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The Copyright and Her History

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Abstract

The remit of the history of copyright law, among all the reasons, has been the technological developments, inventions, innovations, and advancements. The review of literature on copyright reveals that the need for the protection of authors' rights was firmly realized only after Guttenberg's invention of the printing press in 1451. This paper aims to fill some void in the intellectual property literature, particularly relating to the history and generations of copyright law. Paper classifies the generations of copyright into three and seeks to examine the historical development of copyright law through these three classified generations of evolution. Every generation of copyright had its own peculiarity and it not only protected the authors alone but also different stakeholders involved in the publication industry. It has been argued that the technological developments and advancements, and the journey from wheel to pulley; diode, triode to transistors; and transistors to chips have been the substantial reasons in the determination of subject-matter of protection and the rights of authors under the copyright law. Paper also makes an attempt to discuss the: (i) journey of copyright law from a positive right to a negative right; (ii) factors that led to the recognition of the author's economic and moral rights under the copyright law; and (iii) historical development of copyright law in pre-independent and post-independent India.

Keywords: Copyright History, Copyright Generations, Positive Right, Negative Right, Indian Copyright Law

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I. Introduction

The history of copyright on the one hand is the history of a right and rights in the legal sense, and on the other hand, a history of its struggle with technology to create a balance as technology has always remained ahead of it. The advancements in technology posed two challenges: firstly, the protection accorded to the authors; and secondly, new dimensions brought to the existing rights of the authors. The generation of technology from wheel to pulley, from diode, triode to transistors, and from transistors to chips changed the gear of development and made possible which was not possible before. The history of copyright begins with Johannes Guttenberg's printing press in the year 1451[1] and revolves around technological advancements. The generational changes in technology gave further shape to it. The notion that an author should have 'exclusive copyright' in his creation took firm shape at the beginning of the 18th century.[2] But it is derived from a confusion of earlier strains that there was still a major evolutionary conflict to come before its modern form was finally fixed.

A review of articles published in the 'NTUT Journal of Intellectual Property Law and Management'[3] from 1(1) (2012) to 10(2) (2021); the 'Journal of Intellectual Property Rights'[4] from 1(1) (1996) to 27(1) (2022); and the 'International Journal of Intellectual Property Management'[5] from 1(1) (2006) to 12(1) (2022), reveals that no article relating to the history of copyright law or copyright generations has been published. Hence, this study on the history of copyright law — classifying the generations of copyright.

The history of copyright law may properly be classified into three major generations. First Generation: the generation that started with the invention of the printing press and came to an end in England with the enactment of the Statute of Anne of 1710[6] and in much of Europe with the end of the 18th century. It was the period when individual privileges were granted to publishers and authors.

Second Generation: the generation that started with the first legislative enactment in the world to protect the authors' rights and is represented by: (i) the Statute of Anne of 1710 in England; (ii) the Federal Copyright Act of 1790[7] in the United States of America; and (iii) the Literary and Artistic

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[1] *See generally* Shelton A. Gururatne, *Paper, Printing and the Printing Press: A Horizontally Integrative Macrohistory Analysis*, 63(6) INT. COMMUNICATION GAZETTE 459–479 (2001); Christopher McFadden, *The Invention and History of the Printing Press*, INTERESTING ENGINNERING (Sep. 12, 2018), (last visited Apr. 4, 2022) https://interestingengineering.com/the-invention-and-history-of-the-printing-press.

[2] Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship"*, 41(2) DUKE L. J. 455–502 (1991).

[3] Articles published in the NTUT Journal of Intellectual Property Law and Management, (last visited Apr. 5, 2022) https://iip.ntut.edu.tw/p/412-1092-12387.php?Lang=en Only 6 articles related to copyright have been published in the journal but they don't relate to the history of copyright or the generations of copyright. These 6 articles are: Ping-Hsun Chen, *Rethinking the "Access" Element in Copyright Infringement Cases about Popular Music*, 1(1) NTUT J. OF INTELL. PROP. L. & MGMT 189–199 (2012); Ping-Hsun Chen, *Choice of Law—An Unresolved Question in the First Adult Video Copyright Case of the Taiwan Intellectual Property Court*, 3(1) NTUT J. OF INTELL. PROP. L. & MGMT 56–71 (2014); Rofi Aulia Rahman, Akhmad Al-Farouqi & Shu-Mei, Tang, *Should Indonesian Copyright Law be Amended Due to Artificial Intelligence Development?: Lesson Learned from Japan*, 9(1) NTUT J. OF INTELL. PROP. L. & MGMT. 34–57 (2020); Vaibhav Chadha, *Analysing the "Education Exception" clause in Copyright law with special reference to Delhi University Photocopy Case*, 10(1) NTUT J. OF INTELL. PROP. L. & MGMT. 1–18 (2021); Ranti Fauza Mayana, Rika Ratna Permata, Tasya Safiranita & Ahmad M. Ramli, *The Needs for a Comprehensive Copyright Legislation on Over-The-Top Platform in Breaking Covid-19 Cycle*, 10(1) NTUT J. OF INTELL. PROP. L. & MGMT. 67–79 (2021); Nadya Prita Gemala, Rahmi Jened & Henry Sulistyo Budi, *Indonesian Copyright Protection for Animation and its Role in Supporting Creative Economy: Doctrinal, Normative, Practical Constrain and its Solution*, 10(1) NTUT J. OF INTELL. PROP. L. & MGMT. 80–102 (2021).

[4] Articles published in the Journal of Intellectual Property Rights, (last visited Apr. 6, 2022). http://nopr.niscair.res.in/handle/123456789/45

[5] Articles published in the International Journal of Intellectual Property Management, (last visited Apr. 7, 2022). https://www.inderscience.com/jhome.php?jcode=ijipm

[6] 8 Anne c. 19.

[7] 1 US Statute At Large, 124.

Property Act of 1793[8] in France[9] — owes its legislative history to the French Decree of 28–30 March 1852.[10] The Statute of Anne of 1710 didn't make any distinction between the 'citizens' and 'foreigners' for publishing in England. Whereas, the Literary and Artistic Property Act of 1793 in France extended the legal protection to 'foreigners' as well as 'nationals'. It was the generation when authors' rights were first protected by general legislation and also marked the beginning of conventions and treaties between various countries.

Third Generation: the generation that started in the late 19th century and paved the way for formalizing and uniformizing the copyright statutes at the international level. The demand for the fuller protection of authors in this generation led to significant developments in the history of copyright law which are of fundamental importance even today. From the International Copyright Convention of 1886 to the Marrakesh Treaty of 2013, this generation has addressed the issues relating to copyright law from molar to molecular. In this generation, independent India enacted its first Intellectual Property (IP) statute — the Copyright Act of 1957 which came into effect in January 1958. Since its enactment, the copyright statute and rules have been amended several times to meet the demands of the time and further protect the interest and rights of the authors.

This paper examines the historical development of copyright law with reference to the above three classified generations of evolution and aims to fill some voids in the Intellectual Property literature. For the purposes of convenience, this paper is divided into five more parts. Part II examines the First Generation of Copyright. Part III examines the Second Generation of Copyright. Part IV examines the Third Generation of Copyright. Part V examines copyright protection in pre-independent and post-independent India. Part VI concludes.

II. First Generation Copyright

The evolution of copyright has attracted scholars of formidable polish. The First Generation of copyright surfaced with the introduction of the printing press in the 15th century.[11] It is believed that no recognition of the legal rights of authors existed before that time. Speculation over the existence of such recognition in ancient Greece and Rome seems idle. There is no trace of any legal provision against copying a literary or artistic work, although plagiarism was undoubtedly condemned by "public opinion".[12] Rather than law, social control was the only agency for the interests of authors at that time. The conditions of literary and artistic creations with the long and costly work were necessary for the production of each copy at that time. The lack of economic value in the work did not bring about the pressure of interests for recognition and protection which is the prerequisite of the creation of a legal right. Authors were more conscious of the honour accruing to them by the circulation of their writings than of the possibility of profit through their sales. Their only solicitude was about the accuracy of the copies made by the transcribers. This does not mean, however, that large numbers of copies were not produced.

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[8] French Decree of July 19, 1793.

[9] Frédéric Rideau, *Nineteenth Century Controversies Relating to the Protection of Artistic Property in France*, in PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT, pp.241–254, 243–245 (Ronan Deazley et al., eds., Cambridge Open Book Publishers, 2010).

[10] Jane C. Ginsburg, *A Tale of Two Copyrights: Literary Property in Revolutionary France and America*, 64(5) TULANE L. R. 991–1031, 1022. (1990).

[11] *See generally* T. E. SCRUTTON, THE LAW OF COPYRIGHT 70–90 (William Cloves & Sons, 1893); A. BIRRELL, SEVEN LECTURES ON THE LAW AND HISTORY OF COPYRIGHT IN BOOKS (Fred B. Rothman & Co., 1971); W. S. HOLDSWORTH, HISTORY OF ENGLISH LAW, Vol. 6 (Sweet & Maxwell, 1937).

[12] STEPHEN P. LADAS, THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY 16 (Macmillan, 1938).

In this generation, Roman booksellers did a flourishing business, and slave labours were employed to furnish the copies promptly and cheaply on a large scale.[13] It seems strange that the idea of property in literary works, as distinguished from that in the manuscript, had not been developed in this generation.[14] With the discovery of the printing press in 1451, the work of reproduction of literary works became easier.[15] Economic value was attached to a book, since it may be reproduced in great numbers and distributed by the ordinary channels of trade.

Authors had an economic interest that was to be secured in the form of an exclusive right of making or causing to be made copies of their work.[16] The authors found themselves confronted with a situation in which they lost the actual physical control of the vehicle of their work which they had maintained by possession of the original manuscript. Now, the power to make copies (of one of the printed copies), was in the hands of any possessor. Yet the pressure of the interests of authors was not strong enough to obtain general recognition and protection. Personal privileges were alone granted. Original authors were rare during this time. Most of the books published were printings of the works of ancient authors and of the Fathers of the Church — which required much expense and work of scholarship comparing manuscripts and revising the texts. Printers employed the services of learned men and their work was a pioneer which made them the first to obtain privileges and patents for a limited period of time. Even when the published work was one of the new writers, the stake of the publisher appeared greater than that of the author. Thus, the protection was granted in the name of the former.[17] Another reason behind this was that the printers and the publishers from an early time had formed guilds and corporations. These guilds and corporations, by their regulations, provided for the protection of the interests of their members. In England, Mary & Philip granted the Stationer's Company a Charter in 1556.[18] The Charter gave the company powers in addition to the usual supervisory authority over the craft to search out and destroy books printed in contravention of statute or proclamation. The company was thus enabled to organize which was in effect a licensing system by requiring lawfully printed books to be entered into its register. These printed books were entered on the register of the company as the property of particular printers.

