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## COPYRIGHT INFRINGEMENT ON SOCIAL MEDIA: ANALYZING THE EXTENT OF FAIR USE

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### ABSTRACT

*The rise of social media platforms worldwide has sparked a new movement of user-generated content. This trend raises concerns about copyright protection, infringement, and fair use on sites such as Facebook, TikTok, and Pinterest. Copyright infringement occurs on social media when individuals share, repost, or alter protected content without the necessary permission or credit. This problem is made worse by the simplicity of sharing digital material, the unclear limits between fair use and infringement, and the international aspect of social media, which complicates enforcement across different jurisdictions. This paper addresses the intricate issues of copyright infringement and the definitions of fair use within social media. The analysis breaks down the various criteria for demonstrating fair use and attempts to align them with the context of social media through several legal cases. It also explores the obstacles users encounter when trying to assert their copyright rights. Additionally, it highlights the challenges copyright holders face regarding the violation of their exclusive and moral rights. Ultimately, this paper aims to present a clearer perspective on the fair use doctrine in the context of the Internet. By examining the legal framework, assessing its practical implications, and identifying possible solutions, this paper aspires to convey to both creators and users that nurturing an online environment where creativity can thrive while maintaining respect for intellectual property rights is essential for progress.*

**Keywords:** Copyright infringement, Fair Use, Intellectual Property Rights, Social Media.

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## INTRODUCTION

In the past two decades or so, the use of online networking sites has become omnipresent.<sup>2</sup> This widespread use can be credited to increased user-generated content and widespread distribution across platforms. Social Media comprises mainly the internet, and mobile phone-based applications used for sharing a wide range of content and discussing information.<sup>3</sup> A few decades ago, nobody could have imagined that Social Media would become an inherent part of human existence. Certainly, there were methods of effective communication before the rise of social media platforms, but the world has not seen anything like this sought before. “Andreas Kaplan and Michael Haenlein define social media as a group of internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of user-generated content.”<sup>4</sup> Social media’s evolution can be traced back to the 1990s when Geocities launched its homepage, and Blogger was introduced as a platform for publishing personal blogs.<sup>5</sup> Social media marked its presence formally for the first time in 1997 with Sixdegrees.com.<sup>6</sup>

Social media has changed the entire dynamics of how copyright infringement works. In normal parlance, copyright infringement simply means copying a work owned by another Author without his or her permission. But with the coming of social media, it is difficult to analyse who has copied the work, from where he or she has copied it, if it is the first time the work has been copied and so on. Many people are wondering about the impact of user-generated content on copyright protection. This has brought up discussions about how the rules of copyright may need to evolve to keep up with these changes.<sup>7</sup>

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<sup>2</sup> Copyright, Ownership, and Control of User-Generated Content on Social Media Websites *Supra Note 4*.

<sup>3</sup> Shishir Tiwari and Gitanjali Ghosh, Social Media and Freedom of Speech and Expression: Challenges Before the Indian Law, <https://deliverypdf.ssm.com/delivery.php> (last visited Jan 30, 2024).

<sup>4</sup> Andreas M. Kaplan & Michael Haenlein (2010), Users of the World, Unite! The Challenges and Opportunities of Social Media, *Business Horizons*, vol. 53, 2010

<sup>5</sup> “Complete History of Social Media: Then And Now, <https://smallbiztrends.com/2024/01/history-of-social-media.html> (last visited Feb 1, 2024).“

<sup>6</sup> Id.

<sup>7</sup> Elizabeth Townsend Gard & Bri Whetstone, Copyright and Social Media: A Preliminary Case Study of Pinterest, 31 MISS. C. L. REV. 249 (2012).

