Library and information Sciences: Perspectives of Students on Fair Use Literacy under Section 34 of the Thai Copyright Act B.E. 2537 (1994) in Library and Information Science Profession Subject at Department of Library and Information Science, Suansunandha Rajabhat University

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Abstract

A growing number of colleges, universities, libraries, and other organizations may be facing accusations of copyright infringements. Librarians have analyzed and applied fair use in library services, but rarely have they interpreted fair use for educational or library activities. Many librarians ask and concern about the possible ambiguity of fair use even before Thai parliament enacted the Thai Copyright Act in 2537 B.E. The regulated fair use stipulated in Section 34 prescribes that the standard of duplicating copyright work by librarians and/or informationists is a legitimate act. This performance is treated as the copyright exemption. But a number of Library and Information Science (LIS) students do not understand “how to apply fair use” and many LIS lecturers do not know how to teach the application of fair use.

The main purpose of this research is to fill this gap by surveying a sample of LIS students for their perspectives on the importance and relevance of fair use literacy competencies for LIS students. The results of this study provided by librarians will help LIS lecturers and students to be able to understand and apply fair use to real life situations.

The hope is that other institutions will be able to use this study as a guideline to develop and determine their applications of fair use in accordance with their own cultures and practices.

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Purpose – The purpose of this study is to explore the understanding of library and information science students studying in library and information science profession subject at Suan Sunandha Rajabhat University on fair use literacy. Specifically, the study aims at examining the following questions:

- How do LIS student define or understand fair use literacy?
- Whether they are familiar with existing standards in Copyright Act 2537 B.E.
- How important do lecturers believe fair use literacy is for their students?
- How do they address fair use literacy, or expect it to be addressed within the curriculum?

Design/methodology/approach – It was drawn on an activity survey of sixty library and information science students studying in library and information science profession subject at Suan Sunandha Rajabhat University. The said survey was conducted through a combination of peer interviews with an e-survey. A set of questions was asked about the preferred terms used in the school for fair use literacy, i.e., (1) certain special cases, (2) does not conflict with a normal exploitation of the copyright work by the owner of copyright, and (3) does not unreasonably prejudice with the legitimate right of the owner of copyright. Thus, the researchers invited LIS student to participate in a brief of survey for their perspectives on fair use literacy.

The researchers took notes on all inquiries, then analyzed the content of the interviews to find the accepted patterns.

Findings – This paper reported on fair use literacy aspects of the first major surveys of library and information science students studying library and information science profession subject at Suan Sunandha Rajabhat University library and information science profession subject at Department of Library and Information Science. Suan Sunandha Rajabhat University.

Research limitations/Implications – The survey sample was a population of library and information sciences students studying in library and information science profession subject.

Practical implications – It is recommended that library and information science professional subject must promote fair use issues for student understanding.

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1. Introduction

It is acceptably known that fair use or fair dealing is an exception of the protections under copyright law. This aspect is indicated in international law encompassing copyright and member countries of those international agreements establishing the said international laws incorporate such aspect into their domestic law. Under Thai copyright law, fair use is embedded in Section 34 of the Thai Copyright Act B.E. 2537.

The Thai Copyright Act B.E. 2537, like other legal instruments, provides a minimum standard of copyright protections, at the same time, allows appropriate exceptions such as fair use on copyrighted works. Basically, fair use was universally recognized under national legislation, but the exception of this right varied considerably from country to country. In Thailand, the main provision regarding fair use is stipulated in Section 32 of the Thai Copyright Act B.E. 2537.

An act against a copyrighted work by virtue of this Act of another person which does not conflict with a normal exploitation of the copyrighted work by the owner of copyright and does not unreasonably prejudice the legitimate right of the owner of copyright shall not be deemed an infringement of copyright.

Subject to the provision of paragraph one, any act against the copyrighted work in paragraph one shall not be deemed an infringement of copyright provided that the act is each of the followings:

1. research or study of the work which is not for profit;
2. use for personal benefit or for the benefit of himself and other family members or close relatives;
3. comment, criticism or introduction of the work with an acknowledgement of the ownership of copyright in such work;
4. reporting of the news through mass-media with an acknowledgement of the ownership of copyright in such work;
5. reproduction, adaptation, exhibition or display for the benefit of judicial proceedings or administrative proceedings by authorized officials or for reporting the result of such proceedings;
6. reproduction, adaptation, exhibition or display by a teacher for the benefit of his teaching provided that the act is not for profit;
7. reproduction, adaptation in part of a work or abridgement or making a summary by a teacher or an educational institution so as to distribute or sell to students in a class or in an educational institution provided that the act is not for profit;
8. use of the work as part of questions and answers in an examination

The Thai copyright law provides within the scope of Section 34 of Copyright Act B.E.2537 special statutory exemption for libraries. The said Section authorizes libraries to perform activities that assist in the dissemination of knowledge, in particular, it generally allows libraries to reproduce copyrighted work for, and distribute those works to, patrons and other libraries. Section 34 Paragraph 2 further permits librarians to copy and redistribute some parts of a work for purposes such as research and study but not for interlibrary loan.

