4.0 HISTORICAL BACKGROUND

Copyright is a branch of law that grants authors (writers, musicians, artists and other creators) protection for their works. This protection consists of providing authors with ownership or property rights (or exploitation rights), which take into account their material interests. Under copyright, authors are entitled for protection against unauthorized use of their works as well as to a possible share in any earnings from its use by the public.\(^1\)

Looking on the history we found that copyright protection always has been an issue of global concern. Throughout history, different types of laws and legislation have been developed to protect the rights of authors. The absence of a consistent history of copyright law in any given area of the world does not mean the absence of copyright, non a permissive attitude towards reproduction or infringement of authorship.\(^2\) From an international perspective, it is exceedingly difficult to expose the history of copyright, because the division between developed and developing countries complicates an accurate charting of copyright conflicts and construction. In some countries, copyright was developed within the context of religious laws, while in others it exists independently. Following and summarizing the history of copyright in a global context through its own legal system, produced a unique legislative history. The origin of copyright is closely related to the development of printing, which enabled rapid production of copies of books at relatively low cost. The growth of literacy created a large demand for printed books, and the protection of authors and publishers from unauthorized copying was recognized as increasingly important in the context of this new means of making works available to the public. The first copyright laws were enacted as a result.
Historically speaking the most important geographical area of copyright development was Europe. The earliest copyright laws were designed to control publisher and producers of literature, and to protect some aspects of religious faith from denigration. Authors required permission to set their manuscript in type, or even to share them with others. During this time, copyright standards essentially were an extension of official censorship rules, motivated by the state and religion, rather than a need to protect property.3

The oldest recognizable Copyright Act on record is the English Statue of Anne, which passed in 1710.4 Under this act it provided that, after the lapse of a certain period, the privilege enjoyed by the Stationers’ Company to make and distribute copies of works, would revert to the authors of the works, who then had the right to assign the privilege to another publisher. Failure to register the book prevented an action for damages against an infringer, but did not invalidate copyright. The Statute of Anne served to promote competition in the publishing business by restricting and the requirement to deposit a copy of the document. The purpose of the statue of Anne and its immediate consequences was to reduce piracy and monopolies in the book trade and so protect the rights of authors, publishers, and society, Patterson5 views this Statue as trade legislation, and Samuelson6 points out that “[t]he Statue of Anne established mechanism to remedy consumer complaints about excessive price”. This act was the first attempt to establish balance in copyright, the first acknowledgement of the need to protect the interest of both authors and society.

Following the first Copyright Act which was passed in UK as English Statue of Anne other states also passed similar Copyright Acts during that same period, including Denmark in 1741, Spain in 1762; and France in 1793. In 1790, the United States of America promulgated its first federal copyright statute. After French Revaluation in year 1792, the authors identify and role in modern life became a point of contention and provided a definitely different starting point for copyright7. Until then, the principle of French copyright law was to regulate
the trade of books all over the country. The extension of the French Copyright Act (1852) to all the authors, in spite of nationality, was against the fact that it should become the basis for global copyright protection for authors.

In Germany, where printing originated, copyright principles first emerged in the form of rules regulating publishing agreements. In the mid-nineteenth century, the various German States enacted laws recognizing authors as the owners having rights for their works. Around the same time, laws were passed in Austria and Spain. National codification also took place in some of the Latin American countries following their independence: in Chile (1834), Peru (1849), Argentina (1869) and Mexico (1871).

Moreover, the expansion of new methods of printing had significant impact on the evolution of copyright laws throughout history when the global movement for the recognition of copying emerged by the end of eighteenth century. Countries sought protection for the rights of their authors beyond their own border, and was willing to offer similar protection to foreign authors. Their goal was to attain principles pertaining to the book trade. The idea of copyright law which started as a registry system to organize works published in European countries improved over the years to become both more prominent and ineluctable. European states were the first to reach the agreement on copyright laws, minimizing the process of repeating books registration in each country.

4.1.1 History of Copyright in India

According to Indian philosophy “the absence in doer of desire to claim it as his own doing is the symbol of attainment of ultimate knowledge”. In the earlier days the works were created either in the name of God or for service to humanity. The creator of work never desired to protect his/her work. It was clear that there is no role of creator, it is thought that whatever work was created through him was purely the work of God and he was fortunate enough to be in this role. Besides, in the early ages there were no means but memory of the scholars to preserve these scholarly works for posterity.
The risk of the work being gradually forgotten and lost after a gap of few generation, being abridged or modified or enriched by the knowledge and experience of those whose memories were the carriers of the work with the passage of time. There also existed the possibility of other scholars who were not the real authors getting the recognition for the work.

In ancient times Indian scholars bore in their mind that God was the source of every doing or being; in fact he was the only creator. Therefore the tendency of scholars is to avoid authorship rights. This dispassionate attitude of authors, as far as claiming the right of authorship is concerned persisted in India throughout the Mugal empire as well. The Urdu language which came into being as a result of an amalgamation of Indian and European languages and which has, vast literature of its own; also reflects similar trends as there are several books, poems, stories etc. the authorship of which is yet undecided.

The eventual concept of copyright in India was introduced during the time it was British colony. When the literary Copyright Act, 1842 was passed by the British parliament bringing about many changes in the law of copyright, it was also made applicable in British colonies besides Britain himself. Thus this act which provided for protection of copyright in books published on British soil automatically got an extension to the British India.

For the enforcement of copyright in the areas under the administration of east India company as also for promoting the endeavours of knowledge and learning in these areas the Governor General in Council, on December 18, passed the copy right act, 1847 which provided protection of copyright for works published in the areas under company administration for the first time since the enactment of British Act of 1842, i.e the literary Copyright Act, 1842.

According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years post-mortem. But in no case could the total term of copyright exceed a period of forty-two years. The government granted a compulsory license to publish a book if the owner of copyright, upon the death of the author, refused to allow its publication. The act of infringement
comprised in a person’s unauthorized printing of a copyright work for (or as a part of attempt of) "sale hire, or exportation", or "for selling, publishing or exposing to sale or hire". Suit or action for infringement was to be instituted in the "highest local court exercising original civil jurisdiction." The Act provided specifically that under a contract of service copyright in "any encyclopedia, review, magazine, periodical work or work published in a series of books or parts" shall vest in the "proprietor, projector, publisher or conductor." Infringing copies were deemed to be copies of the proprietor of copyrighted work. Importantly, unlike today, copyright in a work was not automatic. Registration of copyright with the Home Office was mandatory for the enforcement of rights under the Act. However, the Act also specifically reserved the subsistence of copyright in the author, and his right to sue for its infringement to the extent available in law other than the 1847 Act. As we shall see, this reservation of other “copyright-type” laws was done away with in later legislations.

RR Dada Changi in his book on copyright says that British India had been represented by India office in Britain at the Imperial copyright conference of 1910 which had closely preceded the introduction of the copyright Bill in British Parliament which ,despite some initial hindrances, ultimately passed through both the houses to became the Copyright Act, 1911. This became effective from 1st July 1912 in Britain and Indian government first tried to take into confidence the local governments in the territories under company rule so as to modify the Imperial Act of 1911 to bring it in tune with Indian requirements .Thus the British Act was enforced in Indian on Oct. 31, 1912.

