

# [Photocopying of copyrighted works for educational purposes law international essa...](https://assignbuster.com/photocopying-of-copyrighted-works-for-educational-purposes-law-international-essay/)

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## Abstract

Copyright law begins with the premise that the copyright owner has exclusive rights to many uses of protected works like right to reproduce, distribute, make derivative works, and publicly display or perform the work. Copyright law forbids the misappropriation of the copyrighted works; however, it permits the use of copyrighted works for certain specified purposes under what has come to referred to as ‘ fair use’ in the United States and ‘ fair dealing’ in United Kingdom, India, Canada and ‘ exceptions’ or ‘ restrictions’ in other legislations. These ‘ exceptions’ are carved out to prevent the conflict between the creators, disseminators and society and to ensure that the benefits of creativity reach the society. The doctrine of ‘ fair use’ or ‘ fair dealing’ is an integral part of copyright law. In the Indian Copyright Act, 1957, as amended in the year 2012, section 52 deals with fair uses. This section has only three sub-sections, 52(1)(a), 52(1)(i) and 52(1)(j) dealing with fair use or fair dealing in educational context. These statutory provisions indicate that the law in India does not expressly deal with the issue of photocopying of copyrighted works for educational purposes. Therefore, the issue of unauthorized reproduction of the copyrighted works by way of photocopying for educational purposes needs to be addressed in light of the statutory provisions and by analysing how other countries have dealt with the same issue. In this regard analysis and comparison is made of the statutory provisions and its interpretation by the courts in the U. S. A, U. K. and India, highlighting that photocopying of copyrighted works for educational purposes is a fair dealing but with restrictions of amount of work copied, its implications on the market etc. Further emphasis is laid on the international and national efforts to deal with this problem and how far these efforts have succeed and further suggesting what all needs to be done to resolve the issue in its totality.

## I. INTRODUCTION

" The primary objective of copyright is not to reward the labour of authors but to promote the progress of science and useful arts... To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work... This result is neither unfair nor unfortunate... It is the means by which copyright advances the progress of science and art."[1]- Sandra Day O’Connor, J. THE UNAUTHORIZED reproduction for educational purposes of limited number of copies of copyrighted works has come to present one of the major problems in the copyright law. The problem becomes more acute with the technological advancement in methods for making inexpensive photocopies which has led to more tensions between copyright owners and users (especially students, teachers and library). At the heart of the problem or the dispute is the ‘ fair use’ or ‘ fair dealing’ doctrine which permits reproduction of the copyrighted work or use in a manner, which, but for the exception carved out would have amounted to infringement of copyright.[2]The term ‘ fair use’ or rather the doctrine as it has evolved in the jurisprudence of copyright law finds its roots in the understanding that copyright is not an absolute right. 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."[3]The defence of fair use originated as an equitable doctrine allowing certain uses of literary works that copyright law would otherwise have prohibited, if prohibiting such uses ‘ would stifle the very creativity which that law is designed to foster’.[4]However, due to the nature of the doctrine of fair use, the term is devoid of precision in definition and the courts have time and again confronted with this problem. The end of this problem is that fair use has been regarded as peculiarly situation-specific and case-specific. Therefore, courts have relied on various factors while deciding different cases which are discussed in the later part of the paper. An attempt is made to analyse the problem of reprography[5](more specifically photocopying) for educational purposes in light of the most accepted defence i. e. the defence of fair use or fair dealing by formulating and answering the following issues: Whether photocopying of copyrighted works for educational purposes constitutes fair use? If yes, whether such use be allowed without any restrictions or guidelines? If no, what are the factors that should be considered while formulating such restrictions or guidelines? Whether the existing provisions relating to ‘ fair dealing’ in Section 52 of the Indian Copyright Act, 1957 covers photocopying of copyrighted works for educational purposes? Whether establishment of the Reprographic Rights Organization can be a useful tool in resolving this problem? With this brief overview and the questions to be dwelt upon, the researcher shall now proceed to analyse these issues. In the part II of the paper, the researcher shall deal with the legal framework on doctrine of fair use and the scope is restricted to the discussion of doctrine of the fair use in educational context and a comparative analysis of the law existing in U. S. A, U. K and India is made. In the part III of the paper, the problem of photocopying for educational purposes in reference to doctrine of fair use is discussed with special reference to various case laws decided by the courts in the U. S. A and the guidelines which form the basis of such disputes. Further an attempt is made to analyse various situations on the anvil of the Indian Copyright Act, 1957. In the part IV of the paper, the international and national efforts (specifically in the U. S. A, U. K and India) to deal with the problem of photocopying are discussed at length and further emphasis is laid on the role of Reprographic Rights Organizations i. e. Collective Administration Society. In the part V of the paper, the researcher shall conclude the issue.

