

Poorna Mysoor, *Implied Licences in Copyright Law* (Oxford University Press, Oxford, 2021) Pp. xv-368, ISBN- 978-0-19-885819-5, Hard Back: \$120.00

In the era of technological transformation, implying a copyright licenses is new and evolving concept under copyright law. Implied License are considered as standard and targeted legal instrument to balance competing interests between copyright owners and content users while using of copyrighted work especially in digital environment. Having its origin in contract law, implied license has been initially applied on intellectual property under patent law for new and useful invention; and subsequently under copyright law for the digital work. Such work being personal property under the copyright law, if a person or user is permitted to make limited use of this with the consent of owner, or under established custom, or on the basis of policy considerations, implied licenses arises in his favor under common law. The implied license on digital work similarly provides that ‘copyright owner who created his work online is deemed to have accepted online rules of conduct on its dissemination despite any contrary assertion.’ As result, there has been emergence of various contentious issues in different jurisdictions on digital copyrighted works especially while using Internet. However, very few authors and scholars have focused on the potential use of implied licenses as legal tool to resolve these emerging legal issues. One remarkable effort has been made in recent time by an author of a book titled as “Poorna Mysoor, *Implied Licences in Copyright Law (2021)*”. This book finds it place among certain other works such as an article by Orit Afari, *Implied Licences: An Emerging New Standard in Copyright Law* (2009) and two relevant books such as ‘Carlo Scollo Lavizzari, *Cross-border Copyright Licencing: Law and Procedure* (2018)’ and ‘Jorge L. Contreras, *Intellectual Property Licencing and Transactions: Theory and Practice* (2022).’

This book provides analytical framework for examining of implied copyright licenses based on three sources: ‘the consent of copyright owner’; ‘an established custom’; and ‘State intervention to achieve policy goals.’ It analyses plenty of case laws from different jurisdictions with the object of formulating and suggesting systematic and methodological way of implying copyright licenses for digital work. For this purpose, the book has been divided into three parts with twelve chapters having around three hundred pages. The book in its three parts first of all, lays down conceptual foundation; then, rationalizes conceptual frameworks within copyright doctrine; and subsequently, applied implied copyright licenses in the instance of browsing, hyperlinking and indexing on the Internet. The twelve chapters collectively emphasize on the application and advantage of implied licenses not only in the offline, but also in online use of the copyrighted work. The flow charts and figures used make, the complicated and conceptual process easier to understand the application and limitation of the implied licenses on digital platform.

Part one first of all in its three chapters lays down the conceptual foundation for implied copyright licenses defining copyright licenses as a legal relationship, providing base for copyright licenses to be implied and proposing the framework for implying copyright licenses in different scenario. In its first chapter, while defining copyright licenses as legal relationship, author has explored Hohfeldian analysis to identify the legal relationship and its application on contractual licenses and copyright licenses. The second chapter lays down the basis by identifying the source of power for copyright licenses to be implied through ownership power to consent the use, or on established custom and State intervention for public policy reasons. It also adds a component of revocability of such licenses on the same source or basis. The third chapter proposes the framework for implied copyright through prism of the 'Hohfeldian conception' of licenses. It advocates for this framework to be applied on these licenses in contrast to the rigid rules and seeks to balance the transparency and flexibility in this regard. It also outlines certain criteria based on which one can marshal the facts to ascertain if a license can be applied within its limitation and scope.

Part two with set of five chapters rationalizes and analyzes the conceptual framework within copyright doctrine applicable on implied licenses on the basis of existing case laws. The case laws have been predominantly from United Kingdom, Australia and Canada. In this part, chapter four deals with conceptual framework for implying consent based bare licenses rationalizing the conduct of copyright owners and their knowledge. On the other hand, chapter five explores the conceptual framework for consent based implied contractual licenses wherein the copyright owner uses it in exchange for value. For more clarity, the author has referred and discussed different types of contracts such as commission contracts, standard form of consumer contracts etc. Further, chapter six explains about the licenses implied by custom or usage prevalent for trade, business and profession referring different industries. It examines the scope and avenues for implying copyright licenses by custom for the use of copyright work online. This chapter analyses several case laws relating to commercial law to establish a custom as basis for implying copyright licenses. In addition to this, chapter seven deals with policy based implied contractual licenses. It distinguishes the consent based and policy based implication of implied contractual licenses. Further, it examines the exhaustion and repair mode of transfer of ownership of copyright work as implied by policy based contractual licenses. Finally, it discusses about specialized industry engaged in hazardous substance wherein how its information flow is regulated by policy based implied contractual licenses. Chapter eight is related with policy based implied bare licenses examining the issue that how a successful invocation of the inherent power implies a bare license to achieve policy goals. It refers several case laws that basically deny copyright infringement in public interest applying three-step test and

fundamental right regime. It also tries to demonstrate scope of the jurisdiction of a court can be brought under this framework.

Part three finally tests the application of implied copyright licenses to the Internet to address challenges faced on it due to browsing, hyper linking and indexing. However, courts have dealt with such challenges posed by the technological prowess through application of legal reasoning other than implied licenses. Further, it includes most of the cases from United Kingdom and European Nations, and specific cases from United States and Australia to demonstrate how the courts have responded to apply implied licenses to the Internet. This part begins with chapter nine setting the stage for application of fundamental and preliminary matters applicable on the content placed on the Internet with or without consent of copyright owners. Chapter ten specifically deals with applicability of implied licenses to browsing and streaming on the Internet. It demonstrates that licenses implied on different bases could be placed in to service to address different scenario even without knowing the content placed on Internet with owner's consent or without. Further, chapter eleven discusses about the application of implied licenses for the hyperlinking directly on the web page. It explains the manner and mechanism through which implied licenses can be helpful to resolve the challenges faced with the content placed with copyright owner's consent and without. It further puts forward the appropriate base for implying licenses in different circumstances on the Internet. Then, chapter twelve addresses the actions which may be covered by the indexing for application of implied licenses. It referred specific cases of search engines, new aggregators, data aggregators and content sharing platforms to show how different considerations inform implying licenses both when content is placed on the Internet in both instances as with and without consent of copyright owner.

The book in its last part has final remarks put forth by the author summarizing the parts and chapters devoted on the implied licenses under copyright law. She argues for the application of implied licenses for the copyright work especially on digital platform. She firmly makes clear that 'the need for implied license would not disappear which is evident by the growing case laws on implying term in to contract and copyright.' Finally, she concludes by saying that 'there would always be need to fill the gaps in such contracts, by implied licenses based on the conduct of copyright owner or give effect to a custom or policy goals and where the courts in certain circumstance will be called upon to imply a copyright licenses for copyright work on Internet.' Overall, this book provides clear and detailed analysis of the framework on implied licenses in copyright law, but it has limited jurisdictional base to apply. Some areas have also left untouched which have direct and indirect impacts and implications of implied licenses on digital management of copyrighted work under copyright law. Still, this book would be relevant and helpful for the researchers, practitioners and policy makers interested in the interpretation,

application and implementation of the implied licenses in copyright related disputes on digital platform.

Amrendra Kumar*

* Ph.D. (Jawaharlal Nehru University, New Delhi); Assistant Professor, Law Centre-II, Faculty of Law, University of Delhi, Delhi (INDIA); Email: akumar18@lc2.du.ac.in; Mob: 9871372552