



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## AN OVERVIEW OF THE INTERSECTION OF COPYRIGHT AND FREEDOM OF EXPRESSION

Souparnika S

LLM student

### ABSTRACT

The current intellectual property landscape is made up of two pillars: copyright law and freedom of expression, each of which are vital in establishing the originative and informational ecosystems. This outline explores the intricate relationship between copyright and freedom of expression, examining their evolution in the digital age. Copyright laws are enacted to foster innovation and promote entrepreneurs' economic rights by giving them exclusive ownership of their works. However, these privileges inherently limit the public's ability to use, share, and build on copyrighted content. This restriction has sparked fears that this could be incompatible with the freedom of expression, a fundamental human right enshrined in international conventions and national constitutions. In discussions about fair use, transformative works, and digital sharing, the tension between copyright and freedom of expression is most apparent. Fair use principles, which are embedded in many copyright structures, allow for a restricted use of copyrighted material for purposes such as criticism, commentary, and education. The intersection of copyright and freedom of expression is made clearer in this area. Copyright holders advocate for the right to protect their intellectual property rights on the one hand, while advocates for expression advocate for the importance of a strong public domain and unrestricted discourse. This intersection has been exacerbated by the proliferation of user-generated content, social media, and online platforms in the digital age. The ease with which individuals can post and remix content raises alarming questions about the boundaries of copyright and the degree to which it can limit free expression. The internet's global nature, in addition, creates cross-border challenges for copyright enforcement and expression. What is considered a violation in one jurisdiction may be considered free expression in another, highlighting the need for international coordination and legislative frameworks that strike a balance between these rights. This paper concludes by stressing the importance of this ongoing debate and the need for nuanced approaches that safeguard both creative incentives and fundamental rights. In the digital age, finding the right balance between

copyright and freedom of expression is a challenging, dynamic, and often contentious challenge that continues to shape the way we create, share, and consume information and culture. As we navigate the changing landscape of intellectual property and free expression in the 21st century, it remains a critical issue for legislators, designers, and the general public alike.

#### KEYWORDS:

- Copyright
- Freedom of expression
- Fair use
- Digital age
- Intellectual property

