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Copyright Law and Online Higher Education: Access to Knowledge and Emerging Legal Challenges

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Abstract: *The rapid advancement of technological tools in the Internet era has led to the widespread adoption of online education models such as Massive Open Online Courses (MOOCs), webinars, and live online classes. This shift was further accelerated by the COVID-19 pandemic, which required educational institutions to move to online teaching and learning. Online education enhances access to higher education by reducing physical, geographical, and financial barriers. However, the legal challenges of online higher education remain underexplored in the Indian context, particularly concerning authorship and ownership of educational content. This article examines these issues with a focus on copyright challenges faced by educators and institutions. Using a comparative doctrinal analysis of copyright laws across jurisdictions, the study demonstrates that insufficient awareness of copyright complexities may hinder the effective dissemination and sharing of knowledge.*

Keywords: *Online Education; Copyright Law; Higher Education; Authorship and Ownership; Digital Learning; Comparative Legal Analysis; India*

INTRODUCTION

Online education delivery has emerged in recent years as a new iteration of distance education, driven by rapid technological advances and the convenience it offers and with the advent of COVID-19, academic communities and universities turned to online teaching as the primary mode of interaction with students and the dissemination of learning during a period of unprecedented disruption. This increased reliance on online education has opened a broader discourse on the implications of this model for faculty, students, and traditional education, as it has long been understood. It has also created opportunities for scholarship examining the impact of online legal education.

However, in the Indian context, as online education has gradually evolved and been adopted, limited attention has been paid to the legal issues and implications that may arise in the conduct of online teaching. This is particularly true with respect to copyright issues. This article seeks to bring this aspect of the discourse into broader discussion and critical examination.

Until recently, universities have devoted relatively little attention to copyright issues in digital education or to the creation of copyrightable works by professors and academics, primarily due to the limited potential for financial exploitation of such works (Kwall 2001, 1–2). As Robert A. Gorman (2000, 297) notes, "Copyrightable works generated in universities have rarely promised income of any magnitude, and therefore universities have traditionally taken little interest in such issues."

Furthermore, universities have more often occupied the role of users or consumers of copyrighted works, such as materials included in course packs or lecture resources, rather than that of creators or owners (Gorman 2000, 314). This dynamic has shifted significantly with the increasing popularity of online education, which owes much of its success to technological advances and the growing commercialization of higher education (Gorman 2000, 298). The rising importance of intellectual property for industry has, in turn, led to government-supported schemes and strategies that encourage universities to promote innovation and develop intellectual property.

Internet technologies and online education models have developed more rapidly than the legal frameworks designed to regulate them, and the contours of copyright ownership in online courses remain unclear, particularly in India. As Kezar and Bernstein-Sierra observe, "The shift from traditional classroom to online teaching implies more than just a venue change. This shift carries several legal and practical implications for faculty and universities" (Kezar and Bernstein-Sierra 2017). This transition has fundamentally transformed certain aspects of authorship and ownership in online pedagogy, unsettling traditional understandings of authorship rooted in print culture and analog copyright law.

This article provides a brief overview of the contemporary landscape of online education. The first section examines the evolution of online education across multiple generations, from correspondence-based learning to telecommunications media and, ultimately, digital technologies. It explores key theoretical frameworks for assessing the implications of online education, particularly the gradual shift from the teacher as the sole author of educational materials to teachers as participants in a broader collaborative process of creation.

The discussion then focuses on digital pedagogies and the transformation of authorship, analyzing how the nature of online education has reconfigured authorship from a solitary endeavor into a collaborative practice. It then examines the principal copyright challenges arising from this new model of authorship, drawing on comparative perspectives from various jurisdictions and the Indian context. In this regard, it also analyzes the intellectual property policies of selected universities to assess how they address ownership issues. The analysis further integrates legal analysis with normative discussion to assess how authorship should be reformulated or reconceptualized to better serve the online educational environment. The central argument advanced in this article is that authorship in online education has shifted from an individual, proprietary model toward a relational and distributed practice shaped by technology, law, and pedagogy. The article concludes by offering recommendations for a framework capable of addressing these evolving developments.

METHODOLOGY

This paper uses a doctrinal approach, complemented by a critical socio-legal perspective. This allows the study to examine not only the legal foundations of the concepts but also their broader normative and societal implications. The analysis relies on a comprehensive review of primary sources, including peer-reviewed journals, scholarly books, policy papers, and publications from reputable organizations, ensuring both academic rigor and practical relevance.

