Cosplay and Copyright Law: Navigating Infringement and Fair Use in Creative Expression

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Abstract— **Cosplay, the practice of embodying fictional characters through costume, props and performance, has grown from a fan pastime into a commercial industry, with professional cosplayers earning from appearances, sponsorships, social media and the sale of costumes, patterns and photographs. This growth raises a question that the law has yet to settle: whether cosplay infringes the copyright in the characters and costumes it reproduces, and whether the fair use doctrine offers a defence. The paper first examines whether fictional characters and costumes are independently copyrightable, drawing on the scènes à faire doctrine, the idea-expression dichotomy, the sufficient delineation test, and the treatment of costumes as "useful articles" in Star Athletica v. Varsity Brands. It contrasts the position on props and armour in the United States with the UK ruling in the Stormtrooper helmet litigation involving Lucasfilm. It then applies the four statutory fair use factors to cosplay, giving particular attention to commercialisation and transformative use. It argues that transformative forms, such as gijinka, gender-bent and crossover cosplay, are better placed to succeed than faithful reproduction, while mass production and sale of replicas weigh against fair use. The paper also considers the Indian position under the Copyright Act, 1957, the Designs Act, 2000, and the fair dealing provisions of Section 52. It concludes that the availability of fair use for professional cosplay remains uncertain for want of precedent, and that licensed cooperation between cosplayers and rights holders offers a more stable path than reliance on the defence.**

Index Terms— **Cosplay, Copyright, Fair Use, Transformative Use, Fictional Characters, Fair Dealing**

I. INTRODUCTION

Individuals worldwide engage in the practice of cosplay at comic conventions and related events, where they meticulously recreate their favorite fictional characters through detailed costumes, stylized wigs, and intricate makeup. This practice, known as cosplay, has evolved significantly since the early days of conventions, such as those dedicated to "Star Trek". While cosplayers once predominantly portrayed well-known characters like Darth Vader, today's participants frequently embody a wider range of innovative concepts, highlighting the progression and diversification of the art form. As cosplayers continue to hone their skills, they increasingly select complex subjects to represent, showcasing their dedication and craftsmanship.

The rise of comic conventions has played a significant role in the surge of fan cosplay, providing enthusiasts with a centralized platform to display their creations and fostering a sense of community. In recent years, the cosplay industry has gained significant commercial traction, with professional cosplayers benefiting from sponsorship deals and social media influence. However, the increasing prominence of cosplay has raised questions regarding copyright infringement, as various governments examine the relationship between copyright laws and cosplay culture. This paper further explores these copyright concerns, particularly as they relate to professional cosplayers, and evaluates the potential application of the fair use doctrine as a defense. Given the evolving legal landscape surrounding copyright and the portrayal of fictional characters, understanding the interplay between cosplay and copyright law is essential for cosplayers navigating this complex environment.

II. RESEARCH OBJECTIVE AND QUESTION

Primary Research

The primary objective aims to evaluate: "Whether cosplayers infringe upon copyright through their portrayals of fictional characters and costumes, and to assess how the fair use doctrine could serve as a potential defense?"

Secondary Research

The secondary objective is to explore the implications:

(i) Commercialization of cosplay on copyright law

- How does the commercialization of cosplay impact copyright law?
- What legal challenges arise from professional cosplayers' commercial activities?

(ii) To examine how different jurisdictions address cosplay-related copyright issues

- How do various jurisdictions interpret and enforce copyright laws in relation to cosplay?
- What differences exist in their approaches to addressing copyright infringement in cosplay?

(iii) To identify the transformative elements within cosplay that may bolster a fair use defense.

- What transformative elements are present in cosplay that may support a fair use defense?
- How do these elements influence legal considerations of copyright infringement in cosplay?