At Common Law, 'competition and monopoly were born together. The Statute of Monopolies of 1623 enacted in England sought to curb monopolies but recognized the grant of patents for inventions as an exception to competition. It is believed that the monopoly in the form of IP is in furtherance to competition, *i.e.*, the monopoly in the form of IP promotes rather than stifling competition by enforcing exclusive rights to encourage creativity'.[19] In England, the royal grants of privilege to print certain books were not copyrights.[20] They were not granted to encourage learning or for the benefit of authors. They were commercial monopolies and licenses to tradesmen to follow their calling. As gradually monopolies became unpopular, the printers sought to base their claims on other grounds and called the

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[13] LUDWIG FRIEDLANDER, *ROMAN LIFE AND MANNERS UNDER THE EARLY EMPIRE*, Vol. 3 (Sagwan Press, 2015).

[14] THE ENACTMENTS OF JUSTINIAN, *THE INSTITUTES' THE CIVIL LAW*, Vol. 2, (S. P. Scott, ed., Central Trust Company, 1932).

[15] BENJAMIN KAPLAN, *AN UNHURRIED VIEW OF COPYRIGHT 1–5* (Columbia University Press, 1967).

[16] Martin Kretschmer & Friedemann Kawhol, *The History and Philosophy of Copyright,* in MUSIC AND COPYRIGHT, 21–53 (Simon Frith & Lee Marshall, eds., Edinburgh University Press, 2004). (last visited Apr. 5, 2022). URL: https://www.researchgate.net/publication/265287021_The_History_and_Philosophy_of_Copyright_i

[17] Joanna Kostylo, *From Gunpowder to Print: The Common Origins of Copyright and Patent*, in PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT, 21–50, 31 (Ronan Deazley et al., eds., Cambridge Open Book Publishers, 2010).

[18] Himali Sylvester, *The Exordium of Copyright System in UK*, ENHELION BLOGS (May 10, 2003), (last visited Apr. 3, 2022). https://enhelion.com/blogs/2021/05/10/the-exordium-of-copyright-system-in-uk/; Ian Gadd, *A Companion to Blayney*, THE PAPERS OF THE BIBLIOGRAPHICAL SOCIETY OF AMERICA, 111(3) 379–406 (2017).

[19] Aqa Raza, *Theoretical Underpinnings of Copyright and Design Laws: Decisions of the Supreme Court of India*, J. OF INTELL. PROP. RIGHTS, 26(4) 220–234, 221 (2021), (last visited Apr. 14, 2022). URL: http://nopr.niscair.res.in/bitstream/123456789/58372/1/JIPR%2026%284%29%20220-234.pdf

[20] WILLIAM F. PATRY, COPYRIGHT LAW AND PRACTICE (1st ed., BNA Books, 1994).

"right of copy" not a monopoly, but a "property right". The Stationers' Company had a register in which its members entered the titles of their works that they were privileged to print. Gradually, a custom developed by which members refrained from printing the books withstood on the register, in the name of the author. Thus, members respected each other's "copy" — as it was called, and there grew up trade recognition of the "right of copy" or "copyright".[21] This right was subsequently embodied in a bye-law of the stationers' company. The entry in the register was regarded as a record of the rights of the individual named and it was assumed that possession of a manuscript carried with it the right to print copies.

In this generation, copyright was in the form of individual and personal privileges or licenses based on the principle that 'right comes straight from the "public authority"'. There was no question of international protection of the authors' rights for the reason that the Pope, King, or the Princes were the authorities who granted these privileges. But in absence of any international protection of the authors' rights, privileges were granted to foreigners whose work was published within the country. Hugo Grotius's famous treatise *'De Jure Belli ac Pacis (The Rights of War and Peace)'* published in Paris in 1625 is an example, which obtained a privilege for 15 years.[22] But, as a general rule, foreign privileges were not recognized. The advantage of the law in this stage can be said to be in the form of "incentives" provided to the stationers who invested in the printing press. This generation specifically talked about the stationers and their rights and by not addressing the authors and the authors' rights, gave the reasons and scope of its consideration and resolution by the subsequent generation.

III. Second Generation Copyright

The First Generation of Copyright which was in the form of personal privileges granted by the Sovereign to the individual authors and publishers started fading with the restoration of the freedom of the press. In England, a demand to protect the interests of authors and publishers arose much earlier than in any other country. The Licensing of the Press Act 1662[23] was passed to prevent the 'frequent abuses in printing seditious treasonable and unlicensed books and pamphlets and for regulating of printing and printing presses' but it lapsed in 1694.[24] Repeated attempts were made to renew it as the proprietors of copyright felt that they had no adequate protection under the common law without the summary measures provided in the Licensing Act. Numerous petitions were presented to the Parliament in 1703, 1706, and 1709. This finally led to the enactment of the Statute of Anne of 1710[25] which provided 'for the encouragement of learning, by vesting of the copies, during the times therein mentioned'.[26]

The Statute of Anne of 1710 was the first general legislative enactment in any country designed to protect the rights of authors. It gave authors of books the sole right and liberty of printing them for a term of 21 years from April 10, 1710, and of books not then printed, the sole right of printing for 14 years (Section I) with a *proviso* that after the expiry of the said term of 14 years, the sole right of

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[21] Martin Kretschmer, et al., *Introduction. The History of Copyright History: Notes from an Emerging Discipline*, in PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT, 1–20 (Ronan Deazley et al., eds., Cambridge Open Book Publishers, 2010).

[22] Tony Volpe & Joachim Schöpfel, *Dissemination of Knowledge and Copyright: An Historical Case Study*, J. OF INFORMATION, COMMUNICATION & ETHICS IN SOCIETY 11(3) 144–155 (2013).

[23] 14 Car. II. c. 33.

[24] Karen Nipps, *Cum Privilegio: Licensing of the Press Act of 1662*, THE LIB. QUAR. INFO. COMMUNITY, POLICY 84 (4) 494–500 (2014).

[25] Ibid. Statute of Anne, supra note 6.

[26] W. Cornish, *The Statute of Anne 1709-10: Its Historical Setting*, in GLOBAL COPYRIGHT: THREE HUNDRED YEARS SINCE THE STATUTE OF ANNE, FROM 1709 TO CYBERSPACE 23 (Lionel Bently, et al., eds., Edward Elgar Publishing, 2010).

printing or disposing of copies should return to the authors thereof for another term of 14 years, if they were then living. The titles of the books had to be registered in the register book of the stationers' company (Section V) and 9 copies had to be delivered to certain libraries.[27] The Statute of Anne was passed with a view to give greater protection to copyright but it had the unexpected result of curtailing it. In the case of Donaldson v Beckett,[28] the House of Lords finally decided that the effect of the Statute of Anne was to extinguish the common law copyright in published works, though leaving the common law copyright in unpublished works unaffected.[29]

With regard to the rights of foreigners, the Statute of Anne of 1710 provided that the work be published within the country and did not make any distinction between "citizens" and "foreigners". In Gurichard v Mori,[30] it was held that anyone had the right to publish in England a work that had been first published in a foreign country. This situation was remedied in England by the passing of the International Copyright Act of 1838.[31] In England, this Act granted protection to the authors of books first published in foreign countries on conditions of reciprocity, namely, on the conditions that in such foreign countries authors of books first published in England were protected.

After their independence, the United States of America (*hereinafter*, the USA), was not long in adapting copyright legislation. In the meantime, Connecticut on 8 January 1783, passed the 'Act for the Encouragement of Literature and Genius, 1783';[32] and Massachusetts on March 17, 1783, enacted the 'Act for the purpose of securing to authors the exclusive right and benefit of publishing their literary productions for twenty-one years' that provided for depositing two copies in the library of the Harvard University.[33] Congress in the same year had recommended to the various states to grant copyright protection to authors and publishers who were a citizen of the USA.[34]

In 1789, the Constitution of the USA provided that Congress was authorized 'to promote the progress of science and useful arts by securing for a limited time to authors and inventors, the exclusive right to their respective writings and discoveries' (Article I, Section 8, Clause 8 of the USA Constitution).[35] Consequently, the Federal Copyright Act of 1790[36] was passed on May 31, 1790, in accordance with the provisions of the USA Constitution.

In France, the Literary and Artistic Property Act of 1793[37] referred generally to "authors", and it might seem that foreigners, as well as nationals, were covered by its provisions. This seemed to be

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[27] E.P. SKONE JAMES, et al., COPINGER AND SKONE JAMES ON COPYRIGHT 16 (12th ed., Sweet & Maxwell, 1980).

[28] (1774) 2 Bro PC 129.

[29] Ibid. Kretschmer et al., supra note 21.

[30] (1831) 9 L.J. Ch. 227.

[31] 1 & 2 Vict. c. 59.

[32] Conn. Acts 133.

[33] Benjamin W. Rudd, *Notable Dates in American Copyright 1783—1969*, 28(2) THE QUAR. J. OF THE LIBRARY OF CONGRESS 137–143 (1971); Oren Bracha, *Early American Printing Privileges. The Ambivalent Origins of Authors' Copyright in America*, in PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT, 89–114, 110 (Ronan Deazley, et al., eds., Cambridge Open Book Publishers, 2010).

[34] Los Angeles Copyright Society (LACS) & UCLA School of Law, Copyright and Related Topics: A Choice of Articles, 77 (2006).

[35] *See* M.C. Miller, *Copyrighting the "Useful Art" of Couture: Expanding Intellectual Property Protection for Fashion Designs* 55(4) WILLIAM & MARY L. REV. 1617, 1637. (last visited Apr. 8, 2022). URL: https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3529&context=wmlr; Lionel Bently, & Jane C. Ginsburg, *The Sole Right ... Shall Return to the Authors": Anglo-American Authors' Reversion Rights from the Statute of Anne to Contemporary U.S. Copyright*, 25 BERKELEY TECH. L. J., 1475–1600, 1549. (last visited Apr. 8, 2022). URL: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1549&context=faculty_scholarship

[36] Ibid. The Federal Copyright Act, *supra* note 7.

[37] Ibid. French Decree, *supra* note 8.

confirmed by a Decree of February 5, 1810.[38] Article 40 of the Act provided that 'Authors, not only nationals but also foreign authors, of any printed or engraved work may sell, their rights, etc.'

In other words, the authors, both nationals and foreigners were permitted to assign their rights to a publisher or any other person.[39] But the dominant opinion in France as well as judicial decisions upheld the view that works of foreigners were protected only if first published in French territory.[40]

The freedom of the press played a significant role in this generation and its expanding horizons paved the way for the recognition of works of the authors and their rights. It may be said that the restoration of freedom of the press led to the enactment of statutes in these countries based on reciprocal promises giving consideration to the works of the foreign authors. Further to this, the USA Constitution explicitly provided for the exclusive rights of the authors in the text of the Constitution. The advantages of law in this generation were in the form of recognition of the authors' labour and work, restoration of authors' dignity, and also his economic rights.