THE HISTORY AND EVOLUTION OF DISTANCE EDUCATION: FROM SEPARATION TO VIRTUAL LEARNING

The Evolution of Technological Perspectives

Distance education has long been a mode of educational delivery, practiced worldwide to provide learning opportunities to those who are either unable or unwilling to participate in traditional classroom teaching (Holmberg 1995). It has been defined as "a field of education that focuses on pedagogy and andragogy, technology, and instructional systems design, aiming to deliver education to students who are not physically on site" (AICTE). Another commonly cited definition states that distance education "usually involves a situation where learners are separated from their teachers, and it includes systems (electronic or otherwise) to establish and maintain communication between teacher and learner to promote learning, assessment, and support" (Panchabakesan 2011, 113).

The evolution of distance education is often described in three main generations, primarily linked to changes in the technologies used to deliver it. The first generation primarily relied on printed texts and materials disseminated through postal services (Aoki 2012, 1184). Since the early 20th century, many colleges and universities across Europe, the United States, and India have begun offering correspondence courses. At the time, distance education was commonly referred to as correspondence education because learning materials were shared via post and consisted of printed or photocopied content.

In India, distance education has been prevalent for nearly half a century in various forms. In 1961, the Government of India established a commission under the chairmanship of Dr. D. S. Kothari, then Chairman of the UGC, to study the introduction of correspondence courses. The committee observed that "the correspondence method admits greater flexibility than classroom education, particularly in the combination of subjects leading to a degree, and this is an advantage that should be fully exploited in the interest of sound education" (Panchabakesan 2011, 114). Consequently, the first correspondence courses were introduced in 1962.

The second generation of distance education is characterized by the use of radio and television to supplement printed materials. This generation is also referred to as the "industrial mode of distance education, with a highly specialized division of labor in producing and delivering instructional materials" (Aoki 2012, 1184). It also expanded the reach of courses, making them accessible to thousands of learners.

The third generation of distance education uses information and communication technologies, especially the Internet, to deliver educational content and support interaction between teachers and learners. Online education, also called digital learning, refers to Internet-enabled instruction and training (Dhanasegaran 2006, 2). Its core elements include content delivery in multiple formats, structured learning experiences, and a connected community of learners, experts, and program developers (Dhanasegaran 2006, 2).

The Internet has revolutionized distance education, enabling the delivery of entire courses, degrees, and programs with a single click (Colyer 1997, 41). It has also advanced various fields, including science, healthcare, and education (Masrek and Baharuddin 2023, 47).

The Evolution of Pedagogical Perspectives

There have been criticisms of classifying distance education solely by the technologies employed. Anderson and Dron (2010) propose an alternative framework that identifies three generations of distance education based on their dominant pedagogical approaches. They emphasize pedagogy as the factor that "defines the learning experiences encapsulated in the learning design" (Anderson and Dron 2010).

The three pedagogical generations are cognitive-behaviorist, social constructivist, and connectivist. Cognitive-behaviorist pedagogy primarily focuses on how learning was defined, practiced, and researched in the late 20th century. Behavioral learning emphasizes learning as a change in observable behaviors acquired through exposure to stimuli, measuring behaviors rather than attitudes. Cognitive behaviorism, on the other hand, concentrates on individual learning centered on content and designed for high scalability (Anderson and Dron 2010). Social constructivism emphasizes group interactions and the synthesis of knowledge, aligning more closely with the practices of distance education. This pedagogy gained traction with the rise of networked technologies, which enabled many-to-many communication (Anderson and Dron 2010). Finally, connectivist pedagogy highlights the role of networks in learning. It assumes that learners have access to vast amounts of knowledge and content, which they must navigate effectively to apply meaningfully. This approach is particularly relevant for Internet-based distance education, where learners must traverse extensive online resources to benefit fully.

The nature of distance education has therefore evolved gradually, from "pencil-and-paper correspondence courses" to real-time online instruction (Vencatesan 2006, 891). Consequently, numerous terms have emerged to describe the field, reflecting the technological tools used to facilitate learning. These include remote learning, distance learning, e-learning, flexible learning, open learning, blended learning, hybrid learning, web-based learning, online learning, mobile learning, and technology-enhanced learning (Zawacki-Richter and Jung 2020, 6). Zawacki-Richter and Jung use the term "Open, Distance and Digital Education" to capture both the historical origins and the evolution of the field in its various forms (Zawacki-Richter and Jung 2020).

