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Copyright and Contract Law: Implications on the Functioning of Libraries

Dr.Tarseem Singh
Asstt. Librarian, University of Jammu.
Kartika Bakshi
Research Scholar, Department of Law, University of Jammu.

Abstract
The main objectives of copyright legislation and libraries are to protect the rights of creators of information as well as protect the rights of general public to use that information. The success of present information exchange model depends on the mutual respect and cooperation between copyright law legislations and social institutions like libraries. In the present paper the attempt has been made to highlight the various provisions of copyright law and law of contract which enable the institutions like libraries to work for the benefits of institution and readers at large.
Intellectual property, information Resources, License, Copyright infringement, Law of Contract.

Introduction

Information resources in any forms are integral part of libraries and copyright laws. Whereas copyright laws are enacted to control the publication and distribution of information resources and computer software but at the same time Libraries are entrusted to perform certain functions which are provided exemption in copyright laws. The new system of information exchange can be developed through cooperation between different stakeholders including libraries, ILS vendors, book and subscription agents, publishers, e-content aggregators, etc. (Webster, 2008). The prime aim of copyright laws is to ensure the encouragement to original creators of information resources through certain rights over their intellectual creations. The right to publish,reproduce and transfer of such content to third party to publish, reproduce and distribute their intellectual output is granted to creators of original information resources under copyright protection. At the same time, library and museum as a place and as a reservoir of information resources have been granted permission under copyright laws to disseminate the information resources once they are owned and purchased, and even reproduce certain number of copies of the publications which are no longer available in market or stopped publication.

The present era is consider to be era of knowledge and its success surely lies in the pace of identifying opportunities, converting ideas into innovations with value creation and exploitation that will distinguish winners from losers (Ganguli, 2001). Creation of information and knowledge in any form like pamphlets, monograph, painting, photgraphs and even computer software and programmes are considered as the intellectual creation of one's mind and treated as the intellectual property. Owing to its value and utility, the individuals as well as organisations are making lot of investment in terms of intellectual pursuit, time and money in research and development activities.

In order to motivate the original creators to produce the valuable information resources for name, fame and get benefitted for the labour and investments made for the creation of information and

knowledge, various countries have legislated various laws to govern and regulate the terms and conditions for use of information resources in different forms and formats. On other hand, libraries are considered as social institutions entrusted to perform the functions of: discovery; selection; procurement; store; share; and dissemination of information and information resources to public at large. Library professionals are supposed to perform the sacred duty of making available information and information resources to users irrespective of any caste, creed, colour, gender,credentials with minimum restrictions if any. Firstly, it was believed that the copyright legislations are more in favour of creators and presently, "agents and vendors now dominate the supply chain and librarians have to content with pricing models and negotiating licensing terms and conditions" (Fieldhouse, 2012).

From the above, one can easily summarise that libraries and library professionals are in the middle of 'information resources' and 'users' of information. They facilitate the flow of information from its creators to its end users. Thus, library professionals have dual obligations: ensure protection of rights of creators as well as facilitate right of users to whom the library is intended to serve.

It has been seen in the past that due to some ignorance or unintentional activities, libraries has been made party to some legal cases related to copyright infringement. Recently a case of copyright infringement against the photocopy owner, who runs the facility on the premises of Delhi School of Economics of Delhi University was filled by the Publishing houses of Cambridge, Oxford University Press, and Taylor & Francis (http://www.deccanherald.com).To avoid such happenings and better serve the public in consonance with copyright regime, library professionals required to familiarise themselves with some basic provisions of copyright and contract laws.

Copyright law: A Conceptual analysis

Copyright, according to Black's Law Dictionary is "the right of literary property as recognised and sanctioned by positive law. An intangible, incorporeal right granted by statue to the author or originator of certain literary or artistic productions, whereby he is invested, for a specified period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them." Initially copyright was meant for only literary works like books, but with the passage of time expanded for number of works like; musical works; dramatic works; Pantomimes and choreographic works; pictorial, graphic, and sculptural works; films and audiovisual works; sound recording; computer programme; digital works. Modern copyright law has been influenced by a range of traditional legal rights that have been recognized throughout history, including the moral rights of the author who created a work, the economic rights of a benefactor who paid to have a copy made, the property rights of the individual owner of a copy, and a sovereign's right to censor and to regulate the printing industry. The origins of some of these rights can be traced back to ancient Greek culture, ancient Jewish law, and ancient Roman law (Bettig, 1996)

The objectives of the copyright law are mainly twofold. Firstly it grant certain economic and moral rights for limited period to encourage and rewards the creators or their employers and secondly, copyright law also allowed the public to use the copyright work for certain purposes specified in the law.

