

## COPYRIGHT LAW AND DIGITAL EDUCATION IN INDIA: A STUDY OF FAIR DEALING AND ONLINE LEARNING PLATFORMS

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### ABSTRACT

The rapid proliferation of digital technology has fundamentally transformed the landscape of education in India, giving rise to a burgeoning ecosystem of online learning platforms, massive open online courses (MOOCs), and government-sponsored digital educational infrastructure. This transformation has generated significant tensions between the proprietary rights of copyright holders and the public interest in ensuring wide and affordable access to educational content. The Copyright Act, 1957, through its fair dealing provisions under Section 52, attempts to balance these competing interests by creating exceptions for educational uses of copyrighted works. However, the adequacy of these provisions in the context of digital education remains seriously contested. This article undertakes a comprehensive legal analysis of the interface between copyright law and digital education in India, critically examining the doctrine of fair dealing under Section 52 and its application to online learning platforms. Through comparative analysis of frameworks in the United States, United Kingdom, Australia, Canada, and the European Union, this article identifies international best practices and proposes targeted legislative, policy, and institutional reforms to create a technology-neutral, purpose-oriented fair dealing framework adequate for India's rapidly expanding digital education sector.

**Keywords:** Copyright Act 1957, Fair Dealing, Section 52, Digital Education, Online Learning Platforms, EdTech, Technological Protection Measures, Open Educational Resources, SWAYAM, NPTEL, DU Photocopy Case

### INTRODUCTION

The relationship between copyright law and education has always been complex and contested. Copyright law seeks to protect the economic and moral rights of creators by granting them exclusive control over the reproduction, distribution, and communication of their works. Education, on the other hand, depends fundamentally on the free flow of information and access to the accumulated body of human knowledge. These two imperatives – protection and access – stand in inherent tension, a tension that has been significantly amplified by the digital revolution. India has witnessed an extraordinary transformation in its educational landscape over the past decade. The proliferation of internet connectivity, the rapid adoption of smartphones, and successive government policy initiatives have collectively created a vibrant and rapidly expanding digital education ecosystem. The COVID-19 pandemic of 2020–2021 acted as a powerful catalyst, compressing years of gradual adoption into months as physical institutions shuttered and teaching migrated almost entirely to online platforms. According to a KPMG and Google Report, the Indian online education market was valued at approximately USD 2.8 billion in 2020 and was projected to reach USD 10.4 billion by 2025, with over 4,500 EdTech startups catering to diverse educational needs. The primary legal instrument governing copyright in educational activities in India is Section 52 of the Copyright Act, 1957, which

sets out the circumstances in which the use of copyrighted works does not constitute infringement – the doctrine known as 'fair dealing'. However section 52 exceptions were crafted in a pre-digital era and reflect assumptions about the physical, analogue character of educational activity that are increasingly at odds with the realities of digital education. This article investigates these legal problems and proposes targeted reforms<sup>219</sup>.

**Table 1: Growth of EdTech Market in India (2015–2025)**

Year	Internet Users (Mn)	EdTech Market (USD Bn)	Online Edu. Users (Mn)
2015	302	0.4	1.6
2017	432	0.9	5.2
2019	560	1.5	12.8
2020	749	2.8	45.0 (COVID)
2023	910	7.5	120.0
2025 (Proj.)	1,100	10.4	180.0

Source: KPMG and Google, 'Online Education in India: 2021' (2021); NASSCOM, 'India EdTech: Unlocking the \$10B Opportunity' (2021).

**COPYRIGHT LAW IN INDIA: HISTORICAL EVOLUTION AND LEGISLATIVE FRAMEWORK**

The history of copyright law in India is inseparable from the history of colonial legal transplantation. The first copyright statute applicable to India – the Indian Copyright Act, 1847 – was enacted during the East India Company's administration, closely modelled on the British Copyright Act of 1842. The Indian Copyright Act, 1914, which extended the UK Copyright Act, 1911 to British India, introduced foundational concepts including the idea-expression dichotomy and the first formulations of educational use exemptions.

The Copyright Act, 1957 represented India's first independent exercise in copyright law-making. Enacted after extensive deliberation, it sought to provide a comprehensive framework fulfilling both national developmental priorities and international treaty obligations under the Berne Convention and the Universal Copyright Convention. A defining feature of the 1957 Act was its explicit acknowledgement of the tension between copyright protection and public access through relatively broad fair dealing exemptions under Section 52.