Independent India accorded high priority to formulation of her own law on copyright. The Indian Copyright Act 1957 repealed the Indian Copyright Act 1914 ("the 1914 Act") which had virtually incorporated the whole of the Imperial Copyright Act 1911. The revision of the 1914 Act occurred within a mere seven years of Independence. “Apart from the fact that the United Kingdom Act did not fit in with the changed constitutional status of India ,it
became necessary to enact an independent self contained law on the subject of copyright in the light of growing public consciousness of the rights and obligations of author and in the light of experience gained in the working of the existing law during the last forty years. New and advanced means of communication like broadcasting, litho-photocopy etc also called for certain amendments in the existing law."

The Indian Copyright Act noted amendment five times since 1957 i.e. in the year 1981, 1988, 1992, 1994 and 1999. India being a developing nation, has always tried to keep herself abreast of changing times and tried to bring the law in conformity with the best laws on the subject in the world. Frequent changes in the copyright Act bear a testimony to this fact.

4.1.2 History of US Copyright

Although Copyright law originated in the seventeenth century in Europe, United States copyright law can be traced directly its roots in the British Statute of Anne. The British Statute of Anne (1709) was used as a template for creating the Copyright Act and considered registration as a prerequisite for obtaining copyright protection. However, such protection was granted only to US citizens’ publications within the US territory.

Only three private Copyright Acts were passed in America prior to 1783, two of the acts were limited to seven years; the other was limited to a term of five years. The Continental Congress had no authority to issue copyright, instead it passed a resolution encouraging the States to "secure to the authors or publishers of any new book, Copyright of such books for a certain time not less than fourteen years from the first publication; and to secure to the said authors, if they shall survive the term first mentioned, the Copyright of such books for another term of time no less than fourteen years."

The first Copyright Act in the United States was passed in 1790 under the title "An act for the encouragement of learning” by securing the copies of maps, charts, and books, to the authors and proprietors of such copies. This is the first
step to secure copyright according to the act in United States. This act provides exclusive right to author for publishing and vend of maps, charts and books for a period of 14 years with the right to renewal for another additional 14 years term if author was still alive. In this act there was no provision to authorize other kinds of writings, such as musical compositions or newspapers and specifically noted that it did not prohibit copying the works of foreign authors.

Copyright was first established in the United States Constitution which declared that Congress had the right “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (Article 1, section 8, clause 8)"15 to better define the scope of copyright giving it a broad framing in the Constitution, Congress passed the first Copyright Act in 1790 and later revised it in 1831, 1870, 1909, 1976, 1998, and most recently amended several times, most recently by the Digital Millennium Copyright Act (DMCA).

Copyright law ensure protection to the creators under the laws of the United States to the authors of “original works of authorship,” which include literary, dramatic, musical, artistic, and certain other intellectual works.16 This protection is available to both published and unpublished works. The objective of Copyright Act is to promote Progress of Science and as well as for the works of art, literature, music, and other works of authorship, in order to benefit the public. The United States recognizes no absolute, natural right to an author in preventing others from copying or otherwise exploiting the work. The copyright laws gave authors limited property rights to their works, but for the ultimate purpose of benefiting the public by encouraging the creation and dissemination of more works. The author's interest is secondary to that of the public. The balance in copyright is drawn by limiting property rights to the author's particular method of expressing an idea or information. Copyright never gives rights to the idea being expressed or in facts or other elements in the public domain which an author may incorporate into his work. Others are
free to express the same idea as the author did, or use the same facts, as long as they do not copy the author's original way of expressing the ideas or facts. In addition, even these rights granted to the author's expression are limited by duration and are subject to certain exceptions permitting public use under limited circumstances.

4.2 INTERNATIONAL DEVELOPMENT OF COPYRIGHT ACT

It is well established that copyright is territorial in nature that is protection under a given copyright law is applicable only in the country where that law applies. Thus, for works to be protected outside the country of origin, it is essential for the country to follow bilateral agreements with countries where the works are to be used.

In the global information society international copyright norms govern access to information in all parts of the world. International copyright treaties and agreements, implemented in national laws and information policies, form a system of interrelated laws that provide a basis for copyright protection for literary and artistic works and neighboring rights protection for performances, phonograms and broadcasting organizations. Copyright laws are shaped by the international treaties and agreements that have developed since the late 19th century to provide some degree of harmonization across national jurisdictions. For more than a century, major treaties and conventions have been established to respond to needs arising from the increasing interdependence of nations. International agreements are in a constant process of change, and are shaped by social and economic needs and technological advances. "Berne Convention for the Protection of Literary and Art" is the first international convention about copyright. It was adopted in 1886 as the result of an effort that began in the mid-19th century, when international cooperation was needed to standardize protection of authors’ rights among nations. The foundation of International Conventions indicated that the intellectual property system had come to the international stage.
Today international and regional treaties and agreements are negotiated among member states of international bodies. WIPO negotiations are member-driven process, based on agreement among participating nations, who negotiate the texts of treaties and agreements. The international copyright system allows for nations to formulate national copyright laws that are in their best interest. Flexibilities include minimum copyright terms, in order to maintain a substantial public domain; use of copyright limitations and exceptions to fulfill compelling public policy needs such as education, research, creativity, library and archival activity, and access to information for blind, visually impaired and other reading disabled persons; personal and private uses; defining the scope of protected works; and setting the scope of exclusive rights.

The countries that adopted the Berne Convention formed the Berne Union to ensure that the rights of authors in all member countries were recognized and protected. The Berne Convention is administered by the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. The international scope of copyright protection in Berne convention (1886) forever changed the worlds concern for, and response to copyright laws. Several national Copyright Act and international agreement were developed to handle the problem of copyright.

The Berne Convention, is the foundation of all international copyright agreements, was followed by several agreements and treaties, including the universal copyright convention (UCC) in 1952. The Rome convention (1961) granted copyright protection to performers, producers of phonograms and broadcasters is known as the source of the concept of related rights. The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement brought copyright issues into the age of globalization. Mean while, leaving aside away from the industrialized world, India and the United States of America made attempts to achieve a similar accord. Ultimately; the most up to date copyright legislation has come by way of international treaties administered by the World Intellectual Property Organization.
4.3 IMPORTANT INTERNATIONAL CONVENTIONS ON COPYRIGHT

The Berne Convention

The Berne Convention is the oldest international treaty in the field of copyright held on September 9, 1986. The Berne Convention has been revised several times in order to improve the international system of protection which the Convention provides. The Convention rests on three basic principles. Firstly, the principle of “national treatment”, according to which works originating in one of the member States are to be given the same protection in each of the member States as they grant to works of their own nationals. Secondly, there is automatic protection, according to which such national treatment is not dependent on any formality; in other words protection is granted automatically and is not subject to the formality of registration, deposit or the like. Thirdly, there is independence of protection. The convention is considered to be the foundation for international copyright, and was inspired, no doubt, by the progress made in international relationships. An order such as the international book trade was subject to increasing conflict due to the growing movement of books between countries and the power of technology. The convention provides strong worldwide protection against copyright infringements, which allows an authors work to be protected in all signatory nations (Mc Lane, 1998).

