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COMPARATIVE INSIGHTS INTO COPYRIGHT DISCLAIMERS OF THE UNITED STATES AND INDIA

*Mr. Sayed Qudrat Hashimy**

ABSTRACT

This study delves into the realm of copyright disclaimers, serving as declarations to apprise users of the protected nature of reproduced content and to assert the copyright owner's rights. Focusing on the legal frameworks outlined in Section 107 of the US Copyright Act, 1976, and Section 52 of the Indian Copyright Act, 1957, the research investigates various types of copyright disclaimers, their prerequisites, and the associated legal landscape. Employing the doctrinal method of research, the study extensively examines fair use and fair dealing doctrines within the context of copyright laws in the United States and India. By utilizing primary and secondary sources, the paper analyses and compares legal provisions and interpretations of these doctrines, shedding light on their scope, limitations, and practical applications. A key emphasis is placed on the intricacies of writing a copyright disclaimer, and a sample disclaimer is included. Understanding copyright disclaimers is deemed crucial for individuals and organizations aiming to honour intellectual property rights while navigating the intricate web of copyright law. The research contributes valuable insights into how fair use and fair dealing are construed and applied in the United States and India, unravelling the legal framework surrounding the use of copyrighted materials in these jurisdictions. By exploring the similarities and differences between the two doctrines, this study provides a nuanced understanding of the legal landscape of copyright law in both jurisdictions. Its findings serve as a valuable resource for scholars, practitioners, and policymakers engaged in the

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field of intellectual property rights, offering comprehensive information on the interpretation and implementation of fair use and fair dealing in the United States and India.

Keywords: *Disclaimer, Copyright Protection, Copyright infringement, Fair Use, Fair Deal, Copyright, unauthorised use of Copyrighted Work.*

Paper Code: RP-VBCL-11-2024

INTRODUCTION

Copyright is a legal framework that provides creators, such as writers, musicians, artists, and others, with protection for their original works. The Copyright Act grants exclusive rights to creators, allowing them to control certain acts related to their works, including reproduction, distribution, and public performance.¹ These rights extend to various forms of creative expression, such as literary, dramatic, musical, and artistic works, as well as cinematograph films, sound recordings, and computer programs.

The purpose of copyright is to safeguard the rights of authors and creators, preventing unauthorized reproduction or exploitation of their works by others. However, copyright law also includes limitations on these exclusive rights. One such limitation is the concept of fair dealing, which allows for certain uses of copyrighted works without the author's permission.

A copyright disclaimer serves as a declaration made by an individual who uses a copyrighted work, specifically in the form of reproduction. By including a copyright disclaimer, the person affirms that the reproduction is legally protected under Section 107 of the United States Copyright Act of 1976² and Section 52 of the Indian Copyright Act of 1957.³ The disclaimer also provides relevant details about the source or copyrighted work from which the content is derived. The primary objective of incorporating a copyright disclaimer into a

¹Upendra Baxi, *Copyright Law and Justice in India*, 28 J. INDIAN LAW INST. 497 (1986).

²U.S. Copyright Office Fair Use Index, <https://www.copyright.gov/fair-use/> (last visited May 16, 2023).

³Copyright Office: Exceptions To Infringement Under Copyright Act, 1957, <https://copyright.gov.in/Exceptions.aspx> (last visited May 16, 2023).



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reproduction is to communicate to the readers or viewers that the reproduction does not violate the copyright of the original work. It serves as a notice that the individual using the copyrighted material has taken appropriate measures to ensure their usage is within the bounds of the law. By including a copyright disclaimer, the person acknowledges their responsibility to respect copyright laws and intends to prevent any potential infringement. This disclaimer helps to clarify that the reproduced content is being used in a lawful manner, either through obtaining proper permissions, utilizing fair use provisions, or other legally acceptable means. The inclusion of a copyright disclaimer provides transparency and protection for both the person using the copyrighted work and the copyright owner. It demonstrates an awareness of intellectual property rights and an intention to comply with legal requirements. By making this declaration, individuals aim to avoid any confusion or misinterpretation regarding the lawful usage of the reproduced material. It is important to note that while a copyright disclaimer can provide a level of protection and assurance, it does not absolve individuals from potential copyright infringement claims. It is advisable to seek legal advice or obtain proper permissions when using copyrighted material to ensure compliance with copyright laws and regulations.

COPYRIGHT DISCLAIMER AND OWNERSHIP

A copyright disclaimer plays a crucial role in protecting the ownership rights of creators for their original content. It serves as a necessary measure to safeguard various forms of creative work, including apps, art, blog posts, branding, choreography, designs, photographs, poems, song lyrics, videos, and writings. By asserting copyright ownership through a disclaimer, creators can establish their rights and provide notice to others, ensuring their works are respected and used appropriately.

A copyright disclaimer is a statement or notice that is added to explain the copyright status of a specific work or to provide information about the rights and restrictions of the copyright holder. It is frequently used to convey that the work's copyright holder has specific rights reserved over it and to let others know about the permissible and prohibited uses of copyrighted content. A copyright disclaimer is used to protect the rights of the author and



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deter unlawful use or infringement of their work. It acts as a warning to the general public that the work is covered by copyright laws and that authorisation may be needed to use it in specific contexts.

A copyright disclaimer is a statement that asserts ownership over original content and informs others about the rights and restrictions associated with that content. It serves as a notice to the public that the creator or copyright holder has certain exclusive rights over the work and that unauthorised use may infringe upon those rights.

