Copyright problems in journal publishing

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Copyright legislation is meant primarily to reward the scholarship of the author of a work, such as a published article, and the labor and investment of the publisher who publishes it. The law therefore means to fund creativity in the area, while allowing readers free access to published material.¹

Copyright legislation appeared first in developed countries, beginning with the Berne Convention of 1886, followed by the Stockholm (1967) and Paris (1971) revisions; in between, several Inter-American conventions were held. The Universal Copyright Convention of the UNESCO was a compromise between the Berne Convention and the American view.¹ In our country, the Indian Copyright Act, 1957 of the Government of India, as amended from time to time,² and the International Copyright Order, 1971, as notified in the Gazette of India in 1991,³ are applicable to all publications. The International Copyright Order derives from the Berne Convention 1971, which India has ratified.

Free access to photocopying led to important modifications in original copyright legislation,¹²⁴ since the written word became more vulnerable to piracy. It is anticipated that piracy will become even easier as electronic media are more widely used in future, and hence further modifications may be necessary.

Pirates either reproduce copyrighted material purporting it as their own or reproduce it without permission of the original copyright owner. They primarily aim to make quick money while avoiding payment of legitimate royalties to authors and publishers and of taxes to the government. To an extent, violations of copyright legislation in our country and in other developing countries may be occurring inadvertently, due to ignorance on the part of the violators. We suspect that even such ‘ignorant’ violators are aware, though somewhat vaguely, of the copyright legislation, but violate it because they are in a hurry to use the published material for their short-term goal or they presume and hope that their acts will go undetected and unpunished. Law-enforcing agencies are often lax and the copyright owners are themselves ignorant of their rights or find it cumbersome to act.

The Indian Journal of Gastroenterology has also had its quota of intended or actually committed copyright violations. The journal wishes to focus the attention of this journal’s readers, contributors and advertisers on the import of copyright rules.

Case 1

A reputed pharmaceutical company reprinted an article from the Journal without its permission and circulated the material to medical practitioners to support one of its products. The circulated version was reprinted in entirely different fonts and style. No permission had been obtained, or even asked for, from the Journal. When the Journal asked the company to explain, they regretted the mistake and apologized verbally. So as not to cross swords with a valuable advertiser, the Editor did not pursue the matter. Further, he felt that asking the company to pay a monetary compensation might be tantamount to extortion.

Case 2

A periodical enjoying a wide circulation among medical practitioners reprinted, nearly verbatim, without permission an article published in the Journal. The only reference to the Journal was a line saying ‘Curtsey (sic): Indian Journal of Gastroenterology’. Two letters to the company’s management from the Journal evoked no response. The Journal then wrote to the Copyright Clearance Center, USA, which handles the Journal’s copyright payments. The Center advised a reference to local legal authorities. The Federation of Indian Publishers advised us that we should initiate proceedings against the periodical. The Journal, considering the cost and time involved, decided instead to publish a notice mentioning the periodical’s identity and the nature of the violation.⁴

Case 3

A reputed pharmaceutical company held a round-table conference on Helicobacter pylori infection, during which it circulated reprinted versions of articles that were published in a recent supplement issue of the Journal. The Journal sent a written objection and asked the company for monetary compensation for reproduction. The company paid up.

Case 4

A reputed pharmaceutical company published an update on Helicobacter pylori infection, in which they subtitled an article as ‘Adapted from Indian J Gastroenterol 1997 Suppl’. More importantly, they quoted statements from articles published in this supplement issue, quoting them out of context to support their products. The Journal wrote an objection letter asking them i) to issue a clarification that their statements were not endorsed by the Journal or the Indian Society of Gastroenterology, and ii) to quote correct and specific statements from the articles published by the Journal, with references. The first letter from the Journal received no response from the company. A second letter indicated that the Journal intended to publish a statement in the next issue, setting the record straight; it was made clear that responsibility for any ad-

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verse publicity that this might bring to the company would be entirely theirs. The company responded immediately and complied with both the requirements in the next issue of their update.

Care 5

Another reputed pharmaceutical company had paid the Journal for rights to distribute the Abstracts of an annual conference of the Indian Society of Gastroenterology in electronic format. They used this permission to distribute a full print version of the Abstracts. Although the company violated the original agreement, the Journal decided not to pursue the matter since a non-commercial party, namely, the organizers of the Conference, found these extra copies convenient.

Could these be instances of ‘ignorant’ violations? We believe otherwise. First, the Journal publishes a statement on the first page of each article indicating clearly that it is governed by a copyright. Thus, the violators cannot take a plea of ignorance. Second, the violators have usually been companies of considerable repute. In industry, trademarks and patents are important issues, so it is expected that these companies, their legal cells and their executives are aware of the copyright acts and rules. They would also be aware that violations of the Indian Copyright Act, 1957 invite penalties, which include monetary fines up to Rs. 200,000 and imprisonment up to 3 years.2 Third, the occurrence of several such cases in the last few years suggests a systematic practice of side-stepping the law. In many cases, the violators were not only violating the copyright, but were also engaging in the unethical practice of twisting facts to promote their products. These companies are thus violating the law with impunity, in the belief that medical journal editors are either themselves ignorant of the law or are too busy or too weak to act. In one case, the company’s response to the Journal’s letters was downright indignant, suggesting ‘who in India is worried about copyrights?’!

Looking back, the companies’ general assessment about medical journal editors may not have been far from correct. In the instances recorded above, the editors took only mild steps and no strict measures or legal action. And let’s not forget that these cases may reflect only the tip of the iceberg, with several other violations going unnoticed and unchallenged.

The only way we can ensure better adherence to copyright rules is by editors pursuing strict action to protect their rights. As readers may have noticed, in the cases referred to above, the Journal has been getting slowly, but definitely, stricter. This article is a way of informing readers and, more importantly, copyright violators, that the Journal is doing just as would be expected of it, will get stricter in due course of time and expects more Indian medical journals to follow suit. We hope that professional bodies like the Indian Association of Medical Journal Editors will take up such issues and ensure collective action.

References