



The Copyright Regime in the Age of Social Media: An Analysis with Special Reference to Free Speech

Author: Prakriti Ranjan¹

Abstract

The rapid convergence of artificial intelligence (AI) tools and social media platforms has led to a massive increase in digital content creation, fueled by technologies such as meme generators, auto-reel editors, and remix software. Though the phenomenon supports creativity, it also introduces new problems to the copyright law, as the boundaries between original works and derivative creations, be they parodies, remixes, collaborations, or satires, become increasingly difficult to differentiate. The blurring of these boundaries further complicates the process of enforcement and interpretation within Intellectual Property (IP) provisions, challenging our longstanding definitions of the traditional Intellectual Property Framework.

The article engages with the evolving culture of digital virality to highlight the unique legal conundrums that arise when AI-assisted and user-generated content circulate on such a large scale. It analyses the platform's responses regarding the issue, ranging from algorithmic content moderation to severe notice-and-takedown systems.

A key focus of the study lies in the Indian legal context, where the distinction between the right to ownership and the right to use is examined in light of the rapid increase in social media's remix culture. By exploring platform practices along with the statutory laws focusing on the right to ownership and right to use, the article analyses whether existing legislative frameworks are sufficient or require adaptation and modifications, and which one should take precedence while balancing creativity and innovation against the Individual's copyright.

Keywords: artificial intelligence (AI), social media, Intellectual Property (IP), digital virality.

¹ 3rd year, Chanakya National Law University.

Introduction

As there has been advancement in technologies across the globe, there is a rapid change in every activity and work. A notable event is that the convergence of artificial intelligence tools and social media platforms has fundamentally affected contemporary content creation with the help of technologies like meme generators, auto-reel editors, etc., producing large-scale digital content. On one side, it encourages participation in creativity; on the other hand, it complicates the application of copyright law because the distinction between original works and derivatives, like parodies, remixes, satires, and memes, becomes blurred. Such challenges the traditional assumptions underlying Intellectual Property frameworks, particularly in ‘Right to Use’ and ‘Right to Ownership’.

Copyright law was originally framed to protect original and identifiable works. Now, it operates within a developed digital framework, where, apart from AI-generated content, there has been increased posting and reposting of content, often without consent and permission. Enforcement practices on social media platforms are done through automated moderation systems and rigid notice-and-takedown mechanisms, which largely prioritise ownership rights over real fact-wise assessment. Due to this, even the lawful and socially valuable contents such as criticisms, commentaries, satires, etc., come under copyrighted content and are thereby restricted. The problem extends to access to knowledge, access to information and the potential effect on freedom of expression in such digital space.

The article examines these issues within the legal Indian legal framework, focusing on the continuing tension between the right to ownership and the right to use under Copyright law. Along with statutory governance, it also analyses the platform governance practices, which assess whether the contemporary framework balances creative incentives with expressive freedoms. The article, then, includes, comparative analysis of the United States and the European Union, representing two contrasting approaches to deal with copyright protection, one very flexible and user-friendly, while the other is stricter and right-holder focused. The article then explores the growing tensions between copyright enforcement and free speech, and argues whether any reform is necessary or the contemporary framework is well-balanced for both the user and rightsholder and free speech and copyright enforcement.

AI Assistant Tools and Virality

With the rapid advancement of technologies like machine learning and natural language processing, with the help of human intervention, there has been a significant increase in the work generated by Artificial Intelligence (“AI”). AI tools learn human language via models like Natural Language Generation (NLG) and Natural Language Processing (NLP). These methods are devised by computer science that is proficient in generating human spoken or written content using data sets².

