



# A STUDY ON BOUNDARIES OF CREATIVE EXPRESSION ON DIGITAL CONTENT CREATORS IN FAIR USE OF DIGITAL CONTENTS

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**Abstract:** The rise of digital content creation has blurred the lines between original expression and derivative works. This paper explores the challenges faced by creators in determining the boundaries of fair use when incorporating copyrighted material into their work. The paper examines the concept of fair use and its core principles, including the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use on the market for the original work. It then analyses how these principles apply in the digital realm, where remixing, sampling, and commentary are commonplace creative practices. The digital realm presents unique challenges for applying fair use principles. Practices like remixing music, creating reaction videos, or using copyrighted images in memes are all forms of creative expression that may incorporate copyrighted elements. Determining whether these practices fall under fair use can be complex and uncertain. Finding a balance between protecting copyright holders' rights and fostering the creativity of digital creators is crucial. Potential Solutions for a More Equitable Landscape: Clearer Guidelines and Educational Resources: Providing creators with a better understanding of fair use principles would empower them to make informed decisions about incorporating copyrighted material. Legislative Reforms: Potential legislative reforms could address the specific challenges posed by new digital technologies and creative practices. The research method followed here is a Empirical research. A total of 205 samples have been collected out of which all samples have been collected through a convenient sampling method. The sample frame taken here is public areas in and around Chennai.

**Index Terms** - Guidelines, Creative practices, Copyrighted elements, Fair use, Expression.

## INTRODUCTION

The digital age has unleashed a wave of creative expression in India. From YouTube channels brimming with witty commentary to music producers crafting innovative remixes, online platforms have empowered individuals to share their voices. Smith Mehta (2019) In India, music, films, and television show up as a major export and local industry. Digital media platforms have fundamentally changed the content production landscape in India, when before content development was limited to professional producers. The essay explains Indian internet content makers' motivations through in-depth interviews with ten of them. Professional pursuits, the development of creators' identities, and the emergence of quasi-corporate structures in India's democratised digital platforms are some of the discussion topics. By doing this, the piece contests the idea that social media makers are just "amateurs" or "UGC" (user-generated content). The findings of this study indicate that rather than categorising creators according to platform affordances, future research on online content creators should adopt a more comprehensive approach. However, this creative freedom collides with the ever-present question of copyright: can creators incorporate existing works into their content without infringing on the rights of the original owner? The answer lies in the concept of fair use, a legal doctrine that allows for the limited use of copyrighted material without permission. Indian copyright law, governed by the Copyright Act, 1957, grants creators' exclusive rights over their original works. This includes the right to reproduce, adapt, and distribute their content. These protections are essential for incentivizing creativity and ensuring creators are compensated for their work. However, copyright law also recognizes the concept of fair use. This allows for the limited use of copyrighted material without permission from the copyright holder, for purposes such as criticism, commentary, news reporting, teaching, scholarship, and research. Fair use strikes a crucial balance between protecting creators' rights and fostering a culture of creativity and innovation. The application of fair use in the digital realm presents unique challenges. Digital content can be easily copied, transformed, and shared [1].

David R. Brake (2014) synthesises previous research and fresh examinations of current survey data. When taken as a whole, they imply that online content producers are typically members of comparatively privileged groups and that online services that feature their contributions may have content that is skewed towards what appeals to them the most. We discuss some policymakers' and academics' implications for these findings. The distribution of online content creation practices, both globally and among socioeconomic groups within countries, has received very little academic examination, despite the fact that the practice is of great interest to many. I describe the disparities in motivation, access, abilities, and usage that seem to underpin and sustain variations in online content creation practices between social groups, drawing on

theoretical frameworks employed in digital divide research. This makes it difficult to determine what constitutes fair use on a case-by-case basis. Some of the factors Indian courts consider when evaluating fair use, purpose and character of the use transformative uses, such as parodies or critiques, are generally favoured over purely commercial uses [2]. The nature of the copyrighted work, published works generally have a lower threshold for fair use compared to unpublished works. The amount and substantiality of the portion used to use only a small, non-essential portion of the copyrighted work is more likely to be considered fair use. Rajesh. M (2023) the issue that digital copyright laws face from an Indian perspective by looking at case laws. The ownership rights that writers and artists have over their creative works are known as copyright, and it is one of the most important types of intellectual property rights. Among the types of works included are books, paintings, computer programmes, movies, databases, and maps, to name a few. Thanks to digitalization, it is now much easier to copy, duplicate, and sell works without the owner's consent, and it is more difficult to detect such violations [3].