Copyright protections automatically apply to original work as soon as it is created and fixed in a tangible form, such as writing it down or saving it on a computer. In many countries, including the United States, and India, the author needs to register a work or include a copyright symbol (©) to have copyright protection. However, it is generally recommended to include a copyright notice or disclaimer to clarify to others that the work is protected by copyright. By including a copyright disclaimer that can provide evidence of ownership of the work and potentially discourage infringement. It helps establish a record of rights and can be useful in legal proceedings if someone infringes upon a copyrighted work. It also informs others about the permissions or restrictions associated with the work, such as whether it can be used, copied, distributed, or adapted without consent. The duration of copyright protection varies depending on the applicable copyright laws and jurisdiction. In many countries, including the United States, copyright protection generally lasts for the author's life plus an additional period, typically 70 years after the author's death,⁴ whereas in India, in case of original literary, dramatic, musical, and artistic works the time period of copyright in India is 60 years in addition to the author's lifespan. Where there are multiple authors, the term is 60 years post the death of the last author.⁵ Nevertheless, it is significant to note that copyright laws can differ between countries, depending on the rules and jurisdiction, to understand the duration of copyright protection for your work. After the copyright term expires, the work

⁴Duration of Copyrights (Bitlaw), <https://www.bitlaw.com/copyright/duration.html> (last visited May 16, 2023).

⁵Copyright Protection in India- Overview and Recent Developments, https://intellectual-property-helpdesk.ec.europa.eu/news-events/news/copyright-protection-india-overview-and-recent-developments-2022-03-02_en (last visited May 16, 2023).



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typically enters the public domain, where it can be used by anyone without permission or restriction. This article covers two primary types of copyright disclaimers:

a) *Original work copyright disclaimer*

This disclaimer establishes the ownership of original content across different platforms, including blogs, websites, images, videos, music, and social media, to protect an original work from theft and unauthorised usage.

b) *Copyright disclaimer under Faire Use or Fair Deal*

This disclaimer is commonly seen in content, particularly YouTube videos, that incorporates copyrighted material belonging to others. This statement, "fair use" or "fair deal", aims to shield you from potential copyright infringement claims. It recognises that particular material falls within the permissible limits outlined in fair use or fair dealing provisions.

Copyright law is intricate, and the interpretation of fair use depends on various factors. To ensure adherence to copyright regulations and to address specific concerns, it is advisable to seek legal counsel from professionals well-versed in copyright law.

COPYRIGHT DISCLAIMERS AND FAIR USE

A copyright disclaimer can be used to indicate the application of fair use when using copyrighted materials. Fair use is a broad concept that involves using or reproducing copyrighted materials for transformative purposes, including commentary, criticism, and parody.

A. *Commentary and criticism*

Commentary and criticism allow for the replication of portions of copyrighted works to provide comments or critiques. For example, quoting song lyrics in a music review, summarising research for a paper, or using excerpts from news articles for educational purposes. Reproducing materials for evidence in a court case is also allowed under fair use. By reproducing materials in these contexts, copyright laws aim to enhance the value, reliability, and integrity of critical reviews and commentary. Including a fair use disclaimer can help protect against unwarranted copyright claims on your commentary or criticism.



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B. Parody

Parody,⁶ another form of fair use, permits the mimicry, humorous treatment, or satirical representation of copyrighted works.

Parody often serves as a criticism or commentary on the original work, the artist who created it, or something otherwise connected to the work. In the United States, parody is protected by the First Amendment as a form of expression. However, since parodies rely heavily on the original work, parodists rely on the fair use exception to combat claims of copyright infringement. The fair use exception is governed by the factors enumerated in section 107 of the Copyright Act:

- i. *the purpose and character of the use;*
- ii. *the nature of the original work;*
- iii. *the amount and substantiality of the original work used; and*
- iv. *the effect on the market value of the original work.*

Generally, courts are more likely to find that a parody qualifies as fair use if its purpose is to serve as a social commentary and not for purely commercial gain. Parodies often evoke the feelings and themes of the original work and often incorporate or reference parts of it in more expansive ways than commentary or criticism. A fair use or disclaimer is beneficial in preventing unnecessary copyright strikes on your parody work. The protection of original work under copyright law exists automatically, even without a disclaimer. However, not having a copyright disclaimer may make it more challenging to prove ownership in court if someone misuses the said work. Additionally, the absence of a disclaimer may lead to misunderstandings, with others assuming they can freely reproduce, share, or use a work when that may not be the case.

Posting a copyright disclaimer is a simple and effective way to protect an original literary and artistic work. It provides clarity and can help prevent unauthorised use. While registering your copyright offers additional legal advantages when pursuing infringement cases, a copyright disclaimer is often sufficient for most situations.

⁶Parody: Fair Use Or Copyright Infringement, FINDLAW, <https://corporate.findlaw.com/intellectual-property/parody-fair-use-or-copyright-infringement.html> (last visited May 16, 2023).



A copyright disclaimer typically comprises four main elements:

- The copyright symbol(©) is used to indicate the existence of copyright protection over the work.
- This component specifies the year in which the work was first published or made available to the public.
- It is important to include the name of the copyright owner, which can be an individual or an organisation, to clearly establish the ownership of the copyrighted material.
- This statement explicitly asserts the copyright owner's rights and may include phrases such as **"All rights reserved"** or **"No part of this work may be reproduced, distributed, or used without permission."**

When creating a copyright disclaimer, the author/ creator of a work has the flexibility to include some or all of these components, depending on preferences and the specific requirements of the work. Understanding these components thoroughly ensures a comprehensive understanding of the key elements to be considered in a copyright disclaimer.

a) *Copyright Symbol*

The use of the copyright symbol, represented by the © sign, in a copyright disclaimer is indeed important as it signifies that a work is protected by copyright. It consists of a letter "C" enclosed in a circle i.e. ©, (for instance, see the figure -1). Alternatively, the word "copyright" or the abbreviation "Copr" instead of the symbol itself. While the copyright symbol is not legally required in the United States and India, it is recognised and commonly used internationally. In some countries, the absence of a symbol, word, or abbreviation may affect the recognition of your copyright.