There has been a rapid rise in the use of AI-assisted tools across all spheres of life. This is driven by their versatile nature as one AI system, like Gemini, can help one address various academic questions, analytical and mathematical queries, enrich understanding, assisting in multiple works like research, coding and technical tasks, and supports in organising and planning. The advancement in use of AI tools has also catalysed creative works like preparing captions, hashtag ideas, trend analysis, creating memes, enhancing virality strategies, improving reels, TikTok scripts, and many more that has taken creativity to an unimaginable level. At times, social media platforms themselves offer built-in AI tools for example Instagram, TikTok, and YouTube, each have their own. While there are numerous external applications such as CapCut, Canva, CopyAI, Lumen5 and AI meme makers that provide such AI tools to provide unique and creative ideas just by putting your thoughts into words as prompts within seconds. The underlying factors for the widespread adoption of AI tools can largely be attributed to the fact that they hardly require any prior skills to produce better content while also saving considerable time. Instead of demanding expertise, significant human labour, these tools only require an idea, its expression in a few words, and the result will be ready instantly. This has resulted in a tremendous rise in the use of such tools and of creation and re-creation in social media content. Therefore, this cycle of creation, re-creation, uploading, and reuploading ultimately results in the virality of the content.

These AI assistant tools work through automated editing, template-based generation, algorithmic matching of visuals to audio, auto-captioning, and even text-to-image or text-to-video synthesis³. For example, meme generator applications allow users to provide minimal commands, in the form of prompts, to generate the desired meme formats. By using these

² *International Journal of Creative Research Thoughts*, '[Article title unknown]' (IJCRT 2024) <https://www.ijcrt.org/papers/IJCRT2404147.pdf> accessed 11 November 2025.

³ Shaw M and Puja Devgun, 'AI in Content Creation' (2025) 7 *International Journal for Multidisciplinary Research*. https://www.researchgate.net/publication/392874320_AI_in_Content_Creation/citations accessed 11 November 2025.

functions smoothly on regular platforms, users have an easy way to access and engage with various forms of digital creativity, such as parody, satire, mashups, collaborations, and remixes. When these digital creativities inspired by AI assistant tools get through the process of creation, re-creation, uploading and re-uploading, it ultimately results in virality. In the process of creating any content to make it viral, users usually do not start from scratch; instead, they work upon the already existing content by slightly transforming small portions or other elements to give it meaning. However, this use of existing content to modify into new content disrupts the boundary between an original work and a derivative work, making it difficult to differentiate between the two. Furthermore, using the pre-existing materials like images, clips, music, dialogues, scripts, etc. for making new content involves a potential risk of infringement of the copyright of the original owner or author of the pre-existing content. The reasons for such use can be many, like making parodies, satires, remixes, memes, etc., which require a base material to exist. If copyright infringement were to apply to every use of existing material, then no such content could be created. Different jurisdictions have varying laws and scopes to address these issues. We will deal with the legal jurisdictions of India, the EU and the US further. Thus, not all uses of existing content can be considered infringement of the copyright. However, the problems arise when the user directly makes any copyrighted material in use as a base to create a derivative work or reposts it without the prior permission or approval of the copyright owner, leading to copyright infringement.

In case of infringement, there are certain ways to deal with it. First, Digital platforms (“platforms”), where content is being shared, reshared and consumed, themselves have a mechanism to deal with such posts, uploads or reposts that involve copyright infringement. If problems still persist or the platform lacks an appropriate means to deal with the cases of infringement, copyright law provides legal remedies before a judicial body.

Platforms usually deal with infringement issues through automated detection and matching systems, notice-and-takedown procedures, penalties, and copyright strikes. For instance, YouTube and Facebook have implemented automated content recognition tools such as Content ID and Rights Manager to monitor and detect content that is infringing. These tools give the copyright holders some rights to block, monetise, or track unauthorised uses of their content⁴. This paper will provide a detailed examination of how YouTube uses Content ID to detect

⁴ LexDMCA, ‘The Role of DMCA in Social Media Copyright Enforcement’ (LexDMCA Blog) <https://lexdmca.com/blog/casestudy/the-role-of-dmca-in-social-media-copyright-enforcement/> accessed 11 November 2025.

copyright infringement in the latter part. If a user disregards valid copyright claims, it may lead to copyright strikes, and multiple strikes can result in the termination of the channel⁵. In copyright law, transformative works are an exception to infringement, as they are considered new works in themselves. However, in many instances, even a slight or minor use of existing work, on a platform like Instagram, attracts copyright infringement claims, remaining an inadequately addressed issue for most digital platforms.