One of the main issues faced while looking specifically at copyright infringement is that, over the internet, most consumers assume that everything is free for them to take.<sup>8</sup> The concept of a free culture presents a challenge in determining the boundary between permissible copying and the creator's rights. With the evolving landscape of social media platforms, copyright infringement lawsuits have surged, and fair use provisions are often invoked in various jurisdictions. Fair Use is a defence available under the Copyright regime to the infringer "which allows the use of copyrighted material under certain circumstances without the permission of the Creator for purposes such as teaching, research, criticism, etc."<sup>9</sup> The recent behaviour on the internet which largely comprises unfiltered sharing, continuous posting and ravish collection of data has increased the demand for controlling and monitoring what goes on over social media sites.<sup>10</sup>

This paper talks about the issue that the widespread use of social media should be addressed, and it should be figured out what is shareable-content<sup>11</sup> and what falls under the umbrella of fair use. The first part discusses Copyright infringement on social media platforms. Then it discusses the defence of fair use, followed by suggestions on how the challenges faced by monitoring copyright infringement on social media can be dealt with.

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<sup>8</sup> Lauren Levinson, Adapting Fair Use to Reflect Social Media Norms: A Joint Proposal, 64 UCLA L. REV. 1038 (2017)."

<sup>9</sup> What Is Fair Use?, Copyright Alliance (Sep. 7, 2016), <https://copyrightalliance.org/faqs/what-is-fair-use/> (last visited Feb 2, 2024).

<sup>10</sup> Jessica Gutierrez Aim, Note, Sharing Copyrights: The Copyright Implications of User Content in Social Media, 35 HAMLINE J. PUB. L. & POL'Y 104, 115 (2014).

<sup>11</sup> Insta-Fringement: What Is a Fair Use on Social Media *Supra* note 5.

## **UNDERSTANDING COPYRIGHT INFRINGEMENT AND FAIR USE.**

Copyright is a type of Intellectual Property which is responsible for the protection of original works as soon as the work is expressed in a tangible medium. As per the US Copyright Office: “When an Author independently creates a work and has a minimal degree of creativity, it is termed as original.”<sup>12</sup> However, the degree of creativity is different for each jurisdiction. Copyright also provides the creator with certain exclusive rights<sup>13</sup> concerning the original work which are given under the “Indian Copyright Act, 1957”.<sup>14</sup> It provides Authors of Original Work with various economic rights which include the right to Reproduction, the right of distribution, the right to communicate work to the public, the right to make cinematograph films or sound recordings and the right to Adaptation.<sup>15</sup> These exclusive rights align with the Berne Convention.<sup>16</sup> Copyright law protects the expression of ideas and not ideas per se. These ideas can be preserved through digital archives, which fall under copyright protection.

The statutory definition of Copyright Infringement can be found under section 51 of the Indian Copyright Act. “To avoid copyright infringement, it is necessary to obtain a licence from the owner of the copyright or the Registrar of Copyright.”<sup>17</sup> Furthermore, it is paramount to comply with any stipulations enacted by a competent authority pursuant to the relevant act. In simpler terms, copyright infringement transpires when an individual engages in actions that fall within the exclusive purview of the copyright holder or permits any material to be used in a manner that constitutes public communication, thereby infringing upon the copyright. It is also considered infringement when a person makes, sells, distributes, exhibits or imports infringing copies of the work without permission. It is important to note that reproducing “a literary, dramatic, musical or artistic work in the form of a cinematograph film is considered an infringing copy.”<sup>18</sup>

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<sup>12</sup> What is Copyright? | U.S. Copyright Office, <https://www.copyright.gov/what-is-copyright/> (last visited Feb 2, 2024).

<sup>13</sup> Copyright Act, 1957, § 14, No. 14, Acts of Parliament, 1957 (India).

<sup>14</sup> Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

<sup>15</sup> *Supra* Note 12.

<sup>16</sup> Berne Convention for the Protection of Literary and Artistic Works, <https://www.wipo.int/treaties/en/ip/berne/> (last visited Jan 31, 2024).

<sup>17</sup> “Copyright, Ownership, and Control of User-Generated Content on Social Media Websites,” *Supra* Note 4.

<sup>18</sup> Copyright Act, 1957, § 51, No. 14, Acts of Parliament, 1957 (India).