According to the Paris Act of the Berne convention of July 24 1971, and as amended on September 28, 1979 (the sixth and the last revision of this agreement), the convention protects all modes and forms of expression produced in the literary, scientific and artistic domains (Article 2) specifically, the Berne convention classifies the type of protection by using two broad categories “literary” and “artistic”. (Berne convention [Article 2.1])

The type of literary or artistic medium is not an issue in the convention; it protects all works created by authors without restriction or limitation on the type of materials used. In this convention, authors of literary and artistic works have exclusive rights. For instance, they have economic rights that protect
against reproduction or distribution of their works without permission . Article 6(b), became the international standard for moral rights. The Convention “reflects that author shall have right to claim authorship of the work and to object to any distortion, mutilation or other modification of , or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation” (Article 6b). 20

**Universal Copyright Convention**

Universal Copyright Convention (UCC, 1952) was created in Geneva as an alternative to the Berne Convention (1886), due to the disagreement by a number of countries with several articles. For example, USA was one of the countries not in favour of the Berne Convention (1886), but joined the UCC in 1955. It is thought that this part of legislation a landmark in the field of copyright law and helped to harmonise and simplify national legislation. The convention is based on the doctrines of national legislation supporting the protection of literary, artistic, and scientific works, similar to the Berne Convention (1886). Although the UCC (1952) appreciates Berne Convention’s (1886) language, signatories to the UCC (1952) enjoy significantly less demanding conditions, allowing countries to grant exceptions to IPR if provided these do not interfere with the spirit of the convention. Only if a country applies both agreements, is the Berne Convention (1886) regarded as better at safeguarding IPR. Revised in Paris, in 1971, the second protocol of the UCC (1971) explicitly commands for national law protection for published works, if the author is a citizen of a United Nation’s (UN) member country.

**Rome Convention**

In 1948, during a conference held in Brussels to further develop the Berne Convention, some consensus was reached for copyright agreements. Groups of authors had been seeking new means of copyright protection that would include performers, producers and other related to the creative process. Ultimately, a final separate draft was developed in Rome in October, 1961 by
UNESCO, the International Labor Office, and WIPO. It was the first agreement to protect the rights of those related to authors.

The Rome Convention for the protection of related rights, as previously defined, provides important new methods for worldwide copyright protection. It is considered to be of paramount importance, because it changes the meaning of authors right of performers, producers of phonograms (sound recording), and broadcasting organization.

These laws were developed to prevent all types of unauthorized copying of “phonograms,” defined as “any exclusively aural fixation of sound performance or of other sounds” (The Rome Conventions, Article 3b). Also, the Convention defines “publication” as “the offering of the copies of a phonogram to the public in reasonable quantity” (Article 3d), and “reproduction” as “the making of the copy or copies of a fixation” (Article 3e). Article 7 states that any reproduction of a phonogram work without its producers consent is prohibited. In the case of reproduction for broadcasting, or for any communication to the public, the user must pay a single equitable remuneration to the performers, or the producers, or both.21

**TRIPS Agreement**

Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a unique among the IPR accords as membership in the WTO is a "package deal," meaning that WTO members are not free to pick and choose among agreements. TRIPS establish minimum standards for the availability, scope, and use of seven forms of intellectual property: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets). It spells out permissible limitations and exceptions in order to balance the interests of intellectual property with interests in other areas, such as public health and economic development. TRIPS agreement achieved the goal to link international trade with people’s intellectual property rights. The agreement provides many principles and systems to other country’s legal system. And
TRIPS has greatly promoted intellectual property system into the integration process. The TRIPS agreement recognized the concept of “related rights” or “neighboring rights”- with its inherent conditions, limitations, exceptions, and reservations- as it appeared in the Rome Conventions, in Article 14. Again, the Agreement sought to extend the protection, which would extend fifty years beyond the death of an author, as it has been established in the Berne Convention.22

**WIPO Copyright Treaty**

The WIPO Copyright Treaty (WCT) for the protection of literary and artistic works adopted Articles 1 to 21 of the Berne Convention. Article 1 of WCT states that it is “a special agreement within the meaning of article 20 in Berne Convention,” aiming for a unified minimum standard of protection, and giving countries the ability to develop extensive protection agreements. Importantly, the WCT adopted article 6b of the Berne Convention (which was ignored by the TRIPS Agreement) dealing with moral rights. Since the protection of areas such as computer programs and transmission of works through the internet could not have been addressed in the Berne Convention, the WIPO treaties offered guidance to governments through models of a Copyright Act that could remain responsive to all challenges, especially in the age of digitization. The WCT provisions cover the area of digital materials and cyberspace authors rights.23

**4.4 INTERNATIONAL COPYRIGHT PROVISIONS FOR LIBRARIES**

The major concern of librarians and libraries is that who should deal with copyright issues and the limitation that these treaties would apply to library materials. International agreements make few direct statements pertaining to such limitations. Instead, the limitations of protection are commonly generalized, as in the Berne Convention (Article 9.2), which determines the “three steps test “as a measure for limitations on the authors exclusive rights.24 Prentice,25 points out that, in general, the WCT treaty gives strong support for
fair use, and also reflects an awareness of the changes that have developed in technological formats.

In collecting all types of materials and information’s sources for the public, today’s librarians have to maintain an understanding of copyright issues for libraries based on international principles. The legacy of domestic copyright legislation and varied national understanding of copyright have been the basis for the application of copyright protection and limitations in libraries. In turn, the national definition of exemptions is based on limitations specified in international agreements (WIPO), combined with the influences of cultural perspective. Librarians, then, represent these values when they implement copyright law. Although the WIPO model adopted the “three step test” of the Berne Convention, but its interpretation vary from country to country. The WIPO model requires that each member country adhere to the three steps according to their national laws, conceptual understanding of fair use, and the necessity of exemption. It states that “each country’s exceptions reflect its own cultural traditions and business practices”. It also raises concern over the passing national copyright laws on the basis of rich countries that should not conflict with the rest of the world, especially with the advent of the digital age.

The provisions for libraries have been discussed as it is available and the permission that are provided under the various convention in the following paragraph.

1. Berne Convention
2. Rome Convention
3. TRIPS

**Berne Convention**

Even though the Berne Convention does not clearly specify libraries as the beneficiaries of such flexibility, libraries still benefit from the Convention’s provision of limitations. The exemption in the Berne Convention that deal with the right of reproduction is the most important concern for librarians, since they
offer some flexibility, so long as their practice does not infringe on the “three test steps” of its article. It is a matter for legislation to the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author (Berne Convention, Article 9.2).\textsuperscript{26}

As established in article 9.2, the reproduction of the work must be limited to the three steps test: (1) specific cases which are (2) not in conflict with a normal exploitations of the work, and (3) do not harm the interest of the author. By using these three tests, “exceptions” in the right of reproduction, by stating “such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.” Certain free uses of the works also are further clarified as the ability “to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that is justified by the purpose” (Article 10).\textsuperscript{27}

**Rome Convention**

The Rome convention discussed about the library’s role in balancing the social interest through copyright law, Article 10, of Rome convention explains that the right of Phonogram reproduction is limited to the producer of the phonogram alone. Article 14 specifies the limitation to economic rights as “until the end of the period of twenty years computed from the end of the year in which” the fixation is produced. Article 15 asserts that any member state may “in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards: (a) private use; (b) use of short excerpts in connection with the reporting of current events; (c) ephemeral fixation by broadcasting organization by means of its own facilities and for its own broadcasts; (d) use solely for the purpose of teaching or scientific research”.\textsuperscript{28}
The Rome Convention made fair use exceptions for private use, minimal educational use, and use in scientific research. Thus under this provision, libraries are not allowed to reproduce phonogram materials, although library users could use the fair use exception for their private use, research, or teaching.