The Act has been amended on four significant occasions. The Copyright (Amendment) Act, 1984 protected computer programmes as literary works. The 1994 Amendment addressed cable television, sound recording, and emerging digital concerns. The 1999 Amendment secured TRIPS compliance. Most significantly for digital education, the Copyright (Amendment) Act, 2012 introduced Technological Protection Measures (Section 65A), Rights Management Information (Section 65B), and expanded disability exceptions.

Section 13 specifies the works protected – original literary, dramatic, musical, and artistic works, cinematograph films, and sound recordings. The Supreme Court in *Eastern Book Company v. D.B.*

<sup>219</sup> KPMG and Google, *Online Education in India: 2021* (2021) 8; Nasscom, *India EdTech: Unlocking the \$10B Opportunity* (Nasscom, New Delhi, 2021) 12.

*Modak*<sup>3</sup> elaborated the 'modicum of creativity' standard, holding that works must possess some minimum degree of creative expression. Section 22 provides for a copyright term of the author's lifetime plus sixty years, representing a long period of private monopoly over works that could otherwise be freely disseminated for educational purposes. Section 51 specifies infringement, including the broad concept of 'communication to the public' – particularly relevant in the digital streaming context<sup>220</sup>.

**FAIR DEALING AND EDUCATIONAL EXCEPTIONS UNDER INDIAN COPYRIGHT LAW**

**A. The Concept and Structure of Fair Dealing**

In India, fair dealing is not a judicially created doctrine but a statutory one, codified in Section 52 of the Copyright Act, 1957. Unlike the broad, open-ended four-factor test under the US fair use doctrine (17 U.S.C. § 107), India's fair dealing is a purpose-specific, enumerated scheme. Section 52(1)(a) provides that a fair dealing with any work (not being a computer programme) for the purposes of research or private study, criticism or review, or the reporting of current events shall not constitute infringement.

The Act does not define 'fair dealing'. Indian courts have developed the applicable standard through case law. In *Blackwood and Sons Ltd. v. A.N. Parasuraman*,<sup>4</sup> the Madras High Court held that fairness must be assessed by considering the quantity and quality of material taken, the purpose of the taking, the nature of the original work, and the likely effect on the market for the original. In *Civic Chandran v. Ammini Amma*,<sup>5</sup> the Kerala High Court emphasised that fair dealing must be assessed from the perspective of the reasonable man and must serve the stated purpose in a genuine rather than pretextual manner.

**B. Educational Exceptions Under Section 52**

**Table 2: Educational Exceptions Under Section 52, Copyright Act, 1957**

Section	Exception	Key Conditions	Digital Applicability
52(1)(a)	Fair dealing for research/private study	Genuine research or study; proportionate amount	Uncertain – 'private study' may not cover online platforms
52(1)(i)	Reproduction by teacher/pupil in course of instruction	For instruction only; not for commercial use	Uncertain – does 'instruction' cover online teaching?
52(1)(j)	Performance in educational institutions	Audience limited to institution members	Very limited – streaming to remote learners excluded
52(1)(za)	Personal/backup copying	Personal use only; no distribution	Partially applicable – covers student personal copying
52(1)(zb)	Transient/incidental storage	Must be for lawful use of work	Applicable – covers platform caching

**C. The DU Photocopy Case: A Landmark Analysis**

The single most important judicial development in India's copyright-education interface is the Delhi High Court's Division Bench decision in *The Chancellor, Masters and Scholars of the University of*

<sup>220</sup> Copyright Act, 1957 (No. 14 of 1957), s. 52.

*Oxford v. Rameshwari Photocopy Services*<sup>6</sup> (the 'DU Photocopy Case', 2016). The case addressed whether the preparation and sale of 'course packs' – compilations of photocopied passages from copyrighted textbooks for university students – constituted infringement or fell within the educational fair dealing exceptions under Section 52.

The Division Bench adopted a purposive, contextual interpretation of 'reproduction by a teacher or pupil in the course of instruction' under Section 52(1)(i), holding that it should be read broadly to include all activities forming part of the process of education. Since course packs were prepared for use in instruction, the reproduction was 'in the course of instruction'. The Court dismissed the publishers' argument for strict quantitative limits and implicitly engaged with the TRIPS three-step test, holding that India's fair dealing exceptions are consistent with international obligations. This case signals Indian

courts' willingness to interpret educational exceptions expansively. However, its reasoning – developed in the context of physical photocopying – leaves open the extent to which it applies to commercial online platforms that are not educational institutions in the classical sense.