Copyrighted work will be directly violated by a rival if they: significantly duplicate a work, give permission for someone else to commit a violation, or inadvertently duplicate someone else's creations. Using significant, unique, or crucial components of someone else's work is referred to as a 'substantial reproduction' of that person's work. It doesn't always imply a significant amount of work. This is evaluated on a case-by-case basis. The court in one of the cases held that getting the original owner of a piece of music to agree that the work will be used by someone else is crucial.<sup>19</sup>

When someone sells or imports a product that is protected by copyright, it can be considered indirect infringement. Indirect infringement refers to an act that contributes to or facilitates infringement by someone else. In the case of copyright, this means that even if someone is not directly copying or distributing copyrighted material, they can still be held liable for indirectly infringing on the copyright owner's rights by selling or importing a product that infringes on those rights. This is because such actions can enable others to infringe on the copyright owner's rights, and thus, can be legally actionable. Allowing for the download of songs owned by someone else would amount to indirect infringement.<sup>20</sup>

When any of the other mentioned acts are done by an unauthorised person without the permission of the author, it constitutes Copyright infringement. However, with the advent of the World Wide Web, infringement concepts have become more complex and challenging to interpret.<sup>21</sup> To establish copyright infringement, two elements must be established. Firstly, it must be confirmed that the author has the legal copyright to the work in question. Secondly, it must be proven that the work has been copied, reproduced, or distributed without the owner's permission. Digital content can be easily shared and distributed across multiple platforms, making it difficult to track the source.<sup>22</sup> The digitisation of copyrighted work and the rapid growth of the internet have changed the dynamics of how copying is interpreted.

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<sup>19</sup> Gramophone Co. v. Super Cassettes 2010 SCC Online Del 4743.

<sup>20</sup> A&M Records, Inc. v. Napster Inc., 239 F.3d 1004 (9th Cir. 2001).

<sup>21</sup> Id.

<sup>22</sup> Irina Atanasova, Copyright Infringement in Digital Environment, 1 J. Law Econ. 13 (2019).

## PRINCIPLE OF FAIR USE

Within the framework of copyright law, **fair use** acts as a crucial exception, allowing for the utilisation of copyrighted materials under specific circumstances without explicit permission from the owner. This concept serves as a safeguard against overly strict interpretations of copyright, which could inadvertently hinder the very innovation that the law aims to foster. Fair use enables the creation and advancement of new works based upon existing ones, while simultaneously ensuring that the rights of copyright holders remain protected.

*The Fair Use test:* The test of fair use is codified under section 107 of the US Copyright Act. It states that copyright is not violated when a work is used fairly “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use, scholarship, or research)”. According to the statute, one must take into account the following four considerations to evaluate whether a certain usage is a fair use:<sup>23</sup>

- A. The copyrighted work’s nature: When it comes to sharing factual information for the betterment of the public, there is more flexibility in copying from works such as biographies compared to fictional works like plays or novels. Furthermore, citing fair use is more justifiable if the material is sourced from a published work rather than an unpublished one. The extent of fair use is limited for unpublished works as the author retains the right to manage the initial public presentation of their expression.
- B. Its purpose & character, including whether it is being used for nonprofit educational purposes or profit: The matter at hand pertains to whether the material has been utilised in the formation of a fresh creation or simply replicated word-for-word in another piece. When incorporating portions of a copyrighted work, the following factors are taken into account: Has the original material been altered by the incorporation of fresh expression or significance? Has the original work been enhanced, introducing new facts, aesthetics, perspicuity, and understanding? Studies, research, and teaching endeavours that require a critical examination or interpretation of a work can also be regarded as transformational applications. But figuring out how much of a transition has occurred might be difficult. An

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<sup>23</sup> “Measuring Fair Use: The Four Factors, Stanford Copyright and Fair Use Center (2013), <https://fairuse.stanford.edu/overview/fair-use/four-factors/>” (last visited Feb 6, 2024).

encyclopaedia of Harry Potter, for example, was considered “somewhat transformative” for gathering together all of the terminology and lexicons from the books into one volume. Nevertheless, considering the substantial use of exact text from the original works, this degree of alteration was not enough to claim fair use.<sup>24</sup>

