Copyright Laws in India and Maintenance of a Welfare State

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Information has attained the status of a ‘primary good’ and is therefore essential for the socio-economic development of an individual in any society. Given the nature of the Indian polity which is a Welfare State, the current copyright regime in India, which has largely been modelled to fulfil India’s obligations under the TRIPS Agreement, does not strike a harmonious balance between promoting the progress of arts and sciences and fulfilling the constitutional mandate of achieving social and economic justice. The lengthy term of protection of copyright is detrimental to the benefit that public might derive from release of such work in public domain. Developing nations like India should develop copyright models that do not stunt the growth of their skilled work force and further satisfy their constitutional goals.

Keywords: Constitution of India, copyright laws, copyright term, welfare state, monopoly

‘Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust … The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one.’

‘Microsoft, the giant, has stirred. This month, February 2003, for the first time, four dealers who together cater to 60 per cent of the PC market in Thiruvananthapuram were trapped by agents of Microsoft Corporation, threatened with legal action and made to pay costs for infringing Microsoft's valid and existing copyright and trademark rights by installing unlicensed Microsoft products on computer systems that they had sold.’

The snippet of the news-item quoted above is just a glimpse of what has become a common news feature, but is somehow yet to capture everyone’s imagination. It began with a sting operation that was conducted by a private investigating agency to crack down on sale of pirated software. These raids were followed by a legal notice. With no means to defend a copyright infringement action and faced with the prospect of imprisonment for up to a period of three years and a fine of up to rupees two lakhs, most dealers plead guilty. There seems to be nothing wrong with the aforementioned scenario. In fact, it appears as if, for once, the law offenders were brought to book. Perhaps, there is more to this than meets the eye.

Intellectual Property: The Uncharted Territory

Most Indians today are no longer unfamiliar with the once alien and western sounding terminology of intellectual property rights (IPR). For the common man the moment of realisation was, in a true third world fashion, when he was told, while buying a personal computer that he could be at a real risk of being imprisoned and paying a hefty fine if caught using pirated software. For a multitude of computer literate population in India, this was an unpleasant wakeup call. The use of pirated software in developed countries is a crime, which entails severe punishment. However, until very recently, the average technosavvy Indian has used pirated software as a matter of right and was oblivious to the seriousness of his piratical ways. To a large section of the population using pirated software is just about as natural as having a computer, perhaps even more so. Most find it unacceptable to pay more than three times the amount for say software that must necessarily be a part of the computer and not feel a sense of guilt or moral turpitude over the act. After all, it is not equivalent to theft. Or is it?

In India, there has been a copyright law in place since 1911, however it is only in the post-liberalisation years from 1992 that there has been an active demand to enforce IPR more stringently. The irony of the current intellectual property (IP) regime is that unlike globalisation, privatisation, and

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liberalisation, the construction of highways, dams etc., it did not set in slowly or steadily for India to get used to the idea. It has been thrust upon with uncompromising severity to implement, without questioning.

The recent spate of incidents, the tenor of government policies, the specialised agencies that have sprung up all over urban cities to deal with copyright theft, have called such acts into question. One is informed how using pirated software causes serious revenue loss to the corporations, how it scares away invaluable foreign investment. Alongside the economic loss, one is told that it causes irreparable harm to the author of a work if one uses a pirated version of his work as he does not receive the ‘fruits of his intellectual labour’ and is deprived of the incentive to continue his work.

The current scenario presents an inexplicable conundrum, because one is told that using pirated goods is wrong, but surely, no one is expected to buy the original works at the abysmal prices they are offered. So one must continue in one’s erring ways out of necessity. But, why is it that one feels no guilt or at least not a considerable amount of it, over using pirated goods? It would seem like a contradiction of sorts, so either the conclusion or the premise in the present equation is incorrect. For the premise that the use of pirated intellectual property (IP) is a crime; the conclusion should have been that a sense of deviation in committing this crime should have been felt. However, the conclusion in fact is that one feels no sense of guilt over the use of pirated works. It is therefore necessary to carry out an exercise in critically examining the philosophical basis and the classical justifications that are offered for the existence of the institution of IP laws in general and copyright in particular.