The vulnerability of copyrighted works has increased in the digital age because everything is accessible to everyone, everywhere, at all times, posing a serious threat to the rights of inventors and copyright owners. Copyright infringement is becoming insignificant due to peer-to-peer networks, peer-to-peer technology, high density storage devices, and great technologies enabling rapid reproduction without loss of quality. Although the fundamental purpose of copyright, which is to prevent piracy, remains unchanged, technological progress has led to a methodical shift in the application of copyright. On digital platforms, rights are exercised very differently than they are in the conventional setup that is comparable to copyright. The effect of the use upon the potential market for or value of the copyrighted work If the use harms the market for the original work, it is less likely to be considered fair use. Indian digital creators can leverage fair use to enhance their work. Here are some tips: Focus on transformative use: Don't simply copy existing content. Instead, use it as a starting point for creating something new, like a commentary, parody, or educational video. Credit the original creator: Providing attribution shows respect and helps audiences discover the original work. Use only the amount necessary: Avoid using more of the copyrighted work than is absolutely necessary for your creative purpose. Be aware of the context Fair use is a complex legal concept. If unsure, it's always best to consult with a lawyer specialising in intellectual property. The Indian digital landscape thrives on a vibrant community of content creators. However, this creativity can be stifled by the ambiguity surrounding fair use in the digital age.

Unlike the well-defined concept in the United States, India's Copyright Act, 1957, uses the term "fair dealing" which has a broader and less clear-cut interpretation. Nilanjana Sensarkar (2007) looks at how the Indian Copyright Act, 1957's Digital Rights Management (DRM) provisions might affect the music and Bollywood industries in particular. It draws attention to the controversy surrounding DRM and advises India to weigh the flexibility offered by international treaties and technology prior to implementing DRM. The government has proposed changes to the current legislation to include DRM in light of the rapidly expanding Indian entertainment industry. Traditionally, DRM has been viewed as a weapon against online piracy, giving copyright holders the ability to manage who can access their works, what uses are allowed, and how their works are distributed in the digital sphere. This essay explores the difficulties faced by digital content creators in India when it comes to utilising copyrighted material under the principle of fair dealing. One of the major challenges is the lack of clear guidelines for fair dealing [4]. The Act outlines four factors to be considered purpose, nature of work, amount and substantiality of portion used, and effect on the market but the weight given to each factor remains undefined. This ambiguity creates a situation where creators are unsure whether their use of copyrighted content falls under fair dealing, leading to self-censorship and stifled creativity.

Devarhubli (2021) the role of the judiciary, the effects of technological advancements on the copyright laws of developing countries like India, and the reforms that are required to address the obstacles to effective copyright in the age of technology. The two defining characteristics of a knowledge-based economy are innovation and seed. The ability of new technologies to facilitate the dissemination of knowledge in a way never possible before is its most astounding characteristic. The Internet undoubtedly makes it possible for copyright holders to communicate and distribute their works to the public much more quickly, but it has also made it easier for others to make multiple copies of a work without permission and distribute those copies much more quickly and widely. In this case, the works are largely protected by copyright law. Nonetheless, the same strategy has been used to address this issue. This indicates that Internet-based infringement has been subject to the same traditional definitions of copyright infringement. The fear of copyright infringement lawsuits further discourages creators from taking risks [5]. Unlike the US, where fair use has a robust legal precedent, India lacks a strong history of fair dealing cases. This lack of case law makes it difficult for creators to predict the outcome of potential disputes, leading them to avoid using copyrighted material altogether, even when it could be considered fair dealing. The digital age presents unique challenges. Remixes, parodies, and critical commentaries – all staples of the online creative space – often rely on the use of copyrighted material.

However, the current framework might not adequately consider the transformative nature of these works, potentially hindering the creation of new and engaging content. Laura Herman (2023) decolonization of creativity in the digital age is emphasised in this study, especially in light of the platformed creative economy. It makes the case that a sizable worldwide user base has been ignored in favour of Western consumers while designing technology. It is essential to take into account the local effects and vernacular reality of designed platforms in order to guarantee inclusion. One way to view digital innovation and algorithmic cultures from a non-Western perspective is through fieldwork done with young people in India. The article offers a paradigm called Creativity as Access, Identity, Expression, and Data for integrating internationally focused research on digital creativity. Creative universalisms and distinctive local cultural demands are revealed when these findings are compared to those from the West. This highlights the significance of building platforms with relevant audiences in mind and taking local vernacular realities into account when making design decisions [6].

