ORIGIN OF COPYRIGHT LAW AND ITS INFRINGEMENT

I. 1. Origin of infringement in Copyright law.

The concept of copyright is not a new evolution. It is related to the history of man. With the introduction of machines in the field of printing and thereby simultaneously replacing manual writing, it became a protected right. The first statute is traced as the statutes of the University of Paris 1223, which authorized duplication of texts for university use only except other purposes. In early times, since religious literature was written only and there was no concept of market system in the society for its circulation, so there were no problems relating to copying. Later on due to the effect of Eight Commandments, "THOU SHALT NOT STEAL" in Europe became the moral basis of the protective provisions of the law of copyright. This law did not allow anyone to get a benefit and to appropriate to himself that which had been produced by labour and skill of another, because basic principle is that no man shall steal what belongs to another and this was the reason that the question of copyright began to agitate the minds of authors of texts when printing press came into existence.\(^1\) The notion that an author should have an exclusive "copyright" in his creation took firm shape at the beginning of the eighteenth century. It derived from a confusion earlier strains and there was still a major evolutionary conflict to come before its modern form was finally fixed.

From their early years of the first copying industry - printing - a pattern of exploitation had been developing: an entrepreneur, whose calling was typically that of "Stationer", became the principal risk taker; he acquired the work from its author (if he was not reprinting a classic) and organized its printing and sale. The stationers (forefathers of the modern publisher) were the chief proponents of exclusive rights against copiers. Certainly their own practices - their guild rules and the terms on which

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\(^1\) Remedies Regarding Infringement of Copyright in India: An overview – by Dr. Dharmendra Kumar Mishra. Indian Bar Review 2004, July-December; Pages 363-368.
they dealt with authors - insisted upon this exclusivity; their regime for “insiders” became a source of trade customs from which general rights against “outsiders” might be distilled. 

In this objective the stationers found an ally in the crown. In 1534 they secured protection against the importation of foreign books; and in 1556, Mary, with her acute concern about religious opposition, granted the stationer’s company a charter. This gave a power, in addition to the usual supervisory authority over the craft, to search out and destroy books printed in contravention of statute or proclamation. The company was thus enabled to organize what was in effect a licensing system by requiring lawfully printed books to be entered in its register. The right to make an entry was confined to company members, this being germane to the very purpose of charter. The system of control was equally satisfying to Elizabeth and her stuart successors, who supervised it through the star chamber and the heads of the established church. Governments determined to censor heterodoxy made concert with the established order of the publishing trade.

The royal predilection for granting special privileges might interfere with the interests of the stationers. Not only was sole privilege to print Bibles, prayer books and laws claimed under the royal prerogative; much wider privileges - not confined to particular, or even new works - were also granted by letter patent. In the long term, it was not the fact of individual grants which mattered, but their cumulative effect. For they might bear the inference that, as with exclusive rights in technical inventions, it needed special authority from the crown to secure legal protection against imitators.

So long as, the licensing system survived, this line of argument was of no great significance. And stationer’s company licensing had considerable vitality. It outlived the ignominy into which the star chamber fell, being kept up by the long parliament and confirmed in 1662 after Charles II’s restoration. But he allowed it to lapse in 1679; and while james II revived it for seven years in 1685, it could not last long in the political

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climate of his dethronement. Parliament finally refused to renew it in 1694. The stationer’s; who had argued forcefully against their loss of protection, were left with such claim to “copyright” as they could make out of their own customary practices surrounding registration. As they also lost their search and seizure powers and equity had not yet begun to grant injunctions to protect any interest that they might establish, their only hope was in common law and this they put to no decisive test. Their needs were equally for definite substantive rights and for effective procedures to enforce them and these needs were reflected in the legislation that they secured in the reign of Anne, the copyright Act of 1970.