### INTRODUCTION

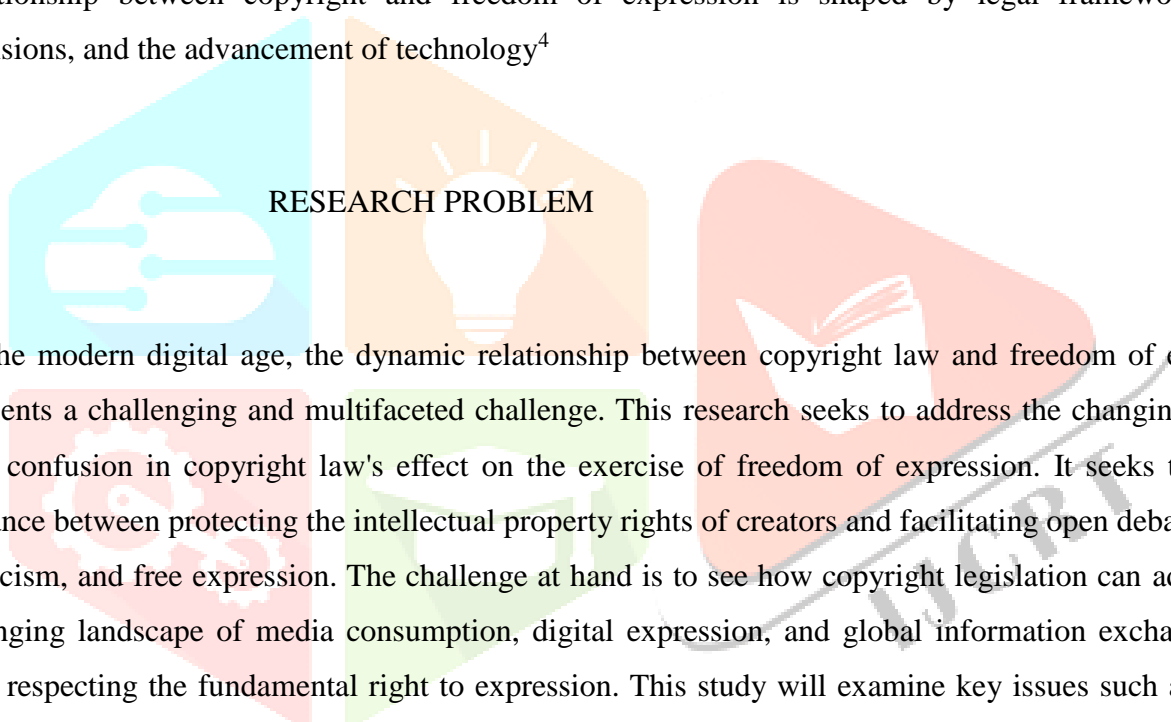
In modern society, the intersection of copyright and freedom of expression is at the carrefour of two fundamental principles, each vital to fostering a flourishing cultural and intellectual landscape. Copyright, a legal framework intended to safeguard the economic interests of creators, grants creators exclusive rights to their works, encouraging innovation and creativity. On the other hand, freedom of expression is a fundamental human right enshrined in international and national law systems, which is vital for the exchange of ideas, democratic discourse, and the development of various voices. As these two pillars of our information society merge, a complex and evolving relationship emerges, marked by a rupture that has deep historical roots but has taken on new forms in the digital age.<sup>1</sup> Although copyright aims to protect intellectual property and provide financial incentives to creators, open debate, public speaking, and the free movement of information are the foundation on which open debate, public speaking, and the free movement of information are constructed. This research paper explores the multifaceted dimensions, opportunities, and implications of this interplay in today's technologically advanced world by examining the dynamic relationship between copyright and freedom of expression. As individuals and companies grapple with issues that go beyond the usual scope, it has amplified the conflict between copyright and freedom of expression.<sup>2</sup> Issue such as fair use, transformative works, user generated contents, digital sharing, and international copyright enforcement all contribute to this complex and often contentious landscape. The possibility that copyright will stifle freedom of expression is one of the primary challenges at this intersection. Copyright holders assert their exclusive rights aggressively, limiting others' ability to use, share, or transform copyrighted material for purposes such as criticism, parody, or education. This issue has sparked debates about the scope and duration of copyright protection,

---

<sup>1</sup> Melville B. Nimmer Does Copyright Abridge the First Amendment Guarantee of a Free Speech and Press? 17 UCLA L. REV. 1180, 1189 (1970).

<sup>2</sup> Ginsburg, J. C. (2014). A tale of two copyrights: Literary property in revolutionary France and America. *Texas Law Review*, 92(8)

as well as the importance of keeping track of the public.<sup>3</sup> On the other hand, there is also concern that overly broad interpretations of freedom of expression can jeopardize copyright protection, since unfettered sharing and reproduction of copyrighted content could jeopardize the financial interests of the creators and discourage future development. In cases involving file-sharing, internet censorship, and the fair use doctrine, which allows for a limited use of copyrighted material without permission for purposes such as commentary and news reporting, this tension arises. The international nature of the internet, in addition, makes matters worse because countries have different legal requirements and enforcement mechanisms related to copyright and freedom of expression. This global dimension raises concerns about the harmonization of copyright laws and the protection of users' rights across borders. In this complex landscape, policymakers, legal experts, and advocates are constantly grappling with finding the right balance between copyright protection and freedom of expression, attempting to protect both the rights of creators and the free exchange of ideas and information that underpin democratic societies. The dynamic relationship between copyright and freedom of expression is shaped by legal frameworks, court decisions, and the advancement of technology<sup>4</sup>



In the modern digital age, the dynamic relationship between copyright law and freedom of expression presents a challenging and multifaceted challenge. This research seeks to address the changing tensions and confusion in copyright law's effect on the exercise of freedom of expression. It seeks to strike a balance between protecting the intellectual property rights of creators and facilitating open debate, artistic criticism, and free expression. The challenge at hand is to see how copyright legislation can adapt to the changing landscape of media consumption, digital expression, and global information exchange while still respecting the fundamental right to expression. This study will examine key issues such as fair use principles, online content sharing, moral rights, and the impact of international copyright laws, in order to find solutions and policy recommendations that balance the often-competing interests of copyright and freedom of expression in a manner that mirrors the values of a democratic society.

