

## ACADEMIC RESEARCH AND COPYRIGHT ISSUES

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### **Introduction**

The main object of intellectual property law is to persuade the creation of a great variety of intellectual supplies. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they make, usually for a limited era of time. Because they can earn profit from them, this gives economic enticement for their creation. These economic incentives are anticipated to stimulate innovation and put in to the technical progress of countries, which depends on the amount of protection granted to innovators.

Copyright may be a right that grants the artificer of distinctive work exclusive rights for its use and allocation. this is often generally just for a restricted time. The exclusive rights don't seem to be absolute however restricted by limitations and exceptions to copyright law, as well as simply use. A main limitation on copyright is that it protects solely the distinctive expression of ideas, and not the underlying ideas themselves

**Academic Research** refers to cautious study of a specified topic, field, or crisis, undertaken to find out facts or principles. When there is academic research the copyright issue arises. When we search for any literary work like articles we find that some of them are copyrighted while others are not.

An author may or may not copyright his works. A work which is not copyrighted can be used by world for its benefit while some authors put restriction on the world for using their works for its benefit by copyrighting his work.

### **The Copyright Act, 1957**

The Copyright Act 1957 commands the subject matter of copyright law in India. The Copyright Act is on effect in India from 21 January 1958. The history of copyright law in India can be seen back to its colonial era under the British Empire. The Copyright Act 1957 was the first post-independence copyright legislation in India and it has been amended 6 times since 1957. The latest amendment was in the year 2012, through the Copyright (Amendment) Act 2012. India is a member of the majority of the significant international conventions governing the vicinity of copyright law<sup>1</sup> which includes the Universal Copyright Convention of 1951, Berne Convention of 1886 the Rome Convention of 1961 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). But India is not a member of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

### **Section 3. Meaning of publication:-**

- (a) Regarding a literary, dramatic, musical or artistic work, the subject of copies of the work to the people in adequate quantities;
- (b) Regarding cinematograph film, the sale or hire or offer for sale or hire of the film or copies thereof to the public;
- (c) in the case of a record, the issue of records to the public in adequate quantities;

But does not, except as otherwise expressly provided in this Act, includes,-

- (i) in the case of a literary, dramatic or musical work, the issue of any recording such work;
- (ii) in the case of a work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.

**Section 13. Works in which copyright subsists:-** According to provisions of this act copyright shall exist all over India in the following classes of works-

- (a) Original literary, dramatic, musical and artistic works;
- (b) Cinematograph films; and
- (c) Records.

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<sup>1</sup> Mishra J.P., Intellectual Property Rights, Central Law Publications, 23<sup>rd</sup> Edition

**Section 14. Meaning of copyright:-** Copyright means the elite right, by virtue of and subject to the provisions of, this Act,-

(a) in the case of a literary, dramatic or musical work, to do and approve the doing of any of the following acts, that is:-

(i) Reproduction of any work in any material form

(ii) to publish the work;

(iii) Performing the work in Public

(iv) Producing, reproducing, Performing or publishing any translation of the work;

(vi) Communication of the work by radio-diffusion or to communicate to the public by a loud-speaker or any other alike tool the radio-diffusion of the work

(vii) any adaptation of the work;

(viii) to do in relation to a translation or an adaptation of the work any

**Section 17. First owner of copyright:-** the author of a work shall be the first owner of the copyright :

(a) within the case of a literary, dramatic or inventive work created by the author within the course of his employment by the man of affairs of a newspaper, magazine or similar periodical below a contract of service or situation, for the aim of publication in a very newspaper, magazine or similar periodical, the same man of affairs shall, within the absence of any agreement to the contrary, be the primary owner of the copyright within the add to this point because the copyright relates to the publication of the add any newspaper, magazine or similar periodical, or to the copy of the work for the aim of its being therefore revealed, however altogether alternative respects the author shall be the primary owner of the copyright within the work;

(c) in the case of a work made in the course of the author's employment under a contract of service, to which clause (a) or clause (b) does not affect, the employer shall, in the absence of any harmony to the divergent, be the first owner of the copyright.

### **Protection of “Foreign Works in India”**

Under the Indian Copyright Act, 1957 works of foreign authors/owners are accorded the equal<sup>2</sup> security in India to which the Indian citizens are permitted under the Act. In order to maintain pace with the global necessity of harmonization, the Copyrights Act, 1957, has ushered in far reaching changes and brought the copyright law in the country in line with the developments in the IT industry, whether it is in the field of satellite broadcasting or computer software or digital expertise. The amended law has made provisions to guard performer's rights as envisaged in the Rome Convention.

