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COPYRIGHT AND NATURE AND SCOPE OF ITS RELATED RIGHTS

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ABSTRACT

The term 'copyright' denotes a cluster of rights. The cluster of rights comprised in copyright are bestowed upon an intellectual work's creator by statute, not in recognition of any inalienable right of the creator over his creation, but so as to help the creator in preventing any other person from misappropriating such intellectual creation. Thus, copyright is a negative right, as it embodies what is not permitted to be done with respect to its subject-matter. The reason why copyright is bestowed upon creators is so that these rights may propel the creative endeavours of a greater number of persons, thereby leading to creation of new knowledge. There is, however, another reason underlying the grant of copyright, which does not concern the creator, but rather is concerned with the benefit of the public at large. The said two reasons underlying copyright protection of intellectual works often conflict with each other, but are indisputably equally important.

To ensure harmony between the two conflicting reasons for copyright protection, copyright legislations have prescribed the requirements and contours of copyright in such a manner that there exist certain limitations and exceptions to the exclusive rights of copyright. Limitations and exceptions to copyright have been recognised at the international level, vide Article 9(2) of the "Berne Convention for the Protection of Literary and Artistic Works 1886" (Berne Convention). This has been done by laying down three steps to be complied with by countries which are members of the Berne Convention in order to decide which limitations and exceptions to copyright are to be provided in their respective domestic legislations. The first step is to identify special circumstances in which it may be permitted to 'copy' a copyright-protected work. The second step is to ensure that such special circumstances do not hinder the ordinary use of copyright-protected works. The third and final step is to ensure that such special circumstances do not unfairly disadvantage the creator or owner of the copyright-protected work. After fulfilling the said three steps, a country is required to incorporate these special circumstances as the 'limitations and exceptions' to the exclusive rights of copyright in their respective copyright legislations.

KEYWORDS: Copyrights, Conventions Etc

INTRODUCTION

Copyright and related rights are one of the types of intellectual property rights. The term 'copyright' collectively refers to a cluster of rights which are granted by the statute. These cluster of rights ensure that when a person creates an original work, such person enjoys exclusivity over certain dealings concerning the work. The said

exclusivity is limited in nature and scope so as to exclude from its purview ideas as well as any facts or information which is a part of the public domain. Such limitation on the exclusivity or monopoly of copyright is necessary to ensure that the monopolistic rights conferred by copyright do not negatively impact knowledge creation and dissemination. Not only does the term 'copyright' connote that there is a right to copy; but it also means that there is effectively the right to prevent the unauthorized use of the expressions of creative labours of an author, as well as a supposed incentive to encourage authorship. Granting copyright statutory protection, however, does not entail the protection of original ideas, but rather entails the protection of original expressions of original or unoriginal ideas in tangible forms.

Copyright is concerned with protection of property rights in personam and in rem, violation of which is redressable by statutory remedies. Although copyright if often referred to by scholars as well as judges as a 'negative right' owing to its conferment of exclusionary entitlement on the creator of an original expression, according to the scholar Upendra Baxi, such reference is "both inaccurate and misleading". According to Baxi, copyright, which is defined in Section 14 of the Copyright Act 1957 (India) to be an "exclusive right, by virtue of, and subject to, the provisions of this Act", and entitles the right-bearer to do and authorise the doing of the prescribed acts in relation to copyright-protected works is "in affirmative and positive sense".

NATURE OF COPYRIGHT AND RELATED RIGHTS

Copyright protection is widely considered as bearing a utilitarian purpose, as statutory safeguards are constructed in order to prevent misappropriation of the works created by authors so as to bolster intellectual progress. Thus, copyright protection has the twin objectives of creating incentive for creators of original works on one hand, and promoting dissemination of creative works among the public, on the other hand. Copyright protection endeavours to harmonise the twin competing, albeit congruently significant objectives, by crafting limitations and exceptions to the bundle of exclusive rights comprising copyright. Related rights are rights related to copyright. Related rights are designed to serve broadly two purposes: first, to safeguard the interests of those who play a role in disseminating among the public, copyright-protected works; second, to protect the interests of those whose creations are statutorily ineligible for copyright protection, but which are nonetheless worthy of protection as property right due to the degree of creativity or the technical skill and/or organizational skill involved in their production. Related rights are also known as neighbouring rights[1].

