



Copyright Law in the Digital World: With special emphasis on Provisions for Access to the Disabled in the United States and India

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Abstract

Copyright is extended as an incentive to creator for its tangible work, not ideas. The fundamental principle of ‘automatic protection’ is essence of copyright. With technological advancement distinguishable new works such as electronic programmes, databases, and multi-media works generated, which initially sparked concerns over their copyright coverage. With digitalisation scope and reach of works produced increased significantly. If compared with respect to pre digitalisation era then accessibility of work to disable person has been enlarged. However, there are still many works which are not available in accessed formats and there is always a question over the liberty and rights of such people. In cases where a visually disabled person is not able to relish a work due to copyright regulatory framework requires indeed for some exception which can facilitate personal use. Further, legally backing up libraries to make accessible copies for disabled persons based upon the idea of inclusion. This paper attempts to analyse how digitalisation has posed challenges, which are addressed in copyright legal framework of United States and India. Also, this research tends to analyse how far digitalisation has helped differently abled persons to access the works. It will be discussing copyright law special provisions for work accessibility to differently abled persons internationally as well as in domestic jurisdictions of United States and India.

Keywords: Copyright, IPR, Digital world

INTRODUCTION

Copyright is a right assumed to or derived from work when it is created. Copyright is not a right in originality only of ideas, but expression of it.² Copyright fundamentally shields the creation of an author

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² Senthil Kumar, ‘Idea-Expression Dichotomy Under Copyright Law’ (Mondaq, 19 October) <<https://www.mondaq.com/india/copyright/536650/idea-expression-dichotomy-under-copyright-law>> accessed 18 April 2021



and averts others from replicating such original content.³ Law governing Copyright primarily has twin purposes. It provides an incentive to the work's creator while also providing access to the general public. The copyright law's whole regime seeks to strike a balance.⁴

There is a tenacious myth that copyright is something that is obtained from a government agency. However, in reality protection to work generated automatically happens the moment when creator express it in a "fixed form".⁵ One of the fundamental principles of "automatic protection" is mentioned in Berne Convention⁶. It states that copyright protection exists automatically from the time a work qualifying characteristics of subject matter of copyright is fixed in a tangible medium.⁷ In the United States, copyright is immediately created in favour of author when an eligible work is formed.⁸ United States copyright law unlike in India have its explicit basis in the Constitution, fundamental law of land. The Copyright Clause provides that: "*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*".⁹ Copyright law as developed in the United States or in any other part of the world primarily encourages and rewards creative expression of the author. In India Copyright law regime is governed through statute and rules, no explicit right is mentioned in the Constitution of India. However, India as signatory to various intellectual property right treaties and conventions by virtue of Article 51 of Constitution has directive principle to foster respect for international law and treaty obligations. The Copyright Act of 1914 was passed by the Indian legislature under the British Raj.¹⁰ It was nearly identical to the Copyright Act of year 1911 in the United Kingdom. However, the most significant reform made by this Act was the addition of criminal penalties for violations.¹¹ In order to suit the provisions of the Berne

³ Ibid.

⁴ All Answers Ltd, 'Copyright Law Protects Expressions of Ideas' (Lawteacher.net, 20 August) <<https://www.lawteacher.net/free-law-essays/contract-law/copyright-law-protects-expressions-of-ideas-contract-law-essay.php?vref=1>> accessed 19 April 2021

⁵ There should be no copyright protection on an expression that is so intrinsically attached to an idea that there is no other means to say it, according to the general rule of copyright law. The expression, not the idea, is protected by copyright. There can't be any exclusivity when it comes to the idea of a creator. Baker v Salden (1879), a landmark case in the United States, has firmly defined this point.

