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BERNE CONVENTION AND RELATED AGREEMENTS

AUTHORED BY - ASHISH SHUKLA

Introduction:

In British legal parlance "Copyright" is the term used to describe the area of Intellectual property law that regulates the creation and use that is made of a range of cultural goods such as books, songs, films, and computer programs[1]. The intangible property protected by copyright law is distinctive in that it arises automatically for the benefit of author[2]. Various rights are conferred upon on the owner of copyright, including the right to copy the work and the right to perform the work in public. The primary rights that are currently granted to copyright owners are set out in sections 16-21 of the 1988 Act. Anyone who carries out any of these activities, or authorizes someone else to carry out these activities is liable for primary infringement. The rights vested in the owner are limited, notably in that they are not infringed when a person copies or performs a work that they have created themselves. The rights given to a copyright owner last for a considerable time: in many cases for Seventy years after the death of the author of the work. The Basic framework of British copyright law is largely to be found in the copyright, Designs and Patents Act 1988, as amended, as amended, most significantly to implement European Community directives. While aspects of copyright law have a long history, copyright law did not take on its modern meaning as a discrete area of law that grants rights in work of literature and art until at least the mid-nineteenth century. Moreover, it was not until the passage of the 1911 copyright Act that copyright law was rationalised and codified into the type of modern, abstract, and forward-looking statute. The 1911 Act was also important insofar as it abolished common law copyright in unpublished works and also repealed the plethora of subject-specifics statutes that existed at the time. In their place the 1911 Act established a single code which conferred copyright protection at number of works whether published or not, and including many unprotectable works such as architecture , sound recordings, and films[3]. In most cases, protection

[1] For an analysis of various other perspectives on copyright, see P.Goldstein, 'Copyright' (1990-91) 38 Journal of the copyright society of the USA 109
[2] The author of a work is defined in the 1988 Act, "As the person who creates the work."
[3] Films were protected as 'photographs', without prejudice to copyright in the dramatic works embodied in films. Sound recordings were deemed to musical works: CA 1911 s.19.

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lasted for fifty years after the death of the author of the work[4]. At the same time, 1911 Act abandoned all requirements concerning formalities. Infringement was also expanded to include translations and adaptation as well as reproductions 'in a material form'. Following a review by the Gregory Committee in 1952, the 1911 copyright Act was replaced by the 1956 copyright Act. This extended the scope of the copyright to encompass sound and television broadcasts, as well as typographical formats of published editions. Along with sound recordings and films which were now recognized as having copyright in their own right, these new rights were placed in a special category in Part II of the 1956 Act.

Author's rights and Neighbouring Rights:

While British copyright law abandoned the formal distinction between different categories of works with the passage of the 1988 Act, nonetheless an informal distinction is still drawn between two general categories of subject matter. More especially a distinction is drawn between what are known as 'authorial work' and 'entrepreneurial works'. Authors work refer to work created by 'author' such as books, plays, music, art, and films. In contrast neighbouring rights which are sometimes called 'related rights' or 'droit voisins' refer to 'works' created by 'entrepreneurs' such as sound recordings, broadcast, cable programmes, and the typographical format of published editions. The rationale for differentiating between these two categories of subject matter lies in the fact that neighbouring or entrepreneurial rights are typically derivative, in the sense that they use or develop existing authorial works; that they are product of technical and organizational skill rather than authorial skill; and that rights are initially given not to human creator, but to the body or person that was financially and organizationally responsible for production of the material. The history of copyright is a complex, subtle, and rich subject. Depending on one's interest it is possible to highlight many different themes and trend. Most of histories of copyright law tend to focus on the origin of copyright, which are usually traced back to the 1710 Statute of Anne, or occasionally to the practices developed in sixteenth century to regulate the book of trade. The 1911 Act was also amended on a number of occasion, primarily to take account of new technologies such as cable television and computer software. A further periodic review by the Whitford Committee in 1977 proposed a general revision of 1956 Act[5].

[4] Literary, dramatic, musical, and artistic works other than photographs, which received a term of fifty years from making.
[5] Report of the committee on Copyright and Design Law (cmnd.6732 ,1977).

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Evolution of Copyright Act in India;

Over a period of more than 150 years, India saw a slow development of modern copyright law. In 1841, the British India Company enacted a law that brought copyright to India . The 1847 enactment stated that the copyright was in effect for the author's lifetime plus seven years after death. The government might issue a forced licence to publish a work if the copyright owner refused to permit its publication upon the author's death, but in no instance could the entire term of copyright exceed 42 years.