## RESEARCH OBJECTIVE

The primary aim of this report is to systematically examine and report findings on the relationship between copyright law and freedom of expression, with a particular emphasis on the following, to examine the current legislative frameworks and their effect on the exercise of freedom of expression in

<sup>3</sup> Fisher, W. W., & Syed, T. (2012). Copyright and creativity: Creating markets for cultural goods. *Texas Law Review*, 90(7),

<sup>4</sup> 7 Jay Dratler Jr. Fair Use in Copyright Law 43 U. MIAMI L. REV. 233, 245 (1988)

the context of copyright law, identifying both areas of overlap and potential conflicts. To make concrete plans, legislative changes, and policy recommendations that strike a balance between copyright protection and the preservation of expression rights, while still maintaining a democratic and inclusive information society. By achieving these goals, this study hopes to contribute to a deeper understanding of the challenges and opportunities at the intersection of copyright and freedom of expression, with the ultimate aim of forming policy, and ethical debates in this vital area.

## RESEARCH QUESTION

1. Does copyright law impact the ability to exercise freedom of expression, particularly in cases involving transformative use and artistic critique?
2. The ethical considerations and potential conflicts that arise when copyright law intersects with the right to freedom of expression, especially in cases involving reputation, moral rights, and cultural heritage.

## HISTORY

The relationship between copyright and freedom of expression has a long and complicated history that has spanned centuries. The origins of copyright: as a legal term, the annex act of 1710 was enacted in England. This act, which was also known as the copyright act 1710, was one of the first copyright laws and was intended to regulate the procreation and distribution of books, particularly to address concerns about publishers' monopolies. However, the statute was mainly focusing on the economic prospect of publishing and did not address issues pertain to freedom of expression. Press freedom: in the 17th and 18th centuries, the printing press and the dissemination of data through printed media laid the groundwork for the current conception of press freedom. This right was associated with the notion of unexposed expression and public discourse. Copyright and censorship: in the 18th and nineteenth centuries, copyright laws were enacted in many countries, with the intention of regulating and regulating the distribution of printed materials.<sup>5</sup> These former copyright laws were more concerned with protecting the economic sake of authors and publishers than with safeguarding freedom of expression. Expansion in the 19th century: the resurgence of copyright law and the identification of moral rights, which included the protection of an author's reputation and the integrity of their work, occurred during the 19th century. These developments, while respecting the rights of the creators, also posed potential challenges to freedom of expression. International copyright agreements: in the late 19th and early 20th centuries,

<sup>5</sup> Alexandra Sims The Public Interest Defence in Copyright Law: Myth or Reality? 6 EIPR 335, 339 [2006].

international copyright agreements, such as the berne convention, were found to chord copyright laws across nations. These agreements were intended to protect the interests of artists and their works, but they often necessitate restrictions that could interfere with freedom of expression. Fair use and fair dealing: fair use (in the united states) and fair dealing (in many other nations) egress in the twentieth century as part of copyright legislation that allows for the limited use of copyrighted material for purposes such as criticism, news reporting, and education. These exceptions were made in an attempt to strike a balance between copyright rights and expression rights.<sup>6</sup> The digital age and the internet: in the late twentieth century and early 21st century, the development of the internet and emerging technologies introduced new dispute to copyright and expression. At this intersection, issues such as file sharing, online censorship, and user-generated content posed composite legal and ethical challenges. Debates of the day: due to the rapid advancements in the digital age, the argumentation over copyright and expression has erupted in recent years. Court cases, legislative changes, and international conventions continue to shape the landscape and pose significant challenges about how to strike a balance between the needs of creators and the public<sup>7</sup>. A gradual recognition of the demand to strike a balance between the protection of intellectual property and the conservation of the fundamental right to express oneself freely has marked the intersection of copyright and freedom of expression in history. This continuing evolution is influenced by technological advancements, social norms, and shifting economic assumptions<sup>8</sup>.

