



“A Study On Subject-Matter Of Copyright”

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Abstract :

copyright are vital role to the promotion of Indian business, trade and innovation and protection of consumer. copyright law are not within India but global, the international law regarding the copyright protection prescribed in the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs Agreement), it are internationally recognized as minimum standards in the Intellectual property rights administration of every member states.

Keywords : what is copyright, objective of copyright, development in copyright, WIPO, WPPT, TRIPS Agreement and copyright.

Introduction

The large number of international instrument define the scope and admit of copyright. Large number of treaties and convention were adopted at international level to determine the scope and ambit of copyright. Thus, it can be seen that the concept of copyright has been evolved over centuries at international level. The law relating to copyright was recognized as conventional law through the 1886.¹ In India it is also well – settled that a statute should be interpreted in the light of international treaties and convention.

What is Copyright:

Intellectual property rights are defined as a type of copyright. For the authors of literary, drama, music or art works and for producers of cinematograph films and audio recordings copyright is a right conferred on them by law. It is actually a pack of rights including, inter alia, the right to reproduce or communicate that work to the public, adaptation and translation. Depending on how the work is done, there might be slight differences in the composition of rights.

Objective of Copyright Law : The main goals of copyright are to develop valuable art and science and to pay writers fairly for their labor. Copyright does this by ensuring writers' rights to their creative expression while enabling others to freely build upon the ideas and information contained in a work. Two things are the main objectives of copyright law. First and foremost, governments developed copyright laws to protect the creative expression of authors, musicians, designers, painters, and other creators as well as film and sound recording producers who risked their money to share their works with the public.

¹International convention for the protection of literary and artistic work.

Second, copyright laws enable others to freely build upon the information and recommendations included in a work. It also authorizes some unfettered uses of information that is protected by copyright. The breadth of these authorized uses is described in the Copyright Act of 1957. Measures pertaining to free use are included in the Act in order to create the maximum possible harmony between the rights of the copyright owner and the well-being of individuals in the benefit of society.

The new developments in the copyright regime

Copyright protection at international level began by the middle of nineteenth century on basis of bilateral treaties. A number of such treaties providing for mutual recognition of rights were concluded but they were neither comprehensive enough nor of a uniform pattern.

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In 1967, the convention establishing the world intellectual Property organisation was adopted by which WIPO was established. In 1996, WIPO adopted two treaties on copyright, predominating and phonogram treaty. Thus there are two international convention entered into by the countries who are member of WIPO which are known as WIPO copyright treaty(WCT), 1996 and WIPO predominating and phonogram treaty(WPPT). During 1970 and 1980, a number of important technology development took place- reprography, video technology, electronic database, etc. This creation demand for legal protection.

The Internet Treaties of WIPO 1996

The WCT came into force on 6 April 2002 and WPPT came into force on 20 May 2002. these two treaties are known as "International treaties". WTC deals with the protection of literary and artistic work. WPPT extends copyright like protection and producer of phonogram.³

The scope of copyrights in the light of the so-called digital (internet) revolution has raised many Issues about the future shape of the law and naturally there is a need to reform the copyright laws accordingly. The digital era has proved to be detrimental to the interest of the producers of music, films and software programmes. New technologies have increased the problem of piracy. Reforms therefore are essential to curb infringement of these rights. Stringent legislations are required and there is a move to resort to self-help measures to supplement and even override the statutory framework where the environment seeks such measures. The legal reform is have to be viewed from the general perspective basically and bear a special impact on entertainment media and to all works in the digital media.

Copyrights have provided protection to all creative works that are emerging in new mediums including the multi-media.⁴

Internet, as a media of information, marketing and advertising device is capable of reaching an ever-widening number of citizens, consumers and buyers. It has proved to be a beneficial media for all

² At Berlin in 1908, at Rome in 1928 etc.