In this generation, authors' rights received exclusive recognition. Moreover, it seems that this generation somehow recognized and moved further to the proposition that the real fruit should go to the tiller of the land. Further to this, the economic, moral, and neighbouring rights of the authors were recognized — giving due consideration to the integrity and paternity of the works of the authors. But the limitation in the form of monopoly creating hindrance in the dissemination of knowledge/information was not fully addressed in this generation and was the issue to be dealt with in the Third Generation.

IV. Third Generation Copyright

The 19th-century brought profound changes in the conditions upon which the rights of authors were based. In the political field, the liberty of the press, destruction of the division of social classes, dissemination of education, and reinforcement of national unity by the use of national languages instead of separate dialects created new conditions for the works of authors and artists. Whereas, in the social and economic fields, new processes of reproduction of literary and artistic works, expansion of the press, creation of new universities, development of bookselling and wider circulation of books, learning of foreign languages, and more frequent traveling of people from one country to another created new conditions for the works of authors and artists. As a result, authors began to demand fuller protection of their rights and raised much outcry against the injustice done to them — pirating of their works in foreign countries.

The treatment afforded by law to a bale of cotton shipped to St. Petersburg was compared with the fate of an author's creation, of which he was robbed as soon as crossed the boundary of his home state. But at the same time, conflicting interests appeared. On the one hand, some people who had no literature of their own lived at the expense of those with rich and prosperous literature. National industries had developed supplying the domestic market and they were reluctant to yield their interests to those of foreign authors and foreign publishers. On the other hand, foreign works were badly adapted and mutilated for the domestic market, and another group of persons interested in art and literature

[38] Stef van Gompel, *Copyright Formalities and the Reasons for their Decline in Nineteenth Century Europe*, in PRIVILEGE AND PROPERTY: ESSAYS ON THE HISTORY OF COPYRIGHT 157–206, 194 (R. Deazley, et al., eds., Cambridge Open Book Publishers, 2010).

[39] Lionel Bently & Martin Kretschmer, eds., *French International Copyright Act, Paris (1852)*, PRIMARY SOURCES ON COPYRIGHT (1450–1900). (last visited Apr. 8, 2022).
URL: https://www.copyrighthistory.org/cam/tools/request/showRecord.php?id=record_f_1852

[40] CARLA HESSE, *RES PUBLICATA: THE PRINTED WORD IN PARIS* ,1789–1810 (Ph.D. Thesis, Princeton University, 1986).

organized and demanded that the social interests in the production and publication of the genuine works of foreign authors be secured and protected. Furthermore, national writers and artists found that their interests were prejudiced by the abundant publication and sale of unauthorized foreign works at cheap prices. It is from the conflict of these interests and the attempt to harmonize them that the international protection of foreigners slowly evolved. It has been noted above that in the previous period many countries provided in their law for the protection of foreign author's rights on the condition of reciprocity or attempted to negotiate treaties for the reciprocal protection of their citizens in this field. However, very few treaties were entered into up to 1852. Certain countries remained outside this effort. Belgium and the USA constituted an outstanding illustration of this exception by refusing protection to foreign authors.

In the USA, the Copyright Act of 1790[41] as further amended by the Act of February 3, 1831, protected only citizens and residents of the USA and explicitly allowed piracy of works written, exposed, or made by persons who were neither citizens nor residents of the USA.[42] Given this, systematic piracy was committed in the USA of works published in all foreign countries, especially in England. Since immigrants came to the USA from all countries, piratical reprints of books in all languages were made. English books were most commonly pirated. Any work that was considered likely to sell and of which the cost of reproduction was moderate was reprinted in the USA without any hesitation whatsoever — the very enterprising re-printings, such as the cabling from England of a book published by Queen Victoria so that it was put on sale in the USA twelve hours after the receipt of the last words of the cable. American printers used to set up the type of English works on the steamers from England to New York so that the books were published in America within a week of their appearance in England. Committees of writers were set up in England and in the USA to put an end to this situation. However, gradually there grew up vested interests in the reprinting of books, which could not be easily destroyed. The so-called "courtesy copyright" among American publishers, protecting the first American reprinter did not last long.[43] The competition which ensued resulted in the publication of English novels on bad paper and with bad print at a cheap price — ten, fifteen, or twenty-five percent. For this reason, the important publishers in the USA took their place at the head of the movement to secure protection for foreign authors. George Haven Putnam was an outstanding leader of this movement, having issued his first pamphlet for international copyright in 1879 and having continued his fight up to the passage of the International Copyright Act of 1891[44] and thereafter.[45] They were joined by those American authors who could not find a publisher or a market for their books due to the disastrous prices of cheap reprints. This movement which started with Henry Clay's Report of February 6, 1837,[46] did not achieve success until 1891.[47] After a tremendous amount of educational work and strong pressure from the publishers of American books and American authors, the International Copyright Act of 1891[48] was passed — popularly called the 'Chace Act'. The reason for enacting the Chace Act was to extend copyright protection to foreign works in the US to avoid literary piracy.

The enactment of the Chace Act proved only partially successful. It did away with the requirement that the author has to be a citizen or resident of the USA, but it qualified the protection of foreign authors by the stipulation that all books must be set up in the USA to acquire copyright and by the requirement for reciprocity on the part of the state to which the author belonged. The Amending Act of

41 Ibid. The Federal Copyright Act, supra note 7.
42 Ibid. Section 5.
43 Robert Spoo, *Courtesy Paratexts: Informal Publishing Norms and the Copyright Vacuum in Nineteenth Century America,* 69 STANFORD L. REV. 637–710, 653 (2017).
44 The International Copyright Act of 1891 (Chace Act) (26 Statute At Large, 1106).
45 GEORGE HAVEN PUTNAM, com., THE QUESTION OF COPYRIGHT: COMPRISING THE TEXT OF THE COPYRIGHT LAW OF THE UNITED STATES, A SUMMARY OF THE COPYRIGHT LAWS AT PRESENT IN FORCE IN THE CHIEF COUNTRIES OF THE WORLD (2nd ed., G.P. Putnam's Sons, 1896).
46 Ibid.
47 Ibid. International Copyright Act, supra note 44.
48 Ibid.

March 3, 1905,[49] allowed the authors of works first published abroad in any language other than English, to gain an interim protection for 12 months upon complying with certain conditions.

During the decades 1852–1862, France was able to conclude 23 treaties for the reciprocal protection of authors' rights, using to the best advantage of the initiative taken by her in promulgating the French International Copyright Act 1852.[50] Finally, in 1858, the First Congress of Authors and Artists was held in Brussels on September 27–30, 1858.[51] By its resolutions, the principle of international recognition of authors' rights without the condition of reciprocity was proclaimed. Further, uniform legislation on literary and artistic property by all countries was demanded. That is how Congress started the movement which brought about the International Copyright Union of 1886 and finally gave birth to the third generation of copyright. Though the third-generation copyright became universal in character but it did not come in a day. The first attempt was made in 1886 at the International Copyright Conference. This generation urged the need for uniform legislation at the international level to specifically address the problems faced by the authors and include the literary, dramatic, film, and cinematographic works within the statutory ambit of copyright, and further protect the performers and broadcasting rights of the authors by general legislation.

A. The International Copyright Convention 1886

The Swiss Government communicated the Draft Convention to 55 countries and invited them to sign the Convention at a new conference.[52] This Conference was convened at Berne on September 6, 1886. All the countries that signed the Draft Convention in 1885 were represented at this new Conference except Honduras, Netherlands, Sweden, and Norway. In addition, Belgium, Liberia, Japan, and the USA sent delegates, and the last two attended as observers (*ad audiendum*).[53] The Conference was bound by the understanding reached at the previous Conference that it would not in any way change the draft Convention and so had practically nothing to do except to sign the Convention, an Additional Article, and a Final Protocol. France and Spain declared that their accession included that of all their colonies. Great Britain's accession meant the inclusion of all its colonies and possessions, subject to an understanding that the British Government could denounce the Convention subsequently for any or all of its possession including India. The Conference also received declarations from the signatory countries with regard to the class in which they desired to be placed from the point of view of contributions towards the expenses of the International Bureau established by the Convention. France, Germany, Great Britain, and Italy were placed in the first class; Spain in the second; Belgium, Switzerland in the third, Haiti in the fourth; and Tunis in the fifth. One year later, on September 5, 1887, delegates of the signatory countries met at Berne and exchanged ratifications of the Convention. Only Liberia was absent and failed to deposit its ratification. But later, Liberia acceded to the Union on October 16, 1908.[54] According to *tis* Article 20, the Convention entered into effect three months later, *viz.,* on December 5, 1887 — the envisaged amendment of the Treaty to introduce improvements to

[49] 33 Statute At Large, 1000.
[50] Ibid. Bently & Kretschmer, supra note 39.
[51] SAM RICKETSON & JANE C. GINSBURG, *INTERNATIONAL COPYRIGHT AND NEIGHBOURING RIGHTS: THE BERNE CONVENTION AND BEYOND,* Vol. 1, 340 (2nd ed., Oxford University Press, 2006).
[52] *Copyright: Monthly Review of the World Intellectual Property Organization,* WORLD INTELLECTUAL PROPERTY ORGANIZATION,23(2),(1987),(last visited Apr. 4, 2022).
URL: https://www.wipo.int/edocs/pubdocs/en/copyright/120/wipo_pub_120_1987_02.pdf
[53] Akiko Sonoda, *Historical Overview of Formation of International Copyright Agreements in the Process of Development of International Copyright Law from the 1830s to 1960s,* (2007). (last visited Apr. 5, 2022).
URL: https://www.iip.or.jp/e/summary/pdf/detail2006/e18_22.pdf
[54] Thorvald Solberg, *The International Copyright Union,* 36(1) Yale L. J. 68–111 (1926).

