



Cover Page



COPYRIGHT LAW AND THE ACCESS TO EDUCATION

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Abstract

Education plays a vital role in the development of society and human beings. The right to education world- widely recognized as a basic human right. The main purpose of education is to enhance human intellect and acquire knowledge as knowledge is considered power. The primary source to acquire knowledge is school, college, universities as well as other supplementary sources like newspapers, internet, books etc,. Today internet is considered the most important and easily accessible source of information to acquire knowledge. Photocopying the text books, material, course packs etc has become a substantial or rather part of everyone's life in the technology age. The main element in using photocopy material for academic purposes is lack of access to books or high cost of books either the case may be. In this paper, an attempt has been made to describe how copyright helps in providing education? We have tried the analysis of the exception of fair dealing or fair use for educational and academic purposes. It would also explain the articles of the Indian constitution related to the right to education.

Keywords: Constitution, Copyright, Fair use, Knowledge, Photocopy, Right to Education.

1. Introduction

Copyright contributes its significant share in the development of a country. The national cultural enrichment could be high if the protection will be provided to literary, dramatic, musical, and artistic works, cinematographic films and sound-recordings. For the encouragement of authors for more intellectual creation, a high level of security to their work is required. The security for their work encouraged them to create more. For social, economic, and cultural development there should be an encouragement for intellectual creation. Copyright is the most vulnerable form of the intellectual property, as it is fragile and prone to theft and abuse.

The Right to education recognized is a basic human right in India. It has a very long history. It is not the development of few years. Presently the right to education which is a Fundamental Right under part -3 of the Indian Constitution is the outcome of the struggle of our freedom fighters, social activist, and the great educationists who had always made sincere efforts to ensure that compulsory education will make available to all the children and future of the country will be safe. The demand for the right to education started way back at the end of the eighteenth century. It was the period when there was no formal mechanism for providing free and compulsory education to the children but the need was always felt that the children being the most vulnerable section of the society should get protection in the society¹. In Ancient India, there was no formal mechanism for providing education, but the informal mechanism was prevalent².

II. Meaning of Copyright

Copyright contributes its significant share in the development of a country. It is the oldest form of intellectual property. The enrichment of the national cultural heritage depends directly on the level of protection afforded to literary, dramatic, musical, and artistic works, cinematograph films, and sound recording. The higher the level, the greater the encouragement for authors to create; the greater number of a country's intellectual creations, the higher it's renown³.

¹ J.P Naik, *Education Reforms in India: A Historical Review*, Bombay: Orient Longman Limited (1978).

² *Ibid*

³ Dr. V.K Ahuja, *Law of Copyright and Neighbouring Rights: National and International Perspectives*, 1, Lexis Nexis Butterworths (2007).



Copyright is an exclusive right not an ordinary property right. It is not only a positive right from the standpoint of the author but it is a negative right as well which restraint others from exercising it.⁴

Copyright refers to the legal right of the owner of intellectual property. In simple terms, copyright is the right to copy. This means that the original creators of the product and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.⁵

III. The Limitation or Exception to Copyright

The exceptions allow the user to use the author's work without prior permission or after paying prescribed fees.

The major exceptions to the copyright law that are mostly used in the field of education:

- 1) Fair use
- 2) Face-to-face instruction and
- 3) Virtual instruction⁶.

Here we will discuss the special exception that is. Fair dealing has statutory recognition in the larger societal interest for the benefit of the general people. The fair dealing word 'fair' is used as an adjective. According to this rule, the way which is considered to be acceptable, appropriate unbiased, and unprejudiced⁷.

IV. The Doctrine of 'Fair use' or 'fair dealing'

The Fair use doctrine has a judicial origin where as fair dealing has statutory recognition. The Indian law relating to fair dealing has been incorporated in Section 52 of the Copyright Act, 1957 but it nowhere defined the meaning of fair dealing. The effect of not defining fair use leaves it open to dispute and allows for the rule to be applied on a case-by-case basis. It is critical to understand the concept of fair use, especially in the context of education. Fair use attempts to allow a user to use the author's work in specified and limited ways. It is a justified ground to achieve the greater good. By using the term 'fair use' or 'fair dealing' the defendant may save himself from the legal action for infringement. It is a strong defense under copyright law. Any unauthorized use of the copyright in a work amount to infringement of copyright of the original work. However, some unauthorized uses of copyright work for certain specific reasons are allowed by law, and it is not considered as an infringement of that work. The main purpose behind this unauthorised reproduction of copyright work is for some certain purpose such as research, private study, criticism, teaching, review, etc. Such unauthorised use of copyright work is termed as 'fair use' or 'fair dealing'. Thus fair use or fair dealing is a doctrine that generously allows copying of copyright protected work without deeming the copier an infringer, even though the copyright holder has not authorized copying⁸.