Furthermore, the ease of sharing and copying digital content online makes it difficult for copyright holders to control its dissemination. This can lead to situations where creators are unsure whether the content they are using has been legitimately obtained, further adding to the confusion surrounding fair dealing. Neelika Arora (2020) sample of 486 respondents who watch YouTube channels prior to travelling was used to build a research model and test it empirically. Furthermore, structural equation modelling with partial least squares was used to validate the study's hypotheses. Delhi was home to the study's respondents. Through the adoption of YouTube channels, this study determined that the most important factors influencing a traveller's intention to visit a destination were comprehensiveness, relevance, timeliness, source expertise, and attitude. Furthermore, there was no statistically significant difference in the reliability and accuracy of the sources. The data used in this paper's analysis came from respondents who lived in Delhi. Additionally, it only examined the impact of seven dimensions on the intention of tourists to visit their destination, potentially excluding some significant determinants. This paper has implications for travellers and YouTube vloggers. The outcome demonstrates that travellers carefully and carefully consider YouTube channel content before choosing a destination.

Therefore, vloggers should use their videos to give travellers accurate, thorough, and pertinent information about their destinations [7]. To empower digital content creators and foster a healthy online creative ecosystem, certain steps can be taken. Firstly, India needs to develop clearer and more specific guidelines for fair dealing, drawing inspiration from established practices in other jurisdictions. Secondly, promoting education and awareness about fair dealing among creators and copyright holders is crucial. This can be achieved through workshops, online resources, and legal aid initiatives. Dhiraj Murthy (2018) looks at the comment section of YouTube. We provide a novel understanding of online racialized expression as a networked phenomenon by concentrating on reactions to the controversial musical group Das Racist. The comments left on the top five Das Racist videos are analysed using a combination of qualitative coding, social network analysis, and thick data descriptive techniques. Because there isn't much research on YouTube comments, this study is important for understanding how race affects the creation and consumption of YouTube comments in regular online interactions.

We displayed networked antagonistic relationships, which were discovered to be strongly racially charged and intertwined with other forms of animosity. Many times, people interpret comments on YouTube as either indiscriminate, personal jabs or as merely broad declarations of "hate." Our investigation goes further and finds that racialized expressions also involved networked interactions, in which antagonistic notions were transmitted between and within videos within the comment network [8]. Finally, establishing a robust system for resolving copyright disputes is essential. This could involve setting up specialised tribunals or implementing alternative dispute resolution mechanisms to provide creators with a faster and more affordable way to resolve fair dealing concerns. To address these issues, several solutions can be implemented. Firstly, India can adopt a clearer framework for fair use, drawing inspiration from established practices in other countries. This framework should provide clear guidelines on the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use upon the potential market. Secondly, the government can encourage the establishment of collective licensing agencies. These agencies would simplify the permission process for creators by aggregating rights and offering blanket licences for specific uses. Additionally, online platforms should adopt a "notice and counter-notice" system, allowing creators to contest takedown notices and have their content reinstated if it falls under fair use. Vishnu S (2023) The essay explores the ethical and legal issues related to copyright ownership and control, including issues like limiting creativity and exploiting creators.

In order to address this problem, the article suggests a number of possible solutions, such as encouraging fair use, enacting open access regulations, and working together with copyright holders. The development of fresh and varied artistic expressions in the Indian entertainment sector would be aided by these solutions, which would level the playing field for creators. In the end, the paper highlights how the industry must deal with copyright dominance in order to guarantee the sector's continuous expansion and innovation. It emphasises in its conclusion the need to strike a balance between upholding copyright holders' rights and encouraging innovation and creativity within the sector [9]. A major issue facing the Indian entertainment sector is copyright dominance, in which a few companies own most of the copyrighted material. This has made it more difficult for up-and-coming and independent artists to break into the market and safeguard their creations. Finally, fostering digital literacy is crucial. Educating creators on copyright law and fair use principles will empower them to make informed decisions about content utilisation. Siddharth Kanojia (2023) the rise of over-the-top (OTT) services has completely changed how people watch and listen to media. In recent years, these services have become a major disruptor in the media industry. Many worries about the regulation and censorship of content on OTT platforms have surfaced since their launch. As a result, by reviewing the various legal and regulatory frameworks in the UK, India, and China, this paper has investigated current trends in OTT content censorship and regulation. It has looked into censorship cases and explored different facets of political and civil liberties [10].