The world's first copyright law "The Statute of Anne" was enacted in England in 1709. Its full title was "An Act for the Encouragement for learning, by vesting the copies of printed books in the author or publishers of such copies, during the times therein mentioned." The three main features of this act were:

a. The authors had right over his work;
b. Infringer had to pay a fine;
c. Protection will not be granted unless the title of the book entered in the 'Register Book' of the Company of Stationers (Ahuja, 2007).

The very principle underlying the grant of copyright is that there must be sufficient "skill, judgement and labour" involve in the creation of the work (Cornish, 2001).

In United States, Congress passed an act similar to Statute of Anne as the first American copyright law in 1790.

In India the first Copyright Act was enacted in 1914. It was the modified form of United Kingdom Copyright Act 1911. The Act presently in force was legislated in the year 1957 and is known as The Copyright Act, 1957. This Act was time and again amended in 1983, 1984, 1994 and 1999 respectively to accommodate the new development taking place with regard to technology as well as meet the standards and developments in international Copyright law.

The main features of the Copyright Act, 1957 are: Creation of Copyright Office under the control of Registrar of copyright; setting up of copyright Board to supervise the rates of fees, royalties, compensation and permission for public performances; enlargement of the scope of copyright to other forms of works; term of copyright enhanced to period of 60 years after the death of authors; infringement of copyright; penalties for violation of copyright; and acts not to be infringement of copyright.

Before finding the various provision for working of libraries under this act, it is necessary to know some basic elements of the Copyright Act,1957. Copyright does not constitute a single right but is a bundle of economic and neighbouring rights including morals rights. Under the Copyright Act , the owner of the copyright acquire various rights such as: Substantial rights granted under section 14; rights of assignment; moral rights; ownership of copyright and right of owner; right to sue the infringer.

The exclusive rights in case of literary, dramatic or musical, and computer programme are dealt in section 14(a) and (b). A per section 14(a) the exclusive right of the owner are to do or authorise the doing of any of the following acts in respect of a work (literary, dramatic or musical) or any substantial part thereof, namely:-

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
(ii) to issue copies of the work to public not being copies already in the circulation;
(iii) to perform the work in public, or communicate it to the public;
(iv) to make any cinematograph film or sound recording in respect of the work;
(v) to make any translation of the work;
(vi) to make any adaptation of the work;
(vii) to do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clause (i) to (vi).

Although the computer programmes also find mention in the definition of literary work, but due to its peculiar nature the exclusive rights of owner are mentioned in section 14(b) which are as under:

(i) To do any of the acts specified in clause (a);
(ii) To sell or give on commercial rental or offer for sale or for commercial rental any copy of computer programme.

Copyright infringement

With the development of ICT, it is very easy to copy and its transfer from one medium to another without any authorisation, which is termed as copyright infringement. Copyright infringement can occurs under different situations that are clearly mention in copyright law and is an offence. According to section 51 of Copyright Act, 1957, a copyright work is deemed to be infringed:

(a) when any person, without a license granted by the owner of the copyright or the Register of Copyrights under this Act or in contravention of the conditions of licence so granted or of any condition imposed by a competent authority under this act-

i. does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

ii. permits for profit any place to be used for communication of the work to the public where search communication constitutes and infringement of the copyright in the work, unless he was not aware and had no reasonable grounds for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

i. make for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

ii. distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or

iii. By way of trade exhibits in public, or

iv. Imports into India, any infringing copies of the work:

Provided that nothing in sub-clause (iv) shall apply to import of one copy of any work, for private and domestic use of importer.

Acts not constituting infringements (Library exceptions)

The Copy right Act provides certain exceptions to infringement. The object of the exception is to balance the monopoly rights provided to creator of owner of the copyright works and rights of public to use the work. These exceptions are provided for certain public purposes for encouragement of private study and research and promotion of education. Under these acts the institutions like museum archives and libraries find mention about their working, directly or indirectly.

Section 52 gives a long list of acts which do not constitute infringement of copyright. Section 52(a) deals with fair dealing which read as:

(a) A fair dealing with a literary, dramatic, musical or artistic work [not being computer programme] for purpose of-

i. Private use including research;

ii. Criticism or review, whether of that work or of any other work;

Reproduction of a literary, dramatic, musical or artistic work is also allowed for teachers and students {section 52 (h)} for their use in the course of instruction or answering any question in the examination.

