

An Insight into Copyright Infringement Vis-a-Vis Fair Dealing

"When you have wit of your own, it's a pleasure to credit other people for theirs."

(By Criss Jami, Killosophy)

Introduction:

The saying by Criss Jami Killosophy quoted above is a classic example of respecting copyright of an original work. Copyright is the exclusive right, given to the creator of a creative work, to reproduce the work in any form and media. The creative work may be in a literary, dramatic, artistic, cinematograph films, sound recording or musical form. Copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. A copyright is subject to limitations based on public interest consideration, such as the "fair use" doctrine in the United States. Some jurisdictions require "fixing" copyrighted works in a tangible form. It is often shared among multiple authors, each of whom holds a set of rights to use or license the work, and who are commonly referred to as rights holders. These rights frequently include reproduction, control over derivative works, distribution, public performance, and moral rights such as attribution.

Copyright protects literary, dramatic, musical and artistic works as well as films, sound recordings, book layouts, and broadcasts. Copying or using a copyright work requires expression permission from copyright owner, however, in certain exceptional cases, a copyright work may be copied or used in part or whole without such permission. Deliberate infringement on a commercial scale may lead to a criminal prosecution, so one should take care when using copyright material.

Copyrights are "territorial rights" means copyrights granted by the law of a certain country, do not extend beyond the territory of that specific jurisdiction. Copyrights of this type vary from one country to another. Some countries, and sometimes a large group of countries, have made agreements with other countries on uniformity of procedures across them. However, when works "cross" national borders, there is often a conflict between national and international rights as they are inconsistent in nature by virtue of territoriality of the laws. In India, the Copyright Act, 1957 (the Act) read with the Copyright Rules, 2013 (the Rules) provide the legal framework and procedure for copyright registration, regulation and enforcement.

Copyright Infringement:

Copyright laws provide certain exclusive rights to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. Use of such copyright protected work without the permission of the copyright owner is copyright infringement. Primary infringement is the actual act of copying, while secondary infringement includes unauthorized dealings like selling the pirated books, importing them, etc. In the case of secondary infringement, knowledge of infringement is present with the infringer; while in case of primary infringement, knowledge may or may not be there.

If any of the infringement activity is performed by a person or business, then they are liable for civil and criminal prosecution under the copyright laws of India. If one is copying or reproducing an original literary, artistic, dramatic or musical work in any manner, it is important to have all the licenses and permissions. Many copyright owners allow their work to be used without the need for direct permission, whereas, most copyright owners allow the use of their work only after you obtain a license or permission from them. Make sure that using a copyrighted work under the 'fair use' policy for educational or research purposes.

What is Fair Dealing?

'Fair dealing' is a legal term used to establish whether a use of copyright material is lawful or whether it infringes copyright. There is no statutory definition of fair dealing - it will always be a matter of fact, degree and impression in each case. The question to be decided is: how would a fair-minded and honest person have dealt with a copyrighted work? Factors that have been identified by the courts as relevant in determining whether a particular dealing with a work is fair, include:



- ◆ Does using the work affect the market for the original work? If use of a work acts as a substitute for it, causing the owner to lose revenue, then it is not likely to be fair.
- ◆ Is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount that was taken? Usually only part of a work may be used.
- ◆ The relative importance of any one factor will vary according to the case in hand and the type of dealing in question.



The Act enumerates certain acts that do not amount to infringement of copyright. Some of which are provided as under:

- a) A fair dealing with any work, not being a computer programme, for the purposes of (i) private or personal use, including research; (ii) criticism or review, whether of that work or of any other work; (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public;
- b) The reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
- c) The reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;
- d) The reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force;
- e) The reading or recitation in public of reasonable extracts from a published literary or dramatic work;
- f) 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 they published for such use in which copyright subsists;
- g) The reproduction of any work:
 - i. By a teacher or a pupil in the course of instruction;
 - or

- ii. As part of the question to be answered in an examination; or
- iii. In answers to such questions;

Fair Use Not Amounting Copyright Infringement

Copyright law has been modernised to make it easier for schools, colleges and universities to use copyright material. It removes restrictions on the use of copyright material with modern teaching practices such as distance learning. Recently, Delhi High Court has delivered a landmark judgment, in the matter of “The Chancellor, Masters & Scholars of the University of Oxford & Ors. Vs. Rameshwari Photocopy Services & Ors. [DU Photocopying Case]”. In this case, Division Bench of Delhi High Court ruled that the preparation of ‘course packs’ i.e. compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions does not constitute infringement of copyright in those books under the Act, as long as the inclusion of the works photocopied (irrespective of the quantity) was justified by the purpose of educational instruction. It held that such photocopying qualifies as reproduction of the work by a teacher in the course of instruction and thus does not amount to copyright infringement by virtue of Section 52(1)(i) of the Act. In effect, it held that the educational institutions do not require a license or permission from the publishers for making and distributing course packs to students if the copyrighted material included in them is necessary for the purpose of instructional use by the teacher to the class.

Conclusion:

The fair dealing exception in the Act allows you to use copyright work for the purpose of research, private study, education, satire, parody, criticism, review or news reporting, provided that what you do with the work is ‘fair’. Whether something is ‘fair’ will depend on the circumstances of each case. There is a thin line between copyright infringement and fairly using a copyright work. Due to intricacies in the matters of protection of intellectual property rights, courts often consider circumstantial factors.

Corollary to the foregoing, nothing is cast in stone given the complexity of the issue and it will be for the courts to decide whether or not an alleged infringing use is fair. And this approach will lead to increased uniformity in accessing the copyright works. However, there are benefits to broad copyright exceptions, it is always advisable to provide as much clarity as possible in statutes too. So far, much has been left for judicial interpretation, understanding and discretion. The copyright law reform process presents an opportunity to provide more clarity even amidst broad exceptions.

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