Journal of Intellectual Property Rights
Vol 31, November 2026, pp. 1081-1091
DOI: 10.56042/jipr.v31i6.28752

Digital Learning and Access: Legislative Reforms for Copyright and Open Educational Resources in India

Kaveri Shukla† and Sunitha Kanipakam

Department of Law, Sri Padmavati Mahila Visvavidyalayam, Tirupati – 517 502, India

Received: 16th February 2026; revised: 22nd June 2026

The digital learning methods have been widely developed at global level. It has strengthened the traditional classroom education system in India. Its online content and Open Educational Resources (OER) movement, has accelerated the democratization of access to quality education. Online contents have contributed majorly in the development of digital learning methods. The Creative Commons licences have created a major threat to existing legal framework in copyright law in accommodating the unique characteristics of online contents, educational practices and the needs of both creators and learners. However, this transformation introduces critical friction points on Creative Commons Licensing, digital content dissemination, and fair dealing with the existing legal frameworks of the Indian Copyright Act, 1957. This article critically analyses the legal dilemma posed by the widespread permissions given to use the content which having Creative Commons licence, the uncertainty regarding digital application of the exception given under Section 52 of the Copyright Act, 1957 and emerging challenges from AI-Generated educational content. This study adopts doctrinal research methodology comprising of primary legal sources, such as the Copyright Act, 1957, constitutional principles on the right to education, and judicial decisions including DU Photocopy case, *Neetu Singh* v *Rajiv Saumitra* and *Cambridge University Press* v*Patton* along with secondary sources namely books, journal articles, international instruments to delineate specific vulnerabilities in the digital context. The research concludes by proposing targeted legislative and policy recommendations addressing digital educational carve-out and a mandatory collective licensing scheme to harmonize the right to education with protection of intellectual moral and economic rights.

Keywords: Copyright Laws, Creative Commons, Digital Learning, Infringement, Open Educational Resources

Education is recognised as one of the basic requirements in human life that solely has the power to mould an individual's life as well as contribute to the development of a nation. Under the Indian Constitution, education for all children has been made as a fundamental right as per Article 21 A.[1] A society without education would be similar to a place without light. Its significance in an individual's life can neither be reduced nor ignored. It is the most basic and essential element for an individual's development and growth of society. India has seen the historical evolution of the education system from the Vedic era to the Buddhist period, from Muslim invaders to colonial rule, and from a traditional to a modernised education system after the independence of the country.

The present learning process has shifted from the conventional classroom system to the modernised digital learning methods. Now any student can improve his capacity by using different digital learning platforms.

Online education has brought significant transformations in society; however, it poses a heavy risk to the copyright protection of contents available in open access. As under the Creative Commons licence, these contents are easily available to everyone without any control on their use. This has created threats of copyright infringement of original creators who have developed these contents.

The significance of this research lies in its potential to serve as a blueprint for modernisation of India's intellectual property regime in the wake of the National Educational Policy (NEP) 2020. The research is critically important because it addresses the "legal-grey area" currently inhabited in digital education. By critiquing the limitations of the Copyright Act of 1957, this study highlights that current laws are insufficient for the vast scope and multifaceted nature of modern digital learning. Its significance lies in the call for legislative reforms, specifically the proposal for a "digital educational carve-out." This provides policymakers with a concrete direction to amend Section 52 of the Copyright Act, 1957, ensuring copyright protection of the original author.

†Corresponding author: Email: shukla.kaveri21@gmail.com

The research addresses the "Digital Divide" prevailing in the country due to geographical and financial barriers which affects the access to quality education. The promotion of Open Educational Resources (OER) has become a very essential social necessity of present times which has its drastic impact on the education system.[2] The study is significant as it argues that copyright should not be a barrier to the constitutional right to education. This research advocates for a legal structure that supports Open Educational Resources, the research promotes inclusive learning. The proposal for "Collective Licensing Scheme" ensures that students get access to the educational content.

As digital tools begin to dominate the content creation, this research identifies the legal authorship of the algorithmically modified content. It provides a framework for how India can be treated as a tool for education rather than a threat to intellectual property. This will make it a vital resource for legal scholars, policymakers and tech developers who are navigating the evolving intersection of copyright law and digital innovation. The study holds international significance through its comparative analysis of the Unites States Technology, Education and Copyright Harmonization (TEACH) Act, 2002, the European Union Digital Single Market (DSM Directive) and the South Africa Copyright Law. This ensures that Indian Copyright reform is not isolated but remains compatible with international treaties like Berne Convention for the Protection of Literary and Artistic Works and World Intellectual Property Organization (WIPO). Finally, research is significant for educational administrators. It clarifies guidance on how educational institutions can use Digital Rights Management (DRM) to protect sensitive content without violating the spirit of fair dealing. It empowers teachers to innovate with multimedia and interactive content without infringing the copyright of original creators. The OER system and digital learning has brought a great educational revolution in India.

