

# LEGAL POSITION OF SATIRE IN IP LAWS IN INDIA: A CRITICAL ANALYSIS OVER THE JUDICIAL DEVELOPMENT

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***A**bstract—Satire enjoys enduring cultural significance in addition to its popularity. Since it is a critical analysis of pre-existing work, it often cites or reflects the elements of the original work. It is the nature of satire or parody to strike in the minds of its consumers the memory of the criticized content. For the amusement of audiences, people have long made fun of desirable targets. When a satirist imitates a copyrighted work, satirists may run afoul of copyright law, which grants authors control over the duplication, performance, and distribution of their creations. The rights of users of copyrighted works are currently a major point of concern in the area of copyright policy. Satire is exposed to these issues to varying degrees depending on how it is treated legally. While copyright laws exist to recognize and protect individual creativity as an intellectual labor, free speech encourages bringing things to a public platform. There is a natural friction between these two ideas. Considering these developments and juxtaposing them to the current global environment where the parameter of free speech is under analysis, the study is justified to have researched. As art expands its platform and artists explore their creativity, the legal complications around fair use and satire would be a big concern, particularly in the Indian market. This is furthermore relevant considering how convenient and easy it has become to create content in modern times through the connectivity of the Internet, social media, and the availability of digital devices.*

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*Considering the number of Internet users in India, whose number is significantly high, it is an impending legal problem that our domestic legislation must be equipped to tackle. Up until now, Indian legal doctrine has treated parody and satire equally, whether in the context of intellectual property protection or freedom of expression. Despite the fact that this approach has no bearing on the freedom of expression as it is envisioned in Article 19(1)(a) of the Constitution, the situation would be different in light of intellectual property regulations. The author of this article will deal with the Judicial approach in the article. The author, with the help of literature, and national and international scenarios has suggested 3-tier tests in this article to be able to use the fair dealing defense.*

**Keywords:** Satire, Entertainment, Copyright, Fair Use, Internet Users

## I. INTRODUCTION

The word satire is inferred from the Latin term ‘satura’<sup>1</sup> meaning wonderful mixture. Although satire has a few shapes but there are three shapes that are frequently considered as the column shapes of satire<sup>2</sup> and have flourished over the centuries since then began an appearance on the scholarly scene, each named after the one who made it popular i.e., Horatian (for Horace), Juvenalian (for Juvenal) and Menippean (for Menippus)<sup>3</sup>.

The leading example of the Menippean form of satire may be found in Lewis Carroll’s *Alice’s Adventures in Wonderland*, which contrasts a particular ideology, such as homophobia or racism, with the moral judgment of Juvenalian satire, which is dark rather than hilarious. Horatian satire is entertaining and makes a few passing societal observations. Modern times may make it challenging to distinguish between different types of satire since they constantly overlap and adopt new forms<sup>4</sup>.

<sup>1</sup> Bernd Renner, *From Satura to Satyre: François Rabelais and the Renaissance Appropriation of a Genre*, 67 *CAMB. U.P.*, 377–424 (2014).

<sup>2</sup> Kaelyn Barron, *Types of Satire: Definitions and Examples from Literature*, TCK PUBLISHING, 04:50 PM <https://www.tckpublishing.com/types-of-satire/> (last visited on Mar. 29, 2023).

<sup>3</sup> Become a writer today, <https://becomeawritertoday.com/types-of-satire/> (last visited on Mar. 29, 2023).

<sup>4</sup> S.H. Braund, *Ancient Menippean Satire - J. C. Relihan: Ancient Menippean Satire*. Pp. xv 306. Baltimore and London: The Johns Hopkins University Press, 1993. Cased, £39.50., 45,

