Study on the Effective Administration of Copyright

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Abstract: Copyright springs into life immediately on creation of the work. Thus, the work is protected as soon as it is recorded, in writing or otherwise, on paper, canvas, tape, disc, film or other recording medium from which it is capable of being reproduced.\textsuperscript{2} Hence, it is quite clear that mere ideas are not protected unless they are reduced to writing or other material form, however, if idea is developed into a concept fledged with adequate details, then the same is capable of registration under the Copyright Act.\textsuperscript{3} Thus, it is not necessary to apply to any authority in order to enjoy copyright protection: “The law of copyright rests on a very clear principle: that anyone who by his or her own skill and labour creates an original work of whatever character shall, for a limited period, enjoy an exclusive right to copy that work. No one else may for a season reap what the copyright owner has sown”. One of the central problem facing right owners who wish to exploit their works is how to monitor or police infringement. The policing activities were mostly ad-hoc and depended on monitoring activities in the marketplace. However, as copyright expanded to encompass a wider array of subject matter and (particularly ephemeral) uses, the problem of policing copyright have changed. The problem becomes even more complex when the protected copies cross the international borders. One of the main mechanisms developed by right owners to monitor infringement has been collective systems of management and enforcement of rights.

JUSTIFICATION FOR EFFICIENT COPYRIGHT PROTECTION

The underlying principles on which the modern international system of copyright is founded are generally considered to be fourfold: natural law, just reward for labour, stimulus to creativity and social requirements. These four fundamental principles are cumulative and interdependent and are applied in justification of copyright in all countries, although different countries give varying emphasis to each of them. To generalize, it is true to say that in the development of modern copyright laws; the economic and social arguments are given more weight in the Anglo-American laws of common law tradition, whereas, in Continental law countries with civil law systems, the natural law argument and the protection of the authors are given first place. Accordingly, we may distinguish two major traditions in copyright law: the Anglo-American, or common law copyright system, and the continental European, or civil law authors’ rights system. As this terminology might suggest, the former tends to emphasize the protection of the work, while the latter is rather centered on the personality of the work’s creator. The distinction becomes particularly relevant with respect to such questions as moral rights or a legal entity’s eligibility as author. Finally, it may be concluded that there are two main justifications for the legal protection provided by copyright. The first is related to economic considerations, while the second stems from theories referring to natural law. From an economic point of view, granting an exclusive right ensures that the author will receive an economic reward for the exploitation of the work for a certain period and hence constitutes an incentive for creativity.

Reward

According to reward arguments, copyright protection is granted because we think it is fair to reward an author for the effort expended in creating a work and giving it to the public. Copyright is a legal expression of gratitude to an author for doing more than society expects or feels that they are obliged to do. In a sense, the grant of copyright is similar to the repayment of a debt. However, in contrast with other system of reward (such as the Booker Prize), copyright allows the general public to determine who should be rewarded and the size of that reward: the more copies of a book that are purchased or the more a record is played on the radio, the greater the financial reward that accrues to the copyright owner. In short, copyright provides a legal means by which those who invest time and labour in producing cultural and informational goods can be confident that they will not be able to recoup that investment, but also to reap a profit proportional to the popularity of the work. This approach conveys the idea of ‘incentive based argument’.

Stimulus to Creativity

Reward theory in turn provides a stimulus to creativity; copyright presupposes that the guarantee

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of protection and the possibility of controlling and being paid for the exploitation of works encourage authors to create. Anthony Trollope rightly said: “Take away from English authors their copyrights and you would very soon take away from England her Thus Bentham argued that ‘An exclusive privilege is of all rewards the best proportioned, the most natural, and the least bothersome’. According to natural law, the author has an exclusive natural right of property in the results of his labour and should have control over publication of his work as well as the right to object to any unauthorized modification or other attack on the integrity of his work.