The sole right and liberty of printing books that the Act conferred was given to authors and their assigns; but it stemmed nonetheless from commercial exploitation rather than literary creation pure and simple. Enforcing the right depended upon registering the book’s title before publication with the stationers’ company, “as hath been usual”, and likewise it was enforceable by seizure and penalties. The right lasted for 14 years from first publication “and no longer”; but if the author was still living at the end, the right was “returned” to him for another 14 years. Other “Copyrights” were expressed to be unaffected by the Act. It was not difficult to argue that an author ought to have some protection over his work before it was published. Since this went uncovered by the Act, it could only lie in a right of literary property at common law. But much more absorbing was the question whether any common law right survived in perpetuity the act of publication.

At first, in the view of majority of judges, history and policy demanded the recognition of this complete property right. The Act of Anne was treated as providing supplemental remedies during the period when unfair completion could most readily injure the first publisher. In the end, the great case of Donaldson v. Beckett\(^3\) narrowly settled the issue on the other way the statute was taken to delimit the scope of rights after publication absolutely. It was a most strategic victory for those who would insist that claims to trading exclusivity must be balanced against public interest in the freedom

\(^3\) (1774) 2 Bro. P.C. 129.
to exploit. Had the case gone the other way, protection for other forms of intellectual 
endeavour against “misappropriation” would have been pressed in a host of analogies. 
Given Donaldson v. Beckett, new forms of protection had to be secured from the 
legislature; and even if a lobby succeed, the most that could be hoped for would be an 
exclusive right of limited duration.

That process had indeed already begun. The engravers had succeeded in 1734 
and 1766. Textile designers secured some very temporary protection by statutes which 
were the precursors of the present registered design system. In 1798 and 1814, 
sculptures were protected; and eventually - as the technical possibilities for reproducing 
artistic works expanded - the Fine Arts Copyright Act 1862, brought in paintings, 
drawings and photographs.

In 1814, the term of statutory right in published books was extended to 28 years 
or the author’s life, whichever was longer. But sergeant Talfourd’s attempts to have it 
again extended - for a period of perhaps the author’s life and 60 years - ran into shoal of 
“economical” argument, put in particularly telling form by T.B. Macaulay. His view of 
copyright as “a tax on readers for the purpose of giving a bounty to authors” meant that 
in 1842 the period was extended only to 42 years or the author’s life and 7 years, 
whichever was longer. That compromise was at last until international pressures obliged 
parliament to revise its views in Talfourd’s direction.

The commercial interest of book publishers had called for a “Copyright” and much 
the same applied to artistic work. But in the art of drama and music, exploitation 
occurred as much through performance as through the sale of copies. Playwright’s 
composers and their commercial associates sought a “use” right upon each public 
performance of the work. In 1833 this distinct performing right was given in dramatic 
works and in 1842 extended to musical work. Despite the nature of the performing right, 
the wider term, “author’s right”, was never introduced into English usage, as it was in 
most other languages, in place of “Copyright”. The difference reflects the accretive 
historical process by which the British law developed. But equally it carries another
overtone a change to “author’s right” might well symbolize some preference for creator over entrepreneur. That is something which has rarely attracted much ardour in Britain.

The same point is under-scored in another way. The relation between author and exploiter offers many opportunities for tension and disagreement. In continental Europe the need to safeguards the artistic integrity of the author in the course of such relations was eloquently argued, particularly in the latter nineteenth century; and in many copyright laws the author was accorded moral rights which entrenched making in operative any surrender of the rights in advance of the time when the author might want to rely upon them. These typically might include; the right to decide to make the work public; the right to be named as a author; the right to object to revisions affecting honour or reputation. Some systems have gone to the extent of adding a right to have the work withdrawn upon payment of compensation; and the right to object to destruction. In Britain, this sort of demand seems scarcely have surfaced at all. Instead, in the high age of contractual freedom, relations were left determined by agreement, supported by such terms as the court might imply in the name of business efficacy and subject to the torts of defamation, injurious falsehood and passing off.

