



INTERFACE BETWEEN COPYRIGHT AND HUMAN RIGHTS

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I. INTRODUCTION

The hefty expansion of subject matters of IPRs led academicians like James Boyle to define it as “second enclosure movement”. This time having subjects not lands but the result of the human intellect like copyright, patents etc. Different links have evolved over the time between various kinds of Intellectual Property and Human Rights. The roles of private property in human rights have always been controversial and this is so in the case of Intellectual property law and Human Rights interface as well.

If we talk specifically about Copyright, copyright and Human Rights are two subjects that developed in absolute isolation of each other but from past few decades their intersections became common owing to development of various national and international instruments dealing with both human rights and copyright. The two are trying hard to reconcile and deal with the conflicting issues. As far as human rights are concerned every individual has his/her own conception of human rights. Simply put human rights are something that exists by virtue of humanity and nothing else. We don’t possess human rights because they are written somewhere but because they are the foundation of any independent society. Though, it is a different matter altogether that human rights have gained formal legal recognition and can be effectively enforced under various national and international instruments. Human rights approaches bring back values to the system. Human rights protect not only civil and political rights but also social, economic and cultural rights of the people.

Copyright on the other hand is a property right that is provided to the authors of certain categories of creative work. Threads that weave Intellectual Property and Human rights seem to have their roots in the natural law, most famously as the Lockean moral desert theory, which held that property rights should be commensurate with the sacrifice incurred. So, it can be said that property right is a reward for work done to create new works.¹ Moreover, copyright is a right in a property which in turn could be seen as human rights. Also, it is the economic right of the author to reap the economic benefits of his hard work and author’s moral right to maintain the integrity in their work. Copyright also relates to freedom of expression of the authors and also their right to practice and profess any occupation. As regards to the larger public interest there is a general belief that copyright protection violates certain important human rights like right to access to information, cultural rights, right to education etc. Where copyright protects the rights of an individual human being i.e. the author of the work and human rights is meant for all human beings, the latter is to be given priority over the former.

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¹Daniel J. Gervais, “How Intellectual Property Rights and Human Rights: Can Live Together: An updated Perspective” in Paul L.C. Torremans, *Intellectual Property Law and Human Rights* 3-26 (Wolters Kluwer, 2008).

It can thus be said that the debate extends both ways i.e. the need for proper protection of human rights of authors by way of copyright and protection of human rights of the larger mass which is threatened by copyright protection. A balancing exercise thus becomes extremely important keeping in mind the tremendous growth in the number of international instruments dealing with intellectual property making it obligatory for all the countries of the world to protect copyright. Moreover, copyright protection which traditionally extended only to original literary, artistic and dramatic works has enormously elaborated its subject matter. Today copyright is used to protect software, rights of the authors of underlying works, yoga postures, tattoos and what not. In these circumstances it becomes extremely important to look at this interface closely and solve the conflicts between these two independent and important rights.

II. INTERNATIONAL INSTRUMENTS

There are various international instruments that recognize both human rights and copyrights together and even refer intellectual property though not in proper sense of the word as human rights. Article 27 of the Universal Declaration of Human Rights, 1948 states:

- “(1) 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.
 (2) 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.”

Article 27 as a human right is of universal nature and vests on every human being. Furthermore, the human rights that are embodied in UDHR are to exist independently of such right's recognition in legal system or customs or enforcement in their own country. Article 27 gives rise to paradoxical juxtaposition of public right to access to scientific and private right to protection of scientific, literary and artistic works to which he is the author. In itself this provision highlights the clear conflict that exists between these two rights.²

It is not the only provision that is raising such a concurrence. Article 15 of the UN Covenant of Economic, Social and Cultural Rights also talks about the same and states:

- “The States Parties to the present Covenant recognize the right of everyone:
 (a) To take part in cultural life;
 (b) To enjoy the benefits of scientific progress and its applications;
 (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

The Original clause 1 of Article 15 of the draft covenant did not include clause (c). It can thus be said that it is originally viewed only from the point of view of end users of the scientific works and the rights of the authors of these works was recognized later. This clause was basically included to provide piracy of literary and scientific works by other nations who are not going to pay any royalties to the authors of these works. It can be said that this provision focuses on the general interest to participate and get benefit from the new inventions at the same time providing protection to the authors and creators of these work. This provision like Article 27 envisages that the two rights should go hand in hand leaving

²Vandana Mahalwar, “Copyright and Human Rights: The Quest for fair Balance” in Manoj Kumar Sinha & Vandana Mahalwar, *Copyright Law in the Digital World* 151-174 (Springer, 2017).

behind a number of questions as to how a balance between enjoyment of the fruits of science and incentives of innovation can be achieved.³

III. CONFLICTS IN VARIOUS HUMAN RIGHTS

Whenever we think of Intellectual Property Rights we think of entrepreneurship and innovation while it is much more than that. Intellectual property and Human Rights are the new frontier that needs to be looked at. Though copyright protection is essential to protect the human rights of the authors of the protected works, at the same time it is also essential to find whether it violates any other human rights. There are certain human rights which are generally considered to be violated by the copyright protection some of which are:

