



UNIVERSITY OF OXFORD VS. RAMESHWARI PHOTOCOPY SERVICES

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ABSTRACT

Nowadays all the colleges and university in India are providing notes to the students thereby providing the texts and excerpts which otherwise is not easy for them to access. In order to provide notes to these students the faculty in charge provides notes to the photocopy shop of the university who in turn creates multiple copies and provides it to the students. This research emphasises whether such excerpts for students are legitimate or not. I will be emphasising the different sections involved in the copyright act and how they are acting in order to decide the legality of the case. The rights of the publisher, author and other neighbouring rights are also considered while doing the research. Also the main purpose of copyright was discussed and whether there was infringement of copyright by the licensed photocopy service of Delhi University or not.

Key Words- Copyright, neighbouring, research, legitimacy, Ownership, remedies

INTRODUCTION

COPYRIGHT

Meaning of Copyright---Copyright is exclusive right of multiplying, commercially dealing with and arrange assignment of the copies of the work performed recognized by

law as subject matter of Copyright for a specified period.¹

Subject matter of Copyright

Copyright is basically original creation of literature, dramatic, musical and artistic works. Copyright was subsequently extended to computer programme, cinematograph film and sound recording.²

The purpose of formation of Copyright law is to protect initiatives and protect intangible goods. Not only the invention or creation of the work is paramount but it is more important that it is reachable to the masses. The Delhi High Court held that, the photocopies from different books which are under the syllabus of the university won't be considered as copyright infringement as they are common and meant to grow the literacy rate of the state and this do not come under the ambit of copyright infringement. It was seen that it considered as reproduction of work by a teacher for his student in the duration of teaching as an infringement which do not fall under the scope of copyright law. The query to whether Indian copyright is natural or statutory is still vague. However in the past few years it is observed that, the private property is influencing the copyright law. This research focuses in the judgement of the Hon'ble High Court of Delhi in the case of "University of Oxford Vs Rameshwari Photocopy Services" regarding the usage of educational texts by public masses and how they can be exempted from the copyright law (i.e. private copyright law). This analysis/research has been divided in five part where in the first part, there will be introduction about the basics of copyright law in how it has affected the following case

¹ "Lectures on "Intellectual Property Rights" - by Ravi Shinde, Para No.-3, Pg.-15.

² *Ibid.*



pressuring on Private property disclosures. The subsequent chapter will be dealing on the summary/crux of the case, the chapter after that is on the reaction of different critiques towards the case on the last part will be the conclusion part of this research.

COPYRIGHT IN INDIA

In India, Copyright subsists in:

- original literary, dramatic musical and artistic works
- Cinematograph films: and
- Sound Recording

Literary work includes computer programme including databases. The subject matter of Copyright includes e.g. Poems, Novels, Music, School Textbooks; question paper set for examination; law reports; catalogues; consignment notes; directories; mathematical tablets; railway timetables; road books; guide books; books of scientific questions and answers; rules of a game; stud book; trade statistics; choreographic work or entertainment in dumb show; the arrangement of acting form a scene of which is fixed in a writing or otherwise, a painting, a sculpture, a drawing (including a diagram map, chart or plan), an engraving or photograph, whether or not any such work possesses artistic quality; architectural work or any other work of artistic craftsmanship etc.³⁴

LAW OF COPYRIGHT

The Copyright law is mentioned in the Copyright Act, 1957 and is amended subsequently from time to time is amended five times since it came into existence.⁵

“The Copyright (Amendment) Act, 2012” is the most substantial and the most recently amended. There are three important authorities and institutions for registration of Copyright which the Indian Copyright legislation provides, for the effective protection of Copyright and also for better enforcement of the Copyright of the concerned individuals. The following are the authorities:

- Copyright office
- Copyright Board
- Copyright Societies⁶

RIGHTS CONFERRED BY COPYRIGHT LAW:-

Copyright law confers the following rights on the owner of Copyright:

1. “Right to reproduce the work in any material form.
2. Right to issue copies of the work to public.
3. Right to perform the work in public, or communicate it to the public.
4. Right to make any cinematography film or sound recording of the work where the Copyright is in literary, dramatic or musical work.
5. Right to make translation of the work.
6. Right to sell or give on commercial rental or offer for sale or for commercial rental any copy of computer program.
7. Right to include the work in any cinematograph film where the Copyright is in an artistic work.
8. Right to make any adaptation of the work where the work is susceptible to such adaptation.”⁷

³ Supra Note-2.

