INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

COPYRIGHT AND EDUCATION IN THE DIGITAL AGE

-Ishika Soni[1]

ONLINE LEARNING PLATFORMS[2]

Course Readings and Other Materials

Students may still be able to acquire hard copies or digital versions of textbooks. Keep in mind that traditional textbooks and workbooks do not usually have eBook versions available for libraries. To help your students overcome the barriers to access and the expense of textbooks, look for Library eResources and Open Educational Resources (OERs) that align with your weekly themes. You can include a list of these resources for your course sections in an eReserves list.Copyright still applies to works that are digital, accessible online, or free to read.

Sharing copies

While there may be copyright difficulties when creating new materials for students (by downloading and uploading files, or scanning from physical papers), these are no different from the decisions you make when determining whether to share something online with your students during in-person meetings.Although copying a complete work is prohibited, most teachers don't do that! Copying brief passages from books to provide to pupils could be considered fair dealing.

Publisher Materials

Publishers may provide an instructor with supplemental materials to use in a course if the textbook is adopted as a mandatory text. Please follow the conditions of use provided by the publisher when using these resources.If you want to use any parts of the textbook in the

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course material, you must get written consent. Please contact us if you require any help with this procedure.

Electronic Reserves Service

Getting things online can be aided by the eReserve service at the library and an online list of course materials via Centennial. locating eBooks when accessible, making links to resources for library subscriptions, and much more. Please be aware that time and service requests are subject to change based on personnel availability and service demands.

Recording videos of yourself, live-casting lectures, etc.

As long as your new course video is being shared through a password-protected course website like eCentennial, it is typically permissible to show slides with images to students via live video conferencing or recorded movies.

After in-person class meetings, a lot of instructors regularly upload a copy of their slides as a file for students to view. In any event, you shouldn't do this unless all of the content on the slides complies with copyright laws.

Multimedia viewing/listening

The distinctions between online and in-person instruction can get a little more intricate in this case. Under Section 29.5 of the Copyright Act, audio and video of physically obtained media (music or audio-visual materials, such as CDs or DVDs) may be played during a live class session[3]. Playing the same media online is typically not covered by that exemption, though.

You might be permitted to use your institution's fair dealing standards under the Copyright Act to include audio and video snippets in lecture recordings or live-casts if you can restrict their use to relatively short segments for your course.

CONCEPT OF OPEN EDUCATIONAL RESOURCES (OER)

Open Educational Resources (OER) refer to educational materials, whether in the public domain or protected by copyright, that have been made available under an open license. These resources allow others to access, reuse, repurpose, adapt, and distribute them without any expense. An open license is a type of license that acknowledges and protects the

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[3] Barbara L. Ludlow, "Understanding Copyright and Intellectual Property in the Digital Age: Guidelines for Teacher Educators and Their Students" 26 *Teacher Education and Special Education* 130-144 (2003).

intellectual property rights of the copyright owner. It allows the public to access, reuse, repurpose, alter, and redistribute educational content with necessary permissions.

The Recommendation on Open Educational Resources (OER), which was endorsed by the 40th session of UNESCO's General Conference on 25 November 2019, represents the inaugural global normative framework that encompasses the domain of openly licensed educational resources and technologies within the realm of education.[4]

UNESCO established the OER Dynamic Coalition to assist Member States in implementing the 2019 Recommendation on Open Educational Resources (OER). The objective of the OER Dynamic Coalition is to facilitate networking and information sharing in order to generate synergistic effects across the five areas of action outlined in the recommendation. These areas include:

i.   enhancing the capabilities of stakeholders to generate, access, repurpose, modify, and distribute Open Educational Resources (OER);

ii.   formulating policies that are conducive to this goal;

iii. promoting the development of inclusive and equitable quality OER;

iv.   fostering the establishment of sustainable models for OER; and

v.   Facilitating international collaboration.

UNESCO utilises Open Educational Resources (OER) to facilitate initiatives aimed at enhancing universal access to information. The actions undertaken encompass the UNESCO ICT Competency Framework for Teachers Harnessing Open Educational Resources (OER) Project, as well as the Guidelines on the Inclusion of Learners with Disabilities in Open and Distance Learning.

The UNESCO ICT Competency Framework for Teachers Harnessing OER project aims to address the digital divide and enhance digital competencies. This initiative provides support for teacher/instructor training in digital competency development during both initial and in-service teacher education. Additionally, the project focuses on the creation of contextualized training materials that are based on OER.

The Guidelines on the Inclusion of Learners with Disabilities in Open and Distance Learning offer a comprehensive framework for governmental bodies, educational institutions, instructors, and quality assurance and recognition organizations to effectively design and

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[4]   Open   Education   Resources,   https://www.unesco.org/en/open-educational-resources#:~:text=Open%20Educational%20Resources%20(OER)%20are,adaptation%20and%20redistribution%20by%20others., Last visited 15th March 2024.

implement open and distance learning platforms and procedures that cater to the diverse needs of all learners. Their primary focus is on open solutions, such as Open Educational Resources (OER).

