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"Copyright laws: Digital World and Human Rights"

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Certificate

This is to certify that Megha Hurkat, student from Gujarat National Law University, Gandhinagar, has successfully completed and submitted her report, **Copyright laws: Digital world and Human rights**. This has been submitted in fulfilment of her internship at the Centre for Intellectual Property Research and Advocacy (CIPRA) during the month of 1st December to 31th December 2020.

Bangalore, 21st January 2021

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DECLARATION

Certified that this research work is my original work and I have not borrowed any material from other's work nor have I presented this partly or fully to any other institution/college/university.

I have completed with all the formalities prescribed in this regard

Date: 21st January 2021

Signature

Place: Bangalore, (Virtually) **NAME: Megha Hurkat**

COPYRIGHT LAWS: DIGITAL WORLD AND HUMAN RIGHTS

I. INTRODUCTION

In this technological world, intellectual property strengthens nearly every part of human life. In our everyday lives, we come into touch with IP-protected goods. Intellectual property rights honor innovators with their ideas. eg. from a nicer glass of mojito to a more energy-friendly fridge, from a designed piece of fabric to a more efficient vehicle. It impacts the environment in a number of ways. We're still looking for fresh, creative, quality and effective goods. In order to protect the original works of the authorship or the innovator, IP rights are issued, which are primarily of three types: 1) Trademark 2) Patent 3) Copyright. We'll discuss in detail about copyright.

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings[1]. It is granted for 60 years and owner gets lifetime ownership of the copyright. Laws were codified under the Copyright Act, 1957.

II. TREATIES AND CONVENTIONS RELATED TO COPYRIGHT[2]

i. Berne Convention for the Protection of Literary and Artistic Works

ii. Free Trade Agreement – The FTAs contain chapters on intellectual property rights, which include substantive copyright law and enforcement obligations.

iii. Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, Geneva, 1971.

iv. Convention Relating to the Distribution of Program - Carrying Signals Transmitted by Satellite, Brussels, 1974.

v. Universal Copyright Convention at Geneva, 1952 which was revised at Paris in 1971.

vi. WIPO Performances and Phonograms Treaty, Geneva, 1996.

vii. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the WTO agreements.

III. COPYRIGHT AND DIGITAL WORLD

The capacity of people to exchange thoughts, knowledge, phrases, truths and lies over vast distances in virtually no time has profoundly terrified the strong and encouraged the blessed a

[1] https://www.wipo.int/
[2] https://www.copyright.gov

network link. The synergistic relationship between digitization and networking has torn down some of the essential differences that have existed in much of the twentieth century.

The boundaries between the three processes have also collapsed in the digital moment. The distinct processes are: i) access to work, ii) utilizing a work and iii) copying a piece of work. In the modern world, you cannot get access to a news article without having a couple copies of this.[3] Let us understand this with an example –

If I can get to share a novel with a friend or colleague, I'm just going to give her the hardcopy of the novel. I don't need to make any separate copy of it. But I want do it in the online realm. When I click on a z-library that includes almost all books, the code in the random access memory of my computer machine is a duplicate. The source code for the hypertext markup language is a clone. This is *access to work.*

Now If I want a friend or a colleague to read the novel as well, I'm going to have to make another copy attached to the e-mail. The e-mail could be saved as a copy on my friend's computer. And so my friend will make a copy on her hard drive anytime she gets an e-mail, and make some in RAM and on the computer when reading it. This is *using a work.*

Copyright was intended to control copying only. It was not intended to control one's freedom to read or post. But no matter how the boundaries between access, use and copying have collapsed, copyright policy makers have met with what seems to be a tough choice. For even less than $5,000 in 2000, a juvenile was able to record, produce, publish, advertise and sell loads of new tracks. This is *copying a work.* Ease of delivery and the low entry hurdles have produced a cacophony of white noise in the digital world. Creativity has been materialized, so it's far harder to gain a consumer or a market.

