

# ***Moral Rights in Copyright Law***

***Submitted By***

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Requirements for the degree of MASTER OF LAWS (CORPORATE LAW)***

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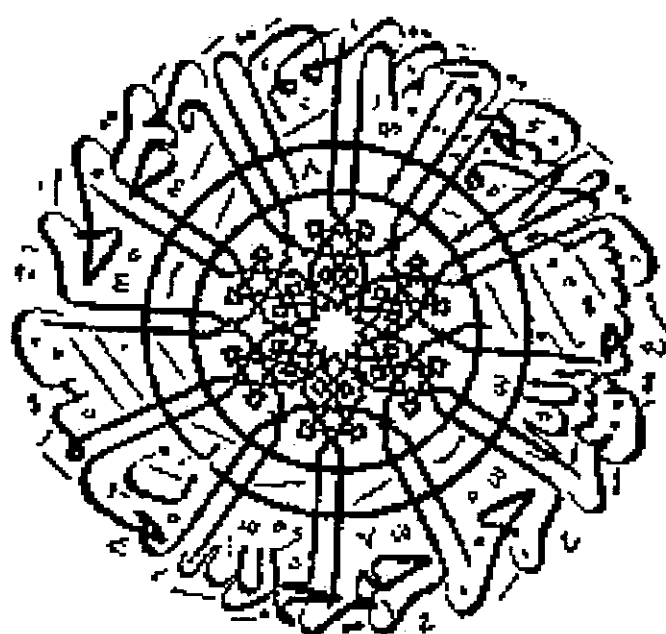
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*O ye who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that ye do. (4:135)*

### ***FINAL APPROVAL***

It is certified that we have evaluated the dissertation submitted by Miss. Tania Mustafa, registration No 259-FSL/LLMCL/F09 on "Moral Rights in Copyright Law" in Faculty of Shari'ah & Law. It is our Judgment that this dissertation is of sufficient standard and scope to warrant its acceptance by the International Islamic University for the award of LL.M. Corporate Law degree.

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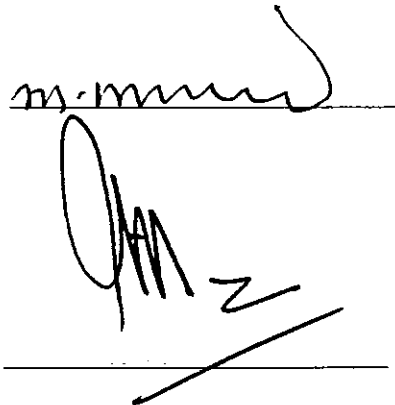
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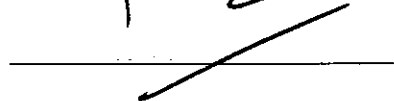
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Requirements for the degree of MASTER OF LAWS (CORPORATE LAW)  
(Faculty of Shari'ah & Law)  
In the International Islamic University, Islamabad  
2011***

## ***DECLARATION***

I, Tania Mustafa, hereby declare that the work in this dissertation was carried out in accordance with the Regulations of the International Islamic University. The work is original except where indicated by special reference in the text and no part of the dissertation has been submitted for any other degree. The dissertation has not been presented to any other University.

**Tania Mustafa**

**259-FSL/LLMCL/F09**

**(December, 2011)**



## ***DEDICATION***

*To Allah Almighty*

*Alhamdulillah, all praises to Allah for the strengths and His blessing in  
Completing this Dissertation*

*To my Father (Rana Ghulam Mustafa Advocate)*

*Who has been my role-model for hard work, persistence and personal sacrifices, and who  
instilled in me the inspiration to set high goals and the confidence to achieve them*

*To my Mother (Mrs. Shahida Mustafa)*

*Patience and understanding shown by her during my whole academic career is greatly  
appreciated*

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# TABLE OF CONTENTS

<b>ACRONYMS.....</b>	<b>XII</b>
<b>LIST OF CASES.....</b>	<b>XIII</b>
<b>LIST OF FIGURES.....</b>	<b>XIV</b>
<b>ABSTRACT.....</b>	<b>XV</b>

## **CHAPTERS:**

### **1. Introduction and Historical Background**

<i>Introduction .....</i>	<i>1</i>
1.1 <i>Copyright in Intellectual property laws .....</i>	<i>5</i>
1.2 <i>History of Copyright Law .....</i>	<i>6</i>
1.3 <i>Rights under copyright law .....</i>	<i>7</i>
1.4 <i>Moral Rights .....</i>	<i>8</i>
1.5 <i>Definition of Moral Rights .....</i>	<i>9</i>
1.6 <i>Evolution of Moral Rights.....</i>	<i>9</i>
1.7 <i>Materials on which Moral Rights apply .....</i>	<i>10</i>
1.8 <i>Occurrence of rights in copyrighted work.....</i>	<i>11</i>
1.9 <i>Theories for the protection of Copyrighted work .....</i>	<i>12</i>
1.9.1 <i>Right of Integrity .....</i>	<i>12</i>
1.9.2 <i>Right of Paternity .....</i>	<i>12</i>
1.9.2.1 <i>Right to require Attribution to the author.....</i>	<i>13</i>
1.9.2.2 <i>Right to prevent False Attribution to another.....</i>	<i>13</i>
1.9.2.3 <i>Right to prevent false attribution to author.....</i>	<i>13</i>
1.9.2.4 <i>Right to require respect for a pseudonym .....</i>	<i>13</i>
1.9.3 <i>Right of Disclosure (Right of first Publication) .....</i>	<i>14</i>
1.9.4 <i>Right of Recall.....</i>	<i>14</i>
1.10 <i>Copyright Infringement.....</i>	<i>14</i>
1.10.1 <i>Types of Infringements.....</i>	<i>15</i>
1.10.1.1 <i>Primary Infringement.....</i>	<i>15</i>
1.10.1.2 <i>Secondary Infringement .....</i>	<i>15</i>

1.11 Infringements of Moral Rights .....	15
1.11.1 Exceptions to the Infringements of Moral Rights .....	16
1.12 Remedies for Infringements of Moral Rights .....	17
1.13 Difference between Moral rights and Economic rights .....	18

## **2. Current Legal Regime for the Protection of Moral Rights at National and International Level**

2.1 Conventions and Treaties on Moral Rights Protection .....	21
2.1.1 Berne convention (1886) for the protection of literary and artistic work of Copyright law. ....	21
2.1.1.1 History. ....	21
2.1.1.2 Important Provisions under Convention. ....	22
2.1.1.3 Principles of the Berne Convention. ....	24
2.1.1.4 Minimum Standards .....	25
2.1.2 WIPO Copyright Treaty 1996. ....	26
2.1.2.1 Author's rights under WCT. ....	26
2.1.3 The Universal Copyright Convention 1952. ....	27
2.1.4 The Rome Convention 1961. ....	27
2.1.5 The Agreement on Trade-Related Aspects of Intellectual Property Law (TRIPS) ...	27
2.2 Protection of rights under USA Laws .....	29
2.2.1 The Visual Artists Rights Act 1990 of United States .....	29
2.2.1.1 History. ....	29
2.2.1.2 Rights Protected under VARA .....	30
2.2.1.3 Works Qualify for VARA Protection .....	30
2.2.1.4 Works not qualify for VARA Protection. ....	31
2.2.1.5 Waiver of rights under VARA. ....	31
2.2.1.6 Time limits for VARA protection .....	31
2.2.1.7 Aim of the Act. ....	32
2.2.1.8 Case Laws .....	32
2.3 Protection of rights under UK Laws .....	33
2.3.1 Copyright, Designs and Patents Act 1988. ....	33
2.3.1.1 Historical Background .....	34
2.3.1.2 Structure of the Act .....	34
2.3.1.3 Time Duration of copyright work .....	35

2.3.1.4 Moral Rights. ....	35
2.3.1.5 Remedies for infringement of Moral Rights. ....	36
2.3.2 The Performances (Moral Rights, etc.) Regulations 2006. ....	36
2.3.2.1 Performers' Rights. ....	36
2.3.2.2 Qualifying Performance. ....	39
2.3.2.3 Duration of Performer's rights. ....	39
2.3.2.4 Consent and waiver of rights. ....	40
2.4 Protection of rights under Australian Laws. ....	40
2.4.1 Copyright Act 1968 of Australia. ....	40
2.4.1.1 Important provisions regarding Moral Rights. ....	41
2.4.1.2 Duration of Moral Rights. ....	42
2.4.1.3 Case Laws. ....	42
2.4.2 Copyright Amendment (Moral Rights) Act 2000. ....	43
2.4.2.1 Nature of the Moral Rights under the Act. ....	44
2.4.2.2 Reasonableness test. ....	44
2.4.3 Copyright amendment indigenous communal moral rights Bill. ....	45
2.4.3.1 Development of Communal Moral Rights. ....	46
2.4.3.2 Criticism. ....	46
2.4.3.3 Requirements to claim Indigenous Communal moral rights. ....	46

### **3. Global Approach to Moral Rights**

3.1 France. ....	49
3.1.1 French Act on Moral rights. ....	49
3.1.2 Test of Reasonableness. ....	50
3.2 USA. ....	50
3.2.1 Historical Background. ....	51
3.2.2 Berne's minimum requirements and Moral Rights in USA. ....	52
3.2.3 Berne Convention as a Non-Self executing treaty. ....	52
3.2.4 Case law. ....	53
3.2.5 Today's status of moral rights protection in USA. ....	53
3.2.6 Moral Right's future in United States. ....	56
3.2.6.1 Moral Rights Will Not Change. ....	56
3.2.6.2 Moral Rights Will Change. ....	57
3.3 United Kingdom. ....	58

3.3.1 Historical Background . . . . .	58
3.3.2 Time Duration . . . . .	59
3.3.3 The rights of employees . . . . .	59
3.3.4 Current position in UK . . . . .	59
3.4 Canada . . . . .	60
3.4.1 Historical Background . . . . .	60
3.4.2 The Right of Anonymity . . . . .	61
3.4.3 The absence of Express Defenses . . . . .	61
3.4.4 The absence of Indirect Infringement . . . . .	61
3.4.5 Canada's short protection period . . . . .	62
3.4.6 Position of Moral rights in Canada . . . . .	62
3.5 Australia . . . . .	63
3.5.1 Moral rights disputes under the new regime . . . . .	63
3.5.1.1 National Gallery of Australia . . . . .	64
3.5.1.2 The Garden of Australian Dreams . . . . .	64
3.5.1.3 Meskenas v ACP Publishing Pty Ltd . . . . .	64
3.5.2 Role of Agencies to protect Moral Rights . . . . .	65
3.6 India . . . . .	66
3.6.1 Relevant provisions of Indian Law . . . . .	67
3.6.2 Judicial Precedents by Indian courts on Moral Rights . . . . .	67
3.6.3 The Copyright (Amendment) Bill, 2010 . . . . .	71
3.6.3.1 Moral Rights under the Copyright (Amendment) Bill, 2010 . . . . .	72
3.6.3.2 Critical Analysis of the Act: . . . . .	73
3.6.4 Future of Moral rights in India . . . . .	74