#### **D. Limitations of the Current Framework**

Despite liberal judicial interpretation, the current fair dealing regime suffers from four structural limitations for digital education. *First*, the framework is technology-neutral but not technology-affirmative – it does not expressly recognise or enable digital educational uses, creating a chilling effect on platforms and educators. *Second*, educational exceptions are spread across multiple sub-clauses with different conditions, producing an incoherent framework difficult to navigate for compliance purposes. *Third*, the interaction between Section 65A's TPM protection and Section 52's fair dealing rights creates a structural paradox – circumventing a digital lock to exercise a statutory fair dealing right may itself constitute an offence. *Fourth*, the absence of any statutory licensing mechanism for large-scale digital distribution of educational content forces platforms to either negotiate costly individual licences or rely on uncertain fair dealing exceptions.

### **DIGITAL EDUCATION AND ONLINE LEARNING PLATFORMS IN INDIA**

#### **A. Government Digital Education Initiatives**

The Indian government has invested significantly in creating public digital education infrastructure through flagship initiatives. SWAYAM (Study Webs of Active Learning for Young Aspiring Minds), launched in 2017, hosts over 3,000 courses from more than 1,000 faculty members across disciplines, available free to registered learners. NPTEL (National Programme on Technology Enhanced Learning), a joint initiative of seven IITs and IISc launched in 2003, has developed over 2,000 online video courses accumulating over 800 million YouTube views. NDLI (National Digital Library of India), maintained by IIT Kharagpur, aggregates content from multiple sources raising complex copyright questions about third-party content aggregation. DIKSHA (Digital Infrastructure for Knowledge Sharing), launched in 2017, provides a platform for school education with content from NCERT, state governments, and private publishers.

#### **B. Private EdTech Platforms and Copyright Challenges**

India's private EdTech sector spans K-12 education, test preparation, higher education, and professional certification. Major platforms include BYJU'S (in financial distress as of 2024), Unacademy, Vedantu, upGrad, and Indian operations of Coursera and edX. Unlike government platforms that operate primarily with institutional faculty content, private platforms must either create original content (at substantial cost), license content from publishers, or rely on fair dealing exceptions with attendant legal uncertainties.

The Bombay High Court's decision in *Tips Industries Ltd. v. Wynk Music Ltd.*<sup>8</sup> – holding that on-demand streaming services cannot rely on statutory licence provisions designed for radio broadcasting – has significant implications for educational platforms. The principle that statutory provisions must be narrowly construed signals caution against creative legal arguments about the reach of existing exceptions.

Platform liability for user-uploaded content is governed by Section 79 of the IT Act, 2000 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. In *Myspace Inc. v. Super Cassettes Industries Ltd.*,<sup>9</sup> the Delhi High Court established that internet platforms are not automatically liable for user-uploaded infringing content, provided they comply with safe harbour conditions – not initiating transmission, not modifying content, taking down infringing content expeditiously, and not deriving financial benefit from infringement. The 2021 IT Rules impose substantial

administrative burdens on educational platforms, and fear of losing the safe harbour may lead to over-broad content removal that chills legitimate fair dealing.

### C. Technological Protection Measures and the Access Paradox

Section 65A of the Copyright Act, inserted by the 2012 Amendment, prohibits circumvention of effective Technological Protection Measures (TPMs). In the online education context, TPMs appear as DRM systems restricting copying of digital textbooks, access controls on course materials, and watermarking. The legal paradox is acute: if a student wishes to exercise an educational fair dealing right but the digital textbook is protected by a DRM system preventing printing, they must circumvent the TPM to exercise their statutory right. Whether Section 65A(2)'s exception for circumvention 'for a purpose not expressly prohibited by this Act' covers educational fair dealing circumvention is unresolved by Indian courts – a critical gap that the 2012 Amendment failed to address.

