

Open Letter to OUP to refrain from appealing in the Delhi University photocopy case (The Chancellor, Masters and Scholars of the University of Oxford and Ors. v. Rameshwari Photocopy Services and Anr.)

Dear Delegates of the Oxford University Press,

We write to you as concerned Oxford University academics, students and alumni in relation to the recent decision of the appellate bench of the Delhi High Court. As you will appreciate, this judgment affirms the right of students to access photocopied copyrighted materials, so long as this is justified by the purpose of educational instruction. Pertinently, the court gave a meaningful, purposive interpretation to section 52(1)(i) of the Indian Copyright Act, 1957, which allows the reproduction of any work by a teacher or a pupil in the course of instruction. And refused to grant an injunction against the creation of course packs (containing excerpted material from copyrighted texts) by universities and other educational institutions.

We strongly urge you to desist from appealing this progressive decision. Given the increasing privatisation of knowledge goods across the world, the cost of education has reached prohibitively expensive levels. Even resource-rich universities in developed countries are reeling under the impact of this sharp increase in prices. Institutions such as Harvard University have urged their faculty members to publish in more open access journals, citing the exorbitant cost of subscriptions to be “academically restrictive” and “fiscally untenable.” In this context, the High Court decision is a much-welcomed development, particularly for resource-constrained developing countries such as India.

Notwithstanding state subsidies in the Indian education system (and Delhi University is a key example here), students continue to struggle to afford a quality education. The latest editions of several academic texts are often unavailable, and have to be imported at considerable cost. This, despite the fact that a number of academic texts and reference materials are often created by academics working at publicly-funded institutions, as a part of their primary mission to disseminate their scholarship widely. Academic publishing benefits from the free labour of academics (in the form of peer reviews), as well as public funding, such as those towards university library budgets.

It is for this reason that a number of OUP authors and academics protested the filing of the lawsuit that led to this judgment. These academics indicated that they were happy for students and universities to utilize excerpts of their books, through the creation of course packs. We reproduce relevant extracts from their statement below :

“It has come to our attention that Oxford University Press along with Cambridge University Press and Taylor and Francis have filed a petition in the Delhi High Court claiming copyright infringement by Rameshwari Photocopy Services along with Delhi University as a co-defendant. We are given to believe that the infringement that has been claimed is with respect to course packs that are used as a part of various social science subjects including history, politics, economics, sociology etc. As authors and educators, we would like to place on record our distress at this act of the publishers, as we recognize the fact that in a country like India marked by sharp economic inequalities, it is often not possible for every student to obtain a personal copy of a book. In that situation the next best thing would have been for multiple copies of the book to be available in the library so that students are able to access

these books without any difficulty. But given the constraints that libraries in India work with, they may only have a single copy of a book and in many instances, none at all. The reason we make course packs is to ensure that students have access to the most relevant portions of the book without which we would be seriously compromising their education.

The argument made by publishers for strong copyright enforcement is based on presumed losses caused to them. Given the pricing strategy followed by publishers, we do not believe that students are the primary market for these books and hence it would be disingenuous to presume that every photocopied article or book would be a lost sale. We would also like to refute the claim that academic publishing is sustained by the investments made by publishers. This claim hides the fact that most academics are able to write books because they are supported by public infrastructure and money by virtue of being employed by universities or research centers. Academic writers are paid salaries and make their living from the university system, which in India is still largely government subsidized. Academic authors could not possibly make anything close to a living from the royalties that publishing houses offer them. This means in effect that the profits of academic publishing houses are under-written by tax-payers' money, and there is a huge public contribution to the profits made by academic publishing houses.

In most countries in the world there are copyright exceptions made for educational uses and this provision is most critical in developing countries in which the cost of books, in proportion to incomes, is exorbitant.

We would finally like to place on record that the petitions filed by the publishers claim that they are acting on behalf of authors and representing the interest of authors. As academics and authors we believe that the wider circulation of our work will only result in a richer academic community and it is unfortunate that you would choose to alienate teachers and students who are indeed your main readers and we urge you to consider withdrawing this petition."

During the course of the hearings, the lawyers for the publishers' cohort proposed a photocopying licence from the Indian Reprographic Rights Organisation (IRRO) as an alternative to the status quo. However, a photocopying licence presumes that the making of course packs is itself an illegal act, or in this case, an act of "infringement." The creation of course packs, as demonstrated by the petitioners and affirmed by the statement of the authors and academics, does not constitute an infringement, and falls squarely within Section 52(1)(i) of the Indian Copyright Act.

The history of collecting societies in India has been riddled with instances of mismanagement and malfeasance – and the IRRO itself has come under attack multiple times for its opacity and lack of good governance. This does not lead us to have confidence in the proposed licencing regime. In any case, the IRRO proposal limited the copying to only 15% of a copyrighted work. Much higher proportions have been held to constitute an educational "fair use" even in the world's largest capitalistic economy, namely the US. Further, when a similar system to the one proposed by the publishers was implemented in Canada, collecting societies ratcheted up their licensing fees to exorbitant levels, causing some universities to walk out of these licensing arrangements. The evidence

indicates that the alternative suggested in court will most likely fail to secure the objectives it seeks to achieve.

In the light of these issues, we are truly dismayed that a progressive publisher like OUP would endorse the IRRO as the way forward at this stage. A consideration of the IRRO as a feasible option might be possible in the future, where the institutional malaise that it suffers from is remedied. However, a policy decision as to whether or not to go in this direction is the prerogative of the sovereign republic of India, in much the same way that amending the law to provide for more equitable economic appropriation of the proceedings of publishing might be. As of now, the law is clear, and given the nature of India's stratified educational constraints, we urge you to adhere to it.

Therefore, we urge you not to appeal the Division Bench's progressive judgment. Given the University of Oxford's reputation as a truly global institution that has recently tried to foreground diversity and inclusion, we would be disappointed if this step is undertaken. As students, authors and academics who have been associated with OUP in different ways, we are greatly aggrieved by this curtailment of Indian students' access to knowledge.

Finally, we understand that OUP may have been a reluctant party in this litigation that has resulted in the alienation of its own authors, students, and patrons. We therefore urge you to refrain from litigating further on this matter. Instead, we encourage you to work with all stakeholders in the academic ecosystem to ensure that India's progressive copyright exception is deployed to the fullest extent possible. This, in effect, will promote access to education in India, in a fair and legitimate manner. In the same vein, we urge you to take steps to ensure that OUP's titles are sold at a more affordable price in India and other countries, particularly where they are intended for a student audience.

Many thanks,