Be that as it may, in the end, satire is a literary device which traditionally used to hold a moral responsibility to raise issues of public interest. The early modern period has often been called the golden age of satire<sup>5</sup>. New perspectives open all realms of human existence and the ensuing sweeping changes are the conception of an alternative social, political, and religious order. Simply put, satire is the use of humor, irony, or mockery to critique society, works of art or literature, individuals, or societal concepts<sup>6</sup>. The term “satire” is used to describe both the humorous way of critiquing the statements as well as the work produced in that manner. Satire is a centuries-old genre of literature that makes fun of and mocks social norms, works of art and literature, as well as people’s moral and character flaws<sup>7</sup>. The main goal of satire is to expose the flaws and shortcomings of society, as well as someone’s artistic and literary endeavors, etc. Even though satire might contain fun and laughter, the end consequence is always the recognition of flaws, corruption, etc. Consequently, satire can be viewed as societal commentary<sup>8</sup>. Satire suggests the recognizable circumstances of the time in a crooked and comical way in order to draw attention to its absurdity. There is ridicule, however with a society-serving motive in it. It is the desire to humiliate/criticize a work, a person a group, or a society that follows something in bad taste, and in the view of the satirist should not be the case. Given that satire serves this practical and utilitarian function, the standards by which it is evaluated are relatively straightforward. If satire fails to effect constructive change or encourage rational thought, it is failing<sup>9</sup>.

Satire has been used conjunctively with parody under Indian jurisprudence. In a legal context, neither the Satire nor the Parody has been defined by any of the statutory provisions, but the same can be understood through a few of the leading judgments. In the case of *Ashutosh Dubey v. Netflix, Inc.*<sup>10</sup>, the Delhi High Court characterized satire as a work of art. It is an artwork that ridicules its subject using ways like magnification. It is a facetious, ironic, and frequently inflated depiction of a subject.

The Hon’ble Supreme Court through Hon’ble Justice D.Y. Chandrachud in a leading case<sup>11</sup> observed that in satire, recent events or issues are held up to contempt by way of mockery or sarcasm. One of the most powerful artistic mediums for exposing the absurdities, hypocrisies, and contradictions present

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THE CLASSICAL REVIEW, 52–54 (1995).

<sup>5</sup> Stewart Tolley, *The Age of Satire*, OPEN EDUCATIONAL RESOURCES, (Mar. 29, 2023, 04:50 PM), <https://open.conted.ox.ac.uk/series/age-satire> (last visited on Mar. 29, 2023).

<sup>6</sup> Nicholas Diehl, *Satire, Analogy, and Moral Philosophy*, 71 J. AESTHET, 311-321, (2013).

<sup>7</sup> Filmmaking Lifestyle, <https://filmlifestyle.com/what-is-satire/> (last visited on Mar. 29, 2023).

<sup>8</sup> Krystal N. Craiker, *A Complete Guide to Satire*, PROWRITINGAID, <https://prowritingaid.com/art/1109/everything-you-need-to-know-about-satire.aspx> (last visited on Mar. 29, 2023).

<sup>9</sup> Tim Parks, *The Limits of Satire* Tim Parks, THE NEW YORK REVIEW OF BOOKS, <https://www.nybooks.com/online/2015/01/16/charlie-hebdo-limits-satire/> (last visited on Mar. 29, 2023).

<sup>10</sup> *Ashutosh Dubey v. Netflix, Inc.*, 2020 SCC OnLine Del 625.

<sup>11</sup> *Indibly Creative (P) Ltd. v. State of W.B.*, (2020) 12 SCC 436.

in so much of life. In ways that other modes of communication and expression frequently do not, it has the exceptional capacity to make a point swiftly and clearly and to promote understanding.

Broadly speaking, the characteristics of satire could be understood through the below-outlined pointers:

- a. Real references, concepts, individuals, or even other artistic or philosophical works are represented in this way.
- b. Has a mocking or critical intent with a burlesque tone that is communicated through humor, the comparison of unrelated concepts.
- c. It always serves a critical or moralizing purpose, which is a didactic or complaining function, even though it communicates using a great diversity of themes, tones, and tactics.<sup>12</sup>

According to Ashley Marshall<sup>13</sup>, satire has five characteristics that scholars generally agree upon: (1) it is a “literary art,” (2) it “attacks its targets,” (3) its targets are “discernible historical (particulars,” (4) its critiques are “to some extent humorous,” and (5) it is essentially a “negative enterprise.”