## II. LEGAL FRAMEWORK ON DOCTRINE OF FAIR USE IN EDUCATIONAL CONTEXT: A COMPARATIVE STUDY[6]

The doctrine of fair use or fair dealing is a significant concept in copyright law as it seeks to balance the societal interest as opposed to the personal interest of the owners of copyright. However, despite its importance in the copyright law, the concept remains relatively unexplored in India in general and particularly in educational context.[7]On the other hand, in other countries,[8]specifically in U. S. A., the concept of fair use has been refined over the past decades through various judicial pronouncements[9]and by formulating guidelines[10], with regard to fair use for educational purposes. Therefore, it is important for a proper treatment of the problem of photocopying for educational purposes in context of the doctrine of fair use that a comparative analysis is made in this regard. Even the international treaties recognise certain acts which may be done without the authorisation of the copyright owner. Under article 9(2) of the Berne Convention[11], the countries of the Union are authorised by way of a national legislation to permit the ‘ reproduction’ of protected works ‘ in certain special cases’ provided that such reproduction ‘ does not conflict with a normal exploitation of the work’ and ‘ does not unreasonably prejudice the legitimate interests of the author’. This is referred to as ‘ Three-Step Test’ and the same is provided under article 13 of the TRIPS[12]under the heading ‘ Limitations and Exceptions’.[13]Similarly, the Universal Copyright Convention, 1971 under article IVbis para 2 provides that any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the rights mentioned in para 1 of the article.[14]However, any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made. Under article 13 of the TRIPS, the limitations and exceptions: Must be confined to special cases. Must not conflict with a normal exploitation of the workMust not unreasonably prejudice the legitimate interests of the right holders. The question whether there is prejudice to the interest of the author, and whether such prejudice is reasonable or not, leaves great latitude to national legislations. The answer to the question posed by the convention has to be given in two stages. In the first place by the national legislation which formulates the exception permitted by the convention, and in the second place, by the national courts interpreting that formula in the national law.[15]

