

REVISITING THE HISTORY OF COPYRIGHT AND CONTEMPORARY CHALLENGES

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ABSTRACT

Copyright law functions as a critical legal instrument for fostering creativity, innovation, and cultural development while ensuring that society benefits from the dissemination of knowledge. Over time, copyright has evolved from a narrow regulatory mechanism controlling printing to a complex rights-based framework operating in a global digital economy. This article undertakes a doctrinal and analytical examination of the historical evolution of copyright law, its international harmonisation, and its development within the Indian legal system. It further explores contemporary challenges arising from digital piracy, artificial intelligence, algorithmic creativity, and emerging technologies such as deepfakes and NFTs. Through judicial analysis and policy evaluation, the article identifies gaps in existing copyright frameworks and proposes reform-oriented recommendations aimed at reconciling technological innovation with the protection of creators' rights and the public interest. The study concludes that copyright law must adopt a flexible, technology-neutral, and human-centric approach to remain effective in the digital age.¹

Keywords: Copyright, Artificial Intelligence, Digital Piracy, Authorship, Fair Use, Deepfakes, TRIPS, India.

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¹ William Cornish, David Llewellyn & Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (8th edn., Sweet & Maxwell 2013).

I. Introduction

Copyright law is distinct from other forms of intellectual property because it directly regulates cultural production, creative labour, and access to knowledge. Unlike patents, which protect functional inventions, copyright protects expressive works that shape education, public discourse, and cultural identity. As a result, copyright law carries not only economic significance but also constitutional and human rights implications, particularly concerning freedom of expression, the right to education, and access to information.²

Historically, copyright has attempted to balance competing interests—those of authors seeking recognition and remuneration, and those of society seeking access to creative works. This balance, however, has become increasingly fragile in the digital era. Digital technologies enable instantaneous reproduction and global dissemination of works, undermining traditional enforcement models and challenging the territorial foundations of copyright law.³

Further, the rise of artificial intelligence and machine learning systems has unsettled foundational copyright concepts such as authorship, originality, and creativity. Works generated with minimal or no human intervention raise normative questions about whether copyright should continue to be rooted exclusively in human creativity or adapt to algorithmic production.⁴ Against this backdrop, revisiting the historical foundations of copyright becomes essential for understanding how the law can evolve without losing its normative coherence.

1.1 Socio-Legal Dimensions of Copyright in the Digital Age

The transformation of copyright law in the digital era cannot be fully understood without examining its broader socio-legal implications, particularly in relation to labour, access to knowledge, and distributive justice. The rapid integration of artificial intelligence into creative industries has raised concerns regarding the displacement and devaluation of human artistic labour.⁵ AI systems are now capable of generating music, visual art, literary texts, and audio-visual content at a scale and speed that far exceeds human capacity. This technological shift has led to growing apprehension among artists, writers, and content creators regarding the erosion of traditional livelihood opportunities and the commodification of creativity.

² Lionel Bently & Brad Sherman, *Intellectual Property Law* (5th edn., OUP 2018).

³ Paul Goldstein, *International Copyright* (OUP 2001)

⁴ Thaler v. Perlmutter.

⁵ Martin Kretschmer, “Copyright and the Value of Creative Labour” (2005) 9 *Info. Comm. & Soc.* 84.

While AI is often positioned as a tool that augments human creativity, its deployment within commercial platforms frequently prioritises efficiency and cost-reduction over artistic integrity and fair remuneration. The resulting asymmetry between human creators and algorithmic production raises critical questions about whether copyright law should evolve to incorporate labour-protective mechanisms that safeguard the economic interests of artists. In the absence of such safeguards, there is a risk that copyright law may inadvertently facilitate the concentration of creative production within large technology companies,⁶ thereby marginalising independent creators.

In the context of developing countries such as India, copyright law must also be evaluated through the lens of access to knowledge and informational equity. High costs associated with copyrighted educational materials, academic publications, and digital resources often restrict access for students, researchers, and institutions operating under resource constraints.⁷ The digital divide further exacerbates this challenge, as unequal access to technological infrastructure limits the ability of large sections of the population to benefit from knowledge economies.