⁴ <http://copyright.gov.in>

⁵ <http://www.lawctopus.com/academike/working-Copyright-Board-india-procedure-litigation-regards->

Copyright/, Last Seen- 5October 2020, 11:45P.M.

⁶ *Ibid.*

⁷ Lectures on Intellectual Property Rights - Ravi Shinde, Para No.-4, Pg.-14



THE BERNE CONVENTION

The requirement for a uniform system led to the formation and adoption of “The Berne Convention” to protect all the literary and all artistic work of the concerned individuals on September 9, 1886. This is the oldest treaty of International Copyright and is open to all states. Instruments of ratification and accession are deposited with the Director General of the World Intellectual Property Organization.⁸

The said Convention rests on three basic principles

- **The Principle of National Treatment-** It means that a Berne Member country must treat the other members of the Berne Treaty in the same manner as it is enjoyed by their own nationals
- **Automatic Protection-** Under Berne no formalities are required as pre conditions to protection
- **Independence of Protection-** Enjoyment and exercise of the rights granted is free from the existence of protection in the country of its origin of the work.⁹

⁸ WIPO, Intellectual Property Reading Material (1995) Pg -5.

⁹ Law of Copyright- Alka Chawla, Para No.-5, Pg- 13.

¹⁰ *Ibid.*

¹¹ Section-11 of Copyright Act, 1957-

“Copyright Board.—

1. As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall consist of a Chairman and not less than two or more than 1[fourteen] other members.—(1) As soon as may be after the commencement of this Act, the Central Government shall constitute a Board to be called the Copyright Board which shall

As time passed a need for a better and more systematic form of protection of copyright was in need, despite that the Berne Convention is considered as the mother of Copyright Law. After various treaties and conventions along came the WIPO Copyright Treaty, 1996.¹⁰

COPYRIGHT BOARD

The Copyright Board which is a quasi-judicial body, was constituted in September 1958. The Copyright Board is established under Section-11.¹¹ The jurisdiction of Copyright Board extends to the whole of India. The Board is interested with the work of resolving of disputes relating to Copyright registration, assignment of Copyright, grant of licences in respect of works withheld from public unpublished Indian works, production and publication of translations and works for certain specified purposes. It also sees other matters under the Copyright act, 1957.¹²

The Board contain powers similar to that of civil court and all proceeding conducted by Board should be considered as a judicial proceeding under the ambit of Section 192 & 228 of IPC, 1860. These are the other powers of the Copyright Board¹³:-

1. consist of a Chairman and not less than two or more than [fourteen] other members."
2. The Chairman and other members of the Copyright Board shall hold office for such period and on such terms and conditions as may be prescribed.
3. The Chairman of the Copyright Board shall be a person who is, or has been, a Judge of 2[***] a High Court or is qualified for appointment as a Judge of High Court.
4. The Registrar of Copyrights shall be the Secretary of the Copyright Board and shall perform such functions as may be prescribed."

¹² Lectures on Intellectual Property Rights - Ravi Shinde, Para No.-3, Pg.-46

¹³ <http://copyright.gov.in>

**POWERS:**

- “Power to grant compulsory license in published work.”¹⁴
- “Power to grant compulsory license in Unpublished Indian work.”¹⁵
- Power to grant license to produce and publish translations.
- Power to grant license to reproduce the published works for the benefit of general public.
- Power to carry out rectification of Register of Copyrights.
- Power to fix shares in resale of original copies.
- Power to hear appeals.

CHAPTER 3**WHAT IS MEANT BY LICENSING?**

The meaning of the term “license” means an authority to act something which would otherwise be inoperative, wrongful or illegal; a formal permission from a constituted authority to do something. It is a personal and revocable privilege to do some act or series of acts upon the lands of another without possessing any estate therein. It gives immunity to the licensee while acting under the privilege but confers no vested right by which he can rightfully enjoy it contrary to the will of grantor. A licence is an excuse by reason of the consent of the plaintiff’s land, or the infringement of his patent or Copyright. It is a revocable permission to commit any action that would otherwise be lawful for the licensee to enter the licensor’s land to do some act that would otherwise be illegal, such as hunting game.¹⁶ A licence in

a right of Copyright means the authorisation to do an act with respect to a work in which Copyright subsists without which the doing of such act would amount to an infringement.¹⁷

There are different ways for exploiting of a Copyright in a work. The right to Copyright is a bundle of rights which comprises multiple rights.¹⁸

