


Subject: Library and Information Science

Production of Courseware

 **-Content for Post Graduate Courses**



Paper No : 01 Knowledge Society

Module : 09 Intellectual Property Rights: Copyright



Development Team

Principal Investigator
&
Subject Coordinator

Dr. Jagdish Arora, Director
INFLIBNET Centre, Gandhinagar

Paper Coordinator

Prof K S Raghavan
Visiting Scientist, Centre for Knowledge Analytics
and Ontological Engineering (KAnOE), PES Institute

Content Writer

Dr Sanjeevi Amba
Retd Scientist, Central Leather Research Institute

Content Reviewer

Prof K S Raghavan
Visiting Scientist, Centre for Knowledge Analytics
and Ontological Engineering (KAnOE), PES

Intellectual Property Rights: Copyright

I. Objectives

The objectives of this module are:

- To give you an overview of IPR and its major facets in general;
- To explain in detail all aspects related to copyright issues including major treaties;
- To examine the implications for libraries and information centres

II. Learning Outcome

On completion of this module, you should have an idea of the different kinds of intellectual properties and the need for and importance of assigning intellectual property rights. You should also have a clear idea of the copyright regulations in force in India and their implications for libraries

III. Structure

1. Intellectual Property Rights (IPR)
 - 1.1. Introduction
 - 1.2. Categories of Intellectual Property
 - 1.3. IPR in India
 - 1.4. International IPR
2. Copyright
 - 2.1. What is Copyright?
 - 2.2. Terminology Associated with Copyright holder
 - 2.2.1. Copyleft
 - 2.3. What is a Derivative Work
 - 2.4. Licenses and Assignments
 - 2.5. Rights and Exceptions
 - 2.6. Public domain
 - 2.7. Orphan works
 - 2.8. Circumvention
 - 2.9. Creative Commons (CC)
 - 2.10. International Copyright Treaties
 - 2.11. Indian Copyright Act
 - 2.12. Copyright Protection in India
 - 2.13. Term of Copyright
 - 2.14. Fair Use of Copyrighted Works
 - 2.15. Copyright in LICs
 - 2.16. Institutional Repositories
 - 2.17. Libraries and Visually Impaired
3. Summary
4. Reference

1. Intellectual Property Rights (IPR)

1.1. Introduction

Intellectual Property Rights (IPR) related issues have been growing in importance especially since the coming into existence of TRIPS (described later) and its implementation in India. Advances in digital communication and technologies have been major factors that necessitate a proper understanding of all the issues involved. These have led to a situation in which the need for awareness of IPR-related issues among library & information science professionals (LISP) assumes great importance. The principal facets of IPR, their impact and implications for library and information work and service are discussed. As is to be expected the emphasis is on the areas of patent information and copyright. However, other IPR will be touched upon.

The term 'property' generally brings to mind two types of properties – immovable property such as land or buildings and movable property such as jewelry, shares, stocks, automobiles etc. Intellectual property can be considered a third category of property. Intellectual property is increasingly being recognized as of prime importance in the economy of nations. The basic features that apply to other types of property viz., that the owner of the property is free to use it as he/she wishes, provided

the use is not against the law, and to exclude others from so using that owned property apply just as well to intellectual property.

What exactly is ‘intellectual property’? The term is reserved for types of property that result from creations of the human mind, the intellect. It can be divided into copyright and related rights on the one hand and industrial property on the other. Industrial property covers patents, trademarks and designs. Rights of ownership are granted by the State. However, unlike the conventional types, the rights of the owner are limited to a specific period of time. The ‘time feature’ distinguishes intellectual property and differentiates it from other types of property. This time feature is mainly because a balance has to be maintained between two “contradictory” perspectives. These are:

- The individual’s right to enjoy the fruits of his/her intellectual endeavors
- The need for the society to better itself with the outputs of the intellect.

