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## On the right to photocopy

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AFP

BREAKTHROUGH: “The judgment will have a far-reaching impact in academic circles as well as on the copyright industry.” File photo of the Rameshwari photocopy shop in New Delhi.



*The DU photocopy judgment is a victory for access to education. But is it successful in balancing the competing interests of the academic community and the copyright holders?*

On September 16, the [Delhi High Court dismissed the copyright infringement petition](#) filed by three international publishers against a photocopy shop located in the Delhi University premises (*The Chancellor, Masters and Scholars of the University of Oxford v. Rameshwari Photocopy Services*). The court ruled that making course packs for suggested reading for students by photocopying portions of various prescribed reference books does not violate the copyright of the publishers.

### Right to reproduction

Section 14 of the Copyright Act, 1957, grants a bundle of exclusive rights such as the right to reproduction on copyright owners for commercial exploitation of the work. Making photocopies amounts to reproduction. Photocopies made in violation of Section 14 thus constitute infringement unless it is listed under Section 52 as an act not constituting infringement. The judgment holds that if any provision of the Act permits any person other than the owner to reproduce any work or substantial part thereof, such reproduction will not amount to infringement (Para 27).

The Copyright Act, to prevent stagnation of the growth of creativity, seeks to maintain a balance between the competing interests of the copyright owners on the one hand and the interests of the public to have access to works on the other. Copyright’s basic rationale is that there should be promotion of creativity through sufficient protection; and at the same time it also caters for dissemination of knowledge and access to copyright material through the doctrine of fair dealing. This doctrine, which is essential for research and academic purposes, is an exception to copyright holders’ exclusive rights. The Indian copyright law uses the term ‘fair deal’ (where listed purposes are statutorily embedded) whereas the U.S.’s copyright law adopts ‘fair use’ (which is merely illustrative). As per Article 13 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, these exceptions must confine to “special cases which do not conflict with a normal

exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder". Since the term 'fair dealing' is not defined in the Act, the judiciary determines its scope on a case by case basis.

### **Fair dealing**

Section 52(1)(i) of the Copyright Act treats as fair dealing "the reproduction of any work (i) by a teacher or a pupil in the course of instruction; or (ii) as part of the questions to be answered in an exam; or (iii) in answers to such question. Section 52(1)(j) uses terms such as "staff and students of an educational institution" whereas Section 52(1)(i) uses "teacher or a pupil in the course of instruction." On analysing this difference, the judgment holds that "there is no reason to interpret Section 52 (1)(i) as providing for an individual teacher and an individual pupil." The word 'instruction' is not defined in the Act. According to Justice Rajiv Sahai Endlaw, the words "in the course of instruction" would include "reproduction of any work while the process of imparting instruction by the teacher and receiving instruction by the pupil continues during the entire academic session... imparting and receiving of instruction is not limited to personal interface between teacher and pupil but is a process commencing from the teacher readying herself/himself for imparting instruction, setting syllabus, prescribing text books, readings and ensuring, whether by interface in classroom/tutorials or otherwise..." Hence it would be fair dealing if the students click photographs of each page of portions of the prescribed book.

### **Limitations**

Copyright must increase and not impede the harvest of knowledge. When the judgment reads, "Copyright is to motivate the creative activity of authors in order to benefit the public", what is left for the copyright owners? The judgment places no limitation on photocopy if the material is prescribed in the course of instruction. Copyright holders invest considerably in creating works. Can this be ignored while interpreting Section 52(1)(i) as a license for reproducing unlimitedly everything prescribed in the suggested reading? If the legislature had intended to give such a wide interpretation to the words "in the course of instruction", why does it add, "as part of the questions to be answered in an exam or in answers to such question" which should also be covered automatically? If the suggested reading provides for the whole book, does Section 52(1)(i) permit reproduction of the whole book or only reasonable excerpts? The judgment has conveniently avoided any direct reference to this aspect. The Court Commissioner had reported that "8 books were found being photocopied cover to cover". Was the court successful in balancing the competing interests of the academic community and the copyright holders? When the university is entitled to free photocopy of 3,000 pages every month(Para 4), can the possibility of commercial interest be overruled? In that context, does it comply with Article 13 of TRIPS? Is it justified to cover the private photocopy shop in the university premises within the expression "in the course of instruction"? Doesn't the judgment provide blanket immunity to the university to meet the demands of all the students by purchasing a single book?

Undoubtedly, the judgment, which is a breakthrough in the Indian copyright jurisprudence, is a major victory to access to education in a developing country like India. It will certainly have a far-reaching impact in academic circles as well as on the copyright industry. When access to education itself is a challenge, none of the students can be expected to purchase expensive textbooks, especially when syllabi prescribe certain portions from various books. Universities are expected to cater to students' reading requirement without prejudicing copyright holders' legitimate economic interests. Are the Indian universities honestly utilising funds earmarked for libraries for that purpose? The students' demands can be met reasonably by permitting reproduction of reasonable excerpts.

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