have greater fair use protection, whereas using unpublished content may violate copyright. Third, the amount used matters; small, non-essential parts are generally acceptable, but copying the core or most expressive part (“*the heart*”) can lead to liability. Lastly, if the meme harms the market or reduces the value of the original work, it is unlikely to be considered fair use.

In the Indian context, the Delhi High Court elaborated the four-factor test. It ruled that these factors should be taken ‘holistically’ and not in isolation (with no undue preference to any one factor).³³

Indian courts have evolved a more layered understanding of fair use, as seen in landmark cases such as *RG Anand v Deluxe Films* and *Civic Chandran v Ammini Amma*.^{34,35} These cases propounded a doctrine similar to the ‘transformative work principle’ where a “*completely different work*” constitutes no violation of copyright.³⁶ The courts identified key factors for determining fair use, including the value and quantum of the material used concerning the purpose of criticism or commentary, the intent behind the reproduction, and the likelihood of substantial similarity or competition between the two works.³⁷

While parody and critique have traditionally been sheltered under fair use, memes often fall outside these protections as they rarely “*comment, review, or criticise the original work.*”³⁸

³¹ *Supra* note 6 at 2.

³² “Nyan Cat and Keyboard Cat creators sue Warner Bros,” *BBC News*, 3 May 2013, <https://www.bbc.com/news/technology-22397446> (last visited on June 20 2025)

³³ *Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House*, 2011 (47) P.T.C. 244 (Del).

³⁴ *Supra* note 20 at 5.

³⁵ *Civic Chandran v Ammini Amma*, 16 PTC 329 (Kerala).

³⁶ *Supra* note 20 at 5.

³⁷ *Supra* note 35 at 8.

³⁸ *Supra* note 26 at 6.

Instead, they build or modify existing work to create humorous content that may not legally qualify as “transformative.”

However, if the four factors are satisfied, the court will treat the use of copyrighted work to create a meme or reel as “fair” and hence exempt from liability. Later, in *Blackwood v. A.N. Parasuraman*, the court interpreted the expression ‘fair’ in ‘Fair dealing’³⁹

- that to constitute fairness, there must be no intention to compete and to derive profit from such competition
- that unless the motive of the infringer was unfair, in the sense of being improper or oblique, the dealing would be fair.⁴⁰

The court has laid down these rules so that no party profits financially from the other's efforts. The fair use principle upholds freedom of expression, protecting transformational works from infringement claims. As digital culture continues to evolve, there is a growing need to clarify how fair use applies, balancing creativity without undermining the rights of original creators.

Exceptions to the Defence of Fair Use

If the meme or reel infringes the right to privacy (Article 19) or the right to freedom of speech (Article 19) or is made with an intent to harm society as a whole, then the member is not entitled to a fair-use defence. Under Rule 4(2) of the IT Rules 2021, if a meme threatens India’s security, relations with other states, sovereignty or integrity, then the intermediaries should identify the meme creator, and they would not be able to claim the fair use defence.⁴¹

Memes or reels would be protected by the fair use defence as long as they are portrayed in the form of comedy or criticism and do not harm the sentiments of a society or defame a person. For instance, the court once directed politician Priyanka Sharma to apologise to West Bengal Chief Minister Mamata Banerjee for defamation by sharing a meme with a morphed face.⁴²

The court rejected the defendant’s argument that she merely shared the meme and did not create it, as the court said that the ‘fair use’ defence does not apply when it defames or harms another

³⁹ *Blackwood And Sons Ltd. And Ors. vs A.N. Parasuraman And Ors.*, AIR 1959 MAD 410.

⁴⁰ *Supra* note 6 at 2.

⁴¹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Rule 4(2).

⁴² Japnam Bindra, “SC grants bail to BJP worker Priyanka, tells her to say sorry to Mamata,” *Live Mint*, May 14, 2019, <https://www.livemint.com/politics/news/mamta-banerjee-meme-case-sc-grants-conditional-bail-to-priyanka-sharma-1557820326295.html>. (last visited on June 20 2025).

person. The court held that the right to freedom of speech and expression cannot be denied unless it infringes upon the rights of others.

III. COMMERCIAL USE AND THE FAIR USE DEFENCE

While memes or reels are often created to deliver humorous commentary without an immediate profit motive (even often by anonymous users), they increasingly carry commercial value and economic potential. This shift is evident when companies have licensed or adapted popular memes for promotional use. A notable example is the television show *Futurama*, which strategically leveraged fan-made memes featuring its iconic jokes as part of its marketing efforts.⁴³

Commercial use of memes or reels would not come under the defence of fair use. When commercial use is spotted, the owner of the copyrighted work can file an infringement claim against the meme or reel creator. For example, AIB, a popular Indian comedy group, attempted to leverage the popularity of ‘Game of Thrones’ by producing comedic memes using the show's visuals. However, these memes were not simply created for entertainment but to promote brands that partnered with AIB.⁴⁴ Although memes represent a “new” expression of original content, the fair use doctrine does not protect works created for commercial gain without authorisation.⁴⁵

This became more notable when the owners of the viral internet characters Keyboard Cat and Nyan Cat filed a lawsuit against Warner Bros. and 5th Cell Media for unauthorised use of their creations in the video game *Scribblenauts*.⁴⁶ The court ruled in favour of the original creators, affirming their intellectual property rights and awarding them compensation. Similarly, in *Grumpy Cat Limited v. Grenade Beverage LLC*, the court held that using Grumpy Cat’s image to promote and market coffee drinks beyond the scope of a prior licensing agreement amounted to copyright and trademark infringement.⁴⁷ Grumpy Cat Limited was awarded damages, reinforcing the principle that even internet memes and viral content can attract legal protection when used commercially without consent.