## United States of America

The basis of the doctrine of fair use is found in article 1, section 8, clause 8, of the United States Constitution where it is stated that, " The Congress shall have power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Laws subsequently enacted by Congress have attempted to advance the progress of science and the arts by: providing a monetary incentive to authors and inventors. allowing broad public access to works created by authors and inventors. Until codification of the fair use doctrine in the 1976 Act, fair use doctrine was evolved by judicial decisions, to preserve the constitutionality of copyright legislation. The earliest American case recognizing the fair use doctrine was Folsom v. Marsh,[16]often termed the ‘ source of the fair use doctrine’ in the United States wherein Story J., recognized the fair use theory and set forth certain factors to analyze in determining whether the second user had made a ‘ fair use’ of the copyrighted material. He observed that:" We must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use made may prejudice the sale, or diminish the profits, or supersede the object of the original work. Many mixed ingredients enter into the discussion of such questions."[17]The factors as laid down by court in this case was followed by courts in subsequent cases like Karll v. Curtis Publishing Co.,[18]Leon v. Pacific Tel. & Tel. Co.,[19]and Benny v. Loew’s Inc.[20]One positive factor, at least, was that the doctrine of fair use became firmly entrenched in copyright law. However, attempts were being made to give the judicial doctrine of fair use, a statutory recognition. Finally, in an effort to more accurately answer the question of what fair use is, and to establish a uniform set of criteria, a crystallization of the determining factors of fair use appeared in the proposed Copyright Law Revision Bill of 1967. The criteria there set forth were the purpose and character of the use; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work. The doctrine of ‘ fair use’ has now been codified in section 107 of the U. S Copyright law.[21]However, the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. By incorporating the fair use provision in section 107, the House Report accompanying the Act indicated that Congress intended to restate the present judicial doctrine of fair use, ‘ not to change, narrow or enlarge it in any way.’[22]Section 107[23]provides that notwithstanding anything contained in section 106 and 106A,[24]the fair use of a copyrighted work is not an infringement, including use by reproduction or by any other means, for purposes such as criticism, comment, teaching including multiple copies for classroom use, scholarship or research. Following factors need to be considered while determining fair use: the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; andthe effect of the use upon the potential market for or value of the copyrighted work. . On an analysis of section 107, it is pertinent that there are certain express situations to which fair use is intended to apply. Thereby, it incorporates educational purposes like teaching (including multiple copies for classroom use), scholarship and research, but, a crucial point is that an educational purpose alone does not make a use fair. Such use has to be tested on the anvil of the factors in order to conclude whether or not an activity is ‘ fair’. Further, each of the four factors is subject to interpretation by the courts and the analysis of fair use has always been tailored to the individual cases i. e. depends on the facts and circumstances of each case. Factor One: What is the purpose and character of the use? Courts usually consider three factors when determining the purpose and character of the allegedly infringing use: whether the use was productive; whether the use was commercial; andwhether the alleged infringer's conduct was proper.[25]None of the three factors, however, is determinative of a finding. Even though no factor is considered determinative, courts tend to focus on the transformative value, or in other words, productive use, of the secondary work.[26]In Harper and Row Publishers Inc. v. Nation Enterprises,[27]the U. S Supreme Court observed that the crux of the profit/non-profit distinction is not whether the sole motive of the use is monetary gain but whether the user stands to profit from exploitation of the copyrighted material without paying the customary price. Further, although the profit element is a significant factor in the fair use analysis, it is not itself controlling; whether a use is fair depends on the totality of all the factors. To the same tune, in Campbell v. Acuff-Rose Music Inc.,[28]the U. S Supreme court rejected the statement given in Sony Corp. v. Universal City Studio,[29]that, ‘ every commercial use is presumptively unfair’ and explained that the commerciality of the use merely tends to weigh against a finding of fair use. As an equitable defence, fair use presupposes faith so that the fairness of defendant’s conduct is relevant fairness of its use. Factor Two: What is the nature of the copyrighted work? The second factor concerns the nature of the work that has been copied. Generally, courts look to whether the plaintiff’s work is primarily creative as opposed to informational in determining the nature of the copyrighted work.