



The Doctrine of ‘De Minimis’ in Indian Copyright Law: A Constitutional Shield against the Chilling Effect on Free Speech

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The de minimis rule is a part of copyright legislation that significantly limits the enforcement of copyright infringement claims and excludes them from legal action. Copyright law can sometimes restrict freedom of speech under Article 19(1)(a), creating legal tension.¹ However, Indian law balances this through the fair dealing exception in the Copyright Act, allowing for limited use for criticism, review, or education. Courts ensure that the copyright doesn't override public interest or suppress free expression.² These rights shield individuals from laws or policies that unnecessarily limit their freedom to convey their thoughts and sentiments. Excessive protection of copyrights, however, generates suits that violate free speech, known as the ‘Chilling Effect.’ Artists refrain from creating new pieces because of the fear of being sued for copyright infringement on minor uses of copyrighted work. This study examines whether the ‘De Minimis’ theory may be employed as a constitutional approach to counter such an excess in the Indian Copyright Law. Using legislative measures and judicial interpretations, the paper looks into how Indian jurisprudence manages to strike a balance between fundamental rights and the protection of copyright. The lack of any codified formal definition of ‘De Minimis’ under the Copyright Act has precipitated some confusion as to its application, although Indian courts have at times recognised the necessity to strike a fair balance. Other jurisdictional communities that have better-defined systems for addressing petty crimes, the US and the EU being good examples, are mentioned in the article for comparative purposes. Such observations could assist in sharpening India's response to the de

¹ ‘de minimis’ (Merriam Webster) <<https://www.merriam-webster.com/dictionary/de%20minimis>> accessed 03 March 2025

² “‘Fair dealing’ in copyrights: is the Indian law competent enough to meet the current challenges?” (Lexology, 01 March 2014) <<https://www.lexology.com/library/detail.aspx?g=5a5164cd-53c8-45e1-ac63-4e2cc90883b6>> accessed 03 March 2025

minimis principle. The paper closes by maintaining that the de minimis test must be enforced firmly by Indian copyright law.³ It implies that this will avoid stifling creativity and enable copyright law to uphold the right of free speech.

Keywords: *de minimis, chilling effect, copyright act, infringement, free speech, constitution.*

INTRODUCTION

Justice Louis Brandeis stated,

*"If there be time to discover by argument the fallacy and falsehood, to forestall the evil by the instrument of education, the remedy to be applied is more speech, not enforced silence."*⁴

So, what happens when a song clip used in a short meme or a few seconds of a movie in a parody video lands someone in legal trouble? Is using every little bit of copyrighted material a crime?

In a country like India, where freedom of speech is a fundamental right under Article 19(1)(a), the answer isn't very simple. As we move deeper into the digital age, where people are constantly creating, remixing, and sharing it on the internet, there is a growing conflict between two rights: the 'right to freely express' and the right to 'protect one's creative work' with the aid of copyright. This tug-of-war forms the crux of most legal disputes these days.

To keep things fair, the law uses a simple but powerful idea known as the de minimis rule – a Latin phrase, '*De Minimis non curat Lex*' that means '*the law doesn't care about small things.*' The rule prevents people from being sued for tiny, harmless uses of someone else's work that don't hurt its value. Think of it as legal common sense: if your use of a few seconds of music does no harm to the original artist and does not affect their compensation, it should not land you in a judge's courtroom.

³ 'Understanding Copyright and Related Rights' (WIPO, 03 October 2016)
<https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf> accessed 03 March 2025

⁴ 'Principles of Free Speech and Free Expression' (Brandeis University, 10 October 2018)
<<https://www.brandeis.edu/president/past/liebowitz-letters/2018-10-10-principles-free-speech-expression.html>> accessed 03 March 2025

A good example is that of *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd* (2010)⁵. The Delhi High Court ruled that airing a few seconds of a song clip on a television show did not amount to copyright infringement. It recognised that taking such trivial issues to court not only constitutes a waste of time but also violates the right to free speech.

Yet this helpful principle is not used enough in India. While creators deserve protection, copyright laws should not be used as a sword to stifle creativity or wise comment, especially in a democracy where the freedom of speech is a top priority. Excessive copyright enforcement, even for minor uses, can deter people from speaking up, joking, educating, or even just being creative on the internet.

This paper addresses how the *de minimis* doctrine can act as a shield for free speech, especially when creative expression involves minimal or harmless use of copyrighted material. It asks whether Indian courts can rely on this doctrine to protect expression in the digital age, and suggests ways to strike a balance between copyright protection and freedom of expression, both of which are necessary to a healthy and democratic society.