The analysis has demonstrated a strong correlation between the level of creative freedom granted in each region and the freedom of expression. Last but not least, the study offers suggestions for legislators and other interested parties on how to strike a balance between the necessity of information access and freedom and responsible content control and regulation. Ashwin Ramakrishnan (2022) contends that India's current legal system has fallen short in addressing the nation's particular legal and cultural issues. Until these obstacles are addressed, it will be challenging to establish a mechanism that effectively addresses online copyright infringement. Nations with diverse regulatory frameworks include the US, Canada, Ireland, and France. This thesis contends that each would fail to address issues particular to India's online copyright context, in addition to having serious limitations on their own. This thesis makes the case, via a comparative analysis, for a new regulatory model that integrates elements of these models, attends to particular Indian issues, and strikes a more equitable balance between the rights of copyright holders and Internet-based copyright users in order to combat copyright infringement in India. Additionally, promoting public awareness about fair use will encourage a more balanced discourse on digital content creation [11]. In conclusion, while the concept of fair dealing exists in India, its lack of clarity creates significant difficulties for digital content creators.

Sriram Mohan (2018) importance of linguistic and cultural regions for the internationalisation and localization of digital platforms is examined in this article. We investigate the industrial and cultural logics at play when digital platforms like YouTube navigate new markets, bringing issues of globalisation and cultural diversity to bear on the study of platforms. We begin by outlining YouTube's history in India and showing how the company came to regard the linguistic and cultural diversity of southern India as essential to its future growth both domestically and internationally. We then describe how "region" emerges as the dominant scale for localization through close readings of videos created by a top channel (Put Chutney) and look at various notions of the region that are mobilised to secure an online audience. In a broader sense, we contend that the interaction between the representational and algorithmic logics that govern how digital platforms function produces the contingent result of platform localization [12]. By implementing clearer guidelines, promoting education, and establishing efficient dispute resolution mechanisms, India can create a more enabling environment for its thriving digital creative community. This will not only protect the rights of copyright holders but also foster innovation and the creation of new and exciting content. The main aim of this research is to find out the hardships faced by Digital content creators.

## OBJECTIVES

- To determine the Problems faced by Digital Creators in Fair use of Digital Contents.
- To analyse the 'Stringent Boundaries' over fair use of Digital Contents
- To check the Boundaries on Digital Creators on Fair use of Digital Contents
- To analyse the Inconsistent Application of the term 'Fair use' of Digital Contents

**METHODOLOGY**

The research method followed here is empirical research. A total of 205 samples have been collected out of which all samples have been collected through a convenient sampling method. The sample frame taken here is public areas in and around Chennai, Tamil Nadu like beaches, malls and parks. The independent variables are gender, age, educational qualification and Place of living. The dependent variables are Knowledge on Problems faced by Digital Content Creators in Fair use of Digital Contents, Agreeability on 'Stringent Boundaries' over fair use of Digital Contents, Effects of Boundaries on Digital Creators on Fair use of Digital Contents, Agreeability on Inconsistent Application of the term 'Fair use' of Digital Contents, Rating on, Inadequate Laws pertaining to Fair use of Digital Contents.

**HYPOTHESIS:**

**Null Hypothesis:** There is no Relation between educational qualification and Effects of Boundaries on Digital Creators on Fair use of Digital Contents.

**Alternate Hypothesis:** There is Relation between educational qualification and Effects of Boundaries on Digital Creators on Fair use of Digital Contents.