#### **4. The Status of Moral Rights in Pakistan**

4.1 Copyrights in Pakistan . . . . .	75
4.1.1 Registration of Copyrighted work in Pakistan . . . . .	75
4.1.2 Rights of copyrighted owners in Pakistan . . . . .	76
4.2 The Evolution of Copyright Law in Pakistan . . . . .	76
4.2.1 The Copyright Act, 1911 . . . . .	77
4.2.2 The Copyright Act, 1914 . . . . .	77
4.2.3 The Copyright Ordinance, 1962 . . . . .	78

4.2.4 <i>The Copyright (Amendment) Ordinance, 2000.</i>	78
4.3 <i>Moral Rights under Copyright Ordinance, 1962.</i>	79
4.3.1 <i>Right of Paternity</i>	79
4.3.2 <i>Right of Integrity</i>	79
4.3.3 <i>Duration of author's special rights.</i>	79
4.4 <i>Infringements and Remedies under Copyright Ordinance, 1962.</i>	80
4.4.1 <i>Infringement in Copyrighted work</i>	81
4.4.2 <i>Remedies.</i>	82
4.4.2.1 <i>Civil Remedies.</i>	82
4.4.2.2 <i>Criminal Remedies</i>	83
4.4.2.3 <i>Administrative remedies.</i>	84
4.5 <i>Enforcement of Copyrights.</i>	84
4.5.1 <i>Police.</i>	84
4.5.2 <i>Pakistan Customs</i>	85
4.5.3 <i>Federal Investigation Agency (FIA)</i>	85
<b>5. Conclusion and Recommendations</b>	
5.1 <i>Conclusion</i>	87
5.2 <i>Recommendations</i>	91
<b>Bibliography</b>	96



## ACRONYMS

ACA	American Copyright Act
CA	Customs Act
CDPA	Copyright, Designs and Patents Act
CLRC	Copyright Law Review Committee
CPACT	Coalition to Preserve the American Copyright Tradition
FIA	Federal Investigation Agency
ICA	Indian Copyright Act
ICMR	Indigenous communal moral rights
IP	Intellectual property
IPO	Intellectual Property Organization
TRIPs	Trade Related Aspects of Intellectual Property Rights
UCC	Universal Copyright Convention
UK	United Kingdom
USA	United States of America
VARA	Visual Artists Rights Act
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization

## LIST OF CASES

1. *Adams v Quasar Management Services Pty Ltd & Ors*, 2002 QSC 223 (13 August 2002)
2. *Amar Nath Sehgal vs. Union of India* decided on 21.02.2005 by Hon'ble Mr. Justice Pradeep Nandrajog
3. *Benchmark Building Supplies Ltd v Mitre 10 (New Zealand) Ltd & Anor*
4. *Carter v. Helmsley-Spear*, 861 F.Supp. 303 (S.D.N.Y. 1994), *aff'd in part, vacated in part*, 71 F.3d 77 (2d Cir. 1995)
5. *Clemens v. Belford, Clark & Co.*, 14 F. 728, 730-731 (C.C.N.D.Ill. (1883)
6. *English v. BFC&R East 11th Street LLC*, 1997 WL 746444 (S.D.N.Y. march 3, 1997)
7. *Gilliam v. ABC*, 538 F.2d 14 (2d Cir. 1976)
8. *Independent Media v. Ali Saleem and Anr.* 2006 C L D 97 (Karachi)
9. *K.P.M Sundhram v. Rattan Prakashan Mandir* AIR 1983 Del 461.
10. *Mannu Bhandari vs. Kala Vikas Pictures (Pvt) Ltd*8
11. *Meskenas v ACP Publishing Pty Ltd*, 2006 FMCA 1136
12. *Messers Ferozesons Pvt. Ltd. v. Dr. Col. Retd. K.U. Kureshi and others*, 2003 C L D 1052(Lahore)
13. *Peker v. Masters Collection*, 96 F.Supp.2d 216 (E.D.N.Y. 2000)
14. *Pollara v. Seymour*, 150 F. Supp. 2d 393 N.D.N.Y. 2001
15. *Shakeel Adilzadah v. Pakistan Television Corporation Ltd. and other*, 1989 C L C 2447 (Karachi)

## **LIST OF FIGURES**

<b>Figure 1:</b>	<b>Theories for Protection of Author’s Moral Rights . . . . .</b>	<b>12</b>
<b>Figure 2:</b>	<b>Duration of Copyrighted work. . . . .</b>	<b>35</b>

## ABSTRACT

### MORAL RIGHTS IN COPYRIGHT LAW

By: Tania Mustafa

Supervisor: Rizwan Faiz

This thesis presents the work on Moral Rights in Copyright Law. Moral rights differ from copyright. Copyright<sup>1</sup> protects property rights, which entitles authors to publish and economically benefit from their published works. Moral rights safeguard personal and reputational rights, which permit authors to defend both the integrity of their works and the use of their names. While copyright may be bought, sold or licensed, authors generally retain their moral rights, which cannot be transferred to third parties.

An author of a work has a right to the integrity of their work and to be associated with their work by name, unless they choose otherwise. Moral rights continue even after a work is no longer in the creator's possession. Furthermore, unlike the economic rights moral rights are personal rights that cannot be assigned to another person, such as a publisher, although they can be waived in whole or in part. Thus, even if the economic rights in a creative work have been assigned, the work cannot be so modified as to constitute a mutilation or distortion that would harm the honor or reputation of the creator. The duration of moral rights is the same as for other rights.

This important doctrine needs to be recognized and implemented all over the world, this work of mine is to highlight these rights, asses their current status in different civil and common law countries including Pakistan and also to suggest curative measures regarding the recognition and enforcement of this particular doctrine.

My whole thesis is divided into 5 chapters which are as follows:

Chapter 1 describes about the introduction and the evolution of copyright law and moral rights of authors. This Chapter includes the theories of protection through which the author can enjoy his rights. Furthermore, this chapter will include discussion about the difference between moral rights and economic rights. The important one is that this chapter describes about the infringement and remedies of moral rights.

Chapter 2 provides the current legal status of protection of moral rights at national and international level. In this chapter I discussed about the conventions and Acts on moral rights in those countries where the moral rights gained attention of legislators. I also mention about some other Acts and treaties in different countries these are WIPO Copyright Treaty 1996, The Visual Artists Rights Act 1990 of United States, Copyright, Designs and Patents Act 1988, The Performances (Moral Rights, etc.) Regulations 2006, Copyright Act 1968 of Australia, Copyright Amendment (Moral Rights) Act 2000 and Copyright amendment indigenous communal moral rights bill.

Chapter 3 provides global approach to moral rights in different countries that in what extent these rights gain protection. I mentioned few countries which are France, USA, UK, Canada, Australia and India.

Chapter 4 provides the status of moral rights in Pakistan. First of all I discussed about the copyright evolution in Pakistan than I discussed that which agencies can enforce moral rights, in precise way I also discussed about the Copyright Ordinance, 1962 in which moral rights are given as the name of Author's special rights.

Chapter 5 includes the conclusion and recommendations on the topic.

## ***CHAPTER I***

### ***INTRODUCTION AND HISTORICAL BACKGROUND***

# Moral Rights in Copyright Law

## Introduction:

Copyright ensures that the creator of an original work retains their rights to control their own work and how it is used by others (e.g. videos can only be shown to certain audiences, for certain purposes), what proportion of an item can be reproduced and how that copy is then utilized. Amongst the rights that are protected by the Copyright Act are the “Moral Rights” of the creator which includes the Paternity Right and the Integrity Right.

In copyright law moral rights are exclusively granted to authors, meaning that the law protects their work. A work is a spiritual creation, or the product of a person’s thought, in such a way that the work and its author cannot be completely disassociated. Even if an author waives economic rights on his or her work, the creation is still dependent, to some extent, upon its creator. Intellectual work is protected because it is the emanation of the author’s personality. No one can claim these rights except the author himself if any other person infringes his right. Moral rights consist of the author's right to claim authorship (right of attribution), the right to object to modifications of the work (right of integrity), the right to decide when and how the work in question will be published (right of disclosure), and the right to withdraw a work after publication (right of withdrawal). Moral rights protect author’s creative work.

The habitual dispute between authors and users is that of paid versus free access. Moral rights give this conflict a new front. Authors want to preserve the work exactly as it was created, without alterations; whereas users might wish to modify it to suit special needs or interests, deleting parts of a work or mixing one work with another. It is important to point out that in this

respect, moral rights also benefit the users, as they ensure the work acquired is authentic and genuine.

Moral rights are rights of creators of copyrighted works generally recognized in civil law jurisdictions and first recognized in France and Germany, before they were included in the Berne Convention for the Protection of Literary and Artistic Works in 1928. Those countries which legally protect moral rights, authors have right to protect any changing, modifications in their work which affect their honor.

The first legal international treaty to recognize the concept of moral rights was the Rome Act of 1928. Article 6<sup>bis</sup> of the current Berne Convention treaty includes a moral rights clause that protects authors' rights to decide whether and when to publish works, claims of authorship after the work is published, and preservation of the works' integrity.

French law recognizes perpetual moral rights. In Germany, moral rights end when the author's copyright expires while in other countries, moral rights terminate with the author's death. Many European countries provide for moral rights in addition to copyright held by an author. In the United Kingdom, Ireland, Holland, United States and Canada the author can, under certain conditions, waive his/her moral rights. In Pakistan moral rights exist in the Act as "Author's special rights". In most countries the author and his heirs are the only ones who can be holders of the moral rights originally bestowed to the author.

Although the protection of moral rights is chiefly a matter of national law, a brief review of the international basis of national moral rights statutes is helpful in understanding the common core of transnational moral rights law. The primary international reference for moral rights is the Berne Convention for the Protection of Literary and Artistic Works which has contained a moral



rights provision since 1928. The Berne Convention was not the first multilateral treaty to include a provision on moral rights, but rapidly became the most important international source of moral rights. Article 6<sup>bis</sup> of Berne Convention, which is universally understood as codifying the moral rights of attribution and integrity.

In 1996, moral rights again became the object of international regulation, when Article 6<sup>bis</sup> of the Berne Convention was incorporated by reference into the World Intellectual Property Organization Copyright Treaty “WCT” and expanded to apply to performing artists by the WIPO Performances and Phonograms Treaty “WPPT”, with a slight, but significant, modification.

Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, has the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.<sup>1</sup>

Currently, Article 5 of the WPPT and Article 6<sup>bis</sup> of the Berne Convention are the only relevant moral rights provisions on the international level. Unfortunately, The Berne Convention is silent on the question on whether moral rights can be waived or alienated. It is for this reason some member countries allow the waiver of moral rights.

