


**Intellectual Property**  
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**Lecture-54**  
**Educational Exceptions in Copyright Law in India**

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### Interpretation of Educational Exceptions

- Restrictive v. Liberal
- Liberally interpreted by courts in India
- Preparation of guide books and reproduction of previous years' exam papers in textbooks
- DU Photocopy Case (The Chancellor, Master and Scholars of the University of Oxford and Ors. v. Rameshwari Photocopy Services and Anr.): Photocopying of course packs


Let us now look at the Educational Exceptions in Copyright Law in India. The interpretation of educational exceptions can be broadly looked at either as a restrictive one or as a liberal one. There are certain countries, which have a restrictive interpretation on educational exceptions. And there are other countries like India, which have a very liberal interpretation on these exceptions. It is been so far been liberally interpreted by the courts in India including with the with the Delhi University Photocopy Case.

Preparation of guide books and reproduction of previous years questions exam papers in textbooks, what was called the course pack was in question before the Delhi University Photocopy Case. And the case was titled as the chancellor, master and scholars of University of Oxford and others. The Oxford University press and the Cambridge university press were involved in this litigation. And the case was filed against Rameshwari Photocopy Services. And the case involved photocopying of course packs.

The professors of Delhi University would while in the course of instructing their students would prepare a course pack, which comprised of materials from various copyrighted

works. These course packs were photocopied by the students at the nearby photocopy services the Rameshwari Photocopy Services. And these copies were purchased by the students for a small price. Oxford University press and Cambridge University press along with others filed a case against Rameshwari Photocopy Services and Delhi University stating that creation of course packs amounted to infringement. And sort an order of injunction against the parties.

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### Exception 1: Reproduction

- Reproduction in the course of instruction- Section 52 (1)(i) of the Copyright Act, 1957
- “Reproduction”-duplication or copying
- Express prohibition against reprographic process in U.K., Singapore-reproduction permissible but no photocopying
- No express prohibition in Indian law
- Course of instruction to cover all ways of imparting knowledge

The court had to consider exception number 1, which is an exception in the act on reproduction, fair dealing is contained in section 52 of the Copyrights Act. And reproduction in the course of instruction is something, which is an exempted act. So, reproduction in the course of instruction cannot amount to infringement under the act. So, reproduction was covered.

And reproduction amounted to duplicating or making copies. There is an express prohibition against reprographic process in the United Kingdom reprographic pertains to reproduction in a graphic form, which would include photographs and photo copies. And Singapore had permitted reproduction, but not photocopy. There was no express prohibition in the Indian law and course of instruction is meant to cover all ways of imparting knowledge.

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### Section 52(1)(a)(i) of the Act

- 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**

So, this is the just of the section 52 the relevant provision, which was considered by the court in the Delhi University Photocopy Case. Certain acts not to be infringement of copyright. The following acts shall not constitute an infringement of copyright namely, a fair dealing in the United States they refer to this as fair use. A fair dealing with any work not being a computer program, for the purpose of one private or personal use including research.

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### Section 52(1)(i)(i) of the Act

- 52. Certain acts not to be infringement of copyright- (1) The following acts shall not constitute an infringement of copyright, namely:—
- (i) the reproduction of any work-
- (i) by a teacher or a pupil **in the course of instruction**

And reproduction of any work by a teacher or a pupil in the course of instruction. Now, this was the exception under the act.

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### Relevance of end-user test

- Ultimate beneficiaries of the copyrighted material
- Students as end-users
- DU Copyright case- Rameshwari photocopying service not the end-users

Now, the relevance of end-user is important. The ultimate beneficiaries of the copyrighted material are not the photo copying centre or the teachers. It is the students, the students are the end-users. In the DU Copy photocopying case, Rameshwari Photocopying Centre was not the end-user.

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### Exception 2: Fair dealing

- Fair dealing in the course of research-Section 52 (1)(i)
- “Private use”=Research+ Private Study+ Instruction (Alberta v. Canadian Copyright Licensing Agency 2012 SCC 37)
- Fair dealing exception applicable to circulation of extracts
- Quantitative limits (cap such as 10%, etc.) to fair dealing restrictive-what are the consequences?
- Cover to cover reproduction permissible?

The 2nd exception, which deals with fair dealing is again a research exception. The fair dealing in the course of research, this is covered in section 52 1. Private use is regarded as research plus private study plus instruction. Now, this was decided in an case involving Alberta versus Canadian copyright licensing agency in 2012. So, private use was allowed in Canada.

The fair dealing exception could be applicable to circulation of extracts with regard to quantitative limit. The court held that they could be quantitative limits on the amount of copies that can be made as a part of fair dealing say they could be a 10 percent limit, which made the fair dealing restrictive. Now, the question that came before the Delhi University Copyright Case was whether cover to cover reproduction is permissible, because the course packs comprised of portions and chapters from different books, which were all subject matter of copyright.

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### Right to access

- Textbooks too highly priced for students
- Limited number of textbooks available in libraries
- Textbooks unavailable/out of print

Now, in this case what comes out is the fact that at the foundation of the case, there was the issue of right to access, right to access to knowledge. Textbooks were too highly priced for the students to afford. And they were only limited number of text books available in the libraries. And the textbooks some of them were either unavailable, because they were printed in foreign countries or they were out of print.

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## Fair dealing

- 2012 amendments-fair dealing to cover all works
- No quantitative limit (cover to cover copying permissible)
- No involvement of publishers
- Students as end-users
- Economic burden on Universities reduced

The 2012 amendments covered fair dealing for all works. The amendment does not have any quantitative limit so, by going by the amendment cover to cover copying would appear to be permissible. There is no need to involve the publishers with regard to exercise of a right under fair dealing. And students for the purpose of fair dealing will be considered as the end-users. And by having this fair dealing exception the economic burden on the universities will be substantially reduced.

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## DU Photocopy Case

- 9<sup>th</sup> Dec, 2016: Allowed educational use
  - Fair use: use necessary for achieving the purpose of educational instruction, regardless of the percentage of the work used
  - ‘in the course of instruction’: included preparation and distribution of course packs to students
  - Teaching: fairness determined by extent justified by the purpose
  - Issue of course packs not publication: Difference between publication and reproduction (profit)
  - Agency: irrelevant

In the Delhi University Photocopy Case, the Delhi high court allowed educational use, and said that it is a part of fair dealing. Now, fair use the court said would include use necessary for achieving the purpose of educational instruction, regardless of the percentage of the work involved, whether the work involved only a part or the entirety, it would still come under fair use or fair dealing.

Now, this would answer the question whether cover to cover copying is allowed and the court also held. In the course of instruction the phrase that appears in the section would include preparation and distribution of course pack to students. Now, there was an argument made in the case that instruction would only pertain to what the teacher does in the class. And it will not cover making copies of material, but the courts disagreed with that argument and the court said that it would cover preparation of course packs.

And for the purpose of teaching fairness will be determined by the extent justified by the purpose. The extent justified by the purpose of education. So, what were the institutions what were the main purpose of the institution. So, the extent of fair use will be justified by the purpose of the institutions, which you engage in fair dealing. The court also held that the issue of course packs do not amount to publication. They made a distinction between publication and reproduction.

And publication is something that is done for profit. So, they brought the fact that profit is involved in publication and reproduction may be done without the involvement of profit. And the court also rejected the argument that an agency, which was involved in the copyright infringement. In this case, the photocopying centre would not be relevant for considering the fair use or the fair dealing exception for educational purposes.