This article adopts a doctrinal research methodology, critically analysing primary legal sources, viz., the Copyright Act, 1957 and relevant amendments to it and judicial precedents of cases mainly concerning educational exceptions alongside secondary literature on international copyright frameworks. The paper argues that the current statutory exceptions are insufficient for the scale and complexity of the modern digital learning system. Thus, necessary amendments are needed to ensure both educational accessibility and copyright protection of educational resources.

Meaning of Education

The fundamental concept of education relates to an individual's involvement with a particular school or any other educational institution for seeking knowledge on different subjects. It helps in all-round development of an individual. Various philosophers have defined the term education differently. Rousseau, an eminent philosopher "Education of man commences at his birth before he can speak, before he can understand he is already instructed. Experience is the forerunner of precept." From the words of Swami Vivekananda "Education is the manifestation of the divine perfection, already existing in man". Similarly, United Nations Educational, Scientific and Cultural Organization (UNESCO) has defined this term as "all types and levels of education and includes access to education, the standard and quality of education, and the condition under which it is given."[3]

UNESCO has later broadened this scope in its 1974 Recommendation has defined education as "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes, and knowledge."[4] The revised draft of UNESCO's recommendations 1974 was published in 2023 which defined the term education as "Education is an inalienable human right. This is a lifelong and society-wide process, through which everyone learns, and develops to their fullest potential, the whole of their personality, sense of dignity, talents and mental and physical abilities, within and for the benefit of local, national, regional and global communities, and ecosystems."[5]

The goals of the modern education system are being achieved through digital learning. The development of digital education system has revolutionized the existing education system in which everyone is getting equal rights and access to education. Online contents have contributed majorly in the development of digital learning methods. The creative commons licences have created a major threat to existing legal framework in copyright law in accommodating the unique characteristics of online contents, educational practices and the needs of both creators and learners. However, this transformation

introduces critical friction points with the existing legal framework of the Indian Copyright Act, 1957. The tension between the protection of intellectual property and the dissemination of knowledge is not merely a statutory conflict but a profound philosophical debate. This research is situated within the importance of Access to Knowledge and primary objective to promote copyright holders.

Strengthening digital learning, protection of statutory rights and the challenges posed by Open Educational Resources stands as a major hurdle to the modern education system. The shift of the education system from traditional classrooms to modern digital learning methods has profoundly accelerated the democratization of education, offering access to education by removing geographical and financial barriers.

This transformation is governed in India by the Copyright Act, 1957. The proliferation of online content and the movement toward Open Educational Resources which is often governed by Creative Commons licences present a critical dilemma. On one side, they strengthen access to educational content for all and on the other side they pose a threat of copyright infringement of original creators. The ease of digital reproduction, modification and global distribution complicates the application of established doctrines like fair dealing [6] raising questions about institutional liability, creator remuneration and the enforceability of licensing terms across jurisdictions.

This research adopts a doctrinal research approach for the study and analysis on digital learning and access to education in India. It further involves critical and analytical study of the existing Copyright Act, 1957 and its subsequent amendments which forms the statutory basis for Intellectual Property Rights in India. The study employs comparative analysis of international legal resources and landmark judicial precedents from the United States, Canada, the European Union and South Africa to identify effective legislative areas for balancing copyright protection and access to digital education.

This research involves both primary and secondary data sources. Primary sources of authority such as the Constitution of India, the National Education Policy, 2020, the Copyright Act, 1957 and its amendments were analysed to understand the current legal framework in India on regulating copyright of authors of online educational content. Further, the study also involves detailed analysis of landmark Judgments of Indian Courts delivered in Delhi University Photocopy case,[7] Neetu Singh v. Rajiv Saumitra & Anr.[8] These were supplemented by International case laws in Cambridge University Press v. Patton,[9] Great Minds v. Office Depot, Inc.[10] etc. on exceptions to the doctrine of fair dealing [6] especially related to educational content. The application of Commons Licences in digital context has also been deeply analysed in this research. The secondary data sources include books, scholarly articles, reports from international copyright institutions such as World Intellectual Property Organization (WIPO) were analysed.

To provide a holistic perspective, the research incorporates a comparative legal research methodology. This involves analysing international legal instruments and the domestic laws of diverse jurisdictions, including the US's evaluating the "four-factor test" of Fair Use and the TEACH Act, 2002. There is also analysis of the EU's Directive on Copyright in the Digital Single Market (DSM). There is also study and analysis of Copyright laws of South Africa, Canada, Brazil, and Australia. This comparative lens is essential to identify global "best practices" that can be localised for the Indian context, ensuring that proposed reforms remain compliant with international treaties.