³ Jatindra Kumar Das; Law of copyright; PHI Learning Pvt. Ltd, Delhi (2015) 60

⁴ Neera Pandey; Intellectual property rights; PHI Learning Pvt. Ltd (2009) 187

forms of creative works offering varied products for the consumers. This technology which is incorporated through the internet by which the digitization of information and material of all kinds have created a possibility of bringing out electronic products and services which can be traded on the internet. Copyrights have also been affected with the entry of the internet. The copyrighted works have been introduced through the internet and there has been a Widespread piracy of the copyrighted works taking advantage of the internet. The problems that have been created through this new media is not confined only to the widespread piracy, it is also difficult to trace the offender and seek a proper form to investigate the matter. Specialized Courts are not sufficient. A special mechanism has to be introduced that is conducive to all countries as it is no more a national problem, but it is an offence that crosses regional boundaries and needs specialized laws to handle the ever growing problem to tackle such situations. Trips Agreement has also mentioned the rights and obligations of the customs officials in this regard.⁵

The key point that is to be noted which bears a glaring contrast between the digital media and the analogue media is that the digital media has made copying very easy and the copy nearly perfect. The internet has provided a new avenue for reaching consumers of information and entertainment products. It also poses an equally difficult problem as opportunities have increased to exploit these works with great ease and speed. The legal issues that arise in relation, to protection of works In the digital media is that once the out is placed on the internet it is difficult to control or curb the public from having access to it. The means of protecting these rights can be in various ways-either it is through a contract in the form of licensing agreements or it can be in the form of new technologies like water-marking the works or by introducing new legislations that give special rights to the owners in the form of digital rights management system.

(1) The product can be locked behind technological barriers- (or walls or fences):- Encryption, or by the so-called water-marking, passwords and so on requiring authorization and payment through electronic means before they could be opened up or used. These barriers can be placed provided the rights are granted to the copyright holders. It is in this context that the two Treaties (WIPO Copyright Treaty and WPPT) have introduced the Rights Management Information.⁶

Special features of WPPT

- The Preamble of the treaty clearly states that the objective of this treaty is to protect the rights of performers and producers of phonograms in a manner as effectively, and uniformly as possible. It recognizes the need to introduce new international rules in order to provide adequate solutions to the questions posed by economic, social, cultural and technological developments. It also recognized the profound Impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms.⁷
- The need to maintain a balance between the rights of performers and producers of phonograms with the larger public Interest, particularly education. research and access to information was also stressed in the Preamble.

⁵Dr.T.VidyaKumari;CopyrightProtection,Asia Law House (2004) 29

⁶Jatindra Kumar Das; Law of copyright;PHI Learning Pvt.Ltd,Delhi (2015) 60

⁷Dr.T.VidhyaKumari; Copyright Protection; Asia Law House,Hyderabad (2004) 149

- The second important feature is that it recognizes the moral rights of the performers. Independently of performer's economic right and even after the transfer of those rights the performer, shall as regards his live aural performances or performances fixed in phonograms, have the right to demand to be identified the performer of a particular performance, and to object to any distortion, mutilation or other modification of such performance that would be prejudicial to his reputation.⁸
- The performers also enjoy exclusive rights for their unfixed performances, and as such has the exclusive right of authorising their unfixed performances.⁹
- The right of reproduction right of rental, right of making available fixed programmes.¹⁰
- The producers of phonograms are accorded the right of reproduction, distribution rental right for making available their phonograms by wire, or wireless means.¹¹
- The most significant feature of this Treaty is that under Articles 18 and 19 for the first time has given protection to the producers of phonograms and to the performers the right of self-help, by providing effective technological measures to exercise their rights. The legal rights that are provided under Arts 18 and 19 is that the States signatory to this Treaty shall provide adequate legal protection and effective legal remedies against, the circumvention of effective technological measures that are used by performers or producers of phonograms in connection With the exercise of their rights under this Treaty and it restricts acts which are not authorised by the performers or the producers of phonograms in respect of their performances or phonograms.¹²
- The obligations In relation to protection the Rights Management information that is granted, to the performers and producers of phonograms Include:
 - (i) any act that induces, enable, facilitate or conceal any Infringement of any right covered by this Treaty;
 - (ii) remove or alter any electronic rights management Information without authority;
 - (iii) to distribute, import for distribution, broadcast, communicate or make available to the public without authority performances, copies of fixed performances, or phonogram knowing that electronic rights management information has been removed or altered without authority.¹³

Thus the special feature of this treaty is to protect "Rights Management Information" which means Information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram. the owner of any right in the performance or phonogram, or Information about the terms and conditions of use of the performance or phonogram and any number, Codes that represent such data when any of these commodity of information are affix to a copy of a fixed performance, or a phonogram or materialize in acquaintance with the communication or making feasible of a Fixed performance or a phonogram to the public.¹⁴

