



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

A Comparative Analysis of Copyright and Intellectual Property Laws of India and the USA

Yash Bethal^a

^aNRI Vidyadayini Institute of Science, Management and Technology, Bhopal, India

Received 19 February 2023; *Accepted* 07 March 2023; *Published* 11 March 2023

In today's era, Intellectual Property is one of the vast fields that covers a person's intellect or creation of minds, including original artistic and literary works, inventions, design, etc. The concept of protection of Intellectual property rights comes with international treaties and agreements and the laws of the nation are made in accordance to protect the person's intellectual property rights also with the increase of globalization the creators or inventors in the present scenario want their IPR rights protected so that's why the laws related to it becomes significant. Copyright plays a prominent role in the protection of intellectual property rights. The copyright owner gets certain exclusive rights regarding using and restricting others from using its unique or creative works and contents but this right is not absolute or divine or it subsists only for a specific term according to the law. This article aims to analyze the concept of copyright and intellectual property law. This article attempts to analyze the concept of copyright and its development and role in international treaties and also it makes a detailed evaluation of Copyright and Intellectual Property Laws in India and the USA.

Keywords: *intellectual property, inventions, globalization, copyright, international treaties.*

INTRODUCTION

Intellectual property rights are those rights that are related to a person's intellect and it is protected right as it prevents other people to use them and it is an exclusive right given to the owner of the intellectual property. Intellectual property (IP) rights boost the innovative environment by giving recognition and economic benefits to creators or inventors whereas the lack of IPR awareness and its ineffective implementation may hamper the economic, technical, and societal developments of a nation.¹ That's why the different nations are trying to implement the set of rules and regulations related to the field of IPR and by it, the Government of India launched the National IPR Policy which will promote a holistic and conducive ecosystem to catalyze the full potential of intellectual property for India's economic growth and socio-cultural development while protecting the public interest.² There are different types of intellectual property like Copyright, Patent, Trademark, and Trade secret and Intellectual Property Rights encourage people to the more inventions or creations. Copyright is the right that is the outcome after the development of print media, it ensures the author, the protection of his literary or artistic work. However, this right is for a certain duration but the author must get the exclusive rights to property which is made by using his intellect. For this, in India, The Copyright Act, of 1957 has been enacted which has a set of rules and regulations regarding copyright.

MEANING OF INTELLECTUAL PROPERTY RIGHTS

Intellectual properties are referred to those types of property which are intangible and it needs a human mind to create such type of property. It refers to creations of the mind, such as inventions; literary and artistic works; designs; symbols, names, and images used in commerce.³ It took a lot of effort and time in the creation or invention for which law gives them exclusive rights on such Intellectual Property for obtaining the profits arising from it. So, this right is called Intellectual property Rights. The ultimate owner of the Intellectual Property is the one who

¹ M Bala & Deepak Verma, 'Analysis of Reforms in Intellectual Property Rights and their Impact on Intellectual Property in India' in Dr Meenu Jain and Dr Anita Moudgil (eds), *Sensitizing and Imparting Awareness about Intellectual Property Rights among Students* (National Press Associates 2020)

² National Intellectual Property Rights (IPR) Policy 2016

³ 'What Is Intellectual Property (IP)?' (WIPO) <<https://www.wipo.int/about-ip/en/>>> accessed 15 February 2023

creates it and he can sell, buy or license his intellectual property according to the laws. This exclusive right does not just favor the creator for his profit but it helps in the growth of the national development. If no law enforcement is present in the nation, it will hamper intellectual development and there will be a high chance of infringement.

The concept of Intellectual property is not new it can be traced back to European countries around the 14th century. If we see the history of the European countries, they are advanced in terms of education and art, and from Venice, there is the start of giving recognition to Intellectual property and copyrights⁴. At the beginning of the 19th century, new technologies and the pace of development worldwide increased gradually and Paris Conventions and Berne conventions were adopted through which a new set of laws was enacted in respected nations for the protection of intellectual property rights. Also, in India Copyright Act and Patent act were commenced in 1957 and 1970 which also have a long history connected with British rule in India. The World Intellectual Property Organization is a significant body in increasing awareness related to Intellectual property it has two objectives which are:⁵

- (i) To promote the protection of intellectual property worldwide; and
- (ii) To ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers.