'perfect' the system — 'Berne Convention'.[55]

B. The Berne Copyright Convention 1886

The purpose of the Berne Convention as indicated in its preamble was '…to protect, in as effective and uniform manner as far as possible, the rights of authors in their literary and artistic works.'[56] Article 1 of the Convention provided that the countries to which the Convention applied constitute a Union for the protection of the rights of authors in their literary and artistic works. The fundamental principle of the Convention was "national treatment", *i.e.,* persons entitled shall enjoy in each country of the Union the advantages accorded by the law of such country to its nationals. This was however subject to the limitation that the duration of copyright in any country of the Union shall not exceed the term provided for in the country of origin.[57] Another important feature of this Convention was the principle of automatic protection, according to which such national treatment was not dependent on any formality of registration, notice, or deposit.[58]

The Convention laid the foundation for the codification of copyright law by providing common legislation for the Union. Thus, translation rights formed the subject of the compromise solution by the fixation of the term of 10 years from the date of publication of the original work.[59] Other provisions of the Convention dealt with the reproduction of articles published in newspapers and periodicals[60] and the reproduction of copyrighted works in publications intended for instructional activities, works of a scientific character, and chrematistics.[61] It was provided that articles of newspapers or periodicals might be reproduced, provided the authors or editors had not explicitly forbidden reproduction. The reproduction of articles of political discussion in daily news was unrestricted.[62] Article 9 dealt with the right of public presentation of dramatic or dramatical musical works, whether published or not. The national treatment principle of Article 2 was made applicable in this matter. No compliance with any formalities was required except those prescribed in the country of origin. Authors were also protected against the presentation of a translation of such works during the term of protection of other translation rights accorded by the Convention. Article 2 also applied to the public execution of unpublished musical works as well as of published musical works the author of which had explicitly forbidden public execution.

Further, provisions of the Convention dealt with: (i) indirect appropriations of literary or artistic works, such as adaptations, musical arrangements, etc., (ii) the presumption of authorship of works protected by the convention, (iii) the seizure of pirated reproductions upon attempted importation, (iv) the measure which might be taken by the various countries to control the circulation, representation or exhibition of works, and (v) the application of the Convention to works already created. The contracting countries were permitted to enter into special agreements among themselves, provided they confer to authors larger advantages than those granted by the Convention.

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[55] Rebecca Giblin, *A Future of International Copyright? Berne and the Front Door Out: An Essay in Honour of Sam Ricketson,* SSRN (Apr. 8, 2019), (last visited Apr. 12, 2022). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3351460

[56] Berne Convention for the Protection of Literary and Artistic Works, 1886. (last visited Nov. 24, 2021). URL: https://www.wipo.int/treaties/en/ip/berne/

[57] Article 7, Berne Convention.

[58] Articles 2–3, Berne Convention.

[59] Article 5, Berne Convention.

[60] Ibid. Article 7, supra note 57

[61] Articles 8–9, Berne Convention.

[62] Articles 10–14, Berne Convention.

An International Bureau was established for the Union at Berne,[63] and provisions were made for periodical revisions of the Convention,[64] for the accession of new countries and of colonies to the Union,[65] and for the indefinite duration of the Convention, subject to denunciation.[66] In addition to the Convention, an Additional Article and a Final Protocol were signed and ratified. The former retained in effect the existing bipartite treaties which granted to authors broader rights than those secured by the Convention. The latter contained explanations of various provisions in the Convention. The Convention was an achievement when compared with the text now in force after the latest Revision in Paris in 1971.

The original Convention will appear inadequate. But when the state of the municipal law in the various countries in 1885 is taken into consideration, and the discussions in the Conferences of 1884 and 1885 are studied, it must be admitted that the Berne Convention was a great step ahead in securing more complete protection to authors and artists than they ever enjoyed up to that time. The Convention has been revised 5 times with two separate additions but the Preamble of the Convention has remained unamended.[67] The Convention is considered a milestone in the statutory history of copyright but had flaws that led to the Berlin Revision in 1908.

C. The Berlin Conference Revision 1908

It was the view of the delegates of Paris that a new Conference of revision should meet after a period of between 6–10 years. It was proposed at the Conference that the protection of the rights of authors be simplified and extended. Berlin was chosen as the place for that Conference. Four new countries were added to the Union before the convening of the new Conference for revision — Denmark on July 1, 1903, Japan on July 15, 1899, Liberia on October 16, 1908, and Sweden on August 1, 1904. Montenegro had in the meantime denounced the Convention on April 1, 1899. The New Conference, postponed by a common agreement, was called together on October 14, 1908. It was a long Conference, lasting till November 14, 1908. All the Members of the Union were represented at the Conference with exception of Haiti. In addition, delegates from many countries attended the Conference including the USA.

With the objectives of simplification and extension of authors' rights, it was proposed to extend the protection of the Convention to: (i) works of art applied to industry, (ii) extend to photographs, architectural works, and choreographic works the same protection as to other artistic and literary works, (iii) assimilate translation to other forms of reproductions and to grant translation rights for the whole term of copyright, (iv) deal with newspaper articles involving political discussion as with other literary articles, (v) recognize the exclusive right of musical works as residing in their composers without the formality of their reserving their rights upon publication, and (vi) provide for the composer's right to authorize the adaptation and execution of his works by mechanical instruments. [68]

The objective of simplification was sought by abolishing the reference to the conditions of the 'law in the country of origin' in Article 2. The Convention was signed on November 13, 1908. The most important amendments adopted in Berlin were that the Convention defined more fully the expressions 'literary and artistic works' for its protection. Convention also made it clear that the

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63 Article 24, Berne Convention.
64 Article 27, Berne Convention.
65 Article 29, Berne Convention.
66 Article 35, Berne Convention.
67 World Intellectual Property Organization, *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)* (615 (E) 1978),
(last visited Apr. 3, 2022). URL: https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf
68 Ibid. Kretschmer & Kawhol, supra note 16.

contracting countries were bound to afford protection by their law for all of these works.[69] Photographic works were explicitly included.[70] Protection was made subject to no formality whatsoever and independent of the existence of protection in the country of origin.[71] The Convention provided that protection under it endured for the life of the author and 50 years after his death, subject, however, to different regulations by the law of each country.[72] Translation rights were now recognized for the entire term of copyright without any restriction.[73] Recognition was given to the right of authors of musical works to authorize the adaptation of their works to mechanical instruments and the public execution of such works by such instruments.[74] This principle was subject to the provision that the legislation of the contracting countries might determine the reservations and conditions relative to its application. Likewise, the Convention recognized the exclusive right of authors to authorize the reproduction and public presentation of their works by cinematograph.[75]

D. The Additional Protocol 1914

On March 20, 1914, delegates of the 18 Member countries of the Union signed at Berne an Additional Protocol to the Revised Convention of 1908. The circumstances under which it came about were that the Revised Convention of 1908 granted to the authors belonging to Non-Member countries (where their work was first published), a unionist treatment in the other member countries. Thus, every Member country was bound under the Convention to treat works of such authors published in its territory as if they were works of national authors, without any regard to the existence of reciprocity in the country to which the author belonged. Specifically, Great Britain and the British dominions were bound to protect works of American authors published in their territory as works of national authors published in their territory. Further, they were also bound to extend to them Unionist protection if they were published in another country of the Union.

Under the Chace Act of 1891, for the first time, copyright protection was extended to foreign authors. With this protection, an onerous condition of manufacturing in the USA was also imposed. In the case of a book, photograph, chrome, or lithograph, it was necessary, as a requisite condition for protection that copies offered for sale in the USA be printed from typeset, or from plates or negatives or drawings on stone, made within the limits of the USA. Thus, a foreign author was prevented from following the natural and convenient course of having his work set up in his own country. The effect of this clause was to prohibit the foreign author from offering for sale in the USA a work printed outside the USA.

The U.S. Copyright Act of March 4, 1909, relieved foreign authors in general from the effects of this clause, but they were preserved as to works written in the English language.[76] This amounted to discrimination against Great Britain and its dominions and colonies. On May 18, 1910, an Imperial Copyright Conference met in London to discuss the question of ratification of the Revised Convention of 1908 and to consider the elaboration of an Empire Law on copyright. It terminated its work on July

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[69] Lionel Bently, *Copyright, Translations, and Relations between Britain and India in the Nineteenth and Early Twentieth Centuries*, 82(3) CHICAGO-KENT L. REV. 1219–1220, 1232 (2007). (last visited Apr. 3, 2022). URL: https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3616&context=cklawreview

[70] Article 3, Revised Berne Convention.

[71] Article 4, Revised Berne Convention.

[72] Article 7, Revised Berne Convention.

[73] Article 8, Revised Berne Convention.

[74] Article 13, Revised Berne Convention.

[75] Article 14, Revised Berne Convention.

[76] Daniel Gervais, *The 1909 Copyright Act in International Context*, 26(2) SANTA CLARA HIGH TECH. L. J. 185–214 (2010). (last visited Apr. 5, 2022).URL: https://core.ac.uk/download/pdf/149256612.pdf

10, 1910, with the adoption of a memorandum containing various resolutions (Report of the Imperial Copyright Conference 1910).

Subsequently, Great Britain passed the new Copyright Act in 1911, in conformity with the Revised Convention of 1908. This Act protected American authors without regard to any formality whatsoever, provided their works were first published in Great Britain or any other Union country. However, Section 23 of the Act enabled the Government by Order in Council to direct that protection shall be refused to non-resident citizens of a country that does not give adequate protection to works of British authors. Great Britain ratified the Convention of 1908 without any reservation. However, it proposed to the member countries of the Union the adoption of an Additional Protocol granting to each Member country the right to restrict, within its territory, the benefits of the Convention concerning authors of a non-member country. As a result, all the Member countries of the Union accepted the text of an Additional Protocol by Great Britain and signed it at Berne on March 20, 1914.

The Protocol constitutes a restriction of the regime of the Union by granting power to a Member country to limit the protection of the works of authors, nationals of a Non-Member country, who at the time of publication were not domiciled in a country of the Union.[77] This power could be exercised when the non-member country did not sufficiently protect the works of authors belonging to the member country. The latter is free to determine the absence of "sufficient" protection for works of its authors in a non-member country. It may then retaliate but such a Member country is bound to notify the Government of the Swiss Confederation by a written declaration of the restrictive measures taken. The government will then communicate the declaration to the Member countries.[78]

E. The Rome Conference Revision 1928

At the Berlin Conference of 1908, it was agreed that the next Conference of Revision could be held in Rome Between 1914 and 1918. The World War necessitated a postponement. In 1927, it was arranged to convene the Conference on May 7, 1928. The International Bureau Communicated to the Member countries, as well as to Non-Members. At the time Conference was convened on 7 May 1928, the Union was comprised of 36 countries, 19 more than in 1914. All the 36 members of the Union were represented at the Rome Conference except Haiti and Liberia. 21 Non-Member countries including the USA also attended. The programme of the Conference as prepared by the International Bureau and the Italian government, proposed amendments both in form and substance. At the Conference, it was first proposed to abolish the liberty given by Articles 25 and 27 of the 1908 Convention to Member countries and new acceding countries of making a reservation about the application of certain provisions of the Convention. It was pointed out that the situation created thereby was very confusing, and contravened the object of the Convention.[79]

It was further proposed to make the period of copyright of 50 years *post mortem auctoris* compulsorily uniform for all countries of the Union, to extend the protection of the Convention to works of art applied to industry, to secure to authors and artists the exclusive right of authorizing the communication or execution of their works by radio and analogous means; and to perfect the provisions on mechanical musical instruments and movies. The Italian government submitted a proposition for the recognition of the moral right of authors.