The government is also taking initiative to fight piracy in the software industry, motion pictures and the music industry along with players in the industry through their associations and organizations like National Association of Software and Service Companies (NASSCOM), National Initiative against Piracy and Counterfeiting (NIAPC) etc.

### **Copyright in Education**

The use of materials confined by copyright is important to the learning procedure. Educational resources exist in all formats that are predictable as ‘works’ in copyright law. To reduce the load on teachers and students who want to make use of copyright materials as part of their teaching and learning experience, the law includes a number of exceptions that permit for the use of all types of copyright work for certain educational purposes.

If you are using materials in an educational perspective this does not mean that you can forget about copyright. What it does mean is that one needs to be conscious of when one can use a work without obtaining consent or paying a license fee, and when consent or a license is requisite. For instance, if a school or college wishes to record television broadcasts for use within a classroom, it should get a license from the Educational Recording Agency. Within any educational institution there is usually someone who is accountable for copyright issues. A first step could be to find out who has that role in your place of study or work. They should be able to help you

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<sup>2</sup> February 9,2017, Copyright Issues in Education by Linda Engaghen

understand whether your use of a work is allowable by an exception, or whether a pertinent licensing scheme applies. In general, it is significant to keep in mind that one is not allowed to make commercial use of any copies formed for educational purposes.

## **Copyright Issues in Education**

Copyright issues in education comes often which can be studies in two respects –

### **1. Public Domain-**

Public domain refers to the state of belonging or being accessible to the public as complete, particularly through not being subject to copyright or other lawful limits the public domain incorporates all the creative works to which no intellectual property rights pertain. Those rights may have expired, been forfeited, expressly relinquished, or may be improper.

Works in the public domain are inventive works that are not protected by copyright. This includes works that have been in survival long enough. It also encompasses works produced by the government, which does not copyright its work. If a work is in the public domain, attributions must still be granted to the original creator, but anybody can use or even sell the works.

Public domain does not completely eliminate the original creator's rights. Attributions must always be given, but one can alter the original work significantly.

**2. Licensing and Copyright-** When a work is created by someone he own the copyright, which is our exclusive right as the author to own that work. He control who else can use the work and in what manner. So for using a copyrighted work one has to grant license by an authority to permit a usage. Assignment of copyright and licenses can comprise a number of limits and conditions. These can include limitations on the kind of use that can be made of the work, the phase of time for which a license applies and requirements for payment. Whether one is granting or receiving a license, it is always a good idea to record the particulars of the license in writing. It is also a good idea to date the on paper record of the license, and have it signed by both the licensor and licensee.

## 1. FAIR USE IN EDUCATION AND RESEARCH

Fair use is a doctrine that allows limited use of copyrighted matter without having to first obtain consent from the owner of copyright. Fair use is one of the **limitations to copyright** anticipated<sup>3</sup> to balance the interests of copyright holders with the public interest in the wider allocation and use of artistic works by allowing as a defense to copyright infringement claims certain restricted uses that might otherwise be considered infringement.

Fair use offers an extremely significant opportunity for faculty to make logical and restricted uses of copyrighted resources. Clipping, cutting, pasting, uploading, posting, and many additional activities that are frequent at the university may be copyright infringements or may be within fair use. Some example situations:

- Clipping and copying materials into innovative education apparatus
- Posting materials for learning.
- Developing databases of copyrighted works for research.
- Sharing articles and other materials with classmates.
- Developing digital libraries.
- Placing copies on library reserves.

A fair use analysis is essential to decide if your use is a just one.

### **Pros and Cons of using Copyrighted works for academic purpose**

There can be both pros and cons of copyrighted works which are used for academic purpose-

**1. Pros-** Definitely when a copyrighted work is used for academic purpose it is very beneficial to teachers as well as students. The copyrighted works always contains some beneficial and important things which tell about the unknown facts which improves learning of students and helps teacher in teaching.

**2. Cons-** Fair use of copyright work is beneficial but it can be a con also as in if an author has given any copyrighted work and it is not used fairly rather it is used by faculty and students in

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<sup>3</sup> <https://spicyip.com/tag/fair-dealing>

their own name which will be creating impression on mind of others that it is their work which will be straightaway infringement of right of author which he wanted to be protected.

