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ИСТОРИЧЕСКАЯ ЭВОЛЮЦИЯ ПРАВОВЫХ УСЛОВИЙ ОБЕСПЕЧЕНИЯ АВТОРСКОГО ПРАВА В ХОДЕ ПРОЦЕССА ЦИВИЛИЗАЦИИ

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HISTORICAL EVOLVING OF LEGAL JUNCTURES IN COPYRIGHT THAT SHAPED UP THE CIVILIZATION PROCESS

Развитие изобретательности — сущность человеческой цивилизации. Даже в современных обществах человечество до сих пор думает о том, как защитить изобретательство, чтобы способствовать цивилизационному процессу. Одним из таких механизмов защиты является авторское право. Этот концепт имеет долгую и сложную историю, он существовал в человеческой истории еще до того, как авторское право появилось в виде юридического концепта. Данная статья исследует назначение закона об авторском праве. Особое внимание будет уделено его развитию на разных этапах цивилизационного процесса. Понятие «копия» представляет отправную точку для защиты авторского права на протяжении всей его истории. Идентичное копирование появилось вместе с изобретением печатной машины, которое стало средством продвижения человеческой цивилизации. Авторское право изначально касалось предотвращения незаконного копирования печатного материала. В современную цифровую эпоху авторское право приобретает новую специфику.

The development of human ingenuity is the gist of human civilization. Even in contemporary societies, mankind still think of how to protect their ingenuity in order to iron out their civilization process. One of these mechanisms is and has been Copyright. There is a long and complex history for the concept of copyright. Even well before copyright emerged in the shape of a legal concept, it had been in existence in the human history. This article will examine the purpose of copyright law especially focusing its development in different stages in civilization process. Copyright was initially concerned about preventing possible unlawful copying of printed material which in fact started with the innovation of printing machine — the stepping stone in human civilization. In the modern digital era, this can be seen in different faces.

Ключевые слова: авторское право, печать, копия, цивилизационный процесс.

Keywords: copyright, printing, copy, civilization process.

Introduction

The civilization is a conflict-ridden term that has been used in several traditions in its history. As Oxford Dictionary explains civilization means *inter alia* the stage of human social development and organization which is considered most advanced or the stage of human social development and organization which is considered most advanced (Oxford Dictionaries: Online). This development comes through the human ingenuity which is the quality of being clever and inventive. Without a proper protection mechanism for the human ingenuity civilization would not be an existing component. Primarily, patent and copyright are and have been the top of the order of among other protection mechanisms which are used to protect human ideas. The ideas in human mind cannot be copied so long as they are not physically expressed, i.e. the mental steps in human brain cannot be copied unless they are physically expressed. The first physical expression of human ideas relating to art can be found from the cave art in all around the world. In this era, there has not been a mechanism to make an identical copy from these arts. The identical copying was started from the innovation of printing machine. Copyright was initially concerned about preventing possible unlawful copying of printed material.

One of the corner stones of human civilization process is invention of printing machine. This concept is still shaping up the civilization process. After the invention of printing, the concept of copyright law has been enforced as part of statutory law. In this juncture, the basic governing fact of this right was theft. Now copyright statute has deviated to prevent a variety of Copyright infringement incidents. This deviation has been accompanied by the acts considered to be regarded as infringement. Infringement can take place in various forms. i.e. copying, issuing copying to public, renting or lending a work to public, performing, showing or playing in public (s.16 (2), Copyright, Designs and Patents Act 1988 — here in after CDPA 1988).

As aforementioned, civilization means social development fine-tuned by human cultures. Culture is the way of life in a society. It comes with various performing arts. In modern world this variation is complex and broad. At the beginning of the copyright law, it was able to prevent only literary work being infringed, but now it concerns the performance of musical and dramatic, artistic works and many derived rights such as trade mark rights and some parts of intellectual property on Internet.

At the beginning, copyright was a licence granted to publishers who can exercise the Royal Prerogative. It is now a right given to authors or creators of work, such as books, films, computer programme which is the main tool of contemporary societies, to control copying or exploitation of such work. Copyright is a way gives property rights in relation to mental labour or intellectual creative labour (Deveci 2004: 1).

Historical evolving of copyright

Copyright, as this term suggests, is a right that speaks about properties. Before 1709 book copying, binding and selling was controlled and dominated by an association of stationers which was called Stationer's Company. This company had the power to seize the unlawful printing of books. In the late sixteenth century, the printers who have monopolization of skill and control of technology began to lose influence to copy-holding of book sellers (May, Sell 2006: 87). In 1558, a bill for the restraint of the press was introduced in the House of Lords that carried an impressive title, "... that no Man

shall print any book or ballad, unless he be authorized thereunto by the King's and Queen's Majesties Licence, under the Great Seal of England (Patterson 1968: 29–30). Though it was considered as licence, the Intellectual property which subsists of copyright is a natural inherent right (Bowker 1912: 32).

