

“Comparative Analysis of Copyright International Conventions”

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"Everyone has the right to the protection of the moral and material interests arising from any science, literary or artistic creation of which he is the author." If anyone has the right to be protected of their assets which is the consequence of something they make, what is the correct legal remedy when this protection is infringed? There have been two recent circumstances that posed this issue, with the additional aspect that the suspected thieves in issue reside in China.

The new case concerns the first public outdoor work by Anish Kapoor built in the United States in Chicago, Illinois. Cloud Gate, also known as "The Bean," is an elliptical 110-ton sculpture cast from a seamless series of highly polished stainless steel plates that represent the famous skyline of Chicago and the above clouds. At the statue reveal, Kapoor claimed that "the welding technology for making this piece did not exist, it had to be made, it was beyond what NASA could do."¹ This piece of art became an icon of Chicago and was listed as the best attraction of the city, beating out Wrigley Field and Lake Michigan.² His popularity deeply touched Kapoor at The Bean's dedication ceremony in Millennium Park and he admitted to being proud of the way it had entered public consciousness.³ However, it seems The Bean is not only popular with natives and tourists from Chicago. The oil-producing city of Karamay is in China's far west Xinjiang region.⁴

In this city, an artist, whom the city officials refuse to name, puts on the finishing touches of an arching, reflective, stainless steel blob⁵ that reflects the granite ground beneath it, which is meant to recall an oil field. Understandably, Mr. Kapoor is angry and said, "Today in China it is legal to steal other people's imagination."⁶ Moreover, he threatened to take his case to the highest level and challenge those responsible in court, while also attempting to get Chicago's Mayor Rahm Emanuel's assistance. Sadly, this is not the only current issue regarding copyright that spans the Pacific Ocean.

Comparison assists in understanding a concept better. The same also holds true for law. Comparative law study helps in the different countries to better understand the different laws. Through developed country has recognized the value of protecting the intellectual property

¹ Noreen S. Ahmed-Ullah, Bean's Gleam has Creator Beaming, Chicago Tribune, (May 16, 2006), http://articles.chicagotribune.com/2006-05-16/news/0605160259_1_bean-cloud-gatemillennium-park.

² Jacob Mikanowski, Cloud Gate, Tilted Arc, The Point, (Spring 2012) Issue 5, <http://thepointmag.com/2012/criticism/cloud-gate-tilted-arc> (Last Accessed June 17, 2020).

³ Ahmed-Ullah, *supra* note 2.

⁴ Karamay, China, World Energy Cities Partnership, <http://www.energycities.org/KaramayChina> (last accessed July 5, 2020).

⁵ The Bean and the Bubble: when is imitation in art flattery, when is it theft?, The Economist, (Aug. 29, 2015), <http://www.economist.com/news/united-states/21662539-when-imitation-artflattery-and-when-it-theft-bean-and-bubble> (Last accessed Oct. 12, 2015).

⁶ FROZEN, Awards, IMDB, <http://www.imdb.com/title/tt2294629/awards> (last accessed June 20, 2020).

creators' right. Copyright is one of those intellectual property rights, too. Copyright is a positive benefit which grants the author of copyright exclusive rights or authorizes others to benefit from a copyrighted work. Copyright law tries to optimize the level of incentive to create and the interest in maximisation once created access to information.⁷ Copyright provides legal rights without any objective examination of the work 's content.⁸ Copyright is an integral part of a country's growth process. The preservation of the national culture and heritage is directly dependent on the level of protection that literary, dramatic, musical and creative plays, cinematographic films and sound recordings provide. Protection of copyright is not a human right by itself, but it is an instrument which defends the human rights of authors and publishers. Protection of its owners' copyrights has, thus, gained importance in both national and international law.⁹ Copyright in the beginning was limited only to books.