The Indian Copyright Act, which was largely modelled after the British Copyright Act of 1912, was introduced by the British government in 1914 with the goal of strengthening copyright rules in India. The Indian government enacted the Copyright Act, 1957 following independence, superseding the earlier legislation and providing a more extensive framework. **The international copyright agreement known as the Berne Convention for the Protection of Literary and Artistic Works had a significant influence on this measure.** The Copyright Act, 2012 has undergone five updates between 1983 and 1999. The most recent revolutionary amendment was approved by the president of India on June 7, 2012, and was notified on June 8, 2012, following the parliament's ratification on May 22, 2012. The copyright (Amendment) Act, 2012 was published in the official gazette and went into effect on June 21, 2012. The Act has 79 sections spread across 15 chapters. The WIPO Performances and Phonograms Treaty ("WPPT") and the WIPO Copyright Treaty ("WCT"), two WIPO internet treaties signed in 1996, have been brought into compliance with the Act primarily for the following reasons: to protect and address the concerns of the music and film industry; to address the concerns of the physically disabled and to protect the interests of the author of any work; to make incidental changes; to remove operational facilities; and to enforce rights. Because the British Copyright Act of 1842, which did not adequately address the rights of Indian authors, had a significant influence on the first copyright act in India, which was passed in 1847, the UK copyright act and the Indian copyright laws are extremely relevant.

Need for Berne Convention:

- The copyright of literary and creative works was covered by national laws passed by a number of nations before the Berne Convention was established. There were conceptual variances in these national laws that resulted in disparities between the copyright regimes of various nations. All national copyright laws, despite their diversity, had one

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fundamental characteristic in common: they were exclusive to the countries in which they were implemented. Thus, copyright protection for domestic works was limited to their home nations. These pieces were, nevertheless, also exported to other nations.

- Numerous nations signed bilateral agreements requiring the signatories to acknowledge and uphold the copyrights granted by the contracting states. The fact that these agreements were neither consistent nor thorough, however, was a significant disadvantage.
- An international copyright framework that could promote international cooperation was therefore thought to be necessary. The Berne Convention was subsequently signed as a result, promoting global cooperation for copyright protection.

- **BERNE CONVENTION (1886 – 1971);**

The most important international influence on the development of UK copyright has been the Berne Convention on the protection of Literary and Artistic Works. The Berne Convention was drawn up in 1886 as a small treaty allowing for mutual recognition of rights amongst a few largely European countries. Since then, the treaty has been revised on a number of occasion[6], and the membership expanded to 151 states[7].

In its earliest form, there were two key provisions of the Berne Convention. The first was the adoption of the principle of national treatment. This meant that with certain exceptions a country of the Union should not discriminate between its own nationals and those of others countries of the Union. For, example, under the principle of national treatment, French law was obliged to confer the same rights on a British author as it conferred on French authors. In addition to principle of national treatment, the Berne Convention has long required that the 'enjoyment and exercise' of copyright in the works of the Convention should not be 'subject to any formality'. This means that registration or notices cannot be made prerequisites for protection.[8] Because international protection is to be automatic, there is no need for international bureaucratic regimes to simplify registration process.

[6] The last revision was at Paris on 24 Jul.1971, and amended on 28 Sept.1979.
[7] As of 15 Oct. 2003. The convention applies to all works in which copyright has not expired at the time of accession to the convention : Berne Art.18
[8] Berne Art. 5(2). For consideration as to whether the requirement of assertion of the right of attribution complies with this.

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Over time the Berne Convention has come to demand that members of the Union provide certain minimum standards of protection to copyright owners and authors. These includes the Right to reproduce the work,[9] to perform the work publicly,[10] to translate the works , to adapt the work, and to broadcast the work, Members of unions are also to give author the moral rights of attribution and integrity. In recognition of the need for the public to be able to utilize work without payment, there is limited scope for members of union to create exceptions. In relation to the reproduction right, this exception must satisfy the so-called three-steps.

What type of copyright protection does it offer:

- For all tangible works, the Berne Convention stipulates a minimum 50-year protection period following the author's death. The photographic and cinematographic works are the only ones that are exempt from the protection term. Here, a photograph's minimum protection time is 25 years from the year it was taken, while a cinematographer's minimum protection period is 50 years from the date of production or publishing.
- The agreement guarantees that these artists' rights will always be with them. Additionally, the Berne Convention guarantees authors and artists the right to exercise control over how their masterpieces are reproduced, altered, and distributed. In addition to providing a framework for a uniform and impartial method of acknowledging the copyright of works created in other nations, the international agreement requires member nations to provide a minimum level of performance and pursue specific provisions for the enforcement of copyright laws.

