



Fair Use Provisions under the Indian Copyright Act: Awareness Among Librarians of Colleges and Universities in Maharashtra

Jagdish Wamanrao Khobragade^{1†} and Anson C J²

¹Department of Law, Maharashtra National Law University, Nagpur, Maharashtra - 441 108, India

²Inter-University Centre for IPR Studies, Cochin University of Science and Technology, Cochin, Kerala - 682 022, India

Received: 20th December 2020; accepted: 21st September 2021

Indian Copyright Act, 1957 provides a private right in copyright which extensively deals with provisions that guarantee access to knowledge as well. Copyright is an exclusive and assignable legal right given to the author for a particular period for original literary, dramatic, artistic works, and musical work whether published or unpublished. These rights are not absolute but subject to restrictions and limitations imposed by law. Section 52 of the Copyright Act, 1957 is one such provision that restrains the exclusive enjoyment of rights given to the copyright holder. As per Section 52 (1)(o) of the Copyright Act, 1957 a non-commercial library is permitted/allowed to make three copies of a book for library use, provided such books are not available for sale in India. The present article is about the concept of fair dealing which is originated from the Common laws of England. Although, the concept of fair use and fair dealing are used synonymously, the Indian Copyright Act, 1957 deals with fair dealing under Section 52 of the Copyright Act, 1957. The reproductions of works for research or private study, taking photocopy for research and educational purpose, etc., are covered under the doctrine of fair use. This paper will explain the conceptual framework of the Indian Copyright Act and the empirical reality in libraries of Maharashtra. It attempts to empirically test the usage of fair use provisions under the Indian Copyright Act and the awareness among librarians of Colleges and Universities in Maharashtra. The research methodology used for the present study is both doctrinal and non-doctrinal. It was observed that most of the librarians are aware of Copyright Law and copyright exceptions but when it comes to the implementation librarians also face difficulty and it leads to the infringement of copyright.

Keywords: Copyright, Section 52 of The Copyright Act, Library and Information Technology, The Doctrine of Fair Use, Fair Dealing, Education, The Exception to Copyright, TRIPS Agreement, Berne Convention

Creativity is an integral aspect of copyright. Modern Copyright Law is based upon the theory of creativity that if the protection of copyright is increased creativity will increase naturally. Creativity is the backbone of copyrighted material and this principle has an economic vision. The first Copyright Law was enacted by the Statute of Anne in England in 1710. It is the State who promotes the creative works and the authors are encouraged by State protection and thereby society will be promoted to work more creatively. The changing social structure, such as the application of information and technology and media, the new production of knowledge, and the democratization of creativity, has brought changes to the regulatory framework of copyright with some challenges. The basis of copyright is the greater the protection of rights and the greater the reward, the greater the incentive to create new works, the greater the number of new works created. According to

Macaulay, by increasing the financial bounty available to authors, we ultimately increase the public's bounty of new works of authorship.¹ The educational institutions have a greater responsibility for copyright protection because it has a collection of books and literature in libraries. Libraries and archives are key stakeholders in the collection of copyrighted material in India. These institutions have the vast majority of copyrighted material that is subject to copyright protection. This article is about how the copyright systems interact with the education system and Section 52 of the Indian Copyright Act, 1957. The reproduction of works for research or private study, taking photocopy for research and educational purpose, preservation of available copy, inter-library loans, private use, use by professors, students or members, digitization of books, access to e-books and digital library, books not in circulation in India are permitted under fair use. In addition to that adaptation, to facilitate access to disabled, translations of copyrighted works, unpublished works for private

[†]Corresponding author: Email: jkxobragade@gmail.com

copyright policies and ethics of fair use in their implementations.

The research methodology used for the present study is both doctrinal and non-doctrinal. A questionnaire tool was used to survey the librarians, assistant librarians, and library assistants in various colleges and universities situated in 145 libraries in the State of Maharashtra. The questionnaire was circulated to the above stakeholders and the data collected from the responses were analyzed. The present study will help in identifying the lacuna in the librarian's awareness of copyright. The value of this paper lies in the ideas it has provided for increasing copyright awareness and improving copyright compliance by all the concerned. It is also valuable as it proves the necessity for continuous awareness education of librarians on copyright in addition to the need for copyright protection for all personally responsible for handling libraries. The objectives of this study are:

- (i) To find out the awareness of the Indian copyright Act in the State of Maharashtra;
- (ii) To identify the lacuna in the implementation of copyright law in libraries;
- (iii) To find out premising photocopying under Section 52 of the Copyright Act 1957; and
- (iv) To understand the relationship between copyright and the education sector concerning Section 52 of the Indian Copyright Act, 1957.