WIPO gives the way for the development of intellectual property infrastructure to ensure the protection of IPR and which enhances creativity and creates an environment of new inventions for the betterment of human society. “WIPO was adopted on July 14, 1967, and at present, it has 193 signatories and headquarters situated in Geneva, Switzerland. India joined the WIPO in

⁴ Chandra Nath Saha and Sanjib Bhattacharya, ‘Intellectual property rights: An overview and implications in the pharmaceutical industry’ (2011) 2(2) Journal of Advanced Pharmaceutical Technology & Research <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/#ref4>> accessed 15 February 2023

⁵ Summary of the Convention Establishing the World Intellectual Property Organization (WIPO Convention) (1967) (WIPO) <https://www.wipo.int/treaties/en/convention/summary_wipo_convention.html> accessed 15 February 2023

1975 and the purpose of the WIPO is the betterment or advancement of intellectual property and enhancement of administrative cooperation throughout the world.”⁶

“TRIPS Agreement (Trade-Related Aspects of Intellectual Property Right) came into force in 1995 and it covers intellectual properties like intellectual property namely, trademarks, copyrights, geographical indications, patents, industrial designs, layout designs for integrated circuits, and undisclosed information or trade secrets. The members of the WIPO will become members of the TRIPS automatically without any further formalities and TRIPS Agreement ensures a certain international standard that has to be fulfilled for the protection of Intellectual Property.”⁷

Intellectual property has an eminent place in the field of business as it increases uniqueness and competitiveness in the market. Due to intellectual property rights, business companies can have a unique product, and also Intellectual Property like a trademark helps the customers in recognizing the product and it also shows the qualities, specifications, and brand value. Copyright ensures the originality or uniqueness in artistic or literary works like in cinematography it helps the makers that their work cannot be copied and they can serve the viewers’ original content.

COPYRIGHT LAWS IN INDIA

Copyright refers to the exclusive rights which are given for the protection of the original or unique artistic or literary works. It encourages creators to do more creations as the copyright law will ensure them the security on the exclusive ownership of their work for a certain duration. The concept of copyright emerged with the development of the printing press in European countries in the 15th century and it becomes an extreme need to prevent copying of the original

⁶ ‘World Intellectual Property Organisation (WIPO)’ (*Drishti IAS*, 27 October 2018) <<https://www.drishtiias.com/important-institutions/drishti-specials-important-institutions-international-institution/important-institutions-international-world-intellectual-property-organisation-wipo>> accessed 15 February 2023

⁷ ‘Trade Related Aspects of Intellectual Property Rights (TRIPS)’ (*Byjus*) <<https://byjus.com/free-ias-prep/trade-related-aspects-of-intellectual-property-rights-trips/>> accessed 15 February 2023

content or works. Also, in the British era in India, the Indian Copyright Act, of 1847 was enacted and after the independence, the Parliament of India commenced the Copyright Act in 1957.

Section 13⁸ provides the classes of the work on which the claim of the copyright can subsist which are original literary, dramatic, musical, and artistic works; cinematograph films; and sound recordings. As per section 14⁹, the exclusive rights are sustained with the creator and he has the power to give the license to another person of using the rights and without prior permission of the owner, no one can use it which leads to the offense of copyright infringement. Also, this act provides that the first owner will be the person who creates the property and the copyright can subsist with the owner during the lifetime and also till 60 years after his death¹⁰ and it varies for the different works.

