CHAPTER-6
SUMMARY AND CONCLUSION

This research study was motivated by the need to obtain a better understanding the impact of Intellectual Property Rights particularly copyright with respect to Library services. The researcher aimed to demonstrate the impact of IPR on library services. The study on examination of the existing literature and data collected on the basis of the survey on the librarians from India and USA brought to the fore a unique understanding of the Copyright Act and its application in libraries. The status of IPR in India and USA has been discussed in detail as studied under the provisions available for libraries including the opinion of the librarians serving these institutions supplemented by an intense exploration of the literature. The study has reached to the following conclusion:

6.1 INTELECTUAL PROPERTY RIGHT AND LIBRARIES

In a democratic setup libraries represent a public institution that assures the right, privilege, and the ability of individuals to choose and pursue any direction of thought, study or action they wish. Library provides the capital necessary for understanding the past and plan for the future by providing various services to its patrons. Library services include various traditional services such as circulation, reference service, interlibrary loan service, and translation service as well as modern services that are made available through the technological means. For fulfilling its aim libraries collect and bring together at one place repositories books, journals, music, and a wealth of other materials from a variety of sources. Libraries and archives are open to the general public providing an opportunity for learning for all, including those who cannot afford to purchase books and other materials.

Importance of libraries in the society has ample applications as its dependence varies from individual to individual for varied reasons and purposes. Speaking in gross generalizations, libraries and archives place primary importance to provide access to their patrons, viewing copyright issues from the public
perspective, need for uninhibited information flow to enable full participation 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 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 for the cross purposes.

Libraries have always made hard copies of works of collections, and started making machine reproductions in the beginning of the 20th century. But it was not until the advent of the modern photocopier machine that the activities of libraries and archives had the potential for significant economic impact on markets for copyrighted works. Libraries provide patrons with print, audio, video, and other materials; public-access computer terminals; special programming for children and adults, including book clubs and reading groups; and electronic journals and databases.

Library collections house both copyrighted and public domain materials and their mission are to make these works available to students and faculty to support teaching, learning, research and scholarship. Awareness of copyright and other intellectual property rights is growing in the society and, therefore, librarians will have, to think of the intellectual property issue that may affect the working of the libraries and make suggestions to the government so as to make appropriate legislation.1 A clear understanding of the law is necessary particularly in the context of digitization to ensure that the activities by a library, even inadvertently, do not result in infringement of copyright. Librarians will have to examine the existing legislative framework in order to see whether services of libraries are within the copyright framework. It must be remembered that libraries and their patrons have the right to expect that digitization of public domain material can be performed without copyright restrictions; that the government publications and public domain material in
electronic format is available without copyright restriction and that in the cases of copyrighted material the conditions of access and use are not unduly restricted or prohibitively expensive. Keeping in view the requirement for spreading literacy and education in the country, public libraries should be able to use electronic technologies to preserve their collection, whether they are in the public domain or in the copyright domain, to provide on-site access to the digitized material, and to provide copies of reasonable extract of the material in electronic and paper form for legitimate non-commercial use. Librarians, therefore, need to study the law keeping this requirement in view and examine how far the existing law facilitates this task of providing services to the people.

Libraries deal with the literary work which comes under the subject matter of copyright which is a part of intellectual property right; therefore libraries are directly affected by and require applying copyright laws. The relation between copyright law and libraries is crucial, since most materials in libraries, both printed and digital are copyrighted. In an attempt to insist copyright laws, organizations such as the American library Association have developed a code of ethics that contains statements regarding copyright. The code states that librarians have a role and responsibility to respect intellectual property laws. (ALA code of ethics, 1995)<sup>2</sup> Libraries face different challenges concerning copyright laws, including developing copyright polices, planning for the copyright permissions, participating in the education of users regarding copyright issues, controlling the unsuitable situation regarding changes in the format of library materials, and understanding the situations in which copyright laws apply. All the problems fall under two types of actions in libraries: the reproduction and distribution of documents. These actions are observed in situations such as inter library loans, and library reserve service. <sup>3</sup> Libraries acquire to process, organize, preserve, disseminate and provide access to works, including those that have lost market viability or are out of print. But due to several reasons, the present day libraries are passing through several constraints resulting into the non-compliance of the role for which they have been established as the integral part of the institutions. Some of the
reasons for such a hurdle are: information explosion, change in technology, variation in international laws, hike in the cost of publications, devaluation of rupees on account of increase in the conversion rates of foreign currency, shrinking of library budgets due to the financial cuts on the allocation of funds especially to the higher education institutions, etc. On the other side, the awareness of the users about the information explosion and availability of information in different formats at different places is increasing which has resulted in the form of rising expectation for the pointed exhaustive information and other types of library services including the timely access to e-resources both in public domain and in commercial domain. Needless to say that the research and development activities cannot take place without the proper and adequate library and information services is a big threat to the acquisition capacity and other activities as mentioned above.