This research identifies challenges to the Copyright Act, 1957 particularly in the scope and application of 'fair dealing' in the context of digital and automated content generation technologies. The research is well-processed in thorough manner through review of doctrines, precedents, excerpts of technological development related to recent changes in India's education system and IPR enforcement. Finally, the research applies a normative and reformative analysis. The methodology does not merely describe the law but evaluates it against the socio-economic goal of "educational democratization." By identifying friction points such as the legal status of computation content-creation systems and the limitations of Digital Rights Management (DRM) this research aims to suggest actionable policy recommendations.

The Public Policy Imperative: Digital Learning and Open Educational Resources (OER)

Open Educational Resources are study materials available in the public domain that allows no-cost access, adaptation, redistribution, and use of content

available.[11] Advancements in the digital platforms have largely empowered the creation and distribution of Open Educational Resources, offering learning materials that are free, accessible and often adaptable by users. This enables flexible and personalised learning experiences among the students.[12] It effectively overcomes traditional geographic, financial and social barriers which hinders the education system. This system makes sure that each and every student is provided with the same educational resources as with other students of the same age regardless of their socio-economic position.[13] This ensures to promote inclusive learning environment, and making OER more significant to Indian education system under NEP 2020.[14] Digital methods significantly enhance teaching through interactive content and multimedia resources, thereby elevating existing educational practices in India.[15]

The process of making available a digital content is granted permission by the author of the content to use a particular creative work in the manner in which it is being given licence. The Copyright Act, 1957 provides that "the owner of the copyright in any existing work or the prospective owner of the copyright may grant any interest in the right by licence."[16] Creative Commons licences is one of those ways through which legally copyrighted content can be used once the CC licence is granted. It supports a flexible view of copyright in contrast to the traditional "all rights reserved" framework.[17] The availability and accessibility of the copyrighted works is expanded through these licences over their originally created works.

Open Educational Resources provides free and accessible learning materials to all the students. This will help in accessing educational materials for all the students in spite of their financial capacities. The digital learning methods can offer flexible and personalised learning experiences, fostering lifelong learning opportunities to people.[12] Education across different age groups can be provided by digital learning methods.

The digital learning methods help in overcoming the social barriers existing in the society. Digital tools can also play an important role in enhancing teaching and learning through interactive content, multimedia resources and collaborative activities. This enhances educational practices in India. The digital age provides an opportunity to develop a more flexible and adaptable copyright framework. Developing a new legal framework that supports OERs not only fosters innovation in content delivery but directly supports the constitutional goal of achieving universal educational access.

Judicial Approaches on Digital Learning Contents

The landmark decision of Delhi High Court in ***The Chancellor, Masters & Scholars of the University of Oxford & Ors.*** **v** ***Rameshwari Photocopy Services & Ors.,***[7] popularly known as Delhi University Photocopy case, has stated that specific acts of photocopying for educational purposes is not an infringement of copyrighted material. The present case was brought before the court by three publishers against Delhi University and Rameshwari photocopy for infringement of the copyrighted materials which belong to them. Delhi University made photocopies of some books and made a compilation of it into a course pack as a study material for the students. The issue that came before the court with this case was whether making course materials for students by photocopying results in infringement of copyright or not? The High Court in its judgement observed that compilation of study material from various books comes under the ambit of fair use of such copyrighted materials and cannot be stated as an infringement of such material.

The Delhi High Court even ruled that the commercial sale of books for the purpose of profit did not constitute 'fair use'. This was found by High Court in ***Neetu Singh*** **v** ***Rajiv Saumitra & Anr.***,[8] where a suit was filed by the plaintiff seeking grant of a permanent injunction against the three defendants to prohibit them from reproducing, selling, or distributing of her copyrighted literary book titled "English for General Competition" which is her original work. The court while deciding whether such copying and publishing of the content would be considered as fair use or not. The court decided that sale of study materials to the students by the defendant for gaining profit was not a fair use of the copyrighted work of the plaintiff.

In the case ***Addala Sitamahalakshmi*** **v** ***State of Andhra Pradesh***[18], the present case revolved around the copyright issue concerning the educational textbooks published of subjects like science and mathematics. The High Court observed that educational use of the copyrighted works for the benefit of students and educational institutions are protected through exceptions under the act of 1957.

The Court even noted that copyright protects the original literary, artistic, dramatic and musical works.[19] Mathematical questions and scientific equations are not considered original works eligible for protection under copyright act.