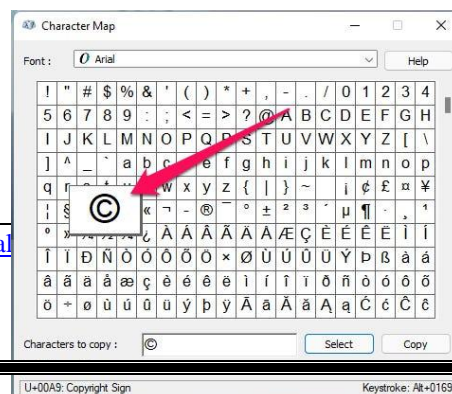
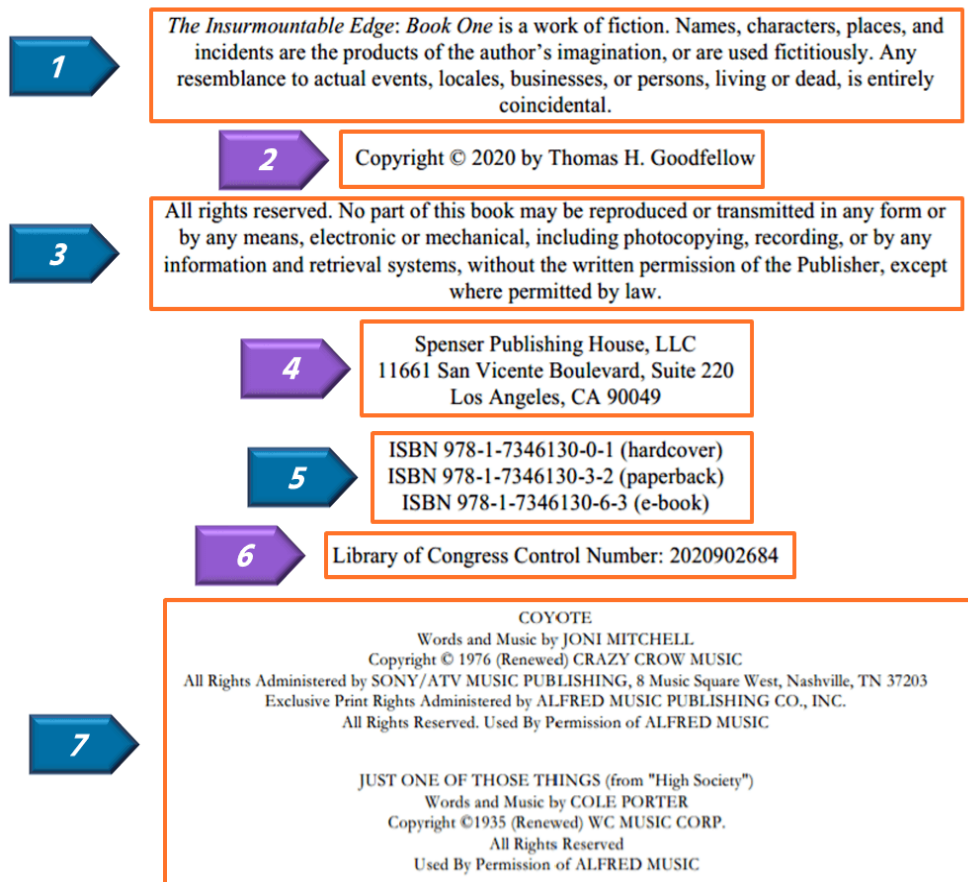




Figure 1

b) *The Year of Publication*

The inclusion of the year of publication in your copyright disclaimer is indeed an important requirement. It signifies the year in which made the content available to the public, even if it differs from the year of its creation. In copyright disclaimers, specifying the exact month or day of publication is unnecessary. Simply indicating the year of publication is sufficient to fulfil this component of the disclaimer. The following example has been taken from the [Creative Law Center](https://creativelawcenter.com/copyright-page/).⁷



⁷8 Parts of a Perfect Copyright Page, Creative Law Center (2020), <https://creativelawcenter.com/copyright-page/> (last visited May 16, 2023).
Image by petershreeber.media



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Figure II

c) *The Name of the Copyright Owner*

It is essential to clearly identify the owner of the work, whether it is an individual or a company.

By including the name of the copyright owner in your disclaimer, you establish clear ownership and provide transparency regarding the entity or individual who holds the rights to the copyrighted work. This ensures that others can easily identify and acknowledge the rightful copyright holder.

d) *A Statement Reserving Your Right*

The statement reserving your rights is an optional component of a copyright disclaimer. It allows the author to explicitly declare the extent of the rights that are asserted over original content. Here are the three common variations of this statement:

i. **All rights reserved**

This statement **"All rights reserved"** indicates that you are reserving all rights to your content, and others should seek permission from you before using, reproducing, or distributing it. **"All Rights Reserved"** at the end of a copyright disclaimer signifies that the author reserves all rights over a created work and that others must seek permission before using, reproducing, or distributing it. To maintain the proper structure, it is advised to place the **"All Rights Reserved"** statement after the copyright symbol, the date of publication, and the name of the copyright owner. By following this sequence, you ensure that all essential components of the copyright disclaimer are included in the correct order.

ii. **Some Rights Reserved**



This statement, "**Some rights reserved**", signifies that while the author is reserving certain rights to content, they also allow certain uses or permissions as specified. It may be accompanied by a Creative Commons License or other authorisations granted by the copyright owner. "Some Rights Reserved" at the end of your copyright disclaimer. This indicates that you are reserving specific rights to your work but may allow certain uses or permissions as specified. The "Some Rights Reserved" statement is commonly used when licensing works under Creative Commons or similar frameworks. It allows you to define the specific terms and conditions under which others may use, distribute, or modify your content. For example, in the case of stock photos or designs, you may choose to reserve the right to control commercial use or restrict the sale of your work for profit. This enables an author to maintain a level of control over how her content is utilised while still allowing certain uses or modifications under specified conditions.

Including the "Some Rights Reserved" statement clarifies the permissions and restrictions you are imposing on your work, ensuring that others understand the terms under which they can use or share it. (see *Figure -3*)

LICENSES	TERMS
	Attribution BY Others can copy, distribute, display, perform and remix your work if they credit your name as requested by you
	No Derivative Works ND Others can only copy, distribute, display or perform verbatim copies of your work
	Share Alike SA Others can distribute your work only under a license identical to the one you have chosen for your work
	Non-Commercial NC Others can copy, distribute, display, perform or remix your work but for non-commercial purposes only.

