

International Protection of Copyright in the Era of Globalization

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Abstract

Copyright is a statutory protection that is provided to the creator of work by virtue of their National laws. This protection is provided to the owner of a creation, so that he could enjoy his exclusive rights and also stop others from infringing his creation. With the advent of information technology and internet, need was felt for providing the protection to the author's/creator's at the international level. Further, the process of globalization made it mandatory for us to have an International regime with respect to Copyright protection. Therefore, people across the world joined hands to frame an International System for protecting the work of author and entered into several treaties and agreements. The present paper deals with the aspects of international copyright. It discusses various treaties for the protection of the copyright at the international level. This paper also talks about the specific fields in which the protection is available along with the type protection available to the creator of the work. India being the member of various International bodies has amended its copyright laws to come in parity with the International Conventions and treaties like Berne Convention 1886, WIPO Copyright Treaty and TRIPS etc.

Keywords: Copyright, Creator/Author, Performers Right, Conventions and Treaties.

INTRODUCTION

Copyright is a kind of legal right which provides the creator of original work exclusive right to determine the conditions under which his original work could be used by others. It is important to understand that copyright protects the original expression of ideas and not the idea itself. Idea must have assumed some form in order to get the protection of Copyright. Copyright is granted by the public law which is applicable within the boundaries of a particular state. If a copyright is granted by a particular state then it shall be applicable only in the territory of that state. That mean it has territorial limitations.

Generally, the protection of intellectual property right is provided to the citizens of the country under their own law. Now with the expansion of the interaction of these intellectual property rights beyond the scope of one's nation it is important that the protection is provided to the work of author beyond these territorial boundaries. International copyright is when by force of international

agreements, the protection is provided to the creator of work beyond the territorial limit from which it was obtained. India is the member of the Berne Convention for Protection of Literary and Artistic Work (1886) and the Universal Copyright Convention; therefore, it provides copyright protection to all the members of these copyrights' Convention [1].

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The Berne Convention of 1886 [2]

The Berne Convention is provided for the protection of literary and artistic work. It is an

international agreement which was first accepted in Berne, Switzerland on 9 September 1886. It came to effect from 5 December 1887. India has also signed and ratified this convention.

One of the most important provision of the Berne Convention is that it provides protection of the published work in all the contracting countries of the Berne Union and for the unpublished work whose authors are citizens or residents of the contracting countries. If the work was published in Berne country first but the author is a national non-union national the union nation may restrict the protection of the work limited to the country of which the author is the national.

One of the most important aspect of Berne Convention is that it requires to treat the work of the authors from member of Berne Union same protection as those of their own nations. The Berne Convention provides that registration is not necessary for the purpose of copyright law.

Article 1 of the Berne Convention provides that countries which are party to this convention shall be provided the protection of the rights of authors in their literary and artistic work.

Article 3 of Berne Convention 1886 provides that the protection is available to all the nationals and residents of the countries that are member of the Berne Union. Work simultaneously published in several countries if it is published in two or more countries within the period of thirty days of its first publication.

Article 4 provides that protection shall also be provided to the cinematographic work the creator of which has its headquarter or residence in the nations of Union. It also provides protection to the architecture work erected in the country of Union.

Country of origin is to be considered for protection of copyright under the Berne Convention. The country of origin is where the work is published and nowhere else. Article 5 of the Convention provides that where the work is published simultaneously in more than one country the country with shortest term of protection is defined as country of origin. Where the work is published simultaneously in one party country and non-party country then the party country is the country of origin. For the purpose of the unpublished work or publication in non-party country the country of origin decided as per the nationality or residency of the creator of such work. In case of the work of architecture, the country where the architecture is erected is the country of origin.

Article 7 provides that the term of the copyright shall be for the lifetime of the author plus fifty years after his death. In case of cinematographic work and anonymous or pseudonymous work, the term of the expiration shall be fifty years after the work was available to the public. In case of photographic work and other artistic work, is to be decided by the legislation of that country. The term of expiration must be for at least twenty-five years from the making of the work. The country of the union can grant the protection in excess of the said period.

The Berne Convention provides for certain form copyright exceptions. The limitation is called "three step test". The three-step test is provided in article 9(2) of the Berne Convention. It states that the legislation in the country of union can permit the reproduction of certain work in special cases, provided that the reproduction of such work does not conflict with the normal exploitation of work or unreasonably prejudice the legitimate interest of the author.

Universal Copyright Convention [3]

The second most important convention after Berne Convention 1886 regarding international copyright is Universal Copyright Convention. The United Nations Educational, Scientific and Cultural Organization also known as UNESCO formed Universal Copyright Convention for those countries which were not part of Berne Convention. The Universal Copyright Convention was signed

in 1952 in Geneva, Switzerland. The Universal Copyright Convention came into force in 1955. The Universal Copyright Convention was basically formed for benefit of developing countries.

