

Legal Issues in 'IP in Textbooks'

Issue: Whether the Statutory Defence of Fair Use under Copyright Law is Applicable to Textbooks in the Current Education Scenario?

Introduction

- ❖ The Copyright Act, 1957 does not define the term ‘fair use’ or ‘fair dealing’, but the Indian Courts have held it to be an acceptable defence in cases of copyright infringement.
- ❖ Defence of Fair Use allows copyrighted works to be used without the prior permission or authorization of the right holder for certain purposes.
- ❖ Use of a work for educational purposes falls within the scope of fair use exceptions under the Act. However, educational purpose alone is not sufficient to make use of a work ‘fair’.
- ❖ What may or may not amount to fair use depends on a case-to-case basis, and this is not applicable in all circumstances as a blanket protection. It is upon the discretion of the court to interpret what constitutes fair use in light of the surrounding circumstances. To put very simply, textbooks are generally small extracts from published books or articles, relevant to the course study.
- ❖ The legal issue regarding the applicability of the fair use principle to the use of textbooks during online classes stems from the absence of a direct provision in the Act to clearly extend such protection to education outside its traditional meaning and scope.

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Defence of Fair Use

❖ **Article 13 of the TRIPS Agreement stipulates that:**

“Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.” (emphasis supplied)

Relevant Provisions of the Copyright Act, 1957

❖ **Section 52:** (1) *The following acts shall not constitute an infringement of copyright, namely, —*

(i) *the reproduction of any work—*

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

Section 52, however, does not specify any limitation on the quantum of material that is reproduced in the course of instruction. ■

Relevant Provisions of the Copyright Act, 1957 (Contd.)

❖ **Section 52 (Contd.):** (1) *The following acts shall not constitute an infringement of copyright, namely, —*

(h) *the publication in a collection, mainly composed of non-copyright matter, **bona fide intended for instructional use**, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:*

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

(j) *the **performance, in the course of the activities of an educational institution**, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording **if the audience is limited to such staff and students**, the parents and guardians of the students and persons connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording; (emphasis supplied)*

Relevant Provisions of the Copyright Act, 1957 (Contd.)

- ❖ **Section 2(k):** *“Government work” means a work which is made or published by or under the direction or control of—*
 - (i) the Government or any department of the Government;*
 - (ii) any Legislature in India;*
 - (iii) any court, tribunal or other judicial authority in India;*

- ❖ **Section 3:** *Meaning of publication.—*

For the purposes of this Act, “publication” means making a work available to the public by issue of copies or by communicating the work to the public.

Relevant Case Laws

❖ ***V. Ramaiah v. K. Lakshmaiah*, [1989 (9) PTC 137]**

- *“Merely because the author of the guide, viz. the respondent used the language couched in the text-book, his conduct does not necessarily mean that he pirated the words. It is only a guide and was written to help the students to understand the meaning, significance and answers that have to be written for the questions therein or the answers to be given to the words used by the author. Suppose, the defendant used the entire textbook without making any independent contribution and used it as his work and marketed it for the purpose of the general public. Certainly, his conduct would constitute an infringement of the right of the original author.”*

❖ ***Romesh Chowdhry & Ors. v. Kh. Ali Mohamad Nowsheri & Ors.*, [AIR 1965 J. & K. 101]**

- *“It is well settled that in order to be actionable the infringement must be a colorable imitation of the originals with the purpose of deriving profit.”*

The DU Photocopy Case

- ❖ ***The Chancellor, Masters and Scholars of University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors., [CS (OS) 2439/2012]***
 - *“Copyright, specially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public.”*
 - *“The legislators have found reproduction of the copyrighted work in the course of instruction to be justified for the purpose of teaching and to be not unreasonably prejudicing the legitimate interest of the author. It is not for this Court to impose its own wisdom as to what is justified or what is unreasonable, to expand or restrict what the legislators have deemed fit. The legislature is not found to have imposed any limitation on the extent of reproduction.”*

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Copyright Issues relating to Government books

- ❖ The National Council of Educational Research and Training (“NCERT”) is an autonomous organization under the Government of India created to assist and advise the Central and State Governments on policies and programs for qualitative improvement in school education.
- ❖ The major objectives of NCERT is to prepare and publish model textbooks, supplementary material, newsletters, journals and develop educational kits, multimedia digital materials, etc.
- ❖ The Online Textbooks Section on their website provides a strict disclaimer against copyright violation:
 - i. It provides that NCERT textbooks may be downloaded and used as textbooks or for reference, but any republication is strictly prohibited.
 - ii. No agency or individual is allowed to make electronic or print copies of these books and redistribute them in any form whatsoever.
 - iii. No website or online service is permitted to host these online textbooks.
- ❖ The copyright of school textbooks of various state boards are owned by the respective state education authorities and the copyright policy of each state board, is different from the other.

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Issues arising out of Online Teaching

- ❖ Posting of Recorded videos by teachers on YouTube – not free use of copyrighted content.
 - Uploading of teaching videos on public platforms falls within the ambit of ‘circulation to the public’ and amounts to ‘publication of the work’. As discussed, Section 52(1)(h) specifies the permissible limit of use of copyrighted work for such publication to two short passages only.
 - This limit may prove to be an obstacle and sometimes may be exceeded without the intention of an educator to infringe upon the exclusive rights of the author/owner of the copyrighted work.
 - Whether courts would take into consideration the lack of other means to make information easily accessible to all and extend the protection of ‘fair use’ to such dissemination of work for educational purposes is a development in Copyright law worth looking forward to.
 - Given the circumstances, seeking licenses and taking prior permission may not always be feasible.
- ❖ Possible solutions in the absence of a direct provision can be: Uploading of such informative videos/lectures containing copyrighted content through private channels and marking those as ‘unlisted’. This would prevent those videos from showing on public feed where it becomes easily accessible to all.

Conclusion

- ❖ While the existing provisions under the Copyright Act, 1957 does safeguard fair dealing in respect to traditional educational purposes, they are not sufficient to extend such protection in light of the gradual shift from the earlier model of studying and imparting knowledge.
- ❖ The Copyright Act must be amended to bring the existing provisions in consonance with the ongoing transition towards virtual education.
- ❖ Law is dynamic in nature and is ever evolving, with web-based learning and online schools becoming the new norm, the legislature needs to amend the existing framework such that it spells out the acceptable standard of fair dealing correctly.
- ❖ The shift to online classes is here to stay, there is a need for clarity in the existing provisions and them to be more express and direct in nature.
- ❖ In the absence of a traditional classroom set up, reproduction of work may be necessary for the purpose of imparting instructions during teaching and must be protected under the law.

THANK YOU!

Questions?

Shreya Kunwar, Trainee Associate

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