Licence of Copyright

The one who has any right to the copyright in the work or the potential owner in the Copyright of any future work may accord any interest within the validity by licence. The licence must be in writing and will be signed either by the assignee himself or his authorised agent. Just in case of a license concerning Copyright in any future work, the licence shall effect only the work comes into existence. A licence deed in relation to a work should contain the following particulars-

- Identification of the work
- Duration of license
- The right licensed
- Territorial validity of license the quantum of money payable and
- The term regarding revision extension and termination¹⁹

There are different kinds of Licences. A licence may be Exclusive or Non- Exclusive, it may be granted by the Copyright Board as a compulsory Licence and shall be limited to a specific amount of time, time to a territory within the jurisdiction or to part of the interest

¹⁴ Sec. 31A of “The Copyright Act, 1957”

¹⁵ Section- 31A The Copyright Act, 1957.

¹⁶ Brayan A. Garner, Black’s Law Dictionary (1999), Page No.-931.

¹⁷ Kubanni.abu.edu.ug

¹⁸ Law & Practice of Intellectual Property in India- Dr. Vikas Vashishth, Para No.-2, Pg.-922.

¹⁹ <http://Copyright.gov.in>



where possible. A licence may be given for future work, but the Licence will take effect only when the work comes into existence.²⁰

Non Voluntary Licenses

The author and any of the possessor of the Copyright has exclusive rights of his creations in matters of publishing or any other work. He has the authority to grant license in regards to the work done by him, the permission can also be granted by an agent if he has been provided authority for the same from owner of the Copyright if not the permission is considered to be invalid. Before getting into the details of compulsory licensing we shall discuss in brief Section 30 which deals with licenses by owners of Copyright.²¹ The Section after careful reading interprets that, any owner of the Copyright shall grant interest in his Copyright work by granting a license in favour of the person he is willing to grant the right, the same can be granted by him or his authorized agent on his behalf. Before the Amendment of 2012 it was compulsory for the owner of the Copyright to sign it but after the amendment the requirement of signing had been dispensed with. There are certain situations in which the exclusive right of authorizing a particular act is replaced by right to equitable remuneration. This distinguishes compulsory licensing from fair dealing.²²

The Copyright Act 1957 provides for three kinds of non- voluntary licenses

- a) “Compulsory Licenses
 - i. Compulsory Licenses in works withheld from public.
 - ii. Compulsory Licenses in unpublished or published works
 - iii. Compulsory Licenses for benefit of Disabled²³
- b) Statutory Licenses
 - i. Statutory License for Cover Versions
 - ii. Statutory License for broadcasting of literary and musical works and sound recording²⁴
- c) Non Voluntary Licenses after expiry of prescribed periods
 - i. License to produce and publish translations
 - ii. License to reproduce and issue works for certain purposes.”²⁵

COMPULSORY LICENSING

Initially there was no protection in IPR (Intellectual property Law). Later owners right over the creations were accepted and they were granted certain rights. These laws provided protection to the owners under different categories and names like patents, industrial designs, copyrights, trademarks etc.²⁶ However, occasionally the IPR owners used to engage in ‘exclusionary conduct’

²⁰ www.copyright.gov

²¹ Section 30, Copyright Act, 1957

Licences by owners of copyright.—“The owner of the copyright in any existing work or the prospective owner

of the copyright in any future work may grant any interest in the right by licence in writing signed by him or

by his duly authorised agent: Provided that in the case of a licence relating to copyright in any future work,

the licence shall take effect only when the work comes into existence. “

²² www.copyright.gov

²³ Section 31, 31A & 31B, Copyright Act, 1957

²⁴ Section 31C & 31D, Copyright Act, 1957

²⁵ Section 32 & 32 A, Copyright Act, 1957

²⁶ www.legalservicesindia.com/article/impip.htm, Last Seen- 5 October 2020, 12:45A.M.



towards innovators and potential competitors on market which are secondary to and dependent upon an IPR protected industrial standard or de-facto monopoly. This anti-competitive conduct could manifest itself in the form of refusal to deal or licence, thereby rectifying market failure. This concept of compulsory licensing in copyright is derived from patent law, where the owner is forced to face the competition in the market, similarly in copyright law; the copyright holder is subjected to equitable remuneration.²⁷

Compulsory license is the term generally applied to a statutory license to do an act covered by an exclusive right without the prior authority of the right owner. Compulsory licensing allows for the use of protected (in this case, Copyrighted material) without the prior permission of the owner of the right.²⁸