Contemporary Legal Frameworks for Copyright Infringement

i. What constitutes Copyright Infringement: Indian context

According to the Copyright Act, 1957, ‘copyright’ means “the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof the work.”⁶ The works may include various “original literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings.”⁷ Thus, the copyright grants the right to do or authorise certain acts with respect to the protected work. When such a protected work is used by an unauthorised person, it leads to copyright infringement. In the context of social media, the subject matter of copyright protection includes images, text, and scripts, which are often infringed by reproduction, adaptation, distribution, public performance or communication to the public of protected work.

The Copyright Act says that “infringement occurs when a person, without a licence or in violation of its terms, does anything that only the copyright owner is entitled to do, or permits the communication of the work to the public for profit, or distributes/sells/lets for hire, infringing copies of the work”⁸. The copyright owner enjoys exclusive economic rights and moral rights for these works. These are basically the ownership rights of the owner. Thus, when Section 51 is read in conjunction with Section 14 of the Act, any unauthorised act that violates the exclusive rights of the owner constitutes copyright infringement. In the context of social media, uploading any copyrighted image, copyrighted video, or reposting someone’s creative work like music, reels, memes, etc., without permission will constitute infringement.

⁵ Google, ‘Copyright and Content ID’ (YouTube Help) <https://support.google.com/youtube/answer/2814000> accessed 11 November 2025.

⁶ Copyright Act 1957 (India) s 14.

⁷ Copyright Act 1957 (India) s 13.

⁸ Copyright Act 1957 (India) s 51.

Section 51 of the Copyright Act provides that copyright is infringed when any person exercises any exclusive rights conferred to the owner, without a valid licence or in breach of licence conditions or knowingly permits a place to be used for profit for the unauthorised communication of the work to the public. Infringement also takes place in commercial dealings in infringing copies, including making, selling, hiring, displaying, distributing, publicly exhibiting, or importing such copies in a manner that affects the copyright owner, subject to exceptions.

Therefore, in contemporary times, the ongoing practices of sampling music, remixing video, re-editing visuals, or AI- AI-assisted derivative creations that involve protected materials amount to copyright infringement. An individual often uses the pre-existing music, photograph or other audiovisual content to create a meme, remixes, or other derivative outputs without the owner's authorization to gain popularity, increase engagement on the platforms or earn through those derivatives. In this way, the person unlawfully exploits the exclusive economic rights of the copyright owner, like "rights of reproduction, adaptation, and communication of the work to the public"⁹. For example, contemporary social media involves the creation and circulation of memes. Where a meme is created by the owner, any unauthorised activity, including reposting, reproduction, or dissemination of such work, will constitute infringement.

ii. What is NOT Copyright Infringement: Statutory Exceptions and Defences

As we know, protecting all the works so that no one can use it for any purpose will result in various problems and unnecessarily increased work in various works like research or other works that require the use of such materials. It also sounds impractical to ask for permission again and again for small to big works. Therefore, against the right of ownership, some 'Right to Use' must also exist so that the protected work can be used in a specific manner without attracting copyright infringement. Section 52 mentions acts that do not result in copyright infringement. This includes, for example, fair dealing with any work. "Fair dealing includes acts for private use of research and study, for criticism or review of work or reporting of current events and current affairs."¹⁰ The other examples include incidental storage during electric transmission, making backup copies of legally obtained computer programs, reproduction of any work for judicial or legislative reports, use of such works by educational institutions in a

⁹ *ibid*

¹⁰ Copyright Act 1957 (India) s 52.

certain manner, etc.¹¹ The fair-dealing provision is exhaustive in nature as it enumerates list of certain acts that are exceptions to copyright infringement, leaving a narrow room for interpretation, unlike broader concepts of 'fair use' as in the US.

