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Is photocopying of books in the course of imparting education a copyright infringement ?

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Is photocopying of books in the course of imparting education a copyright infringement ?

International copyright laws uphold the rights of exclusive use and exploitation by the creator/author to the exclusion of the others (except in certain exceptions). Indian copyright laws seek to maintain a balance between the interest of the owner of the copyright in protecting his/her works on the one hand and the interest of the public to have access to the works on the other. This balance between the two competing rights was again tested in the recent matter of *the Chancellor, Masters & Scholars of the University of Oxford and Ors. vs Rameshwari Photocopy Services and Ors.,* where the Delhi High Court ("**the Court**") upheld the supremacy of public welfare over the interests of publishers/authors, by laying down that:

"*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*."

Brief Facts

A suit for relief of permanent injunction and damages was instituted by the publishing giants, namely: i) Oxford University Press, ii) Cambridge University Press, United Kingdom (UK), iii) Cambridge University Press India Pvt. Ltd., iv) Taylor & Francis Group, U.K. and, v) Taylor & Francis Books India Pvt. Ltd., ("**Plaintiffs**") against Rameshwari Photocopy Service (a photocopy shop carrying on its business from the premises of Delhi School of Economic (DSE), University of Delhi) ("**Defendant No. 1**") and the University of Delhi ("**Defendant No. 2**"), *inter alia*, for restraining the Defendants from infringing the copyright of the Plaintiffs by creating and selling the course packs/anthologies to the students of Defendant No. 2 and claiming damages for such infringement.

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In a nutshell, the Plaintiffs alleged that the Defendant No. 2 is creating and distributing course packs for its students with the help of Defendant No. 1 by photocopying the relevant chapters from the text books, thereby infringing the copyright of the Plaintiffs. Plaintiffs further alleged that in the garb of the fact that the number of original books in the library of the Defendant No. 1 are limited, the faculty of DSE through Defendant No. 1 is compiling various master copies and course packs of the relevant chapters from the books, articles and journals of the Plaintiffs, which are being distributed/circulated to the students on a large scale. Further, the Plaintiffs contended that the Defendant No. 2 is *institutionalizing infringement*, by encouraging and recommending its students to purchase these course packs instead of legitimate copies of Plaintiffs' publications.

As per the Plaintiffs, the objective for filing the suit was not to stop the students from photocopying the content from the books but to prevent the *systematic photocopying of their publications* by the Defendants.

While the Defendants set out their own independent defences before the Court, the Defendant No. 2 primarily contended that its act of making the course packs falls within the scope/exception of section 52 of the Copyright Act, 1957 ("**the Act**") and thus it does not amount to infringement of copyright of the Plaintiffs. Since, the Defendant No. 2 had admitted making of course packs from the books of the Plaintiffs, the Court was left to decide only the legal issue without trial of the matter, which was whether making, compiling and selling of course packs by the Defendants resulted in infringement of copyright of the Plaintiffs as per the Act.

Decision of the Court

The Court during its extensive analysis assessed Section 14 of the Act that provides a list of activities which can be considered as the 'exclusive right' of the copyright owner including the exclusive right "*to reproduce the work in any material form*" and the right "*to issue copies of the work to the public not being copies already in circulation*" in the owner of the copyright. Section 51 prescribes that copyright is infringed *inter alia* when any person does anything exclusive right to do which has been conferred by the Act on the owner of copyright. However, section 52 of the Act lists certain acts which do not constitute infringement. Therefore, even if an exclusive right to undertake something constitutes copyright, performing such an act will not constitute copyright infringement if it falls within the scope of section 52 of the Act.

While analysing various provisions of the Act in the light of the facts and circumstances of the case, the Court arrived at the following conclusions:

- Words in section 14(a)(i) of the Act *"to reproduce the work*" will include *"making photocopy"* of the original literary work.
- Reproduction per se would constitute infringement of copyright. To constitute infringement, it is not necessary that the person who has so reproduced the work, should put it to any use or should distribute or sell the same to others.

	• Doing of something whose exclusive right vests with the owner constitutes infringement of copyright even without a commercial element. However, facilitating and dealing in infringing copies constitute infringement only if done with a commercial element. • Therefore, the Court held that making of photocopies by the Defendant No. 2 will constitute infringement of copyright within the meaning of section 51 of the Act, unless such act is listed under section 52 of the Act as an act not constituting infringement. The above conclusions led the Court to evaluate the question as to whether the act of Defendant No. 2 of making photocopies/reproduction of the literary work of the Plaintiffs involving a commercial element would fall within the exceptions of section 52 of the Act and therefore would not amount to infringement of the copyright of Plaintiffs. In terms of section 52(1)(i) of the Act, 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 exam; or iii) in answers to such questions, shall not amount to infringement of copyright. Therefore, for the action of reproduction of Plaintiff's work by the Defendant No. 2 to not constitute infringement of copyright, the same has to be *"by a teacher or a pupil in the course of instruction".* The Court observed that the term *"in course of instruction*" cannot be given a narrow interpretation and would not only include lecture given by a teacher in the class room but would also include all those activities that a teacher does in the course of imparting education including setting of syllabus, prescribing of books and authors, personal interface with students and preparation before the lecture etc. In light of the above conclusions, the Court held that: i) Imparting of education by teachers today is as part of an institution, as the Defendant No. 2 and it is the Defendant No. 2 which on behalf of its teachers is reproducing the copyrighted work by making photocopies thereof, and exception provided under section 52(1)(i) of the Act would be applicable to an educational institutional; ii) Copying of any copyrighted work by the teacher/educational institution for the purpose of imparting instruction to the pupil as prescribed in the syllabus during the academic year would fall within section 52 (1)(i) of the Act and would not constitute infringement of copyright of Plaintiffs; iii) The actions of the Defendants did not result in infringement of the copyright in the books of the Plaintiffs because the Defendant No. 2 had already purchased and kept the books of the Plaintiffs in its library. Defendant No. 2 in the course of instructions had made a master copy of the relevant portions of the books of the Plaintiffs. Making further photocopies out of these master copies and distributing the same to the students would not constitute infringement of copyright in the books of the Plaintiffs under the Act. With respect to the act of Defendant No. 2 of supplying the master copy to the Defendant No. 1 and allowing it to supply photocopies thereof to the students for a charge, the Court held that the same would also not amount to infringement of copyright of the Plaintiffs by the Defendants as the same does not constitute "*publication*" within the meaning of the Act. The Court further opined that once such an action is held to be not offending any provisions

of the Act, merely because the photocopying is done not by the person desirous thereof himself but with the assistance of another human being, would not make the act offending.

The Court thus concluded that the actions of the Defendants do not amount to infringement of copyright of the Plaintiffs.

Conclusion

While the judgement of the Court was well received by the student community and educational institutions, it opens a debate on legitimate protection of rights of publishers who are already suffering from acts of rampant copying and reproduction of their published works. The wide interpretation of the terms '*teacher', 'in the course of instruction'* etc. to include *'educational institutions'* provides an extensive leeway to institutions to not only continue but promote the practice of mass scale *'copying'* of copyrighted works. While the judgment might be challenged by the Plaintiffs before the appellate court, it is clear that the Indian judiciary is ready to liberally interpret the provisions of the copyright Act to uphold the interest of the general public over the private rights of owners of copyrighted works.

Feedback