- C. Amount of work copied: In certain instances, the quantity of material replicated is deemed so minuscule (or “de minimis”) that the court grants permission without necessitating a thorough fair use evaluation. To illustrate, several copyrighted images were featured in the film *Sevenured*, which led the image owners to file a lawsuit against the movie’s producer. The court ruled that the images “appear briefly and are obstructed, heavily blurred, and hardly identifiable.” Therefore, the use was seen as fair.<sup>25</sup>
- D. Impact of the use of the copyrighted work in the potential market: Considering whether the use of copyrighted material results in loss of income or undermines a new or potential market for that material is crucial, as it may lead to legal consequences. For example, an artist once used a copyrighted photo to create wood sculptures, sold them for several hundred thousand dollars without permission, and was sued by the photographer. The artist argued that their sculptures were a fair use since the photographer had yet to make sculptures. Nevertheless, the court ruled that the crucial factor was the existence of a potential market for sculptures of the photograph, irrespective of whether the photographer would have thought of making them or not.<sup>26</sup>

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<sup>24</sup> Warner Bros. Entertainment, Inc. v. RDR Books, 575 F.Supp.2d 513 (S.D. N.Y. 2008).

<sup>25</sup> Sandoval v. New Line Cinema Corp., 147 F.3d 215 (2d Cir. 1998).

<sup>26</sup> Rogers v. Koons, 960 F.2d 301 (2d Cir. 1992).

## **COPYRIGHT INFRINGEMENT IN THE DIGITAL ENVIRONMENT**

In the present time, most of the information produced and distributed is in the digital format. New technologies pose new challenges. Sometimes, the innovation is so complex and different that it shakes the entire legal system, making it difficult for law agencies to keep up. Society is currently facing a complex battle over the future of copyright, which involves the right to reproduce and modify information.<sup>27</sup> Copyright law deals with intangible products of thought, but it relies on fixation.<sup>28</sup>

Users can now create, alter, share, and show information on a scale never previously feasible, thanks to the features of digital works and the network environment, especially the identical copy feature and the convenience of duplicating works. However, one of these skills is the ability to manipulate copyrighted information. Information of any kind can be sent. It is unlawful to distribute copyrighted content without the owner's consent (where there are no exceptions like fair use). However, digital objects are different, as they can be shared without losing access to the original, and the digital copies are identical. This is a fundamental difference from physical objects. In the digital world, copyright infringement can take many forms: Ripping music: Copying songs from CDs or other media without permission, Illegal downloads: Downloading movies, music, or software without paying for it, Music sharing: Distributing copyrighted music online without permission, Content theft: Copying text, images, or other content from websites without the owner's consent.<sup>29</sup>

A person may be violating the author's copyright if they carry out one of the actions that are subject to their exclusive rights. In addition to this kind of direct copyright infringement, one may also be held accountable for aiding another party in infringing. First, there is what is known as "materially contributed" infringement, which occurs when someone assists the individual who is directly violating someone else's intellectual property. Another is vicarious liability, which occurs when someone makes money off of the infringement of another person but could have prevented the

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<sup>27</sup> Nicholas Friedrich Scharf, "Exploring the Changing Interface Between Copyright and Regulation in the Digital Environment", UEA Law School (2013).

<sup>28</sup> David N. Weiskopf, "The Risks of Copyright Infringement on the Internet: A Practitioner's Guide", 33 Univ. San Franc. Law Rev. 1 (1998).

<sup>29</sup> Atanasova, *supra* note 19.



infringement in the first place.<sup>30</sup> Determining who should be held liable for copyright infringement on the Internet is one of the most challenging questions to answer.<sup>31</sup>

Platforms such as Instagram, Facebook, and YouTube function as intermediaries as defined under the Information Technology Act, 2000<sup>32</sup>, which governs digital communication and data handling in India. These platforms benefit from the ‘safe harbour’ provisions outlined in Section 79<sup>33</sup> of the Act, which shield them from liability for user-generated content, provided they adhere to specific conditions. Notably, this protection is contingent upon the platforms promptly removing any infringing content once they receive actual knowledge of such violations or a formal takedown notice. This legal framework aims to balance the need for responsible content management with the promotion of free expression on digital platforms, ensuring that intermediaries can operate without undue risk while still being accountable for the content they host.<sup>34</sup>