This is evident from the theories of copyright law. These are:

- Fairness, i.e. creators of original work of literature/art have to be rewarded for their effort;
- Welfare, i.e. the law should be such as to maximize total human welfare. Intellectual creations which are public goods have certain characteristics. They are non-rivalrous in that it can be enjoyed by many and not be restricted and non-excludable in that once enjoyed others cannot be prevented from enjoying it;
- Personhood, i.e. intellectual products are extensions of personalities of the creators and hence the creators must have power to control the use or modifications to the products (Later discussed under moral rights)
- Culture i.e. to promote the flourishing of culture by creating a conducive atmosphere.

1.2. Categories of Intellectual Property

- Trademarks - Marks, logos, names etc.
- Industrial Designs – e.g. a new shape for a bottle
- Patent - Inventions e. g. a new product or process of manufacture
- Copyright and Copyrights Related Rights - Literary, artistic and scientific works, books etc. Performances, broadcasts etc
- Geographical Indications - Geographical names indicating a product –

1.3. IPR in India

In India, the Controller General of Patents, Designs and Trademarks (CGPDTM) administers all matters pertaining to Patents, Designs, Trademarks, and Geographical Indications. The Indian Patent Office functioning under the Controller General is also recognized as an International Searching Authority and International Preliminary Examining Authority under the PCT (Described under the section dealing with Patents). The Rajiv Gandhi National Institute of Intellectual Property Management is also affiliated to the CGPDTM. CGPDTM is under the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. (<http://www.ipindia.nic.in/>)

Copyright is administered by the Copyright Office under the Ministry of Human Resource Development, Department of Higher Education. (<http://copyright.gov.in/>)

1.4. International IPR

World Intellectual Property Organisation (WIPO)

WIPO was established in 1967 to promote the protection of IP throughout the world through cooperation among states and in collaboration with other international organizations. In 1974, the WIPO became a specialized agency of the UN and is headquartered in Geneva. WIPO is responsible for promoting the development and harmonization of IP-related legislation, standards and procedures among its 186 Member States and handles the administration of 26 international treaties. The nine strategic goals of the WIPO were adopted by the member states in December 2009.

Trade Related Aspects of Intellectual Property Rights (TRIPS) (1994):

The TRIPS Agreement, administered by WTO, is an international treaty which has shaped IPR legislation and activities in countries around the world. It sets minimum standards for many forms of intellectual property including copyright. The TRIPS Agreement is applicable to all WTO members of which India is one. The obligations under TRIPS apply equally to all member states, however, developing countries were allowed extra time to implement the applicable changes to their national laws. The transition period expired in 2005 and India has amended its intellectual property laws to be in conformity with TRIPS regulations. It requires member countries to provide sanctions against copyright violations and specifies enforcement procedures, remedies, and dispute resolution procedures.

2. Copyright

With this general background of IPR we will look at various aspects of copyright and the care to be taken by LISP vis-à-vis copyright. 2.1. What is Copyright?

Copyright (and related rights) is a right of use given by the law to the creators of literary, dramatic, musical and artistic works for a specified period of time. It grants the creator of an original work the exclusive rights to its use and distribution. It also specifies who may use or copy such works and how and when it can be done. It protects the authors from unauthorized use of their works. A work has to be more than an idea and must be original.; a slogan in an advertisement is as entitled to copyright as a piece of music or a piece of literature.

Copyright protection can be applied to:

- literary works
- musical works
- dramatic works
- graphics such as photographs and paintings

- motion pictures or audio visual works
- TV programmes
- architectural and other artifacts
- software
- databases
- sound recordings

Ideas cannot be copyrighted; only the expression of ideas fixed in a tangible medium can get copyright protection. That is it can be written/printed or recorded on a CD or DVD or stored in a computer hard drive etc. Copyright protection is automatic in that it comes into existence as soon as a work is created.