[1] Michael a. Epstein, epstein on intellectual property, 5th ed. 2008, pp.15-20

LEGAL TRADITIONS OF COPYRIGHT PROTECTION

Copyright protection around jurisdictions across the world is bestowed in accordance with two legal traditions- the copyright tradition and the authors' rights tradition. There are fundamental differences in the copyright protection granted in Anglo-United States systems and civil law systems. Anglo-United States or copyright systems deem copyright to be akin to physical property which a natural or legal person can create and exploit commercially. This conception of property places exclusive entitlement over incidents of such property right as the core concern of copyright in copyright systems. Whereas, in civil law systems, the 'property' that is the subject-matter of copyright protection is the right of the creator, rather than the property itself. This conception of copyright supposes that whatever is created by an author as a product of his intellectual labour is a manifestation of his personality over which he should enjoy exclusive right by virtue of the principle of natural justice. This fundamental difference in the two systems is also reflected in the terminology employed by them, with the protection granted termed as 'copyright' in the copyright systems and 'author's right' in the civil law systems. Therefore, at the centre of the copyright system lies the protection of the intellectual property (creation), whereas at the centre of the civil law system is the protection of the author (creator)[2].

EVOLUTION OF COPYRIGHT AND RELATED RIGHTS

(a) From Gutenberg's Press to Statute of Anne

In the fifteenth century, Gutenberg's printing press was invented. It was this invention which propelled the genesis of copyright protection, though the initial objective of such protection was to secure the interests of the press rather than that of the authors whose intellectual works were printed and circulated. The starting point of understanding the evolution of copyright has to be the Statute of Anne which is the first ever legislation in the world relating to copyright protection. Titled after the then Queen Regnant of the Great Britain, it was the preceding politico-legal circumstances involving stakeholders rivalling each other for dominance in eighteenth century Britain that led to the passage of the said statute. The impact of these circumstances culminated into the legislative genesis of copyright law as we know today.

(b) Stationers' Company versus Enlightenment Thinkers

The Age of Enlightenment in the eighteenth century resulted in the questioning of absolute authority, the advocacy of reason, and emergence of voices of defiance against oppression of all kinds. The voices of enlightenment prominently came from the authors, painters, scientists, philosophers of the era, who gave way to their enlightened ideas through creative or intellectual works. The publication of these

[2]Upendra baxi, "copyright law and justice in india", journal of indian law institute, vol.28 no.4, 1986, pp.505-506

works was a crucial step in disseminating these radical thoughts and ideologies to a readership of masses, and hence, a key to their propagation and persistence. Publication of literary works in Britain, during the said era, was in the monopolised hands of the 'Worshipful Company of Stationers and Newspaper Makers', popularly known as the 'Stationers' Company'. The Stationers' Company, since the receipt of the Royal Charter of Incorporation in 1557, had been holding an exclusive license over the publishing business and had also been bestowed with the power to formulate and enforce regulations to administer the publication of works. The Charter statutorily codified the Stationers' Company's monopoly over publication of books. The Charter provided that the assertion of ownership on a 'copy' by a Stationers' Company member rendered him exclusivity, meaning no other member was then permitted to publish the same or to 'copy' the text. The origin of the idea or concept of 'copyright' was thus, created by the Stationers' Company, although the concept assumed altered forms in the copyright legislations enacted henceforth. The Company was responsible for enforcing the limitations and restrictions statutorily imposed on publication by virtue of the Licensing of the Press Act 1662. The said legislation was aimed to be "An Act for preventing the frequent abuses in printing seditious treasonable and unlicensed books and pamphlets and for regulating of printing and printing presses."

(c) Berne Convention: The Birth of International Copyright Protection

It was not long, before the bilateral treaties started proving insufficient in tackling the challenges of cross-border infringement of copyright and need was felt for devising a uniform system of protection of copyright at international level. The creation and adoption of the Berne Union through the Berne Convention for the Protection of Literary and Artistic Works in 1886 (Berne Convention) cured the said insufficiency. Countries which adopted the Berne Convention formed the 'Berne Union' and undertook to recognise and protect rights of authors within the Berne Union. Interestingly, the US refused to sign the Berne Convention in 1886, and signed it only 102 years later in 1988. Among all the countries joining hands to secure international copyright protection, France became the champion by according favourable treatment to domestic and foreign copyrights. It was the "International Literary and Artistic Association" led by Victor Hugo, a prominent French author, that helped in the establishment, conception and organisation of the Berne Convention which first came together for deliberations in Berne in 1883. France, Belgium, Britain, Haiti, Italy, Germany, Spain, Switzerland and Tunisia ratified the Berne Convention in 1886. The preamble encapsulated their objective to "protect effectively, and in as uniform a manner as possible, the rights of authors over their literary and artistic works."

Further, in 1928, inspired by the French precedent, the Berne Convention recognised the moral rights of authors of works[3].