### D. Creative Commons Licensing and Open Educational Resources

Creative Commons (CC) licences provide a voluntary alternative to traditional all-rights-reserved copyright for creators who wish to permit certain uses without individual licensing negotiations. In the educational context, CC licences reduce transaction costs, enable collaborative open textbook development, and align with institutions' public interest goals. Open Educational Resources (OER) – educational materials released under open licences permitting free use, adaptation, and redistribution – represent CC licensing in practice. NPTEL's adoption of CC BY-NC-SA licensing for its content is a notable model. UNESCO's 2019 Recommendation on Open Educational Resources calls on member states (including India) to mandate open licensing for publicly funded educational content and establish OER repositories – a comprehensive national OER policy in India remains to be developed.<sup>10</sup>

## COMPARATIVE ANALYSIS: INTERNATIONAL FRAMEWORK

A comparative analysis of copyright frameworks in five jurisdictions reveals both the inadequacies of India's approach and the legislative options available for reform.

### A. United States: The Fair Use Doctrine

The US fair use doctrine under 17 U.S.C. § 107 is an open-ended flexible standard applying to 'any purpose' and assessed by four factors: purpose and character of use; nature of the copyrighted work; amount and substantiality of portion taken; and effect on the potential market. The transformative use doctrine, developed post-*Campbell v. Acuff-Rose Music, Inc.*,<sup>11</sup> has significantly expanded fair use for digital educational contexts. The Second Circuit's decision in *Authors Guild v. Google, Inc.*<sup>12</sup> –

upholding Google's mass digitisation of books as fair use on transformative grounds – establishes the principle that large-scale digital reproduction enabling access to information may be fair use where use is transformative and does not harm the market for the original. The US experience demonstrates that an open-ended multi-factor standard can accommodate rapidly evolving digital educational uses without constant legislative amendment.

### B. United Kingdom, Australia, Canada, and the European Union

The UK's Copyright, Designs and Patents Act, 1988 (CDPA) provides Sections 32–36A with specific educational exceptions more detailed and practically useful than India's Section 52(1)(i) and (j), and creates explicit TPM circumvention exceptions for non-commercial research and private study – a critical gap in India's framework. *Hubbard v. Vosper*<sup>13</sup> established the foundational principle of holistic fair dealing assessment. Australia's Copyright Act, 1968 provides a 10% quantitative safe harbour for research or study, offering significantly greater legal certainty than India's vague standard. More significantly, Australia's Part VB statutory licences permit educational institutions to make and communicate copies of works for educational purposes upon payment of equitable remuneration to collecting societies – a pragmatic resolution of the copyright-education tension that India currently lacks.

Canada's Supreme Court in *CCH Canadian Ltd. v. Law Society of Upper Canada*<sup>14</sup> held that fair dealing is a user's right deserving large and liberal interpretation. The Court's six-factor framework – purpose, character, amount, nature of work, available alternatives, and effect on the work – is analogous to the US four-factor test and considerably more flexible than India's approach, demonstrating that even within a 'fair dealing' system, courts can adopt an expansive educational orientation.

The EU's Digital Single Market Directive (2019/790/EU), Article 5, introduced mandatory exceptions for cross-border digital educational uses, requiring all member states to permit digital use of protected works for teaching – explicitly covering digital and cross-border educational activities. This mandatory framework represents an important international standard for India to emulate.

**Table 3: Comparative Analysis – Fair Dealing/Fair Use Across Jurisdictions**

Jurisdiction	Standard	Digital Applicability	Statutory Licence
India	Fair dealing (enumerated)	Uncertain; not technology-affirmative	None for education
USA	Fair use (open-ended, 4-factor)	Explicit (TEACH Act, §110(2))	None; negotiated licences
UK	Fair dealing + educational ss.	Partially explicit; TPM exception exist	sEducational licences availab
Australia	Fair dealing + 10% safe harbour	Statutory licence covers digital use	Yes (Part VB scheme)
Canada	Fair dealing (purposive, 6-factor)	Judicially expanded (CCH)	None; negotiated licences
EU	Optional + mandatory (DSM Direc	tExplicit for digital/cross-border	Collective licensing widely

## FINDINGS, RECOMMENDATIONS, AND CONCLUSION

### A. Principal Findings

This research yields five principal findings. *First*, India's fair dealing framework under Section 52 is technologically inadequate – designed for analogue educational purposes, it does not expressly

cover digital or online educational activities. The language of 'reproduction by a teacher or pupil in the course of instruction' and 'performance in educational institutions' reveals assumptions about physical classrooms irreconcilable with platform-mediated online education.

*Second*, the interplay between Section 65A's TPM regime and Section 52's fair dealing exceptions creates a critical access paradox. Where copyrighted educational content is protected by digital locks, students and teachers who would otherwise enjoy fair dealing rights may be unable to exercise them without risking criminal liability for TPM circumvention.