DEFINITION AND SCOPE OF THE DOCTRINE IN COPYRIGHT LAW

The doctrine '*De Minimis non curat Lex*', meaning '*the law does not concern itself with trifles*,' simply provides that trivial or minor things are not a matter of concern to the law and do not have to be dealt with by the judges.⁶

It is used in copyright law to excuse insignificant uses of protected content that neither harm the original work's value nor affect the copyright holder's market. It is most relevant in cases involving parody, incidental use, or educational content, where enforcing copyright would be excessive. However, the application of this principle varies across jurisdictions. In the United States, it is widely recognised, as in *Newton v Diamond* (2003),⁷ where a minimal musical sample was ruled non-infringing. Indian courts, though more conservative, have acknowledged it in cases like *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd.* (2021), while often relying instead on fair dealing under Section 52 of the Copyright Act. In the UK and EU, the doctrine is not always named but operates through tests of

⁵ *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd* (2011) 45 PTC 70

⁶ '*de minimis*' (Cornell Law School) <https://www.law.cornell.edu/wex/de_minimis> accessed 03 March 2025

⁷ *Newton v Diamond* [2003] 349 F.3d 591

substantiality and originality. Despite these differences, the core idea remains the same: minor, harmless uses should not face legal consequences.

HISTORICAL EVOLUTION AND INTERNATIONAL PRECEDENTS

This doctrine comes from common law and has progressively evolved to form a significant element of intellectual property law. At first, it was used in the law of property to prevent unjust enforcement where there was minimal infringement; afterwards, it was adopted in the copyright law to shield minor violations from being taken to court.⁸

US: The US courts have applied de minimis, and courts have considered the extent and nature of infringement in copyright actions. The Ninth Circuit held in *Newton v Diamond* (2003) that a musical three-note sequence of a copyrighted work was so insignificant that it fell outside infringement.⁹

On the other hand, a 'De Minimis' defence failed in *Ringgold v Black Entertainment Television, Inc.* (1997), affirming that occasional but extensive use of copyrighted material would result in infringement. The de minimis defence can be used alone or together with the fair use provisions of the Copyright Act 1976 under US law.¹⁰

UK: While not recognising the doctrine of de minimis as a special legal doctrine, the UK does recognise similar principles under the 'substantiality test.' The test is designed to determine whether the copied material is substantial enough for legal intervention to be warranted. Where the material copied is not substantial, accidental copying is not considered to constitute infringement, according to the decision of the House of Lords in *Ladbroke (Football) Ltd v William Hill (Football) Ltd* (1964).¹¹

European Union: The European Union also provides for the denial of copyright infringement claims for incidental or limited use of copyrighted material under its 'rule of minor importance' through the principle of de minimis.¹² Minor uses, according to the European

⁸ Ben Tauber, 'Clarifying the De Minimis Doctrine in Copyright Law' (2025) 14(1) NYU Journal of Intellectual Property and Entertainment Law <<https://jipel.law.nyu.edu/clarifying-the-de-minimis-doctrine-in-copyright-law/>> accessed 03 March 2025

⁹ *Newton v Diamond* [2003] 349 F.3d 591

¹⁰ *Ringgold v Black Entm't Television, Inc* [1997] 126 F.3d 70

¹¹ *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 ALL ER 465

¹² Treaty on the Functioning of the European Union 1958, art 101(1)

Court of Justice, are not necessarily required to be extensive enough to be classified as infringement.

Other Jurisdictions -

Canada: Based on the nature, intent, and impact of the use, Canadian courts uphold the de minimis theory in the exceptions of fair dealing.

Australia: Similarly, Australian courts employ the Copyright Act 1968 to identify used material that is substantial.¹³ Such global legal information illustrates how the de minimis principle helps judges cut unnecessary charges so that copyright protection becomes necessary, but not over-enforce rights where minimal infringement is involved.

APPLICATION OF THE DOCTRINE IN INDIAN COPYRIGHT LAW

Judicial Recognition in India: Indian courts have, in some situations, invoked the de minimis rule in some cases even though it is not codified in Indian copyright law. The exceptions of fair dealing under the Indian Copyright Act, 1957, i.e., Section 52, on some occasions, overlap with the ideas upon which the de minimis doctrine finds its foundation.¹⁴ Therefore, although ad hoc, the courts have applied and interpreted the theory in various cases.

