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The Second Shamnad Basheer Essay Competition on Intellectual Property Law (2021)

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III Prize

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For the essay

"A Conflict of Rights: Public Photography, Copyright and Innovation"

A CONFLICT OF RIGHTS: PUBLIC PHOTOGRAPHY, COPYRIGHT AND INNOVATION

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I. Introduction

With the advent of technology, one can find that the means or the tools required for creating 'art' are more user friendly, and what once used to be in the exclusive control of a group of professionals is now accessible to most of the population.[1] With this increase in creative works, there also exists technology which enables effortless reproduction and sharing of such creations.[2] The overhaul this technology has created in the artistic field has not been matched by proportionate reforms in the 'Intellectual Property Rights' ("IPR") regime. One such field is that of photography and more specifically 'public photography'.[3] With the increase in smartphones, digital cameras, DSLRs, photo editing applications, etc., most people can create photographs of professional quality, which previously required a considerable amount of skill and experience.[4]

[1] Dan Hunter and F. Gregory Lastowka, 'Amateur-To-Amateur' (2004) 46 William & Mary Law Review.
[2] *Ibid* at 1, page 1003.
[3] Andrew Inesi, 'Images Of Public Places: Extending The Copyright Exemption For Pictorial Representations Of Architectural Works To Other Copyrighted Works' (2005) 13 Journal of Intellectual Property Law.
[4] Tom De Castella, 'Five Ways The Digital Camera Changed Us' (*BBC News*, 2012) <https://www.bbc.com/news/magazine-16483509> accessed 20 April 2021.

Put simply, photographs or images taken in spaces open to the public are referred to as public photography. It could include popular tourist destinations, landscapes, architectural work, street art or photography and so on. A person in Mumbai, taking a landscape picture of the Gateway of India along with the iconic Taj Mahal Palace and several branded showrooms might be infringing on several IPRs.[5] Similarly, people visiting Paris might not be allowed to take photographs of the Eifel Tower at night because of the copyright protection granted to this particular rendition of the structure with lights in the background.[6] Even taking a picture on a specific road, such as 'Times Square' in Manhattan will have to be done after taking into account the creative works on display in the background. The Subsequent commercial distribution of photographs which includes the protected works of other artists, might make one liable for infringement on the copyright, trademark or design of the other artists. This phenomenon is inevitable in the new digital landscape where most of the people are taking professional pictures effortlessly and engaging in the widespread distribution of the same.[7] This might result in a conflict between different right holders, specifically between owners of copyright and the public who seek to take photographs and utilize in different manners the copyrighted work situated in public spaces. This paper will primarily try to answer the question of how one can balance the rights of the different parties engaged in public photography and, what outcome would best serve the interests of both copyright law and the public.

To that end, the *second* part of the paper will look at the broad provisions and cases dealing with copyright infringement in public photography and the 'freedom of panorama' in the American, Indian and European jurisprudence. There have been relatively fewer cases on this subject which have come up in Indian courts and as such the discussion on the issue has been limited. However, through the literature and cases available on the same, the author tries to flag out the ambiguity as well as the differences between the three jurisdictions. Linked to this argument, the *third* part of the paper will analyse the normative defences used in copyright law, and the

[5] Lalatendu Msihra, 'In Mumbai, Taj Palace Gets A Trademark' (*The Hindu*, 2017) <https://www.thehindu.com/news/national/in-mumbai-taj-palace-gets-a-trademark/article19141829.ece> accessed 20 April 2021.

[6] Carolina Bologna, 'Why Your Eiffel Tower Photos May Be Illegal' (*HuffPost UK*, 2019) <https://www.huffpost.com/entry/illegal-photos-eiffel-tower-night_l_5c38bf78e4b0c469d76d9eb1#:~:text=Eiffel%20passed%20away%20in%201923,with%20protections%20of%20its%20own.> accessed 20 April 2021.

[7] Bert P Krages, *Legal Handbook For Photographers* (Amherst Media 2017).

drawbacks in applying them in cases of public photography. The *fourth* and final part of the paper will make a brief argument for strengthening the 'freedom of panorama' and the rights granted to artists so as to provide clarity in an ambiguous field, to strengthen the creative rights of photographers and artists and, to increase innovation and accessibility.

II. Jurisprudential Comparison of the 'Freedom of Panorama'

The 'freedom of panorama' is the right available in a few countries, to take photographs of works which are located in public spaces.[8] The scope and extent of this right varies across different countries and has led to considerable confusion in the given area.

