



## Dynamic multimedia mash-ups: Copyright challenges in India's short-form video ecosystem

Jahnvi Singh

Advocate, Department of Law, Madhya Pradesh, India

### Abstract

The proliferation of short-form video platforms in India, including Josh, Moj, Instagram Reels, and YouTube Shorts, has catalysed an unprecedented wave of user-generated multimedia mash-ups that challenge traditional copyright paradigms. These creative remixes, combining fragments of music, cinematographic clips, and internet memes, occupy an ambiguous legal space between transformative expression and cumulative infringement.

This article examines- (i) the doctrinal tensions arising from India's restrictive fair dealing framework under Section 52 of the Copyright Act, 1957, (ii) the inadequacy of intermediary safe harbor provisions under Section 79 of the IT Act, 2000, and (iii) the unresolved question of moral rights violations in derivative works. Drawing on emerging jurisprudence and comparative insights, the article proposes legislative reforms, including a tiered fair dealing exception for non-commercial transformative use, platform-specific compulsory licensing schemes, and clarified standards for *de minimis* copying to reconcile creative innovation with rights-holder protection in India's burgeoning digital content economy.

**Keywords:** Copyright infringement, short-form video, mash-ups, transformative use, fair dealing, *de minimis* copying, intermediary liability, algorithmic curation, moral rights, music sampling, compulsory licensing

### Introduction

#### The Contemporary Imperative

India's short-form video ecosystem has witnessed exponential growth following the 2020 ban on TikTok<sup>[1]</sup>. These platforms have democratized content creation, enabling millions of creators to produce multimedia mash-ups by remixing copyrighted music, film dialogues, and viral clips. Yet this creative efflorescence occurs within a legal vacuum. Unlike the United States, where the four-factor fair use doctrine accommodates transformative appropriation<sup>[2]</sup>, Section 52 of the Copyright Act<sup>[3]</sup> enumerates exhaustive exceptions that do not explicitly address remix culture. Simultaneously, platforms invoke intermediary immunity under Section 79 of the IT Act<sup>[4]</sup>, while creators face takedown notices and potential criminal liability under Section 63 of the Copyright Act<sup>[5]</sup>. This doctrinal dissonance necessitates urgent scholarly and legislative attention.

### Material and Methods

This article employs a doctrinal and comparative legal analysis, with its primary focus on:

- Statutory interpretation of the Copyright Act, 1957 (Sections 52, 57, 31D, 38B) and the IT Act, 2000 (Section 79).
- Case law analysis on originality, substantiality, fair dealing, *de minimis*, and intermediary liability
- Comparative references to U.S. fair use and EU regime, and scholarship on platform governance and algorithmic enforcement.
- Sectoral developments such as music sampling controversies and private licensing ecosystems.

### Evolution of Indian Jurisprudence on Derivative Works

#### The Originality Threshold and Derivative Works

Indian courts have historically approached derivative works through the originality lens established in *Eastern Book*

*Company v. D.B. Modak*<sup>[6]</sup>, which requires 'substantial degree of skill, industry, or experience' beyond trivial rearrangement. In *R.G. Anand v. Deluxe Films*<sup>[7]</sup>, the Supreme Court held that if a secondary work is sufficiently transformative, substantiality of copying may not vitiate fair dealing, provided the derivative work does not substitute the original's market. However, Indian courts have not explicitly recognized transformative use as an independent defense outside criticism or review.

### Emerging Recognition of Transformative Purpose

*University of Cambridge v. B.D. Bhandari*<sup>[8]</sup> marked a subtle doctrinal shift. The Court held that a guidebook utilizing copyrighted examination questions served a 'transformative purpose' distinct from the original's expressive intent, thereby narrowing the reproduction right to the work's original purpose. This reasoning, while not fully embracing U.S.-style transformative use, suggests judicial willingness to recognize non-expressive, functionally distinct uses. Yet, the Court stopped short of extending this principle to entertainment-oriented mash-ups, leaving short-form video creators without clear guidance.

