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Copyright in the Creator Economy: Examining the Thin Line Between Fair Use and Infringement

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The rapid rise of the creator economy has challenged traditional boundaries of copyright law, especially within digital platforms such as YouTube, Instagram, and TikTok. This paper critically examines two pressing issues in the Indian copyright landscape: (i) the legal treatment of incidental or background use of copyrighted music in user-generated content, and (ii) the copyrightability of Artificial Intelligence (AI)-generated works. The analysis situates these challenges within the framework of the Copyright Act 1957, judicial precedents, and comparative international practices, while also drawing upon Intellectual Property Rights (IPR) policy discourse. The study also finds that Indian law remains rigid on incidental music use and is unprepared for the AI-authored works, creating uncertainty for digital creators. Legislative reform, such as the explicit recognition of incidental use exceptions and consideration of sui generis protection for AI outputs, is proposed to ensure a balanced framework that promotes innovation while protecting the rights holders.

Keywords: *copyright, intellectual property rights, artificial intelligence, digital platforms, digital creators.*

INTRODUCTION

The contemporary creator economy has now become an iconic feature of the digital medium, in which the creation and distribution of content has become democratised. Millions of users in India and all parts of the world would be doing monetised creative activities via YouTube,

Instagram, and TikTok. Nevertheless, this is an accelerated digital transformation that has increased the tension between strict copyright enforcement and vibrant creative freedom. This new economy architecture requires real-time content creation and dissemination to all parts of the globe. Large channels of communication like YouTube are also a meeting point since they can reach close to 33.7 per cent of the total Indian population. Therefore, the content created on these channels, such as livestreams, vlogs, commentary, and brief videos, is usually characterised by the direct use of already existing content. Such incorporation is either deliberate, in the purpose of reusing materials under a transformative fair use (e.g., parody, criticism, or remixing), or accidental, through incidental inclusion of materials under copyright (e.g., background music). The malleability of digital production is, therefore, in direct opposition to the Indian anti-digital copyright paradigm.

The Copyright Act 1957 was created to protect the broad, exclusive rights of owners in their creative works¹, which made infringing their copyright, including unauthorised reproduction or communication to the public, a *prima facie* case in Section 51². These issues are currently not resolved in the Indian law. Although Section 52³ has reference to exceptions of fair dealing, it is a prerequisite that does not cover music that is taken accidentally. More so, the advent of Artificial Intelligence also adds a new layer of ambiguity: since the law assumes that human authorship is a necessary condition of copyright, the position of an AI-generated piece of creative work is not taken into account. These major loopholes in the law pose serious questions about the level of doctrinal certainty, the larger intellectual property policy, upcoming innovation, and the capacity to evolve, the digital economy in the end.

THE OBSCURITY OF THE BACKGROUND USE OF INCIDENTALS

Incidental inclusion of the copyrighted music in the digital object, such as a song playing in a cafe in the livestream, has grown into one of the primary aspects of legal contradiction of modern creators. Indian Copyright Law, The Copyright Act 1957, under section 52 of the Indian legislative system, has an exception of good faith dealing that is relevant to the purpose (e.g., research, criticism, review, and incidental presentations of artistic work in the

¹ Copyright Act 1957, s 14

² Copyright Act 1957, s 51

³ Copyright Act 1957, s 52

context of user-generated digital material)⁴ but contains no corresponding exception of incidental capture of musical work.

Judicial Conflict: Strict Liability vs De Minimis: The Indian court decision indicates a division in the implementations between law-based statutes that are strictly adhered to and just teachings. *Super Cassettes Industries Ltd v Hamar Television Network Pvt Ltd*, the court of Delhi, indicated that the non-transformative use of even significant portions of a song could constitute infringement, indicating that the court was not particularly generous on the non-transformative use.

This was, however, overruled by the Division bench in *India TV Independent News Service Pvt Ltd v Yashraj Films Pvt Ltd*,⁵ the Court in this case allowed the defence of de minimis non curat lex (the law does not mind trifles) in defence against the infringement of copyright. The Court did rule that the incidental use of snippets of a song, where the intent was not to obtain the work, but the occurrence of actually reporting the news, could not constitute an infringement of the action. However, following this ruling, the price paid by creators making out under case-by-case de minimis use without physical codification to establish a statutory safe harbour.

International Divergence: The complete reverse of such jurisdictions as the United Kingdom is such precariousness. In the case of inadvertent inclusion of a copyright work into a sound recording, film, or broadcast, Section 31 of the Copyright, Designs and Patents Act 1988⁶ (CDPA) expressly permits such inclusion, provided that such inclusion is not deliberate.⁷ Similarly, the wider concept of Fair Use is used in the United States regarding the incidental inclusion and factors such as the type of use, and the effect on the markets, and numerous transformative or momentary uses which do not infringe on the Indian copyright law are also subject to the doctrine.