(i) United States of America ("USA")

The 'Freedom of Panorama' in America extends only to architectural works accessible in the public space and would also include third party works attached to the original work, irrespective of whether they are aesthetic or separable.[9] However, this freedom does not extend to other works installed in public spaces, such as, sculptures, designs, paintings etc.[10] To understand these provisions better, one has to look at the case of *Leicester v Warner Bros,*[11] where the ninth circuit court held that the use of portions of the public art installation- 'Zanja Madre', in the movie Batman Forever, would fall under the exception to copyright protection provided in §120(a); for works of architecture situated in public spaces. 'Zanja Madre' was a public art installation which included a street wall, multiple buildings and a courtyard, with the art-work and buildings being intrinsically interwoven together. The court applied the 'integrated test' and held that the buildings and street walls were 'functional' in nature and were seen as an 'integrated' whole, not classifiable as other works of art under 102(a)(5).[12] This case has strengthened the public photography rights by classifying pictorial, graphical or structural ("PGS") works ordinarily under §102(a)(5),[13] as works of

[8] Mélanie Dulong de Rosnay and Pierre-Carl Langlais, 'Public Artworks And The Freedom Of Panorama Controversy: A Case Of Wikimedia Influence' (2017) 6 Internet Policy Review.
[9] Copyright Law of the United States, 17 U.S.C. § 120(a).
[10] U.S.C (n 8), §102(a)(5).
[11] Leicester v. Warner Bros, 232 F.3d 1212, 57 (9th Cir. 2000).
[12] *Ibid* at 1915.
[13] Copyright Law of the United States, s102(a)(5)/

architecture, when they are intrinsically attached to the primary work in question. This ruling has been hailed by several scholars for introducing a 'bright-line' rule and reducing the discretion granted to judges in applying the ambiguous 'separability' test.[14] This exception also includes murals and other works of art which might be attached to the primary building.[15] However, the court has been clear that the exception under §120(a) of the Copyright Act would not be extendable to works that are merely 'functional'. It is necessary that to be 'functional' the architectural work should be 'habitable'. For instance, in *Gaylord v United States*[16] the court held that a 'War Veterans Memorial', which included individual soldiers, public benches and walkways would not be exempt under §120(a) as the primary purpose of the memorial was not to 'house' people but to convey a particular message.

In another recent case of *Davidson v United States*[17], the court reached a decision which was in contrast to what was held in the *Leicester* case. The court held that the replica of the 'statue of liberty' which was attached to the York New-York casino in Las Vegas, would not classify as an architectural work and would thus not be exempted under §120(a). It was reasoned that the statues in this case served no functional purposes and could not be described as a 'habitable' structure despite being attached to a building.

Thus, there exists no clear principle to ascertain the scope of this freedom and ambiguity persists throughout.[18] As will be seen in the following sections, there is a need to reimagine the copyright protection granted to works in public spaces to bring it in conformity with the recent technological developments.

(ii) Europe

The position in Europe is a mixed bag, despite the term 'Freedom of Panorama' originating in Germany itself.[19] The European Copyright Directive lays down that member states *may* limit copyright protection for those works which are 'permanently

[14] John B, 'The Utility Of A Bright-Line Rule In Copyright Law: Freeing Judges From Aesthetic Controversy And Conceptual Separability In Leicester V. Warner Bros.' (2005) 12 UCLA Entertainment Law Review.
[15] U.S., LLC. v. Lewis, Case No. 19-10948 (E.D. Mich, 2019).
[16] Gaylord v. United States, 595 F.3d 1364 (Fed. Cir. 2010).
[17] Davidson v United States, 312 F.2d 163 (8th Cir.1963).
[18] Bryce Clayton Newell, 'Freedom Of Panorama: A Comparative Look At International Restrictions On Public Photography' (2011) 44 Creighton Law Review.
[19] *Ibid* at 7.

