

INTERNATIONAL CONVENTIONS UNDER COPYRIGHT LAW AND PERSPECTIVE OF DEVELOPING COUNTRIES

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ABSTRACT

This abstract seeks to bring out the study of International Conventions under Copyright Law and Perspective of Developing Countries. Article 21 of the Indian Constitution ensures just, fair and reasonable procedure for disposing off any matter came before any Hon'ble court or any tribunal. Faster the disputes are resolved it will be better for all the parties concerned in as particular and for society in general. Repudiation of justice through hindrance is one of the biggest derision of law, but in India it is not limited to mere derision; the postponement of case, in fact kills the entire justice dispensation system.

Every country across the globe have their own set of copyright laws. But, the flexibility that most of the country enjoy while adjusting and enforcing the same within the limited ambit of various international treaties. The basic function of the international treaties is to bring all the signatories under one roof and their must not be any difference between them while doing trade and businesses. Unluckily the present situation is quite complex and rigid and instead of single treaty/ agreement we have majorly six multilateral agreements. Every treaties/ agreements will have some signatories. The six agreements are administered by international organizations. The aim to understand implications of international agreements, to understand the need of international management system of this field and the perspective of developing countries.

Keywords: *International Conventions, WIPO, TRIPS, Copyright Law, Free Trade Agreement,*

Introduction:

In today's world everyone wants to have the ownership over the work created by them and Intellectual Property Laws gives the boost to this in terms of growth of shares, creating profit, leveraging, creating goodwill etc. The meaning of Intellectual property as defined by the World Intellectual Property Organization (WIPO), as "Intellectual Property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have legislation to protect intellectual property for two main purposes which are to offer statutory expression to creators' moral and economic rights to their creations, as well as the public's rights to access those creations and to facilitate fair trade by encouraging innovation and the distribution and implementation of its findings as a deliberate act of government policy that will contribute to economic and social development"¹. These are said to be legal rights that allows the owner to do exploitation of their work done. The basic idea of intellectual property rights is to give protection to the person who came up with the discovery or idea shall get the exclusive right over the work created. In India the Intellectual Property Rights are governed by various legislations like Indian Copyright Act, 1957, Trademarks Act, 1999, Indian Patent Act, 1970, Geographical Indication Act, 1999 and Designs Act, 2000. These legislations provide safeguard to the creator/owner of that Intellectual Property and if any infringement took place then will provide reliefs/remedies.

The origin of intellectual property rights is that the person who came up with the idea or discovery or creation should have exclusive control to use as it's their hard work. The monetary values of these rights are recognized. The Intellectual property rights in India are governed by various acts such as Indian Patent Act, 1970, Trademarks Act, 1999, Indian Copyright Act, 1957 and Designs Act, 2000. These Acts provide security to the inventor or owner of the intellectual property and if any infringement came in light then it provides remedies.

¹ https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf

History of copyright law in India

Copyright law in India:

The Copyright act, 1957, rules and the Copyright orders, 1999 administer the facets of the copyright that is relating to neighboring rights. The copyright act was initially in fifteen chapters which contains 79 sections. Under section 78² of the act the central government have the power to make rules by notifying it in the official gazette for the benefit of the public at large. The protection of the copyright I given as per the procedure mentioned under the act. The copyright fall under Entry no. 49 of the union list under Constitution of India which is the subject matter of Central government which provides the exclusive right to the central government to make laws. India is part of various conventions, treaties and agreements (Berne Convention, 1886; Universal Copyright Convention, 1952; Trade and Related Aspects of Intellectual Property Rights (TRIPS), 1995; WIPO Copyright Treaty, 1996; WIPO Performance and Phonograms Treaty, 1996)³.

Growth of Copyright law in India:

The rationale given by the parliament behind the passing of the Copyright act are:

The prevailing law that is related to Copyright is contained in the UK Copyright Act, 1911 which was modified by the Indian Copyright Act, 1914 rather than the fact that the UK Copyright Act is not adequate with the new Constitution of India⁴. Thus, the new enactment was needed to be made which is independent, and will protect the rights of the authors. The modern and newly evolved means like broadcasting, artistic, dramatic etc. are also needs certain amendments as it is changing at very high pace.