**Analysis:**

Table 1 represents the Chi-square test on Educational Qualifications and the effects of boundaries on Digital Creators on Fair use of Digital Contents

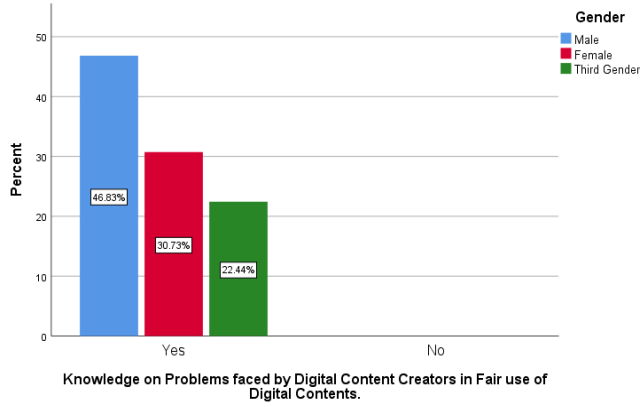
Chi-Square	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	63.360 <sup>a</sup>	8	.000
Likelihood Ratio	81.385	8	.000
Linear-by Linear Association	.249	1	.618
N of Valid Cases	205		

Educational qualification \* Effects of Boundaries on Digital Creators on Fair use of Digital Contents Crosstabulation

		Chilling effect	Unequal Playing Field	Disencouragement from Collaboration	Limited reach	Stifled Creativity	Total
Educational Qualification	Undergraduate	10	7	12	24	10	63
	Postgraduate	19	13	28	0	0	60
	P.hd	24	8	9	20	21	82
Total		53	29	49	44	31	205

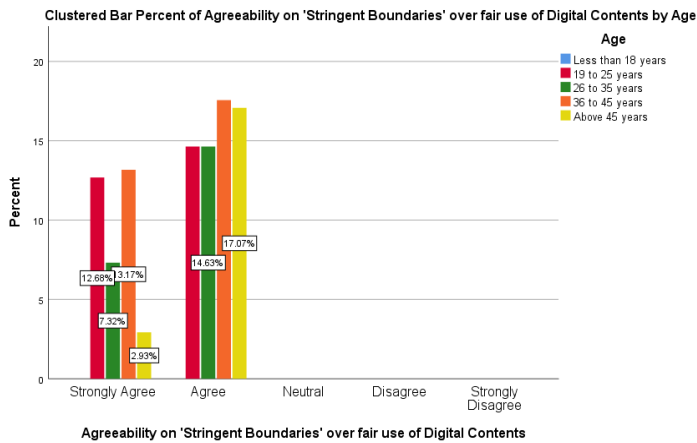
Figure 1 is a graph on knowledge on problems faced by digital content creators in fair use of digital contents by Gender.

Clustered Bar Percent of Knowledge on Problems faced by Digital Content Creators in Fair use of Digital Contents. by Gender



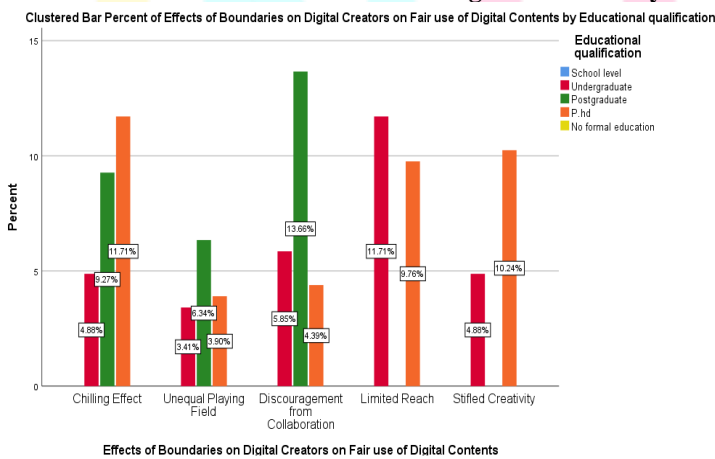
**Fig1,** Most of the people belonging to the option of male, female and third gender have mostly chose the option of yes i.e., over 46%, 30% and 23%. This is because people are well aware of the social media such as YouTube, Instagram and various platforms. Where content creators express their ideas and opinion in a creative manner.

Figure 2 is a Graph on agreeability on stringent boundaries over fair use of digital contents by age.



