

Educational Institutions and Copyright Laws

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Received: 19 October 2016; revised: 9 November 2017

The Hon'ble Delhi High Court, has in its judgment delivered on 16 September 2016, ruled that there is no bar in reproducing text books and other educational materials, used for the purposes of imparting education. A study of the world wide practice shows that, though some relaxation is made in respect of reproduction of educational materials, they are limited in their scope, permitting only small extracts to be copied by adopting the principle of 'Fair Use'. International Treaties are also particular about 'Fair Use', which will not have much effect on the rights of the right holders. It is also felt that the interpretation of the Hon'ble Delhi High Court, is not in tune with the letter or spirit of the Copyright Act. An earlier ruling of the Hon'ble Supreme Court, also does not support these views. The issue deserves re-look.

Keywords: The Copyright Act, 1957, US Copyright Act, 1976, The Copyright, Designs and Patents Act, 1988 of UK, The German Copyright Act, 1965, Berne Convention, Vienna Convention on the 'Law of Treaties', fair practice

Section 52 of the Indian Copyright Act 1957¹ lays down that certain acts listed therein shall not constitute infringement of copyright. One such instance is the use of copyrighted materials for educational purposes. Clause (i) of Sub-section (1) of Section 52 reads as follows:

“the reproduction of any work;

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answer to such questions;”.

The scope of this provision came up for consideration before the Hon'ble Delhi High Court in *The Chancellor, Masters and Scholars of the University of Oxford & ors v Rameshwari Photocopy Services & Anr.*² It was alleged by the plaintiffs, that the respondents were guilty of infringing their copyrights in their publications, by photocopying on a large scale, circulating the same, and by sale of unauthorized copies of substantial extracts, from the plaintiffs' publications by compiling them into course pack/anthologies for sale. The course pack being so sold, containing photocopies of portions, varying from six to sixty pages. The Commissioner appointed by the High Court, reported that he found 45 course packs containing photocopied articles, comprising of 1 to 22 copies of varying number of pages of the

books of the plaintiffs, and that eight books were found being copied from cover to cover. After hearing the rival contentions of the parties, including the Delhi University and Delhi School of Economics, the Hon'ble Delhi High Court came to the conclusion, that there was no infringement of the copyright owned by the plaintiffs, in view of the exclusion in Section 52(1)(i) of the Copyright Act, referred to above. While arriving at this conclusion, the Hon'ble Court made the following observations:

Section 52(1)(i), is not restricted to cases of individual teacher and an individual pupil(Para 55)

'Instruction' is not confined to educational institutions or establishments. The word 'instruction' embraces any form of instruction whatsoever, and not necessarily in educational institutions (Para 56)

'In the course of instruction' means reproduction of any work, while the process of imparting instruction by the teacher and, receiving instruction by the pupil continues ie., during the entire academic session during which the pupil is under the tutelage of the teacher and that imparting and receiving of instruction is not limited to personal interface between the teacher and the pupil, but, is a process commencing from the teacher, readying himself for imparting education, setting syllabus, prescribing text books, reading and ensuring whether by interface in class room/tutorials or otherwise, by holding tests from time to time or clarifying doubts of students.' (Para 72).

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'Copyright specially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations'(Para 80).

'The International Conventions like Berne Convention³ and TRIPS⁴, give liberty to the individual countries, to give exemptions from Copyright Laws'(Para 97).

Before we go into this Judgment in detail, it would be useful to go through the International Practice.

USA

Section 107 of the US Copyright Act 1976,⁵ provides that the 'fair use' of a copyrighted work, including such use by reproduction in copies, for the purpose of teaching, scholarship, research etc., is not an infringement of copyright. In determining whether the use in any particular case is a 'fair use', the factors to be considered shall include the following:

a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

b) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;

c) the effect of the use upon the potential market for the value of the copyrighted work.

Over a period of time, certain norms have been evolved. Teachers are permitted to make a copy of an excerpt. This could be a chapter from a book and an excerpt from a work, and cannot be more than 1000 words or 10% of the whole work, whichever is less. Students may copy portions of works under the 'fair use' copyright exemption, provided copying is not being used as a substitute for buying a text book.

