

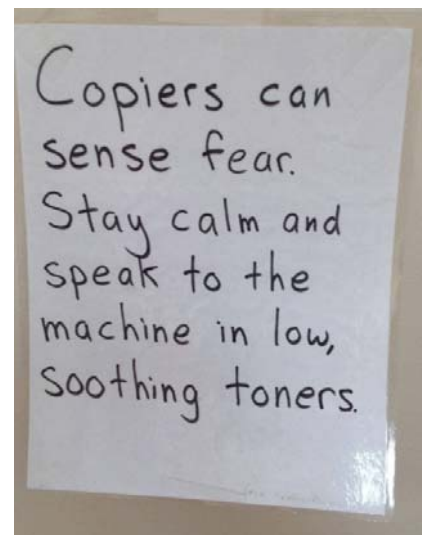
The Course Packs Dispute: A Primer

Dr Dev S. Gangjee

Overview

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)

1. Factual background
2. Delhi HC Judgment
 - Appeal against Interim Injunction
 - Decided the dispute on a point of law
3. Arguments on appeal



1. Factual Background



© AFP; source: India Times

- Ps – leading publishers
- D1 (shop) produced course-packs on behalf of D2 (university), reproducing © protected works
- 6 to 65 pages (or between 5% and 33.25%) of the original books
- D2 facilitated D1s activities (agent)
- Packs sold > at cost, < market rates
- Syllabus X require whole books, only portions

2. Arguments before Endlaw J

Ps

- CPs: produced by infringing acts
- Competing with texts in the market for educational pub.
- IRRO provided a licence-based alternative for a modest fee
- © law must be interpreted in accordance with comparable legislation, international treaties

Ds

- Textbooks unaffordable for students; limited copies in library
- A2K and education were important public interests
- No competition (portions copied)
- Reproduction directly by individuals permitted under s 52
 - Certain acts not to be an infringement
- IRRO payment only required if no option under s 52

2a. Judgment

- Exceptions under s 52 should **not be interpreted restrictively**; defined the scope/limits of infringement
- 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)).
- '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.

2b. Relevant Provisions

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.

2c. Legislation cont.

S 52

...

(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;

2d. Legislation cont.

S 52

...

(h) the **publication** in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists:

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

3. The Appeal

- (i) should be read narrowly, as an exception to exclusive rights
- Read in a 'fairness' preface to scrutinise uses
 - (a) refers to 'fair dealing';
 - *DB Bhandari* (Del DB) requires this
- Structural features suggest (i) was designed for individual and not institutionalised cases
 - (i) only allows for reproduction and not publication (issuing copies)
 - Other provisions mention 'publication', 'educational institutions'
 - A broad (i) would make other provisions meaningless
 - A broad reading permits unrestricted copying of works extending to complete works by private or public educational institutions, destroying the value of copyright protection for the education sector.
- IRRO is an alternative option
- International treaty obligations restrict interpretative room

4. The Big Picture

- Does the law support the outcome (providing course-packs)? (Means)
- Is the outcome worth supporting in some other manner? (Ends)
- *How does or should Indian law permit course packs?*
- *In a context where it is highly unlikely that students would buy the textbooks if course packs were not available.*