International treaties are very significant for the worldwide protection of copyright although nations have their copyright laws without international treaties which have legally binding effects, the objective to provide full protection of copyright cannot be attained. International treaties have developed the copyright protection regime and it enhances the unique creations of work worldwide. Some of the treaties or conventions are as follows:

Berne Convention: This convention is the first international treaty regarding copyright which was held in Switzerland. Through this, it was the first step to promoting the awareness and protection of copyright. Also, after the treaty world gets a uniform set of rules related to this subject matter, and India on April 1st, 1928 become one of the signatories of the treaty. Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967, and at Paris in 1971, and was amended in 1979.¹¹ This treaty mandates that if some person has created a unique artistic or literary work and has an exclusive right in his respective nation then by treaty this right is equally applicable to all other nations which are signatories of the convention.

⁸ Copyright Act 1957, s 13

⁹ Copyright Act 1957, s 14

¹⁰ Copyright Act 1957, s 22

¹¹ 'Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)' (WIPO) <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html> accessed 16 February 2023

Universal Copyright Convention: This convention was introduced as an alternative to the Berne convention and made in Geneva in 1952. UNESCO (United Nations Educational, Scientific and Cultural Organization) developed the Universal Copyright Protection for the purpose to provide international protection of copyright to those countries which are not satisfied with the rules and regulations of the Berne Convention. The signatory nations of the Berne Convention also sign the Universal Copyright Convention to ensure the extension of the scope of the protection of copyright to the non-signatory nations of the Berne convention. The United States of America did not sign the Berne convention earlier but the USA has done some sort of amendments to become a signatory of the Berne Convention and finally signed it in 1989. Article 17 of UCC, clearly mentions that it will not affect any provision provided in the Berne Convention.

COPYRIGHT LAW OF THE U.S.A

U.S. copyright law traces its lineage back to the British Statute of Anne, which influenced the primary North American country federal copyright law, the Copyright Act of 1790¹². American constitution and other legislations provide specific laws related to copyright protection and development. The Federal Copyright Act was commenced in 1970 and U.S. copyright law grants the protection of the exclusive right only for 14 years but it can be further increased according to the rules and procedures set by the legislation. The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.¹³

The U.S. Copyright Act, (codified at 17 U.S.C. §§ 101 - 810), is federal legislation that protects the writings of authors.¹⁴ Similar to the Indian Copyright Act, U.S. Copyright also mentions that the right of the copyright is only sustained by the person who creates and will be the first owner

¹² Mayank Negi, 'A Comparative Study of Copyright Laws in India, US, UK (2019)' (2019) 8(5) International Journal of Science and Research <<https://www.ijsr.net/archive/v8i5/2051902.pdf>> accessed 16 February 2023

¹³ United States Constitution, art I s 8

¹⁴ 'Copyright' (Cornell Law School)

<<https://www.law.cornell.edu/wex/copyright#:~:text=Overview%20%2D%20U.S.%20Copyright%20Act&text=All%20works%20of%20authorship%20fixed,and%20whether%20published%20or%20unpublished>> accessed 16 February 2023

of the copyright. The U.S Copyright Office has various powers and functions like to look into the functioning of the copyright act and maintain the record related to the registration of copyrights.

CONCLUSION

Intellectual Property Law has a very significant international value in terms of socioeconomic development. The historical development of the IPR is very complex and as per the need of developing society new rules and regulations were formulated. Various International treaties and conventions show the path to achieving the goal of the protection and development of Intellectual Property Laws without it the governments of different nations will not get the exact guidelines for enacting the particular laws related to IPR in their respective nations. IPR laws are dynamic it changes from time to time so International Organizations and Nations must amend and implement the laws which are capable to deal with the changing scenario of the world. Intellectual Property Rights are the exclusive right or monopoly rights that can be used by the owner for economic or monetary benefits for revenue generating. In this era of globalization, it is very crucial to encourage Intellectual Property Protection which can ensure fair business practices and can prevent infringement. Copyright is a significant topic for the encouragement of the creation of unique work and it gets the world's attention for obtaining copyright protection all over the world. If no rules and regulations are present then creators or owners hesitate to create such unique artistic or literary works by spending their valuable time and it will affect the creativity level of society.