**Copyright:** copyright is a term used to describe a legal term that gives creators exclusive rights to their intellectual property, such as books, music, art, and software. These rights include the right to reproduce, distribute, and display their works. Copyright is used to provide an economic boost to creators and shield their original creations from unauthorised use.

**Freedom of expression:** freedom of expression is a fundamental human right that guarantees individuals and groups the ability to express their thoughts, opinions, ideas, and artistic expressions without restriction. It is often cited in national and international statutes as a pillar of democratic societies, facilitating the free exchange of information and ideas.

**Fair use (or fair dealing):** fair use in the United States and fair dealing in other nations refer to provisions in copyright law that prohibit the use of copyrighted content without the permission of the owner. This includes purposes such as criticism, analysis, news reporting, education, and analysis

**Public domain:** public domain refers to works of art and intellectual property that are not protected by copyright or intellectual property rights. These works are considered a public heritage and can be used by anyone without restriction.

---

<sup>6</sup> Martin Senftleben Copyright Limitations and the Three Step Test 30 Kluwer Law International [2004].

<sup>7</sup>Neil Winestock Netanel Asserting Copyright's Democratic Principles in the Global Arena 51 VAND L. REV 217, 223 (1998).

<sup>8</sup> Fisher, William W., and Talha Syed. "Copyright and Creativity: Creating Markets for Cultural Goods." Texas Law Review 90, no. 7 (2012)

Moral rights: are a set of copyright-related rights that protect the creators' personal and reputational rights. They include the right to be attributed as the author of a work, as well as the right to object to derogatory treatment of one's work.

## LAWS

International laws:

The berne convention on the protection of literary and artistic works is one of the former and most widely accepted international conventions on the protection of copyright. It institute the principle of "national treatment," which means that creators from member countries are granted copyright rights in other member countries. The berne convention sets some requirements for copyright, but it does not provide specific guidelines for equilibrise copyright and freedom of expression.

The universal declaration of human rights (udhr): the udhr recognizes the right to expression expression, as well as the right to "see, receive, and transmit information and ideas of all kinds." Although not a copyright treaty, the udhr's principles on freedom of expression are important in framing debates about the relationship between copyright and freedom of expression.

The world intellectual property organization (wipo): the wipo manages a variety of international treaties and agreements pertain to intellectual property, including copyright. It provides a forum for treatment on copyright, expression, and other topics.

Indian laws:

The copyright act of 1957 in India is the primary statute for copyright protection. It specifies the scope of copyright protection, the rights of users, and restriction and exceptions, such as fair dealing. It is important to understand how Indian law treats the relationship between copyright and freedom of expression.

Information technology act, 2000 (India): this act in India contains provisions on digital copyright, internet service provider liability, and digital rights direction. In the digital age, it plays a vital role in addressing copyright issues, which are often linked to freedom of expression on the internet.

Constitution of India: the constitution of India, especially article 19(1)(a), warrant the right to expression and expression. This constitutional provision, although not directly related to copyright, is vital in framing debates about the relationship between copyright and freedom of expression in India.

Case law: in India, court decisions on topics such as copyright infringement, fair dealing, and free expression serve as guidelines and legal precedent on how these two areas interact.

Bilateral and multilateral agreements: India has signed international treaties and agreements, including the wto-trade-related aspects of intellectual property rights (trips agreement). These agreements have a bearing on india's copyright landscape and its conformity with international requirements.