The information technology has brought about an increase in the scope of international copyright. Within this internet age, the growing and expanding reach of copyright has generated interest globally within focusing on key issues such as computer program security, databases, music, film, videos, books, photographs. There are several international conventions on copyright which have had significant effects on the development of copyright legislation. Member States of the Universal Copyright Convention (UCC) and the Berne Convention for the Protection of Literary and Artistic works are obliged to provide same rights to authors of other member States as they provide to their own authors.¹⁰

INTRODUCTION

Safeguarding of copyright rights under copyright law was not universal, as it depended heavily on copyright traditions in common law and in countries of civil law. The very definition of scope and copyright theories is special in each country according to their social, economic, and cultural context and values. The conflict in international law enforcement created a pertinent need for universal harmonization of copyrights. Many countries involved in applying copyright law in a consistent way, made an effort to harmonize laws and started to enter into bilateral, regional and international agreements. The consequence of such harmonization paved the way for the birth of numerous International Copyright Conventions and Treaties. The Berne Conventions, the Universal Copyright Convention, the WTO,¹¹ the WIPO Treaties and the Neighboring Rights Treaties such as the Rome Conventions, Geneva, Brussels and the WIPO Performers and Phonogram Treaties are examples of such conventions and treaties. Due to the inclusion of dispute settlement mechanism, the substantive and procedural norms of the TRIPS Agreement which included all the vital provisions of Berne and Paris were more instrumental in implementation and enforcement.

⁷ Kreiss, Robert A., Accessibility and Commercialization in Copyright Theory, Ucla L.Rev at P. 43, (1995).

⁸ Zekos, Georgios I, Intellectual Property Rights and Cyberspace, Amicus Books, Hyderabad, at P. 2, (2008).

⁹ Acharya, N.K., Text Book on Intellectual Property Rights, Asia Law House, Hyderabad, at P.8, (2007).

¹⁰ Jain, Pankaj & Pandey, Sangeet Rai, Copyright and Trademark Laws relating to Computers, Eastern Book Company, Lucknow, at P.82, (2005).

¹¹ Paul Goldstein, Law of International Treaties on Copyright, Oxford University press.US 2001, p.5

Even so there was a big tug-of-war between developed and developing nations in achieving a win-win situation, resulting in the failure of the WTO ministerial round.

BERNE CONVENTION

In 1886, the International Convention on the Protection of Literary and Artistic Works, commonly known as the Berne Convention regulating copyright, was adopted to define and protect copyright owners' rights. This was the first international copyright convention to be updated several times in 1908 in Berlin, 1928 in Rome, 1948 in Brussels, 1967 in Stockholm and 1971 in Paris to meet the various issues faced by technological developments.¹² The Berne Convention had authorized various aspects of contemporary copyright law. It set the idea of creating a copyright in motion, the moment a work is "fixed" i.e. produced. Registration is not necessary. It also makes it obligatory, an obligation, for countries to recognize copyrights owned by the citizens of all other Convention members. The countries to which this Convention applies constitute a Union designed to protect authors' rights in their literary and artistic works.¹³

The term "literary and artistic works" includes all creations within the literary, scientific and artistic domain. Its mode of expression may be varied, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic-musical works; dumb-show choreographic creations and amusements; musical compositions with or without words; cinematographic works in which works expressed through a process similar to cinematography are incorporated; photographic works to which are incorporated creations expressed by a process similar to photography; creations of applied art; illustrations, maps, plans, drawing and sculptural works in connection with geography, topography.¹⁴ Music adaptation and other modifications of a published or arty production are safeguarded as artistic works in the original creation without loss of copyright.¹⁵ The Convention shall protect encyclopaedias and anthologies which are regarded intellectual creations by reason of the selection and arrangement of their contents.¹⁶ All the signatory nations shall safeguard the creations referred to in the Convention. The said safeguard shall be in title for the author and his successors. The Berne Convention allows its participants to recognize the copyright of writers' works of other parties to the Convention, i.e. Berne Union members, as that of their own nationals.

The protection of the Convention is accessible to citizens and residents of member countries and to development, first published or simultaneously published in an acountry that is party to the agreement of the Convention.¹⁷ The "country of origin" will be the signatory country

¹² Ahuja, V.K, Law of Copyright and Neighbouring Rights: National and International Perspectives, Lexis Nexis, New Delhi, at P.3, (2007).

¹³ Article 1 of the Berne Convention.

¹⁴ *Id*, Article 2(1).

