

## Legal Issues in ‘IP in Memes’

Issue: Does Use of Copyright Protected Images in Memes amount to Infringement?

## Introduction

- ❖ Memes- *“an amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media”*. (emphasis supplied)
- ❖ Section 2(c) of the Copyright Act, 1957
  - *“...an engraving or a **photograph**, whether or not any such work possesses artistic quality...”*  
(emphasis supplied)
- ❖ Memes as ‘artistic works’ and ‘cinematograph films’.
- ❖ Section 2(a)(v) of the Copyright Act, 1957
  - *“adaptation” means,- in relation to any work, any use of such work involving its rearrangement or alteration”*.
- ❖ Memes as adaptation of works.

## Relevant Provisions of the Copyright Act, 1957

### ❖ Section 14:

*“...the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-*

*(c) in the case of an artistic work,—*

*(i) to reproduce the work in any material form including— (A) the storing of it in any medium by electronic or other means...*

*(v) to make any adaptation of the work*

*(d) in the case of a cinematograph film, - (i) to make a copy of the film, including—*

*(A) a photograph of any image forming part thereof; or*

*(B) storing of it in any medium by electronic or other means...” (emphasis supplied)*

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## Relevant Provisions of the Copyright Act, 1957 (Contd.)

### ❖ Section 51:

*“Copyright in a work shall be deemed to be infringed— (a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act— (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright.”*

### ❖ Section 52:

*“(1) The following acts shall not constitute an infringement of copyright, namely, - (a) a fair dealing with any work, not being a computer programme, for the purposes of—*

*(i) private or personal use, including research...*

*(ii) criticism or review, whether of that work or of any other work.”*

## Relevant Judgements

### ❖ *Civic Chandran and Ors. v. C. Ammini Amma and Ors.* [1996 (16) PTC 670 (Ker)]

- *“The term ‘fair dealing’ has not been defined as such in the Act, But Section 52(1) (a) and (b) specifically refers to ‘fair dealing’ of the work and not to reproduction of the work. Accordingly, it may be reasonable to hold that the reproduction of the whole work or a substantial portion of it as such will not normally be permitted and only extracts or quotations from the work will alone be permitted even as ‘fair dealing’. In the circumstances, the quantum of extracts or quotations permissible will depend upon the circumstances of each case. It may not be proper to lay down any hard and fast rules to cover all cases where infringement of copy right is alleged on the basis of extracts or quotations from the copyrighted work. In a case like the one on hand, court will have to take into consideration (1) the quantum and value of the matter taken in relation to the comments or criticism; (2) the purpose for which it is taken; and (3) the likelihood of competition between the two works.” (Emphasis supplied)*

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## Relevant Judgements (Contd.)

### ❖ *Ravinder Singh and Sons v. Evergreen Publications (India) Ltd. and Ors.* [FAO 235/2017 & CM APPL. 19611/2017]

- *“It is impossible to define what is "fair dealing". It must be a question of degree. You must consider first the number and extent of the quotations and extracts. Are they altogether too many and too long to be fair? Then you must consider the use made of them. If they are used as a basis for comment, criticism or review, that may be fair dealing. If they are used to convey the same information as the author, for a rival purpose, they may be unfair.”*
- *“A work is "transformative" when the new work does not "merely supersede the objectives of the original creation but rather adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message...”*

## Applicability of De Minimis Rule

### ❖ *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.* [2013 (53) PTC 586(Del.)(DB)]

- *“Courts have identified two types of substantial similarities: (i) Comprehensive non literal similarity; where Courts have strived to identify the "fundamental essence of the structure", and it being copied, even where specific expression is not copied. (ii) **Fragmented literal similarity**, in which bits of specified expressions are copied, but the overall structure is not. **It is in the latter, that Courts have employed de minimis**; holding that substantial similarity is present only if the amount of literal expression copied is more than de minimis.”* (Emphasis supplied)
- 7 • Factors considered in applying the De Minimis Rule- *“(i) the size and type of the harm, (ii) the cost of adjudication, (iii) the purpose of the violated legal obligation, (iv) the effect on the legal rights of third parties, and (v) the intent of the wrongdoer.”*

## 9<sup>th</sup> Report Of The Standing Committee On Information Technology, I&B Ministry

- ❖ *“In its most general sense, a fair use is any copying of copyrighted material done for a limited purpose, such as to comment upon, criticize, or parody a copyrighted work. Such uses can be done without permission from the copyright owner. In other words, fair use is a defense against a claim of copyright infringement. If someone’s usage qualifies as a fair use, then it would not be considered an infringement.”*
- ❖ *“On being asked whether forwarding of film clips/short extract of movies as memes, jokes etc., for commercial gains would qualify for fair use, the Ministry has stated that as informed by the Department for Promotion of Industry and Internal Trade, whenever any work is used for commercial purpose, it is no more considered as an exception under “fair dealing. As “fair dealing” only protects the works which are used for purposes such as private, educational or review or critique or reporting of current events”*

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## 9<sup>th</sup> Report Of The Standing Committee On Information Technology, I&B Ministry (Contd.)

- ❖ *“Further, with regard to film clips/short extract of movies as memes, jokes etc., being forwarded for non-commercial gains, the Ministry has submitted that the decision for lodging a complaint is entirely up to the author or the copyright holder of the film when it comes to film clips, short extracts of movies, etc. being used/ forwarded as Memes, Jokes, etc. for non-commercial gains.”*
- ❖ *“The Committee observe that the Cinematograph(Amendment) Bill, 2019 as introduced in Rajya Sabha does not have a provision for 'Fair Use'. Thus, apprehensions were raised that in the absence of the 'Fair Use' provision in the Bill, there is no protection provided in the Bill to someone who forwards a film clip/short extract of movies as memes, jokes etc., for noncommercial purposes. The Ministry of I & B contended that incorporating such a provision would defeat the purpose of having an absolute anti-camcording provision with intention to create ‘making a copy of a film’, an offence...According to the Ministry, access to cinematograph works for educational purpose can be obtained by legalized channels as well, such as purchasing a DVD, etc. and for that making infringing copies is not the only option.”*

# THANK YOU!

## Questions?

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