**Personality Theory**

On the assumption that a work created by an individual reflects the unique nature of him as an individual, natural rights arguments require that we recognize the resulting creation as the exclusive property of its creator. Kant and Hegel?in their writings discussed the different versions of personality theory. According to Kant and Hegel, if one’s artistic expressions are synonymous with one’s personality, then they are deserving of protection just as much as the physical person is deserving of protection since in a sense they are a part of that physical person. Hegel in his writings on property supported the personality theory of intellectual property instead of concentrating on the labour involved in creating intellectual works. In his famous creation the “Philosophy of Right”, Hegel gives the basis for taking possession of things: A person has as his substantive end the right of putting his will into any and every thing and thereby making it his, because it has no such end in itself and derives its destiny and soul from his will. This is the absolute right of appropriation which man has over all “things”. This power over a thing “constitutes possession”, property is derived from man's right to “put” his will and because “the true and right factor in possession” is property, “into” a thing and make it his. Because of this emphasis on personality, Hegel considers the very acts of copying a literary work to be expressions of personality. In the case of works of art, the form-the portrayal of thought in an external medium-is, regarded as a thing, so peculiarly the property of the individual artist that a copy of a work of art is essentially a product of the copyist's own mental and technical ability.12 But the contention of Kant and Hegel on the Personality theory is not unanimously accepted and has been criticized. In this regard Palmer states that if a work of art were part of an individual’s personality then they would cease to exist after the person died. Again if we analyze the Kantian based personality it states that a work is not a commodity, but it is an expression or embodiment of the author’s personality. And to enable an author to control his personality he must therefore be able to control his work. The final criticism of the personality theory is that it provides little guidance about how much control an author should be given over their self-expression.

**Labour Theory**

The second Natural Law rationale is Locke's theory of property; he derives it from man's labour. The philosopher John Locke argued that a labourer has a natural property right to an item that is created with his/her labour. He explains this derivation in his Second Treatise on Government: “Every Man has a Property in his own Person. This no Body has any Right to but himself. The labour of his Body, and the Work of his Hands, we may say, are properly his. WHATSOEVER he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it SOMETHING that is his own, and thereby makes it his Property”. The close observation of above paragraph shows that property proceeds from labour, which is, in fact, “owned” according to this theory and it seems that labour can also be the basis of the ownership of intellectual property. Intellectual works are the product of one's mental labour, and only take form outside of the mind by means of the labour of the body. Before the idea is expressed, it must belong to the man as a part of his person, and thus seems to be his property according to Locke's account of self ownership. This idea that a man owns himself and his actions leads to a very strong interpretation of property rights to intellectual works. Every idea is owned by its original thinker and its original expression must also be his as it can only be expressed by his action. Like most other theories Lockean theory is not beyond criticism. Carys J. Craig argue by saying that deontological explanations for copyright law framed in Lockean natural rights rhetoric, and loaded with presumptions of moral entitlement, inevitably distort rather than facilitate a nuanced understanding of the copyright system. She further criticizes Lockean theory from two directions. First, she examines the extent to which Locke’s theory of acquisition can offer a sound account of the shape and scope of the copyright system. She questions the coherence of Locke’s theory in the realm of intangibles, and the ability of the copyright system to meet the conditions for appropriation that the theory demands. Second, she argues that the essential Lockean focus upon the rights-bearer is inappropriate in the copyright context, as it adds ideological legitimacy to the economic goals of copyright holders and favours commoditization over communication. Ultimately, the author maintains that there must be a departure from the Lockean view of property in the intellectual property context to permit a paradigm shift from a rights-based to a public interest
Copyright as an Exclusive Human Right