OER, or Open Educational Resources, are a component of the broader concept of 'Open Solutions', which encompasses Free and Open Source software (FOSS), Open Access (OA), Open Data (OD), and crowdsourcing platforms.

OER are closely connected with intellectual property issues, as most educational content is protected under conventional copyright terms. Creative Commons, an organisation that provides ready-made licensing agreements that are less restrictive than the "all rights reserved" terms of standard international copyright, is a "critical infrastructure service for the OER movement."[5]

3.2.1 SUCCESFUL MODELS OF OER[6]

FUNDING MODEL

As previously stated, numerous Open Educational Resources (OER) initiatives have been initiated in recent years. The aforementioned entities have emerged from governmental bodies, foundations, organisations, as well as various groups and individuals. Financial backing is a necessary requirement for each of these projects; yet, no singular model has emerged as the prevailing one. This section provides an overview of the many models that are presently being utilised.

The **Endowment Model** involves acquiring initial money for the project. The fund administrator is responsible for overseeing the initial financing, while the project's financial support is derived from the interest generated on said fund. At the Stan-ford Encyclopaedia of Philosophy, organisers determined that implementing a subscription-based model would result in higher costs compared to the potential earnings. To address this, funds ranging from

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[5]OER and Copyright, Tallin University 2010, https://www.tlu.ee/~sirvir/Information%20and%20Knowledge%20Management/Open%20Educational%20resources%20(OER)/oer_and_copyright1.html, Last visited 15th March 2024.

[6] Downes, Stephen. (2007). Models for Sustainable Open Educational Resources. Interdisciplinary Journal of Knowledge and Learning Objects. https://www.researchgate.net/publication/44075539_Models_for_Sustainable_Open_Educational_Resources, Last visited 15 March 2024.

3 to 4 million USD were obtained from various charitable foundations[7]. These funds were used to generate interest, which in turn supported the service's operating budget of $190,000 USD.

The **Membership Model** involves inviting a group of interested organisations to contribute a specific amount, either as an initial investment or as an annual contribution or subscription. This money enables the OER service to produce operating profits. The Sakai Educational Partners Programme is a membership-based network that offers educational opportunities. Members make a financial contribution of $10,000 USD, which thereafter grants them a range of advantages, such as early access to decisions regarding the roadmap, code releases, and documentation.[8]

The **Donations Model** is a framework in which a project that is considered deserving of support from the broader community solicits and obtains donations. Donations are thereafter administered by a non-profit organisation, which has the option to allocate them towards operational expenditures or, if the sums are deemed adequate, endeavour to construct an endowment. Several open source and open content projects, such as Wikipedia and the Apache Foundation, receive funding using this approach. It is noteworthy to mention that these donations are frequently accompanied with the acquisition of branded merchandise, such as the Spread Firefox is a good initiative.

Conversion Model- In the conversion model, you give something out for free and then convert the freebie recipient into a paying customer. They say this is necessary because "there is a natural limit to the amount of resources the Donation model can bring to an open source project, probably about $5 million per year." Linux distributors like SuSe, RedHat, and Ubuntu use this technique to distribute free, open-source software. A subscriber receives installation, support, or advanced features. The conversion model is common in education, with Elgg and LAMS using it.

PLOS's Contributor-Pay Model, Open Access Model: One-Time Author-Side Payments enables donors to pay for contribution maintenance and the provider to offer it for free. This concept has garnered support from publishers, especially since funders like the Wellcome

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[7] D. Allcoat, "Education in the Digital Age: Learning Experience in Virtual and Mixed Realities" 59 *Journal of Educational Computing Research* 795-816 (2021).

[8] Schön, Sandra. (2010). Strategic Integration of Open Educational Resources in Higher Education. 10.1007/978-3-642-03582-1_11., Last visited 15th March 2024.

Trust now require free access to funded resources. Publishers' 'open choice option' makes research articles and accompanying documentation freely available online immediately after publication. Funding agencies like the Wellcome Trust will pay for this process, estimating it will cost 1% of their yearly budget." [9]

The **Sponsorship Model** underpins free radio and TV in most homes. It can range from invasive commercial advertising on commercial TV networks to subtle 'sponsorship' signals in public broadcasting. Many firms have sponsored OER projects in online education, typically in conjunction with educational institutions. The Microsoft-MIT iCampus Outreach Initiative (China Open Resources for Education) is an example. Apple's recently announced Stanford on iTunes effort (Stanford, 2005). Research Councils UK mandated open access for all funded research, which led GNU EPrints to adopt this model.

