
UNRAVELLING THE DIFFERENCES BETWEEN FAIR USE AND FAIR DEALING: LIMITATIONS TO COPYRIGHT

Nikhil Viswam Menon, Advocate, Kochi
Karun Roy, Advocate, Kochi
Gowri R Parvathy, Advocate, Kochi

ABSTRACT

“I have mentioned already the value and size of the industries which now believe they need extensive copyright protection to safeguard their income stream. They, quite properly, lobby for their interests. But who lobbies against them? There is no trade union of copyright infringers. Support for any limitation on copyright is easily portrayed as support for pirates the usual pejorative global expression for infringers. It is depicted as support for the parasites of industry. Is it surprising, then, that the scope of protection gets ever wider? I suggest that the drafting of the legislation bears all the hallmarks of a complacent certainty that wider copyright protection is morally and economically justified. But is it?”¹

Although I use fair use and fair dealing interchangeably, there is a stark difference between the two. The two doctrines do play the same role from the user’s perspective, they are two standalone doctrines used in different parts of the world. Through this paper, I aim to look mainly into the existing provisions on fair dealing under the Indian Copyright Act, 1957 along with international perspectives of fair use and fair dealing. Aside from that this paper also delves into other limitations on copyright such as statutory and compulsory licencing.

¹ Sir Hugh Laddie, Judge of the High Court of Justice, England, Copyright: Over-Strength, Overregulated, Over-Rated, Stephen Stewart Lecture before the IP Institute, (1995), 18 EUROPEAN INTELLECTUAL PROPERTY REVIEW 253 - 60 (1996).

INTRODUCTION

On the subject of "fair dealing" of works protected by copyright, the aforementioned remark reflects the views of the late Sir Hugh Laddie, a judge on the High Court of the United Kingdom. His somewhat audacious views above on "fair dealing" may anger individuals who regard copyright purely from a protectionist standpoint. He is known for his audacious thoughts on matters of intellectual property rights that frequently deviated from the ordinary and conventional. Which is better, "fair use" or "fair dealing"? While copyright is given as an exclusive right to creators of certain works, it is made possible for the general public to access such protected works by allowing for some fair use exceptions to copyright protection. Third parties' use of a work in accordance with these exceptions may be regarded as fair dealing with that work.

Fair use exceptions restrict the exclusive rights that copyright holders have to reproduce their works for a predetermined amount of time. It can also be seen as a part of user's rights on copyright. If the use of copyrighted material is deemed to be "fair" or falls under a list of exceptions and restrictions, it does not amount to an infringement. All of these methods enable users to copy a work that has been granted copyright in whole or in part, even when the owner of the copyright has not expressly authorised or disapproved the use of the work. However, the nature of the use and the source work are what ultimately determine what is fair or if a use complies with certain legally defined exceptions and limitations.

THE NEED FOR COPYRIGHT EXCEPTIONS

“The doctrine of fair use need not be so mysterious or dependent on intuitive judgments. Fair use should be perceived not as a disorderly basket of exceptions to the rules of copyright, nor as a departure from the principles governing that body of law, but rather as a rational, integral part of copyright, whose observance is necessary to achieve the objectives of that law”.² The doctrine of "fair dealing" was once a doctrine of equity that permitted the use of some copyright-eligible works, which would have otherwise been illegal and would have amounted to copyright infringement.

The major goal of this concept is to stop the creative development for which the law was intended from stagnating. Fair use shouldn't be seen as an occasionally permitted deviation

² Pierre N. Leval, "TOWARD A FAIR USE STANDARD," 103 HARV. L. REV. 1105 (1990).

from the ideals of the copyright regime but as a crucial component of the entire structure. Limited control over how their works is used is granted to content creators under fair dealing. In general, this effectively implies that the work can be criticised or reviewed. Users can quote from books. The use of art and media can expand upon pre-existing ideas and contribute to cultural enrichment. Data can be digitalized and indexed. Older file formats can be read by new software. People can exercise their right to free expression, and copyright rules can more logically adapt to new technology.