⁶ Adopted in 1886 for the Protection of Literary and Artistic Works

⁷ Rights direct a copyright clearance center subsidiary, 'What is Copyright?' (International Copyright Basics) <<https://www.rightsdirect.com/international-copyright-basics/>> accessed 18 April 2021

⁸ US Copyright Law, 17 U.S.C. § 302

⁹ U.S. Const. Art. I, § 8, cl. 8

¹⁰ Sharada Kalamadi, 'History of Copyright Law in India' (BananaIP Reporter Copyrights, Intellectual Property, Media and Entertainment Law, 8th January) <<https://www.bananaip.com/ip-news-center/history-of-copyright-law/>> accessed 18 April 2021

¹¹ Ibid.



Convention, The Copyright Act was enacted in the year 1957 becoming first copyright law of Independent India. Number of amendments are brought in past few years (recently 2012) but copyright regime¹² is till date governed by provisions of this Act. Literary, dramatic, musical, artistic, cinematographic, and sound recordings are all protected by copyright laws. The phrase "copyright" denotes a group of exclusive rights under Section 14 of the Indian Copyright Act that the owner of copyright is provided with. Only the copyright owner or another person to whom the owner of copyright has bestowed such permission may exercise these rights. The right to public correspondence, adaptation, reproduction, printing, and other rights are just a few examples of these rights. Both United States and India is signatory to various international instruments concerning to intellectual properties and have tried to align their domestic legislations with international framework.

This paper attempts to analyse how digitalisation has posed challenges, which are addressed in copyright legal framework of United States and India. Also, this research tends to analyse how far digitalisation has helped differently abled persons to access the works and what special provisions are available for them in these two jurisdictions.

Copyright Law in the Digital World

The widespread use of emerging technology has resulted in the emergence of many distinguishable new works such as electronic programmes, databases, and multi-media works, which initially sparked concerns over their copyright coverage. As more digital goods emerge in the network world, effective management and delivery of such products has become one of India's major concerns as it has made easy to reproduce, distribute, and communicate works. The combination of digital and information technologies has made copyright protection and administration incredibly challenging. However, to an extent digital technology contributed in the creation of works with more versatility than earlier and facilitated in detecting infringements to an extent through software (such as Turnitin in case of academic works) and other modes of high-tech solutions. The purpose of digital collections and displays is to provide a variety of public benefits, including increasing the visibility of specific works, reducing the costs of searching and

¹² The Copyright Act 1957 (the Act), along with the Copyright Rules 1958 (the Rules), is the governing law in India for copyright protection.



preserving works, ensuring access, and enabling wider distribution of the works.¹³ Most of the countries have now recognised copyright law in their domestic jurisdictions (as well as signatory to international conventions) and amended their frameworks to accommodate digital changes that are brought in the last few decades.

One of the fifteen specialty organisations under the United Nations is the World Intellectual Property Organization. In order to promote and defend intellectual property all over the world through partnerships with nations and international organisations, it was established in 1967 by the WIPO Convention. The Berne Convention, administered by the World Intellectual Property Organization (WIPO), establishes a minimal bar of requirements for the securing interests of creators of copyrighted works around the world and has been adopted by almost 180 countries.¹⁴ However, differences in national copyright rules, on the other hand, may pose a problem for global institutions and multinational companies with workers employed in various countries along with disseminating information across borders.

With digitalisation scope and reach of works produced increased significantly. If compared with respect to pre digitalisation era then accessibility of work to disable person has been enlarged. Now, there are applications, software and other technological features inbuilt in the devices which can convert text to speech for people with visual impairment, transforming their lives for better. However, there are still many works which are not available in accessed formats and there is always a question over the liberty and rights of such people. Somehow people differently abled are dependent on another person for their research and are not able to fully communicate their potential work. In 21st century trends in amount of expenditure in nuclear weapons, arms, satellites and infrastructure almost in all countries is more than what is spend on education or developing facilities for disabled. In cases where a disabled person is not able to relish a copyrightable work to the same extent calls for some exception for personal use. Further, motivating the libraries to make accessible copies for disabled persons based upon the idea of inclusion. We will be discussing copyright law special provisions for access to the disabled internationally as well as in domestic jurisdictions of United States and India.