¹⁵ *Supra note* 13, Article 2(3)

¹⁶ *Supra note* 13, Article 2(5) .

¹⁷ *Supra note* 13, Article 3.

for a work published simultaneously both in the signatory nation and in non-signatory nations. The nationality of the authors provides the "country of origin" for an unpublished work. For a production first available in a non-party country, without publication within thirty days in a party country, here too, the nationality of the author suggests the "country of origin" if he / she is a citizen of a signatory country.

According to the Berne Convention, copyright will subsist in all creations except photographic and cinematographic work in the Party countries for fifty years after the author's death. However party nations can provide longer terms at no charge. The convention establishes copyright in case of a photographic work for a period of twenty five years from the year it was first created. The Berne Convention provides copyright for cinematographic work for fifty years after it was first shown or when it was first created in the event it was not shown within fifty years. Under the treaty parties are allowed to provide their own terms of protection.

UNIVERSAL COPYRIGHT CONVENTION (UCC)

Besides, there was another conference called the 1952 Universal Conference on Copyright in Berne. This convention was adopted at Geneva by an international conference convened under the auspices of the United Nations Educational , Scientific and Cultural Organization (UNESCO), which had consulted copyright experts from different countries for several years.¹⁸ A further important international convention for copyright protection is the Universal Copyright Convention (UCC). This was introduced in 1952 in Geneva , Switzerland. The convention entered into force in 1955, which was less protective than the convention in Berne, and attracted many signatories, including the US.

The main difference was the presence of formality, and no provision for the author's moral rights. For those states that disagreed with aspects of the Berne Convention, but still wanted to participate in some form of multilateral copyright protection it was an alternative to the Berne Convention. These states included both developing countries and the United States, as well as most of Latin America. The main features are as follows: –

- (1) No country Party to this Convention shall grant domestic authors a more favorable treatment of copyright than the authors of any other signatory.
- (2) A copyright notice consisting of a mark, the name of the copyright owner and the year of first publication shall appear in all copies of the work. Nevertheless, a party nation can need more formalities but does not prefer domestic work over international work.
- (3) The fixed period of copyright in the countries of the Group shall be the lifetime of the author and twenty-five years thereafter. However, in the case of photographic works and applied art works the term is ten years.

¹⁸ Gogia, Deepak, Intellectual Property Law, Ashoka Law House, New Delhi, at P.179, (2010).

(4) All States Parties shall, subject to a compulsory license under certain circumstances, grant an exclusive right of translation for a term of seven years for the balance of the copyright period. The Convention on Universal Copyright is not against any other multi-sided or two sided agreements or arrangements between two or more countries that are parties. If somehow any contradictions exist between the UCC and rules of some multi-faceted or two sided treaties then the UCC will prevail. But the Berne Convention will prevail in case of differences between UCC and Berne convention. The UCC and the Berne Convention were revised at the Paris Conference to address the special needs of developing countries, especially with regard to translations, reproductions, public events and broadcasting. Such wide regulations were to apply only to teaching, science, and scholarship. The World Trade Organisation, by signing an agreement on trade-related aspects of intellectual property rights, has endeavored to formulate some important provisions to allow the inclusion of new copyright rights (TRIPS).¹⁹

AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

The Intellectual Property Rights Agreement on Trade Related Aspects, including Trade in Counterfeit Goods, was adopted in 1994 for inserting the points of the Uruguay Round of Multi-Sided Trade Negotiations. Some of the objectives of the TRIPs Agreement are to reduce perversions and trade barriers among nations, to promote useful and sufficient protection of intellectual property rights and to ensure that measures to implement intellectual property rights do not themselves become barriers to legitimate trade.²⁰ The TRIPS Agreement embraces parts of the Berne, Rome and Paris Conventions and the late Washington Integrated Circuits Treaties to set requirements for intellectual property legislation. It also provides for the administrative and judicial protection of intellectual property rights, and includes provisions for broader regulation of infringement trade.