The provisions need to be designed in framed in such a way that it would meet the international obligations. So, there is a need of revision of Copyright law that seems inevitable.

² <https://copyright.gov.in/Documents/CopyrightRules1957.pdf>

³ <https://blog.ipleaders.in/leading-international-instruments-related-to-intellectual-property-rights/>

⁴ <https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3616&context=cklawreview>

The motive of the government behind enacting this legislation was to control the monopolistic approach and to compete the interest of the person associated with it.

In our independent legislation we have borrowed the principle from the UK Copyright Act, 1956⁵.

Legal aspect of the WIPO Copyright Treaty (WCT) and its Link with other International Treaties

Article 1(1) of the WCT⁶ states that “the treaty is a special agreement within the meaning of Article 20 of the Berne Convention⁷ for the Protection of Literary and Artistic Works, with regards Contracting Parties that are countries of the Union established by that Convention.”

Article 20 of the Berne Convention have the provisions that speaks:

The government of the nations of the union will reserve the right to move into the agreements among them, so far as such agreements that grants to the authors more extensive rights than to those that are granted by this convention, or can have any other provisions also that are not conflicting to the convention.

So, the article 1(1) of the WCT clears that interpretation of the WCT is not acceptable that may result in lowering the level of the safeguard given by the Berne Convention.

Article 1(4) of this establishes a guarantee for the possible respect of the Berne Convention, as it includes by the reference of all substantive provisions that provides “Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.” Article 1(3) of the Treaty explains that the Berne Convention means the 1971 Paris Act⁸ of that Convention.

Article 1(2) of the Treaty contains a safeguard clause which is similar to the one that is given under Article 2.2 of the TRIPS Agreement:

⁵ <http://docs.manupatra.in/newsline/articles/Upload/460E95D3-4C55-4277-8151-543A90D9B8B8.pdf>

⁶ <https://www.wipo.int/treaties/en/ip/wct/>

⁷ https://www.wipo.int/treaties/en/ip/berne/summary_berne.html

⁸ https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

“Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the Berne Convention for the Protection of Literary and Artistic Works”⁹. This clause differs from the parallel provision that is given under the TRIPS Agreement.

The TRIPS Agreement and the Universal Copyright Convention (UCC) are the examples of such “other treaties.”

There is no specific relationship between the WCT and the WPPT either, also there is no such link between the WCT and the WPPT that is equivalent to the Berne Convention and the Rome Convention.

Under Article 24(2) of the Rome Convention¹⁰, which says that countries can may adhere to that Convention that are part of the Berne Convention or the Universal Copyright Convention (UCC). While, in principle, it is said that any country that is signatory to the WIPO may accede to the WPPT. But, it is not a condition that they have be the party to the WCT (or the Berne Convention or the Universal Copyright Convention).

Various international conventions to govern Copyright at global level

There are various international conventions that governs the Copyright at international level are as discussed:

a. Berne Convention:

In the year 1886, ten European countries signed the Berne Convention that is for the protection of literary and artistic works with a motive of reducing the confusion. From that time 164 countries have signed the Berne Convention. Any country who wants to join can do so.

⁹ http://world-intellectual-property-organization.com/edocs/mdocs/diplconf/en/cnrn_dc/cnrn_dc_5-chapter1.html

¹⁰ https://www.wipo.int/edocs/pubdocs/en/copyright/617/wipo_pub_617.pdf

This convention has established three fundamental principles which are:

- i. Principle of National Treatment: Principle of National Treatment¹¹ means that the member countries are bound to give the same status to the goods of other countries that are signatory to the convention.
- ii. Principle of independence of protection: Principle of independence¹² of protection means that the member country shall give the same protection to the domestic works, even though the work of other country has not been protected by their copyright laws of the country of origin of goods.
- iii. Principle of automatic protection: Principle of automatic protection¹³ means that it prohibits the member countries from requiring persons from other than the Berne Conventions member countries to go for legal formalities as it is an essential for the protection.