Significant Indian cases that have dealt with the Rule of de minimis:

Super Cassettes Industries Ltd. v TV Network Pvt. Ltd. (2011): The Delhi High Court identified the de minimis principle in this copyright case concerning the incidental use of a song in a TV show. The use was found to be so insignificant by the court that it could not be considered a violation of copyright.¹⁵

In 2012, India TV Independent News Service v Yashraj Films: In news programming, incidental use of copyrighted materials in small quantities may not at all times amount to infringement, the court explained.¹⁶ But even this ruling helped to make it clear that more

¹³ Commonwealth Copyright Act 1968

¹⁴ Copyright Act 1957

¹⁵ *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd* (2011) 45 PTC 70

¹⁶ *India TV Independent News Service Pvt Ltd & Ors v Yashraj Films Pvt. Ltd* (2012) 192 DLT 502

defined legal parameters must be established for distinguishing between that which is an infraction and that which lies within acceptable parameters.¹⁷

Eastern Book Company v D.B. Modak:¹⁸ It suggested that smaller-scale copies of judicial commentaries or excerpts from the case law may not always be significant enough to invite infringement, the Supreme Court tangentially advocated the de minimis doctrines in this judgment.

The Academy of General Education case of 2009 v Malini Mallya:¹⁹ In determining whether an act is a copyright infringement, the Supreme Court emphasised that purpose and the level of copying are viable factors. The importance of purpose and quantity in determining copying was brought out in this case, which was an indirect consideration of the de minimis rule.

CHALLENGES IN APPLYING THE DOCTRINE IN INDIA

The doctrine of fair dealing is not officially established under Indian copyright law, and the de minimis rule is not officially accepted, thus leaving a loophole in the law in its enforcement universally.

- **Inconsistent Judicial Application:** Indian courts have applied the de minimis rule in differing standards, smudging it sometimes with the fair dealing provisions without conclusively establishing the law.
- **Limited Scope to Online and Virtual Worlds:** The de minimis theory has a clear and correct legal meaning with increasing scope as copyright disputes take place in virtual realms, e.g., YouTube notice-and-takedown disputes, memes, and remix pieces.

Although the de minimis principle is invoked in some of the Indian courts, it is nevertheless a reasonably poorly fleshed-out Indian copyright law doctrine. One indicator of legal uncertainty is conflicting court interpretations and the absence of formal legal recognition. In addition to safeguarding basic rights such as freedom of expression, an even clearer and more consistent enforcement of the de minimis principle—either by legislative change or

¹⁷ *Ibid*

¹⁸ *Eastern Book Company v D.B Modak* (2008) 1 SCC 1

¹⁹ *Academy of General Education Manipal v Malini Mallya* (2009) 4 SCC 256

clearer court judgment—can be a necessary defence against unfounded copyright claims. There is a growing necessity to develop *de minimis* principles under the Indian copyright regime with the speeding up of digital content evolution.

ARTICLE 19(1)(A) AND FREEDOM OF SPEECH AND EXPRESSION

The pillar of Indian democracy is freedom of speech and expression, guaranteed by Article 19(1)(a) of the Indian Constitution²⁰. People are enabled by this freedom to express their imagination, feelings, and creativity with minimum interference from the state. However, such a right under Article 19(2)²¹ is open to reasonable restrictions, i.e., those relating to the protection of copyrights. While copyright law is bound to protect the works of authors and creators, at the same time, it constricts the freedom of free speech. Such a right to use, adapt, or distribute copyrighted material at times conflicts with rights restricted under copyright law granted to creators of their work. With the advent of mass communication and digital media, it is difficult with robust copyright protection muzzling expression, information, and creativity. The *de minimis* rule plays a significant role in such situations. The theory makes good on its promise that enforcement of copyright does not over-censor free expression by allowing small, incidental, or trivial copyright infringement.

CONFLICT BETWEEN COPYRIGHT AND FREE EXPRESSION

- **Over-enforcement of Copyright:** Copyright owners sometimes stifle criticism, political satire, or comment by threatening suit. The threat of suit for trivial infringement tends to keep people from speaking out publicly.
- **Chilling Effect on Creativity:** Even if art passes the *de minimis* test, the threat of suit for trivial application of the work of protection discourages creative endeavour.
- **Internet Age Challenges:** In what otherwise constitutes *de minimis* invasions, material is repeatedly stripped automatically by copyright mechanisms, e.g., Content ID on YouTube, by removing material that has the right of protection as mistaken use or fair use; those actions intrude on free speech.

²⁰ Constitution of India 1950, art 19(1)(a)

²¹ Constitution of India 1950, art 19(2)

The de minimis rule here could be a constitutional safeguard that forbids trivial copyright infringement from unduly restricting free speech and creativity.

