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Exceptions and Limitations under Copyright Law

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Under Intellectual property law, copyright is defined as a legal right that is possessed by a person who invented something or created something. To elaborate, when a person creates or invents a unique or new product then that product is considered as the original product and the person will become the original owner of the product by acquiring legal rights on the product. For example, any creations in matters of poetry, novels, lyrics regarding music, software products regarding computers, filming, art, original designs regarding architecture, literature, etc. Further, copyright is preserved and safeguarded without getting the original work to be used by others. Copyright is one of the branches of Intellectual Property Rights that grants the creator an exclusive legal right over his work. A creator or owner has legal rights to financial and other rewards linked with the creation. Violations of copyright laws could result in a variety of legal penalties. On the other hand, the law allows libraries to utilize copyrighted material for researching and scholarly purposes without the copyright owner's permission. Furthermore, the copyright statute makes any breach or infringement of fair use of library resources unlawful. Initially, the article mentions the general exceptions and limitations under copyright law. Later on, it focuses on exceptions and limitations in the context of libraries and archives under Indian copyright law. Finally, it mentions some agreements and conventions regarding exceptions and limitations under copyright law with an international perspective.

Keywords: *copyright law, copyrighted work, copyright holder, exceptions and limitations.*

INTRODUCTION

Intellectual property can be defined as a categorical or characteristic description of a group of “Intangible assets”, which are protected legally and owned originally by a company or by a person. Further, these assets are kept away from the use of outsiders and outsiders can’t use them without the prior permission of the original owner. An intangible asset means ‘non – Physical Assets’, which are owned by the company. Legal rights under intellectual property can be given for intellectual creation in the fields of arts, literature, scientific and Industrial matters. Simply, Intellectual property means whenever there is a creation made by human minds or human intellect. Through, a person’s intellect there will be a creation of a unique thing or product. Further, for the creation of these new things or products, certain legal rights are provided to the original owner of the product. These rights are called intellectual property rights. Generally, these rights are given only for a restricted period. There are mainly three forms of intellectual property rights namely copyright, patents, and trademarks.

Copyright is a legal right that is exclusively provided to an inventor or creator or a group of persons to protect their invention or work or creation from reproducing, translating adopting, and distributing by others. Prior permission from the owner is required for outsiders to use the original product. The most significant purpose of the copyright is to safeguard and also award some rights and benefits to persons on their created or produced work. To be protected under copyright law, a work must have the following¹ characteristics:

- The work must always be original (that is, it must have been created from scratch rather than being duplicated from some of the other sources). The piece has to be made for the very first time).
- It has to be secured and fixed tangibly.
- There are some limitations to the exclusive rights provided to copyright owners. The Copyright Act contains several exceptions to the exclusive rights of the copyright owner. The fair use exception has been most important and, possibly, the most ambiguous of the

¹ Indian Copyright Act 1957

limitations on a copyright owner's exclusive rights. The Copyright Act contains various more exceptions and limitations to the exclusive rights of the copyright owner, namely exceptions to:

- allowing libraries and archives to make a copy for preservation;
- enable a copy of something like a computer program's operator to create a duplicate copy of the database;
- Accepting some performing and displays for the causes of education for classrooms, services regarding religious matters and also for communicating with physically handicapped persons
- Allowing only certain registered or authorized bodies to reproduce the work and further allowing them to distribute the work exclusively for blind and disabled people.
- Allows some of the purchasers to redistribute the work only if the copies are allowed legally with permission if not they are disposed of.

RIGHTS OF AUTHOR²

There are so many rights that are provided to the author or creator by the judiciary under copyright law in India. Under sections 14 and section 57 of the Indian copyright act, there are certainly special and exclusive rights that are provided to the creator or inventor. These rights are generally classified into 3 categories, which are as follows:

1. Statutory Right or Negative rights:

These statutory rights are the exclusively provided legal rights to the creator or author for his created work. This right further imposes negative responsibility on others or the outsiders by prohibiting them from using this original work without prior permission of the owner.

