

**IN THE HIGH COURT OF THE WESTERN PROVINCE HOLDEN**  
**IN COLOMBO**  
**EXERCISING ITS CIVIL JURISDICTION**

1. L. Lionel Halwathura,  
311/7, Boraluoda,  
Athurugiriya.
2. Kamala Jayalath Halwathura,  
311/7, Boralugoda,  
Athurugiriya.
3. Koralage Ashoka Perera,  
49/6, Pasalwatta,  
Rukmale,  
Pannipitiya.

**PLAINTIFFS**

Case No: HC/Civil/60/2006 [03]

-VS-

Sirisumana Godage,

carrying on business as a  
sole proprietorship under the  
name and style of S. GODAGE  
AND BROTHERS at No. 675, P.  
de S Kularatna Mawatha,  
Colombo 10.

**DEFENDANT**

**BEFORE** : Ruwan Fernando, H.C.J.

**COUNSEL** : Harsha Cabral, P.C. for the  
Plaintiffs



Rasika Dissanayake for the  
Defendant

WRITTEN SUBMISSIONS

FILED ON : 19.02.2014 & 13.04.2016  
(By the Plaintiffs)

08.07.2014 & 13.01.2016 (By  
the Defendant)

ARGUED ON : 15.07.2016

DECIDED ON : 04.11.2016

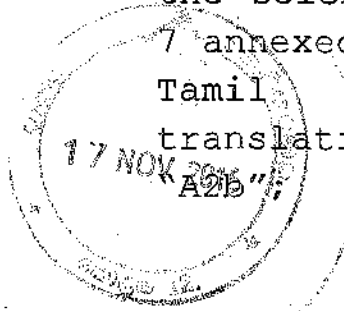
Ruwan Fernando, High Court Judge

**INTRODUCTION**

[1] The plaintiff instituted this action against the defendant by plaint dated 18.12.2006 seeking *inter alia* the following reliefs:

a. a declaration that the plaintiffs are the owners of copyright of the Science and Technology Textbook for Year 7 annexed to the plaint marked as "A2" and the Tamil language and English language translations thereof marked as "A2a" and "A2b";

b.a declaration that the defendant is not entitled to print and/or supply any copies of the Science and Technology Textbook for Grade 7 annexed to the plaint marked as "A2" and the Tamil language and English language translations thereof marked as "A2a" and



c. judgment against the defendant in a sum of Rs. 21 Million or such other sum due to the plaintiff on account of the damages suffered by the plaintiffs due to the infringement of the copyright of the Science and Technology Textbook for Year 7 annexed to the plaint marked as "A2" and the Tamil and English language translations thereof marked as "A2a" and "A2b" together with legal interest from date hereof till the date of decree and thereafter on the decretal amount at the same rate until payment in full;

d. an order for accounting of profits for the Science and Technology Textbook for Year 7 printed and supplied by the defendant to the Ministry of Education in addition to the aforesaid 351,530 Science and Technology Textbook for Year 7;

e. judgment against the defendant in such sums of profits made by the defendant together with the legal interest from the date hereof till the date of decree and thereafter on the decretal amount at the same rate until payment in full; and

f. costs.

#### THE CASE FOR THE PLAINTIFF

[2] The plaintiff stated *inter alia* in the plaint as follows:

1. The defendant intimated to the 2<sup>nd</sup> plaintiff that the Science and Technology Textbook for Year 7 submitted by the defendant consequent to



the acceptance of a bid forwarded by the defendant to the Ministry of Education in response to Tender for the procurement of Science and Technology Textbook for Grade 7 under the second General Education Project (GEP2) by the Government of Sri Lanka had not met the required standards and requested the 2<sup>nd</sup> plaintiff to edit the said book (A1) to meet the standard required by the Ministry of Education;

2. The 2<sup>nd</sup> plaintiff accepted the said request made by the defendant and proceeded to edit the said book with the assistance of the 1<sup>st</sup> and the 3<sup>rd</sup> plaintiff;
3. Despite best efforts of the plaintiffs, it was impossible to improve the said book to the standard required by the Ministry of Education through a process of editing;
4. When the plaintiffs informed the defendant of the same and at the request of the defendant, the plaintiffs proceeded to write a Science and Technology Textbook for Grade 7 anew in conformity with the Syllabus approved by the Ministry of Education;
5. The plaintiffs managed to complete the Science and Technology Textbook for Grade 7 (P2) and the said book was accepted by the Ministry of Education for meeting the standards required by the Ministry of Education;



6. Thereafter the said book was translated into Tamil and English languages with the assistance of the plaintiffs (A2a/P2a) and (A2b/P2b);
7. The defendant has admitted the authorship of the plaintiffs of the said book by the inclusion of the names of the plaintiffs;
8. The defendant requested the plaintiffs to assign the copyright of the plaintiffs in respect of the said book by providing the plaintiffs with a format of the copyright agreement (A3) but the plaintiffs did not agree to transfer the copyright in respect of the said book written by them;
9. The defendant had printed and supplied 351,530 copies of the said book to the Ministry of Education without licence of the plaintiffs and received a sum of Rs. 52,017,330/- from the Ministry of Education in respect of the said 351,530 copies of the said book and committed an act of infringement of the copyright of the plaintiffs.

#### **THE CASE FOR THE DEFENDANT**

[3] The defendant filed answer and stated *inter alia*:

1. The Science and Technology Textbook for the Grade 7 has been written on a syllabus and under the supervision of the Advisory Committee of the Education Publications Department for the purpose of free distribution and therefore



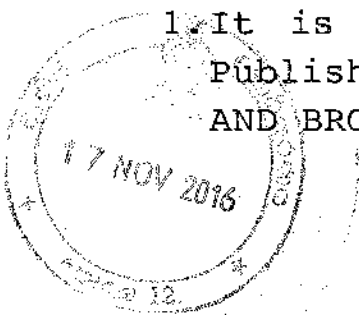
copyright does not arise under the Intellectual Property Act;

2. A bid submitted to the Ministry of Education in response to a Tender for the procurement of Science and Technology Textbook for Grade 7 under the Second Education Project (GEP2) by the Government together with 4 chapters and a synopsis of the rest of the chapters of the Science and Technology Textbook authored by Mr. Madurasiri Jayawardana and Mr. Ariyaratne Ranasinghe was accepted by the Ministry of Education;
3. The services of the plaintiffs were obtained only to edit the said book written by Madurasiri Jayawardana and Mr. Ariyaratne Ranasinghe and the plaintiffs were paid for the services rendered by them for editing the said book and therefore the plaintiffs are estopped from claiming the reliefs prayed for in the plaint;
4. The plaintiffs' names were included as authors of the book on their request with the written permission of the said Madurasiri Jayawardana and Ariyaratne Ranasinghe.