located' in public.[20] The wording of this provision makes it clear that there is no compulsion for countries to necessarily implement it, leading to considerable disparity and confusion among the countries.[21] For instance, for the longest time France did not have any provision for the 'freedom of panorama' even for works that existed in the public domain. Post 2016, a narrow exemption was introduced which extended the right to public photography to only those works which are located permanently on 'public streets'; are created by a 'physical person', with a narrow exception existing for those photographs which are used for 'non-commercial' purposes.[22] In Sweden, despite the existence of a 'freedom of panorama', the Stockholm Supreme Court in the case of *Sverige ek.för». (BUS) vs Wikimedia Sverige* held that the use of the photographs for a public-database created by Wikimedia would amount to copyright infringement.[23] It was justified on the grounds that such use harmed the 'legitimate interests' of the copyright owner, as the option to communicate the work to the public through this new channel should be left to the discretion of the artist. Further, they emphasized on the fact that creation of such a database, despite being done by a non-commercial organization, might have commercial benefits attached to it.[24] This raises several questions, not restricted to photography in the normative sense. Corporations providing services such as Google-street and maps, videos games such as Pokémon-Go,[25] might have public works and installations in their background. One can view a street with entire details from across the globe with the aid of technologies such as google street. With such restrictions in place, organizations will have to take permission for making technological services available to the public. The competing interests in such a case are disproportionate, severely undermining the incentives for innovating and investing in services beneficial to the public.[26]

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[20] Council Directive 2001/29/EC of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related rights in the Information Society [2001] O.J. (L 167) 10., A5 § 3(h).

[21] Eleonora Rosati, 'Freedom Of Panorama: What Is Going On At The EU Level?' (*The IPKat*, 2021) <https://ipkitten.blogspot.com/2015/06/freedom-of-panorama-what-is-going-on-at.html> accessed 20 April 2021.

[22] French Code of Intellectual Property, L122-5; Eleonora Rosati, 'Freedom Of Panorama In France: Could Even A Visit To Père Lachaise Become A Problem?' (*The IPKat*, 2021) <https://ipkitten.blogspot.com/2016/04/freedom-of-panorama-in-france-could.html> accessed 20 April 2021.

[23] *Bildupphovsrätt i Sverige ek.för. (BUS) vs Wikimedia Sverige (Case nr Ö 849-15).*

[24] Nedim Malovic, Swedish Supreme Court defines scope of freedom of panorama, *Journal of Intellectual Property Law & Practice*, Volume 11, Issue 10, October 2016, Pages 736–737.

[25] Gotta Catch 'Em All Without Infringing Copyright: Pokémon And Freedom Of Panorama' (*The IPKat*, 2021) <https://ipkitten.blogspot.com/2016/07/gotta-catch-em-all-without-infringing.html> accessed 20 April 2021.

[26] Baron Oda, 'Mobile Devices, Public Spaces, And Freedom Of Panorama' [2018] ABA SciTech Lawyer.

On the other hand, countries like the United Kingdom ("UK")[27] and Germany[28] grant a very wide 'freedom of panorama', including under its ambit all works accessible in the 'public space'. However, despite Germany being a strong proponent of the freedom, the scope of photography has not been expanded to include broadcasting of 'visual images', like in the Copyright Act of the United Kingdom. An important point of focus in these countries is that the picture should be taken from a public space and not from a private place such as a house or a platform. However, the rationale behind this is grounded in security and privacy reasons rather than copyright protection and as such would not fall under the scope of this paper.

(iii) India

The position in India is also ambiguous, primarily because of the lack of cases and clarity on the issue. The Indian Copyright Act includes works of architecture, sculptures, paintings etc., within its definition of artistic works.[29] The rights granted to the copyright owners of such artistic works, includes the rights to reproduce the work (either in an electronic form, or a 2D or a 3D form), to communicate it to the public, and to include it in cinematographic films, among other things.[30] This provision alone appears to grant almost no 'freedom of panorama' to photographers in India. However, there exists an exception under The Copyright Act, which grants the freedom to make paintings, drawings, engraving's and take photographs of artistic works located in public spaces.[31] This however, does not take into account the current digital advancements. For instance, if one were to apply these two provisions to the Stockholm case,[32] there might not exist any exemption under the Copyright Act in the Indian jurisdiction for electronic data-bases, or any other technological advancements such as the 'augmented reality' developed by Microsoft in its 'Holo-lens'. There is an additional exemption for cinematographic films which utilise structures and works of architecture available in the public. [33]

Neelkanth Darshan was a short feature film which was shot in the Akshardham Temple situated in New Delhi, the architecture of which is protected under Copyright

[27] Copyright, Design and Patents Act, 1988, s62.
[28] Copyright Law (Urheberrechtsgesetz, UrhG), s59.
[29] The Copyright Act, 1957, s2(c).
[30] *Ibid* at s14.
[31] The Copyright Act,1957, s52(s),(t).
[32] *Bildupphovsrätt i Sverige ek.för. (BUS) vs Wikimedia Sverige (Case nr Ö 849-15).*
[33] The Copyright Act,1957, s52(1)(u)(i).