Britain could not however afford to reject entirely the ideals of those for whom copyright was a practical expression of reverence for the act of artistic creation. Her commercial position made her a considerable exporter of Copyright material and she had a strong interest in reciprocal copyright arrangements with other countries and their colonies. On the question of protecting foreign works, it was possible to take a number of attitudes; the French for instance, at first granted protection to all authors of works published in France and to works to Frenchmen published anywhere. The Americans, by contrast, underlined their independence from Britain by confining copyrights to citizens and residents; and a century later, while conceding some place to foreign authors, country by country, congress required all legitimate copies of various types of work to be produced in the United states (under the controversial “manufacturing clause”). The British, true to their own tradition of giving first consideration to home
publishers, admitted foreign authors to copyright upon condition that the work was first published within the country.

With protectionist America, the hope of satisfactory mutual arrangements was slender, but with continental Europe and elsewhere the prospects were brighter. A number of bilateral arrangements were worked out. Then, by the Berne convention of 1886, a multinational system evolved, under which either the personal correction of the author with a Member state, or first - publication in a Member state, was to secure copyright in the other under the principle of national treatment, but this in turn raised questions about the scope of rights offered in each state. At the Berlin Revision of the convention in 1908, Britain was obliged to accept the majority consensus on two matters; protection was to arise out of the act of creation itself, without any condition of registration or other formality - which obliged Britain to abandon even the traditional requirement of stationer's company registration before suing; and the period of protection for most types of work was to be at least the author's life and 50 years - that quasi - proprietary right against which Macaulay had persuaded Parliament 70 years before.

These changes were adopted in the copyright Act, 1911, the first British legislation to bring the various copyrights within a single text and at the same time to put rights, even in unpublished works, on a statutory footing. There was, however some concession to public interest arguments; in the later years of the copyright in published works there were certain provisions for automatic licences.

If the author gained by this intrusion of foreign ideals, the entrepreneur was by no means forgotten. The 1911 Act gave the producers of sound recordings their own exclusive right to prevent reproductions of their recordings (and, as the court later held also to prevent public performances of them). The right was indiscriminately labeled copyright, even though it was conferred not upon the executants artist whose performance was recorded but upon the business which organized the recording. It was thus not an author's right at all, but something which continental theory would scrupulously distinguish as a "neighbouring right". An important precedent was set for an
age that was to see a great increase in the technical possibilities for artistic expression. Similar observation has been made by the apex court of India in R.G. Anand vs. Delux Films.\textsuperscript{4}

“It is obvious that when a writer or a dramatist produces a drama, it is the result of his great labour, energy, time and ability and if any other person is allowed to appropriate the labours of the copyright work, his act amounts to theft by depriving the original owner of the copyright of the product of his labour”.

First of all, this right applied to ‘books’ and was extended to other works in due course. Thus the first Act was passed in 1709 relating to copyright in England, which provided to an author the exclusive privilege of printing, reprinting and publishing his own original work. At present, it has too much importance all over the world due to the rapid technological development in this area.

In India, the protection of copyright begins since 1847, when the East India Company enforced English Act of 1842 to those areas which were under its control. But the first statute was passed ‘in 1914 as the India copyright Act, 1974. This Act was in existence until after the independence, when a new copyright Act of 1957 was made. Thereafter, the Act was undergone through many amendments to make it fully compatible together with copyright Rules 1958. It provides protection to all original literary, dramatic musical and artistic works, cinematograph films and sound recording. It also brought other sectors within its purview such as satellite broadcasting, computer software and digital technology. At present, after the issuance of the International Copyright order 1999, the provisions of the order extend to nationals of all World Trade Organisation (WTO) member countries and India is one of the members of the WTO, also. By this way copyright has its global importance.

\textsuperscript{4} AIR 1978, SC 1913.
I.2 Nature of Copyright

‘Copyright’ is the term used to describe the area of intellectual property law that regulates the creation and use that is made of a range of cultural goods such as books, songs, films, paintings, computer programs etc. The object of copyright law is to protect the author of the copyright work from an unlawful reproduction or exploitation of his works by others.