III. FLOURISHING COMMERCIALIZATION OF COSPLAY

Cosplay, defined as the practice of embodying a fictional character through costume and performance, has evolved into a rapidly expanding industry. While the concept has long been present in various forms, the term itself only gained recognition in the 1980s. Cosplay typically draws from diverse media sources such as films, television programs, comic books, video games, and other cultural texts, reflecting its broad appeal and growing prominence in popular culture. The majority of the time, it has something to do with comic book conventions or other pop culture events, where thousands of fans dress as their favorite characters from various media, including Harry Potter, Star Wars, Doctor Who, Lord of the Rings, Pokemon, Naruto, Final Fantasy, and Marvel and DC Comics. Although most cosplayers simply do it for fun, wearing their costumes for conventions like Comic-Con and then returning to their normal professions afterwards, there are a handful who have made it their business[1]. These individuals are professional cosplayers who are compensated for attending events such as conventions and gatherings, similar to other prominent public figures. Professional cosplayers are those who have proven themselves to be the epitome of the art form and who are well-respected by their contemporaries for their exceptional character portrayals. They put a lot of thought and effort into their outfits[2].

According to projections, the worldwide cosplay business will grow from an estimated $4.62 billion in 2020 to over $23 billion in 2030[3]. The internet is another medium where this approach is quickly gaining traction. Nowadays, there is a substantial cosplay community on YouTube, TikTok, Instagram, and Twitch.

In light of this, it's hardly surprising that the several authorities have decided to encompass professional cosplay under copyright law especially Japanese government as in recent times it has become more than just a harmless pastime. Copyright is not necessarily infringed upon just by donning a character's costume. However, it might be in the case that the cosplayer is being compensated to do so, such as for an appearance on a program or event[4].

It is not an implausible notion that copyright law and cosplay might be at odds with one another. Many cosplayers achieve their goals of convincingly portraying the fictitious characters that are the subject of copyright protection. To illustrate the point, let's say a cosplayer wishes to portray the character 'Ciri'

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[1] Emma Steen, Things You Only Know When You Are... A Professional Cosplyer, TIME OUT (2019), https: //www.timeout.com/tokyo/things -to-do/things-you-only-know-if-youre-a-professional-cosplayer.

[2] Molly Rose Madonia, *All's Fair in Copyight and Costumes: Fair Use Defence to Copyright Infringement in Cosply, 20* MARQ. INTELL. PROP. L. REv. 179 (2016).

[3] Aniket K & Roshan D, Cosplay Costumes Market by End User, Application and Distibution Channel: Global Opportunity Analysis and Industry Forecast (2021-2030), ALLIED MARKET RESEARCH https://www.alliedmarketresearch.com/cosplay-costumes-market-A13135.

[4] Japan to Clarify Copyrght Rulesfor Cosplay, THE JAPAN TIMES (Jan. 31, 2021), https://www.japantimes.co.jp/news /2021/01 /31/national/cosplay-copyrightinfringement/#:-:text-While%20wearing%20a%20costume%20of,an%20appearance%20at%20an%20event.

from the acclaimed fantasy novel series 'The Witcher.' To pull it off, they'd have to design and wear an iconic outfit bearing the character's likeness. Consequently, a cosplayer would ironically have to violate their beloved copyrighted work in certain instances. It is crucial to analyze the copyright issue within this framework, as derivative works are created when two-dimensional characters and costumes from films, video games, and comic books are adapted into three-dimensional forms.

IV. THE COPYRIGHTABILITY OF FICTIONAL CHARACTERS AND COSTUMES

When evaluating the potential for copyright infringement in a cosplay context, two primary factors must be examined: first, whether the fictional character is eligible for copyright protection; and second, whether the costume associated with that character is independently copyrightable. The determination of copyrightability for both the character and the costume depends on the specific characteristics of the cosplayer's subject matter, which may result in affirmative conclusions for either or both factors.

A. Copyrightability of Fictional Characters:

If a stock character (a minor supporting character in a work of fiction, like a snooty cheerleader, a gruff grandpa, a nosy neighbour, etc.)[5] does not have any distinguishing personal characteristics, their costume can be protected by copyright (like a Stormtrooper from Star Wars), but the character itself cannot. Ethan Hunt from Mission: Impossible is a good example of a fully realized character whose unique history and personality warrant copyright protection but whose dull look does not.

A frequent example of an element that does not qualify for copyright protection is stock characters. This is because they are considered to be part of the "scenes a faire" theory. The idea-expression diachotomy, to which this philosophy is connected, states that while ideas are not copyrightable, the expression of ideas is. It has been further determined that stock characters do not qualify for copyright protection due to their lack of distinctiveness and commonality. The 'Sufficient Delineation Test,' established by the court, ensures that characters are protected solely in cases where they are sufficiently depicted in the original work[6].