One of the most important ways to promote equitable access in field of education is that the national or domestic copyright laws have strong exceptions and limitations that enable the fair use of copyright material for educational purposes.

As stated in the Copyright Act, the permitted purposes that apply to fair use or fair dealing are⁹:

- 1) Research
- 2) Private use
- 3) Criticism
- 4) Review
- 5) News reporting

Here we will discuss in detail the exception of fair use for educational purposes and how copyright helps in providing education?

⁴ Akhil Prasad and Aditi Agarwala, *Copyright Law Desk Book knowledge, Access & Development* 101, Universal Law Publishing Co. (2009).

⁵ Information Technology Act, 2000 (Act 21 of 2000), India, available at: <http://www.investopedia.com> (last visited on August 10, 2020).

⁶ Information Technology Act, 2000 (Act 21 of 2000), India, available at: <https://www.lib.purdue.edu/uco/CopyrightBasics/exceptions.html>, (last visited on May 15, 2020).

⁷ Information Technology Act, 2000 (Act 21 of 2000), India, available at: <https://www.collinsdictionary.com/dictionary/english/fair>. (last visited on May 15, 2020).

⁸ *Supra* note 5 at 195.

⁹ Information Technology Act, 2000 (Act 21 of 2000), India, available at: https://www.uleth.ca/lib/copyright/content/fair_dealing_week/fair_dealing_vs_fair_use.asp (last visited on May 20, 2020).



Cover Page



Statutory exceptions: A part from Common law exceptions there are some statutory exceptions that are also provided by the Copyright Act. Some unauthorised uses of copyright work for certain purposes are permitted by law and the same shall not be considered as infringement of that work.

i. Fair dealing for research and Private Study-

Fair dealing is a doctrine that permits or allows some copying of the copyright work without the permission of the author and without deeming the user an infringer. Sec 52(1)(a)(i) of the Copyright Act originally provided that a fair dealing with a literary, dramatic, musical, or artistic work for purposes of ‘research or private study’ did not constitute an infringement of copyright work. The Copyright (second amendment) Act 1994, the term ‘private use, including research’ has been substituted for the term ‘research or private study’. It seems the object of the amendment is to avoid the harassment to public and give a more broad interpretation in the public interest for the said term private study.

The issue had also been posted as to what is ‘private study’? In *Blackwood & Sons v. A.N Parasuram*¹⁰ the court clarified that the private study did not involve publication and if the work was published it could not take protection under the clause relating to private study. The term “private study” only covers the case of a student copying out a book for his own use not the circulation of copies among other students.

The Federal Court of Australia defined the term ‘research and study’ in the case of *De Garis v. Neville Jeffress Pidler Pty Ltd.*¹¹ The court defined research as the diligent and systematic inquiry or investigation into a subject in order to discover facts or principles. The court defined study as the application of mind to acquire of knowledge, as by reading, investigation or reflection; a particular course of effort to acquire knowledge; through examination and analysis of a particular subject.

The term ‘Study’ refers to the application of the mind to acquire knowledge but ‘Research’ refers to acquire knowledge by discovering some new facts which have not been discovered earlier.

The use of copyright work can be used only for the purposes of private study not for commercial purposes.

ii. Fair dealing for the purpose of Reporting Current Event-

The Copyright Act provides that the fair dealing with literary, dramatic, musical; and artistic work for the purpose of reporting current event in a newspaper, magazine, or similar periodicals which do not constitute the infringement of copyright work.¹² The event reported must be current and not the matter of history. In deciding the whether the work is being used for this purpose, a useful test may be whether it is reasonably necessary to refer to the work in order to deal with the current events in question. The work must be used for reporting current events, not for editorial or other purposes.¹³

iii. Use of Copyright material in the Course of Education-

The Copyright Act provides that the reproduction of a literary, dramatic, musical or artistic work -

- a) By a teacher or a student during the course of instruction;
- b) In form of a question in the examination; or
- c) The answer to such questions; not deemed to be an infringement of copyright.¹⁴

In *Syndicate of Press of University of Cambridge v. Kasturi Lal and Sons*¹⁵ the Delhi High Court held that it is noteworthy that this exception would be applicable only when material from the original is reproduced as a part of the question to be answered in an examination or in answers to such questions. Here this exception would not be applicable because the reproduction is not made as a part of the questions and answers; rather the complete set of questions and answer keys is copied from the original work.¹⁶

Where making of a copy of a copyrighted work is not an infringement but the subsequent dealing with such copy may be treated as an infringing copy for the purpose of that dealing. The purpose of this provision is to prevent the commercial exploitation of copies made for educational purposes.¹⁷

¹⁰ AIR 1959 Mad 410.