Institutional Model – an institution may take on an OER initiative instead of sponsoring it. Perhaps the most well-known is MIT's OpenCourseWare project, which is funded as part of the university's regular programme and organisational mission. MIT notes, "It is an ideal that flows from the MIT Faculty's passionate belief in the MIT mission, based on the conviction that the open dissemination of knowledge and information can open new doors to the powerful benefits of education for humanity around the globe.

Governmental Model — like the institutional model, government entities, like the UN, directly fund OER programmes. Canada's SchoolNetis one of many such projects.

Partnerships and Exchanges—though not considered finance or financing models, they help establish OER networks. Instead of finance exchanges, partnerships rely on resource exchanges that produce OERs. At a recent UNESCO conference, an Open Source Congress was proposed, which would be a voluntary effort by interested higher education institutions to lend their technical and functional expertise to begin the high-level design and planning for the next-generation, open source administrative systems.

TECHNICAL MODELS

An analysis of the sustainability of Open Educational Resources (OERs) would be insufficient without taking into account the methods by which OERs are developed and

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[9] M. M. de Oliveira, L. N. Paschoal and E. F. Barbosa, "Quality Models and Quality Attributes for Open Educational Resources: A Systematic Mapping," 2021 IEEE Frontiers in Education Conference (FIE), Lincoln, NE, USA, 2021, pp. 1-9, https://ieeexplore.ieee.org/document/9637309, Last visited 15th March 2024.

distributed. Similar to numerous initiatives, the mere acquisition of funding for a project does not guarantee long-term viability. It is anticipated and frequently necessary that the resources obtained through funding will be beneficial, and the manner in which this is achieved can greatly impact the amount of funding required and obtained[10]. Technological advancement in the realm of Open Educational Resources (OERs) has been propelled by financial factors. The concept of the 'learning object' was primarily motivated by the expectation that sharing and reusing learning resources would save production costs. The nature of OER design necessitates interoperability among data, software, and services.[11]

Learning items must possess the qualities of being easily accessible, adaptable, and compatible. The nature of this has been the topic of extensive deliberation (and disagreement) in the preceding years. Two overarching models have arisen:

- Unrestricted utilisation, employed within the local context - the Open Educational Resources (OERs) are utilized in their original form without any alterations by the educational institution. Utilisation involves the assembly of a set of resources, analogous to the assembly of atoms to create molecules or Lego bricks to construct toy houses.

- The resources undergo a process of downloading, adaptation, and subsequent submission to the system repository for evaluation and future use by other individuals. According to UNESCO (2002a), translation is considered a component of adaptation rather than a distinct function. Furthermore, it should be acknowledged that in order to attain these aforementioned suggestions, it may be necessary to establish a suitable degree of user registration.

These two approaches represent a clear division not only in the field of educational resources, but also in other types of content. Creative Commons, for instance, deemed it essential to permit authors to include a 'no modification' provision alongside the three conditions outlined in Creative Commons licences (as previously explained). In addition, the capacity to customize software for personal use is frequently emphasized as a significant differentiating factor between software that is simply 'free' and software that is 'open source'.

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[10] Kyle K. Courtney, "Copyright in the Digital Age" *Law Librarianship in the Digital Age* (2013).

[11] Ahmed Tlili, Fabio Nascimbeni, Daniel Burgos, Xiangling Zhang, Ronghuai Huang & Ting-Wen Chang (2023) The evolution of sustainability models for Open Educational Resources: insights from the literature and experts, Interactive Learning Environments, 31:3, 1421-1436, https://www.tandfonline.com/doi/abs/10.1080/10494820.2020.1839507, Last visited 15th March.

The issue of quality is often brought up, as there is an expectation for learning resources to possess trustworthiness and authority. Therefore, the aforementioned Global Index System would rely on the evaluation process conducted by a volunteer group serving as an editorial board. A proposal was put forth to establish a feedback loop for the purpose of evaluating and disseminating the lessons learned during the development and utilisation of open courseware. These deliberations also brought attention to the necessity of providing training and enhancing the capacity of faculty members.

Access to Open Educational Resources (OERs) is a commonly raised topic. Within the realm of Open Educational Resources (OERs), access is commonly upheld via software systems known as 'repositories. Meanwhile, software is accessed through specialized version control systems like CVS or Subversion. Configurations exhibit variability, however, the subsequent is customary:

- It is advisable to keep resources in distributed databases.

- These resources can be retrieved from there for the purpose of modification or utilisation.

- There will exist a singular index of resources that is centrally maintained.

- The courseware exhibits a high degree of dynamism, as the index serves as a momentary representation and necessitates regular updates.

- The index will encompass a comprehensive chronicle of the origin and utilisation of the resources, along with the feedback and comments provided by users.

CONTENT MODELS

Content type affects sustainability. Courses can last eight years or fewer, whereas books can last centuries. Digital images can be put into documents, but books cannot (unless they are digitized and the content format allows it). It is not surprising that 'sustainable' OERs are often described as flexible material that may be tailored to local requirements and conditions (or 'glocal'). Sustainable here means reusable.