“Compulsory licence in works withheld from public.—

If at any time during the term of Copyright in any Indian work²⁹ which has been published or performed in public, a complaint is made to the Copyright Board that the owner of Copyright in the work—

a) has refused to re-publish or allow the re-publication of the work or has refused to

allow the performance in public of the work, and by reason of such refusal the work is withheld from the public; or³⁰

b) has refused to allow communication to the public by 1[broadcast], of such work or in the case of a 2[sound recording], on terms which the complainant considers reasonable," the Copyright Board, after giving to the owner of the Copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to re-publish the work, perform the work in public or communicate the work to the public by 1[broadcast], as the case may be, subject to payment to the owner of the Copyright of such compensation and subject to such other terms and conditions as the Copyright Board may determine;³¹ and thereupon the Registrar of Copyrights shall grant the licence to the complainant in accordance with the directions of Copyright Board, on payment of such fee as may be prescribed.³²

2. Where two or more persons have made a complaint under sub-Section (1), the licence shall be granted to the complainant who in the opinion of the Copyright Board³³ would best serve³⁴ the interests of the general public.³⁵

²⁷

[http://nopr.niscair.res.in/bitstream/123456789/18377/1/JIPR%2018\(3\)%20201-211.pdf](http://nopr.niscair.res.in/bitstream/123456789/18377/1/JIPR%2018(3)%20201-211.pdf). Last Seen-6October

2020, 10:45A.M.

²⁸ *Ibid.*

²⁹ “This word “Indian work” includes—

1. “an artistic work, the author of which is a citizen of India”; and

2. “a cinematograph film or a [sound recording] made or manufactured in India.””

³⁰ www.nopr.niscair.res.in

³¹ <https://copyright.gov.in/>

³² *Ibid*

³³ www.copyright.gov

³⁴ <https://shodhganga.inflibnet.ac.in/>

³⁵ <http://nopr.niscair.res.in/>



Section 31 of this Act basically deals with the granting of compulsory licenses ³⁶in case of works which have been restricted from the public. According to this Section if an owner of an Indian work is refused by the publisher or is disallowed the work from being republished or if he has barred the performance of the same work before any public domain/place then a complaint can be made to request the grant of a compulsory license. Hence a Copyright Board only needs to get into those matters/cases where the price is really high in respect of giving absolute rights for the work performed.

When a complaint is filed before the Copyright Board, the board shall give the owner of Copyright reasonable opportunity of being heard by the Board after conducting a fair inquiry if they deem fit they shall direct the registrar of Copyrights who shall grant the plaintiff a compulsory license. ³⁷³⁸

Way back in 2012, Amendment a complaint could be made for the grant of a compulsory license only just for Indian works but now the complaint can be made for any works be it a foreign or an Indian. The scope of this Section has been enlarged now.

There is an absolute right which vests with the author or owner of the Copyright to publish or not publish his work. In civil law countries this right is referred to as moral right of divulgation. ³⁹ According to this right the author has the power to decide the terms and condition according to which he shall accept the works to be published before the public. In India the authors right to control his first publication is not extended to his right to

withhold further publication once the work has been published for the public, the public as all right to go through the authors work but in order for the public to be able to go over work of the author certain things needs to be fulfilled.

The term of Copyright in the said work is subsisting i.e. it has not yet fallen into public domain.

According to Section 31(1) of the Copyright act the owner of the Copyright

- Has refused re-publication or to republish the work or has refused for any performance to happen in public (public performance) and due to such refusal the work has been withheld from public.
- He has refused any sort of communication to public by means of broadcasting or in case of a sound recording the he has refused the communication for the same, the condition being that the terms on which the communication has been barred is reasonable.⁴⁰

If the above conditions have been fulfilled then any person can make a complaint to the Copyright Board. The Board will then follow the principle of natural justice (audi alteram partem). If after conducting a fair proceeding it can be concluded that the grounds for a refusal to republish, or disallowing the performance in public are license for the republishing of the work or for a public performance or any sort of broadcast. The license shall be only granted to a license if in the eyes of the Board he is capable to do the following

³⁶ Ibid

³⁷ Supra Note 31

³⁸ Supra 25

³⁹ Law of Copyright- Alka Chawla, Pg-192.