## II. SATIRE AND ITS INSEPARABLE CONNECTION WITH INTELLECTUAL PROPERTY LAWS

The object and purpose of Intellectual Property rights is to protect the original work of creators from infringement where any person other than the creator imitates such original work without the leave and license from the creator<sup>14</sup>. These rights were provided to protect and safeguard the interest of original creators and ultimately to encourage them for further creation of original works<sup>15</sup>. Intellectual Property Right basically is a negative right given to the creators to restrict others from using their original work with an intent to protect and prevent their goodwill and reputation and to prohibit the other party from gaining any commercial benefit out of such work<sup>16</sup>. In Satire, it’s common practice to use filmland, someone’s trade mark or cultural or erudite work while claiming that the definition is intended to be humorous and therefore exactly legal and thus its connection with Intellectual Property Laws is insepa-

<sup>12</sup> CONCEPT DAILY, <https://conceptdaily.com/satire-concept-origin-characteristics-authors-and-politics/> (last visited on Mar. 29, 2023).

<sup>13</sup> Emmett Stinson, *Satire*, OXFORD RESEARCH ENCYCLOPEDIA OF LITERATURE (2019).

<sup>14</sup> Dr. Jayashri Bangali, *Copyright: An Important Element of Intellectual Property Rights*, LEGAL SERVICE INDIA, <https://legalserviceindia.com/legal/article-2176-copyright-an-important-element-of-intellectual-property-rights.html> (last visited on Mar. 29, 2023).

<sup>15</sup> ABOU NAJA, <https://abounaja.com/blogs/ip-for-satire-and-parodies> (last visited on Mar. 29, 2023).

<sup>16</sup> Raghavendra Mishra, *INTELLECTUAL PROPERTY RIGHTS AND MEDIA IN INDIA: COPYRIGHT ACT 238* (2020).

rable and undeniable. Generally, the satirist in a suit for infringement seeks its defense under the ambit of fair use<sup>17</sup>.

### III. THE CAT CHASE BETWEEN IP LAW AND SATIRE AND ITS DEFENSE THROUGH FAIR USE

It is a form of satirical art where the satirist mocks and critiques an existing work by creating a copy that highlights the shortcomings of the original. Since it is a sort of critical analysis of a pre-existing work, it often cites or reflects the elements of the original work. It is satire to strike in the minds of its consumers the memory of the criticized content. When a satirist imitates<sup>18</sup> a copyrighted work, the copyright law, which gives creators rights over the replication, performance, and distribution of their works, could cause her to break the law<sup>19</sup>.

It is a basic rule that until the same concepts are expressed in a new way, there is no copyright associated with ideas, subjects, themes, or movie plots. A copyright violation occurs when the subject matter or a concept presented is the same as the original work. It is challenging to distinguish between creative criticism and imitation in the case of “Satires” because it is based on the original work of another author or artist. The *Civic Chandran case*<sup>20</sup> resolved this question by ruling that the ideal of reduplication of cultural work, i.e., untoward drama, wasn’t misapplication. Instead, the goal was to expose to the public the ideology that the original drama had promoted and to critique it. Copying did not violate the copyright because it was done to criticize; rather, it amounted to fair dealing. The Court also established three-part criteria that must be met before the alleged satirist may assert fair use as a defense:

- I. Quantity and importance of the matter considered considering any remarks or criticism;
- II. The reason why it is used;
- III. Possibility of rivalry between the two works. The “Intent” is a crucial component regarding parody/satire, in addition to the three conditions test. It is well-established that copyright infringement occurs when original material is parodied or satirized with the goal to profit from it commercially or capitalize on its reputation.

According to Section 52(1)(a) of the Indian Copyright Act of 1957, Copyright is not violated by fair handling of any original work for the purpose

<sup>17</sup> THE WANG IP LAW GROUP, <https://www.thewangiplaw.com/blog/2019/05/how-does-copyright-law-apply-to-parody-and-satire/> (last visited on Mar. 29, 2023).

<sup>18</sup> MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT §13.01 (1992).

<sup>19</sup> CONCEPTS DAILY, *supra* note 12.

<sup>20</sup> *Civic Chandran v C. Ammini Amma*, 1996 SCC OnLine Ker 63: (1996) 16 PTC 329 (Ker.).

of criticism and evaluation, whether that work is the target or not. The 2<sup>nd</sup> Circuit described the doctrine as “the most problematic in the entire copyright law” in *Dellar v. Samuel Goldwyn Inc*<sup>21</sup>.

Considering the law, as it is currently written, it goes without saying that the parodist or satirist must show that there was no purpose to engage in business competition with the copyright holder of the work or to profit from such a commercial connection in order to invoke the defense of fair dealing<sup>22</sup>.

