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Historical Development of Copyright Law

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ABSTRACT

This research paper is about the history of copyright law i.e it pointed out how copyright law evolved all around the world. Copyright law is now the most important part of National or Foreign National countries. Every country makes it an integral part of the law. The protection to copyright work has been provided as per the domestic laws of the country and the same limitation and exceptions are also as per the domestic laws of the country. The idea for the protection of copyright began only with the invention of printers. Before the invention of printers, there was no need for the protection of copyright because there was no chance or less chance of piracy. The author of creative work had the sole right of their creation. With the advent of technology, the need for the protection of copyright arise all around the world. In earlier days the scope of copyright was not so broad as the present scenario. The protection only provided to literary, and artistic work. But the scope of copyright had been broadened with the phase of time and as per need of protection of intellectual creation. In this paper, the light has been thrown on the development of copyright law from its very beginning to date.

Keywords: *Convention, digital environment, intellectual property, historical development, human rights, treaties, etc.*

I. INTRODUCTION

Intellectual property is a product or creation of the human mind or intelligence for the protection of which rights are granted and allow the owner of it to get its benefit. These rights are not granted per se rather they require recognition by law. Copyright is one of the most important aspects of intellectual property rights. The Copyright law formally came out in the picture only after the invention of the printer that is a technological development by Gutenberg. Today almost every nation has a copyright law in place and is mostly standardized to some extent through international and regional agreements such as the Berne Convention and the European copyright directives. But when we look back, we realize that Copyright law has a

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very unique history.³

While no creative work is automatically protected worldwide, there are international treaties that provide protection automatically for all creative works as soon as they are fixed in a medium. There are two primary international copyright agreements, the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works.

The real need for copyright law was felt only after the invention of printers and copiers. Before the invention of printers, writing could be created only once. It was highly laborious and the risk of errors was involved in the manual process of copying by a scribe Copyright.⁴

What is copyright?

In general, copyright is a form of legal protection given to content creators through the assignment of specific rights to works that qualify for protection.⁵

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.⁶

The main goals of copyright are:

- To encourage the development of culture, science, and innovation.
- To provide a financial benefit to copyright holders for their works
- To facilitate access to knowledge and entertainment for the public.⁷

II. HISTORY OF COPYRIGHT

(A) Pre Gutenberg era of Copyright

Centuries ago, there was no protection for intellectual works like copyright, trademarks, patents, etc. The owner of the intellectual property had no control over its work. Earlier people were not aware of the benefits of their work. They produced it with no profit motive intention. Since there was no printing press so the chances of copying the work were less and if anyone wanted to copy then it was done only with the handwriting so it was assumed that the copy

³ Mondaq. 2022. Historical Development Of Law Of Copyright - Intellectual Property - India. [online] Available at: <<https://www.mondaq.com/india/copyright/978858/historical-development-of-law-of-copyright>> [Accessed 17 January 2022].

⁴ *Ibid.*

⁵ RightsDirect. 2022. *What is Global Copyright? International Copyright Basics | RightsDirect.* [online] Available at: <<https://www.rightsdirect.com/international-copyright-basics/>> [Accessed 17 January 2022].

⁶ WIPO. 2022. *Copyright.* [online] Available at: <<https://www.wipo.int/copyright/en/>> [Accessed 17 January 2022].

⁷ See *supra* note 3.

was done only for educational or learning purposes. At that time most of the population were illiterate so the copy was done only by priests or monks so the work was not highly copied.

(B) Post Gutenberg era and Powers of printer:

Until the advent of the printing press, nobody needed protection against others who might steal their work; the process of copying books was so tedious that few copies of most books were ever made. But during the mid-sixteenth century, the Stationers' Company was established by a group of printers who agreed among themselves that they would not print books that another was already printing. The fatal flaw with their idea was that new printers could show up with their presses and print anything they liked. To avoid this competition, the Stationers' Company petitioned the King for a monopoly, which was granted. Of course, the monopoly came with a catch - a censorship system gave the King the ability to control what was printed.

This exclusive right to print copies of books - copyright - is the ultimate source of today's body of copyright law in the United States and across the world.⁸

The republic of Venice was the first to grant the privilege to print books. It was for the history of its own named 'Rerum venetarum ab urbe condita opus' authored by Marcus Antonius Coccius Sabellicus. From 1492 onwards Venice began to regularly grant privileges for books. In 1518, the first copyright privilege was granted in England. It was issued to Richard Pynson, King's Printer, the successor to William Caxton. The privilege gave a monopoly for the term of two years. These copyright privileges were called monopolies. Later in 1701, the parliaments of England and Scotland were united as a result of the Anglo-Scottish Union. The new parliament was able to change the laws in both countries and an important early piece of legislation was the Copyright Act of 1709, also known as the Statute of Anne, after Queen Anne.⁹ The act came into force in 1710 and was the first copyright statute. The enforcement of the Statute of Anne in April 1710 marked a historic moment in the development of copyright law. As the world's first copyright statute it granted publishers of a book legal protection of 14 years with the commencement of the statute.¹⁰

The United States did not follow the law of England. Till 1783, the US did not have proper copyright legislation.