¹¹ (1990) 18 IPR 291.

¹² The Copyright Act, 1957, s.52(1)(b)(i).

¹³ *Supra* note 5 at 198-199.

¹⁴ The Copyright Act, 1957, s. 52(1)(h)

¹⁵ (2006) 32 PTC 487(Del).

¹⁶ *Ibid*, 494.

¹⁷ *Supra* note 5 at 201.



Cover Page



iv. Performance of a work in Course of Education-

The next educational exception that allowed by the Copyright Act is the performance by the staff members, teachers, or students in a literary, dramatic, or musical work during educational activities in educational institutions where the audience is limited to such staff, students, parents, and guardians of the students.¹⁸

The principle of 'fair dealing' for academic purposes can easily understood in the light of the leading judgment of the Delhi High Court. Judgment has played a significant role in deciding the matter relating to fair dealing.

In the case of *The Chancellor, Masters, and Scholars of the University of Oxford and Others v. Rameshwari Photocopy Services and Another*¹⁹ a landmark judgment the division bench of the Delhi High Court held that the preparation of course pack that is a compilation of photocopies of the relevant portions of different books prescribed in the syllabus and their distribution to students by educational institutions does not constitute the infringement of copyrights under the copyright Act, 1957, as long as the inclusion of the works photocopied was justified by the purpose of educational instruction. It held that such photocopying qualifies as a reproduction of the work by a teacher in the course of instruction and thus not amount to copyright infringement by virtue of section 52, sub-clause (i) of clause (I) of the Act. In effect, it held that the educational institutions do not require a license or permission from the publisher for making and distributing course packs to students if the copyrighted materials included in them are necessary for the purpose of instructional use by the teachers to the class.

Photocopying the text books, course packs, or study material has become the attire need of academicians. Major people in India who belong from diversified economic background do not usually be able to purchase the heavy cost books for their academic accomplishments so the need of photocopy material arises. *Now the main question is arises whether photocopying of the text material, books, etc for academic purposes amount to infringement or not? The answer to this may vary with facts and circumstances in each case. The general exceptions to fair use that is known as 'fair dealing' in India recognized by the various countries throughout the world.*

V. International Conventions

The Berne Convention – The Berne Convention permits the fair use of literary and artistic works. It provides that it is permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries²⁰. The legislation of the countries of the union and special agreements between the countries of the union shall permit the utilisation, to the extent justified by the purpose, of literary or artistic works by way of illustration in publication, broadcasts, or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.²¹ However, the convention made it obligatory for the user to acknowledge the source and mention the name of the author.²²

The convention further provides that it can not in any way affect the right of the government of each country of the Union to permit, control, prohibit by legislation or regulation, the circulation, presentation, or exhibition of any work.²³

TRIPs Agreement-Under the TRIPs Agreement, members are obliged to 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.²⁴

¹⁸ Copyright Act, 1957, s. 52(1)(i).

¹⁹ CS (OS) 2429/2012 High Court Delhi, New Delhi.

²⁰ Berne Convention, art 10(1).

²¹ *Ibid*, art 10(2).

²² *Ibid*, art 10(3).

²³ *Ibid*, art 17.

²⁴ TRIPs Agreement, art 13.



Cover Page



WIPO Copyright Treaty (WCT) 1996- The WCT provides that contracting parties may, in their national legislation, provide for the limitations of or exceptions to the rights granted to authors of literary and artistic works under the treaty in certain special cases that do not conflict with a normal exploitation of the work, and do not prejudice the legitimate interests of the author.²⁵

VI. Copyright and Education

The first Copyright Statute, the Statute of Anne 1709²⁶, was entitled “An Act for the Encouragement of Learning”. Copyright law is based on the idea that the flourishing of the private market in copyright protected works will promote learning²⁷. On the other hand, the human right to education imposes an obligation on the States and their governments to provide free education for all and this, in turn means easy and cheap access to educational and learning materials²⁸. The provision of learning materials is an integral part of the human right to education. Copyright affects the prices at which text books and learning materials are provided and therefore the tensions may arise between the right to education and the monopoly private rights of author owing to the copyright²⁹. Copyright law and access to education is a complex and much- debated issue. On the one hand, the right of the copyright holder to protect his copyright work and on the other hand there are a user of copyright- protected work who demands free and open access to education and knowledge. Their conflicting interest must be balanced. The main aim of copyright law is to protect the original work of the author. It provides a negative right by excluding any other to use the work without prior permission of the author.