#### **ADMISSIONS AND ISSUES**

[4] At the trial, the following admissions were recorded by the parties:

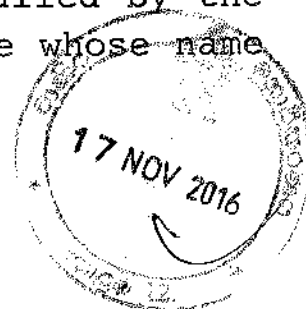
1. It is admitted that the defendant is a Book Publisher under the name and style S. GODAGE AND BROTHERS;



2. It is admitted that the Ministry of Education called for a Tender for the procurement of Science and Technology Textbook for the Grade 7" under the Second General Education Project (GEP2) of the Government of Sri Lanka;
3. It is admitted that the defendant made a bid for the said Tender called by the Ministry of Education and that the said bid was accepted;
4. It is admitted that the plaintiffs' services were used by the defendant to edit the Science and Technology Textbook for the Grade 7;
5. It is admitted that the Science of Technology Textbook for the Grade 7 was translated into Tamil and English;
6. Subject to paragraph 12 of the answer, it is admitted that the plaintiffs were named as authors of the Science and Technology textbook for the Grade 7;
7. The receipt of the Letter of Demand marked as "A6" is admitted.

[5] The plaintiff raised 14 issues and the defendant raised 13 issues and accordingly, this case proceeded to trial on 27 issues. At the trial, the 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs and the Commissioner for Department of Education (Development) gave evidence on behalf of the plaintiffs.

[6] However, neither the defendant nor any employee of the defendant gave evidence during the trial of the action. The only witness who was called by the defendant was Mr. Madurasiri Jayawardane whose name



appears on the Science and Textbook for Grade 7 as one of the authors.

#### **NATURE OF ACTION**

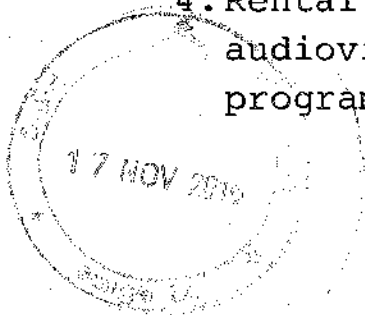
[7] This is a copyright infringement action filed by the plaintiffs as owners of the copyright in respect of the Science and Technology Textbook for Grade 7 (P2). The plaintiffs claim that the defendant had printed and supplied 351,350 copies of the said book without obtaining any licence or assignment of copyright from the plaintiffs and therefore, the said acts of the defendant amount to an infringement of copyright in respect of the said Science and Technology Textbook for Grade 7 (P2).

#### **ECONOMIC RIGHTS OF COPYRIGHT OWNER**

[8] In terms of section 9 of the Intellectual Property Act No. 36 of 2003, the owner of copyright of a work has exclusive rights to carry out or authorize the acts in relation to such work. Section 9(1) of the Act reads as follows:

"Subject to the provisions of section 11 and 13, the owner of copyright of a work, shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

- 1.Reproduction of the work;
- 2.Translation of the work;
- 3.Adaptation, arrangement or other transformation of the work;
- 4.Rental of the original or a copy of an audiovisual work, a work embodied in a sound program, a data base or a musical work in





the form of notation, irrespective of the ownership of the original or copy concerned;

5. Importation copies of the work (even where the improved copies were made with the autorotation of office, owner of the copyright);
6. Public display of the original or copy of the work;
7. Broadcasting of the work;
8. Other communication to the public of the work,

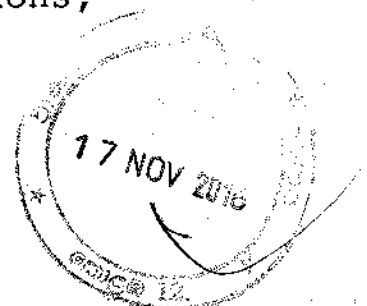
[9] In terms of section 9 (2), the provisions of subsection (1) of this section shall apply to both the entire work and a substantial part thereof.

#### **PROTECTED WORK**

[10] The works protected as copyrighted works are recognized in section 6 and 7 of the Act as follows:

6 (1) Literary, artistic or scientific work which are original intellectual creations in the literary, artistic and scientific domain, including and in particular-

- (a) Books, pamphlets, articles, computer programs and other writings;
- (b) Speeches, lectures, addresses, sermons and other oral work;
- (c) Dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions;



- (d) Stage production of works specified in paragraph (c) and expressions of folklore that are not for such productions;
- (e) Musical works, with or without accompanying words;
- (f) Audiovisual works;
- (g) Works of architecture;
- (h) Works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (i) Photographic works;
- (j) Works of applied art;
- (k) Illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

[11] The works specified in subsection of the Act shall be protected by the sole fact of their creation and irrespective of their work or form of expression, as well as of their content, quality and purpose.

[12] In addition, the following works shall also be protected as works:

- (a) Translation, adaptation, arrangements and other transformation or modifications of works; and
- (b) Collection of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents.

## TYPES OF WORKS CREATED BY THE PLAINTIFFS

[13] It is not in dispute that initially, the services of the plaintiffs were obtained to edit the Science and Technology Textbook for Grade 7 to meet the standards required by the Ministry of Education and in terms of this request; the plaintiffs proceeded to edit the said book. The document marked A1 annexed to the plaint and the document produced and marked as P1 at the trial was a true copy of parts of the said book given to the plaintiffs for editing by the defendants.

[14] It is also not in dispute that the plaintiffs contributed to the Science and Technology Textbook for Grade 7 and subsequently, the Science and Technology textbook for Grade 7 was completed to meet the standards required by the Ministry of Education, translated into Tamil and English and printed and supplied to the Ministry of Education by the defendant in terms of the agreement between the defendant and the Ministry of Education (V1).

## DISPUTE

[15] The parties are however, at variance in respect of the type of work performed by the plaintiffs or the extent of contribution made by the plaintiffs towards the creation of the said book. The plaintiffs' position was that despite their best efforts, it was impossible to improve the aforesaid book to the standard required by the Ministry of Education and therefore, at the request of the defendant, they wrote a new Text Book capable of meeting the required standards of the



Ministry of Education (Vide- paragraphs 7 and 8 of the plaint).

[16] The position of the plaintiffs was that it became impossible to improve the said book to the standard required by the Ministry of Education and therefore, at the request of the defendant they wrote a new book in conformity with the syllabus approved by the Ministry of Education.

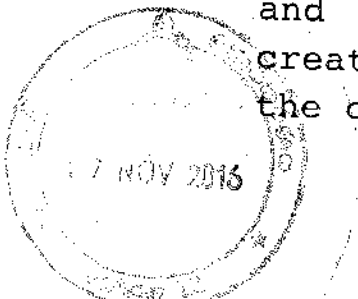
[17] The defendant however, took up the position that the assistance of the plaintiffs were obtained for the purpose of editing the book which was written by Madurasiri Jayawardana and Ariyaratne Ranasinghe as it was necessary to print and supply the book within a very short span of time (Paragraph 10 (b) and (c) of the answer).