Unlike the Berne Convention, the Universal Copyright Convention does not include provisions explicitly recognizing moral rights. The rights of paternity and integrity may be indirectly presumed, however, from some of its regulations. This omission should not be seen as an oversight, but rather as a deliberate attempt to accommodate countries that did not sign the Berne Convention on the basis of such grounds.

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<sup>1</sup> Article 5(1) of the WPPT.

The objective of my study is to assess the status of moral rights at the international level while studying the current legal regime regarding moral rights in perspective of whether there is any legislation protecting this particular doctrine in some particular civil law and common law countries.

## 1.1 Copyright in Intellectual property laws:

Intellectual property is a term referring to a number of distinct types of creations of the mind for which a set of exclusive rights are recognized and the corresponding fields of law. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights and trade secrets in some jurisdictions. Intellectual property is any innovation, commercial or artistic, or any unique name, symbol, logo or design used commercially. Intellectual property laws protect the application of ideas and information that is of commercial value.<sup>2</sup> Intellectual Property rights stop others from using their names illegally on the subject, which is not their own creation. Intellectual property defines as:

“Any intangible asset that consists of human knowledge and ideas. Some examples are patents, copyrights, trademarks and software”<sup>3</sup>

“A product of the intellect that has commercial value, including copyrighted property such as literary or artistic works, and ideational property, such as patents, appellations of origin, business methods, and industrial processes”<sup>4</sup>

Intellectual property is divided into two classes;

- 1) Industrial property includes patents, trademarks, industrial designs and geographical indications.
- 2) Copyright includes literary and artistic works like novels, plays, musical works, poems,

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<sup>2</sup> William Cornish and David Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights*, 6<sup>th</sup> Edition (London: Sweet & Maxwell South Asian Edition. 2008), 6.

<sup>3</sup> Definitions <[http://www.investorwords.com/2526/intellectual\\_property.html](http://www.investorwords.com/2526/intellectual_property.html)> (Last accessed August 2, 2011).

<sup>4</sup> Definitions <<http://www.thefreedictionary.com/intellectual+property>> (Last accessed August 2, 2011).

films, artistic works like drawings, paintings, photographs and sculptures, and architectural designs.<sup>5</sup>

Copyright is a form of intellectual property that grants authors and artists the exclusive right to the reproduction, derivation, distribution, performance and display of their original works including literary, artistic, dramatic and musical works and computer programs for a defined period of time. Copyright law gives rights to author for his work and the person who is not copyrighted owner of the work, has no any right on that work.<sup>6</sup> “©” is an internationally recognized symbol of copyrighted work.

## 1.2 History of Copyright Law:

The issue of copyright never arose in ancient times because the creators usually had no concept, and in some cases, no interest to earn from their work. They just wrote and composed their work for the sake of fame or intellectual pursuit. Modern legal rights influenced by collection of older rights like moral rights, which includes the rights of author, economic rights which includes the financial benefits for authors, individual property rights of the owner of a copy and sovereign rights to censor and to control the industry.

Statute of Anne was the first copyright law in England, which was enacted in 1709. This Statute declared the authors rights and also described the time limitation for it. After the expiry of that period these rights would pass into public domain.<sup>7</sup> Copyright as a concept gained wider recognition after the beginning of the printing press and with wider public literacy. In Britain, at the beginning of eighteenth century the origin of copyrights in legal terms originated from a

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<sup>5</sup> “What is intellectual property” Available at < <http://www.wipo.int/about-ip/en/>> (Last accessed August 1, 2011).

<sup>6</sup> Tim Padfield, *Copyright for archivists and records managers*, 3<sup>rd</sup> Edition (London: Facet Publishing, 2007), 105.

<sup>7</sup> “Copyrights” Available at < [http://islamabad.usembassy.gov/root/pdfs/ipr\\_copyrights.pdf](http://islamabad.usembassy.gov/root/pdfs/ipr_copyrights.pdf)> (Last accessed November 7, 2010).

reaction to printers' monopolies. Charles II made the order to pass the Licensing Act 1662, because there was not any regulatory framework governing copying of the books. This Act established a register, which includes licensed books, and it was also a requirement to deposit a copy to the Stationers' Company, essentially continuing the licensing of material that had long been in effect.<sup>8</sup>

### 1.3 Rights under copyright law:

There are three types of rights that the copyright law grants to the copyright owner. These rights are:

#### 1. Moral Rights:

The copyright owner can claim his right whenever any person infringes his authorship right and these rights are concerned with protecting the personality and reputation of the author or the creator.

#### 2. Economic Rights:

The copyright owner can take financial compensation from the people who use his work.<sup>9</sup>

#### 3. Assignable Rights:

The following rights can be assigned via contract or license to another person or body, such as a publisher. These rights are:

- Copying
- Issuing copies to the public

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<sup>8</sup> "Media Laws and Ethics" Available at <[http://free-books-online.org/mastering\\_communication/media-laws-and-ethics/copyright/](http://free-books-online.org/mastering_communication/media-laws-and-ethics/copyright/)> (Last accessed August 2, 2011).

<sup>9</sup> "Copyright and related rights" An Overview (Sep 19, 2009), Available at <<http://www.articlesbase.com/advertising-articles/copyright-and-related-rights-an-overview-1247936.html>> (Last accessed December 4, 2010).

- Performance
- Communicating the work by electronic means
- Adaptation and translation
- Dramatization
- Lending and rental
- Publication
- Making available a right

## 1.4 Moral Rights:

The term “moral right” is derived from a French term *Droit moral*.<sup>10</sup> Moral rights include:

1. **Droit de divulgation:** “The right of publication”: This right gives author a right that he can decide that whether he wants to publish his work or not.
2. **Droit a la paternite:** “the right of paternity”: This right gives the author a right that he can claim authorship of his exhibited work or published work.
3. **Droit au respect de loeuvre:** “the right of integrity”: This right gives the author a right to avoid changes in author’s work which may cause harm to author’s honor or reputation.

Moral rights represent the social values that respect authorship, creativity and artistic work.

This creative act builds a special relationship between the creator and his work. Through the artist’s work he provides an important service to the society. Government protects these rights and they vary from state to state. A moral right gives legal protection in the author’s work in personal interest and in moral interest. There were three separate developments through which

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<sup>10</sup> Under Section 57 of the Indian Copyright Act, 1957, some additional rights are conferred on the author of a literary work as compared to the owner of a general copyright. These rights are also known as “moral rights”

international copyright standards as they are recognized today, have been developed. These are:

- i. TRIPs/WTO system,
- ii. The World Intellectual Property Organization (WIPO),
- iii. Copyright Harmonization Directives of the European Union.<sup>11</sup>

## 1.5 Definition of Moral Rights:

Berne Convention provides to the authors the rights which are personal rights of authors and these rights cannot be sold, bought or transfer to anyone else. It defines moral rights as:

“Moral rights include the right to proclaim authorship of a work, disclaim authorship of a work and object to any modification or use of the work that would be injurious to the author’s reputation”<sup>12</sup>

## 1.6 Evolution of Moral Rights:

Copyright law is part of Intellectual property law and its foundations can be traced to the civil law system. The first recorded instances of copyright laws being legislated upon occurred during the 18<sup>th</sup> century in England and France. In Common law countries though, moral rights became accepted much more slowly than in civil law countries.<sup>13</sup> In Civil law countries, the extent to which the protection of moral rights was accepted can be gauged from the fact that in 18<sup>th</sup> century in France, it was accepted that when an artist sold his work, the moral rights to that work still remained with him.<sup>14</sup>

The Rome Act of 1928 was the first international treaty which introduced the idea of moral rights.<sup>15</sup> For authors, two rights were recognized in Berne Convention, The first one is a

<sup>11</sup> Anurag K. Agarwal & S.S. Sagar Priyatham, “Moral Rights in Copyright Law” Available at <<http://www.ebc-india.com/lawyer/articles/2003v8a3.htm>> (Last accessed December 4, 2010).

<sup>12</sup> “Moral Rights Definitions” Available at <<http://legaldefinition.us/moral-rights.html>> (Last accessed August 9, 2011).

<sup>13</sup> Paul Goldstein, *Goldstein on Copyright*, 3<sup>rd</sup> Edition, Volume III (New Delhi: Wolters Kluwer), 17.23.

<sup>14</sup> James Gilmore, “Moral Rights in Copyrights” Available at <[http://www.ehow.com/facts\\_5782492\\_moral-rights-copyrights.html](http://www.ehow.com/facts_5782492_moral-rights-copyrights.html)> (Last accessed September 30, 2010).

<sup>15</sup> Stephanie C. Ardito, “Moral Rights for Authors and Artists” Available at <<http://www.infotoday.com/IT/jan02/ardito.htm>> (Last accessed November 6, 2010).

“Paternity Right” and the second one is the “Integrity right”. Brussels Act of 1948 and Stockholm Act of 1967 comprehensively described these two rights but now these provisions are found in Article 6 of the Paris Act of 1971. There are also some other rights like right to prevent excessive criticism, right to prevent false attribution of authorship, and right of an author that whether his work should be published or not and the right to change his work. These rights are not equally implemented in all member states.<sup>16</sup> Recently the Berne Convention was revised to the effect that now all the member countries should include moral rights in their copyright laws.<sup>17</sup> This recognizes the theoretical difference between copyright and moral rights that copyright protects only those rights in which author can publish his work and can take economical benefits from that work like proprietary rights etc., while moral rights protects personal and reputational rights. Under the laws of those countries, which protect author’s rights, the authors can claim for the right to protect any distortion, misrepresentation, or interference, which can be harmful for their reputation.

### **1.7 Materials on which Moral Rights apply:**

Moral rights apply to these things like:

- i. Literary works;
- ii. Commercial documents, song lyrics, leaflets, manuscripts, manuals, computer programs, newsletters & articles etc.;
- iii. Dance and dramatic works;
- iv. Musical works;
- v. Recordings and scores;

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<sup>16</sup> Kevin Garnett et al., *Copinger and Skone James on Copyright*, 15<sup>th</sup> Edition (London: Sweet & Maxwell. 2005), 626.

<sup>17</sup> Michael F. Flint, *A user’s Guide to copyright*, 2<sup>nd</sup> Edition (London: Butterworths.1985), 71.



- vi. Artistic works;
- vii. Paintings, architecture, photography, sculptures, technical diagrams, maps, logos;
- viii. Typographical arrangement of published editions;
- ix. Periodicals, magazines, etc.
- x. Sound recordings or recordings of other copyrighted work, e.g. musical and literary work;
- xi. Films;
- xii. Broadcasts and cable programs;
- xiii. Now Computer programs also include in Copyright (Computer Programs) Regulations 1992.

