

# FAIR USE VS COPYRIGHT NON-COMPLIANCE AMONG THE ACADEMIC COMMUNITY IN UNIVERSITIES OF DEVELOPING NATIONS

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## Abstract

The purpose of the paper is to assess whether the copyrighted resources in the universities are being used following fair use principle or not and if there is any copyright management policy in the universities to manage the access to those resources. Quantitative data regarding the use of resources in the library collected through online (using survey monkey web platform) and offline were computed through statistical software (MINITAB version 13). Copyright Resources are not used complying fair use principles in the universities of West Bengal and there is no copyright management policy in any university of West Bengal. Considering similar economic conditions, the findings are equally applicable in other developing nations. Study was conducted among the universities of West Bengal. However result of the study is applicable to universities in all developing nations. This study can inform the entire academic community regarding fair use and can make university or appropriate authority feel the need to design and develop balanced and well-defined copyright management policy for the universities. There is close relation in between fair use and economic condition of that country. The unique context of fair use of copyrighted resources in the universities of West Bengal can add to the body of literature related with intellectual property rights in the universities and form the basis, for further comprehensive study.

**Key words:** E-resources, Copyright, Access, Access management, Digital Library, Copyright Management

## 1. Introduction

With the advent of Information and Communication Technology (ICT), the whole scenario of learning resources and its access and use pattern in the university libraries has drastically changed all over the world. Words like digital content, electronic library containing e-journals, e-books, journal consortiums, open access, digital library, DRM (Digital Rights Management) all have become simply buzzwords along with the traditional analog or print resources in the present library system. Our Indian Copyright Act, 1957 in its section 52 has listed various kinds of uses of copyrighted materials that are equally applicable for both analog as well as digital contents by which Copyright Act is not violated and these are the fair uses of the copyrighted materials. Considering the changing context and nature of content, use of copyrighted resources by the university academic communities in West Bengal, a highly educated and advanced state in India, is not different from the other developing nations of the world. Therefore it is appropriate to consider universities in developing nations as unique research objects thereby granting proper consideration to universities present in specific geographic locations. The present case study reveals a

disturbing trend which needs to be corrected immediately. From a librarian's point of view we must ensure that our prime objective of information dissemination is no way blocked by any law or act but at the same time we cannot afford to be cultural cops of the publishers. Thus we must formulate a sensible and balanced policy framework for our university libraries for better copyright management and access management to avoid all kinds of plagiarisms, litigation and above all for the promotion of scholarship and healthy academic culture.

## 2. Objective of the study

1. To develop a fair use culture of the copyrighted materials among the principal stakeholders of the universities and above all in the higher academic institutions
2. Provide stimulus and encouragement to new creation
3. To make students, teachers, librarians and researchers aware in copyright and academic ethics to save themselves from unnecessary litigation.
4. Copyright mapping among the university libraries and its use pattern for fair use
5. To assess Access Management Policy and Copyright Management Policy (if any) for the universities

## 3. Research Questions

Present study seeks to assess how far fair uses of the copyrighted materials are being done in the universities. How the access of e-resources are managed in the universities. Answers were sought to the following research questions:

1. Are the copyrighted materials being used in the universities obeying the fair use principles?
2. Is there any copyright management policy in the universities?
3. Is there any access management policy for e-resources in the universities?

## 4. Assumption

“Copyrighted materials in the university libraries are being used according to the principles of fair use practices and there are well defined copyright management and access management policy in the universities.”

## 5. Limitations

West Bengal is one of the most important states in India. Present study is limited to 12 Academic Universities, 3 Agricultural oriented Universities, 4 Topical Universities and 1 Open University in West Bengal (*table 1*). There are some new universities where libraries and its collection are still in developmental stage.

Sl. No.	Name of the University	Analog /Print Collection	Digital Collection
<b>Academic Universities</b>			
1.	Jadavpur University	600,000 books & 1391 print journals	850 e-books , 9000 e-journals,15 databases
2.	University of Calcutta	Ten lakh books	e-books and e-