International Framework

¹³ Alexandra Purcell, 'Artists' Books, Digital Exhibitions, and the Copyright Issues that Surround Them' [2015] 34, (2) Art Documentation: Journal of the Art Libraries Society of North America, The University of Chicago Press on behalf of the Art Libraries Society of North America 321-329

¹⁴ Supra note 6



Earlier conventions were devoid of technological and commercial developments and practices such as photocopying and printing technologies, digital transmissions systems, databases, computer programmes etc. As a result, at the end of the 1980s, it was recognised that new binding international standards were needed, and work on new instruments in the fields of copyright and associated rights began at WIPO.¹⁵ This work culminated in the adoption, of two new treaties responding directly to digital agenda, at a Diplomatic Conference held from December 2 to 20, 1996, namely the WIPO Copyright Treaty (the WCT) and the WIPO Performances and Phonograms Treaty (the WPPT). The treaties mandate Contracting Parties to have adequate lawful protection and operative remedy against circumvention of measures designed to safeguard the benefits of authors, actors, and phonogram manufacturers in their respective books, performances, and phonograms.¹⁶ (Examples of such measures would be “copy-protection” or “copy-management” systems, which involve technical operations that either curb entire generation of copies or make copies quality so poor that they are rendered fit for nothing). These treaties along with other international instruments framing copyright law regime were devoid of special provisions for the disabled people until Marrakesh VIP treaty came into existence. The Marrakesh VIP Treaty¹⁷ makes it possible for those who are blind or have other print disabilities to access published works. By demanding its contracting parties to establish countrywide legislative requirements that authorise the reproduction, dissemination, and rendering of published works in formats accessible to blind and visually impaired persons, such as Braille, it seeks to address the “book famine.”¹⁸ According to the World Health Organization’s 2013¹⁹ estimates, blind and visually impaired persons in the world are more than 285 million, 90 per cent of whom are living in developing countries. In less than 60 nations, according to a WIPO survey from 2006, copyright rules contain limitations and exclusions clauses that accommodate the needs of people who are blind or visually impaired, such as large print, Braille, or digital audio versions

¹⁵ International bureau of WIPO, 'International Protection of Copyright and Related Rights' (World Intellectual Property Organisation) <https://www.wipo.int/export/sites/www/copyright/en/activities/pdf/international_protection.pdf> accessed 20 April 2021

¹⁶ Ibid.

¹⁷ Treaty that was adopted on 27th June, 2013 during a diplomatic meeting that was convened by the Kingdom of Morocco and facilitated by WIPO.

¹⁸ 'India Is First to Ratify “Marrakesh Treaty” Easing Access to Books for Persons Who Are Visually Impaired' (World Intellectual Property Organisation, 30 June, 2014) <https://www.wipo.int/pressroom/en/articles/2014/article_0008.html> accessed 20 April 2021

¹⁹ 'Blindness and vision impairment ' (World Health Organisation, 26 February 2021) <<https://www.who.int/en/news-room/fact-sheets/detail/blindness-and-visual-impairment>> accessed 20 April 2021



of copyrighted literature.²⁰ The Marrakesh treaty was subject to the requirement that 20 ratifications or accession notifications be submitted to WIPO before it takes effect. On June 24, 2014, India was the first to accomplish so.²¹ Less than 10% of the approximately one million books published worldwide each year, according to the World Blind Union, are made accessible in ways that are usable by people who are blind or visually impaired.²² According to data available on WIPO, 79 Contracting Parties (105 countries) around the globe had ratified or acceded by 25 January 2021, to the Marrakesh treaty.²³ International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 15 provides that everyone has the right to be protected of moral and other interests as an outcome of any scientific, literary or artistic production of which person is the author. The Convention on the Rights of Persons with Disabilities²⁴ in Article 30(3) provides that laws safeguarding intellectual property don't establish obstacles for the individual with disabilities to have access to cultural materials. The Treaty of Marrakesh was eventually signed as a result of this balance strived to achieve between the two international instruments. The CRPD Committee repeatedly urged nation states to comply with the treaty's provisions.