In the present paper, the writings of the noted scholar, Peter Drahos, have been used to show that information in the present day and age has acquired the status of a ‘primary good’.

Information- A Free Good?

Copyright laws, as they stand in India today, ominously lean towards the first world partiality for protecting private interest over the promotion of societal welfare. This partiality cannot be reconciled with the constitutional position in India, because information in this society has attained the status of a primary good.

The term ‘information’ is defined in ‘a broader generic sense to include abstract objects and knowledge of various kinds … abstract objects are species of information’. Rawls has defined primary goods as, ‘things that every rational man is presumed to want. These goods normally have a use whatever a person’s rational plan of life’. Drahos places information in the category of primary goods and says that ‘it may be perhaps the most important primary good when one consider its role in one’s lives, the economy, and the development of knowledge, culture and its impact on power in a society’. Rawls further classifies primary goods into social and natural primary goods. Social primary goods are, ‘rights, liberties, powers, privileges, wealth, income, and opportunities whereas health and vigour, intelligence and imagination are natural primary goods’. One can ascertain from Rawls’ classification that natural primary goods may be defined as the raw material, the inherent capacities with which a person is born. They are not a result of external factors, though they might be either enhanced or diminished by the operation of external influences, such as a person’s environment, upbringing, and societal influences. Social primary goods on the other hand are attributes that every person possesses by virtue of their existence in a civil society. In which of these categories does information fall? Apparently, information is a social primary good that is today just as essential to the welfare and development of a person as rights, liberties, powers and opportunities because in ‘a social structure in which citizens have equal rights to basic liberties, citizens requires equal access to information so that they can strategise and make correct decisions’. The
reason information is grouped with other basic freedoms, such as freedom of speech and liberty is because, for the meaningful exercise of these rights, access to and use of information is essential. ‘The importance of information as a primary good can be better appreciated when the consequences of its imperfect distribution are considered’. Imperfect distribution of information would necessarily negate the Constitutional objective of achieving social and economic justice, since imperfect distribution of information would mean that there is imperfect distribution of the material resources necessary for the attainment of socio-economic equality and would necessarily lead to inequality of opportunity. A society such as India’s cannot leave information off the list of primary goods, because then, the guarantee of socio-economic justice would not only be incomplete but also ineffective.

However, it is also accepted that though information may be a primary good, it is also an economic good, i.e., just as land is valuable, so is information. So also is information a profitable commodity in exchange. The question that then arises is: why should information be treated differently from any other tangible property and why should there be a separate framework to regulate information? The answer lies in the fact that information is an abstract object. Drahos has stated that all economic goods must possess the dual characteristic of desirability and scarcity i.e., people desire the possession of these goods and they are scarce. In absence of either one of these characteristics, a good is no longer an economic good. However, the second condition does not hold good for information.

‘There can be scarcity of information about a particular subject. People may be ignorant, or they may be restricted from having access to information by social norms or encryption technology. But once in existence, information is not a scarce resource. The supply of information to one person does not diminish the amount available for supply to another person. Information has, in the language of economics, the property of being, non-rivalrous in consumption. There is another cogent feature of information that matters for the purpose of understanding its nature and that is its natural tendency to spread. Humans are information gatherers and exchangers’.16

What is then the justification of creating property rights in a resource that unlike other property forms is inexhaustible? Were rights in literary and artistic works always treated in the same manner as tangible property? The struggle for literary property in England was for the publisher’s and not the author’s rights. This led to the emergence of the figure of the author as a ‘solitary genius’ and the property analogy in relation to land was borrowed from John Locke to further the cause of literary property.