[30]Additionally, the use of a protected work is less likely to be considered fair use than the use of a protected factual work.[31]When distinguishing whether an allegedly infringing work is ‘ functional’ or ‘ factual’, the court looks to the expressive elements of the work that must necessarily be used as incident to expression of the underlying ideas, functional concepts, or facts.[32]Further whether the copyrighted work is unpublished and the allegedly infringing work is published is also a critical factor and if the work is indeed unpublished, then the scope of the fair use defense is narrowed.[33]However, the status regarding unpublished work was changed by an amendment in the year 1992 by which it was clarified that the unpublished nature of a work does not itself bar fair use. Factor Three: What is the amount and substantiality of the portion use in relation to the copyrighted work? This factor determines whether the allegedly infringing work constitutes a fair use by looking at the amount of the copyrighted work copied by the alleged infringer and the substantiality of the copied portion. Courts, therefore, must consider ‘ not only the percentage of the original work used but also the ‘ substantiality’ of that portion to the whole of the work, that is, courts must evaluate the qualitative aspects as well as the quantity of material copied.[34]In general, the greater the amount of the copyrighted work used, the less likely it is that the fair use exception is applicable.[35]Therefore, the use of a large portion of a protected work is less likely to be considered a fair use than the use of a small portion. Alternatively, even the copying of an entire work does not preclude fair use, but it does weigh against a finding of fair use.[36]However, qualitative analysis is also essential and thereby, the use of a small portion of the work that is the most essential or important part of the work is unlikely to be considered a fair use.[37]The court must take into account how much of the copyrighted work was taken and whether that portion was an essential element of the plaintiff’s work.[38]Factor Four: What is the effect of the use on the market? This factor evaluates not only the extent of market harm caused by the particular actions of the alleged infringer, but also whether unrestricted and widespread conduct of the sort engaged in by the defendant would result in a substantially adverse impact on the potential market for the original.[39]Consequently, use of the allegedly infringing work that competes in the market with the copyrighted work is unlikely to be considered a fair use. Further, courts generally balance competing ideals of how the public will benefit if the use is permitted versus the copyright proprietor’s personal gain if the allegedly infringing use is denied, when determining this factor.[40]However, an allegedly infringing use of a protected work that destroys the value of the copyrighted work to the copyright proprietor cannot be considered a fair use.[41]The market analysis should consider not only the market for derivative works based upon the original.[42]If the court finds that direct duplication occurred for a commercial purpose, then a presumption will be established that market harm occurred. Conversely, no presumption will be established if only 'mere duplication' occurred, even if for a commercial purpose.[43]Therefore, occasional quotations or photocopies may have no adverse market effects, but reproductions of software and videotapes can make direct inroads on the potential markets for those works. However, the four statutory factors enumerated by Congress under section 107 and as discussed above are not meant to be exclusive, although they are highly probative of whether the allegedly infringing use is fair.[44]. Since fair use is an ‘ equitable rule of reason’ to be applied in light of the overall purposes of the Copyright Act, other relevant factors may also be considered in the determination of the type of use.[45]In addition to the four factors so enumerated, courts generally take into consideration whether: the party using the protected work acted in good faith; the party using the work asked for permission; andthe age and availability of the underlying work.[46]Therefore, the factors to be considered are not exhaustive and will depend on the facts and circumstances of the case. Further, the Technology, Education, and Copyright Harmonization (TEACH) Act was signed by President Bush on November 2, 2002 which facilitates and enables the performance and display of copyrighted materials for distance education by accredited, non-profit educational institutions and the primary purpose of which is to balance the needs of distance learners and educators with the rights of copyright holders.