Indian copyright jurisprudence has, to some extent, recognised the importance of balancing proprietary rights with public interest. The expansion of fair dealing provisions and the introduction of exceptions for persons with disabilities under the Copyright (Amendment) Act, 2012⁸ reflect a commitment to inclusive access. However, the increasing digitisation of knowledge resources and the rise of paywalled platforms necessitate a re-examination of whether existing exceptions are sufficient to ensure equitable access in a digital environment.

Another significant concern relates to inequality in the enforcement of copyright in digital spaces. Enforcement mechanisms are often disproportionately tilted in favour of large corporate rights-holders who possess the financial and technological resources to monitor and litigate infringements. In contrast, individual creators and small-scale users frequently lack the capacity to assert their rights or challenge unjust takedowns. Automated content moderation systems employed by digital platforms further complicate this landscape by relying on

⁶ Shoshana Zuboff, *The Age of Surveillance Capitalism* (2019).

⁷ Madhavi Sunder, *From Goods to a Good Life* (Yale University Press 1993)

⁸ Copyright (Amendment) Act, 2012 (India).

algorithmic detection tools that may result in over-blocking or erroneous removal of lawful content.⁹

Such enforcement asymmetries raise important questions about procedural fairness, accountability, and the protection of user rights in digital ecosystems. The concentration of enforcement power within private platforms also blurs the distinction between public regulation and private governance, thereby necessitating greater transparency and regulatory oversight.

Taken together, these socio-legal challenges underscore the need to reconceptualise copyright law not merely as a tool for economic regulation, but as a framework that must balance innovation, labour rights, and equitable access to knowledge in an increasingly digital and algorithm-driven society.

II. Research Methodology

The present study employs a doctrinal and analytical research methodology, focusing on the interpretation and evaluation of legal texts rather than empirical measurement. Primary sources include statutory provisions, international treaties, and judicial decisions from India, the United States, the United Kingdom, and international forums. Secondary sources consist of authoritative textbooks, peer-reviewed journal articles, policy papers, and reports issued by institutions such as the World Intellectual Property Organization¹⁰ (WIPO) and national copyright offices.

A comparative approach is adopted where necessary to highlight divergent legal responses to common challenges, particularly in the areas of AI-generated works and fair use. The research is qualitative in nature and seeks to identify normative gaps, doctrinal inconsistencies, and policy shortcomings within existing copyright frameworks.

III. Historical Evolution of Copyright Law

The early regulation of creative works was primarily concerned with political control and economic monopoly rather than authors' rights.¹¹ In pre-modern England, licensing systems operated as tools of censorship, with publishers exercising near-total control over reproduction.

⁹ Tarleton Gillespie, *Custodians of the Internet* (Yale University Press 2012)

¹⁰ World Intellectual Property Organization (WIPO), *WIPO Technology Trends: Artificial Intelligence* (2019)

¹¹ Mark Rose, *Authors and Owners* (Harvard University Press 1993).

Authors were largely excluded from legal recognition, reflecting the absence of an individualistic conception of authorship.

The Statute of Anne, 1710, marked a paradigm shift by recognising authors as rights-holders and introducing limited-term protection. Importantly, the statute articulated a public-oriented rationale by linking copyright protection to the “encouragement of learning.”¹² This dual purpose—rewarding authors while serving public interest—became the philosophical foundation of modern copyright law.

With the expansion of international trade and cultural exchange, national copyright laws proved inadequate. The Berne Convention institutionalised minimum standards of protection while respecting national sovereignty, thereby laying the groundwork for international copyright governance. The later incorporation of copyright into the TRIPS Agreement signalled a shift towards stronger enforcement mechanisms and elevated copyright to the level of international economic regulation by strengthening global copyright protection and harmonisation.¹³

IV. Copyright Law in India

The Indian copyright framework reflects a conscious attempt to balance international obligations with domestic socio-economic realities. The Copyright Act, 1957 adopts a broad definition of protectable works while incorporating limitations and exceptions aimed at education, research, and public access.

Judicial interpretation has played a crucial role in shaping Indian copyright jurisprudence. Indian courts have consistently emphasised the idea-expression dichotomy¹⁴ and cautioned against monopolising ideas, themes, or historical facts. The 2012 amendment further reinforced authors’ moral rights and introduced progressive provisions enabling access to works by persons with disabilities, reflecting India’s constitutional commitment to social justice.