The strict liability nature of copyright infringement raises a concerning possibility: anyone knowingly or inadvertently involved in unauthorised use could be liable. Imagine uploading an image online without permission. Each website visit triggers a download onto viewers’ devices, potentially constituting separate infringements of the copyright owner’s exclusive rights. This scenario could snowball into hundreds, thousands, or even millions of infringers stemming from a single infringing work. While theoretical, this poses complex questions for creators and platforms: does every visit constitute infringement, and how can liability be managed in this expansive digital landscape? Navigating this labyrinthine issue is crucial for all participants in the digital world.<sup>35</sup>

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<sup>30</sup> Copyright Infringement in India, <https://www.indiafilings.com/learn/copyright-infringement-in-india/> (last visited Feb 6, 2024).

<sup>31</sup> Jennifer L. Kostyu, “Copyright Infringement on Internet: Determining the Liability of Internet Service Providers”, 48 Cath. U. L. Rev. 1237 (1999).

<sup>32</sup> Information Technology Act, 2000, § 2(1)(w) (India).

<sup>33</sup> Information Technology Act, 2000, § 79 (India).

<sup>34</sup> Bhumika Sharma, Smita Pandey, *From Safe Harbor To Watchdog: Section 79 Of The IT Act & Controversy Over Fact Check Units - IT and Internet - India*, <https://www.mondaq.com/india/it-and-internet/1521872/from-safe-harbor-to-watchdog-section-79-of-the-it-act-controversy-over-fact-check-units> (last visited May 12, 2025).

<sup>35</sup> David N. Weiskopf, “The Risks of Copyright Infringement on the Internet: A Practitioner’s Guide,” 33 U.S.F. L. REV. 1 (1998).

**COPYRIGHT INFRINGEMENT: ISSUES ON SOCIAL MEDIA**

With the coming of social media, the dynamic nature of Creative content has entirely changed. It is more user-generated content than the traditional creative works that were there before. The major chunk of content present on various social media sites falls under either of the following categories: “1. Texts 2. Photographs 3. Music Recordings or 4. Videos.” All these are expressly given under the Copyright Act<sup>36</sup>, hence, there should be no such pertinent issue in implementing copyright laws. However, that is not the case; two primary requirements ensure that a work can be copyrighted: first, originality and second is fixation.

The first criterion is subjective and depends on how creativity and originality are perceived in an area. The requirements and thresholds are different for each work and each jurisdiction. If the work is an original creation of the author, the first requirement is met. The second requirement is fixation in a tangible medium. Software and computer files that are permanently saved on hard drives are seen as fixed<sup>37</sup> since the computer and its display are examples of machines or devices that may let someone perceive them.<sup>38</sup> Therefore, it is very clear that a work can be protected under copyright and also infringed on social media platforms.

*Ownership:* Every Creator on social media is the owner of the work that he/she has created. However, there are always terms and conditions that are neglected by the users. A user is more likely to spend time deciding the type of profile they want rather than going through the terms of the social media where they create their new identity.<sup>39</sup> Social media platforms like Facebook and Instagram allow the user to retain Copyright over their post. It also talks about non-exclusive licence over the content, i.e. the work can be used by these sites without any payment to the creator. Also, with features like reposting and sharing or even a simple screenshot, it gets difficult to trace

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<sup>36</sup> Clark, *supra* note 16.

<sup>37</sup> Copyright Act, 1957, sec 2 cl o,

<sup>38</sup> gphillips, IDEA ® The Journal of the Franklin Pierce Center for Intellectual Property - IDEA Vol. 46 (Parts 1 through 4), (2016), <https://ipmall.law.unh.edu/content/idea-%C2%AE-journal-franklin-pierce-center-intellectual-property-idea-vol-46-parts-1-through-4> (last visited Feb 24, 2024).

