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# Exploring Sovereign Immunity in Copyright Infringement: How India can Learn from the Global Experience

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Governmental use of copyrighted works although a very important area has received little attention compared to similar use of patented inventions. But such uses by the government/sovereign have been reported in various jurisdictions including USA where the power of eminent domain was invoked to give some kind of justification. This article makes an enquiry about this unexplored but important area of intellectual property law by adopting a comparative study of important jurisdictions.

**Keywords**: Governmental use of copyright, eminent domain, sovereign rights

Copyright law deals with original works of authorship which satisfies the criterion of fixation in any tangible medium of expression. Similar to property rights involving land, the strength of copyright guarantees the rights of use and exclusion. In the case of land, the scope of a land-owner's right is based on the principle that he who owns the land owns everything up to the sky and down to the centre of the earth.[1] Copyright also follows more or less the same principle subject to certain limitations. Thus the right to copyright essentially means the right to control the socio-economic agenda of an abstract entity, which will exclude that entity from public domain. Just like property, in the case of copyright also people are interested in acquiring possessions and protecting the rightholder's exclusive possessions from trespassers. This means that copyright confers its owner an exclusive title which involves the right to use, the right to exclude all others both from use and possession, and the right to transfer use and possession to others.[2]

The rights available in copyright are highly fragmented and deal with many different entitlements that affect the delicate stability of the system.[3] Since many rights are involved it is popularly called as a bundle of rights. The bundle of rights known collectively as 'the copyright' gives the author the exclusive rights to reproduce, to adapt, to distribute, to perform publicly and to display publicly the copyrighted work. This means that the owner of the copyright has the right with respect to the work to reproduce, distribute, communicate to public, make any adaptation to the work, include in a cinematographic film, etc.[4] The copyright owner can do these things on his own or give a licence to any person who intends to do any or all these things. These rights cover a wide variety of activities spanning from making copies in print form to the grant of licences to various broadcasting organisations delivering the content through satellite transponders or Internet. The copyright owner's exclusive ability to effectively control this bundle of rights is very crucial in the whole process as this helps him to protect the monetary value of the copyrighted work. However it should be noted that the boundaries of copyright like any other property right should be clearly drawn. Along with the bundle of rights there also exists a bundle of limitations to the above said rights. These limitations are framed in such a manner as to take care of the fundamental societal needs based on public interest.

Dealing with the rights of the copyright owner, the system provides for remedies in case of any breach. Thus any unauthorized use of a copyrighted work which is not permitted by the copyright law will in turn allow the copyright owner to seek the remedies provided under the concerned law applicable in the respective countries.[5]

When the alleged act of infringement is committed by a private individual or corporation, copyright law

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enumerates a structured framework for deciding issues of liability and damages. However the situation can become very complex when the alleged infringement is committed by the government or a government owned entity. In such instances sovereign immunity doctrines, along with policy considerations relevant to governmental uses, will play a role while determining the nature of government entity's liability for infringement and adequate relief.[6] One eminent scholar is of the opinion that governments have a superior right to use copyrighted property than copyright owners and as a result it is inappropriate to prevent a government entity from any use of copyrighted property benefiting society.[6]

**Governmental Use of Copyrighted Works**

There are two aspects of copyright in original literary, dramatic, musical or artistic works that are relevant in relation to the government. The first concerns ownership of copyright by the government. The second aspect concerns the right of the government to do acts comprised in the copyright in a work owned by someone else. This paper will be dealing with the latter aspect only.[7] It is a fact that governmental uses of copyrighted property are widespread in many countries. The government or its agencies avail themselves of such property as computer software, magazine articles, book excerpts, photographs, records, network television programs, poetry, and art.[8]

**Position in United States of America (USA)**

In USA, the legal position is that the government can be held liable for violation of copyright laws. Thus it has been expressly provided that a work protected by copyright laws can be infringed by the United States (US) government.[9] The exclusive action for such infringement is an action by the copyright owner against the US government in the Court of Federal Claims for the recovery of monetary damages.