A related concept often used synonymously with online education is open education. However, Moore and Kearsley (1996, 2) argue that the two are distinct. They observe that open learning "embraces the idea of students being able to take courses or programs without prerequisites and being able to choose to study any subject they wish" (Moore and Kearsley 1996). Open learning operates on the philosophy of broadening access to educational opportunities by reducing academic and administrative barriers.

The literature in this area examines the impact of the Internet on distance education, particularly on students' learning outcomes (Luvai Motiwalla and Steven Tello 2000; Akpan and Akpan 2017), as well as its contribution to collaborative learning (Chukwunonso, Ibrahim, Selamat, Idama, and Gadzama 2013). Chukwunonso et al. (2013, 8) note that the challenge with adopting network technologies is not their implementation but their effectiveness in achieving students' learning outcomes.

The nature of the challenge has shifted from a scarcity of information and difficulties in dissemination to an overwhelming abundance of information, knowledge, and data available at our fingertips at any given moment (Colyer 1997, 42). Masrek and Baharuddin (2023, 47) explore

this phenomenon of "information overload" and its effects on students' anxiety and stress levels, as well as the coping strategies they employ to manage the constant influx of information.

Moreover, the widespread use of Internet technologies has raised important questions regarding copyright protection for educational materials in this domain. A review of the literature on distance education over the past decade suggests that scholarship has primarily focused on the various types of distance education, the tools and technologies involved, the benefits of distance learning, and operational issues related to course and content development. Of particular relevance to the present discussion is the literature examining the impact of the Internet on the nature and scope of distance education, as well as the attendant copyright issues it raises.

Digital Pedagogies and the Transformation of Authorship in Practice

One of the key concerns highlighted in the literature on distance education is the quality of course content and curriculum development. Scholars have argued that course content for online models must "move beyond adapting or modifying existing course material and should also focus on course structure, presentation, flexibility, and course pacing" (Vencatesan 2006). There is a recognized need for high-quality, interactive, and engaging course materials that can attract and retain learners. To achieve this, blended learning, rather than purely synchronous or asynchronous approaches, has been suggested as a more desirable model (Bartholet et al. 2016). Additionally, it has been argued that education should shift away from a teacher-centered model, in which instructors decide "what is important and relevant," toward a learner-centered approach where students determine what they are learning and why (Jona 2000).

In recent years, the Government of India has recognized the potential of digital education and introduced regulations to promote its use. For example, in 2018, the University Grants Commission (UGC) released the University Grants Commission (Online Courses or Programmes) Regulations, 2018, which allow higher education institutions that meet specified conditions to offer online courses (UGC Regulations 2018, REGD No. D. L. 33004/99). This was followed by the University Grants Commission (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020. Furthermore, the Ministry of Education launched the MOOC platform SWAYAM, which offers a wide variety of online courses across disciplines, and SWAYAMPRABHA, which provides educational channels through DTH under the Digital Initiatives in Higher Education program.

A single individual does not design these courses. Instead, they result from the collaborative efforts of multiple actors, including subject designers, course instructors, web developers, and media specialists (Trentin 2001, 47–48). Consequently, online education transforms teachers' roles from sole content authors to participants in the course-delivery process. This shift affects not only their role in the classroom but also their identity as the exclusive authors of educational materials. The design of an online course typically involves two related phases: the course plan and the communication architecture for its development. Economic constraints shape these courses, the profiles of target participants, the types of technologies used, and the availability of experts and producers of ad hoc learning materials (Trentin 2001, 49).

The development of online resources has not only transformed the learner experience but has also fundamentally altered conceptions of authorship, ownership, and the intellectual property embedded in these courses. Although literature on ownership of online courses and materials is limited in the Indian context, this discourse has been ongoing internationally, particularly in countries such as the United States since the early 2000s. Technology has "unquestionably complicated the issue of intellectual property in higher education, with ownership being one of the most widely debated issues due to the economic benefits of international distribution" (Munigal 2016). Traditionally, academic institutions and universities have not clearly addressed ownership of faculty-created intellectual property, and legal frameworks have remained unclear or silent on these emerging issues. In response, universities and governments are increasingly developing policies to provide clarity and address these developments (Munigal 2016). The growing economic potential of online educational works has also made universities aware that it may not be financially prudent to allow intellectual property to remain under the ownership of individual faculty members (Kezar and Bernstein-Sierra 2017).