## 1.8 Occurrence of Rights in Copyrighted Work:

Rights in copyrighted work arise when a person creates his own work. It can also be said that it is an automatic right. A person can therefore take an idea of any book but he cannot take its original contents and words. Some specific things are always protected by law like logos etc., but the idea behind any work cannot be protected.<sup>18</sup>

When an author gives permission to assign his copyrighted work to another person, that author retains his right on that material. Some countries respect these rights but this concept varies from country to country.<sup>19</sup>

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<sup>18</sup> "Fact sheet P-01: U.k Copyright Law" (November 27, 2009) Available at [http://www.copyrightservice.co.uk/copyright/p01\\_uk\\_copyright\\_law](http://www.copyrightservice.co.uk/copyright/p01_uk_copyright_law) (Last access July 29, 2011).

<sup>19</sup> "In Law, What Are Moral Rights?" Available at <http://www.wisegeek.com/in-law-what-are-moral-rights.htm> (Last access December 4, 2010).

## 1.9 Theories Regarding Protection of Copyrighted Work:

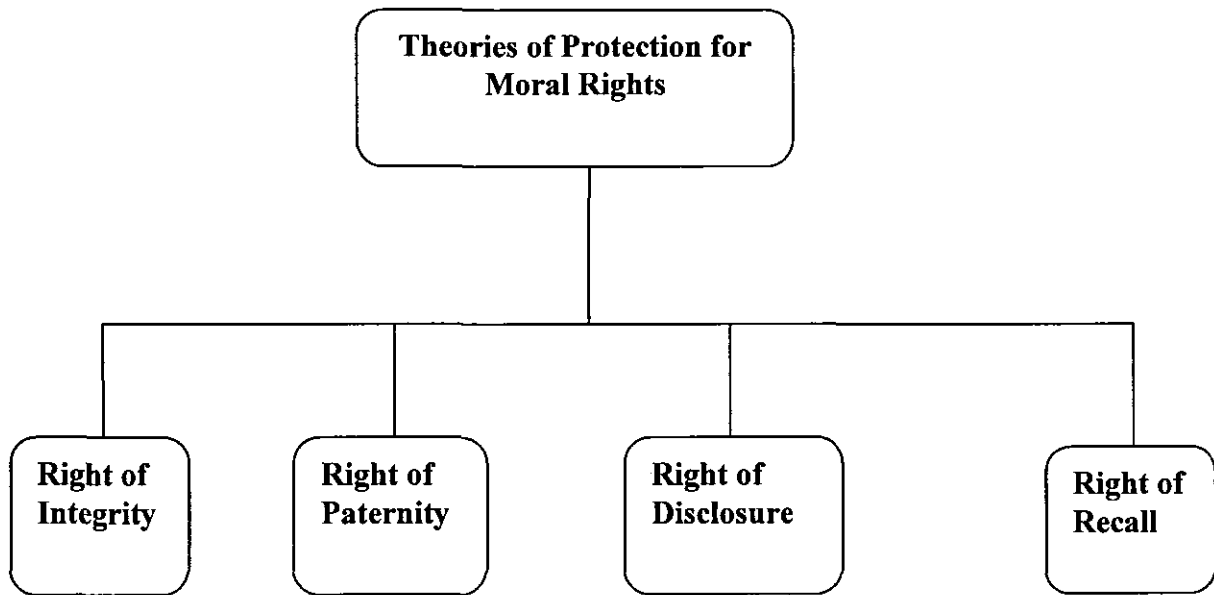


Fig 1: Theories for Protection of Author's Moral Rights

### 1.9.1 Right of Integrity:

Under copyright law, the right of integrity is one type of right of author's rights. Authors can enjoy this right and no one can harm their reputation. This right stops others from making changes in the original work. This right remains with the author even if he transfers his right to any other person.

### 1.9.2 Right of Paternity:

Under US law, if an author fails to protect the rights which are given as below, he can partially secure these rights under Section 106A (a) (1) and (2) of the Copyright Act

1976, and under sec 43(a) of the Lanham Act. Right of paternity protects four interests,<sup>20</sup> which are as follows:

#### **1.9.2.1 Right to require Attribution to the author:**

Author has right to gain credit of his work that he is the only person who did all this work and no one has right over his work.

#### **1.9.2.2 Right to prevent False Attribution to Another:**

This right prevents someone who wrongfully alleges that another person is the creator of the work. Authors who have rights to have a work attributed to them also have a related right against the work's misattribution to someone else.

#### **1.9.2.3 Right to Prevent False Attribution to an Author:**

An author's right of privacy is violated by a false title of authorship. The person who did not create the work, upon attribution can be liable for misrepresentation under sec 43(a) of the Lanham Act, unless the right has been falsely attributed to him.

#### **1.9.2.4 Right to Require Respect for a Pseudonym:**

For marketing purposes of an author's work, an author can, by contract require his assignee or licensee to use a pseudonym rather than the author's true name. Authors have generally enjoyed success in requiring respect for their pseudonyms.<sup>21</sup>

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<sup>20</sup> Paul Goldstein, *Goldstein on Copyright*, 3<sup>rd</sup> Edition (New Delhi: Wolters Kluwer, 2007), 17:212.

<sup>21</sup> *Ibid.* P 17:218.

### 1.9.3 Right of Disclosure (Right of first Publication):

Author's first right of publication is described under section 106 of copyright Act 1976. In United States, on the expiry of copyright in work, the right of first publication also comes to an end. When the author or his legal representatives carefully closeted the work, the person who finds that work he can published it by his own name.<sup>22</sup>

### 1.9.4 Right of Recall:

If the work does not reflect author's capabilities ideas or approach than by using this right, the author can recall his work from the marketplace, but this right is recognized only by few states. Through a contract though, the author can obtain the recall right.

### 1.10 Copyright Infringement:

Copyright Infringement is the unauthorized use of copyrighted material in a manner that violates the copyright owner's exclusive rights, such as the right to reproduce or perform the copyrighted work, or to make derivative works that build upon it. Copying of a copyright protected work or a substantial part comprises infringement.<sup>23</sup> There are many different ways copyright in which the owners may find their copyright has been infringed.

A parody of a work would infringe the copyright if it amounts to a substantial copy of it. Copying does not have to be an exact copy. Copyright could be infringed if a drawing looks similar to another; a novel with a very similar plot is written or a computer programme is copied by copying its structure and organization. Copyright in a literary or dramatic work can

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<sup>22</sup> *Ibid.* P 17:219

<sup>23</sup> Lavelle Coleman, "Infringement" Available at <http://www.lavellecoleman.ie/cuuploads/editor/file/England%20and%20Wales%20pdfs/Intellectual%20Property/Infringement%20of%20Copyright.pdf> (Last accessed December 16, 2011).

be infringed by translating into another language.

### **1.10.1 Types of Infringements:**

There are two types of Infringements which are as follows:

#### **1.10.1.1 Primary Infringement:**

Primary infringement is done by a person who copies the work which is protected in Copyright Law. If the defendant is innocent that he did not have knowledge about the copyrighted work than he will not be liable or if then court thinks that the defendant have no opportunity to copy the work than he will not be liable under the Copyright infringement.

#### **1.10.1.2 Secondary Infringement:**

Secondary infringement means to copy the work without the permission of original creator of the work. For example, the trader who imports copies into the UK may be liable for secondary infringement, as will the trader who sells, distributes or stores such copies. Secondary infringement will also cover those who provide the means to copy the protected work, for example, who provide premises and equipment in order to copy.<sup>24</sup>

### **1.11 Infringements of moral rights:**

Moral rights can be infringed through these ways:

- a. The person who is not a creator but attribute that work to someone else;
- b. Someone reproducing a falsely attributed work;

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<sup>24</sup> Corinne Day, "Primary and Secondary Copyright Infringement", *Lawdit*, (Sep 8, 2008), Available on <[http://www.lawdit.co.uk/reading\\_room/room/view\\_article.asp?name=../articles/6087-CD-Primary-and-Secondary-Copyright-Infringement-file.txt](http://www.lawdit.co.uk/reading_room/room/view_article.asp?name=../articles/6087-CD-Primary-and-Secondary-Copyright-Infringement-file.txt)> (Last Accessed May 7, 2011).

- c. Work is treated in a derogatory fashion like distorting, mutilating or materially altering the work;
- d. Introducing a work, which had been treated in a derogatory fashion.

The creator of the work is entitled to take legal action if an infringement occurs. As for copyrighted work, the work which has been infringed must be copyrighted work in accordance with the terms of the Copyright Act, Like, it is a dramatic, Literary, musical or artistic work, or it is a sound recording, a cinematograph film, a television or radio broadcast, a cable programme or a published edition of a work.<sup>25</sup>

### 1.11.1 Exceptions to the infringement of moral rights:

These are some exceptions to the infringement of moral rights:

- a. The right to identification as author will not be infringed if:
  - i. The author declares the infringement;
  - ii. The work is not an artistic work (e.g. a product or package) like a design of anything;
  - iii. The work is made for publication in a newspaper, magazine, periodical, encyclopedia, dictionary or yearbook;
  - iv. The author gave his consent or waived his right in the written form, that he is going to give up his right;
  - v. if copyrighted work has expired;
- b. The right to object to derogatory treatment will not be infringed if:
  - i. The work is computer-generated;
  - ii. The work is made for the purpose of news or reporting current events;

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<sup>25</sup> Michael F. Flint, *A user's Guide to copyright*, 2<sup>nd</sup> Edition (London: Butterworths.1985), 44.

- iii. The work is made for the purposes of publication in a newspaper, magazine, periodical, encyclopedia, dictionary or yearbook;
  - iv. The work is changed because there is an offence like (public disorder, indecency, obscenity, blasphemy, profanity);
  - v. The work is changed because there is a public offence, encouraging or inciting crime or disorder;
  - vi. The work was made during employment and employer has taken copyright and he can change that work without author's identification;
  - vii. The author gave his consent or waived his right in the written form that he is going to give up his right;
  - viii. if the copyrighted work has expired;
- c. The right to prevent false attributions will not be infringed if:
- i. The author gave his consent or waived his right in the written form that he is going to give up his right.

### **1.12 Remedies for infringement of moral rights:**

An author can claim remedies for the infringements of his moral rights through court. These are some damages that court may award one or more from them to anyone. These are as given:

1. Injunction
2. Damages
3. Any statement or declaration which declares that a moral right of an author has been infringed
4. There is an order that the defendant made a public apology for the infringement

5. There is an order that any false attribution of authorship, or derogatory treatment, or the work be removed or reversed.<sup>26</sup>

Courts by their discretion as to the proper remedies, may take into account any of the following, which are given as below:

- Whether the defendant had knowledge, or ought to have been aware about the author's moral rights;
- work of an author damaged and its effects on the author's honour and reputation;
- The number, and categories, of those people who have seen or heard the work;
- Anything which has been done by the defendant to diminish the effects of infringement;
- If there has been an infringement of attribution of authorship, then any expenditure or difficulty that would have been related with identifying the author;
- In removing or reversing any false attribution of authorship, or derogatory treatment, of the work, any expenditure or difficulties, which have been, arise.