However, the role of the libraries continues to be the same irrespective of the problems and challenges they are facing on account of the several factors discussed in the study. Libraries provide the facility of inter-library loan for meeting the information requirements of the user by adopting the system of document delivery, electronic network services, and also supplying of photocopies of the documents in place of books/journals. It has become almost a routine demand of the users as they demand photocopy of the articles which may be converted into the demand of supplying the information at their terminals.

Since the libraries are functioning in order to fulfill their obligatory duty of satisfying the information needs of the users by making available information being sought by the users in the best possible way, they are joining the resource sharing and networking programmes. These developments are observed by the publishers with distrust and are not happy to accept these changes in the context of the attitude toward perception of libraries.
6.2 LIBRARIES IN THE DIGITAL ERA AND COPYRIGHT

Now-a-days, information is increasingly being produced in digital format. New communication technologies bring unprecedented opportunities for mass publication in less time with improved access to information. Technology has the potential to improve communication and access for all irrespective of their location and other factors. If reasonable access to copyrighted works is not maintained in the digital environment, a new barrier will be created which will deny access to those who cannot afford to pay. It is an undisputedly accepted fact that the libraries and documentation centers continue to play a critical role in ensuring access for all in the information society. Traditionally, libraries provided reasonable access to the purchased copies of copyrighted works held in their collections. However, in future if access and use of information in digital format is subject to payment, the libraries ability to provide access to its users will be severely restricted. It is also an established fact that the librarians and information professionals recognize, and are committed to support the needs of their users to gain access to copyrighted works as well as other information and ideas they contain. Simultaneously, librarians and information professionals are also intended to support the needs of authors and copyright owners to obtain a fair economic return for their intellectual property.

While discussing libraries venture into the e-book lending arena, the issues surrounding access, privacy, copyright and fair use have become more prominent .Digital rights management is a new phrase that is being used during discussions about licensing and access to the electronic world of publishing .Both libraries and publishers have serious concerns about these issues. It is important to discuss how electronic book providers are allowing access to materials and libraries are trying to balance the interests of the users and publishers. This is an area of interest that has grown as more and more libraries began to invest in the electronic book and begin to realize what effect it has on its collection, and patron access concerns.
Use of electronic resources in libraries is not new, patrons had access to variety of publications on CD-ROM as well as both commercial and free databases for years. Libraries purchase individual copies to run on standalone machines in the library then expand to provide access through library networks. Libraries have been particularly active in recent years in tending their electronic resources to patrons via internet. Students rarely have to leave their dorm room to get access to any number of reference sources, full text journals articles, searchable databases and even full text monographs or treaties. Reference books have been the preferred type of publication for online access, there is a growing realization that full text works, in which a user may be interested is only a small portion of the work, is also becoming popular.

The understanding of the concept of fair use in libraries is prime importance. Library and information professionals should be facilitated to make use of the provisions of ‘Fair Use’ in order to satisfy the information requirements of its users. Institutions like IFLA supports balanced copyright law that promotes the advancement of society as a whole by giving strong and effective protection in the interests of rights holders as well as allow reasonable access in order to encourage creativity, innovation, research, education and learning. It is a concerned that the balanced act that seems to ensure and promote use of the intellectual property act does not allow the less privileged users especially in the developing countries, as most of the databases are too expensive.

IFLA on the one side, supports the effective enforcement of copyright and recognizes that libraries have a crucial role to play in controlling as well as facilitating access to the increasing number of local and remote electronic information resources, and on the other side, maintains that overprotection of copyright could threaten democratic traditions and impact on social justice principles by unreasonably restricting access to information and knowledge. Therefore, IFLA states that unless libraries and citizens are granted exceptions which allow access and use without payment for purposes which are in the public interest and in line with fair practice such as education and research,
there is a danger that only those who can afford to pay will be able to take advantage of the benefits of the information society, which will further widen the digital divide.\textsuperscript{6}

Therefore on the one hand Copyright Act ensures the protection of the author’s right by providing exclusive rights to the authors but on other hand it provides many exceptions and limitations over the exclusive rights of the authors for safeguarding the users right of free access for non commercial purpose. It is the public interest for the law to be flexible enough to allow access and use of work in specific case. Copyright is designed to encourage creativity so potential creators must be able to research the works of the others, without the fear of prosecution, in order to develop new ideas. Authors are not expected to buy every work in order to do research. Research and education are therefore valid reasons for copying.\textsuperscript{7}

Copyright has from its inception worked towards maintaining to balance among the creators and the user’s right to access information for teaching, learning and further creative endeavors. Therefore Copyright Act of both India and USA provides for various exceptions and limitations over the author’s right. Under Indian Copyright Act various library activities such as reproduction and distribution of library documents are ensured under Section 52. Whereas US Copyright Act provides special section under Copyright Act for various library activities. Section 108 of US Copyright provides provision for reproduction and distribution of library documents without copyright infringement.

\textbf{6.3 COPYRIGHT CHALLENGES AFFECTING LIBRARY SERVICES}

Copyright law is in transition, and many of the changes have direct and profound consequences for libraries. There are various Copyright challenges that affect library services which are discussed below:

\textbf{6.3.1 Licensing of Copyrighted Works}

In traditional library it is a general tendency to purchase the documents for the library and make it available for patrons by facilitating different services. Most
of the library collections are in physical forms like books, journals, reports, proceedings etc. These documents once purchased become the property of the libraries and it can be lent to the user as many times as required.

