

Chaining the Unchained Books: Copyright as an Infringement on the Philosophy of the Library Science

Ashish A. Ahuja*

Abstract

This paper gives a brief overview of the philosophy and laws of library science as propounded by Dr SR Ranganathan. Then it gives a brief introduction to the laws of copyright in India under the Copyright Act 1957 and the later amendments in view of ongoing information revolution. It also explains what constitutes copyright protection and copyright infringement.

"What is a book that a man may know it,
and a man that he may know a book?"¹

1. THE LIBRARY SCIENCE—AN INDIAN PHILOSOPHY

Indian philosophy on library science has developed through its deep cultural tradition. Perhaps the most often remembered name in this regard is the name of Dr SR Ranganathan, who has given India the framework of this philosophy, which holds as good the basis of library science even today. The frame of thought propounded by him, is the philosophical foundations of librarianship.

2. THE LAWS OF LIBRARY SCIENCE

The laws of library science have developed over a period of time. Dr SR Ranganathan

identified five laws of library science,² which truly form the basis of any development of this science in this modern world.

The first law is 'Books are for use.' This law is often considered to be the paramount law of library science as all the remaining laws in some form or the other, are derivatives and variants of this law. However this law did take its time to develop and a look into History would reveal a period in the 15th and 16th centuries, when books were in fact chained and kept to the shelves. This was because at that point of time, the purpose to be preservation of the books and not so much the use of the same.

The reason identified for the same seemed to be that books were rare and difficult to produce and it took years to copy a book. However even after they were unchained, a number of librarians did not accept the primary principle that the books were meant for the use and were happier with the books in the shelves, rather than them being used by someone.

* B.A., LL.B. (Hons.), National Law School of India University, Bangalore.

Today a turnaround situation is observed with the information revolution and librarians are ensuring that the books are meant for their use and thereby avoiding possessive attitudes. Numerous libraries are round the clock libraries.

Other principles which have been an offspring of this primary, paramount principle are the principles such as 'Books are for all'. This law indicates a movement from books being for a chosen few to books being for all. The widening of this principle includes transborder information, travelling libraries, etc. The third law aims at an open access system whereby "Every Books its Reader" is the paramount purpose of this principle. The freedom of individuals and the curiosity of individuals is best rewarded with open access systems. The Fourth Law is the law of cataloguing, indexing, stacking guiding, etc., with the paramount purpose of the same being 'Save the time of the reader' The Fifth Law is a movement towards world-wide access, with a growth in members and users, keeping in mind the principle that 'The library is a growing organism'.

These principles are generally identified as the philosophical principles around which any library development would be oriented. All of them are offspring's of the primary principle of use of information. Modern day information accessing through Internet, CD-ROMs, are nothing but implementation of the above principles.

3. COPYRIGHT PROTECTION— BRIEF INTRODUCTION

Having given a brief overview of the philosophy and the Laws of library science, it is necessary to give a brief introduction to the laws of copyright.

The laws of copyright were framed in order to protect an author against piracy of his work. This Right is not a right which arises under common law, but is a right which has arisen by

statutory protection. Hence if one is to understand the nature of the protection sought to be granted by this right, one would have to examine the statutory framework under which the laws of copyright are enacted.

In India, the law relating to copyright is embodied under the Copyright Act 1957.

The first question that must be answered is as to what amounts to a copyright and in what kind of works does it vest.

Under Section 13 of the Copyright Act 1957, a copyright subsist in all original literary, dramatic, musical and artistic works; cinematograph films and sound recordings. This reflects that the protection that is sought to be given by the Act is wide and includes all kind of works. For the present purpose, a look at literary work is the most essential, as this is in relation to library science.

According to Section 14 of the Act, a copyright would mean the exclusive right to do the following acts in relation to a literary work:

- to reproduce the work in any material form including the storing of it in any medium by electronic means;
- to issue copies of the work to the public, not being copies already in circulation;
- to perform the work in public or to communicate it to the public;
- to make any cinematograph film or sound recording in respect of the work;
- to make any translation of the work;
- to make any adaptation of the work.