<sup>39</sup> “Facebook terms and conditions: why you don’t own your online life,” The Telegraph (2013), <https://www.telegraph.co.uk/technology/social-media/9780565/Facebook-terms-and-conditions-why-you-dont-own-your-online-life.html> (last visited Feb 24, 2024).

the owner of the work. And if the work has been copied by multiple people, there is no way of deciding against whom to file the complaint. If the work has been copied from one site to the other, the work of detecting the true culprit becomes even more tedious.

In the case of *Fairmont Hotels vs. Bhupendar Singh*<sup>40</sup>, the Court held that copying of photographs from a search engine and posting them on social media amounts to copyright infringement.

*Difficult to bring a successful Infringement Action:* Due to a lack of resources, small artists on social media fail to sue. Other difficulties while filing a suit are gathering evidence, navigating the complexities and facing powerful social media platforms as their opponent.

Casual users like parents sharing photos on Facebook are more vulnerable to content theft. They might not be aware of copyright laws or how to pursue legal action. This makes it easier for others to exploit their work. On the other hand, content creators actively seeking fame and monetisation through platforms like YouTube have better defences. Their awareness of copyright and potential for legal action makes them less susceptible to exploitation.<sup>41</sup>

*Moral Rights Issues:* Apart from the above issues, the issue of protecting moral rights is also of immense importance when talking about the protection of copyrighted work on social media. Moral Rights include two factors under their ambit. The first one is the right to attribution, and the second is the right to integrity.<sup>42</sup> On social media, most of the time, while reposting the original content owner is not credited for the work, which is against the very feeling of owning a copyright. More often than the work is also distorted and circulated to create memes and other ‘funny’ content on social media sites. There is no clarification as to whether that falls under the ambit of fair use or is a violation of an Author’s moral Rights. The issues that surround the protection of copyrighted work on social media platforms seem never-ending and require attention in this age of digitisation.

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<sup>40</sup> *Fairmont Hotels Pvt Ltd vs. Bhupendar Singh* CS (OS) 274 (2015).

<sup>41</sup> Copyright, Ownership, and Control of User-Generated Content on Social Media Websites, *Supra* Note 4.

<sup>42</sup> Moral Rights Basics, <https://cyber.harvard.edu/property/library/moralprimer.html> (last visited Feb 24, 2024).

## **THE DEFENCE OF FAIR USE ON SOCIAL MEDIA**

It is of utmost difficulty to analyse the extent and application of the doctrine of fair use. “The fair use doctrine is called the most troublesome in the whole copyright law.”<sup>43</sup> There is always confusion in understanding what should fall under transformative use and what should not. Various decisions by the courts of varying natures add to the confusion even more. However, as it is a very case-to-case based approach, even the courts have failed to settle for a permanent rule. The Indian Copyright Act under section 52 states what constitutes fair use, one of the elements under it is transformative use, which is the focal point of discussion in this chapter, as it prevails in social media. The US copyright law lays down factors to analyse fair use under section 107.

### **Determining Transformative Use:**

*Nature and Purpose of the Work:* In recent decades, the evaluation of a work’s transformative nature has assumed a preeminent role in determining if the “purpose and character of the use” factor weighs in favour of fair use under copyright law. During the transformative analysis, courts typically inquire whether the derivative work merely supplants the objectives of the original creation, or conversely, introduces novel elements characterised by a distinct purpose or character, thereby altering the original through the introduction of new expression, meaning, or message.<sup>44</sup> A heightened degree of transformativeness within a derivative work tends to diminish the relative weight accorded to the remaining fair use factors in the ultimate determination of fair use.<sup>45</sup>

On social media, with options for sharing and reposting, it becomes difficult to analyse what the boundaries of fair use will be and to answer the question of whether the work is transformative or not. On platforms like Instagram, where one can simply repost the picture belonging to someone else easily, it becomes difficult to pinpoint the ownership, and also, the reshare constitutes a transformative use or not.

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<sup>43</sup> *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661, 662 (2d Cir. 1939).

<sup>44</sup> *Folsom v. Marsh*, 9 F. Cas. 342, 345 (C.C.D. Mass. 1841).

