

# Advocating for improving copyright laws for libraries at national and international standards

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**Abstract:** There is a need to sharpening the range of legal instruments to enforce intellectual property rights and libraries should keep abreast of international copyright parent standards and domestic case law to ensure that their interpretation legislation maintains a balance between the public interest and the rights of copyright owners to earn a living from their works. So it is right time to harmonisation of copyright laws based on international standards set down by the international conventions, agreements and treaties and the use of copyright works by libraries. Focuses on the library exceptions provided in the Indian Copyright Act 1957 and the other relevant laws. In this era the judicial interpretation given by court shows the advocating of these rights has been remarkable in giving them life in the real sense of term.

**Keywords:** Indian copyright act 1957, WCT, TRIPS, WIPO.

**Paper Type:** Conceptual Paper.

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## Introduction

It is clear from this paper that copyright policy contrary to popular opinion is not only about the provision of incentives to private creators but there is a very significant public interest in the intersection between copyright and access to educational materials. The nature of a country's copyright policy could have a significant impact on its ability to meet its developmental and educational goals. In the information age copyright materials in digital format can be accessed almost instantaneously from anywhere at any time. Advances in technology makes it possible for the digital content to be quickly and easily copied on a large scale without the copyright owner's knowledge without the use of intermediaries, transmitted and used by multiple users. The new exploitation opportunities in digital environment have come with new challenges to provide protection to the copyright holders against unauthorized use of their contents in digital environment. The copyright laws in India are set to change as new amendments propose to introduce the anti circumvention and Rights Management Information provisions in India although India is under no obligation to introduce these changes as it is not signatory to WCT or WPPT. Copyright office in India posted proposals to amend the Copyright Act, 1957 on its website in 2006. One of the proposed amendments seeks to introduce the Digital Rights Management (DRM) in the Indian copyright law. The purpose for such introduction in the Indian copyright laws has been to keep pace with national and international developments and advance in technologies.

## Indian Copyright Act and further Amendments

The first Indian Copyright Act was passed in 1911 by the British and India signed the Berne Convention in 1927 and became its copyright member at international standard. The Indian Copyright Act of 1957 has undergone numerous amendments the latest being in 1999, Copyright Amendment Bill 2010 and I.C. Rule 2012. At present Indian legislation does not deal with the intricacies of computer-based network systems. On this virtual highway digital content providers will have to conform to various jurisdictional laws and policies regarding the content provided as well as addressing differing intellectual property laws. Content providers in India need assurance of the proper use of intellectual property in the open internet environment and efforts in this direction are underway. There should be legal mechanisms to protect against the hacking of technological protection measures applied to copyrighted works in digital environment. Focuses on this point of view Indian government inserted some necessary laws.

The proposed new Section 65A and 65B are inserted in the light of the WCT Articles 11 and 12 containing two parts in the Indian Copyright Act provided that

- Protection to the Technological Measures and deals with anti-circumvention measures preventing abuse of copyrights.
- Access control (user id, password, IP, etc.).
- Copy control (illegal copies, parody).
- Encryption technology.

The proposed new section 65B to be added in lateral part provided that:

- Protection to RMI.
- Protection to electronic tags, codes, Watermarks.
- Protection to owners' digital signature, licensing information, and signals for copying confirmation.

#### **Area of section 14 and 52**

Copyright is not a single right but in fact it consists of a bundle of legal rights. Section 14 of I.C. Act states that the owner of the work not only possess the right as such for certain limited period to prevent others from copying his work or doing any other act which according to the copyright law can only be done by the author of the work nevertheless the law also grants him some economic as well as moral rights. The conferment of these rights however is not unlimited so as to give absolute monopoly to the owner of the work where he gets absolute freedom to determine as to who can access his ideas or information but on the contrary the law seeks to establish an equilibrium between the rights of the owner and the public interest in having access to ideas and information .To maintain this balance court has been taken some advocating steps:

#### **Section 51, Copyright Act. In RG Anand v Delux Films, AIR 1978 SC 1613.**

“The Court held that an exact copy of the original is not necessary but there is infringement even if there are resemblances with the original in large measures. The test for infringement laid down by the Court is this: to see if the reader, spectator or viewer after having read or seen both the works is clearly of the opinion and gets the unmistakable impression that the subsequent work appears to be a copy of the original”.