OER developers have focused on reusability, as shown in the JIME Special Issue "Commentary and Debate on: Reusing Online Resources: A Sustainable Approach to eLearning."

While reusability is technical (and explored in the previous section), it is also a content challenge. For instance, 'reuse' denotes incorporation into an existing context of use, which creates meaning and language difficulties. Students trained in Peirce logic will struggle with a

Polish-only logic text. In learning resource descriptions, datasets and metadata create meaning and representation challenges. Educators face issues while 'cross walking' data structures and canonical vocabularies.

As mentioned before, resource licences are another content issue. Even though MIT does not pay royalties or use commercial content, clearing licences for all items was a considerable investment in its Open-CourseWare effort. Many licencing schemes exist, including Creative Commons and GNU Public Licence. Licencemodels depend on many factors:

- Does the author own the published work?

- Can authors seek user site content removal?

- Can author approval be required for changes?

- Should only non-profit educational organisations use content, or may for-profit institutions?

Recent conversations have emphasized rethinking provider-consumer relationships. At a recent UNESCO meeting, "Mohammed-Nabil Sabry first discussed the French University of Egypt's adaptation and use of four OCW courses. He set the tone for the week by proposing that a move from a 'provider/user' paradigm to a community model of collaborative production would boost OER utilisation. The artificial provider/user/organizer/sponsor roles attributed to different actors in early OER discussions are constraining and misleading. OER creation, adaptation, use, advocacy, and financing are less neat, but offer more creative and sustainable development potential. One participant described it as a shift from 'knowledge for all' to 'construction of knowledge by all'.

MODELS FOR STAFFING

The conventional approach to resource creation, encompassing educational resources and other types, entails the recruitment and employment of personnel, typically comprising professionals, to carry out the necessary tasks. Various models have arisen in the development of Open Educational Resources (OERs), driven by both necessity and the aforementioned factors. Volunteer personnel have played a significant role in driving the provision of Open Educational Resources (OERs), particularly software.

This presents a series of novel factors to be taken into account when evaluating the long-term viability of such efforts, as sustainability is no longer just guaranteed by adequate compensation. The incentives provided to volunteer staff differ significantly from those offered to individuals employed by a paycheque. Typically, the motive behind this is driven

by altruism, stemming from a desire for their work to be utilised and disseminated. "The primary motivation or incentive for individuals to freely distribute OER material is the potential for others to adopt and potentially enhance the material." In several instances, volunteer participation is motivated by tangible incentives. Professors, for instance, dedicate their labour to the betterment of society with the expectation of obtaining tenure, promotions, or acknowledgment. Non-financial incentives frequently necessitate the occurrence of resource sharing within a community, as numerous variables that drive sharing may exclusively arise inside a communal setting. Undoubtedly, one could contend that in the absence of an existing culture, there is no incentive to engage in sharing. A prospective contributor may lack a sense of professional duty to engage in sharing, and notably, may not have personally encountered the significance of sharing. Volunteers, in addition, require effective organisation, which should acknowledge and encourage the volunteers' incentives for sharing. Furthermore, it is imperative for a volunteer organisation to possess a well-defined overarching goal, strategy, and delineated responsibilities for its participants.

In addition to an extensive roster of vice presidents overseeing diverse product portfolios, volunteers assume a range of tasks encompassing "developers," "committers," and "users." A "PMC member" is an individual who has made substantial progress and has been elected based on their merit for the project's development and display of dedication. Two prominent organisational structures have emerged in volunteer-driven open resource communities: the Emergent Model and the Community Model.

- Community Model o Reputation is an inherent consequence of human interactions o Users possess significant influence and should be treated with respect

- The Emergent Model necessitates the implementation of reputation mechanisms such as Ebay and Slashdot. Users, in this model, possess limited influence, except inside the aggregate.

The integration of these platforms can be conceptualized as constituting an Ecosystem Model, wherein individuals engaged in the creation, utilisation, and enhancement of open material collectively constitute an ecological system.

3.3 CHALLENGES FACED BY EDUCATORS ON DISSEMINATING DIGITAL CONTENT

The speed at which information and communication technologies (ICT) are evolving today is unprecedented, and this presents an opportunity for innovative interventions aimed at closing the achievement gap. ICT can serve as a bridge to help education transcend geographical boundaries by facilitating the creation and distribution of educational materials in collaboration with others. Education regulations in the modern era have started to reflect this, recognizing the internet's importance for education's future.

Many educational institutions, especially colleges and universities, were forced to transition from classroom instruction to virtual instruction or distance learning in the wake of the epidemic and to stop the spread of COVID-19. Nonetheless, copyright is a major obstacle to the extraordinary and unanticipated move to online learning.

