

A GUIDE ON FAIR USE CASES IN INDIA*

1. Education and Research

Type of Use	Whether Permitted ?	Legal Provision	Case Details	Relevant Paragraphs & Points of Reasoning
A. Guide books				
Publishing notes on original books (including certain quotations from them) that serve as a guide to the students to understand the books	Yes	52(1)(a)(ii) - fair dealing for the purposes of criticism or review (52(a)(ii) earlier)	Romesh Chowdhry and Others v. Kh. Ali Mohamad Nowsheri and Others (Jammu and Kashmir High Court, 1965)	Paras 6 and 8 - no colourable imitation for profit - in the nature of review of original books - title of notes clearly shows that it's a guide - quotations given to help explain their significance

* This table includes cases under The Copyright Act, 1957 only.

<p>Publishing guide books containing meanings of difficult words used in original textbooks, annotations, and probable questions with answers</p>	<p>Yes</p>	<p>52(1)(a)(i)</p> <p>- fair dealing for the purposes of personal or private use including research</p> <p>(52(a)(i) earlier – fair dealing for the purposes of research or private study)</p>	<p>V Ramaiah v. K Lakshmaiah (Andhra Pradesh High Court, 1988)</p>	<p>Para 8</p> <ul style="list-style-type: none"> - using the language couched in original book doesn't necessarily mean piracy - only a guide written to help students - acknowledges author of original book
<p>Publishing guide books containing step-by-step process of arriving at solutions to problems contained in original textbooks, but not containing the theoretical or explanatory content present in them</p>	<p>Yes</p>	<p>52(1)(a)(ii) – fair dealing for the purposes of criticism or review</p>	<p>The Chancellor Masters & Scholars of The University of Oxford v. Narendera Publishing House and Others (Delhi High Court, 2008)</p>	<p>Paras 35-38</p> <ul style="list-style-type: none"> - neither pretend to be textbooks nor reproduce all that is contained in them - designed to cater to the students weak in their understanding of the subject - purpose and manner of use of questions different - transformative, amounting to

			<p>The Chancellor Masters and Scholars of The University of Oxford v. Narendera Publishing House and Others (2011) (see discussion on the blog here)</p>	<p>review</p> <p>Paras 115-116</p> <ul style="list-style-type: none"> - agreed with Single Judge’s reasoning above - no copy of theoretical or explanatory content of each chapter - only takes questions from exercises at the end of each chapter to provide step-by-step process for reaching the answers, which is not provided in original book - meant for easy and better understanding of students
<p>Publishing guide books reproducing all exercises along with answers from original books, but not reproducing theoretical portions, appendices, additional exercises,</p>	<p>Yes</p>	<p>52(1)(a)(ii)</p> <p>- fair dealing for the purposes of criticism or review</p>	<p>Syndicate of The Press of The University of Cambridge on Behalf of The Chancellor, Masters and School and Others v.</p>	<p>Paras 79-87</p> <ul style="list-style-type: none"> - aim and pattern of use completely different

<p>illustrations etc., giving different introduction for exercises, publishing answers together with the questions instead of at the end of the book, providing translation in Punjabi and Hindi, and not confining to the subject matter of the original books</p>			<p>B.D. Bhandari and Others (2011) (see discussion on the blog here)</p>	<ul style="list-style-type: none"> - not confined to grammar i.e. the subject matter of the original book, deals with other aspects of the English subject i.e. prose, poetry etc. - structured on pattern of English exam - in three volumes and priced 6 times higher - added own introduction to some units - contained syllabus for each year and also translation from English to Hindi and Punjabi - answers given at the end of each exercise itself - omitted certain questions to include only essential portions which are most likely to be prescribed by examiner, only syllabus prescribed portions incorporated - clear to customers/students that it's a
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				<p>guide – titles also completely different, no attempt to represent otherwise</p> <ul style="list-style-type: none">- in the form of a review of the original book, to enable students to give effective answers to questions that may be set in the exam- exercises given in a university prescribed book cannot be changed- intention to not merely copy as theoretical portions, addendums, additional exercises not copied- intention to provide a guide to understand prescribed books, one single book for cracking the English paper instead of separate books for text, poetry, essay writing, grammar, etc.
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		<p>52(1)(i)(ii) & (iii)</p> <p>(52(1)(h)(ii) & (iii) earlier)</p> <p>- reproduction as part of exam questions or answers</p>		<p>Paras 61-63</p> <ul style="list-style-type: none"> - not applicable as it's available only to a teacher or student and not a publisher - wouldn't come to the aid of commercial exploitation by publishers
B. Question papers/Questions				
<p>Publishing past years' question papers</p> <p>(in this case papers of CBSE Board examinations)</p>	<p>No</p> <p>(assuming not even if accompanied with answers, as defendant had stated that fact but it was not considered by the court)</p>	<p>52(1)(a)(i)</p> <p>- fair dealing for the purposes of private or personal use, including research</p> <p>(earlier, fair dealing for the purposes of research or private study)</p>	<p>Rupendra Kashyap v. Jiwan Publishing House (Delhi High Court, 1996)</p>	<p>Para 21</p> <p>- not available to a publisher for publishing a book for commercial exploitation, even though the book may be used or be meant for use in research or private study</p>