In essence, fair dealing or use is essential for the continuous operation of global culture, education, news, and study. Fair dealing or fair dealing regulations have also been adopted in most nations. Globally speaking, fair use refers to the freedom for academics, researchers, and students to study and distribute information without fear of punishment or repercussions. Simply put, the type of use must further the purpose of promoting constructive thought and public education without unduly reducing the incentives for copyright.

INTERNATIONAL PERSPECTIVE: THE THREE STEP TEST

The three-step test was first enacted in the 1967 revision of the Berne Convention. The three-step test is essentially a guiding principle which basically puts the onus on the state to make exception to copyrights by following the three-step test. The three-step test in Berne convention is as follows;

"It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works [a] in certain special cases, provided that

[b] such reproduction does not conflict with a normal exploitation of the work and

[c] does not unreasonably prejudice the legitimate interests of the author."³

Versions of this test is also found in the TRIPS Agreement⁴ and the WCT⁵. Now, it is to be noted that the Berne Convention three-step test only applies to exceptions and limitations to the right of reproduction, while the three-step test contained in Article 13 of the TRIPS Agreement applies to exceptions and limitations to any of the "exclusive rights" associated with copyright.

³ Art. 9(3), Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979).

⁴ Art. 13, Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994.

⁵ Art. 10, WIPO Copyright Treaty, December 20, 1996.

The three-step test can also be interpreted to mean that limitations and exceptions that pass the test should not be excessively wide, should not deprive right holders of a substantial source of income, and do not harm right of holders disproportionately. The three-step test under TRIPS has effectively become one of the reasons for the signatories to provide for user's right. Another flipside to this aspect is that the three-step test can also be seen as a means to limit the scope of the fair dealing exceptions. This opinion is more apt with respect to the individual centric nature of intellectual property rights.

FAIR USE vs. FAIR DEALING

The doctrine of fair use is prevalent in the United States of America. According to me, the doctrine provided wide users rights as the decision is made on a case-to-case basis. It gave the judiciary a wider field to work on the ambit of fair use. Although today the fair use doctrine is codified⁶, the judiciary still gives wide interpretations on the issue. In the United States, fair use is built on Justice Story's 1841 ruling in the case of *Folsom vs. Marsh*.⁷ This case essentially set the tone for fair use interpretations. Here, in order to create two-volume work of his own, writer Reverend Charles Upham copied 353 pages from the plaintiff's 12-volume biography of George Washington. Bela Marsh published the piece. The original collection of letters was published in a twelve-volume edition by publisher Charles Folsom of Folsom, Wells and Thurston, who later filed a lawsuit for "piracy of the copyright." The defendants claimed that they are using it fairly as one of their defences. The court in this interesting judgment stated that there exists fair use of work but rejected the same in the present case. J. Story famously stated in this judgement that;

*“Look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits or supersede the objects, of the original work.”*⁸

The court in this instance identified these essential ingredients for fair use which later on came to be codified as the Fair use doctrine. Today the fair use doctrine can be seen in the United States Copyright Act, 1976 wherein the fair use of a copyrighted work, including such use through reproduction in phone records or copies for purposes like criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is

⁶ S. 107, Copyright Act of 1976.

⁷ *Folsom vs. Marsh*, 9. F.Cas. 342.

⁸ *Ibid*.

not considered to be a violation of copyright. Now this use is subject to certain factors. The nature of the copyrighted work, the purpose and character of the use, including whether it is for profit or non-profit educational purposes, the quantity and quality of the portion used in relation to the copyrighted work as a whole, and the impact of the use on the potential market or value of the copyrighted work. This is known as the four-factor test. To determine whether a use is or is not a fair use, always keep in mind that you need to apply all four factors.⁹

In common law countries including Great Britain, Canada, Australia, India, and New Zealand, copyright regulations provide an exception for fair dealing from copyright infringement. According to the copyright laws in these countries, fair dealing of a copyrighted work does not constitute infringement if it is expressly permitted. This essentially provides for exhaustive list of exceptions and according to me this is more restrictive than Fair use. Essentially it means that if a work is copied for a purpose other than one that is permitted by law, it cannot be considered fair dealing, regardless of the copier's initial intent.