2.2. Terminology Associated with Copyright holder

Copyright holder is generally the creator of the work. However, this varies from country to country. In some countries, when a work is created within the scope of employment then the copyright is held by the employer and not the employee who created the work. It is not always so in civil law countries where the employee holds the copyright. In India, for works made in the course of an author's employment under a contract of service, the employer is the first owner of the copyright. Some countries recognize only individuals whereas some recognize organisations and corporations also as authors. In India all government work is under copyright to the government. If joint authorship exists, the authors of the "joint work" will be recognized as the co-owners of the copyright in that work. The copyright symbol ©, introduced in 1952 by the Universal Copyright Convention, accompanied by the name of the copyright owner and year of first publication guarantees protection.

2.2.1. Copyleft

Finally, a brief mention must be made of copyleft. Copyleft is a general method for making a program or software free. It requires that users who have modified or extended the software also make their contributions freely available. (For more details see www.gnu.org)

2.3. What is a Derivative Work?

A derivative work is one that adapts or modifies an existing work, for example, a movie based on a novel, adaptations, translations etc. Copyright may be given to the work independent of the original work which has its own copyright. That is, they receive the same protection as the original work. Similarly, anthologies, collections of work also have their own copyright provided originality is demonstrated in the arrangement of collection or in the selection of material. For such derivative works, protection is granted “without prejudice to the copyright of the original”. This means that the author of the derivative work has to obtain permission for the derivative work from the original copyright owner.

2.4. Licenses and Assignments

When a work is licensed, the copyright holder authorizes others to engage in activities covered by the license, which specifies the purpose, duration, type (whether exclusive or not), the format permitted, and the intended audience. Compulsory licensing can be granted for works withheld from public. Copyright may also be permanently transferred to another party on contractual basis. The transfer may be partial or for all uses envisaged. For instance the author may transfer the right for a book he/she has written to be made into a play. However, separate permission will have to be obtained for staging the play. If it is to be made into a movie, the producer will have to obtain permission independently.

2.5. Rights and Exceptions

Two types of rights are spoken of in the context of copyright: economic rights and moral rights. Economic rights are the right to copy the work, which includes storing it electronically, the right to issue copies, to rent or lend it, to perform or display or to make adaptations or translations of the work. Moral rights give the creator of a work the right to be identified as the creator and the right to prohibit destruction or degradation of the work.

2.5.1. Copyright Infringement

This refers to unauthorized use of works without permission of the copyright holder. Infringement could also refer to the violation of moral rights. Infringement can be direct when one reproduces works (except for Exceptions specified) without getting prior permission or it can be indirect. Indirect infringement occurs when one aids, either wittingly or even unwittingly, to the exploitation of the work without permission. Plagiarism is when one passes off another's work as one's own without due acknowledgement. In such cases, both moral as well as economic rights are infringed upon. Damages can be claimed by the copyright owner for infringement. Infringement may also entail penal sanctions under copyright law.

2.5.2. Related Rights or Neighboring Rights

These are rights granted to protect persons other than authors who disseminate copyrighted works. They cover the rights of performers and broadcasters etc. who bring creative or organizational skill to the original work.

2.5.3. Rental Rights and Lending Rights

Rental rights cover situations wherein a work might be rented out for commercial purposes. Lending Right refers to situations wherein a work is given for use for free. The practice of libraries falls under the latter category.

There are statutory limitations on the rights mentioned above. Copyright statutes of all countries recognize the right to make reproductions of the protected work for academic purposes. An international yardstick has been provided in Article 9(2) of the Berne Convention against which exceptions to rights can be measured. This is referred to as the three-step test i.e. exceptions:

- Must be confined to special cases
- Should not conflict with normal exploitation of the work
- Should not prejudice legitimate interests of the author.

2.5.4. Provision of documents for the visually impaired

The Marrakesh Treaty adopted by members of WIPO in 2013, requires the adoption of copyright exceptions to improve access by print-disabled persons to copyrighted works. It allows the waiver of copyright restrictions in order for books to be available in formats such as Braille, large print text and audio books.