Laws. However, by virtue of the exception under Section 52, videography for the purposes of cinematographic films in public spaces, including the temple would not amount to an infringement. Interestingly, if the Akshardham Temple was recreated as a set for a play or drama, then this would not come under the exception and would amount to copyright infringement. Thus, what we see is a very narrow and parochial interpretation of the existing exception and rights.[34]

Thus, an underlying theme in most jurisdictions is the lack of proportional development in the copyright regime with the progress in technology, and that the 'freedom of panorama' as it currently exists does not account for the various possibilities that are likely to arise in the future.

III. Applying Copyright Defences to Public Photography

Before analyzing the importance of developing a 'bright-line' rule for the 'freedom of panorama' and for reforming the current copyright protection granted to works in public spaces, it is important to understand in brief as to why the normative defences would fall short in the given circumstances.

i. Fair Use

The defence of 'fair-use' grants an exception in certain circumstances for the unauthorized use of certain copyrighted material, so as to prevent the stifling of that which copyright law seeks to protect and encourage.[35] Determination of a case by analysing the 'fair use' principle involves the application of a four prong test, which includes determining the purpose of the use, including whether it is used for commercial or non-commercial purposes; the nature of the copyrighted work; the amount or the portion used; and the ultimate effect of the use upon the potential market. The application of this test would largely be determined based on the facts and circumstances of the given case and thus remains highly ambiguous. While 'fair-use'

[34] Swaraj Paul Barooah,'Don't Copy My Architecture' *(SpicyIp)* < https://spicyip.com/2014/01/guest-post-dont-copy-my-architecture.html> Accessed 8th July,2021.
[35] Copyright Law of the United States, 17 U.S.C §107(1984).

can be used in most cases of photographs taken by tourists and common people, the most contentious aspect is determining the 'commercial' usage of a picture. Would uploading a picture on a social media site, run by advertisements, still be a non-commercial usage of the work? In such circumstances, there is no control over the further distribution or use of the picture, making it uncertain as to whether it is being used for commercial purposes or not. This is just one issue emerging in the sphere of technology. Information repositories such as wikimedia, despite not using the images for commercial purposes, would not be able to claim the defence of fair use. Similarly, Google-streets, augmented reality,[36] video games etc., would not qualify under this defence. The trade-off between the developmental possibilities and the copyright protection granted to artists in the public sphere is disproportionate. Copyright Law exists to encourage the growth and development of innovation and creativity, while the situation over here is quite contrary. Over time, the third prong of the fair-use defence has also been diluted as the determination of the amount of the work which has been copied, needs to take into consideration the 'nature' of the work in contention. [37] A photograph of an artistic work in most circumstances would involve a use of the entire piece,[38] making an analysis on the third factor inconsequential.

This defence in India is known under the head of 'fair dealing' and encompasses mere exceptions. While this makes the analysis more objective, it carries with it the risk of being extremely narrow and rigid. It includes an exception for research or private use and criticism. It also includes an exception explicitly for reporting and within its ambit fall newspapers, periodicals, cinematography films and photographs. However, this too is restricted for reporting and leaves several questions unanswered.

At the EU level, there also exists an explicit list of valid exceptions as 'fair dealings. This is much wider in scope than the one prevalent in India. Among other things it includes a broad exception to use works available in the public sphere.[39] However, given that it is not mandatory in nature, there exists considerable variations in its implementations across different countries. While the 'fair-use' doctrine as provided for under the American Law is vague and ambiguous, it would nevertheless provide

[36] Afoaku M, 'The Reality Of Augmented Reality And Copyright Law' (2017) 15 Northwestern Journal of Technology and Intellectual Property.
[37] Nunez v. Caribbean Int'l News Corp., 235 F.3d 18 (1st Cir. 2000).
[38] Sony Corp. v. Universal City Studios, 464 U.S. 417 (1984).
[39] *Ibid* at 20, s5(3)(h)

for a more flexible approach towards accommodating technological developments.[40] However, even this interpretation of the test would have to be modified to a considerable degree with each advancement and would leave the current situation in an even messier position.