It can be understood that the courts have either failed to define fair dealing or refrained from doing so due to the repercussions. Yet the courts have identified certain ingredients essential for a work to be categorised as Fair dealing. *Hubbard v. Vosper*¹⁰ is one such landmark judgement wherein the court extensively discussed fair dealing. The Church of Scientology filed a lawsuit against Cyril Vosper, a former member, for copyright infringement following the release of a book called *The Mind Benders* that criticised Scientology. The Church of Scientology claimed that the publications contained information that was stolen from L. Ron Hubbard's writings and documents, as well as secret information about Scientology courses. The Court of Appeal ruled unanimously in Vosper's favour after he successfully refuted the argument under the fair dealing theory. The scope and content of fair dealing was discussed in Lord Denning's ruling. Lord Denning provided a legal test for deciding what would constitute a legitimate use of the theory of fair dealing.

“It is impossible to define what is ‘fair dealing.’ It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey

⁹<https://copyright.columbia.edu/basics/fair-use.html#:~:text=To%20determine%20whether%20a%20use,to%20apply%20all%20four%20factors> (Accessed on 30 October 2022).

¹⁰ *Hubbard v. Vosper*, [1972] 2 Q.B. 84.

the same information as the author, for a rival purpose, that may be unfair. Next, you must consider the proportions. To take long extracts and attach short comments may be unfair. But short extracts and long comments may be fair. Other considerations may come to mind also. But, after all is said and done, it must be a matter of impression. As with fair comment in the law of libel, so with fair dealing in the law of copyright. The tribunal of fact must decide. In the present case, there is material on which the tribunal of fact could find this to be fair dealing.”¹¹

The court in this decision effectively stated that the degree of extracts, the use for which it was copied and the proportion of the use with respect to the original work must be looked into for applying the fair dealing defence. Finally, the court said that, at the end of it all, it is up to the impression created based on the facts of the case. This case has been referred to by the Indian Courts to understand fair dealing.

INDIA AND FAIR DEALING

Each nation has its own rules that govern how the exception of fair dealing is applied and understood. In India, Section 52¹² of the Copyright Act, 1957 lists common exceptions or defences to copyright infringement. The fair dealing clause stipulates that in order for a transaction to be considered "fair," its goals must be consistent with those that have been statutorily established. The Indian Copyright Act, 1957 replaced the law prevailing before its enforcement, namely the Copyright Act, 1914. The current statute went through several amendments. The various amendments to the Copyright Act also had an effect on Section 52 of the Indian Act. The 1983 amendment increased the scope of Section 52 by amending it to 'private use including research. The 1994 and 1999 amendments brought in exceptions applicable to computer programmes. The 2012 amendment further increased the scope by amending Section 52 to 'private or personal use including research'¹³. Along with that it also brought in exceptions for the disabled as well as licencing of copyrighted works for the disabled.

The exception of fair dealing per se has not been defined in the Act but, simply put, it is mostly decided on the basis of facts and circumstances of a case. It justifies supposedly unpermitted use of a copyrighted work. The essence of fair dealing can be found in the case of *Wiley Eastern*

¹¹ Hubbard v. Vosper, [1972] 2 Q.B. 84 at para 94.

¹² Indian Copyright Act, 1957.

¹³ S.52, Indian Copyright Act, 1957.

*Ltd. v. IIM*¹⁴, the purpose of Section 52 was outlined as being to defend the freedom of expression guaranteed by Article 19 (1) of the Indian Constitution through research, private study, criticism, or reporting of current events. Yet there is no general rule or set of regulations in India that specify how much work can be appropriated without the creator's consent and yet fall under the exception of fair dealing. However, there are several rules on which the court must base its decision, with the public interest being one of the most important factors. The decision in this case is primarily left to the Court's discretion. The scope of fair dealing has been discussed and set out through several cases. The most significant of them being *Civic Chandran v. Ammini Amma*.¹⁵ In this case, the drama 'Ningalenne Communistakki' was written by playwright Thoppil Bhasi in 1952. Since then, the play has been performed over 10,000 times and has received a great deal of acclaim. Defendant No. 1 authored a play titled 'Ningal Are Communistakki' in 1995. This drama was published in the Malayalam edition of India Today and was designed as a counter-drama to the drama authored by Thoppil Bhasi. The plaintiffs launched a lawsuit against the defendants on the grounds that the counter-drama had violated their copyright for the drama for which the defendants claimed it being fair dealing. In the instant case, the Court further set out that three factors are relevant for deciding whether the plaintiffs' rights had been violated by referring to the *Hubbard v. Vosper* judgement:

- Quantum and value of the matter taken in relation to the comment or criticism;
- The purpose for which it was taken;
- The likelihood of competition between the two.

The Court came to the decision that the scenes and people in the drama were not taken from the counter play in order to substantially recreate the drama after examining both scenes in turn. The Court also pointed out that the intention wasn't to misappropriate the drama's theme or writing style nor was it trying to mimic the drama. The counter-main drama's goal was to critique the philosophy that was portrayed in the play. The Court determined that there was sufficient evidence in the counter-drama to demonstrate that the Defendant had contributed his own time and effort. Furthermore, the court found that there was no likelihood of competition between the two as well. Finally, the court stated that considerable copying of copyrighted work is permitted for the sake of public interest. Thus, the suit was dismissed as such.

¹⁴ *Wiley Eastern Ltd. v. IIM*, 61 (1996) DLT 281.

¹⁵ *Civic Chandran v. Ammini Amma*, 16 PTC 329 (Kerala).

This is a landmark case which dealt with the fair dealing exception for review and criticism. Section 52 lays down an exhaustive list of exceptions, all of which does not have jurisprudence yet. The existing jurisprudence in fair dealing, for the sake of understanding, will be discussed in this paper by categorising the cases with respect to the provisions of Section 52 into education and entertainment. Stark difference can be observed in how the Indian Courts approach fair dealing in cases related to education and in other categories.

A. Education:

To adjust the contending interests of the general public and that of the copyright holders, certain exemptions are given in the Copyright Act for the general public as a rule. The Copyright Act of India additionally unmistakably accommodates exceptions to this exclusive option to adjust the two contending interests. But it has been noted that when the court deals with cases which has education as a part of the issue, the court has successfully upheld user's rights over copyright. This can be seen as an effort by the court to foster development by not putting restraints on imparting education. It may be due to the inherent fact that judges are well aware of the conditions in India as a developing nation and how important education is. To put undue restraints on the domain of education through copyright will spell doom for the country's future. With respect to education, the major provisions that come into play are section 52(1)a, 52(1)h and 52(1)I of the Indian Copyright Act.

The court used the transformative work test to evaluate whether there was a fair use of the copyrighted work in *The Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House*¹⁶, which involved a clear discussion of the law on copyright infringement. The plaintiff issued textbooks for class XI while adhering to the curriculum laid out by the Jammu and Kashmir State Board of School Education. A contract between the plaintiff and the board resulted in the plaintiff becoming the owner of the copyright to the aforementioned textbooks. The lawsuit provided solutions to the exercises' questions in their textbooks but did not outline a thorough, step-by-step process for doing so. The defendants, Narendra Publishing House, and others created how-to manuals that included the techniques for resolving those issues on their own. The plaintiff requested a court order prohibiting the defendants from engaging in such conduct on the grounds that this amounted to the defendant substantially copying questions. The question at hand was whether the exercises' questions,

¹⁶ *The Chancellor Masters and Scholars of the University of Oxford v. Narendra Publishing House*, 2008 (38) PTC 385.