In ***Cambridge University Press* v *Patton***,[9] a suit was filed by three publishing houses, Cambridge University Press, Oxford University Press and Sage Publications, Inc. against officials of Georgia State University. The copyright policy of 2009 had provision which permitted professors of the University to make available to students the books without paying to the publishers. The digital copies were reproduced from the digital copies of excerpts of the copyrighted book. The major issue raised before the court was whether GSU's 2009 copyright policy led to persistent misapplication of doctrine of fair use that resulted in copyright infringement of her work. The Eleventh Circuit Court of Appeals of the United States laid out the district court's approach in performing a work-by-work analysis to have a holistic balance of the four factors.

While deciding in ***Great Minds* v *Office Depot, Inc***.[10] on the Creative Commons licensed study materials reproduction, if as per the terms of agreement between them then it would not be a violation of agreement terms. Commercial copy shops reproduced the educational materials at the request of the school which they were using under a CC licence. The Court ruled that this reproduction of material did not constitute copyright infringement as the copy shop was acting on behalf of the school who were using the material under CC licence.

Challenges to Copyright Law and Digital Learning Framework

The shift to digital learning methods have created significant legal challenges to existing scope and application of Copyright provisions such as:

(i) The original intent of Section 52 was to address the infringement of copyright of original authors. Applying this section to Massive Open Online Courses, cloud storage and automated distribution systems creates ambiguity.

(ii) There has been a lack of judicial precedents on ensuring copyright protection for digital contents due to which challenges are faced in deciding the cases.

(iii) Challenges also exist to the scope and application of provisions of 'fair dealing' in the digital context. Lack of clarification to support legitimate educational practices in the context of digital learning creates challenges to digital learning. Whereas lack of an online system in remote areas still creates challenges in the access of education in rural areas.

(iv) Digital Rights Management technologies generally in order to protect copyright create restrictions to legitimate access and use of educational resources. This creates challenging situations for digital learning.

(v) Due to the automated content-generation technologies, different legal issues have emerged which are basically related to authorship, ownership, and the application of copyright law. This also creates challenges in protecting the copyright of original creators.

(vi) Existing copyright laws may not adequately address issues related to digital content, and which causes various legal uncertainties and challenges posed by emerging technologies to original creators.

(vii) There has been significant contractual conflict between the policy of Creative Commons licences and the Limits of Waiver Creative Commons licences that provide the primary mechanism for sharing Open Educational Resources.

(viii) Due to Creative Commons licences, there have been commercial misuse of licensed content, especially under permissive Creative Commons terms. It violates the original creator's economic rights without clear and efficient legal recourse.

(ix) When the creator and the person involved in copyright infringement reside in different countries, protection of copyright becomes very difficult. The conflict between contractual terms of the Creative Commons licences and the statutory rights granted by the Berne Convention and WIPO Copyright Treaty introduces complex jurisdictional hurdles to the copyright protection.

The Intersection of Generative Machine-Learning Systems and Digital Pedagogy: Navigating Authorship and Fair Dealing

The rapid integration of Language Learning Models (LLMs) and Generative machine-learning-based systems into the Indian educational landscape

has introduced a paradigm shift into the Copyright Act of 1957 never contemplated. As teachers and students increasingly utilise algorithm-driven tools to summarize complex legal doctrines, generate interactive quizzes or even co-author Open Educational Resources (OER) which fundamentally challenged the existing Copyright Act, 1957 which did not mention about technology. Under the Copyright Act, an author is generally understood to be a natural person. However, the emergence of machine Generated OER where a human provides a prompt and a machine generates the content that creates challenge to the copyright protection.[20]

A more contentious and structural issue lies in the training of machine-learning models. Generally, copyrighted materials are used to train AI models without obtaining consent of the original creators.[21] This generates significant legal uncertainty regarding the scope and enforceability of copyright protection.[22] In the absence of a specific 'text and data mining' (TDM) exception in Indian law the legality of using copyrighted educational content for training algorithmic learning systems remains ambiguous.[23] The unavailability of any legal provision to decide the use of copyrighted contents in developing of such models is likely to create major legal and regulatory challenges.

Furthermore, the Act protects an author's moral rights, specifically the right to integrity. Under Section 52 of the Copyright Act, 1957 the concept of fair dealing covers an area where the copyrighted materials are used for specific purposes. When automated content-generation tools summarise an author's work for a digital course pack, they may inadvertently misrepresent the author's original intent which violates provisions of copyright Act. In a digital learning environment where a lot of inaccurate information is provided to students. There is challenge of ensuring that students get valid content.[24]

To resolve the conflict between machine-learning-based content creation and OER, this research proposes that India could pioneer a 'Compulsory Collective Licensing' model for the use of copyrighted works in the training of educational algorithmic systems.[25] Such a framework would ensure that technological innovation in education does not undermine the intellectual and economic rights of original creators, while simultaneously supporting the growth of digital pedagogy.