Reasonable Limitations and Restrictions under Article 19(2): The government may limit free speech on various grounds like protection of copyright, public order, and defamation under Article 19(2). Provided they are being compelled to preserve the general welfare or safeguard the rights of creators, these are accepted as reasonable limitations. These must be subjected to the test of reasonableness, however. What this implies is that any restriction on freedom of expression must be reasonable, necessary, and not arbitrary. Under the terms of Article 19(2), the judiciary must come to a decision on the necessity of free speech restriction under copyright if it is proportionate.²²

MAJOR DECISIONS OF THE SUPREME COURT ON FREE SPEECH AND COPYRIGHT

Shreya Singhal v Union of India (2015): The Supreme Court struck down Section 66A of the Information Technology Act because it was a violation of Article 19(1)(a) since it imposed indeterminate and excessive restrictions on speech. The judgment emphasised that restrictions, whether copyright or otherwise, must be clearly defined so as not to unnecessarily stifle free expression.²³

Bennett Coleman v Union of India (1973): This case provided that public interest should not be inappropriately impaired by way of curtailing free expression. In copyright issues, where overly vigorous enforcement has the effect of stifling the public's access to knowledge and innovation, this doctrine is particularly useful.²⁴

Indian Express Newspapers v Union of India (1986): The Supreme Court stressed the importance of freedom of the press to democracy. It ruled that copyright restrictions could not be invoked for censorship of media reports, especially where the reporting constitutes fair reporting or political commentary.²⁵

These rulings support the principle that free speech cannot be unduly limited by copyright law, which is consistent with the application of the de minimis rule in copyright law.

²² *Ibid*

²³ *Shreya Singhal v Union of India* AIR 2015 SC 1523

²⁴ *Bennett Coleman & Co. v Union of India & Freedom of Press* (1972) 2 SCR 757

²⁵ *Indian Express Pvt Ltd (Bombay) & Ors v Union of India* (1984) 2 SCR 287

THE INTERSECTION OF COPYRIGHT LAW AND CONSTITUTIONAL RIGHTS

Some of these decisions have silently embraced the *de minimis* rule to achieve proportionality between freedom of speech and copyright protection, though Indian courts have not used it in so many words as a constitutional safeguard.

C. Ammini Amma v Union of India & Ors:²⁶ The Kerala High Court has ruled that use of copyrighted work for social or academic criticism does not necessarily have to rise to the level of infringement. The ruling indicated that incidental uses with a social purpose shouldn't be legally barred, where they are in the larger public interest, although the court did not mention the *de minimis* doctrine by name.

India TV Independent News Service Pvt Ltd & Ors v Yashraj Films Pvt. Ltd: “Minor, sporadic uses of copyrighted video in news shows are not infringements”, the court held. This ruling upholds the ‘*De Minimis*’ theory, that small copyright claims do not interfere with public discourse and journalism.²⁷

Comparative Perspectives: To reconcile copyright protection and the Indian constitutional right of free speech, the doctrine of ‘*De Minimis*’ is required. It provides the safeguard for creativity and expression, especially in the age of the internet, by preventing frivolous infringements from turning into legal obstacles. While Indian courts have not yet formally constitutionalised this doctrine, judicial trends suggest growing recognition of its value in preserving expressive freedom. However, blindly transplanting policies from jurisdictions like the US or UK, where fair use doctrines and strong institutional enforcement exist or from China or France, where state control or rigid moral rights influence copyright, may not work in India’s pluralistic and overburdened legal system. India requires a context-specific approach that balances cultural diversity, limited legal access, and the need to nurture grassroots creativity. Thus, formally embracing the ‘*De Minimis*’ rule would ensure that copyright law evolves without stifling the democratic right to free speech.

²⁶ *C. Ammini Amma v Union of India & Ors* AIR 1999 Ker 179

²⁷ *India TV Independent News Service Pvt Ltd & Ors v Yashraj Films Pvt. Ltd* (2012) 192 DLT 502

How Other Jurisdictions Balance Copyright and Free Speech?

United States: For a copyright not to unfairly constrict free speech, the courts of justice in America have regularly applied the rule 'De Minimis' on the grounds of fair use consideration. As can be proved with the help of an example, in *Newton v Diamond*,²⁸ the right of free speech took hold as a musical composition had used a minimal part of a copyrighted work.

United Kingdom: The UK uses the 'test of substantiality' to ascertain if the use of copyrighted material is sufficient to justify pursuing legal action. According to the 'De Minimis' rule, use will not cause copyright liability if found to be limited.

European Union: To avoid unnecessary litigation of trivial or fortuitous uses of intellectual creations, the EU has adopted a 'rule of minor importance' of copyright enforcement. Like the 'De Minimis' rule, this rule permits the courts to refuse claims for minor infringement.

The de minimis doctrine is important to avoid the enforcement of copyright unnecessarily encroaching on free speech under Article 19(1)(a). While Indian courts have invoked this principle in a few cases, its status as a constitutional rule is unclear. 'De Minimis', in the age of increased instances of copyright takedowns, online battles, and attacks on reporters, needs to be codified into an express legal principle. Enhancing judicial understanding and harmonising Indian copyright law with international best practices will enable the achievement of a better balance between the protection of creators and the guarantee of free speech.