⁴³ Ronak Patel, “First World Problems: A Fair Use Analysis of Internet Memes,” 20(2) *UCLA Entertainment Law Review* 236-256 (2013).

⁴⁴ *Supra* note 6 at 2.

⁴⁵ *Supra* note 26 at 6.

⁴⁶ *Supra* note 32 at 8.

⁴⁷ Grumpy Cat Case (*Grumpy Cat Limited v. Grenade Beverage LLC*) (Judgment) [2018] LLC 8:2015cv02063.

However, if the corporation creates memes or reels for commercial purposes without copying any original content, it does not constitute copyright infringement.

IV. Copyright Liability for Intermediaries in the Age of Memes and Reels

The advent of social media platforms has provided people with Platforms to create and upload user-generated content. This has been accompanied by a rise in internet intermediaries, which allow people to express opinions by hosting user-generated content.⁴⁸ Intermediaries such as Instagram, YouTube, or Facebook may face ‘contributory liability’ under Section 51(a)(ii) of ICA 1957 if they knowingly host infringing content, including the unauthorised use of copyrighted music or visuals in reels or memes.⁴⁹ However, Section 79 of the IT Act 2000 offers them conditional immunity under the safe-harbour principle.⁵⁰ It provides that internet intermediaries are ‘immune’ provided they do not aid or induce infringement and act expeditiously on takedown notices.

In cases like *Myspace v SCIL* and *Christian Louboutin v Nakul*, judicial interpretation has clarified that mere hosting does not attract liability unless the platform has “actual knowledge” of infringement.⁵¹⁵² Users who create memes using copyrighted images or music in reels without legal authorisation may be infringing the original creator’s rights. However, they remain protected unless platforms fail to act on complaints or are actively involved in facilitating the infringement.⁵³

Ethical Considerations and Fair Use Defence

While popular tools for humour and social commentary, memes and reels raise significant ethical concerns, primarily when they rely on copyrighted content without permission, respecting original creators is fundamental; using their work without credit undermines their effort and may amount to ‘intellectual theft.’ Creating content ethically means crediting the original source and ensuring your work adds something new, like a fresh perspective, humour, or commentary, instead of copying what is already there.

⁴⁸ Gautam Badlani, Blog, “Intermediary Liability Under Copyright Regime,” *ACIPR Blog, Alliance University*, September 1 2023, <https://www.alliance.edu.in/committees/acipr/blog/2023-09-01-intermediary-liability-under-copyright-regime.php>. (last visited on June 20 2025).

⁴⁹ The Copyright Act, 1957 (Act No. 14 OF 1957), s. 51(a)(ii) (Ind.).

⁵⁰ The Information Technology Act, 2000 (Act No. 21 OF 2000), s. 79 (Ind.).

⁵¹ *Myspace Inc. vs. Super Cassettes Industries Ltd*, 2016 SCC Online Del. 6382.

⁵² *Christian Louboutin Sas vs Nakul Bajaj & Ors*, *AIRONLINE* 2018 DEL 1962.

⁵³ *Supra* note 1 at 1.

Beyond copyright, these formats often perpetuate harmful stereotypes, offend vulnerable groups, or misrepresent cultures, making cultural sensitivity essential. For instance, the *Harambe* meme shows how online humour can turn harmful. What began as a joke about a gorilla's death quickly spread, with some using it to mock and harass, even in racist ways. The meme's circulation amplified attacks against Black individuals. It led to a phenomenon known as '*fetishisation*,' where a single aspect of an event, like an image or joke, is isolated and exaggerated, overshadowing the whole story and its complex social context.⁵⁴

The use of personal images without consent also raises serious privacy concerns, particularly in the age of viral sharing. Moreover, memes should not mislead viewers or damage someone's reputation, which could cross into defamation. Transparency in intent, such as clearly indicating parody, is equally essential to maintain audience trust. Lastly, although memes and reels offer space and a platform for emerging creators to express themselves, this creative freedom must be exercised responsibly. There is an utmost need to balance originality and ethical considerations in all these cases.

V. CONCLUSION AND WAY FORWARD

Memes and reels have emerged as two popular modern sources of entertainment, humour, and creativity, reflecting a blend of open-mindedness, research and analysis.⁵⁵ However, the rapid growth of meme or reel culture has raised significant concerns regarding intellectual property rights infringement. Using artistic and musical works without the author's permission to create memes and reels has led to copyright infringement and potential economic harm to original creators. Additionally, memes can sometimes reinforce harmful stereotypes or offend, while the unauthorised use of someone's image or content, violating their privacy, remains a serious ethical issue.

While the 'fair use defence' to copyright infringement often supports the creation of memes and reels, obtaining permission from original creators remains a prudent practice to balance creativity with respect.⁵⁶ Fair use defence should allow memes and reels to flourish as forms

⁵⁴Whitney Phillips, "The complex ethics of online memes," *The Ethics Centre*, Oct. 26, 2016, <https://ethics.org.au/the-complex-ethics-of-online-memes/>. (last visited on June 20 2025).

⁵⁵Divanshi Gupta, "Laugh Out Loud, Legally: Copyright Considerations in Memes," *Lexology*, July 6, 2023, <https://www.lexology.com/library/detail.aspx?g=c5ab7083-ee83-4b20-bda8-60cd4b4bfl6c>. (last visited on June 20 2025).

⁵⁶*Supra* note 26 at 6.

of expression, without crossing into exploitation. Ultimately, memes and reels should continue to entertain and inspire audiences without compromising the rights and dignity of others.