⁸ Lawshelf. 2022. *The Concept & History of Copyright and Sources of Law*. [online] Available at: <<https://lawshelf.com/coursewarecontentview/the-concept-history-of-copyright-and-sources-of-law/>> [Accessed 17 January 2022].

⁹ See *Supra* note 3.

¹⁰ Wikipedia. 2022. *History of copyright - Wikipedia*. [online] Available at: <https://en.wikipedia.org/wiki/History_of_copyright> [Accessed 17 January 2022].

The earliest copyright case is traced back to Ireland, where there was a dispute over the ownership of the Irish manuscript Cathach. The Cathach is the oldest extant Irish manuscript of the Psalter. It contains a Vulgate version of Psalms XXX (10) to CV (13) with an interpretative rubric or heading before each psalm. It is traditionally ascribed to Saint Columba as the copy, made at night in haste by a miraculous light, of a Psalter, lent to Columba by St. Finnian. A dispute arose about the ownership of the copy and King Diarmait Mac Cerbhaill gave the judgment “To every cow belongs her calf; therefore to every book belongs its copy.”

The real need for copyright law was felt only after the invention of printers and copiers. Before the invention of printers, writing could be created only once. It was highly laborious and the risk of errors was involved in the manual process of copying by a scribe. Interestingly even in such a situation, Europe had elaborate system censorship and control over scribes. During the 15th and 16th Centuries, printing was invented and widely established in Europe. Copies of Bibles were the first to be printed. The government had allowed printing without any restrictions but this led to the dissemination of a lot of governmental information. Subsequently, the government started issuing licenses for printing.

The republic of Venice was the first to grant the privilege to print books. It was for the history of its own named ‘*Rerum venetarum ab urbe condita opus*’ authored by Marcus Antonius Coccius Sabellicus. From 1492 onwards Venice began to regularly grant privileges for books. In 1518, the first copyright privilege was granted in England. It was issued to Richard Pynson, King’s Printer, the successor to William Caxton. The privilege gave a monopoly for the term of two years. These copyright privileges were called as monopolies. Later in 1701, the parliaments of England and Scotland were united as a result of the Anglo-Scottish Union. The new parliament was able to change the laws in both countries and an important early piece of legislation was the Copyright Act of 1709, also known as the Statute of Anne, after Queen Anne. The act came into force in 1710 and was the first copyright statute.

The United States did not follow the law of England. Till 1783, the US did not have proper copyright legislation. It was in 1783, few writers raised voices against the government to enact copyright law as they believed that nothing is more properly a man’s own than the fruit of his study and that the protection and security of literary property would greatly tend to encourage genius and to promote useful discoveries.” But then, the continental congress did not have any power to enact copyright laws. In 1787, proposals were submitted at the Philadelphia convention to grant Congress the powers to enact copyright law, and it was finally in 1790, first federal Copyright Act was enacted.

Thereafter, came international agreements like the Paris Convention and the Berne convention which are the standards for the copyright law enacted by every country including India.¹¹

III. INTERNATIONAL COPYRIGHT CONVENTION OR TREATIES

(A) The Berne Convention, 1886

The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright.¹²

The Berne Convention was first adopted on September 9, 1886, in Berne, Switzerland, and was later revised at several conferences: Paris, 1896; Berlin, 1908; Berne, 1914; Rome, 1928; Brussels, 1948; Stockholm, 1967; and Paris, 1971. The agreement grew out of a perceived need in the late nineteenth century to protect authored works from international PIRACY, or unauthorized copying.¹³

The Berne Convention deals with the protection of works and the rights of their authors. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.

The three basic principles are the following:

- (a) Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its nationals (principle of "national treatment")¹⁴
- (b) Protection must not be conditional upon compliance with any formality (principle of "automatic" protection)¹⁵
- (c) Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases

¹¹ BananaIP Counsels. 2022. *History of Copyright Law in India*. [online] Available at: <<https://www.bananaip.com/ip-news-center/history-of-copyright-law/>> [Accessed 17 January 2022].

¹² Wikipedia. 2022. *Berne Convention - Wikipedia*. [online] Available at: <https://en.wikipedia.org/wiki/Berne_Convention> [Accessed 17 January 2022].