The important aspects of Universal Copyright Convention are as follows:

- i. The convention makes it essential for all the members of the convention to provide same kind of protection to both domestic author as well as the foreign authors.
- ii. The convention provides certain formalities that are to be strictly followed by all the members of the convention. These formalities include name and signature of copyright owner, symbol of copyright, year of publications etc.
- iii. The term for the protection of copyright is the lifetime of the author plus 25 years. Also, the owner of copyright is provided seven years of exclusive right to translate their work.

The Universal Copyright Convention was revised in Paris in 1971. This convention provided more support developing nations keeping in mind their needs. The Intergovernmental Copyright Committee was formed under Article 11 of Universal Copyright Convention. The Committee has to conduct meetings of ordinary session once every four year.

World Intellectual Property Organization

The World Intellectual Property Organization or WIPO was formed in 14 July 1967 in order to promote the protection of intellectual property right. It has its headquarters at Geneva, Switzerland. It has 191 members currently. WIPO is the Universal Copyright Convention, Encyclopedia of Britannica predecessor of United International Bureaux for the Protection of Intellectual Property, 1893. WIPO is a specialized agency of UN agency in 1974. WIPO pursues to protect and promote the work of intellectual property especially in developing countries in order to help them develop socially, economically and culturally. It helps to provide the transfer of intellectual property to the developing nations for their benefit.

The main objective of WIPO is to promote the protection of Intellectual Property Rights. In order to fulfil these objectives, there are certain norms and guidelines fixed by the administrative bodies of WIPO. These norms are to be followed by all the member of the Union. The legal and technical assistance is also provided by the WIPO to the member in order to guide them. Assistance for registration and classification is also provided by the WIPO to its members.

There are basically three wings in WIPO:

- i. The WIPO General Assembly: It is formed by the members of the Union of the states. The main object of the assembly is to appoint the Director General from the nominated members. The review of reports and financial reports is done by the assembly.
- ii. The WIPO Conference: Its main function is to implement the amendments of the WIPO.
- iii. The WIPO Coordination Committee: The committee provides the draft of agenda to General Assembly and Conference where the candidate for the general assembly are nominated.

WIPO Copyright Treaty and WIPO Performances and Phonogram Treaty

The WIPO Copyright Treaty was signed on 20 December 1996. It provides for the protection of two subject matter; computer programs in whichever form and compilation of data in database in intellectual creation [4].

The term of protection is fifty years for any kind of work. The exception clause is present in Article 10, which provides that the three-step test to be used as used in Berne Convention. The member of the union must adopt the provisions of the treaty. They can use these provisions in modified sense except if such modification is as per the legal norm of the treaty.

The WIPO Performances and Phonogram Treaty provides protection to the author for the right of the performers and producers of phonograms. The WIPO Performances and Phonogram Treaty and

the WIPO Copyright Treaty together are known as “Internet Treaties”. The Internet Treaties are mostly used to provide to the protection which were not available under Berne Convention. The Berne Convention was signed in 1886 after which a lot of development was made in technology therefore there was need of the wider protection of copyright especially in the era of internet. The Internet Treaty provides protection to the owner when their creation is available on internet. Also, compensation is provided to the authors in case their work is produced in unauthorised manner. The protection against the problem of hacking the work of owner along with legal remedies available to them. This treaty also provides for the management of information in electronic form. India has also acceded the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty.

Rome Convention 1961

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations was signed on 26 October 1961 and was brought into effect from 18 May 1964 [5]. The protection under this convention was provided for the first time to the intellectual property in the form of audiocassettes and videocassettes. The protection is provided to the following:

- i. **Performers:** The protection in the Rome Convention 1961 is provided to the performers of literary or artistic work. The protection is provided to the actors, musicians, singers and dancers. Here the consent of the performer is to taken first before providing their performance to the public in the form of live show or recording their performance and showing it to the live audience or recording the performance and generating the copies of such performance.
- ii. **Producers of phonograms:** Phonogram means exclusive aural fixation of sounds of a performance. The producers have the right either to allow or deny the reproduction of their phonograms
- iii. **Broadcasting Organisations:** The Rome Convention provides for the protection of the rights of the broadcasting organisations. The permission of the broadcasting organisation is must before rebroadcasting their work. The fixation for how many times the broadcasts is made accessible to the public.

The time period for the protection of the rights under Rome Convention is 20 years. though the time period can be increased by the signatory members in their countries. World Intellectual Property Organization (WIPO), United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labour Organisation (ILO) have together formed a committee known as the Intergovernmental Committee for the administration of the Rome Convention. Rome convention is also open to members of the Berne Convention and the members of the Universal Copyright Convention.