which the defendants had copied, prima facie merited copyright protection and, if so, whether the "fair dealing" defence applied. The High Court considered whether the "fair dealing" defence was appropriate in the current instance. It's interesting to note that the Court decided whether Section 52, which encompasses the "fair dealing" theory, applied in the current case by using the balancing test under the "fair use" doctrine under US copyright law. It's also intriguing to observe how the High Court equated the "fair dealing" and "fair use" doctrines. The Court's strategy should be viewed in the context of the conceptual similarity between the two doctrines. The later doctrine's flexibility is the sole area where there is a difference. The four-factor test for "fair use" was adopted in this case which helped the court conclude that the defendants' guide books which provided the step-by-step process of reasoning is for the purpose of catering to the needs of weak students. Thus, the defendants' work was held to be "transformative" in character. Furthermore, the Court determined that "review" under Section 52 (1) (a) (ii) of the Copyright Act resulted from the defendants' reviewing the problems and helping the pupils solve them by outlining "step by step" rationale. According to the Court, a review of a mathematical work could entail a treatise on the subject or a re-examination of the work. As a result, it was determined that the defendants' work was covered by Section 52 of the Act's "fair dealing" clause. Therefore, the adoption of the fair use exception in this instance aided the judiciary in giving Section 52 of the Copyright Act a liberal interpretation, even though it expressly states fair dealing.

When we discuss the fair dealing doctrine, it would be amiss not to discuss the DU photocopy case. In *The Chancellor, Masters & Scholars of University of Oxford & Ors v. Rameshwari Photocopy Services & Anr*¹⁷, the unauthorised use and reproduction of Oxford University Press publications to produce and market "course packs," which were excerpts of study materials for students' reference, led Oxford University Press, Cambridge University Press, and Taylor and Francis to file a lawsuit for copyright infringement against Rameshwari Photocopy Services and Delhi University in 2012. The Delhi High Court's Single Bench issued an interim injunction prohibiting the RPS and DU from creating, distributing, and disseminating compilations of these course packs. The defendants then refuted the lawsuit by saying, among other things, that their activities fell under the Act's sections 52(1)(i), 52(1)(a), and 52(1)(h) and so did not constitute copyright infringement. The single bench ruled in favour of the respondents. According to the Court, the presence of copyright in literary works does not grant writers entire

¹⁷ *The Chancellor, Masters & Scholars of University of Oxford & Ors v. Rameshwari Photocopy Services & Anr*, 235 (2016) DLT 409.

ownership of their works; rather, it is a privilege to stimulate advancement in the arts for the prosperity of the public mind. Oxford appealed the Single Bench's ruling to the Division Bench. This led to the division bench decision of 2016.

The issue to be decided by the division bench was whether the preparation of 'course packs' i.e., compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions constitute infringement of copyright in those books under the Copyright Act, 1957. On December 9, 2016, the Division Bench, made up of Justices Pradeep Nandrajog and Yogesh Khanna, decided the appeal, refusing to grant an interim injunction to the plaintiff-publishers and vehemently ruling that creating and giving out course materials to students does not violate their copyright as long as doing so was justified by the need for educational instruction (regardless of the quantity photocopied). The Division Bench ruled that the preparation of 'course packs' i.e. compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions does not constitute infringement of copyright in those books under the Copyright Act, 1957, as long as the inclusion of the works photocopied was justified by the purpose of educational instruction. It was decided that such photocopying does not constitute copyright infringement under Section 52(1)(i) of the Act because it qualifies as replication of the work by a teacher during instruction. In essence, it was decided that educational institutions did not need a licence or permission from the publishers in order to create and give course packs to students as long as the copyrighted materials inside of them are required for the teacher to use them as instructional materials with the class. As a result, it remitted the issue to the single bench for a fact-specific decision on whether the copyrighted materials present in the relevant course packs were required for the teacher's use of the class for instructional purposes. The course packets could continue to be created and sent to the students up until that point.

It is interesting to note the courts observations. The court began by pointing out that only the general concept of fair use may be read into Section 52(1)(i) because it lacks an express fair use limitation. It disallowed the application of the four-factor test for determining fair use to this clause. It was laudably emphasised that the sole factor to be considered in determining whether a use is fair under this provision is its intended use, which in this case is education, rather than its quantity or extent. Additionally, it ruled that the fair dealing criterion could not be incorporated into any of Section 52(1) other where it has been mandated in. It also held that