‘Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no body has any Right to but himself. The Labour of his Body and the Work of his Hands, we may say, are properly his. Whosoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property’.17

This Lockean discourse on tangible property was the theory imported by the booksellers and the proponents of perpetual copyright to justify creating property rights in intangible objects. Under this theory one can see how readily the argument, that literary works are as much a man’s property as produce from land, blended with the established property norms and ideas. The idea of property was ingrained in society and it made for a very convincing argument to simply include artistic works within the category of property. However, there is a fundamental fallacy in this importation of the Lockean theory of property to govern intangibles, as one simply cannot use the principles applicable to govern tangible property to regulate intangibles. Justice Joseph Yates, the only judge dissenting in the case of Millar v Taylor, recognized this distinction when he stated that ‘nothing incorporeal could be treated as property in the same sense as a house or land’.19

The judgment of the US Supreme Court in the case of Wheaton v Peters also highlights the distinctive nature of literary property and reiterates the view expressed by Justice Yates, that ‘property is founded on occupancy and abstract objects cannot be occupied’.20 The court stated,

‘Feudal principles apply to real estate. The notion of personal property of the common law, which is based on natural law, depend materially on possession, and that of an adverse character, exclusive in nature and pretensions. Throw it out for public use, and how can you limit or define that use? How can you attach possession to it at all … light and air, and a part of the great ocean,
may be claimed and held, as long as necessary for the occupant; but abandon the immediate occupation, and the exclusive power and the exclusive possession are gone together. These and similar reasons contribute to show the source of literary property everywhere.21

The dissenting opinion of Justice Yates and the judgment in the abovementioned case challenges, at a very fundamental level, the existence of property rights in intangible objects.

Section 14 of the Copyright Act, 1957, defines copyright as an exclusive right to do or authorise the doing of certain acts. It is therefore, not a property right but a personal right that entitles the holder of the right to do certain acts in relation to the thing for which he holds the right. The premise here is that nature of this right needs to be examined by Courts in the Indian context having regard to not only the language of Section 14 of the Copyright Act, 1957 but also having regard to the Constitutional framework which envisages the creation of a Welfare State.

One must be ever cautious of the danger of defining copyright as a property right. This interpretation is more commonly made than one cares to admit. In the Penguin Books Ltd case, the Court held that copyright is a property right.22 The instant case is one of the few where copyright has been defined as a property right by the Court while there are other cases which while discussing Section 14 do not interpret it as a property right. Copyright is not a property right in literary objects but a personal right in relation to literary objects.

Copyright: The (un) Welfare State

Building on the assertion that information is a ‘primary good’, it would be interesting to demonstrate that the current copyright regime does not strike a harmonious balance between promoting the progress of arts and sciences and fulfilling the constitutional mandate of achieving social and economic justice.

The framers of our Constitution intended for India to be, not a capitalist but a socialist economy, where the welfare of the people would be paramount. The Preamble to the Constitution introduces India as a ‘socialist’23 Republic. The Supreme Court of India, while interpreting the word ‘socialist’, has held that the term ‘socialist’ read with Article 14 of the Constitution of India, empowers the courts to strike down a statute, which fails to achieve the socialist goals to the fullest extent.24 The courts have interpreted the term ‘socialist’ read with various other cognate Articles to mean reduction of inequalities in income and status and to provide equality of opportunity and facility.25

The idea of ‘socialism’ as contained in the Preamble to the Constitution is also accompanied by the concept of ‘social justice’. The expression ‘social and economic justice’ involves the concept of ‘distributive justice’, which connotes the removal of economic inequalities and the rectifying of the injustice resulting from dealings and transactions between unequals in society.26

Article 38 of the Constitution of India27 enjoins the State to strive to promote the welfare of the people by securing and protecting a social order in which justice-social, economic, and political—shall inform all the institutions of national life striving to minimise inequalities in income and endeavour to minimise inequalities in status, facilities, and opportunities.28 ‘Copyright creates proprietary rights over information. These proprietary rights restrict the free flow of information. This would in effect create an inequality of a new kind and split the population into two groups, i.e. the information-poor versus the information-rich’.29 In the modern context, this kind of discrimination would result in the same repercussions as the inequalities that existed between the ‘land-owners’ and the ‘land-labourers’ resulted in. The copyright regime in its current form would create disparities which are ‘in essence old forms of inequalities patterned around the ownership of productive forces’.30

