

MOOT COURT PROBLEM

ABHIDWEEP- UNITY IN DIVERSITY

Democratic Republic of Abhidweep (hereafter DRA) is a secular, socialist, democratic, multicultural, multiracial, and multilingual State. DRA is having a legal system and tradition very similar to what we have here in India. DRA's Constitution and laws are very similar to that of India, save and except the following:

1. The Constitution of DRA, 1960 is having an additional Article 21B which reads as under:

No person shall be deprived of his/her right to access to information through electronic means except according to procedure established by law.

2. The Copyright Act, 1960 of DRA does not contain a provision similar to Section 57 of Indian Copyright Act, 1957.

GYANVIDYA UNIVERSITY- A CENTRE FOR EXCELLENCE

In 1961, the Government of DRA (hereafter GoA) by a central legislation (Gyanvidya University Act, 1961) established Gyanvidya University (hereafter GU) for improving the overall quality of higher education and achieving excellence in fundamental research in DRA. GU is governed by an autonomous and independent Governing Council. GU is a legal entity that may sue or be sued. GU receives an annual grant of DRA-Rupees of 300 crores from the Ministry of Human Resource Development (MHRD), GoA. GU offers courses on a wide range of areas including engineering, medicine, law, management, humanities. Over the years, GU earned for itself a great deal of reputation through pioneering contribution to science, technology, jurisprudence and medicine. Last year, GU found a place in the list of best 50 universities of the world. GU houses the largest library in DRA. The library has huge repository of books, journals, periodicals, videos and audios. Copyright subsists in the majority of the books, journals, periodicals, videos and audios kept in the library. However, there are also books, journals, periodicals, videos and audios that have fallen in public domain.

THE IDEA OF PUBLIC DIGITAL LIBRARY

On May 3, 2014, the MHRD, GoA organised a conference of the Vice-Chancellors of all public funded universities of DRA at Shivpuri (capital of DRA) for augmenting the quality of education through mass access to information. During the conference, GU's Vice-chancellor

mooted the idea of establishing a public digital library under the name and style of Public Digital Library of Abhidweep (hereafter PDLA). The idea received overwhelming support from all other Vice-Chancellors as well as MHRD officials. GoA decided to undertake PDLA project and GU was entrusted with the responsibility of implementing the project for and on behalf of GoA. The key features of the project are as under:

1. All books, journals, periodicals kept in the public funded universities and public libraries of DRA will be digitized. Then such digitized version of the books, journals, and periodicals will be uploaded to a dedicated internal server of concerned the University or the public library (as the case may be). The internal server will be appropriately linked to the PDLA so that materials could be accessed through links available at PDLA website.
2. PDLA website will be harboured and maintained by GU. PDLA will give access to all digitized materials of GU's own library and such materials will be available in downloadable formats. PDLA website will also provide links to digitized materials of all other public funded universities and public libraries and following the link, a library user can download the materials.

When the news of the proposed public digital library caught headlines in the national media, it was highly appreciated by the academic and student communities of DRA. It brought for DRA's teaching-learning community an excellent opportunity to access books available throughout the country. Times of DRA, a leading daily of the country described the step as an important milestone for strengthening the fundamental right guaranteed under Article 21B of the Constitution of DRA.

GU APPOINTS NIRRIKSHAN

GU was not having human resources to undertake digitization of its own library as such GU outsourced the work of digitization to a leading IT company Nirrikshan. Nirrikshan is a company which is incorporated in the State of Dilmun of the Federal Republic of Swarnapuri (hereafter FRS). FRS follows the laws of the United States of America and the State of Dilmun follows the laws of the State of Delaware, United States of America. Nirrikshan is having a huge patent portfolio. Nirrikshan is a pioneer in "Optical Character Recognition" technology –core to digitalization of library. Nirrikshan agreed to digitize GU's library for a consideration of \$1 million. The project started on July 1, 2014 with the following deliverables:

1. Nirrikshan will scan the physical copies of all the books, articles and journals available at GU's library.
2. Nirrikshan will prepare subject and content indexing of the scanned materials.
3. Nirrikshan will help GU to upload the materials to a dedicated internal server which in turn will be linked to PDLA and thus, could be accessed by users having proper login credentials.

PDLA BECOMES OPERATIONAL

By the end of December 2014, around 2, 00,000 books and journal of GU's library were scanned and uploaded. PDLA has become operational, but as of now it only gives access to GU's library material as the other universities and public libraries are yet to complete their scanning and uploading. For accessing PDLA, a user is required to sign up, register, create an account by divulging his/her credentials, and agree with an end-user agreement – given in a click wrap format. The PDLA website contains the following disclaimer:

A user of this website shall exercise due diligence to verify and ascertain which of the contents (i) are proprietary and as such protected by copyright or (ii) have fallen in public domain, or (iii) are orphan works whose owners could not be traced, and GU shall have no duty or obligation to provide the user with any information or advice in this regard.

As a user you understand, acknowledge, accept and agree that for providing this PDLA Service, GU, either had taken third party content-owner's permission or in good faith believes that providing of such content to be fair use and fair dealing.