[18] Whilst the contribution made by the plaintiffs to the creation of Science and Technology Textbook for Grade 7 is not in contest, the question is with regard to the nature or extent of contribution made by the plaintiffs in the creation of Science and Technology textbook for Grade 7.

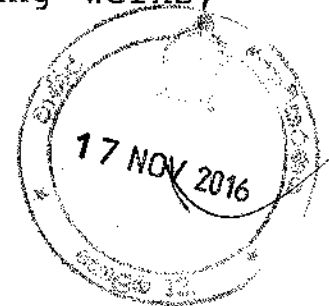
#### **ORIGINAL OWNERSHIP OF ECONOMIC RIGHTS OF A WORK**

[19] Section 14 of the Act recognizes the original ownership of economic rights of a work and identifies 5 situations in which original ownership of economic rights can exist in a work. Section 14 provides as follows:

- (1) Subject to the provisions of subsections (2) and (5) of this section, the author who created the work economic rights, shall be the original owner of economic rights;



- (2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If however a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in respect of the part that he has created;
- (3) In respect of a collective work, the physical person or legal entity at the initiative, and under the direction, of whom of which the work has been created shall be the original owner of the economic rights;
- (4) In respect of a work created by an author employed by a physical person or legal entity in the course of his employment, the original owner of the economic rights shall, unless provided otherwise by way of a contract, be the employer. If the work is created pursuant to a commission, the original owner of economic rights shall be unless otherwise provided in a contract, the person who commissioned the work;
- (5) In respect of an audiovisual work, the original owner of the economic right shall be the producer, unless otherwise provided in a contract. The co-authors of the audiovisual work and the authors of the pre-existing works, included in or adapted for, the making of the audiovisual work shall, however, maintain their economic rights in their contributions of pre-existing works,



respectively, to the extent that those contributions or pre existing works can be the subject of acts covered by their economic rights separately from the audio visual work.

**AUTHORS OF THE SCIENCE AND TECHNOLOGY TEXTBOOK FOR GRADE 7 (P8)**

**WORK OF MADURASIRI JAYAWARDANE AND ARIYARATNE RANASINGHE**

[20] The plaintiffs have admitted that the Science and Technology Textbook for Grade 7 (P8) which was originally authored by Madurasiri Jayawardane and Ariyaratne Ranasinghe was given to them for editing but later it was created by them as a new book. The evidence of the 1<sup>st</sup> plaintiff at page 7 of proceedings dated 30.01.2009 on this point is as follows:

උ- ස්වාමීනී මම මේ 7 වසර පොතට සම්බන්ධ වූනේ 2004 අප්‍රේල් මාසේ. මෙම පොත සංස්කරණය සඳහායි මට ඉදිරිපත් කලේ. මේ පොතේ ටෙන්ඩරයට මා කිසිම සම්බන්ධතාවයක් නැහැ. 2004 අප්‍රේල් මාසේ මෙම පොතේ ඒකක කිහිපයක් මට එව්වා සංස්කරණය කරලා දෙන්න කියා. ගොඩගේ සමාගම මාව දැන හඳුනා ගෙන හිටියා. මම 8 වසර පොතෙන් 9 වසර පොතෙන් ඔවුන් සමඟ ලියලා තිබුන නිසා මම ඒක සංස්කරණය කරන්න මහන්සි වුනා. .... මම මේ පොත සංස්කරණය කලා කිහිප අවස්ථාවක්. හැම අවස්ථාවකදීම දෙපාර්තමේන්තුව නියමිත මට්ටමට නැහැ කියා ප්‍රතික්ෂේප කරල එව්වා. මට එම අවස්ථාවේදී සමාගම කීව්වා නැවත වරක් එම පොත අළුතින් ලියලා දෙන්න කියා. අන්න ඒ අවස්ථාවේදී මම මේ පොත ලියන්න පටන් ගත්තා. තනියම ලියන්න බැරි නිසා අනෙක් ලේඛකයෝ දෙන්නෙක් අඩ ගහගෙන ලියන්න පටන් ගත්තා.

[21] The evidence of the 2<sup>nd</sup> plaintiff at page 25 of proceedings dated 21.07.2010 on this point is as follows:



ප්‍ර කොහොම හරි සංස්කරණය කරන්න මහත්මියට දුන්නු පොත් ලියා කිබෙන්නේ මධුරසිරි ජයවර්ධන සහ ආරියරත්න රණසිංහ යන අය? උ එහෙමයි.

[22] It is not in dispute that Mayurasiri Jayawardane and Ariyaratne Ranasinghe are the original authors of Science and Technology Textbook for Grade 7 (P8).

[23] It appears however, that the said Madurasiri Jayawardane and Ariyaratne Ranasinghe are not parties to this litigation. The said Jayawardane has stated in his evidence that a general payment was made by the defendant company to them in terms of the agreement between them and the defendant company. However, he did not produce the said agreement to Court to enable the Court to ascertain the exact payment made by the defendant in terms of the said agreement. His evidence at page 12-13 & 18 of the proceedings dated 19.10.2011 is as follows:

ප්‍ර මෙම පොත සම්බන්ධයෙන් කතෘවරයෙකුට අදාළ එකඟ වන ලද මුදල තමාට සමාගම විසින් ගෙව්වාද?

උ සාමාන්‍ය දීමනාවක් දුන්නා. ....(පිටු 12, 13)

ජර තමාට මේ සම්බන්ධයෙන් කිසිම ලියවිල්ලක් නැහැ?

උ අපේ ගිවිසුමේ උපලේඛනයේ කිබෙනවා.

ප්‍ර තමාගේ ගිවිසුමක් කිබෙනවාද?

උ ඔව්.

ප්‍ර අධිකරණයට ගෙනවිත් කිබෙනවාද?

උ ආයතනයෙන් අහන්න ඕන.....(පිටු 16)

ප්‍ර තමා ලිව්වේ අධ්‍යාපන අමාත්‍යාංශයේ ආරාධනයක් මතද? ගොඩගේ සමාගමේ ආරාධනයක් මතද?

උ ගොඩගේ සමාගමේ ආරාධනය මත.

ප්‍ර ඒ සම්බන්ධයෙන් ගිවිසුමකට ඇතුළු වී කිබෙනවාද?

උ ඔව්. ....(පිටු 16, 17)



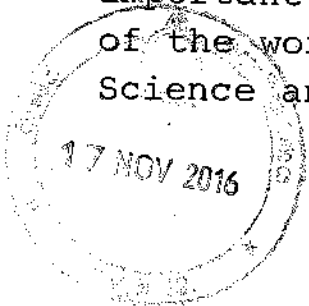
- .....
- පු තමා ලිව්වා කියන පොතට තමාට ගෙවීමක් කලාද?
  - උ ඔව්.
  - ප කීයක් ගෙව්වාද?
  - උ මට මතක හැටියට රුපියල් 125,000/ ක් පමණ වගේ.
  - ප ඒ ගිවිසුම ප්‍රකාරවද ඊට අමතරවද?
  - අ ගිවිසුම ප්‍රකාරව.
  - ප රණසිංහ මහතාටත් ගෙව්වාද?
  - උ ඔව්. ....(පිටු 18)

[24] The defendant has admitted in paragraph 13 of the answer that he entered into an agreement with regard to the copyright of this book with Madurasiri Jayawardane and Ariyaratne Ranasinghe. It appears therefore, that payments had been made to the said Jayawardane and Ranasinghe as original authors of this book in terms of an agreement between the defendant and the said Jayawardane and Ranasinghe.