2. Fair use in Thai Copyright law (Decisions of the Thai Supreme Court on Fair Use)

Decision of the Supreme Court No. 1908/2546 involved the infringement of a literary work by the defendants. As his defence, the first defendant argued that his act was considered research or study of the work which was not for profit under Section 32 Paragraph 2 of the Copyright Act B.E. 2537. In considering the argument, the Court first laid down the rule of consideration that “the exception of copyright infringement as argued by the first defendant consists of three conditions which are: (1) certain special cases, (2) does not conflict with a normal exploitation of the copyrighted work by the owner of copyright, and (3) does not unreasonably prejudice the legitimate right of the owner of copyright.”

It is apparent that in the first decision, the Supreme Court set the rules, in accordance with the provisions of Section 32 of the Copyright Act B.E. 2537, that when considering the application of fair use to the case, the consideration of the Court will involve three steps. That is, the provisions of Paragraph 1 and Paragraph 2 of Section 32 must be employed together to form the three step test. In this case, however, the first defendant specifically raised the argument of fair use under Subsection (1) of Paragraph 2, and the Court thus began the consideration by examining the certain special case raised by the first defendant.

The three conditions as set in the Decision of the Supreme Court as explained below may be considered together as doctrine of fair use under Thai Copyright law. The said conditions are:
• Certain special cases. This means “certain special purposes with fairness.” Such condition is a combination of purposes and characters of the use and quantity and quality of such use.
• Does not conflict with a normal exploitation of the copyrighted work by the owner of copyright. This means that the use must not affect the potential market such that the economic benefit that the copyright owner should receive must not be hurt since it is one of the factors to determine whether the use is fair or not.
• Does not unreasonably prejudice the legitimate right of the owner of copyright. This means that the use should not unreasonably prejudice the legitimate right of the owner of copyright, of which that focus is on both moral and economic rights of the copyright owner.

While Section 34 of the Thai Copyright Act B.E. 2537 (B.E) stipulates that "[a] reproduction of a copyrighted work by virtue of this Act by a librarian in the following cases shall not be deemed an infringement of copyright provided that the purpose of such reproduction is not for profit and Section 32 paragraph one is complied with:
(1) reproduction for use in the library or another library;
(2) reasonable reproduction in part of a work for another person for the benefit of research or study."

In addition, Section 34 of the Thai copyright law is one of the legal cornerstones that authorizes libraries to perform activities that assist in the dissemination of knowledge. Section 34 generally allows libraries to reproduce copyrighted work for, and distribute those works to, patrons and other libraries. Section 34 Paragraph 2 further permits librarians to copy and redistribute some parts of a work for purposes such as research and study but not for interlibrary loan.

Generally, librarians in Thailand often reproduce the copyrighted work such as -books, digital materials etc. in whole, for, and distribute those works to, patrons and other libraries. Section 34 Paragraph 2 in fact does not allow librarians to perform such activity.

The more practical point of view arising from this problem is shown in the Manual on Fair Use of Copyrighted Work published by the Department of Intellectual Property of Thailand. The said manual aims to provide guidelines for interpretation of the fair use doctrine constituted under Section 32 of the Copyright Act. In this manual, the consideration on fair use must comply with the three step test by considering the certain special cases with the conditions that the activity does not conflict with a normal exploitation of the copyrighted work by the owner of copyright and does not unreasonably prejudice the legitimate right of the owner of copyright. However, this manual fails to directly address whether Section 32 paragraph 1 alone can be used as a defense for copyright infringement. [The manual is available at http://www.ipthailand.org]

3. Libraries and the Special Provisions of Section 34

Thai Copyright law includes numerous specific provisions limiting the rights of copyright owner, including a provision specifically applicable to libraries. Section 34 of the Copyrights Act allows libraries to copy library collection for specific purposes under fair use (specified condition).

According to the Decision of the Thai Supreme Court No. 1908/2546, there has been a development of the law on fair use, within the limitations, to make copies of the copyrighted works for the following three purposes: (1) certain special cases, (2) does not conflict with a normal exploitation of the copyrighted work by the owner of copyright, and (3) does not unreasonably prejudice the legitimate right of the owner of copyright. Once it is determined that the copying is for one of those purposes, the library must then resolve these questions:
- Is the library eligible to enjoy the benefits of the law?
- Is the copyrighted work one of the types of works that may be used pursuant to this statute?
- Has the library adhered to the conditions for making copies for each of the allowed purposes?