### Fragmentary Literal Similarity and De Minimis Defense

In *India TV Independent News Service (P) Ltd. v. Yashraj Films (P) Ltd.*,<sup>[9]</sup> the Delhi High Court introduced the *de minimis* doctrine, recognizing that copying trivial or negligible amounts may not constitute infringement. This framework comprises two prongs: comprehensive non-literal similarity (copying structural essence) and fragmented literal similarity (copying bits of expression without overall structure). Mash-ups typically involve fragmented literal similarity in the form of brief audio clips, visual snippets, or dialogue excerpts, raising the question of whether such use qualifies as *de minimis*. However, Indian courts have not established quantitative thresholds, creating uncertainty for creators using even short musical samples.

### Music Sampling and the Absence of Statutory Clarity

The Copyright Act contains no specific provision addressing music sampling, despite its centrality to remix culture. In the recent Chuttamalle controversy (2024) <sup>[10]</sup>, allegations of unauthorized sampling from a Sri Lankan song highlighted the legal ambiguity surrounding derivative musical works. While Section 52(1)(j) of the Copyright Act <sup>[11]</sup> permits making sound recordings of musical works in certain circumstances, it does not clearly authorize sampling for transformative purposes. Courts have consistently required licensing even for small samples <sup>[12]</sup>, creating a de facto prohibition on unlicensed remix culture.

### Existing Legal Framework: Copyright and Intermediary Liability

#### Section 52: Narrow Ambit of Indian Fair Dealing Clause

Section 52 of the Copyright Act <sup>[13]</sup> enumerates specific fair dealing exceptions, including private or personal use, criticism or review, reporting current events, judicial proceedings, and educational purposes. Crucially, the provision does not recognize parody, satire, or transformative non-commercial use as independent exceptions. The 2012 Amendment <sup>[14]</sup> expanded fair dealing to include cinematograph films and sound recordings, yet it retained the restrictive closed-list approach rather than adopting an open-ended fair use standard. Consequently, mash-up creators cannot invoke fair dealing unless their use falls within criticism, review, or reporting. These categories rarely encompass entertainment-oriented remixes.

#### Section 79: Intermediary Safe Harbor and Its Limitations

Section 79 of the IT Act, 2000<sup>[15]</sup>, provides conditional safe harbour to intermediaries hosting third-party content. To qualify for protection, platforms must: <sup>[1]</sup> function as passive conduits without initiating or selecting content; <sup>[2]</sup> observe due diligence under the Intermediary Guidelines, 2021; <sup>[3]</sup> expeditiously remove content upon receiving “actual knowledge” from court orders or government notifications <sup>[16]</sup>; and <sup>[4]</sup> not aid or abet unlawful acts. This framework creates perverse incentives. Platforms adopt over-compliance strategies <sup>[17]</sup>, removing content upon private complaints to avoid liability <sup>[18]</sup>, thereby bypassing judicial scrutiny. Moreover, safe harbor does not extend to platforms exercising editorial control or algorithmic curation, raising questions about whether recommendation engines disqualify platforms from immunity.

### Moral Rights and User-Generated Modifications

#### Section 57 of the Copyright Act <sup>[19]</sup> confers two moral rights:

the right to claim authorship (paternity) and the right to prevent distortion or mutilation prejudicial to the author’s honor or reputation (integrity). These rights remain with the author even after economic rights transfer. Amarnath Sehgal v. Union of India <sup>[20]</sup> and Mannu Bhandari v. Kala Vikas Pictures <sup>[21]</sup> upheld moral rights against unauthorized alterations <sup>[22]</sup>. Mash-ups inherently involve modification by altering music tempo, overlaying new visuals, juxtaposing clips out of context, thereby potentially implicating integrity rights. Yet courts have not clarified whether transformative alterations by third-party creators, rather than assignees, trigger moral rights liability. This ambiguity chills creative experimentation, as creators face potential claims from both economic and moral rights holders.