Although the ancient Roman law speaks about the deviation between the art and the artist, the Copyright Act 1709, commonly referred to as the 'Statute of Anne' is the first copyright act in the modern world. This Statute introduced two new concepts namely; the author becomes the owner of copyright and the principle of a fixed term of protection for published work. These two concepts are the basics of modern law of copyright. However, most scholars argue that the copyright did not take its modern meaning until the dawn of the mid-nineteenth century that was another corner stone of civilization.

Donaldson v Becket 1774 ((1976) 1ER 835) had the effect of destroying common law Copyright in unpublished works, but common law remained unchanged or unaffected until 1911 and could now only exist in statute. Before this *Case* the printers who had monopolise (Patterson 1968: 225–226) which enjoyed under the old system wanted to continue their perpetuity monopoly under the common law copyright. This made a contradiction with the Statute of Anne. The decision declared that there were no common law rights with this Statute. This emphasises the requirement of publication or recorded formation of a work for the purpose of copyright protection.

The Copyright Act 1911 attempted to unify and codify all the divergent branches of the existed Acts into one coherent system. With this objective, it also abolished the existing common law related to copyright in unpublished works (Bently, Sherman 2009: 33). This codification established a protection to a number of works which were not protectable through previous acts. For example, sound recordings and films. From the 1911 Act, literary, dramatic, musical and artistic works received a protective copyright term of 50 years from its making.

Internet is one of the civilization identities of contemporary societies. Copyright protects different faces of this modern tool. Digital databases are in recorded formation and published in the Internet. Web pages as well as web sites consider as a cable programme service (s. 7, CDA 1988) which comes under the global Telecommunications network within which it supplies a platform for the Internet (Bainbridge 1999: 230–231).

Berne Convention

At the international level, copyright laws were operated by two separate systems of international regulations. One was in Europe and the other was in America (Prime 1992: 290). In order to introduce some degree of uniformity to the international level of copyright law, a conference was called in 1885 which resulted in formation of the first international treaty on Copyright law — the Berne Convention in 1886 (Prime 1992: 289). It was a multinational agreement that enabled reciprocal Copyright protection to be secured in all member states so long as the author is connected with a member state or the work was first published in a member state.

In United Kingdom, the Copyright Act 1956 considered further amendments to the Berne Convention and the United Kingdom's accession to the Universal Copyright

Convention that administered by United Nations Educational, Scientific and Cultural Organization (UNESCO). Moreover, the scope of the new Act was wide enough for the first time to cover the new technological advancements such as films and broadcasts. More importantly, the Performing Right Tribunal (Macqueen, Peacock June-1995: 157–175), the predecessor of the current Copyright Tribunal (Prime 1992: 140–141) was also established by this Act.

The current UK copyright law, CDPA 1988 covers the area of patents and registered designs as well as the traditional view of Copyright. Further, the Act grants the creators of literary, dramatic, musical and artistic works the right to control the ways in which their material may be used. Broadcast and public performance, copying, adapting, is suing, renting and lending copies to the public have been covered by this Act.

After this law came into force, the creator also received the right to be identified as the author and to object to distortions or exploitation of his work. The duration of the right has been meaningfully enhanced by this Act. E.g. 70 years plus life of the author for literary, dramatic, musical and artistic works and films; and also 50 years for sound recordings and broadcasts. Further, the CDPA created a new automatic form of short-term protection for designs which is one of the main features of human ingenuity.

The performance of dramatic work was not classified as a restricted act until the Copyright Act 1933 (also known as the Bulmer Lyttons Act) was passed and provided an exclusive right of public performance for a period of 28 years, after which; there was a reversionary length of time granted to the author for the residue of his life. The Copyright Act 1842 also provided similar protection for the performance of musical works, and the period granted was extended to bring it into line with the protection offered to literary works. The range of works protected was greatly increased, however many different statutes were passed with no consideration to creating a unified system.

A Royal Commission was formed in 1875 to solve the problems of the disjointed laws. The commission report published in 1878 stated that the law is wholly destitute in any sort of arrangement, incomplete, often obscure, and intelligible even upon long study, many parts are so ill-expressed.

Copyright Act of 1911 abolished the common law Copyright which is the significant act of the said Act. Before this Act was passed; the land mark case, Donaldson v Beckett abolished the author's common-law copyright. This case effectively ended the debate that the perpetual common law copyright existed by ruling (Ganley 2004: 282). The protection could now only be conferred by statute. The duration of Copyright protection was also extended to the life of the author plus 50 years. Producers of sound recordings got an exclusive right to prevent others from reproducing their recordings or playing them in public (Section 19 (1)). Act stated that copyright arose in the act of creation, not the act of publishing and hence existed in both published and unpublished works.

Publication is one of the central concepts of expression of ideas that shape up the civilization process. Publication means the issuing copies to the public as well as making available to the public. This availability can be done by the way of conventional type or electronically. In contemporary societies, digital databases are in the electronic way of making availability to the public.