Differences between the various forms of "intellectual property" have weakened, if not collapsed. They definitely collapsed in the public imagination and created a great deal of uncertainty. In fact, the distinctions have also dissolved. Software program, for example, was the target of copyright protection until the late 1980s. As the market has evolved, there is also a stake in its legal security. Currently its Software can include legal rights arising from copyright, patents, trademarks, trade secrets and contract law. So, while the term "intellectual property" was simply a metaphor and a scholarly convention in the 1960s, by 2000 it was a fact.[4] Not going into too deep about IPR, focus will be mainly on copyright laws.

IV. THE LICENSE OF COPYLEFT

In 1990s, Stallman came up with an ingenious license of *Copyleft*. Copyleft licenses specify that anybody who copies or edits Open Software promises to make all modifications and updates freely accessible. These modifications are maintained by the Copyleft license. Hence

[3] Paul Goldstein, Copyright's Highway: The Law and Lore of Copyright from Gutenberg to the Celestial Jukebox (New York: Hill & Wang, 1994), p. 197.

[4] For a brief account of the controversies over software patents, which became available only in the late 1980s, see James Boyle, Shamans, Software, and Spleens: Law and the Construction of the Information Society (Cambridge: Harvard University Press, 1996), pp. 132-34. Also see Andrew Chin, "Computational Complexity and the Scope of Software Patents," Jurimetrics (Fall 1998): 17-27. Among the best work on software patents and the idea of a sui generis area of "intellectual property" for software is Pamela Samuelson et al., "A Manifesto concerning the Legal Protection of Computer Programs," Columbia Law Review 94 (1994).

the license is perpetuated by itself. It extends the idea of transparency and sharing everywhere someone wishes to do so. This prohibits any organization from wanting to distribute commercial copies of free software. Copyleft's influence and prominence have allowed many people to question the basis on which copyright lies and to wonder if its power has really served to obstruct innovation. By the year 2000, the ideas underlying Free Software and Copyleft stayed as infringed views, even as the software they influenced and allowed had found its way into the world of the computing industry.[5] This gave rise to idea-expression dichotomy since people started making slight changes in the original work or program.

V. IDEA-EXPRESSION DICHOTOMY

Although recent global efforts to protect data through *sui generis* intellectual property rights are challenging the cornerstone of the idea-expression dichotomy, tensions have generated more recycling bins than garbage cans. In reality, our digital screens have served to restore and perpetuate dichotomy—at least in the world of software design. In cases where copyright protection is opposed to the public need for information, a satisfactory solution will most frequently be extracted from the concept of dichotomy (freely available) vs. speech (makes a valuable contribution only with the consent of the copyright owner)[6]. Thus, the public interest could never allow such a fascinating video to be transmitted without the permission of the creator.[7]

i. Pac-man Game

The resurgence of the idea-expression dichotomy started with the remarkable popularity of Pac-man, a video game by Midway Production Corporation in the United States. The game became extremely popular and dominated in the early 1980s.The professional players controlled the computers to such an extent that Midway, wishing for more cents, quickly had to roll out other variants of the game with varying trends for progress. Just after the approved Atari version of it reached store shelves, other American company, Philips Consumer Electronics Corp., launched a similar game called *K. C. Munchkin* for the long-forgotten Magnavox Home Entertainment Center game console.

The Philips edition contained a maze having slight esthetic variations between K. C. Munchkin and Pac-man. The Court of First Instance held that the basic principle of a "maze-chase" game could not be covered under copyright protection. In evaluating suit for an injunction, the Seventh Circuit Court of Appeals also held that Atari did not cover general features such as mazes, dots and score systems. The court then decided that any average observer can see K. C. Munchkin was really close to Pac-man. It then issued a preliminary injunction against K. C. Munchkin.

[5] Stallman, "What Is Copyleft," at www.gnu.org/copyleft/copyleft.html.

[6] See for all the case of Escadrille Normandie-Niemen, Trib. gr. inst. Seine, 9 January 1962, Roger Sauvage v. Sté Alkam, Sté Cinedis, Sté Franco-London Film, RIDA 35 (April 1962) 135.

[7] For a strange decision to the contrary (the public interest to know about the disastrous consequences of taking drugs during a rave party outweighs any consideration relating to copyright, at least in hearing a preliminary injunctive relief), see Beggais Banquet Records Ltd v. Carlton Television Ltd and Another, [1993] EMLR 349, at 372.

ii. Franklin Computer Program

The Apple II had a distinct lead over early personal computer operating systems. It's been cool, agile, useful, and enjoyable. Franklin Computing Corporation had the idea of offering a cheaper version of Apple II.