One of the constant themes in the history of copyright law is that it has been influenced by foreign and international treaties and developments. There are a number of international treaties that impact upon copyright law. Berne Convention and Universal Copyright Convention are two Conventions that lay down minimum standards for copyright protection and provide for reciprocity of protection between those countries which have ratified the conventions. At the present time, each convention has a significant numbers (Berne has well over 100) and many countries, including India, have ratified both conventions. The Berne copyright convention is administered by the World Intellectual Property Organization and the UCC by UNESCO, the United nations Educational, Scientific and Cultural Organization. The Berne copyright convention dates from 1886 and has European origins. It has been and continues to be very successful, but as a means of enforcing other states to join an International ‘Club’ without requiring the Berne Convention to be watered down the Universal Copyright Convention came into existence in 1952.

Article 1 of the Universal Copyright Convention states that the countries to which the convention applies constitute a union for the protection of the rights of authors in their literary and artistic works. Generally, the term of protection is the life of the author and 50 years after his death, but countries in the Union may grant longer terms (Article 7).

Article 1 of the Universal Copyright Convention states that each contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, and printings,
engravings and sculptures. The minimum term of protection shall not be less than the life of the author and 25 years after his death.

One important difference between the conventions is that the Berne Copyright Convention requires no formalities whereas the Universal copyright Convention permits contracting states to require compliance with formalities, including deposit, registration and the payment of fees.

Another important international development is TRIPs, (Trade Related Aspects of Intellectual Property Rights). There are a number of Provision in TRIPs that relate to copyright. The most important of these is that members must implement Articles 1-21 of the Berne Convention excluding Article 6 bis of that Convention dealing with moral rights [TRIPs Article 9(1)]. One of the consequences of this is that disputes over compliances with Berne can now be considered by the WTO.

In addition, the TRIPs Agreement contains certain ‘Berne-plus’ features, as regards various aspects of copyright. For example, under TRIPs, protection must be given to computer programs as literary works within the Berne Convention [TRIPs Act 10(1)].

In December, 1996, two treaties were agreed at Geneva: the WIPO Copyright Treaty and the WIPO Performers and Phonograms Treaty. Both treaties were intended to supplement the existing Conventions to reflect, in particular, technological changes and changes in practice.

In India, the first Copyright Act was passed in 1914. This was nothing but a copy of the U.K. Copyright Act, 1911, with suitable modifications to make it applicable to the then British India. The next Act which is the current statute was the Copyright Act, 1957 which adopted many of the principles and provisions contained in the U.K. Act of 1956, but it also introduced many new provisions.

The present law of Copyright in India is contained in the aforementioned Copyright Act, 1957 as amended subsequently. Besides consolidating and amending
the law relating to Copyright, it also introduced a number of changes and new provisions. No Copyright exists in any work except as provided in the said Act (Sec. 16). Copyright subsists only in the items of work specified in Sec 13 of the Act, namely (a) original literary, dramatic, musical and artistic work, (b) cinematograph film and (c) records. The scope of the works, however, has been the subject of various judicial interpretations.

The Copyright Act, 1957 provides for the setting up of a Copyright office under the control of Registrar of Copyright for the purpose the registration and certain other functions. A body called Copyright Board was created under the Act. The Board is authorized to deal with certain kinds of disputes pertaining to Copyright. The orders passed by the Registrar and the Board in certain matters are appealable. Infringement of Copyright can be stopped by an action of infringement. The remedies available are an injunction and damages or account of profits and in some cases conversion damages. Infringement of Copyright is also an offence punishable with imprisonment and fine.

The Copyright Act, 1957 came into force on 21st January 1958. On the same day, the Central Government under powers conferred by the said Act passed two orders, S.R.O. No. 271 and S.R.O. No. 272 in respect of international Copyright, both being dated 21.01.1958. Copyright protection is given only to works first published in India irrespective of the nationality of the author except where the author is foreign national whose country does not give Copyright protection in India to the extent available in the home country on reciprocal basis. Works of International Organizations like United Nation Organizations and its specialised agencies and Organization of American State are granted Copyright protection in India irrespective of the place of publication provided they are first published by the International Organization and there is no Copyright for the work in India at the time of publication and Copyright in the work belongs to the Organization. Works of foreign authors first published in India will be granted protection in India on reciprocal basis, that is, provided similar protection is granted to Indian authors.
India is a member of Berne convention and Universal Copyright Convention. The Copyright Act, 1957 conform to these two Conventions. Both these Conventions were revised at Paris in 1971 enabling developing countries to grant compulsory licences for translation and reproduction of works of foreign origin required for specified purposes.

