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**Research Paper Title: Notion of Copyright Protection in Open Access Publications and Development of Self-Learning Material**

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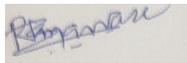
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## DECLARATION

I, the undersigned, hereby would like to explicitly state that the write-up titled, “**Notion of Copyright Protection in Open Access Publications and Development of Self-Learning Material**” is original and has not been published earlier, or that it is not under consideration for possible publication elsewhere.

Name: **Vishal Ranaware**

A small rectangular image showing a handwritten signature in blue ink, which appears to be 'Vishal Ranaware'.

Signature:

Date: **22/12/2020**

## Notion of Copyright Protection in Open Access Publications and Development of Self-Learning Material

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### Abstract

Copyright laws are protecting the creation of the creator of intellectual work such as books, cinematographic work, lyrics, music, published research papers and so on. It confers rights to the authors to enable them to use created work and to be recognized as a creator. Content published in an open access journal is accessible and free to use, however the access to content is conditional and subject to terms of the licence. Such published work can be used for the development of self-learning material. This research paper will explain the widely accepted creative common licences for open access publication and copyright protection through it.

### Keywords

Open access, OER, Copyright, Creative commons, Intellectual property, Self-learning material.

### Introduction

Generally, people are familiar with only two types of tangible properties, i.e. movable (*car, bike or other goods can be moved from one place to another*) and immovable (*house or things attached to the land*) property. Common thing between these two is both can be touched or felt. However, with advancement of civilised society, intangible property has emerged as a new type of property.

Intangible property means non-monetary property that cannot be seen, touched or physically measured (Mehta & Madhani, 2009). Intellectual property is the type of intangible property (Mehta & Madhani, 2009). Therefore, the question is what is 'Intellectual Property?' The answer is Intellectual Property are the legal rights which result from human intellect in the industrial, scientific, literary and artistic fields (The World Intellectual Property Organisation 'The Concept of Intellectual Property,' 2020).

The term intellectual property covers exploitative rights of design, literary works, inventions, etc. of their authors (Gale, 1978). Journals are protected by the intellectual property rights (Hossain, 2018). The author/s have right to exploit the work of his intellect, the author has exclusive rights, no one else is allowed to take the benefit of his intellectual efforts.

According to Article 2(viii) of the Convention Establishing the World Intellectual Property Organization (WIPO) signed at Stockholm on July 14, 1967, an ‘intellectual property’ shall include the rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavour,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields (The World Intellectual Property Organisation ‘Convention Establishing

the World Intellectual Property Organization – Draft Texts of Amendments Agreed in Principle,’ 2020).

However, such work can be used with permission or under a licence. Also, there are certain statutory exceptions which will not create any liability if there is a use by the non-author/s.

### **Research Methods**

For this research, a doctrinal research method is used. For this purpose, the researcher has used notified laws and judicial decisions as a primary data and books, journals, commentary as a secondary data.

### **Concept of Copyright**

‘Industrial property’ and ‘copyright’ are the two branches of intellectual property (The World Intellectual Property Organisation ‘The Concept of Intellectual Property,’ 2020). The term ‘Copyright’ defines the rights that creators have over their produced creative and literary works. It gives protection to the books, music, paintings, sculpture, films, computer programs, databases, advertisements, maps, technical drawings and so on (The World Intellectual Property Organisation ‘Copyright,’ 2020).

Authors are taking efforts to produce the intended product; therefore, ideally, they

have the right to derive economic benefits from it. However, nowadays due to technological development it is difficult to control the circulation and usage of content. Books and journals are easily available to the users through internet. On this basis, following are the ways to use content produced by someone else:

- a) Pay for the content
- b) Use the content for the purpose exempted by the copyright law
- c) Use content available in open access world

In first category, once you take the licence or permission from author or publisher by paying him some licence fee, users are allowed to use that content as per contract. Secondly, if you have not taken permission from author but the intended use falls under an exempted act then that act will not be considered as a copyright infringement.

In third category, the content is available free of cost but that is subject to certain conditions as defined by licences under which the content is made available. Nowadays, online journals are using creative common licences (Hossain, 2018).

### **Certain Acts Not To Be Infringement of Copyright**

The copyright infringement in most of the cases will be replication of the novel work.

It includes reproduction of the original work or a considerable portion of it in any form and also includes storing the work in any medium by electronic means (Infringement of Copyright, Exceptions and Limitation in the Digital Era, 2020).

Aggrieved person has to show that the challenged work is considerably similar to the original one. The courts will review both the works in question on the well accepted principle under copyright law, i.e. infringement action is launched only if the user used owner's complete work or substantial part of it (Infringement of Copyright, Exceptions and Limitation in the Digital Era, 2020).