The developments in the digital environment mean the progressive substitution of sales in lieu of licenses as the main medium for accessing information resources. There are significant differences between selling a work and licensing it. The sale of a physical copy of a work implies the total transfer of property rights on that specific copy of the work, which gives the buyer a number of benefits, such as its resale or lease. While licensing provides publishers with greater control in the use of their works, how they are used, by whom, and at what cost. Licensing access to copyrighted works versus the acquisition of the copyrighted work by libraries presents new challenges to both libraries and their patrons. Under license agreements, a library is bound by the terms of the agreement. These agreements do not necessarily reflect the privileges and exceptions of the Copyright Act such as fair use, preservation, and interlibrary loan. For example, if libraries are unable through negotiation to include in the license terms the ability to perform preservation of copyrighted works, libraries can no longer exercise the rights that are otherwise available through the Copyright Act.

On the contrary licenses are contracts, that is, private agreements that grant a limited transfer of rights to use the work. This means a series of terms and conditions which do not incorporate considerations of public policy beyond some basic limitations that constitutes a valid contract. The tendency for transactions related to digital information to be governed by contracts entails the possible annulment of the limitations to copyright through the terms and conditions established in such licensing contracts. In reality, libraries are obliged to renounce copyright limitations such as the first sale doctrine, fair use and preservation, thereby impeding the development of their usual and legitimate activities. Examples of such restrictive practices are many: the interlibrary loan of digital materials is prohibited; classroom and off campus
uses are impossible for libraries as copies of electronic materials can be prepared only for the purpose of archiving and preservation; even when libraries sign agreements that allow them to have perpetual access, there is not necessarily a solid copy and donations become more difficult. In addition, these restrictions can even be asserted through technological measures. For instance, one patron’s misuse may be used as the pretext for precluding subsequent access not just to the offending individual but to all authorized users.

Licensing and technological controls built into a licensed database can restrict the fair use rights of library users in a number of ways. Technological controls can limit the number of copies of an article copied or the amount of text reproduced. These amounts are controlled by the printing and downloading commands of the licensed database. Once technological controls are built into a database with copyrighted materials, it becomes difficult if not impossible for libraries to negotiate exceptions.

Provisions under Copyright Act are also challenged in the contract regime. Although libraries may preserve copyrighted works under Section 108 of the US Copyright Act section 52 of Indian Copyright Act, there may be times that libraries choose to preserve copyrighted works under Fair Use. In case of license it does not permit the preservation of copyrighted works and a library cannot exercise fair use due to the license terms and/or technological controls, copyrighted works will be lost to future generations. Publishers have not undertaken preservation of copyrighted works. Instead, it is libraries that preserve these works for future users. Fair use serves a critically important role in the library and educational arena and in all sectors, both public and private. Fair use, in addition to reflecting in copyright law first Amendment was based on principles of free speech, provides the basis for activities in scholarship and education. Fair use safeguards our collective interest in the flow of information which is, in turn, a source of culturally and economically valuable knowledge. Important questions have been raised about the use of licensed content for the
interlibrary loan, for archiving purposes, as well as for general usage of the content in the authorized user community.

One of the most important features associated with copyright is the existence of contracts, or licenses. These are agreements between parties which typically allow the user of copyright material to do things that would normally not be permitted in law, in return, typically, for some type of payment. Virtually all such contracts rely on an acknowledgement by the potential user that the materials to be used are the copyright of the organization issuing the license. There is a reasonable argument that copyright is a mechanism to ensure that contracts are agreed. There is certainly a trend, exemplified by the latest draft Directive from the European Union on copyright and related rights, that in future greater reliance should be placed on contract than on the law alone. In any case, in the digital environment, contracts are the norm and there is little reliance placed on the law alone.¹ The US scenario owing to the federal structure of the US government, the relationship between their norms on copyright and those that regulate contracts is particularly complex. Whereas the former fall under the power of Congress, the legislation surrounding contracts is the responsibility of the different states, leading to the problem of the preference of one over the other. Thus the content of contracts is not only limited by those norms strictly relating to their validity, which are applicable to the digital setting or any other setting. There is also the possibility that copyright may pre-empt the terms and conditions established in a contract. Specifically, section 301 of the US Copyright Act establishes that a law or state right will be pre-empted, leaving the copyright law as the only applicable norm, if the following two circumstances occur: the “something” must fall under the subject matter of copyright as an original work of authorship fixed in a tangible medium of expression; and the state law at issue must provide rights that are “equivalent” to those provided by copyright. Besides this “statutory” preemption of state law, the preference can also be achieved from a general analysis based on the Constitution’s Supremacy Clause, the aim of which is to determine whether a state law “stands as an obstacle to the accomplishment
and execution of the full purposes and objectives of Congress”. If this is indeed the case, the state law will be pre-empted even if the prerequisites of section 301 are not satisfied. Ricketson argues that, with the advent of digital technologies, past assumptions about whether or not library copying might be a normal exploitation of the work are changing as the rights holder is now in a position to supply the market himself or at least license the library to make and communicate the reproductions needed. The copyright owner can now perform the same role as the library either personally or through the agency of a collecting society. Collecting societies make it possible for libraries and archives to acquire the necessary licenses to make and supply the reproductions that are requested. Why should libraries have a statutory monopoly on a market that can provide a return to rights holders for the use of their work? The service provided by a library is in competition with the ways in which copyright owners can potentially exploit their work. The competition is intensified where libraries provide.