The Rome Convention was the earlier agreement to provide the protection that was missing in the Berne Convention for rights of those related to authors, including performers, producers, and others related to the creative process. While the agreement recognizes the right to private use, and the use of materials for research, it was overly vague regarding how to balance the rights of the author and the rights of the public which makes clear that librarians had to interpret for themselves terms like “personal use” and scientific research needs. The Rome Convention provided a very short duration for copyright protection of twenty years which was very limited period of time (Article 14), compared to the 50 year duration of today’s international WIPO Performances and Phonograms Treaty (WPPT) (article 17).

**TRIPS**

In terms of the Trips agreement, libraries may have been concerned about such stipulation as: “computer programs, whether in source code or object code, shall be protected as literary works under the Berne Convention (1971)” (TRIPS, Article 10.1); and “Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations” shall also be protected (TRIPS, Article 10.2). Virtually all library materials are included in this protection, even some type of data and computer programs that are not commonly in the “public domain.” Usually information sources that are in the public domain require regulations, where domestic copyright law may differ. TRIPS did not actually create unique copyright laws to add to those already developed in this area, but rather adopted, and referred to previous global legislative efforts, and used them as standards and conditions to which
countries planning to join the WTO agreement must adhere. Most of the exceptions made under the Berne and Rome Conventions apply to the TRIPS agreement as well, so libraries did not gain more flexibility regarding the reproduction or distribution of works. The only notable difference is that moral rights are not recognized by the TRIPS agreement.

4.5 COPYRIGHT ACT AND LIBRARIES

The basic purpose of the establishment of the libraries is to promote the education by providing various services to its patron. The Library’s mission is to provide information, stimulate thinking, and support and enhance educational, informational, recreational, and cultural pursuits.

The role of libraries does not end as it plays a vital societal role, contributing to intellectual, cultural, and economic advancement, creativity, and the public good. It assures the right, privilege, and the ability of individuals to choose and pursue any direction of thought, study or action they wish. The Library provides the capital necessary for us to understand the past and plan for the future. It is also our collective memory, as history and human experience are best preserved in writing. . . . Libraries are fundamental in empowering people to take charge of their lives, their governments, and their communities.

A library has been the chief conserver of knowledge achieved by men in their intellectual pursuits that helps in generating new ideas and discoveries, while ‘education’ is an art of making available to each generation the organized knowledge of the past which helps in promotion of science and arts. Louis Round Wilson and M. F. Tauber have rightly opined that “the process of social change are inter-woven in the facts, ideas, and interventions of man; and each new idea or invention grows out of accumulated and conserved knowledge”. Libraries and archives collect and bring together in single repositories books, journals, music, and a wealth of other materials from a variety of sources in a way that no single individual could, thereby streamlining and facilitating the process by which authors and creators learn from and build upon the work of others. Libraries and archives open to the general public.
provide an opportunity for learning for all, including those who cannot afford to purchase books and other materials. As historian Wertsman\(^3\) has observed, “[T]he public library has been historically a vital instrument of democracy and opportunity in the United States . . . . Our history has been greatly shaped by people who read their way to opportunity and achievements in public libraries.”

On the other hand, library collection includes books and other documents which are intellectual that are protected by the Copyright Act. The owner of the copyright to a specific work has certain exclusive right with respect to the work. In this context exclusive means that the copyright owner may exercise those rights by the owner.

According to copyright provision the library documents can be divided under two broad categories firstly those documents that are under the protection of Copyright Act and other are those documents which are not protected under the Copyright Act also called “free domain document”. The domain free documents which are not under the copyright protection doesn’t have any problem while providing library services and are free to use those documents in any format. The library can digitize the document for providing online retrieval system; can change to any format as per convenience. On the other hand copyright protected documents in the library are those documents which are protected by Copyright Act and the creators of the documents enjoy the exclusive right provided by the Copyright Act of their respective country. While dealing with copyright protected documents libraries have to take much care so that exclusive rights of the authors are not violated.

Generally every library provides some basic services to its patrons like reference service, interlibrary loan service, circulation service, reprographic service, translation service, web based services etc that will vary from library to library due to the nature of functioning of libraries and requirement of their users. For providing these services library have to do various background activities like reproduction of documents for interlibrary loan , display of books for awareness patrons, preparing abstract , digitization of printed documents,
maintaining database for easy retrieval of information and much more on the basis of requirement.

Copyright issues can also be raised when a library makes any digital material (including material digitized by the library itself) available online, even temporarily, or if a library distributes digital material electronically. Therefore emailing copyright material to clients, other libraries or staff, or posting material to a web or intranet site, may raise copyright issues. Whether libraries should be legally entitled to do any of these has become contentious.

The working of the libraries is affected by copyright at every stage in day to day functioning. Though most of the documents of the libraries are protected by copyright and it provides exclusive right to the copyright owner, violation of that right comes under the category of infringement. On one hand copyright protects the rights of the owner at the same time it provide various provisions for libraries and its users.

The Copyright Acts of India and USA have been discussed to understand the provisions available for application in libraries under the following headings:

1. Purpose of Copyright Act and libraries
   (a) India
   (b) USA

2. Exceptions under the Copyright Act for library activities in India and USA
   (a) Reproduction
   (b) Distribution
   (c) Fair use
4.6 PROVISION UNDER INDIAN AND US COPYRIGHT ACT FOR LIBRARIES

The Fundamental goal of copyright is to foster knowledge and understanding by ensuring the continued availability of creative works and rich and enduring intellectual legacy upon which new works of authorship can be build speaking in gross generalizations, libraries and archives place primary importance on the value of providing access to their patrons, viewing copyright issues through the lens of the public’s need for uninhibited information flow in order to fully participate in creative, intellectual, and political life. Rights-holders, on the other hand, emphasize the value of exclusive rights for creators, recognizing that without incentives and compensation to creators and their publishers, the amount and quality of creative and intellectual works available to the public will be severely diminished. Of course, for copyright law to work optimally, the core values of dissemination to the public and incentives to create should reinforce one another, not work at cross-purposes. This was the task before the drafters of the Indian Copyright Act and US Copyright Act 1976, as well as the Digital Millennium Copyright Act, and the Copyright Term Extension Act, each of which addressed the needs of libraries and archives in a world of changing technology.