The safety of copyright and neighboring copyright rights provided for in the TRIPS Agreement maintains the existing standards for the protection of this category of intellectual property rights. In general, the TRIPS Agreement deals with all intellectual property and copyright and the relevant rights are discussed in Part II, Section 1 (Articles 9 to 14) of the Agreement. TRIPS Agreement, article 36, 37 and 38, also cover integrated circuits and semiconductor devices, and also tackle misuse of these circuits, copyright rights, mandatory licensing and innocent misuse. Since the TRIPS Agreement was signed at the end of 1991, negotiators in the World Intellectual Property Organization (WIPO) were left to seek and address some of the problems surrounding copyright, the Internet and modern technology.²¹

¹⁹ Jain, *supra note* 11, at P.82.

²⁰ Ahuja, *supra note* 12, at P.16.

²¹ Jain, *supra note* 11, at P.85.

WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)

WIPO's foundation was laid out in the Paris Convention in 1883. Fourteen nations decided here on the defense of industrial property, which started the process of securing intellectual property for inventions, trademarks and industrial designs. It helped the intellectual property creators get protection outside their local countries for their works. The 1886 Berne Convention began the scheme of automatic rights for artistic works produced in the member countries. The WIPO was set up to promote the worldwide protection of industrial property as well as copyrighted works such as literary, musical, photographic and other artistic creations. WIPO provided its attention to computer program security when, in 1978, it proposed model requirements for computer program security.²² WIPO has twofold goals:

- (i) Intellectual Property promotion and security through international cooperation; It currently administers more than 20 intellectual property treaties.
- (ii) WIPO's further task is to regulate the organizational cooperation between Paris, Berne and other intellectual unions on the settlement of labels, patents and the safeguarding of artistic and literary works.

WIPO's intellectual property protection functions began to increase from the mid-1990s, when it signed a cooperation agreement with the World Trade Organization. Increasing and developing internet usage has led to the growth of e-commerce. With the rise in electronic trade, disputes surrounding this have also increased and, thus, WIPO has been tasked with resolving these problems. WIPO members include more than one hundred eighty countries. The WIPO general assembly is the body responsible for policy making. Biannually, it convenes its meeting where its budget and programs are fixed.

To the harmony of one hundred and seventy NGOs, or more, preserve spectator status. Copyright law faced challenges that were adapting to computerized developments, particularly the Internet. Protecting copyright has been an extreme problem because the protected works can be quickly downloaded and exchanged over the internet. Taking into account the final goal of updating the legal structure in line with the current technological developments, the World Intellectual Property Organization (WIPO) has negotiated two treaties known as Internet Treaties. They are the WIPO Treaty on Copyright (WCT), and the WIPO Treaty on Performance and Phonograms (WPPT). Those two arrangements are thought to be the updates and supplements for the protection of the artistic content to the Berne Convention.

The Diplomatic Conference in Geneva on 20 December 1996 adopted this Treaty. This is a special agreement within the framework of Article 2 of the Berne Convention.²³ It concerns digital technology and the internet. Even though the WIPO document was prepared and thus

²² Rowland, Diane & Macdonald, Elizabeth, Information Technology, Cavendish Publishing Limited, London, at PP.5-6, (1997).

²³ *Supra note 22*, Pg. 7.

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WIPO COPYRIGHT TREATY, 1996

The Diplomatic Conference in Geneva on 20 December 1996 adopted this Treaty. This is a special agreement within the framework of Article 2 of the Berne Convention.²⁴ It concerns digital technology and the internet. Even though the WIPO document was prepared and thus has the status of historical documents as far as the computer industry is concerned, it shows that even at this early stage, major problems were evident.²⁵ The WCT is a special arrangement between the parties nations to give writers greater rights than those given by the Berne Convention. This also has other clauses that are in compliance with the Berne Convention. The Treaty specifies, "Computer programs as literary works are protected within the scope of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever their mode of expression or form may be."²⁶ According to the treaty, the collection of facts and figures or other material are covered as intellectual property in any variety which constitute intellectual creations for its arrangement. The facts and statistics and other documents themselves don't have this protection available. This protection is without prejudice to any copyright contained in the compilation's facts and figures or material. Therefore it is noted that the following papers from the TRIPS Agreement have been restated. WIPO has however deleted some controversial words from TRIPS articles. In the TRIPS Agreement computer programs are protected as literary works whether in object code or source code. The WIPO Copyright Treaty, however, usually encompasses all types of computer programs, and not only object code or computer program source code. WIPO Copyright Treaties now also covers compilations of data in any form whatsoever. Thus it is seen that the WIPO Copyright Treaty is compatible with the TRIPS Agreement except for some minor changes.