In addition to these three principles the Berne Convention also enforces to the member nations a number of more specific requirements, they must impose copyright for the minimum period of time. The minimum term of protection is the life of the author and after that fifty years for all the works except the cinematograph film and photography. This also requires that the members should recognize and impose the moral rights.

The convention sets a framework for the member countries to also include and adopt the exceptions. The three-step test defines the freedom of member countries to make exceptions or put limitations to the author's right to manage the reproduction of the works.

¹¹ https://cyber.harvard.edu/copyrightforlibrarians/Module_2:_The_International_Framework

¹² Ibid

¹³ Ibid

The convention was revised in the year 1971, in Paris which adds the special provisions relating to the developing countries. The developing countries have the free ship regarding the minimum standard with respect translation rights and reproduction rights.

The amendment¹⁴ permits the developing countries to grant the non-exclusive and non-transferable compulsory licenses to translate the work for teaching purpose, research and to reproduce the work.

b. Universal Copyright Convention (UCC):

The Universal Copyright Convention (or UCC) was created by UNESCO¹⁵ and embraced in 1952. It was made as an option in contrast to the Berne Convention. The UCC tended to the want of a few nations (counting the United States and the Soviet Union) to appreciate some multilateral copyright insurance without joining the Berne Convention. The UCC's arrangements are more adaptable than those of the Berne Convention. This expanded adaptability was proposed to oblige nations at various phases of improvement and nations with various monetary and social frameworks. Just like the Berne Convention, the UCC has also the principle of national treatment and also prohibits any discrimination against foreign authors, but it contains few requirements that member countries must comply with. Show, the UCC consolidates the rule of public treatment and disallows any oppression unfamiliar creators, however it contains less necessities that part nations should consent to. The copyright commitments of individuals of the WTO are administered by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

¹⁴ <https://www.keionline.org/copyright/berne-convention-exceptions-revisions>

¹⁵ <https://www.britannica.com/topic/Universal-Copyright-Convention>

c. Rome Convention:

By the year 1961, innovation had advanced essentially since the Berne Convention had been marked. A few developments, for example, recording devices, had made it simpler to duplicate recorded works. The Berne Convention simply applied to printed works and hence didn't help copyright holders safeguard against the new innovations. To address the apparent requirement for solid authoritative security for recorded works, individuals from WIPO closed the Rome Convention¹⁶ for the Protection of Performers, Producers of Phonograms and Broadcasting Associations on October 26, 1961. It broadened copyright insurance from the creator of a work to the makers and makers of specific, actual encapsulations of the work. These incorporates audiocassettes, CD's, and DVD's¹⁷.

The Rome Convention requires part nations to allow insurance to craft by entertainers, makers of phonographs, and broadcasting associations. Nonetheless, it too grants part nations to make special cases for that insurance - for instance, to allow unapproved employments of a chronicle to educate or logical examination.

Ninety- one nations are signatory to the Rome Convention. The membership is open just to nations that are part of Berne Convention or to Universal Copyright Convention (UCC). Nations that are joining the conventions may "reserve" their rights with respect to some provisions of the treaty.

¹⁶ https://www.wipo.int/treaties/en/ip/rome/summary_rome.html

¹⁷ https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.html

d. WIPO Copyright Treaty (WCT):

In the manner the copyright owners reproduce, distributes and market their works has changed in the current situation. Recording of sound¹⁸, articles, photos, and books are ordinarily put away in electronic arrangements, distributed by means of the Internet, and incorporated in information bases.

Sadly, the very advances that empower more effective stockpiling and dissemination have additionally encouraged boundless copying of copyrighted works. Worried about the impacts of these new innovations, the administrations of created nations pushed for furthermore, at last made sure about the two treaties which are:

- The WIPO Copyright Treaty
- The WIPO Execution and Phonograms Treaty.