Thus, the 'fair-use' defence is not equipped to deal with the plethora of cases which have arisen because of the advancement in technology and only adds on to the obscurity plaguing the current regime.

ii. De-Minimis

The defence of de-minimis originates from the principal that the law does not engage in trifles.[41] It is often used as a tool in determining the threshold of the 'fair-use' defence. While analysing whether there exists a defence to the infringement on this ground, one needs to determine the 'substantial similarity' between the original work and the work which is alleged to have been copied. There would usually exist an exception to infringement in those cases where the copying has been minimal. For instance, an insignificant copying in a picture, with say multiple artistic works in the background or where the third-party work is blurred and not of primary importance would amount only to a *de-minimis'* infringement. As mentioned in the previous section while explaining the 'fair use' doctrine, this analysis with respect to public photography is futile as in most circumstances, a photograph of a public work would include a copy of the entire work in question.

Further, this analysis is fraught with confusion given the subjective nature of determining 'substantiality'.[42] Rather than engaging in substantial similarity, it might help to determine the impact of the infringement. If the ultimate effect is inconsequential,[43] it might probably be exempted under this ground. However, one can see the apparent drawback of applying this in the case of public photography. While this might exempt photographs taken for private use, it might not encompass within its ambit, the subsequent usage of such photographs, including mere sharing on social media. Thus, the *de-minimis* defence is relatively weak given that it has no

[40] Anthony Rosborough, 'Lessons From Copyrightx: The Top 3 Differences Between EU And US Copyright Law – Intellectual Property Society' (*Gu-ips.org*, 2021) <https://gu-ips.org/index.php/2019/04/21/lessons-from-copyrightx-the-top-3-differences-between-eu-uk-and-us-copyright-
[41] Ringgold v. Black Entm't Television, Inc., 126 F.3d 70 (2d Cir. 1997)
[42] *Ibid* at 40.
[43] Knickerbocker Toy Co. v. Azrak-Hamway Int'l, Inc., 668 F.2d 699 (2d Ci. 1982).

statutory foundation and can be used in only those circumstances where the work that is copied is minimal, not in focus or when the infringement does not have any consequences to the owner of the original work. If anything, this defence further adds to the ambiguity in the current regime as determining the outcome of a particular action is particularly cumbersome and bound to attract errors.[44]

IV. Strengthening the Freedom of Panorama

Almost everyone has at some point taken a photograph, and to most people the term 'freedom of panorama' is alien. However, among photographers, there is considerable confusion with respect to the scope of the rights available across the world, and there has been minimum discussion on the same. One has to weigh out the pros and cons of granting this freedom to users. On the one hand there exists the rights and interest of those artists whose works are visible in public spaces, and on the other hand there exists the right to freedom of expression,[45] and the development of technology and creativity.[46]

The author suggests a mid-way for protecting both parties and ensuring that creative progress in society is not stymied. Taking inspiration from the EU directive on copyright[47], there should be a blanket 'freedom of panorama' for all works situated in the public sphere. This reduces the confusion and discretion granted to judges to determine the contentions on a case-by-case basis. Thus, in the American sphere, this would include an expansion of §120(a) of the US Copyright Law, to all those works which are available in public spaces, not limited to buildings. In the EU, this would include making the provision in the directive mandatory for all nations, bringing in uniformity in an otherwise contentious area. Coming to the Indian jurisdiction, there should be an expansion in the understanding of what an exception for photographs of public works would entail.[48] While there exists an almost unrestricted right of photography for all works accessible in the public, there is no clarity as to what use

[44] *Ibid* at 3.
[45] Jed Rubenfeld, The Freedom of Imagination: Copyright's Constitutionality, (2002-2003) 112 Yale LJ [xvii].
[46] U.S. Const. art. 8.
[47] *Ibid* at 18.
[48] The Copyright Act,1957, s52(1)(u)(i)

these works can be put to and further, if any different understanding of photography would also fall under this exception.