4.6.1 Purpose of Indian Copyright Act and Libraries

In the light of the brief examination of case laws clarifying the intent of the Indian copyright law, it can be inferred that the system of copyright in India is not for commercialization of works but for achieving a balance of the interests of all stakeholders, including publishers, authors and users alike. Most importantly, Indian courts have laid stress on protecting public interest and contributing to public good and enriching public domain to enable dissemination of information. In order to enforce the law governing copyright in a way that serves public interest and enriches public domain by promoting and enabling access to and dissemination of information as ruled by the courts, and to remove any ambiguities that may exist in the law in this regard, it is
critical that the current copyright law be amended to provide for specific exceptions to copyright for libraries. In fact, it is the duty of the state to enable such access failing which, the very objective of the Indian copyright system would be defeated.

The Copyright Act allows reproduction of a copyrighted work for “private use, including research” under Section 52(a) (i)\(^{35}\). Such an exception does not make provision for printed works to be converted to accessible formats on large scale for purposes other than research, including for recreational purposes or for use in the normal course of any work. Even though it may be argued that a work in print can be reproduced in an accessible format (limited only to sign language or oral means), it does not go beyond the purpose of education, that too, only “in the course of instruction”.

It is clear that Indian copyright is of supportive nature for libraries and any exception and limitation provided under Copyright Act is to fulfill the purpose of the Copyright Act. The purpose of Copyright Act and the purpose of libraries are similar up to a certain level as the Copyright Act ensures the free flow of the information even in the libraries. The services of the libraries to be provided require information for the users under the provision of Copyright Act. It is now clear that Copyright Act if on the one hand protects the work for a limited time period but on the other hand it gives a broad area to libraries so that it can perform the various functions in providing library services to its users. The exceptions and limitation provided under section 52 of Indian Copyright Act helps in performing various function so that library services can be provided.

4.6.2 Purpose of US Copyright Act and Libraries

The authority for U.S. copyright law is found in Article I, Section 8 of the U.S. Constitution, which empowers Congress to enact laws “To promote the Progress of Science and useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” To the framers of the Constitution, “Science” meant knowledge
or learning. Copyright was intended to serve as “an engine of free expression.”

During the term of copyright protection, the exclusive right granted to creators of all forms of copyrightable expression (referred to collectively in copyright law as “authors”) allows them to control whether and how their works are published and under what conditions, including how to be compensated. By enabling authors to benefit from their works, monetarily or otherwise, copyright provides them with the incentive to create, publish, and disseminate creative and intellectual works, thereby “adding the fuel of interest to the fire of genius.”

Copyright exceptions included under section 108 provide provision that promote the collection, preservation, research, study, and further development of the knowledge base. Collectively, the protections and exceptions support both a vital economy of trade in copyrighted goods and services, as well as a “knowledge economy” of education and expertise. These two economies are interdependent: the trade provides the creative content and a fertile environment for creativity and knowledge provided in part by libraries and archives work together to produce significant economic benefits for the nation as a whole.

Copyright law is essential to how libraries work in the United States. Here it dates back to the USA Constitution. Copyright is based on the notion that creativity should be rewarded: creators of books, music, and other works should be compensated for their efforts and, for a limited time, can control how their works are copied and sold. But the Constitution also says that the “limited” monopoly is intended to “promote the Progress of Science and useful Arts”. This is sometimes referred to as the “bargain of copyright”: The government gives incentives for creation by giving a term of copyright protection that allows recoupment of one’s investment. This provision is not absolute as it has some flexibility, because the law also permits some use of those innovations by others so that they will create still more.
US copyright law accommodate this societal need to use these works for education and research by allowing some reasonable uses of copyrighted works without permission or compensation using the words of US (constitution to promote the progress of knowledge). Creative works inspire new creations, which in turn inspire others, but “engine of free expression” does not function unless the works so created are made available to the public.

There are certain public interests that when balanced outweigh copyright rights in certain circumstances. Wherever Congress has found that public policy concerns warrant exceptions or limitations, it has tried to circumscribe the exception or limitation so that it complements the fundamental aims of copyright law and preserves the incentives to create or to invest in the creation of new works. It allows unauthorized, limited use of a copyrighted work in certain situations for the public benefit under the fair use provision.

Earlier editions of the USA copyright code did not have fair-use provisions written down, but through the years the courts, decided disputes over copyright law, it recognise the need of unauthorized “fair uses”. Therefore copyright law was later revised expressly to include a fair-use provision. There are also other express exceptions in the copyright law that applies specifically to libraries and schools. Fair use is just one example of how copyright law is always being tested and adapted to suit changing conditions.

It was also determined that some acts that might not qualify as fair use were still desirable and required to be allowed. In the Copyright Act of 1976, Congress recognized the importance of the services provided by libraries and archives in helping to create and maintain an informed citizenry. It provided, in section 108 of the Act, exceptions specifically for libraries and archives. Those exceptions permitted them, under certain conditions, to reproduce and distribute lawfully acquired copyrighted works for specified purposes, where such activities can be conducted without material harm to the legitimate interests of rights holders. For instance, in the last decade the explosion of media products including CDs and DVDs and the much wider distribution of
artistic works electronically triggered a need to revise the copyright law. Obviously it was not just about books anymore but about books plus an amazing array of other media. Suddenly, many of the rules did not work so well. Owners of digital intellectual property wanted more control because copies of digital media are so easily copied and disseminated. But libraries still needed to make copies in order to catalogue, preserve, store and make the information available to the public. The USA library community, which includes archives, museums, and the general public, and the intellectual property community, which includes publishers, the motion picture and music industry, are trying to find ways to accommodate these competing needs.

4.7 EXCEPTIONS UNDER INDIAN COPYRIGHT APPLICABLE TO LIBRARY ACTIVITIES

Indian provision can be found under section 14 of the Indian Copyright Act, 1957:\(\text{copyright}\) means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part.

The main purpose of the Indian copyright is to make balance between the creators and the users. For making this balance between the authors and the users Indian Copyright Act protect the rights of authors by providing various exclusive rights as well as Copyright Act provide various provision to make the use of copyright protected work without the permission of the authors. Under section 52 of Indian Copyright Act there are certain activities which does not comes under the provision of infringement. The Indian Copyright Act also allows libraries to reproduce and distribute under terms and condition. There are certain provisions which are discussed under Indian Copyright Act that allow functional activities in the libraries which are discussed below.

4.7.1 Reproduction

Reproduction is the exclusive right of the authors under section14 of the Indian Copyright Act states that no one is allowed to reproduce work except creators
and the person who is permitted by creators. Of course, if the work is in public domain there is no problem. Under certain conditions specified in the law, libraries are authorized to furnish a photocopy or other reproduction.\textsuperscript{40}

Reproduction of the document is an activity which is to be performed for providing many library services. Many of the library services are directly affected by the reproduction and many of library services are affected indirectly. Reproduction is required for providing interlibrary loan service, reprographic service, translation service, reserve room service, reference service etc. In many cases it is found that there is a rare document or unpublished document which is equally important for the users and library cannot purchase it due to it’s the unavailability in the market. For fulfilling the demand of the user it is required that multiple copies of the document be prepared.

In this era of technology every day there is new technique developed for providing library services. The library also adopts these technologies to improve library services. Due to the change in the technology the way of preservation and dissemination of the information has also changed, this also requires reproduction of the document from one medium to another medium. The Copyright Act provides for the reproduction of the document as an exclusive right to the copyright holder under which no one is authorized to reproduce the copyright protected document except the creator or the person whom the creator authorizes.