Authorship in Copyright Law: Evolution Through the Ages

From the perspective of the present, it is difficult to imagine a time when the author was not considered a central figure in discussions surrounding copyright and literary property. However, the author was not always the fixture within copyright discourse that we recognize today. In her historical investigation of 18th-century Europe, Martha Woodmansee (1984) shows how the professionalization of writing during this period influenced perceptions of the creative process and the practice of writing. As writing became a commercial enterprise, writers seeking to earn a livelihood from their craft played a key role in shaping the modern conception of the "romantic author," an individual endowed with "personal genius" capable of producing works of literary merit through sheer brilliance, wit, and internal inspiration (Woodmansee 1984).

Although attributing such qualities of "genius" to authors may appear self-congratulatory, these claims were strategic. They aimed to establish the writer's ownership of their creations, asserting that such works originated solely with the individual. Coupled with theories of natural law, this allowed authors to claim legal protection for their intellectual labor. Prior to this period, writers and artists relied on aristocratic patronage to support their work. However, the advent of the printing press, the broader distribution of books, and rising literacy among the middle classes created a growing demand for reading material. These changes enabled writers to contemplate earning a livelihood through their art, something previously unattainable. In the early days of the publishing industry, writers typically surrendered their manuscripts to publishers for a modest honorarium, a sum "not in proportion to or equivalent to the services performed" (Woodmansee 1984).

The relationship between writers and publishers was initially one of mutual understanding akin to patron and client, in which offering more than a token sum was considered inappropriate because writing was not viewed as a commercial enterprise. However, as demand for books increased and the possibility of earning a living through writing emerged, the imbalance became untenable. Writers began to demand fair compensation for their work, challenging the prevailing practice in which publishers profited while writers remained impoverished. This tension culminated in the enactment of the Statute of Anne in 1709, the first

copyright statute in England, which played a crucial role in embedding the notions of authorship and originality within copyright law. As Peter Jaszi observes, "although the concept of 'authorship' was introduced into English law for the functional purpose of protecting the interests of booksellers, the term took on a life of its own as individualistic notions of creativity, originality, and inspiration were poured into it" (Jaszi 1991, 455).

Since then, this conception of authorship has remained influential in copyright discourse, though not without its critics. For example, Boyle views authorship as a pervasive presence that governs the production and dissemination of knowledge (Boyle 1997). In this framework, the "romantic author guides the commodification and allocation of rights over information, constructs moral hierarchies, rationalizes exclusion, and shapes normative assumptions around legal ownership and entitlement" (Boyle 1997, 51–60). Despite numerous technological changes over time, this conception of authorship has persisted and continues to influence contemporary interpretations. The implications of this understanding of authorship will be explored below.

Copyright Issues in Distance Education

The discussion of copyright law in relation to education has a long history, often arising in response to technological changes that made copying copyrightable works easier. Colyer (1997) identifies the photocopying machine as the first technology to challenge copyright. This development fundamentally altered the landscape of copyright protection, as the general public no longer needed access to heavy, unwieldy machinery to make copies. Colyer, citing Wincor (1994), observes: "Our copyright approach began and has largely remained a series of reflexes to the development of new technology, not a declaration of natural law or some other principle supporting the protection of intellectual productions" (Colyer 1997).

It is therefore evident that the development of copyright law has largely been reactive, evolving to accommodate changes in the creation and dissemination of creative works. Ayyar (2021) highlights several key differences between Internet technologies and earlier technologies. First, previous technologies typically addressed only one type of copyrighted product at a time; for instance, photocopying focused on text, sound recordings reproduced audio, and video recording dealt with both images and sound. The Internet, however, dissolves these distinctions by enabling the simultaneous reproduction of multiple content types. Second, the Internet enables the creation of perfect copies indistinguishable from the original. Third, once a work is disseminated over the World Wide Web, it can be accessed by anyone with a computer and Internet access. These factors make the regulation of reproduction and dissemination rights under copyright law extremely challenging. Unlike earlier technologies, the Internet alters nearly every aspect of interacting with a copyrighted work (Ayyar 2021, 107).

The introduction of photocopying technology had already disrupted the academic community, providing a simple method to reproduce essential works while raising questions about copyright protection. The challenges posed by this technology have been greatly magnified with the advent of Internet-based educational technologies, which enable the global dissemination of educational materials, courses, and entire programs.