Sub-clause (b) of Article 39 of the Constitution of India provides that ‘[T]he State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.’ Sub-clause (c) of Article 39 supplements this by providing that the State must ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.31 The Supreme Court of India has held that the expression ‘material resources’ used in sub-clause (b) of Article 39 is wide enough to include not only natural32 or physical resources but also movable and immovable property33 and that the term ‘economic system’ in sub-clause (c) of Article 39 is wide enough to include professional and other services.34

Lastly, the direction in sub-clause (b) of Article 39 to serve the ‘common good’ must be achieved by any law that is enacted or already in force. Creative work
must be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and other arts.35 There can be no equality of opportunity while information is concentrated in the hands of a few and its availability to the public at large is dependent on the terms set by this class of ‘information rich’. Rights and liberties do not exist in a vacuum. A charter conferring economic and social equality to people is of little consequence if the government of the day does not provide the means for the people to attain this equality. Merely granting rights to a person does not absolve the State of its responsibility of providing the infrastructure to its citizens to compete in a free market. Rights and liberties have no value if there are no means to achieve them. Caging information in the rigours of the present IP regime would ensure that this primary good turns into a tool for perpetrating economic and social inequality rather than furthering social and economic justice.

Given the socio-economic conditions in India, the adoption of the copyright regime in its current form, would establish a new class of socially and economically disparate people who are now also unequal in their possession of information, which is essential for their economic growth and betterment. It needs no lengthy elucidation to accept the proposition that information is to this century what land was to the earlier. Hence, if one applies the same rules to govern the distribution of information that have been applied to govern the distribution of land, one will end up with the same disparate and desperate situation. How can a country, where a large section of the population is still grappling to come to terms with the process of globalisation and liberalisation, where the need and necessity of information as a primary tool for advancement and progress is still to be realised, adopt a regulatory framework that deprives its people of the benefits of the information age? It is the same as depriving people of opportunities even before they know that such opportunities exist. Surely, this is not in keeping with the ethos of a Welfare State or the ideals of the Constitution?

One might argue that in the present era of globalisation, in order for India to proceed on the road of development, it is impermissible to reject the entire copyright regime. One might also argue that copyright has provided the much needed economic independence to authors so that many individuals may indulge in creative activity freely without having to depend upon the favour of limited patrons and that the dissemination of creative work requires the middleman who in turn deserves to be compensated. Against the backdrop of complex socio-economic forces, even though the institution of copyright restricts the free flow of information, which, being a primary good should be a free resource especially in a Welfare State; one must acknowledge that the complete abolition of copyright law may not be a realistic aspiration at this stage. Considering that the popular mindset in favour of copyright law is so powerful, it would require a revolution to overthrow this monopoly. So also, one cannot deny that as a mechanism for regulating the distribution of knowledge and promoting the progress of arts and science by providing some economic incentive to the author, copyright law does try and reconcile conflicting demands, ‘[t]he economic philosophy behind the Copyright Clause ... is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors’.36 This is also the motif of the preamble to the Copyright Act, 1957. However if the current copyright law in India is to remain true to its purported object without grossly violating the constitutional mandate of a Welfare State, then it must relentlessly fight to ensure that private interest does not overshadow public interests. The ever-extending term of copyright is one such obliteration of public interest.