### 1.13 Difference between Moral rights and Economic rights:

Moral rights and Economic rights are basic element in copyright law and protect literary and artistic work.<sup>27</sup> Behind each of them, there are different conceptual underpinnings, which are broadly, as follows:

- i. Moral rights includes, the right to decide on disclosure of the work; the right to claim

<sup>26</sup> Allan Woodley, "Intellectual Property Law - Copyright and Moral Rights – Remedies" Available at <<http://www.laclawyers.com.au/document/Intellectual-Property-Law--Copyright-and-Moral-Rights--Remedies.aspx>> (Last accessed February 7, 2011).

<sup>27</sup> Anurag K. Agarwal & S.S. Sagar Priyatham, "Moral Rights in Copyright Law" Available at <<http://www.ebc-india.com/lawyer/articles/2003v8a3.htm>> (Last accessed December 4, 2010).



authorship, the right for the author to avoid mention of the author's name if the author wants to remain unidentified; the right to choose a fictitious name or pseudonym; the right to object to illegal changing in the work, the right of removal of the work from public use against payment of compensation for damages caused to any person who has already received proper authorization to use the work.<sup>28</sup> On the other hand, economic rights are those rights, which included reproduction right, right of communication to the public and right to translation and adoption.

- ii. Moral rights are inalienable as after transferring the economic right, the author still retains moral rights.
- iii. The person does not have absolute right of disposal who transfers his economic rights, but moral rights can be waived through an agreement.
- iv. In few countries moral rights are permanent in nature while economic rights are not.<sup>29</sup>
- v. The purpose of moral rights is to give author the protection of his reputation in copyrighted work while the purpose of economic rights is to provide money for the rights to copyrighted owner.
- vi. Author can take financial benefits from economic rights, as he can give his copyrighted work in public on the condition that he will take payment from that use by the public.
- vii. Economic rights are the source of income for the authors. While in moral rights, the author can claim for the misuse of his work and author can give his moral rights under some conditions.

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<sup>28</sup> "Copyright and related rights" An Overview (Sep 19, 2009), Available at <<http://www.articlesbase.com/advertising-articles/copyright-and-related-rights-an-overview-1247936.html>> (Last accessed December 4, 2010).

<sup>29</sup> Kathrine Spinner Madse, "Moral Rights" Available at <[http://www.juridicum.su.se/jurweb/utbildning/master/master\\_of\\_european\\_intellectual\\_property\\_law/Material%202009/Module%201/Summaries/Copyright/Madsen\\_4.pdf](http://www.juridicum.su.se/jurweb/utbildning/master/master_of_european_intellectual_property_law/Material%202009/Module%201/Summaries/Copyright/Madsen_4.pdf)> (Last accessed February 5, 2011).

- viii. Moral right does not give any pecuniary right to author, while the economic rights cover all aspects of commercial activities in relevant field.<sup>30</sup>

Moral rights and economic rights are both of vital importance to the rights of an author. Economic rights are always attached with moral rights, like in the right of paternity author can increase or maintain his reputation as an artist.

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<sup>30</sup> "Basic notions about copyright and neighboring rights" Available at [http://portal.unesco.org/culture/en/files/30671/11443368003faq\\_en.pdf/faq\\_en.pdf](http://portal.unesco.org/culture/en/files/30671/11443368003faq_en.pdf/faq_en.pdf) (Last accessed October 7, 2010).

*CHAPTER II*

*CURRENT LEGAL REGIME FOR THE PROTECTION*

*OF MORAL RIGHTS AT NATIONAL*

*AND INTERNATIONAL LEVEL*

In this Chapter I am going to discuss about the protection of Moral rights of an author at national and international level. There are many conventions and treaties which were held on this issue and many countries include the provision of moral rights in their Acts. In this chapter I will discuss about those Acts which include the term “Moral Rights” and will discuss that how much work had been done on moral rights. To some extent all countries have same provisions on moral right but with minute difference.

## **2.1 Conventions and Treaties on Moral Rights Protection:**

### **2.1.1 Berne convention (1886) for the protection of literary and artistic work of**

#### **Copyright law:**

The Berne Convention<sup>31</sup> for the Protection of Literary and Artistic Works also called as the Berne Union or Berne Convention which has first established the recognition of copyrights between sovereign nations.

#### **2.1.1.1 History:**

Victor Hugo<sup>32</sup> played primary role in its development. In nineteenth century legislators had concerns that in foreign countries how can copyright be protected? In 1886 a specific multilateral treaty known as Berne Convention for the protection of literary and artistic works which deals with copyright was established. This Convention promoted minimum standards for protection of literary and artistic works and films. According to this convention if a copyright owner is in one member country he is also a member of another member state, this is called as

<sup>31</sup> Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, Completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971, and amended on September 28, 1979.

<sup>32</sup> “Berne Convention for the protection of literary and artistic works” available at [http://www.wordiq.com/definition/Berne\\_Convention\\_for\\_the\\_Protection\\_of\\_Literary\\_and\\_Artistic\\_Works](http://www.wordiq.com/definition/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works) (Last accessed February 5, 2011).

concept of “national treatment or reciprocity”.<sup>33</sup>

This convention required major changes in U.S copyright Law (especially with the reference to moral rights and the registration of copyright works), so the United States did not agree to become its member state. Thus the Universal Copyright Convention was adopted in 1952, to cater to its objections. Since 1967, the Berne convention has been administered by WIPO, the World Intellectual Property Organization. Almost all nations are members of the World Trade Organization. The requirement of TRIPs Agreement is to accept almost all of the conditions of the Berne Convention by non-members. The United States became a party to the Berne Convention in 1989.

The Berne Convention is significant because it enforces treaties which protect intellectual property, such as copyright. This means it helps to promote creativity, fair trade, and economic and social development.<sup>34</sup>

### 2.1.1.2 Important Provisions under Convention:

According to Article 2(1):

Every production in the literary, scientific and artistic domain falls under the term of “literary and artistic works”. It includes every original work of authorship. Computer programs also fall under this provision.

According to Article 3(1) (a):

An author who is national of those countries which are member states of this convention, his published or unpublished work is protected under this convention.

<sup>33</sup> Mark J. Davison, Ann Louise Monotti, Leanne Wiseman, “*Australian intellectual property law*” available at [http://books.google.com.pk/books?id=79yY3r2GvPcC&pg=PA190&dq=Berne+convention+\(1886\)+for+the+protection+of+literary+and+artistic+work+of+Copyright+law:&cd=3#v=onepage&q=Berne%20convention%20\(1886\)%20for%20the%20protection%20of%20literary%20and%20artistic%20work%20of%20Copyright%20law%3A&f=false](http://books.google.com.pk/books?id=79yY3r2GvPcC&pg=PA190&dq=Berne+convention+(1886)+for+the+protection+of+literary+and+artistic+work+of+Copyright+law:&cd=3#v=onepage&q=Berne%20convention%20(1886)%20for%20the%20protection%20of%20literary%20and%20artistic%20work%20of%20Copyright%20law%3A&f=false) (Last accessed February 5, 2011).

<sup>34</sup> Justine Shoolman, “*How the Berne Convention Helps with Copyright Protection*” available at <http://EzineArticles.com/2960248> (Last accessed February 5, 2011).

According to Article 5:

An author's work is protected in other member states and the protection governed by the laws of that country where the author can claim about protection and that country is under obligation to afford these rights. Protection in the country of origin shall be governed by domestic law of that country if a country who is not a member of union; the national of that country cannot claim his rights regarding his work.

According to Article 7:

This article gives the duration of copyright protection granted by the Convention and the duration is the life of the author and fifty years from the end of the year of his death.

According to Article 8:

Authors shall enjoy their exclusive right to the translation of their works throughout the term of protection of their rights in the original works.

According to Article 9:

Authors shall enjoy their right to authorizing the reproduction of their works, in any manner and form.

According to Article 16:

If any person makes any infringement than those infringing copies will be seized in any other country where work is protected.<sup>35</sup>

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<sup>35</sup> Manoranjan Ayilyath, "International Instruments Relating to Intellectual Property Rights: The Scope of Berne Convention, 1886" (October 19, 2010), available at <<http://jurisonline.in/2010/10/international-instruments-relating-to-intellectual-property-rights-the-scope-of-berne-convention-1886/>> (Last accessed May 16, 2011).

According to article 6<sup>bis</sup>:

Article 6<sup>bis</sup> describes about the moral rights as when author transfers his economic rights he still have moral rights through which he can claim authorship of the work and to object to any misrepresentation, disfigurement or any changing about his work. And author can also take any action in which his reputation can be injured. These rights will continue until the expiry of the economic rights. Article 6<sup>bis</sup> defines as:

1. Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

2. The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

3. The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

### **2.1.1.3 Principles of the Berne Convention:**

#### **a. National Treatment:**

This principle applies where the member country gives same copyright protection to an artist who lives in another member country, as he is its own citizen. For example: If a person publishes a novel in the U.S, and someone in Australia distributes copies of it without his permission, that person could pursue an infringement case as if he was an Australian citizen.

#### **b. Principle of Automatic Protection:**

Automatical protection is given to copyright in Bern Convention countries and does not require registration or marking it with the copyright notice, although both are highly

recommended for added protection. In 1989, when the United States joined the convention they continued to make statutory damages and attorney's fees only available for registered works. However, "this does not apply for works not originating in the U.S".<sup>36</sup>

#### 2.1.1.4 Minimum Standards:

There are some minimum standards of the convention which are as follows:

a. Rights:

Berne Convention provides some rights which include:

- i. The right to translate work
- ii. Make any changing or to arrange the work in a specific manner
- iii. Perform the work and the right to reproduce the work.
- iv. Right to authorize the public performances or broadcast, and the communication of broadcasts and public performances<sup>37</sup>

b. Moral Rights:

"Moral Rights" are also given under this Convention. Author has right to object to any treatment which can be harmful for his reputation.

c. Duration of Protection of Copyrighted work:

Some countries extended the duration to 70 years but the minimum standard of protection is 50 years after the calendar year of author's death. On this rule two exceptions are there which are as follows:

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<sup>36</sup> Justine Shoolman, "How the Berne Convention Helps With Copyright Protection" available at <<http://EzineArticles.com/2960248>> (Last accessed February 5, 2011).

<sup>37</sup> Fact sheet P-08: Uk Copyright Law, "International copyright law - The Berne Convention" (March 6, 2009), available at <[http://www.copyrightservice.co.uk/copyright/p08\\_berne\\_convention](http://www.copyrightservice.co.uk/copyright/p08_berne_convention)> (Last accessed February 5, 2011).



- i. Photography minimum term is 25 years from the year the photograph was created.
- ii. Cinematography minimum term is 50 years after the first showing or, if the work has never been shown, 50 years from the creation date.