[25] It appears that the economic rights of the said Jayawardane and Ranasinghe in respect of pre-existing Science and Technology Textbook for Grade 7 (P8) now belong to the defendant publisher in terms of the said agreement.

**WORKS CREATED BY THE PLAINTIFFS ON PRE-EXISTING WORK**

[26] The defendant's position was that the services of the plaintiffs were obtained for mere editing purposes and therefore, they merely edited the book authored by Jayawardane and Ranasinghe. The important question however, is to decide the nature of the work created by the plaintiffs in respect of Science and Technology Textbook for Grade 7 (P2) in





view of the stand taken by the plaintiffs that they wrote this book (P2) anew at the request of the defendant since it was impossible for the book to be improved to the standard required by the Ministry of Education.

[27] The plaintiffs have admitted that the new work (P2) was created on the preexisting Science and Technology Textbook for Grade 7 (P8) which was authored by Madurasiri Jayawardane and Ariyaratna Ranasighe

[28] The evidence of the 2<sup>nd</sup> plaintiff at page 25 of proceedings dated 21.07.2010 reads as follows:

- ප්‍ර කොහොම හරි සංස්කරණය කරන්න මහත්මියට දුන්න පොත් ලියා තිබෙන්නේ මධුරසිරි ජයවර්ධන සහ ආරියරත්න රණසිංහ යන අය?  
උ එහෙමයි.

[29] It is abundantly clear that the plaintiffs have started off their work on the pre-existing work of Madurasiri Jayawardana and Ariyaratne Ranasinghe (P8) who are admittedly the authors of the Science of Technology Textbook for grade 7 marked P8. Accordingly, I hold that the plaintiffs have created the work (Science and Technology Textbook (P2) on the preexisting Science and Technology Textbook authored by Madurasiri Jayawardana and Ariyaratne Ranasinghe (P8).

[30] It is not in contest however, that the said Book authored by Madurasiri Jayawardana and Ariyaratne Ranasinghe (P8) was not approved by the Ministry of Education for not meeting the standard required by the Ministry of Education. It is also not in dispute that the services of the plaintiffs



were obtained initially, to edit the said book authored by Madurasiri Jayawardana and Ariyaratne Ranasinghe (P8) in conformity with the standard required by the Ministry of Education.

**COPYRIGHT IN PRE-EXISTING WORK & ORIGINAL DERIVATIVE WORK AS PROTECTED WORK**

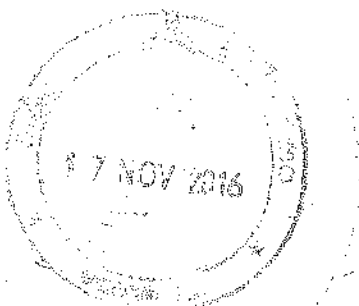
[31] The question arises under such circumstances whether the Science and Technology Textbook for Grade 7 (P2) can qualify for copyright protection as original work when the plaintiffs have created work on the pre-existing work of Madurasiri Jayawardane and Ariyaratne Ranasinghe.

[32] The applicable legal position for copyright protection for works created on pre-existing work is contained in section 7 of the IP Act of Sri Lanka as follows:

Section 7- Derivative works

"The following works shall also be protected as works:

- (a) Translation, adaptation, arrangements and other transformation or modifications of works; and
- (b) Collection of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents".



**DERIVATIVE WORK ACQUIRES A SEPARATE COPYRIGHT PROTECTION DISTINCT FROM THE COPYRIGHT OF PREEXISTING WORK**

[33] In terms of subsection (2), the protection of any work referred to in subsection (1) shall without prejudice to any protection of a pre-existing work incorporated in or utilized for the making of such a work. This means that the work created on preexisting works also acquires a separate copyright distinct from the copyright of preexisting work incorporated in or utilized for the making of such a work. Examples of derivative works include modifications, revisions, annotations, elaborations, or other modifications which, as a whole, may represent an original work.

[34] For the purpose of clarity, it is important to refer to the legal principles that are applied in relation to the protection afforded to authors of derivative works in the United States.

**DERIVATIVE WORKS IN THE UNITED STATES**

[35] A derivative work in section 101 of 17 U.S.C is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation or any other form in which a work may be rested, transformed or adapted.

[36] In addition, a work consisting of editorial revisions, annotations, elaborations or other modifications which as a whole, represent as



original work of authorship, is a derivative work under the law of the United States (17 U.S.C. 101).

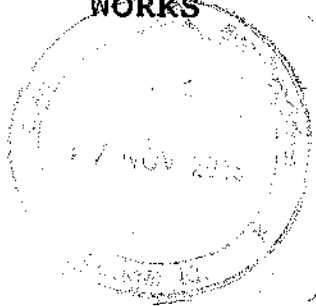
### DERIVATIVE WORK SHOULD ACQUIRE ORIGINALITY

[37] However, a derivative work based on a previous work is copyrightable if, but only if, the second work meets the originality requirement. (Vide- Donald S. Chisum, Tyler T. Ochoa, Shubha Ghosh and Mary LaFrance, Intellectual property Law, 3<sup>rd</sup> Ed. p. 305). This means that to acquire copyright protection, there must be at least some substantial variation, not merely a trivial variation such as might occur in the translation to a different medium (Vide- L.Batlin & Son v Snyder, 536 F 2<sup>nd</sup> 486, 491 (2<sup>nd</sup> Cir. 1976). Thus, a derivative work must be substantially different from the underlying work to be copyrightable (Gracen v. Bradford Exchange, 698 F 2<sup>nd</sup> 300, 305, (7<sup>th</sup> Cir. 1983).

[38] In Shrock v Learning Curve Int'l, Inc 586 F 3<sup>rd</sup> 513 (7<sup>th</sup> Cir, 2009), the standard of copyright protection for derivative was explained as follows:

"(1) the originality requirement for derivative works is not more demanding than the originality requirement for other work and (2) the key inquiry is whether there is sufficient nontrivial expressive variation in the derivative work to make it distinguishable from the underlying work in some meaningful way".

### LIMITATIONS TO COPYRIGHT PROTECTION FOR DERIVATIVE WORKS



[39] It appears however, that there are two key limitations to the copyright protection for derivative works.