<p>Publishing a book containing reproduction of set of exercises and answer keys from another book</p>	<p>No</p>	<p>52(1)(i)(ii)&(iii) (earlier 52(1)(h)(ii)&(iii))</p> <p>- reproduction as part of exam questions or answers</p> <p>52(1)(a)(ii) (52(a)(ii) earlier)</p> <p>- fair dealing for the purposes of criticism or review</p>	<p>Syndicate of Press of University of Cambridge v. Kasturi Lal and Sons. (Delhi High Court, 2005)</p>	<p>Para 10</p> <p>- reproduction is not made as a part of the questions and answers; rather the complete set of questions and answer keys is copied from the original work</p> <p>Paras 7(a) & 11</p> <p>- Verbatim lifting of the text to the extent of copying the complete set of exercise and the key to such exercises can't be termed as a review, criticism or a guide to the original work</p>
<p>Uploading questions prepared by another in literary or video form (in this case, questions prepared for coaching of CAT aspirants)</p>	<p>No, if consideration is paid to educators for submitting the questions for upload</p>	<p>52(1)(i)</p> <p>- reproduction in the course of instruction or as part of exam questions or answers</p>	<p>Fermat Education v. Sorting Hat Technologies Pvt. Ltd. & Ors. (Madras High Court, 2018) (see discussion on the blog here)</p>	<p>- “Once consideration is paid for uploading materials, then it becomes a business venture and a responsibility is imposed on the defendants to ensure that they do not infringe the copyright of any another person”</p>

C. Course packs				
<p>Preparation of ‘course packs’ i.e. compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions</p>	<p>Yes, as long as the inclusion of the works photocopied (irrespective of the quantity) is justified by the purpose of educational instruction</p>	<p>52(1)(i)(i) - reproduction in the course of instruction</p>	<p>The Chancellor, Masters & Scholars of the University of Oxford and Ors. v. Rameshwari Photocopy Services and Ors. (Delhi High Court, 2016) (see details here)</p>	<p>Paras 30-80</p> <ul style="list-style-type: none"> - four factor fair use test, including qualitative and quantitative test, won’t apply to use under this provision - “so much of the copyrighted work can be fairly used which is necessary to effectuate the purpose of the use i.e. make the learner understand what is intended to be understood” - phrase ‘course of instruction’ means the entire process or programme of education as in a semester and is not limited to the process of teaching in the classroom; thus, includes preparation and distribution of course packs to students within its

				<p>ambit</p> <p>- Teachers /pupils aren't expected to purchase photocopiers, thus they can get materials photocopied through photocopiers</p>
D. Activities at educational institutions				
<p>Performance of a dance at an educational institution by its staff/students before an audience limited to them, students' parents/guardians and other persons connected with institutions' activities</p> <p>Performance of a dance at an educational institution before a non-paying audience if it comes within the purview of an amateur club or society</p>	<p>Yes</p>	<p>52(1)(i)</p> <p>(52(1)(i) earlier)</p> <p>- performance at educational institutions</p> <p>52(1)(l)</p> <p>- performance by amateur club/society</p>	<p>Academy of General Education, Manipal and Others v. B. Malini Mallya (Supreme Court, 2009)</p>	<p>Para 20</p>

2. Entertainment

Type of Use	Whether Permitted ?	Legal Provision	Case Details	Relevant Paragraphs & Points of Reasoning
I. Music				
A. TV broadcasting				
Broadcasting copyrighted songs on a TV channel	No, if the songs have no relevance to the programme telecast and it is not for purposes of review, criticism or reporting of current events	<p>Section 52(1)(a)(ii)</p> <p>- fair dealing for the purpose of review or criticism</p> <p>Section 52(1)(a)(iii)</p> <p>(section 52(1)(b) earlier)</p> <p>- fair dealing for the purposes of reporting current events</p>	<p>Super Cassettes Industries Ltd. v. Hamar Television Network Pvt. Ltd. and Ors. (Delhi High Court, 2010)</p> <p>(see detailed discussion on this decision on the blog here)</p>	<p>Paras 10.1, 10.2 & 11</p> <p>- musical works broadcasted had no relevance to the programme telecast by the defendant</p> <p>- they were neither used for the purposes of criticism or review nor shown to be necessary for the purpose of reportage of current events</p>

