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Interpretation of Section 52 of the Copyright Act, 1957

It is interesting to note that in India, wherever provisions have been made for criminal prosecution for violation of any Intellectual Property Rights, a criminal case can be filed against known as well as unknown persons. It is also important to note that both civil and criminal remedies, wherever applicable, can be availed simultaneously and both the remedies are coexistent.

At least the Delhi High Court thinks so. In a recent judgment passed by the Delhi High Court in the case of *The Chancellor, Masters & Scholars of the University of Oxford & Others Vs. Rameshwari Photocopy Services & Another*, the Court held that photocopying of portions of books by the students or the University, which are part of the course curriculum and available in the University library does not constitute infringement under the Indian Copyright Act, 1957.

The Court was deciding an infringement suit filed by Oxford University Press, Cambridge University Press, Taylor & Francis Group, U.K. amongst others against the University of Delhi and the shop owner who was permitted by the University of Delhi to photocopy its books.

The Court was interpreting the Section 52 of the Copyright Act, 1957, which lists acts which do not amount to infringement of Copyright and in particular Section 52 (1) (i), which read as:

The reproduction of any work –

By a teacher or a pupil in the course of instruction; or

As part of the questions to be answered in an examination; or

In answers to such questions;

In interpreting the word teacher, the court held that University will also be included in the word teacher considering that education has been institutionalized.

The words "in the course of" has been held to not limited to personal interface in the classroom but to include the preparation carried outside the classroom as part of the course curriculum during the entire academic session. Resultantly, reproduction of any copyrighted work by the



teacher for the purpose of imparting instruction to the pupil as prescribed in the syllabus during the academic year would be within the meaning of Section 52 (1) (i) of the Act.

Going further, the Court held that photocopying of books by the student will amount to fair use under Section 52 (1) (a) of the Copyright Act. The Court goes on to hold that if a student was to borrow book from the university library, click photographs by a mobile phone and print it, the same would be an act of fair use and not amount to infringement of copyright.

The Court gave finding that only if the University was charging for the reproduction at a price competing with the price fixed by the publisher, could be said that University is functioning commercially. Therefore, to defeat an allegation of commercial use by the publisher, the infringer is only required to peg the infringing copy at a different price point than that of the publisher.

The Court held that copyright, especially in literary works, is thus not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. The ratio for this observation is that copyright is intended to increase and impede the harvest of knowledge; to motivate the creative activity of authors and inventors in order to benefit the public. The Court has thus categorized literary work to be less protectable than other works viz. cinematographic work or artistic work. The court missed the point that copyright laws has its origin to protection of literary work and should be treated equally with other works. The Court ignored that e-classrooms have become the norm with digital educational content and instruction material. These digital content are largely graphics falling in the category of cinematographic work. Therefore, one would be tempted to argue that reproduction of these cinematographic work will not amount to infringement as these are part of the course curriculum.

The Court held that:

Berne convention in Article 9 (1) (2) has left it to member countries to legislate to permit reproduction provided it does not unreasonably prejudice the legitimate interests of the author.



Article 10 of the Berne convention permitted members to legislate regarding Free User of Work.

Article 13 of TRIPS also permits members to have limitation or exceptions to exclusive rights in special cases which do not unreasonably prejudice the legitimate interest of the right holder.

The Court held that once the legislature in relation to copyright has taken a call on what is justified for the purpose of teaching and what will unreasonably prejudice the legitimate interest of the author has not imposed any such limitation, the Court cannot impose the same.

The Judgement is very well written with detailed reasoning for the conclusions reached by one of the highly respected and erudite Judge. One doesn't know whether there is going to be an Appeal against this decision but it does create an uncomfortable situation for authors and publishers. Any book which gets prescribed in the course curriculum of a University will be stripped of its copyright sheath. It could be copied freely without any compensation to the author and the publisher. It definitely does not augur well for a knowledge economy which India is aspiring to be, which envisage just compensation for intellectual creations.

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