2.6. Public domain

Public domain refers to works that are not protected by copyright. It comprises the body of knowledge to which no one can establish or maintain proprietary interests - . the body of knowledge and creativity considered part of a common cultural and intellectual heritage to be exploited or used by anyone. This means that anyone may copy, reuse or share the created work. Public domain works have been collected by a number of organizations and can be found on the internet. These organizations include the Smithsonian Institution Public Domain Images, the Project Gutenberg collection of public domain electronic books, the Librivox collection of public domain audio books, and the Prelinger Archives collection of public domain films (including advertising, educational, industrial, and amateur films), among others.

The concept of public domain is of utmost importance to LISP and will be discussed later on.

2.7. Orphan works

This term denotes works that are still protected by copyright but whose copyright holder cannot be located. In such cases, it is essential for the LISP to take every step to trace the rightful owner. This becomes very important in the context of digitization as there are many precious documents, maps etc which belong to this category and which the LISP will not only have to preserve for posterity and for research but also make them available to users who need them. Permission to use the work can be obtained from the competent authority. LISP will have to check the guidelines for this. For instance, the European Union has given a directive on the permitted uses of orphan works. The directive has a set of common rules on the digitisation of such works.

(http://ec.europa.eu/internal_market/copyright/orphan_works/index_en.htm)

It is interesting to know about ARROW (Accessible Registries of Rights Information and Orphan Works towards Europeana), which is a project of a consortium of European national libraries, publishers and collective management organisations also representing writers. Arrow facilitates the identification of authors or the owners of works (text as well as images), whether it is an orphan work or whether it is in copyright or not etc. (<http://www.arrow-net.eu/>). The 2012 amendment to the Copyright Act 1957 (India) covers orphan works.

2.8. Circumvention

The widespread use of digital and communication technologies has made it easy for downloading, storing, retrieving, dissemination and reproduction of works in the digital format. Digital texts, conference materials, e-books and sound recordings are acquired by LIS. To prevent unauthorized copying, technology protection measures and Digital Rights Management (DRM) measures can be taken by the copyright holder of the work (creator/producer/distributor). These could be by encryption technologies, by a combination of hardware and software or by regional control measures which specify the region where the DVD can be played. At times, circumvention of such protections may be for legitimate reasons, such as when a library wants to make archival or backup copies of digital materials. However, circumvention of technology is an offense and is illegal, as specifically indicated in The Digital Millennium Copyright Act (DCMA).

2.9. Creative Commons (CC)

“Creative Commons is a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools”. (www.creativecommons.org). It provides the creator of a work ways to authorize specific uses of their work while retaining control over other uses. Creative Commons Licenses do not replace copyright and can be used only when the Licensor already has a copyright for the work. CC work along with the copyright, but enables the creators of the work to create their own licenses giving others the right to share, use or create derivative works. Further, most importantly, the people who use the work need not worry about copyright infringement provided they adhere to the conditions agreed to.

http://itlaw.wikia.com/wiki/EU_Database_Directive

CC offers a set of licenses. These briefly are:

- Attribution – work can be used by others but only if credit is given
- Use only for non-commercial uses
- No derivative works can be made
- Derivative works may be permitted but with specific provisos

CC 0 (CC “zero”) protocol is a universal waiver of copyright and enables the authors to place their works in public domain. This is of immense use to LIS in their digitization activities and also in providing access to such material. India also has a Creative Commons group.

2.10. International Copyright Treaties

Copyright law is country specific in that each country has its own copyright law and it is applied in accordance to the country in which the author is a citizen (The rule of territoriality). Several international treaties have been entered into to harmonize national laws. There are six international treaties relating to copyright of which four are managed by WIPO, one by the World Trade Organization (WTO) and one by the UNESCO. The treaties outline broad standards for member countries to follow for their own copyright legislation.