A constant challenge is finding the right balance between copyright protection and expression freedom under both international and Indian laws. This intersection is constantly shaped by legal interpretations, court decisions, and policy changes, and it is influenced by cultural, technological, and global influences. To stay up-to-date with the most up-to-date information in this competitive arena, it's important to consult the most recent legal information and seek help from legal experts.

Sections involved:

Section 52(1)(a): this section of the copyright act (copyright act, 1957, 52(1)(a)) provides for exceptions to the reproduction of copyrighted works for the purpose of criticism, analysis, or news reporting, which is vital to freedom of expression in the context of journalism and artistic criticism

. Section 52(1)(i): copyrighted works may be reproduced or modified for educational purposes under this section (copyright act, 1957, 52(1)(i), which is vital to academic and educational freedom of expression.

Section 52(1)(h): the copyright act (copyright act, 1957, 52(1)(h)) provides for the reproduction of copyrighted works for the purpose of reporting current events, although this exception is subject to certain limitations

. Section 52(1)(o): this section (copyright act, 1957, 52(1)(o)) authorizes the recording of sound recordings or cinematograph films of literary, dramatic, or musical works for the purposes of study.

Section 107: the copyright act (copyright act, 1957, 107), in section 107, provides for a fair dealing provision, which is similar to the fair use doctrine in the united states. It outlines the steps to consider whether a copyrighted work is a fair trade, allowing for only a limited use for specific purposes, such as research and private research.

Section 52(1)(c): a broadcast of a work, which may include freedom of expression via television or radio, is permitted under this section (copyright act, 1957, 52(1)(c), if it is not a separate and independent work.

Section 30: the copyright act's section 30 (copyright act, 1957, 30) provides for the right to use a copyrighted work for personal or commercial use. Section 31a: this section (copyright act, 1957, 31a) outlines the mandatory licensing provisions that allow for the reproduction of copyrighted works for specific purposes, even without the owner's permission, under certain conditions.

## ROLE OF JUDICIARY

The judiciary plays a vital role in the relationship of copyright and free expression. Its primary function is to interpret and apply existing laws to settle disputes and set-up legal precedents.

Interpreting copyright law: copyright laws are interpreted by courts, which include provisions regarding fair use, fair dealing, moral rights, and exceptions. Judges must strike a balance between the rights of creators and copyright holders and the rights of individuals and entities exercising their freedom of expression.

Fair use or fair dealing: courts determine whether a particular use of copyrighted material qualifies as fair use or fair dealing. To make this determination, they consider factors such as the purpose, the nature of the job, the amount of material used, and the market impact. Court decisions have established precedents that can guide future cases.

Resolving copyright infringement disputes: when copyright holders argue infringement, the judiciary must determine whether a violation of copyright law has occurred. This involves determining whether the use of copyrighted material in violation of the rules or regulations is unlawful.<sup>9</sup>

Protecting moral rights: in cases involving moral rights, courts address issues such as attribution and the integrity of a work. They determine whether actions involving a copyrighted work tarnish the creator's image or violate their moral rights. When resolving disputes, judges are charged with balancing the interests of creators, copyright holders, and the public. Their decisions are intended to protect the rights of creators while also safeguarding expression freedom, ensuring a vibrant public discourse.<sup>10</sup>

The judiciary's role at the intersection of copyright and freedom of expression is multifaceted and significant.

## CONCLUSION

The intersection of copyright and freedom of expression poses a multifaceted, ever-evolving legal, ethical, and societal problem. Technological advancements, cultural shifts, and legislative changes constantly influence this delicate balance, which is vital for fostering creativity, invention, and the free exchange of ideas. Key findings highlight the importance of concepts such as fair use and fair dealing in preserving the freedom of expression. These exemptions to copyright law provide commentary, criticism, news reporting, and instruction while still respecting the rights of creators. However, the digital age presents new challenges, including online content sharing, user-generated content, and the possibility that copyright enforcement can limit freedom of expression. In situations involving artistic criticism and transformative works, moral rights, particularly the right to attribution, are ethically relevant. A constant challenge is finding a balance between respecting creators' reputational rights and preserving the public's right to express themselves freely<sup>11</sup>. International agreements play a vital role in shaping copyright legislation and its effect on freedom of expression. Policymakers should continue to prioritize harmonising global standards to protect both creators and the general population. The judiciary, as the defender of these rights, plays a vital role. Courts must adapt to the ever-changing landscape of technology and provide guidance in interpreting and applying copyright legislation. Their decisions set legal precedents, influencing how these fundamental rights work. The intersection of copyright and freedom of expression is characterized by its breadth, tensions, and potential for innovation and creativity. The most important thing is to maintain a balance between copyright and expression rights,