⁴⁰ Supra25



- Pay the prescribed fee
- Compensate the owner for Copyright
- Any conditions other than the term which are determined by the Copyright Board.⁴¹⁴²

COMPULSORY LICENSING IN OTHER COUNTRIES

Compulsory Licensing in UK

- The Berne Convention accommodates statutory mandatory authorizing under certain circumstances. This situation is of entertainers' rights with respect to the transmission of their lives up to expectations by methods of radio, phone or other identical mechanical assembly. Under Article 80 of the Berne Convention entertainers don't have an elite right to preclude these types of misuse however they are qualified for impartial remuneration for such employments. A comparative right is conceded to the phonogram maker for the show of his/her records by radio, silver screen, TV and in broad daylight premises (Article 73). Also, as per article 13 of the Convention, part nations may force reservations on the select right conceded to the creator of a musical work or to the words' creator that run with such musical work, where the recent work as of now been approved with the goal that outsiders can produce those works. On the other hand, such the reservations can be just applied in the nations where the parts of nation has enactment covering it, and must additionally not be biased to the privileges of the creator to get pay.⁴³
- At the national level, a case of statutory licenses is given by licenses to the recording of musical works in the United States. The US Copyright Act incorporates statutory

procurements for obligatory authorizing on non-sensational musical sythesys for generation in phone records (i.e. records, tapes and smaller plates) under certain circumstances. The obligatory permit applies strictly when the copyright proprietor has allowed the primary permit for conveyance of phone records containing his/her musical creation. When such approved circulation has been made, whatever other individual shall get a mandatory permit to make and circulate phone records of the work, if the essential reason for such circulation to people in general is for private use. This gives the musician the right to pick the first recording craftsman to record the tune, yet blocks him/her from banning different artists from recording the tune, the length of they pay the recommended sovereignty.⁴⁴

- In the United Kingdom a statutory permit was presented in 1995 when the copyright term of assurance was stretched out from fifty years to seventy years after the creator's passing. Statutory licenses apply, in specific circumstances, for works for which insurance had effectively lapsed yet which was restored by righteousness of a later.

Compulsory Licensing in USA

- To understand compulsory licensing in the United States of America we need to refer through Section 114 and 115 of the Copyright act as follows:-
- **“Section 115** – The “Mechanical License” – Section 115 of the Copyright Act provides a compulsory license to make and distribute phonorecords of musical works, subject to certain terms and conditions, such as: “the license is only available after a phonorecord of the musical work has first been distributed to the public in the United States under

⁴¹ <http://copyright.gov.in>

⁴² Law of Copyright- Alka Chawla, 2012, Pg- 134.

⁴³ Supra Note 31

⁴⁴ Scott, 1988, Pg- (319-325)



authority of the copyright owner”⁴⁵. A 115 license includes the right to distribute phonorecords of musical works by means of a digital transmission, which constitutes a digital phonorecord delivery (“DPD”).⁴⁶

- **“Section 114** – The “Performance License” - Section 114 of the Copyright Act provides a compulsory license to digitally perform phonorecords, subject to certain terms and conditions, such as the service must be “non-interactive” and comply with certain programming restrictions. The 114 license is intended to address the process of “streaming” performances of phonorecords by means of a digital transmission to listeners, much the same way a radio station plays songs over the air.”⁴⁷
- To understand this section we need to understand what phonorecords are which are defined as “material objects in which sounds, other than those accompanying a motion picture and audiovisual work, are fixed.”⁴⁸. As the compulsory license only applies “to the “making and distribution of phonorecords and since soundtracks are not phonorecords compulsory license is not available to those”⁴⁹ who want to record a sound track.”
- A compulsory license is available to anyone as early as “phone records of a nondramatical musical work have been distributed to the public in the United States and its Territories under the authority of the copyright owner.”⁵⁰

Section involved

Section 52 of the Copyright Act Law

This Section revolves around the relationship between the “teacher and the pupil” where the notes provided by the teacher to students is not considered as infringing copyright claims. The provision of these material to the students while in the course of education would not be considered as copyright as the same is exempted under Section 52 of copyright law.

The defendant in this case argued that if the specified act is being exempted for the student it must be exempted for defendant number 1 also (photocopy shop and the university).⁵²

CHAPTER IV

Copyright disclosures

This law was meant to curb duplicacy in intangible content and also to protect the work of the author or the writer all those who worked for the intangible product and also how it can be provided to the general public for educational purpose. Commons have an important role in the copyright of intangible products. Commons are usually underestimated but have a major role which makes sure that the goods are not inaccessible and also public in general could afford them for their use and not only as a claim for the intangible goods.

Now after discussing about Commons I will be discussing about the educational exemption upon which I will be stressing in

⁴⁵ <http://copyright.gov>

⁴⁶ Section 115 Copyright Act, USA

⁴⁷ Section 114 Copyright Act, USA

⁴⁸ www.copyright.gov/title17/92chap1.html#101, Last Seen- 10 October 2020, 12:45P.M.