In the present study, a Survey Method was used to collect data from the stakeholders. The quantitative data is collected and analyzed with the help of MS Excel and R software (rcmdr). Data is collected through google forms among various librarians of Maharashtra.

Data Collection Tools

For the demographic data, designation, place, name of university or college, has been asked and since the area was fixed it was limited to Maharashtra. Total 400 emails and contacts were collected from various sources and then a questionnaire was sent to all for data collection. Google form was used to collect data and all collected data is downloaded in an excel sheet. It took three months to collect data from 145 colleges and university libraries after repeated requests for submitting a response to the questionnaire.

Sampling Method

In the present study, a Random Sampling Method was used for understanding the librarians' awareness

about Section 52 of the Copyright Act. A descriptive questionnaire was prepared to ask certain questions to librarians in colleges and Universities of Maharashtra. The population used for this study is librarians in Maharashtra (Fig. 1).

Statistical Analysis

The requisite data was collected through 'Google form' from 145 libraries from Colleges and Universities of Maharashtra. The tables and charts were prepared according to questions and answers are given by the respondents. The MS Excel and R software (rcmdr) were used to analyze the data.

Figure 1 shows that all the respondents are either librarians/assistant librarians or library assistants in the colleges (133) and university libraries (12) of Maharashtra. These are mostly public libraries. It can be seen from the Fig 1 that most respondents are librarians from the colleges. Of the total 145 respondents, 144 have responded to all questions and only one respondent did not answer all questions therefore for the present study only 144 respondents have been considered.

The questionnaire was sent to 400 libraries, and out of this 133 colleges and 12 university librarians have participated in the study and responded to questions relating to copyright awareness in libraries (Fig. 2).

Most of the librarians were found to be aware of copyright exceptions in the Copyright Act (Table 2). They are aware of the authors' protection and the publishers' expectation from a library. The bridge that

Fig. 1 — Sample profile of respondents from librarians in Maharashtra

Table 2 — Awareness of various provisions of the Copyright Act

Provisions/ Awareness	Yes	No
Are you aware of any exceptions for library use under Copyright Law?	121	23
Is photocopying permitted in your Library?	110	34
Is the Photocopying of a whole book permitted in your library?	14	130
Do you allow students to take snapshots/images of books?	99	45
Do you have e-books in your library?	116	28
Whether you have attended any conference/workshop/seminar on the Copyright Act, 1957?	100	44
Whether your Library has experienced any cases/ problems related to Copyright from authors/publishers?	19	125

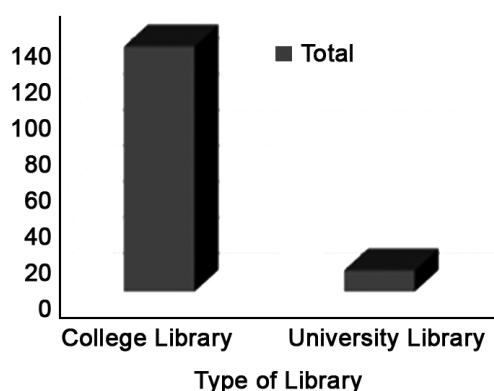


Fig. 2 — Types of libraries included in the sample

libraries build between author and reader is that it is only to be used for an academic and educational purpose which its prominent use. The gathering of information without the due credit to the author may show the unpleasant effect. It may become an impasse to the author. Therefore, the libraries should keep the authors as unequivocal as possible so that the authors' work should not last an ephemeral. Most of the librarians are aware that exceptions of library users may not be for the duplication for the ease of information.

It was observed that most librarians (76%) are aware of photocopying in libraries. It may be concluded that there is no specific reason why most of the scholars are worried about their copyrighted content. It should also be kept in mind that most of the authors names are attached to the copyrighted material and theft of such information may discourage the authors to work creatively. Most of the scholars have a coterie of professionals Most of the scholars have a coterie of professionals who may find the information substantial enough whereas there is open access to most of the copyrighted works in libraries. Most university students of public libraries may find it as a source of information for their research without the due credit to the author which can be regulated by specified mechanisms for photocopying. Allowing

photocopy of books is not a violation of the copyright for research and study purposes but when it comes to the circulation of such material for commercial purposes and out of the scope of the librarian then it will be difficult to justify such use. Like in landmark case of *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v Rameshwari Photocopy Services & Ors.*, (2016) 160 DRJ (SN) 678. The High Court of Delhi observed that the preparation of course material i.e compilation of photocopies of relevant material given in the prescribed syllabus and distribution of it to students does not amount to an infringement of copyright if it is purely for educational instructions. Further, held that such photocopying and reproduction of the work by a teacher does not amount to copyright infringement by Section 52 (1)(i) of the Copyright Act, 1957.