Most literature on the intersection of distance learning and copyright law originates in Western countries, such as the United States and the European Union. Copyright issues in digital distance learning arise primarily in two ways: first, through the use of pre-existing copyrighted

materials in course packs, classroom instruction, or library-facilitated resources; and second, through the creation of new copyrighted materials during or prior to the course, raising questions about ownership. Western scholarship has predominantly focused on the first issue, though some studies also explore the latter.

The United States enacted the Digital Millennium Copyright Act (DMCA) in 1998 in response to the rapid growth of digital technologies. The DMCA introduced stringent provisions, including anti-circumvention measures, providing rights holders with additional tools to protect their interests. However, these protections also made it more difficult for students in distance learning programs to disseminate or publicly perform copyrighted materials online. A substantial body of scholarship has analyzed the impact of copyright law on digital distance education.

For example, Gasaway (2001) examines the first facet of the interaction between copyright and distance learning, focusing on the performance and display of copyrighted works in instructional settings, the distribution of course materials to students, and the role of libraries in supporting distance learners (Gasaway 2001, 784). Her analysis is grounded in US copyright law, particularly the Copyright Act of 1976, and highlights several key issues. One such issue concerns Section 110(2), which permits "the performance of entire non-dramatic literary and musical works and the display of any work in educational transmissions" (Gasaway 2001, 785), as well as the broader challenges of applying fair use in distance learning contexts.

Gasaway also emphasizes the gap between educators' perceptions and legal realities. Many instructors do not distinguish between classroom teaching and distance education, assuming that distance learning enjoys the same copyright exemptions as in-person instruction. This assumption creates legal challenges because the law does not automatically treat digital or distance education in the same way as traditional classroom instruction. Section 110(2) proved inadequate for supporting distance learning, leading to the enactment of the Technology, Education, and Copyright Harmonization (TEACH) Act, signed into law by President George W. Bush in 2002 (Reyman 2006, 31). The TEACH Act extended certain rights from in-person classroom instruction to digital and distance learning environments, addressing critical gaps in copyright law (Reyman 2006, 31).

From a European perspective, Xalabarder (2004) examines the extent to which limitations and exceptions available for teaching in analog settings apply to educational activities conducted on digital platforms, such as the Internet, at both international and domestic levels. She analyzes Article 10.2 of the Berne Convention to determine whether it encompasses digital or distance teaching. By focusing on the term "utilization," Xalabarder argues that the article could cover not only reproduction rights but also the right of communication to the public, thereby including distance and digital learning activities within its scope. She further references the European Union's Directive 2001/29/EC, specifically Article 5.3(1), which provides exceptions for teaching purposes: "Use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved."

Xalabarder, reading the article in light of Recital 42, argues that it is clear the teaching exception covers the right of communication to the public, applying to both in-person and distance education. The work further examines whether downloads of transmitted materials by recipients, i.e., students, fall within these teaching exceptions. Additionally, Xalabarder reviews

the domestic legislation of EU countries to address questions regarding the scope of works to which limitations may apply, the beneficiaries of these exceptions, and the purposes for which they may be used, among other issues.

This analysis highlights the need to address the second facet of distance or digital learning, namely, the creation and ownership of materials, particularly in Global South countries like India.

In India, copyright ownership is governed by Section 17 of the Copyright Act, 1957, which identifies the first owner of a copyrighted work. According to this provision, the author of a work is generally the first owner of the copyright (*Blueberry Books v Bharti Goyal* [2019] AIR 84 [Delhi]). Section 2(d) defines "author" as follows: the writer of a literary or dramatic work; the composer of a musical work; the artist of an artistic work (other than a photograph, whose author is the photographer); the producer of a cinematograph film or sound recording; and in the case of computer-generated literary, dramatic, musical, or artistic works, the person who causes the work to be created.

Section 17 also provides specific exceptions to this general rule, as outlined in its provisos:

(a) For a literary, dramatic, or artistic work created by the author in the course of employment for a newspaper, magazine, or periodical, the owner of the publication is the copyright owner with respect to publication in that medium; in all other respects, the author remains the copyright owner (S. 17 proviso (a)).

(b) For a photograph, painting, portrait, engraving, or cinematograph film, the person who provides valuable consideration is the first owner (S. 17 proviso (b)).

(c) For works created in the course of the author's employment under a contract of service or apprenticeship, the employer is the first owner (S. 17 proviso (c)).