*Third*, the absence of a statutory licensing mechanism forces educational platforms into a binary choice between costly individual licences and legally uncertain fair dealing claims – both options impeding the growth of affordable digital education. *Fourth*, India's flagship government initiatives (SWAYAM, NDLI, DIKSHA, NPTEL) operate without a clear statutory framework governing copyright ownership, aggregation, and distribution of educational content. *Fifth*, compliance obligations under the 2021 IT Rules impose disproportionate burdens on small EdTech platforms, generating a chilling effect on legitimate educational innovation.

## B. Recommendations for Legislative and Policy Reform

**1. Introduce a Structured Fair Use Provision.** India should amend Section 52 to introduce a structured fair use provision modelled on the Canadian CCH framework. This provision should: (a) apply to any use of a copyrighted work rather than only specified purposes; (b) direct courts to consider the purpose and character of use (with educational use presumptively favourable), the nature of the work, the amount taken, market effect, and whether the work was reasonably obtainable commercially; and (c) include a non-exhaustive list of presumptively fair purposes including education, research, commentary, and accessibility.

**2. Explicitly Extend Educational Exceptions to Digital Uses.** Sections 52(1)(i) and 52(1)(j) should be amended to clarify that 'reproduction' includes digital reproduction, 'performance' includes online streaming and digital transmission, and 'educational institution' includes accredited distance learning and online education providers. The amendment should specify that delivery of educational content to remote learners through learning management systems constitutes 'instruction in the course of educational activities'.

**3. Resolve the TPM–Fair Dealing Paradox.** Section 65A should be amended to explicitly provide that circumventing a TPM for the purpose of exercising a right under Section 52 is not an offence, and that supplying a device or software for such circumvention for educational fair dealing purposes is also permissible. This resolves the paradox where a statutory fair dealing right is rendered practically unexercisable by a digital lock.

**4. Introduce a Statutory Educational Licence.** India should introduce a statutory licensing mechanism for educational copying and digital distribution, modelled on Australia's Part VB scheme. The licence should: (a) permit educational institutions and accredited online learning platforms to reproduce and communicate copyrighted works for educational purposes subject to equitable remuneration; (b) specify remuneration rates through collecting societies and a copyright tribunal; (c) apply to both physical copying and digital distribution; and (d) require compliance with Rights Management Information obligations.

**5. Develop a National OER Policy.** Pursuant to UNESCO's 2019 OER Recommendation, India should mandate open licensing for all publicly funded educational content, establish a national OER repository integrating SWAYAM, NDLI, DIKSHA, and NPTEL content, and provide incentives for OER creation by academic institutions.

**6. Create a Specialised EdTech Copyright Compliance Framework.** The Ministry of Education and DPIIT should develop clear, platform-appropriate guidelines on educational fair dealing scope, a simplified take-down procedure that does not chill legitimate fair dealing, a mechanism for pre-clearance on proposed educational uses, and capacity-building support for small and medium EdTech platforms.

### C. Conclusion

This article has demonstrated that India's copyright framework falls systematically short of the needs of its growing digital education sector. The historical analysis reveals that the Copyright Act, 1957, despite the significant reforms of 2012, was not designed for the online, platform-mediated educational environment of contemporary India. The doctrinal analysis shows that while the Delhi High Court's expansive interpretation in the DU Photocopy Case provides important protection for educational uses, structural limitations – technological inadequacy, the TPM-fair dealing paradox, and the absence of statutory licensing – render the framework inadequate. The comparative analysis confirms that jurisdictions with more flexible educational copyright frameworks – particularly the US, Canada, Australia, and the EU post-DSM Directive – have more effectively balanced copyright protection and educational access in the digital environment.

The reforms proposed in this article – a structured fair use provision, explicit digital extension of educational exceptions, resolution of the TPM paradox, statutory educational licensing, a national OER policy, and a specialised EdTech compliance framework – form a coherent programme for bringing India's copyright framework into alignment with the needs of its digital education revolution. These reforms are grounded in international best practice, consistent with India's treaty obligations under the Berne Convention, TRIPS, and the WCT, and calibrated to India's unique educational and developmental context. The right to education guaranteed by Article 21-A of the Constitution of India must be interpreted for the twenty-first century to encompass the right to participate in the digital knowledge economy. Copyright law must be a vehicle for realising this constitutional commitment, not a barrier to it.

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