## United Kingdom

The Copyright, Designs and Patents Act, 1988 under chapter III (sections 28-76)[47]contains express defences to copyright infringement known as the acts permitted in relation to copyright works. These are the acts that can be performed without attracting liability for copyright infringement, but this is without prejudice to other legal rights or obligations.[48]Laddie J., observed that, " Chapter III consists of a collection of provisions which define the extraordinary precision and rigidity the ambit of various exceptions to copyright protection."[49]In addition to the exceptions in the 1988 Act the courts have also developed a number of common law defences that a defendant may rely upon when sued for infringement of copyright. Lionel Bently and Brad Sherman pointed out that these exceptions perform a number of different roles in different cases which are: Promotion and encouragement of creation of works. To overcome the market failure that arises where an economically optimal use would not occur for one reason or other. To protect other non-copyright interests, such as the privacy and free speech. To prevent monopolies from being abused. To preserve material that is culturally and historically valuable.[50]Section 28 of the 1988 Act is the introductory provision which defines and limits the scope of the chapter III.[51]Under this chapter, education is treated as a special case and there are several exceptions to infringement in this regard contained under sections 32-36A and similarly, fair dealing for the purposes of research and private study is covered under section 29. Fair Dealing under the Act: The 1988 Act, allows ‘ fair dealing’ with the works that attracts copyright. This means, roughly, that there will be no copyright infringement if the use made of the work is fair. The Act provides no definition to the term ‘ fair dealing’ but restrict the defence only for a number of purposes. The ‘ fair dealing’ defences are found in sections 29 and 30 which provides that a person will not be liable if they can show: Fair dealing for the purposes of research and private study (section 29(1)). Fair dealing for the purposes of criticism or review (section 30(1)). Fair dealing for the purposes of reporting current events (section 30(2)). The main emphasis in this paper will be on ‘ fair dealing’ for the purposes of ‘ research and private study’, but before analysing this provision it is essential to analyse the meaning attributed to the term ‘ fair dealing’ and the factors taken into consideration by the courts while deciding the issue of ‘ fair dealing’ since the word is not defined in the Act.[52]The ‘ fair dealing’ provisions allow the copying or other use of the work which would otherwise be an infringement, and in many cases the amount of the copyrighted work used may be relevant. In Hubbard v. Vosper,[53]Lord Denning, while describing the scope of the ‘ fair dealing’ defence and how a judge should assess it, observed that:" It is impossible to define what is ‘ fair dealing’. It must be a question of degree. You must first consider the number and extent of the quotations... Then you must consider the use made of them. If they are used as a basis of comment, criticism or review, they may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, they may be unfair. Next you must consider the proportions. To take long extracts and attach short comments may be unfair. But short extracts and long comments may be fair. Other considerations may come to mind also. But it must be a matter of impression."[54]There is no reason to restrict the scope of this quote to one particular type of fair dealing; it applies to fair dealing in general.[55]The courts in various cases have laid down the factors relevant for assessing whether a particular use is a ‘ fair use’. These factors are: For which purpose was a substantial part of the work copied? The degree to which the challenged use competes with the exploitation of the copyright by its owner will be an important consideration.[56]What is the use made of the work? In some cases, it may be possible to reproduce someone else’s work without comment or analysis and it be a fair use. In Newspaper Licensing Agency v. Marks & Spencer,[57]a dealing by a person with a copyright work for his own commercial advantage and to the actual or potential commercial disadvantage of the copyright owner is not to be regarded as a ‘ fair dealing’ unless there is some overriding element of public advantage which justifies the subordination of the rights of the copyright owner. What is the proportion of the copied part in relation to the whole work? The relevance of this extent of use will, however, depend very much on the particular circumstances of the case.[58]How the work was obtained? The method by which the copyright material has been obtained may be a factor in determining whether the dealing is fair.[59]Therefore, it is less likely for a dealing to be fair if the dealing relates to a work that is leaked or stolen, than a work that is obtained legitimately. What motive led to the copying? If the motive was to compete with the original work, this is likely to make the dealing with the work unfair and the defence unavailable.[60]Though a number of quantitative elements are taken into account, the final assessment will be qualitative in nature. Therefore, depending upon the circumstances of each case, the fair dealing defence may be unavailable for someone who copies only marginally more than the minimal substantial part of the work, or may be available, in other extreme case, to someone who copies almost the whole work.[61]However, as observed in Hyde Park Residence ltd. v. Yelland,[62]" the court must judge the fairness by the objective standard of whether a fair-minded and honest person would have dealt with the copyright, in the manner that (the alleged infringer) did." Fair Dealing for the Purposes of Research or Private StudySection 29(1) of the 1988 Act provides for fair dealing with a literary, dramatic, musical or artistic work for the purposes of research for a non-commercial purpose does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.