⁴⁹ Etd.aau.edu.et

⁵⁰ Compulsory License for Making and Distributing Phonorecords (<http://copyright.gov/circs/circ73.pdf>) Last Seen- 10October 2020, 06:40 P.M

⁵¹ Etd.aau.edu.et

⁵² www.copyright.gov



this case. This part is an important factor in copyright law. This factor is provided in order to provide access to information.

The intangible goods is in public domain when it is not under any copyright law protection which mean that the general public can use it for his purpose fairly which basically means that if the doing is not safeguarded by any law then anyone one can use it fairly. Again the word “fair” is interpreted differently. Nowadays the problem which arises is that people use this as a shield to copy other people’s work. But not many people know who actually want to use it as a fair means which many of us forget today. But however commons are seen as an essential part of this law.

After “commons” another essential part of copyright law is “educational purposes” where such reproduction of copyrighted work is allowed to the extent where it is fairly used for educational purpose. However it has been seen that in the last few years the disclosure of copyright. It has been framed according to the copyright owner. It has been seen that in the recent years.

It is necessary to understand that commons are not derived from limitations and exceptions but is a part and parcel of copyright law. It can be said that the copyright law does not focus only on the rights and protect the copyright owner but also taken part in providing the work to the general public mainly for educational purposes. Thus it is seen that it is an important part of copyright law.

Analysis of the case

The petition of copyright infringement was filed by 3 parties who are Oxford University

Press, Cambridge and Taylor Francis on photocopy service in Delhi University which is inside the campus of Delhi University. The plaintiff filed a petition claiming that the college was using excerpt from their publication and using it in the compilation of college notes. They claimed that such a type of act is infringing their right under section 52 and section 14 of the copyright act. The student association of Delhi University claimed that it is a part of “equitable access of knowledge”. It means that some of the work copyrighted can be used for fair use. Here the defendant claimed that this provision is provided as an exemption in section 52(d) of the copyright act. Also that they had taken license from IRRO (Indian Reprographic Right Organisation), a registered society under the act permitting only 15% of the copyrighted work.

The suit was first heard on August 12, 2012. A commissioner was appointed by the court to go to the college and collect the required sample in order to check their claims. The defendant claimed that it was considered a “fair use” under section 52(i)(1), Section 52(1)(a), Section 52(h) thus not infringing copyright act.

The issue apprehensive in this case was that some pages from the book of petitioner was copied in the photocopy shop of Delhi University. The photocopy was then provided to whole of the university was a curriculum in the syllabus of college. The students would purchase the same from the photocopy shop of the college.

The judgement was written by justice Nandrog and the judge comprised of justice Khanna and justice Nandrog. This judgement was basically the appeal filed by the plaintiff



which was decided quickly according to Indian judicial system. Justice Endlaw thus decided in favour of the defendant i.e. rameshwari photocopy & others stating that such activity comes under the section 52(i) of the copyright protection act. The division bench questioned whether the reproduction by a teacher to his student in the time of their teaching is fair or not. It also questioned whether the photocopying was permitted under the premises of college and if the college was knowing the whereabouts of this activity. Here the reproduction was seen according to Indian education system. Also the judge emphasised that this comes under the ambit of fair and just and ruled over the four part test which was claimed by the petitioner. This principle was considered to be a part of fairness under the law of copyright law. The bench in other words stated that this was under fair use under the ambit of education. Moreover the four part test represents that for educational purposes private copyright property can be used.

The division bench had a different angle than that of single bench which stated that the photocopy was not done on a very profit basis but for the advantage of the student. The price of photocopying in that place was cheaper than in other places of that area. In many instances the court argued that making more people literate will help increase the literacy rate and in longer run increases the market for copyright law.⁵³

The judge also answered the question with the help of music that when instruments like drums are played then at that time rest of the delicate instruments like flute or marsing cannot be heard so in those cases sound of the delicate instruments are not heard so which

explains how a certain section is to be silenced in order so that the other section i.e. “educational exception” in this case can be heard.

CHAPTER V

CONTENTION OF THE CASE

Interim Injunction

On October 17 2017 the decision was in the favour of plaintiff where the college was restrained from circulating the course pack which had the excerpts from these publications.

Following this the defendant number i.e. The Delhi University filed an appeal before division bench of court briefing that the act was not under copyright infringement. The division bench appealed disclosing that the defendant may file an appeal in single bench to facilitate more scope

Impleading by ASEAK and SPEAK as defendant

On 2013 ASEAK (Association for students for equitable access to knowledge) pleaded the high court and impleaded to consider them as a “necessary party” to the case in order to represent the large number of students who have been affected due to the interim injunction stating that it’s not only about spreading knowledge but is considered as an educational exception under Section 52(1)(i) and Section 52(1)(a).