If a character is so integral to the story that people can't help but root for them, copyright protection might be in their future. The case of Warner Brothers v. Columbia[7] established this standard, it asserts that a fictional figure can only receive copyright protection if it is essential to the narrative being conveyed. This implies the fictitious character can't just be there; they have to play a key role in the tale[8].

In the case of D.C. Comics v. Towl[9], the 9th Circuit Court determined that the defendant's replica automobiles infringed upon the derivative works since the character 'Batmobile' is eligible for copyright protection.

B. Costume Design and Copyright Considerations

Costumes are classified as "useful articles", rendering them non-copyrightable unless they contain independent graphical, pictorial, or sculptural elements that differentiate them from the garment's functional aspects[10].

One point of contention in "Star Athletica" was the cheerleading costumes made by Varsity Brands[11]. Before using them on their cheerleading uniforms, Varsity Brands registered many copyrights for flat designs. By creating nearly indistinguishable cheerleading costumes, Star Athletica allegedly infringed upon this copyright. According to US Supreme Court ruling, an aspect of a practical object

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[5] *Stock Characters,* TV TROPES, https://tvtropes.org/pmwiki/pmwiki.php/Main/StockCharacters.

[6] *Nichols v. Universal Pictures Corporation*, 45 F.2d 119 (2nd Cir. 1930) (U.S).

[7] *Warner Brothers v. Columbia Broadcast System*, 102 F. Supp. 141 (S.D. Cal. 1951) (U.S).

[8] Sanjana, *India: Exploring Copiynght Protection for Fictional Characters,* MONDAQ (Sept. 17, 2017), https://www.mondaq.com/india/copyright/1112382/exploring-copyright-protection-for-fictional-characters.

[9] *D.C. Comics v. Towle*, 802 F.3d 1012 (2015) (U.S).

[10] 17 U.S.C., Z101(2016).

[11] *Star Athletica, L. L. C. v. Varsity Brands, Inc.,* 137 S. Ct. 1002 (2017) (U.S).

may be deemed copyrightable if it resembles a separate two- or three-dimensional work of art. Such an aspect must be eligible for protection as an individual artistic creation in fields such as painting, graphics, or sculpture.

This provides more evidence in favor of cosplayers, who dress as fictitious characters and make props to go along with their outfits. They create a costume that looks very similar to the real thing in terms of size, shape, and cut, but they can't steal the exact patterns or embellishments that are protected by copyright[12].

C. Copyright Considerations for Props and Armor in Cosplay

Copyright law does not apply to cosplay accessories like as armor and props in the United States as they are not considered practical garments. Copyright holders may have their rights infringed upon if an exact reproduction of an item from a film is made (like Thor's hammer) or an item from an animation or a painting (like the Millennium puzzle). The concept of fair use does not apply to items like as armor, weaponry, and jewelry that are linked with well-known fictitious characters, as these items might be seen as works of sculpture.

Nevertheless, things are dramatically different in the UK. The Lucasfilm[13] lawsuit cleared prop designer Andrew Ainsworth to sell helmet duplicates of his own creations used by Stormtroopers in the original "Star Wars" picture. His legal argument was that the garments had a practical purpose and were not works of art, hence they do not qualify for complete copyright protection. He was successful in this endeavor. The UK Supreme Court upheld the lower court's ruling, establishing that the props and armor were distinctively recognizable and functioned as props and costumes within the film's narrative context.

V. EVALUATING THE LEGITIMACY OF COSPLAY: AN EXAMINATION OF FAIR USE PRINCIPLES

There are four components to the fair use test, and the courts must weigh all four in order to reach a verdict[14].

A. Purpose and Nature of the Use:

The significance of the first criterion in assessing the fairness of a usage claim is paramount. Courts evaluate a party's request for fair use by examining the purpose of the usage, often favoring instances deemed educational and non-commercial. However, this does not imply that all educational or charitable uses automatically qualify as fair, nor does it preclude the possibility of fair use in commercial contexts. Transformative uses, which introduce new expression or meaning without merely replacing the original work, are frequently regarded as fair. Such uses provide distinct value that enhances the original content rather than replace it[15].