### Doctrinal Gaps and the Case for Reform

#### Cumulative Infringement and the Aggregation Problem

Mash-ups often incorporate multiple copyrighted works, each individually qualifying as de minimis use but collectively raising infringement concerns <sup>[23]</sup>. Indian law lacks a framework for assessing cumulative infringement across multiple rights holders. Without guidance on whether individual uses should be aggregated to determine substantiality, or each use should be evaluated independently, platforms and creators face unpredictable liability.

#### Commercial versus Non-Commercial Use

Fair dealing exceptions under the Copyright Act do not distinguish between commercial and non-commercial uses, unlike the U.S. fair use doctrine. Most mash-up creators generate content for entertainment without direct monetization, yet platforms derive advertising revenue from user engagement <sup>[24]</sup>. The argument on whether the creator’s non-commercial intent insulate them from liability, or does the platform’s commercial exploitation taint the use <sup>[25]</sup> has not been addressed by Indian courts, leaving creators vulnerable to infringement claims despite lacking profit motive.

#### Absence of Compulsory Licensing for Digital Platforms

While Section 31D of the Copyright Act <sup>[26]</sup> establishes compulsory licensing for broadcasting organizations, no equivalent provision exists for short-form video platforms. Music licensing platforms like Saregama and Hoopr have emerged to fill this gap <sup>[27]</sup>, offering per-reel licenses for commercial use. However, these licenses are prohibitively expensive for individual creators and do not cover cinematic or dialogue clips. A statutory compulsory licensing regime akin to mechanical licensing in the music industry could streamline permissions while ensuring remuneration to rights holders.

#### Algorithmic Curation and Safe Harbor Eligibility

Courts have not definitively ruled whether platforms using recommendation algorithms retain intermediary status. In Myspace Inc. v. Super Cassettes Industries Ltd. <sup>[28]</sup>, the Bombay High Court suggested that active curation may disqualify platforms from safe harbor. If algorithms that amplify infringing mash-ups constitute “knowledge” or “abetment” under Section 79, platforms lose immunity, disincentivizing investment in content moderation tools.

### Proposed Reform Agenda

#### a. Tiered Fair Dealing Exception for Transformative Use:

India should amend Section 52 of the Copyright Act to introduce a new clause recognizing transformative non-commercial use as fair dealing, subject to three conditions: <sup>[1]</sup> the use must add new expression, meaning, or message distinct from the original; <sup>[2]</sup> the quantum copied must not exceed what is reasonably necessary for the transformative purpose; and <sup>[3]</sup> the use must not substitute the primary market for the original work. This tiered approach, modelled on Singapore’s hybrid fair dealing-fair use framework <sup>[29]</sup>, would balance creativity with rights-holder interests.

- b. Quantitative De Minimis Thresholds:** Courts should establish rebuttable presumptions: use of musical clips under 15 seconds, visual clips under 5 seconds, or literary excerpts under 100 words constitutes de minimis copying absent market substitution. These thresholds, subject to contextual factors (originality, commercial harm), would provide creators with safe harbors while preserving rights-holder remedies for substantial appropriation.
- c. Platform-Specific Compulsory Licensing:** Parliament should enact a provision establishing compulsory licenses for short-form video platforms. Platforms exceeding 10 million monthly active users would remit 1-2% of advertising revenue to a Copyright Clearance Authority, which would distribute royalties to rights holders based on usage metrics. This collective licensing model, inspired by Europe's Article 17 of the Copyright Directive, would legalize remix culture while ensuring fair compensation.
- d. Clarifying Moral Rights in the Digital Context:** Section 57 of the Copyright Act should be amended to clarify that transformative mash-ups by third-party creators do not implicate moral rights unless the modification misattributes authorship or egregiously distorts the work's meaning in a manner calculatedly harmful to reputation. This standard, balancing creative freedom with authorial integrity, would align Indian law with the Berne Convention's proportionality requirements<sup>[30]</sup>.
- e. Safe Harbor Conditioned on Effective Notice-and-Takedown:** Section 79 of the Copyright Act should be amended to introduce a notice-and-notice regime. Platforms must forward complaints to uploaders, providing 48 hours for counter-notification before removal. This procedural safeguard, modelled on the Canadian regime<sup>[31]</sup>, would reduce erroneous takedowns while preserving platforms' immunity. Additionally, safe harbor should explicitly cover algorithmic curation that does not involve human editorial judgment<sup>[32]</sup>, clarifying that recommendation engines alone do not vitiate intermediary status.