Human right is a natural right of human being. It cannot be taken away from him till his death. Therefore it is the duty of civilized state to recognize this right as supreme and inalienable right of human being. Human being has a natural desire to do new creative activities. Creative activities mean skill and imagination to produce new works of art, writing, singing and thinking about problems in new way or thinking of new ideas. All these activities are human’s property. Every human being by nature wants to protect his property. Therefore it is a ‘natural necessity’ to protect the life of human being and his property by the state. State can do this important, urgent and useful task with the help of welfare principles of law. Hence, the creative property of human being can only be saved by recognized binding certain ‘rules of conduct’. The rules of conduct are called the principles of positive law. Property created by the wisdom, reason and knowledge by human being is protected by the positive or written law. Therefore wisdom based created property as a form of intellectual property is the right of human being. In this regard, eminent jurist Kant rightly said that property is part of human personality. As such, creative activity deserves respect and protection in the same way as all other basic faculties that are common to all men. This would mean that creators can claim rights by the very fact of their creation. This is a broad statement and it is by no means clear that such rights are by definition human rights and that they must cover all creations and necessarily takes the format of an exclusive right in such creations.

The Universal Declaration of Human Rights, 1948

The first key provision in an international instrument that identifies copyright as a human right is found in article 27 of the Universal Declaration of human rights.

23According to article 27 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”. An equally important—and perhaps countervailing principle is in the same article: “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”.

The International Covenant on Economic, Social, and Cultural Rights

The International Covenant on Economic, Social, and Cultural Rights can be seen as a follow up action on the Universal Declaration of Human Rights. It took the form of a treaty and as such, it can impose legally binding obligations to implement its provisions on States that became contracting parties to it. Article 15 of the Covenant is very clear in this respect and imposes a number of responsibilities on, and steps to be taken by, contracting states in the following way:

1. The steps to be taken by the States Parties to the present covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
2. The States Parties to the present covenant undertake to respect the freedom indispensable for scientific research and creative activity.
3. The States Parties to the present covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields.

Further, Article 15.1(c) of the Covenant clearly imposes an obligation on the contracting parties to protect the moral and material interests of authors and creators. In essence there is an obligation to implement copyright as a human right and to put in place an appropriate regime of protection for the interests of authors and creators.

9. American Declaration of the Rights and Duties of Man, 1948

Article 13 of the covenant dealt with intellectual property rights by stating that:

Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries. He likewise has the right to the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.

2.7 NEED AND TECHNIQUES OF EFFICIENT ADMINISTRATION

It is rightly said that making of law is one thing and implementation of law is quite different thing. Any right like copyright, which is heavily based on economic considerations, will not be effective unless and until there is a robust process to recoup the payment/labour. Copyright will only be effective when author of works will be in position to authorize the use of works in exchange of monetary value. Copyright is a bundle of exclusive rights that means without authorisation of author of works; use of works will amount to infringement. Here term ‘authorisation’ implies the transfer of works by author. To sum up this study explains the ways copyright can be exploited viz. assignment and licensing. It also examines the importance of the role performed by the collecting
societies in administration of these rights and the future of collective administration in the light of the modern technological development like Digital Rights Management. Copyright laws will not flourish unless the rightholders are in situation to recoup the labour. They will be rewarded for their work only, when they administer their rights efficiently.

Thus, it is pertinent to examine administration of copyright and neighbouring rights, which has been done in the next chapter With the advent of new technologies, the owners of the rights are increasingly able to initiate and maintain direct relationship with the users. It is neither possible nor even desirable to keep protected material off the Internet when the Internet is omnipresent, but at the same time it is also important that the new distribution mechanism must be simplified. It is better, therefore, to allow access and adopt a “licensing perspective”. While this does not necessarily diminish the role of CSs, it highlights the need to reform the existing collective society structure in order to justify their continued existence. This is not to say that the role and justification of collective administration of rights is vanishing. It is that they are changing. Collective licensing allows users to obtain general (blanket license) to use a certain type or material without having to obtain an individual license. It may also offer the possibility of obtaining an individual license for extraordinary uses, thereby acting as a one-stop shop. In both cases, the Collective Management Organization makes copyright work in the digital age.

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