Because digital works are generally licensed rather than sold to libraries and other users, there really is no mechanism for preservation. Libraries are concerned because licensed works do not provide a permanent copy. If either party terminates the license agreement, the library is left with nothing. But when the subscription to a print journal is terminated or the journal ceases publication, the library still possesses the volumes covered by the subscription period. This is not true for licensed digital works. Libraries are beginning to negotiate for retention of the electronic product at the end of the license period, but this too may prove difficult as technology chances over time. The library may be able to retain the work in electronic format, but it may not be able to access the work and use it. Even if the library acquires the right to convert the work to newer platforms, it may just not be worth the effort to accomplish the conversion, especially for highly technical and scholarly works with a limited audience. The purchase agreement did not mention any expiry date at all, nor was there any actual notice to anyone that they would expire and become unusable.
Clearly, this causes conflict between publishers and libraries. The same is proving true of works distributed on the web. Some journals are available on the web for only 45 days because the publisher does not view the website as an archive. The text is simply removed from the web after a certain period. Thus, to ensure continuing access, the library would have to print out the journal and bind it or reproduce it as a digital file.\textsuperscript{12}

6.3.2 Problems in Creating Digital Archive of Documents

An important issue which is raised by the maximum number of Indian and US librarians is of archiving of the digital issue. Archiving is an important segment for libraries in virtue of providing services. In case of on-line journals (current and archival issues) or on-line databases (bibliographic & full-text) neither there is a situation of expiring copyright nor any limit fixed is defined to commercial and non-commercial parts beyond which library would be allowed to keep a copy for future preservation purposes for the use of readers. Electronic access to journals is presently looked totally as the commercial activity and the benefits of authors and libraries mostly get secondary treatment. There is no assurance given or efforts made that readers could get continuous access till it is commercially concerned and subsequently get traditional access. In the uncertain electronic environment getting continuous access to the electronic resource is a doubtful case and it is a matter of concern for the libraries through which the access is provided. Librarians, publishers and authors do not have any difference of opinion regarding assured long term access to electronic journal provision but in the commercial environment nobody shows any concern. However, there are evidences where libraries and publishers are trying to take up mission tasks to provide solutions to the problem. Both feel that while respecting imperatives either of publishers or libraries, one should value the human talent in both these organizations.

6.2.3 The web and Internet Services

Digital technology has led to new uses of copyright works both on and off the internet. It allows copyright works to be copied, manipulated and disseminated
with minimal effort and cost that cannot be matched using analogue technologies. Information available on web pages (free) on Internet has become an important information source not only to browse through but worthy to preserve for future use. There are several incidences that occur which have historical significance and information about them appearing on web pages become necessary for libraries to copy and preserve. As libraries use the web to obtain information, they are increasingly governed by licensing agreements, even so the libraries use the web to provide information and share information. Librarians see this as a new way to make information available to people, and libraries as institutions have something important to contribute. Treating the universe of information as a property is problematic. Librarians see information as something that should be shared. One of the properties of information is that it is to be communicated and used. The often repeated statement that information is power is not really true. Information is not power until that information is used.

Libraries help in the process of creation of new knowledge through systematically procuring, organizing and disseminating of knowledge tools or through preserving and sharing e-resources with their users. After all libraries try their level best to protect copyright of its collection by preventing it to go in the hands where they could be misused or commercially exploited. Generally, copyright law gives explicit permission to create 3 copies, when a document is microfilmed then digital preservation becomes still more obvious as it essentially needs copying for preservation.

Libraries were the first consumers of books and other materials that supplied the public with information. Now that information has become increasingly valuable in this post-industrial society so is the production of information products. Producers and vendors have more control over information in electronic form than in analog form because it is held as a central source and is instantly available upon demand. Thus, electronic technology and its corporate owners may hold consumers hostage as they never could in the pre-digital
age. Concomitantly, the Internet is democratizing the distribution, publishing, and consumption of information. The information industry fears easy access will lead to loss of control and will threaten not only their copyrights but also the financial investment in the development of these products. Librarians worry that fair use and free access are threatened by this more stringent regulation on the part of copyright holders. To librarians, the Internet holds great promises for making materials available in ways never before envisioned. No longer must a researcher visit a particular library in a remote location to use unique publications held only by library. By putting these works on the web, scholars all over the world will have access to them from their homes and offices. This corresponds with a librarian’s core value of information to the people. Copyright holders, on the other hand, see this same activity as a threat to their economic health. Such a direct conflict in values explains why librarians and content providers have such a difficult time talking to one another about copyright and the availability of copyrighted works in libraries and archives.