International Comparative Study and Analysis for Copyright and OER Reforms in India

The "fair use" doctrine, as specified under the U.S. Copyright Act permits the unlicensed use of copyrighted material for specific purposes, such as criticism, comment, news reporting, teaching, scholarship, or research. The doctrine is codified in this Act,[26] which outlines four factors that courts consider while determining 'fair use'; the first factor examines whether the use of copyrighted content is of a commercial nature or for non-profit educational purposes. Courts in any copyright infringement case are likely to find fair use when the purpose for which content has been used is transformative that includes what the meaning to such use adds to existing content. This includes expressions, meaning, or message to the original work.[27] The next factor considers whether the work is factual like news articles or creative like a novel. The third factor evaluates both the quantity and the qualitative significance of the portion used in relation to the copyrighted work as a whole. The last factor assesses whether the unlicensed use of a copyrighted work negatively impacts the market for the original work or increases the economic value of the original work. For digital education, the TEACH Act (2002) is especially useful as it provides exemptions for "digital performance" and display of copyrighted works in accredited non-profit educational institutions, subject to certain restrictions.[28] Many OER projects in the US use Creative Commons (CC) licences. Higher educational institutions and funders, such as Government agencies, and foundations, encourage or mandate CC-BY licences for publicly funded educational content.

UK copyright law enacted in the year 1988 relies on the more rigid, statutory-based system of Fair Dealing, which provides specific, closed exceptions for uses such as "non-commercial research or private study" and "illustration for teaching."[29] Unlike the US Fair Use, the UK Copyright Act stipulates that the use must fall strictly within one of these defined categories and must also be "fair" which typically means that the amount copied is necessary for the purpose and that the use does not substitute for purchasing the original work.[30] While the 'illustration for teaching' exception permits small, illustrative, and non-commercial uses, extensive photocopying, and digital access. In the UK, educational institutions are largely governed by statutory licences, such as those provided by the Copyright Licensing Agency (CLA),

which require remuneration for rightholders.[31] This structure generally mandates licensing for broad systematic reuse, often associated with large-scale digital distribution, thereby placing strict constraints on free copying for OER adoption compared to the flexible US model.[30]

The South African Copyright Amendment Bill represents a transformative shift in the nation's intellectual property landscape by introducing a hybrid "flexible-use" exception.[32] This provision mirrors that of the U.S. "Fair Use" doctrine by establishing a four-factor test that allows the judiciary to evaluate the legality of using copyrighted works based on the purpose of the use, the nature of the work, the amount used, and the potential market impact.[33] Unlike the previous, more rigid "Fair Dealing" framework, which was based on the UK Common Law tradition. In the South Africa Copyright Act 1978, fair dealing was only available explicitly over the purpose that were mentioned for fair dealing such as research or private study, review work, and reporting current events.[34] The amendment bill introduced fair use exceptions to enhance rights for creators including royalty and artist resale rights, further it allows the disabled users for better access.[32] After the amendment in Copyright Law, it provides flexibility, which is essential for the growth of Open Educational Resources (OER), as it gives legal provisions necessary for teachers to remix and adapt materials to suit local South African contexts without the constant threat of litigation or prohibitive licensing fees. Beyond general flexibility, the Bill significantly expands statutory exceptions for educational institutions,[35] which explicitly legalizes the creation of digital course packs and the distribution of materials through Learning Management Systems (LMS). This is a critical modernisation for OER, as it permits the reproduction and communication of works in any format be it print, digital, or broadcast provided the use is "to the extent justified by the purpose." Crucially, the Bill addresses the digital divide by allowing the circumvention of Technological Protection Measures (TPMs).[35] This ensures that Digital Management's "locks" cannot be used by publishers to override the lawful educational exceptions granted to students and researchers, thereby ensuring that digital resources are accessible to all.

The EU's framework, largely harmonised through directives like the Directive on Copyright in the Digital Single Market (DSM Directive), mandates a new exception for "digital uses of works and other subject matter for the sole purpose of illustration for teaching" by educational establishments, including via secure electronic networks for distance learning.[36] While this exception is mandatory for all Member States, it is subject to "three-step test" (used only for non-commercial purpose, does not unreasonably prejudice the rights holder and may be over-ridden if "suitable licences" covering the same use are readily available).[37] This licence-preference mechanism means that the educational exception, while broad in scope and intended to facilitate digital education and cross-border OER sharing, often yields to collective licensing schemes, leading to a fragmented and less uniformly "open" educational environment across the various Member States.