As a user you understand, acknowledge, accept and agree that GU is acting in the capacity of a non-profit intermediary and at any point of time if any of the third party content-owners raise objection about the use of their Content or GU, at its own, believes providing of any such contents to be unlawful, GU may at its sole discretion forthwith remove such contents.

AFTERMATH OF PDLA

Mr. Mathew Varghese, a renowned mathematician and book-writer, came across the news of the digital library. He was surprised to find that all his 20 books are available for free download at PDLA. Mr. Varghese's publisher informed him that the sale of his books has been drastically reduced in the quarter that ended on March 31, 2015. Mr. Varghese being a member took up the matter to Authors' Association of Abhidweep (hereafter AAA). In the meantime, several other authors have also complained to AAA. AAA is a copyright society registered under the Copyright Act, 1960. AAA works for the interest of the writers, to protect their livelihood and their right to authorship. It also issues licenses for and on behalf

of its members. Further, AAA espouses freespeech and ensures fair compensation practices in the fast changing landscape of knowledge dissemination.

AAA’S GENERAL BODY MEETING AND THE SPLIT

AAA convened an emergency General Body meeting to discuss the problem of revenue-loss to its members resulting from the free download feature provided by PDLA. In the meeting heated discussions had taken place amongst the members. A group of authors under the leadership of Mr. Jyoti Tripathy, an eminent novelist and Nobel Laureate, contended that AAA should support PDLA initiative. Mr. Tripathy reminded that the authors do have duty towards the society and knowledge should be available free. He requested AAA not to be aggressive in PDLA issue. In spite of such request, AAA’s General Body by an overwhelming majority passed a resolution authorizing AAA’s Secretary to initiate appropriate legal action for infringement of copyright of its members. In protest Mr. Tripathy and 32 other members of AAA left membership of AAA. Later they also relinquished their copyright in all their works.

CEASE AND DESIST NOTICE AND LITIGATION

Without any further delay, AAA sent a cease and desist notice to GoA, GU, and Nirrikshan stating that PDLA project and the connected activities were clear violation of copyright of the members of AAA. Further, it also threatened to sue GoA, GU, and Nirrikshan if such activities were not stopped forthwith. GoA and GU have responded to the notice stating that PDLA and connected activities were fair dealing. However, Nirrikshan did not respond to the notice. Aggrieved by GoA and GU’s fair dealing assertion and Nirrikshan’s silence, AAA, in a representative capacity, filed a suit for injunction, damages and accounts (hereafter the first suit) in the Original Side of the High Court at Shivpuri impleading GoA, GU and Nirrikshan as defendants. The High Court at Shivpuri follows the Original Side Rules of the High Court at Calcutta, West Bengal, India.

NIRRIKSHAN’S NEW SEARCH ENGINE, BOOK SERVICE AND THE SECOND SUIT

In the meantime, Nirrikshan launched an Internet search engine under the name and style of FindIt. One of the key features of FindIt is that it provides a book-view service. The book-view service allows a user to read online substantial part of books scanned by Nirrikshan from various libraries of the world (including GU’s library) and uploaded into its server. AAA sent a separate cease and desist notice to Nirrikshan stating that FindIt service and the

connected activities were clear violation of copyright of the members of AAA. Further, it also threatened to sue Nirrikshan if such activities were not stopped immediately. Nirrikshan did not respond to the notice. Interestingly, Nirrikshan filed a suit for declaration (hereafter the second suit) in the Original Side of the High Court at Shivpuri impleading AAA as defendant. Nirrikshan sought a declaration that FindIt service and the connected activities were fair dealing and as such did not constitute copyright infringement.

HIGH COURT PROCEEDINGS

The single judge bench of the High Court at Shivpuri clubbed the above two suits together although AAA raised objection. In the first suit, the trial judge held that GoA, GU and Nirrikshan through PDLA service and connected activities have infringed the copyright of several members of AAA in their respective works and decreed the suit. The second suit filed by Nirrikshan was dismissed. Being aggrieved and dissatisfied by the judgment and decree passed by the single judge, GoA, GU and Nirrikshan filed an appeal under Clause 15 of the Letters Patent before the High Court at Shivpuri. Nirrikshan separately filed another appeal against the dismissal of the second suit. A division bench of the High Court at Shivpuri heard both the appeals together. The bench held that PDLA service and connected activities are fair dealing and allowed the appeal filed by GoA, GU and Nirrikshan. The other appeal filed by Nirrikshan was also allowed on the ground of fair dealing.

MATTER GOES TO THE APEX COURT

AAA being aggrieved and dissatisfied with outcome of both the appeals filed two separate special leave petitions before the Supreme Court of India. The petitions were admitted by the apex Court. The Apex Court clubbed these two special leave petitions. Edufree, a NGO, fights for the rights of the poor students and raise funds to give scholarships to bright students for pursuing higher education. Edufree filed an application for intervention submitting that the issues involved should also be looked into from the perspective of Article 21, 21A and 21B of the India's Constitution. The application for intervention was allowed. In the meantime, Mr. Jyoti Tripathy and 32 other members who opposed AAA's legal action against PDLA filed a separate application for intervention for supporting the cause of PDLA. This application for intervention was also allowed.

The case has come up before the Apex Court for final hearing.