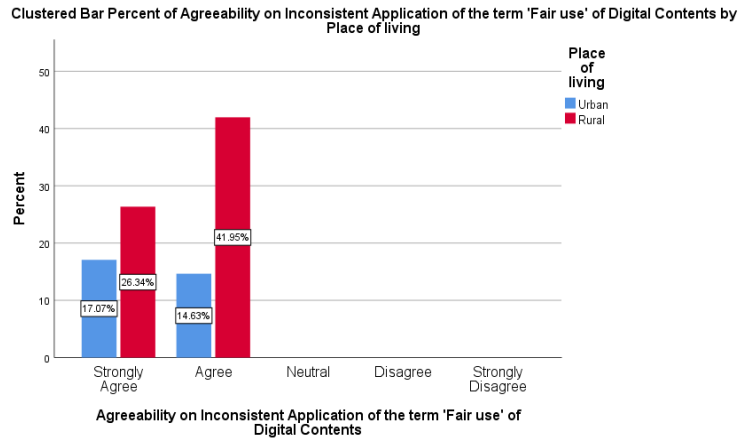
**Fig 2,** Most of the people belonging to the option of 36 to 45 years and 19 to 25 years have mostly chosen the option of strongly agree and agree i.e., over 17%, 13%. This is because the blurry lines of fair use can be intimidating. Creators might be hesitant to produce parodies or satire for fear of copyright takedowns or lawsuits, stifling creativity.

Figure 3 is a Graph on Effects of boundaries on fair use of Digital Contents by Educational qualification.



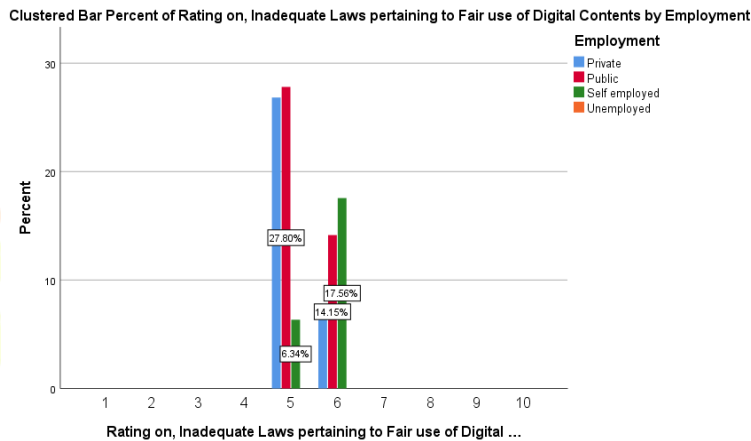
**Fig 3,** Most of the people belonging to the option of PG, P.h.d and UG have mostly chose the option of Discouragement from collaboration, Limited reach, Chilling effect. This is because the fear of copyright takedowns or lawsuits can lead to self-censorship. Creators might avoid parody and satire altogether, especially for works owned by large corporations with aggressive legal teams. The uncertainty surrounding fair use can discourage creators from collaborating on parody or satire projects. Creators might be hesitant to use each other's work for fear of infringing copyrights, hindering potential for innovative and engaging content. Creators might avoid using popular works for fear of copyright issues, limiting their ability to reach a wider audience through established fandoms and cultural moments.

**Figure 4 is a Graph on Effects of boundaries on fair use of Digital Contents by educational qualification.**



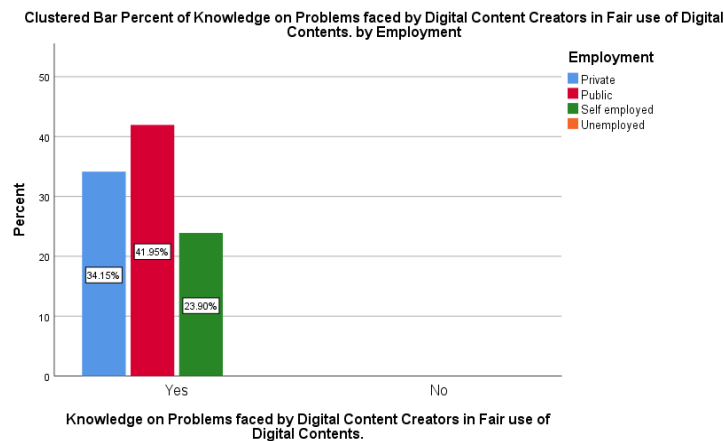
**Fig 4,** Most of the people belonging to the option of rural have mostly chose the option of agree i.e., over 42%. This is because the interpretation of fair use can vary depending on the platform or judge. This inconsistency creates confusion and discourages creators from taking risks with parody and satire.