Canadian copyright law utilizes "Fair Dealing" as its general exception, explicitly listing "education," "private study," and "research" as permitted purposes.[38] Any use for research, education does not infringe copyright and is covered under the category of fair dealing.[38] Crucially, Canadian case has established that fair dealing is a user's right that must be given a "large and liberal interpretation," making it functionally more flexible and user-friendly than the UK's version and often approaching the scope of the US Fair Use doctrine.[39] For education, the Copyright Act also provides specific exceptions for educational institutions, such as the ability to reproduce and communicate works found on the internet for teaching purposes to students, provided the source is acknowledged and there is no clearly visible condition prohibiting the use.[40] This robust combination of user-friendly Fair Dealing and specific educational exceptions has created a supportive legal environment for the creation and utilisation of Open Educational Resources (OER) within Canadian universities and schools.[41]

Australia's copyright laws are currently undergoing a significant modernisation through the Copyright Amendment (Remote Learning and Other Measures) Bill 2025. This Bill directly expands the "show-and-tell" provisions,[42] ensuring that teachers can legally share the same lesson materials in online digital platforms such as Zoom or Microsoft Teams as they do in physical classrooms. Furthermore, the Australian system is defined by Statutory Licence, which differs from the U.S. "Fair Use" model.[43] Further it mentions the exception to "Flexible

Dealing" which focused on exception over use of copyright materials for certain socially useful purposes which includes libraries, archives and educational institutions for a non-commercial use.[44] It also allows educational use of digitally available copyrighted material.[45]

Legal provisions at international level support OER, ranging from the highly flexible to the strictly licensed. The US "Fair Use" doctrine, with its non-prescriptive, four factor test, offers the greatest flexibility for OER creators and users to re-purpose and adapt copyrighted works,[26] as long as the new use is transformative and non-market-displacing. The legal provisions encourage open-licensing. Similarly, India's judicially-broadened Section 52(1) (i) of the Copyright Act, 1957 though rooted in "Fair Dealing," supports the use of copyrighted material for educational purposes. It directly supports OER use in the classroom, and such use must be for non-commercial purposes only. In contrast, the UK and EU systems, while moving towards greater harmonization, remain binding to the principle of more prescriptive "Fair-Dealing". In which licences are over-ridable exceptions, which means that large-scale or systematic OER initiatives face a legal requirement to secure permissions or rely on licensing schemes (like the CLA) for uses that fall outside narrow statutory limits. Thus, the rights of re-use provided in OER should be less automatically permissible than presently provided in the US and Indian systems.

To effectively bridge above-mentioned gaps, address objectives of the study and foster Open Educational Resources following recommendations are needed:

(i) **Addressing legal challenges in digital sharing and Open Educational Resources -** The study highlights that digital sharing and redistribution of educational materials under Creative Commons licences and Open Educational Resources present significant legal uncertainties, particularly regarding attribution requirements, licence compatibility and permissible reuse. In the way forward, it is necessary to amend existing laws on copyright and further provide a specific limit on the percentage of online content which can be used. Further, India should actively collaborate with WIPO and other international bodies to develop standardised digital enforcement protocol for Open Educational Resources, especially concerning the contractual terms of Creative Commons licences.

(ii) **Harmonising copyright protection with the constitutional right to education –** The research establishes need to balance intellectual property protection with the constitutional mandate of ensuring accessible and equitable education. The policy direction should focus on adopting a balanced framework that protects author's rights while ensuring affordable access to educational content. Further, a recognised copyright society should be established for monitoring the users that exceed the proposed fair dealing and a collective licensing limit. The collective licensing fees mechanism should exempt at least public educational institutions from the burden of fees in view of making content available to the public at large.

(iii) **Strengthening IP protection in digital educational environments –** The increasing reliance on digital tools, artificial intelligence, and online platforms necessitates stronger mechanisms for protecting intellectual property in educational contexts. Moreover, domestic institutions should be encouraged to utilize technologies involving Digital Rights Management (DRM) in order to protect highly sensitive educational content. In addition, legislative clarity is requiring to address issues of AI-generated educational content, including authorship, ownership, and liability to ensure that technological innovation does not undermine intellectual property rights.

(iv) **Reforming the Copyright Act, 1957 in context of digital education –** The existing Copyright Act, 1957 requires comprehensive reform to address the complexities of digital education and online dissemination of learning materials. A legislative review should modernise statutory provisions to explicitly cover virtual classrooms, online learning platforms and digital repositories ensuring legal relevance in contemporary educational context.

(v) **Improving Fair Dealing provision to support digital education –** The ambiguity surrounding the concept of fair dealing under the existing copyright law creates uncertainty for educators and educational institutions. Legal reform should

focus on clearly defining the scope of section 52 to include a 'Digital Educational Carve-out'. This specific exception would immunize educational institutions from infringement liability for the digital communication of works via secure internal networks, provided such use is non-commercial and proportionate.

(vi) **Addressing challenges faced by educators and students in copyright compliance –** The research identifies that educators and students often lack clarity on copyright laws, licensing conditions and permissible uses of digital materials. To address this, a comprehensive national guideline should be formulated clarifying the scope related to permissible use of creative commons licensed materials in education and research, ensuring legal certainty while protecting the rights of original creators.