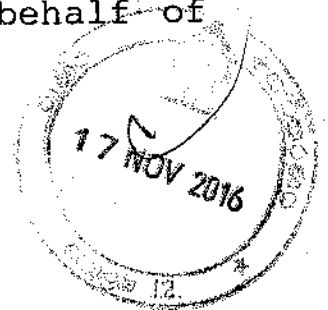
**LIMITATION 1- REQUIREMENT OF CONSENT**

[40] The first limitation seems to be the requirement of consent and therefore, an author who created a derivative work based on preexisting work without permission, could not claim copyright protection in the derivative work (Donald S. Chisum, Tyler T. Ochoa, Shubha Ghosh and Mary LaFrance, Intellectual property Law, 3<sup>rd</sup> Ed. p. 307).

[41] In the present case, the evidence of the plaintiffs was that they were engaged in the creation of a new Science and Technology Textbook for Grade 7 by the defendant after the defendant was informed by them that it was impossible to edit the book (page 7 and 8 of proceedings dated 30.01.2009). Neither the defendant nor any of his employees gave evidence denying the said consistent position of the plaintiffs during the entire proceedings.

[42] On the other hand, the defendant never adduced evidence to contradict the position of the plaintiffs or establish that the permission was never given to the plaintiffs to use the pre-existing book for the creation of a new book

[43] In the present case, both Madurasiri Jayawardana and Ranasinghe had not objected to the plaintiffs using the pre-existing book (P8). Madurasiri Jayawardana who testified on behalf of



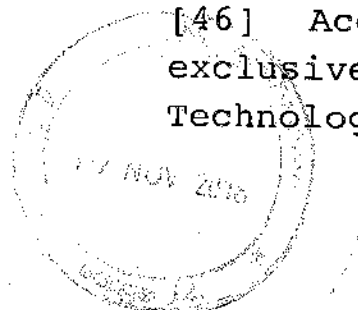
the defendant has stated in evidence that the services of the plaintiffs were obtained only to edit the pre-existing work (P8). The 1<sup>st</sup> plaintiff has however, stated that Jayawardane and Ranasinghe participated in the work only on two occasions and thereafter they, abandoned the work (Vide- page 9 of proceedings dated 15.09.2009). The defendant never testified in court denying this position of the plaintiffs.

[44] On the other hand, it was the defendant who engaged the plaintiffs in the creation of the Science and Technology textbook (P8) and therefore, their dealings were clearly with the defendant who did not contradict the specific statement of the plaintiffs that the defendant requested them to write a book.

#### LIMITATION 2

[45] The second limitation is that the copyright in a derivative work extends only to the new matter (e.g. adapted, revised or modified new works) added by the creator of the derivative work which implies that no exclusive right in the preexisting material that is employed in the work (Donald S. Chisum, Tyler T. Ochoa, Shubha Ghosh and Mary LaFrance, Intellectual property Law, 3<sup>rd</sup> Ed. p. 307). Accordingly, the copyright in a derivative work does not affect or enlarge the scope, duration, ownership or subsistence of, any copyright protection in the preexisting material (Supra).

[46] Accordingly, the plaintiffs cannot claim exclusive rights to the entire Science and Technology Textbook for Grade 7 (P2). However, they



can only claim copyright protection to the new work added by them as derivative works in the creation of Science and Technology Textbook for Grade 7 (P2) irrespective of the fact that the exclusive right in the preexisting material belong to the publisher of the preexisting work in the present case.

### LIMITATION 3

[47] The third limitation is that the copyright in a derivative work does not extend to trivial variation but it extends to non-trivial substantive variations and original derivative work of the author.

### WHETHER THE PLAINTIFFS HAVE MADE SUFFICIENT INTELLECTUAL CONTRIBUTION

[48] Copyright in a derivative work subsists only in original work which means that to be protected by copyright; a work must have originated from the author. It is the labour, skill and judgment which are protected by copyright (University of London Press Ltd v University Tutorial Press Ltd (1916) 2 Ch. 601). Copyright in derivative work also is concerned with the originality of the underlying idea and it is the form in which the idea is expressed which must be original to be protected by copyright.

### NAMES OF PLAINTIFFS ARE INDICATED AS AUTHORS OF THE BOOK (P2)

[49] It has been admitted by the defendant that subject to paragraph 12 of the answer, the plaintiffs were named as authors of the Science and



Technology Textbook for Grade 7 (admission 6). The names of the plaintiffs have been indicated as authors of the said Science and Technology Textbook (P2) in addition to names of Jayawardane and Ranasinghe.

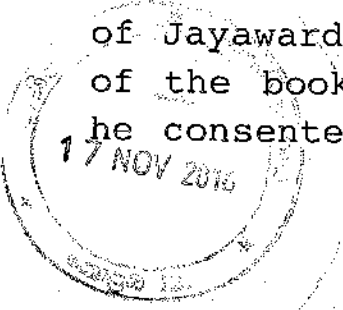
#### **PRESUMPTION OF AUTHORSHIP UNDER SECTION 15 OF IP ACT**

[50] Section 15 (1) gives rise to a presumption, in the absence of proof to the contrary, that the physical person whose name is indicated as the author of a work in the usual manner is the author thereof. Section 15 of the Intellectual Property Act provides as follows:

"15 (1). The physical person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. The provisions of this section shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

15 (2). The physical person or legal entity whose name appears on an audio-visual work shall, in the absence of proof to the contrary, be presumed to be the producer of the said work".

[51] The defendant's position was that the plaintiffs' names were included as authors of the book on their request and with the written consent of Jayawardane and Ranasinghe who were the authors of the book. The said Jayawardane too stated that he consented to the names of the plaintiffs being





included in the book. Obviously, the names of Jayawardane and Ranasinghe have been included in the book as they were the original authors of the preexisting work.

[52] However, the said Jayawardane and Ranasinghe have admittedly entered into an agreement with the defendant and received payments from the defendant in terms of the said agreement. The important question is this: Why did the defendant as a leading book publisher include the names of the plaintiffs in the published book if they merely edited the said book? The defendant and his employees opted not to give evidence in support of the said position taken by him in his answer. It is most unlikely that the defendant being a leading book publisher will ever want to include the names of two school teachers for doing some works which according to them were mere editing works for which they had been paid Rs. 100,000/- each person. The defendant has clearly failed to rebut the presumption in section 15 (1) of the IP Act.

[53] Accordingly, I reject the position taken up by the defendant in his answer that the names of the plaintiffs were included in the book at the request of the plaintiffs.

[54] The defendant has clearly indicated in payment vouchers marked P5a and P5b that a sum of Rs. 40,000/- was paid to each plaintiff as the "කතෘභාගය" (royalty payment). Why should the defendant as a leading book publisher pay a "royalty" to 3 teachers who merely edited the said book? The indication of the names of the plaintiffs in the said book as authors and payment made to them as



"royalty" clearly prove that the plaintiffs have made a substantial and intellectual contribution to the Science and Technology Textbook for Grade 7 (P2) in conformity with the standards required by the Ministry of Education.