However, due to this specificity in Indian Copyright law regards fair dealing, the room for interpretation to see whether an act should be considered infringement or not is negligible. Works like memes, remixes, satires, etc., find no space in the act; therefore, such digital works remain ambiguous. All facts and circumstances are different, and each requires a specific approach to deal. Therefore, fair dealing, being so constrained in its approach in the huge virtual world, leads to ambiguity in the field of copyright.

iii. Right to Ownership v. Right to Use

The copyright act on one hand provides for exclusive rights to owner to enjoy exclusive economic and moral rights in case of reproduction, adaptation, distribution, etc., in order to protect the author against unauthorized exploitation of their works and preserve their rights, while on the other provides for Right to Use for the users to use the protected works through statutory exceptions of fair dealing or authorized licenses. The intention behind providing for the Right to use in the given ways is to enable social benefit via research, criticism, commentary, remixes, parodies, satires, etc. However, the question persists whether the 'Right to Ownership' should gain dominance or the 'Right to Use'. Right to Ownership focuses more on an individualistic approach to protect the work of an individual, while the Right to Use, though, supersedes that approach but enables other creative works to be obtained through the available works, by taking inspiration or following a manner if done lawfully.

In the age of social media, where AI-assisted content creation is used in significant numbers, users mostly rely on the 'Right to Use' in order to transform, remix and share the existing works. But in contrast, ownership rights are very broad, exclusive rights, while the Right to Use is a very narrow and exhaustive list, which is not able to accommodate the wide range of activities happening on the various platforms. This ultimately results in copyright infringement of most of the works. Platforms, through their automated filters and other applications, handle such acts so technically that result in claiming most of the works like parody or remix as infringement. Therefore, all of this leaves very little room for works that involve

¹¹ *ibid*

transformation. In India, the Right to Ownership gains dominance over the right to use, which is quite problematic for a few of the works.

Thus, in the realm of social media, the problem with the available legal framework remains that there always seems to be uncertainty as to what really counts as ‘fair dealing’ for works or transformative works like memes, parody, satirical remix or other transformative AI output. The law provides for a very narrow definition of what constitutes fair dealing and the platforms also mostly over-enforce such creative works. The question for derivative works or AI-generated content also remains there.

Comparative Analysis: US and EU

Both the United States (“US”) and the European Union (“EU”) have been developing their legal frameworks over time to accommodate the evolving needs of copyright protection. On one hand, the US follows largely a utilitarian philosophy which promotes public progress by giving broader freedom to the public to use the protected works, while the EU, on the other hand, adheres to the ‘Authors rights’ philosophy, under which laws are made to protect the author’s personality and provide wider control over their works. The chapter will discuss the form of the laws, how the exceptions are framed, and the status quo of their application.

i. United States

In the US, copyright law is primarily codified under the Copyright Act of 1976. The law, being broader, extends to all sorts of works that are original, works of authorship, and expressed in a tangible form¹². Originality, here, does not mean an invention, but an independent product of the author’s creativity, having a unique form of expression which is not a copy of an existing expression or work¹³.

In the US, to qualify for originality, a minimal level of creativity is thus required. The US SC in *Feist Publications* held that the materials did not qualify for the protection of copyright because they did not contain a minimal level of creativity.¹⁴ *Accordingly, expressions that don’t*

¹² 17 USC § 102(a).

¹³ Deborah E Bouchoux, *Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets* (4th edn, Cengage Learning 2012) 193.

¹⁴ *Feist Publications Inc v Rural Telephone Service Co Inc* 499 US 340 (1991) 1294.

contain any creativity and are just rote, obvious and mechanical will not be qualified for the protection. Copyright protection grants exclusive rights to the author for the “reproduction, distribution, preparation of derivative works, public performance of literary, musical, dramatic, choreographic works and other audiovisual works, and public displays of paintings, sculptures, and similar works.”¹⁵.