Whenever the copyright in any work protected under the US copyright laws is infringed by the US government, or by a corporation owned or controlled by the US, the copyright owner can bring an action for such infringement against the US in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in Section 504 (c) of Title 17, United States Code. This provision also covers any act by a contractor, subcontractor, or any person, firm, or corporation acting for the government and with the authorization or consent of the government.[9]

Under the US law, if the US government/ government agency intends to exercise its right to use copyrighted property but is not able to have a negotiated deal with the copyright owner, it can compel the copyright owner to sell the copyrighted property to the government by invoking its power of eminent domain. Eminent domain is the inherent power of federal and state governments to acquire private property for public use even in the absence of the property owner's consent.[10] The US Supreme Court for the first time recognised the power of eminent domain in the landmark case of *Kohl* v *United States* and defined it as "the right belonging to a sovereignty to take private property for its own public uses, and not for those of another".[11]

According to the US Supreme Court, the power of eminent domain is an essential attribute of sovereignty, and inheres in every independent state.[12] The acquisition of private property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the state which cannot be surrendered or contracted away.[12] The power of eminent domain is backed by the 'takings clause' of the Fifth Amendment made to the US Constitution which stipulates that the federal government shall pay just compensation to anyone whose private property is taken for public use.[13] Even though courts in US require some demonstration of publicness as a preliminary condition for the lawful exercise of the power of eminent domain, scholars have pointed out that modern courts will tolerate very wide-ranging uses of eminent domain.[14]

Thus any government entity desiring to acquire privately owned property for a public use can institute an eminent domain proceeding, and in such circumstances the government entity shall compensate the property owner for its appropriation.[13]

Any type of property, tangible or intangible, is subject to the exercise of eminent domain.[15] Thus, federal and state governments can acquire and use copyrighted material owned by a private person as copyright is also a kind of property. Scholars note that there are no documented instances of government entities affirmatively exercising eminent domain over copyrighted property.[16] However copyright owners have filed cases against government entities alleging

that their property had been taken away without providing just compensation.

In *Arthur S Curtis* v *The United States*[17], the plaintiff was the creator and owner of a copyrighted syndicated cartoon strip titled 'The Medal of Honor -- True Tales of the Nation's Highest Award," which was published in a series beginning in 1945. The strip consisted of a series of action cartoon illustrations with explanatory text in the form of words which one of the figures in the cartoon was depicted as uttering, together with certain other descriptive words. The medal of honour winners depicted by the plaintiff were World War II heroes.[18] According to the plaintiff, he presented his medal of honour strip to an advertising firm and to the US Treasury Department with the understanding he would be paid if his idea was used. The plaintiff further argued that without his consent and without payment to him, the advertising agency provided a medal of honour series using his central idea for the Treasury Department to be used in publicising the sale of defence bonds.[18]

However the contention of the plaintiff was rejected by the US Treasury Department which stated that the advertising agency was never authorized to enter into contracts for the government, and no officer or agent of the government with authority to enter into a contract on its behalf ever had any dealings with the plaintiff with respect to the subject matter in suit. The court noted that since the plaintiff had not produced any supporting facts, the mere statement by the plaintiff could not give rise to an implied contract.[19] The court further observed that in a claim founded upon a constitutional taking, the burden would be on the plaintiff to show that the US Government did in fact use his idea and/or material in its bond advertising campaign The court held while the plaintiff's strip was of the typical cartoon format and style, the US Government merely used the photographs together with a description of the heroic exploits of the recipient and in some cases an artist's drawing.[19]

While dealing with another rare case involving the liability of the government for secondary copyright infringement, the court did not hold the US government liable.[20] In *John C Boyle* v *United States* the plaintiff Boyle wrote a pamphlet describing 'Moneyfor' mutual fund products that were targeted to different maturity dates depending upon the year the money was desired by the investor.[21] He sent copies of that pamphlet to several money managers, including Wells Fargo Nikko Investment Advisors. Several years later, Wells Fargo began to market similar products called 'Lifepath' funds and also got a service mark registered with the United States Patent and Trademark Office for the brand Lifepath. In 1997 Boyle registered his pamphlet in the United States Copyright Office.[21]