The Franklin Ace 100 was an Apple II, and it had a related operating system. Unfortunately for Franklin, the scheme was so close that the code contained a few hints as to its roots. Evidently, the Franklin developers have gone farther than the reverse engineering of the Apple operating system. Significant parts of it had been reproduced.[8] Apple lost this round of its patent action against Franklin. The court declined to issue an injunction, but the appeal court overturned the ruling of the court in August 1983, issuing an injunction to Apple. There comes the need for compulsory licensing. However, there are some challenges regarding this.

VI. CHALLENGES IN DIGITAL WORLD

Imposing a compulsory license enforced by the government can be expensive for society.

a) First, a compulsory license is a major derogation from the law of exclusive rights.
b) Second, compulsory licensing can create major distortions in the economy, as it helps to regulate costs, both directly through the processes for determining royalty rates and indirectly through supply control.
c) Third, after a compulsory license has been established, a system of trust interests is developed around it, making it incredibly difficult to remove long though the requirements justifying its implementation have ceased to exist.

i) *Early Challenges*

a) Maintaining the basis for exclusive rights

The international conclusion was that the current system is largely sufficient to handle emerging developments and requires limited changes instead of just significant revisions. This is expressed in the modest, but significant, framework of the WIPO Copyright Treaty (WCT) established shortly after the advent of digital media. The WCT allows Member States to accept such exclusive rights built for operations that take place over emerging modern media networks such as the Internet. It includes, among other items that writers enjoy the freedom to connect to the public, including the right to make their works available, such as the availability of downloads from the website. Although many of the current copyright laws allow for such a right by more conventional copying or performance rights, WCT has made it quite clear that such a right, in which ever form, must be given to authors.

b) Technological Adjuncts to Copyright Protection

Although the current system of exclusive rights remains largely unchanged, it does include clauses, comparatively new to international copyright negotiations, on technical adjuncts to

[8] Lawrence D. Graham, Legal Battles That Shaped the Computer Industry (Westport, Conn.: Quorum Books, 1999), p.81.

copyright protection. These annexes are meant to further the advancement of digital networks by ensuring that copyright can be easily applied and licensed digitally. Owners cannot depend on technological interventions alone to secure their jobs, for any technical device can be overcome by someone who is willing to get access to work. In other words, although the framework of current property rights remains to be sufficient, the meaningful exercise of such rights in the light of modern applications, such as those on the Internet, involves the addition of legal regulations banning the compromising of their technologies.

ii) *Future Challenges*

c) Determining the Proper Scope of Secondary Liability in the Digital Age

Another fascinating feature of the exponential development of emerging innovation over the past 10 years is the intimate essence of the latest technology. A single person, with relatively little expenditure, can now copy and upload hundreds of copies of works on the Internet; in particular works that can be conveniently digitized, such as music or motion pictures or images. The knowledge that many people's actions will contribute to huge, large-scale action, the violation poses serious concerns about compliance. It is very difficult for copyright owners to recognize, track, and bring legal proceedings against a huge number of people who may be violating their work. Even though the owners might take such action, it is impossible that they will be able to pay for the harm their actions are causing.

Generally, the possibility of secondary responsibility for copyright infringement was a significant deterrent that prevented companies from using patented works as a "drawing" for consumers without authorization. However, this possibility of responsibility had to be balanced. Reportedly, in the case of Grokster[9], the U.S. Court of Appeals. Congress in 2004 tried to resolve the issue legislatively in the case of the new obligation for corporations that benefit from causing others to infringe copyright. Involved sides have not been able to find an understanding and the policy negotiations in Congress have stalled. However, soon after, the Supreme Court refused to reconsider the findings of the Ninth Circuit of the MGM case.