(cc) For speeches or addresses delivered publicly on behalf of another person, that other person is the first owner (S. 17 proviso (cc)).

(d) For government works, the government is the first owner (S. 17 proviso (d)).

(dd) For works made or first published under the direction or control of a public undertaking, the public undertaking is the first owner (S. 17 proviso (dd)).

(e) For works of international organizations, the organization itself is the owner (S. 17 proviso (e)).

All of these clauses are subject to any contrary agreement.

In the context of producing teaching materials for online education, Proviso (c) of Section 17 is of particular interest. Faculty members are typically employed by universities while creating teaching materials. To determine copyright ownership in a traditional physical classroom setting, it is necessary to assess whether the materials were created "in the course of employment" and under a "contract of service."

The provisions of Section 17 raise questions about the meaning and scope of terms such as "course of employment" and "contract of service," prompting courts to interpret them. According to *Halsbury's Laws of England*, the distinction between a contract of service and a service contract is the same as that between an employee and an independent contractor.

An employee is a person subject to an employer's directions regarding how work should be performed. Factors such as the degree of employer control, the service provider's

independence, and the place of service are relevant in determining whether a contract of service exists (Chawla 2013).

Case law identifies several factors to assess whether a person is engaged under a contract of service:

- Direct control by the employer;
- Degree of independence of the person providing the service;
- Place where the service is performed;
- Employer's directions regarding how the work is to be performed;
- Whether the work is integrated into the business;
- Intention of the parties (Chawla 2013).

In the context of academic institutions, copyright disputes have often involved the ownership of question papers. A notable case in England is *University of London Press v University Tutorial Press* ([1916] 2 Ch. 601), which addressed the distinction between a contract of service and a service contract. The Court considered the "freedom enjoyed by the paper-setter as to the time and space for preparing the question paper and the skill and judgment required of the examiner." It concluded that the paper-setter was working under a service contract (as an independent contractor). Therefore, copyright vested in the paper-setter (James 2004).In India, similar issues have arisen. In *Jagdish Prasad Gupta v Parmeshwar Prasad Singh* ([1996] Cri L.J. 154), the Court held that paper-setters were the first owners of the copyright in the question papers they created. In *Agarwala Publishing House v Board of Higher Secondary and Intermediate Education*, UP ([1967] AIR 91 [All]), the Court referred to both the *University of London Press* case and the *Jagdish Prasad Gupta* case. Similarly, it held that the first owner of copyright in question papers would be the paper setter.

An additional question considered by the Court was whether question papers could be classified as "government work" under Section 2(k) of the Copyright Act, 1957. The Court observed:

> The Board exercises no control, in the true sense of the term, over the actual preparation of the question papers set for its examinations. It engages persons who have specialized knowledge of the subjects prescribed for the examinations and asks them to set papers on those subjects within the prescribed curriculum; but having entrusted the work to those persons, the Board leaves them to carry it out by using their own skill and discretion, without any further interference or guidance from the Board. Paper-setters are thus not in the position of servants, acting under a contract of service and subject to the commands of the master as to the manner in which they shall work, but are to be considered rather as independent contractors, acting under a contract for services and not subject to direct control in the performance of those services.

These cases highlight the importance of distinguishing between employment-based and independent arrangements when determining copyright ownership, particularly in academic contexts involving teaching and assessment materials.

The courts have consistently held that, in the absence of an assignment or contract relinquishing copyright, question papers set for examinations belong to the paper-setter (James 2004).

Another recurring issue concerns ownership of books, papers, and articles authored by academics during their university employment. The general understanding has been that creative works such as fiction, drama, or poetry are personal, and copyright in them belongs to the author regardless of their employment status (James 2004). However, questions arise when a professor writes a book on a subject they teach. This issue was addressed in the UK case *Stevenson, Jordan Harrison Ltd v MacDonald and Evans* ([1952] 1 TLR 101), where the Court held that a teacher who writes a textbook on the subject they teach is the author and entitled to copyright, as their employment obliges them to teach, not to write textbooks ([1952] 1 TLR 101).
In India, the treatment of course packs has primarily been addressed through the lens of fair use. In *The Chancellor, Masters and Scholars of the University of Oxford and Ors. v Rameshwari Photocopy Services* ([2017] 1 MIPR 39), the Delhi High Court examined whether reproducing books purchased by the university and distributing copies to students constituted copyright infringement. The Court held that "reproduction of any copyrighted work by a teacher for the purpose of imparting instruction to pupils as prescribed in the syllabus during the academic year would fall within the meaning of Section 52(1)(i) of the Copyright Act, 1957" ([2017] 1 MIPR 39). This case primarily addressed fair use of copyrighted materials owned by others, not ownership of the course materials themselves.