Subsequently Boyle filed a case alleging that the United States wrongfully allowed Wells Fargo's 'Lifepath' service marks, failed to cancel them, and "effectively destroyed" his copyright, which constituted an "unjust taking". Boyle primarily asserted that the creative work for Lifepath originated with the copyrighted work of the plaintiff. Boyle asked the court to cancel the trademarks and to compensate him for his injury.[22]

The court observed that a petitioner had a claim against the United States only when it had consented to be sued by means of a waiver of sovereign immunity. According to the court the plain language of the statute stated that the United States had waived sovereign immunity in three instances: (1) when the United States itself infringed a copyright, (2) when a corporation owned or controlled by the United States infringed, and (3) when a contractor, subcontractor, or any person, firm, or corporation, acting for the government and with its authorization or consent, infringed copyright. Thus in cases involving secondary infringement there is no waiver of sovereign immunity by the US government. Thus under the US law the government could not be held liable for any kind of secondary infringement. Furthermore the Court also noted that the government's issuance of a service mark registration to Wells Fargo could not be construed as either authorization or consent for it to infringe Boyle's copyright.[22]

**Scope of Fair Use Doctrine with Respect to Governmental Use**

In US, the fair use exception to the copyright owner's exclusive rights is a more or a less judicially crafted doctrine whose scope is really broad. Although the fair use exception had its evolution as a judicial doctrine, it got statutory backing by virtue of Section 107 of the Copyright Act, which was added in 1976 (ref. 23).

Section 107 provides four factors that courts must consider in determining whether a particular use is fair. Thus in order to evaluate whether the use made of a work in any particular case is a fair use the

factors to be considered shall include (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.[23]

**Fair Use and Governmental Use**

Just like a private party the government can also rely on fair use, however, it should be highlighted that the use of materials by the government is not automatically a fair use. This has been clarified by the US Department of Justice, in an opinion delivered in 1999. The opinion noted that while government reproduction of copyrighted material for governmental use would in many contexts be non-infringing because it would be a fair use under 17 USC §107, there is no 'per se' rule under which such government reproduction of copyrighted material invariably qualifies as a fair use.[24] This means that there could be some rare scenarios where the government use may not qualify as fair use.

The case law provides very little assistance on the question of when the use of a copyrighted work by the government is fair use. Reported decisions involving application of the fair use doctrine to governmental actions and conduct are extremely rare. The sole reported decision concerning governmental use of copyrighted works is that of *Williams & Wilkins Co* v *United States*.[25] The case was filed against certain practices of the National Institute of Health (NIH) and the National Library of Medicine (NLM). The NIH library ran a photocopying service for the benefit of its research staff: on request, researchers could obtain a photocopy of an article from any of the journals in the library's collection, typically to assist them in their on-going projects or for background reading. In 1970, the library filled 85,744 requests for photocopies of journal articles including journals published by Williams & Wilkins, constituting about 930,000 pages.[26] On the other hand, NLM which was a repository of much of the world's medical literature, provided photocopies of journal articles, free of charge, to other libraries, research- and education-oriented institutions, commercial organisations like drug companies etc.

The Court of Claims, in a 4-to-3 decision, held that the NIH and NLM photocopying practices were non-infringing because such practices were fair uses. The court might have made the decision after understanding the impracticality of government libraries to negotiate with a copyright proprietor every time they needed to photocopy a requested article. Governmental uses like the one mentioned above present especially attractive situations for invoking the fair use doctrine.

Furthermore there may be some specific exceptions in the case of national security where the public interest results in a privilege to the US government for use of the copyrighted work without any express permission from the copyright owner.[27] In tune with this principle the US Army Regulation 25-30 specifically recognises the fair use doctrine and applies it to the Army's use of copyrighted material.