As a foreign matter, there seems to be little continuity between national laws as regards secondary liability, whether it is the duty of a business that uses peer-to-peer technologies to facilitate infringement. This could be an area that requires an international review, standards for such responsibility, particularly considering the multinational existence of the Internet, where a business may set an infringement-facilitating activity that services consumers from one nation around the globe. Establishing successful protection of copyright in the modern age may require certain international standards.

d) Reducing Inefficiencies for Subsequent User

Collective job licensing can support such an author by delivering productive work mechanisms that encourage her to gain permission to use works. Even then, there may be any or even more works for which the artist cannot find the owner or the controlling collaborative

[9] MGM Studios, Inc. v. Grokster Ltd., 545 U.S. 913 (2005).

entity and it cannot address the issue as to whether copyright law allows or forbids the use of those works.

If it is possible that the copyright holder of such a work no longer cares about its future use, so that use should not be prohibited solely due to various confusion about the nature of the work. The outcome would reduce the public has access to a modern and effective use of the work, which is essentially the objective of any successful copyright scheme. These challenges needs the protection of human rights and legislation is still not very clear about interlinking the human rights and copyright protection.

VII. INTRODUCTION OF HUMAN RIGHTS

Two legal bodies, human rights and copyright, once unknown, have been seeking for many decades to harmonize. The two stadiums have been virtually separated from each other for ages. In recent years, however, international standard setting has begun to chart the formerly unknown relations between intellectual property law, on the one hand, and human rights law, on the other. Copyright is commonly regarded not only as a way to promote new works to be produced but also as a means of distribution while protecting their reputation.

While the copyright statute is on the opposite of freedom of speech, as we look back on history, it appears that original statues of copyright have been implemented to guarantee the freedom of expression of the author to circumvent regulation over the stationer in England is best secured. In Harper and Row v. Nation Enterprises[10] in 1985, the US Supreme Court reported that the Framers were supposed to be the engine of free speech for their patent itself. Copyright offers the economic opportunity to produce and disseminate ideas by securing a marketable right to use one's speech.

VIII. INTERNATIONAL LEGAL FRAMEWORK

i) Universal Declaration of Human Rights - UDHR

Global copyright rules differ widely from State to State in terms of freedom of speech or expression and education. Harmonizing national law was neither practicable nor realistic to address this issue of a complex nature of national law. Some of the provisions have also been integrated into International Treaties with a focus on fundamental human rights and freedoms, where express reference is made to the rights of the person.

Article 27 of the United Nations Declaration on Human Rights reads:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

[10] Harper and Row v. Nation Enterprises 471 U.S. 539 (1985).

The paradoxical juxtaposition of the collective right under Article 27 UDHR access and privilege to science and literary advances and the security of the creative output of which the author is the author. Accordingly, both private and public interest was taken into account in Article 27. The apparent dispute between the rights of the author and the right to education is defined in Article 27. Article 27 (1), the ability to engage openly in cultural life is taken into consideration. Communities as well as people apply culture and privilege of access to art and science. However, the right to join in worldwide or generally in the domestic community does not apply to the community.

This dichotomy in Article 27 makes civil rights for everyone difficult by 'creators' human rights' as 'moral and material interests.' Article 27(2) contains the characteristics of freedom of property as a statement of the writers' morals and material interests as civil rights. It prohibits states to hinder the exercising of these privileges by persons. Article 27(2) is a more controversial wording, since there was no criticism of the incorporation in Article 27(1) of freedom to experience arts and technological advances, but there was even more debate about the introduction in Article 27(2) of moral and material interests. The French delegation stressed the unique existence of moral freedom more profoundly when they proclaimed that artists had a right to work, in addition to material or economic rights, which did not cease to exist even though the work entered the sphere of the public. The state of human rights is provided for in Article 27(2) of the UDHR. On 29 April 1959, in his opposition to an unauthorized inclusion of sound track to one of its motions, the Paris court of appeal awarded Charlie Chaplin, a British national, French right to his moral rights, relying on the terms of Article 27(2).[11]

ii) International Covenant on Economic, Social and Cultural Rights - ICESCR

Article 15 of the ICESCR reflects the soul and language of Article 27 of the UDHR. It also talks about everyone's right:

(1) To take part in culture;

(2) To enjoy the benefit of scientific progress and its applications; and

(3) To the benefits from protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is an author.