An overview of the jurisprudence indicates that questions concerning ownership of online course materials have not received substantial attention in India. The issue is particularly complex because online course materials often comprise "a collection of non-copyrighted and copyrighted material from a variety of sources used under the fair use doctrine" (Munigal 2016). In the digital age, determining the "original work of authorship" has become an ambiguous foundational concept requiring clarification (Munigal 2016). Complicating matters further, online course development is a collaborative enterprise that involves faculty as content experts, with instructional design and technical support provided by the University (Kezar and Bernstein-Sierra 2017). The use of university resources may be considered an investment, giving the institution grounds to claim sole or joint ownership of such courses (Kezar and Bernstein-Sierra 2017).

Given the lack of legislative clarity and minimal case law on the ownership of online course materials, many universities have formulated their own intellectual property (IP) policies. The Government of India has also attempted to guide the release of model guidelines. The Cell for IPR Promotion and Management of the Department for the Promotion of Industry and Internal Trade released the Draft Model Guidelines for the Implementation of the IPR Policy on September 9, 2019. These guidelines are based on the World Intellectual Property Organization (WIPO)'s "Guidelines on Developing Intellectual Property Policy for Universities and R&D Organizations" and on the IP policies of various universities (Saha and Kaushik 2020). The primary objectives are "to create a national institutional framework for knowledge creation and its commercial exploitation, as well as to provide an interface between the creators of intellectual property and industry to translate the knowledge into consumer products" (Saha and Kaushik 2021).

Even before the introduction of formal guidelines, universities had implemented their own intellectual property (IP) policies. Broadly, as explored by a recent study (Srivastava, Williams, and Lal 2024), these IPR policies generally consider the following aspects:

- Ownership of intellectual property generated within the universities;
- The role of the technology transfer office or IPR cell;
- Procedures for disclosing inventions in the proper format;
- Various existing Non-Disclosure Agreements (NDAs), including prevention, grant, and other agreements established prior to filing IP;
- Procedures formulated by the office for protecting IP;
- Information regarding any waiver of ownership.

The IPR policies adopted and implemented by various universities and research institutions in India and abroad are often available on their official websites and on the World Intellectual Property Organization (WIPO) website, ensuring easy access for relevant personnel (Srivastava, Williams, and Lal 2024). In their study, Srivastava et al. (2024) selected 10 Indian research institutions and 10 foreign universities/research institutions to examine their IP policies and conduct a comparative analysis of their similarities and differences. The Indian institutions were chosen based on the National Institutional Ranking Framework (NIRF) of the Ministry of Education, Government of India, for the year 2021. Key institutions analyzed included the Indian Institutes of Technology (IITs) Chennai, Bombay, Kanpur, and Delhi; the Indian Institute of Science; Jawaharlal Nehru Centre for Advanced Scientific Research; and Vellore Institute of Technology, among others.

Analysis of these policies revealed several common features. First, all institutions clearly defined "substantial use of resources." Second, all addressed ownership of intellectual property "generated using the substantial resources of the institutions" (Srivastava et al. 2024). In most cases, the universities retain copyright over the inventions or creations.

In addition to these leading institutions, other universities have also implemented IP policies. For example, the All India Institute of Medical Sciences (AIIMS), Delhi, implemented its IPR policy in 2017, addressing ownership in scenarios such as: IP generated by inventors with or without intramural funding, IP generated with external sponsors, IP generated under collaborative research, and IP generated as part of degree programs at all levels (AIIMS IPR Policy 2017).

Guru Nanak Dev University, Amritsar, addresses educational materials, including online course content, in its Miscellaneous section. It states that "the creator of the educational materials will generally own educational materials produced in the normal course; certain circumstances may, however, give rise to claims of joint ownership by the University." The policy further notes that "since all possible situations cannot be envisaged, each particular situation will be evaluated on its own facts to determine ownership interests" (Amritsar University IPR Policy 2021).

Ashoka University takes a slightly different approach. Its IPR policy states that for every academic or teaching program, the university owns the IP concerning the curriculum, including course structure, prerequisites, descriptions, lab experiments, and pedagogy, while copyright in teaching and learning materials remains with the faculty (Ashoka University IPR Policy).