The Copyright (Amended) Act, 1983 was enacted with a view to avail of these benefits. The Copyright Amended Act, 1983 makes a number of other amendment to the Act of 1957 in connection with publication of certain unpublished works, empowerment of the Copyright Board and broadcasting authorities. These Amended Act of 1983 came into force on 9th August 1984.

The Copyright (Amended Act) 1984 introduced certain important amendments the object of which is mainly to discourage and prevent the widespread piracy prevailing in video film records. It came into force with effect from 8th October, 1984.

Consequent upon India signing the GATT and entering the global market economy, a number of changes have been made in the Copyright Act, 1957 by the Amended Act of 1994, to give effect to the obligation arising from the signing of the GATT and to make Indian law more in line with the present law in many developed countries. In the rapidly changing technological environment, Copyright protection is being extended to many areas of creative work particularly in computer industry, relating to computer software and databases. This has found recognition in the 1994 Amendment Act. The Act was finally amended by the Copyright (Amendment) Act, 1999.

The tenure of Copyright, as per present Indian law, is the lifetime of the author and 60 years after his / her death.

Copyright is an incorporeal property in nature. The property in the work is justified by the fact that the right owner has created or made it. As he is the owner of the property, he can dispose of it by outright sale (assignment of his right) or by licensing. Since the subject of the property is incorporeal, it gives a dominium over the work a right in the work programme. The property is an ‘intellectual property’ in the sense that it originates in the mind of persons before it is reduced to material form. However, it is
noteworthy that ideas and thoughts are not protected which merely exist in a man’s brain as ideas and thoughts are not works under the copyright law. But once reduced to writing or other material form, the result becomes a work worthy of protection.

Further, copyright is a bundle of exclusive rights. It is called a negative right, which means that the right owner can prevent all others from copying his work, or doing any other acts which, according to copyright law, can only be done by him. This is also referred to as a monopoly, as it is recognized that the product of a person’s skill and labour is his property. However, the term ‘monopoly’ is misleading. The reason is that if it can be shown that two precisely similar works were, in fact, produced wholly independently of one another, there can be no infringement of copyright by one of the other.

The exclusive rights in copyrighted work are limited in time. Unlike physical property, which lasts as long as the object in which it is vested, copyright subsists for a limited period of time. After expiration of this period, the work passes into ‘public domain’. In other words, it becomes public property and can be freely used by anyone without any hindrance. Thus, exclusive rights in copyrighted work for a limited period serve public interest.

I. 3. **Origin and development of copyright at International Level.**

i. **Contents**

The first international convention on the law of copyright was the Berne convention for the protection of Literary and Artistic Works, 1886. The convention was adopted and signed initially by ten countries, it has now a membership of 136 states, more than half of whom are developing countries. The universality of the Berne Convention is evident from the fact that its membership extends to a number of states in all contents. States at present party to this convention include those in Africa (38), in America (26), in Asia and the Pacific (26) including of course, India and in Europe (46). The Berne convention has been revised several times in order to improve the
international system of protection which the convention provides. Changes have been
effected in order to cope with the challenges of accelerating development of
technologies in the field of utilization of author’s work in order to recognize new rights as
also to allow for appropriate revisions of established ones. An additional Act was
included in 1896. The first major revision, however took place in Berlin in 1908, twenty
two years after the initial formulation of the Berne convention in 1886. This was followed
by the revisions in Rome in 1928, in Brussels in 1948, in Stockholm in 1967 and in Paris
in 1971. These revisions have successively helped to enrich the contents of the
convention.\(^5\)

