

Libraries and Library Services under the Indian Copyright Law

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Abstract

This article describes the reconciliation between copyright law and library services. In India the legal position under the act is that only very specific activities are permitted as regards libraries and library services and much needs to be done for copyright awareness.

1. INTRODUCTION

On the face of it, libraries and copyright protection seem to be located at cross-purposes. One seeks to freely disseminate literature, and the other seeks to preserve the exclusivity of the same. However, looking deeper, one can find a basis for reconciliation of the two in that copyright law is aimed at preventing the unfair use of and unlawful gain from another's literature or other creative work, while libraries aim at distributing knowledge from this literature and other creative works. Libraries in their own way, help in preserving this literature (even beyond the term of copyright) and make it freely accessible for bonafide and genuine purposes like simply reading or research.

2. PROVISIONS FOR LIBRARIES

2.1 Indian Copyright Act

The Indian law in this regard clearly reconciles the two purposes as mentioned above and clearly provides for libraries and library services, directly and indirectly in section

52 of the Copyright Act¹ which lists out certain acts which are not considered to be an infringement of copyright. It may be mentioned at this stage that infringement is the primary offence under copyright law and all the remedies are geared towards providing relief against this offence. Infringement not only includes the commission of unauthorised act but also the permitting for any profit the use of any place for these actions and other acts like selling, letting for hire, distributing exhibiting for trade, or importation of infringing copies². Section 52 of the Act on the other hand, lists out several exceptions to this infringement and it is in this list that libraries and library services find a mention.

Section 52 (o) provides for an exception for books which are not available for sale in India. It reads as under:

'the 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 public library for the use of the library if such books is not available for sale in India.'

Therefore, three copies of such a book can be made and kept by a public library for the use of the library. Thus whereas copying a book

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1. Hereinafter the Act
2. Section 51 of the Act

would otherwise amount to an infringement, this provision grants a concession for books not available for sale in India. It is therefore clear that libraries themselves can make and keep copies of such works.

The question therefore arises in whether there are any provisions for the library to follow for facilitating access to any material. Are there any guidelines or provisions to ensure the safety of the copyright of the works kept in the library? The Copyright Act answers only the tip of this proverbial iceberg of a question in section 52 (p) which permits the reproduction of unpublished work kept in a library for the purpose of research, private study or with a view to publish. A provision to section 52 (p) of the Act however obviates this provision and makes it applicable only to anonymous works or to works whose copyright has effectively expired.³

It is clear from the above two provisions that library and library services in particular are only cursorily covered under the Act. It would therefore be pertinent to view some of the other general provisions under the Act which might have a bearing on this issue.

Section 52 (a) of the Act provides that 'a fair dealing with a literary, dramatic, musical or artistic work not being a computer programme for the purpose of

- 1) Private use, including research;
- 2) Criticism of review,

whether of that work or of any other work, shall not constitute an infringement'. Considering that library services can be, and are usually availed of for private use and research, this concession finds some meaning in terms of library services indirectly. There, however, remains the problem as regards the interpretation of the term 'fair dealing'. The Act does not define it but it is clear that it does not

connote reproduction but only a partial use for a bonafide purpose. While the Act supplies this bonafide purpose, viz., private use, including research and for criticism or revision, English courts have dealt with this term and the following guidelines can be culled out from those decisions:

- ⊕ The quantum and value of the matter taken in relation to the comments or criticism.
- ⊕ The purpose for which it was taken.
- ⊕ Whether the work is published or unpublished, or circulated (if unpublished).
- ⊕ The likelihood of competition between the two works.⁴

2.2 US Copyright Act

The US law too interprets fair dealing in a similar fashion. Para 107 of the US Copyright Act, 1976 lists out the following factors to be considered in deciding whether use is fair:

- (i) The purpose and character of use.
- (ii) The nature of the copyright work.

(iii) The amount and substantiality of the portion used in relation to the copyrighted work as whole.

(iv) The effect of the use upon the potential market for, or value of the copyright work.⁵

The Act, through the provision to section 52(1) requires that such fair dealing mandates the acknowledgement identifying the work by its title and identifying the author.

3. CONCLUSION

The legal position under the Act portrays the picture that only very specific activities are permitted as regards libraries and library services. From the provision of fair dealing, it is

³ Though the normal term of copyright is the life of the author and 60 years, the proviso mentions only life and 50 years. The legislature does not seem to have incorporated the extension of term of copyright from life and 50 years to life 60 years as it has done generally by amendment in 1991.

⁴ See, *Beloff v. Pressdram Ltd.* (1973) RPC, 765; *Hubbard v. Vosper*, (1972) 2 WLR 389, and *Blackwood v. Parasuraman*, AIR 1959 Mad, 410, and 428, cited in P.Narayanan, *Copyright law*. 2nd ed., (Calcutta: Eastern Book House, 1995) 187.

⁵ See, P.Narayanan, *Copyright law*, 2nd ed. (Calcutta: Eastern Book House, 1995) 189.

evident that the same is applicable as far as obtaining material from the library is concerned.

However, not only are the enforcement and monitoring mechanisms weak and toothless, but the provisions do not address a gamut of issues. Important among them is that of electronic photocopying. To what extent should libraries allow for such photocopying in their premises. In the US, not more than 10% of a book can be

photo-copied. In India public photocopying is neither expensive nor inconvenient and even if some sort of cap is placed on the portion of the work that can be photo-copied, the public photocopying can hardly be monitored.

In conclusion, it may be said that much needs to be done in this infant area when the information and technological revolution is on the rise as is copyright awareness.