⁸ Article 5

⁹ Article 6

¹⁰ Article 7,8,9,10

¹¹ Articles 11, 12, 13 and 14

¹² Articles 18

¹³Dr.T.VidhyaKumari: Copyright Protection; Asia Law House,Hyderabad (2004) 152

¹⁴ Ibid

The two Treaties provide a framework of basic rights allowing creators to control and/or be compensated when these works are made and enjoyed by others. The special feature of this Treaty is to ensure that the owners of these rights are adequately, and effectively protected when their works are disseminated through new technologies and communication systems such as the internet. The Treaties insist on full protection to the right-holders for their creations not only in the local territories, but also for exploiting their works abroad. These Treaties provide protection in the digital environment. With the expansion of the internet technology, which is a ground for recorded music, texts, computer programmes, photos, and graphic art, this medium causes serious problems in protecting copyrighted works. A special system for protection of technological measures was introduced by the WIPO in the form of WCT and WPPT.¹⁵

• Copyright and TRIPS Agreement

Following provision discuss as under,

1. Under TRIPS Agreement, confirms that copyright protection shall extend to expressions and not to procedures, ideas, methods of operation or mathematical concepts as such.¹⁶
2. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention, 1971. This provision confirms that computer programs must be protected under copyright and that those provisions of the Berne Convention, that apply to literary works shall be applied also to them. It confirms further, that, the form in which a program is whether in source or object code, does not affect the protection. The obligation to protect computer programs, as literary works means, that only those limitations that are applicable to literary works may be applied to computer programs. It also confirms that the general term of protection of 50 years applies to computer programs, Possible shorter terms applicable to photographic works and works of applied art may not be applied.¹⁷
3. Under TRIPS Agreement Clarifies that databases and other compilations of data or other material shall be protected, as such under copyright even where the databases include data, that as such are not protected under copyright. Databases are eligible for copyright protection provided, that they by reason of the selection or arrangement of their contents constitute intellectual creations. The provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form. Furthermore, the provision clarifies that such protection shall not extend to the data or material itself, and that, it shall be without prejudice to any copyright subsisting in the data or material itself.¹⁸
4. Authors shall have in respect of at least computer programs and, in certain circumstances, of cinematographic works the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. With respect to cinematographic works the exclusive rental right is subject to the so-called impairment test, a Member is excepted from the obligation unless such rental has led to widespread copying of such works, which is materially impairing the

¹⁵ Ibid

¹⁶ Article 9.2

¹⁷ Article 10.1

¹⁸ Article 10.2

exclusive right of reproduction conferred in that, Member on authors and their successors in title. In respect of computer programs, the obligation does not apply to rentals, where the program itself is not the essential object of the rental.¹⁹ The term of protection shall be the life of the author and 50 years after his death. Paragraphs 2 through 4 of that Article specifically allow shorter terms in certain cases.²⁰ These provisions are supplemented by Article 12 of the TRIPS Agreement, which provides that whenever the term of protection of a work, other than a photographic work, or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years, from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.²¹

5. Members to confine limitations or exceptions to exclusive rights to certain special cases, which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. This is a horizontal provision that applies to all limitations and exceptions permitted under the provisions of the Berne Convention, and the Appendix thereto as incorporated into the TRIPS Agreement. The application of these limitations is permitted also under the TRIPS Agreement, but the provision makes it clear that they must be applied in a manner that does not prejudice the legitimate interests of the right holder.²²

Conclusion

There is no detail provision of copyright protection in the TRIPs Agreement, but the Agreement has already made some substantive provisions on the protection of Copyright. All members countries may have a freedom to apply the standard and rules to their legislations in protecting copyright. There is no such thing as an international copyright that will automatically protect an individual author's work around the world since copyright laws might differ widely from nation to nation. The fact that copyright law is territorial can lead to certain complications when an author wants to assert his or her copyright interests in a worldwide context in our increasingly interconnected world where work can be shared instantly with the touch of a button. For instance, in the India, under national copyright law, original works of authorship that are qualified for copyright are immediately protected. There's a chance that other nations with differing copyright laws and standards won't be covered by this automatic protection. Both the length of copyright and the kind of materials that are covered by it can change. So, we need some more effective international laws, treaties, conventions for protection of copyright worldwide.

¹⁹ Article 11

²⁰ Article 7(1) of the Berne Convention as incorporated into the TRIPS Agreement

²¹ Article 12 of the TRIPS Agreement

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