Figure III

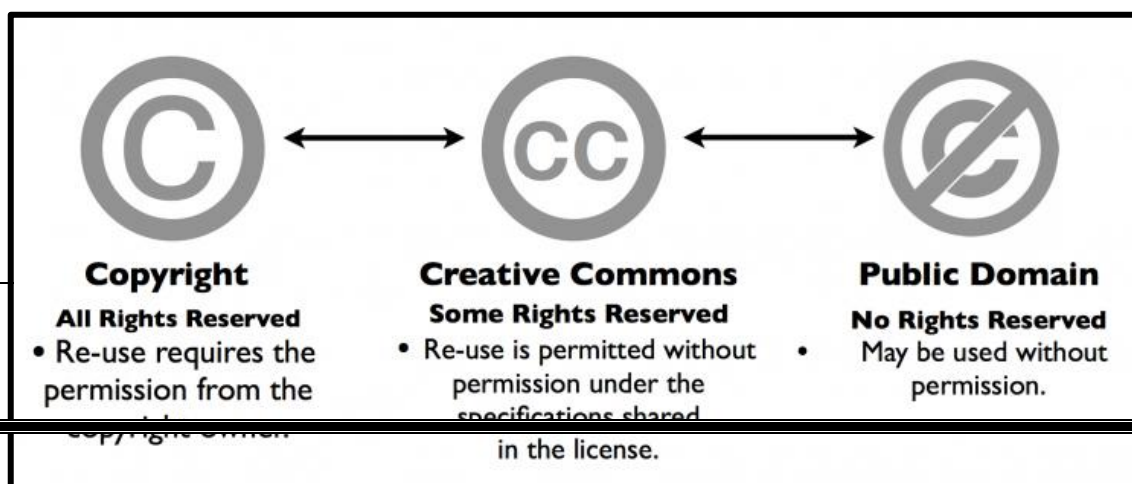


iii. No Rights Reserved

This statement, "**No rights reserved**", states that authors are disclaiming or waiving all rights to the content, allowing others to use, reproduce, or distribute it freely without the need for permission.

"No Rights Reserved" at the end of your copyright disclaimer. This clearly indicates that you are relinquishing all rights to your work, allowing others to use, distribute, or modify it freely without seeking permission from you. However, it is more common to express the intention of reserving no rights over your work by using the Creative Commons symbol CC0. CC0 signifies that you are dedicating your work to the public domain, effectively waiving all rights and allowing anyone to use, study, analyse, and modify the resources freely. (see Figure-4).

Educational institutions, such as museums, often utilise Creative Commons licenses and the CC0 symbol to release their materials to the public domain. This allows for broad access and unrestricted use of the resources for educational and research purposes. In the provided example of the Metropolitan Museum of Modern Art (The Met), they use the OA (Open Access) symbol to represent the art that is part of their Open Access initiative, indicating that these works are available for unrestricted use. By using Creative Commons licenses or symbols like CC0 or OA, you can clearly communicate your intent to waive all rights or dedicate your work to the public domain, allowing for greater accessibility and utilisation of your intellectual property. When using copyrighted materials for purposes such as criticism, comment, reporting, teaching, research, and scholarship, it is important to be aware of the provisions outlined in Section 107 of the Copyright Act.





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Figure IV

To assert your fair use rights under this section, it is recommended to include a copyright disclaimer or fair use disclaimer. This disclaimer serves as a defence against potential copyright infringement claims. Additionally, it is advisable to give proper credit to the original creator and provide a link to the source material to further protect your use of copyrighted works.

YOUTUBE DISCLAIMER

When uploading videos on YouTube that incorporate copyrighted content within the boundaries of fair use, it is advisable to include a copyright disclaimer in the description of the videos. This disclaimer should credit the original creator of the copyrighted content and disclose your fair use rights. "This video features materials protected by the Fair Use guidelines of Section 107 of the Copyright Act" or Fair Deal under Section 52 of the Indian Copyright Act 1957. All rights reserved to the copyright owners." Below is an example of a copyright disclaimer text that can be used in various forms of media, including videos: By including this disclaimer, you are acknowledging your adherence to the fair use provisions while respecting the rights of copyright owners.



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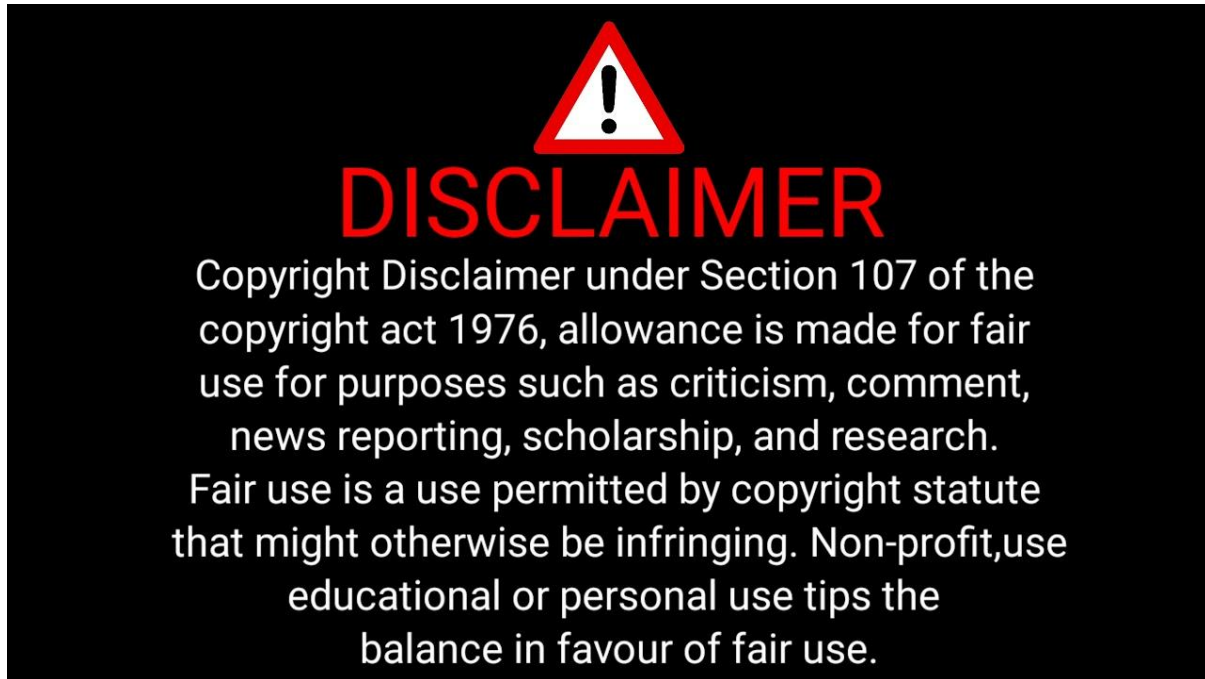