Copyright: The Trojan Horse

‘The immediate effect of the Indian copyright law is to secure a fair return for an author’s creative labour. But the ultimate aim is, by this incentive, to stimulate artistic creativity for general public good...35 the Copyright Act must be construed in light of this basic purpose’.37 Historically, copyrights and patents were established by the royalty so that science and learning might be encouraged for the benefit of the people. It is pertinent to note that the principle objective and justification for the existence of copyright laws the world over, still remains to promote the progress of arts and sciences by granting protection to writers and the owners of such copyright protection, for a limited period of time,38 so that such an incentive promotes public welfare. It is however, a question whether the term of copyright protection today still allows copyright law to remain true to its fundamental object. The principle of justice as propounded by Rawls assists in testing the validity of the justification.
offered for the existence of copyright laws. This paper is concerned only with the fulfilment of the second principle of justice which provides that ‘social and economic inequalities are to be arranged so that they are reasonably expected to be to everyone’s advantage and attached to position and offices open to all’. Thus in order for any regulatory mechanism to be just, it need not ensure that there is complete social and economic equality but only that if inequalities exist, they must be for the furtherance of benefit to everyone and the existence of inequalities that are not to the benefit of all leads to injustice. Within this ambit of Rawlsian justice, it is examined whether the inequalities created by the operation of copyright laws are such that they are to the benefit of all.

As stated earlier, copyright in a work is not based on any natural right of the author. In India as in the United States and in England, copyright is a statutory right. In Fox Film Corp v Doyal, the US Supreme Court stated that, ‘the sole interest of the United States and the primary object in conferring the statutory right. In India as in the United States too, the term of copyright under the Act of 1790 was for a period of 28 years. In the twentieth century, the internationally accepted term of copyright was life of the author plus 70 years. In the European Union (EU) the term of copyright protection exists only if the author plus 70 years. A key factor in the passage of the US Sonny Bono Copyright Term Extension Act, 1998 (CTEA) was a 1993 EU directive instructing EU members to establish a baseline copyright term of life plus 70 years and to deny this longer term to the works of any non-EU country whose laws did not secure the same extended term. By extending the baseline US copyright term, the US Congress sought to ensure that American authors would receive the same copyright protection in Europe as their European counterparts. There was also a view that CTEA may also provide greater incentive for American and other authors to create and disseminate their work in US. Eldred v Ashcroft in which the constitutional validity of the CTEA was challenged and which was ultimately upheld by the Supreme Court, Professor
Lawrence Lessig representing the petitioners argued that the CTEA violated the mandate of the Copyright and Patent Clause of the United States Constitution, by extending the existing copyright term for the works already in existence. His rationale was that how could an extension of the copyright term, for works already in existence provide an incentive to authors and thereby promote progress. Lessig argued elsewhere that copyright might have provided the initial incentive to Walt Disney to create Steamboat Willie. However, the granting of an extension to Disney (or his heirs) will not promote progress since the work is already in existence. ‘Obviously, a retroactive extension cannot provide an incentive — “Gershwin isn't going to write any more music.” To the contrary, the cause of art and science actually suffers under retroactive extensions, because works that otherwise would have been returned to the public are kept in private hands.’

Upholding by the US Supreme Court, of the CTEA has created a dangerous precedent. CTEA was created so as to follow in Europe’s footsteps. This will set up an international standard, which will pressurise other countries to revise their copyright protection terms.

Copyright: The Road Less Travelled

‘The case for regarding information as a primary good of a political as well as a social kind is very strong. The role of any property scheme in relation to information should be to minimise propietorial controls over information. It is not consistent with the principles of justice to use a globalised protectionist scheme of intellectual property to create conditions of artificial scarcity for the primary good of information.’ Information by its very nature is not scarce. By sharing information, none is lost; in fact, one might just end up having more. It seems that ‘States, when it comes to intellectual property, become, as it were, law takers rather than law makers.’

The author is not at any stage suggesting that the regime of copyright as a whole should be rejected, that one should not hasten to apply the principles governing tangible property to intangible property, for they are, by their very nature, different and cannot be governed by the same set of principles. The IP system should be audited like any other government subsidy to make sure that we are getting what we pay for and not paying too much for what we get. Some writers have also considered whether a ‘system of direct government subsidies would be preferable to copyright, if the need for incentive could be met without restricting dissemination and use of information’.