Berne:

The Berne Copyright Convention is for the Protection of Literary and Artistic Works of 1886. According to the WIPO (December 2013), 167 countries are parties to the Convention. The convention established three fundamental principles:

- The principle of “national treatment” meaning that under national law one cannot discriminate against works from countries that are party to the Convention giving foreign authors the same rights and privileges as domestic authors.
- The second is “independence” of protection. That is, countries must give foreign works the same protection that it gives to works emanating from their own country.
- Thirdly, it adheres to the principle of “automatic protection” in that it would not be necessary to register the work.

The Universal Copyright Convention (UCC):

The UCC was developed by UNESCO and adopted at Geneva in 1952 as an alternative to the Berne Convention for those states which disagreed with certain aspects of the Berne Convention. India is a member of the UCC

The Rome Convention:

Developments in technology necessitated another treaty as Berne Convention does not protect media but only printed works. This convention accepted by members of the WIPO in 1961, secures protection in performances of performers, phonograms of producers of phonograms and broadcasts of broadcasting organizations. Though India is not a member of the Rome Convention, the Copyright Act 1957 is fully compliant with the Rome Convention provisions.

WCT and WPPT:

The widespread use of digital and telecommunication technologies has facilitated widespread copying of copyrighted materials. Two treaties tackle this problem. One is the WIPO Copyright Treaty (WCT) and the other is the WIPO Performance and Phonograms Treaty (WPPT).

Indian Copyright Act

The Indian Copyright Act, 1957 came into effect from January 1958. It has been amended several times to meet national and international requirements. The 2012 amendments make Indian Copyright Law compliant with the Internet Treaties The Copyright Act covers the following:

- Literary works
- Dramatic works
- Musical works
- Artistic works

- Cinematograph films
- Sound recordings.

In addition to what has been mentioned about infringement earlier, acts that are also liable for punishment include:

- Making copies for sale or hire;
- Distributing illegal copies for trade such that it affects the economic interests of the owner;
- Importing infringing copies into India;
- Permitting the public performance of works without permission

The Act also includes computer software and stamps in its ambit. The Copyright Board, a quasi-judicial body under the Ministry of Human Resources Development is entrusted with the task of judging disputes pertaining to copyright registration, assignment of copyright, grant of licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations and works for certain specified purposes.

2.12. Copyright Protection in India

Section 40 of the Indian Copyright Act, 1957, in conjunction with the International Copyright Order 1999, accords foreign authors/owners the same protection in India to which the Indian citizens are entitled. Also protected in India through the International Copyright Order is the copyright of nationals of countries who are members of:

- The Berne Convention
- The Universal Copyright Convention
- The Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms
- The Multilateral Convention for the Avoidance of Double Taxation of Copyright Royalties
- The TRIPS Agreement

2.13. Term of Copyright

The duration of copyrights varies from country to country. The minimum duration of copyright protection under Berne Convention is 50 years. In the European Union, and in the US, the duration is author's life plus an additional 70 years. In India, copyrights are protected for a period of 60 years from the beginning of the calendar year next following the year in which the author dies. In the case of original literary, dramatic, musical and artistic works, the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations, the 60-year period is counted from the date of publication.

2.14. Fair Use of Copyrighted Works

When does infringement of copyright not take place? When can a work be copied? These, termed as “fair use”, are spelt out in Article 52 of the Copyright Act. Some of them of relevance to us are:

- Single copy for private, personal and non-commercial purposes, for research and study.
- Criticism or review of a work;
- The making of copies or adaptations of a computer program by the lawful possessor of such computer program
- The making of back-up copies purely as a temporary protection against loss, destruction or damage in order to utilize the computer program for the purpose for which it was supplied.
- The use of work for the purpose of reporting current events in a newspaper etc. or broadcast
- The use of the work for the purpose of a judicial proceeding
- The reproduction or publication of a work prepared by the Secretariat of a legislature.
- The reading or recitation in public of any reasonable extract from a published work
- The reproduction by a teacher or a pupil in the course of instruction, as part of the questions to be answered in an examination, in answers to such questions
- The making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India.