Most of the libraries do not specifically provide photocopies of the whole book believing that the status of the libraries will be lost if the reader copies the whole book. It can be inferred from the above-reflected question of photocopying some part of copyrighted material that if the libraries can provide some part of photocopying then why not the whole book? The reason that can be booked is meant for the libraries but not the authors copyrighted material. The portfolio of information is the crescendo than the severity of originality! Optimism may not follow the grounds of intellectual law as it could result in the nemesis of authors' effulgent works. Therefore, to avert these nemeses and to give due credit, the libraries should concern and restrict themselves to the use the reader may use the original works.

Snapshots are the part of the incentivized version of photocopying. It was observed that 99 of the total 144 librarians may allow the photocopies, as compared to the photocopy of selected material which stands at 110. One can infer that mobile phones are restricted in the libraries and therefore librarians may not allow the reader to use it as a method to use the

copyrighted material. Most of the snapshots may be reproduced by paraphrasing which could in the digital world limit the due credit to the author. To lessen the enduring effect, the libraries do allow photocopying to duplication of the copyrighted material.

Since, most authors in today's internet era try to focus on e-books. Most of the libraries (116) were focused on the use of e-resources to equip readers with this digital experience. Here, the burden on the reader becomes less as he mostly focuses on his inferred research on his specific aim and needs not to go for photocopying and snapshots. What helps for the original content writer from the e-books is that whenever that material is copied from a web-based server, the author gets the mention of his original work on the duplicated material. Most of the libraries are using this tool to enhance their reach to the readers and also the scholars and the content owners may find the use of their material secure from the other direct methods of duplication. However, Table 2 suggests that librarians are aware that e-books are available in the library.

This data referred that still many of the librarians are not aware of the provisions under the Copyright Act, 1957. They are aware that copyright may not give the due credit to the author if he is not getting the due credit for his works and public libraries do play a major role in this. Only 100 of the total 144 librarians were found to be aware of the Copyright Act, but what is more unnerving is that this data is similar to the data of photocopying. Even if most of the librarians are aware of the copyright protection, still they have their libraries allowing the copyrighted works to be photocopied and duplicated. This may have an impact on the publisher as well as he may not sponsor the copyright events as they are not yielding the necessary results for originality protection. Every publisher wants that his licensed work may reach the maximum number of readers and libraries do act as a catalyst and if they are not securing the interest of the publishers as well as the readers, they may disdain certain libraries and the reader's interest might lose. Seminars and workshops do provide information about copyright protection but if they are not implemented it may result in redundancy.

It was also found that most of the libraries have not faced any problem related to copyright because the author wants his word to reach the maximum number of interested readers and libraries do play a pivotal role in that. But in the same question, do they also protect the copyrighted information and to what

extent it cannot be answered in quantitative and hence it is analyzed as above. Publishers do make certain inquiries before making a work shared through a library therefore as deduced from the data; only 19 libraries have faced the problems of copyright protection while 110 do allow their readers to do photocopy!

Conclusion

In India, copyright is more stringent compared to developed nations but the models are working with limited scope. In educational structure, the awareness of copyright and its flexibility in copyright is there. In the present study, many of the librarians answered that they are aware of Copyright Law and copyright exceptions but when it comes to implementation of Copyright Law it is not properly addressed by the librarian and hence it leads to copyright infringements. Although, there are exceptions to the Copyright Law and anyone can use it for study and research purposes under the umbrella of fair use it has some limitations too.²⁷ Therefore, the present study was to see the awareness about Section 52 of the Copyright Act, 1957, and how they are using it. Section 52 is a very strong provision related to copyright protection for its exceptions and doctrine of fair use. It has been borrowed from some international conventions like Article 13 of the TRIPS Agreement and Articles 4 and 10 of the Berne Convention which are relevant to the present study. All these norms have to be followed while dealing with copyright and its infringements in India. However, the Indian Copyright Act, 1957 is a very strong and old law borrowed from the UK Copyright Law. The important stakeholders of the education sector like librarians are aware of copyright law and its exceptions but when it comes to the implementation of copyright law librarians also face difficulty. Therefore, there is a need to have more awareness workshops and training programmes to train librarians about the execution of copyright laws so that they will become more efficient to deal with copyright issues in the education sector.