However, the question about the protection of the rights or interests of those artists or architects whose works are available in the public remains unanswered. There are several situations which need to be taken into consideration before reaching a determinative answer on this front. Firstly, for an architect, the primary purpose of designing a building would be to have it constructed and to eventually earn money from its 'functionality'. These architects would not seek to earn revenue or compete with those artists who create merchandise, sketches or photographs of the building. Thus, granting a blanket freedom for buildings has not been extremely contentious.[49]

The second situation includes those artists who are aware of the fact that their works are going to be installed in public spaces. There also exist artists who consent to their commissioned work being displayed to the public. In such a situation, they would continue to hold the copyright over the intangible aspects of their work. If there exists an absolute 'freedom of panorama' in the given jurisdiction, the artist would be reasonably aware of the implications of a public display of their work. One could expect that works which can be viewed by the public would pique their curiosity and creativity and might eventually result in its reproduction or adaptation.[50] They would have the freedom of weighing their options and opting out of the public display of their work. Thus, granting a 'freedom of panorama' in such situations would be beneficial to the greater public interests, while also ensuring that the rights of the artist are protected. Further, similar to the argument raised for architects, the incentive provided to artists whose works are displayed to the public does not lie in mere monetary benefits. Artists are primarily motivated by the prestige, popularity and recognition attached to having their work displayed in the public. It is highly unlikely that granting the public the freedom to photograph such works would reduce the incentive for artists to create them in the future.[51]

However, this freedom becomes contentious and detrimental to artists in those cases where the owner of a particular piece of work displays it to the public, without the consent of the artist. The law in such cases, should seek to protect the right of the artist

[49] Mary LaFrance, 'Public Art, Public Space, And The Panorama Right' (2020) 55 Wake Forest Law Review.
[50] *Ibid* at 23.
[51] *Ibid* at 3.

and to prevent the unconsented use of their work in public. In fact, Japan and Korea are the only two countries that require the owners of such artwork to take the consent of the artists before they can display their work to the public.[52] Artists should have the freedom in determining what is done with their work and should be given the liberty to consent to their work being accessible under the 'freedom of panorama'. This might prove contentious given the existence of the right of 'first sale' granted to owners of a copyrighted work. However, in both America and India, the moral rights of artists are protected despite a transfer in ownership over the work in question. [53] As such, the artist would still be able to protect their work and would have a say if such public installation or the photographs taken of the same would amount to a deterioration or atrophy of the work in question.[54] This moral right would also include the right to attribution, thus preserving the prestige and accolade that would flow from such public installation.

Thus a 'bright line rule' granting a freedom of panorama to all works accessible in public spaces, would reduce the ambiguity prevalent in the given region. It reduces the discretion granted to judges to apply the defences of fair-use and *de minimis* on a case-by-case basis and instead instils confidence in the public.[55] This also puts ordinary artists on an equal level by grounding their rights in a concrete statutory provision rather than relying on uncertain defences.

Most importantly, a universal 'freedom of panorama' would also encourage the development of technology. For instance, Massive Open Online Courses ("MOOCs"),[56] augmented reality,[57] real time maps etc., heavily rely on the photographs and images of public spaces. Despite a wide exception being grated for education and research purposes under the defense of fair-use, the same hasn't been extended to MOOCs. This becomes especially important in light of the Covid-19 pandemic and the gradual shift to online accessible education. As such, reducing the restrictions in using images of

[52] Copyright Act, Law No. 48 of 1970, art. 30bis., 45-46 (Japan); Copyright Act, Act No. 432, Jan. 28, 1957, amended by Act No. 15823, Oct. 16, 2018, art. 35(1) (S. Kor.).
[53] Amarnath Sehgal case v Union of India [2005] (30) PTC 253 Del.
[54] Kapoor v. Nat'l Rifle Ass'n of Am, 343 F. Supp. 3d 745 (N.D. Ill. 2018).
[55] *Ibid* at 14.
[56] Guides: Copyright Resources To Support Publishing And Teaching: Use Of Copyrighted Materials In Online Courses' (*Guides.library.upenn.edu*, 2021).
[57] *Ibid* at 32.

public works would go a step forward in increasing accessibility in quality digital education.

V. Conclusion

Through the course of this paper, we have seen how there exists considerable ambiguity in the area of public photography. There is no clarity with respect to the rights granted to public photographers across different jurisdictions. It thus becomes crucial to enforce a blanket 'freedom of panorama', while also protecting the minimum moral rights of the artists, as explained above. This would still be the first step towards increasing access and encouraging creativity. There remain numerous questions which need to be clarified and many more which are likely to crop up in the near future. However, the importance of developing a concrete rule on this front serves several benefits which includes among other things an increase in the confidence of the public, development of public welfare services, considerable decrease in the reliance on subjective tests applicable to copyrighted works and so on. It thus becomes crucial to view the 'freedom of panorama' in an expansive manner, so as to accommodate for all the overhauls in the Copyright regime being bought forth by technological advancements.