**LABOUR, SKILL AND JUDGMENT EXPENDED BY THE PLAINTIFFS IN THE CREATION OF NEW WORKS**

[55] I will now proceed to highlight certain similarities and non-similarities of the two works in order to decide whether the plaintiffs have expended labour, skill and judgment in the creation of the Science and Technology Textbook for Grade 7 (P2) as follows:.

**CHPATER 1 - UTILISING WATER**

[56] Despite certain similarities, a number of material differences are found in Science and Technology Textbook for Grade 7 (P2) which was created by the plaintiffs such as pictures, drawings and activities. Examples include- 1.2 has been expanded with a new picture for agricultural purposes, need of water for different ways for existence of living beings are expanded with a picture of an aquatic environment, various methods of water pollution which has been added as 1.4., activity 2 has been modified in P2 with a new picture under "do you know", the list has been expanded in P2, new summarized table has been included for water purification plant with a process of a water-purification plant in P2. Under activity 1.5, a figure for production of drinking water from sea has been added by the plaintiffs. All these new additions are not mere editorial work

but are all original intellectual creations of the plaintiffs.

#### **CHAPTER 2- UTILISING PLANT MATERIALS**

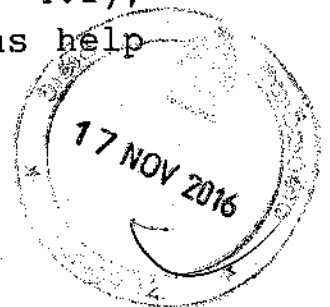
[57] Despite certain similarities, a number of material differences are found in P2 such as pictures, photographs and the text. For example, the plant cell has been added with details, bio-gas production has been added, insect control by plant materials (2.12) has been added and Sinhala-Tamil words too have been added. All these new additions are original intellectual creations of the plaintiffs. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

#### **CHAPTER 3- OBSERVATION OF THE NIGHT SKY**

[58] Chapter 3 of P2 on observation of the night sky is completely different from the P8 authored by Jayawardane and Ranasinghe in that the plaintiffs have used night sky, stars and planets, the moon, sun, other objects, patters of stars, summary, evaluation and Sinhala-Tamil words, pictures, figures, photographs are all materially different from the book marked P8. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

#### **CHPATER 4- BIOLOGICAL RELATIONSHIPS BASED ON FOOD**

[59] Despite certain similarities, there are a number of substantial variations such as majority of pictures, examples, figures, tables (e.g. 4.1), figures (e.g. food web), Subtopic 4.8 (let us help



the existence of animals is added in P2. Cross word in P2 is completely different. Sinhala-Tamil words are also added in P2. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

#### **CHAPTER 5- ENERGY AND ITS BENEFITS**

[60] Despite certain similarities, a number of material differences are found in P2 such as pictures, source of energy (5.2) has been described in detail, the table (5.1) in P2 is different, instances where energy is stored up for benefits of energy (5.3) has been further explained, the ways of storing energy (5.4) in P2 is added, types of energy (5.5) has been expanded in P2, making toys by stored energy (5.6) has been expanded in P2, 5.7 and 5.8 have been expanded, cross word is replaced by a different activity in P2 (5.11), 5.12 has been added. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

#### **CHAPTER 6- SIMILARITIES AND DISSIMILARITIES AMONG LIVING ORGANISMS**

[61] Despite certain similarities, a number of material differences are found in P2 such as pictures, 6.2 has been added with new features, new features in table 6.4 are added, diversity of plants has been added, advantage of animal diversity (6.6) has been added, 6.5 has been described in detail, classification of organisms (6.7) has been expanded and evaluation too has been expanded. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

## **CHAPTER 7- PROCESSES RELATED TO THE EXISTENCE OF ORGANISMS**

[62] Despite certain similarities between P8 and P2, a number of material differences are found in P2 such as pictures, 7.1 activity has been described, biological activities (7.2) have been expanded, 7.2 is similar to V10 however, digestive system has been explained and teeth and mouth have been added and described in detail, respiratory system (7.5) and circulatory system have also been described in detail, nervous system (7.9) is different. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

## **CHAPTER 8 UTILISING ELECTRICITY**

[63] Despite certain similarities between P8 and P2, a number of material differences are found in P2 such as pictures (e.g. pictures in 8.1, 8.2, 8.3, 8.5.1, 8.4, 8.5, 8.7, 8.6, 8.7), 8.3 second part (functioning of electronic circuits by electricity) has been added, activity 8.5-2 has been added with an assignment, dry cell in 8.8 has been added anew, evaluation in 8.13 has been added anew in P2. All these new additions are not mere editorial work but are all original intellectual creations of the plaintiffs.

[64] It is not in dispute that Science and technology Textbook for Grade 7 was required to be created in accordance with the basic guidelines of the Ministry of Education and the Book marked P2 which was revised or modified by the plaintiffs by



new additions was approved by the Ministry of Education after the revised or modified book was submitted to the Ministry of education by the defendant..

[65] I am of the view that the plaintiffs being science teachers with over 25 years experience in teaching, have expended substantial labour, skill and judgment in the creation of the said new work in P2 and those new additions or revisions or modifications are clearly original and independent and substantial intellectual creations of the plaintiffs as authors of those new additions in P2. The works created by the plaintiffs under such circumstances, in my view are sufficiently nontrivial expressive variations in such derivative work to make it distinguishable from the underlying work (P8) in some meaningful way.

[66] It is obvious that the Science and technology Book which is the preexisting work of Jayawardane and Ranasinghe did not meet the standard required by the Ministry of Education but the work created by the plaintiffs as identified in the above chapters modified or revised or transformed the book (P8) into an original intellectual creations by the plaintiffs.

[67] Accordingly, the plaintiffs have clearly created a substantial variation of the Science and technology Textbook Grade 7 (P8) in expending labour, skill and judgment by introducing new pictures, photographs, drawings, tables, diagrams, paragraphs, activities, charts and parts of the

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text which are all their original intellectual creations.

[68] Accordingly, the plaintiffs are entitled to economic rights to their new intellectual creations as original copyrighted work irrespective of the fact that the defendant as the publisher of the said book also enjoys copyright in the pre-existing work of the said book. This means that the plaintiffs will not be entitled to exclusive copyright protection to the entire Science and Technology Textbook but to the exclusive rights to their new works created by expending sufficient amount of skill, judgment and labour to make them as original works distinguishable from the underlying work in some meaningful way.

[69] I hold that the plaintiffs are entitled to be recognized as authors of original intellectual contribution in respect of new works (derivative works) and therefore are entitled to copyright in the derivative work created by them in respect of the Science and Technology Textbook (P2).

#### **INFRINGEMENT**

[70] The plaintiffs are claiming a sum of Rs. 21 Million as damages for infringement of their reproduction rights in respect of the work created by them on the basis that the defendant has printed and supplied 351,530 copies of Science and Technology Grade 7 books to the Ministry of Education without their licence and received a sum of Rs. 64 Million.