Trade related Aspects of Intellectual Property Rights

The Agreement on Trade related Aspects of Intellectual Property Rights (TRIPS) was formed by the members of nations of the World Trade Organisation (WTO) in Uruguay Round of General Trade Agreement on Tariffs and Trade (GATT) in 1994. It came into effect from 1 January 1995. TRIPS Agreement provides protection for the intellectual property rights of copyright, trademarks, industrial designs and patents. The agreement requires the members to adhere to minimum standard provided for the protection of intellectual property rights. It also provides for the minimum period of protection which is to be provided by all the members. The TRIPS agreement also contains many provisions in which the Berne Convention and the Paris Convention are silent.

The TRIPS agreement also talks about the procedures to be followed by the member like administrative procedures, the remedies that are available, the criminal procedure to be followed against the infringer of these rights in order to provide protection to the owner of intellectual property. The TRIPS agreement provides the procedure to settle the disputes between the members of the agreement. The WTO dispute settlement procedures are to be followed. The members of the agreement are free to implement these procedures as per their domestic law. The concept of “most

favoured nation” is followed that says that same kind of protection is to be provided to all the nations in respect of intellectual property rights protection even in case of the non-members of the agreement.

India and International Copyright

Generally, the protection regarding intellectual property is provided under the domestic law to the citizen of that nations residing in their territorial boundaries. But the need of the protection of the copyright was felt at international level with the trend of globalization. India has also signed and ratified the Berne Convention for Protection of Literary and Artistic Work (1886) and the Universal Copyright Convention.

Indian Copyright Act 1957 talks about the legal frameworks of international copyright under section 40 to section 43.

Section 40 talks about the power of Central Government to extend copyright to foreign works. The Central Government in official gazette extend their scope of protection of copyright where:

- i. Work is first published outside India.
- ii. Unpublished work the author of which was a non-citizen or non-resident of India while making the work.
- iii. The domicile outside India
- iv. Any other place of which the author at time of publication or where the author is dead at the time of death, citizen of foreign nation.

Section 40A is added by the Copyright (Amendment) Act, 1999. Section 40A of the act talks about the power of the Central Government to apply Chapter VIII to broadcasting organisations and performers. Under the provided section if the central government is satisfied that a foreign nation is also the member of the convention of rights of broadcasting and performer then it has power to provide them protection under its law.

Section 41 of the act provides that certain works are provided protection under Indian copyright law. The work must be first created by the international organisation and in case of any agreement between the author and organisation, the work should vest with the organisation. Here, international organisation means United Nation Organisation, Specialised Agencies of United Nations Organisation and Organisations of American States.

Section 42 provides that if there are foreign nations which do not provide the protection of copyright to Indian creators in that case Central Government can in official gazette refuse to provide the protection to the work of the nationals of that foreign country.

Section 42A was added by the Copyright (Amendment) Act, 1999. It says that if it appears to Central Government that a foreign nation has not provided adequate protection to the broadcasting and performers’ rights then then it can also not provide the protection as granted under the said act to the citizens of nations.

CONCLUSION

This paper talks about the agreements and treaties that are signed by the various countries at the international level in order to protect the rights of the authors and creators of intellectual property. With the coming of the internet and digital media it is very important that the protection is given to the rights of the creator of the intellectual property at international level.

Generally, the law is provided for the protection of the rights of creator only at domestic level. Therefore, the many countries came together in order to form the similar kind of law for the protection of the rights related to intellectual property at international level. Under these conventions

and treaties certain provisions are formed for the members of the ratifying nations to which they have to adhere to. The convention has provided certain guidelines under which the members of the convention have to make changes in their intellectual property law. Like the Berne Convention provides that registration is not required for the protection of the copyright.

India is also member of these convention and treaties. India has also made changes in the provisions of copyright law by the amendment of 1999 in Copyright Act 1957. These changes are made to protect the copyright of the foreign under the Indian Copyright Law. India has also ratified the so-called Internet Treaties in order to wider the scope of the protection of intellectual property rights of owner when his work is available online. Most of the nations have not signed but also ratified these treaties still a strict adherence to these rules are required by the member nation.

Suggestions

The international treaties are made in order to provide protection to the creator of the intellectual property. It is important that all the nations strictly adhere to the provisions of these treaties of which they are member. It is very essential that international recognition and protection is available to the creator of intellectual property as it will encourage the new talent to come forward. The creator of such intellectual property also enjoys the economic benefits from their creation. Therefore, it is must that the protection is provided from reproduction or publication of their work at international level. With the coming of new technologies and internet era it is of prime importance that the rights of the creator are not exploited. This can be only done when the changes are made by all the nations in their own domestic law of intellectual property.

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