Each revision has added to and embellished. Briefly the additional Act of 1896
extended the duration of the right of translation to the normal term; it also took a step
towards protection of architectural works. The Berlin Act of 1908 added choreographic
works and entertainments in dumb show, photographic and similar works, works of
applied art, cinematographic work as well as derivative works (translation, adaptations
etc.) to the list of protected works. The Rome Act of 1928 further extended the
enumeration of protected work to include lectures, addresses, sermons and other of an
oral nature. It also recognized the right of broadcasting as also the So called moral
rights. The Brussels Act of 1948 reinforced protection of works of applied art; extended
the right of authors of dramatic and musical works to cover “any communication to the
public of the performance of their works”, the right of broadcasting was to cover any
communication to the public by wire or by re-broadcasting of the broadcast of the work;
obliged member states to provide for a term of protection covering fifty years after the
death of the author; and included a provision for droit de suite an interest in the sale of
original works or manuscripts subsequent to the initial or first interest.

\[\text{ii. Purpose}\]

The purpose of the Stockholm revision of 1967 was to eater for the rapid
technological developments as well as the needs of developing countries and to

introduce administrative and structural changes. For the first time the right of reproduction of the work was expressly accorded to authors. As for the preferential provisions for developing countries worked out in Stockholm, these were further taken up at the Paris Revision Conference in 1971, where new compromises were worked out. The substantive provisions of the Stockholm Act (other than the appendix) which had also never entered into force were, however, adopted by the Paris Revision Conference in fact as they had been worked out and included in the Stockholm Act. The purpose of the Berne convention has indicated “to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic work”. Article – 1 lays down that the countries to which the convention applies constitute a Union for protection of the rights of authors in their literary and artistic works. The basic principles of the convention include “national treatment” according to which works originating in one of the member states are to be given the same protection in each of these states as the later grant to works of their own nationals; also the principle of automatic protection, according to which such national treatment is not dependent on any formality; in other works protection is granted automatically and is not subject to the formality of registration, notice or deposit.

I. 4. Essential ingredients of infringement of copyright.

The infringement of copyright in a work occurs when one or more of the following acts take place -

a) Reproduction of the work in a material form;

b) Publication of the work;

c) Communication of the work to the public;

d) Performance of the work to the public;

e) Making of adaptations and translations of the work and doing any of the above acts in relation to a substantive part of the work;
Doing anyone of the above acts in relation to a substantive part of the work will amount to infringement of copyright. Mere difference in dimensions or in accurate reproduction where substantial part of the work is immaterial for bringing an act into the sphere of infringement of copyright.\(^6\)

The Supreme Court of India in landmark judgement of R.G. Anand v. Deluxe Films,\(^7\) clearly, explains the circumstances and instances pertaining to copyright infringement. The court has laid down the following propositions for holding infringement of copyright –

i. There is no infringement of copyright in copying an idea, theme, plot, historical or legendary fact. Infringement and expression of the idea of author of the original work.

ii. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the court should determine whether or not the similarities are on fundamental or substantial aspect of the mode of expression adopted in the copyright work. If the defendant’s work is literal imitation of some work having copyright, with some variation it may amount of infringement of copyright.

iii. The better test is to see whether a spectator or the viewer after having read or seen both the works is clearly of opinion with an unmistakable expression but the subsequent work appears to be a copy of the original.

iv. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work no question of violation of copyright arises.

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\(^6\) The Emerging challenges to the Legal Protection of creativity under copyright law an overview – by Dr. V. Tayal and Mr. Tariq, Supreme Court Journal (Apex Court Expression – Reverted – SCJ) 2008. January : Pages 20-22.

\(^7\) AIR 1978 SC 1613.
v. If the similarities appear in two works with material and broad dissimilarities negativing the intention to copy the original and the coincidence in the two works are merely incidental, then there would be no infringement of copyright.

vi. As a violation of copyright amounts to an act of piracy, it must be proved by clear and cogent evidence after applying the various tests laid down.

vii. The viewer’s test is material to prove infringement of copyright. If the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.