In India, a concept's expression is protected by copyright law rather than the idea itself. Cinematographic films and sound recordings that are literary, dramatic, artistic, or musical are granted copyright protection under Section 13 of the Copyright Act, 1957.

The term "bundle of exclusive rights" granted to the copyright owner by virtue of Section 14 of the Act is known as copyright. These rights belong to the copyright holder, who is the author of the work, and they can only be used by the holder or a third party who has been given permission to do so.[12]

Online v. Offline Teaching

Although online instruction has been available for some time, schools and institutions throughout the world have just recently been forced to implement it as a result of the COVID-19 pandemic. Using video-conferencing software, an instructor can teach remotely or online while using resources including text documents, audio files, PowerPoint presentations, and movies.

In an offline learning environment, the instructor would be in charge of the information that was shared and would be aware of who was receiving copies of the materials. However, managing information control becomes challenging in an online learning environment,

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[12] Virtual Teaching and Copyright: How fair is fair use?, https://www.mondaq.com/india/copyright/955608/virtual-teaching-and-copyright-how-fair-is-fair-use , Last visited 15th March 2024.

particularly when course materials must now be uploaded online for students to access because they do not have access to the school or university library.

Copyright Law and 'Fair Use'[13]

Rather than protecting the idea itself, copyright law protects how an idea is expressed. Thus, copyright protects material manifestations like books and videos. According to Section 13 of the Indian Copyright Act 1957, all works that fall under the category of literary, dramatic, artistic, or musical works, as well as cinematographic films and sound recordings, are protected by copyright in India.

Any other individual is prohibited by copyright from exploiting the original author's work without their consent. Nonetheless, under some circumstances, copyright law allows the use of a work that is protected by copyright without requiring the author's permission. This is the fair use theory, sometimes known as the doctrine of fair dealing in India (even though the two ideas are not the same; a discussion of their distinctions would be outside the scope of this article). The intent, type, and quantity of the work utilized in conjunction with the copyrighted work must all be taken into consideration to determine fair use.

Through their rulings, Indian courts have established what fair use is. The Kerala High Court established a three-part test in Civic Chandran and Ors. v. C. Ammini Amma and Ors. to establish whether the defense of fair use may be raised in a particular instance. These were:

  i.   The amount and worth of the material obtained;
  ii.   The reason for the acquisition; and 3. the possibility of a conflict between the two pieces.

It is important to remember that fair dealing with any original work for the purpose of criticism and review, whether of that work or any other work, does not amount to copyright infringement, as stated specifically in Section 52(1)(a) of the Copyright Act. Furthermore, anything copied by a teacher or student for academic purposes in a school would not be considered a copyright infringement, according to Section 52(1)(i).

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[13] Virtual Teaching and Copyright: How fair is fair use?, https://www.mondaq.com/india/copyright/955608/virtual-teaching-and-copyright-how-fair-is-fair-use , Last visited 15th March 2024.

But it would be false to believe that sharing any copyrighted content for educational reasons is permitted under the fair use/fair dealing doctrine. Such a false presumption does nothing but raise the possibility of copyright violations. Thus, even when applying this idea to instruction, there are significant restrictions.

First of all, copyrighted material may only be acquired legally. While it is permissible to download original works that have been shared online, copyright would be violated by works that have been unlawfully downloaded or by websites that offer purchased material for free download.

Second, content protected by copyright should only be utilized for educational purposes. Teachers and educational institutions must make sure that the material they utilize is only for furthering the non-profit purpose of education, as Section 52(1)(i) grants permission for the use of such work only for educational reasons for students and teachers.

Thirdly, the idea of fair use/fair dealing cannot be invoked when sharing scanned copies of purchased books with pupils. If an institution already has a hard copy of the book in its library, it is permitted to share scanned versions of paid books for educational purposes under the 2012 Amendment to the Indian Copyright Act.

Many companies, like Cambridge University Press, have been kind in providing students with free access to their online textbooks as a result of the COVID-19 epidemic. Some have chosen to access their books and content online through a paid membership. Because of the pandemic's lack of access to textbooks, which are fundamental to educational institutions, publishers now have to distribute their content online.

How Copyright Issues Can Be Tackled [14]

Certain information may be only accessible through secondary sources. To help avoid copyright infringement, universities, schools, professors, and teachers should bear the following factors in mind. Commercial or even unlawful consumption of such material may result in legal action.

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[14]Barton, Carolina. (2016). Copyright Laws and Distance Education. 10.13140/RG.2.1.3306.9042., https://www.researchgate.net/publication/305488815_Copyright_Laws_and_Distance_Education, Last visited 4th April 2024.

- By giving students the online link to the content instead of downloading it, you may ensure that the original authors receive credit for their works that are made available to the public. It is important to use caution while disseminating links to illegal content, such as free scanned versions of expensive novels discovered on piracy websites. Furthermore, the original author should have approved or permitted the item to be uploaded publicly.