#### IV. JUDICIAL DEVELOPMENT IN INDIA

Up until now, Indian legal doctrine has treated parody and satire equally, whether in the context of intellectual property protection or freedom of expression. Even though this has no implications when viewed through the lens of the freedom of expression as it is envisioned in Article 19(1)(a) of the Constitution, the situation would be different when viewed through the lens of intellectual property legislation.

Contrary to the United States of America, India lacks case laws that explicitly differentiate parody from satire. According to the Indian Copyright Act of 1957, criticism presented as satire (much like a parody) should be protected by the fair dealing defense. From *Blackwood and Sons Ltd. v. A.N. Parasuraman*<sup>23</sup>, one can deduce that satire would be entitled to a fair dealing defense if it a) does not compete with the original work to make money and b) has an unfair motivation, such as being indecent or oblique. Similarly in *Civic Chandran v. Ammini Amma*<sup>24</sup>, another assumption is that while satire critiques original works, copying them does not violate the terms of fair use or fair dealing and is instead acceptable.

The Supreme Court of India in *R.G. Anand v. Deluxe Films*<sup>25</sup>, stated, “When the same concept is used, but it is presented and handled differently, creating an entirely new work, there is no question of copyright infringement.”

It is to be noted that the courts have observed it is imperative to promote social and political dialogue amidst the populace. On similar lines, the Patna High Court in the case of *Ashvani Dhir v. State of Bihar*<sup>26</sup> while observing a parody against Lalu Prasad Yadav the former CM of Bihar, it has held that a

<sup>21</sup> *Dellar v. Samuel Goldwyn Inc*, 150 F2d 612 (2nd Cir. 1945).

<sup>22</sup> Vatsala Singh, *Parody: Fair Use Or Infringement? - Trademark - India*, MONDAQ, <https://www.mondaq.com/india/trademark/756930/parody-fair-use-or-infringement> (last visited on Mar. 29, 2023)

<sup>23</sup> *Blackwood and Sons Ltd. v. A.N. Parasuraman*, 1958 SCC OnLine Mad 62: AIR 1959 Mad 410.

<sup>24</sup> *Civic Chandran v. Ammini Amma* *supra* note 20.

<sup>25</sup> *R.G. Anand v. Deluxe Films* (1978) 4 SCC 118: AIR1978 SC 1613.

<sup>26</sup> *Ashvani Dhir v. State of Bihar*, 2005 SCC OnLine Pat 64: AIR 2005 Pat 101.

creative artist must be provided with the freedom to show the picture of the society, political system or any person involved in politics if it does not affect public order, decency, or morality.

As seen in *Ashutosh Dubey v. Netflix*<sup>27</sup>, the plaintiff sought a permanent injunction barring the defendants from airing or streaming any episodes of the web series (TV show) “Hasmukh,” specifically Episode 4 of Season 1. It was averred by the plaintiff that the said episode contained certain derogatory remarks against the legal fraternity and such statements must be treated as scandalous. There were certain statements made in the episode which compared thieves with lawyers and further stated that the law is dirty. The Hon’ble Delhi High Court held that the distinction of humor and defamation wherein the court held that the above-mentioned statements were spoken by the Protagonist while performing on stage as a stand-up comedian. The court also observed that it is a commonly accepted situation that a comedian who performs stand-up exaggerates a subject to a level where it transforms into satire and humor. Viewers do not see comedians’ comments or gags as an expression of reality, instead choosing to take them with a bit of salt, comprehending they in fact are an exaggeration intended to expose flaws or shortcomings.

Furthermore, the Court clearly stated that satire is a work of art and that one of the tactics used to create it is exaggeration beyond what is reasonable so that flaws become apparent. This is a case where the court has sought to offer protection to satires. A similar pro satire suit was one of *Tata Sons Ltd. v. Greenpeace International*<sup>28</sup>. It is a general observation that every case is based on distinct facts and circumstances and therefore, every case ought to be decided on its facts, merits, and circumstances. However, the said observation goes unnoticed in cases of Satire/Parody. The Hon’ble Courts, at least till now, have taken a liberal approach and granted the satirist with desired reliefs under the ambit of fair use without analyzing the impact of loss it may cause to the goodwill and reputation of the original creator and thereby to the society.