¹³ Law.jrank.org. 2022. *International Copyright - History Of The Berne Convention*. [online] Available at: <<http://law.jrank.org/pages/5738/copyright-International-History-Berne-Convention.html>> [Accessed 17 January 2022].

¹⁴ Wipo. 2022. *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*. [online] Available at: <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html> [Accessed 17 January 2022].

¹⁵ *Ibid.*

to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.¹⁶

(B) Trips Agreement

The TRIPS Agreement which came into effect on 1 January 1995 is to date the most comprehensive multilateral agreement on intellectual property.

The TRIPS Agreement gives all WTO Members transitional periods so that they can meet their obligations under it. The transitional periods, which depend on the level of development of the country concerned, are contained in Articles 65 and 66.

Developed country Members have had to comply with all of the provisions of the TRIPS Agreement since 1 January 1996. However, all Members, even those availing themselves of the longer transitional periods, have had to comply with the national treatment and MFN treatment obligation as of 1 January 1996.

For developing countries, the general transitional period was five years, i.e. until 1 January 2000. In addition, the Agreement allowed countries in transition from a centrally-planned into a market economy to delay application until 2000, if they met certain conditions.

For those countries on the United Nations list of least-developed countries, the transitional period is eleven years. The Agreement provides a possibility to extend the transitional period upon duly motivated request.

Two important substantive obligations have been effective from the entry into force of the TRIPS Agreement on 1 January 1995. One is the so-called “non-backsliding” clause in Article 65.5 which concerns changes made during the transitional period, and the other the so-called “mail-box” provision in Article 70.8 for filing patent applications for pharmaceutical and agricultural chemical products during the transitional period.

The “non-backsliding” clause in Article 65.5 forbids countries from using the transition period to reduce the level of protection of intellectual property in a way that would result in a lesser degree of consistency with the requirements of the Agreement.

Special transition rules apply in the situation where a developing country did not provide product patent protection in a given area of technology, especially to pharmaceutical or agricultural chemical inventions, on the general date of application of the Agreement for that Member, i.e. in the year 2000. According to Article 65.4, such a developing country may delay the application of the TRIPS obligations on product patents to that area of technology for an

¹⁶ *Ibid.*

additional five years (i.e. to the year 2005). However, the Agreement includes additional transitional arrangements in the situation where a country does not provide, as of the date of entry into force of the WTO Agreement, patent protection for pharmaceutical and agricultural chemical products commensurate with the TRIPS provisions. In accordance with the “mail-box” provision contained in Article 70.8, the country concerned must provide, as from the date of entry into force of the WTO Agreement, a means by which patent applications for such inventions can be filed. These applications will not need to be examined for their patentability until the country starts applying for product patent protection in that area, i.e. for a developing country, at the end of the ten-year transition period. However, at that time, the application must be examined by reference to the prior art as it existed at the time the application was made. If the application is successful, product patent protection would then have to be granted for the remainder of the patent term counted from the filing date of the application. If a product that has been the subject of such a patent application obtains marketing approval before the decision on the grant of the patent is taken, there is an obligation under Article 70.9 to grant exclusive marketing rights for a period of up to five years to tide over the gap. This is subject to many safeguards to ensure that the product concerned is a genuine invention: subsequent to the entry into force of the WTO Agreement, a patent application must have been filed, a patent granted and marketing approval obtained in another Member for the product in question.

(C) Wipo Copyright Treaty, 1996

The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention.¹⁷ It deals with the protection of works and rights of the author in the digital environment. It has currently in 193 member states. India became its member in 1995. The necessity to introduce international rules to protect the right of authors in their literary and artistic works is become more important because of the new economy, technology development, and its impact on the creation and use of literary and artistic works.¹⁸ It deals with 2 subject matters to be protected by copyright law i.e

1. computer programs, whatever the mode or form of their expression; and
2. compilations of data or other material ("databases"). In any form, which, because of the selection or arrangement of their contents, constitute intellectual creations.¹⁹

In addition to the rights recognized by the Berne Convention, they are granted certain **economic**

¹⁷ Sanjay Pandey, *Neighbouring Rights Protection in India*, Vol.9, JIPR 356,357, July (2004).

¹⁸ “WIPO Copyright Treaty, “Preamble”. http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo.html#preamble. The advantages of adherence to the WIPO copyright treaty(WCT).

¹⁹ Art. 4, WIPO Copyright Treaty.

rights which are as follow:

- (i) the right of distribution;
- (ii) the right of rental; and
- (iii) a broader right of communication to the public.