### **Ownership of Copyright in India**

**Section 17 First owner of copyright:** - According to section 17 of Copyright act the ownership belongs to a person -

within the case of a literary, dramatic or inventive work created by the author within the course of his employment by the man of affairs of a newspaper, magazine or similar periodical below a contract of service or situation, for the aim of publication in a very newspaper, magazine or similar periodical, the same man of affairs shall, within the absence of any agreement to the contrary, be the primary owner of the copyright within the add to this point because the copyright relates to the publication of the add any newspaper, magazine or similar periodical or to the copy of the work for the aim of its being therefore revealed, however altogether alternative respects the author shall be the primary owner of the copyright within the work. It contains two aspects-

**(a) In course of Employment-** The author of a work is, in belief is the primary owner of copyright over his work. However, an employer can possess rights over the works of its employee if three conditions are met:

1. The subsistence of an employment agreement.
2. The formation of a work in the course of employment
3. The absence of a contract specifying otherwise.

**(b) Not in course of employment** –When a person is not employed anywhere then he will have the exclusive ownership of the work created by him.

### **When the Use of Copyright Works does amount to infringement**

According to **section 51** copyright in a work will be infringed —

(a) When a person, without a license given by the owner of the copyright or the Registrar of Copyrights under this Act or in infringement of the conditions of a license so granted or of any condition imposed by a proficient authority under this Act—

(i) does something, the special right to do which is by this Act conferred upon <sup>4</sup>the owner of the copyright, or

(ii) allows for revenue any place to be utilized for the communication of the work to the public where such communication constitutes an breach of the copyright in the work, unless he wasn't aware and had no rational view for believing that such communication to the public would be an breach of copyright

(b) When any person—

(i) makes for sale or rent, or sells or lets for rent, or by way of trade displays or offers for sale or rent, or

(ii) Distributes either for the motive of trade or to such a degree as to affect detrimentally the owner of copyright

(iii) By means of trade exhibits in public, or

(iv) Imports into India, any breaching copies of the work:

### **When the use of copyright works does not amount to infringement**

The provisions of S. 52 of the Copyright Act, 1957 provide for some acts, which would not amount to an infringement of copyright that is to say just dealing with a literary, dramatic, musical or artistic work not being a computer program for the purposes of-

1. Private use, including research;

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<sup>4</sup> Supra Note 1

2. Criticism or analysis,
3. Reporting recent events in any print media or
4. Transmit or in a cinematographic movie or by way of pictures,
5. Reproduction for the purpose of a legal proceeding or for details of a legal proceeding;
6. Reproduction or publication of a literary, dramatic, musical or creative work in a work geared up by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, entirely for the use of the members of that Legislature;
7. The reproduction of any literary, dramatic or musical work in a licensed copy made or supplied in harmony with any law for the time being in force;
8. The reading or recitation in public of any rational extract from a published literary or dramatic work;
9. The publication in a compilation, mainly composed of non-copyright matter, bona fide anticipated for the use of educational institutions,
10. The creation of sound if made by or with the license or permission of the owner of the right in the work.

### **Copyright material used in Education Institutions (Limitations)**

The copyright material used in education institution is for the benefits of student only. It is copyrighted to such extent that it is accessible from particular institution and nowhere else. Even it cannot be used except from institution internet. It is done so that no other institution or person uses it unfairly and to keep data highly secured. The use of material is restricted to the campus which may sometimes be a limitation to students as due to lack of time it is not always possible to do that work in the campus, when it is accessible from everywhere the work becomes easy.

For instance manupatra is a site which gives a detailed information relating to law but a membership is to be taken of it by the institution and then the manupatra is accessible only in the campus and from internet of institution and from nowhere else which creates a difficulty as students and teachers cannot use from their home and becomes restricted to the campus where it is not every time possible to do all the work.

### **Emerging Challenges to Conventional Copyright Regime in Educational Institutions**

IT is increasingly being used in educational institutions in India. Internet and Intranet have become part of the teaching-learning process at almost all levels of education. Virtual classrooms have already become a reality. Distance education is now an instantaneous process. Students can access knowledge stored in any website anywhere in the world at their convenience. Teachers can instruct without having the students physically before them. Computer screens have replaced blackboards. Notes and materials are distributed not on paper but through computer networks. All these developments have profound impact on copyright issues in the educational institutions. While some of the traditional issues have acquired new dimensions, totally new issues have also arisen.