Figure V

For instance, if you are uploading your own copyrighted content to YouTube, it is recommended to include a copyright disclaimer in the description of your videos. A standard copyright statement that you can add to your YouTube videos may look like this: "**Copyright @ [name & year]. Any unauthorised reproduction of this content will result in immediate legal action.**" By including this disclaimer, you assert your rights as the copyright owner and warn against any unauthorised reproduction or use of your content. However, it is important to note that copyright laws can vary between jurisdictions, so it may be beneficial to consult with a legal professional, IP Lawyers, to ensure your copyright disclaimer aligns with the applicable laws in your region. As demonstrated in the example provided, a simple copyright symbol (or "C" or "Copyright") can serve as a YouTube disclaimer. However, to enhance the protection of your intellectual property, it is advisable to include an advisory statement against theft or unauthorised use.



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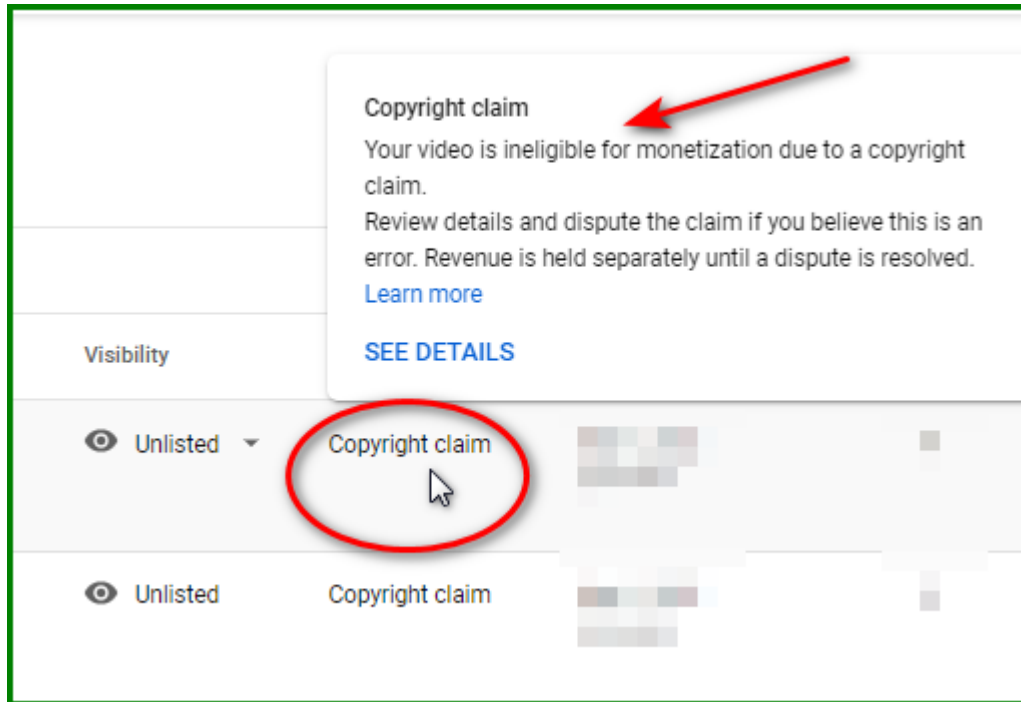


Figure VI

If you are uncertain about whether your use of copyrighted content is protected under fair use, it is always best to seek permission from the copyright owner before including their work in your video. Alternatively, you can choose to omit the copyrighted content from your video to avoid any potential copyright infringement. By obtaining proper permission or preventing the use of copyrighted content without authorisation, it can ensure compliance with copyright laws and mitigate the risk of legal issues related to copyright infringement.

DISCLAIMER ON FACEBOOK

On Facebook, it is important to respect copyright laws when posting someone else's copyrighted content. You should only share such content if you have explicit permission from the copyright owner or if the material falls under the provisions of fair use as outlined in Section 107 of the US Copyright Act or Section 52 of the Indian Copyright Act. To protect yourself and clarify the status of the content you are sharing, it is recommended to include a copyright disclaimer in your Facebook posts. The disclaimer should state the following:



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- The content being shared is the original work of another individual or entity.
- You have obtained permission to use that content.
- The use of the content is protected under the "fair use" provision.
- You do not claim ownership over the content.

Here is an example of a Facebook copyright disclaimer from Cover Music, explicitly stating that he does not own or make claims to the original music featured in his video:

"Copyright Disclaimer: This video features music that is the property of its original creators. I do not own or make any claims to this music. I have obtained permission to use this content, and its use is protected under the fair use provision of copyright law."By including such a disclaimer, you demonstrate transparency and respect for copyright ownership while ensuring that you are in compliance with applicable laws. For instance, when posting material on Facebook that you have copyrighted, such as a video, logo, or music, it is important to include a copyright disclaimer to assert your ownership rights. The copyright disclaimer should contain the following elements:

❖ *Copyright symbol*

Use the copyright symbol (©) or the word "Copyright"to indicate that the material is protected by copyright.

❖ *Year of copyright*

Specify the year in which the material was copyrighted. This is typically the year of creation or publication of the work.

❖ *Name of the copyright owner*

Clearly state the name of the copyright owner, which can be your name or the name of your company or organisation.