Not only do libraries provide access to the Internet, they also provide Internet content. A huge number of libraries now have a homepage. A survey of public and academic libraries showed that 62% had homepages. Some libraries also answer reference questions online. The Internet gives libraries the opportunity to expand their public relations and promote their services. Digitization permits libraries to present their content along with sound and graphics and to reach a wider audience than just the local area. However, it is always assumed that owners put the information on Internet with a purpose of giving it wide publicity and therefore it is assumed that the copyright owner has granted an implied license to allow people to download web page on local machine and display it. Neither Indian Copyright Act nor US Copyright law allows such action but under fair use such action may be practiced. However, there are no provisions to confirm this. Solutions found to overcome this issue is using Internet Archives provided commercially. Under this “Way-back machines” allows one to retrieve outdated web pages. Use of
such Internet Archive resources like e-Bay or uses of robust.txt files are getting popularity.

### 6.3.4 Digitization /Digital content creation

One of the most critical areas in which limitations and exceptions have failed to maintain a balance in the digital environment is library preservation, which faces an uncertain future due to its absence of adequate copyright laws and policies in India and USA.

The collection and long-term preservation of digital content pose challenges to the intellectual property regime within which libraries are accustomed to working. How to achieve an appropriate balance between copyright owners and users is a topic of ongoing debate in legal and policy circles. The purpose of an archive (e.g., to ensure preservation or to provide an easy and convenient means of access), its subject matter, and the manner in which it will acquire copies, as well as who will have access to the archive, from where, and under what conditions, are all factors critical to determining the copyright implications for works to be included in it.

### 6.3.5 Fair use in digital Era

Fair use or fair dealing is a concept that explores itself as the justice given to the work. The provision of fair use or fair dealing under Copyright Act is the result of protection for user’s right. The Copyright Act insures the free flow of the information in the society so that new information can be established. The libraries serve the group who take information for research or for private or personal use. The library patrons use this provision for photocopying the copyrighted documents for personal, private or for research purposes. Now a days the digital collection of the libraries are growing at a fast rate and the complication while dealing with the digital documents have also increased.

The fair use of print material by allowing reproduction in a reasonable way for private study, research or education is well understood. But in the context of digital information, since it is distributed to a larger community, it is difficult
to judge, comprehend “fair use”, access and control the infringement of copyright law. In this context it is necessary to modify the copyright law. A comprehensive program to systematically digitize and stream sound recordings over the Internet without regard to its copyright status would have little claim for fair use; however, it is not easy to determine when a more modest program might qualify under fair use. Fair use determinations are fact based, so it is difficult to do anything but make general observations and assumptions about possible digital preservation and dissemination programs.

The first fair-use factor, the purpose and character of the use, favours nonprofit, educational, and scholarly uses. This factor also favors “transformative” uses that analyze, supplement, or otherwise build on, rather than merely reproduce, the original. Transformative use is not essential to fair use, though the first factor usually weighs more heavily in favour of fair use where there is a transformative aspect. The first fair use factor would likely favour library copying and streaming of sound recordings limited to research or scholarly uses.

The second fair use factor, the nature of the copyrighted work, would likely favour copyright owners, as the works are predominantly creative rather than factual.

The third factor amount and substantiality of the portion of the work used in relation to the work as a whole would also favour copyright owners, if the entire works were used. The assessment of this particular factor could change if only small excerpts were used (especially if the excerpts were not of particularly high quality), but such excerpts may not satisfy the scholarly and research goals of libraries and their patrons.

The fourth factor, which affect the potential market for or value of the copyrighted works, is the hardest to assess. Sound recordings (and underlying musical or other works) vary significantly in their market potential.
Digital technology has brought about renewed interest in older works, and rereleasing older sound recordings can be done with a smaller financial investment on the part of copyright owners than previously required. Digital technology may give new life to older works that had little apparent market potential as 10 or 15 years ago.

How might widespread use of copyrighted works in a particular manner, without apparent objection by copyright owners, affect a fair use determination? Assume, for example, that it is common practice for libraries to make available 30-second audio clips on the Web, and that copyright owners have raised no objection to this practice. A custom of permitted use (indicating apparent acquiescence by a particular copyright owner or similarly situated copyright owners) can sometimes favour a fair use defense. However, copyright owners’ failure to take action with respect to a particular practice does not necessarily indicate that they consent to it. In the early stages of a new technology, enforcement costs that copyright owners would incur may outweigh the likely return from the use, and a practice develops whereby users proceed without permission. Over time, however, copyright owners set up enforcement mechanisms.

The availability of a fair use defense cannot be predicted with certainty. As with collaborative preservation projects, some streaming projects might qualify, depending on factors such as the categories of subject works, who will have access to the materials, and under what circumstances. But the structure of the Copyright Act (e.g., the limitations placed on copies made under section 108(b) and (c), and the limitations placed on works streamed pursuant to section 110(2), including the technological protection requirements), lead to the conclusion that fair use could not justify a comprehensive program to digitize copyrighted sound recordings and to make them publicly available over the Internet.