### **2.1.2 WIPO Copyright Treaty 1996:**

In 1996 this treaty was adopted by the member states of the World Intellectual Property Organization (WIPO). Under Berne Convention this treaty is a special agreement. The main purpose of this treaty is to develop and maintain the protection of the rights of authors in their literary and artistic works in an effective and standardized manner.

#### **2.1.2.1 Author's rights under WCT:**

##### **a. Right of distribution**

Under article 6 of WCT<sup>38</sup>, under this article author has right to sale his original work in public or transfer his right to any other person.

##### **b. Right of rental**

This right authorizes commercial rental to public of original and copies of three kinds of works:

- i. Computer programs
- ii. Cinematographic works
- iii. Work which is in material form in phonograms

##### **c. Right of communication to the public**

Under article 8 right of communication is described. It is the right of author that he can

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<sup>38</sup> WIPO Copyright Treaty (adopted in Geneva on December 20, 1996).

communicate to public through wire or wireless means.<sup>39</sup>

Article 2 of WCT describes as the protection under copyright just cover the expressions. “Ideas, methods and procedure are not protected under copyright law”.

### **2.1.3 The Universal Copyright Convention 1952:**

The Universal Copyright Convention was concluded in 1952 with membership comprising many Berne Convention member states and also the US, which was not then a member of Berne. Australia accepted formally the UCC in 1969. The UCC applied to the same range of works as were protected by Berne, but the standards of protection were lower and more general. Since the US joined the Berne Convention in 1989, the international importance of the UCC has diminished.

### **2.1.4 The Rome Convention 1961:**

The Rome Convention sets out protection for sound recordings, broadcasts and performances. The Rome Convention was administered by WIPO. Until the TRIPS agreement in 1994, it remained the only international instrument protecting performer's and Broadcaster's rights.

### **2.1.5 The Agreement on Trade-Related Aspects of Intellectual Property Law (TRIPS):**

TRIPS agreement is an important international convention. This agreement has included in it some of the articles which were present in Berne Convention for the protection of copyrights. The provisions relating moral rights which were present in Berne Convention are thoroughly excluded in TRIPS agreement. TRIPS require member states to implement the protection prescribed by the Berne Convention, except for the moral rights provisions. This

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<sup>39</sup> “Summary of the WIPO Treaty (WCT)” (December 20, 1996), Available at <<http://tradeinservices.mofcom.gov.cn/en/b/1996-12-20/5515.shtml>> (Last accessed August 16, 2011).

clearly implies that only the economic rights relating to copyrights are protected under this agreement. The things which could have possibly protected moral rights such as principle of most favored nation, obligations to have enforcement procedures available under local law, as well as remedies such as damages for breach, provisional measures etc., are not available under this agreement.

There may be three main considerations for the non-inclusion of “moral rights” in the TRIPS Agreement. These are as follows:

1. Although most common law countries have adopted the moral rights provision, the tensions between copyright and author’s rights system have not disappeared. The persistence of conceptual differences about the appropriate form of copyright law is apparent in the incomplete and unsatisfactory codification of moral rights in the common law system.
2. The reason for legislation about moral rights has been a degree of concern about their economic effects. The common law countries have been most fearful about the practical consequences of introducing protection for moral rights into systems that traditionally emphasize economic rights.
3. The exclusion of moral rights from international harmonization efforts may have to do with a fundamental incompatibility between the philosophy of moral rights and the commercial force of the international copyright regime

## 2.2 Protection of rights under USA Laws:

### 2.2.1 The Visual Artists Rights Act 1990 of United States:

An artist's moral rights regarding his or her art work protects under Visual Artists Rights Act (VARA). The rights under VARA are separate from ownership of the work itself and from the copyrighted work, which includes the right to reproduce, broadcast, display or perform the work in public.<sup>40</sup>

#### 2.2.1.1 History:

VARA was the first federal Copyright legislation to grant protection to moral rights. Under federal law and some state laws, if the artist no longer owns his art but he retains certain rights to his work, these rights are called as Moral rights. These rights are new to American law but for a long time they are acknowledged and protected in Europe. Starting with California in 1979, many states enacted legislations giving artists a range of moral rights.<sup>41</sup> Visual Artists Rights Act (VARA) enacted by congress in 1990, which amended the Copyright Act to confer moral rights.<sup>42</sup> if the work of the author is successful enough to full fill certain requirements envisaged by VARA then he gets some additional rights in his work which are not lost even if he hands over the ownership of his copyright or physical possession of his work to anyone. For example, a painter may sue to the owner for destroying the painting.

<sup>40</sup> Sharon Forsche, "The Visual Artists Rights Act of 1990" Available at <http://www.artsandbusinessphila.org/pvla/documents/VisualArtistsAct.pdf> (Last accessed December 16, 2010).

<sup>41</sup> Robert Baron, "Moral artists for Artists: The Visual Artists Rights Act", 27:3 (2002), 6-8. Available at <http://pages.uoregon.edu/csundt/copyweb/CunardCAA2002.htm> (Last accessed December 17, 2010).

<sup>42</sup> William M. Landes, Richard A. Posner, "The economic structure of intellectual property law" Available at <http://books.google.com.pk/books?id=L2P3EHagf3cC&pg=PA270&dq=The+Visual+Artists+Rights+Act+1990+of+United+States:&cd=4#v=onepage&q=The%20Visual%20Artists%20Rights%20Act%201990%20of%20United%20States%3A&f=false> (Last accessed December 17, 2010).

### **2.2.1.2 Rights Protected under VARA:**

#### **I. Attribution**

- i. The right to claim authorship
- ii. The right to stop as being attach your name within the art work which you did not create
- iii. The right to prevent your own art work from being attributed to you if the work has been changed in a way that damages your honor or reputation

#### **II. Integrity**

- i. The right to prevent any intentional changing of your work which would damage your honor or reputation
- ii. The right to prevent any intentional destruction of your work if it is of "recognized stature" like if the arts community thinks that the work is significant. During the course of time the author of the work is not entitled to claim any remedy for the damage done to his work

### **2.2.1.3 Works Qualify for VARA Protection:**

Visual arts means that work is not for publication, advertising, or any utilitarian purpose its only for public display. Visual art is defined as:

- i. A painting, drawing, print, sculpture, or a photograph produced only for exhibition purposes (not a personal album)
- ii. The work must exist in one copy or in a limited edition of no more than 200 copies which are consecutively numbered and signed by the artist

#### **2.2.1.4 Works not qualify for VARA Protection:**

Any hired work, which is:

- i. As a part of your job the art work which you make for your employer
- ii. Art you contribute to a collective work, such as a textbook, if you sign a contract beforehand expressly saying that the art will be considered work made for hire.

#### **2.2.1.5 Wavier of rights under VARA:**

Under VARA moral rights of an artist can be waived. But VARA rights may not be sold, bequeathed, or transferred. These rights can be waived by contract. When there is more than one artist on a single work than waiver by one artist binds on all. Rights can be protected until the death of the last surviving contributor if the rights are not waived.

#### **2.2.1.6 Time limits for VARA protection:**

- 1 Full protection given to the artist (or last surviving artist, if it's a collaboration) lives for a work on or after June 1, 1990
- 2 The work of the author which he has created before June 1, 1990 is protected only if he still has the ownership or entitlement of his work at 1 June, 1990 and no modifications are made on his work until this date. The protection available to the author by following this procedure will last 50 years from the date of death of author.

The works of the artists or authors which they have made or created on the date when VARA became functional or operative or after its becoming functional will last until the end of that calendar year in which the artist or author dies but those works of the artists which they have created before the VARA became operational and they still have entitlement of those works because they have not transferred it to someone else will last as long as the copyright continues

to be entitled or own by them. And as far as those works are concerned which are jointly created by two or more authors, they will last until the end of calendar year in which last surviving artist dies and nobody is left behind to claim copyright.

### **2.2.1.7 Aim of the Act:**

As far as VARA is concerned it is a legislation or law which like other laws has certain justifications both at public as well as private levels. The first aim of the VARA is to provide certain grants or remedies to the artist of his art which he can exercise in case of any kind of damage is done to his art and its second purpose is to protect and preserve artistic heritage for the general welfare or benefit of the society. VARA admits this fact that artist has a property right in his art which is although different from natural right model of Europe, which entitles him to protect his art from any future alteration or any prejudicial use of his work by any other person. This right is given to the artist because his reputation as well as livelihood depends upon his work.

### **2.2.1.8 Case Laws:**

*Peker v. Masters Collection*<sup>43</sup> An artist who produces posters of his work and Master Collection's purchased that posters and without his permission they backed the poster on canvas and applied a clear gel to the surface, thereby imitating the sweep of brushstrokes and the impasto of paint. The artist sued Masters Collection under both VARA (for modification) and under copyright law. The court dismissed the VARA claim on the grounds that the modification was to the posters, not to the artist's "work of fine art," the original canvas. But the court, however, found for the artist on the copyright claim on the grounds of unauthorized reproduction.

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<sup>43</sup> *Peker v. Masters Collection*, 96 F.Supp.2d 216 (E.D.N.Y. 2000).

The most important case on this and many other VARA issues is *Carter v. Helmsley-Spear*. In *Carter v. Helmsley-Spear*<sup>44</sup>, The decision of the court is that

When an artist is able to prove that his or her work of visual art has achieved a recognizable stature in the community, and that modifying the art work would harm the artist's honor or reputation, the artist may prevent others from mutilating, destroying, or otherwise modifying the work.<sup>45</sup>

In *English v. BFC&R*, In New York a group of artists, want to revitalize a rundown community park, created a several murals and sculptures on walls and property that belonged to the city. When the city moved to develop the park, the artists sued under VARA to stop the artworks' destruction. The S.D.N.Y held that:

“VARA does not apply to art illegally placed on property”<sup>46</sup>

But in *Pollara v. Seymour*,<sup>47</sup> the court refused to dismiss a similar VARA claim finding there were genuine issues of "material fact" whether an illegally displayed mural was intentionally destroyed by a property manager at a hotel.

## 2.3 Protection of rights under UK Laws:

### 2.3.1 Copyright, Designs and Patents Act 1988:

Moral rights protection in the UK is provided by moral rights provisions in the “Copyright, Designs & Patents Act 1988”.<sup>48</sup> The UK is one of the countries which have signed the Berne Convention. The Copyright, Designs and Patents Act 1988 introduced a set of new laws to protect copyrighted owners from harm on their reputations, not being correctly

<sup>44</sup> *Carter v. Helmsley-Spear*, 861 F.Supp. 303 (S.D.N.Y. 1994), aff'd in part, vacated in part, 71 F.3d 77 (2d Cir. 1995).

<sup>45</sup> *Ibid*.

