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Why the DU Photocopying Case could prove to be a wrong precedent?

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ABSTRACT

Copyright as an intellectual property right protection is the right granted solely to the architect of any creative work. Since it does not require registration in India, it is granted simply when the origination of the copyright takes place. However, there are certain exceptions to copyright infringement in India based on either fair dealing and other specific activities mentioned in the Copyright Act. The author looks at a recent interpretation of one of these exceptions and how its broad interpretation can be harmful for copyright law in general.

The Division Bench of the Delhi High Court in December 2016 dealt with a rather interesting case that sparked a lot of controversy, owing to the magnanimous number of stakeholders involved, which were, the students of Delhi University. The issue pertained to 'course packs' distributed to students by a photocopying centre. These 'course packs' would be created as a collection of photocopies of portions of books as required by the students for the syllabus.

The precedent set in the judgement would change the entire concept of educational books and authorship in years to come and with the rise of the digital era, would change how the education system works with respect to educational resources.

Keywords: copyright law, fair use, course of instruction, education, personal use.

I. INTRODUCTION

The judgement² held that such photocopying, pertaining to the purpose of educational instruction, is protected from copyright infringement claims.³

These course-compilations were regarded as unauthorized and unlicensed copies by the publishers, infringing⁴ the copyright⁵ in the publications. The judgement by Hon'ble Justice Nandrajog established certain precedents, which may require certain scrutiny.

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² The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors., 233 (2016) DLT 279

³ Copyright Act, 1957, Section 52(1)(i)

⁴ Copyright Act, 1957, Section 51

⁵ Copyright Act, 1957, Section 14

II. FAIR-USE POLICY

The Court, by establishing the fact that Section 52(1)(i) does not have a fair use limitation, which the Court clarified is extended only to clause (a), restricted its fair use determination to its end purpose, i.e., education.

But, in terms of protecting copyright of authors of books intending to impart education, what this essentially claims is that if an author has written a book that is educating students over the curriculum of the Delhi University, then such a copyright of that book and the material within, simply does not exist. The Court, in clarifying that such will only be the case in terms of imparting education as the end purpose, has skipped over the fact that the sole purpose of using these books shall be imparting education and hence, these books itself become an exception to Copyrights as a concept.

Further, the allowance of multiple reproductions of such books by its target audience, i.e., the students, will in fact, reduce the market share of such books, reduce profits and discourage publishers from publishing such books.

III. COURSE OF INSTRUCTION

Course of Instruction is the overarching requirement for the copyright infringement exception. The word ‘course’ could be the noun ‘course’, meaning the curriculum, or the verb ‘course’, meaning the complete process of education.

While the noun understanding would have a defined set of topics and therefore, a finite number of possibilities attached to what is to be considered ‘course’, but the verb understanding would have infinite number of such possibilities, as then, instruction would refer to the entirety of the teach of period.

PRIVATE OR PERSONAL USE

Section 6(1) of the UK Copyright Act, 1956 is *Pari Materia* with Section 52(1)(a) of the Indian Copyright Act, 1957. The above given Section ⁶, was interpreted wherein, where ‘*private study*’ by a student is to be interpreted as ‘*dealing with the original work*’ and thus, not provided the protection of private or personal use. ⁷ The court ignored the purpose of the reproduction of the work in favour of the final use of the product. The purpose in question is not the final use of the reproduced work, but the purpose of the very reproduction, that is, sale and profit. Since the copier machine that reproduced the work are not themselves dealing with

⁶ UK Copyright Act, 1956, Section 6(1)

⁷ *Sillitoe & Ors. v. McGraw-Hill Book Co. (U.K.) Ltd.*, [1983] F.S.R. 545

the work for the purpose of their personal use, such copying is not covered under the personal or private use defence.⁸

REPRODUCTION V/S PUBLICATION

The Copyright Act in India provides 2 rights to the owner of the copyright – reproduction and publication.⁹ Making the work available to the public by issuing copies or public communication is publication of the work.¹⁰ Thus, reproduction, as a right, allows making one copy and Section 52(1)(i) provides a right to reproduce, not publish and hence, it is incorrectly used under Section 52(1)(i) and should be used under Section 52(1)(h), with the restriction attached to the sub-Section.

A TEACHER OR A PUPIL

The term ‘a teacher or a pupil’ was interpreted by the Court as the entire educational institution. However, prior to the amendment¹¹ to the Act, the term ‘educational institution’ was mentioned in Section 52 (1) (h) and still in Section 52 (1) (j) and not in Section 52 (1) (i) and thus, considering the indefinite singular article before the teacher and the pupil, the judicial interpretation is questionable at best.

IV. CONCLUSION

The precedent set in the DU Photocopying Case could prove harmful for firstly, the publishers of educational books, who will lose out on their prime share in the market and ultimately, the authors, who will have reduced profits. It also weakens the power of intellectual property rights as a whole if the restrictions of copyright claims are interpreted widely instead of strictly.

⁸ Copyright Licensing Authority v. University of Auckland, [2002] 3 NZLR 76 (NZHC)

⁹ Copyright Act, 1957, Section 14

¹⁰ Copyright Act, 1957, Section 3

¹¹ Copyright Amendment Act, 2012

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