

International Copyright Treaties Prior To 1996: An Overview

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Abstract The history of copyright protection has followed two separate streams, one relating to the rights of authors of literary and artistic works and the other relating to the contributions of others who add value in the presentation of literary and artistic works to the public: these include performing artists such as actors, dancers, singers and musicians, producers of phonograms including CDs and broadcasting organizations. These contributions are generally referred to as 'related' or 'neighbouring' rights because they are related to or neighbouring upon the main authors' rights. The two treaties that deal with the authors' rights are the Berne Convention and the Universal Copyright Convention (UCC).



THE BERNE CONVENTION

Adopted in 1886, with a membership of ten countries, the Convention has today grown to be the most important international copyright convention with a membership of over 140 member countries. The provisions of the Convention (with the exception of those relating to moral rights) are mandated to be applicable to all WTO members whether signatories to the Berne Convention or not.

The Convention has evolved through a number of revisions at Berlin (1908), Rome (1928), Brussels (1948), Stockholm (1967) and Paris (1971). The Paris revision is the text, which is now in force. Under the Convention, copyright protection covers all "literary and artistic works", a term which is defined to encompass diverse forms of creativity such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; cinematographic works, works of the fine arts including drawings and paintings and photographs.

The two fundamental principles on which the Convention is based are:

(i) National treatment: - An author in a member country can claim in another member country (apart from the country of origin of the work the same protection as the country of claim gives to its own nationals). For instance, an Indian author can claim in the UK the same protection as UK gives to its own nationals.

(ii) Convention rights: - The Convention provides certain specific rights to authors concerning reproduction, public performance, broadcasting etc., and these rights can be claimed whether or not the country of claim gives these rights to its own nationals.

The Convention requires unanimity of votes cast at a Revision Conference for any substantive amendments.

Universal Copyright Convention (UCC)

The UCC was adopted in 1952 and revised at Paris in 1971. The main inspiration for the adoption of the UCC was the desire to meet the particular features of US Copyright law, which required formalities such as deposit, registration and notice as conditions precedent for protection, and to establish a lower common standard of protection acceptable to the developing countries. The Convention seeks to meet these obstacles by requiring that these formalities shall be regarded as fulfilled, as far as works originating in other countries are concerned, if all legitimately published copies of the work bear the "copyright notice" i.e., the symbol '©', the name of the copyright proprietor and the year of first publication.

Since the level of protection required by UCC is lower than that required by the TRIPS Agreement, it is unlikely to be relevant to the future course of international copyright law and its importance in the development of world copyright primarily lies in building a bridge between the United States, Russia and other developing

countries on the one hand and those of the developed world on the other.

THE ROME CONVENTION 1961

The Rome Convention was adopted on October 26, 1961 and it set an international standard for related rights belonging to performers, phonogram producers and broadcasters. Currently, there are 67 members of the Convention. India is not a member.

THE PHONOGRAMS CONVENTION 1971

The Rome Convention deals with the rights of performers, phonogram producers and broadcasters. Unfortunately, the ratification of the Convention requires a complex legislative framework, accommodating the rights of the three interested beneficiaries and their interrelationships. In the meantime, in view of the growing menace of record piracy which assumed serious proportions for the growth of the record industry, it was felt that, given the inherent difficulties of ratification of the Rome Convention, there was a need for adoption of a special convention to combat the menace with simpler rules of ratification.

The Convention was adopted in October 1971 and it covers the right of phonogram producers only. Currently there are around 63 members of the Convention.

The WIPO Treaties of 1996: An overview of the issues raised by the Internet and partly addressed by them.

Since the ratification of the pre-1996 treaties, digital technology, satellite broadcasting and communication through the Internet have enabled the transmission and use of copyright protected materials in digital forms over interactive networks and thereby disrupted the traditional markets for the sale of physical copies of such works. Since the Internet allows one to make an unlimited number of copies, virtually, instantaneously without any perceptible degradation in quality, this poses a serious challenge to the traditional copyright concepts and the manner in which these have been exploited in the analog world.

Taking cognizance of the above challenges to traditional concepts, two new treaties were adopted in December 1996:

- The WIPO Copyright Treaty (WCT);
- The WIPO Performances and Phonograms Treaty (WPPT).

