

Copyright issues in the academic environment

Siladitya Jana

Assistant Librarian, Indian Institute of Science Education and Research, Kolkata, Mohanpur 741 246, West Bengal,
E-mail: siladitya.jana@iiserkol.ac.in

Received: 29 June 2017; revised: 23 April 2018; accepted: 24 April 2018

The paper highlights the issues in the prominent copyright case between some big publishers and a Delhi University photocopy shop. The paper also addresses the question whether the present copyright system in India requires a relook in view of the changing socio-economic conditions of our society and the world at large. Concludes that supporting students and researchers in their study and research are essential and some changes are required in the present copyright toward this end. Open Access (OA) publishing is a step in that direction.

Keywords: Academics; Copyright; Delhi University Copyright Case; Open access; Photocopy

Introduction

A society formulates laws as per its requirements at a given point in time and the society progresses in response to the changing needs and aspirations of its citizenry. It cannot look away from the transformed ethos of its inhabitants. Changing the prevalent rules and laws in response of these changing needs are a *sine qua non* of a living and responsible society. Copyright laws are also important laws in a society.

Copyright is the exclusive right conferred on the creator or the originator of a creative work to reproduce, print, perform, translate, adapt, make a film etc., for a fixed period of time. It is aimed to encourage the copyright holders to create more works that benefit the society at large.

The recent copyright case concerning a photocopy shop at the Delhi University raised discussions in several quarters^{1,2}. Apparently, three multinational publishers approached the court against the university regarding photocopying from the books published by them. After five years (2012-2017), the publishers eventually decided to withdraw their case against Delhi University^{3,4}. Later, the Indian Reprographic Rights Organisation (IRRO) challenged the ruling of the Delhi High Court Division Bench in the Supreme Court⁵. But the Honourable Supreme Court refused to interfere in the Delhi High Court judgement⁶.

Since 2008, two of these publishers along with another one are still continuing a similar case against the Georgia State University (GSU). That case was against the e-reserve system followed by GSU. These publishers complained that the e-reserve system of GSU is against the prevalent copyright laws of USA. The publishers lost the case in several courts. However, they again re-appealed in the 11th circuit court of USA against the decision of the previous ruling which largely went in favour of GSU. This case was related to the teachers' use of the parts of the books for their teaching. During this long period, as an impact of this case, several USA universities including GSU changed their e-reserve policies. The publishers are still pursuing their case against GSU^{7,8}. As of now, the 11th Circuit Court of Appeal of USA heard the appeal of the publishers and their verdict is awaited⁹.

In the background of the GSU case, it is indeed surprising that these publishers decided to withdraw their case in India. It is worth wondering what may have prompted them to take a different decision in India.

In another recent academic copyright case, a Colombian court has dropped the criminal charges brought against a biologist for uploading another scientist's thesis in a file sharing website. However, it

may be noted that like the GSU case, here also the prosecutor decided to appeal against the verdict¹⁰.

The present study takes the recent copyright case of the Delhi University as a starting point to discuss some of the copyright issues in the academic sector.

Objectives of the study

- To examine the controversial copyright violation case regarding the Delhi University in the background of similar cases in other parts of the world;
- To peruse the attitude of the prime stakeholders i.e., the authors or copyright holders in the similar types of cases;
- To show that the open access (OA) publishing systems is helping in alleviating some of the copyright problems faced in view of the toll-access scholarly resources; and
- To offer some suggestions about the need to take a relook at the prevalent copyright system in view of the changes in the society.

Methodology

Literature on the relevant topics were consulted to discern the attitudes of key stakeholders related to copyright in the academic environment. In general, Internet was searched to locate documents on the topics discussed in the present work. Keywords like Delhi University copyright case, Georgia State University course reserve case, and photocopy were used to find out general documents like newspaper articles, blog posts, online discussions etc., related to this study. Databases like Google Scholar and JSTOR were also searched for scholarly papers on current copyright related issues in the academic environment. Here, keywords academics, copyright, open access, and photocopy were used in combination to find out relevant documents covering these issues.