The 2012 amendment with regard to fair use now covers all works (except software), in effect covering sound recordings and video as well. This will enable one to make personal copies of songs and films, to make copies for research, to use film clips in classrooms, etc.

2.15. Copyright in LICs

This is discussed in the context of the activities given below:

- Provision of copies
- Transfer of copyright
- Inclusion of photographs
- Online database access
- Creation of websites
- Digitization activities

Provision of Copies

LISP have traditionally been requested to supply photocopies of materials available. This activity is undertaken when the end use is for private, research and educational purposes as per exceptions in most copyright laws. However, even here great care and diligence has to be observed. If a library has as members people from the industry or a doctoral student sponsored by a commercial firm. and supplies photocopies to them is there a violation of copyright as it is not being

used for academic purposes? The purpose for which the photocopy is made decides whether it is commercial or not. This has to be clarified first and policies drawn up by the LIC. While providing photocopies, libraries generally require the requestor to sign a form stating that the material being requested for is for academic purposes only. Certain copyright legislations of some countries limit copying to a single article per issue (UK); some countries restrict photocopying to form of publication such as books or periodicals. At times LISP may prepare course packs consisting of chapters from books, articles, essays etc. for use by students in consultation with the teaching staff. In such cases also, LISP must take into account copyright provisions for each and every one of the materials in the pack. The Rameshwari Copyright Case in 2013 in which three publishers filed a suit against Delhi University and a photocopy centre in which they claimed that photocopied course material is a violation of Copyright Act shows that this is an area which is still grey. (The Hindu, June 17, 2013). The Times of India in its 19th July 2010 issue carried a news item about how students using the cut and paste feature in preparing reports are violating copyright. Librarians can create an awareness of such problems among the students and that internet material is also copyrighted.

Transfer of Copyright

In Institutions where scholarly publications are the norm and signing of copyright transfer forms is done by the researcher, LISP can make the scholars aware of the Author's Addendum to Copyright transfer forms which deals with Authors' Retention of Rights as given by SPARC (Scholarly Publishing and Academic Resources Coalition)(www.sparc.org), Science Commons etc. Further, wherever possible, the LISP would have to make the scholars aware of programs such as SHERPA/ROMEO (www.sherpa.ac.uk/romeo) which describe the policies of various publishers regarding copyright and posting papers in institutional repositories either as pre-prints or post-prints and so on.

Assignment of software may be done for use in information activities by software developers. LISP must be fully aware of the ramifications, terms and period of use, restrictions, etc when they enter into an agreement for the use of the software in the LIC. Similarly, they should also be aware of technology protection measures/circumvention and negotiate with sellers regarding archiving of software/making copies so that they have access to the software in case there is any trouble. The Copyright Act Amendment, 1999 brought forth a few changes in the "fair use" provision pertaining to computer software. It permits making of copies or adaptation of the computer program from a legally obtained copy for non-commercial personal use".

Inclusion of Photographs

At times, the organisation of which the LIC forms a part might prepare materials for teaching, handbooks for circulation at seminars or for commercial purposes such as textbooks or monographs. In such cases, the LISP will not only have to be aware of the need for getting copyright permission separately for photographs to be included but also be aware of the different duration for various materials such as text and photographs.

Online Databases Access

Today's LICs subscribe to online databases or e-journals. Access privileges are covered by licenses. The LISP should first take care to ascertain the extent of material that is covered by the License. Is it only the abstract or the full text? Does the license include graphics and images and can they be printed if required? The use that will be made of the material should also be clearly spelt out in the license. Some of the questions to be considered include:

- Whether downloading or printing will be permitted and if so, the extent to which these can be done
- Whether such articles can be part of a course pack for students; if the library is part of a consortia
- Whether occasional access to journals not specifically subscribed to by the library but which is part of the consortial package be permitted
- Whether the forwarding/scanning of the article to another member of the consortia be allowed
- Whether the exceptions mentioned under the copyright act would be applicable to licensed materials also