Almost all copyrights law throughout the world provide privilege for educational institutions because such institutions are considered important for the development of society. With the rise of the concept of welfare state, it is the responsibility of government of every state to provide education for the overall development of the nation. Therefore, along with the right to work and the right to social security, the right to education must be featured in socialist constitutions.

VII. Importance of Right to Education and Fair use

The right to education did not secure a position under part- 3 of the Indian Constitution during its drafting rather it was secured under part-4 of the same. The Supreme Court of India in many judgments has expanded the right to education in the shadow of the right to life under Article- 21 of the Indian Constitution³⁰. In India, the two famous Public Interest Litigation cases that shaped the destiny of education are *Mohini Jain v. State of Karnataka*³¹ and *Unnikrishnan J.P v. State of Andhra Pradesh*³² both the cases were decided before the enactment of the 86th Amendment Act, 2002 and hence, the right to education was justified under Article 14 and 21 as a part of the fundamental right that is ‘right to equality’ and ‘right to life’ respectively. Though the issue in both cases was related to higher education, the result of these cases was that free and compulsory primary education was held to be a fundamental right flowing from Article 21.

The Constitution Amendment Act, 2002³³ inserted **Article 21-A** which made the right to education a Fundamental Right for children in the age group of 6-14 years.

*“The State shall provide free and compulsory education to all children of six to fourteen years in such manner as the State, may by law determine.”*³⁴

Article - 45 was altered to accommodate the obligation of states to provide the early childhood care and education to all children until they complete six years of age.

*“The state shall endeavour to provide early childhood care and education to children below the age of 6 years.”*³⁵

²⁵ WIPO Copyright Treaty 1996, art 10.

²⁶ Copyright Act, 1709, 1710, 8 Ann.,c.19 (Eng.).

²⁷ *Ibid*

²⁸ *Id*

²⁹ Manfred Nowak, *The Right to Education in Economic, Social and Cultural Rights: A Textbook*, 189, 191 (Asborn Eide ET. AL Eds.(1995).

³⁰ Article 21 provides: “Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law”

³¹ AIR 1992 SC 1858.

³² AIR 1993 SC 2178.

³³ The Constitutional (Eighty- sixth Amendment) Act, 2002, s.2 (w.e.f 1-4-2002).

³⁴ The Constitution of India, art. 21-A.

³⁵ *Id*, art. 45



Cover Page



2 2 7 7 - 7 8 8 1



The third amendment was the insertion of a **clause (k)** after **Article 51-A (j)** that imposes responsibility on the parents and guardians to provide the opportunity for the education to their child.

“Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”³⁶

This Amendment Act, 2002 makes it obligatory for the appropriate government to ensure that every child gets free elementary education. In addition to this, said Act made it mandatory for the private educational institutions to reserve 25 percent seats for children from weaker sections.

There are so many assumptions about the education system in India as like the education is cheap and the cost of books in India is relatively low so the study material is easily affordable. But education system of India is at a very challenging stage. The high production cost of scientific and technical books is one of the major factors for using photocopy material. The present need for the education and promise for its access to everyone makes the copyright law very important. It is the duty of legislators of developing countries to ensure that the structure of their copyright laws as such that maximize the availability of books at low cost as well as improve the ability of educational institutions to provide learning materials.³⁷

VIII. Conclusion

Education has both intrinsic as well as instrumental values. Education is a means for the development of human beings and society. Education helps in recognizing and developing the inherent dignity of individuals and his attitude. Its importance has seen in the Supreme document that is the Indian Constitution itself provides the right to education under different provisions. The Copyright Act, 1957 also provides some educational exceptions for students and other scholars or academicians but is subject to fair use. The ‘Fair use’ doctrine is a strong piece of defense for the infringer of copyright. There is no doubt that fair dealing is an undefined term under the Indian copyright act it is the court who defined it as per facts and circumstances of the case before it.

Now it is the fundamental need to have an equal access to education. One of the most important ways of promoting equitable access in the area of education is by ensuring that copyright laws have strong exceptions and limitations.³⁸ Exceptions and limitations can be statutory or may be created by judiciary. But the fair use doctrine must not be used as a shield to protect the illegal or unlawful use of copyright work which has no educational purposes. Education should not be used as an excuse or a tool to harm the author's rights.

³⁶*Id*, art. 51-A (k).

³⁷ Information Technology Act, 2000(Act21 of 2000), India, available at: <<http://www.education.nic.in/copyright/mainact.asp>> Government of India, *Study on Copyright Piracy in India (1999)*. (Ministry of Human Resource Development).

³⁸P. B. Hugenoltz and R.L. Okediji, “Conceiving an International Instrument on Limitations and Exception to Copyright”, Final Report(March 6, 2008) <www.ivir.nl/.../hugenoltz/limitations_exceptions_copyright.pdf> last visited on April26, 2021.