Photocopy and fair use

It may be noted that photocopy *per se* does not tantamount to violating the copyright act. Every country's copyright act has a clause called the *fair use* doctrine. This clearly explains the areas where photocopying is not a violation of the land's copyright law. For example, the 52nd clause in the 11th chapter of the Indian Copyright Act states these areas which

include photocopying for personal academic purpose, academic purpose of a teacher or a student etc¹¹. What the Honourable Delhi High Court said in regard to the photocopying is of paramount importance^{12,13}. The single judge bench rejected the petition of the publishers on the ground that the course pack preparation did not tantamount to copyright infringement. On appeal, the division bench to a large extent affirmed the judgment of the single judge bench but also asked the single judge bench to fact-check whether it was indeed necessary for the teachers to prepare course-packs for their class instruction. At this point, the publishers decided not to move Supreme Court for an appeal. In a recent paper, Liang discussed the various facets of this case in detail. The author emphasised on the issue of access with relation to copyright and its relation with the political economy of information and knowledge goods¹⁴.

While copyright is not the right to copy, it needs to balance the needs and aspirations of both the producer and the users of the intellectual works. The courts while dealing with these kinds of cases, invariably looks to some aspects, like: the underlying reason for photocopying and the usage of the photocopied materials; types of the documents photocopied; whether the photocopied material changed the original document's character; whether the act of photocopy may have any impact on the selling of the original document etc. The Honourable Delhi High Court also kept these aspects in their mind while delivering their judgment. In the case related to the Colombian biologist also, the court dropped the criminal charges against the scientist as he did not upload the thesis online with a motive for his own personal gain or to malign the original author¹⁰.

Role of publishers

Many foreign multinational publishers publish Indian editions of their publications including textbooks. But, in many cases, the physical examination of these books brought to light that the quality of printing and paper is not so good. But, the prices are kept on a higher side for many books¹⁵⁻¹⁸. As a result, many students are not in a position to buy those books.

The authors and scholars on the other hand want their works to reach the highest number of interested readers. An American professor and a member of the

Authors Alliance (USA) requested the *Alliance* to inform this to the court in the amicus brief on his behalf in the previously mentioned GSU case¹⁹. In a recent survey of the authors whose work GSU uploaded in their e-course reserve system, Hansen and Butler showed that many authors “strongly” supported GSU in their use of the materials. Various authors pointed out that this type of academic use of their work does not have any effect on their plan for future academic works. Some also mentioned that this type of use rather motivate them to produce new scholarly works. Though may not be mandated by the copyright law, but the fact is all the authors who responded to the survey informed that the publishers did not contact them before moving the case against GSU²⁰. This broadly shows that the authors produce scholarly contents with the broad aim of getting recognition through the academic use of the works rather than the royalties from the publishers.

Open access and copyright

The origin, development and the spread of open access (OA) has been to address the concerns of high pricing of journals set by publishers that make the journals inaccessible to the readers. OA also makes the life of the readers or users of the research papers or results hassle-free from the copyright concerns. It gives ample scope to its readers re-use the materials in their convenient way through its various Creative Commons (CC) license systems, like: CC-BY (attribution), CC-SA (share-alike), CC-NC (non-commercial) and CC-ND (No derivative works). In most of the cases it only asks for proper citation of the paper used in the new or derivative work. This is an accepted norm in the scholarly communication ecosystem. And the most important aspect of this license system is that the authors retain the copyright of their scholarly work. They do not need to transfer the copyright of their works to the publishers²¹.

Open access has now become a movement throughout the world. With open access, anyone with an internet connection can access the research results without any financial barrier. This does not mean that OA publications do not cost anything. It does have a cost component and we need to understand the cost component of these publications. Various international research funders like Wellcome Trust²², Max Planck Society²³ etc., assist researchers with separate funds to help them publish their results in

open access mode. Increasingly, many funders are making it mandatory and research results are available in open access including journals or repositories.

In India to, the Department of Biotechnology (DBT) and the Department of Science and Technology (DST) have prepared an OA policy²⁴. India’s science academies are publishing OA journals without any article processing charges (APC)^{25,26}. The government of India has initiated the establishment of the National Digital Library (NDL) to assist the students, researchers and academicians to access books, research papers, thesis etc., freely²⁷. The NPTEL programme offers free educational videos²⁸. There is a growing impetus to produce Open Educational Resources (OER) all over the world²⁹. Many world renowned colleges and universities have initiated projects to produce open textbooks³⁰. Even, the humanities and social science fields have seen recent activities to publish their books in OA³¹. An international initiative called OA2020 was initiated to transform the subscription based scholarly contents into open access³². On the other hand, it is felt by some that big publishers are attempting to subvert the OA movement³³. Some publishers make their contents open after an embargo period which does not really help the cause of research, especially scientific research.