It is not in dispute that the defendant has reproduced the Science and Technology textbook for Grade 7 (P2) without licence or assignment of any copyright in the derivative work from the plaintiffs and supplied the said Textbook to the Ministry of Education.

**APPROVAL OF A SYLLABUS BY AN ADVISORY COMMITTEE OF THE EDUCATION PUBLICATIONS DEPARTMENT**

[71] The defendant has taken up the position that the book in question has been written on a syllabus approved by an Advisory Committee of the Education Publications Department for the purpose of distributing freely and accordingly, copyright does not arise under the intellectual property Act. Although the book in question had been written in accordance with the guidelines given by the Ministry of education, it was the plaintiffs who created the book on the pre-existing work at the request of the defendant who later printed, supplied and received a sum of approximately Rs. 64 Million. Accordingly, the defendant who had entered into an agreement with the Ministry of education for the development and supply of Textbook in question on commercial terms and received a huge sum of Rs. 64 Million is estopped from taking up this defence.

[72] Accordingly, I hold that the reproduction of the said Science and Technology Textbook for Grade 7 without licence from the plaintiffs constitutes an act of infringement of the copyright of the plaintiffs in the derivative work.

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**WHETHER THE PLAINTIFFS AS AUTHORS OF DETRIMENTAL WORK WERE SUFFICIENTLY COMPENSATED?**

[73] The defendant has stated that the plaintiffs have been paid Rs. 100000/- each person and therefore they are estopped from claiming any compensation from the defendant. It is important however, to examine the receipts issued by the defendant when they made some payments to the plaintiffs.

[74] According to the documents marked P4a to P5c, the plaintiffs have been paid a sum of Rs. 60,000/- each person for short orders and a sum of Rs. 40,000/- each person for long orders as indicated in the said documents.

[75] It is not in contest that the pre-existing work of the book marked P8 was not in conformity with the standard required by the Ministry of Education. The defendant obtained the services of the plaintiffs to edit the book initially to meet the standard required by the Ministry of Education despite the fact that the original authors Jayawardane and Ranasinghe could have done the revision or modification without assistance from any other third party.

[76] It was the defendant who requested the plaintiffs to create the book to the standard required by the Ministry of Education when it was impossible to edit the pre-existing book P8. The plaintiffs had expended their labour, skill and judgment in revising or modifying the pre-existing work and done a qualitative job which was accepted by the Ministry of Education to be in compliance



with the standard required by the Ministry of Education.

[77] Although Jayawardena has stated in evidence that both plaintiffs and the original authors were involved in the editing of the book, the defendant did not confirm on oath that Jayawardana and Ranasinghe too were involved in the revisions or modification of the book. Accordingly, the plaintiffs have established on a balance of probability that only the plaintiffs were involved in the revisions or modifications of the said book and made an intellectual contribution to the pre-existing book by original and new additions.

[78] It was the revised or modified work of the plaintiffs that was ultimately approved by the Ministry of Education and thus, if not for the intellectual creations of the plaintiffs, the defendant would not be able to print and supply the book to the Education Ministry and receive a huge sum of Rs. 64 Million.

[79] The book had been translated into Tamil and English languages and the Ministry had agreed to purchase the Sinhala book at Rs. 140.50, the Tamil transaction book at Rs. 161.75 (Vide- V3). The Ministry has also purchased 24,000 English translations at Rs. 161.75 (Vide- the evidence of K.V. Nandani at page 6 of proceedings dated 09.06.2011). The defendant has received a huge sum of Rs. 64 Million for supplying 285,751 copies of Science and Technology Textbook for Grade 7.

[80] For those reasons I hold that the plaintiffs were not reasonably and sufficiently compensated by

the defendant in the creation of the final Science and Technology Textbook for Grade 7 (P2).

### CALCULATION OF DAMAGES

[81] In case of an infringement of copyright, the court has the power under section 170 of the Intellectual Property Act to order the infringer *inter alia* the following damages:

#### 1. Actual damages and additional profits

to pay the right holder such damages as are adequate to compensate him for the loss suffered by him by reason of such infringement, in addition to the recovery of any profits (170 (3)). Actual damages are monetary compensation for harm proximately caused by infringing activity

#### 2. Statutory damages-

Any copyright owner may elect, at any time before final judgment is rendered, instead of proved actual damages, an award of statutory damages for any infringement involved in the action of a sum not less than rupees 50,000/- and not more than rupees one million as the court may consider appropriate and just.

[82] In the present case, no election was made by the plaintiffs seeking statutory damages instead of actual damages and hence, the question of statutory damages will not arise.

[83] However, the plaintiffs as owners of copyright in the derivative works are entitled to recover



actual damages suffered by them as a result of the said infringement. The uncontradicted evidence establishes that the defendant had printed and supplied to the Ministry of Education Ministry the following books:

1. The defendant had printed 137,970 copies of Sinhala language of the said book and supplied to the Ministry of Education during the long print run;
2. The defendant had printed 16,710 copies of Sinhala language of the said book and supplied to the Ministry of Education during the long print run;
3. The defendant had printed 77,607 copies of Sinhala language of the book and supplied to the Ministry of Education during the long print run;
4. The defendant had printed 16,000 copies of Sinhala language of the said book and supplied to the Ministry of Education during the long print run;
5. The defendant had printed 8000 copies of English language of the said book and supplied to the Ministry of Education during the long print run;
6. The defendant had printed 3180 copies of Tamil language of the said book and supplied to the Ministry of Education during the long print run;

7. The defendant had printed 17,284 copies of Tamil language of the said book and supplied to the Ministry of Education during the long print run (Vide- evidence of Nandani of the Ministry of Education).

[84] It is important to refer to the case of Attorney General v. Blake (2000) UKHL (UK) in which the Court considered the established basic principles in awarding damages as follows:

"As with breaches of contract, so with tort, the general principle regarding assessment of damages is that they are compensatory for loss or injury. The general rule is that, in the off quoted words of Lord Blackburn, the measure of damages is to be, as far as possible, that amount of money which will put the injured party in the same position he would have been in had he not sustained the wrong. Damages are measured by the plaintiff's loss, not the defendant's gain. But the common law, pragmatic as ever, has long recognized that there are many commonplace situations where a strict application of this principle would not do justice between the parties. Then compensation for the wrong done to the plaintiff is measured by a different yardstick."

[85] In applying a yardstick, the actual damages should reimburse the copyright owner for the extent to which the market value of the copyrighted work at the time of the infringement has been injured or destroyed by the infringement (Fitzgerald Publishing Co., Inc., v. Baylor Publishing Co. Inc., 807 F 2<sup>nd</sup> 1110, 1118 (2<sup>nd</sup> Cir.



1986). The loss in fair market value is usually measured either by the profits lost due to the infringement or by the value of the use of the copyrighted work to the infringer (Polar Bear Prods Inc., v Times Corp, 384 F 3<sup>rd</sup> 700 , 708 (9<sup>th</sup> Cir. 2004)).