If the organisation served by the LIC or the LIC itself has more than one campus, then the license should clearly specify that access and downloading of material is permitted for all the campuses and centers. Another question would be that of downtime when access to online databases or journals would not be possible. The Licensor should specifically state the downtime if any and the penalties that will be imposed if it is exceeded. The term of the license should also be specifically stated whether access is for a limited period of time or for perpetuity. If the latter, then updates to software have to be provided to the LICs whenever required to access the online material. Access must be assured when mergers and takeovers take place among the publishers. If a license is not renewed then access to back numbers of the journals which had been subscribed to should also be ensured. Many of the questions raised here rightfully relate to consortia and policies regarding them. However, as downloading and distribution of material come under the ambit of copyright they are mentioned here.

The Internet has expanded access to online databases and e-publications in a big way and therefore procurement of individual articles/parts of digital works such as papers in conference instead of the whole journal/proceedings etc is also gaining ground. Copyright fees would have to be paid in such instances. LISP will have to budget for paying copyright fees for individual items which are downloaded.

Websites Creation

LISP, as part of their information services, have been creating local portals for their users. There has been much discussion on whether such an action infringes copyright. When are the creators of the links responsible for indirect/direct links to infringing material? Deep linking and use of frames cause most problems. Many websites have given clear guidelines regarding linking to their sites. These have to be studied by the information professionals and permission obtained before linking. It would be in their own interests and that of the organisations

which they represent if the information professionals look into this and obtain permission if necessary as otherwise what would be an exercise to help the library users may turn out to be an area of contention in copyright law. Problems of indirect linking are likely to occur in such a scenario. Further, guidelines have also to be drawn up regarding linking by others to the website of the LIC.

Digitization Activities

LICs undertake digital preservation to prevent further deterioration of fragile materials and to ensure the long term availability of information in rare and fragile documents. Digital preservation necessarily means reproduction which is one of the exclusive rights given to the author. To preserve content and prevent loss of information due to non use of the digitized materials multiple copies will have to be made as backup. Though most laws make allowance for libraries to make copies for reference the LISP will have to exercise due caution in such an undertaking. Coming to digitization projects in libraries, it is essential that the information professionals get prior permission from the author before embarking on this exercise. Care has to be taken to ensure that the material that is being digitized is either out of copyright or that the permission has been obtained. Photographs in newspapers pose a special problem as permission might have been obtained originally for reproduction of it only once. Hence, digitization would require permission from the newspaper as well as the photographer. Further, questions as to whether a library can make copies for research purposes of fragile documents and make them available in the library or on a campus intranet will have to be resolved. The Digital Millennium Copyright Act (USA) allows no more than three copies to be made for preservation purposes. A similar provision exists under section 52(1) of the Indian Copyright Act which allows a public library to make three copies for its use. When digitizing orphan works, which have been described earlier, permission has to be obtained from the Copyright Board as given earlier in this lesson.

To facilitate digitization of libraries a new clause (n) has been introduced in the 2012 amendment to enable the storage of a digital copy of a work if the library possesses a non-digital version of it. The Public Domain Mark which has been mentioned in an earlier section will be of use in such activities.

An example is the Google Books Library Project, an effort by Google to scan and make available on the Internet the collections of several major research libraries. (www.google.co.in/googlebooks/about/history.html). Bibliographic information and only snippets of the book are made available. If the book is in the public domain then it is available fully. The Authors Guild and Association of American Publishers among others sued Google (2005) for its book project. In 2013, Judge Chin (Federal Judge, New York, USA) ruled that the digitization of university library collections by Google was a fair use under US copyright law. The Authors Guild and individual writers have appealed against this. The Authors Guild also filed a copyright infringement suit against the HathiTrust, (<http://www.hathitrust.org>). In 2012, it was ruled that the project's scanning and use of copyrighted works qualified as fair use under copyright law.