the fair dealing standard has been prescribed only in clause (a) of Section 52(1) and thus cannot be imported into its other clauses including clause (i). The interpretation of Section 52(1)(i), which was the case's central contention, was then addressed by the court. The General Clauses Act, 1897¹⁸ was cited in order to support the conclusion that the phrase "reproduction," which means "creating a copy of," also includes its plural, i.e., producing more than one copy of the original or photocopying. It further ruled that "teacher" and "student" include "teachers" and "students," concluding that this clause contemplates producing multiple copies of a work by teachers or pupils. Furthermore, the court also emphasised that there was no market effect due to the fact that the books were easily available for reference in the library. The court further dealt with the argument of the publishers that reproduction of works under Section 52(1)(i) can be made only by a teacher or a pupil and not by an intermediary i.e., the photocopier. It rejected this argument by rightly observing that "*common sense tells us that neither the teacher nor the pupils are expected to purchase photocopiers and photocopy the literary work to be used during course of instruction in the class room*".¹⁹ Additionally, it stated that the photocopier in this instance was not making any additional money above the profit it would normally get from simply photocopying documents. As a result, it determined that the argument against using an agency was immaterial. Thus, the Division Bench dismissed the appeal after finding that Section 52(1)(i) permits the unauthorised preparation and distribution of course materials to students as long as the works contained therein are required to carry out the course materials' intended function, namely educational instruction.

B. Entertainment:

From the offset, it is important to state that the jurisprudence of fair dealing with respect to education and with respect to entertainment matters like cinematography and music are poles apart. We can see that the courts have always restricted itself from broad interpretations in case of entertainment. Moreover, the economic aspect and the market effect are considered at in all cases explicitly. It can also be noted that the court also looks strictly into the quantum of taking of copyrighted material.

In *Supercassette Industries v. Nirulas Corner House (P) Ltd*²⁰, the plaintiff claimed copyright infringement because a few audio clips of songs for which they had copyright were being

¹⁸ Section 13(2), The General Clauses Act, 1897.

¹⁹ The Chancellor, Masters & Scholars of University of Oxford & Ors v. Rameshwari Photocopy Services & Anr, 235 (2016) DLT 409 at para 60.

²⁰ *Supercassette Industries v. Nirulas Corner House (P) Ltd*, 2008 (37) PTC 237 (Del.).

broadcast on the television in a closed-off area of the defendant's hotel. the Court, while rejecting the defence of fair dealing in terms of Section 52(1)(k) held that the two categories' 'hotels' and 'similar commercial establishment' gives a clue to Parliamentary intention. it excludes the operation of such categories of establishments from the benefit of what are obviously deemed not infringements and that such provisions should receive a restricted interpretation, having regard to the nature of the expressions used. These clauses were deemed to be indicators of the legislative intent to classify the use of televisions and sound recordings in hotels as public communications rather than for private purposes, even when they were being played in an enclosed hotel room. As a result, the Court decided against interpreting the statute in a way that would serve what it deemed to be the legislative goal.

The Delhi High Court in *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*²¹ noted via a table that the purported uses of the copyrighted works and found that it did not come under any of the exceptions listed in S.52(1)(a)(ii), S.52(1)(b)(ii), or S.39(b) of the Copyright Act. The relevance of the copyrighted musical works used by Hamar TV and Focus TV and the types of programmes they aired were sufficiently dissimilar. The substantiality issue and fair use for the purpose of critiquing, reviewing, or reporting current events were the two key factors that supported the decision. The court rejected the defendants' prior argument that a single 40-second broadcast cannot be regarded as "substantial takings" since it found that the qualitative test is as important to the quantitative test. Thus, rather than the aggregate number, the essence of the copyrighted work is crucial. In addition, it was discovered that although it is impossible to define fair dealing precisely, it may be determined by looking at the facts, the degree, and the total impact. Moreover, the court came to the conclusion that factors such as the intentions of the alleged infringement, the scope, and the purpose of the use all affect whether the broadcast was required to cover current events. This test was clearly failed by the defendants. Furthermore, it is illegal to violate copyright while disguising one's criticism, though judges would typically take a more lenient stance when figuring out the suspected infringer's motivations. This case essentially set out the principle of substantial takings.