The main limitation of US copyright protection, the Contractual and technological approaches for protecting digital works doctrine of fair use, is
under fierce attack in recent years. The White Paper (Information Infrastructure Task Force (USA), 1995) hoped to reduce fair use drastically, which caused great opposition on the part of a number of experts who defended its full permanence as the means of balancing the different interests in play. The law that was finally passed, the Digital Millennium Copyright Act (US Government, 1998) (hereinafter DMCA), does not contain any norm referring directly to fair use, but there are some provisions that affect its very essence, for instance the norms that protect technological measures and prohibit their circumvention.

Several studies have indicated that conflicts are caused by the difficulty in distinguishing between fair use and exception in copyright law. This problem appearing both at the international and domestic levels, seems to have caused by the lack of clear description of accepted activities such as quotations, and critical comment, as well as reproduction and distribution for the purpose of personal use. On the other hand, “exemptions” are permissions given in particular situations, or for specific purpose, to legalize the acts of reproduction and distribution by libraries.

Contemporary digital technology has contributed significant confusion and complication to the definition and principles of fair use. According to Seltzer no legislation has drafted to standardize the meaning of fair use. While the concept of Fair use has been approached mainly through a general suggestion of goals, the key idea is that fair use provides a balancing of exclusive rights by giving legal clemency to some types of infringement. Herrington states that “[f]air use is a mean to assure that the information that is at the basis of our culture remain accessible for critical comment, parody, news reporting, and educational purpose”. It was also stated that fair use is “the legal exception to copyright upon which educators and librarians, or anyone concerned with further knowledge”. If we acknowledge that the essential professional goal of librarians is to contribute to further knowledge, they must have or develop for
themselves, a meaning of this concept, so as to apply its principles to their daily requirements.

Loffman stresses that the technology that publishers have developed to limit user rights opposes internationally recognized standards of fair use.

The notation of fair use has gained different meaning in domestic Copyright Acts from one state to another, owing mainly to the difference between national constitutions. Each definition is constructed according to the culture and history of the nation. Also the application of fair use differs from civil law to common law of the countries.

Newby finds that the ambiguous definition of fair use in international agreement is of particular importance. He also points out that fair use never has a common definition across national laws, whether the countries being compared are developed or developing. In his analysis of the variance between national copyright laws, Newby found that India’s definition of fair use was very broad.

The librarians in the digital environment have the same responsibility to collect information and help the readers by giving it even if the form is electronic information. The role of librarian is to be protected and enhanced. The copyright protection should be encouraging to the users of information for creativity and not for creating hurdles in the use of information. The Librarians should continue to work as catalyst for the free flow of information between the owners of copyright and the users of the information.

The law provides no clear or direct answer as to when fair use applies in a specific situation because each must turn on its own unique facts. US Congress intentionally specified flexible factors that can be adapted for changing needs and circumstances. To reach a decision each proposed use must be carefully analyzed in terms of the four factors outlined earlier. Reasonable minds may differ on the applicability of fair use in a particular circumstance, and as a result there is necessarily some risk incurred in arriving
at a decision. If most factors outlined above lean in favour of fair use, the proposed use is most likely to be allowed without permission; if most lean the opposite direction, the action will most likely not fit the fair use where exception and permission is required.

Time may also have a bearing on the decision. When a copyrighted work is new or has just been published, there may not yet be an established method for gaining permission. Therefore, it may be possible for them to be under fair use of the work without permission, as opposed to a copyrighted work that has been in circulation for some time where there is an established method of gaining permission and an established commercial market. But the analysis may lead to an entirely different result for the same work used the very next year. In short, the fair use of a publication may have time limits.

India has one of the most elaborate systems of fair dealing in the world, and must be very careful before tempering with these freedoms. Majority of respondents felt the need to revise the provisions dealing with library exceptions to keep the library movement in India alive and accommodate the digital challenges. It was pointed out that libraries in India was never a profit making entity, but rather performing a public function largely funded by the government, whose future seems bleak.

6.3.6 First Sale Doctrine Fails in Digital Era

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 on 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. With a physical item, only one copy is involved with any single transaction. When the library lends a book to a patron, the copy shifts from the library’s possession to the patron’s, and then presumably, back to the library. At any single moment, only one party has access to that one copy, either the library or the patron. However, with an electronic document, the computer used to view the document needs to make temporary copies locally just for the patron to be able to access the document. This method of redistribution is not explicitly permitted by the first sale doctrine because the first sale doctrine does not apply to making reproductions. First sale, therefore, cannot apply perfectly to the electronic document. First sale could conceivably apply if the sum total of those copies created for access available at any one time did not exceed the number of copies actually purchased.

This concept is embodied in section 109 of US Copyright Act;

Notwithstanding the provision of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.

The term “object” here refers to the physical embodiment of the copyrighted work, as opposed to the copyright itself. The first sale doctrine applies to this physical embodiment of the work. This is one reason the U.S. Copyright Office rejected the extension of section 109 into cyber space and the creation of a digital first sale doctrine.