JUDICIAL TESTS FOR 'DE MINIMIS' IN COPYRIGHT CASES

Indian courts have formulated several tests to determine whether the use of a copyrighted work is de minimis. The tests determine the scope of copying, the financial effect, and the purpose of use.²⁹

The Quantitative and Qualitative Test: It is used by courts to determine the amount of copyrighted work copied and the significance of the work copied in the original work. It will

²⁸ *Newton v Diamond* [2003] 349 F.3d 591

²⁹ Department For Promotion of Industry and Internal Trade, 'A Hand Book Of Copyright Law' (Ministry of Commerce and Industry) <<https://copyright.gov.in/documents/handbook.html>> accessed 03 March 2025

not always be 'De Minimis' where only a limited amount of work is copied, but still maintains the key concepts. However, the copied element will be more 'De Minimis' in nature if it is minor and does not even contribute to the purpose of making any impact upon the commercial worth of the work.³⁰

The Test of Economic Harm: Such a test considers if the copyright owner incurs any financial loss through unauthorised use of copyrighted material. The use is 'De Minimis' if it fails to affect the market value or sale of the original material.³¹

The purpose and context in which copyrighted content is used are established by the Courts through the Purpose and Context Test. As for the public good relative to commercial gain, applications pertaining to academic research, journal writing, criticism, or satire would find themselves most likely to be regarded as 'De Minimis'.³²

Comparison with International Jurisprudence -

US: The 'De Minimis' rule is usually invoked in the US as an independent defence or cumulatively with the safeguards of the fair use provisions under Section 107³³.

Example: In *Newton v Diamond*,³⁴ the court held that use of a three-note sample of a copyrighted song was too short to be infringement because it was not substantial in terms of quantity or quality.

The court overruled the 'De Minimis' defence in *Ringgold v Black Entertainment Television, Inc.*³⁵, holding that even brief but substantial copying of copyrighted material could be considered as infringement.

UK: 'De Minimis' is not a separate rule of law in the UK, but the test of substantiality is the test used by the Copyright, Designs and Patents Act 1988³⁶.

³⁰ *India TV Independent News Service Pvt Ltd & Ors v Yashraj Films Pvt. Ltd* (2012) 192 DLT 502

³¹ *Super Cassettes Industries Ltd. v Hamar Television Network Pvt. Ltd* (2011) 45 PTC 70

³² *C. Ammini Amma v Union of India & Ors* AIR 1999 Ker 179

³³ Copyright Act 1976, s 107

³⁴ *Newton v Diamond* [2003] 349 F.3d 591

³⁵ *Ringgold v Black Entertainment Television, Inc.* [1997] 126 F.3d 70 (2d Cir)

³⁶ Copyright, Designs and Patents Act 1988

Example: *Football (Ladbroke) Ltd. v Football (William Hill) Ltd.*: A reproduction of another's copyright to replicate something trivial is not, said the court, a reproduction, which accords with de minimis principles.³⁷

European Union: 'Rule of minor importance' enforces the 'De Minimis' principle. This rule aids in avoiding disproportionate litigation of minor infringements, keeping enforcement of copyrights from sanctioning trivial uses of copyrighted work.

By separating minor infringements from Indian case law, such foreign policies illustrate the way legal systems balance copyright protection, fair use, and freedom of expression.

DE MINIMIS DOCTRINE AS PROTECTION AGAINST CHILLING EFFECT ON FREE SPEECH

The Chilling Effect on Free Speech: The 'Chilling Effect' is how, even when free speech is legally permitted, it is repressed because of fear of legal action. In the context of copyright law, the effect occurs when people, like journalists, artists, and creators, do not speak freely because they fear overly strict enforcement.

Reasons for the same are given below:

Afraid of Suits: Since the copyrighted content can be used in a way that would qualify as 'De Minimis' or Fair dealing, others avoid using it for fear of legal retribution.

Overtly Aggressive Copyright Enforcement: YouTube Content ID and other algorithmic platforms also tend to block videos containing little or accidental use of copyrighted content, even if the uses themselves are not significant.

Suppression of Parody and Criticism: The owners of copyrights can use copyright infringement as a tool to suppress political satire, social critique, and parody and hence curb the freedom of speech.

The doctrine of 'De Minimis' works as a constitutional shield that encourages free expression and imagination. Because of this provision, the trivial and fortuitous uses of copyrighted material do not give rise to frivolous suits or censorship,

³⁷ *Football (Ladbroke) Ltd. v Football (William Hill) Ltd.* [1964] WLR 273, 1

The Doctrine of ‘De Minimis’ and Article 19(1)(a): Freedom of expression and speech has been assured under Article 19(1)(a). Article 19(2) does contain reasonable restrictions against the protection of copyright, and the right is relative, thus balancing free speech with the protection of copyright.