LICENCING OF COPYRIGHT

Chapter IV of the Copyright Act discusses licensing of copyrighted works. The various licences can be categorised as:

²¹ *Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd.*, 2011 (45) PTC 70 (Del.).

1. Compulsory licenses for works withheld from the public²²: This clause states that anybody may apply to the copyright board for the issuance of a mandatory permission to publish a work that the copyright owner has kept from the public. However, the complainant should have first asked the copyright owner for permission to republish or perform the work before turning to the Copyright Board, and the owner should not have acted properly when the complainant's request was turned down.
2. Compulsory licenses for unpublished works of unknown authors²³: Any person may apply to the Copyright Board for a licence to publish or communicate such works or translations thereof to the public in the case of unpublished works by unknown or deceased writers. However, the applicant must legally advertise his proposal to do so in a major publication before filing such an application.
3. Statutory licenses for Cover Version²⁴: The provision of law that permits for statutory licenses for creating cover versions of any sound recordings is outlined in Section 31C of the Copyright Act. This clause expressly calls on the Copyright Board to set the minimal royalty that must be paid for the production of such a version.
4. Statutory licenses for Broadcasting literary, musical works and sound recordings²⁵: This license is issued by the Copyright Board in favour of any broadcasting organization desirous of broadcasting to the public any literary, musical work or sound recording which is already published by the copyright holder. Although the Copyright Board is authorized to determine the royalties payable under this license, the Board is yet to convene and determine these royalties.
5. License to produce and publish translations²⁶: After paying a certain royalty, the applicant is granted permission by the Copyright Board to translate and publish a literary or theatrical work after seven years of the original work's publication. It is important to note that cinematographic films and sound recordings are not covered by this agreement.
6. License to reproduce and publish works for limited purposes²⁷: If the editions of such literary, scientific, or creative works are not made available in India, the Copyright Board may grant licences to publish a work there. In such cases, the Copyright Board

²² S.31, Indian Copyright Act, 1957.

²³ S.31A, Indian Copyright Act, 1957.

²⁴ S.31C, Indian Copyright Act, 1957.

²⁵ S.31D, Indian Copyright Act, 1957.

²⁶ S.32, Indian Copyright Act, 1957.

²⁷ S.32A, Indian Copyright Act, 1957.

may grant the licence after assessing the royalty that must be paid to the copyright holder.

CONCLUSION: EXCEPTION TO COPYRIGHTS AND DEVELOPMENT

The foundation of copyright law is the encouragement of creation through adequate protection. On the other hand, a number of copyright law theories and exemptions—whether judicially or statutorily developed—recognize the equally urgent necessity to support creative work. They make sure that the rights provided by copyright do not prevent the spread of knowledge. One such exception is the "fair dealing" doctrine. When combined with a brief copyright term, it ensures both a vibrant public domain in speech and a public pool of ideas and information from which one can draw and replenish. Therefore, it is important to balance the exclusive rights granted to the copyright holder with the frequently conflicting objective of enhancing the public domain when interpreting "fair dealing" provisions.

Therefore, Section 52 must be given a liberal interpretation that is consistent with copyright law's goals. The concepts of other jurisprudence must be used because Section 52 merely specifies the broad heads. The adoption of the "fair use" doctrine's guiding principles is a positive development given that it is a more open-ended doctrine. But in order to add assurance, this strategy needs supporting components like guidelines. Otherwise, this strategy can prove counterproductive because uncertainty can impede creativity, which is one of the main goals of copyright legislation. Furthermore, the Indian statute has ushered in an era for access to copyrighted material for the disabled, not specifically limiting it to the visually impaired. The absence of a definition on what is fair dealing is an aid to the court in my humble opinion. This stands true to my observation regarding the Courts interpretations on matters of education. This does not mean in any way that the Courts impede the rights of the copyright holders. The strict interpretational approach of the court in matters other than education is evidence of this. The courts have adhered to stricter interpretations with respect to musical works, cinematography and even books on which there is commercial value.

Unquestionably, the fair dealing doctrine is essential to development. Its place in the wider framework of copyright law is still unclear, though.