## Position in United Kingdom (UK)

Various exceptions dealing with the governmental use of copyrighted works in many commonwealth jurisdictions has its genesis in the Gregory Committee Report. The Gregory Committee (the Committee) considered it was anomalous that, while there were provisions allowing governmental use of patented inventions and designs, and for use of copyright material ancillary to such use, there were no corresponding statutory provisions permitting governmental use of any other copyright material.

The Committee was of the opinion that it may well be necessary for the armed services, when seeking tenders for military equipment, to copy drawings of and documents about the equipment in question without always waiting for the prior consent of any owners of any copyright. The Committee accordingly recommended that the power to reproduce copyright material for governmental services should be granted by a permanent legislation, subject to provisions for the payment of compensation, to be settled by the Court if the parties fail to reach an agreement.

Taking cue from the Committee report, the UK's Copyright Designs and Patents Act 1988 provided for the use of copyrighted works by the government under the category of fair dealing for the purpose of public administration.[28] The relevant provisions cover judicial proceedings, proceedings before royal commissions, statutory enquiries, certain public records, and statutorily authorized matters. The law clarifies that when a material is open to public inspection pursuant to a statutory requirement, any copyright in the material as a literary work is not infringed by the copying of so much of the material as

contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.[29]

According to the available exceptions, any material which is in public records open to public inspection in pursuance may be copied, and a copy may be supplied to any person, by or with the authority of that officer who holds the record without infringement of copyright.[30] Undoubtedly this provision can have lot of significance for intellectual property owners. Thus according to this provision any material submitted before the Drugs Controller in UK on the toxicity and efficacy of a particular drug can be copied and made available to any person if the concerned officer approves the same.

**Position in Australia**

The Copyright Act 1968 (Australia) provides for the Crown use of copyright material. The Commonwealth, State and Territory governments, as well as any person authorized in writing by those governments, can use copyright material for the services of the Commonwealth, State and Territory.[31] The government is required to notify the copyright owner of the Crown use as soon as possible after that use, unless that would be contrary to the public interest.[32] The government and the copyright owner may agree to terms, including potential remuneration for the use. If they cannot agree, the Copyright Tribunal of Australia has jurisdiction to set terms.[33] Furthermore the law also provides that the copyright in a literary, dramatic, musical or artistic work is not infringed by anything done for the purposes of a judicial proceeding or of a report of a judicial proceeding.[34]

The Australian High Court had recently decided an interesting case dealing with governmental use of copyright.[35] The appellant, Copyright Agency Limited (CAL), was a collecting society and its members included those from the Australian Consulting Surveyors Association who produced survey plans of land and strata in the State of New South Wales (State). The State registered surveyors to ensure that survey plans prepared by them could meet the requirements of the State for the defining of boundaries of land parcels in the State. The State also registered survey plans through its Department of Lands.[35]

In order to be registered in New South Wales (NSW), survey plans, had to follow certain requirements under the NSW law. Apart from registering the plans the NSW government also reproduced those survey plans for certain purposes and stored them in its database. CAL went to the Copyright Tribunal and sought a determination under Sections 183 and 183A of the Copyright Act 1968 as to the amount of royalties that the NSW government should pay to the copyright owners for the use of particular plans. However the State contested this claim and contended that it was the copyright owner under Section 176 of the Copyright Act 1968 as the plans were made under its direction or control.[36] The case was referred to the Federal Court of Australia, where the Full Bench made a determination.[37]

The Federal Court held that crown/government copyright did not subsist in the survey plans in question under Sections 176 and 177 of the Copyright Act 1968 and thus the State of NSW did not own the copyright in these particular plans.[37]

The Federal Court further held that the State of NSW was entitled to a licence, beyond what was permitted under Section 183 of the Copyright Act 1968, allowing it to reproduce and communicate the plan in question to the public. The Federal Court was of the opinion the State of NSW had an implied licence for free, to do everything that it was obliged or authorized to do with or in relation to registered plans.[37]