#### Additional Legal Considerations

- a. Performer Rights and Section 38:** The 2012 Amendment to the Copyright Act extended moral rights to performers under Section 38B<sup>[33]</sup>. Mash-ups using film clips may implicate both cinematographic copyright and performer rights.<sup>[34]</sup> Statutory reform must address this multiplicity of rights, potentially introducing bundled licensing mechanisms that clear both authorial and performer rights simultaneously.
- b. Cross-Border Enforcement Challenges:** Short-form video platforms operate globally, yet Indian copyright law lacks effective mechanisms for cross-border enforcement. Strengthening cooperation with international intermediaries and harmonizing India's fair dealing provisions with emerging global norms such as the EU's Article 17<sup>[35]</sup> or proposed U.S. SMART Copyright Act<sup>[36]</sup> would enhance enforceability while reducing jurisdictional arbitrage.

- c. Emerging AI-Generated Mash-Ups:** Generative AI tools increasingly enable automated remixing, compounding attribution and authorship challenges.<sup>[37]</sup> Future reforms must anticipate AI-mediated mash-ups, potentially requiring machine-generated content disclosures and clarifying whether AI tools qualify as 'intermediaries' under Section 79 of the Copyright Act.<sup>[38]</sup>

#### Conclusion

India's short-form video ecosystem exemplifies the creative potential and legal perils of digital remix culture. The Copyright Act's restrictive fair dealing framework, coupled with intermediary safe harbor provisions designed for passive hosting, cannot accommodate the cumulative, transformative, and commercially ambiguous nature of multimedia mash-ups. Without legislative intervention, India risks either stifling a vibrant participatory culture through over-enforcement or undermining rights holders through de facto non-enforcement. The proposed reforms, such as tiered fair dealing, quantitative de minimis thresholds, platform-specific compulsory licensing, clarified moral rights standards, and procedural safeguards for intermediary liability, offer a balanced path forward. By recalibrating copyright law to recognize transformative appropriation as legitimate cultural practice while ensuring equitable remuneration, India can position itself as a global leader in harmonizing intellectual property protection with digital innovation. The stakes extend beyond legal doctrine: they encompass the cultural autonomy and economic livelihoods of millions of creators redefining entertainment in the world's largest democracy.

#### Reference

1. Thomas Germain, *The Ghosts Of India's Tiktok What Happens When A Social Media App Is Banned*, (BBC, 6 december 2024) < <https://www.bbc.com/future/article/20240426-the-ghosts-of-indias-tiktok-social-media-ban>> accessed on 10<sup>th</sup> October 2025.
2. Rich Stim, *Measuring Fair Use The Four Factors*, (Stanford Libraries Copyright And Fair Use Overview, 2019) < <https://fairuse.stanford.edu/overview/fair-use/four-factors/>> accessed on 10 October 2025.
3. The Copyright Act, 1957, section 52.
4. The Information Technology Act, 2000, section 79.
5. The Copyright Act, 1957, section 63.
6. *Eastern Book Company V. D.B. Modak* AIR 2008 SC 809.
7. *RG, Anand V. Deluxe Films* AIR 1978 SC 1613.
8. *Syndicate Of The Press Of The University Of Cambridge V. B.D. Bhandari and Ors.* [RFA (OS) No.21 Of 2009 And FAO (OS) No.458 Of 2008]/
9. *India TV Independent News Service (P) Ltd. v. Yashraj Films (P) Ltd.* 2013 (53) PTC 586 (Del).
10. Tejas Misra, *Copyright Violations In Derivative Works And Music Sampling – The Case Of Chuttamalle, Spicyip*, August 14, 2024. < <https://spicyip.com/2024/08/copyright-violations-in-derivative-works-and-music-sampling-the-case-of-chuttamalle.html>> accessed on 10 October 2025.
11. The Copyright Act, 1957, section 52.
12. Dale Roeck, *Cause the Samplers Gonna Sample Should Courts Allow De Minimis Copying of Sound*

