

Rameshwari Photocopier on the premises of Delhi University's Delhi School of Economics supplies 'course packs' containing photocopies of chapters of books. Amit Mehra

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What a photocopy shop's HC victory over publishers means for copyright

A Division Bench of the Delhi High Court is scheduled to hear on November 29 an appeal by several multinational publishers against a judgment delivered by the court in September, which allowed a photocopying shop in Delhi University to continue to sell photocopied chapters from their books. At issue is the doctrine of "fair use", and the definition of copyright. ANEESHA MATHUR explains

What is the case about?

Publishing companies Oxford University Press; Cambridge University Press, UK; Cambridge University Press India Pvt Ltd; Taylor & Francis Group, UK; and Taylor & Francis Books India Pvt Ltd, had approached Delhi High Court in 2012 to get a permanent injunction to restrain Rameshwari Photocopier, a popular photocopying shop on the premises of Delhi University's Delhi School of Economics, from making copies of chapters of books published by these companies and selling them to students as "course packs". The publishers asked the court to ensure the university obtains a licence from the Indian Reprographic Rights Organisation (IRRO) — a copyright society that collects licensing fees on behalf of publishers — and seeks permission to prepare course packs after paying dues.

What is the problem with the Rameshwari Photocopier's "course packs"?

According to the publishers, the shop was violating their copyright and "competing" with the copyright holders by commercially exploiting their work and depriving them of revenues. [The copyright of a book may lie either with its author or with the company publishing it.] Copyrighted material could not be reproduced without permission.

righted material under the Indian Copyright Act, 1957. It also argued that across the world, students were allowed to copy a limited number of pages from any work for use in research, and that DU had, by granting it licence to work on the university premises and issuing books for photocopying, "permitted" it to create course packs.

What is the doctrine of "fair use"?

The copyright law recognises the right of ownership of the producer/publisher on the material, and does not allow its reproduction without permission — barring "exceptions". International agreements such as the Berne Convention for the Protection of Literary and Artistic Works, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) allow countries to lay down these exceptions. Section 52 of the Indian Copyright Act lays down several "acts (that) shall not constitute an infringement of copyright", including "research or private study" and "by a teacher or a pupil in the course of instruction".

What line did Delhi University take?

DU clarified that no "licence" was granted

copier. Two groups — Society for Promoting Educational Access and Knowledge (SPEAK) and Association of Students for Equitable Access to Knowledge (ASEAK) — filed intervention pleas. They said it was "unrealistic" to expect all students to buy all books that had been recommended, and that the course packs carried "very small" parts of the books — less than 10% of the total — and did not constitute infringement of copyright.

Why did the court give its verdict in favour of the photocopier?

In its 94-page judgment, the single judge Bench of Justice Rajiv Sahai Endlaw ruled that while photocopying was "reproduction of the copyright material" as defined under the Copyright Act, it was covered under the exception for "fair use", that allowed copying for academic purposes in the course of studies.

The Bench expanded the definition of "teacher and pupil" who are allowed to reproduce copyright work under Section 52 (1) (i) of the Act — and said that the university as an institution was a "teacher" that was creating the course packs for the purpose of study by students. It said that the expression "course of

study" was to be interpreted broadly by the university to aid students by photocopying the relevant extracts instead of requiring them to make copies themselves.

What is the significance of the verdict?

It has expanded the definition of terms in the Act to include the copying of work by educational institutions. This will help tens of thousands of students to continue to access study material that may not be readily available. The verdict has particular significance for technical studies, books on which are often in limited circulation and very expensive.

It has also brought a new turn to the interpretation of India's copyright law. The judgment discusses the balance between the "legitimate interests" of publishers and the right of students to get access to books. It has noted that copyright isn't a "divine" or natural right, but has been created under statute, which allows for exceptions to the right. The Berne Convention and TRIPS allow countries to carve out exceptions under domestic law while ensuring that the "legitimate interests" of the publisher are protected, the court has said. Some lawyers have alleged that provisions of international conventions are sometimes used by copyright owners to block use of their material and charge high fees for licences.

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exploiting their work and depriving them of revenues. [The copyright of a book may lie either with its author or with the company publishing it.] Copyrighted material could not be reproduced without permission, they told the court. The publishers also objected to the fact that the university had allowed the shop to operate on its premises, and make copies of books from its libraries. Letting this go on would “adversely impact” the publishing industry, they said.

What was the photocopier’s defence?

The photocopier said it was not commercially exploiting the books, and was preparing course packs from the university’s syllabus and suggested readings. It claimed that the course packs were only being used by teachers and students “in the course of academic instructions and for research purposes”, which are part of “fair use” of copy-

in the course of instruction”.

What line did Delhi University take?

DU clarified that no “licence” was granted to Rameshwari Photocopier — however, the shop was allowed to run “keeping the interest of the students in mind”. The university also said the “service of copying certain pages” was “necessary” because “purchasing individual books is expensive and several of the books are also out of print or not available in India”. It told the court that if DU had the funds and manpower, it would have provided photocopying services in the library itself. The university underlined that it did not gain anything from the transactions between the photocopier and its customers.

And what about students and teachers?

Teachers — including authors — and students came to court in support of the photo-

of the Act — and said that the university as an institution was a “teacher” that was creating the course packs for the purpose of study by students. It said that the expression “course of instruction” in the relevant part of the Act referred to the entire academic year, and was not restricted to specific classroom lectures. The court held that the course packs contained very limited parts of the books, and could not be said to be “competing” with the publishers.

Significantly, the court held that since students could “copy out” large parts of the books by hand as study ‘notes’, the use of technology to “facilitate” the copying of extracts could not be said to violate the law.

The judge discussed the nuances of the terminology used in the Act, and ruled that books bought by the university for its libraries were “copies already in circulation”, and that Rameshwari Photocopier could be seen as a “contractor” engaged by the uni-

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So what happens now?

The publishers have filed an appeal, which comes up before a Division Bench of the court on November 29. They have argued that the September 16 single judge verdict had “ignored” earlier judgments of the court, which had held that photocopying of textbooks was “commercial exploitation” and constituted an infringement of copyright.

The publishers had also sought a stay on the operation of the judgment, which has been declined. The Division Bench has, however, asked Rameshwari Photocopier to maintain books of accounts — should the single Bench judgment be overturned, it may be asked to compensate the publishers.