Another central feature of civilization process is giving validity to moral values. Copyright speaks about the economic and moral value of a creation. Moral rights were

first introduced into the Berne Convention in 1928. However, some thought, or at least acted as if, Commonwealth countries already adequately protected moral rights through the common law and hence need do nothing more to comply with Berne (Vaver 1999: 270). These types of further revisions strengthened the position of the author in member states of the convention.

In 1952 a new agreement, the Universal Copyright Convention (UCC) was formulated in Geneva under the auspices of UNESCO, with the purpose of providing mutual protection amongst the countries of the Berne Union and those of the Pan-American Union of which the United States is the principal. USA was one of the original signatories to the convention. There were no provisions in 1952 Convention for authors moral rights which was one of the major impediment to the United States signing up to the Berne Convention. The United States required all works to be registered.

Copyright was therefore vested, in order to accommodate this UCC.

The important difference between the UCC and the Berne Convention concerns works that have fallen into the public domain because the Copyright has expired. Under the UCC once Copyright has been lost, it cannot acquire protection retrospectively. Should its country of origin subsequently ratify the UCC retrospective protection does occur? The United Kingdom was also a founding signatory of the UCC. After signing this convention another parliamentary committee known as the Gregory Committee, was appointed to consider whether or not any changes were needed to the existing domestic legislation to comply with increasing international obligations. The committee that also considered the effect of new technology on Copyright works published its report in 1952 and as a result the 1956 Copyright Act was passed.

This Act repealed the few remaining Acts of copyright that remained despite the 1911 Act, and indeed, the entire 1911 Act. Three new types of work on which Copyright could subsist were introduced cinematograph films, broadcasts and the typographical arrangements of published editions. Broadcast copyright is distinct from any other copyright (Colston, Middleton 2005: 278). There is a separate copyright in the typographical arrangements of published editions of literary, dramatic and musical works.

Public Interest

The democracy which is the fruit of public interest is one of the themes of contemporary societies. One of the main features come along with copyright is public interest which acts as a defence for a defendant in the case of copyright infringement. Public interest is a newest and less well developed defence in the copyright field compared with other defence. Even in Berne Convention, though there is no literary wording, it recognised that there is a need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information.

Places such as libraries, museums, universities, and places for public broadcasting can be considered as icons of civilization process. Due to access to information, public interest was protected through these institutions for years. Traditionally librarians have

perceived the public interest in copyright primarily in terms of the equitable doctrine of fair use. The libraries are databases where there is a collection of collective knowledge of multiple generations. The CDPA 1988 speaks about the public interest. '[The] prescribed Libraries are allowed to make copies of periodical articles, or the whole or part of a published edition of a literary, dramatic, or musical work, in order to supply another prescribed library'.

In *Lion Laboratories v Evans* ([1985] QB 526) the Court held that the defendant news papers-*Daily Express*, had the public interest defence in an action for infringement of copyright. The most recent case *Ashdow v Telegraph* ([2001] 3 WLR 1368), 'offer little assistance as to when the public interest defence would apply, except to indicate that the circumstances are more limited than in cases of breach of confidence.

The Dramatic and Musical Performers Protection Act of 1925; first offered some limited sanctions to these illicit acts and further enhancements were made by the Dramatic and Musical Performers Protection Act of 1958, Performers Protection Act of 1963 and Performers Protection Act of 1972. All of these Acts made some controversies over the recording industry.

Before the Designs and Patents Act came into power, Whitford Report considered international developments in the Berne Convention in 1971. The 1956 Copyright Act, the Copyright Computer Software Act 1985 and the Performers Protection Acts were repealed by this law. This 1988 Act introduced number of new rights, such as rental rights in respect of sound recordings, films and computer programs and a comprehensive system of moral rights for authors. For years the concept, Industrial Designs, was a controversial issue which was settled by this Act as a right. Design is defined as any aspect of the shape or configuration of the whole or part of an article, but not surface decoration (Philips, Firth 2001: 372).

While the CDPA provides the principal legislation background in copyright law, some certain areas are covered by other legislations such as the Broadcasting Act of 1990. The European Union is continually struggling harmonise the legal background of its member states.

Conclusion

Copyright history runs back to the ancient Roman Empire. In this era they recognised the concept of authors of their work. Invention of printing is a stepping stone in civilization process and it was the turning point of modern pattern of copyright. Before the Statute of Anne disputes over the rights to the publishing of books were enforced by common law. Publishing is and has been the identity of expression of ideas which is a main tool of civilization mechanism. Throughout its history, copyright has played its role as a licence which stops making unauthorised copying. This encouraged the creative people and their innovative skills. Copyright is a right as its name suggests. Human rights justification of copyright reflects that copyright is a human right which more sophisticates human civilization journey. Human personality shapes up the contemporary societies and this shined up from the moral rights that come under the copyright. Under the utilitarian justification, copyright promotes public interest and social welfare those are governing factors of contemporary societies.

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