There was a great deal of controversy in the drafting of Article 15 on the incorporation of intellectual property provisions.[12] There was a dispute between the members about whether the bill should be in the form of a covenant or a declaration.[13] The smaller United Nations Member States hoped for a covenant that would link together large and small states in about

[11] Société Roy Export Company Establishment et Charlie Chaplin v. Société Les Films Roger Richebé, 28 R.I.D.A. 133 (1960).

[12] Helfer and Austin 2011.

[13] Yu 2006–2007; Johannes Morsink stated: Most of the delegations felt that the phrase international bill of rights meant no less than a covenant, while the two superpowers, the U.S. (most of the time and the USSR (all the time), insisted that all the Council had meant was for them to draw up a declaration or manifesto of principles without any machinery of implementation attached to it.

the same way.[14] As Article 15 of the ICESCR follows in the footsteps of Article 27, a few delegates seemed unable to repeat what is already in place in Article 27 of the UDHR.[15] The right to engage in cultural life and to reap the rewards of scientific advancement has not been problematic during the drafting meetings. However, there was no dispute on the inclusion of the right to profit from cultural and science advances. The clauses relating to these two privileges were enacted by 15 to 0 votes, with three abstentions.

When the draft treaty was sent to the Twelfth Session in the autumn of 1957, the Third General Assembly Committee of the Commission on Human Rights did not include Article 15(1) (c) on the protection of the religious and material values of writers and makers. With regard to Article 15(1) (a) and Article 15(1) (a) (b),[16] there was strong cooperation from both delegations, but there was no mention of the interests of the founder. With respect to the discussion on the right to protect the rights of the maker, this time the request to include this right in the agreement came from Costa Rica and Uruguay, not from the French delegation.

Few delegations, who were originally opposed to the notion of intellectual property the defense of right changed their minds at the time of the Third Committee of the General Assembly conference.[17]

IX. FREEDOM TO CREATE WITH RESPECT TO LEGISLATIONS

Freedom of creation is a precondition for the unrestricted exercise of freedom of expression and of opinion. They stand respectively in the same manner as, mutatis mutandis, the old common law of copyright and copyright of written materials. With the same time, a broad definition of freedom of expression includes freedom of development, as a comprehensive understanding of copyright concerns not only published works, but also unpublished ones. Freedom of creation is not freedom of opinion; while a creation can express an opinion, the concept alone does not validate freedom of creation. For instance, an Asian photographer recently arranged a photo exhibition in Neuchâtel, Switzerland, showing numerous bridges and other sites where suicide could be quick. The message should have been obvious. The right to create, however, is not to be fully integrated to freedom of expression or freedom of opinion. No one is going to object to photographers visiting different places and taking photos. Thus, the right to create is acknowledged even though, according to predominant ethics, any further measures might well be restricted.

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[14] *Ibid.*

[15] *Id*. Danish delegate Max Sorensen expressed, It would clearly be undesirable merely to transpose the relevant sections from the Universal Declaration to the draft Covenant, for to do so would weaken the authority of the former, and lead to unwarranted conclusions about the significance of those of its provisions which were not reiterated in the latter. Also, Eleanor Roosevelt, the US delegate while highlighting the fundamental difference between two documents stated, The [Declaration] consisted of a statement of standard which countries were asked to achieve…. But…a covenant was a very different kind of document, since it must be capable of legal enforcement. The task of drafting such an instrument was wholly unlike that of setting out hopes and aspirations relating to the rights and freedoms of people.

[16] Maria Green, International Anti-Poverty Law Centre., "Drafting History of the Article 15(1)(c) of the International Covenant," para 34, U.N. Doc. E/C.12/2000/15 (Oct. 9, 2000). As Green noted,