THE COUNCIL OF EUROPE'S CYBER-CRIME CONVENTION 2001

In 2001 America and twenty-nine other nations signed the CyberCrime Convention of the Council of Europe. The member countries are to make laws under this convention that prohibit numbers of activities. The following are illegal as per the convention-

- a) unauthorized access of an Internet computer system;
- b) unauthorized interception of Internet data;
- c) Internet-related computer equipment damage;
- d) Internet-related computers interference;
- e) Fraud and forgery via internet;
- f) Child pornography production and distribution; and

²⁴ *Supra note 22*, Pg. 7.

²⁵ Article 4 of the WIPO Copyright Treaty.

²⁶ *Id*, Article 5.

g) Internet copyright infringement.²⁷

A COMPARATIVE STUDY OF DIGITAL RIGHTS MANAGEMENT IN INDIA WITH UNITED STATES OF AMERICA (US) AND EUROPEAN UNION (EU)

The 1980s and 1990s had seen the digital revolution sweeping the globe over the World Wide Web and the introduction of the internet. It is very important for policymakers, content owners, consumer electronics and device manufacturers to understand the Internet technology, the purpose it plays, the uses of such technology and the role of the major players on the Internet to understand the legal consequences of the Internet on authors' copyright. The Internet is often called a network of networks.

Material from all over the world can be accessed, viewed, retrieved, printed and downloaded via internet. We don't have a "master" or "boss" buying and managing the internet. Therefore it is sometimes described as "anarchy of communication with information technology."²⁸ It is also called a set of computer networks that are probably not the same, connected by gateways that control information, transmit messages from the network distribution via the protocol used to receive networks.²⁹

CONCLUSION

Intellectual property has a double nature, that is to say it has both a national and an international dimension. For example, patents are regulated by a given country's national laws and regulations, while international patent conventions guarantee basic rights and provide the contracting states with certain provisions for implementing the rights. The European Union is calling for harmonization of both substantive and procedural rules within Europe.

In the last century, before any international convention in the field of industrial property existed, protection of industrial property rights in the various countries of the world was challenging because of the diversity of their laws. In fact, patent applications in all countries needed to be made approximately at the same time in order to prevent a publication in one country losing the novelty of the invention in the other. These practical issues have created a strong desire to overcome those difficulties.

The development of a more internationally oriented flow of technology and the increase of international trade during the second half of the last century made harmonization of industrial property laws urgent in both the field of patent and trademark.

Whenever the Government of the Austrian-Hungarian Empire invited the other countries to participate in an international exhibition of inventions held in Vienna in 1873, participation

²⁷ Availab at, <http://www.bicklaw.com/InternationalInternetLaw.htm>(last accessed June 20, 2020).

²⁸ Kumar, Krishna & Sharma, S.R., *Cyber Laws Intellectual Property and E-Commerce Security*, Dominant Publishers and Distributors, New Delhi, at P. 69, (2001).

²⁹ Microsoft Press, (2002), *Microsoft Press Computer Dictionary* at P.220.

was hindered by the fact that many foreign visitors were unwilling to exhibit their inventions at that exhibition in view of the inadequate legal protection afforded to the inventions exhibited.

In recent years, many developing countries have been under pressure in their intellectual property laws to enact or implement even tougher or more restrictive conditions than the TRIPS Agreement requires – these are known as 'TRIPS plus' provisions. Nations are by no means compelled by international law to do this, but as part of trade agreements with the United States or the European Union, many, such as Brazil, China or Central American states, have had no choice but to adopt them. These have a detrimental effect on drug availability. Common examples of TRIPS plus protections include extending a patent term beyond the minimum of twenty years, or introducing provisions limiting the use of compulsory licenses or restricting generic competition.