Fundamental principles of Berne Convention:

1. The Berne Convention's first and fundamental principle addresses the equal status of creative works that originate in a contracting state with regard to protection.
2. The automatic protection of all works, independent of any legal requirements for protection, is upheld by the second principle of the Berne Convention. This indicates that publishers and authors are free to use the copyright sign without any restrictions or qualifications. To be safe, ensure that it is enforced, and stop worrying about infringement, it is advisable to register a copyright. Naturally, this would also offer you a

[9] Berne Art. 9. (countries to recognize the exclusive right of authorizing the reproduction of works ‘in any manner or form’; Art. 9(3). Specifically states that a sound or visual recording is considered a reproduction.
[10] Berne Art.11 (For Dramatic, dramatico-musical, and musical works); Art.11 ter (public recitation and communication of literary work.)

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number of unique benefits.

3. With a few exceptions, the treaty's ultimate principle protects literary and artistic works regardless of the protection provisions in the nation where the work was first created.

Rights of the authors under Berne Convention:

- According to Article 5, the authors of works covered by the Convention are entitled to all the rights granted to their nationalities by the laws of the member nations of the Union. As a result, the writers are protected by copyright in all Union member states under the national laws that apply in each of those states. There will be no formalities associated with the protection.
- As a result, the Convention requires its parties to grant both domestic and foreign authors the same level of copyright protection. Nonetheless, the Union's member states have the autonomy to decide on the level of protection to be granted to the writers and the kind of recourse that they can access.
- The right of the writers to translate their works is stipulated in Article 8. They might even give someone else permission to translate or copy their writings.
- The right of authors to give permission for their theatrical and musical works to be performed in public exists. They might also give their permission for their works to be televised for public consumption or to be adapted for the big screen.

TRIPS Agreement:

An international legal agreement between all of the World Trade Organization's member nations is known as the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS (WTO). It sets baseline requirements for how national governments regulate various types of intellectual property (IP) in relation to citizens of other WTO members. TRIPS, which is overseen by the WTO, was negotiated at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1989 and 1990.

TRIPS specifically mandates that WTO members provide copyright rights for writers, other copyright holders, and holders of related rights, such as broadcasting organisations, sound recording producers, and performers; additionally, members must provide copyright rights for geographical indications, industrial designs, integrated circuit layout designs, patents, new plant

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varieties, trademarks, trade names, and proprietary or undisclosed information. TRIPS delineates protocols for enforcement, remedies, and dispute settlement. All intellectual property rights must be protected and upheld in a way that balances rights and responsibilities, fosters technological innovation, transfers and disseminates technology for the benefit of both technology producers and users, and promotes social and economic welfare.

The most extensive multilateral agreement on intellectual property to date is the TRIPS agreement, which brought intellectual property law into the multilateral trade system for the first time. Worried that affluent nations were interpreting TRIPS too narrowly, developing nations started a series of negotiations in 2001 that produced the Doha Declaration. The WTO specifies the scope of TRIPS in the Doha Declaration, which states, among other things, that the objective "to promote access to medicines for all" can and should be taken into consideration when interpreting TRIPS.

Implementation in Developing Country:

While all member states are subject to the same requirements under TRIPS, developing nations have been given an extension to amend their national legislation in two stages based on their level of development. For developing nations, the transitional period ended in 2005. For pharmaceutical patents, the transition period to apply TRIPS for least developed countries was extended to January 1, 2016, and it may be further extended until 2013.

Therefore, it has been claimed that the TRIPS standard, which mandates that all nations have stringent intellectual property laws, will harm the development of less developed nations. There has been a claim made that most developing countries, if not all of them, would benefit strategically from using TRIPS's flexibility to enact the weakest IP rules possible.

For the most part, this has not occurred. Many developing nations have not fully implemented Doha-authorized TRIPS flexibilities, such as mandatory licencing, parallel importation, data protection limits, broad research use and other patentability exceptions, into their legal frameworks, according to a WHO report from 2005. This is probably because developing nations frequently either directly copy the intellectual property laws of developed nations or rely on technical assistance from the World Intellectual Property Organisation (WIPO), which critics like Cory Doctorow claim encourages them to impose stronger intellectual property monopolies, due

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to a lack of legal and technical expertise required to draft legislation that implements flexibilities.

Post TRIPS Expansion:

Many countries have entered into bilateral agreements to adopt a higher degree of protection in addition to the baseline intellectual property requirements established under the TRIPS agreement. These standards, sometimes referred to as TRIPS+ or TRIPS-Plus, come in a variety of formats. The following are some of these agreements' general goals:

- The enactment of anti-circumvention legislation to safeguard DRM systems. The WIPO Performances and Phonograms Treaty and the 1996 World Intellectual Property Organisation Copyright Treaty (WIPO Treaty) made this possible.
- More stringent restrictions on patent forced licences.
- A more vigorous approach to patent enforcement. More widely, this endeavour has been noted in draft WIPO and EU regulations on the protection of intellectual property. The WIPO Copyright Treaty of 1996 was put into effect by the EU Copyright Directive of 2001.
- The effort to draft a WIPO Broadcasting Treaty, which would grant broadcasters (and maybe webcasters) the only right to disseminate copies of works they have produced.