- By using their institutional credentials, schools and universities can also purchase software, enabling students to use the resources on these platforms for their academic work.

- It is important to encourage the usage of open-access platforms, where content is freely shared. These sites allow uploaded content to be utilized without restriction as long as it is only used for educational purposes.

- Get consent from the original owner of the copyright before using the work for instructional purposes.

- By educating students about copyright law and the legal ramifications of unapproved material sharing, you can deter them from sharing more protected content.

- In addition, educators ought to try to produce unique content that they may readily provide to their pupils without fear of violating the copyright of others.

The internet's ability to provide knowledge has undoubtedly made it possible to deliver education more effectively, but it has also presented a threat to copyright laws. The battle over online learning's copyright laws will go on as web-based instruction has become the standard in recent months. As a result, we must warn and instruct our educators about the potential for copyright infringement as well as how they can avoid it. Due to the restrictions of the fair use/fair dealing doctrine, educators must always exercise caution to ensure that they do not violate any laws while carrying out their duty to instruct.

3.4 IMPACT OF COPYRIGHT ON ACCESS TO EDUCATIONAL RESOURCES

India has a large number of human resources, despite the fact that it is the second most populous country in the world and is competing with China to become the most populous country in the world. Nevertheless, among the 189 countries that make up the global developmental index, it continues to hold the 129th position. There are a lot of variables that

are responsible for this, the most important of which is the presence of educational facilities that are weak in infrastructure facilities. The former Prime Minister of India correctly articulated the significance of education by saying, "Education alone is the foundation on which a progressive and prosperous society can be built."[15] This statement is a perfect example of the value of education. Not only should we strive to achieve functional literacy, but we should also strive to ensure that every boy and girl who is interested in learning has access to a high-quality education that is also affordable, easily accessible, and equitable. It is anticipated that India's Gross Enrollment Ration (GER) in higher education for the age range of 18-23 years will be 27.3 for the year 2020-21, according to the All India Survey on Higher Education (AISHE Report). This figure, despite being fairly low, is the highest that the country has ever achieved.

There are a multitude of issues that are responsible for this low enrollment, the most prominent of which is the high expense of education, which serves as a barrier for many students who are interested in pursuing higher education. This cost takes into account the cost of enrollment, tuition fees, commuting expenses, pricey books, the demand of digitalized equipment such as laptops, and the availability of internet connectivity.[16] In this article, we will discuss the cost of gaining access to books and other study materials, which accounts for a staggering twenty percent of the total cost in relation to availability or unavailability as a result of the execution of the Copyright Act of 1957 (which will be referred to in the following paragraphs as the Act).

When it comes to copyright laws in developing countries, an effective law should, on the one hand, make it possible for the majority of people to have unrestricted access to content, and on the other hand, it should offer incentives to content creators so that they can produce original content. This necessitates the establishment of a balance between the economic rights of the creator and the right of the public to have access to such inventions, which is

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[15]Manmohan SinghPrime Minister of India, The Prime Minister's Independence Day Speech (New Delhi, August, 2007) *available a*t http://pmindia.nic.in/speech/contentasp?id=570 (last visited on 2nd April, 2024)

[16] Admin and Admin, "THE IMPACT OF INTELLECTUAL PROPERTY RIGHTS ON ACCESS TO EDUCATIONAL RESOURCES AND OPEN EDUCATION - Legal Vidhiya" (*Legal Vidhiya* -, August 3, 2023) https://legalvidhiya.com/the-impact-of-intellectual-property-rights-on-access-to-educational-resources-and-open-education/#:~:text=Traditional%20copyright%20models%20can%20restrict,particularly%20in%20low%2Dresource%20settings., Last visited 2nd April 2024.

something that can only be accomplished via the implementation of a strong statutory scheme. This equilibrium is ensured by Chapter VI of the Act, which serves to define infringement in accordance with Section 51 of the Act while concurrently enumerating around forty activities that do not constitute infringement in accordance with Section 52. The Indian legal system pays only a small amount of attention to copyright issues in the realm of academics and research.

One of the primary reasons for this is that education and things related to education were never actually seen to be a commercial commodity in India; rather, they were considered to be a medium through which education was imparted.[17] On the other hand, as a result of the passage of time, the internet has evolved into a fertile ground for plagiarism, duplication, and other behaviours that constitute a flagrant violation of the ethics of academic and publication practices. Scholars and researchers invest a significant amount of time and effort into doing original study, and copyright rules ensure that their work is not plagiarised or used without their permission. In order to maintain the integrity of research, copyright rules ensure that it is not tampered with or altered in any manner that could jeopardise its originality or accuracy. This helps to ensure that the study is properly protected. India is a signatory to a number of international conventions in the field of copyright.