United States

The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty are the two 1996 treaties that addressed copyright issues with contemporary mechanisms. The former listed many electronic works as being eligible for copyright protection and forbade obtaining beyond the technological safeguards put in place to protect electronic works. The latter attempted to uniformly standardize copyright provisions for performance works across member states. The nature of copyright in relation to contemporary information systems, such as the Internet, was addressed in the 1998 legislation known as the Digital Millennium Copyright Act that implemented two WIPO treaties. It criminalizes construction and circulation of technology, devices, or services intended to circumvent measures that regulate access to copyrighted works. The growth of computer networks and user-generated digital content has provided a forum where anybody can easily produce copyrightable material and alter other people's copyrighted

²⁰ Edward harris, 'Marrakesh Treaty: Work Still to be Done for Ratification, Implementation' (WIPO Media Center) <https://www.wipo.int/pressroom/en/stories/marrakesh_treaty_work_to_do.html> accessed 18 April 2021

²¹ Ibid.

²² Ibid.

²³ World intellectual property organisation, 'Contracting Parties Marrakesh VIP Treaty' (*Administered Treaties*) <https://wipolex.wipo.int/en/treaties/ShowResults?start_year=ANY&end_year=ANY&search_what=C&code=ALL&treaty_id=843> accessed 20 April 2021

²⁴ International human rights convention of the United Nations enacted with intend to protect the rights and dignity of persons with disabilities



content. The Act has helped online service providers escape responsibility; this capability puts a pressure on their ability to control digital rights. Though there exist stringent provisions for ensuring copyright protection as fundamental, but rights are balanced in the statutes by giving due consideration to disability exception. For the exclusive use of eligible persons (the term "eligible person" is now used to describe learners who qualify for accessible formats), institutions and organisations recognised as authorised entities may create and provide accessible formats (now, "accessible format" replaced "specialised format").²⁵

The Librarian of Congress announced on October 28, 2012, that literary works supplied electronically are among the works exempt from the prohibition against the circumvention of technical fortification procedures. This prevents read-aloud capabilities from being used and interferes with screen readers and other assistive devices for people who are blind or have reading impairments.²⁶ The U.S. Copyright Act, Section 121 known as the Chafee Amendment, announced recently in February 12, 2021 brought new changes. The reason enumerated for the changes includes revising the terminology to “blind and print-disabled” persons rather than ‘blind and other physically handicapped’ persons. Also, amend the description of services to include internet-enabled/electronic services etc and removing the condition for a medical expert certification for people with reading disabilities.²⁷ National Library Service for the Blind and Physically Handicapped (NLS)²⁸ conducts a program relies on Section 121 in providing access to disabled users, similarly the HathiTrust Digital Library²⁹. The United States signed the Marrakesh VIP Treaty on October 2, 2013 and has ratified it on February 8, 2019.

India

The author of a copyrighted work is guaranteed exclusive freedom of use, reproduction, and so on. However, there are a few exceptions under which a copyrighted work may be used, copied, or replicated without the permission of the copyright owner. There have been several steps taken for disable people

²⁵ Aem center, 'The Chafee Amendment' <<https://aem.cast.org/acquire/chafee-amendment>> accessed 18 April 2021

²⁶ Federal Register / Vol. 77, No. 208 / Friday, October 26, 2012 / Rules and Regulations

²⁷ Library of congress, 'A Rule by the Library of Congress on 02/12/2021' (Loans of Library Materials for Blind and Other Print-Disabled Persons, 21st February) <<https://www.federalregister.gov/documents/2021/02/12/2021-02837/loans-of-library-materials-for-blind-and-other-print-disabled-persons>> accessed 18 April 2021

²⁸ The National Library Service (NLS) was founded by Congress in 1931 to oversee the “free national library programme of reading materials for print-disabled individuals.”