CAL filed an appeal against the decision of the Federal Court in the High Court of Australia. The High Court of Australia, held that there was no implied licence relating to the public use of the plans, either in the surveyors' contracts with their clients or independently of these contracts. The court based its reasoning on the fact that there was no necessity to imply such a licence, and the State of NSW charged for the copies it supplied. Thus it held that the State of NSW was not entitled to use surveyor's plans by copying the survey plans and supplying them to the public without compensating the copyright owners.[37]

**Position in New Zealand**

The Copyright Act 1994 (New Zealand) has provisions dealing with the crown/government and provides for the use of copyrighted material for the services of the government/crown upon payment of equitable remuneration to the copyright owner as agreed or determined.[38] The scheme is engaged only where acts are done for the purposes of national security or during a period of emergency[39] or in the interests of public safety or health.[40]

**Position in Singapore**

The Copyright Act of Singapore has robust provisions dealing with governmental use of copyrighted material. The relevant provision states that the copyright in a literary, dramatic, musical or artistic work, sound recording, cinematograph film, television broadcast, sound broadcast or cable programme, shall not be infringed by the Singapore Government or by any authorized person doing any acts comprised in the copyright if the acts are done in the service of the Government.[41] This also covers use by the government pursuant to a defence agreement with some other country for the supply of defence items.[42]

It also states that the government shall at the earliest inform the copyright owner about such use.[43] However in order to avoid the misuse of these provisions by educational institutions owned by Singapore government it has been provided that the copying of the whole or a part of a work for the teaching purposes of an educational institution under the control of the government shall not be considered as an act done in the service of the Government.[44]

**Position in Continental Europe**

Countries in the continental Europe like Germany also provide for certain exceptions to the government in order to promote administration of justice and public safety. Thus it is permissible to make or cause copies of a work to be made copies for use in proceedings before a court, an arbitration tribunal or a public authority. Apart from the above exception, courts, arbitration tribunals and public authorities can reproduce portraits or cause portraits to be reproduced for the purposes of administration of justice and public safety.[45]

**Position in India**

The Copyright Act 1957 (India) also contains certain provisions relating to governmental use of copyrighted works. According to the available provisions, the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding is permitted.[46] Similarly the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature exclusively for the use of the members of that Legislature is a permitted act.[47] Furthermore the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force is also permitted.[48] Another notable provision is the exemption given to any performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any official ceremony held by the Central Government or the State Government or any local authority.[49]

**Fine-tuning the Indian Law: Some Suggestions**

As noted above the Indian law does not mention the compensation to be provided to copyright holders as a result of such use. It should be remembered that any reproduction by government or authorities acting through it should neither conflict with normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author/owner. The present provisions in the Copyright Act dealing with governmental use is very basic and do not provide a comprehensive coverage of the acts done by the government. The Copyright Act should contain a clause which shall authorize the Union, State or Local government as well as any person authorized in writing by those governments, to use any copyrighted material for the services of the above said governments. The government and the copyright owner can come to an agreement with reference to the various terms, including potential remuneration for the use. If they fail to reach an agreement, the Copyright Board can be given the jurisdiction to set the terms and conditions. Although it is desirable for the government to be given a superior right to use copyrighted property over the copyright owners, it should be counterbalanced with the obligation of the government to compensate the copyright owners for the value of their appropriated works.

The limited government use exemption which the law provides can be supplemented with a much wider compulsory licence in favour of the government. However any such licence should provide for a reasonable compensation scheme to make good the loss incurred by copyright owners.

**Governmental Use to Protect National Security**

The Copyright Act should also contain some specific exceptions in the case of national security where public interest results in a special privilege being given to the Indian Armed Forces and /or strategic departments of the Indian defence establishment. This privilege should allow the concerned departments/armed forces to make use of

the copyrighted work without any express permission from the copyright owner. For example if the Indian Army or Bhabha Atomic Research Centre wants to use the picture of a particular weapon system which is displayed in a defence journal published by *Janes Defence Weekly*, they should be able to do so without any permission from the copyright owner.