<p>Broadcasting small parts of copyrighted songs sung by a singer (originally performed by them for films) during a chat show</p>	<p>No</p> <p>However, defence of de minimis may be available</p>	<p>Section 52(1)(a)(iii) (52(b) earlier)</p> <p>- fair dealing for the purpose of reporting current events</p>	<p>India TV Independent News Service Pvt. Ltd. & Ors. v. Yash Raj Films Pvt. Ltd. & Anr. (Delhi High Court, 2012)</p> <p>(see detailed discussion on this decision on the blog here)</p>	<p>Para 12</p> <ul style="list-style-type: none"> - such programme cannot be labelled as one reporting current events - live audience is present - there's fun and humour in dialogues - merely because the artist speaks about herself and summarizes a pen-profile of her life, it would not be reporting current events
<p>Broadcasting clips of copyrighted works (sound recordings, cinematograph films etc.) from another's repertoire on a news channel</p> <p>(according to the defendant, 7-25 seconds long clips were played in connection with dissemination of news regarding the applause or</p>	<p>No, if its purpose is to just enhance the programme and not that of review or criticism of the works</p>	<p>Section 52(1)(a)(ii)</p> <p>- fair dealing for the purposes of criticism or review</p> <p>(Section 52(1)(a)(iii) on fair dealing for the purposes of reporting of current events and current affairs was not</p>	<p>Super Cassettes Industries Ltd. v. M/S. Shreya Broadcasting Pvt. Ltd. (Delhi High Court, 2019)</p>	<p>Para 11</p> <ul style="list-style-type: none"> - use of plaintiff's copyrighted work was not for its criticism or review - it was in a way to enhance the programmes of the defendant

appreciation won by the picture)		stated to have been invoked by the defendant)		
B. Internet broadcasting / online streaming				
Permitting streaming/filtering of another's copyrighted sound recordings on a website	No, if the website receives a fee or revenue from its sponsors or from third parties	Section 52(1)(a)(i) - fair dealing for the purposes of private or personal use	Saregama India Ltd. & Ors. v. Alkesh Gupta & Ors. (Calcutta High Court, 2013)	- such use amounts to commercial exploitation and cannot be termed as personal/private use
Making available another's repertoire of copyrighted songs over a music streaming/OTT platform	No	Section 52(1)(a)(i) - fair dealing for the purpose of private or personal use	Tips Industries Limited v. Wynn Music Limited and Another (Bombay High Court, 2019)	Paras 36 & 41 - selling and / or commercially renting copyrighted sound recordings for commercial benefit cannot be termed as fair dealing for the purpose of private /

		<p>&</p> <p>Section 52(1)(b)</p> <p>- transient/incidental storage of a work</p>		<p>personal use or conducting research</p> <p>- storage of copyrighted sound recordings on one’s platform and their customers' devices can’t be considered transient or incidental to the services provided when such offline storage (permanent or temporary) is the primary selling point/unique object of the business</p>
C. Festival Related Events / Religious Ceremonies				
<p>Playing music at Navratri Dandiya/Garba events or other festival related events where entry is subject to a fee</p>	<p>No</p>	<p>Section 52(1)(k),</p> <p>- utilising recording as part of amenities for residents or non-profit club’s activities</p> <p>Section 52(1) (l)</p> <p>- performance by amateur club/society</p>	<p>Devendrakumar Ramchandra Dwivedi v. State of Gujarat and Others (Gujarat High Court, 2009)</p> <p>(see discussion on this decision on the blog here)</p>	<p>Para 10-15</p> <p>- “Section 52(1), (k), (l) and (za) generally refer to non-profit performances of music and other non-dramatic works. Basic thrust is to exempt live performances of such works when there is no commercial purpose and when there is no admission charge and are used exclusively for educational,</p>

<p>Playing music in connection with a bonafide religious ceremony like Navratri Pooja, Aarti etc. or a marriage procession or other social festivities associated with a marriage or an official ceremony arranged by the Government</p>	<p>Yes, if no commercial purpose, no entry charge and/or admission proceeds used exclusively for</p>	<p>for non-paying audience, or for benefit of religious institution</p> <p>Section 52(1)(za)</p> <p>- performance in the course of any bona fide religious ceremony/official ceremony held by Government</p> <p>Section 52(1)(za)</p> <p>- performance in the course of any bona fide religious ceremony/official ceremony held by Government</p>		<p>religious or charitable purposes and not for any private financial gain.”</p> <p>-</p>
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	educational, religious or charitable purpose and not for private personal financial gain			
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