The guiding principle of U.S. Copyright law is to encourage the creation of literary and artistic works so that the public can have access to knowledge for further creativity¹⁶. It may seem surprising that, despite being a leading proponent of capitalism on a global stage, the U.S. still places more on public rights and privileges than on the author’s exclusive moral and economic rights. This is mainly expressed in exceptions provided under the ‘Fair Use’ doctrine. When a work falls within the scope of the fair use doctrine, it can be exempted from copyright liability. If any use qualifies as fair use is determined by the four-factor test prescribed by the statute, that “includes: (1) *the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes*; (2) *the nature of the copyrighted work*; (3) *the amount and substantiality of the portion used in relation to the copyrighted work as a whole*; and (4) *the effect of the use upon the potential market for or value of the copyrighted work*.”¹⁷ Therefore, the list is inclusive rather than exhaustive and depends on the specific facts and circumstances of each matter, rather than a single line applicable to all sorts of cases. Apart from this doctrine, another one that limits the exclusive rights of the author is the first-sale doctrine.¹⁸ This doctrine restricts the exclusive right of the owner to control the distribution of a particular physical copy of a work after its authorised sale. After lawfully buying a copy of the copyrighted work, the consumer is free to sell, lend, or give away the copy without having to ask permission from the original copyright holder.

This liberal approach of the US copyright law, especially through the fair use doctrine, plays an important role in building and developing an environment conducive to innovation and critical discourse. Such acts of permitting copyrighted content for different purposes like criticisms, commentary, education, research, etc., the law ensures healthy discourse while not operating as a monopoly over expression. such flexibility is essential to support new forms of creativity, especially in the digital era, where remixes, sampling, and user-generated works

¹⁵ 17 USC §§ 106, 113–115, 120.

¹⁶ *Twentieth Century Music Corp v Aiken* 422 US 151, 156 (1975), where the court proclaimed that the “ultimate aim” of the US copyright law is to enable artistic creativity for the general public good.

¹⁷ 17 USC § 107.

¹⁸ 17 USC § 109(a).

form an integral part of contemporary culture. As a result, copyright law in the US not only protects creativity rather than being a little liberal in approach, facilitates continuous creative engagement. This also helps in the prioritising of access to knowledge and transformative creativity. Thus, U.S. copyright law shows a pragmatic balance between private ownership and public benefit.

ii. European Union (“EU”)

Copyright law in the EU is not a single, unified legal system; rather, it contains a bundle of national laws that are harmonised through EU directives. Previously, the law was less harmonised due to various barriers, such as historical, cultural, and linguistic diversity among the member states of the EU, with the limited trans-border economic significance for artistic works. However, harmonisation efforts to create a more consistent framework have grown in recent times due to the rise of digital technologies and increased economic interests in various areas like software and databases¹⁹.

The present copyright law in the EU is governed by a statutory framework that consists of 13 directives and 2 regulations that harmonise essential rights for authors, performers, producers, and broadcasters²⁰. Most of these directives are intended to ensure the EU’s compliance with international obligations under the Rome Convention, Berne Convention, TRIPS Agreement, WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.²¹ The principal legislative instruments include the *Information Society Directive* and the *Directive on Copyright in the Digital Single Market*. These instruments basically ensure copyright protection and set common standards in order to reduce national discrepancies and promote cultural diversity. Apart from the legislature, the Court of Justice of the European Union (“CJEU”), too, through various cases and judgments, has been actively involved in the harmonisation of Copyright at the EU level through various cases and judgements. One of the fundamental requirements of copyright protection is originality. Through various judgements,

¹⁹ Eleonora Rosati, ‘Copyright and Artificial Intelligence’ (2023) *International Review of Intellectual Property and Competition Law* <https://link.springer.com/article/10.1007/s40319-023-01357-0> accessed 18 November 2025.

²⁰ European Commission, ‘Copyright Legislation’ (Digital Strategy) <https://digital-strategy.ec.europa.eu/en/policies/copyright-legislation> accessed 18 November 2025.

²¹ *ibid*

the CJEU has “harmonised the general criterion of originality as an *author’s own intellectual creation* for all works in EU Copyright law.”²²

While the primary objective behind these frameworks is to balance the author’s rights with consumers’ access to works, the scope for user-oriented exceptions remains comparatively limited. Though the exceptions exist for “quotation, criticism or review, caricature, parody, and pastiche, along with educational use, research, and text-and-data mining, particularly for non-commercial and scientific purposes.”²³ However, these exceptions are mostly optional for the Member states and are subject to strict interpretations, which often result in overemphasis on Rightsholder’s rights.

