

Understanding Copyright Laws: Infringement, Protection and Exceptions

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ABSTRACT

Copyright is a branch of Intellectual Property Rights and an exclusive legal right given by the judiciary to the creator on his creation. As a creator (he/she/group) has rights to enjoy financial and other benefits associated as per the law over the creation. Violation of copyright law would lead to several judiciary consequences. On the other hand law permits libraries to use copyrighted material for research and academic purpose without any permission from the copyright holder. Further, any violation or an infringement of fair use of library resources is punishable under copyright act. Here an attempt has been made to understand copyright issues in relation to library resources, also highlight protection, infringement, fair dealings, and limitations under the Indian copyright act 1957. Besides, pointing out on the roles and responsibilities of librarians with regard to copyright laws.

Keywords: Copyright Law; Copyrightinfringement; Copyright exceptions; Copyright and Libraries

Purpose:

Understanding Copyright laws with a library professionalperspective to identify do's and don'ts with regard to Indian copyright law.

Methodology:

For this study survey method has been employed and collected opinions through questionnaire from experts in the field of law and library science.

Findings:

It's a challenging task for librarians to manage resources within the framework of copyright laws, but libraries can provide effective services under 'fair use' dealing without any hindrance to the use of information in the academic environment. During the acquisition process, especially with regard to electronic resources, Librarians need to be attentive about the clauses mentioned in the contracts or in agreements while dealing with the publication industry.

1. INTRODUCTION

Copyright is one of the branches or aspects of Intellectual Property Rights (IPR). IPR has been defined by World Intellectual Property Organization (WIPO), as “Intellectual Property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators for their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development”¹.

Intellectual property has been categorized in to many branches² as shown in fig-1.

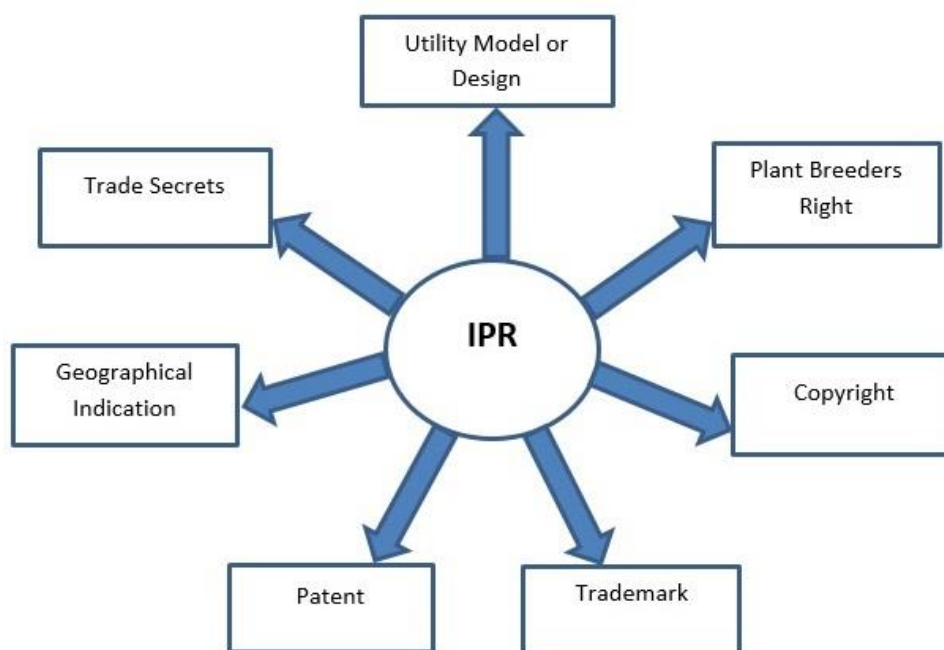


Fig-1

What is copyright law?

Copyright is an exclusive legal right given to the creator or a group of individuals to protect their work or creativity from reproduction, adaption, translation, distribution and public performance by others without prior permission from the creator/person responsible for the existence of the work.

The purpose of the copyright is to secure and reward the general benefits i.e. labor of authors on the produced work. It encourages the authors to produce and proceed with more works on continual basis.