**Figure 5 is a Graph on Inadequate laws pertaining to fair use of digital contents by employment.**



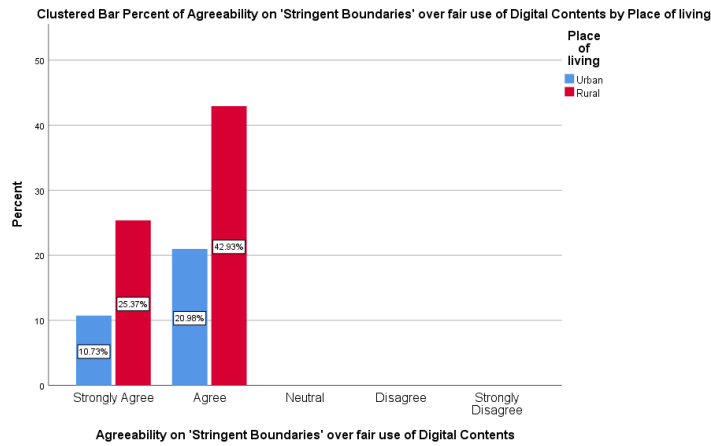
**Fig 5,** Most of the people belonging to the option of private and public have chosen the option of 5 i.e., over 28%. This is because the laws are inconsistent with each other which creates a confusion among the public regarding the application of it.

**Figure 6 is a Graph on Knowledge on problems faced by digital content creators in fair use of digital contents by employment.**



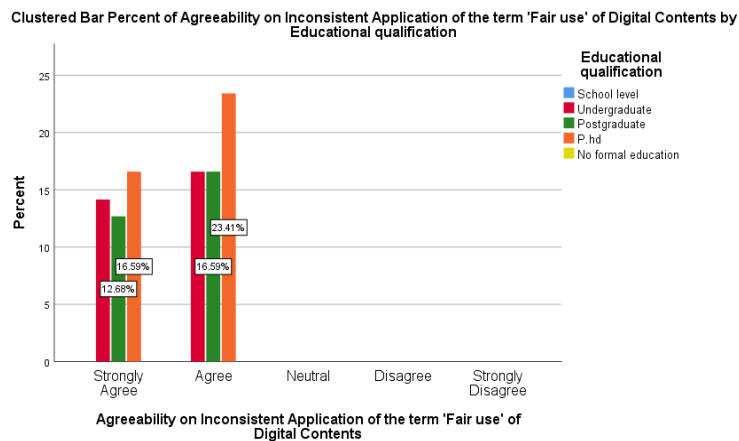
**Fig 6,** Most of the people belonging to the option of private, public and self-employed have chosen the option of yes i.e., over 42%, 34% and 24%. This is because the threat of legal action can lead to self-censorship, preventing creators from tackling sensitive topics or using copyrighted material even when it might fall under fair use. Large corporations may have more resources to fight fair use claims, potentially discouraging smaller creators from pushing boundaries.

**Figure 7 is a Graph on agreeability on stringent boundaries over fair use of digital contents by place of living.**



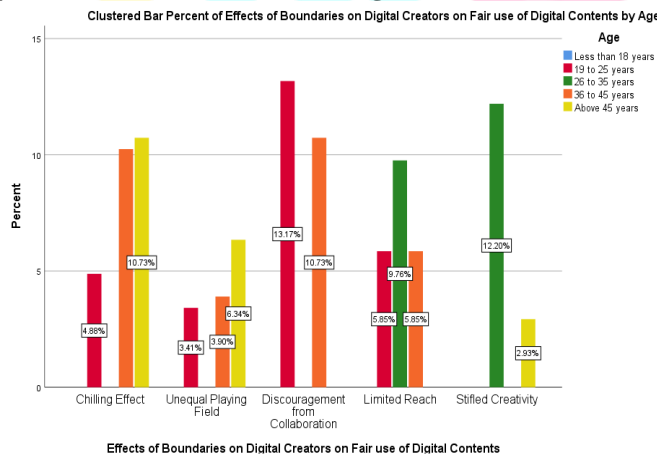
**Fig 7,** Most of the people belonging to the option of urban and rural i.e., over 21% and 43%. This is because Stringent fair use boundaries can have a chilling effect on digital content creators, stifling creativity and innovation. Finding a balance between protecting copyright holders and fostering a thriving digital ecosystem is crucial

**Figure 8 is a Graph on Agreeability on inconsistent application of the term fair use of the digital contents by educational qualification.**