[63]Section 29(1C) provides for fair dealing with a literary, dramatic, musical or artistic work for the purposes of private study does not infringe any copyright in the work. However, fair dealing with the typographical arrangement of a published edition for the purposes of research or private study does not infringe any copyright in the arrangement.[64]The rationale for this defence lies in the belief that research and study is necessary to generate new works. It also recognises that research and study does not normally interfere with the incentives and rewards that copyright provides to creators and owners.[65]Various factors may be considered while adjudicating whether a particular use is a fair dealing for the purposes of research or private study:[66]The financial motive behind making a copy of a work or part of a work for research or private study. Nature of the research or study. Funds available to the researcher or student. Questions such as whether the person concerned is copying simply to save himself the expense of buying a copy of the work, or whether it is reasonable to expect a copy to be purchased. Further, the act involved in fair dealing can be done by another, such as where a librarian makes a copy of an article in a periodical for a student who requires the copy for the purposes of research or private study. This aspect is covered under section 29(3), however the scope and extent is limited by restricting multiple copies of same material being made or the same material being provided to more than one person at substantially the same time and for substantially the same person. In Sillitoe v. McGraw-Hill Book Co (UK) Ltd.,[67]the defendant published study notes intended to assist students taking GCE ‘ O’ level examinations in literature, and had reproduced a substantial part of the claimant’s works in the study notes. The defendant contended that the ‘ study notes’ fell within the fair dealing provision for the purposes of research and private study under section 6(1) of the Copyright Act, 1956. The court refused to accept the contention of the defendant and held that the defendant was not engaged in research or private study, but was merely facilitating this for others, that is the students purchasing copies of the study notes. Educational Use under 1988 ActIn addition to the fair dealing defences, the 1988 Act contains a number of defences under sections 32-36A that relate to copying carried out by educational institutions. Section 174(1) of the act defines ‘ educational establishments’ as being any school and any other description of educational establishment specified by order of the Secretary of State. By the Copyright (Education Establishments) (No. 2) Order 1989, other establishments include universities established by Royal Charter or Act of Parliament, most institutions for further or higher education and theological colleges. ‘ School’ is defined by reference to the appropriate legislation under section 174(3).[68]The expression ‘ teacher’ and ‘ pupil’ include, respectively, any person who gives and any person who receives instruction.[69]Section 32 deals with things done either for the purpose of instruction, or for examination purposes. Copyright in a literary, dramatic, musical or artistic works or in a sound recording, film or broadcast is not infringed by its being copied in the course of instruction or of preparation for instruction provided the copying is done by a person giving or receiving instruction; is accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose. However, in case of literary, dramatic, musical or artistic work, the copying is not to be done by means of a reprographic process. Therefore, it is permissible for a teacher to reproduce an artistic work on a blackboard in a classroom for purpose of instruction or to ask pupil to write out by hand a substantial extract from a work of literature. Anthologies are dealt with under section 33, which permits the inclusion of a short passage from a published literary or dramatic work in a collection provided that the collection is intended for use in educational establishments and consists mainly of material in which no copyright subsists. Further, performances of literary, dramatic and musical works are permitted under section 34 provided the audience is made up of teachers and pupils at the educational establishments and other persons directly connected with the activities of the establishment. Similarly, under section 35, a recording of a broadcast or a copy of such broadcast may be made by an educational institution provided the same is accompanied by sufficient acknowledgement and the purpose is non-commercial. Copyright in a work is not infringed by the lending of copies of the work by an educational establishment under section 36A. However, the most important provision is section 36 which permits the reprographic copying of passages of published literary, dramatic or musical works by or on behalf of educational establishments for the purposes of instruction provided that they are accompanied by a sufficient acknowledgement and the instruction is for non-commercial purpose. However, the amount that can be copied is extremely small; being not more than one percent of any work in any quarter and the authority to copy is subject to the availability of licenses and the actual or constructive notice of the person making the copies as regard such licenses. A license may not attempt to reduce the portion that can be copied under section 36. The operation of the section 36 defence is limited as a result of the fact that educational establishments have entered into a number of relevant certified licensing schemes.[70]Therefore, under the Copyright, Designs and Patents Act, 1988 there are certain exceptions that specifically deal with fair dealing for the educational purposes and the court while deciding the question regarding fair dealing have taken into consideration the purpose, proportion, motive and status of other work. However, the only thing that can be said with any degree of certainty is that whether a particular act falls within the meaning of ‘ fair dealing’ depends very much upon the circumstances surrounding the act i. e. it will depend on the facts and circumstances of each case.

