The Chancellor, Masters & Scholars of the University of Oxford & Ors. v Rameshwari Photocopy Services & Anr. **(CS(OS) 2439/2012) 16 Sep 2016, Delhi High Court (Rajiv Sahai Endlaw J)**

The plaintiffs **(Ps)** were leading publishing houses: Oxford University Press, Cambridge University Press and its Indian affiliate, Taylor & Francis and its Indian affiliate. They filed suit for a permanent injunction restraining Rameshwari Photocopy Services **(D1)** and - via the Delhi School of Economics (DSE) - Delhi University (DU) **(D2)** from infringing copyright owned by them in various publications which had been photocopied and distributed to students in course packs.

The course packs reproduced selected portions of copyright protected materials ranging from 6 to 65 pages (or between 5% and 33.25%) of the original books. D2 facilitated the photocopying of course packs in various ways – it licensed the premises for the shop to D1, provided access to the books contained in its library for making master-copies (the basis for subsequent copies in the packs), the DSE syllabus formed the basis for the packs and DSE faculty members encouraged students to purchase the packs. The packs were sold at 40-45 paise per page (i.e. 1/2 pence) which is more than at-cost but less than market-rates. In return, DU benefitted from free photocopies each month (3k pages). The syllabus never required entire books to be reproduced; only select portions were contained in the packs.

Amongst the arguments raised by the Ps were:

- Unauthorised reproduction and distribution were infringing acts (ss 14, 16, 51).
- The provision of course packs led to D2 directly competing with the Ps in the market for text books in the field of education
- A licensing scheme administered by the Indian Reprographic Rights Organisation (IRRO) would allow students to have access to copies of limited excerpts on the basis of an annual institution-wide blanket-fee, which would be modest. There was also a long term public interest in creating a viable financial model for the provision of textbooks to the Indian market and the licensing scheme facilitated this.
- Any interpretation of Indian copyright legislation must be in accordance with international copyright treaties and comparable legislative provisions in other countries (e.g. the UK).

Amongst the arguments raised by D1, D2 and various civil society organisations who intervened were:

- The original books were unaffordable for students and DU libraries could only afford very limited copies. Access to knowledge and the importance of education as being in the broader public interest should inform legal interpretation.
- D2s actions did not adversely impact publishers since there was no detrimental impact on the market for the original text books – copying (say) 10% of a book would not be a substitute for the original. There was a need to balance the copyright owners' interests with the public interest in access to information.
- Direct photocopying by individual students was permitted, as arguably was photocopying within the premises of a university library, under exceptions to copyright exclusivity contained in s 52. So the 'external' location of D1's photocopiers should not matter.

- A limitation or exception under s 52 permitted the photocopying of excerpts, so why was an IRRO licence required at all?

After reviewing these and other arguments, the judge concluded that:
(a) The exceptions to exclusive rights contained in s 52 of the Copyright Act 1957 defined the scope or outer limits of the infringement provisions. They were not to be interpreted strictly or narrowly, as might otherwise be the approach when interpreting provisos or limitations.
(b) The relevant exception was one favouring educational use, by permitting unauthorised reproduction 'by a teacher or pupil in the course of instruction' (s 52(1)(i)).
(c) 'In the course of instruction' was to be interpreted broadly, covering not just classroom instruction but extending to the provision of prescribed readings in the packs.
Since the actions of D1 and D2 were within the s 52(1)(i) exception, there was no liability for copyright infringement.

Legislation – relevant sections of the Copyright Act 1957

2. Interpretation. In this Act, unless the context otherwise requires,—
…
(m) "infringing copy" means, (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise than in the form of a cinematographic film;

14. Meaning of Copyright
For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:
(a) [For literary works…]
(i) to reproduce the work in any material form including the storing of it in any medium by electronic means; **[reproduction right]**
(ii) to issue copies of the work to the public not being copies already in circulation; **[distribution right]**
(iii) to perform the work in public, or communicate it to the public;
…
52. Certain acts not to be infringement of copyright.
(1) The following acts shall not constitute an infringement of copyright, namely:
(a) a fair dealing with any work, not being a computer programme, for the purposes of-—
i. private or personal use, including research;
ii. criticism or review, whether of that work or of any other work;
iii. the reporting of current events and current affairs, including the reporting of a lecture delivered in public.
…
(i) 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 examination; or
iii. in answers to such questions;