To get protection from the copyright law the work should possess the following³;

- a) The work must be an original one (Original means, the work has been created from inspiration and not copied from any other existing sources. The work must have been created for the first time)
- b) It must be fixed in any tangible form

The presentation of the work must be in the expressible and physical form and should be capable of being identified in a fixed form/identified in its existence or tangible form such as paper, recordings on optical media, paintings, documents, web servers etc.

¹<http://www.wipo.int/portal/en/index.html>

²<http://lawstreamed.blogspot.in/2011/10/intellectual-property-rights.html>

³ Indian copyright act 1957

- c) Must be First publication

An original work, should not be published before

- d) Work published after the death of author, at the time of death author must own the citizenship in India
- e) In case, work published out of India, at that time author must be citizen of India

As per Indian Copyright Act section 13 of Chapter III, the protection is given to the following works;

- Literary works
- Musical works
- Dramatic works
- Artistic works
- Cinematograph films
- Architectural works
- Sound recordings
- Computer program/software

Copyright protection is not provided for;

1. Works not fixed in tangible form
2. Titles, names, short phrases, slogans, methods, factual information, symbols or designs – however trademark law may provide some protections to these works
3. Ideas or concepts, procedures, process, plans, principles, discoveries, and guidelines – however in such cases patent or trade secret law may provide protections to these works
4. Works that are already in public domain and original authorship is not traceable are not covered under copyright law
5. Copyright works that are already expired

Rights of Author/creator

Copyright is a bundle of rights given to the author by the judiciary. As per the Indian Copyright act Section 14 of chapter III and 57 of chapter XI, author has been conferred with some exclusive and special rights; these rights can be divided into 3 categories and as follows;

1. Statutory Rights or Negative rights

Copyright law provides an exclusive legal or statutory right to the original author on his creation of work. It imposes a 'negative duty' on others that prohibits from using or getting benefit from the work without the consent of the author.

2. Economic Rights

The economic right provides author to enjoy the financial benefits. The creator can earn royalty by assigning rights to others either fully or partially. As per the international conventions, generally every national copyright statute provides following exclusive rights to the copyright holder.

- Adaption rights
- Distribution rights
- Public performance rights
- Public display of works rights

- Rental rights
- Reproduction rights
- Translation rights

3. Moral Rights.

Copyright law always protects the creator even after the assignment of copyright work to others either fully or partially. Moral rights grant an author the right to have his name kept on the work forever and protects from any distortion or modification of the work, or other offensive action in relation to the work, which would be damaging to the author's reputation.

Term of Copyright protection

Normally current copyright doesn't require any kind of registration for its protection. Once the work created in tangible form, an author automatically gets the copyright on his creation. The term of the copyright protection on different works has described in section 22-29 of chapter V of Indian copyright act. The term of the copyright protection is as mentioned below.

1. The copyright term in respect to published literary, dramatic, musical and artistic works is lifetime of the author plus 60 years from the death of the author. In case of multiple authors the term is 60 years from the death of last author.
2. In case of anonymous and pseudonymous works, the copyright term is 60 years from the date publication.
3. Copyright protection for photographs, cinematograph films, and sound recordings is 60 years from the date of publication.

Infringement of Copyright

Violation of a copyright law by any person without a license or permission by the owner of the creation is called as infringement of copyright. Copyright law provides exclusive legal rights to an author to get all kind of benefits on his creation.

As per the section 51 of chapter XI of Indian copyright act, using any copyrighted work without the permission of a copyright owner is an infringement of copyright law and the following instances could be considered as infringement of copyright. Any person who does the infringement of a copyright is solely held responsible for his misconduct.

- i. Performing publicly without any consent of the owner
- ii. Using copyrighted work for any kind of business which brings financial benefit
- iii. Distributing for the purpose of trade or import
- iv. Reproduction of substantial part of copyrighted work in any material form
- v. Circulating among the unauthorized persons
- vi. Adoption or translation of copyright work without any permission
- vii. Resale or renting of copyrighted material to others

Fair use or Fair dealing

The doctrine of fair use is a broad concept and flexible in its scope. Fair use dealings have been laid down by the courts in various situations during their judgments. The four doctrines prescribed in the United States code⁴ as;

- i. Damage on the market value of copyright work
- ii. Nature of the copyright work – public access, unpublished, copyright expired
- iii. Purpose of using, i.e. whether it is for commercial or educational or research or any social cause
- iv. Substantial usage of work

Fair use⁵ is an essential part of copyright law which permits to reproduce the copyrighted work in a manner that could be only used for following purpose which is not considered as infringement. Fair use is a key factor that encourages the growth of knowledge and motivates people for fair utilitarian.