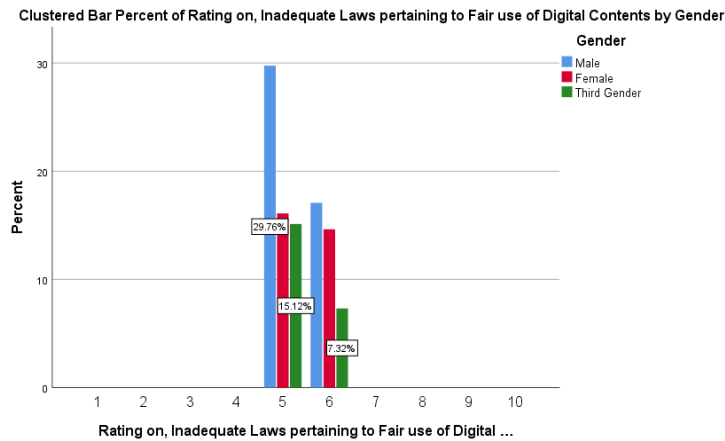


**Fig 8,** Most of the people of the option of p.hd have mostly chosen the option of agreement i.e., over 23%. This is because the concept of fair use, a legal doctrine allowing limited use of copyrighted material without permission, plays a crucial role in fostering creativity in the digital age. However, the inconsistent application of fair use creates several challenges for digital content creators.

**Figure 9 is a Graph on Effects of boundaries on digital creators on fair use of digital contents by age.**



**Fig 9,** Most of the people belonging to all the age categories have mostly chosen the options of Discouragement from collaboration, Limited reach, Stifled creativity and chilling effect i.e., over 14%, 10%, 10% and 12%. This is because the unpredictable nature of fair use can create a chilling effect on creativity. Creators may be hesitant to use copyrighted material for fear of infringing, potentially hindering the creation of transformative and innovative content. Uncertain about fair use boundaries, creators might avoid incorporating potentially transformative uses, leading to content that is less diverse and critical.

**Figure 10 is a Graph on rating inadequate laws pertaining to fair use of digital contents by gender.**

**Fig 10,** Most of the people belonging to the option of male have mostly chosen the option of 5 i.e., over 30%. This is because of the lack of crystal-clear legislation on certain aspects of creative expression in India. It can create a more predictable environment where creators can confidently push creative boundaries while respecting copyright. This will not only benefit creators and consumers but also contribute to a richer and more diverse digital culture.

## CONCLUSION

The burgeoning landscape of digital content creation in India has empowered a generation of creators to express themselves in innovative ways. However, the concept of fair dealing, the Indian equivalent of fair use, remains an area of ambiguity. This lack of clarity creates a complex landscape for creators, potentially stifling creativity and hindering their ability to push artistic boundaries. India's Copyright Act, 1957, does not offer a clear definition of fair dealing. This absence creates uncertainty for creators who rely on fair dealing to incorporate copyrighted material into their work. The subjective nature of fair dealing factors further complicates the decision-making process. Courts consider factors like the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use on the market. However, the interpretation of these factors can be inconsistent, leading to unpredictable outcomes for creators. Understanding fair dealing empowers digital content creators to leverage existing works for creative purposes while respecting copyright law. The Major limitation of the study is the sample frame. The sample frame Collected through offline mode like explaining the thesis, asking the question the way they understand is the limitation of the study, most of the respondents have refused to give their response. Collection of data via offline mode is limiting factor of this research. To Developing clear and accessible guidelines specifically for the digital context. To Considering legislative reforms to address the specific challenges posed by new digital technologies and creative practices. To Encouraging creators to focus on transformative uses that add new meaning or commentary to copyrighted material. To ensure the parody or satire adds new meaning or commentary, not just copying the original. Here are some practical tips for digital content creators to navigate this space: Embrace Transformation: Strive to create new expression that builds upon, critiques, or satirizes existing works. This transformative nature strengthens your fair dealing argument. Minimize and Be Selective: Limit your use of copyrighted material to the bare minimum necessary for your creative purpose. Select portions that are less central to the original work. Acknowledge the Source: Always credit the original creator, demonstrating respect and potentially bolstering your fair dealing claim. Seek Legal Expertise: When dealing with complex situations or significant use of copyrighted material, consult an intellectual property lawyer. Their expertise can help assess the fair dealing implications specific to your intended use. By considering the factors outlined above and seeking guidance, when necessary, creators can navigate the boundaries of fair use and foster a vibrant digital creative landscape in India.

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