The copyright exists in the expression and not mere idea. The manifestation of the idea in some substantial form, i.e. book, work of art, music, drama, film, sound recording, etc., would qualify that work for protection as a 'copyright work'. The Supreme Court of India in a leading case of R. G. Anand v. Delux Films (AIR 1978 SC 1613) very lucidly declared that there can be no copyright in an idea, subject matter, themes, plot or historical facts.

#### **Supreme Court held that:**

“It seems to us that the fundamental idea of violation of copyright or imitation is the violation of the Eighth Commandment: ‘**Thou shalt not steal**’ which forms the moral basis of the protective provisions of the Copyright Act of 1911. It is obvious that when a writer or a dramatist produces a drama it is a result of his great labour, energy, time and ability and if any other person is allowed to appropriate the labours of the copyrighted work, his act amounts to theft by depriving the original owner of the copyright of the product of his labour.” R.G. Anand v. Delux, (1978) 4 SCC 118, p. 127 para 15, per Fazal Ali, J. Favale, Marcella (2014). The big advantages of copyright protection is that protection is available in several countries across the world although the work is first published in India by reason of India being a member of Berne Convention. Protection is given to works first published in India in respect of all countries that are member states to treaties and conventions to which India is a member.

In the information age today the digital libraries emerging as agents through which the digital divide can be addressed easily to enhance the education in India. When we taking into consideration the copyright laws at international standard The Digital Millennium Copyright Act allows no more than three copies to be made for the purpose of preservation. A similar provision exists under sec-52(1)(o) of the Indian Copyright Act which allows a public library to make three copies of a qualified range of works for its use. So the primary function of a public library is to preserve the rare documents which are not available in India for sale. Now when a work is made available an author can declare that it is provided under one of the various creative common licenses. Either way whether it is to make available the content freely available or to provide it in secure paid manner. So a appropriate copyright laws need to be in place so that right of content creators can be protected. Whereas sec-52(1)(p) permits reproduction of literary, dramatic or musical work for the purpose of research or private study provided that these works are kept in the library or 60 years have passed since the death of the author.

#### **Recognition of copyright protection as a social goal**

Copyright system that indirectly achieves social goals through the protection of the author. Some commentators argue that social goals must be directly pursued by copyright legislation. This implies that the protection of the author comes second to the protection of the public. In practical terms this means that the public is allowed every use of copyright works that does not damage the author directly. Patterson and Lindberg for example maintain that copyright has been invented firstly and mainly to enhance the learning process of the community at large. It does so by promoting the circulation of culture and the transmission of knowledge. The direct goal of copyright should be to encourage learning

and to promote human knowledge. Digital Rights Management implementation should take place within legal limits so to preserve the knowledge.

Patterson and Lindberg recognize copyright as:

- A Moral rights for the author.
- A Learning rights for the user.
- A Marketing rights for the entrepreneur and publisher.

### **Copyright's direct and indirect protection**

Copyright exceptions from legislation point of view protect the public interest in the presence of inherent limitations. Today technology must not erase copyright exceptions. It has to comply with them. Copyright indirectly protect the interest of the public while directly protecting copyright owners. However according to some copyright scholars the public should be directly protected by copyright. The protection of the author is justified only to the extent that it allows the achievement of this important goal which can be pursued in practice only by implementing high access allowances to copyright works.

### **Exceptions and Limitations area under the International Legal Framework**

We shall analyze the scope of the international framework before determining whether Sec. 52 of the Copyright Act is in consonance with it. India was first a signatory to the Berne Convention last revised in 1971 which specifically recognizes an exception for teaching purposes in Article 10 (2). This article now known as the teaching exception was incorporated into the TRIPS agreement through article 9(1) of TRIPS which provides that:

“It shall be a matter for legislation in the countries of the Union and for special agreements existing or to be concluded between them to permit the utilization to the extent justified by the purpose of literary or artistic works by way of illustration in publications broadcasts or sound or visual recordings for teaching provided that such utilization is compatible with fair practice”.

International treaties consistently shield educational exceptions from the bearing of the three-step test. During the negotiation of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty both of which ultimately incorporated the three-step test developing countries raised concerns that the provisions would diminish their ability to introduce new exceptions for the purposes of education. Member states therefore adopted an Agreed Statement which shields the Berne Convention exceptions from the TRIPS agreement and the WCT stating:

“It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is also understood that Article 10(2) of the WCT neither reduces nor expands the scope of applicability of the limitations and exceptions permitted by the Berne Convention”.