By including these components in your copyright disclaimer, you establish your ownership over the material and provide notice to others that the content is protected by copyright.

Here is an example of how a copyright disclaimer may appear when posting copyrighted material on Facebook:"**Copyright © [Year] [Copyright Owner's Name]. All rights reserved.**"



The screenshot shows the 'Settings' tab of a Facebook form. The 'Privacy Policy' section is selected and highlighted with a red arrow. It includes a text box for 'Link text' (containing '70') and a 'Link URL' field with a red warning icon. Below this is a 'Custom disclaimer' section with a checkbox for 'Add custom disclaimer'. The 'More volume - Form preview' on the right shows a preview of the form with a 'Submit' button.

Figure VII

Note that copyright laws may vary in different jurisdictions, so it's always a good idea to consult with a legal professional to ensure your copyright disclaimer complies with applicable laws in your region.

COPYRIGHT DISCLAIMER FOR MUSIC

When posting music online for which you own the copyright, it is important to include a music copyright disclaimer in the description or listing. Music copyrights have distinct elements that need to be addressed in the disclaimer:

➤ ***Sound recording copyright***

Sound recordings are designated by the phonogram copyright symbol, which is a capital letter P inside a circle (©). This symbol represents the copyright protection for the specific recording of the music.



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➤ *Lyrics and composition copyright*

The standard copyright symbol (©) is used to indicate the copyright protection for the lyrics and composition of the music. If your music is protected by both sound recording copyright and lyrics/composition copyright, it is advisable to include both symbols.

In addition to the copyright symbols, include the copyright date (the year in which the music was created or published) and the name of the copyright owner. Here is an example of how a music copyright disclaimer may appear in a description or listing: "**© [Year] [Copyright Owner's Name] for the sound recording. © [Year] [Copyright Owner's Name] for the lyrics and composition. All rights reserved.**"

Including this copyright disclaimer in the description or listing of your music helps assert your ownership rights and informs others that the music is protected by copyright. It is important to note that copyright laws may vary depending on your jurisdiction, so it's always recommended to consult with a legal professional to ensure compliance with applicable laws and regulations.

WHERE TO DISPLAY A COPYRIGHT DISCLAIMER

Displaying your copyright disclaimer in the following locations can help ensure that it is easily accessible and visible to users:

a) Website footer

Placing the copyright disclaimer in the footer of your website is a common and effective practice. It appears on every page of your website, providing consistent visibility and reminding visitors that your content is protected by copyright. The footer of a website is commonly considered a crucial location to display a copyright disclaimer due to its static nature, ensuring visibility to users regardless of their location on the site. An example of a copyright disclaimer in the footer can be observed on the following given website.



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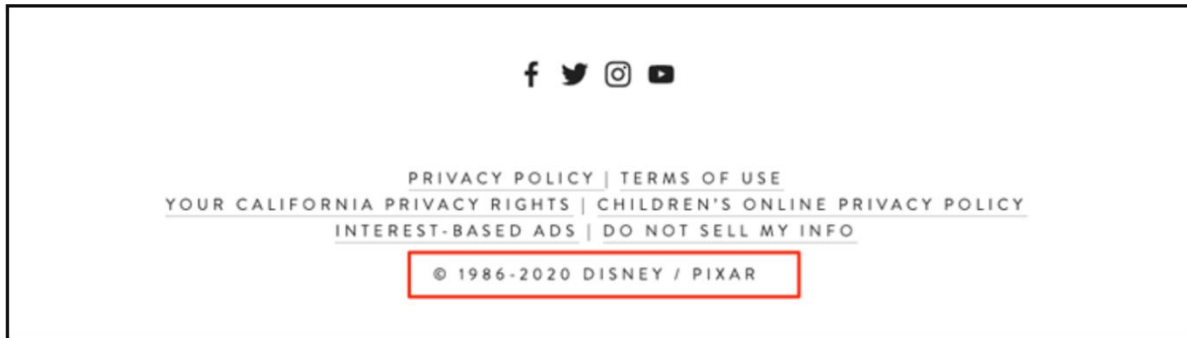


Figure VIII

b) Mobile Apps

If you have a mobile app, consider including the copyright disclaimer in a dedicated section within the app's settings or about page. This ensures that users can easily find and access the disclaimer while using the app.

To protect your intellectual property rights, it is recommended that you include a copyright disclaimer within your mobile app as well as on any app store listings. By doing so, users will have a clear understanding of the rights you hold over your app. An example of this practice can be observed in the screenshot below. Identification of Apple Inc. as the copyright owner. Explicit statement reserving all rights. By placing the copyright disclaimer in these key locations, you establish a clear statement of your ownership rights and reinforce the protection of your content. It also helps users understand their responsibilities when interacting with your intellectual property. Remember to adapt the placement of your copyright disclaimer based on the specific requirements and design of your website, app, or other platforms to ensure it is prominently displayed and easily noticed by users.



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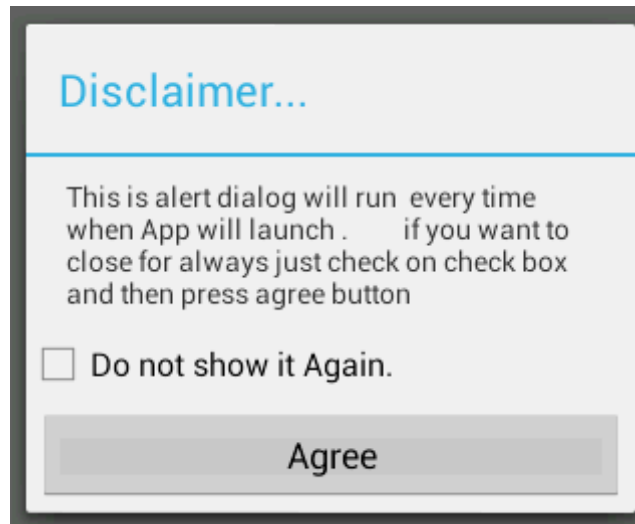


Figure IX

c) *Email footer*

Adding the copyright disclaimer to your email footer is a professional way to assert your ownership rights in all your email communications. It helps remind recipients that your content is protected and should not be reproduced without permission.