- Recordings or Should They Shake it Off, Penn State Law Review,2022:127:1.
13. The Copyright Act, 1957, section 52.
  14. The Copyright Amendment Act, 2012.
  15. The Information Technology Act, 2000, section 79.
  16. Shreya Singhal V. Union Of India AIR 2015 SC 1523.
  17. Jhalak Mrignayani Kakkar, Shashank Mohan And Vasudev Devadasan, Safe Harbor And Content Moderation Regulation In India, Cambridge University Press, 2025.
  18. Vasudev Devadasan, Conceptualising India's Safe Harbour In The Era Of Platform Governance, Indian Journal Of Law And Technology, 2024, 19(1).
  19. The Copyright Act, 1957, section 57.
  20. Amarnath Sehgal v. Union of India 2005 (30) PTC 253 (Del).
  21. Mannu Bhandari v. Kala Vikas Pictures AIR 1987 Delhi 13.
  22. Binny Kalra, Copyright in The Courts How Moral Rights Won the Battle of The Mural, WIPO Magazine, 2007.
  23. Cathay YN, Smith and Stacey Lantagne, Copyright and Memes: The Fight For Success Kid, 110 Georgetown Law Journal Online, 2021, 142.
  24. Kerri Eble, This Is A Remix Remixing Music Copyright To Better Protect Mashup Artists, University Of Illinois Law Review, 2013.
  25. Peter S. Menell, Adapting Copyright For The Mashup Generation, University Of Pennsylvania Law Review, Vol 164:44.
  26. The Copyright Act, 1957, section 31D .
  27. Saregama <<https://Business.Saregama.Com/>> accessed on 10 October 2025, Hoop smash <<https://Hooprsmash.Com/>> accessed on 10 October 2025.
  28. Myspace Inc. V. Super Cassettes Industries Ltd. 236 (2017) DLT 478.
  29. Peter K. Yu, Fair Use And Its Global Paradigm Evolution, University Of Illinois Law Review, 2019.
  30. Cooper E. Global Mandatory Fair Use, The Nature and Scope of the Right to Quote Copyright Works, by Tanya Aplin and Lionel Bently. Law Quarterly Review,2021:137:685-688.
  31. Canada's Approach To Intermediary Liability For Copyright Infringement The Notice And Notice Procedure, Berkeley Technology Law Journal, 2014.
  32. Maayan Perel and Niva Elkin-Koren, Accountability In Algorithmic Copyright Enforcement, 19 STAN. TECH. L. REV, 2016, 473.
  33. The Copyright Act, 1957, section 38B.
  34. Andrew S. Long Mashed Up Videos And Broken Down Copyright Changing Copyright To Promote The First Amendment Values Of Transformative Video, Oklahoma Law Review,2007:60:317.
  35. Directive On Copyright In The Digital Single Market, "Directive (EU) 2019/790 Of The European Parliament And Of The Council Of 17 Apr. 2019 On Copyright And Related Rights In The Digital Single Market And Amending Directives 96/9/EC;2001/29/EC, Official J.Eur. Communities,2019:130:92.
  36. Strengthening Measures To Advance Rights Technologies Copyright Act, 2023.
  37. Malakar, Prafull, Leeladharan, Manavalan, Generative AI Tools For Collaborative Content Creation A Comparative Analysis, DESIDOC Journal Of Library and Information Technology,2024:44:151-157.
  38. The Copyright Act, 1957, section 79.