The Chilling Effect of Automation: Legal loopholes are augmented by mechanisms of automated enforcement. A specific instance of the incidental use exception notwithstanding,

⁴ Copyright Act 1957, s 52(1)

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

⁶ Copyright, Designs and Patents Act 1988, s 31

⁷ 'Copyright Transparency Report' (*YouTube*, 27 June 2023)

<https://storage.googleapis.com/transparencyreport/report-downloads/pdf-report-22_2022-7-1_2022-12-31_en_v1.pdf> accessed 22 November 2025

in 2022 alone, the Content ID system of YouTube has taken on over two billion claims of copyright violations around the globe, where the specific instance of use might have a commercial harm to the claim holder, provable or not. This in itself has the effect of cooling down the freedom of expression and the necessity of making alterations to Section 52 of the Act legislatively to accommodate the incidental use of music.

Was Artificial Intelligence-Generated Art Copyrightable? The copyright law has been put to the test by the rise of the Generative AI tools, such as ChatGPT, DALL-E, and MidJourney, as they are anthropocentric in nature. In India, copyright is provided in original works of literature and dramatic works, musical works, and artistic works (which is to say, that the copyright protection of a non-human writer is not envisaged).

The 'Modicum of Creativity' Threshold: The necessity of human skill has always been imposed in the Indian jurisprudence. One more successful reversal of the doctrine was in *Eastern Book Company v DB Modak*,⁸ when the Supreme Court ruled that copyright lacks where a minimum amount of human creativity and skill is present. In *Tech Plus Media Pvt Ltd v Jyoti Janda*,⁹ the Delhi High Court also stated that copyright was not viable in situations where there was no minimum amount of human creativity and skill.

This places a barrier on the path of expedited engineering. In the meantime, the user makes prompts to an AI, and the specific form of the resultant text or image is constructed by the algorithm. No matter whether the user is not able to demonstrate that the prompt (in and of itself) was specified to the extent that to conclude about the exact outline of the output (the AI becomes a mere

instrument, say, a pen), the work fails to pass the originality test, too. This is in line with the logic behind the case *Naruto v Slater*¹⁰ (the so-called Monkey Selfie case) of the US, whereby the courts ruled that the non-human animal (and by extension the inanimate) has no standing to own copyright.

⁸ *Eastern Book Company & Ors v DB Modak & Anr* (2008) 1 SCC 1

⁹ *Tech Plus Media Pvt Ltd v Jyoti Janda & Ors* (2014) SCC OnLine Del 1819

¹⁰ *Naruto v Slater* [2018] 888 F 3d 418 (9th Cir 2018)

Policy Silence and International Strategies: This scepticism has been given codification by the Copyright Office of the US, in the instance of *Zarya of the Dawn*.¹¹ Copyright was awarded to the human creator of the arrangement of a comic book, but specifically not to the computer-generated image itself, which was only being altered to suit the medium required by the human creator, regardless of whether the image-making was being done by the creator. Otherwise, despite the urgency, as reported by the Deloitte consulting company in 2023, 63%¹² of the Indian creative startups that employ AI tools, the domestic policy has nothing to say about the topic of AI authorship.

YOUTUBE COPYRIGHT POLICY

YouTube is one of the most used apps in India. This is because of the various types of content that can be produced through it, which provides various options for the users in a single app. YouTube reached approximately 33.7% of India's total population and an even larger share of its internet-connected citizens. When it comes to the production of content on YouTube, there are certain laws that must be abided by the creators just to make sure that the efforts can be monetised. Even though the recent policies, certain aspects, and effortless content are not recognised and monetised,¹³ let's now look at the YouTube policy and copyright laws applicable, both from the creators' and the owner's perspective.

If we have a look at the YouTube policy regarding copyright, they are only supposed to use content that is produced by them and are not supposed to upload any other content that belongs to other YouTubers (who have the copyright of the content). To use this content, there is a need to obtain the required permission from the authorised person. Otherwise, they would be considered an infringement.

When it comes to copyright infringement, it is provided that when a work is used, copied, or reproduced by a creator without the permission of the respective owner, it is said to be an infringement of the right. When seen from the aspect of YouTube, using music, uploading a movie, or even a video of another creator as a whole, it would come under infringement. This

¹¹ 'Re: *Zarya of the Dawn* (Registration # V Au001480196)' (*US Copyright Office*, 21 February 2023) <<https://www.copyright.gov/docs/zarya-of-the-dawn.pdf>> accessed 13 October 2025

¹² 'State of AI in India' (*Deloitte*, 16 December 2021)

<<https://www.deloitte.com/in/en/Industries/technology/research/State-of-AI-in-India.html>> accessed 13 October 2025

¹³ 'India YouTube Statistics 2025 | Top 10 YouTube Channel & Video Stats' (*The Global Statistics*) <<https://www.theglobalstatistics.com/india-youtube-user-statistics/>> accessed 13 October 2025

is what leads to the owners giving copyright strikes to the creators or going on to take legal action against them. According to Section 51,¹⁴ it says about when copyrights are infringed, such as unauthorised use of content, that is, when a person uses content without the permission of the licensor or the Registrar of Copyrights under the act, or the reproduction of a literary, dramatic, musical, or artistic work in the form of a cinematograph film will also be considered as an infringement.