I. 5. Doctrine of fair dealing.

Considering various situations in which it would not be proper to force a user to obtain consent of the owner of a copyright, the legislature has provided several exceptions in law. These exceptions are enumerated in section 52 of the copyright Act 1957. “Fair dealing”, is one of the most important and debatable exception under section 52 of the Act.

There is burning question to the publishing community that how much of someone else’s work may be used without asking permission. The answer rests in the concept of “fair dealing” or “fair use”.

Fair use was traditionally defined as “a privilege in others than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent. The whitford committee report recommended a general defense of fair dealing with a work a dealing not ‘unreasonably prejudicing the copyright owner’s legitimate interests’. Thus under the fair dealing doctrine of copyright law, an author may make limited use of another author’s work without asking permission. The fair dealing or fair use privilege is perhaps the most significant limitation or a copyright owner’s excluding rights.
The notion of permitting some use of a copyright work which is considered to be fair is common in many jurisdictions. For example, section 107 of the copyright Act, 1976 of the USA has allowed fair use in relation to a copyright work. Section 107 of the Act. requires a case-by-case determination whether a particular use is fair and the statute notes many nonexclusive factors to be considered. This approach was “intended to restate the judicial doctrine of fair use not to change, narrow or enlarge it in any way”.

In the U.K., Fair dealing is allowed in relation to copyright work of the various permitted acts in chapter - III of the copyright, designs and patents Acts 1988, the most well known are the fair dealing defences that are found in sections 29 and 30. These provide that a person will not be liable if they can show:

I. fair dealing for the purpose of research or private study;

II. fair dealing for the purposes of criticism or review;

III. fair dealing for the purposes of reporting current events.

One of the notable features of U.K., Copyright law is that fair dealing is only permitted for the purposes specially listed in the copyright, Designs and Patents Act 1988. It means dealing must be fair for the purposes of reserve or private study, criticism or review, or the reporting of current events. As such, it is irrelevant that the use might be fair for a purpose not specified in the Act, or that it is fair in general. The restricted approach adopted in the U.K. should be contrasted American copyright law which has a general defence of fair use, according to that; if the court is satisfied that the use is fair then there will be no infringement.

In India, section 52(i) of the copyright Act 1957 provides that a fair dealing with a literary, dramatic, musical or artistic work not being computer programme for the following purposes does not constitute infringement -

I. research or private study;

II. criticism or review whether of that work or of any other work;
Ill. reporting current events in a newspaper, magazine or similar periodical or by broadcast or in a cinematograph film or by means of photographs.

The explanation to the above provision stipulates that whether dealing with a particular work was fair, it would have to be considered whether any competition was likely to exist between two works. The Kerala High Court has explained the meaning and expressions of fair dealing in Civic Chandran v. Ammini Amma.\(^8\) The court held that, “the degree of substantiality that is to say the quality and value of the matter taken is an important factor in considering whether or not there has been a ‘fair dealing’. Each case depends on its facts and what may be fair in other case. Criticism or review may relate not only to literary style but also to be doctrine or philosophy of the author as expounded in his book’. The court further declared that, fair criticism of the ideas and events described in the books or documents would constitute ‘fair dealing’. Publication of confidential information leaked by third party can not constitute fair dealing for the purpose of criticism or review. [Beloff v. Pressdram].\(^9\)

Kerala High Court in a recent judgment of M/s. Info seek solutions v. M/s. Kerala Law Times,\(^10\) clarifies the law of copyright in regard of the ‘judgment delivered by the court of law. The court said, “Judgments being documents, recording facts which have been enquired into or may have been taken notice of for the benefit of the public or for resolution of disputes in accordance with the law of the land, by the court as an agent authorized and accredited for that purpose by the law, the judgments are public documents. The information as to judgments and the source of such information are in the public domain and cannot be subjected to copyright. Being public documents, judgments are essentially in public domain and cannot be treated as something over which copyright could exit. The judgments of the superior courts constitute an important source of law ……….. (And) none can have copyright over the law of the land”.

\(^8\) 1996 PTC 670 (Ker.)
\(^9\) (1973) 1 All E.R. 24.