Digital transmission of a work does not implicate the alienability of a physical artifact. When a work is transmitted, the sender is not exercising common law domination over an item of the personal property; he is exercising the central copyright of reproduction with respect to the intangible work...The underlying
The purpose of the first sale doctrine is to ensure of free circulation of tangible copies.

### 6.4 OPPORTUNITIES UNDER COPYRIGHT ACT FOR LIBRARY SERVICES

The research conducted for exploring the various provisions under the Copyright Act and the status of copyright in India and the US reveals the following facts some of them may be understood as favours under the Copyright Acts for libraries.

The purpose behind the Copyright Act of India and USA is to promote the creativity whether it is in the form of writing, music, painting etc. Copyright Act clears it in its provisions that the main purpose of US Copyright Act is to promote the science and useful arts. Whereas Indian Copyright Act does not give any explanation about the purpose of copyright but that gap is filled by the Indian courts stating that Copyright Act is for the promotion of education. After analyzing the provisions of the Copyright Act of both the countries it is found that the basic emphasis of the Copyright Act is on the promotion of education.

The purpose for the establishment of libraries is also for the promotion of education and the libraries promote education by providing various services to its user. The exceptions and limitations over the right of copyright holder facilitate the library activities that are essential for providing library services. Various provisions provided under Copyright Act of both the countries for libraries are helpful in providing library services.

Protection of authors rights are a basic feature of Copyright Act in both the countries. The protection of the author’s right is a motivational instrument that motivates authors for further new creation. Its impact on library services is seen as a protection of author’s rights motivating them for new creation which initiates the generation of new documents for the libraries that are the sources of library services.
Fair use and fair dealing is the most important exception provided under Copyright Act of both the countries as it is the most important for libraries for proving library services. Fair use allows the academy to respond to the dynamic nature of the educational process and to the evolving formats of information resources. Fair use allows an otherwise rigid copyright system to respond to the fluctuating volume of available information and to the changing demands for its use. Fair use allows all members of the library community to sample the broadest possible range of ideas, to build new works upon the old, and to facilitate equal access to copyrighted works within the reasonable limits of the law. Library users whom most of them are students teachers and people looking the information for personal private and for research purpose that are allowed under provision of fair use / fair dealing. Photocopy service that is one of the important library service provided by the most of libraries can only possible due to the provision of fair use /fair dealing provided under Copyright Act.

Copyright Act of both the countries assure distribution of the document under circulation service or Inter library loan service. US Copyright Act provides special provision of First Sale Doctrine under Section 109 of US Copyright Act that ensure that distribution right of the author is transferred when any one purchase the document. Under Indian Copyright Act distribution right is not entitled on the circulated copy. First Sale Doctrine is the principle tenet that facilitates the library services such as lending services which is a common practice in any library.

DMCA is the law under the US Copyright Act which deals with the digital documents. But it is disappointing that DMCA increased the monopoly of the creators that ultimately affects the library services. Provision of fair use and first sale doctrine are not included under DMCA which forms the basis of many library services.
6.5 FINDINGS OF THE SURVEY

Under this study the survey is conducted to find out the present situation of Copyright Act in libraries. The finding of the survey outlines the viewpoint, experience and suggestions of librarians of India and USA.

After analyzing the survey it was found that most of the Indian as well as US librarians think that copyright is not a threat to intellectual freedom nor they thought that it monopolizes knowledge. It shows an acceptance of Copyright Act in libraries. As Intellectual freedom and monopolization of knowledge have great importance for libraries in providing services. Any interruption in intellectual freedom and monopolization of knowledge creates a barrier in the free flow of information that affects library services. The balancing nature of Copyright Act of both the countries provides intellectual freedom and helps in reducing the monopolization of knowledge.

Exceptions and limitations provided under Indian and US Copyright Act for libraries ensures various library activities, such as reproduction, preservation, distribution, translation etc. and role of these activities while providing library services are important. The result also shows the importance of the exceptions and limitations provided under Copyright Act of both the countries for libraries. Exceptions and limitations provided for the libraries and educators under Copyright Act of India and USA decide the functioning of the libraries as most of the Indian and US librarians agree that exceptions and limitations provided under Copyright Act benefits to the library functioning.

While most of considered that anonymous works should not be protected by the Copyright Act. Anonymous works are those works of which the authors are not identified. Therefore if copyright protections apply to these works it is not possible for libraries to seek permission.

Emergence and application of new technology in the library has great impact on the libraries, due to application of digital technology and networking, methods of preservation and dissemination of information has changed.
Providing services in the digital era require digital content which is generated through the process of digitization. The digitization of library documents are only possible in libraries when Copyright Acts incorporate provisions for libraries. The librarians of India and USA are also concerned with the provision of digitization that are equally important for providing library services. Most of the librarians in India and US think that Copyright should provide more limitations to libraries for digitization of print materials for preservation, access as well as providing its collection full text online.

The finding of the survey also revealed that copyright sometimes create problems while providing library services, as it conflicts with the libraries role in providing easy access and use of digital materials and it is expressed that provisions under copyright are not adequate to the libraries need. The study led to the general conclusion that most of the Indian librarians applying copyright in libraries get frustrated which affects library services whereas the US librarians do not think so. It makes clear that Indian respondents are not comfortable with the application of Copyright Act in libraries.

