

FREQUENTLY ASKED QUESTIONS

**BALBHARATI COPYRIGHT POLICY
FOR
MAHARASHTRA STATE BUREAU OF TEXTBOOK PRODUCTION
AND
CURRICULUM RESEARCH
“BALBHARATI”
2018 – 2019**

FAQs

1) Who all must buy a Licence?

All publishers, distributors, tuition classes, content users who wish to utilize Balbharati's Contents to develop Supplementary Materials for commercial use in print or digital form. Publishers/users having a turnover shown in Income Tax return upto INR 10,00,000/- are exempt from buying a license. In case of individuals, applicants having a gross taxable income of less than INR 10,00,000, as per the income tax returns filed, in the preceding financial year, shall be exempt from paying a licence fee. But they required to do registration process by paying registration fees Rs. 1000/- (+) GST 18%

2) Do users need to buy Licence even if the user is distributing free content as part of their promotion of its commercial venture?

Yes; so long as the content/material is prepared in accordance with Balbharati's Contents, substantially or materially, a user needs to obtain a Licence for such purposes. The determining test is utilization of Balbharati's Contents and not the end purpose for which such Contents have been used, without obtain a Licence thereof.

3) Can one Licence cover use of content for print, digital, tuition classes, free content, and developmental content?

No. Individual Licenses under three separate categories i.e. print, digital and tutorial shall be applicable.

4) Does a person need to buy the Licence if it is developing/selling content as a government body?

Under the terms of the Copyright Act, 1957, if any person, without a licence granted by the owner of the copyright, does anything the exclusive right to do is conferred upon the owner of the copyright, such person is liable for copyright infringement. The term '*person*' will include any agency, entity or person, whether private or government and all such persons are required to obtain a License for preparation of Supplementary Materials in accordance with Balbharati's Contents.

5) If the Contents were developed before the release of the Balbharati Copyright Policy, does a person still need to buy the Licence?

Any Supplementary Materials based on Balbharati's content shall come under the purview of the Balbharati Copyright Policy in the current financial year and the period hereinafter.

6) What kind of publications are covered under the Licence?

Guides, digests, pocket book, question banks, compositions, dictionary, notes, magazines, textbooks, workbooks, practical books, digital material, tutorial material shall come under purview of the Balbharati Copyright Policy.

7) What are the works protected under the Copyright Act, 1957?

Under the terms of Section 13 of the Copyright Act, 1957, copyright subsists in the following classes of work :

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematographic films; and
- (c) sound recording

8) Is Balbharati owner of the copyright for the various Contents published by it?

Section 17 of the Copyright Act, 1957 prescribes that author of a work shall be the first owner of the copyright therein. The term '*author*' has been defined in section 2(d) of the Copyright Act, 1957 as under:

"author" means,-

- (i) in relation to a literary or dramatic work, the author of the work;....*
- (vi) in relation to any literary, dramatic, musical or artistic work which is computer-generated, the person who causes the work to be created*

Section 2(o) of the Copyright Act, 1957 provides an inclusive definition of '*literary work*', stating that the term- *"includes computer programmes, tables and compilations including computer databases."*

9) What are the rights with respect to the '*literary works*' published by Balbharati protected under the Copyright Act, 1957?

Under the terms of section 14 of the Copyright Act, 1957, Balbharati's rights in respect of its works shall include the right:

- (a) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (b) to issue copies of the work to the public not being copies already in circulation;
- (c) to make any translation of the work;
- (d) to make any adaption of the work

10)What is the scheme of licensing canvassed under the Balbharati Copyright Policy?

The Balbharati Copyright Policy envisages a non-exclusive, revocable, non-transferable Licence in relation to its Contents published by it, in as much as section 30 of the Copyright Act, 1957 gives the right to the owner of copyright to grant any interest in respect of any existing or future work of the copyright, by Licence in writing.

11)What are the conditions subject to which a Licence will be granted to Authorized Users under the Balbharati Copyright Policy?

- (i) The Licence will be applicable for preparation of Supplementary Materials in print format and digital format as well as preparation of Supplementary Materials by tuition classes;
- (ii) The Licence shall be non-assignable, non-transferable and no other agencies/companies/entities shall be allowed to reproduce Balbharati's Contents in any form;
- (iii) A Licensing Agreement will be executed between Balbharati and the Authorized Users, for a term expiring on 30 April 2019 and upon payment of Licence Fee thereto;
- (iv) The Licence shall not transfer any intellectual property rights or any other rights in relation to Balbharati's Contents, to the Authorized User;
- (v) The Licensee shall not sub-licence, rent or transfer the Licence to any third party, in whole or in part, in any form, whether modified or unmodified.

12) Is this a onetime Licence Fee?

This is an annual fee that needs to be renewed yearly.

13) Are "schools or publishers" "free to use" the Contents?

Schools are free to use the Contents for their academic curriculum. Students, teachers, researchers who want to use this for their individual purpose / self-consumption are exempt. Schools wanting to use the content in the teaching learning activities in their institution are also exempt from purchasing the Licence. Publishers/users having a turnover shown in Income Tax return upto INR 10,00,000/- are exempt from buying a license. In case of individuals, applicants having a gross taxable income of less than INR 10,00,000, as per the income tax returns filed, in the preceding financial year, shall be exempt from paying a licence fee

14) What is the meaning of the terms 'piracy', 'plagiarism' and 'copyright infringement' under the Balbharati Copyright Policy?

The Andhra Pradesh High Court in the case of ***K. Marari v. Muppala Ranganayakamma (C.C.C.A. 65 of 1983)*** while discussing the meaning of the terms 'piracy' and 'copyright infringement' has held:

"17. IN Corpus Juris Secundum, Vol. 18, at page 212, in Section 90, it is stated of 'infringement' thus:

infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by the statute on the owner of the copyright....