[17] *Ibid.*

The protection of copyright may be contrary to the freedom to produce or create any time a designer feels like borrowing. Copyright law forbids forgery as copying, however private use can legitimize copying. It would appear completely unthinkable to a designer that collage can stop using quotations from copyrighted works. It is disconcerting for multimedia creators to apply for authorization from any and every copyright holder. In the case of contemporary artists, they often talk of being stifled by copyright law, which favors the consolidation of rights in the hands of a few rights holders. It seems odd to a writer that the plot of another author cannot be passed to other occasions and other locations, under other titles, without breaching the copyright of the first author.[18] The common ground in these concerns is that piracy interferes with copyright law. A further creation in the few cases where the need for copying has been recognized, copyright law and court rulings allow for exceptions, such as parody and extracts. As the main point of most judicial decisions aimed at prohibiting piracy, it was an unusual phenomenon that a court had to analyze forgery by partial replication of pre-existing work in a new work.[19]

At moment, there is no reason to go beyond the explicitly delineated exceptions to copyright as enshrined in copyright law. Freedom to create, however, can conflict with copyright at the level of fundamental rights rather than mere legal provisions. However, there is need to create some balance between freedom to copy and copyright laws. One option can be *the proportionality test* in this. The proportion can generally be between the part which is borrowed and which is new. The work which has more utility may be then substituted to the original work.

Another option can be *fair use doctrine* which may be helpful for courts with the rule that *"de minimis non curat praetor"* as mentioned in WIPO. It can be used as an escape between the conflict between freedom of education or information and protection of Copyright. Fair use may be an escape out of the conflict between freedom of education, freedom of information and protection of intellectual property however it is too general concept to give an answer keeping freedom to create at stake.

X. AN OVERVIEW ON GENERAL COMMENT No. 17

The uncertainty in the language of Article 15 on the grounds of conflicting interests among the writers and human rights, there was a demand for clarification on the terms of the deal. The General Comments shall include a general interpretation of any given article. General Statement No. 17 is a lengthy and well-formulated text of 57 pages, composed of 6 sections.

The General Statement clarifies that the 'moral and material interests' of writers alluded to in Article 15(1) (c) do not comply with intellectual property rights under domestic or international law. The General Comment, even illustrates the distinction between human rights and intellectual property rights. It specifies that human rights are innate in human beings when individuals reach the world with those rights, but intellectual property rights are

[18] Régine Deforges et Editions Ramsay v. Trust Company Bank et consorts Mitchell, Court of Appeal Paris, 21 November 1990, RIDA 147 (January 1991) 319.
[19] Campbell v. Acuff-Rose Music, Inc., 114 S.Ct. 1164 (1994).

rewards granted by States to the producer of invention and States to protect the dignity of scientific, literary and artistic productions for the good of society as a whole. Intellectual property rights have temporary limits since they are secured only for a finite amount of time, at the close of which they join the public domain, while human rights, on the other side, are "the timeless expressions of the human person's fundamental rights." The General Comment maintains that Article 15(1) (c) "safeguards the personal link between authors and their creation." Article 15(1) (c) however does not extends to legal entities such as Corporations or any other business associations.

The field in which the protection of intellectual property rights and human rights converges is the protection of writers' moral rights. The dispute between Article 15(1) (b) i.e. the right to benefit from technological advancement and its implementations and Article 15(1) (c) i.e. the right to benefit from the protection of the moral and material interests arising from any scientific, literary or artistic development of which it is the writer needs a more rational approach. Copyright works as a natural restriction of freedom of expression. Focus on the moral and material interest as human rights will overpower and dominate over basic human rights such as freedom of expression.[20]

XI. THE DOCUMENTATION CONFLICT

Internal conflicts occur where various clauses of some agreement are in dispute with each other. In specific, Articles 26 and 27 of the UDHR provide a space for disagreement as between the right to compulsory and open education and the moral and material interests of the publishers. Sections 13 and 14 of the ICESCR are contradictory to Articles 15(1) (c). Articles 13 and 14 affirm the right of free primary education. The two clauses both seek to make secondary education open to everyone. Whereas Article 15(1) (c) discusses questions regarding the security of moral and material interests arising from a secure intimate partnership between the author and the creator.

Article 9 lays out the minimum standards to be followed by the Member States in the TRIPs.[21]

In order to safeguard the copyright of owners, Article 7 lays out the goals of the TRIPs Arrangement. Human rights and intellectual property issues have already been noted by the UN Committee on Human Rights. Article 9 of the TRIPs specifies that the Member States shall have no privileges or rights whatsoever. Obligations with regard to the privileges are conferred by Article 6bis of the Berne Convention. As a result, both paternity and dignity protection, which are the author's exclusive rights, have not been maintained in Journeys.