1. Freedom to Create: When copyright gives the author of original, literary or artistic work to protect his/her work from infringement or copying it takes away other right from borrowing that work. There are situations where copyright protection is pitted against the public need for information and is required to be shared at an urgent basis for larger public good. Though the rules relating to idea expression dichotomy may provide certain answers to this situation. On the other hand, there are also rules relating to parody, fair use etc. which can provide enormous scope to the artist to create his/her new work by borrowing something from the work of the original author. Yet the issue is required to be looked into in detail to find out how far these two rights are in conflict.
2. Freedom of Speech and Expression: Article 19 of the UDHR provides freedom of speech and expression to every human being. Freedom of speech and expression refers to the right to express oneself freely. Relationship between copyright and freedom of expression has long been debated. As per few they cannot reconcile while many believe that they two are absolutely different fields and have no relationship at all. Though arriving at a conclusion is absolutely necessary as both these rights are immensely important for the development of a society. *Ashby Donald and Others v. France*,⁴ is the first case that came in front of ECHR dealing with freedom of speech and expression and copyright law of France. Though the case was not made out but the court clarified that illegal reproduction of public communication protected by copyright shall be considered an interference with freedom of expression.⁵In India Article 19 of the Constitution provides for freedom of speech and expression and also put certain restrictions on the same. It is important to mention here that copyright is not one of the restrictions that have been put on the fundamental freedom of speech and expression. What is protected under the copyright law is the expression of an idea and not the expression itself, until and unless one does not want to copy from others work copyright does not in any way seems to violate the fundamental freedom of speech and expression guaranteed under the Constitution of India.
3. Right to Education: The importance of education can never be undermined. It is the basic stone on which the development of any society rests. The significance of education can be realized from the fact that it has been recognized as a human right in

³Available at: http://assets.wwfindia.org/downloads/human_rights__ipr_in_trips_era_3.pdf (last visited on Nov. 20, 2018).

⁴Appl. Nr. 36769/08.

⁵Krisjan Buss, "Copyright and Free Speech: The Human Rights Perspective", 8(2) *Baltic Journal of Law and Politics* (2015).

most of the international instruments. Right to free and compulsory education has been identified as both fundamental right as well as directive principle under the Constitution of India. The development of Information and Communication technology has provided people with the riches of information that has the power to decrease the educational gap. The conflict between copyright and right to education occurs in numerous ways but one that has been debated throughout the world is who owns the educational material in which authors have a material interest and it is also one of the basic sources of the education. The recent *Rameshwari*⁶ photocopy case raised the eyes of the entire country on this issue, though the decision was in the favour of the students. Copyright is one reason for the high costs and less availability of educational material. Though there are number of exceptions and limitations in the Indian Copyright Act to deal with this issue yet it is a hurdle in providing educational material to the public at large. Moreover, with the laws relating to digital protection of copyright becoming stricter, another question that arises is that how internet can distinguish between the normal user and one who falls under any exception specified under the Copyright Act.

4. Right to Access to Information: Right to information is today recognized as a fundamental right and it has time and again been reiterated by the courts that right to information is one of the prerequisites of a democracy. In *R.P Limited v. Indian Express Newspaper*⁷ Supreme Court read right to know under Article 21 and held it to be an important prerequisite of participatory democracy. Right to Information or access can come directly in conflict with the copyright as the economic and moral rights of the author can be violated if his work is openly accessible at the same time too many restrictions on the availability of protected work can hamper the growth of the society. There are many provisions in the Indian Copyright Act that take care of this dispute and try to reconcile the conflicting claims of different group like those relating to fair use, compulsory license, idea-expression etc. Strenuous legal protection can no doubt hamper the right to access to information but if the exceptions and limitations are properly applied the two can go hand in hand.⁸
5. Cultural Rights: Cultural right can be defined as the right of access to, participation in and enjoyment of culture. The impact of copyright on cultural rights has long been neglected. In spite of flexibilities offered by IP regulations the conflict between cultural rights and Intellectual Property particularly copyright is becoming common. This can be seen by compression of exceptions and limitations provided under the various copyright laws. These exceptions and limitations are the main sources by which cultural rights can be enjoyed by the public at large. Another example could be with reference to protected work over internet, internet like a human being is unable to distinguish or apply exceptions in case of innocent usage.⁹

IV. CONCLUSION

⁶CS/OS 2439/2012.

⁷ AIR 1989 SC 190.

⁸Available at: <http://shodhganga.inflibnet.ac.in/bitstream/10603/33710/5/chapter5.pdf> (last visited on Nov. 20, 2018).

⁹ Caterina Sganga, "Right to Culture and Copyright: Participation and Access", in C. Gieger (ed.) *Research Handbook on Human Rights and Intellectual Property* 560-576 (Edward Elgar, 2015), available at: https://papers.ssrn.com/sol13/papers.cfm?abstract_id=2602690 (last visited on Dec. 12, 2018).

It is itself clear from the provisions of UDHR and ICSECR that copyright and human rights are in conflict with each other. The important question is how and where all the two intersect and how they should be balanced. There is no doubt in the fact that both copyright and human rights are important for the growth of any society. We cannot ignore one for other, what is important is to find the solution so that the two can walk happily together