(vii) **Modernising copyright regime to address emerging technologies –** Rapid technological developments such as artificial intelligence, blockchain-based content system, deep fakes, and immersive learning technologies requires a technology-neutral and adaptive copyright framework. Regular legislative review mechanism should be institutionalised to ensure that copyright law evolves in line with technological advancements affecting the creation, use, and distribution of educational content.

Conclusion

Digital learning through online content provided by various sources creates different challenges specifically to copyright protection that is generally infringed by creative commons and vast use of digital tools in the learning system. The online learning system has increased the access of education to every individual without imposing unnecessary restrictions based on their age and financial capabilities. The core tension lies in strengthening both fundamental right of education and statutory intellectual property rights. Further, it is also essential to recognise that the future of digital learning in India depends not merely on legal reform, but also on effective implementation, institutional accountability and continuous policy evaluation. Legislative amendments must be accompanied by clear procedural frameworks and enforcement mechanisms to ensure that copyright of original creators are not violated. There should be clear guidelines in implementation of these laws, so that it can address practical challenges faced by stakeholders in the education sector.

Further, it is the judiciary which has accountability to interpret any statute in appropriate manner, hence to interpret copyright exceptions in a technologically balanced manner keeping in view of its influence on the society. Judicial clarity on fair dealing, educational use and digital dissemination will help in reducing uncertainty and litigation, thereby encouraging innovation in online education. Specialised training for judges and legal practitioners on digital copyright issues may also contribute to more informed and consistent jurisprudence in this evolving domain. From an institutional perspective, official platforms of universities should be encouraged to adopt open-access policies and promote the creation of indigenous Open Educational Resources (OERs). Government funded educational content should, as a default, be made available under open licences to maximise public benefit and reduce dependency on proprietary materials. This approach aligns with India's constitutional commitment to social justice and equitable access to education, where right to education is considered as a fundamental right of citizens between the age of 6 to 14 years. Moreover, periodic review of copyright legislation is necessary to ensure responsiveness to rapidly advancing technologies such as artificial intelligence, blockchain content management systems and immersive learning tools. A dynamic and technology-neutral legislative framework will allow India to remain adaptable while safeguarding both educational access and intellectual property.

The study has also demonstrated that while digital technologies and Open Educational Resources have significantly expanded educational access, they have also exposed shortcomings in the existing copyright framework. The analysis of the Copyright Act, 1957 and its amendments reveals that important issues concerning digital dissemination, fair dealing, educational exceptions, Creative Commons licensing and AI-generated content remain insufficiently addressed. The research further finds that educators and students frequently encounter uncertainty in navigating copyright obligations, thereby necessitating clearer legal standards, institutional support and awareness initiatives. These findings justify the proposed legislative and policy reforms aimed at balancing intellectual property protection

with the constitutional right to education. In conclusion, a balanced and forward-looking copyright regime is indispensable for the sustainable growth of digital education in India. By harmonising the right to education with the protection of creative labour, India can foster an inclusive, innovative and legally sound digital learning environment. Such a framework will not only strengthen the national education system but also position India, a global leader in the responsible development and dissemination of Open Educational Resources.