The Conference created a plenary committee, an editing committee, and sub-committees on the

[77] Paragraph 1, Additional Protocol.
[78] Paragraph 4, Additional Protocol.
[79] GRAHAM DUTFIELD & UMA SUTHERSANEN, DUTFIELD AND SUTHERSANEN ON GLOBAL INTELLECTUAL PROPERTY LAW (2nd ed., Edward Elgar Publishing, 2020).

moral right of authors, radio, cinematography and photographs, and mechanical reproduction of musical works. The Rome Conference did not rewrite the Convention as its predecessor had done. The amendments were drafted on the existing text or inserted in additional articles under *bis* or *ter* without disturbing the existing numeration of the Convention. The most important amendments adopted were that oral literary works, such as lectures, addresses, and sermons, were included among the works to be protected under Article 2 of the Convention. Additional Article *bis* reserved the liberty of each country to exclude totally or partially from protection, political discourses, and discourses made in judicial debates and to determine the conditions under which lectures, addresses, and sermons might be reproduced by the Press. The valiant efforts of France to have works of art applied to industry protected as artistic works, in general, failed again. Upon the proposal of Great Britain, the text of the Additional Act of Berne 1914 was inserted in Article 6 of the Convention. The Italian proposal for recognition of the *moral rights* of authors formed Article 6*bis* of the New Convention. This provided that independently of the proprietary rights and even after the assignment of these rights, authors possess the right to claim authorship of their work and to object to any deformation, mutilation, or modification thereof prejudicial to their honour or reputation. The legislation of each country was left free to determine the conditions for the exercise of these rights of authors.

The proposition that the duration of copyright be made compulsorily uniform in all countries of the Union for 50 years *post mortem auctoris* or that at least dependency upon the duration in the country of origin be abolished, was not approved by the Conference. A new Article 7*bis* was adopted regulating the period of protection of works of joint authorship. Minor amendments were made to Articles 13 and 14 dealing with musical and cinematographic works, giving them the retroactive application. Aside from the recognition of the moral rights of authors, the only important amendment to the Convention consisted in the insertion of a new Article 11*bis,* recognizing the exclusive right of authors to authorize the communication of their work to the public by the radio. On the whole, the results of the Rome Conference were mediocre. Many of the objectives of the Conference were not accomplished. After lengthy and laborious discussions, the amendments were adopted. Apart from the recognition of the moral rights of the authors, the exclusive right authorizing public communication of works by radio was of limited significance.

F. The Brussels Convention 1948

Most of the countries that were party to the International Copyright Union were at war during World War II (*hereinafter*, WWII). There has been no contention either in this war or that of the First World War on any side that the Convention was to be deemed abrogated. Since the Convention was of a juristic rather than a political nature, it intended to establish a more or less permanent condition of things that need not pressure a state of peace, and it concerned the interests of private persons and not of the states directly. After WWII was over, it was thought proper to take the long-due revision of the Convention. Thus, the Brussels Conference of 1948.

The main features of the Brussels Convention are: (i) Article 4 provided that first publication in a Non-Union country would mean loss of protection. Further protection is to be afforded to nationals of Non-Union countries habitually resident in a Union country. It was also open to any country of the Union to restrict the protection of works whose authors are nationals of Non-Union country which does not give reciprocal rights and are not habitually resident in a country of the Union; (ii) The Brussels Convention omitted the provision of Article 7(2) of the Rome Convention which entitled countries of the Union to provide a shorter period of protection than those laid down in Article 7. This was a big achievement; (iii) The Rome Convention added, for the first time, provided the minimum term of copyright in works of joint authorship, namely one expiring with the death of the author who dies last. However, the Brussels Convention dropped this provision and instead provided that in case of work of

joint authorship, the term of protection was to be calculated from the date of the death of the last surviving author;[80] (iv) Convention provided that the protection of the Convention was not to apply to news of the day nor miscellaneous information having the character of mere items of news. Thus, no copyright protection is afforded by the Convention to news or facts constituting press information;[81] (v) The Rome Convention, for the first time, introduced provisions intended to extend an author's rights beyond those generally comprehended in the term copyright. These provisions comprehended what is known as the author's *droit moral*.[82] These provisions were extended by the Brussels Convention which provided first that, even after the assignment of his copyright, the author should have the right during his lifetime to claim authorship of the work and to object to any 'distortion, mutilation or other alteration thereof or any other action in relation to the said work which would be prejudicial to his honour or reputation'. Secondly, it was provided that the right granted to the author as aforesaid should, after his death, be maintained at least until the expiry of the copyright. Thirdly, the means of redress was left to the national law;[83] and (vi) a new right, which was introduced for the first time by the Brussels Convention, deals with what is known, on the continent, as the *driot de state.* It provided that the author, or after his death, the persons or institutions authorized by national legislation with respect to original work of art and original manuscripts, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer thereof by the author thereof. This matter, however, was left to the legislation of individual members but was provided that it can be claimed in any country which does not have such legislation.[84]

G. The Universal Copyright Convention (UCC) 1952

The desire to bring the USA within a general network of international copyright relations and to create a bridge between the Berne Union on the one hand, and that of Pan-American countries, on the other hand, was truly strong. So was also the wish to maintain the basic tenets of the Berne Convention. Indeed, the Brussels Revision was directed towards this aim only. After the Brussels Revision, UNESCO took the initiative by promoting the Universal Copyright Convention which was signed in Geneva on September 6, 1952.[85] India also participated in this Conference. Recommendations were made for the holding of a Revision Conference in 1971 to revise this Convention, like the Berne Convention, which was revised in Paris in 1971. The effect of the revised Convention was that each Contracting State undertakes to give to the unpublished works of the nationals of all other contracting states the same protection as it gives to the unpublished works of its nationals as well as the protection specially granted by the Convention.[86] Convention further provided the right to restrict the public performance of the broadcast at the receiving end. UCC further provided that permission to broadcast does not imply the permission to record the broadcast, but then there is a confusing and ambiguous kind of paragraph.[87] It shall, however, be a matter of legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcast. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such

[80] Article 7*bis*, Brussels Convention.
[81] Article 9(3), Brussels Convention.
[82] World Intellectual Property Organization, *Brussels Act, 1948* (TRT/BERNE/004 1978). URL: https://wipolex.wipo.int/en/text/278722 (last visited Apr. 3, 2022).
[83] Article 6*bis*, Brussels Convention.
[84] Article 14*bis*, Brussels Convention.
[85] E. Schwartz, *An Overview of the International Treatment of Exceptions*, 2 PIJIP RESEARCH PAPER (2014). URL: https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1043&context=research (last visited Apr. 10, 2022).
[86] Article 2(4), UCC.
[87] Article 11*bis* (3), UCC.

legislation. Then the notion of *droit moral* and that of *droit de suite* has been repeated with amendments.[88]

India participated in this Convention and signed the Final Act on November 10, 1973. It made a declaration under Articles 22–26 of the Stockholm Act (which related to administrative matters). By a note dated October 7, 1974, India deposited its instrument of ratification with the declaration that the said ratification does not apply to Articles 1–21 and the Appendix thereto with a further declaration that India does not consider itself bound by Article 33(i) of the Paris Revision. It shall be entitled to calculate the term of protection from the date of the 'first publication' of the work or its registration prior to publication, provided the term of protection is not to be less than 25 years from the date of its first publication or registration.[89] 'Publication' as used in this Convention, means the reproduction in intangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.[90] But the Convention shall not apply to works or rights in works which, at the effective date of this Convention in the contracting state where protection is claimed, are permanently in the public domain in the said contracting state.

As to the nature of the protection to be afforded, the Convention provided that each contracting state shall give adequate and effective protection to the right of authors and other copyright proprietors in literary, scientific, and artistic works, including writings, musical, dramatic, and cinematographic works, and paintings, engraving, and sculpture.[91] It is further provided that these rights are to include the basic rights protecting the author's economic interests, to give to the published works of nationals of the other contracting states wherever first published, and to published works of the nationals of any country if first published in one of the contracting states' rights it gives to works first published in one of the contracting states' rights it gives to works first published in its own territory as well as the protection specially granted by Convention.[92] Authors are to enjoy such protection without any formality of registration or deposit of copies etc, subject to the condition that from the time of first publication, all copies published bear the symbol accompanied by the name of the copyright proprietor and the year of first publication, placed in such manner as to give reasonable notice of claim of copyright.[93]

The Convention provided for copyright to endure the lifetime of the author and 25 years after his death. It is to be noted that the duration of the term is binding and obligatory upon all the contracting states.[94] In case of any contracting state which, upon the effective date of the Convention in that state, does not compute that date of protection based on including the exclusive right to authorize reproductions by any means, public performance, and broadcasting and are to extend to the work either in original form or in any form recognizably derived from the original. But any contracting state may make exceptions that do not conflict with the spirit and provisions of the Convention, to such rights but shall nevertheless accord a reasonable degree of effective protection to each of the rights to which an exception has been made.[95]

It is clear from the above provisions that while promising general copyright protection, the Convention does not describe the details of the protection that are to be afforded by the contracting states and substantially leaves the mode and extent of protection to the separate legislation of each state. It only extended further than the Berne Convention in requiring protection to be given to published works, not only if first published in a contracting state but if first published anywhere, if the author is

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[88] Joseph S. Dubin, *The Universal Copyright Convention*, 42 DUKE L. J. 89–119, 95, 101 (1954).
[89] Article 4(2)(b), UCC.
[90] Article 6, UCC.
[91] Article 1, UCC.
[92] Article 2(1), UCC.
[93] Article 3(1), UCC; *see also X UNESCO Copyright Bulletin* 225 & 248 (No. 2, 1957).
[94] Article 4(2)(a), UCC.
[95] Article 4*bis*, UCC.

a national of a contracting state.[96] The Convention came into force on July 10, 1974 — three months after the deposit of 12 Instruments of Ratification.

H. The Stockholm Convention 1967

The Berne Convention was further revised at a Conference held in Stockholm on July 11, 1967, which closed on July 14, 1967.[97] The Convention introduced a protocol regarding developing countries to satisfy the wishes and needs of some developing countries who considered the protection provided by the Berne Convention beyond their scope of interests.[98] The Protocol provided that any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratified and acceded to the Convention might make reservations in respect of certain matters which would have the effect of giving less protection in that country than what was afforded in other countries of the Berne Union.