The WIPO Copyright Treaty (WCT) is a unique arrangement under the Berne Convention that went into power on March 6, 2002.

It is the primary worldwide deal that requires nations to give copyright security to PC programs and to information bases (gatherings of information or other material).

The WCT additionally expects individuals to restrict the circumvention of innovations set by rights holders to forestall the duplicating and dissemination of their works. These advances incorporate encryption or "rights the executives' data" (information that distinguish works or their creators and are essential for the administration of their privileges).

¹⁸ <http://www.legalserviceindia.com/copyright/Cinematograph-Films.htm>

e. WIPO Performances and Phonograms Treaty (WPPT):

The WIPO Performances and Phonograms Treaty (WPPT) was signed by the members of WIPO on December 20, 1996. The WPPT improves the performers and producers' rights of phonograms. Phonograms contains vinyl records, tapes, audiotapes, MP3s, and other media for the purpose of storing the sound recordings.

The WPPT gives the economic rights¹⁹ to which has been fixed in phonograms. It additionally provides moral rights on the performers. There were eighty-six-member nations to WPPT.

f. Trade Related Aspects of Intellectual Property Rights (TRIPS):

TRIPS is the agreement which is headed by the WTO and was came to conclusion in the year 1994. TRIPS²⁰ sets up minimum standards for various forms of IP's in the member countries of the WTO.

The provisions of TRIPS don't vary radically from the Berne Convention. The biggest difference is that the TRIPS provide protection to computer programs. Nonetheless, TRIPS don't require the protection to moral rights of the author which the Berne Convention requires.

The main advancements of TRIPS are the remedies that are available to the persons. In contrast to the Berne Convention, TRIPS require the member nations to give successful authorizations to infringement of copyrights. It also establishes the dispute resolution techniques for the member countries of the WTO.

TRIPS allow more flexibility for the implementation which intends to allow the developing countries to balance the combination of principles with developments.

¹⁹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=945408

²⁰ https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm

Perspective of Developing Countries

Few spectators believe that the government must make changes in the copyright law across the globe as it promotes the creators. They said that giving of an exclusive right in the creative expression gives the necessary incentive to the holders of copyright. This promotes the new ideas and benefits to the citizens. Separating of competitions is necessary to allow local creators to flourish. However, others say that implementation of the same law across the world has a negative impact on the developing nations²¹. Most developed nations have the dominating and lucrative entertainment, research industry, that exports the copyrighted work and thus it benefits from the strong copyright law. In other hand the developing countries typically imports the copyrighted work so, it is argued that the peoples from these nations will have to pay more royalties as the result of enhancing the copyright protection. It is also reasoned that limited copyright laws prohibits various governments from addressing important social needs, like providing better education to the citizens, as the important information are protected by the law.

The other set of arguments have promoted a various number of groups in the developing countries to resist the imposition of the minimum standard that needs to be maintained for the protection as said in the TRIPS agreement²² and the even strict duties are imposed on developing nations by Free Trade Agreements.

It is called for to manage the balance between providing encouragements to the creators and by rewarding their activities and on other hand promoting the knowledge and do research in order to economical advancements and foster innovation in the developing nations.

²¹ <https://www.mondaq.com/unitedstates/trademark/57856/intellectual-property-rights-in-developing-nations>

²² <https://www.e-ir.info/2013/12/23/the-arguments-for-and-against-the-trips-agreement/>

Conclusion

In the present scenario every nations wants to be superior among the others. So, for being in the race of superiority they have to be the signatory to the treaties and convention such as Berne Convention, Paris Convention, WPPT, WCT, TRIPS. This will help the people of the signatory countries to get protection by way of single application and the most underlining thing is that the treaties are well equipped with the clauses and rules that will be helpful in this rapid changing society of the technology and internet. It can be expected that that in the near future the countries not signatory to these treaties and convention will also sign as signing will help them in growing rapidly in this daily changing world.