<sup>9</sup> E. Heymann Die Zeitliche Begrenzung des Urheberrechts (Berlin, Prussian Academy of Sciences, 1927) cited in Davis at 189.

<sup>11</sup>Karnani, Anupam. "Creative Destruction and Copyright Law: A New Perspective on the Google Book Search Settlement." University of Pennsylvania Law Review 158, no. 6 (2010)



allowing them to coexist and thrive in the digital age.<sup>12</sup> To ensure a stable and democratic environment for the exchange of ideas, data, and creativity, courts, policymakers, designers, and society as a whole must continue to navigate this treacherous terrain.

Suggestions: To tackle the challenges of the digital age, policymakers should consider rewriting and updating copyright laws. Reforms can be used to strike a better balance between creators' rights and the freedom of expression. This may involve clarifying and expanding fair use or fair dealing provisions. Promote public awareness and understanding of copyright and its relationship with freedom of expression. Individuals and organizations can be supported to better understand their rights and responsibilities, reducing inadvertent violations and court disputes. Encourage the development and adoption of ethical guidelines for content creators, stressing the importance of attribution and respect for creators' moral rights, particularly in the context of transformative works and artistic criticism. Advocate for international cooperation in establishing copyright laws that respect the interests of creators and the general public. This will help to harmonize laws and facilitate cross-border access to information and creative works.

Support the use of alternative licensing schemes such as creative commons, which give creators the freedom to choose how their work is to be used. These models can be used to advance both copyright protection and expression freedom.

Encourage organizations and individuals to engage in public interest litigation to oppose copyright laws and practices that inadvertently restrict freedom of expression. These court cases can create significant constitutional precedents. Develop and adopt technological solutions that enable creators to protect their rights while still allowing the public to use and share content more effectively, such as blockchain-based copyright management schemes.

Support research and advocacy efforts that examine the relationship between copyright and freedom of expression. Policies and reports can help policymakers and the public better understand the issues at hand and help inform decision-making. In the case of copyright enforcement, advocate for greater transparency and accountability. This will help to avoid overzealous activities that could jeopardize freedom of expression, particularly online. Organize multi-stakeholder dialogues with creators, users, legal experts, and policymakers to facilitate open discussions and consensus-building on key topics. Collaborative approaches will help to find common ground and solutions.

A multifaceted approach is required to understand the dynamic relationship between copyright and freedom of expression. Addressing the challenges and opportunities at this intersection requires encouraging open dialogue, educating stakeholders, and pursuing balanced legal and ethical solutions.

---

<sup>12</sup> Karjala, Dennis S. "Moral Rights and Fair Use: A Comparative and Empirical Analysis of Copyright Cases in the United States and France." *Notre Dame Law Review* 85, no. 3 (2010)

## REFERENCES

- "Copyright Law: A Practitioner's Guide" by Lloyd J. Jassin and Steven C. Schechter
- "Patry on Copyright" by William S. Patry
- "Copyright's Highway: From Gutenberg to the Celestial Jukebox" by Paul Goldstein
- Lohmann, M. (2016). Fair use: An affirmative defence against claims of copyright infringement. Harvard Journal of Law & Technology, 29
- Samuelson, P. (2016). Legally speaking: Fair use. Communications of the ACM, 59(1)
- Aufderheide, P., & Jaszi, P. (2011). Reclaiming fair use: How to put balance back in copyright. University of Chicago Press.

