



Fair Use or Fair Mis-use: By Kirit S. Javali, Partner & Prerana Gaur, Advocate

The recent landmark decision delivered in the case of *The Chancellor, Masters & Scholars of the University of Oxford & Ors. Versus Rameshwari Photocopy Services & Anr.*, by the Hon'ble Delhi High Court, has amplified the meaning of 'Fair Use' under Section 52 of the Copyright Act, 1957 (Act) in the interest of public at large. Primarily, Section 52 of the Act deals with the exceptions to infringement of copyright, quoted under the section as, 'Certain acts not to be infringement of copyright', based on the principal test of 'Fair Use'. The suit was filed in the year 2012, in the Hon'ble High Court of Delhi, by leading international publishers against a small scale photocopier of Delhi University, who was licensed by the University to make copies of coursepacks for students of Delhi University. Hon'ble Delhi High Court, passed the historical decision which has revolutionized the Copyright Law, by widening the interpretation of the term Fair Use in the interest of public at large or can be rightly said as, for the greater good of all.

It was alleged by the publishers (Plaintiffs), namely Oxford University Press, Cambridge University Press, United Kingdom, Cambridge University Press India Pvt. Ltd., Taylor & Francis Group, U.K. and Taylor & Francis Books India Pvt. Ltd., that the Defendants namely, Rameshwari Photocopy Service and University of Delhi were infringing the copyright of the Plaintiffs. It was stated by Plaintiffs, that Rameshwari Photocopy Service (Defendant) was reproducing, photocopying and distributing the copies of the Plaintiffs copyrighted work by compiling them into course packs on a large scale, as it was encouraged and recommended by the University of Delhi (Defendant) to the students instead of purchasing legitimate copies of the Plaintiffs publications. On the other hand, the Defendants contended that no act of infringement of copyright was made on their part and stated that the activities carried out for the purpose of education was within the purview of Fair Use as laid under of Section 52 of the Act.

The soul of the copyright law is based in the interest of public, as it primarily deals with the general benefits that the public derives from the labour of the authors. The Act was introduced to provide an impetus to promote creativity and the application of intellect, which thereby would aid in the development of the economy. The protection granted to the work of intellect in the form of Copyright, acts a reward for the Copyright holder for investing his/her time, effort and money in the creation of the work. Therefore, the protection of copyright incentive to authors was given in order to promote more intellectual work, which will thereby be beneficial for the society.

The wisely opinionated decision in this case listed with the Hon'ble Delhi High Court has upheld this concept of copyright by augmenting the realm of the term 'Fair Use' in the interest of public. Fair use of literary work for the purpose of educational institutions is not an infringement of the copyright possessed by an author. As laid down in the Act, everyone is entitled to make

use of a copyrighted work, on the premise that it does not amount to an infringement of the copyright. Reproduction of the copyrighted work should be less than a substantial part of the copyrighted work for it to be within the parameter of the limits of fair use laid down under Section 52 of the Act. Simultaneously, the legal guidelines must provide utility to the public for whom the law is formulated. Thus, the term Fair Use, can be said to be advocated in the interest of the society than that for the author and this milestone decision has highlighted this aspect of the law of Copyright that is elucidated in the interest of the society.

Commercial exploitation of copyright work amounts to infringement, therefore for it to be within the ambit of Fair Use, there must be true understanding of the term Fair Use. Fair use acts a limitation and an exception to the exclusive right of ownership granted to the creative owner of the copyrighted work. The scope of the term Fair Use in the copyrighted work is only limited to the extent that it does not diminish the value of the copyrighted work and it does not appropriate the labour of the author to a substantial extent. The Hon'ble Court's appreciative decision has proportionately balanced the interests of the copyright holders and the students by progressively interpreting the term Fair Use. This radical shift has appropriately been made in interest of learning, which is the true essence of the Copyright Law.

It is stated under Section 52(1)(i) of the Act, that the reproduction of any work by a teacher or a pupil in the course of instruction; or as part of the questions to be answered in an examination; or in answers to such questions will not constitute as an infringement of copyright. The court accepted this contention of the defendants and stated that, "*The legislators have found reproduction of the copyrighted work in the course of instruction to be justified for the purpose of teaching and to be not unreasonably prejudicing the legitimate interest of the author. It is not for this Court to impose its own wisdom as to what is justified or what is unreasonable, to expand or restrict what the legislators have deemed fit. The legislature is not found to have imposed any limitation on the extent of reproduction. Once the legislature which under our Constitution and under the international covenants aforesaid was entrusted to while making law in relation to copyright take a call on what is justified for the purpose of teaching and what will unreasonably prejudice the legitimate interest of the author has not imposed any such limitation, this Court cannot impose the same.*" Further, the judge stated, "*.....unreasonable prejudice to the legitimate interest of the author cannot form the bedrock for this Court to interpret the Copyright Act of this country.*" Based on this the court decided that the actions of the defendants did not amount to infringement of copyright of the plaintiffs, therefore, no trial was required and the suit was accordingly dismissed.