Another educational society of scholars and lawyers SPEAK(Society for promotion of equitable access of knowledge also pleaded the court to make them to the appropriate party and argued that it not only an exception under section 52(i) of the act but is a natural right of the students to be able to access those

⁵³ www.copyright.gov.in



excerpt. It mentioned an empirical survey where it was seen that the cost of these books was very costly. It was further mentioned by the defendant that the books which were available in the country are very outdated^{54, 55}

Reaction of Student organisations

The students in many numbers protested as they felt like it was curtailing their basic needs and the deficiency of access to knowledge in India. In regard to which many learned scholars wrote a letter to the publishers to withdraw the suit back. Many of those who signed to withdraw the suit were the writers of plaintiff's publishing company. These authors contended that they are having no problem with the copyright. The publishers are including their names on their own.

Questions left Unaddressed

Are these distribution commercial?

The most important question to be asked in this case is whether the photocopy is done in a commercial basis. Because the main argument under section 52 is that it is not done in a commercial basis but for spreading knowledge across the country for a better literacy. This fact was contested. It was stated by the university that the price of photocopying was very negligible and that it was never seen in a commercial angle. And also they claimed that the defendant that the photocopy was provided only to students with the valid identity card and not to random people.⁵⁶

The plaintiff complained that the photocopy was not provided in pages but provided to everyone in books and contended that the price for which the defendant was providing

photocopy was much higher which is sold in market by which the university is earning. Findings on the issue would provide the judgement for similar cases where there is a need to set the boundries. As the suit was withdrawn no trial was held because of which the court was not able to do what crucial in knowing whether the judgement was confined to the specific instance.

Restriction to course pack only?

The judge proclaimed his judgement with respect to the course packs only. Supporting the statement the judge added the fact that if the photocopier were selling the photocopies of the plaintiffs complete work at a much acceptable rate, it could be stated that the photocopier or the university is working for monetary gains, hence ruling out the likelihood of a possible competition between the Defendants and the Plaintiffs.

However the Defendant University, instead of encouraging the original book by the plaintiff, constantly promotes the course packs, undoubtedly pointing towards the lucrative aspect which has been failed to taken into consideration by the judge.

Despite that, the judge appropriately notes that the students, who are the main users in this scenario, would not be the primary consumers of the plaintiff's works as they would not be able to bear the expenses. He believes that photocopying is a better substitute for students who are unable to afford the original works.

In accordance to the rising prevalence of the photocopying services in the current world, it is an overstatement to refer to the photocopier as the centerpiece of the market. In a scenario

⁵⁴ www.copyright.gov.in

⁵⁵ Web.mit.edu

⁵⁶ Nopr.niscair.res.in



where a photocopier didn't exist, students might have had to buy the original works at an unaffordable price or carefully copy out all the required text and information.

Even in the best case scenario of the right holder, a lot of students would still depend on photocopying. However there is a high possibility in the creation of another market exclusively for copyrighted works if a proper benchmark has not been set on admissible photocopying.

A photocopied version of a published work is undeniably cheaper as compared to the prices of the original. So, it's completely inappropriate to deny the fact that the price of a photocopied work does not compete with that of the original work. This difference in pricing tends to direct students with limited resources and financial sources towards buying a photocopied material rather than an original publication. The copyrights holder is likely to face a loss upon realization of this situation.

CHAPTER V

Conclusion

The response of the students was as expected united for the judgement which has changed the scenario of academic marketplace in India.

Though the judgement and the corresponding analysis here is with regards to Indian context, I wish to bring to your notice that this property centric view of Intellectual property is not just an issue faced in India but also in many other countries. The same is the case with the education sector. Chaining of academic research as "property" has been facing protests all across borders. A very similar but factually different situation would

be the US Supreme Court Judgement in Author's Guild vs Google.

However it has been how the reason for photocopy does not affect the monetary aspect of the publisher even if the photocopier is allowed to circulate but the lack of permissible limit in replicating will discourage writers and publishers who create new work. Also it is be seen on how distributing these course packs show how our education system is spoon feeding students and discouraging them to research on their own.

Restricted access to academic works, paid subscriptions, increasing severity and cost of paywalls have been and still are criticised all across the world. A very good referral would be the protest and criticism with regards to Elsevier dominating the publishing landscape in European Union. At the same time, as a way to oppose these restrictions, efforts are being taken by multiple individuals. In fact, a good number of academicians have made their articles available free of cost. Activists are working on tools to help seekers with a corresponding free version. Increasing support for such movements and open source speak for itself.