This implies that if the person is the owner of copyright in a book (an owner could be the author or the person to whom the author sells his rights), than that person has the exclusive right of reproducing the book, by any means. That person also has the right to do the other acts mentioned above.

When one claims such an exclusive right, it would lead to the obvious conclusion that others are precluded from doing the same, otherwise the 'exclusive' nature of the right would be disturbed.

With the ongoing information and communication revolution, certain interesting questions arise. One such interesting question is directly affecting Library Science and hence a discussion on the probable issues that arise is warranted. The new generation authors today 'key in' their complete work on computers and more often than not store the data on CD-ROMs and market the product as CD-ROMs itself, thereby wishing the traditional hard copies (paper copies) goodbye. How would the same be protected? As the material is stored on compact discs, would the same be treated as 'literary works'?

Interestingly, prior to the Amendment Act of 1994, the definition of literary work had a very wide definition, including "tables, compilations and computer programs, that is to say, programs recorded on any disc, tape, perforated media or other information storage device, which, if fed into or located in a computer or computer based equipment, is capable of reproducing any information. Undoubtedly the definition was broad enough to include programs included in CD-ROMs, as it expressly included program recorded on any disc. Of course the intention was certainly to safeguard programs on floppy diskettes.

Unfortunately this clarity has disappeared with the 1994 Amendment Act (seemingly unintentional) where the definition of literary work has been constructed by including "computer programs, tables and compilations including computer data bases". Though omission of words "that is to say, programs recorded on any discs....." ought not to make a difference, as the primary inclusions remain, unfortunately it does make a difference, as computer programs has been defined in a very limited way, as meaning "a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable

medium, capable of causing a computer to perform a particular task or achieve a particular result".

The implication of this definition seem to be that computer programs would only include such software as those capable of causing a computer to do something. Such a constructed definition would exclude CD-ROMs from within its meaning, as CD-ROM does not make a computer perform a task, it merely would contain certain information, which readers might find useful and helpful.

Even the definition of 'records' has vanished from the amended Act and the definition of 'sound recording' has been brought in. Once again the central theme of this definition remains the production of sound and hence in my opinion a CD-ROM in which literary works are incorporated cannot qualify as a sound recording.

The question still remains unanswered. In my opinion, the work would still qualify as a literary work, even if it is produced on a CD-ROM, as the definition is an inclusive definition. In law an inclusive definition is generally considered as descriptive and not exhaustive. Even otherwise, it is certain that if an author was to write a book and also produce it simultaneously in CD-ROM versions he would be protected, as the written version would qualify as a literary work and the CD-ROM would be an automatic right of the owner of the literary work, as provided in the now amendment section 14 which is clause (a) provides that the author would have an exclusive right in the cast of a literary work, to reproduce the work in any material form including the storing of it in any medium by electronic means. This right would be wide enough to include CD-ROM production under its fold.

It is important to note at this point that a copyright exists in form and not in idea. For instance, if a person were to write a classical love story based on an idea, in the settings of the early 18th century, it is not that nobody can

use the said idea and write another novel, but it is merely, that the novel of the first writer should not be copied.

The period of protection for a copyright is generally the lifetime of the author-50 years (after the death of the author). However in India, the period of protection is the lifetime of the author + 60 years after the death of the author. This implies that after the said period anyone can copy the work. Today the works of Shakespeare are in fact not protected by any copyright, which gives that the freedom to all individuals to copy the original works of Shakespeare without the permission of the publishers.

Having understood the copy RIGHTS, it is now necessary to briefly understand, as to what would amount to an infringement of a copyright. A copyright in a literary work shall be deemed to be infringed when any person does an act without prior authorisation which the owner of the copyright has the exclusive right to do. This implies that if someone were to copy the book, or even part of the book which is protected under copyright, then the same would amount to an infringement of the copyright. In the modern day, even information transmission across the Net involves reproduction of the work and if it is a work in which copyright subsists, there may be infringement in such action.

Further it must also be noted that a work is given automatic protection and there is no need for any registration in order to get protection.

4. COPYRIGHT PROTECTION IN RELATION TO LIBRARY SERVICES

Copyright protection in relation to library services would imply a need to examine the kinds of infringement which may crop up in library services.