UK

The Copyright, Designs and Patents Act 1988 of UK⁶ lays down the conditions relating to use of Copyrighted material by or on behalf of an establishment, by virtue of this section. Section 32 deals with the use and copy of Copyrighted materials (other than reprographic copying), in the course of instruction. Section 36 deals with reprographic copying by educational establishments, of passages from published works. The following conditions shall apply:

i) It should be accompanied by proper acknowledgment and, should be for use only for non-commercial purposes.

ii) Not more than one percent of any work may be copied by or on behalf of an establishment, by virtue of this section in any quarter.

Australia

Section 40 of The Copyright Act 1968 of Australia,⁷ lays down the conditions under which copyrighted material can be used for purposes of education.

i) 'Fair Dealing' will be permitted.

ii) The criteria to be considered to determine, whether any use or copying shall come, under the category of 'fair dealing' shall include:

a) the purpose and character of the dealing;

b) the nature of the work or adaptation;

c) the possibility of obtaining the work or adaptation, within a reasonable time at an ordinary commercial price;

d) the effect of the dealing upon the potential market for, or value of the work or adaptation;

e) in a case, where part only of the work or adaptation is reproduced- the amount and substantiality of the part copied taken in relation to the whole work or adaptation.

The following can be considered as reasonable adaptation-

- 10% of the number of pages in the edition; or*

- if the work or adaptation is divided into chapters - a single chapter.*

Germany

The German Copyright Act 1965⁸ provides an enumerative catalog of limitations and exceptions from the exclusive rights granted to the copyright owner. The balancing of the interests of the copyright owner on the one hand and the general public on the other is considered very important. Under the German Copyright Law, it is permissible to make copies of small segments of individual contributions for personal use in teaching in non-commercial institutions of education (Article 53).

The copyright laws of most of the other countries are also on similar lines, although there could be some variations in details. Most of these countries grant some concessions for educational purposes provided they are used for non-commercial purposes and, the copying is limited. The concept of 'fair dealing' is adopted by almost all the countries. All of them make sure that such copying does not affect the potential market of the copyrighted work.

International Conventions and their Binding Effect

A number of International Copyright conventions have been entered into by most of the nations, and the important among them are the following:

- i) The Berne Convention for the Protection of Literary and Artistic Works, 1886⁹
- ii) Universal Copyright Convention, Geneva, 1952¹⁰
- iii) Universal Copyright Convention, Paris, 1971¹¹
- iv) Agreement on Trade Related Aspects of Intellectual Copyrights, 1994 (TRIPS)¹²

India is a signatory to all these conventions and they are, therefore, in the nature of binding treaties. Of the above listed conventions, the Berne Convention and TRIPS are considered the most important.

Article 9(2) of the Berne Convention reads as follows:

"It shall be a matter of legislation in the countries of the Union to permit the reproduction of such works in certain special cases, *provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.*"

Article 13 of TRIPS reads as follows:

"Members shall confine limitations and exceptions to exclusive rights, to certain special cases, which do not conflict with normal exploitation of the work and do not unreasonably, prejudice the legitimate interests of the rights holder".

It may be seen from the above that the freedom of the member countries of the conventions to grant exemptions is very limited and will be subject to the conditions laid down therein. There is no *cart-Blanche* available for granting exemptions. These conditions are binding on the signatories, as these are considered as International Treaties, by virtue of the definition contained in Article 2(1)(a) of the Vienna Convention on the 'Law of Treaties'. Article 26 of this Convention,¹³ reads as follows:

'Every treaty in force is binding upon the parties to it and must be performed in good faith.'

This provision is also known as 'Pacta Sunt Servanda'(promises to be kept).

Article 27 of this Convention, provides that

a party, may not invoke the provisions of its internal law, as a justification for its failure to perform treaty obligations. Articles 60 and 66 provide for measures that can be adopted in cases of breach of treaties, such as submitting the matter to the International Court of Justice or referring the matter to arbitration.