(i) Commercial Aspects of Cosplay

While considering all of the elements, it is important to remember that commercial motivation is not always associated with infringement. While many secondary users do so with the intention of making a profit, placing too much emphasis on this motive limits the defense. The commercial aspect, however, is undeniably crucial. Due of the company's commercial character, the district court in DC Comics Inc. v. Unlimited Monkey Business[16] rejected the fair use defense.

Cosplayers rake in the dough through social media, convention appearances (where top cosplayers allegedly make approximately $50,000 each appearance), picture sessions with fans, and the sale of both the photos and the patterns for their costumes. Since this constitutes commercial usage, the copyright holder is likely to benefit. Expert cosplayers in the fields of costume design, prop making, and wig styling sometimes take commissions from those in the

[12] Mary Ellen Tomazic, *Costumes, Characters and Copyrght: A Cosplayer's Guide to Recent Cases,* INTELLECTUAL PROPERTY LAW (Jun. 16, 2017), https://met-iplaw.com/met-iplaw2012/?p-200 ["Mary Ellen"].

[13] *Lucasfdm Ltd. v. Ainsworth*, 12 EMLR (2010) (U.K).

[14] U.S. Copyright Office Fair Use Index, COPYRIGHT.GOv, https://www.copyright.gov/fair-use/.

[15] *Id.*

[16] *DC Comics Inc. v. Unlimited Monkey*, 598 F. Supp. 110, 118 (N.D. GA 1984) (U.S).

industry[17]. Unlicensed props and costumes can be sold for a profit, which means the copyright holder benefits from commercial use.

A professional cosplayer's primary motivation for going to comic conventions, meanwhile, isn't financial gain. One of the main draws of the convention is the opportunity it provides to network with other fans who have similar interests. As a result, these characters have a special place in the hearts of cosplayers as cosplay is a form of expression and tribute for them. Cosplayers pay homage to these figures in this way. The expense of attending the convention and making the costume can be partially covered by the payment, which is seen as an additional benefit. Here, cosplay would be considered fair use as the usage of the character is secondary to the primary goal and inspiration behind attending the event.

The court in Campbell[18], also observed that a work transformational aspect might lessen the impact of commerciality.

(ii) Transformative Use in Copyright Law

Cosplay, representing a form of fan creativity, may qualify as fair use if it significantly transforms the original work by infusing it with new expression and meaning, mitigating commercial considerations. According to the Campbell case[19], fair use balances the commerciality of the work against its transformative nature. Cosplayers, by infusing their own resourcefulness and originality, often transform two-dimensional characters from manga, anime, or comics into three-dimensional, real-life portrayals. This creative process could qualify as transformative use, even if the cosplayer benefits commercially from selling costumes or accessories[20].

The transformative aspect of cosplay is evident in the skill and imagination required to bring a fictional character to life. Cosplayers typically start with an image of the character's outfit and then adapt it using their own motions, materials, and creativity to produce something unique. They often reimagine how a character's props or costume elements would function in the real world, utilizing their artistic abilities to enhance the outfit. Despite this creativity, courts may not consider a mere three-dimensional reproduction of a two-dimensional character sufficiently transformative to qualify for fair use.

However, forms of cosplay are more likely to qualify as transformative fair use. For instance, gijinka cosplay, where non-human characters are given human forms, or gender-bending cosplay, where male characters are reimagined as female and vice versa, involve significant creative changes[21]. Crossover cosplay, which combines characters from different genres (e.g., Marvel with DC or Disney with anime), also demonstrates a high level of originality. These types of cosplay reflect a personal interpretation of the characters and add fresh meaning to the original designs, making them more likely to be considered fair use[22].

Each cosplayer's distinct physical features and personal style contribute to a unique portrayal, ensuring no two recreations of the same character are identical. For example, at the 2021 Anime NYC event, Yalda's reinterpretation of Sailor Moon creatively merged her school uniform with superhero elements, demonstrating cosplay's potential for transformative expression[23].