The adoption of the Protocol, despite opposition, led to a serious situation in the international copyright field. Thus, although Article 21 made the Protocol an integral part of the Berne Convention, Article 28 provided that any country ratifying or acceding to the Convention may declare that its ratification or accession is not to apply to the substantive provisions of the Convention and the Protocol. Thus, none of the major developed countries ratified or acceded to the substantive provisions of the Convention as also the Protocol with the result that Stockholm Revision became a dead letter.[99]

I. The Paris Revision 1971

The disagreement with the Stockholm Conference led to its revision at the Revision Conference held in Paris during the period from July 5–14, 1971. India also participated in this Conference and signed the Convention. The Convention entered into force on October 10, 1974.[100] The situation created by Stockholm Conference was particularly unfortunate since it had been hoped that one of the results of the Stockholm Revision would be that the USA would join the Berne Convention after undertaking a revision of its national law.[101] Thus, the Paris Convention assumed added importance.

In view of this situation, the very first change which Paris Revision brought in was the dropping of Article 21 of the Stockholm Convention relating to the 'Protocol Regarding Developing Countries' which provided for acceptable special provisions in favour of developing countries. As a result, many countries including some of the major countries like the USA[102] adhered to the Paris Convention.[103] As to the USA, there is still difficulty, notwithstanding the United States Copyright Act 1976,[104] in the

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[96] Article 3, Paris Revision.

[97] Dorthy M. Schrader, *Analysis of the Protocol Regarding Developing Countries*, 17(3) BULLETIN OF THE COPYR. SOC. OF THE U.S.A. 160 (1970).

[98] Royce Fredrick Whale, *Protocol Regarding the Developing Countries*, BRITISH COPYR. COUNCIL (1986).

[99] Alan Story, *Burn Berne: Why the Leading International Copyright Convention Must be Repealed*, HOUSTON L. REV. 40(3) (2003), (last visited Apr. 3, 2022). URL: http://copysouth.org/portal/node/36

[100] Ibid. Guide to the Berne Convention, supra note 67.

[101] A. B. Ringer, *A New Horizon for International Copyright*, 17(2) BULLETIN OF THE COPYR. SOC. OF THE U.S.A. 81 (1969).

[102] M. Gabay, *The United States Copyright System and the Berne Convention*, 26 BULLETIN OF THE COPYR. SOC. OF THE U.S.A. 202 (1979).

[103] *Report of Committees—The Whitford Committee Report on Copyright and Designs Law,* Cmnd. 6732 (1977), paras 50–60, 85. (last visited Nov. 24, 2021). https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1977.tb02453.x

[104] 90 US Statute At Large, 2541.

sense that there are possible areas of conflict between the Convention and the Act. Similarly United Kingdom's Copyright Act 1956[105] is to be amended before the UK can adhere to Paris Revision. The Copyright Committee of 1977 in England recommended that England should ratify the Paris Convention.

Two systems are possible for an International Copyright Convention. Theoretically, the most satisfactory system would be a complete copyright code to be applied in each country of the Union both for nationals and subjects of other countries. A less satisfactory system is one that merely requires each Member State to give to the nationals of other member states the same protection as it gives to its own nationals with the result that the measure of protection will vary from state to state. The system, in fact, adopted in the Berne Convention represented a compromise of the two systems and the revisions of the Convention alluded to above have tended to extend the principle of the common code. In fact, the Paris Act embodies a reasonably complete code but, as will be seen, specifically reserves to members the right to deal with certain matters by their own legislation.[106]

Thus, Article 3 of the Berne Convention (Paris Revision) which contained the general criteria for eligibility for protection provided as follows:

'(1) The protection of this Convention shall apply to:

Authors who are nationals of one of the countries of the Union, for their works, whether published or not; Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union. Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purpose of this convention, be assimilated to nationals of that country…'

This Article is certainly wider in scope than the Brussels Convention since works of nationals of Union countries are to be protected, even if the first publication takes place in a Non-Union country. But even the Paris Act provided, in a similar way to the Brussels Convention, that it is open to any country of the Union to restrict the protection of works whose authors are nationals of a Non-Union country which does not give reciprocal rights and are no habitually resident in a country of the Union.[107]

Article 3 (3) provided that the expression 'published works' is to mean works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies had been such as to satisfy the reasonable requirement of the public, having regard to nature of work. But the performance of dramatic or musical work, the exhibition of a work of art, and the construction of a work of architecture do not constitute publication. How then can such works be published? In the case of a dramatic work and a musical work, by printing and publishing the text or score. In the case of a work of art, such as a picture, presumably by publishing sketches, photographs, and so on of the work.[108]

Article 4 of the Paris Revision contained the special criteria of eligibility for protection in respect of cinematographic works and works of architecture: 'The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to: Authors of cinematographic work the maker of which has his headquarters or habitual residence in one of the countries of the Union; Authors of works of architecture erected in a country of the Union or of other structure located in a country of the Union.'

Article 5 of the Convention deals with the extent of protection:

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[105] 1956 c. 74.
[106] Ibid. JAMES et al., supra note 27.
[107] Article 6, Paris Revision.
[108] Ibid. JAMES et al., supra note 27.

'Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this convention. Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country same rights as national authors.' It is interesting to note that there may be a disparity in the extent of protection in the country of origin and in other countries of the Union since protection in the country of origin is governed by the domestic law, but in countries other than the country of origin, the author is given, not only the rights which are given under their domestic laws but also the rights granted by the Convention. Thus, an author can be worse off in the country of origin than in other countries of the Union. As to the term of protection, the basic term of protection is still to be the life of the author and 50 years after his death.[109] However, unlike the Brussels Convention, minimum terms of protection have now been laid down for cinematographic works, photographic works, and works of applied art. Thus, in the case of cinematographic works, the countries of the Union may provide that the term of protection is to expire 50 years after the work has been available to the public with the consent of the author, or failing such an event within 50 years from the making of such a work, 50 years after the making.[110] In the case of photographic works and works of applied art in so far as they are protected as artistic works, it is to be a matter for legislation in the countries of the Union to determine the term of protection thereof, however, this term is to last at least until the end of a period of 25 years from the making of such a work.[111] In the case of anonymous or pseudonymous works where the identity of the author remains undisclosed, the period is 50 years after the work has been lawfully made available to the public.[112] But the Convention also provided that the countries of the Union are not required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for 50 years.[113]

The Paris Act further provided that the countries of the Union may grant a term of protection in excess of those provided by the article. The provisions of Article 2 as to adaptations must be read in conjunction with Article 12, which lays down that the authors of literary or artistic works are to enjoy the exclusive right of authorizing adaptations, arrangements, and other alterations of their work. It is a matter of domestic legislation as to how far works of applied art and industrial designs and models are protected, subject to, of course, Article 7(4) which provided for a minimum term of protection of 25 years from the making of a work of applied art.

With regard to broadcasting rights, the Paris Revision under Article 7(6) has conferred distinct rights upon authors: (i) the right to restrict the original broadcasting; and (ii) the right to restrict any diffusion of the broadcasting by an independent receiving authority. This was the revision of the Berne Convention. The Preamble of the Berne Convention remained unamended but two paragraphs were added 'to mark the link with the preceding revision carried out in Stockholm in 1967'.[114] As mentioned in the 'Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)' published by WIPO in 1978, the 'purpose was to pay tribute to the merits of this last revision as regards the substantive provisions[115] and the administrative clauses[116] which were left completely unchanged by the Paris Conference, and to the preparatory work done by the Stockholm Conference in seeking solutions to the problems of developing countries'.[117]

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[109] Article 7(1), Paris Revision.
[110] Article 7(2), Paris Revision.
[111] Article 7(4), Paris Revision.
[112] Article 7(3), Paris Revision.
[113] Ibid.
[114] Ibid. Guide to the Berne Convention, supra note 67.
[115] Articles 1 to 20, Paris Revision.
[116] Articles 22–26, Paris Revision.
[117] Ibid. Guide to the Berne Convention, supra note 67.

J. The WIPO Copyright Treaty (WCT) 1996

WCT is a 'special agreement under the Berne Convention' that entered into force in the year 2002. WCT deals with the protection of the rights of the authors in the digital environment.[118] In total, Treaty contained a Preamble and 25 Articles that provided new international rules and clarified the interpretation of certain existing rules. Not only did it bring effectiveness and uniformity but also provided an adequate solution to the question raised by new economic, social, cultural, and technological developments.

K. The Marrakesh Treaty 2013

On June 27, 2013, at Marrakesh, a treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled was adopted by the Diplomatic Conference. The Treaty came into force on September 30, 2016. Although the Intellectual Property Rights and Human Rights movements are apparently different and are also distinct in their very origin, concept, and principles. Sometimes they criticize one another and sometimes try to accommodate each other. But Marrakesh Treaty is an attempt to accommodate and create a balance between the two.[119] It allowed the production and distribution of copyrighted printed and published work without the authorization of the copyright owner for the persons who are blind, visually impaired, or otherwise print disabled in an accessible format.[120]

The issues that arose with time or didn't receive the attention of the international community were thoroughly addressed in a normative order from the International Copyright Convention in 1886 to the conclusion of the Marrakesh Treat in 2013. This generation has played a pivotal role in the development of copyright law. Copyright has been subject to severe criticism because of its historical background that it creates a monopoly. And this monopoly creates a hindrance in the dissemination of knowledge. This generation addressed this issue throughout. The Marrakesh Treaty of 2013 has provided the molar to molecular treatment and has also considered the addressed the problems arising with time.

The advantages of the law in every stage can be said to be in the form of 'incentives' that it provided in different forms. In the First Generation, stationers who invested in the printing press were the real beneficiaries. In the Second Generation, incentives were in the form of recognition of the authors' labour and work, restoration of authors' dignity, and also his economic rights. These incentives gave impetus to the authors. In the Third Generation, these were no longer confined to only moral and economic rights, rather altruistic and philanthropist aspects were also given due consideration.

V. Copyright Protection in India

The question of whether or not, India prior to the colonization had any notions or institutions for

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[118] World Intellectual Property Organization, *WIPO Copyright Treaty (WCT) (1996)* (226 (E) 1996). (last visited Apr. 3, 2022). URL: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_226.pdf

[119] World Intellectual Property Organization, *Main Provisions and Benefits of the Marrakesh Treaty 2013* (2016). (last visited Apr. 3, 2022). URL: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_flyer.pdf

[120] *Creative Commons*, (last visited Nov. 24, 2021). http://creativecommons.org/licenses/by/3.0/

legal protection of creative artists has not been asked. It has not been asked as this makes even tentative approaches to answers quite ambitious at this stage. Legal and social historians of ancient and medieval India have yet to attend to this aspect. This part will discuss the copyright protection in the period when India was a British colony and the period after her independence.