Ownership of works created in and for educational institutions is likely to raise fresh issues in the context of digital technologies. While the books and papers that academicians write even on the subjects they are teaching may continue to be their intellectual property, the ownership of the copyright in the course materials and other teaching literature that they might create in order to discharge their duties as employees of the university may lead to disputes between the institutions and the creators. For example, if a professor conceived and concretized<sup>5</sup> a particular course in a university, ran it for some time, then quit that institution and joined another one, whether he could run the same course in the new institution without infringing copyright may very well become an issue. Technological changes have also altered the model of creation of works within the educational institution. Collaboration and association of a number of persons within the faculty and staff are

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<sup>5</sup> May 11, 2014, Emerging Challenges in Copyright by Mona Jhawar

many a time involved in the production of multi-media education kits used particularly in distance education.

Computer education is one area where the ownership issue may have a new dimension. The faculty and students, as part of a class project, may create new software programs, which could be later commercially exploited. While there is no suspicion that the resultant software is their intellectual creation, the creation of the same concerned utilization of the institutional facilities, materials and class time. In such situations disputes between the institution and the authors as to the ownership cannot be ruled out.

### **Remedies under Copyright Law for the infringement of Right**

There are two types of remedies a person can get for copyright infringement in India –

1. Civil remedies,
2. Criminal remedies

### **Civil Remedies for Copyright Infringement**

The civil remedies are given under section 55 of the copyright act, 1957 which are as follows:-

#### **1) Interlocutory Injunctions**

The most significant remedy is the award of an interlocutory injunction. In most case the application filed is for interlocutory relief and the matter on the odd occasion goes <sup>6</sup>beyond the interlocutory stage. There are three necessities for there to be a grant of interlocutory injunction –

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<sup>6</sup> Januaury 25,2016, What Are The Remedies Available For Copyright Infringement In India By Haridya Iyenger

**Firstly**, a *prima facie* case.

**Secondly**, there needs to be equilibrium of convenience.

**Finally**, there needs to be an irreversible injury.

## 2) Pecuniary Remedies

Copyright owners can also look for three pecuniary remedies under Section 55 and 58 of the Copyright Act of 1957.

**First**, an account of profits which lets the owner seek the sum of money made equivalent to the profit made through illegal manner.

**Second**, compensatory costs which let the copyright owner seek the damages he suffered due to the breach.

**Third**, conversion damages which are assessed according to the worth of the article.

## 3) Anton Pillar Orders

The Anton pillar order gets its name from the holding in Anton Pillar AG V. Manufacturing Processes. The subsequent essentials are there in an Anton Pillar Order –

First, an injunction restraining the defendant from destroying or infringing commodities.

Second, an order permitting the plaintiff's attorney to look for the defendant's premises and take goods in their secure care.

Third, an order that the defendant be directed to reveal the names and addresses of suppliers and customers.

#### **4) Mareva Injunction**

The Mareva injunction is used when the court is satisfied that the defendant is trying to make a delay or obstruct the implementation of any declaration being passed against him. The court has the power to direct him to place entire or any part of his property under the court's disposal as may be enough to please the decree. This is provided in Order XXXVIII, Rule 5<sup>7</sup> of The Civil Procedure Code, 1908.

#### **Criminal Remedies**

Under the Copyright Act, 1957 the following remedies are provided for breach:

1. Imprisonment up to 3 years but, not less than six months
2. Fine which may not be less than 50,000 but, may lengthen up to 2,00,000
3. Search and seizure of infringing goods
4. Delivery of infringing goods to the copyright proprietor.

#### **Case Law**

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<sup>7</sup> Ibid

### **Mary vs. ILP Institution of Management**

#### **Facts**

In this case plaintiff had written a book on a particular topic. The institution made use of it for educating students and the one professor of the institution started selling the book in his own name. When the plaintiff came to know about this she filed a suit against the institution for using her work by professor in his own name and infringing her copyrighted work.

#### **Judgement**

It was held that the institution was not aware about this thing so institution cannot be held liable but the professor was liable for infringing the plaintiff's copyrighted work and he was ordered to pay a compensation of 2,00,000 to plaintiff.

### **Ashwin Gupta vs. Little Flowers High school, Goa**

It was held in this case that where the literary work is used for educational purpose i.e. for fair use, it will not amount to infringement of the person's right of copyright so here suit was dismissed by High Court.

*"A copyright protects only original work not a copied one"*