<sup>46</sup> Robert Baron, “Moral artists for Artists: The Visual Artists Rights Act”, 27:3 (2002), 6-8. Available at <<http://pages.uoregon.edu/csundt/copyweb/CunardCAA2002.htm>> (Last accessed December 17, 2010).

<sup>47</sup> *Pollara v. Seymour*, 150 F. Supp. 2d 393 (N.D.N.Y. 2001).

<sup>48</sup> “Caslon Analytics note moral rights cases” Available at <<http://www.caslon.com.au/mrcasesnote1.htm>>, (Last accessed December 17, 2010).



attributed to their work and against derogatory treatment of any of their work which are no longer in their possession. Changes to the Convention led to the inclusion of new moral rights in The Copyright, Designs and Patents Act 1988.<sup>49</sup>

### 2.3.1.1 Historical Background:

The Copyright, Designs and Patents Act 1988 is the principal codifying copyright statute for the UK. It came into force on 1 August 1989. It has already been amended several times by subsequent statutes and also by various statutory instruments. The Act also creates a number of new intellectual property rights; in particular, moral rights national unregistered design rights and rights in performances.<sup>50</sup>

### 2.3.1.2 Structure of the Act:

This Act includes 7 parts and originally it had 8 schedules but a new one has been added to provide for licensing of performer's property rights. First part deals with copyright. The remaining parts provide for rights in performances, national unregistered design right, registered designs, patent and trade mark agents, patents, restriction of anti-protection devices and other matters. Section 77 to 89 of Copyright, Design and Patents Act of 1988 contains provisions regarding moral rights.<sup>51</sup> These sections include the rights:

- i. Right of paternity,
- ii. Right of integrity,

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<sup>49</sup> "Copyright Law in the UK" Available at [http://www.lawontheweb.co.uk/Media\\_Law/Moral\\_Rights/](http://www.lawontheweb.co.uk/Media_Law/Moral_Rights/) (Last accessed July 6, 2011).

<sup>50</sup> Jane Lambert, "Copyright Designs and Patents Act 1988", (March 7, 2004), Available at <http://www.ipit-update.com/copy11.htm> (Last accessed July 12, 2011).

<sup>51</sup> Akil Hirani, "Moral Rights in Computer Programs", (December 23, 2010), Available at <http://www.planetarticle.net/2010/12/23/moral-rights-in-computer-programs/> (Last accessed July 14, 2011).

- iii. Right against false attribution, and
- iv. Right to privacy

### 2.3.1.3 Time Duration of copyright work:

Time duration of copyrighted work under this Act is given as:

Protected Work	Duration
Literary, dramatic, musical or artistic works	70 Years
Sound Recordings and broadcasts	50 Years
Films	70 Years
Typographical arrangement of published editions	25 Years
Broadcasts and cable programmes	50 Years
Crown Copyright	125 Years
Parliamentary Copyright	50 Years

Figure 2: Duration of Copyrighted work

### 2.3.1.4 Moral Rights:

These rights are given under chapter IV of the Act. Certain rights are given under this Act as:

- i. Paternity Rights
- ii. Integrity Rights

- iii. False attribution of work
- iv. Privacy Right as the right of any person to privacy in respect of photographs which he specially made for private and domestic purposes<sup>52</sup>

### 2.3.1.5 Remedies for infringement of Moral Rights:

Remedies for infringement of traditional copyright are given under sections 96 to 100 of this Act. Under section 103 remedies for the infringement of moral rights are given. Infringement of moral rights is actionable as a breach of statutory duty owed to the person entitled to the right.<sup>53</sup>

### 2.3.2 The Performances (Moral Rights, etc.) Regulations 2006:

The introduction of moral rights for performers in the United Kingdom, as required by the 1996 WIPO<sup>54</sup> Performances and Phonograms Treaty (WPPT), signed by the United Kingdom in 1997. These Regulations were made under section 2(2) of the 1972 Act and amend the Copyright, Designs and Patents Act 1988 to implement the WIPO Performances and Phonograms Treaty (WPPT).<sup>55</sup> These Regulations were laid before Parliament on 11 January 2006 and came into force on 1 Feb 2006.<sup>56</sup>

#### 2.3.2.1 Performers' Rights:

Performers now have property and non-property rights which are to some extent similar to economic and moral rights in copyright law. Property rights include reproduction right,

<sup>52</sup> Kevin Garnett et al., *Copinger and Skone James on Copyright*, 15<sup>th</sup> Edition (London: Sweet & Maxwell. 2005), 627.

<sup>53</sup> Pascal Kamina, "Film copyright in the European Union" Available at

[http://books.google.com.pk/books?id=PqJYG9ihusC&pg=PA313&dq=moral+rights+in+copyright+law+in+uk&hl=en&ei=b7EWTqfgIM6lrAfvu\\_HPAQ&sa=X&oi=book\\_result&ct=result&resnum=1&ved=0CCsQ6AEwADgK#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20uk&f=false](http://books.google.com.pk/books?id=PqJYG9ihusC&pg=PA313&dq=moral+rights+in+copyright+law+in+uk&hl=en&ei=b7EWTqfgIM6lrAfvu_HPAQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCsQ6AEwADgK#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20uk&f=false) (Last accessed July 8, 2011).

<sup>54</sup> The World Intellectual Property Organisation is a specialist agency of the United Nations with a mandate to manage intellectual property matters, which includes copyright and performers' rights

<sup>55</sup> "Explanatory Memorandum to the Performances (Moral Rights, etc) Regulations", (2006), Available at [http://www.legislation.gov.uk/uksi/2006/18/pdfs/uksem\\_20060018\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/18/pdfs/uksem_20060018_en.pdf) (Last accessed May 27, 2011).

<sup>56</sup> "Rights in performances" available at <http://www.ipit-update.com/perform.htm> (Last accessed December 17, 2010).

distribution right, rental right, lending right and now making available right. Whenever the sound recording of any performer played in public, than the performer is entitled to fair remuneration from the owner of the copyright. Performer's non-property rights are the rights to withhold consent for recording, broadcasting or transmission of a performance.

There are two types of rights which are given as below:

### **I. The right to be identified as the performer:**

According to section 205C of the Copyright, Designs and Patents Act 1988, that when a performance is given in public or broadcast live, or a sound recording (but not a video recording) of the performance is communicated to the public, then the performer has a right to be identified. The exclusion of video recordings from the scope of the new right has been criticized by performers' organizations. When the performance is in group than there is no general right for individuals to be identified individually. However, new section 205D requires that the right to be identified must be asserted, in a similar manner to the rights of authors and directors.<sup>57</sup>

The performer has certain rights as:

- i. He has right to identify on his performance if any person has heard or seen about that performance
- ii. In the case of broadcasting performance, the performer has right to identify if any person has heard or seen about it
- iii. In case of sound recording which is communicated to public performer has right against any person who hears that communication

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<sup>57</sup> "Performers gain Moral rights" (January 31, 2006), Available at <<http://www.srb.com/newsitem/Performers-gain-moral-rights>> (Last access May 27, 2011).

This right applies in these circumstances:

- i. in relation to the whole or any part of a performance
- ii. This right not apply in relation to any performance which is given for the idea of advertising of any goods or services
- iii. Unless the right is specially asserted it will not be an infringement. Right can be asserted generally or in respect of a specified act or acts but it must be asserted in writing by either the performer or persons authorised to act on behalf of the performer (such as agent and managers) or an assignee of a performer's property rights
- iv. Where it is not feasible to identify the performer this right will not apply. Especially where there is no any requirement to identify individual performance and the performance is in group
- v. Will not apply in relation to any performance given for the purpose of reporting current events
- vi. Will not apply in relation to news reporting; incidental inclusion of a performance or recording; things done for examination purposes; parliamentary and judicial proceedings; or, in relation to Royal Commissions and statutory inquiries.<sup>58</sup>

## **II. The right to object to derogatory treatment of a performance:**

Under Sec205F the right to object to derogatory treatment is established. This right is infringed if any person communicates the broadcast performance, or sound recording to the public with changing which can be harmful for performer's reputation. This right applies to all

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<sup>58</sup> "Creation of new moral rights" (2006) available at <<http://www.clarionsolicitors.com/articles.php?article=26>> (Last accessed December 17, 2010).

performers individually and there is no separate provision for groups. Sec205G gives the exceptions to the right to object to derogatory treatment, and include performances for the purpose of reporting current events and modifications consistent with normal editorial or production practice.

This right applies in these circumstances:

- i. In relation to the whole or any part of a performance
- ii. No any need for its declaration
- iii. It will not apply on those performances which are given for the purpose of reporting current events
- iv. is not infringed by modifications made to a performance which are consistent with normal editorial or production practice
- v. is not infringed by anything done for the purpose of avoiding the commission of an offence, complying with a duty imposed under an enactment or in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste and decency, or which is likely to encourage or incite crime or lead to disorder, or to be offensive to public feeling.

#### **2.3.2.2 Qualifying Performance:**

The performance must constitute a “qualifying performance” means the performance must be given by a qualifying individual<sup>59</sup> or in a qualifying country.<sup>60</sup>

#### **2.3.2.3 Duration of Performer’s rights:**

The duration of Performer’s moral rights is 50 years from the end of the calendar year

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<sup>59</sup> A qualifying individual is a performer who is a citizen, subject or resident of a qualifying country

<sup>60</sup> A qualifying country is the United Kingdom, any EEC Member State or any other country providing reciprocal protection specified by Order

during which the performance was made or, if during that period it was released, 50 years from the end of the calendar year during which it was released.

#### **2.3.2.4 Consent and waiver of rights:**

Consent on the behalf of performer is not an infringed act under this Act. During the performer's lifetime moral rights cannot be transferred but they can be waived through written agreement. Wavier can be made on conditional or unconditional basis and also made on future performances. The performances which were taken place before the enactment of the Act moral rights don not apply on these performances.

### **2.4 Protection of rights under Australian Laws:**

#### **2.4.1 Copyright Act 1968 of Australia:**

As far as Australia is concerned it has a copyright law in the form of copyright Act 1968 which has gone under so many reforms until now. Before copyright Act 1968, copyright act 1912 was enforced which was replaced by the former Act. The copyright Act 1968 came into existence by the proposal of Spicer committee when this committee was given the task to amend copyright Act 1912 in the light of Brussels Act of Berne convention for the protection of literary and artistic works. The copyright Act 1968 has undergone numerous amendments and its first review was made by a committee in 1974 headed by justice Franki for the purpose of examining the impact of reprographic reproduction on copyright law in Australia. The committee was also asked to examine the impact of photocopying and making proper amendments in copyright law to make a proper balance between the owner of copyrighted work and its users. This committee recommended licensing of a statutory scheme and also stated that purpose of copyright law is to give pecuniary credit to its owner and to encourage him to make such works in the future also but at the same time it must be seen that such protection is not at

the cost of study, research and education and these departments should not be adversely affected by granting protection to the works of the authors.<sup>61</sup>

#### **2.4.1.1 Important provisions regarding Moral Rights:**

Part IX of the Copyright Act 1968 describes about Moral rights of performers and of authors of “literary, dramatic, musical or artistic works and cinematograph films” and also gives the definition of moral rights in relation to an author and to a performer.

