

**'FAIR USE' OF E-RESOURCES FOR
ACADEMIC PURPOSES:
SPECIFIC REFERENCE TO INDIA**

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COPYRIGHT

- **Copyright is granted for**
 - Literary works
 - Artistic works
 - Dramatic works
 - Musical works
 - Cinematographic films, sound recordings
- **Unlike most other IPRs, Copyright does not require to be registered to be granted protection. The moment a work is created, copyright exists.**

WHO IS THE OWNER OF THE COPYRIGHTED WORK?

- **Rule no. 1:** The **author** is considered to be the first owner of copyright **(But there are exceptions)**
- **Definition of author [Section 2(1)(d), Copyright act, 1957]**
 - (i) in relation to a literary or dramatic work, the **author of the work**;
 - (ii) in relation to a musical work, the **composer**;
 - (iii) in relation to an artistic work other than a photograph, the **artist**;
 - (iv) in relation to a photograph, the **person taking the photograph**;
 - (v) in relation to a cinematograph film or sound recording, the **producer**; and
 - (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, **the person who causes the work to be created**;

CONTD...WHO IS THE OWNER OF COPYRIGHTED WORK?

- **Rule no.2 :When author is not considered to be the owner of copyright law?
(Section 17, copyright Act, 1957)**

Some examples,

- a. Commissioned work: painting, photograph, etc.
- b. Contract of service: in case of employee who works in newspaper, magazine or other periodical

etc.

RIGHTS OF COPYRIGHT OWNER

- **Economic Rights include**

- i. Reproduction rights (includes the storing of it in any electronic medium). [Refer: section 14(a) of Indian Copyright Act, 1957]
- ii. Right to issue copies to the public
- iii. Public performance rights
- iv. Adaptation rights
- v. Translation rights etc.

- **Moral rights**

- i. Right of attribution/ paternity
- ii. Right of integrity

- **Note: Economic rights are for limited period; but, moral rights are forever).**

INFRINGEMENT OF COPYRIGHT (SECTION 51 OF THE INDIAN COPYRIGHT ACT)

- When any person **without a license by the copyright owner or without due authorisation** as given in section 51 (a) or does anything which conflicts with the rights of the copyright owner.
- **Secondary infringement**
- Selling, hiring, displaying any infringing copies
- Distributing infringing copies for trade or to an extent which conflicts with the interest of the copyright owner
- Exhibiting infringing copies in public
- Importing infringing copies

FAIR USE, MEANING AND UTILITY IN ACADEMICS

- All rights of the copyrighted like reproduction in any material form including the storing of it in any medium by electronic mode; issuing copies to the public, public communication rights, adaptation, film making rights, translations etc. are with the copyright owner.
- So, any use without their consent will be held infringement until and unless they come under “fair use”

Fair Use

- **Fair use are those acts which normally would be considered infringement but due to coming under the acts permitted under fair use are not infringement.**
- **Purpose of Fair Use is to serve public interest**

FAIR USE IN ACADEMICS

(S. 52 OF THE INDIAN COPYRIGHT ACT, 1957)

1. For private or personal research. (photocopying is technically reproduction of the work but if done for the aforementioned research purpose, it will not be infringement).
2. 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;
4. the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording **if the audience is limited to such staff and students, the parents and guardians of the students and persons connected with the activities of the institution** or the communication to such an audience of a cinematograph film or sound recording;

CONTD...FAIR USE FOR LIBRARY PURPOSES

5. the storing of a work in any medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non-digital copy of the work (scanning a physical copy of a book)
6. making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a 2[non-commercial public library] for the use of the library if such book is not available for sale in India;
7. the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:

LEADING CASE ON FAIR USE FOR EDUCATIONAL PURPOSES IN INDIA

- *The Chancellor, Masters & Scholars of University of Oxford v. Rameshwari Photocopy Services*, (2016) 160 DRJ (SN) 678

The Division Bench of the Delhi High Court on December 9, 2016 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 Copyright Act, 1957, as long as the inclusion of the works photocopied (irrespective of the quantity) was justified by the purpose of educational instruction.

RESEARCH QUESTIONS

1. Do you think *Rameswari Photocopy* decision is a good one?
2. Does uploading videos in Youtube for students constitute fair use?
3. In light of the COVID-19 crisis, do you think the 'fair use/fair dealing' exceptions related to education is sufficient in India? Will more exceptions make the teaching-learning process more convenient?

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