Though there are many laws governing a particular usage of content, there are some leniencies shown for some particular usage of content. These would mostly come under the Doctrine of Fair Dealing. It is a doctrine that allows a person to use a protected work with the limited usage of such work to maintain the sanity and originality of such work, as well as the registered proprietor of the work.¹⁵ This is provided under Section 52 of the Copyright Act 1957, which says about acts which would not amount to infringement of Copyright. It allows the use of copyrighted content, limitedly, without prior permission from the creator.¹⁶ This can be done for any private use, parody, research, criticism, review, education, or reporting of a current event. In the case of a YouTuber, for example, if a creator is making a video for the criticism of another creator as a roast (a common word), it would come under the use of fair dealing. However, if these lack originality in the content, like reacting or just a mere re-upload, then these would be considered as infringement. And as per the YouTube policy, whether it can be considered as a fair use depends on a few factors:¹⁷

- the purpose and character of the use,
- the nature of the copyrighted work,
- the amount and substantiality of the portion used about the copyrighted work as a whole,
- the effect of the use upon the potential market for or value of the copyrighted work.

Though we have section 52 protecting the creators, there needs to be a clear definition or a clear boundary on how much of the content can be used, such as the duration of the clips or

¹⁴ Copyright Act 1957, s 51

¹⁵ Rajshree Mukherjee, 'Fair Use Law in India under Copyright Act' (*iPleaders*, 15 February 2020) <<https://blog.ipleaders.in/fair-use-law-india-copyright-act/>> accessed 13 October 2025

¹⁶ 'What is Copyright Laws in YouTube: Role of Copyright Act, 1957' (*The Legal School*) <<https://thelegalschool.in/blog/copyright-laws-on-youtube>> accessed 13 October 2025

¹⁷ 'Copyright' (*YouTube*) <<https://www.youtube.com/intl/en/howyoutubeworks/copyright/#copyright-exceptions>> accessed 13 October 2025

the soundtrack. Parody and Satire are not provided explicitly under the section. Though it is understood that they are not an infringement, when expressed through a section in the act, it would have more value to the exception. In line with the object of the Copyright Act, parodies promote creativity and the growth of ideas.

WHERE DOES THE DIFFERENCE LIE?

Let's understand this through an Illustration:

Illustration 1: Creator A makes a video where he uses some clips of a movie and just gives a reaction to those clips. Creator B makes a video where he uses some clips of a movie and makes a review where he criticises the movie for toxicity. But out of both of them, Creator A's work will be considered as an infringement, whereas Creator B's work will be under fair dealing.

Why is it that both of them have differences, though they use the same content? That's where the difference lies. In this illustration, Creator A makes a work that is not likely to be transformative and is just a mere reaction to clips without a meaningful commentary, criticism, or opinion sharing. There is no alteration made to the main content. It does not add any meaning, but it's just a reuse of the original content, which will be competing with the original work. So, it would fall under Section 51 of the Copyright Act, 1957.

But when it comes to Creator B, his work will be considered as transformative and critical, which adds meaning and gives insight. There is a critical aspect that is involved in the video, with the addition of a discussion of the film and commentaries, which can change the view of the people. This is not a mere reuse of a work and a competition to the original work, but another aspect that adds value to the movie by creating discussions. So, it would be covered under Section 52 of the Act. So here is the difference. It does not lie in what content is being used, but in how and why it is used by the creators, which would make it more meaningful and provide insight through the newly produced video.

CONCLUSION

Through this analysis, it can be understood that the Indian Copyright laws are not fully equipped to handle the main challenges of the creator economy. Firstly, the incidental use of music is commonplace in digital content, and this will not be considered as fair dealing under

section 52, which exposes the creators to liability for these acts. Secondly, AI-generated works question the mere human authorship requirements, which leaves the unprotected in their relevant reliance on such tools in the creative industry.

The copyright law must evolve in India for it to remain competitive in the global digital economy. Introducing an explicit incidental use exception and considering recognition (or sui generis protection) for AI works are crucial steps. The Indian creator economy risks stagnation under rigid copyright doctrines ill-suited to the digital age, without such reforms.