## V. CHALLENGES

The fair use doctrine has been the subject of extensive debate over the years and has resulted in several landmark decisions, in which courts have liberally interpreted the doctrine of fair use and has expanded its horizons. Parodists and satirists avoided the shackles of the law as the doctrine was, for the most part, lenient by the courts. The loopholes these persons have been using can be categorized as:

- 1. Entertainment or comedy:** A Common Defense of Satirists. Comments or reviews of copyrighted works are linked to Humor and

<sup>27</sup> *Ashutosh Dubey v. Netflix, Inc.*, *supra* note 10.

<sup>28</sup> *Tata Sons Ltd. v. Greenpeace International*, 2011 SCC OnLine Del 466: (2011) 45 PTC 275.

comic intent. Instead, these actions are protected further stating that such conduct is fair use for entertainment purposes. However, the real problem is to make a line between comedy/humor and infringement. There should be clarity that till what extent it can be protected by law<sup>29</sup>.

2. **Commercial/Economic benefit:** The primary goal of satire is to reveal the mistakes and flaws of the artistic and literary work and of the society etc. Though satire might include fun and amusement, the end goal is always the recognition of society's mistakes, falsification, and wickedness of the society, as well as creative and literary effort.<sup>30</sup> Use of someone else's work by satirists must extend no further than is required to achieve that purpose. This is another loophole which acts as one of the determining factors for a satire to be considered as an infringement or not as laid down in the famous Civic Chandran case<sup>31</sup>. If the use of the copyrighted work is undertaken for commercial or economic benefits without any social cause and without taking leave and license or permission from original creator of that work, ought not to come under the ambit of fair use.

## VI. CONCLUSION AND SUGGESTIONS

In the last 10 years, a new genre of communication has emerged that can be viewed as a mixture of several classical genres. Information by satirists is typically a mixture of 3 elements (a) entertainment, (b) information, and (c) opinion. Traditionally, each of these three communication goals has been explored in its own communication genre. Humor in sitcoms and other entertainment genres, political reporting in hard news, and political persuasion in opinion at ed news. However, in satirical form, all these three different goals can be achieved at the same time.

While seeing all the positive sides and before executing all these goals, those of us who study satire need to look at the relationship between satire's audience and its aspiration for corrective action. Satirists are advised to investigate whether and in what form satire exists<sup>32</sup>. It is presumed that most satirist art cannot be created without taking reference of someone else's work. In order to protect that art under the ambit of fair use, the foremost thing to observe is that if the satirists have made enough changes in order to make the subsequent work a new work. If the satirist has not presented the subsequent work differently and it is a mere copy of someone else's work, then prima facie it will

<sup>29</sup> David Tan, *Parody, Satire, Caricature, and Pastiche: Fair Dealing is no Laughing Matter* (Chapter 17) - THE CAMBRIDGE HANDBOOK OF COPYRIGHT LIMITATIONS AND EXCEPTIONS, (2021).

<sup>30</sup> James E. Caron, *The Quantum Paradox of Truthiness: Satire, Activism, and the Postmodern Condition*, 2 *STUD. AM. HUMOR* 153 (2016).

<sup>31</sup> Civic Chandran v. Ammini Amma, *supra* note 20.

<sup>32</sup> William Howell, *Judgments, Corrections, and Audiences: Amy Schumer's Strategies for Narrowcast Satire*, 5 *STUD. AM. HUMOR* 70 (2019).



be considered as an infringement<sup>33</sup>. However, if sufficient changes have been made by the satirists, then other factors should be checked like to what extent the reference to someone else's work have been used and is the art just used for a commercial benefit before keeping the satirists work under the ambit of fair use. The author is of the opinion that defense of fair use should not be discounted easily.