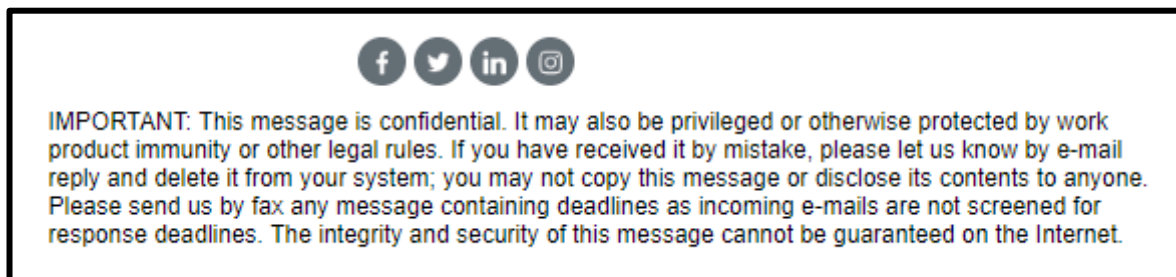


Figure X

To protect your branding, designs, or other protected content in marketing emails sent to consumers, it is recommended to include a copyright disclaimer in the footer. By doing so, you can assert your ownership rights and make recipients aware that the content is protected by copyright. An illustration of this practice can be seen in the provided screenshot, where Slack incorporates a copyright disclaimer in their marketing emails.



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The advantages and disadvantages of using a copyright disclaimer can be summarized as follows:

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- 1) Adding a copyright disclaimer showcases the reproducer's understanding of copyright laws, which can enhance their credibility as a source of information.
- 2) The disclaimer allows readers or viewers to easily identify the source of information on which the reproduction is based, promoting transparency.



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- 3) By including a copyright disclaimer, the reproducer asserts their belief that the reproduction falls under fair use provisions, potentially making it easier to demonstrate their good faith intention if a copyright infringement case arises.
- 4) A copyright disclaimer can provide an opportunity for the reproducer to give proper credit to the original copyright owner, acknowledging their authorship and intellectual property rights.

Disadvantages

- 1) A copyright disclaimer does not provide legal protection or guarantee that the reproduced work is covered under fair use. It is not a sanctioned legal device and does not deter a copyright owner from pursuing a copyright infringement suit.
- 2) By adding a copyright disclaimer, the reproducer openly acknowledges that the contents of the reproduced work were copied from a copyrighted source. This admission can be used as evidence against them in a copyright infringement case.
- 3) The copyright disclaimer can be used as evidence that the reproducer had knowledge of the copyrighted work and intentionally infringed upon it. This can weaken their position in a copyright infringement lawsuit and potentially lead to an unfavorable outcome.

INTERNATIONAL LEGAL FRAMEWORK FAIR DEALING

Under Article 13 of the TRIPS (Trade-related aspects of Intellectual Property Rights), member countries are required to limit limitations or exceptions to exclusive rights to certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.⁸

Similarly, Article 9(2) of the Berne Convention emphasises that legislation or exceptions to exclusive rights should be tailored to special cases that do not conflict with the normal

⁸TRIPS: Agreement on Trade-Related Aspects of Intellectual property rights, April 15, 1994., WTO | intellectual property - overview of TRIPS Agreement, https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm (last visited May 16, 2023).



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exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.⁹ These principles have been incorporated into the copyright legislation of countries that are members of the World Trade Organization (WTO) and are bound by the TRIPS agreement and the Berne Convention.

UNITED STATES COPYRIGHT ACT OF 1976

Section 107 of the U.S. Copyright Act indeed provides for certain exceptions to copyright infringement under the fair use doctrine. Section 107 of the Copyright Act provides the statutory framework for determining whether something is a fair use and identifies certain types of uses—such as criticism, comment, news reporting, teaching, scholarship, and research—as examples of activities that may qualify as fair use. The doctrine of fair use in the United States is a legal principle that allows for the limited use of copyrighted material without permission from the copyright owner. It originated as a common-law doctrine and was later codified in the United States Copyright Act of 1976. The purpose of fair use is to strike a balance between the rights of copyright holders and the societal benefits of creative and transformative uses of copyrighted works.

The concept of fair use was first recognised in the case of *Gyles v. Wilcox* in 1740¹⁰ and further developed in *Folsom v. Marsh* in 1841.¹¹ In *Folsom v. Marsh*, Justice Story attempted to establish a test to determine whether a particular use of a copyrighted work amounted to infringement or fair use. The key question was whether the reproduced work directly competed with the original work in the market. If it did, it was considered infringement. With the enactment of the Copyright Act in 1976, fair use gained more

⁹Berne Convention for the Protection of literary and Artistic Works, September 9, 1886., Berne Convention for the Protection of Literary and Artistic Works, <https://www.wipo.int/treaties/en/ip/berne/index.html> (last visited May 16, 2023).

¹⁰Primary Sources on Copyright - Record Viewer, https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=commentary_uk_1741 (last visited May 16, 2023).

¹¹*Folsom v. Marsh* | Case Brief for Law School | LexisNexis, COMMUNITY, <https://www.lexisnexis.com/community/casebrief/p/casebrief-folsom-v-marsh> (last visited May 16, 2023).



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prominence and clarity. Section 107 of the Act outlines the four-factor test used to determine the extent of fair use. The factors include the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use upon the potential market for the original work. While Section 107 provides some guidance on the application of fair use, it allows courts significant discretion to interpret and apply the doctrine on a case-by-case basis. This means that judges have the power to determine whether a particular use qualifies as fair use based on the specific circumstances of each case.