Additionally, the context in which cosplay is performed, such as at conventions or public events,

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[17] Deena ElGenaidi, *Cosplyers are dressing up and cashing in,* LINKTREE, https://Iinktr.ee/blog/how-professionalcosplayers-make-money-social-media/.

[18] *Campbell v. Acuff-Rose Music, Inc*., 510 U.S. 569.

[19] *Id*.

[20] Christina Chung, Holy Fandom, Batman! Commerdal Fan Works, Fair Use, and the Economics of Complements and Market Failure, 19 B.U. J. SC1. & TECH. L. 381 (2013).

[21] Tiffani Daniel, *10 Creative Spider-Verse Cosplays That Still Look Just Like The Characters,* SCREENRANT (Dec. 17, 2019), https: //screenrant.com/spider-verse-creative-cros sover-cosplays/#deku-spider-man.

[22] Kayree Lee, *Cosplay: Gfinka Cosplay,* THE MAGIC RAIN (Oct. 8, 2017), https://themagicrain.com/2017/10/cosplay-gijinka-cosplay/.

[23] Jason Alpert-Wisnia, *New York Comic Con and the art of cosplay,* WASHINGTON SQUARE NEWS (Oct. 17, 2022), https: //nyunews.com/2022/10/16/new-york-comic-con-and-the-art-of-cosplay/.

also separates the character from its original fictional environment. This setting adds another layer of transformation, as the character is now being portrayed in the real world, surrounded by other fans, rather than in its original fictional narrative[24].

Cosplay transcends the mere replication of characters' outfits and accessories, as it fundamentally embodies the personal creativity that cosplayers infuse into their portrayals. Transforming a two-dimensional character into a three-dimensional representation often yields a distinctive artistic expression. If cosplayers incorporate their unique style and personality, this may substantiate a fair use claim, viewing cosplay as a creative reinterpretation of the original work.

B. The Legal Characterization of the Copyrighted Work

The second factor examines the nature of the copyrighted work. Courts apply this standard to afford greater protection to works more aligned with the author's original intent. As a result, fictional works typically receive stronger copyright protection than factual works or those in the public domain, favoring the author's rights.

Cosplay typically involves embodying fictional characters from various media, such as films, comic books, television shows, and video games, while adding personal stylistic elements. These works warrant copyright protection due to the significant creative effort invested by their authors in developing both the characters and their respective fictional worlds. The court in Kelly v. Arriba Soft Corp[25] held that widely circulated published characters are more likely to fall under fair use. However, fair use is more restricted for unpublished works, as the author retains control over their initial public display, thus offering greater protection to the copyright holders of well-known characters[26].

In the Bill Grahams case[27], the court deemed the second fair use factor less significant than transformative use. Thus, when cosplay is transformative, this factor holds minimal impact on professional cosplayers.

C. Consideration of Magnitude and Substantiality in Fair Use for Cosplay

The third factor in determining fair use is the magnitude and significance of the borrowed content. Cosplay is more likely to qualify for fair use when only a small portion of the original work is utilized. Most cosplayers incorporate recognizable elements of characters and costumes to ensure onlookers can identify the source material[28]. Failure to accurately capture the character's essence could undermine the portrayal, especially for professional cosplayers. A mere replication of minor details is insufficient for a convincing depiction. Fans consider various factors, such as costume, personality, and distinctive traits, when selecting characters to cosplay. Satirical adaptations may, however, enhance the argument for fair use.

D. Evaluating the Potential Market Impact on the Original Work

The fair use doctrine in copyright law is essential for assessing the permissibility of using copyrighted material without authorization from the copyright holder. A critical consideration in this assessment is the potential market impact of the original work. If fair use adversely affects market viability, it diminishes the copyright holder's profitability and, consequently, their incentive to create new works[29].

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[24] Michael Lacerna, *Sailor Moon Cosplay Recates Iconic Transformation Sequence,* CBR.COM (Dec. 8, 2021), https: //www.cbr.com/sailor-moon-cosplay-tranformation-sequence/.

[25] *Kelly v. Arriba Soft Corp*., 280 F.3d 934 (9th Cir. 2002) (U.S.).