(For details Ahmad Asir, Google Books Litigation Update, BERKELEY TECH. L.J. BOLT (November 10, 2013), <http://btlj.org/?p=3097>.)

In September 2014, the European Court of Justice (ECJ) ruled that European Union governments may permit libraries to digitize books in their collection without getting the consent and make them available for perusal at “electronic reading posts”. However, if the users want to print out the material or if they want to take a copy on USB stick then the rights holders will have to be duly compensated. Such acts would be deemed to be acts of reproduction and thus the creation of a copy. As the decision is a very recent one, LISPs of the EU are still studying its implications for the LICs.

Digitization has not been confined to individual libraries alone but have been done on large scale as can be seen from Project Gutenberg, Internet Archive and Million Books Project.

2.16. Institutional Repositories

LISP have in recent years started creating and maintaining Institutional Repositories. Questions of copyright have to be addressed in this context. Publishers generally ask the authors to sign over the copyright to them before the work is published. The question whether there will be a break of copyright if the work is stored in a repository depends on what has been signed over to the publisher. The copyright statement might indicate that such materials cannot be deposited in an institutional repository or personal web site. At acceptance of the manuscript, a copyright transfer agreement to allow self-archiving may be insisted upon. At times, metadata might be submitted to the Institutional Repository with a link to the website of the publisher/journal etc. Pre-prints might be made available on the IR. Nowadays, however, most major publishers will accept and allow papers published in their journals to be deposited in open access repositories, subject to certain conditions. The SHERPA/RoMEO database provides a summary of copyright and archiving policies adopted by publishers. LISP can check this website (<http://www.sherpa.ac.uk/romeo.php>) for getting information regarding copyright policies.

2.17. Libraries and Visually Impaired

Under the 2002 amendment the Indian Copyright Act, Section 52(1)(zb) allows any person to facilitate access by persons with disabilities to copyrighted works without any payment of compensation to the copyright holder, and any organization working for the benefit of persons with disabilities to do so as long as it is done on a non-profit basis. India has a large percentage of global visually impaired population and this is of particular significance to public libraries who could now serve effectively a segment of population which hitherto had very limited or no access.

3. Summary

This section has dealt only with what is copyright and the issues involved. It provides only an overview of a vast subject area which involves many legal issues and which are out of the purview of this module. As Copyright Law is country specific and is constantly being updated especially in view of digital technologies and ease of access and reproduction, LISP will have to keep themselves regularly updated on various aspects of copyright. UNESCO's The ABC of Copyright and Copyright for librarians: The Essential Handbook brought out by Berkman Centre for Internet and Society at

Harvard University and EIFL provide a very informative and instructive starting point. These books have been used in the preparation of this study material. LISP can also go online and browse through web sites of libraries for statements and activities regarding copyright. For information on national laws, WIPO Lex is an electronic database which provides access to intellectual property (IP) laws and treaties of the Members of WIPO, the World Trade Organization (WTO) and the United Nations (UN) as well as international, regional and bilateral treaties. The IFLA has set up the Committee on Copyright and other Legal Matters (CLM) to advise the IFLA and take active part in international copyright issues.

The lesson does not cover videos, cinematographs, sound recordings etc. In this digital age, in addition to the Copyright Act 1957 with amendments, LISP will have to take into account, the Information Technology Act 2000 and cyberlaw issues especially in the context of software for managing information, downloads, information access and scanning and forwarding of materials.

4. References

<http://www.arrow-net.eu>

<http://www.ipindia.nic.in>

www.gnu.org

www.creativecommons.org

http://itlaw.wikia.com/wiki/EU_Database_Directive

www.sparc.org

www.sherpa.ac.uk/romeo

www.sparc.org

www.sherpa.ac.uk/romeo

www.google.co.in/googlebooks/about/history.html

<http://www.hathitrust.org>