² N M Anjaneya Reddy & Lalitha Aswath, 'Understanding Copyright Laws: Infringement, Protection and Exceptions' (2016) 48 International Journal of Research in Library Science 5330

2. Economic rights:

These economic rights provide certain financial benefits to the owner. The owner of the originally produced work can gain some loyalty and fame through imposing some rights on others. The owner can impose rights on others either partially or wholly. Based on the International framework and also according to every copyright statute at the national level provides the following special and legal rights to the holder of the copyright owner:-

- Right to adopt
- Right to distribute
- Right to perform publicly
- Right to display works publicly
- Right to rent
- Right to reproduce
- Right to translate

3. Moral rights:

For a while after the attribution of copyright work to others, whether entirely or partially, copyright law constantly protects the creator. Moral rights give a creator the right to even have his title forever associated with work and safeguard him from any misinterpretation or alteration of the work, as well as every other offensive conduct regarding the work, that will also harm the author's prestige.

GENERAL EXCEPTIONS AND LIMITATIONS UNDER COPYRIGHT LAW

Even though there are many rights protected, safeguarded, and provided under copyright law, these rights are not absolute and are subject to certain limitations. Following are some of the limitations under copyright law:

1. Expiring of copyright:

Expiring of period copyright is one of the most significant limitations. As previously mentioned, the copyright is given to a person only for a prescribed period and after the completion of time, the copyright expires. For instance, if works are created under corporate authorship then the term of copyright is 95 years starting from the date of publishing and 120 years starting from the date of creation. Further, after expiring of copyright the work falls under the category of public domain, and later on, the work is regarded as “Cultural Heritage”. Once it is considered as a cultural heritage, it has no limitations and the public can use this work for their commercial gain.

2. Unknown works or works of an orphan:

Whenever someone wishes to utilize a copyrighted work but is unable to find the copyright holder i.e., the copyright holder is neither located nor discovered. No matter how much we keep restrictions and how many rights are imposed, the outsiders always find a way to reach copyrighted work and to gain from it. In these situations, the orphan works come into play. The limitation or legislation of orphan work allows to us the copyrighted work whenever the owner of the work can be found after performing a “reasonable search”. Then that work is listed under orphan works.

3. The doctrine of Fair use or fair use exception:

The doctrine of fair use or fair use or the limitation of fair use is considered as one of the well-established limitations to the copyright holder. There are no particular rules to define the term “fair use”. As there is no particular definition it is difficult to know what falls under fair use and whatnot. Regardless, the definition can be determined based on the situations or circumstances of a case. Whether a usage is “Fair” or not is solely determined by the court. Despite these confusions, whenever there is a case of fair use either in favor or against then it

would be easy to tell whether the usage is fair or not based on looking into the basic elements of the case. Following³ are some of the conditions to know whether a user is a “fair use” or not:

- The purpose and type of the use: Fair use supports educational, commentary, criticism, and news-related usage of work, whereas solely commercial purposes, are prohibited.
- The copyrighted work's nature: Completely fictitious and unattributed copyrighted works are often afforded greater protection than works that seem to be factual and readily accessible.
- The size and weight of the portion consumed: When it comes to fair usage, less is more. In general, the law favors uses that include a tiny piece of work compared to the whole. Exceptions are frequently given for works that seem to be difficult to break down, such as pictures and Haiku.
- The impact of the use mostly on copyrighted work's potential market or value: Finally, fair use considers the impact of the usage on the market or value of the work, favoring cases where the user had a positive or minor negative influence.

Generally, under the limitation of fair use, it is a better and good idea to take or use a copyrighted work as fair as possible and as little as possible so that there would only be little damage to the original copyright holder. Finally, it is important to note that attribution is considered as only a requirement in building a case of “fair use”. Even though it is regarded as a basic requirement or element in fair use scenario, it weighs and gains heavy value that the use which is non-attributed becomes volition under copyright law.