STATUTORY NATURE OF COPYRIGHT

It is now a settled position that copyright is a statutory right, as its very existence, as well as its character is strictly dictated by statutory provisions. In Krishika Lulla v. Shyam Vithalrao Devkatta, the Supreme Court of India held that "copyright is a statutory right", requiring statutory conditions to be satisfied. As seen above, the decision in Donaldson v. Beckett has settled that "there is no copyright at common law". Also, there cannot be any customary rights in the like of copyright. The statutory nature of copyright has been explicitly clarified by copyright legislations. The US Copyright Act provides, in Section 301(a), that: "no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State." Section 4 of the Copyright Act of Singapore clarifies that no copyright can exist apart from as provided in the statute.68 Similarly, the Copyright Act of Canada, vide Section 5(1) stipulates that copyright is statutory subject to the territorial limits of the statute. Section 16 of the Copyright Act 1957 of India stipulates that copyright can be enjoyed by a person only in accordance with the provisions of the statute or any other statute conferring copyright or other rights of like nature. That the fruits of intellectual labour tantamount to property of the creator or author of such intellectual work, was emphasised by the Supreme Court of India in Gramophone Company of India Ltd. v. D.B. Pandey, by noting that a person's brain-child merits protection by law. Although an intellectual creation is a property of its author, it is pertinent to note that according to Article 300A of the Constitution of India, right to property is a constitutional right, but not a fundamental right. The Supreme Court of India, in P.T. Munichikkanna Reddy v. Revamma, explained why right to property is not a fundamental right. The Court noted that monopolising knowledge is not in consonance with the scheme of the Constitution of India and that new knowledge is generated by artistic works for the benefit of public, therefore such knowledge should be disseminated among public; however, such dissemination of knowledge should be subject to reasonable terms and accompanied by payment of reasonable compensation to the creator

In K.T. Plantation Pvt. Ltd. v. State of Karnataka, a Constitution Bench of the Supreme Court of India held that the word 'property' in Article 300A of the Constitution of India includes intangible property such as copyright, and therefore, copyright can be deprived only in accordance with provisions of law. Further, the nature of copyright was deliberated upon by the Delhi High Court, in Chancellors, Masters and Scholars of University of Oxford v. Rameshwari Photocopy Services in

[3]H K Saharay (ed.), iyengar's commentary on the copyright act, 9 th ed. 2016, pp.19-20.

2016. The court particularly discussed whether copyright is a natural right or a common law right which vests all incidents of ownership, similar to other forms of property, in the copyright owner, provided statutory provisions are not contravened. The court opined that the Copyright Act 1957, vide Section 13, has defined the subject-matter of copyright. While defining the subject-matter, the provision also adds a rider that the existence of copyright is controlled by all other provisions of the statute. Therefore, although copyright may exist in natural law also, but its nature and scope has been defined by the statute and is subject to statutory limitations as well, thereby obviating the possibility of natural law copyright. Therefore, copyright is not a common law right or fundamental right, but a statutory right and therefore, its nature, scope and limitations of each right are as per the statutory provisions of each jurisdiction[4].

BUNDLE OF PROTECTED RIGHTS

(a) Moral Rights

The moral basis intellectual property rights can be found enshrined in Article 27 of the Universal Declaration of Human Rights (UDHR). According to the said provision, every person is entitled, inter alia, to the "protection of moral and material interests" as a result of creation of a literary, artistic or scientific work by such person. The moral basis of copyright has been specifically encapsulated in Article 6bis of the Berne Convention. According to the said provision, members should ensure that the moral rights of authors of copyrighted works, namely, rights of paternity and integrity, are protected by their domestic legislations. The Berne Convention stipulates the existence of these moral rights as being independent of the statutorily provided economic rights. In certain jurisdictions, moral rights continue to be enjoyed by authors after the economic rights in such work have been transferred.

(b) Economic Rights

Copyright comprises of two types of rights. The first type of rights is 'moral rights' provided in Article bis of the Berne Convention which vest with the author perpetually. The second type of rights is 'economic rights' which ensure that the copyrighted work is economically exploited exclusively by the creator for statutorily fixed period of time. The Berne Convention provides for a bundle of economic rights to authors of copyrighted works, including the right to reproduce, communicate to public, adapt, translate, perform, broadcast, distribute, etc. any copyright-protected work. According to John Christman, the ownership of property rights can be said to comprise of two types of rights, namely, control rights and income rights. According to him, control rights would include the rights to acquire, use, transfer and demolish

[4]Denis de freitas, "the main features of copyright protection in the various legal systems", journal of indian law institute, vol.28 no.4, 1986, pp.443-445.

the property, and income rights would include the right to derive commercial benefit from such acquisition, use, transfer and demolition of the property.