Understanding the necessity of reproduction Indian and US Copyright Acts have made the provision for reproduction in the libraries. The provision made under Copyright Act for reproduction makes the services possible in the libraries where the reproduction is required.

The reproduction of copyrighted documents is discussed under section 52 of Indian Copyright Act. Subsection 52(o)\textsuperscript{41} make provision for libraries to duplicate not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of a person in charge of a
non-commercial public library for the use of the library, if such book is not available for sale in India.

Subsection 52(o) deals with making fresh copy for use in a library. The subsection allows for making up to three copies for the use in a library. This subsection makes conditions for the reproduction. Under this section libraries are allowed to reproduce three copies after ensuring a book is not available for sale in India. Excellent library services are not possible in the libraries without the availability of good collection in the libraries. It is generally found that there are many documents which are currently not in publication and there availability in the market is nil but demand of such a document is quite high in the libraries and libraries are unable to purchase that document due to unavailability in the market. For the sake of making that documents available in the libraries, Sub section 52(o) of Indian Copyright Act make provision that library can make up to three copies books including book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of a person in charge of a non-commercial public libraries for the use of the library. This subsection helps libraries for maintaining the collection of libraries for the users.

### 4.7.2 Distribution

The right of distribution encompasses distribution of copies to the public “by sale or other transfer of ownership, or by rental, lease or lending.” This right extends only to the distribution made to the public, but a library is for general use, or a store looking for maximum sales, is the most certainly distribution to the public. 42

The distribution of copyright protected documents in the library is very common when library lends library collection to users under circulation service. The library has to perform the distribution activity in the library under the provision of Copyright Act. The Indian Copyright Act does not give any exception in case of distribution of copyrighted work in libraries. Therefore Indian libraries are bound to follow the instruction given in the section 14 of
Indian Copyright Act. Even though Indian Copyright Act provides exclusive right of distribution to the copyright holder but in case of literary, dramatic, musical work and artistic work the distribution right is only up to the first sale. The copyright holder loses his distribution right after sale of the work.

Whatever rights have been guaranteed to the owner are related to the intellectual creation and does not limit to any other right of the copyright owner outside the ambit of the statutory provision to owners of copies of the IP. This is the baseline of the first sale under subsection 14(a)(ii) and 14(c)(iii), which is allows the purchaser to transfer, sell, or give away a particular lawfully made/obtained copy of the copyrighted work without permission once it has been obtained. Under the subsection 14(a)(ii) and 14(c)(iii) which applicable only in case of a literary, dramatic, musical and artistic work, which give exclusive right to owner to issue copies of the work to the public not being copies already in circulation. The exclusive right of distribution is given to the copyright holder on only first copy not on the copy which is already in circulation. The word “circulation” which is later defined in copy right act is that copy which is already sold. On the sold copy the distribution right is transferred to the purchaser of that copy. Now the purchasers have the distribution right, he can distribute that copy to anyone but all other right given to the copyright holder remains with them. In case of the library when library is the purchaser of the copyright protected document the library also gets distribution right and library can distribute that copy to anyone. Thus the copyright owner will not have any control over the downstream movement of an article incorporating his IP beyond the first sale. In India we can infer it from a harmonious reading of the explanation to section 14 together with sections 14(a)(ii) and 14(c)(iii), which states that rights provided to the copyright owner include the right to issue copies of artistic work, literary, dramatic, or musical work, not being a computer program, but that the copyright owner has no control over copies already in circulation.
However, sections 14(b) (ii), 14(d) (ii) and 14(e) (ii) allow the copyright owner of cinematograph film and sound recordings to sell or give on hire, and the copyright owner will have control over the downstream.

The Indian Copyright Act does not provide special provision for the libraries whereas as it is a common provision which is applicable for any one. Under Indian Copyright Act the Copyright Act doesn’t give right of distribution to the copyright holder on the sold copy or copy which is already in circulation. The Indian Copyright Act only gives distribution right to the right holder only up to the first sale.

4.7.3 Fair Dealing Provision

Fair dealing provision under Copyright Act is not particular for libraries rather it allows certain acts as fair dealing. Section 52 of the Indian Copyright Act, 1957 has a greater significance and regulates the monopoly of the individual owner of the work. The doctrine of fair dealing balances the rigid principles of monopoly rights of the copyright and need of the society from the author selects his plots and creates new works. The Act provides list of the activities which are treated as part of fair dealing and it will not amount to the infringement of the right of the owner. The Indian Copyright Act gives exceptions and limitations under section 52 by indicating that certain activities are not to be considered as infringement of Copyright Act. The Subsection 52(1)(a)(i)(ii)(iii) of Indian Copyright Act defines the activities that are not to be included under the infringement of Copyright Act for the purpose of private or personal use, including research, criticism or review and reporting.

While providing documents through interlibrary loan it is seen that two rights of the owner are involved i.e. reproduction and distribution. These two rights are the exclusive right provided under the Copyright Act of India, and these two activities are termed as infringement if it is done without the permission of the copyright owner. Library commonly make photocopies of a work and then use the photocopy to provide ILL.
The provision of fair dealing under Copyright Act makes room for library services as it allow certain activities (under which library activities are also included) without fear of infringement. The provision for fair dealing in libraries depends on the nature of use of the copyright protected materials.

Elaborating the section 52 of Indian Copyright Act that deals with the fair dealing in the context of libraries, it is clear that:-

1. Under fair dealing provisions only library patrons are allowed to reproduce it where patrons use it for the purpose of personal or private need including research and for criticism.

2. The Copyright Act further allow to store any work in any electronic medium for the purposes mentioned in section 52 including the incidental storage of any computer programme that shall not constitute infringement of copyright.

Therefore it is clear from the subsection of the Copyright Act that library can reproduce it in the electronic forms for the user under the fair dealing it means that for the purpose of private or personal use, including research; criticism or review and for reporting.43

Library Services That Directly Benefits from Provisions of Copyright Act

Reprographic Service

One of the important library services is reprographic services where users request to the library for substantial part of the book. The user of the library demands the reproduced copy of the document for the purpose of personal or private use or for the research which library makes reproduction for the patrons. The fair dealing under Copyright Act is the base of reprographic services under which provisions are made for reproduction for private, personal use including research are allowed for library user.
Inter library Loan Service

If we take in consideration the service such as the interlibrary loan service we found that under interlibrary loan one library request to another library on the behalf of the user.

Here two cases of interlibrary loan occur first is the inter library loan of the books which are purchased where reproduction is not required. Only the distribution of document should take place in the case distribution is made under the provision of section 14(a) and 14(c) of Indian Copyright Act under which the distribution right of the author is transferred to the purchaser and here the library is the purchaser so it has the right to distribute the copies to the users.

Second case occurs where the reproduction and distribution is required for interlibrary loan. Reproduction and distribution of documents inadvertently gets involved while preparing for inter library loan service. Indian Copyright Act does not clearly mention to reproduce and distribute for interlibrary loan. Indian Copyright Act in section Sec 52 (1) (a) gives relaxation of reproduction for non commercial activities and libraries take advantage of the provision that is reproduction under fair dealing for any work not being a computer programme for the purpose of private or personal, including research and for criticism or review of that work or any other work.