We have progressed a long way from sending letters to sharing information just over a click. The technology today enables us to do that. The corresponding time taken would have been undreamt for someone decades ago. From massive computers with barely any processing capacity, we've come to an era of supercomputers with almost all devices being able to tap into that power over cloud technologies. This has affected the means of content creation to a large extent. Individuals today with the help of technology are capable of tasks which took entire



industries at one point of time. Across all domains, content creation is getting easy day by day. While content copying and reproduction are getting easier. The easier it is to copy, harder it is to control. At such times, being stringent would only be a loss to us all. It would prevent the education and sharing of information from reaching its true potential. And that is exactly what a property centric view of copyright is doing.

It is important, therefore, to reframe the balance between the private property discourse and the commons discourse in favour of the latter, particularly in the context of education. This would ensure as much free access to information and education, as is practically feasible. Putting profit before access to education is very much akin to putting the cart before the horse.

We have come a long way from 2012, when it all started. At this point, it must be noted that all the concerned plaintiff parties i.e. the University Press from Oxford & Cambridge, Taylor & Francis have withdrawn their suit against Rameshwari photocopy services. In their Joint Press Statement, they stated that they would work closely with academic institutions, teachers and students to understand and address their needs. And that significant efforts shall be taken to ensure the regular contribution by all, including authors and publishers, towards India's education system for the longer term.

In the division bench judgement, it was made known that copyright in any literary work is not a divine or natural right that confers absolute ownership of their creators. Copyright is intended to prevent the knowledge from getting copied and not imparted. The act that is meant to assist

another human being and impart knowledge cannot be considered an offense. And thus, the act by the Rameshwari Photocopy services that helped students with subsidised study material wasn't considered a copyright infringement.

The recognition granted to educational exceptions, to the need for accessibility is definitely a momentous victory. It is important to note that the judgment here keeps the interest of students and adopts a perspective on fair use that sees it as a right, and not just any mere defence. This itself is a giant step forward for the commons discourse.

However, there are still issues yet to be addressed. The test for what qualifies as the "extent justified by the purpose" is also one of them. Hopefully, this too shall be dealt by the courts in the future in a similar view. In conclusion, we can only be hopeful that this reframing of the discourse will see a wider application in the Intellectual Property Rights (IPR) jurisprudence as a whole, not just in the education sector, but also in other crucial sectors/areas including Health and pharmaceuticals.

BIBLIOGRAPHY

➤ **PRIMARY SOURCES**

STATUES

1. The Copyright Act, 1967

CONVENTIONS

1. Berne Convention for the Protection Of Literary And Artistic Works (Paris Text 1971)

⁵⁷ www.copyright.gov



2. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961.

6. http://www.indialawjournal.org/archives/volume5/issue_4/article4.html
7. <http://blog.mylaw.net/tag/copyright-board/>
8. www.copyright.gov/title17/92chap1.html#101

➤ **SECONDARY SOURCES**

BOOKS

1. Dr. S.R Myneni, Law of Intellectual Property (Asia Law House, 7th edn., 2014)
2. Barak Aharon, Purposive Interpretation In Law, 88 (Universal Law Publishing Co. Pvt. Ltd, Delhi, 2007).
3. Law relating to Intellectual Property Rights- VK Ahuja
4. Law of Copyright- Alka Chawla

ARTICLES

1. Karandeep Makkar and Daksh Mitra, “Compulsory Licensing of Copyrights: Public Interest and the Entertainment Industry” 5 ILJ (2012)
2. Matthew Sag, “The Perils of Compulsory Licenses in Copyright Law
3. Rich Stim, Copyright and Compulsory Licenses
4. Daksh Mitra, “Pay ‘n’ Play: Public Performance of Sound Recordings vis-à-vis Copyright” 18 JIPR (2013)
5. Himanshu Raman Singh, “Entertainment Network v. Super Cassette Industries: Compulsory Licensing in the Copyright Demystified” 18 JIPR (2013)

➤ **OTHER SOURCES**

WEBSITES REFERRED

1. www.manupatra.com
2. <http://supremecourtfindia.nic.in/>
3. <https://indiankanoon.org/doc/119540048/>
4. <http://blog.mylaw.net/tag/copyright-board/>
5. <http://lex-warrier.in/2012/07/copyright-board-cannot-pass-order-of-interim-compulsory-license/>