4. Exception of Parody:

Parody is considered a subcategory of “fair use” limitation which deals with the protection of works that protects the use of an original copyrighted work to mock it. In general, fair use

³ [Jonathan Bailey](https://www.plagiarismtoday.com/stopping-internet-plagiarism/your-copyrights-online/limitations-of-copyright/), 'Fair Use, Haiku and You' (*Plagiarism Today*, 2016)
<<https://www.plagiarismtoday.com/stopping-internet-plagiarism/your-copyrights-online/limitations-of-copyright/>> accessed 14 September 2021

favors parody, which is when a work is used to mock the work itself, over satire, which is when a work is used to mock something else. Both parody and sarcasm, on the other hand, have already been held to be fair use. It's worth noting, however, that all claims of fair use under parody law must still pass the standard fair use test. When parodying a work, it's probably a good idea to observe all standard fair use restrictions.

5. Compulsory licensing:

In addition to the exclusions and limits discussed above, many nations use "compulsory licenses" to limit the rights of copyright holders. Compulsory licenses are frequently viewed as a compromise involving copyright holders' economic interests and the public's desire to use copyrighted works. Article 13⁴ of the Berne Convention, for example, empowers governments to impose mandatory permits for using musical works. The rights of public borrowing by libraries as well as the right of private copying of audio recordings in return for a levy on blank CDs are two examples of compulsory licenses that exist in several nations.

There are several compulsory licenses under copyright law, including copyright licenses that allow:-

- Copying or duplicating or reproducing and redistributing the musical work which is non-dramatic in the process of making and distributing sound recordings.
- Cable system operators and satellite operators can retransmit the original copyrighted program without any infringement under copyright law only if they pay a license fee under compulsory licensing
- Jukeboxes are used to perform non-dramatic musical works in public,
- Certain copyrighted works are used in noncommercial broadcasting.

THINGS THAT CAN'T BE COPYRIGHTED

⁴ Berne Convention 1886, art 13

There are many things and works which should not be and cannot be copyrighted. For instance, the things which can't be copyrighted include names, factual truths, ideologies, phrases, and also some other items which are very small and too short. It's also important to notice that the copyright is only a right that protects the work which is tangible or physical in form but not expressions, ideologies, etc. copyright law can prevent a person from recreating a story from already created characters but it allows a person to create his own scientific story. Copyright does not protect which is very small to be unique. Titles, phrases, and sentences can rarely be copyrighted on their own; they must be part of a bigger work. Even still, duplicating even a small amount would be infringing on copyright because it could have been a unique or one-of-a-kind creation.

LIMITATIONS AND EXCEPTIONS UNDER COPYRIGHT LAW IN THE CONTEXT OF LIBRARIES AND ARCHIVES IN INDIA

The collection of books and all the periodicals up to date is kept systematically in a library whereas the collection of information of history maintained in form of documents or records is held in archives. The foremost difference between the library and archives is that in libraries through the collection of books there will be circulation of information among the public whereas in archives there will be no circulation of information among the public as the information collected from the past is stored in archives. Despite this, the copyright deals with both the library and archives. The limitations or exceptions to copyrights in these matters come into play whenever there is the copying of information from libraries and archives without prior permission and whenever there is fair use of copied information.

GENERAL EXCEPTION FOR THE LIBRARY

According to Tunis Model law⁵, whenever there is a reproduction of work by any public libraries or by any documentation centers in scientific or artistic fields, which is made lawfully available to the public, then the copies which are reproduced should be limited and further for

⁵ Tunis Model Law 1976

copyrighted works should not lead to any dispute and exploitation of workers.⁶ Indian copyright law stipulated certain exceptions and limitations to libraries for copyrighted works under the statute of fair dealing. This is dealt with under section 52 of the Indian copyright Act and this exception under fair use is created judicially. This legislation provides permission for the usage of copyrighted work by libraries for the fields such as researching and educating, instructing, teaching, training, etc.,

In *The Chancellor, Masters & Scholars of the University of Oxford & Ors vs Rameshwari Photocopy Services*⁷, The Delhi high court considered the doctrine of fair use or exceptions to fair use. In this case law, the plaintiff stated that the defendant photocopied the entire original book which led to a reduction of the book. This was challenged as copyright infringement and violation. The defendants took fair use as a defense. Likewise, there are many cases in which exceptions under fair use are applied.