A recent research on the uploading and their subsequent downloading of scholarly research papers from these publishers show that most of the users are rather interested in reading latest research results. Hence, the latest research papers are downloaded more than the contents of the legacy archives³⁴. Hence, it may be said that with large scale adoption of OA in our scholarship, the user community may benefit in accessing their required latest scholarly materials without the legal entanglement or imbroglio of the copyright cases.

Conclusion

In conclusion, it may be said that in today’s age of ICT, there is an urgent need to start discussion on what perspective the present copyright act should have and what shall be its constitutional backbone. ICT has made communication and transfer of information easier and cost effective. Despite that most publishers are known to be excessively charging for online journals and other such resources and in the process creating access barriers. Here, OA publishing

can play a catalytic role in democratizing access to scholarly contents for everyone. We also need to question ourselves whether we are entangled with a copyright system which did not evolve with the ICT and the changing landscape of economic systems throughout the world³⁵. It is argued that the present copyright system may be an impediment to objectives of open access³⁶.

The DU case shows us that the present copyright system may be an impediment for free flow of information. These issues need to be addressed so that information access is relatively easier in the academic environment. We may seriously consider about the application of the CC licenses for the scholarly output. The government should mandate that all the research output coming out of their fund should be in available in open access.

Acknowledgement

Acknowledgment is due to the anonymous referee(s) whose valuable suggestions helped to improve this paper from its original version.

References

- Jain A, DU photocopy case: court restores copyright suit by publishers for trial. Available at <http://www.thehindu.com/news/cities/Delhi/DU-photocopy-case-court-restores-copyright-suit-by-publishers-for-trial/article16783415.ece> (Accessed on 01 May 2017).
- Mathur A, Issues of access and 'fair use' in new High Court copyright judgment, Available at <http://indianexpress.com/article/explained/du-photocopy-case-delhi-high-court-copy-right-judgement-4422503/> (Accessed on 01 May 2017).
- Joint statement by Oxford University Press, Cambridge University Press and Taylor & Francis. Available at <http://fdslive.oup.com/asiaed/News%20Items%20and%20Images/Joint%20Public%20Statement.pdf> (Accessed on 01 May 2017).
- Hebbbar P, Publishers withdraw copyright suit against Delhi University Photocopy Kiosk. Available at <http://www.huffingtonpost.in/2017/03/09/delhi-university-photocopy-case-publishers-withdraw-copyright-s/> (Accessed on 29 June 2017).
- Agarwal P, IRRO challenges Del HC's DU photocopy judgment before the Supreme Court. Available at <https://spicyip.com/2017/04/breaking-news-irro-challenges-del-hcs-du-photocopy-judgment-before-the-supreme-court.html> (Accessed on 06 April 2018).
- Press Trust of India, Won't interfere with HC relief to DU photocopy shop, says Supreme Court. Available at <http://www.thehindu.com/news/cities/Delhi/wont-interfere-with-hc-relief-to-du-photocopy-shop-says-supreme-court/article18416546.ece> (Accessed on 06 April 2018).
- Schwartz M, Georgia State Copyright Case: What You Need To Know—and What It Means for E-Reserves. Available at <http://lj.libraryjournal.com/2012/05/copyright/georgia-state-copyright-case-what-you-need-to-know-and-what-it-means-for-e-reserves> (Accessed on 01 May 2017).
- Hansen D, We're back! (and so is the GSU fair use e-reserves appeal...). <http://blogs.library.duke.edu/scholcomm/2016/11/21/13586/> (Accessed on 01 May 2017).
- Kupferschmid K, Copyright Law in 2017: 12 big court cases to know about, Available at <https://www.copyright.com/blog/copyright-law-2017-12-big-court-cases-know/> (Accessed on 06 April 2018).
- Catanzaro M, Colombian biologist cleared of criminal charges for posting another scientist's thesis online. <https://www.nature.com/news/colombian-biologist-cleared-of-criminal-charges-for-posting-another-scientist-s-thesis-online-1.22057> (Accessed on 29.05.2017).
- Indian Copyright Act, 1957, Available at <http://copyright.gov.in/documents/copyrightrules1957.pdf> (Accessed on 01 May 2017).
- High Court of Delhi. Available at <http://lobis.nic.in/ddir/dhc/RSE/judgement/16-09-2016/RSE16092016S24392012.pdf> (Accessed on 01 May 2017).
- High Court of Delhi. Available at <http://lobis.nic.in/ddir/dhc/PNJ/judgement/09-12-2016/PNJ09122016RFAOS812016.pdf> (Accessed on 01 May 2017).
- Liang L, Paternal and defiant access: copyright and the politics of access to knowledge in the Delhi University photocopy case, *Indian Law Review*, 1 (1) (2017) 36-55.
- Wiley India. Available at <https://www.wileyindia.com/geography-earth-science/computational-geomechanics-with-special-reference-to-earthquake-engineering.html> (Accessed on 12 April 2018).
- Springer Special Priced Indian Editions. Available at <http://static.springer.com/sgw/documents/1349241/application/pdf/sie> (Accessed on 12 April 2018).
- Routledge. Available at <https://www.routledge.com/Nanoparticle-Assemblies-and-Superstructures/Kotov/p/book/9780824725242> (Accessed on 12 April 2018).
- Elsevier India. Available at http://www.elsevier.co.in/web/Uploads/downloadDocuments/187_others_Anatomy_Leaflet_final.pdf (Accessed on 12 April 2018).
- Hanse D, Fair use for others. <http://blogs.library.duke.edu/scholcomm/2017/02/21/fair-use-authors/> (Accessed on 01 May 2017).
- Hansen D and Butler B, Does fair use affect academic authors' incentive to write? Some lessons from authors of works from the GSU Course Reserves Case. <http://blogs.library.duke.edu/scholcomm/2017/05/19/fair-use-affect-academic-authors-incentive-write-lessons-authors-works-gsu-course-reserves-case/> (Accessed on 22.05.2017)
- Creative Commons, Frequently Asked Questions. Available at <https://creativecommons.org/faq/> (Accessed on 09 April 2018)
- Wellcome Trust, Open access policy. Available at <https://wellcome.ac.uk/funding/managing-grant/open-access-policy> (Accessed on 01 May 2017).
- Max Planck Society, MPG Open Access Policy. Available at <https://openaccess.mpg.de/policy> (Accessed on 01 May 2017).