[26] Rich Stim, *Measuring Fair Use: The Four Factors,* STANDFORD LIBRARIES, https://fairuse.stanford.edu/overview/fairuse/four-factors/.

[27] *Bill Graham Archives v. Dorling Kindersley*, 448 F.3d 605 (2006) (U.S).

[28] *Fanworks, Fair Use, and Fair Dealing,* ORGANIZATION FOR TRANSFORMATIVE WORKS, https://www.transformativeworks.org/fanworks -fair-use-and-fair-dealing/.

[29] W. Michael Schuster, *Fair Use and Licensing of Derivative Fiction: A Discussion of Possible Latent Effects of the Commerdalization of Fan Fiction,* 55 SOUTH TEXAS L. REV. 540 (2014).

In assessing the market impact of a use, courts examine conventional, reasonable, and probable markets, including derivative markets such as sequels, adaptations, or merchandise. This evaluation is particularly relevant to cosplay, where fans recreate costumes and props. Cosplay can enhance the visibility of original works, potentially increasing consumer interest in purchasing related media, such as comic books or films[30].

Copyright issues emerge when cosplayers engage in the sale of costumes and props, particularly in cases of mass production of items derived from copyrighted characters. While individual creations may fall under fair use, large-scale production infringes on the copyright holder's exclusive rights to control reproduction and distribution. To mitigate infringement risks, cosplayers must secure licenses from copyright holders before selling such items. This principle is exemplified by the lawsuit filed by Paramount Pictures v. Axanar Productions Inc.[31] for a fan film that raised over $1 million through crowdfunding. The court determined that the film did not sufficiently transform the original Star Trek works to qualify for fair use, impacting the market for official merchandise.[32]

The newly established regulations imposed strict limitations on the duration of fan films, the utilization of original Star Trek props and costumes, and the commercial distribution of such films. Fan filmmakers were mandated to operate as unpaid volunteers, precluding any financial compensation. These measures aimed to safeguard Paramount's market for Star Trek merchandise and prevent competition from fan-generated content[33]. In a similar vein, 20th Century Fox issued cease-and-desist letters to Etsy sellers producing knitted hats inspired by the canceled series Firefly. The hats, known as "Jayne's Hat," were deemed exact replicas, rendering fair use inapplicable. Subsequently, 20th Century Fox licensed the design, allowing authorized sales[34].

These cases underscore the inherent tension between fan creativity and copyright enforcement within cosplay communities. While many copyright holders support fan engagement at conventions, they swiftly assert their rights when such creativity is commercialized. Costumes and props derived from copyrighted characters are typically safeguarded under both copyright and trademark law. Consequently, the interplay between fair use and market harm remains nuanced, as copyright holders seek to protect their interests while acknowledging the potential for fan engagement to enhance demand for their intellectual property.

VI. THE INDIAN SCENARIO

Cosplay has been more well-known and popular in India since the first Comic Con India in 2011. From its humble beginnings as a pastime, cosplay has grown into a lucrative industry, with many cosplayers now making a comfortable living at conventions across the world. As more and more people become aware of the ability of Indian cosplayers, it is likely that they will continue to thrive in this sector. Thus, intellectual property rules should be considered while planning for the future of cosplay culture in India.

Copyright protection for imaginary characters can be extended under the Copyright Act, 1957 ("1957 Act"). Indian courts have issued many rulings on the copyrightability of fictitious characters throughout the years. The courts have held that fictitious characters can be protected by copyright in several cases, such as Star India v. Leo Burnett[35] and Malayala Manorama v. VT Thomas[36].

It is the Designs Act, 2000 ["2000 Act"] and the 1957 Act that mainly safeguard costume designs in India. Nevertheless, several court decisions have shown that a design or other work cannot simultaneously be protected under both statutes. Rajesh Masrani v.

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[30] *Id*.

[31] *Paramount Pictures v. Axanar Productions Inc*, No. 2:15-cv-09938-RGK-E (C.D. Cal. Jan. 3, 2017).

[32] Tomazic, *supra* note 12.

[33] *Id*.