The scope of the permissibility of exceptions and limitations under library and archives is quite notable under “India’s existing treaty obligations” such as the Berne Convention and TRIPS agreement. To bring the exceptions and limitations of libraries and archives under Article 10(2)⁸ of Berne of the convention then those exceptions and limitations should satisfy the three-step test stipulated either in Article 9 of the Berne Convention or in Article 13⁹ of the TRIPS agreement. Further, the scope of these limitations and exceptions of libraries and archives under sections 52(1)(g),¹⁰ (h),¹¹ (i),¹² and (p)¹³ under the India Copyright Act, has addressed the need for education in India and later on lead to set out of National policy and National Mission on education.

⁶ *Amruta Pai*, ‘Limitations and exceptions for libraries and archives under the copyright law’ (*iPleaders*, 2021 <<https://blog.iplayers.in/limitations-exceptions-libraries-archives-copyright-law/>> accessed 17 September 2021

⁷ *The Chancellor, Masters & Scholars of the University of Oxford & Ors v Rameshwari Photocopy Services* [2016] RFA(OS) 81/2016

⁸ Berne Convention 1886, art 10(2)

⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) 1994, art 13

¹⁰ India Copyright Act 1957, s 52(1)(g)

¹¹ India Copyright Act 1957, s 52(1)(h)

¹² India Copyright Act 1957, s 52(1)(i)

¹³ India Copyright Act 1957, s 52(1)(p)

INTERNATIONAL FRAMEWORK ON EXCEPTIONS AND LIMITATIONS UNDER COPYRIGHT LAW

- **The Berne Agreement:**

There are certain limitations according to the Berne convention in this regard. Article 9 (2)¹⁴ of the Berne convention, deals with permitting the reproduction of copyrighted work only in exceptional and specific cases. The article further provides that this reproduction of the work should not create any disputes and conflicts leading to exploitation and damage to work and also should not create any controversies to the original legal intentions of the creator or owner.

- **The Trips Agreement:**

Further, under the TRIPS agreement, article 9(1)¹⁵ of TRIPS provides that the usage of copyrighted work is permitted up to a justified purpose in the fields of literature and arts and further provides that this reproduced or copied work can be published and broadcast with the illustration provided that such usage should be compatible with the fair usage or practice.

Understanding the extent of this article necessitates knowledge of the definitions of numerous major terms used in it. However, no cases about the teaching exemption have been considered by a World Trade Organization (WTO) resolving disputes panel, affording us with an authoritative understanding of these phrases. As a result, we must examine them using the interpretive principles specified in the Vienna Convention on the Law of Treaties, as if they were being examined by the WTO.

In a nutshell, these principles provide that unless the treaty's parties have designated a particular meaning to terminology, the usual meaning of the term in its original context should have been used. Ancillary agreements and instruments signed by both parties in connection with the treaty, along with later agreements made by the parties and applicable international law, should indeed be scrutinized. Other items, such as preliminary documents, may be employed if these sources prove unsatisfactory.

¹⁴ Berne Convention 1886, art 9(2)

¹⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) 1994, art 9(1)

CONCLUSION

Exceptions to the Copyright Act of India can be found in both the provisions relating to statutory licenses and the provisions dealing with fair dealing. Any changes to the exceptions must have been made following India's international legal commitments, particularly the Berne Convention. Even if there are numerous copyright limitations and challenges, a complete understanding of copyright law including fair use deals will enable us to safely utilize copyrighted works for academic and research purposes. Before/during the procurement/subscription of any materials, a reasonable level of understanding of copy-right issues must be envisaged. An agreement/contract/terms and circumstances between relevant parties on resource procurement could play a vital role in safeguarding copyright holders at this time.

The librarian's job as a facilitator requires him to educate his customers or consumers regarding copyright concerns regularly. And this might be one of the primary factors contributing to a decrease in copyright breaches among library patrons. According to the Indian copyright laws of 1957, neither the publishers nor the facilitators are accountable for any violation of copyrighted content, but the person who engages in the infringing activity is responsible for his actions.