²⁹ It is a large-scale collaborative collection of digital material from research archives, including content digitised by Google Books and the Internet Archive digitization projects, as well as content digitised locally by libraries.



prior to legislative actions, first was the establishment of India's DAISY Forum in 2007. The group of non-profit agencies from India called DAISY Forum of India (DFI) collaborate to produce books and reading materials in accessible formats for those who are unable to read standard print. A coalition of institutions including the Centre for Internet and Society³⁰, Inclusive Planet, the media, and scholars delivered a comprehensive study to the Indian government. It highlights best practises and outcomes of copyright exceptions for people with print disabilities. After witnessing the Marrakesh VIP Treaty at international domain, there was a significant transformation of copyright laws and principles in India. India strengthening the ethos it carries became the first country to ratify the Marrakesh Treaty. The aim was to make it easier for those who are blind, visually impaired, or otherwise print challenged to access published works.³¹ The Act of 1957 was insufficient to protect interests of nearly about 47 million print disabled people in India. After the 2012 amendment, for the first time the needs and aspirations of print disabled people were catered for.³² Prior to this amendment, any translation of written works into Braille, audiobooks, or other formats required permission from the creator, and any conversion done without permission was considered a copyright infringement. For print disabled people, the Indian Copyright Act is welcoming and accepting. It provides better access to artistic content and the ability to translate copyrightable work into any open accessible medium, without the need to buy a licence, by any organisation or themselves. The only condition laid down is that the work must not be exploited for commercial gains.³³ The Indian Copyright Act's Section 52(1) (zb) addresses copyright exceptions and permits private individuals, educational institutions, and non-profit organisations to reuse all types of copyright-protected content in usable formats for the assistance and welfare of people with disabilities. However, the individual or group that offers these accessible forms must make sure that they are separate from conventional commercial channels.³⁴ In comparison to United states the concern of disabled have

³⁰ The Centre for Internet and Society is a non-profit advocacy organisation dedicated to topics such as freedom of speech, anonymity, equality for people with disabilities, information sharing, and intellectual property rights.

³¹ 'India Is First to Ratify "Marrakesh Treaty" Easing Access to Books for Persons Who Are Visually Impaired' (*World Intellectual Property Organisation*, 30 June, 2014) <https://www.wipo.int/pressroom/en/articles/2014/article_0008.html> accessed 20 April 2021

³² Ibid.

³³ Indian copyright Act 1957, Sec. 31C

³⁴ Selvam and selvam, 'Disability Exceptions in Copyright' (7th March) <<https://selvams.com/blog/disability-exceptions-copyright/#:~:text=Visually%20impaired%20and%20otherwise%20print%20disabled%20persons%20now%20have%20a,is%20not%20already%20commercially%20available.>> accessed 18 April 2021



latter arrival, the copyright regime in United States though did not ratify till 2019 the treaty but through Chafee Amendment tried to give some blanket protection.

Conclusion

There is a requirement for more contracting parties to ratify the Marrakesh VIP Treaty formulating novel codes of best practice and guidelines. They are significant for fostering digital compilations of works that are accessible to print disabled persons worldwide. The idea of inclusion will be reality when work will be available in varied formats, showcased in the paramount way for scholastic and research use without inculcating the feeling of disabled within anyone. It is vital in digitalised world for nation states to realise that for public good wherever means exists to extend help through technology, liberal provisions promoting interest of differently abled persons should be a priority. Copyright is more of individualistic right but is also largely concerned with public good, a balance must always be the point a nation state should aspire to achieve. Copyright societies in India, United States or for that matter any other country must work to encourage policy making and cooperation from content creators for a favourable copyright law regime in their nations concerning disable people. Also, a thought must be given to Digital Rights Management system which effectively override the disability exceptions as it typically does not differentiate between copying for legitimate purposes (under the disability exceptions – making accessible copy) and illegitimate purposes (to make the work accessible online by eliminating the technical limitations). World intellectual property organisation cannot be ignored, it has key role at international forum to persuade for ratifying the provisions and open new horizons for differently abled in the areas of education, media, scientific research, culture, communication etc. along with boosting cross border exchange. Fruitful implementation of Marrakesh VIP Treaty will facilitate easier and more fluid circulation of works through organisations that assist the persons who are blind, visually challenged, and print disabled. It would harmonise restrictions and exceptions so that these organisations can work across boundaries.