Educational Need vs Copyright Law: A Judicial Action for Social Engineering - Fair Dealing, Public Interest, and Copyright Law

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ABSTRACT

In India, can a research scholar or student or teacher get photocopies from the chapters of original text book of publishers for educational, research or teaching purpose? Whether reproduction of work or distribution of copies for educational purpose is permissible under Copyright Law or it infringes the copyright of publishers or it is “fair use” only? Is copyright a natural or divine right or only statutory, right? Whether use of reproduced copyrighted books is reasonable educational need? This paper objects to answer these questions after analysing the decision of Hon’ble Court given in the case of The Chancellor, Masters & Scholars of the University of Oxford & Ors. V/s Rameshwari Photocopy Services & Another on 16.09.2016 & 09.12.2016 against the international debate and in favour of students or researchers who cannot afford to read costly books published by international publishers.

KEYWORDS

Copyright, Distribution of Copies, Duration of Ownership, Economic Rights, Exclusive Rights, Fair Use or Fair Dealing, Reproduction of Work

INTRODUCTION

.... copyright is not natural or divine right and that education is an important social need... (Justice Rajiv Sahai Endlaw, n.d.).

Copyright is a kind of intellectual property rights. Copyright is bundle of intangible rights, granted by law, for a limited period, to the creator or author or originator of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. This law gives exclusive rights or privilege to that person to make copies of the same for publication and sale. The creator of a literary, artistic, musical or other creative work has sole right to publish and sell that work. Copyright owners have right to control the reproduction of their work, including right to receive payment for that reproduction. An author may grant or sell those rights to others, including publishers. Thus, copyright laws include the rights of reproduction of work, communication of work to the public, adaptation of work and translation of work Infringement of copyright owner is not permitted1 under the law.

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COPYRIGHT VIOLATION

On 14th August, 2012, a petition was moved in Delhi High Court by five publishers – three International publishers i.e. the Oxford University Press, Cambridge University Press, United Kingdom (UK), Cambridge University Press India Pvt. Ltd., Taylor & Francis Group, U.K. and, v) Taylor & Francis Books India Pvt. Ltd., against the Rameshwari Photocopy Service situated in north campus of University of Delhi for the sale of photocopied books recommended by syllabus of Delhi University for violation of their copyright.

Publishers alleged that (1) photocopier is selling the photocopied books (Course pack) without authorisation of publishers through the agency of University of Delhi, it infringes their copyright and consequently causing huge financial losses because students stopped buying their text books. (2) that the said course packs sold by the photocopier are based on syllabi of Delhi University and the faculty teaching in University is encouraging and recommending the students to purchase these course packs instead of legitimate or original copies of publishers. (3) that the libraries of the University are issuing books, published by the publishers kept in the said libraries, to the photocopier for photocopying to prepare the said course packs.

MANDATE OF INTERNATIONAL CONVENTION ON COPYRIGHT

Publishers alleged that India being signatory of Bern Convention (1886)\(^2\), is bound to protect literary and artistic works. India should regard the laws operating in other countries (Entertainment Network (India) Ltd. Vs. Super Cassette Industries Ltd., 2011). Municipal Law of India must respect rules of international law (Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey, 1984). They further alleged that photocopier is infringing copyright of the plaintiffs on the one hand and depriving the plaintiffs of the IRRO licence fee on the other hand. It was argued that copying of extracts without permission, compiling them into course pack and selling them to college students amounted to infringement (Basic Books Inc. Vs. Kinko’s Graphics Corporation, 1991), if such copying is allowed, there would be no market left for the book(s).

NO DEFENCE OF DOCTRINE OF FAIR USE

Publishers argued that fair use of copyright work does not provide blanket immunity for multiple copies for classroom use (Princeton University Press Vs. Michigan Document Services, 1996). They quoted the decision whereby the defendant was restrained from reproducing important segments of copyrighted work, binding the copies into course packs and selling the course packs to the students for use in fulfilment of reading assignments given by professors at University of Michigan and negating the defence of fair use doctrine. With respect to the defence of “fair use”, they argued it is only available to the teacher and scholar to reproduce the literary work in the course of instructions or examination paper setter to reproduce any literary work as part of the questions or to the pupil to reproduce the literary work as answers to such questions (The Press of The University of Cambridge Vs. B.D. Bhandari, 2011). If the defence of fair use is allowed to a photocopier, then it would result in a situation where every photocopier, without permission from the owner of copyright, would reproduce the ad verbatim literary text from the educational textbooks prescribed by the University and for commercial gains and benefits and that too without giving any royalty or payment to the right owners towards such a reproduction and thereby discourage creativity of authors who put their skill, labour, years of knowledge, expertise etc. into the educational books.
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