A. Pre-Independence

From the middle of the 18th-century up to the time of the enactment of the Literary Copyright Act 1842[121] (*hereinafter*, the Act of 1842), copyright protection in India, if at all afforded, was by the common law of England or by virtue of the principles of equity and good conscience. After the enactment of the Act of 1842, copyright in published books could be enforced in British India. "Books", under the Act of 1842, included every volume, pamphlet, letter, and press sheet music-sheet, map, chart, and plan. It directed the registration of every book at the Stationer's Hall in London.[122] Musical and dramatic compositions were held to be books and protected by copyright statutes relating to literary works.[123] The Act of 1842 also afforded protection under Section 20 to performing rights in both dramatic and musical works.[124]

In order to consider the question of ratification by England of the Berlin Revision of Berne Convention 1908, a departmental Committee chaired by Lord Gorell was appointed by the Board of Trade in 1909.[125] The Committee came to the conclusion that Berlin Convention should be accepted by Britain with few reservations as possible. Subsequently, in 1910, an Imperial Copyright Conference was convened in London to consider the recommendations of the said Board of Trade Committee.[126] Representatives of self-governing dominions of the Board of Trade Committee recommended that: (a) an Act dealing with the essentials of the Imperial Copyright Law should be passed by the Imperial Parliament, and (b) this Act should be expressed to extend to all British possessions subject to rights of self-governing dominions and possessions to modify or add to its provisions by legislation certain cases affecting only procedure and remedies.

A bill giving effect to these recommendations was prepared and introduced in both the Houses of Parliament and after several modifications, was eventually passed into law which came to be known as the Copyright Act of 1911[127] (*hereinafter*, the Act of 1911). It came into operation in the UK on 1 July 1912. The Government of India considered that the early introduction of the Imperial Act of 1911 into India was desirable and consulted various local governments regarding modifications and alterations that might be necessary to make it suitable for the local conditions of India. In view of difficulties that were experienced in Great Britain because of the non-application of the Act of 1911 to India and having regard to serious hardship and loss which might be inflicted on English authors thereby, the Act of 1911 was brought into force in India by a proclamation in Gazette of India on October 31, 1912. In the meantime, the question of modification or additions to the Act of 1911 was postponed for subsequent consideration on receipt of views of various local Governments. Later, the Government of India, after

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[121] 5 & 6 Vict. c. 45.

[122] CATHERINE SEVILLE, *LITERARY COPYRIGHT REFORM IN EARLY VICTORIAN ENGLAND: THE FRAMING OF THE 1842 COPYRIGHT ACT 10*, 13–14 (Cambridge University Press, 2003).

[123] Ibid.

[124] Upendra Baxi, *Copyright Law and Justice in India*, 28(4) J. OF THE INDIAN L. INSTITUTE 497–450, 498, 502 (1986).

[125] CHAMILA S. TALAGALA, COPYRIGHT LAW AND TRANSLATION: ACCESS TO KNOWLEDGE IN DEVELOPING COUNTRIES (1st ed., Routledge, 2021).

[126] BENEDICT ATKINSON, *THE TRUE HISTORY OF COPYRIGHT: THE AUSTRALIAN EXPERIENCE*, 1905–2005 (Sydney University Press, 2010).

[127] 1 & 2 Geo. 5 c. 46.

the receipt of the views of local governments, concurred with them and by virtue of powers conferred by Section 27 of the Act of 1911, prepared a Draft Bill embodying modifications and additions to the Act of 1911 which were considered desirable together with certain formal and necessary alterations due to the difference between English and Indian administration and procedure. This bill was eventually passed into law which came to be known as the Indian Copyright Act 1914.[128]

The Indian Copyright Act of 1914 (*hereinafter*, the Act of 1914) was a short Act in the sense that it had only 14 Sections which annexed the whole of the Act of 1911 as its First Schedule.[129] The Act of 1914 introduced two major changes: Firstly, it introduced criminal sanctions for copyright infringement under Sections 7–12, and secondly, it modified the scope of the term copyright.[130] Under Section 4, the "sole right" of the author to 'produce, reproduce, perform or publish a translation of the work shall subsist only for a period of ten years from the date of publication of the work'.[131] The author, however, retained his "sole right" if within the period of 10 years he published or authorized publication of his work a translation in any language in respect of the language.[132]

The modification in the term of copyright for translation rights can't be explained by any reference to the dominant characteristics of colonial policy. The language of the Act might suggest a laudable policy of promoting wider diffusion of Indian works from one language to other Indian languages, a consideration which might have appeared distinctive to India as compared with the UK.[133] There might also have been the desire to promote the growth of the publication industry in numerous Indian languages.[134] The Governor-General of India on December 18, 1847, passed the Indian Copyright Act[135] for 'the encouragement of learning in the territories subject to the government of the East India Company by defining and providing for the enforcement of copyright therein'. Its preamble speaks of doubts which exist or which may exist concerning recognition and enforcement of copyright as a part of the common law or administration of justice based on "justice, equity and good conscience" or as regards the application of British Statutes to territories then administered by the East India Company.[136]

B. Post-Independence

1. The Copyright Act 1957 and the Copyright Rules 1958

The Act of 1914 had become outdated and thus a bill to revise the copyright law in India was introduced in the Council of States on October 1, 1955. Bill was passed in about 18 months which also included its processing by the Joint Select Committee of the Parliament.[137] It was a remarkable achievement of independent India's legislature that it attached so much of importance to Intellectual

[128] Ibid. Act III of 1914; *see also* Bently, supra note 69.
[129] T.G. Agitha & N.S. Gopalakrishnan, *The Imperial Copyright and the Indian Copyright Law*, 117 (2013). https://www.researchgate.net/publication/296930462_The_imperial_Copyright_Act_1911_and_the_Indian_copyright_law (last visited Apr. 3, 2022).
[130] Ibid. Baxi, supra note 124.
[131] Ibid.
[132] Ibid. Bently, supra note 69.
[133] Ibid. Agitha & Gopalakrishnan, supra note 129.
[134] Ibid. Baxi, supra note 124.
[135] The Indian Copyright Act, 1947 (Act XX of 1947).
[136] Ibid. Baxi, supra note 124.
[137] *Report of the Joint Committee, The Gazette of India Extraordinary* (14 November 1956). (last visited April 3, 2022). URL: https://spicyip.com/wp-content/uploads/2020/04/Report-of-the-JPC-on-the-Copyright-Bill-1955-Nov.-14-1956.pdf

Property Rights in general and copyright in particular. In fact, there were a number of factors that necessitated the early revision of the copyright law. Firstly, it was clear that the continued existence of the Act of 1911 through the Act of 1914 was unbecoming of the changed constitutional status of India. Secondly, the Act of 1914 did not accord with the 1948 Brussels Act of the Berne Convention and the 1952 Universal Copyright Convention. Thirdly, the new and advanced methods of communication rendered modernization of the law necessary.

The need for an 'independent self-contained law' was also felt in the light of the experience of the 'working' of the Act of 1911 and more important of 'growing public consciousness of the rights and obligations of the authors'.[138] Reports of many committees and deliberations of International Copyright Conventions were taken into account while considering the Draft of the 1957 Bill. The Joint Select Committee was also benefitted from the evidence of many Indian and foreign organizations such as the Indian Institute of Education and Cultural Freedom, All India Centre – PEN International,[139] Indian Council for Cultural Freedom, All India Hindi Publishers Association, Indian Phonographic Industry, All India Radio, British Copyright Council, International Confederation of Societies of Authors and Composers (Paris), Performing Right Society (London) and Columbia Gramophone Company Ltd. Interestingly, the Satsangis of Radhaswami faith, a purely religious organization also came with its suggestions and gave evidence before the Joint Select Committee. In total, the Committee held 13 sittings. But despite such a lengthy deliberation, the Report of the Joint Select Committee was a brief in just 7 pages (excluding 2 pages containing the names of the composition of the Committee) of the majority report and 7 pages of dissent by six members.[140] All the major recommendations of the Joint Select Committee were ultimately accepted such as its definitions of 'authors', 'artistic works', 'dramatic works'. Its recommendations as to the enhanced prison sentences, and independence of the Copyright Board, were also accepted. It also defined civil jurisdiction for the infringement proceedings and the same was approved by the Parliament while enacting the Act. The original proposal to reduce the term of copyright for the life of the author and 25 years post-mortem was not accepted by the Joint Select Committee on the ground that India must fall in line with International Conventions. The Joint Select Committee also negatived Bill's proposal on similar grounds making the formality of registration a pre-condition for infringement.[141] Perhaps the only significant matter on which the Committee's proposals were not accepted in view of powerful dissents pertained to a 10 years term of copyright for translations.[142]

IP Law, like most of the other Indian laws, is a colonial legacy. The genesis of IP Law in India may be traced to the time of Transfer of Power from the East India Company to the British Crown in the year 1858 AD.[143] The Copyright Act 1957[144] (*hereinafter*, the Copyright Act), as it was finally

[138] Ibid. Baxi, supra note 124.
[139] PEN International, (last visited Apr. 29, 2022). https://pen-international.org/centres/all-india-centre
[140] Ibid. Report of the Joint Committee, supra note 137.
[141] *See generally* Misra Bandhu v. Koshal, AIR 1970 MP 261, 267. Decision of the High Court of Madhya Pradesh, India.
[142] Ibid. Report of the Joint Committee, supra note 137.
[143] Ibid. Raza, supra note 19.
[144] Act 14 of 1957.

passed, was not in any sense a replication of the English legislation proposals. In this sense, the Copyright Act was the first truly Indian legislation after more than 200 years of subjection to Imperial law. The Copyright Act is divided into 15 chapters and contains 79 sections. In addition to this, the government has been empowered to enact copyright rules by virtue of Section 78 of the Copyright Act. The Government thus enacted the Copyright Rules 1958 which deals with matters of procedure for application of licences for translations, performing rights societies, relinquishment and registration of copyright, and related matters. The Copyright Rules 1958 was later repealed by the Copyright Rules 2013.

2. The Copyright Amendment Acts of 1983 and 1984

Despite the leading role which India played in the revision of the Berne Convention and Universal Copyright Convention leading to the Paris Act of 1971, it was not until 1983 that the Indian Legislature could take up the revision of the Copyright Act. The Copyright (Amendment) Act 1983[145] inserted Sections 32A and 32B which provided for "compulsory licences" for publication of copyrighted foreign works in any Indian language for the purposes of systematic structural activities at a low price with the permission of the copyright Board on certain conditions. Another significant change that the amendment brought in was the insertion of a new provision Section 19A which empowered the Copyright Board, upon a complaint, to order revocation of the assigned copyright where either the terms are "harsh" or where the publication of the work is unduly delayed. The Board has been given the power to publish unpublished Indian works and for the protection of "oral works". The Copyright (Amendment) Act 1984[146] also provided for stringent punishments for piracy and effective procedures to inhibit it under Section 9.