Analysis

'Noscitur a Sociis'

Section 52(1)(i) of the Copyright Act,¹⁴ has to be considered not as a standalone provision, but as part

of a general scheme and has to be read in association with the other related provisions. Thirty three types of exemptions are provided for under sub-Section(1) of Section 52. All these exemptions are qualified exemptions laid down for specific purposes and with limitations. Clause (i) cannot be interpreted to mean unlimited right of copying the copyrighted work. The doctrine of '*noscitur a sociis*'(meaning of a word should be known from its accompanying or associated words), has much relevance in understanding the import of words in a statutory provision as words take their colour from each other, the meaning of the more general being restricted to a sense analogous to a less general. The philosophy behind this doctrine is that the meaning of the doubtful words may be ascertained by reference to the meaning of the words associated with it. Even in respect of clause(i), clauses (ii) and (iii) refer only to limited freedom to reproduce, such as a part of the question to be answered in an examination or in answers to such question. There is nothing in sub-clause (i) to suggest that unlimited freedom to reproduce is available, unlike sub-clauses (ii) and (iii).

Purposive Construction

According to this Rule of interpretation, the statute must be read in its entirety and, the purport and the object of the Act, must be given its full effect, by applying the principle of purposive construction. A purposive construction promoting the object of the environment, but not extending its sweep beyond the frontiers within which it was intended to operate must be adopted, to ensure that the true intent of the statute is carried on. In this connection the following observations by Justice Chinnappa Reddy in *RBI v Peerless General Finance and Investment Co.Ltd*,¹⁵ would be very relevant:

"....No part of a statute and no word of a statute, can be construed in isolation. Statutes have to be construed, so that every word has a place and everything is in its place. It is by definition as a whole in the setting of the entire Act....."

The Hon'ble Supreme Court in a recent judgement (on 20 September 2016), in the case of *International Confederation of Societies of Authors and Composers (CISAC) v Aditya Pandey*,¹⁶ approvingly cited the following passage from an earlier judgment of the Court in *Entertainment Networks(India)Ltd v Super Cassette Industries Ltd*.¹⁷

"Para 69-If the right of an author is so pervasive, is it necessary to construe the provision under section

31 of the Act, having regard to the International Covenants and the laws operating in other countries? The answer to the said question must be rendered in affirmative. Interpretation of a statute, cannot remain static. Different canons and principles are to be applied, having regard to the purport and object of the Act. What is essential, therefore, is to see that the expanding area, in which the copyright will have a role to play, is covered. While India is a signatory to the International Covenants, the law should have been amended in terms thereof.

Only because laws have not been amended, the same would not by itself mean, that the purport and object of the Act, would be allowed to be defeated. If the ground realities change, the interpretation should also change. Ground realities would not only depend upon the new situations and changes in the societal conditions *via-a-vis* the use of sound recording extensively by a large public, but, also keeping in view the fact that the Govt., with its eye wide open have become a signatory to International Conventions”.

These remarks squarely apply to the case under our consideration.

Treaty Obligations

The implications of the International Conventions on Copyright have already been considered in detail. In this connection it may also be pointed out, that Article 51(c) of the Constitution of India, provides that the State shall endeavor to foster respect of International Law and treaty obligations in the dealings with organized peoples with one another. It has been decided in a number of cases, that national courts should generally interpret statutes, so as to maintain harmony with the rules of International Law.

Conclusion

1) The exemption provisions in the Copyright Act, have to be interpreted purposively, to promote the

objects of the Act, that is, to safeguard the interests of the copyright holder.

- 2) India's Copyright policy should take into account the world wide practices.
- 3) India being a signatory to International Conventions on Copyright should align its practice to conform to its Treaty obligations.
- 4) The exemption provision in Section 52 (1) (i), as interpreted by the Hon'ble Delhi High Court seems to be out of sync., with the rest of the Copyright Act and also the provisions of International Conventions and , therefore, deserves a re look.

The plaintiffs in this case have filed an appeal against the single Judge's order to the Division Bench. The Division Bench of the Hon'ble Delhi High Court was inclined to differ from the views of the single judge, but refrained from passing suitable orders, in the absence of adequate factual materials. In the mean while the plaintiffs are stated to have withdrawn their case, probably due to some out of Court settlement. The issue raised in the petition, however, remains un-answered.

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