Section 52 (Section 52(1) of the Copyright Act 1957, 2020) states the act does not amount to infringement of copyright. Those acts are defined under clause (1) of section 52 as given below:

- (a) a fair dealing with a copyrighted work for the purposes of personal use such as research and criticism or review;
- (b) a fair use of a work for the purpose of reporting in a newspaper or by broadcast;
- (c) the reproduction of a copyrighted work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

(d) the reproduction or publication of a work in any work prepared by the Secretariat of a Legislature or by the Secretariat exclusively for the use of the members of that Legislature;

(e) the reproduction in a certified copy made or supplied in accordance with any law for the time being in force;

(f) the reading or narrating in public of any reasonable extract from a published literary or dramatic work;

(g) the non-copyright material composed and published along with copyrighted content for the purpose of educational institutions, to get exemption under this clause the same author and publisher can use maximum two short copyrighted passages in period of five years;

(h) a teacher or student uses copyrighted work for the educational purpose in course of instruction or in an examination to write an answer;

(i) any literary, musical or dramatic copyrighted work performed by staff and students of institution before the audience from the same institution such as staff, students or the parents and guardians of the students;

(j) if a literary, dramatic or musical work performed before an audience without charging money to watch that performance,

or for the benefit of a religious institution by an amateur club or society;

(k) the reproduction of a periodical article on current topics such as economic, political, social or religious; however, this only excluded if the author of such articles waived his right of reproduction;

(l) if the content published in newspaper or magazine is the lecture delivered in public;

(m) the person in charge of public library direct to make the copies, not more than three, in case that book or copyrighted content is not available for sale in India;

(n) the work is reproduced for the purpose of research or private study, or publishing the work kept in the institutions to which the public has access;

(o) the publication or reproduction of any matter published in an Official Gazette, a Legislature Act;

(p) the publication or reproduction of the reports of the committees, commissions, councils, boards or other similar kind of legislature appointed bodies, unless production or reproduction is prohibited by the government itself;

(q) the publication or reproduction of the judgments or orders of the courts, tribunals or other authorities unless such acts are prohibited by the respective authority;

(r) the Legislature Act, rules or orders produced or published in any Indian language;

In all above cases user is protected by the law as these acts are not considered as a copyright infringement.

### **Concept of Open Access**

Open access (OA) literature is online, digital and free of charge but not free to produce. It is also free from most of the restrictions of copyrights and licensing. OA literature is peer-reviewed and available to anyone interested. refers to the practice of making peer-reviewed scholarly research and literature freely available online to anyone interested in reading it.

The formal beginnings of the open access movement are several declarations issued in the early 2000s: the Budapest Open Access Initiative (2002), the Bethesda Statement on Open Access Publishing (2003), and the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities (2003). The policies put forth in those declarations form the core tenets of the modern open access movement, but there are several antecedents such as arXiv, a public repository for scientific papers. OA literature has following advantages:

- a. removes price and permission barriers with some flexibility
- b. wider and easier access to articles

- c. compatible with copyrights, peer-reviewed, quality, indexing features and services same as conventional research articles

OA contents are available in following forms:

#### **A) OA archives and repositories (Green)**

In this the peer-review is not performed and the contents are freely available for the reader. These may belong to the individual, institutions or universities with various discipline. For example, the Wawasan Open University of Malaysia has an own Open Educational Resources (OER) repository of learning material. Authors may archive their work without taking anyone's permission and publish it on own website but these archives must need to comply with the protocol so that the contents can be available to the user and inter-operable.

#### **B) OA journals (Gold)**

These journals are peer-reviewed and the contents are then freely available for the readers. There is some cost associated with this including the peer-review charges, manuscript preparation and saving it on server. Those who want to make the content widely available have to pay the production cost so the contents are available for everyone free of charge. Such journals charge some processing fee to the authors or authors sponsor/s, have subsidy from the

hosting agency. Various policies exist for charging the processing fee to the author such as internal university authors does not need to pay the processing fee as well as if there is some income from the advertisement then this fee is waived off or the charges are less.

#### C) Hybrid OA

It is a combination of both open access and closed access journals. These publications are partially funded by the subscriptions.

#### D) Diamond or Platinum OA

These journals publish the open access contents without charging processing fee to the authors and readers, require grant from external sources.

Open access is helpful to many groups including authors, readers, universities, funding agencies, teachers and students. It is an access model not business model. To produce the content in OA, a consent of the copyright holder is needed. OA has two different versions: Gratis and Libre.

Gratis open access makes the content freely (without paying) available to read, but it does not permit the user to use the content in terms of copy, modify or distribute in any way. Libre open access is also freely available online but grants some additional rights regarding using the content for reuse and remixing. CC licences specify the rules for granting such an access to the user, the

details of which are mentioned in the next section.