[20] Copyright Law in the Digital World Challenges and Opportunities by Manoj Kumar Sinha, Vandana Mahalwar (eds.) (z-lib.org)

[21] Article 9 of the trips says: Relation to the Berne Convention

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

It would be fair to state that, by removing moral rights embedded in natural law, the TRIPs Arrangement has weakened the balance between the economic and moral interests of copyright.

XII. APPROACHES TO BALANCE THE CONFLICTING IDEAS

It is important to preserve the author's private interests in order to promote the imagination for which a number of monopoly rights are bestowed on the author in order to make use of the work; on the other hand, it is appropriate for society to make use of the copyrighted work for the general advancement of society. There is a huge difference between enjoying the advantages of such protection and possessing full and unlimited exclusive rights over intellectual property rights. The theory of proportionality requires that interference with a person's basic human rights does not go above what is appropriate to achieve a rational public policy. The different approaches include: (1) The Fair Remuneration Approach (2) The Core Minimum Approach (3) The Progressive Realization Approach.[22]

i) The Fair Renumeration Approach

Equal Remuneration Approach allows the public the right to take advantage of imaginative works through payment of fair fee to the writers. This strategy addresses competing interests by providing a compulsory license to those who need to have accessibility to it (not a free license) and a reasonable remuneration to the author (not an absolute control). Legislatures from various countries have followed this strategy. This approach has been aligned with the goals of the Berne Convention since Article 9.2 of Berne, with a great deal of consideration for the two competing desires, specifies that[23]

"It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."

It should be remembered that an equal remuneration strategy will be acceptable in different jurisdictions, the effect of such restrictions on copyright will be very different in both developed and emerging countries. A similar line of argument would be that if the remuneration were too high, this balancing act would be a mere deception, since it would hold the masses apart from their universal human rights.

ii) The Core Minimum Approach

The Core Minimum Approach points out the basic minimum standard of protection, that a State must provide in accordance with its human rights obligations. The General Comment No. 3 shows how various human rights are mutually interdependent. It is clear that the separation of rights must not be commensurate with their priority, but each right must be seen to the degree that it satisfies the basic needs of any person in society. It is crucial how this

[22] VANDANA MAHALWAR, COPYRIGHT AND HUMAN RIGHTS: THE QUEST FOR A FAIR BALANCE 168-170.
[23] Berne Convention, Article 11bis, 13.

strategy is helpful to the needs of designers and writers. And where the state lacks money to realize other human rights, it provides writers with the least required degree of protection.

iii) The Progressive Realization Approach

This approach provides that intellectual property rights must not only encourage, but also facilitate, access to the rewards of innovation. This approach is widely used to improve the protection of human rights. It provides that the enforcement of human rights by States is a constant process, not just an immediate accomplishment.

XIII. CONCLUSION

It is clear from the above review that the copyright legislation is still in effect. Constructed to face a range of emerging problems raised by modern technology, it still needs to introduce new provisions in line with its own historical experience, as there are so many problems left unaddressed. As new technologies have introduced convergence between the technology, telecommunications and copyright sectors, this convergence will develop more and greater in the times to come, a day will come when there will also be a need for convergence in the laws governing the distribution of all content and services in all these fields to ensure that copyright enforcement functions ad-hoc.

Copyright exists with an implicit dichotomy between collective values, i.e. the right to education, freedom of expression on the one hand, and private interests, i.e. the sole commercial interests of reproduction rights, on the other. It may not be reasonable to extend the protection of intellectual property at the detriment of human rights, nor would it be fair to recognize human rights by limiting intellectual property rights. Although maintaining the moral and material rights of publishers, nations should balance and balance competing interests in a proportionate and reasonable manner.

The goal of a harmonious settlement is to better balance the differences between copyright and derogations. Another challenge that arises is that the international human rights system lacks coherence and is not centralized, which limits the likelihood of such international laws being integrated into national legislation. Harmonious solutions are needed to fill the human rights-copyright interface with coherent, reliable and equitable legal standards that promote both individual rights and social protection.