....FROM the above discussion, it must be held that copying does, not involve of the result of an independent work though the author produces substantially similar result. But without any independent effort if another author produces making substantial use of important features of the copyrighted work, he would be committing piracy and is a trespass on the private domain of the owner of the copyrighted work. It is thereby an infringement of the copyright of the original author.

The Andhra Pradesh High Court in this judgement (*supra*) also laid down tests for determining the act of plagiarism and has held:

"Plagiarism consists of copying of other language or incident or of the plot of the original author or treatment accorded to the work. It must be shown to be cause sin qua non of the infringing work. There must be present two essential things, viz., sufficient objective similarity between the infringing work and the copyrighted work and some casual connection between the work infringed and the infringing work or a substantial part thereof in the former to be found place or basis in the infringing work either by reproduction or adaptation, either with more or less colourable disguise."

This position has also been discussed by the Supreme Court in the case of **R.G. Anand v. Delux Films and Ors. (AIR 1978 SC 1613)** where it has been held:

"Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved." (emphasis added)

Thus, copyright infringement or piracy can be synonymously used and substantial use of copyright material, without a valid licence, would constitute an act of piracy. Plagiarism, as used in general parlance, would consist of copying the original author or treatment accorded to the work, and having sufficient similarity between the infringing work and the copyrighted work, with more or less colourable disguise.

15) When is a Licence required to be taken under the terms of the Balbharati Copyright Policy and the Copyright Act, 1957?

Copyright does not protect facts, ideas, systems, or methods of operation, although it may protect the way these things are expressed. The Supreme Court in the case of **R.G. Anand v. Delux Films and Ors. (AIR 1978 SC 1613)** has held:

"1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

2.... If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy."

Thus, a person preparing Supplementary Materials in print or digital format or tuition classes preparing such Supplementary Materials, in accordance with Balbharati's Contents, would have to obtain a Licence. If a person fails to obtain the Licence, and prepares Supplementary Materials, substantially and materially utilizing Balbharati's Contents, would be liable for copyright infringement.

16) Is sublicensing allowed under the contract?

No

17) What are the consequences of infringement of the conditions of Licence or utilization of Balbharati's Contents without obtaining a Licence?

- (i) Sue the Authorised Users for breach of Licensing Agreement;
- (ii) Restrain the infringement of the copyright, if the Authorized User acts beyond the scope of his rights granted by the Licence;
- (iii) If the Authorized User commits a breach of trust or confidence, a suit for redressal; or
- (iv) Blacklist the Authorized User from the future publication and sales of Supplementary Materials
- (v) Revocation of the Licence and backlisting the publisher from undertaking supplementary book (using Balbharati's Contents) business in Maharashtra for a period of 3 (three) years

18) Is there any exemption from payment of Licence Fees?

Publishers/users having a turnover shown in Income Tax return upto INR 10,00,000/- are exempt from buying a license. In case of individuals, applicants having a gross taxable income of less than INR 10,00,000, as per the income tax returns filed, in the preceding financial year, shall be exempt from paying a licence fee

19) What is the 'fair use' doctrine?

Under the terms of Copyright Act, 1957, 'fair use' of copyright is permissible. Section 52 provides for certain acts which shall not constitute an infringement of copyright:

"(a) a fair dealing with any work, not being a computer programme, for the purposes of—

- (i) private or personal use, including research;*
- (ii) criticism or review, whether of that work or of any other work;*
- (iii) the reporting of current events and current affairs, including the reporting of a lecture delivered in public..*

(h) the publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists: Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

(i) the reproduction of any work—

- (i) by a teacher or a pupil in the course of instruction; or*
- (ii) as part of the question to be answered in an examination; or*
- (iii) in answers to such questions;...."*

The plea of 'fair use', however, would not be admissible if substantial parts of the works are reproduced. The Madras High Court in the case of **Blackwood and Sons Ltd. and Ors. v. A.N. Parasuraman and Ors. (AIR 1959 Mad 410)** has held:

"If substantial and vital parts of the works are reproduced the intention to appropriate to the infringer the labour of others for his own profit is made out and there need not be proof of any independent oblique motive."

20) Does section 52 of the Copyright Act, 1957 carve out exception for 'educational purposes'?

The Delhi High Court in the case of **Rupendra Kashyap v. Jiwan Publishing House (1996 (38) DRJ 81)** has held:

"In respect of the defence of fair dealing, the Court applied the test of "commercial exploitation" and observed that if a publisher commercially exploits the original work, and in doing so, infringes the copyright, the defence of fair dealing would not be available to such a publisher, even if the book published by him is used, or meant to be used for research of private study... The law as to copyright in India is governed by a statute which does not provide for defence in the name of public interest. An infringement of copyright cannot be permitted merely because it is claims to be in public interest to infringe a copyright."

While the jurisprudence in relation to inclusion of 'fair use' of copyright for educational purposes is nascent, it may be useful to refer the judgement of the Division Bench of the Delhi High Court, in the case of **The Chancellor, Masters and Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services and Anr. (233(2016)DLT279)** where it has been held:

"Reproduction of any copyrighted work by teacher for purpose of imparting instruction to pupil as prescribed in syllabus during academic year would be within meaning of Section 52(1)(i) of Copyright Act, 1957"

While, the Indian Reprographic Rights Organisation (IRRO) had filed a Special Leave Petition ("**SLP**") before the Supreme Court challenging the abovementioned judgement of the Delhi High Court, the Supreme Court dismissed the SLP.