Limitation and Exceptions in Digital Environment

The WCT has permitted contracting parties to determine a digital environment limitation and exceptions in their domestic laws. According to Article 10, the contracting parties have the right to create new exceptions and limitations that are suitable in the digital environment.

Paragraph (1) of Article 10 determines the types of limitation on or exception to, the rights granted under the treaty which may be applied, while paragraph (2) of that Article provides criteria for the application of, limitation of, or exceptions to the rights under the Berne Convention.²⁰

The WCT removes the unfair discrimination against photographic works because of the duration of protection.²¹ It obliges contracting parties not to apply Article 7(4) of the Berne Convention, which as also for works of applied art, prescribes a shorter term 25 years for photographic works than for the general 50-year term.²²

Enforcement of Rights

The WCT provided that all the Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.”

However, the Contracting Parties shall ensure that enforcement procedures are available under their law to permit effective action against any act of infringement.²³

IV. COPYRIGHT UNDER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Copyright protection is not per se a human right, but it is a tool that protects the human rights of authors and publishers. Copyright has two elements that relate to human rights: it has an element linked to someone’s creativity and identity and it has an economic aspect. As an author’s right, copyright is not expressly mentioned in international human rights treaties and conventions.

²⁰The WIPO Copyright Treaty, International Treaties and Conventions on Intellectual Property, chapter 272

²¹ *Ibid* chapter 275

²² *Ibid*, Art. 7.

²³ Unfair competition, trademark, copyright and patent, “Selected statutes and international agreements,” 2007 Edition, foundation press, wipo copyright treaty page 511.

(A) Article - 27

- Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits.
- Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

V. INDIAN LEGISLATION ON THE PROTECTION OF COPYRIGHT

The copyright law of India was enacted by the British colony and like most of the acts of that time; it was an imitation of the English law.

The first copyright act of India was enacted in 1847, during the regime of the East India Company. As per the act, the term of copyright was either, for the lifetime of the author plus 7 years or 42 years. The government had the power to grant the publishing license after the death of the author if the owner of the copyright refused permission. All suits and infringement related to copyright came under the jurisdiction of the highest local civil court. The act was replaced by the copyright act of 1914.

The act of 1914 was the first 'modern' copyright law of India. It was the first law to include all works of art and literature under the ambit of copyright. It was a replica of the English law of 1911. It was done by the British to ease the passage of literature over the colonial subcontinent.

(A) Post-Independence Copyright law in India

The Copyright Act of 1957 came into force on the 21st of January, 1958 replacing the 1911 act. The act besides amending the copyright law also introduced milestone changes such as provisions for setting up a copyright office under the control of the Registrar of copyright for registration of books and other works of art. It also established a copyright board to deal with the disputes relating to copyright. The Copyright Act 1957 (the Act), supported by the Copyright Rules 1958 (the Rules), is the governing law for copyright protection in India. Substantial amendments were carried out to the Copyright Act in 2012.²⁴

Copyright law protects expressions of ideas rather than the ideas themselves. Under Section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films, and sound recording. For example, books, computer programs are protected under the Act as literary works.²⁵

²⁴ Lexology. 2022. *Indian Copyright Laws*. [online] Available at: <<https://www.lexology.com/library/detail.aspx?g=e963324a-4b62-49ab-bd90-aeddb1aee2b0>> [Accessed 17 January 2022].

²⁵ Legalserviceindia. 2022. *Copyright Law in India - Copyright Office, Copyright act*. [online] Available at: <<https://www.legalserviceindia.com/article/1195-Copyright-Law-in-India.html>> [Accessed 17 January 2022].

Copyright refers to a bundle of exclusive rights vested in the owner of copyright under Section 14 of the Act. These rights can be exercised only by the owner of the copyright or by any other person who is duly licensed in this regard by the owner of the copyright. These rights include:

- a) The right of adaptation,
- b) right of reproduction,
- c) right of publication,
- d) right to make translations,
- e) communication to the public etc.²⁶

Copyright protection commences the moment a work is created, and its registration is optional. However, it is always advisable to obtain a registration for better protection. Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.

(B) Duration of Copyright

The duration of copyright is the lifetime of the author or artist, and 60 years is counted from the year following the death of the author.

VI. CONCLUSION

The history of copyright law is a long and complicated one. Even after more than 100 years, it is in the developing stage. This is because technology is changing faster than ever. With new techniques, the old law seems to be falling behind, especially in the case of non-literal work. It is often difficult to tell what is similar to the extent of copyright infringement as it is a very subjective question. Thus, we need more specific laws to lessen subjectivity.²⁷

²⁶ *Ibid.*

²⁷ See *supra* note 20