1. Purely for private use, including research work
2. To criticize or review the work of others
3. For any kind of judicial proceedings
4. In order to protect damage or loss of work, copyrighted work could be archived
5. Reporting of current events and news in, such as periodicals, magazines
6. Making not more than three copies of a Book which is not available for sale in India, by the public libraries under the direction of person in charge
7. Using for class instructions by a teacher to his students
8. for the purpose of examination and as part of questions, work can be used for writing answers
9. Can be performed or used in course activities of an educational institution by the staff and students. In such case audience must be limited to staff and students of the institution.
10. Unpublished works which are kept in libraries or any institutions can be reproduced for the purpose of research or private study
11. Reproduction of copyrighted work for disabled persons for non-profit purpose but the institute should ensure that the copies are accessed only by them.

Copyright material and librarian

Libraries are the key intermediaries in providing information to the users and the librarians, are the managers to provide different types of information resources through different channels. Information could be categorized as published, unpublished, print and non-print works. As a facilitator, the librarian has connected to authors, publishers, aggregators, distributors, vendors, and users and so on. The toughest task for librarian is to balance copyright and use of copyrighted material within the purview of laws. The librarian can ensure the reputation of organization and may avoid miss use of copyrighted material by its stakeholders by creating awareness about copyright laws. As per the law the person who has infringed the material is solely held responsible for his act. Violating copyright laws would lead to legal disputes between Copyright holder, publisher, distributor, vendor, aggregator and user or stake holder of concerned institution.

Utmost care should be taken during subscription and its agreements with regard to any kind of electronic resource procurement, and better to consult legal expert during the process. Librarian need to ensure protection of copyrights while providing library access to public.

⁴<http://copyright.gov/title17/circ92.pdf>

⁵ Indian Copyright Act 1957, Chapter 11, Section 52

Reasons for violating copyright laws: case study

Violation of copyright law may differ from case to case, the reasons might be lack of resources, unavailability or inadequate copies, out of print/stock, lack of awareness about law and so on and so forth. To know the reasons for copyright violations and as a part of research, the survey had been conducted in the Bengaluru city among academic library professionals. The respondents of this survey were library professionals from Universities and colleges such as Medical, Engineering, and regular Degree. More than 200 questionnaires were distributed, out of which 143 respondents (72.5%) were responded and reasoned as mentioned in the following table. According to the survey, the opinions have been scattered in an academic environment among professionals with regard to violation or infringement of copyright.

Below table reveals that majority of the respondents were expressed that cost of the material (27.65%), unavailability of resources (24.04%) and unavailability of sufficient quantity (21.96%) are the common or main reasons for violating copyrights.

	Reason1	Reason2	Reason3	Reason4	Reason5	Reason6
Details	Cost of the material	Unavailability of resources (out of print, out of stock etc.)	Unavailability of sufficient quantity/Copy	Misconception of fair use	Copyright provisions not clearly understood	Apathy towards others intellectual property
No. of Respondents	107	93	85	37	43	22
Percentage	27.65%	24.04%	21.96%	9.56%	11.11%	5.68%

Conclusion

Though there are many copyright restrictions and issues, the understanding of copyright law and fair use dealings would direct us to use copyrighted content for academic and research purpose in a secure manner. Sufficient level of understanding of copyright problems needs to be conceived during/ before procurement/subscription of any resources. At this point an agreement/contract/terms and conditions between concerned parties on procurement of resources would play a major role in protecting copyright holders. As a facilitator the librarian regularly needs to educate his users about copyright issues. And this could become one of the important factors that would play a major role in decline in copyright violations among library users. As per the Indian copyright act 1957 it is very clear that neither the publisher nor the facilitator is responsible for any infringement of copyrighted material, but a person who is involved in the activity of infringement is solely held responsible for his act of misconduct.

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