The Copyright Act should also provide an exception/explanation to the effect that any copyright in material, which is open to public inspection pursuant to a statutory requirement or in a statutory register, will not be infringed by copying if such copying is done by or with the authority of the person making the material open to public inspection or maintaining the register provided that the copying is for a purpose which does not involve the issuing of copies to the public.[50] Secondly the Act should permit copying or issuing of copies to the public of copyrighted materials which is open for public inspection pursuant to a statutory requirement or which is placed on a statutory register which contains information about matters of general scientific, technical, commercial or economic interest. However in such cases the person who is making the material open to public inspection or maintaining the register should authorize such an act.

Furthermore one more exception which can be included in the Act is for the material communicated to the government in the course of public business by or with a licence of the owner, where the government owns or controls a document or other material embodying the work. Such material may be copied by the government or it may issue copies to the public for the purposes for which the work was communicated to it, without infringement, subject to any agreement to the contrary. Such provisions can exempt the government even when it indulges in copying or issuing copies to the public which involve a profit at the copyright owner's expense.

## Conclusion

This paper covered in detail the governmental use exceptions in various jurisdictions around the world. Starting from USA where there is no special exception available to the governmental use of a copyrighted work, the paper also discussed the various legal principles and case-laws on such use of copyrighted works in many commonwealth jurisdiction including UK, Australia and India.

On a concluding note it can be argued that the courts must analyse governmental uses of copyrighted property differently from the uses by private defendants. The Union, State and Local government entities, unlike private individuals, have the power to exercise eminent domain over copyrighted property. The power of eminent domain is an attribute of sovereignty, and is inherent in every independent state. If a government entity wants to exercise its right to use any property but is unable to negotiate successfully with the owner for such use, the government can force the right holder to sell some or all of the rights over the property by invoking its power of eminent domain.

Properly exercised, this power can override the rights of copyright proprietors under the relevant statutes. However a government entity's unauthorized use of copyrighted property must be subject to certain limitations to make sure that it does not fall foul of the exceptions provided by the Berne Convention. In short, sufficient guidance should be provided for determining when a particular governmental use of copyrighted property constitutes an exercise of the power of eminent domain and what should be the just compensation provided to the copyright holder.

Indian law on the subject needs to be more comprehensive. Suitable amendments should be carried out to incorporate certain provisions relating to national security, copying/issuing of copies to the public of copyrighted materials that are open for public inspection pursuant to a statutory requirement, etc. However the need of the hour is to have an awareness program regarding the nature and scope of governmental use with respect to copyrighted works. Making various stakeholders aware about the scope of such use will definitely be a right step towards the right direction.

## References

1 The Latin phrase, "*cuius est solum eius est usque ad coelum et ad inferos*": according to this maxim the owner also gets an exclusive right to the mines and minerals contained underground.

2 Zemer L, What copyright is: Time to remember the basics, *Buffalo Intellectual Property Law Journa*l, 4 (2207) 54 at 57.

3 Zemer L, What copyright is: Time to remember the basics, *Buffalo Intellectual Property Law Journal*, 4 (2207) 54 at 63.

4 See generally Section 14, Indian Copyright Act 1957.

5 The Indian Copyright Act 1957 provides for civil, criminal and administrative remedies. Such remedies are available under the copyright statues of all countries.

6 Kwall R R, Governmental Use of Copyrighted property: The sovereign's prerogative, *Texas Law Review*, 67 (1989) 685 at 687-8.

7 In countries like UK, India, Australia etc., the government holds the copyright with respect to works made by, or under

its the direction or control, while in US, copyright protection is not available for any work of the US Government.

8 Shoenfeld S, The Applicability of Eleventh Amendment Immunity Under the Copyright Acts of 1909 and 1976, *American University Law Review*, 36 (1) (1986) 163 at 165.

9 28 USC § 1498(b).

10 *Nichols' the Law of Eminent Domain*, edited by L J Sackman et al., revised 3rd edn, § 1.11, 1985.

11 *Kohl* v *United States*, 91 U.S. 367, at 373-74 (1875).

12 *Georgia* v *City of Chattanooga*, 264 U.S. 472, at 480 (1924).