Copyright legislation which is consistent with international standards originally established by the Berne Convention. The standards set down by Berne have been reinforced and strengthened by inclusion in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the World Intellectual Property Organisation (WIPO) Copyright Treaty (WCT). With increased protection copyright owners will be encouraged to make their works available to the world develop new ways of exploiting the use of their works using current technology thereby promoting the development of copyright based industries.

**The three-step test** originally set out in Article 9(2) of the Berne Convention provides an international yardstick against which exceptions to exclusive rights can be measured and proper interpretation of this article by copyright legislators and policy makers is extremely important when providing new exceptions to copyright. Under the three-step test exceptions:

- must be confined to certain special cases.
- should not conflict with a normal exploitation of the work.
- should not unreasonably prejudice the legitimate interests of the author.



### **Steps taken by court for advocating to copyright**

In the earlier literature as before it the publishers and the entrepreneurs exploiting the work of original author easily which create a big gap in intellectual creation. But now the time has been changed the copyright in different works has been given to its creators by law governing the copyright which has been passed and amended from time to time. There is a great need to protect such works. In order to grow in the state of interdependence it is necessary that the originators of the work must be rewarded with some monopoly rights and at the same time it is also important to advocating between the authors' rights and the public interest to fulfil this gap court has taken some great steps.

The Madras High Court while explaining the basis of protection to the work of intellectual creation in the case of Sulamanglam R. Jayalakshmi v. Meta Musical (AIR 2000 Mad. 454) said:

**"The primary function of copyright law is to protect the fruits of man's work, labour, skill or test from annexation by the other people".**

**In Syndicate of Press University of Cambridge v/s Kasturi Lal**, the defendant published three guide books with substantial reproduction from the plaintiff's books. The Court held that this was an infringement, not falling within any of the exceptions, because Section 52(1) (h) allows reproduction for the purpose of answering questions to be answered in an examination, and not questions and answers as a whole.

**C. Rangraju Soham (Founder) S.K.Y.C v/s Ved Vignan M.P.A. & Another [2010 (43) PTC 348 (CB)]** While dealing with a petition for rectification of registered copyright the question before the Hon'ble Copyright Board was whether the words of Ancient literature Vedas orated by the registrant and forming part of a sound recording were registrable as original works.

"It was observed by the Hon'ble Copyright Board that the copyright law allows for subsistence of copyright in a sound recording regardless of the content. The settled law protects expression of an idea and not the idea itself. It is thus irrelevant for the board to go into the inventiveness of the matter or as to the originality of expression SO HAM registered by the respondent as a sound recording. It is about the expression thereof in sound form. It is also not necessary that an oration has to be accompanied by music to make it a copyrightable work. The rectification petition was accordingly dismissed".

We would therefore need to introduce a set of amendments which creatively use the exception provided in Art. 10(2) of The Berne Convention and given that we are not bound by the three step test when it comes to exceptions for education we should aim for the widest possible exceptions that will enable innovative solutions to the problem of unavailability of learning materials in India.

### **Conclusion**

This paper examines the nature of copyright law for the purposes of the use of copyrighted content in information age. It focuses at the existing national and international legislations and argues for why there is a need for advocating to copyright laws address the needs of copyright holder. Section 52 of the Act solely details the broad heads use under which would not amount to infringement. So libraries should be entitled to take benefit of the exceptions created in their behalf and it is a missed opportunity of the legislative amendment to empower libraries to do so effectively. Therefore some resort and guidelines must be made to the principles enunciated by the courts. In constitutional point of view author can say that the basic purpose of Section 52 is to protect the freedom of expression under Article 19(1) of the Constitution of India so that research, private study, criticism or review or reporting of current events could be protected. So it is the need of the time to advocating the copyright laws in libraries as well as today legislation requiring state intervention. Similarly the premise that copyright law is intended to soften the tussle between incentive and access has reached axiomatic status. Presently there is little in the legal framework governing them that will allow Indian libraries to flourish. While laws across a spectrum of fields would bear on the public library's operation copyright policies have for obvious reasons an especially intimate relationship with the strength to which it will grow.

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#### **Agreements**

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