Unrestricted copyright assertion might unreasonably restrict expression, while copyright protection must be extended to promote invention. Any restriction on free speech must be reasonable, proportionate, and in the pursuit of genuine public interest, as mandated by the Indian Supreme Court time and again.³⁸

Judicial Precedents Supporting a Balanced Approach: *Shreya Singhal v Union of India*, *Civic Chandran v Ammini Amma* and *India TV Independent News Service v Yashraj Films*.

International Precedents -

Ashcroft v Eldred: The U.S. Supreme Court ruled that very long copyright provisions could stifle free expression by denying common information to the public.³⁹

Telegraph Group Ltd. v Ashdown: The concept that copyright should be balanced against democratic values was sustained when the Court ruled that copyright was not to be applied as a weapon against political speech or political debate.⁴⁰

All these examples lend support to the contention that copyright enforcement cannot be excessive because if it is, it threatens constitutional rights and democratic values, foremost among them the basic right of free speech.

EXTENT OF COPYRIGHT AND JUDICIAL REFORM REQUIRED IN INDIA

While Indian courts have embraced the rule of ‘De Minimis’ in limited circumstances, legal uncertainty is substantial due to a lack of unmistakable statutory codification. It results in a chain of difficulties for the enforcement of equitable and equitable copyrights.

³⁸ *Bennett Coleman & Co. & Ors v Union of India & Ors* AIR 1973 SC 106

³⁹ *Ashcroft v Eldred* [2003] 537 US 186

⁴⁰ *Telegraph Group Ltd. v Ashdown* [2001] Civ 1142 EWCA

The Main Issues -

Risk of Abuse: Copyright holders, especially influential ones, can leverage claims of infringement as a tool for censorship against speech, including satire, political speech, and uploaded content like memes. This discourages free expression, especially where the application of the work being copyrighted is limited and does not damage the market or the rights of the copyright holder.

Digital Barriers: 'De minimis' use of content is generally gratuitously taken down by content takedowns based on automated copyright enforcement on the Web. Websites that inappropriately flag and delete content falling within fair use or De Minimis criteria, such as the **YouTube Content ID system**, can stifle inventive freedom.

Judicial Inconsistency: The Indian judiciary has not evolved a consistent methodology in applying 'De Minimis', and judgments are rendered on an ad-hoc basis. Indeterminacy of the actual enforcement and temporal application of the doctrine is reinforced by this.

Proposed Reforms -

Codification of De Minimis in Statute: As Section 52 deals with the exception of fair dealing, the principle of 'De Minimis' as applied in Australia should also be considered as a defence in statute under the Copyright Act 1957 to bridge this gap. It would bring much-needed predictability and certainty of law in copyright litigation.

Judicial Guidance: The Supreme Court can provide clearer judicial guidelines for applying de minimis in all courts to ensure a standard practice in handling cases of careless or casual use of copyrighted materials.

The Application of De Minimis in Digital Copyright Enforcement: 'De Minimis' and fair use must be part of the enforcement mechanisms of digital platforms and copyright systems to safeguard free speech protection. By doing so, the platforms prevent unjustified content take-downs within the boundaries of legitimate use to provide an open and innovative ecosystem for internet users.

De minimis is core to free speech protection because it ensures that petty infringement of copyrights does not provoke unnecessary legal response or censorship. Even though there

have been some occasions when the concept has been turned into a reality, India has yet to give effect to its constitutional value to its full extent. De minimis codification under the Copyright Act and judicial clarification through Supreme Court directives are needed in the interest of freedom of speech lest it be choked by copyright law. Shifting the balance of equilibrium upwards would guarantee that the democratic values prevail and creativity on the internet intensifies.

COMPARATIVE ANALYSIS OF THE DOCTRINE OF 'DE MINIMIS' IN COPYRIGHT LAW: INDIA, US, UK, EUROPEAN UNION

'De Minimis' doctrine comes under the domain of copyright law since it prevents minor usages of work under copyright from being heard before courts of justice. It is the Latin term 'De minimis non-curat lex' i.e. 'the law pays no regard to trifles.' The underlying principle is the same everywhere, though the application varies in countries like the US, UK, India, and the EU because there are legal as well as cultural differences in handling copyrights.