### Types of Licences

Journals nowadays are using Creative Commons (CC) licences. The CC licence helps in sharing and reusing the work. It is one of the public copyright licences that allows the circulation of copyrighted work free of cost. This licence is used by the creator (author) of the work who wants to share their work with the people by giving the rights to share, use and build the work on the same. It provides flexibility to the author and the user who would use or redistribute an author's work under a specified condition given in the licence.

These licences were released in 2002 by a Creative Commons. The latest version 4.0 is released in 2013. These licences are applicable to all work which comes under the copyright, such as books, journals, music, movies, blogs, websites, articles, etc. With these licences, there are some icons which are as discussed below:

#### A) Attribution (BY)



All Creative Commons licences require to include the BY element and attribution to author. The user of this licence may distribute, copy, display and reuse (remix)

the work only if they give the credits to the author in the same specified manner.

#### B) Share-Alike (SA)



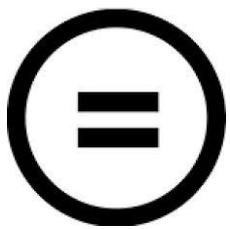
If the user is using content published under this licence then user has to publish the produced work under a licence similar to the licence that govern original content. Without share-alike, derivative works might be sub-licensed with compatible but more restrictive licence clauses.

#### C) Non-Commercial (NC)



The user of this licence may display, copy, distribute and remix the contents based on it but buys only for non-commercial purpose.

#### D) No Derivative Works (ND)



The user of this licence may copy, distribute, display and perform only verbatim copies of the work, not derivative works and remixes based on it. Since version 4.0, derivative works are allowed but must not be shared.

Accordingly following are the types of CC licences (Creative Commons 'About The Licences,' 2020):

#### A) Public Domain (CC0)



Contents are freely available world-wide without restrictions. Attribution is not required. Contents can be remixed and used commercially.

#### B) Attribution Alone (CC-BY)



It allows the user to share, remix, use and distribute the work, even for commercial purpose with the condition that they credit the original creator of the content. This is a most preferred licence and attribution is required.

#### C) Attribution Share-Alike (CC-BY-SA)



It allows the user to share, remix, use and distribute the work, even commercial purpose with the condition that they credit the original creator of the content in new created work with the same terms. All new work which is derived from this has to carry the same licence. Wikipedia uses the same licence.

D) Attribution Non-Commercial (CC-BY-NC)



It allows the user to remix, use and distribute the work for non-commercial purpose with the condition that they must acknowledge the original creator of the content in new created work, not necessarily under the same licence.

E) Attribution Non-commercial Share-Alike (CC-BY-NC-SA)



It allows the user to remix, use and distribute the work for non-commercial purpose with the condition that they must acknowledge the original creator of the content in new created work under the same terms.

F) Attribution No-Derivatives (CC-BY-ND)



It allows the user to use and share the content even for commercial purpose, with the condition that they must acknowledge the original creator of the content. The user cannot change or remix the content.

G) Attribution Non-commercial No-Derivatives (CC-BY-NC-ND)



Among all types of licences, the CC-BY-NC-ND is more obstructive licence. It allows the user to use, download and share

the content with the condition that they must acknowledge the creator of the content. The user cannot change the content and the content should not be used for commercial purpose.

All the licences other than CC0 require attribution of the original author. The 'TASL' term is suggested by the Creative Commons for the attribution which has the full form "Title-Author-Source-License (CC)". This means it includes the copyright notices, cite the author details such as author name etc, cite the title of the original work, cite the specific applicable CC licence and also mentions the type of work i.e. derivative or adaption.

### Conclusion

Journals published under full copyright protection are least open to the academic fraternity as it requires permission and money, which is not possible to most of the users. On other side though, the open access journals are least controlled by copyright laws and the rights are governed by terms of the licences. However, if content is available on open access platform, it can be accessed and used by anyone without paying money and users need not worry about copyright violation and its implications if user has complied with usage terms as defined by CC.

The self-learning material plays vital role in open and distance learning (ODL) as students mostly rely on study material provided by the institute. These institutes have to update their curriculum and self-learning material to satisfy the current market needs. However, there are certain limitations for developing or updating self-learning material such as:

- a. Most of the time it becomes very difficult to find a subject matter expert who will give justice to the course/subject.
- b. The main objective of the ODL is to provide every citizen easy and affordable access to quality education and institutes are providing education at low cost, therefore it becomes very difficult for them to develop new self-learning material or make changes in existing self-learning material at eleventh hour to meet market demand.
- c. Generally, if authors are developing new content, it becomes a time consuming exercise and may cause delay in launching new programmes, course or subject.
- d. Sometimes ODL institutions might have to face copyright issues.

These are the issues which can be resolved by using academic work published in open

access publications or OER, however it is subject to CC licences.

On the basis of above study, the researcher found that ‘Public Domain’ is the most open type of CC licence and CC-BY-NC-ND licence is least open.

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