<sup>45</sup> *Campbell v. Acuff-Rose Music, Inc* 510 U.S. 569 (1994).

The *Dhillon v. Does* case<sup>46</sup> involved the unauthorised publication of a copyrighted image of Harmeet Dhillon on the website Mungergames.net within an article titled “Meet Harmeet.” The court determined that the original purpose of the photograph, utilised in connection with Dhillon’s candidacy for state assembly, was promotional. However, the Munger Games website article’s purpose was expressly critical of Dhillon and her political views. Consequently, the court found that “the defendant’s use of the headshot photo was transformative because it served the purpose of criticism, rather than identification.”<sup>47</sup> This transformative nature, the court reasoned, aligned with the “paradigmatic fair use” envisioned by the Copyright Act.<sup>48</sup> In a similar case, the “Eleventh Circuit Court of Appeals stated that the use of a copyrighted work without the license of the plaintiff for a blog falls under fair use.”<sup>49</sup>

*Amount of Work Copied:* Simply copying a photograph from a search engine or Pinterest and posting it on Instagram would definitely be considered copyright infringement, but taking a picture and using it as a part of a collection of images would raise the question of substantiality. An author writing a blog can claim copyright on his writing, but the same cannot be said for tweets or Facebook and Instagram captions, as the rule of *di returns* would apply. However, with the increased use of Social Media, it has become necessary to answer the question of what will be considered substantial copying and what is not.

*Effect on Market:* One of the requirements to constitute fair use is that the use of the work should be done in a way that does not harm the place achieved by the original work in the commercial market. In 2017, reality star Khloe Kardashian faced a lawsuit from Xposure Photos for allegedly editing out their photo credit from a picture she posted on Instagram. The company claims this is copyright infringement and is seeking damages, including an additional amount for removing their credit information.<sup>50</sup>

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<sup>46</sup> *Dhillon v. Does* 1-10, No. C 13-01465 SI, 2014 WL 722592, at \*5 (N.D. Cal. Feb. 25, 2014).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Katz vs Google Inc* 802 F.3d 1178 (11th Cir. 2015).

<sup>50</sup> J. D. Knapp, “Khloé Kardashian Sued After Sharing Photo of Herself on Instagram, Variety (Apr. 27, 2017)”, <https://variety.com/2017/digital/news/khloe-kardashian-instagram-sued-lawsuit-xposure-photos-unlicensed-1202401328/> (last visited Feb 23, 2024).

Although there is no progress in this case, it raises the question of how Khloe Kardashian earns money by posting pictures on social media. Will that fall under the purview of earning monetary benefit by using somebody's copyrighted work while deciding the case, or not? Also, while deciding upon the question of fair use, if Khloe had credited Xposure, would that have amounted to fair use?

On a different note, however, in the case of *Author's Guild v. Google, Inc.*, Google's Library Project and Google Books digitised millions of books without permission, including displaying snippets in search results. Authors claimed copyright infringement, while Google argued "fair use" for research and educational purposes. The Court here stated that yes, the work very well falls under the purview of Fair use. Then again, this fails to answer the question that Google generates traffic on its search engine by using the books and earns revenue through it, also, the previews might be enough for a few users. This obviously would affect the position of the said book in the market. This proves that the internet is changing the dimensions of how fair use and infringement are perceived by the decision-makers.

## **RECOMMENDATIONS**

The social media landscape presents a complex and multifaceted environment that can be daunting to navigate and analyse effectively. As the prevalence of social media usage continues to soar, users and content creators face a variety of significant challenges, one of the most pressing being the alarming increase in copyright infringement. This rise in unauthorised use of creative works has profound implications for artists, influencers, and businesses alike, undermining the value of original content and creating legal uncertainties. To combat these violations on social media platforms, it is imperative to adopt a comprehensive strategy that integrates legal frameworks, procedural safeguards, and advanced technological solutions.