India: Although the 'De Minimis' doctrine does not form a part of the Copyright Act 1957, it has been applied in a few court rulings in India. Indian courts apply it on an ad hoc basis, considering the quantum of infringement and its effect on the right of the copyright owner. It creates legal uncertainty due to a lack of a clear, systematic test for applying it. There are thus needed reforms, such as codifying 'De Minimis' in law so that copyright abuse claims are avoided, and free expression is preserved.

United States: The de minimis doctrine is explicitly incorporated by American courts with fair use protections under Section 107 of the Copyright Act 1976⁴¹. Cases like *Newton v Diamond* (2003) show how judges weigh the quantitative and qualitative value of material copied. The doctrine is most applied in the United States for transformative, parodic, and critical use, seeking a balance between free speech and copyright protection. But the doctrine is not always accessible, especially when even minimal use would qualify as substantial.⁴²

American Strategy Characteristics –

- **Codified Rules:** de minimis defenses are referred to as fair use defences.

⁴¹ Copyright Act 1976, s 107

⁴² *Bridgeport Music, Inc v Dimension Films* [2005] 410 F.3d 792 (6th Cir.)

- **Tests by the Judiciary:** quantitative and qualitative significance test is applied by Courts while ascertaining 'De Minimis' use.
- **Application to Digital Content:** To provide more precise legal limits, American copyright law has extended 'De Minimis' to digital memes, video material, and music sampling.

United Kingdom: De minimis is utilised in the test of substantiality in the UK in the Copyright, Designs and Patents Act 1988, but not generally as a defined theory. The UK courts determine whether the material copied is sufficient to justify an action. The *Ladbroke v William Hill* in 1964 case highlights that, provided the amount utilised is not great, copying is not infringement. The UK law is concerned with whether the quantity of work copied is great in comparison to the value of the original.

UK Approach to De Minimis -

- **The Test of Substantiality:** There is no recognition of 'De Minimis' as a special theory by courts; instead, they try to find out whether the copied element is substantial in expression.
- **Balanced Strategy:** Fair use in education and media purposes is permissible in courts, tipping the balance in favour of public interest over commercial damage.
- **No Statutory Reference:** Unlike the US, the UK has recourse to the judicial interpretation and lacks a specific 'De Minimis' provision.

European Union: By its 'De Minimis' rule of relatively lesser significance, the European Union is more favourable to the doctrine of 'De Minimis'. The EU does not wish for excessive litigation over small infringements, especially where copyright works are incidentally used. For ensuring a more balanced policy of copyright enforcement, the European Court of Justice has underscored that smaller uses non-prejudicial to the market of the original work must not be held back by judicial restrictions. This principle prevents distortion of the market by overreaching courts.

The European Union applies de minimis in copyright exceptions in the InfoSoc Directive (2001/29/EC) and CJEU case law.

EU Case Law on ‘De Minimis’: *Infopaq International A/S v Danske Dagblade*,⁴³ *Pelham GmbH v Hütter*⁴⁴ and *Deckmyn v Vandersteen*.⁴⁵

EU Approach to De Minimis -

Strict Interpretation: EU courts have restricted the application of ‘De Minimis’ by emphasising originality in even minor copied works.

Case-by-Case Assessment: The CJEU considers ‘economic harm and creative nature’ rather than a rigid rule.

Lack of Legislative Support: The InfoSoc Directive permits ‘limited exceptions to copyright for news reporting, satire, and quotation’ but does not explicitly recognise ‘De Minimis’.

Although it is the general purpose of the ‘De minimis’ rule to avoid too much judicial intervention in copyright issues, different jurisdictions bring it into force in relatively different ways. It is explicitly defined in the UK and EU and transported there along with substantiality and lower moment requirements, but is defined and brought into line with fair use policies in jurisdictions like the US. Uncertainty is created by India’s lack of a formal system, thus requiring more explicit legal requirements. Internationally, a harmonised, regulated de minimis system would assist in creating an equitable balance between free speech and copyright defence.

RECOMMENDED PROPOSALS TO STRENGTHEN THE DE MINIMIS IN INDIAN COPYRIGHT LAW

For Indian artists, educators, and online consumers, the doctrine of ‘De Minimis’ is confusing due to a lack of evident statutory provisions as well as the inconsistent interpretations in the courts of law. Legislative reforms are essential in an endeavour to fulfill global standards. The following are some promising ideas to improve the strength of the doctrine.

Reforms to the Law: Implementation of ‘De Minimis’ in the Copyright Act 1957: To put this in clear words, the ‘De Minimis’ rule will have to be legislatively incorporated separately under Indian copyright legislation. ‘Employment of a work in another copyrighted work will

⁴³ *Infopaq International A/S v Danske Dagblade* [2009] (C-5/08) ECR I-6569

⁴⁴ *Pelham GmbH v Hütter* (C-476/17) [2019] ECLI:EU:C: 2019:624

⁴⁵ *Deckmyn v Vandersteen* [2014] (C-201/13)

not be considered an infringement, if the part used is insubstantial, casual, or nominal and doesn't injure the economic interest of the owner of the copyright,' could be a fresh insertion in Section 52 (Fair Dealing Exceptions). This would prevent unnecessary litigation and protect occasional accidental uses.