These conventions give member states the flexibility to define the areas of "free uses," as well as the "limitations and exceptions" and "acts not amounting to infringement." India is one of the countries that has signed these conventions. Notable among these are the Berne Convention for the Protection of Literary and Artistic Works, which was established in 1886 (hereinafter referred to as the Berne Convention), the Agreement on Trade Related Aspects of Intellectual Property, which was established in 1994 (hence referred to as TRIPS),[18] and the WIPO Copyright Treaty, which was established in 1998 (hereinafter referred to as the WCT).

Since the beginning of time, educational institutions have been widely recognised for their ability to transmit knowledge, skills, and values. In addition, the right to education has been a topic of discussion at a number of international seminars and conferences. The Universal

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[17]Taken from https://iiprd.wordpress.com/2021/08/18/the-significance-of-copyright-law-in-academics-and-research/?utm_source=mondaq&utm_medium=syndication&utm_term=Intellectual-Property&utm_content=articleoriginal&utm_campaign=article, Last visited 2nd April 2024.

[18]TRIPS is one of the 28 agreements signed under the World Trade Organization that replaced General Agreement on Trade and Tariff (GATT) in 1994.

Declaration of Human Rights (UDHR) acknowledged the fact that the freedom to receive an education is derived from the inherent dignity of the human person. Essentially, this right is a form of empowerment that gives citizens the ability to participate in the political systems of their various governments in a way that is both productive and beneficial. Article 21-A of the Constitution was included by the Indian Supreme Court as a result of the Constitution (Eighty-Sixth) Amendment Act, which established the right to education as a basic right for children between the ages of six and fourteen years old.

In the instructional resources, on the one hand, there is a blatant conflict of interest because the authors have a financial interest in the contents. As a result of the content of authors being utilised in research for projects, teaching, the distribution of study material and course packs to students, assignments and the preparation of responses in examinations, and the setting up of question papers, education and copyright law are at odds with one another.

Despite the fact that the Copyright Act was created with the intention of safeguarding the author's work, it has significantly diminished the potential capacity of the publishing business, which has led to limited or nonexistent access to works that have been published outside of the narrow national market. As a result, the rules governing copyright need to be severely restructured in order to accommodate the needs of developing countries[19]. It is important to point out that the Appendix to the Berne Convention allows for "bulk access" to some kinds of educational content that are protected by intellectual property rights, including content that is intended for educational purposes. Furthermore, the Appendix includes provisions for a regime of compulsory licencing, which is intended to restrict the author's sovereignty over his work, particularly with regard to the rights to translation and reproduction [13]. The rights to translation and reproduction are granted to every citizen of a country that is entitled for them, provided that they receive an application for them. In spite of this, the system is extremely complicated and plagued with significant delays, both of which render it incapable of serving any practical purpose.

As an illustration, the reproduction licence is typically issued for the "specific instructional activity" after a period of five years has passed since the publication of the particular edition of the copyrighted work. In terms of the translation licence, the minimum waiting period is

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[19] Barton, Carolina. (2016). Copyright Laws and Distance Education. 10.13140/RG.2.1.3306.9042., https://www.researchgate.net/publication/305488815_Copyright_Laws_and_Distance_Education, Last visited 4th April 2024.

three years from the date of the first publication of the work, and it can only be issued for the purposes of research and teaching scholarship. On the other hand, the system has been shown to be a dreadful failure due to the fact that it has such onerous standards.

There are certain actions that do not constitute infringement, according to Section 52(1)(a) of the Indian Copyright Act, which was passed in 1957. Fair treatment of any work for the purpose of the following:

- Private or personal usage, including research, is encouraged.
- Reviews or criticisms, whether they pertain to that particular work or any other work.
- Reporting on current events and circumstances, including the reporting of a lecture that was given in front of an audience

Furthermore, according to Section 52(1)(i), any content that is duplicated by a student or a teacher in the course of instruction or study in an educational institution would not be considered an infringement of copyright law. In spite of this, it is not possible for there to be irresponsible sharing of content that is protected by intellectual property rights in the name of education and research. The assumption is flawed in and of itself, and it would almost certainly lead to an increase in the number of incidents of copyright infringement. It is important to note that the application of the notion of fair dealing in the context of teaching is subject to various restrictions.

In the first place, it is essential that the work be acquired through legitimate methods, which means that it must be obtained either by gaining permission or by obtaining a subscription to the paid job.

In the second place, the work that is protected by copyright need to be utilised just for educational purposes that are not for profit.

Thirdly, the Amendment that was passed in 2012 established that it is acceptable for students to share scanned copies of paid books with one another, provided that the library of the educational institution has at least one hard copy of the book available for use throughout the library.