The most common kind of infringement that arises is in the form of direct copying and photocopying. Contrary to popular belief, photocopying a work may be totally illegal, as it may be violative of some person's copyright in the work, which includes the exclusive right to produce further copies.

Another form of infringement may arise when the photocopying is done not for the member, but for the library itself, when it requires additional copies of a particular work.

Unfortunately, the implications of the same have not yet been realised, with laws such as the National Libraries Act, 1976, providing under section 20(2)(h), a function of photocopying as one of the function of the Board established under Act. The section reads: "to undertake duplication (including photo duplication) on such person and conditions as may be agreed upon between the Board and such person or institution".

It is only hoped that the books under the control of the Board established under the National Libraries Act, are the books where the period for protection has expired and are such ancient books that no person would complain of infringement.

Before examining the exception to infringement, it is necessary to examine certain modern issues. Would data transfer across the Net amount to infringement? Would lending a CD-ROM to somebody to use amount to an infringement of copyright? Would copyright data from a CD-ROM to a floppy disc amount to infringement?

The use of Net involves access to certain databases and certain information. This would mean that wherever a data base of a particular nature is being stored across the Net and access is sought, it is necessary first, that the owner of the copyright in the work, authorise such storage and dissemination and secondly

authorise the making of hard copies of the work. Unless such authorisation is taken from the owner of copyright, the very storage of the work would amount to an infringement of copyright.

In relation to lending of CD-ROMs it would be similar to the lending of books. As seen earlier, there is nothing wrong in reading an already issued copy. It would not amount to infringement of copyright. Only when copies are made of the work, would there be infringement of copyright. However very often owners of copyrights secure additional protection by adding "not for circulation clauses" in the contract between the purchaser and sellers. These clauses if breached, would result in a breach of contract, though not in a copyright violation similarly such clauses are generally added on the wrapper of the CD-ROM, where they purchaser is prohibited from lending the same. In such a case there is a contractual prohibition. If such a clause does not exist, then is no prohibition on lending, though copyright the CD-ROM on to a floppy diskettes or otherwise would be directly prohibited.

The copyright Act, under section 52 of the Act however provides certain exceptions to infringement, whereby some acts would not be treated as infringement of copyrights. The relevant exceptions which need discussion in the present case are clauses (o) and (p).

Clause (o) of section 52 provides that the making of not more than three copies of a book, by or under the direction of a public librarian, for the use of the library, if the books are not available in India, would not amount to an infringement. Interestingly this protection is available only to Public librarians.

Clause (p) of section 52 provides that the reproduction, for the purpose of research or private study or with a view to publish, any

unpublished literary, dramatic, or musical work kept in a library, museum or other institution to which the public has access would not amount to infringement.

A mention is appropriate at this time of the fair use doctrine. In short, this doctrine embodies the principle that a fair dealing (acknowledgement, etc.) with a literary work for private use (including research), criticism or review, would not amount to an infringement of copyright.

Interestingly, even the above exemption is available only to unpublished literature and unpublished works. It is also provided that the said exception would be available only after the death of the author + 60 years, if the identify of the author is known to the library or museums as the case may be.

These are the limited protection that are available in case of copying of material from public libraries.

5. CHAINING THE UNCHAINED BOOKS

Man and science have travelled a lot since the books were chained and kept in the library. However it is viewed that the introduction of a concept known as copyright, has once again brought about a situation wherein the books are chained to the shelves in a limited sense, where the law of copyright acts as the invisible chain to the books. This is in total contravention of the primary principle of library science, that a library is meant for use and the books of a library are meant for use. This philosophy envisages a free transfer of information, where knowledge would be meant for learning and not for the purpose of buying and acquiring. It is unfortunate that the law of copyright has put this very fundamental principle of library use and library science in doubt, with the bringing in of a commercial edge to knowledge and

literary works. Even the limited exceptions provided to infringement of copyright are insufficient, as they in no way bring back the concept of free flow of literature and information. It is sad that the primary pillar of library science is losing its significance today due to this unfortunate creation of a copy RIGHT.

6. REFERENCES

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