One of the most important articles, Article 17 of the Directive on Copyright in the Digital Single Market (2019/790), emphasises platforms’ responsibility to prevent unauthorised uploads of copyrighted content. The provision, while intending to strengthen authors’ rights has resulted more in encouraging overly restrictive platform practices that prioritise technical compliance over expressive freedom. Consequently, both laws and judicial interpretations enforce stricter platform responsibility and tend to bend towards upholding authors’ rights more than the user’s accessibility.

These developments have impacted social media virality culture by imposing stringent rules on free expression in user-generated content. Both the laws and their interpretation need to be liberalised to achieve a genuine balance between the author’s rights and the user’s rights.

Free Speech and Copyright Laws

Freedom of speech is a basic human right, which is mentioned in Article 19 of the UDHR²⁴ or in ICCPR.²⁵ The right also gets reflected in most of the democratic countries of the world. There remains a plethora of examples around the globe where we hear about different protests, oppositional movements, etc., when freedom of speech is curtailed.

²² Case C-5/08 *Infopaq International A/S v Danske Dagblades Forening* [2009] ECR I-6569, ECLI:EU:C:2009:465, para 37.

²³ Directive 2001/29/EC (Information Society Directive) art 5.

²⁴ United Nations, ‘Universal Declaration of Human Rights’ <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 18 November 2025.

²⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) art 19.

Freedom of speech is an important right for many reasons. It facilitates circulation of ideas, opinions, and information within the public sphere. Prima facie, the right to speech means that every person should have the freedom to speak. Any act by anyone that curtails the right is wrongful and liable for punishment. However, the scope of the right extends beyond mere verbal articulation. Speech also contains the expression of thoughts, beliefs, and creative outputs in various forms. The Indian Constitution also recognises ‘Freedom of Speech and Expression’ as a fundamental right.

An important analytical question lies that why expression itself is important. What exactly does it entail? How does this freedom of expression, which is a human right topic, relate to Intellectual Property Rights? Freedom of Expression is basically the freedom to express one’s opinions, thoughts, skills, talent, etc. Whenever one shares their views or seeks out information, online or offline, one is exercising the right to freedom of expression. This encompasses activities such as criticising the government, questioning religious practices, legally protesting against policies, creating works of art, commenting on news articles, and performing artistic works, etc., all of which constitute the right to freedom of expression. The right is important because it enables and facilitates dialogue, builds understanding, and increases public knowledge. The right is basic to diverse expression and creativity, and innovation.

According to Article 19 of ICCPR, the right includes the freedom to **seek, receive and impart** information in any form through any media.²⁶ Other various frameworks such as “the African Charter on Human and Peoples’ Rights”, “the European Convention for the Protection of Human Rights and Fundamental Freedoms”, “the American Convention on Human Rights, ASEAN Human Rights Declaration”, etc., also recognises that the right to freedom of expression includes both the right to receive and impart knowledge or opinions.

As we have seen so far the status quo of Copyright protection in various countries, the basic question that arises regarding the relationship between the two is whether the Copyright law defeats freedom of expression or promotes it. The core purpose of the Copyright law is to promote creativity, and its regulatory framework is designed to ensure greater public involvement in creative works. This objective is achieved by a) granting protection to original works, (b) incentivising innovations and creativity, and (c) sanctioning those who use such protected works without the acknowledgement of the author. It may seem at a superficial level that the Copyright law restricts freedom of expression by protecting the author’s work and

²⁶ *ibid*

limiting their unauthorised use, as it curtails access to knowledge. However, the copyright law and the incentives it provides to creativity do not operate as a curtailment of free speech. Rather, copyright law functions as a balancing mechanism between freedom of expression and its misuse, ultimately reinforcing and strengthening the value of free speech and expression.