TRANSFER OF COPYRIGHT

An author of a work enjoys moral rights in such work created by him, irrespective of whether he is the owner of the copyright or whether he has transferred economic rights to a third person in return for compensation or royalties. As a general rule, moral rights are not transferrable by the author of a work. Economic rights, on the other hand, may be transferred though two modes: assignment and licence. In assignment, the copyright owner transfers to a third person the entire bundle of economic rights comprised in copyright in return for royalty, whereby the said third person becomes the new copyright owner. In licence, the copyright owner may transfer only one or some of the rights from among the bundle of economic rights, to any other person. As the rights comprising copyright are divisible, the copyright owner may permit (licence) a third person to exercise only particular right(s) in return for mutually agreed compensation, while retaining his ownership of copyright. A license may be exclusive, i.e., it may permit only one person to make the authorised use of copyrighted work, without permitting any other person to make the same or similar use, or license may be non-exclusive, i.e., it may permit a person to make the authorised use of copyrighted work, while also allowing the owner to permit another person to make the same or similar use of such copyrighted work. Licensing may also be governed through collective administration of rights whereby an owner of copyright would grant exclusive license to a collective/ organisation of copyright owners, which would administer the licensing of the work in return for fair compensation. Licensing also permits voluntary relinquishment of certain rights by copyright owner, without seeking any compensation or royalty in return, as in the case of Creative Commons License (CCL). CCL helps authors to turn into licensors whereby they retain their copyright while allowing users to make copies of such copyrighted work, or disseminate such work to public, or make some uses of their work as per the terms of such license[5].

LIMITATIONS AND EXCEPTIONS TO COPYRIGHT PROTECTION

All modern democracies guarantee its citizens the freedom of speech and expression. For instance, in India, such freedom is guaranteed to all citizens as a fundamental right vide Article 19(1)(a) of the Constitution. Integral to the realisation of such right, is the right to know and receive information, because the freedom of speech and expression cannot be effectively realised unless citizens have the relevant information to express them. Freedom of press is also, therefore, an essential right comprised in

[5]Laura biron, "public reason, communication and intellectual property", annabelle lever (ed.), new frontiers in the philosophy of intellectual property, 1st ed. 2012, p.231

the freedom of speech and expression. If copyright in an expression restricts every person other than the owner from reproducing and communicating to public such expressions, can it amount to violation of freedom of speech and expression of users of copyrighted works? Can copyright be said to be curbing knowledge-expansion by restricting the reproduction and sharing of such knowledge comprised in the original works which are protected by copyright? How does copyright law balance the private interest of a copyright owner against the public interest involved in communication of copyrighted works? This balance is achieved by crafting copyright legislations in such a manner that copyright is a bundle of rights, however these exclusive rights of the copyright owner are not absolute.

The rights are conferred on the creators of intellectual property in order to secure the author's private interest in creation of such property, but in order to ensure that the public interest involved in communication and dissemination of such copyrighted works is not unreasonably restricted, limitations and exceptions to the exclusive rights are also incorporated in copyright legislations. In Eastern Book Company v. D.B. Modak, Supreme Court of India noted: Copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute. The importance of the public interest objective of copyright can be understood from the nature of property rights in general, including intellectual property rights such as copyright. Intellectual property rights have always been conferred by the State as an incentive for creation of works so that these works may benefit the public at large. Lord Thomas Babington Macaulay's views on copyright law may be illustrative of this view. In a speech made during a Parliamentary Debate on extension of term of copyright in 1841, Lord Macaulay rejected the view that property right such as copyright was an indefeasible right, but iterated that it was instead a privilege conferred by the State in pursuance of the principle of welfare of mankind, and therefore, copyright law should be such which promotes the greatest public interest[6].

CONCLUSION

The nature and scope of copyright has been in a state of flux since the advent of newer methods of creation and copying of intellectual works, and particularly due to the pervasion of digital technologies in the creative processes of all kinds of works. While the fundamental rules of copyright protection, both at the international as well as the domestic levels have stood the test of time and technology, it cannot be disputed that there are myriad challenges posed to the existing scope of copyright protection which have necessitated its reconsideration. However, the basic incidents of copyright protection, such as the concept of originality, the subject-matter of

[6] j.a.l. Sterling, world copyright law, 3rd ed. South asian ed. 2011, p.68.

copyright, automatic protection and the fixation requirement remain central to copyright protection across jurisdictions; and the aforesaid reconsideration cannot be successfully undertaken without a sound understanding and careful examination of the prevalent nature and scope of copyright and related rights. The nature and scope of copyright and related rights can be understood by comprehending the statutory provisions and relevant judicial decisions in the jurisdictions under study. The nature of copyright, along with the limitations and exceptions to copyright, indicate that the public-private balance in copyright is maintained because of the limitations and exceptions to copyright and related rights.

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