13 Fifth Amendment to the US Constitution, http://www.law.cornell.edu/constitution/fifth_amendment (last accessed 20 April 2014).

14 Merrill T W, The economics of public use, *Cornell Law Review*, 72 (1986) 61 at 63. There are many cases to support this point of view like *Poletown Neighborhood Council* v *City of Detroit*, 304 N.W.2d 455 (1981), *City of Oakland* v *Oakland Raiders*, 183 Cal. Rptr. 673 (1982), etc.

15 Numerous US cases support this view, the landmark cases being *West River Bridge Co* v *Dix*, 47 U.S. (6 How.) 507, at 533 (1848), *Kimball Laundry Co* v *United States*, 338 U.S. 1, 10-11 (1949).

16 Kwall R R, Governmental Use of Copyrighted property: The sovereign's prerogative, *Texas Law Review*, 67 (1989) 685 at 694.

17 *Arthur S Curtis* v *The United States*, 168 F. Supp. 213 (1958).

18 *Arthur S Curtis* v *The United States*, 168 F. Supp. 213 at 214 (1958).

19 *Arthur S Curtis* v *The United States*, 168 F. Supp. 213 at 216 (1958).

20 Under the US Copyright Law there is primary/direct liability and secondary/indirect liability. Secondary liability can be either contributory infringement or vicarious infringement.

21 *John C Boyle* v *United States*, 200 F.3d 1369 at 1371 (Fed. Cir. 2000).

22 *John C Boyle* v *United States*, 200 F.3d 1369 at 1372 (Fed. Cir. 2000).

23 17 USC § 107 (1994), http://www.copyright.gov/title17/92chap1.html#107 (last accessed 23 April 2014).

24 Full text of the opinion is available at http://www.loc.gov/flicc/gc/fairuse.html (last visited accessed 23 April 2014).

25 Williams & Wilkins Co v United States, 487 F.2d 1345 (Ct. Cl. 1973), the same was affirmed by an equally divided Supreme Court while deciding the appeal, 420 U.S. 376 (1975).

26 *Williams & Wilkins Co* v *United States*, 487 F.2d 1345 at 1348.

27 *Key Maps Inc* v *Pruitt*, 470 F. Supp. 33 (S.D. Tex. 1978).

28 See Sections 45-50 of CDPA 1988.

29 Section 47 (1) CDPA 1988.

30 Section 49 CDPA 1988.

31 Section 183 (1) Copyright Act 1968.

32 Section 183 (4) Copyright Act 1968.

33 Section 183 (5) Copyright Act 1968

34 Section 43 Copyright Act 1968.

35 *Copyright Agency Ltd* v *State of New South Wales* [2008] HCA 35, http://www.austlii.edu.au/au/cases/cth/HCA/2008/35.html (last accessed 23 April 2014).

36 The other argument was that it was the owner of copyright under Section 177 of Copyright Act 1968 since it was the first to publish the plans.

37 *Copyright Agency Limited* v *State of New South Wales* [2007] FCAFC 80, http://www.austlii.edu.au/au/cases/cth/FCAFC/2007/80.html (last accessed 23 April 2014).

38 Section 63, Copyright Act 1994.

39 Section 63 (1) (a), Copyright Act 1994.

40 Section 63 (1) (b), Copyright Act 1994.

41 Section 198 (1), Copyright Act 1987.

42 Section 198 (2), Copyright Act 1987.

43 Section 198 (4), Copyright Act 1987, Government need not inform the copyright owner if it causes prejudice to public interest.

44 Section 198 (10), Copyright Act 1987.

45 Article 45, Deutsches Urheberrecht.

46 Section 52 (1) (c) Copyright Act 1957.

47 Section 52 (1) (d) Copyright Act 1957.

48 Section 52 (1) (e) Copyright Act 1957.

49 Section 52 (1) (za) Copyright Act 1957.

50 Section 52 (1) (e) Copyright Act 1957 of the Act seems to be very basic and is not broad enough to cover the various emerging uses.