		and more than 1500 print journals	journals & databases from almost all publishers, 4000 subscribed e-journals
3.	Rabindrabharati University	Approx. 1 lakh books and 304 print journals	e-resources accessed through UGC-Infonet programme
4.	University of Burdwan	1,58,962 books and 300 print journals	e-resources accessed through UGC-Infonet programme
5.	University of Kalyani	150000 books and 110 print journals	e-resources accessed through UGC-Infonet programme
6.	Vidyasagar University	71,877 books and 125 print journals	e-resources accessed through UGC-Infonet programme
7.	Viswa Bharati University	700000 books and print journals 20000	e-resources accessed through UGC-Infonet programme and 5000 e-books and 5000 e-journals, 2databases
8.	University of North Bengal	1,59,552 books and 742 print journals	e-books and databases accessed through UGC-Infonet, 5550 e-journals
9.	University of Gour Banga	Library is in developmental stage	
10.	Aliah University	Library is in developmental stage	
11.	West Bengal State University	Library is in developmental stage	
12.	Indian Statistical Institute (ISI)	129000 books and 800 printed journals	700 e-books and 800 e-journals
<b>Agricultural Universities</b>			
1.	Uttar Banga krishi Viswabidyalaya	35000 books and 35 print journals	e-collections are being developed
2.	Bidhan Chandra krishi Viswabidyalaya	69460 books and 208 print journals	125 e-books, 175 e-journals and CeRA E-Resources Link (consortium)

			for e-resources in Agriculture)
3.	West Bengal University of Animal and Fishery Sciences	17000 books and 80 print journals	CeRA E-Resources Link (consortium for e-resources in Agriculture)
<b>Topical Universities</b>			
1.	West Bengal University of Technology	Library is in developmental stage	
2.	The West Bengal University of Health Sciences	Library is in developmental stage	
3.	Bengal Engineering and Science University	1.3 lakh books and many print journals	e-resources accessed through UGC-Infonet programme and INDEST
4.	National University of Juridical Sciences	14000 books	541 e- books and many law related e-journals
<b>Open University</b>			
1.	Netaji Subhas Open University	Approx. 10000 books	

**Table 1: Universities in West Bengal****6. Definitions**

- **Copyright**

Copyright grants exclusive rights to the creators of original literary, scientific and artistic works. Copyright only prevents copying, not independent derivation. Copyright protection begins, without formalities, with the creation of the work, and lasts (as a general rule) for the life of the creator plus 50 years (60 years in India and 70 years in the US and EU). It prevents unauthorized reproduction, public performance, recording, broadcasting, translation, or adaptation, and allows the collection of royalties for authorized use. Computer programs are protected by copyright, as software source and code have been defined as literary expression (CIPR 2002).

- **Fair Use or Fair Dealing**

Subject to certain conditions, a fair deal for research, study, criticism, review and news reporting, as well as use of works in library and schools and in the legislatures, is permitted without specific permission of the copyright owners. In order to protect

the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. Some of the exemptions are the uses of the work

- i. for the purpose of research or private study,
- ii. for criticism or review,
- iii. for reporting current events,
- iv. in connection with judicial proceeding,
- v. performance by an amateur club or society if the performance is given to a non-paying audience, and
- vi. the making of sound recordings of literary, dramatic or musical works under certain conditions (Copyright Act,1957)

- **e-resources**

Resources that can be accessed with a computer. May be stored on CD-ROM (Glossary, National Library of New Zealand (1999).

- **Gross Domestic Product (GDP)**

The total market value of all final goods and services produced in a country in a given year, equal to total consumers, investment and government spending, plus the value of exports, minus the value of imports (Investorwords.com). GDP is commonly used as an indicator of the economic health of a country, as well as to gauge a country's standard of living.

- **Purchasing Power Parity (PPP)**

An economic theory that estimates the amount of adjustment needed on the exchange rate between countries in order for the exchange to be equivalent to each currency's purchasing power. In other words, the exchange rate adjusts so that an identical good in two different countries has the same price when expressed in the same currency. For example, a chocolate bar that sells for C\$1.50 in a Canadian city should cost US\$1.00 in a U.S. city when the exchange rate between Canada and the U.S. is 1.50 USD/CDN. (Both chocolate bars cost US\$1.00.) (Investopedia)

## 7. Importance of the Study

Let us find out why and how the present study is relevant and important for the other parts of the world. Presently world population is 7 billion (approx.) and out of this, 6 billion (approx.) people live in developing or less developed countries (PRB, 2011). The world is becoming knowledge economy where acquiring knowledge through higher education has become important than ever before. It is quite understandable that number of universities and total enrolment in higher education in developing countries is far more than developed countries. They are chronically underfunded but face escalating demand - approximately half of today's higher education students live in the developing world (Task Force on Higher Education and Society, World Bank 2000). Characteristically universities in the developing nations including universities even in some European countries and in the Americas are of similar nature in terms of