If we observe the stages or development of satire through judicial interpretation, we will see that in the case of *Civic Chandan v. Ammini Amma*<sup>34</sup>, it was stated that even if a substantial portion of the work has been copied for criticism, it will come under the ambit of fair use. In the case of *R.G. Anand*<sup>35</sup>, it was held that the book was different from the visual presentation film and play and thus the imitation was covered under the ambit of fair use. In the case related to *Lalu Yadav*<sup>36</sup> and *Tata Sons*<sup>37</sup>, Hon'ble Court emphasized freedom of speech and expression and believed a creative artist's creativity should not be suppressed and that theory of free press will emerge from free discussions. In the latest judgment of the year 2020 regarding satire and parody<sup>38</sup>, Hon'ble Court believed that people take comedy with a pinch of salt. By the above series of judgments, what the author observes that the Judiciary has been stagnant on one point or one theory and we have not seen any judicial development. In the current Internet era where works are being illicitly copied for commercial benefit which has further led to rise in the number of satirical cases<sup>39</sup>, it is sad to see that the Indian Judicial system has failed to identify the need for an hour which is to protect the copyright works. Media houses like Newslandry<sup>40</sup> etc. are taking advantage of Judicial and statutory loopholes regarding Satire and in the guise of educating/entertaining society, they at times end up infringing trademarks, personality rights as well as copyright works. While interacting with IP Law firms, it came to the picture that legal notices are on a regular basis being sent to media houses, and social media content creators for infringement of copyright, and trademark. Having said all these points, we can easily conclude that Judicial activism and setting the parameter regarding availing of the defense of fair use is a need of an hour.

In order to avail the defense of fair use; *mens rea* must be taken into consideration as the purpose of copying someone's artwork/work have to be

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<sup>33</sup> Emily Marczak, *I Am Once Again Asking For Your Support: The Rise of Another Bernie Meme and its Seat in Copyright Law*, LAUTURE IP, <https://www.lautreip.com/blog/blog-bernie-meme-copyright-lip> (Mar. 29, 2023).

<sup>34</sup> Civic Chandran v. C. Ammini Amma, *supra* note 20.

<sup>35</sup> R.G. Anand v. Deluxe Films, *supra* note 25.

<sup>36</sup> Ashvani Dhir v. State of Bihar, *supra* note 26.

<sup>37</sup> Tata Sons Ltd. v Greenpeace International, *supra* note 28.

<sup>38</sup> Ashutosh Dubey v. Netflix, Inc, *supra* note 10.

<sup>39</sup> Marc Owen Jones, *Satire, Social Media and Revolutionary Cultural Production in the Bahrain Uprising: From Utopian Fiction to Political Satire*, 2 J., SAGE JOURNALS, (2017).

<sup>40</sup> Newslandry, <https://www.newslandry.com/> (last visited on Mar. 29, 2023).

known. Three-tier tests should be there to identify the *mens rea* and to evaluate if it can be taken under the ambit of fair use:

1. **Necessity Test:** Indeed, most of the satirical work cannot be completed without having some reference of the person or person's work. However, it is important to have a parameter to judge to what extent it is important to use the reference and then should be checked that till what extent the reference has been used?
2. **Economic benefit Test:** One of the reasons satires is growing in popularity is because of the internet and the technology that makes it accessible to people. Just as media has exploded over the past decade, so has satire. The Internet is the catalyst for a never-growing satirical craze and satirists, at times, are taking undue advantages of it. Based on the number of views/thumbnails on videos uploaded on the social media platform, satirists observe monetary benefits. It is important to analyze that has the satirist copied the work of the original creator just for the sake of monetary benefit. Have the satirists taken undue advantage of it without taking a license/permit from the original creator of the work<sup>41</sup>?
3. **Social Impact Test:** A mode of writing that uses wit and humor to critique or ridicule human institutions and behaviors with the objective of correction and progress, "according to the definition of satire. It is important to question that does the satirical art has been created with a motive of improvement in society. Does satirical work not create any negative impact in society or create hatred among the people?

The Court must determine, under its analytical framework, whether the material's nature makes further access beneficial to the public interest in the free flow of information or whether it is meant for commercial advantage. If the person who is violating the copyright of the work's user receives a direct financial benefit from using the copy in its stream of commerce, then he should be regarded as an unfair user for profit. It is high time that either the Legislature or the Judiciary ought to investigate how much comedy is too much comedy. Be that as it may, in the considered opinion of the author, the Hon'ble Courts' should consider the true *mens rea* involved, the balance of convenience and harm it likely to cause to the original creator.

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<sup>41</sup> David Tan, Parody, Satire, Caricature, and Pastiche: Fair Dealing is no Laughing Matter, *supra* note 29.