WIPO Copyright Treaty:

The WCT was viewed in the early phases of discussions as an update to the Berne Convention, which had been in effect since the Stockholm Conference in 1971. The WCT was conceived of as an extra treaty that complemented the Berne Convention, but, because any modification to the Berne Convention required the unanimous agreement of all parties.[8] The TRIPS Agreement was the outcome of the forum being moved to the GATT following the breakdown of negotiations over the extension of the Berne Convention in the 1980.As a result, the World Intellectual Property Organization's copyright treaties became far more focused on addressing the issues brought up by digital technology.

The WCT asserts the value of copyright protection for creative activities and highlights its incentive-based character. It guarantees that databases' content structure and selection are protected (Article 5), and computer programmes are protected as literary works (Article 4). In contrast to what may otherwise be the case under the Berne Convention alone, it grants authors of

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works authority over its rental and distribution in Articles 6 to 8. Additionally, it forbids altering rights management data included in works in an unauthorised manner (Article 12) and evading technological safeguards for the preservation of works (Article 11).

Critics point out that the treaty is too broad, for example, prohibiting circumvention of technical protection measures even when done so to pursue legal and fair use rights, and that it applies a "one size fits all" standard to all signatory nations, even though their levels of economic development and knowledge industries are very different.

Implementation of WIPO Treaty:

The Digital Millennium Copyright Act (DMCA) incorporates the WIPO Copyright Treaty into US law. The European Community's representative, the Council of the European Union, adopted the treaty on March 16, 2000, with Decision 2000/278/EC. The European Union has several directives that address copyright protection in software, databases, and devices that circumvent "technical protection measures" like digital rights management (DRM). These directives, together with Directive 91/250/EC, provide a substantial body of law covering the subject matter of the treaty.

WIPO Performance and Phonograms Treaty:

The World Intellectual Property Organization's member nations have signed the WIPO Performances and Phonograms Treaty (WPPT), which was ratified in Geneva on December 20, 1996. It became operative on May 20, 2002. August 2023 saw 112 contracting parties sign the pact.

The goal of WPPT's adoption was to create and uphold the most efficient and standardised approach to the protection of phonogram artists' and producers' rights. The Rome Convention, which was signed on October 26, 1961, and established an international convention for the protection of performers, phonogram producers, and broadcasting organisations, would not be affected by this treaty. Similar duties to contracting nations are imposed on phonogram makers and performers by Articles 18 and 19 of the WPPT, as they are under Articles 11 and 12 of the WCT.

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Implementation of WIPO Performance and phonograms Duties:

The Digital Millennium Copyright Act (DMCA), a 1998 U.S. statute, includes the WIPO Copyright and Performances and Phonograms Treaties Implementation Act. It is divided into two main sections: Section 102, which carries out the WIPO Copyright Treaty's requirements, and Section 103, which, with certain exceptions, arguably offers more protection against copy prevention system circumvention and forbids the removal of copyright management data.

Case laws :

- In the **Union of India v. Amarnath Sehgal case (2005).** In this instance, the plaintiff had sold the Indian government a mural that was to be seen in the Vigyan Bhawan. After that, the mural was removed by the government from Vigyan Bhawan and placed in a store. The mistreatment by the authorities has also caused harm to the mural. The petitioner argued that his moral rights had been violated by the mural's mistreatment. Article 6bis of the Berne Convention, which requires the member nations to uphold the moral rights of copyright holders, was cited by the Court. As a result, the Court decided that the petitioner was qualified to get the mural back in exchange for some compensation.
- The question on the table in **Raj Rewal v. Union of India (2019)** was whether an architect with copyright over a building might prevent the person who owns the land the structure is built on from tearing it down. The Court decided that an architect's moral rights are subordinated to the demands of urban planning. The moral rights of the architect are subordinated to the technical and financial requirements that demand alterations to a building. The Court came to the conclusion that the landowner is fully entitled to remove or demolish any construction that has been erected on the property. The landowner's rights are not superseded by the architect's moral rights.

Conclusion:

The Berne Convention's goal is to provide a standardised, efficient system for defending writers' rights to their literary and creative creations.

The goal of the Berne Convention's revision process was to ensure that it was always up to date with the latest developments and demands. But since 1971, the Convention has not undergone any significant modifications. Therefore, given the quick expansion of digital publications, the Convention does not sufficiently address the concerns of the copyright holders.