Section 52 (o) also allowed making of not than three copies of a book(including pamphlet, sheet of music, map, chart or plan) by the public library for the use of library if such book is not available for sale in India. Section 52(p) further allowed library, museum or other institution to reproduce the work for publication, of any unpublished work kept in their possession for public use if it is free of copyright.

It is pertinent to mention here that Indian copyright act has not defined the fair dealing, public library and has left the scope for debate that what constitute the fair dealing. While dealing with cases of fair dealing the courts take into account; (i) the quantum and value of the matter taken in relation to comments or criticism ,(ii) the purpose for which it is taken, (iii) whether the work is published or unpublished, circulated (if unpublished), and (iv) the likelihood of competition between two works (Narayanan, 2005).

In the absence of a definition of "public libraries" (Iyengar, 2009) libraries in the Copyright Act allows us the freedom of importing definitions from other enactments, for instance, various co-ordinate definitions of "public library" in state enactments, or the definition of the phrase "public authority" under the Right to Information Act both of which associate the concept of "public" to its source of funds rather than its constitution. On this reading, a library may be a 'public library' merely because it is supported by public funds, even despite it not being specially designated as a 'public library' or being kept 'open to the public'. Without the provision of library services and materials to support education, research and the supply of information for the improvement of trade, social and economic progress would not have been on such level (Gasaway, 1996).

Fair Dealing, bonafide usage and Educational Purpose: A Case analysis with special reference to Delhi University Photocopy Case

The case of The Chancellor, Masters & Scholars of the University of Oxford and Ors. v. Rameshwari Photocopy Services and Anr. (2016) was a landmark judgement that found that photocopying portions of copyrighted books en massewere perfectly legal when it was done for educational purposes. Rameshwari Photocopy Service, founded in 1998 and owned by Dharampal Singh, is a photocopy shop present on the Delhi School of Economics (DSE) premises in Delhi University's North Campus. This shop was the primary supply point of a variety of course materials and was often visited by DSE students. This was because some of the professors at the Delhi School of Economics had developed course packets that included pages from books published by various international publishing houses. Rameshwari Photocopy Service was entrusted with duplicating and binding these pages and distributing them to students for 50 paise (US$0.01) each page. n 2012, Oxford University Press, Cambridge University Press (UK), and Taylor & Francis Group (UK), as well as Cambridge University Press India Pvt. Ltd. and Taylor & Francis Books India Pvt. Ltd., filed a copyright infringement lawsuit against Rameshwari Photocopy Service and the University of Delhi in the Delhi High Court for distributing copied portions of their published books without any appropriate license.

The lawsuit generated a ton of support from students, professors and activists alike for Rameshwari Services, with numerous petitions being filed for joining the defence of the case. For example, the Association of Students for Equitable Access to Knowledge (ASEAK) and the Society for Promoting Educational Access and Knowledge (SPEAK) requested that they be impleaded as defendants. Subsequently, they were made defendant number three and four respectively.

In March 2013, more than 309 famous writers and professors from around the world wrote to the publishers, urging them to drop the lawsuit. Surprisingly, 33 of the 309 signatories had a direct relationship with the plaintiff-publishers and were creators of works whose copyright was allegedly infringed by Delhi University and its photocopier. In 2016, the lawsuit was rejected and the injunction was removed by Justice Rajiv SahaiEndlaw, enabling Rameshwari Photocopy Services to

resume selling the course bundles. Later in the same year, a two-judge bench set aside the previous order and allowed for the lawsuit trial to continue, saying that the reproduction of copyrighted books for educational purposes was not copyright violations. At the same time, the Delhi High Court refused to place an injunction on the shop and instead asked it to submit periodic reports of the coursepacks it was selling.

In 2017, an open letter was sent to Oxford University Press by students, alumni and academics of Oxford University, requesting them not to appeal the Division Bench decision in the Supreme Court of India. The three publishers, Oxford University Press, Cambridge University Press (UK), and Taylor & Francis Group (UK) consequently withdrewfrom the lawsuit saying they did not want to get entangled in legal battles with their stakeholders, the educational institutions.

The Indian Reprographic Rights Organisation (IRRO) petitioned the Supreme Court, appealing the Division Bench decision of 2016. The IRRO is a copyright society that was established by publishing houses to give out affordable licenses for reproducing products that had copyright restricting their dissemination. The Supreme Court held that, given that the initial litigation brought before the Delhi High Court had been dropped by the publisher plaintiffs, and that the IRRO was only an intervener in the lower court proceedings, the Supreme Court chose not to intervene in the High Court ruling.

Since the issue involved copyrights, the Copyright Act, 1957 and the Copyright Rules, 2013were the relevant source of legal provisions.