Experience of Indian and US librarian’s indicate that libraries favour Copyright Act and most of the activities are performed within the provisions under the Copyright Act. The Indian and US libraries carried out reproduction and distributions activities under the provisions of Copyright Act, showing that the libraries respect the copyright provisions. The US librarian’s experience shows that most of the US libraries acknowledge the author’s identity in the reproduced copy while it is not a common practice in the libraries of India.

Any restriction on reproduction and distribution directly affects library services. After analyzing the data collected through the questionnaire, it is concluded that the experience of the most of the Indian and US librarians shows that libraries down size reproduction while providing library services even if it is required, due to copyright restrictions. It shows that libraries do not take the risk that leads to copyright infringement rather it refuses to provide
service. From the responses of the librarians it is concluded that libraries also refuse those library services where there are contradictions between Copyright Act and library services. Most of the Indian and US librarian’s experiences shows that due to the lack of provision and explanation under Copyright Act libraries refuse much of the services to the users. The experience of Indian and US librarians also reveal that due to inadequate provisions under Copyright Act, additional cost is incurred on the libraries budget.

It is also observed that majority of Indian and US librarians opined that exceptions and limitations under Copyright Act applicable to the libraries are not fully equipped for library functioning. There is restriction especially when dealing with digital documents such as reproduction and distribution which hamper library services. They feel uncomfortable due to the difference between the provision in Copyright Act for library and requirement of the library.

The study also explored that majority of Indian and US librarians pointed out the causes of infringement in the library while providing library services to users are due to lack of clear understanding of copyright provisions for libraries (lack of explanation), lack of provision for library services in Copyright Act., fair use judgment, Copyright protected documents being costly, requirement of extra copy to match the demand.

They also suggested that proper knowledge of Copyright Act on the part of the staff and users, libraries policy for fair use, reduction of time limit on copyright protected documents for libraries, more provisions for libraries in Copyright Act especially for digital materials would help in reducing the copyright infringement in the libraries.

It is also revealed that when a library needed permission from copyright holder, many problems were faced which included locating authors, long duration for getting permissions, high royalty, and possibilities of refusing permission.
The researcher finds a very optimistic attitude among the US librarians as they are more conscious in taking measures for reducing the liabilities of Copyright Act in libraries. The US libraries conduct awareness programme, issue copyright hand book, appoint legal experts, put copyright instructions on notice boards for avoiding any case of infringement. Some Indian libraries also take these measures to reduce copyright liability as indicated by the librarians.

Special provisions for library services under Copyright Act will help in providing better library services within the boundaries of the Copyright Act. The survey also reveals that 64% of Indian and 67% of US librarians strongly agree that there is a need for special provision under Copyright Act which deals with library services.

SUGGESTIONS

Indian Copyright Act is of very complex nature, it generally outlines the provisions in very broad way. Many provisions are not clearly defined under the Copyright Act. The term “library” is not defined sufficiently therefore it is suggested that the term library must be defined under Copyright Act with its nature of working and scope of libraries. It is also suggested that all those libraries that provide free library services must be added under Copyright Act.

Indian copyright has expanded its provisions dealing with digital documents in the libraries, as the Copyright Act has provisions for digitization only for the purpose of preservation in libraries. It is silent on the access to digitized documents, providing access to documents is the main objective of the library. Therefore it is suggested that Copyright Act must include the provisions for access of the digitized documents, so that digital library services can be enhanced.

Downloading the document from the internet and uploading the document on the library websites is not permitted under the Copyright Act which is very much required for libraries when dealing with the digital environment.
Growing trend of licensing of copyrighted work affects the working of the libraries. As far as licensing is concerned it depends on the licensing agreements of the libraries which creates hindrances through bulging costs for libraries. The owners of Copyright Act have maximum monopoly which creates hurdles in providing services. In the case of licensing in libraries problems arise as some agreements are mandatory for libraries. viz. as long time preservation, access and for interlibrary loan.

The government should make policies that cater to the requirement of libraries to ensure access and use of information sources including digital by amending the Copyright Act.

It is suggested that study of Copyright issues should be made mandatory at secondary school level

RECOMMENDATIONS FOR FUTURE RESEARCH

As with many other areas of inquiry that have not seen excessive (if any) research, the subject of Impact of IPR on library services in the context of legislation of India and USA. There is a greater need to understand several major areas of how copyright is implemented in libraries resulting maximum benefit in providing services without copyright infringement.

The areas for future study also highlight areas for future research on issues of copyrighted and the use of materials in libraries.

- Similar studies can also be conducted to know the impact of copyright on digitization/Digital content creation.

- Future studies could identify the balancing nature of copyright between the copyright holder and the user in digital era and the provisions to be made under the Copyright Act.

- Studies that focus on developing of uniform provisions under Copyright Act at international level for digital libraries can be conducted.
• Studies may be conducted to know the attitude of library professionals towards copyright in the digital era.

• Study can be conducted for assessing the attitude and awareness of user about copyright while using library collection.
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