Global Models -

- **United States:** It is covered under the fair use defence.⁴⁶
- **United Kingdom:** Courts apply the substantiality test.⁴⁷
- **European Union:** CJEU applies de minimis in some cases, like parody, reporting, and education.

JUDICIAL REFORMS: FORMULATING A HARMONIZED DE MINIMIS TEST

There is no existing Indian test for 'De Minimis'. The multi-factor approach, such as in the United States, can be adopted:

- How much copying has been undertaken and why?
- Is it for commentary, educational, or debate purposes?
- Is the owner of the copyright prejudiced economically?⁴⁸
- *Feist Publications, Inc. v Rural Telephone Service Co.*⁴⁹ is a case relating to a work that may either be factual or creative.
- Is the original one transformed, or was the use incidental?

ONLINE COPYRIGHT ENFORCEMENT: HANDLING OVER BLOCKING ON THE NET

'De Minimis' uses are generally avoided by automated takedown mechanisms, causing false content removals.

⁴⁶ US Copyright Act 1976, s 107

⁴⁷ Copyright, Designs and Patents Act 1988, s 16(3)

⁴⁸ *Telegraph Group Ltd. v Ashdown* [2001] EWCA Civ 1142

⁴⁹ *Feist Publications, Inc. v Rural Telephone Service Co.* [1991] 499 US 340

Problems: Websites such as YouTube’s Content ID tend to flag less obvious instances of illegal content. The 2013 case *India TV Independent News Service v Yashraj Films* is a case in point. Proposed reforms are:

- Platforms taking account of ‘De Minimis’ considerations before takedowns.
- Give users whose content has been unjustly removed a clear process of appeal.
- With the supervision of a copyright ombudsman, make automated processes transparent.

Improving Protection of Free Speech: Judiciaries should mandate that excessive enforcement of copyright contravenes Article 19(1)(a) in a bid to ensure that abuse of copyright laws does not hamper free expression.⁵⁰

Defending Parody, News, and Criticism: De minimis must be utilised in order to protect trivial uses in memes, parody, and news. In *Campbell v Acuff-Rose Music, Inc.*⁵¹, there are parallel protections under the US law of fair use.

Public Recognition and Legal Orientation: Stakeholder ignorance is the biggest hindrance to the application of ‘De Minimis’.

SUGGESTIONS

1. Provide de minimis protections to content creators so the content is made available.
2. Education to employ ‘De Minimis’ in copyright proceedings by both judges and legal practitioners.
3. Motivate parliamentary debate regarding enacting ‘De Minimis’ within Indian copyright laws.
4. This will stimulate an honest and imaginative digital culture by harmonising free speech and protection against copyright.

⁵⁰ *Shreya Singhal v Union of India* (2015) 5 SCC 1

⁵¹ *Campbell v Acuff-Rose Music, Inc.* [1994] 510 US 569

CONCLUSION

As George Orwell would put it, 'If liberty means anything at all, it means the right to tell people what they do not want to hear.' This maxim most accurately encapsulates the 'De Minimis' doctrine of copyright law, a valuable bulwark against over-enforcement of copyright laws. Copyright assertions carry a greater risk of stifling expression than ever since the dawn of the internet age, where work is shared and reused for free daily. In keeping with fair and accidental uses of copyrighted works from unreasonably restricting Article 19(1)(a) of the Indian Constitution's freedom of speech guarantee,⁵² the de minimis rule serves a constitutional role as an antidote to the chilling effect.

The topic of research here is the need for judicial clarity in interpretation and some legal reforms to precisely define 'De Minimis' in the context of codifying it under the Copyright Act 1957. A definition of 'De Minimis' must be a delicate equipoise of protection to authors' rights as well as encouragement to free expression and the same can be best comprehended based on comparative foreign models. The more automated the copyright enforcement systems are, the more critical it is to protect them from abuse with a perspective towards censoring innocent material, particularly in the event of parody, satire, and news reporting.

India can make sure that the doctrine of copyright law will not be used as a tool of censorship, but will become more robust to build a healthy, democratic, and open environment of free expression and creativity by making the principle of 'De Minimis' more robust. Along the way, it should also be remembered that, as Orwell argued, the basis of a free and equitable society is freedom of expression, above all else, the freedom to speak unpleasant truths.

⁵² Constitution of India 1950, art 19(1)(a)