poor infrastructure, under qualified faculty, outdated teaching-learning process, underdeveloped curricula, poorly taught students, substandard research, non-transparent university governance and administration. Besides other parameters like low Gross Domestic Product (GDP) and low Purchasing Power Parity (PPP) contributes positively to the negative qualitative growth of the universities in the developing world. Low GDP and low PPP of a country clearly indicate poor affordability to purchase or access learning resources by the higher education students of that country. Almost all universities in the developing countries suffer from the same features. Products of the existing academic system in the developing countries specially from India and China serving everywhere in developed countries. Thus it would not be incorrect to focus on the universities in West Bengal, a state of India, as a developing nation represent the universities of other developing countries as a sample. This is how the present study is relevant also for universities in the other developing world.

University as a system promotes and propagates scholarship through the ages. It creates knowledge and also makes the premise for future research. Creation of new knowledge in every frontier is essential for human civilization. Traditionally Indian culture from the ages of the Vedas has always been emphasised on the purity of knowledge. Purity of knowledge stems from purity of contents on which future knowledge creation is dependent. Academic honesty and integrity are equally important during the creation of knowledge. It is a very delicate issue on which usually university academic community do not feel very comfortable. But issues are so important that is directly connected with country's economic development and potential impediment for becoming knowledge economy. Importance of the present study is that it has addressed the issue of fair dealing, academic integrity and copyright awareness among academic community in the universities of West Bengal as a representative sample of universities in the developing countries. It will surely help in identifying the points which must be redressed in order to bring well articulated and well defined copyright management policy in the universities of developing nations to promote and ensure quality of knowledge.

## 8. Literature Review

A primary mission of the University community is the exchange and development of ideas and information. This brings us into daily contact with the expressions of those ideas embodied in print media, audio and video media, and computer media, among others. Universities are the producers as well as consumers of such expression. Many of the works containing these ideas are copyright protected and the consequences of infringement can be quite serious, therefore, an understanding of the impact of the copyright laws on our ability to utilize these works is very important.

Copyrights at universities are no longer incidental niceties of scholarship; they are increasingly the result of massive investments in equipment and personnel, and they are the deed of rights to potentially lucrative creations (Peterson, 1985). Courts originally developed fair use to dismiss cases of minute or socially beneficial infringements, and the doctrine was largely a rule of reason; courts could excuse and infringement if it "reasonably" should have been allowed (Glenny and Dalglish, 1973).

It is easy to imagine that a system seriously out of balance either way would hurt progress in science and the arts; no protection for authors might mean that fewer would be willing to invest the time and energy to create works; total control for authors or publishers over their

works might severely restrict the public's use of the ideas contained in the works to develop new or derivative works or ideas. "Fair use" is the concept that provides balance between the two extremes (Harper 1993).

In the university context, however, fair use is intrinsically aligned with the notion that education deserves preferential treatment and should not be unduly inhibited. Fair use undoubtedly gives special deference to academic needs, although Congress and the courts have made clear that a non-profit educational purpose is no free license to appropriate protected works. Nor should it be. Any open-ended claim would eradicate scores of creative works that depend on copyright system for survival. Thus, fair use for education must be held to reasonable limits; within those limits a privilege for education is justified and indeed imperative for achieving copyright's goals (Crews 1993).

The world of copyright ownership in the university is in flux. This is a recent development. Before 1987, most believed that scholars owned their creative works, even though they were made for the classroom or during working hours. By owning one's creations under the "teacher exception," a teacher had freedom to use the works at other universities, make alternations and new creations from the initial works, and occasionally reap profit from publishing textbooks or, in rare cases, monographs. Today, the growing trend is to see the "teacher exception" as created not by judge-made law, but by individual university policies. Universities decide what they want to own and what they give *back* to the scholar/teacher creator (Townsend 2003).

## 9. Methods

The academic community of the universities as a population is subdivided into 3 subpopulations. The subpopulations are overlapping, and together they comprise the whole population. Subpopulations in the universities are in the following:

1. Librarians
2. Teachers
3. Researchers/students

The subpopulations are called *strata*. For collecting data, it is more appropriate if we consider *Stratified Random Sampling* (Cochran, 2006).

Reason for choosing this sampling technique is many but principal ones are:

- a. Administrative conveniences like subpopulations are geographically distributed over a long distance.
- b. Sampling problems with human population.
- c. Heterogeneous population consists of subpopulations that are internally homogenous.