24. Department of Biotechnology, Government of India, DBT and DST Open Access Policy. Available at: <http://www.dbtindia.nic.in/wp-content/uploads/APPROVED-OPEN-ACCESS-POLICY-DBTDST12.12.2014.pdf> (Accessed on 01 May 2017).
25. Indian Academy of Sciences, Journals. Available at <http://www.ias.ac.in/Journals/Overview/> (Accessed on 01 May 2017).
26. Indian National Science Academy, Our Journals. Available at <http://www.insa.nic.in/UI/Journals.aspx> (Accessed on 01 May 2017).
27. National Digital Library of India. <https://ndl.iitkgp.ac.in/> (Accessed on 01 May 2017).
28. NPTEL. <http://nptel.ac.in/> (Accessed on 01 May 2017).
29. edX. Available at <https://www.edx.org/> (Accessed on 01 May 2017).
30. BCCampus, OpenEd. Available at <https://open.bccampus.ca/> (Accessed on 01 May 2017).
31. Knowledge Unlatched, KU Books. Available at <http://www.knowledgeunlatched.org/ku-collections/ku-books/> (Accessed on 01.05.2017).
32. Max Planck Digital Library, Open Access 2020. Available at <https://oa2020.org/> (Accessed on 12.05.2017).
33. Esposito J, Return of the big brands: How legacy publishers will coopt open access. <https://scholarlykitchen.sspnet.org/2015/10/14/return-of-the-big-brands/> (Accessed on 12.05.2017).
34. Greshake B, Looking into Pandora's Box: The Content of Sci-Hub and its Usage. *F1000 Research*, (doi: 10.12688/f1000research.11366.1) (Accessed on 18.05.2017).
35. Schonfeld R C, <https://scholarlykitchen.sspnet.org/2017/02/07/the-value-of-copyright-a-publishers-perspective/> (Accessed on 01 May 2017).
36. Poynder R, Copyright: the immovable barrier that open access advocates underestimated. <https://poynder.blogspot.in/2017/02/copyright-immovable-barrier-that-open.html> (Accessed on 01 May 2017).