The four-factor test is not a strict formula but rather a flexible framework that considers the unique aspects of each situation. Courts consider the purpose and character of the use, including whether it is for commercial or nonprofit educational purposes, and whether it involves transformative or derivative use. The nature of the copyrighted work is also considered, with greater leeway given for fair use in works that are factual or published. The amount and substantiality of the portion used is another factor, with fair use more likely to be recognized when small portions of the work are used rather than substantial portions. Finally, the effect of the use on the potential market for the original work is assessed, examining whether the use would impact the market value or potential licensing opportunities for the original work.

A copyright disclaimer is a statement that acknowledges the use of copyrighted material in another author's work without obtaining a license.

INDIAN COPYRIGHT ACT, 1957

In India, the doctrine of fair dealing is addressed under Section 52 of the Indian Copyright Act, 1957, which draws inspiration from the UK Copyright law. Section 52 provides a comprehensive framework for fair dealing, although the term "fair dealing" itself is not explicitly defined in the Act. Fair dealing was explicitly recognized in the UK Copyright Act, 1911, making it the first instance of fair dealing being recognized in the imperial copyright legislation. The fair dealing provisions in the UK Copyright Act, 1911 established three significant limitations to the rights of copyright owners. These limitations are fair dealing for



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the purposes of non-commercial research or private study, fair dealing for the purposes of criticism or review, and fair dealing for the purposes of news reporting.

According to Section 52, fair dealing with a literary, dramatic, musical, or artistic work for the purposes of research, private study, criticism, review, reporting current events, or any other work shall not be considered an infringement of copyright. This provision recognizes the importance of using copyrighted material for legitimate purposes without violating the rights of the copyright owner.

The Copyright Amendment Act, 2012 expanded the scope of fair use by introducing the phrase "any work," thereby extending the provision to cinematograph films and musical works. This amendment broadened the range of works that can be used for private and personal purposes under the fair dealing exception.

These legal provisions in India strive to strike a balance between the rights of copyright holders and the interests of users by allowing limited and justified use of copyrighted works for specific purposes.

Section 52 of the Copyright Act, 1957, permits certain uses of copyrighted material without the permission of the copyright owner, provided they fall within the following purposes:

iv. Private or personal use

Using copyrighted material for personal enjoyment or private use, such as watching a movie or listening to music at home, is considered fair use.

v. Research

Using copyrighted material for research purposes, including academic or scientific research, is permitted under fair dealing.

vi. Criticism

Fair dealing allows the use of copyrighted material for criticism, which includes analyzing, evaluating, or commenting on the work.

vii. Review

Using copyrighted material for the purpose of reviewing, summarizing, or providing an opinion on the work is considered fair dealing.



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viii. Reporting of current events and affairs

Using copyrighted material for reporting news or current events, including news articles, photographs, or video clips, is allowed under fair dealing.

A copyright disclaimer when using a copyrighted work can help clarify that the use is intended to fall within the fair use or fair dealing exception, and it demonstrates an acknowledgement of the original copyright owner's rights. While it is not mandatory to include a copyright disclaimer, it can serve as a helpful notice to indicate that the use is done in accordance with the fair use provisions of the law. However, it is important to note that the determination of fair dealing is subjective and depends on the specific circumstances of each case. It involves considering factors such as the purpose, nature, amount, and effect on the market of the copyrighted work. If there is any uncertainty about whether a particular use qualifies as fair dealing, it is advisable to seek legal advice to ensure compliance with copyright laws in India.

THE JUXTAPOSITION OF FAIR DEALING AND FAIR USE

Fair use and fair dealing are two concepts that provide exceptions to copyright infringement in different legal jurisdictions.

In the United States, the term "fair use" is used and is not explicitly defined in the U.S. Copyright Act. Courts interpret fair use on a case-by-case basis using the four-factor test established in the case *Folsom v. Marsh*. The factors considered include the nature and purpose of the use, the amount and substantiality of the portion used, and the effect on the potential market of the original work. On the other hand, common law jurisdictions such as the United Kingdom, Canada, Australia, India, and New Zealand use the term "fair dealing." Fair dealing is an exception to copyright infringement explicitly mentioned in the respective copyright statutes of these countries. The specific purposes for which fair dealing is allowed are enumerated in the statutes, and any use outside those purposes would not qualify as fair dealing.

One distinction between fair use and fair dealing lies in the accessibility of statutory guidance. Fair use in the U.S. lacks a statutory definition, leaving it to the courts to interpret based on the established factors. In contrast, fair dealing provisions in other countries provide



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some statutory guidance but still leave the determination of fairness to the courts based on the facts and circumstances of each case.

Under Indian copyright law, fair dealing is recognized under Section 52 of the Copyright Act, 1957. Although fair dealing is not defined in the Act, it draws upon the doctrine of equity. In India, fair dealing is justified based on the purposes of private use, research, criticism, and review, which are explicitly mentioned in the statute.

CONCLUSION

In conclusion, fair dealing provisions serve an important purpose in copyright law by balancing the rights of copyright holders with the interests of society. While the concept of fair dealing in India may not be as advanced as in some other jurisdictions, it has gained traction through amendments and judicial decisions. Fair dealing promotes creativity by allowing individuals to use copyrighted works for specific purposes without obtaining explicit permission, leading to a wide variety of creative works that might not have been possible otherwise. The doctrine of fair dealing plays a crucial role in shaping copyright law domestically and internationally. Judicial pronouncements and legal developments contribute to expanding the scope and understanding of fair dealing, ensuring its relevance in the face of changing technological and societal landscapes.

Internationally, fair dealing provisions are incorporated into the copyright legislation of countries bound by the TRIPS agreement and the Berne Convention. These provisions emphasize limitations or exceptions to exclusive rights that do not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holder.

In the United States, fair use is recognized under the Copyright Act of 1976, providing exceptions to copyright infringement. The four-factor test outlined in the Act helps determine the extent of fair use based on factors such as the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect on the potential market for the original work. In India, fair dealing is addressed under Section 52 of the Indian Copyright Act, 1957, which draws inspiration from the UK Copyright law. Fair dealing provisions allow for the use of copyrighted material for research, private study,



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criticism, review, reporting current events, and other purposes without infringing copyright. The Copyright Amendment Act of 2012 expanded the scope of fair use by including cinematograph films and musical works.