This can be explained as. When the copyright law protects the owner's works, it acknowledges them for their creativity and incentivises them for the use of their work for any purpose. This ensures that after getting such protection, moral and economic benefits, the public is encouraged to be more involved in creative works. This will ensure that more such works come out in the market, and this will lead to more expression in the market, eventually strengthening the right. There will be more expressions, works, and creativity available in the market so that more people can have more access to information and knowledge. Secondly, it gives the author exclusive control over their work to decide how it should be used. Such helps in preventing immoral use, plagiarism, copying, etc. In this way, copyright enables other rights encompassed under the freedom of expression, i.e., the right of privacy.

However, there will be a problem if all the works are subject to copyright control; then, the easy availability of ideas or information will be affected, which will eventually defeat the purpose of freedom of expression. But the copyright law provides a normative space by incorporating exceptions and defences, which ultimately balance protection of free speech & expression with the prevention of its violation. Those exceptions include Fair dealing in India, Fair Use in the US, and other statutorily recognised exceptions and limitations in various jurisdictions, including both common law and civil law systems. These defences ensure that certain works should be allowed to be used for public use, such as for educational, research, and scholarly purposes.

Therefore, the problem does not lie primarily with the framework itself. However, it cannot be denied that a few stringent things, like rigid and mechanical platform governance, or misuse of copyright law by governments, corporate entities, and other powerful rights-holders have the potential to suppress the criticisms that are expressed through parodies, satires, or memes, and similar forms of creative expression. These concerns can be resolved by updating the copyright framework, aligning its application with the values underlying Article 19 of the Indian Constitution and adopting a more liberal approach towards such creative works. Such approach would reduce the ability of state authorities, corporate giants, and other influential actors to misuse copyright law as a tool to silence critical or dissenting expression.

One prominent example of the misuse of laws or overly stringent policies that lead to the prohibition of free speech is YouTube's Content ID system. The example is particularly relevant because YouTube is one of the largest digital platforms in existence, with approximately 2.8 billion users worldwide.²⁷ In India alone, the platform has around 467 million active users.²⁸ The platform, which is used by such a large number of people to exercise the freedom of expression, is also the platform which restricts the freedom of expression in a large number. The Content ID of YouTube functions as one such mechanism, enabling automated enforcement of copyright claims that can result in the removal, demonitization, or blocking of content, often without fair use assessment.

In January 2020, a law school posted a video of a panel called "Proving Similarity" who were showing how the experts were analysing music for copyright infringement. YouTube's content ID had already declared it infringed, but the panel and the experts of IP Law reached the conclusion that the video did not infringe copyright. Moreover, YouTube restored the video but never answered the cause of taking it down in the first place. This is just an example among many to illustrate the *** nature of YouTube's Content ID.²⁹

The procedure of the Content ID as claimed by YouTube is that first, "videos uploaded to YouTube are scanned against a database of files have been submitted by rightsholders."³⁰ If a match is found, YouTube can block the video from public view; the right-holders may monetize the video by demanding revenue or data of the video's viewership will be shared with the right-holders.³¹ A significant concern with this system is that a match may be triggered even by a few seconds of content taken from hours-long material. Content ID handles almost 98 per cent of the copyright claims on the platform.³²

Many creative works, particularly music and audiovisual content, for example, are produced through collaboration, remixing, or transformative use. Though some legal systems recognise

²⁷ Global Media Insight, 'YouTube Users Statistics' <https://www.globalmediainsight.com/blog/youtube-users-statistics/> accessed 22 December 2025.

²⁸ The Global Statistics, 'YouTube Statistics' <https://www.theglobalstatistics.com/youtube-statistics/> accessed 22 December 2025.

²⁹ Electronic Frontier Foundation, 'Unfiltered: How YouTube's Content ID Discourages Fair Use' <https://www.eff.org/wp/unfiltered-how-youtubes-content-id-discourages-fair-use-and-dictates-what-we-see-online> accessed 22 December 2025.

³⁰ *ibid*

³¹ YouTube Creator Academy, 'Respond to Content ID Claims' https://creatoracademy.youtube.com/page/lesson/respond-to-content-id-claims_copyright-content-id-overview_image accessed 22 December 2025.