4.8 EXCEPTIONS UNDER US COPYRIGHT APPLICABLE TO LIBRARY ACTIVITIES

US Copyright Act is more particular about libraries and it makes provisions for library under section 108 of US Copyright Act. Various subsections of the section 108 clearly define the activities that are allowed for libraries without the infringement. The other sections that libraries enjoy benefit form are Sec. 107 and Sec.109 of US Copyright Act that directly deals with fair use and first sale doctrine respectively.
4.8.1 Reproduction

Reproduction is a primary activity of the library that is generally required by the library. Section 108 of US Copyright Act describes about the various form of reproduction allowed for the libraries.

Provision of Reproduction for Unpublished Work by Library

Subsection 108(b) of US Copyright Act applies to the reproduction of unpublished works only. It facilitates libraries to make three copies, in digital or analog form, of an unpublished work already in its collection solely for purposes of preservation and security or for deposit in another library. This copy limit is parallel to subsection 108(c), which applies to replacement copies of published works. There is no requirement for the library or archive first to purchase a copy, as it is a must do before making a replacement copy under subsection 108(c). Under this section it is not necessary that the original copy in the library’s collection be damaged, deteriorating, lost, stolen, or in obsolete format for a copy to be made. Copies may be made in digital form, but the library or archive should not make digital copies available to the public outside the premises.

Subsection 108(b) allows libraries to make copies of unpublished works for the purposes of preservation, security, and deposit for research, use in other libraries and archives. The provision is often referred to as a provision for preservation, but it allows reproduction of unpublished works for security purposes as well. For instance, a library or archives could make a copy of a one-of-a-kind unpublished work available to users under this exception in order to safeguard and secure the integrity of its original copy.

In addition, subsection 108(b) recognizes the importance of making one-of-a-kind unpublished works available for scholarship and research. Unpublished works are of fundamental importance in many fields of scholarship. Subsection 108(b) therefore allows the library that owns a copy of an unpublished work to
provide up to three copies of the work for deposit in other libraries or archives in order to make the work more readily accessible to researchers. Subsection 108(b) provides for “three copies”, solely for purposes of preservation and security or deposit for research use.

As widespread distribution could adversely affect the author’s right of first publication, the availability of deposit copies must be balanced against this right. For this reason, the number of copies of unpublished works permitted is currently limited to three. The effect on the right of first publication of permitting limited reproduction and distribution will vary depending on the type of unpublished work. The economic impact might be minimal for works such as personal letters or e-mail messages not intended for public distribution, but intentions may change over time, and the right of the author to decide whether and when to publish is fundamental. 44 For manuscripts or other works that the author or his or her heirs may seek to publish, there may be a strong interest in protecting future exploitation, as well as in preserving the right to decide when and under what circumstances to publish. For works that have already been publicly disseminated but that remain technically unpublished, such as on syndicated television broadcasts, the concerns are more akin to those related to published works – namely the effect on potential new opportunities for commercial exploitation.

Provision of Reproduction for Replacement Copies

Works in a library’s collection sometimes become damaged, disappear, or are rendered unusable when their format becomes obsolete. The existing subsection 108(c) enables libraries and archives to make replacement copies of published works in their collections when one of these events occurs and a replacement copy cannot be obtained at a fair price. Replacement copies may be made in digital form provided the library or archives do not make digital copies available to the public outside its premises. Although subsection 108(c) deals with copying for replacement purposes and does not specifically address preservation, it is sometimes viewed as a *de facto* preservation provision
because it enables libraries in their collections copies of works that would otherwise be lost or inaccessible.

**Provision of Reproduction for Inter Library Loan**

The Section 108(d) and (e) of US Copyright Act which directly influence interlibrary loan service by providing the provisions for interlibrary loan services. This Section fulfils the reproduction requirement in the library for the interlibrary loan service. Subsection 108(d) and 108(e) permit a library to make a single copy of a copyrighted work from its collections upon the request of a user. The copy may be provided pursuant to a request from the library’s own user, or pursuant to an ILL request from another library or archives on behalf of one of its users.

Subsection 108(d) provides that libraries may reproduce and distribute a single copy of “no more than one article or other contribution to a copyrighted collection or periodical issue, or a copy or phonorecord of a small part of any other copyrighted work.” Subsection 108(e) allows libraries and archives to reproduce and distribute an “entire work, or a substantial part of it” if the library first determines, “on the basis of a reasonable investigation,” that “a copy or phonorecord of the work cannot be obtained at a fair price.” The subsection puts the condition which should be fulfilled at the time of reproduction and distribution for interlibrary loan service. The condition includes that -

1. The copy becomes the property of the requesting user (so the libraries cannot use these exceptions as a means to enlarge their collections),
2. The library has no notice that the copy will be used for any purpose other than “private study, scholarship, or research,” and
3. The library prominently displays a copyright warning.

Subsections 108(d) and (e) are subject to several significant conditions. First, subsection 108(i) prevents subsections 108(d) and (e) from being used for most
non-text-based works. Second, the subsection 108(a) included the requirement that the copying activity may not be conducted with “any purpose of direct or indirect commercial advantage.” Subsection 108(g) further limits the scope of the provisions to “isolated and unrelated reproduction and distribution of a single copy or phonorecord of the same material on separate occasions.” Subsection 108(g) (i) precludes the provisions from applying when a library or its employee, is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group.

Subsection 108(g)(2) further limits subsection 108(d)’s exception for copying articles or small parts of works by prohibiting the “systematic reproduction of single or multiple copies or phonorecords of material described in subsection (d),” and clarifies that copies made for ILL do not violate the prohibition against systematic copying if they “do not have, as their purpose or effect, that the library receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.” This provision is intended to prevent libraries and archives from dividing the purchase of periodicals and sharing them through ILL arrangements.

4.8.2 Provision of Distribution for Libraries under US Copyright Act

The distribution of document is equally important for providing many services. Most of the library services are concerned with the distribution of library document. The distribution of the copyrighted material is the exclusive right of the copyright owner under Section 106 of US Copyright Act. Further US Copyright Act understands the importance of distribution in libraries and makes provision for distribution through which US libraries fulfill distribution activities. It was earlier discussed that distribution is the exclusive right which is generally performed in the circulation service where the copyright
documents are lend to the users. During distribution the exclusive right is applicable to these services. The service which is directly affected by the distribution is the interlibrary loan service in which the distribution of documents takes place.

The first sale doctrine, codified in section 109 of the Copyright Act states that once an individual copy of work has been sold, the owner of that particular copy may sell or otherwise dispose of that copy without the permission of the copyright owner.\textsuperscript{44} Without this exception, libraries could not loan books to the users. The first sale doctrine also allows the owner of a particular copy to display publically the work\textsuperscript{45} Recalling that the right to public display is also an exclusive right, the exception in section 109 allows libraries to create displays of their materials to attract and inform user about collections.