The aforesaid treaties have recognized the tremendous impact of the development and convergence of information and communication technologies on authors of copyright and related rights as well as the subject matter of these rights. The treaties attempt to provide an internationally acceptable framework for resolution of the issues raised by such technological developments and, sometimes, these treaties are referred to as 'the Internet Treaties'.

In the digital environment in which e-commerce is conducted, the most fundamental issues raised for the fields of copyright and related rights and partly addressed by the WIPO Treaties would be as follows:

- (i) Software/ computer programs: - The software running a transaction system needs protection. Such protection may be either as a literary work under copyright law or as a separate right under a sui generis legislation.
- (ii) Compilations of data and other material: - The information or content on a computer system / network or a web site or server may, by reason of its selection or arrangement, constitute an original creation and needs protection as such. Such protection may be available as a literary work under copyright law.
- (iii) Reproduction right: The reproduction right must fully apply in the digital environment, in particular to the use of works in digital forms and must include the storage of a protected work in digital form in an electronic form.
- (iv) Communication to the public: This right must apply to the digital environment and must include on-demand availability right whereby, for example, placing a work on an internet web site so that it is available for access by the public is deemed to be part of the general right of communication to the public.
- (v) Right of rental: Since computer programs, sound recordings and cinematograph works which form a substantial subject matter of e-commerce, it would be essential to extend the right of rental currently available to physical copies thereof to their electronic forms.
- (vi) Issues of licensing and enforcement: For electronic commerce to develop to its full potential, workable systems of on-line licensing must evolve, in which consumers can have confidence. Generally, most online transactions proceed on the basis where the subject matter of the transaction is licensed or sold subject to the terms and conditions displayed on-line and accepted through one click of the "I accept" button.

This mode of commerce may be contrary to the traditional principles of copyright licensing / assignment which require a valid contract to be in writing and signed by the respective parties.

(viii) Issues of fair use: In addition to the existing exceptions, the digital environment calls for newer exceptions. One important exception would relate to entities that provide internet access or online services or when technical copies are made 'while browsing a web site'. By definition, when a work is transmitted from one point to another or made available for the public to access, numerous parties are involved in that transmission. When such service providers participate in transmitting or making available materials provided by another which infringe copyright or related rights, are they liable for the infringement? Such liability could arise in one of two ways: if the service provider itself is found to have engaged in unauthorized acts of reproduction or communication to the public or if it is held responsible for contributing to or making possible the act of infringement by another (e.g., the Napster case). Further, the activities of on-line intermediaries raise issues of copyright infringement in the following contexts:

> Caching activity, which generally refers to copying to local servers, frequently requested materials that reside on remote servers. These remote servers might otherwise receive more requests for their contents than they could handle, and transmission networks would be overloaded making the information difficult to access.

> Hosting activity, which refers to an on-line intermediary's provision of storage space on web servers to third party users for content such as a web page, which may incorporate many kinds of materials (software, text, graphics, sound). The provision of server space may also be made to such groups as news groups, chat rooms, usenets, bulletin board services etc. The liability of such on-line intermediary may arise in a situation where the content posted on web servers is infringing or violative of copyright or constitutes defamatory material.

> Search engine facility, which refers to an on-line intermediary's service of providing an information location tool to users of the internet to locate and display a list of links to web sites where the requested information is located. Issues of copyright infringement may arise through the use of certain types of linking techniques including simple linking, deep linking, framing etc.

(ix) Issues of jurisdiction: E-commerce in the context of copyright and related rights raises important issues of private international law. The digital environment has dissolved national boundaries and placed the traditionally understood territoriality of copyright protection under considerable strain. Online availability, whether authorized or otherwise, of copyrighted materials, and their unauthorized use through various means of access such as linking, framing, posting on bulletin boards etc. pose serious issues of jurisdiction for purposes of enforcement involving the copyright owner, the infringer and in many cases the Internet service provider. In such situations, the situs of publication over digital networks may call for a clear choice to be made between multiple jurisdictions such as the place from where the work is posted on the net or the place where the web site server is located or where the user downloads the work.

REFERENCE

Rajendra Kumar & Latha R. Nair in the World e-Commerce & IP Report, November 2001, volume 1, Issue 14.