While India is still at the threshold of the IP revolution, instead of blindly importing foreign laws into her system, an attempt must be made to develop laws keeping sight of the social and economic welfare and need of the nation at large, keeping in mind that property is not the basis for justice but an instrument for justice. Time and again scholars have emphasised that alternative systems exist that successfully provide the so-called ‘incentive’ to authors. Justice Jefferson in his celebrated letters, has stated as much, ‘Society may give an exclusive right to the profits arising from [inventions], as an encouragement to men to pursue ideas which may produce utility, but this may or may not be done, according to the will and convenience of the society, without claim or complaint from any body. Accordingly, it is a fact, as far as I am informed, that England was, until we copied her, the only country on earth which ever, by a general law, gave a legal right to the exclusive use of an idea. In some other countries it is sometimes done, in a great case, and by a special and personal act, but, generally speaking, other nations have thought that these monopolies produce more embarrassment than advantage to society; and it may be observed that the nations which refuse monopolies of invention, are as fruitful as England in new and useful devices.’

Jefferson’s message is simple. Copyright may be necessary, but it should not be treated as a natural right of an author but granted on the basis that the welfare of the public will be served and progress of science and arts will be promoted by securing such rights to the authors for a limited period of time.

Coming to the question posed at the beginning of the paper - Why is it that one feels no sense of guilt engaging in an act that is, in the eyes of the law, a crime? Perhaps the answer lies in the fact that social institutions are an embodiment of the morality of that society. Rawls seems to think that a just system must generate its own support. This means that it ‘must be arranged so as to bring about in its members the corresponding sense of justice, an effective desire to act in accordance with its rules for reasons of justice’. To impose a regulatory mechanism on a society that is not in a position to fully appreciate or understand its ramifications violates the fundamental notions of justice and it is no wonder that violating the law then poses for no moral dilemma nor does a sense of injustice plague the so-called wrongful
Constitutional mandate of a Welfare State.

their flourishing economies and that do not flout the growth of their skilled work force, do not impair well to construct copyright models that do not stunt non-western developing nations like India would do tangible property to govern intangible property and on a fallacious importation of the rules governing copyright model has been in existence for some
time has become so essential for the development of exploitation of this resource. Secondly, information today has become so essential for the development of an individual in any society that the State can no longer allow this valuable resource to be concentrated in the hands of few. Lastly, though the western copyright model has been in existence for some centuries, it must be accepted that this model is based on a fallacious importation of the rules governing tangible property to govern intangible property and non-western developing nations like India would do well to construct copyright models that do not stunt the growth of their skilled work force, do not impair their flourishing economies and that do not flout the Constitutional mandate of a Welfare State.

References
3 Section 63 of the Copyright Act, 1957, provides: ‘Offence of infringement of copyright or other rights conferred by this Act An person who knowingly infringes or abets the infringement of (a) the copyright in a work, or (b) any other right conferred by this Act, [except the right conferred by section 53A], shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees ... ’
7 Peter Drahos is the Director of the Centre for Governance of Knowledge and Development and the Head of Program of the Regulatory Institutions Network at the Australian National University.
9 India has more than complied with the mandate of the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS). A plain reading of the objectives of the TRIPS Agreement will highlight the marked difference in the object sought to be achieved by the TRIPS Agreement than those sought to be achieved by national copyright statutes. The Preamble of the TRIPS Agreement provides: ‘Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade’.
16 Mark Rose states ‘the paradigm of property for Blackstone and other eighteenth century jurists was land and it was on the model of landed estate that the concept of literary property was formulated.’ Blackstone in his commentaries defines ‘property’ as ‘that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe’ as cited in Ref 17.
17 Rose Mark, Authors and Owners the Invention of Copyright (Harvard University Press, Cambridge Massachusetts), 1994, p. 39.
18 Millar v Taylor 98 ER 230.
19 Wheaton & Donaldson v Peters and Griggs 8 Peters 33 US 591, 625 (1834).
20 The Delhi High Court in the case of Penguin Books Ltd England v India Book Distributors & ors AIR 1985 Del 29 held that, ‘[C]opyright is a property right. Throughout the world it is regarded as a form of property worthy of special protection …’.
21 Introduced in the Preamble to the Constitution of India by the Constitution (42nd Amendment) Act, 1976.
25 Article 38 of the Constitution of India provides: ‘(1) The State shall strive to promote the welfare of the people by securing and protecting a social order in which justice-social, economic, and political—shall, inform all the institutions of national life; (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.