[34] Melissa Anne Agnetti, *When the Needs of the Many Qutweg the Needs of the Few: How Logic Cear y Dictates the First Amendmen's Use as A Defence to Copyright Infringement Claims in Fan-Made Work, 45* SOUTHWESTERN L. REV. 143-144 (2015).

[35] *Star India v. Leo Burnett*, 2003 (27) PTC 81 Bom (Ind.).

[36] *Malayala Manorama v. VT Thomas*, AIR 1989 Ker 49.

Tahiliani Design Pvt. Ltd.,[37] esstablished that the 1957 Act, and not the 2000 Act, provides protection for works that have been determined to be artistic. According to Section 13 of the 1957 Act, copyright protection might be extended to costume designs if they are determined to be unique artistic works.

Unauthorized use of copyrighted works for private or personal use is covered by the fair dealing exception to infringement under the Section 52, Copyright Act. According to the Kerala High Court's ruling in Civic Chandran v. C. Ammini Amma[38], three things must be considered in order to establish fair dealing:

(i) the amount and worth of the subject matter in relation to the criticism or comments;
(ii) the reason for its taking; and
(iii) the possibility of competition between the two works.

All of these things line up with the four criteria for fair use that the Section 107, United States Copyright Act of 1976. Cosplaying, then, won't be a problem when done for fun. Copyright infringement cases, however, must consider the commercialization of cosplay.

VII. FUTURE TRENDS

As cosplay continues to expand globally, the legal frameworks governing it are likely to evolve in response to the increasing commercialization of the practice. With cosplay projected to reach over $23 billion by 2030, more nations may follow Japan's lead in developing regulations that address cosplaying as a commercial activity, potentially requiring professional cosplayers to obtain licenses for portraying copyrighted characters.

As intellectual property laws increasingly encompass aspects of cosplay, the issue of fair use will continue to be contentious. Cosplayers who infuse transformative elements such as reimagining characters or merging different genres may find more leeway under fair use, as courts might recognize their creative contributions. This trend could result in a greater emphasis on innovative and distinctive character portrayals that move beyond mere replication, pushing cosplay further into the realm of recognized artistic expression.

Furthermore, as digital platforms grow, so will the influence of cosplay as a form of social media content and branding. Platforms like Instagram, TikTok, and YouTube are expected to remain central to the industry's development, enabling cosplayers to reach larger audiences and generate revenue through brand partnerships. This shift may also lead to an increase in copyright-related disputes as the boundaries between homage and infringement blur, driving a need for clearer legal precedents and licensing frameworks to support the industry's growth responsibly.

VIII. CONCLUSION

In conclusion, not every character or outfit will be copyrightable. Using the fair use defense might not be enough for a cosplayer to justify their conduct if their character or outfit is protected by copyright. The fair use defense applicability to cosplay is also unclear. Therefore, further considerations are necessary, even if the first one may lend credence to the idea of fair use in cases involving transformations of characters and costumes. The second consideration may work against the cosplayer because copyright protection encompasses the vast majority of creative content. Regarding factors three and four, the same holds true. The applicability of the fair use defense to professional cosplay is unclear due to the lack of legal decisions or precedents on this matter.

Cosplayers get a rush out of making their costumes seem just like the real thing, and events like costume contests reward that level of accuracy. They may need to be more imaginative to overcome the obstacles of the very unique persona and the copyrightable clothing designs. Ultimately, the purpose of a fan-made costume is not to replicate the original work but to embody it and show how much the fan loves the piece by trying to imitate its aesthetics. Cosplayers can keep doing these "acts of association through attire" if they want to, but they should be more creative and unique.

Therefore, since a market has been created through commercialization, it becomes economically advantageous for a professional cosplayer to seek a license to the copyrighted work, even if their conduct probably constitutes a fair use. Professional cosplayers

[37] *Rajesh Masrani v. Tahiliani Design Pvt. Ltd*., AIR 2009 Del 44.

[38] *Civic Chandran v. C. Ammini Amma*, 1966 1 K.L.T. 608 (Ind.).

and copyright holders can have a more harmonious relationship by moving away from fair use and toward licensed cooperation.

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[3] *Warner Bros. Pictures, Inc. v. Columbia Broadcasting System, Inc.*, 216 F.2d 945 (9th Cir. 1954).

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