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Photocopying of Books in the Course of Imparting Education - Single Bench Judgement Overruled

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Photocopying of Books in the Course of Imparting Education - Single Bench Judgement Overruled

Recently, widespread debate and concern was caused in the publishing community when a single judge bench of the Delhi High Court, in the matter of *the Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors.*, held that the acts of photocopying the copyrighted work/books in the course of imparting instruction does not amount to infringement of copyright (“**Single Judge Judgment**”). Our write up on the Single Judge Judgment can be found [here](#).

The Single Judge Judgment was thus challenged by the publishers (i) Oxford University Press; (ii) Cambridge University Press, United Kingdom; (iii) Cambridge University Press India Pvt. Ltd.; (iv) Taylor & Francis Group, U.K.; and (v) Taylor & Francis Books India Pvt. Ltd., before the Division Bench of the Delhi High Court.

The Single Judge Judgment was based on interpretation of various sections of the Copyright Act, 1957 (“**the Act**”) and the conclusion was primarily based on Section 52(1)(i) of the Act relating to the right of reproduction of any work by a teacher or a pupil in the course of instruction. However, the Division Bench was of the view that it is necessary to decide “If the right of reproduction of any work by a teacher or a pupil in the course of instruction is absolute and not hedged with the condition of it being a fair use”. The Division Bench therefore set aside the Single Judge Judgment vide its judgment dated December 9, 2016.

Reproduction of Work and Fair Use

In accordance with Section 52(1)(i), an act of reproduction of any work by a teacher or a pupil in the course of instruction shall not constitute an infringement of copyright. The word “reproduction”, and the phrases “by a teacher or a pupil” and “in the course of instruction” were extensively debated and the Division Bench concluded as under:

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- “reproduction” is not defined in the Act and therefore ordinary grammatical meaning was ascribed to it, i.e., “to make a copy of”. Further, by applying Section 13(2)¹ of the General Clauses Act, 1897, it is concluded by the Division Bench that making more than one copies, i.e., photocopying is contemplated by the Act.
- “a teacher or a pupil” would also include teachers or pupils by applying Section 13(2) of the General Clauses Act, 1897. Thus, the activity of reproduction could be resorted to by the teachers as well as the pupils.
- “in the course of instruction” – the Division Bench concurred with the view of the High Court of New Zealand (in the matter of *Longman Group Ltd. v. Carrington Technical Institute Board of Governors*) that “in its ordinary meaning, the course of instruction would include anything in the process of instruction with the process commencing at a time early than the time of instruction, at least for a teacher, and ending at a time later, at least for a student. So long as the copying forms part of and arises out of the course of instruction it would normally be in the course of instruction”.

The Division Bench also drew a distinction between the terms “reproduction” and “publication”. A publication would have the element of profit, which would be missing in the case of reproduction of a work by a teacher to be used in the course of instruction while imparting education to the pupils. That apart, if reproduction includes the plural, it cannot be held that making of multiple copies would be impermissible. Thus, the Division Bench concluded that reproduction of work by a teacher to be used in the course of instruction while imparting education to the pupils is not publication which involves the element of profit.

The Division Bench was further of the view that there has to be fairness in every action, and irrespective of a statute expressly incorporating fair use, unless the legislative intent expressly excludes fair use, and especially when a person’s result of labour is being utilized by somebody else, fair use must be read into the statute. The Division Bench thus concluded that the legislature has not expressly made “fair use” a limiting factor in Clause (i) of Section 52(1) while permitting reproduction by a teacher or a pupil during the course of instruction and therefore the general principle of “fair use” would be read in the clause.

The question whether reproduction of work “in the course of instruction” amounts to “fair use” has been left open by the Division Bench holding it to be a triable issue as it needs to be considered if the inclusion of the copyrighted work in the course pack for instructional use by the teacher to the class was **justified** by the purpose of the course pack. The Division Bench was of the view that an analysis of the course pack with reference to the objective of the course, the course content and the list of suggested readings given by the teacher to the students is warranted and this requires expert evidence and therefore it has directed the suit between the parties to be restored for trial on the issue of fact and for the parties to lead expert witness testimony.

Another fact emerged from the report of a local commissioner that apart from the course packs in question, eight other books were photocopied back to back by the Respondent photocopier. The Division Bench thus framed another issue to be tried by the court in the suit that “whether photocopying of entire books would be a permissible activity”.

Having restored the suit, the Division Bench refused to grant interim injunction to the Appellants against the Respondents much to the relief for students who can continue using the photocopied course pack till the time the suit is decided by the court and the issues are finally settled.

¹ Section 13 - Gender and number

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context -
.... (2) words in the singular shall include the plural, and vice versa.

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