The first sale doctrine does not apply to the rental, lease, or lending of computer programmes or sound recordings for the purpose of direct or indirect commercial advantages.\textsuperscript{46} Nonprofit libraries lending computer programmes for nonprofit purpose may however, lend software copies of software but must include a copy right warning on the packing of the copy being lent.\textsuperscript{47} This subsection of Copyright Act also specifically states that the transfer of possession of computer programme by a nonprofit educational institution to another nonprofit educational institution or to faculty, staff, and students” does not constitute commercial use and thus is allowed under the first sale of doctrine.\textsuperscript{48}

Nonprofit libraries and nonprofit educational institutions also are allowed to rent, lease, or lend copies of “phonorecords,” which would include any sound recording such as cassette tapes or CDs as well as traditional disks\textsuperscript{49}. These exceptions do not apply to for profit libraries or to the resale of computer programmes, such as at a library book sale.

The first sale doctrine is a principle tenet on which many library operations are based. It “holds that a copyright owner’s exclusive right to distribute extends only to the first sale of a copy.” Once a copy of a work is sold, the new owner
of that physical copy is allowed to dispose of that one copy as he or she wishes. He or she can sell it to a used book store or give it away to a friend. If the new owner is a library, it can loan it to as many patrons as it wishes, as often and for as long as it likes. By that one sale, the copyright holder has relinquished his or her rights to that one physical copy of a work. The copyright owner still holds all the applicable rights to the intellectual content of the work, of course, but he or she no longer can control what happens to that one physical copy of the work. First sale is what allows libraries to provide individual public access to privately copyrighted works. The first sale doctrine applies appropriately and well to the sale and subsequent library distribution of any work or parts thereof that can exist and be lent in a specific and restricted physical copy. In the case of books, it is fairly easy for a library to hold up its end of the first sale doctrine. If a library needs to lend (distribute) more books, it merely needs to buy more copies, in order to acquire the additional distribution rights for the additional copies. Since a library would usually not have any more copies to loan if it did not buy them in the first place, implementing compliance to this doctrine is fairly straightforward. With digital items, such as electronic documents or software, the first sale doctrine is more difficult to implement. In fact, it can be argued that the first sale doctrine cannot apply at all because in the digital environment, any lending requires replication.

For the Interlibrary loan service when libraries loan the document where the reproduction is not involved and the library loan the purchased document such as book then the provision of first sale doctrine is applicable for the distribution but in case where the reproduction of the document is involved, such as in the case of an article in a journal, then the section108 (d) and (e) is applicable for the purpose of distribution for the interlibrary loan service.

4.8.3 Fairuse

Fair use is the provision under Copyright Act which enables relaxation on the copyright. The law provides copyright protection to “works of authorship” in order to foster the creation of culture. Its best-known feature is protection of
owners’ rights. But the another feature of Copyright Act that helps the library users to avail the library services such as fair use allows copying, quoting, and generally re-using existing cultural material can be, under some circumstances, a critically important part of generating new culture. In fact, the cultural value of copying is so well established that it is written into the social bargain at the heart of copyright law, as inscribed in the United States Constitution. The bargain is this: we as a society give limited property rights to creators to encourage them to produce culture; at the same time, we give other creators the chance to use that same copyrighted material, without permission or payment, in some circumstances. Without the second half of the bargain, we could all lose important new cultural work.\textsuperscript{50} Fair use in case of USA is central tool for achieving many facets for libraries mission in the IPR world.\textsuperscript{51}

**Provision of fair use under US copyright applicable for libraries**

Fair use is the tool for user in exploiting copyright protected work under certain terms and conditions. The provisions of fair use are defined in Section 107 of the US Copyright Act that allows reproduction and other uses of copyrighted works for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. The statute sets forth four factors to be considered in determining whether a use is fair, including:-

1. The character of the use,
2. The nature of the work,
3. The amount used in proportion to the whole, and
4. The impact on the market for the work.

Fair use has served us well because there is no fair use checklist. The four factors provide libraries and users alike with needed flexibility. Library patrons routinely rely on fair use. A teacher, for example, might photocopy a few pages of a history text found in a library to hand out to her class. A student may include in a term paper a quotation from a novel checked out of a library while a researcher might give a copy of a journal article describing a laboratory
technique to a technician who works for her. In addition to fair uses by library patrons, libraries rely upon fair use in support of a number of library activities. While US copyright law does contain explicit exceptions for libraries and archives in Section 108, these exceptions do not cover every circumstance under which a library might need to use a work.

Section 108 specifically provides that “[n]othing in this section in any way affects the right of fair use as provided by section 107.” For example, library practices for both print and electronic reserves are based on fair use.

4.8.4 Provision of Reserve Room Service

Under the US Copyright Act the provision of reserve room service is discussed in the 1976 copyright revision Act in institution to make copies in limited numbers of copyrighted materials for educational and research use. Various authors and educators have discussed the ramification of the Copyright Act and how to implement it, with no clear consensus emerging. Libraries have wrestled over such questions as: What is fair use for reserve? Can photocopied materials be used repeatedly? Is photocopied material on reserve become the libraries property or does it belong to the users? What can the library do if permission to photocopy is denied?

In general, librarians may photocopy materials for reserve room use. If the request calls for only one copy to be placed on reserve, the library may photocopy an entire article, or an entire chapter from a book or an entire poem. Request for multiple copies on reserve should meet the following guidelines:

1) The amount of the material should be reasonable in relation to the amount of material for one term course taking into account the nature of the course, its subject matter and level.

2) The number of copies should be reasonable in the light of the number of students enrolled, the difficulty and timing of assignment and the number of other courses which may assign the same materials.
3) The material should contain a notice of copyright.

4) The effect of photocopying the material should not be detrimental to the market for the work. In general, the library should own at least one copy of the work.

The four factors provide libraries and users alike with needed flexibility. And there is no need to import from other sections of the law the detailed list of conditions, prohibitions, and exclusions such as those found in the TEACH ACT (The Technology, Education and Copyright Harmonization Act of 2002, known as the TEACH Act, is an Act of the United States Congress concerning distance education) Importantly, there is no bright line for fair use. Thus, fair use is dynamic, inherently ambiguous, and not easily defined but critically important in ensuring legitimate access to copyrighted works.

4.8.5 Provision for Copier Machine in Libraries

Library install reproduction machine for providing reprographic service to the library patrons. Section 108 has a provision that is routinely important to libraries. Section 108(f) (1) gives libraries protection from infringement that a visitor may commit when using unsupervised copier machine in the library. As long as the library displays a notice informing users that making copies may be subject to copyright law, the statue can release the library and its staff from liability. The user of the library is still responsible for any infringements. This provision of the statue offers protection to libraries that post notices on unsupervised “reproducing equipments “at the library. The provision doesn’t narrowly refer to “photocopy machine.” The benefit to libraries could be considerable, and the cost of compliance is negligible. A library is well advised to post a notice on all unsupervised photocopy machines, as well as on VCRs, tape decks, and other equipments that is capable of making copies.
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11. 1847 British Copyright Act of 1847


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35. Section 52(a)(i), Indian Copyright Act 1957.


38. Section 14, Indian Copyright Act 1957.

39. Section 52, Indian Copyright Act 1957.

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41. Section 52(o), Indian Copyright Act 1957.


49. (Ibid).