As the study is targeted to test the hypothesis and the study demands precise analysis of target concepts, questionnaire (both online as well as offline) was employed to collect the numerical data. Another reason for opting quantitative method for research is that it is more efficient than qualitative data.

From each subpopulation 100 individuals are randomly selected and approached to respond to the questionnaire. Of them Total 171 Stakeholders responded to the questionnaire through personal visit, sending online questionnaire (using SurveyMonkey Web Platform) through e-mail, and uploading into the college library website (<http://librarybdc.webs.com/research.htm>). Of them 35 are Librarians including Deputy

Librarians, Assistant Librarians (Grade I and II) and Information Scientists, 66 are University teachers including Professors, Associate Professors and Assistant Professors of Science, Arts, Commerce, Technology, Agricultural Science and Veterinary Science and 70 are Research Scholars/students in all the disciplines and University Students.

## 10. Result

There are 13 questions (*table 2*) in the questionnaire that were responded by the respondents.

Sl. No.	Questions	Yes	No
1. *	Are you aware of fair use of the copyright resources (analog as well as digital)?	53	118
2. *	Do you share your soft copies of research article(s)/chapter(s) of a book or the whole book collected from your university e-library or digital library among your friends or others?	150	21
3.	The Government of India very recently introduced the Copyright (Amendment) Act, 2010 to comply with our International obligations and with the stated intention to making it fit for the purpose of digital age. Are you aware of it ?	20	151
4. *	Do you use Copyrighted works for only non-commercial purposes like teaching-learning/research or not?	143	28
5.	Currently Fair Dealing only covers literary, dramatic, artistic, and musical works. Would you support the extension of fair dealing to cover computer programs, databases, sound recordings, film and broadcast?	98	73
6.	Do you support in the age of internet, you should be able to copy parts of a literary work, research article, parts of a news broadcast, film computer programs, databases and sound recordings?	162	09
7. *	Users should be able to copy the heart/core of a book or an article.	93	78
8.	Do you think there should be different laws for analog and digital resources and different laws should apply to their access?	133	38
9.	Users should be able to have a copy of a research article sent to his or her personal e-mail address rather than having to be present in the library or in the university.	155	16
10. *	Will you allow your books/research articles make publicly available in the web or using other means of broad dissemination?	41	130
11. *	Do you agree that to protect the interest of the copyright holder a library should monitor the material a user/researcher uses (even if the material is e-mailed, downloaded and accessed through his/her personal PC)?	42	129
12. *	Do you think sometimes it is needed to make multiple	109	62



	copies of book/articles other than for classroom teaching and distribute it to others?		
13. *	Do you have a well-defined Access Management Policy and Copyright Management Policy in your university in order to stop all kinds of plagiarism and to retain academic integrity leading to academic excellence?	02	169

**Table 2: Questionnaire**

Here we consider 13 parameters for testing the hypothesis. But from the viewpoint of the hypothesis considering the few factors of fair use of copyrighted works, eight (marked with asterisk \*) of them (assumed) are most responsible parameters. Factors of fair use are in the following:

- Factor 1 - Purpose of Use
- Factor 2 - Nature of Copyrighted Work
- Factor 3 - Relative Amount
- Factor 4 -Market Effect
- Factor 5- Intention

## 11. Analysis

We consider all parameters but mainly zeroed in on only those parameters/factors which are most suitable one for our purpose. For this we use one proportion test for each of the parameters.

Let  $p$  = Proportion of awareness of fair use of the copyright resources (analog as well as digital).

Null hypothesis,  $H_0: p \geq 0.5$  (it implies that people are aware of fair use of the copyright resources) against alternative hypothesis  $H_1: p < 0.5$ . For this we use well-known statistical software (MINITAB version 13) and after computation we see that Sample proportion = 0.309942 and  $p\text{-value} < 0.05$ . Hence we conclude that awareness of fair use of the copyright resources (analog as well as digital) is not so popular among the academic community of the university. Similar deductions (*table 3 and 4*) are applicable to the rest of the parameters.

Parameter	Null Hypothesis
1. *	Proportion of awareness of fair use of the copyright hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
2. *	Let $p$ = Proportion of sharing of soft copies Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
3.	Let $p$ = Proportion of Awareness regarding Copyright Act/Amendment Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
4. *	Let $p$ = proportion of use of copyrighted works for non-commercial purposes Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .

5.	Let p=proportion of preference of extension of fair dealing to e-resources Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
6.	Let p=proportion of support for partial copying for e-resources Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
7. *	Let p=proportion of preference to copy core of a book/article Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
8.	Let p=proportion of liking for different laws for digital or e-resources Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
9.	Let p=proportion of users like to have a soft copy of e-resources Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
10. *	Let p=proportion of users likely to make their intellectual works available in the web/other means of free dissemination Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
11. *	Let p= proportion of users likely to monitor their activities for e-resources access/uses Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
12. *	Let p= proportion of users think making multiple copies is sometimes needed and its distribution Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .
13. *	Let p=Proportion of universities have access management policy and copyright management policy Null hypothesis, $H_0: p \geq 0.5$ against alternative hypothesis $H_1: p < 0.5$ .

**Table 3: Parameter-wise Null Hypotheses**

Parameter	Sample Proportion	p-value	Inference
1. *	0.309942	p-value<.005	Users are not aware of fair use of the copyrighted works
2. *	0.877193	p-value>.005	Users like to share their e-resources
3.	0.116959	p-value<.005	Users are not aware of any Act/Amendment

4. *	0.836257	p-value>.0.05	Copyrighted works are used for non-commercial purposes
5.	0.573099	p-value>.0.05	Users favour fair use of e-resources
6.	0.947368	p-value>.0.05	Users support partial copying of e-resources.
7. *	0.543860	p-value>.0.05	Users like to copy core of a book or an article
8.	0.777778	p-value>.0.05	Users want different laws for e-resources and its access
9.	0.906433	p-value>.0.05	Users like to own a copy of e-resources
10. *	0.239766	p-value<.0.05	Users disallow/dislike to make their intellectual works publicly available in the web or other means of free dissemination
11. *	0.245614	p-value<.0.05	Users do not like their access and use monitoring by the library
12. *	0.637427	p-value>.0.05	Users want to make multiple copies sometimes
13. *	0.011696	p-value<.0.05	Presently no University has any Access Management Policy and Copyright Management Policy

**Table 4: Parameter-wise p-value and inferences****12. Discussion**

From the above analysis of the resulted data, it is revealed that users of all categories are more or less equal in terms of copyright illiteracy. Very few of them are aware of fair uses of the copyrighted works and Copyright Act and subsequent Amendments. Though they have claimed that they use the resources for only non-commercial purposes but at the same time they likely to make multiple copies and its free distribution if the situation demands so. These two events are contrasting and their intentions are questionable. Users favour different laws for use and access of e-resources but in other hand they like to have own a soft copy of the e-resources for distribution and future uses. Users like to copy the core/heart of a book or an article but they do not want to share their intellectual works with others free of cost. Users do not want their activities (access/use of e-resources) are monitored by the library or by the

appropriate authority. No university in the present study has either any well-defined Copyright Management Policy or any Access Management Policy for the encouragement of intellectual works, to restore high level of academic integrity and to combat plagiarism among academic community of the universities. Questions were intended for cross checking and designed to get corroborating evidences from the responses. It has showed very disturbing trend and not conducive for the promotion of scholarship, academic honesty and integrity and highly discouraging for the creators and innovators.

### 13. Conclusion and Recommendations

In the conclusion, it can be said that our primary hypothesis is completely rejected on the basis of above test and study. Thus we can say that copyrighted resources (both analog and digital) are being used in the universities in West Bengal without maintaining the principles of fair use practices. Presently there is no Access Management Policy and Copyright Management Policy in any University under the study. Thus it is highly recommended that academic community in the universities are made aware and literate about the copyright acts, specially to comply with the principles of fair use practices for the promotion of academic integrity, scholarship and to reward the creators and innovators. Users must be educated and make them understand that with the inception of ICT and the revolution of internet and communication technology the conception of purchase of print (analog) resources are being replaced by the access and thus there must be Well-defined Access Management Policy in the Universities based on the principles of fair use practices.

To make a balanced copyright management and access management policy in the universities few other socio-economic factors of that nation must be considered otherwise the present situation will not improve. Universities should be well funded to promote copyright culture as poor affordability in the developing parts of world is one of the main factors of non-compliance of copyright. Degree of copyright compliance should be based on the economic conditions of the concerned country. It cannot be equated with the developed countries. International copyright laws, acts, treaties must be amended accordingly and should give equal opportunity of learning through equal access to the quality content among the higher education students of the developing nations. Universities may explore several paths to generate and collect fund to feed its research and other intellectual works.

Finally like in West Bengal, universities in the other developing nations need to design a well-defined Copyright Management Policy as well as a judicious funding policy, considering the holistic approach to improve the present situation, to combat the rampant plagiarism and to promote healthy copyright culture among the academic community.

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