As a result of the COVID-19 epidemic, new issues were presented, including the proliferation of e-learning and the loss of access to classrooms. Additionally, the amount of photocopying increased, and teachers started abusing copyrighted content by infringing on the properties of the right holder. Taking into consideration the importance of maintaining the health of the educational system and ensuring that the education of children is not jeopardised, a number

of publishers have voluntarily made their work accessible online as a gesture of goodwill. Additionally, access to the items that were relevant to Covid was made easier by certain media outlets that require a subscription. On the other hand, all of these relaxations were only temporary and eventually became unnecessary as time passed. This resulted in an increase in the financial burden that was placed on the users, particularly the students, who were required to subscribe to the content in order to watch it. These difficulties, which had been overlooked for a long time, were brought to the forefront by the COVID-19 epidemic, which implicated the need for a copyright system that would be in line with the new technical developments and adapt to the challenges of accessibility.

There is a significant conundrum that exists, which is that on the one hand, advocating for open access and reduced protection would be in the interest of the educational community. On the other hand, such reduced protection may demotivate authors to come up with unique content, which ultimately results in an underproduction of literary work.

The digital replication and dissemination of works that are protected by intellectual property rights have grown less difficult as a result of the fast rise of digital technologies.[20] In particular, this presents difficulties for the efficient enforcement of copyright laws, particularly in the context of online educational platforms and e-learning settings.

Plagiarism and copyright are two distinct concepts that are sometimes related to one another. For this reason, it is essential to make this distinction clear. It's possible that schools have policies in place regarding plagiarism and what students should do in order to give credit where credit is due, and students should be aware of and follow these policies. If, on the other hand, the work of another person is used without permission and it is not covered by any of the exceptions or limits that are included in the copyright laws, then simply giving credit does not make the use constitutional. The protection of intellectual property can sometimes make it more difficult to obtain reasonably priced educational resources, particularly in places like India that are still developing. It is a difficult effort to strike a balance between the protection of copyright and the requirement for instructional materials that are easily available and affordable.

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[20] Juris Centre, "Role of Copyright Law in Education and Academics" (*Juris Centre*, May 24, 2023) https://juriscentre.com/2023/05/24/role-of-copyright-law-in-education-and-academics/, Last visited 2nd April 2024.

Since this is the case, it is essential to find a middle ground between the rights of the writers and the greater public interest on the other side. One of the only things that could assist solve the difficulties of students not being able to access educational materials is a robust regulation about copyright. This would be beneficial to both the people who create the materials and the people who learn them.

The interaction between intellectual property rights and open education brings a number of opportunities and challenges that should be taken into consideration:

- Awareness and Education Regarding Copyright It is possible that a large number of educators and students may not have a complete understanding of copyright laws and how they interact with open education. Individuals can be empowered to manage the complexity of intellectual property rights (IPR) and make more effective use of open educational resources (OER) if knowledge is raised and educational resources are provided on copyright, fair use, and open licencing.

- Models of Sustainable Funding: Open education is a concept that places a significant emphasis on sustainability. There are costs associated with the creation, maintenance, and upgrading of educational resources, despite the fact that open educational resources (OER) may be publicly accessible[21]. It is possible to assure the lifespan of open education programmes by investigating various types of sustainable finance, such as institutional sponsorship, grants, and public-private partnerships.

- The promotion of open education should involve collaboration between multiple stakeholders, such as educators, governments, educational institutions, publishers, and technology suppliers. This collaboration should be a part of the efforts to promote open education. The creation of improved frameworks that protect the rights of artists while encouraging the production and dissemination of open educational resources (OER) of a high quality might be the result of open conversations.

- Formal Education Integration: In order to make the most of the potential benefits of open education, there is a pressing requirement for a deeper level of integration with traditional educational systems. Recognising the benefits of open educational resources (OER) in academic contexts, providing assistance to educators in adopting

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[21] Sneha Kolluru- Historical Evolution of Copyright Law, 21st Sept 2020, https://lawtimesjournal.in/historical-evolution-of-copyright-law/, Last visited 13th March 2024.

open practices, and cultivating a culture of sharing and cooperation inside educational institutions are all necessary steps in this process.

3.5 CASE STUDIES

➢ **The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services[22]**

The duplication of copyrighted books and other study materials for educational purposes by a copier shop was the subject of this case, which dealt with the infringement of copyright. In its decision, the court decided in favour of the defendant, finding that the fair dealing principles of the Copyright Act, 1957 applied to the photocopying of copyrighted material for educational purposes.

➢ **Amar Nath Sehgal v. Union of India[23]**

Even if the artwork is used by an educational institution, the moral rights of the artist can still be safeguarded, according to the decision that the court made in this investigation. The necessity of recognising the moral rights of artists, especially in the context of educational use, was heavily emphasised by the court.

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[22]The Chancellor, Masters & Scholars of the University of Oxford v. Rameshwari Photocopy Services, (2016) 16 DRJ (SN) 678
[23]Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (Del)