Before a library can enjoy the benefits of Section 34, it must comply with certain general requirements and limitations. Most university libraries will not have much trouble complying with these requirements. The Act establishes the following "basic rules" for the use of Section 34:

- The university library must be opened to the public or to outside researchers.
- The copying must be made "without any purpose of direct or indirect commercial advantage."
- The university library may make only single copies on fair use purposes only.
- Each copy made must include a notice of copyright.

Theoretically, nearly every university library will meet be able to be in compliance with these standards. Practically, however, university libraries must understand and adhere to fair use in order to set the theory to the right practice.

4. Fair Use in Library and Information Science Professional

A growing number of colleges, universities, libraries, and other organizations may face accusations of copyright infringements. Librarians have analyzed and applied fair use in library services, but rarely have they interpreted fair use for educational or library activities. Many librarians ask questions and have concerns on the possible ambiguity of fair use even before Thai parliament enacted the Thai Copyright Act in B.E. 2537.

Library association in many countries that adhere to fair use under the Berne Convention agree to include this minimum standard in their own domestic library professional code of conduct, and often go beyond the minimum standard. Librarians are entitled to this protection in all member countries, according to fair use in those countries. This so called international protection is automatically given.

While many universities have adopted copyright policies of some form, it is only with recent legislation that the law actually required such adoption. Educators, librarians, and others had guidelines that do indeed use percentage or other portion limitations on the amount of the work that may be reproduced and used in educational setting. Fair use guideline and copyright policy in universities offer an identifiable place to begin the institutional policy-formation process, and hopefully, clarify the law and its interpreted policy within libraries for researchers and university communities.
Many schools of library and information sciences in Thailand have great concerns with "how to teach the copyright law and fair use for library and information sciences students" since the practical application is in completing the question as to "how much" inquiry is but one of three fair use factors. The understanding of respondents on fair use was coded based on the ability to identify book and journal situations that might expand privileges beyond that allowed by other areas of copyright law.

5. Findings

The basic questions regarding the importance of fair use literacy competencies, and LIS student's abilities in those competency areas are explored in this study. LIS students believe that fair use literacy is important for their occupation in the future. When asked to rate how much they agree with the statement that fair use literacy is important, 95% or 55 participants strongly agree, and another 5% or 5 participants agree. When asked to rate their fair use abilities in each of the three competency areas, Figure 1, shows the majority of the LIS students rate in three areas specifically: (1) certain special cases, (2) does not conflict with a normal exploitation of the copyrighted work by the owner of copyright, and (3) does not unreasonably prejudice the legitimate right of the owner of copyright.

Figure 1: Rating LIS student ability in fair use literacy competencies

The only skill area in which students rated "strong" was reproduction of library material for library service. On the other hand, very few participants rated their abilities as very poor or poor in any areas. These results suggest that, while students need more improvement in most areas, they do demonstrate some abilities with fair use literacy.

LIS students were also asked to rate the level of how much they agree with the following statements:

- Instruction of fair use literacy is the responsibility of those teaching in the library and information science profession subject.
- Instruction of fair use literacy is the responsibility of those teaching librarians.
- Instruction of fair use literacy should be led by lecturers of library and information science with the collaboration and support of librarians.
As Fig 2. Shows, high percentage of students agreed or strongly agreed with each of the three statements, with only a handful of respondents disagreed on some counts. These suggest that knowledge of fair use literacy, among other things, is the most important.

6. Conclusions

The results of this study show some implications for librarians in working with lecturers. To begin with, the findings indicate that there continues to be opportunities for librarians to become involved with fair use literacy. The fact that LIS students strongly believe fair use literacy is important but yet have not found systematic way to integrate it into LIIs curriculum, demonstrates that they might be opened to suggestions and ideas from librarians and law lecturers in this area. The most important finding of this study is that knowledge of fair use literacy standard must be taught in their courses. Lecturers who are definitive of fair use literacy of any types are much more likely to be able to incorporate fair use literacy concepts into their teachings, and to assess fair use literacy competencies. It is recommended that librarians make a conversation with LIS and law lecturers to reach the same level of understanding.

The current study suggests that lecturers might be receptive to approaches by librarians, under the right circumstances. Librarians often perceive lecturers to be reticent in working with them, and librarians generally believe that lecturers do not see them as peers. Indeed, this study demonstrates that lecturers are not collaborating with librarians.

What is clear from these findings is that fair use literacy has not yet become a priority for library and information sciences curriculum. A number of potential strategies are suggested to resolve this issue:

- The inclusion of fair use literacy on the list of library and information sciences professional development modules offered to teachings in school of library and information sciences;
- Specific targeting of journal in the copyright & fair use research field;
- Specific targeting of copyright & fair use conference for the presentation of papers on current copyright & fair use research;
- Organization of copyright & fair use workshops, seminars and conferences on copyright & fair use for lecturer and LIS students; and
Increase in the level of promotional activities for copyright & fair use in university.

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