[86] Measures of calculating actual damages, the following factors can be taken into account:

1. The amount of profits lost by owner,
2. diminution in value of copyright,
3. reasonable royalties
4. value of the use of copyright material
5. Injury to owner's goodwill

[87] The value of the use may be measured, in turn, by the licence fee that the copyright owner customarily charges others for similar use, or by what a 'willing buyer and a willing seller would have agreed for the use taken by the infringer (On Davis v The Gap, Inc. 246 F 3<sup>rd</sup> 152 , 167, (2<sup>nd</sup> Cir, 2001)).

#### APPROPRIATE FORMULA

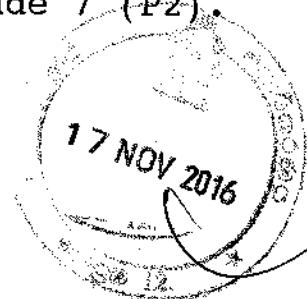
[88] I am of the view that the value of the use = acquisition cost infringer saved by infringing instead of purchasing seems to be the proper formula to be applied in the present case in calculating damages. In the present case, the plaintiffs have stated that they spent nearly 2 months continuously for the creation of the book by new additions and that they even refused to enter into an assignment with the defendant on the basis of insufficient financial benefits to the authors.

[89] The plaintiffs are entitled to reasonable royalties, royalties customarily paid for type of use to which infringer put copyrighted material. This can be estimated by the value for example, the value of the use to infringer.

[90] The value of the book was no doubt important to the defendant because the defendant printed and supplied 285,751 copies of the book to the Ministry of Education and received a sum of Rs. 64 million. The value of the book can also be measured by the fact that the book was translated into Tamil and English language because of the intellectual contribution made by the plaintiffs to the pre-existing book in a manner that was compatible with the standard required by the Ministry.

[91] The witness Nandani called by the plaintiffs has stated that the Ministry purchased 285,751 books in 2005 and a further 10,370 Tamil language books were purchased from the defendant in 2006. The plaintiffs had not received sufficient royalties for the creation of the book by new additions, which have resulted in loss of profits for plaintiffs' intellectual contribution whereas the defendant profited from the new creations of the plaintiffs not only in 2005 but in the year 2006 as well.

[92] For these reasons, I am of the view that the plaintiffs would be entitled to 5% of the purchased value of the Sinhala, English and Tamil language Science and Technology text book for Grade 7 (P2).



[93] Accordingly, the actual damages should be calculated as follows:

1. Sinhala Books- Unit price 141.50 x 5%

Date of order- 2005.05.15- 137,970 books

Date of order- 2005.07.26- 16,710 books

Date of order - 2005.10.25- 77,607 books

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Total books 232,287

Total price Rs. 1,626,009

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2. English Books- Unit price 161.75

Date of order- 2005.06.12- 16,000 books

Date of order- 2005.11.21- 8000 books

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Total books 24,000

Total price Rs. 192,000

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3. Tamil Books- Unit price 161.75

Date of order- 2005.07.06- 3180 books

Date of order- 2005.12.20- 17,284 books

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Total books 20,000

Total price Rs. 163,712

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4. Short order print-Unit price-141.50 (Sinhala) and 161.75 (Tamil)

Date of order-2003.11.05

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Sinhala books 6,500

Price Rs. 45,000

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Tamil books 2500

Price Rs. 20,000

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Total price of short order Rs. 65,000/-

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Total copies of books printed and supplied by the defendant to the Ministry of Education-285,751.

[94] Accordingly, the plaintiffs would be entitled to recover from the defendant a sum of Rs. 2,046,721.00 as actual damages (Rs. 1,626,009.00 + Rs. 192,000.00 + Rs. 163,712 +Rs. 65,000.00).

[95] However, the plaintiffs have been paid only Rs. 100,000.00 each plaintiff and therefore, the said sum of Rs. 300,000.00 should be deducted from the sum of Rs. 2,046,721.00. Therefore, the plaintiffs would be entitled to recover from the defendant a sum of Rs. 1,746,721.00 as actual damages for infringement of their copyright in derivative works.

[96] For those reasons, I answer the issues as follows:

1. (a). Yes  
(b). Yes  
(c). Yes  
(d). Yes
2. (a). Yes but on the preexisting book  
(b). Yes
3. (a). No, revised or modified the pre-existing Book  
(b). Yes  
(c). Yes
4. (a). Yes  
(b). Yes
5. (a). The plaintiffs are the owners of the new additions only



- (b). No, but the plaintiffs are entitled to exclusive copyright in the derivative works to carry out or authorize the reproduction of said copyright
6. (a). Yes  
(b). Yes  
(c). Yes
7. (a). Yes  
(b). Yes  
(c). Yes  
(d). Yes  
(e). Yes
8. Yes
9. (a) Only 285,751 books  
(b) 64 Million  
(c) only 285,751 books  
(d) Yes, in respect of 285,751 books
10. (a) Yes  
(b) Yes
11. Yes
12. Yes
13. Yes
14. Yes, subject to the directions of this judgment
15. Specific
16. Yes
17. Yes
18. Yes
19. Does not arise
20. (a) Yes  
(b) Yes, because the Ministry of Education had paid monies to the defendant in terms of an agreement
21. Pre-existing book only
22. (a) Yes

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- (b) Yes
23. No
24. No
25. (a) Not sufficiently and reasonably  
(b) Does not arise
26. (a). No, but can be printed and supplied to the Ministry of Education by the defendant in terms of the agreement for financial gains  
(b). Does not arise
27. No

### CONCLUSION

For those reasons, the judgment is entered for the plaintiff against the defendant as follows:

- (a) The plaintiffs are entitled to a declaration that they are the owners of copyright in derivative works of the Science and Technology Textbook for Year 7 marked as P2 and Tamil language and English Translations thereof;
- (b) The plaintiffs are entitled to a declaration that the defendants are not entitled to print and/or supply any copies of the derivative works of the Science and Technology Textbook for Grade 7 marked as P2 and the Tamil language and English language translations thereof without licence from the plaintiffs or assignment of their rights;
- (c) The plaintiffs are entitled to recover from the defendant a sum of Rs. 1,746,721.00 as



actual damages from the defendant for infringement of their copyright in derivative works of the Science and Technology Textbook for Year 7 marked as "P2" and the Tamil and English language translations thereof together with legal interest from date of the plaint till the date of decree and thereafter on the aggregate amount at the same rate until payment in full; and

(d) The plaintiffs are also entitled to recover costs from the defendant.

Enter decree accordingly,

H.R. Fernando

Ruwan Fernando  
High Court Judge (Commercial)  
04.11.2016



මුද්‍රිත 1 වන 44 අංකයේ මාසික 'දික්වෙ' කොළම  
මාසික මාසිකයකට මුද්‍රිත 60 / 2006 / 3 ක්‍රමයේ මුද්‍රිත 2016 / 11 / 4  
දිනක මුද්‍රිතයක් පමණක් වශයෙන් මුද්‍රිත කළ බව.

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16/11/16