The main provision over which the entire legal battle proceeded was Section 52(1)(i). Section 52 talks about certain acts which do not constitute copyright infringement. Section 52(1)(i) in particular stated that the reproduction of any work, by a teacher or a pupil in the course of instruction; or as part of the question to be answered in an examination; or answers to such questions all constituted *fair dealing* of that work.

A primary question was whether the case would follow under Section 52(1)(i) or Section 52(1)(h). This subsection says that for *bonafide* usage of copyrighted works, the publication of the same could be allowed. But that was limited to only two passages from works of the same author published by the same publisher during five years.

Because of the absence of substantial Indian case laws in this regard, international treaties were also cited, namely the Berne Convention, 1886 and the Agreement on Trade-Related Aspect of Intellectual Property Rights, 1995. The relevant articles were-

a. Article 9 of the Berne Convention: Allows for governments to make legislation to govern the reproduction of copyrighted works in special cases.
b. Article 10 of the Berne Convention: This article allows for quotations to be made of works already in the public domain, provided it is compatible with fair practice. Moreover, this article also states that the utilization of copyrighted works can be used for teaching with appropriate agreements.
c. Article 13 of TRIPS: This talks about exceptions to exclusive rights only in special circumstances.

The Court decided that Section 52 did not have a cap or limitation on fair use. Rejecting the four-pronged test used in foreign jurisdictions, like the United States of America, the Court opined that fairness of use had to be inferred exclusively from the purpose of the use, i.e., education in this case, and not the qualitative or quantitative extent. Thus, if any material was being used for educational purposes, then that would be considered fair within the meaning of Section 52, irrespective of the fact whether the entire copyrighted book or part of it is being used.

The 2016 judgement in this case unequivocally widened the ambit of reproduction of copyrighted works in the sphere of education. By allowing such reproduction, the Courts increased the accessibility of various foreign publications which are generally very expensive to students of varied financial backgrounds.

Incursion of Contract Law in the Libraries

With the advent of computer and its use in communication technologies leads to creation of digital and electronic resources with unprecedented speed and diversified nature. Today majority of publishers are making use of new technologies and producing significant number of resources in digital and electronic forms. Major target of its use is libraries. With the changing trends in publishing the whole world of information market has also changed its business model.

Now the publishers of electronic resources no more sell their product, but provide only the access to their product and provide their services on contractual terms and conditions called licenses.

A contract means a written agreement between two or more parties which is enforceable by law. A contract consists of an offer, acceptance of the offer, and consideration, which is the exchange of something of value in the eye of law. Contract may cover products, goods, or services for fixed period. The publisher or vendor (licensor) offers a product with terms and conditions set forth in the contract, the libraries (Licensee) accepts the offer and pay the fee. A license or license agreement is a legally binding form of contract through which a library pay for the right to use or access a resource on mutually agreed terms and conditions.Since the role of libraries in the society is same as ever before, so in the changing mode of business model they require to support the continuation in the digital and electronic environment of exceptions that they have been granted under copyright in the print format.

It is often seen that the publishers and vendors keeping their business interest in mind prepare the contract according to their wishes and whims. But since libraries are their prime target, so the libraries being their major consumer must not succumb to their whims and wishes. Keeping in view the role of libraries in society librarian, director or anybody authorised to sign the contract must assert their requirement before signing any contact. All the potentially disputable terms should be defined. Some of these are; users or authorised users, authorised sites, penalties for unauthorised use, delivery by electronic means, sharing with other, responsibility of library for any misuse or overuse of information by the user, and governing laws for any dispute if arises any. The restriction and conditions in the protection, copyright laws (Radcliffe, 1999; Oppenheim, 2000) have proven to be seriously problematic in an era of digital libraries and the need to capture large volumes of content that is at risk of loss. Future changes in library exceptions occur through legal change or other means, these official examinations of current copyright law underscore the general problem of enacting specific laws at a time of rapid change in technology, library practices, and access to diverse copyrighted works.

Conclusion

There is no doubt that information is playing important role in our lives, be it at professional front or day to day routine work at home. It is equally important that the awareness about intellectual property rights is also not widespread. Owing to widespread infringement of copyright, particularly

piracy in books, sound recording and cinematography films there is huge loss of revenue to the world economy.

Libraries having responsibilities to nurturing, sustaining preserving and making readily available the information to anyone who may want it now or in future also have the responsibility to respect the intellectual property rights and other laws of state as well as making the public aware about these.The balance between the right to access information through social institutions like libraries and copyright infringement is a delicate one, and it is upto the authorities to maintain it by creating a harmonious environment for the existence of both.

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