References

1 Pandey J N, *Constitutional Law of India*, (Central Law Agency, Allahabad), 55th ed., 2018, 351.
2 Patel K J, Prakash K & Parekh Y R, Open Educational Resources: An Overview, *Towards Excellence*, 13(2) (2021) 295.
3 United Nations Educational, Scientific and Cultural Organisation, *Convention Against Discrimination in Education*, Art. 1(2), Dec. 14, 1960, 429 U.N.T.S. 93.
4 United Nations Educational, Scientific and Cultural Organisation, *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms*, Art. 1(a), 19 November, 1974.
5 United Nations Educational, Scientific and Cultural Organisation, '*Recommendation on Education for Peace and Human Rights, International Understanding, Cooperation, Fundamental Freedoms, Global Citizenship and Sustainable Development,* Art. 1(a), 42nd Sess., (20 November 2023).
6 The Copyright Act, 1957, Act No. 14 of 1957, s. 52 (India).
7 *The Chancellor, Masters & Scholars of the University of Oxford & Ors.* v *Rameshwari Photocopy Services & Ors.*, 2016 SCC OnLine Del 6229.
8 *Neetu Singh* v *Rajiv Saumitra & Anr*., 2018 SCC OnLine Del 7176.
9 *Cambridge University Press* v *Patton*, 769 F.3d 1232 (11th Cir. 2014).
10 *Great Minds* v *Office Depot, Inc.*, 945 F.3d 1106 (9th Cir. 2019).
11 Mullens A M & Hoffman B, The affordability solution: A systematic review of open educational resources, *Educational Psychology Review*, 35(72) (2023) 1.
12 Mishra S, Open Educational Resources: Removing Barriers from Within, *Distance Education*, 38(3) (2017) 369.
13 Shivaji V M, The Role of Open Educational Resources (OER) in NEP 2020, *Journal of Research and Development*, 17(10) (IV) (2025) 110.
14 Ministry of Education, *National Education Policy 2020* (Government of India 2020).
15 Online Training on Open Educational Resources (OER) and Licences, Central Institute of Educational Technology, A Constituent unit of National Council of Educational Research and Training (NCERT), https://ciet.ncert.gov.in/ (accessed on 10 December 2025).
16 The Copyright Act, 1957, Act No. 14 of 1957, S. 30 (India).
17 Margoni T & Peters D M, Creative Commons Licences: Empowering Open Access, *SSRN Electronic Journal*, 9(2) (2016), DOI: 10.2139/ssrn.2746044.
18 *Addala Sitamahalakshmi* v *State of Andhra Pradesh*, W.P. No. 13251 of 2011 & Cri. P. No. 4032 of 2011 (Andhra Pradesh High Court, Feb. 21, 2024).
19 The Copyright Act, 1957, Act No. 14 of 1957, s. 13 (India).
20 The Copyright Act, 1957, Act No. 14 of 1957, s. 2(d) (India).
21 *Ankit Sahni and RAGHAV AI,* regarding the 'Suryast' case and the brief recognition of AI as a co-author in India (2021).
22 World Intellectual Property Organization (WIPO), *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence* (WIPO/IP/AI/2/GE/20/1 Rev.), Second Session of the WIPO Conversation on Intellectual Property (IP) and Artificial Intelligence (AI), Geneva, 21 May 2020.
23 Gupta S, Fair-Use Doctrine: Copyright challenges posed by AI Generative Technology and In-Text and Data Mining Training, *Christ University Law Journal*, 14(2) (2025) 1.
24 The Copyright Act, 1957, Act No. 14 of 1957, s. 57 (India).
25 Directive (EU) 2019/790 of the European Parliament and of the Council of the European Union of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *Official Journal of the European Union*, L 130/92, 17 May 2019, Art. 12.
26 Copyright Act 1976, 17 USC s. 107 (USA).
27 *Campbell* v *Acuff-Rose Music, Inc.,* 510 US 569 (1994).
28 Copyright Act 1976, 17 USC s. 110(2) as amended by Technology, Education and Copyright Harmonisation (TEACH) Act 2002 (USA).
29 Copyright, Designs and Patents Act 1988, c.48, ss. 29, 32 (UK).
30 Burrell R & Coleman A, *Copyright Exceptions: The Digital Impact,* (Cambridge University Press, Cambridge), 1st ed., 2005, 115.
31 Copyright, Designs and Patents Act 1988, c.48, s. 35 (UK).
32 Copyright Amendment Bill [B13B-2017], s. 12A (South Africa).
33 Shay R M, Fair Deduce: An Uneasy Fair Dealing–Fair Use Duality, *De Jure Law Journal*, 49(1) (2016) 105-117.
34 Copyright Act, Act No. 98 of 1978, s. 12 (1) (South Africa).
35 Copyright Amendment Bill [B13B-2017], s. 12D (South Africa).
36 Directive (EU) 2019/790 of the European Parliament and of the Council of the European Union of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *Official Journal of the European Union*, L 130/92, May 17 2019, Art. 5.
37 Directive (EU) 2019/790 of the European Parliament and of the Council of the European Union of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *Official Journal of the European Union*, L 130/92, May 17 2019, Art.5(2).
38 Copyright Act, RSC 1985, c C-42, s. 29 (Canada).
39 *CCH Canadian Ltd* v *Law Society of Upper Canada*, [2004] 1 SCR 339.
40 The Copyright Act, RSC 1985, c C-42, s. 30.04 (Canada).
41 Salar N, The Canadian UGC Exception: An Attempt to Revolutionise Fair Use Defence for User Generated Content, *Journal of Intellectual Property Rights*, 28 (2) (2023) 107.

42 Copyright Act 1968 (Cth) s. 28, as amended by Copyright Amendment (Remote Learning and Other Measures) Bill 2025 (Cth) sch 2 (Australia).

43 Copyright Amendment (Remote Learning and Other Measures) Bill 2025 (Cth); Copyright Act 1968 (Cth), s. 113P (Australia).

44 Simes L, *A user's guide to the flexible dealing provision for Libraries, educational institutions and cultural institutions: Section 200 AB of the Copyright Act 1968 (Cth)*, (Australian Libraries Copyright Committee and Australian Digital Alliance), 2008, 4.

45 Copyright Amendment Act 2006 (Cth), s. 200 AB (Australia).