### **Recommendation 1: Enhance International Cooperation for the Enforcement of Copyright Across Jurisdictions.**

To enhance the effectiveness of copyright protection on a global scale, it is essential to establish both multilateral and bilateral agreements that empower copyright holders to assert their rights against infringers operating across different jurisdictions. By creating frameworks that facilitate reciprocal enforcement of copyright laws, these agreements would enable copyright holders to pursue legal actions more efficiently and effectively outside their home countries.

### **Recommendation 2: Ensure Effective Implementation and Compliance with Intermediary Guidelines under the IT Rules, 2021.**

Effective implementation of the IT Rules, 2021, should be ensured by paying particular attention to Rule 3(1)(d), which outlines the responsibilities of online platforms concerning the removal of infringing content. This involves establishing a robust monitoring mechanism to track compliance by these platforms effectively. These penalties should serve as a deterrent, encouraging platforms to prioritise the prompt removal of infringing content and maintain a safe and lawful online environment.

### **Recommendation 3: Creation of Intellectual Property Cells at the Regional and University Level.**

To enhance the enforcement of intellectual property rights (IPR) for local creators, it's crucial to establish regional digital IPR cells within State Intellectual Property Offices or Police Cyber Cells.

These units would assist creators in identifying infringements and developing legal responses. Additionally, setting up IPR cells in law schools and technical institutions would educate students and local innovators about intellectual property rights.

**Recommendation 4: Social Media Platforms should be encouraged to invest in automated content detection.**

Investing in automated content detection technologies is crucial for effectively identifying and tagging AI-generated content. Solutions such as AI-based fingerprinting analyse unique characteristics of content, helping to distinguish between human-created and AI-generated material. Meanwhile, Content ID systems enable tracking and management of digital assets, ensuring creators receive appropriate recognition and compensation.

**Recommendation 5: Use of Blockchain technology for tracking the First Creator or Owner.**

Blockchain technology can be used to securely record and timestamp the creation of digital works, providing verifiable proof of authorship and ownership. Its decentralised and immutable nature ensures that ownership records cannot be tampered with or falsified. This enhances trust, transparency, and efficiency in copyright enforcement and licensing, especially on digital platforms.

**Recommendation 6: Create awareness among Creators and Users.**

Creators and Users should learn about the intricacies of the fair use doctrine, which provides a legal framework for the limited use of copyrighted material without permission under specific circumstances. They should be familiar with various types of licenses, such as Creative Commons, which offer different levels of rights and permissions for content sharing and reuse. To ensure respect for creators' rights, users should refrain from reposting, remixing, or sampling any protected content without obtaining explicit permission from the copyright holder.



## CONCLUSION

The burgeoning landscape of social media presents a complex and evolving challenge for copyright law. As user-generated content proliferates at an exponential rate, the lines between 'fair use' and outright infringement blur, threatening the very essence of copyright protection. Addressing this critical issue demands a nuanced exploration of the factors at play and a call for effective solutions. Social media platforms facilitate the rapid dissemination of diverse content, often without clear attribution or understanding of copyright principles. Casual users, sharing personal photos or humorous memes, may unwittingly infringe upon the rights of others. Conversely, aspiring artists and musicians, eager to build a following, may find their creations repurposed or monetised without due credit. This ambiguity creates a breeding ground for confusion and potential exploitation, particularly for those less familiar with legal intricacies. Navigating the complexities of copyright in the social media sphere requires a multi-pronged approach. Firstly, greater awareness and education are crucial. Users need to understand their rights and responsibilities regarding content creation and sharing. Secondly, platforms must play a more proactive role in enforcing copyright policies and developing user-friendly reporting mechanisms. Finally, legal frameworks may need to adapt to address the unique challenges of the digital realm, striking a balance between protecting creators' rights and fostering innovation within the social media ecosystem. In conclusion, the current state of copyright in the social media landscape demands urgent attention. By fostering awareness, encouraging platform responsibility, and exploring legal adaptations, we can ensure that the essence of copyright protection remains intact, allowing creativity to flourish in the digital age. Ignoring this critical issue risks unravelling the very fabric of intellectual property, ultimately diminishing the diverse tapestry of human expression.