29 Article 39(c) of the Constitution of India states that: ‘The State shall, in particular, direct its policy towards securing and protecting a social order in which justice-social, economic, and political—shall, inform all the institutions of national life; (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.’


32 Keshvananda Bharati v State of Kerela (1973) 4 SCC 225, paras 426, 711–726.

33 Fox Film Corp v Doyal 286 US 123, 127 (1932); Kendall v Windsor 21 How 322, 327–328 (1858) and Grant v Raymond 6 Pet 218, 241–242 (1832).


35 Twentieth Century Music Corp v Aiken 422 US 151, 156 (1975).


37 The first principle of justice propounded by Rawls is that ‘each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others’; Rawls John, A Theory of Justice, 1st edn (Universal Law Publishing Co Pvt Ltd, New Delhi), 2000, p. 1, p. 60. “I am not testing the regime of copyright protection against the touchstone of this principle because I have earlier categorized information as a social primary good. If I had classified information as a natural primary good then the copyright regime would have to satisfy the standard laid down in the first principle as well.”

38 Brown Ralph S and Denicola Robert C, Cases on Copyright- Unfair Competition, and Related Topics bearing on the Protection of Works of Authorship (Foundation Press, New York), 2002, p. 2. In its Report accompanying the comprehensive revision of the United States Copyright Act in 1980, the Judiciary Committee of the House of Representatives stated: ‘The enactment of copyright legislation by Congress under the terms of the Constitution is not based upon any natural right that the author has in his writings … but upon the ground that the welfare of the public will be served and the progress of science and useful arts will be promoted by securing to authors for limited periods the exclusive rights to their writings … ’

39 Section 16 of the Copyright Act, 1957, provides that, ‘no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act … ’

40 Wheaton & Donaldson v Peters and Griggs 8 Peters 33 US 591, 625 (1834).

41 Donaldson v Beckett 4 Burr 2408: 2 Br PC 129.

42 286 US 123, 127 (1932).


47 Article 7 of the Berne Convention, 1971, provides, ‘(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.’

48 Section 3 of the Copyright Act, 1911, provides, ‘The term for which copyright shall subsist shall, except as expressly provided by this Act, be the life of the author and a period of fifty years after his death …’

49 Section 22 of the Copyright Act, 1957, provides that, ‘[E]xcept as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year next following the year in which the author dies. Explanation-In this section the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.’


53 This requirement is in observance of Article 7(8) of the Berne Convention.

54 Responding to an inquiry whether copyrights could be extended “forever,” Register of Copyrights Marybeth Peters emphasized the dominant reason for the CTEA: “The reason why you’re going to life-plus-70 today is because Europe has gone that way …” Copyright Term, Film Labeling, and Film Preservation Legislation: Hearings on HR 989 et al. before the Subcommittee on Courts and Intellectual Property of the House Committee on the Judiciary, 104th Cong., 1st Session, 230 (1995).

United States [to that in the EU] can ensure stronger protection for U.S. works abroad and avoid competitive disadvantages vis-à-vis foreign rightholders.” Shira Perlmutter, currently a vice president of AOL Time Warner, was at the time of the CTEA’s enactment Associate Register for Policy and International Affairs, United States Copyright Office.


Article I, Section 8, Clause 8, provides as to copyrights: ‘Congress shall have Power . . . [t]o promote the Progress of Science ... by securing [to Authors] for limited Times ... the exclusive Right to their ... Writings.’


The Thomas Jefferson Papers, the Library of Congress http://memory.loc.gov/cgi-bin/query/r?ammem/mtj:@field(DOCID+@lit(tj050135).