## India

The primary objective of copyright is not to reward the labour of authors, but to promote the progress of science and useful arts. To this end, copyright assures authors the right to their original expression and also encourages others to build freely upon the ideas and information conveyed by a work.[71]It allows people to make some free uses of the copyright material. The reason for having provisions relating to free uses in the act is to strike a balance between the interests of the copyright owner and the interests of the society at large. Thus, the private rights of the copyright owner have been curtailed to a limited extent in the interest of society. The exclusive rights, also known as economic rights of author or owner of copyright is provided under section 14 of the Act are not absolute and are subject to certain provisions of the Act. One such provision is section 52 which specifically provides certain acts which do not amount to infringement of copyright. The section enlists various exceptions and covers within its ambit certain educational exceptions on the ground of ‘ fair dealing’ of the work. Sections 52(1)(a)(i), 52(1)(i) and 52(1)(j) can be referred to as ‘ educational exceptions’. The policy behind the defence of fair dealing was explained by the Delhi High Court in the case of Chancellor Masters & Scholars of the University of Oxford v. Narendra Publishing House.[72]The court observed that:" Fair dealing... legitimizes the reproduction of a copyrightable work. Coupled with a limited copyright term, it guarantees not only a public pool of ideas and information, but also a vibrant public domain in expression, from which an individual can draw as well as replenish. Fair use provisions, then must be interpreted so as to strike a balance between exclusive rights granted to the copyright holder, and the often competing interest of enriching the public domain. Section 52 therefore cannot be interpreted to stifle creativity.... It, therefore, must receive a liberal construction in harmony with the objectives of copyright law. Section 52 of the Act only details the broad heads, use under which would amount to infringement. Resort, must, therefore be made to the principles enunciated by the courts..." The courts in India were also confronted with the problem of defining the canons and contours of the term ‘ fair dealing’ as the Act itself does not define the term. For this the court relied on the observation of Lord Denning in the case of Hubbard v. Vosper[73]as discussed above. The courts have time and again reiterated that it is impossible to develop a ‘ rule of thumb’ for cases of fair dealing as each case depends upon its own facts and circumstances.[74]The courts in India while dealing with fair dealing defence have taken various factors into consideration like the amount and substantiality of the dealing,[75]purpose, character and nature of the dealing i. e. commercial nature or not[76]and effect on the potential market or likelihood of competition.[77]Therefore, it is established that the courts in India have relied on various factors while deciding fair dealing cases and largely any decision in such cases depends on facts and circumstances of a particular case. Fair dealing for research and private study: Section 52(1)(a)[78]provides that a fair dealing with any work not being a computer programme, shall not constitute an infringement for the purposes of: private or personal use, including research; criticism or review, whether of that work or of any other work; the reporting of current events and current affairs, including the reporting of a lecture delivered in public. The courts in India have traced the purpose of defence of fair dealing to the Indian Constitution. In Wiley Eastern Ltd. v. Indian Institute of Management,[79]the court observed that:" The basic purpose of section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India- so that research, private study, criticism or review or reporting of current events could be protected. Section 52 is not intended by Parliament to negatively prescribe what infringement is." Originally, under the 1957 Act, the exception provided ‘ research and private study’; this was amended in the year 1994 to ‘ private use, including research’. The object of such amendment was to avoid narrow interpretation of the words private study. However, these words are further substituted by the 2012 amendment to ‘ private or personal use, including research’. Further there is no definition as to what constitute research under this exception.[80]However what needs to be ascertained is what the legislature wanted to convey by the use of the word ‘ personal’ and whether it includes any legal person like organization, institution or enterprises or merely an individual. Furthermore, it is an established fact that research for qualifying under this exception is required to be private research and not commercial research. Use of copyright material in the course of education: Section 52(1)(i)[81]provides that the reproduction of any work shall not constitute infringement of copyright work: by a teacher or a pupil in the course of instruction; oras part of the questions to be answered in an examination; orin answers to such questions. This particular exception is the most important exception as it allows reproduction of any work by a teacher or a pupil in the course of instruction. However, no definition has been given of ‘ teacher’ and ‘ pupil’ in the Act. In absence of any such definition ‘ teacher’ and ‘ pupil’ may mean any person who gives and any person who receives instructions respectively. Furthermore, it needs to be ascertained as to what will constitute ‘ course of instruction’ and whether in such course of instruction, teacher is allowed to make multiple copies of a work for the purpose of distributing it in the class. This particular aspect is not dealt in any case till now. With regard to the other exceptions like reproduction of a work as part of the questions in an examination and answers to such question has been explained by the court in the case of Syndicate of Press University of Cambridge v. Kasturi Lal & Sons.,[82]wherein the Delhi High Court observed that:" It is noteworthy that this exception would be applicable only when material from the original is reproduced as a part of the questions to be answered in an examination or in answer answers to such questions. This exception would not be applicable because the reproduction is not made as a part of the questions and answers; rather the complete set of questions and answer key is copied from the original work." Performance of a work in educational institution: Section 52(1)(j)[83]provides that the performance of a literary, dramatic or musical work by the staff and students of the institution in the course of the activities of an educational institution is not an infringement of the copyright if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution. This exception is wider in scope as the parents and guardians of the students can also constitute part of the audience. Therefore, under the Indian Copyright Act, 1957, though there are various educational exceptions but their scope is not yet clear because of no judicial pronouncements on the same and the views as to what situations are covered by it may differ according to the facts and circumstances of the case.