³² Electronic Frontier Foundation, 'Unfiltered: How YouTube's Content ID Discourages Fair Use' <https://www.eff.org/wp/unfiltered-how-youtubes-content-id-discourages-fair-use-and-dictates-what-we-see-online> accessed 22 December 2025.

transformative use as ‘Fair Use’ or ‘Fair Dealing’ but such contextual evaluation is largely absent from automated systems like Content ID. The system does not assess whether the use in the work is transformative, critical, or parodic. Such sensitivity impacts the users who want to make content involving reviews, memes, or parodies, especially for any movies or music, etc., because such content is frequently blocked, demonetised, or subjected to revenue diversion, leading to financial and expressive consequences for users, particularly independent creators who rely on such platforms for their livelihood. Therefore, the main task has not been to promote creativity but to pass Content ID.

Moreover, meaningful redressal mechanisms remain weak. Content creators have limited scope to challenge Content ID claims, as communication from the platform is minimal.³³ The only check on the Content ID lies with the willingness of the users to raise dispute on such matches; however, such also works on the whims of the system itself. Since most of the Content ID database is collected primarily by large rightsholders. Therefore, anyway, it is the large media companies with enough of resources that benefit from it, not the small content creators making content for their livelihood. Therefore, in order to protect the large companies’ ‘Ownership Rights’, the system ignores the small creators’ ‘Right to Use’. In this way the free speech is affected via the name of the Copyright Law.

Apart from the platform governance, there has been similar issues arise from the manner in which governments invoke copyright law in order to suppress criticism. Many times, the government does this even when there is no such claim from the owner due to the desired intent of suppressing critics. Copyright law is used by the government for Censorship rights. For example, “the Indian government asked Twitter and YouTube to remove the videos and tweets related to a documentary by the BBC, which focused on the Gujarat religious riots in 2002.”³⁴ Though the BBC did not initiate the takedown requests, the government cited the reasons for taking down requests to be for violations of IP rights. It is very clear that Section 52 of the Indian Copyright Act states that criticisms, reviews or reporting events are treated as an exception; taking down such videos is nothing but misusing copyright laws as a form of censorship, thus restricting free speech.

³³ *ibid*

³⁴ Information Technology and Innovation Foundation, ‘Indian Government’s Use of Copyright Infringement Claims as a Form of Censorship Is Harmful’ (ITIF, 25 January 2023) <https://itif.org/publications/2023/01/25/indian-governments-use-of-copyright-infringement-claims-as-a-form-of-censorship-is-harmful-says-itif/> accessed 4 January 2026.

Conclusion

Copyright protection acts as both a sword and a shield—a sword against infringing works and a shield for works enjoying copyright protection. However, when it performs different functions for different works, it undermines the very purpose for which it exists. This is particularly evident in the case of derivative or transformative works, whether created with the assistance of AI or not, on social media platforms to convey a message which, though inspired by a copyrighted work, possesses its own originality.

By delving deep to know the difference and the conflict between the ownership rights and the use rights. We observed that ownership rights get prominence over the use rights via different examples of platform governance, mechanical takedowns and government censorships that all work in a way to protect the big players while increasing the burden on the small creators. While doing so, the free speech of the users is barely taken into account by any of the entities in power, be it big social media platforms or the government.

The mechanical application of the Indian copyright framework in this digitised, creative, and fast-paced world has a chilling effect not only on freedom of speech and expression but also on scientific temperament, creativity, and the right to be heard. It prevents the novel forms of expression that are prevalent in contemporary society. As Justice P.N. Bhagwati observed, '*Law is not static. It is a living organism and must grow and develop with the needs of society.*' Indian copyright law must therefore adapt to societal changes and needs in a manner that furthers the objectives of copyright protection.

In this regard, reference may be drawn from the comparative jurisprudence of other jurisdictions, such as the U.S. and the E.U., particularly concerning the evolution of copyright provisions to address the demands of contemporary society in the case of derivative works posted, reposted, shared, or uploaded on social media platforms. There is a need for a balanced approach to promote creativity and freedom of expression while promoting copyright protection to original works.