References

- 1 Ku R S R, Sun J & Fan Y, Does Copyright Law promote creativity? An empirical analysis of copyright's bounty, *Vanderbilt Law Review*, 1669, 62 (6) (2009) 1170.
- 2 Rai P, Sharma R K, Jain P K & Singh A, (eds.) *Transforming Dimension of IPR: Challenges for New Age Libraries*, Madhu K S & Gagan K, Copyright Fair Use and Libraries, (National Law University Delhi Press, New Delhi), (2015) 126.

- 3 Article 9 (2) of the Berne Convention, 1886.
- 4 Section 52 of the Copyright Act, 1957 provides certain acts not to be an infringement of copyright.
- 5 Aswath L & Reddy A N M, Copyright law and the academic libraries: A perspective, *Trends in Information Management*, 8 (2) (2012) 111.
- 6 Nikose S M, Awareness and implementation of Indian Copyright Act: A study of university libraries, *International Journal of Research in Library Science*, 2 (1) (2016) 38.
- 7 Kumar N, *University Libraries and Copyright Laws, Library Vendor /Publisher Interface*, International Conference on Academic Libraries (2009) 427.
- 8 Banerjee D N, The story of libraries in India, *Daedalus, Books, Bricks and Bytes*, 125 (4) (Fall, 1996) 353, The MIT Press on behalf of American Academy of Arts & Sciences.
- 9 Rai P, Sharma R K, Jain P K & Singh A, (eds.) *Transforming Dimension of IPR: Challenges for New Age Libraries*, Madhu K S & Gagan K, Copyright Fair Use and Libraries, (National Law University Delhi Press, New Delhi), (2015) 167.
- 10 Article 13 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995.
- 11 Michael S, Copyright in the networked world: Copies in courses, *Library Hi-Tech*, 24 (2) (2006) 305.
- 12 James T C, Indian Copyright Law, and Digital Technologies, *Journal of Intellectual Property Rights*, 7 (2002) 423.
- 13 Mishra P & Dutta A, Striking a balance between liability of internet service providers and protection of copyright over the internet: A need of the hour, *Journal of Intellectual Property Rights*, 14 (2009) 321.
- 14 Nayak A & Chatterjee S, Onset of mobile chip piracy in the domain of copyright infringement, *Journal of Intellectual Property Rights*, 15 (2010) 117.
- 15 Madhavan M, Use of copyright by Open Source Software Movement on computer software and its implications, *Journal of Intellectual Property Rights*, 8 (2003) 32.
- 16 Basheer S, Khetry D, Nandy S & Mitra S, Exhausting copyrights and promoting access to education: An empirical take, *Journal of Intellectual Property Rights*, 17 (2012) 335-347.
- 17 Thomas Z, IP Case Law Developments, *Journal of Intellectual Property Rights*, 14 (2009) 437.
- 18 Academy of General Education, Manipal, and Anr. v. B. Manini Mallya (2009) (39) PTC 393 (SC).
- 19 Nair M, *Canada and Israel: Fairness of Use*, PIJIP Research Paper No. 2012-04 American University Washington College of Law, Washington, D.C.
- 20 Rai P, Sharma R K, Jain P K & Singh A, (eds.) *Transforming Dimension of IPR: Challenges for New Age Libraries*, Jain A, Protecting Unrestricted Photocopying: The Doctrine of Fair Use, (National Law University Delhi Press, New Delhi), (2015) 151.
- 21 Chawla A, Photostating in institutes of higher education - Curse for copyright owners or a boon for the researchers?, *Journal of The Indian Law Institute*, 54 (4) (2012) 520.
- 22 Sinha M K & Mahalwar V, (eds.), *Copyright Law in the Digital World: Challenges and Opportunities*, Das P, Reproduction right in digital medium and free use for educational purpose—An analysis of national and international obligations of India to provide education to all viz. a viz. protecting copyright, (Springer Nature Singapore Pvt. Ltd. Singapore) (2017) 109.
- 23 Herur A and Basu S, The Copyright Act and its effect on the right to education: A critical analysis, *RGNUL Student Law Review*, 1 (1) (2014) 29.
- 24 Bansal A K, Public interest in intellectual property laws, *Journal of the Indian Law Institute*, 55 (4) (2013) 476.
- 25 Sharma A, Indian perspective of fair dealing under Copyright Law: Lex Lata or Lex Ferenda?, *Journal of Intellectual Property Rights*, 14 (2009) 523.
- 26 Pressman R R, Fair use: Law, ethics and librarians, *Journal of Library Administration*, 47 (3) (2008) 89.
- 27 Rai P, Sharma R K, Jain P K & Singh A, (eds.) *Transforming Dimension of IPR: Challenges for New Age Libraries*, Wadhwa I, Photocopying of copyrighted works for educational purposes- Issues and concerns, (National Law University Delhi Press, New Delhi), (2015) 158.