3. The Copyright Amendment Acts of 1992, 1994, 1999 and 2012; the Copyright Rules 2013 and the Copyright (Amendment) Rules 2021

Amendment to the Copyright Act 1957 was introduced by the Copyright (Amendment) Act 1992.[147] The 1992 Amendment Act removed the doubt by declaring that 'copyright shall not subsist by virtue of this Act in any work in which copyright did not subsist immediately before the commencement of this Act.'[148] To cope with the new challenges of technology, the revision of the Copyright Act 1957 was necessary. With this object, a bill to amend the Copyright Act was introduced in 1992 in the Lok Sabha (Lower House) along with Copyright Cess Bill. The Bills had become necessary because it has become much easier for anyone to copy sound recordings, films, and printed works through photocopy than in past. The Bill was referred to Joint Select Committee and was finally passed and assented in 1994. The important feature of the Copyright (Amendment) Act 1994[149] (*hereinafter*, the 1994 Amendment Act) under the present law is that a "musical work" has to be written in a notation (as used in western music). This requirement is being done away with as in practice it denied any protection to most of the Indian composers. The 1994 Amendment Act protected making films, videotapes, or audiotapes of a performance without the performer's permission with few

[145] Act 23 of 1983.
[146] Act 65 of 1984.
[147] Act 13 of 1992.
[148] *See* Section 3 of the Copyright (Amendment) Act, 1992 [Act 13 of 1992].
[149] Act 38 of 1994.

exceptions where the recording is for private use or for news reporting.[150] These rights will be enjoyed not only by singers and actors but also by jugglers and snake charmers. The law will also regulate the hire or resale of any copies of films including videotapes or sound recordings or computer programs. Under this law, a video shop will have to take permission before hiring out any tape to consumers from owners of the same. It was proposed that the Copyright Society will be responsible for the collective administration of copyrights in line with the performing rights society. The 1994 Amendment Act has also enlarged the scope of protection of computer programs.[151] Prior to the amendment, the copyright holder enjoyed the exclusive right to reproduce the work, issue copies, perform the work in public, make any cinematograph film or sound recording in respect of the work, make any translation of the work, or to make any adaptation of the work. The Amendment Act confers the copyright holder with the additional exclusive right to sell, give on hire any copy of the computer program regardless of whether such copy has been sold or given on hire on earlier occasions. In other words, even the legitimate owner (*e.g.,* a purchaser) of a copyrighted work cannot sell or rent his copy of the work. The Amendment effectively eliminates the "first sale" doctrine, developed in American jurisprudence under which a legitimate owner of a copyrighted work could further sell, transfer, lease, or rent the work to another. Taking advantage of the "First Sale" doctrine, many rental companies used to purchase software programs and offer them for short-term rentals — a practice that resulted in widespread reproduction of copyrighted works.[152] Another significant aspect of the 1994 Amendment Act is narrowing down of author's moral right. Now, an author may restrain or claim damages in respect of any distortion, mutilation, or modification of the work if it is done before the expiration of the term of copyright and if such acts would be prejudicial to his honour or reputation. However, an exception has been carved out in the law for the adaptation of computer programs for the purposes of debugging.

According to the Statement of Objects and Reasons of the 1994 Amendment Act, moral rights have been narrowed down because the prior provisions whereby even distortion, mutilation, and modification of the work which are not the pre-judicial to the author's moral rights were in excess of the requirements of the Berne Convention. It should be noted, however, that the provision of moral rights under Indian law goes well beyond the requirements of the TRIPS Agreement which exempts countries from any rights or obligations arising from the provisions of the Berne Convention on moral rights. In fact, the exclusion of moral rights from the purview of the TRIPS Agreement reflects the lack of moral rights under American Copyright jurisprudence.

The penalty for copyright infringement is imprisonment for a minimum of six months and a maximum of three years and a fine ranging from INR 50,000 to INR 2 lakh. The 1994 Amendment Act creates a new *de minimus* punishment of imprisonment for less than six months or a fine of less than INR 50,000 where the infringement has not been made for gain in the course of trade or business. The Amendment also creates a *de minimus* punishment for second and subsequent convictions of imprisonment for less than one year or a fine of less than one lakh rupees where infringement has actually not been made for gain in the course of trade on business. A radical new penalty has been devised which punishes even the users of an infringing computer program. Any person who knowingly makes use of a computer or an infringing copy of a computer program shall be punishable with imprisonment of at least seven days which may extend to three years and with a fine which shall not be less than INR 50,000 but which may extend to INR 2 lakh.[153]

After the 1994 Amendment Act, once again the advancement of the technology compelled the Indian Parliament to bring amendments to the Copyright Act. Accordingly, the Copyright (Amendment) Act 1999[154] provided that the 'performer's right shall subsist until fifty years from the beginning of

[150] Sections 12, 14–15, 1994 Amendment Act.
[151] Sections 14, 17, 20 & 23, 1994 Amendment Act.
[152] Aparna Vishwanathan, *Beware of the New Copyright Act,* 2(123) COMPUTER TODAY 116 (1995).
[153] *See* Section 23 of the 1994 Amendment Act and Section 63B of the principal Act *i.e.,* the Copyright Act 1957.
[154] Act 49 of 1999.

the calendar year next following the year in which the performance is made.'[155] Before this amendment, the period was 25 years. The Amending Act further provided for the rights of the performers and the broadcasting organisations.[156] Further, the Copyright (Amendment) Act 2012[157] amended Sections 2, 11, 12, 14, 15, 17, 18, 19, 19A, 21, 22, 25, 30, 31, 31A, 31B, 31C, 31D, 33, 33A, 34, 34A, 35, 36A, 37, 38, 38A, 38B, 39A, 40, 40A, 45, 52, omitting Section 52B and substituting of Section 53, 55, 57, 65B, 66, 78 of the principal Copyright Act of 1957. But ambiguities are still there.

To note the recent statutory developments in the Indian Copyright Law are the ones that happened almost 8 years back in 2013, and the latest about six months back in March 2021. The Copyright Rules passed in the year 1958 have now been repealed by the Copyright Rules 2013.[158] The Copyright Rules 2013 has restructured, empowered, and strengthened the Board. The Copyright Rules 2013 have been further amended by the Copyright (Amendment) Rules 2021[159] which provides that the publications of the Copyright Journal[160] be made available on the official website of the Copyright Office.[161] So far, 10 Copyright journals have been published and made available on the website of the Copyright Office. The first Journal 'Copyright Journal No. 001' was published in April 2021 and the latest is 'Copyright Journal No. 10' published in January 2022.[162]

VI. Conclusion

The history of copyright law is a history of technological developments which led to the evolution of copyright law through the three generations of evolutions of copyright. The analysis in Part II reveals that in the First Generation, the protection was in the form of "monopoly", a monopoly which was an issue throughout all the generations and is even being criticized in the twenty-first century for the same reason that it creates hindrance in the dissemination of knowledge. The prevalent approach of the First Generation can be well understood by understanding the history of sea voyages as they were granted protection by the Sovereign to roam around the world and to come with some artisan or/and knowledge that was not there — thus, creating a monopoly. In this generation, authors seem to be like an alien notion as everything speaks about stationers and their rights. Analysis in Part III reveals that the authors' economic, moral and neighbouring rights were exclusively recognized. In this generation, the fruits of the labour of the authors received recognition. Analysis in Part IV reveals that sincere efforts were made to address the direct and related problems and challenges that were not addressed by the past two generations. Continuous and diligent efforts were taken to provide molar to molecular treatment to copyright at the international level which is speaking in itself. Analysis in Part V reveals that the first IP legislation enacted in independent India is the Copyright Act of 1957 (a decade after the independence), and before her independence, being a colony, the laws of the United Kingdom prevailed. Within 65 years of the coming into force of the Copyright Act, it has been amended 6 times to meet the standards of international law, cope with technological advancements, and protect the rights and interests of the authors. With every passing decade, more and more countries are realizing the danger of not giving adequate protection to creators of IP and are thus joining the Copyright Union and bringing

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155 *See* Section 4 of the Amending Act which amended Section 38 of the Copyright Act 1957.

156 *See* Sections 5 and 6 of the Amending Act which inserted Sections 40A and 42A to the Copyright Act 1957.

157 Act 27 of 2012.

158 *The Copyright Rules 2013*, G.S.R 172(E) dated 14 March 2013 published in the Gazette of India, Extraordinary, dated 14 March 2013. (last visited Apr. 3, 2022). URL: https://copyright.gov.in/Documents/Copy-Right-Rules-2013.pdf

159 *The Copyright (Amendment) Rules 2021*, G.S.R 225(E) dated 30 March 2021 published in the Gazette of India, Extraordinary, dated 30 March 2021, (last visited Apr. 3, 2022). URL: https://copyright.gov.in/Documents/Notification/Copyright-Rules_Amendment_2021.pdf

160 Rule 2(1)(da), Copyright Rules 2013.

161 Indian Copyright Office, (last visited Apr. 29, 2022). https://copyright.gov.in/CopyrightJournal.aspx

162 *Copyright Journal No. 001, April 2021*, INDIAN COPYRIGHT OFFICE, (last visited Apr. 29, 2022). https://copyright.gov.in/CopyrightJournal.aspx

changes in their national copyright laws. The Indian copyright law after the Amendment Acts of 1994 and 2012 is an excellent piece of example in this context. Whereas, it cannot be denied that in certain aspects, under the USA's influence and to comply with the TRIPS Agreement, the Amendments have an effect of narrowing down copyright protection as well.

The three generations of copyright have played a significant role in developing and reforming the copyright law. History of copyright reveals that each generation got the (identified) problems on or relating to copyright law and also the reasons to address them amicably. The significant contributions of the historical development of law in shaping the current copyright are immense. In the first instance, copyright was recognized only in a literary sense but the historical development of law shows that the copyright protection was extended to the dramatic, artistic, cinematographic works. Moreover, in addition to the exclusive rights of the authors, performers, and broadcasting rights were brought within the statutory protection. From the analysis in Parts II–V, the two propositions that: (i) 'only after the invention of the printing press, the need for protection of authors' rights was firmly realized'; and (ii) 'the journey of copyright law has been a journey from a positive right to a negative right, and technological developments have been the reasons for the change in the subject-matter and number of rights under the copyright law' stands verified. IP is not a positive right. Copyright as an IP is a negative-private property to exclude or prevent others.[163]

It may also be said that the copyright law, as we understand it, is of relatively recent origin. Though the concept of the existence of property cannot be doubted (Social Contract Theory), but the sheer creation of human efforts as a "property" is of recent origin—traceable to the Industrial Revolution. The history of copyright shows that copyright has seen many ups and downs since the invention of the printing press. Unlike other IPs (Patents, Trademarks, etc.), the copyright's struggle is like that of the Cinderella sisters. It received stepmotherly treatment but when it got the recognition, it also got the highest pedestal under the IP umbrella.

[163] Ibid. Raza, supra note 19.