However, despite legislative advancements, enforcement challenges persist, particularly in the digital environment. The lack of specialised copyright courts and inconsistent intermediary liability standards continue to impede effective enforcement.

¹² Statute of Anne, 1710 (UK).

¹³ Berne Convention for the Protection of Literary and Artistic Works, 1886; Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994.

¹⁴ R.G.Anand v. Deluxe Films.

V. Contemporary Challenges to Copyright Law

5.1 Digital Piracy and Platform Economies

Digital piracy today operates within complex platform ecosystems involving hosting services, search engines, and social media platforms. While intermediaries facilitate access to information, they also inadvertently enable infringement. The tension between intermediary liability and freedom of expression has become a defining challenge in copyright enforcement.

5.2 Artificial Intelligence and the Crisis of Authorship

AI-generated works disrupt the human-centric foundation of copyright law. Traditional originality standards presume intellectual effort, skill, and judgment exercised by a natural person. When AI systems autonomously generate outputs, attributing authorship becomes conceptually problematic. Granting copyright to AI-generated works risks diluting human creativity, while denying protection may discourage investment in creative technologies.

The use of copyrighted works as training data further raises questions of mass reproduction, derivative use, and unjust enrichment. Existing exceptions such as fair use and text-and-data-mining provisions remain inadequate to address these large-scale practices.

5.3 Fair Use, Education, and Democratic Culture

Fair use serves as a constitutional safety valve within copyright law. In democratic societies, excessive copyright protection can suppress criticism, parody, and educational use. Digital platforms have amplified participatory culture, but legal uncertainty surrounding fair use often leads to over-enforcement and content takedowns.

5.4 Digital Identity, Deepfakes, and Personality Rights

The emergence of deepfakes and digital replicas poses threats not only to copyright but also to dignity, privacy, and autonomy. Existing copyright law is ill-equipped to address harms arising from the misuse of one's image or voice, necessitating an intersectional approach involving copyright, personality rights, and data protection law.

VI. Judicial Responses

Courts have increasingly adopted a purposive and technology-sensitive approach. In *Authors Guild v. Google*, the U.S. courts recognised that transformative technological uses can coexist

with copyright protection. Indian courts, while cautious, have acknowledged the need to prevent copyright from becoming a tool of suppression.

The contemporary challenges, judicial responses, and policy recommendations discussed above reflect the need for a flexible and technology-sensitive copyright regime capable of addressing emerging digital realities.¹⁵

The ongoing Getty Images v. Stability AI litigation symbolises a turning point, as courts are now confronted with the challenge of regulating AI systems trained on massive copyrighted datasets. Judicial outcomes in such cases are likely to shape future copyright policy globally.

VII. Policy Gaps and Recommendations

To future-proof copyright law, the following policy measures are essential:

1. **Human-Centric AI Regulation:** Copyright should prioritise human creative contribution while regulating AI outputs through sui generis or neighbouring rights.
2. **Statutory AI Training Exceptions:** Clearly defined text-and-data-mining exceptions with remuneration safeguards should be introduced.
3. **Technology-Neutral Drafting:** Copyright statutes must be drafted to remain adaptable across technological platforms.
4. **Strengthened Intermediary Accountability:** Balanced notice-and-takedown regimes should prevent abuse while protecting free expression.
5. **Integration with Human Rights Frameworks:** Copyright policy must align with constitutional values such as education, equality, and freedom of speech.

VIII. Conclusion

Copyright law stands at a critical juncture. While its historical foundations emphasise the promotion of learning and creativity, contemporary realities demand doctrinal flexibility and normative clarity. The challenges posed by digital technologies and artificial intelligence cannot be addressed through rigid legal categories rooted in the past. A recalibrated copyright framework—one that is technologically responsive, socially just, and creator-centric—is essential for ensuring that copyright continues to serve its foundational purpose in an increasingly digital world.

¹⁵ Pamela Samuelson, “Digital Copyright” (1999) 14 Berkeley Tech. L.J. 519.

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