



are completely dependent on the library's on-line collection; secondly these institutions have to shift their teaching and assessment to the on-line mode. These issues also involve interface with intellectual property rights in general and copyright in particular. It would be interesting to highlight some of the pertinent issues regarding classes conducted through an on-line platform and its possible implications from the angle of Indian copyright law.

### **Broadly speaking the issues can be categorised as**

- Whether online teaching will fall within the ambit of the fair dealing provisions on education enumerated in the Copyright Act 1957
- Whether pre-recorded video modules (that contain third party copyrighted material) which are uploaded in a digital platform, is treated in the same manner as face-to face class room teaching
- Can the university libraries claim protection under the fair dealing provisions if they upload a digital copy of the textbooks available in the physical library

### **Fair dealing under Indian Copyright Law**

There are provisions under the Indian Copyright law which exempts certain acts from the definition of copyright infringement. To be specific, sections 52(1)(h) to 52(1)(j) of the Copyright Act deals with exemptions pertaining to the use of copyrighted material for educational purposes. Section 52 (1) (i) of the Copyright Act states that the reproduction of any work by a teacher or a pupil in the course of instruction shall not be act of copyright infringement.

Indian judiciary has given a very liberal interpretation to the phrase "in the course of instruction" and according to this approach the phrase covers any activity that falls within the ambit of providing educational instruction, before and after the actual act of teaching. Thus, the exemption is not merely restricted to classroom teaching and its coverage is very wide to include online teaching as the shift in medium is imposed on the educational institution by the pandemic.

It can be contended that classes through the on-line mode is the closest substitute for the traditional face-to face classroom lectures. Thus, online teaching will fall within the ambit of the fair dealing provisions on education enumerated in the Copyright Act 1957

Because of the problems associated with Internet connectivity, synchronous learning may not be always possible in India. Synchronous learning is the one that happens in real time wherein the students and their instructor interact in a specific virtual place, through a specific online platform, at a specific time. Because of the problems mentioned earlier, in countries like India asynchronous learning tools are widely used.

Asynchronous learning covers various forms of digital learning in which students learn through pre-recorded video lessons or game-based learning tasks that is not being delivered in person or in real time. In many cases instructors upload recorded videos on publicly available platforms like YouTube, where they can be accessed without any restrictions dealing with time or users.

The question whether uploading of pre-recorded video modules (that use third party copyrighted material) is eligible for fair dealing exemption is a tricky one to answer. Under the Copyright law the act of uploading videos (containing third party copyrighted material) and making them publicly available would fall within the definition of publication.

Communication of a work to the public is an exclusive right given to the copyright owner by virtue of Section 14 of the Copyright Act. Here the fair dealing exemption is also drafted in a narrow manner which states that only two short passages from the copyrighted material can be used. This is an area where caution is advised as it has the potential of triggering copyright claims from the owner of the content. Even though the option of taking permission or a license is available it may not be feasible when there are constraints regarding timelines.

University libraries might be able to claim protection under the fair dealing provisions if they upload a digital copy of the textbooks available in the physical library. The amendment to Copyright Act made in 2012 states that the storing of a work in any medium by electronic means by a non-commercial public library, for preservation is allowed if the library already possesses a non-digital copy of the work. This along with the liberal approach taken by the Indian judiciary should lead us to the interpretation that storage and communication by electronic means of the text book is permitted because accessing the physical copy of the book is not possible as a result of the lockdown.

Amongst other things Covid-19 pandemic has exposed the vulnerabilities of copyright system and its capacity to deal with unprecedented situations like prolonged closure of educational institutions and libraries. Policymakers should address this issue through thorough debates which will eventually redraw the contours of exceptions dealing with educational fair dealing and the rights of the copyright holder.

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