These examples illustrate that universities across disciplines have developed their own IP policies to address uncertainties regarding the ownership of educational and online course materials.

AUTHORSHIP REIMAGINED: A RELATIONAL AND ETHICAL APPROACH

As discussed earlier, the romantic notion of authorship has long dominated the conceptualization of the author in copyright law and continues to shape prevailing understandings. However, scholars such as Woodmansee (1984), Jaszi (1991), and Cohen (2007) have proposed a cultural theory of authorship, which diverges from the romantic model. This theory emphasizes the communitarian aspect of authorship, situating the author within their cultural context and linking authorship to the "social existence within which the author is situated" (Shi and Fitzgerald 2008).

The romantic author paradigm has been further challenged since 1968, when Roland Barthes, in his essay "The Death of the Author," argued from a structuralist and post-structuralist perspective that the author is not merely a singular "person," but rather a "socially and historically constituted subject" (Shi and Fitzgerald 2008 2). Similarly, Michel Foucault, in his 1969 article "What Is an Author?," introduced the concept of the "author function," suggesting that the author's name signals the status of a discourse within society and culture (Shi and Fitzgerald 2008). Foucault's approach reexamines and foregrounds the reader's role in constructing textual meaning.

In contemporary times, the author-centric regime of copyright law has been disrupted by networked communication technologies, which have transformed the creative process by foregrounding peer production, sharing, and collaborative activity. Lior Zemer (2007) critiques copyright law for "rejecting the very nature of copyright creation as a collectively imagined and produced activity, and denying the contribution of the public to the copyright creation process." Consequently, scholars have advocated for a model of relational authorship, in which the author is understood not as an isolated entity but as a positioned individual embedded within their community, society, and other networks. This participatory web of creation has become increasingly complex with the proliferation of networked technologies.

As highlighted in previous sections, attempts to apply traditional models of authorship to the distributed practices of online education often produce uncertainty and inequity. Therefore, there is a compelling need to reconceptualize authorship in relational terms. Carys Craig observes that "a relational author is always already situated within and constituted by the communities in which she exists, and the texts and discourses by which she is surrounded." This perspective is highly relevant to online education, as it emphasizes social and cultural contributions rather than solitary effort, capturing the diverse contributions of all actors involved in creating digital educational materials. By adopting a relational lens, the complex relationships inherent in online education models can be better understood and fairly assessed.

CONCLUSION

The analysis in this article indicates that the development and dissemination of education through Internet technologies in India remain at an early stage. While distance education has long been part of the Indian educational framework, the integration of Internet technologies is relatively recent, and significant efforts are required to harness the opportunities it presents fully. In parallel, questions surrounding intellectual property (IP) in this context remain unresolved.

Furthermore, there is a need to reconsider the language used to understand authorship and ownership in relation to digital educational content. As discussed in the previous section, traditional models of authorship must be challenged and reconceptualized in relational terms. Such an approach highlights the contingent nature of creation and emphasizes the social and cultural context in which educational materials are produced.

The IP policies adopted by different universities are diverse and fragmented, reflecting their individual operational models and needs (Saha and Kaushik 2021). A more uniform and coherent policy framework, adaptable to the requirements of individual institutions, is essential to reduce uncertainty and confusion.

Although the Draft Model Guidelines were a positive initiative aimed at providing clarity, they have faced criticism for their vagueness and ambiguity. Key concerns include the absence of a clear definition of "academic institutions" and potential conflicts with the National Innovation and Startup Policy 2019 regarding IP ownership of work developed using substantial institutional resources or as part of academic activities. In some cases, the Draft Model Guidelines may inadvertently increase ambiguity rather than resolve it. Consequently, there is a pressing need for collaboration among universities, policymakers, and educators to develop a practical, context-sensitive approach to intellectual property governance in online education.

This study primarily relies on a doctrinal and policy-based analysis of existing guidelines and university practices, without empirical data from institutions or educators directly implementing online education. As a result, the findings may not fully capture the practical challenges and institutional variations across India. Moreover, the research focuses on higher education and may not reflect the experiences of primary or secondary education institutions adopting Internet-based learning. Future research incorporating empirical case studies, stakeholder interviews, and comparative analyses could provide a more comprehensive understanding of the evolving landscape of online education and intellectual property in India.

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