Under sec 193 the author has a right of attribution of authorship of his work.

Attributable acts are in relation to literary, dramatic or musical works:

- Reproduction of work in material form
- Publication of work
- Any edition in work
- Performance of work in public
- Communication of work in public

Attributable acts are in relation to an artistic work:

- Publication of work
- Reproduction of work in material form
- Exhibition of work to public
- Communication of work in public

Attributable acts are in relation to a cinematographic film

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<sup>61</sup> “*Australian Copyright Law*” (2011), available at <[http://www.ask.com/wiki/Australian\\_copyright\\_law](http://www.ask.com/wiki/Australian_copyright_law)> (Last accessed February 7, 2011).



- To make a copy of the film
- Exhibition of film in public
- Communicate the film in public

Under sec 195AC the author has a right not to have authorship of the work falsely attributed.

Under sec 190 only individuals have moral rights.

### 2.4.1.2 Duration of Moral Rights:

Moral rights cannot be sold, transferred or assigned to anyone.<sup>62</sup> Author's moral rights in his work continues till Copyright ceases to exist and author's right of integrity of authorship in cinematographic film exists till author dies. Moral rights cannot be transferred through will or by operation of law but in case author dies his moral rights may be enforced or exercised by his legal representatives.<sup>63</sup>

### 2.4.1.3 Case Laws:

*Adams v Quasar Management Services*<sup>64</sup> is a case about false attribution of authorship. A civil engineer who was a co-author of a construction manual. He alleged that the defendants had breached s 190 of the Copyright Act 1968 (Cth) by failing to identify him as one of the authors in the Victorian and New South Wales editions of that text. They argued that they were protected from false attribution of authorship through the defense of reasonableness under sec 195AR of that Act 1968, under 2000 Moral Rights amendment. Court held that, "they could not avail themselves of the defense, as the attribution occurred prior to when the section came into effect".

<sup>62</sup> "Copyright glossary" available at <<http://www.library.uow.edu.au/copyright/UOW026672.html>> (Last accessed February 7, 2011).

<sup>63</sup> "Intellectual Property Law-Copyright and Moral Rights-protection" available at <<http://www.laclawyers.com.au/document/Intellectual-Property-Law--Copyright-and-Moral-Rights--Protection.aspx>> (Last accessed May 30, 2011).

<sup>64</sup> *Adams v Quasar Management Services Pty Ltd & Ors*, (2002) QSC 223 (13 August 2002)

Court found that the defendants were breached section 190 but noted that the plaintiff had already received compensation for breach of contract and accordingly held that damages were unwarranted. The decision has been criticized for confusing false attribution and lack of attribution.

In *Benchmark Building Supplies Ltd v Mitre*<sup>65</sup>, on the grounds of trade mark infringement, breach of copyright by both adaptation and copying, and on a further ground (not argued in the High Court) namely breach of moral rights the respondents on appeal seek to defend the judgment. The respondents alleged that the addition of the stickers to the brochures constituted derogatory treatment of the copyright works comprising the brochures. The first respondent alleged that it was the author of the works and entitled to assert moral rights. In this case the authors of the works were individuals that were not parties to the proceedings and the first respondent was not the author. The Court was not convinced that “displaying brochures in which copyright works are reproduced for comparative advertising amounts to derogatory treatment”. That the appellant was taking advantage could not be said to be prejudicial to the honour or reputation of the authors whose identity was not disclosed.

#### **2.4.2 Copyright Amendment (Moral Rights) Act 2000:**

The Copyright Amendment (Moral Rights) Act 2000 became law on 21 December 2000 and amended the Copyright Act 1968 to introduce a moral rights system in Australia.

This Act provides detailed and complete moral rights protection in Australia for authors and film makers.<sup>66</sup> The aim of the Act is to give due acknowledgement to the work of authors and also protect the integrity of their work. An identification of the author of a work must be clear and

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<sup>65</sup> *Benchmark Building Supplies Ltd v Mitre 10 (New Zealand) Ltd & Anor*

<sup>66</sup> “Copyright: New law protecting authors' moral rights”, (2001), Available at <[http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications\\_CopyrightNewlawprotectingauthorsmoralrights-2001](http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_CopyrightNewlawprotectingauthorsmoralrights-2001)> (Last accessed December 18, 2010).

reasonably prominent.<sup>67</sup> Generally moral rights apply to most creative materials in relation to acts or omissions that occur on or after 21 December 2000. Copyright must subsist in a work for moral rights to exist.<sup>68</sup> Films created after 21 December 2000 is subject to moral rights.<sup>69</sup>

### 2.4.2.1 Nature of the Moral Rights under the Act:

Author of an artistic work have some moral rights which are same as in other Acts:

#### I. The right of attribution of authorship

The author of a published story is entitled to be identified if his demand is reasonable.

#### II. The right not to have authorship falsely attributed

If any other person who is not the author of the work and he affixes his name to that work than author has a right to claim. In the case where joint authors are involved in a single work than all have a right to claim. If an article is edited by someone other than the author, it is an act of false attribution to treat the work as being unaltered. This may mean that a sub-editor who substantially changes an article will need a joint by-line.

#### III. The right of integrity of authorship

It is now an author's right not to have the work subjected to 'derogatory treatment'. An author's right of integrity means he is protected from changes that result in material distortion, material alteration, or mutilation that is prejudicial to honor or reputation.

### 2.4.2.2 Reasonableness test:

Infringement occurs if a person fails to observe an author's moral rights unless there is a

<sup>67</sup> "Copyright overview and legislation", Available at <[http://lib.unsw.adfa.edu.au/copyright/copyright\\_legislation.html](http://lib.unsw.adfa.edu.au/copyright/copyright_legislation.html)> (Last accessed December 18, 2010).

<sup>68</sup> Erin Mackay, "Moral Rights come to court", (December 31, 2006) Available at <<http://www.artslaw.com.au/articles/entry/moral-rights-come-to-court/>> (Last accessed May 30, 2011).

<sup>69</sup> "Moral Rights" available at <[http://www.latrobe.edu.au/legalservices/assets/downloads/copyright-it/moral\\_rights.pdf](http://www.latrobe.edu.au/legalservices/assets/downloads/copyright-it/moral_rights.pdf)> (Last accessed December 18, 2010).

reasonable cause. The Act provides that how reasonableness can be determined and contains a provision that any practice contained in a relevant voluntary code of practice governing the work is to be taken into account. There are also some other issues like whether the work was made in the course of the author's employment or under a freelance contract and whether the treatment of the article was required to comply with a law such as defamation. There is a provision regarding waiver of moral rights but it allows written consent by the author. However, employed journalists, artists and photographers may consent to their employer doing acts which may otherwise infringe their moral rights in relation to all works made by them, and to be made by them, in the course of their employment.<sup>70</sup>

The aim of the legislation is to aware the users to respect creator's moral rights. Consequently, it is preferable for any infringement to be corrected rather than punished by way of damages. However, while encouraging disputes to be settled by negotiation and mediation, the legislation allows a court to make an injunction, award damages for losses, make a declaration that a moral right has been infringed, or order a public apology or the removal or reversal of any infringement.<sup>71</sup>

### **2.4.3 Copyright amendment indigenous communal moral rights bill:**

In Australia there is no any legal protection was given to ICMR. Indigenous communities would prevent itself from unauthorized and derogatory treatment of works on the enactment of ICMR.

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<sup>70</sup>Ibid.

<sup>71</sup>"Moral rights overview" available at <<http://www.aesharenet.com.au/backgroundinformation/025moral.asp>> (Last accessed December 18, 2010).

### **2.4.3.1 Development of Communal Moral Rights:**

Senator Aden Ridgeway<sup>72</sup> introduced the proposal that Indigenous communities should be provided with special communal moral rights within the legislation. The proposal was rejected by the parliament and gave the reason behind it, that “this is not the proper time to consider and debate on this proposal but Government did signal its commitment to consider on this issue”.

Bill was only distributed to some organizations and was not available for public and by mid December 2003 copies of that draft were distributed for comment to these organizations. Attorney General Philip Ruddock suggested that “the protection of Indigenous culture depends upon strong and effective copyright laws”.<sup>73</sup>

### **2.4.3.2 Criticism:**

The new Bill was criticized and also provided an opportunity to implement meaningful reform. Some commentators claim that despite the Government’s assertion that the intent of legislation is to provide a simple, workable and practical schema for Indigenous communities, artists, galleries and the public, the focus appears to be on creating legal solutions rather than developing realistic and practical outcomes for Indigenous people. The Bill has been criticized because it was phrased in complicated and legalistic language, which raises serious questions of access for the Indigenous communities for whom the Bill is supposed to be designed.

### **2.4.3.3 Requirements to claim Indigenous Communal moral rights:**

The Bill proposed these five requirements:

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<sup>72</sup> The only Indigenous member of the Senate

<sup>73</sup> “Indigenous Communal Moral Rights (ICMR)” available at <<http://ab-ed.boardofstudies.nsw.edu.au/go/aboriginal-art/protecting-australian-indigenous-art/background-information/proposals-for-change/indigenous-communal-moral-rights-icmr>> (Last access December 18, 2010).

- i. There must be copyright subject matter literary, dramatic, musical or artistic works and cinematograph films (sound recordings are excluded).
- ii. The work must draw on the particular body of traditions, observances, customs or beliefs held in common by the Indigenous community.
- iii. An agreement must be made between an Indigenous community and the creator of the work (the copyright holder). This is a voluntary agreement, which could be oral in nature. Indigenous communal rights cannot exist without this agreement; the onus is on the Indigenous people and communities to initiate contact and negotiation with those parties, such as other artists, film-makers, broadcasters or corporate organizations, who may have an interest in the work.
- iv. There must be an acknowledgement of the Indigenous community's association with the work.
- v. Interested parties in the work need to have consented to the rights arising, and this consent must be provided through written notice.

No any right will arise if all of the above requirements met before the first dealing with the work. Communities can enter into formal agreements and it does not take into account difficulties of language access, legal translation and legal mediation.<sup>74</sup>

Communal moral rights Bill provided an opportunity for indigenous custodians that their collective work is acknowledgeable and remedy is available if anything is done with the work

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<sup>74</sup> "The Politics of Indigenous Knowledge: Australian's proposed Communal Moral Rights Bill" available at <<http://www.copyright.bbk.ac.uk/contents/workshops/anderson.pdf>> (Last accessed December 18, 2011).

that is prejudicial to the community's honor or reputation.<sup>75</sup> The duration of the Indigenous Communal moral rights will be determined according to copyright principles. So the term of right will be determined by the lifetime of an author. In some cases author may belong to community but on the other hand author may have only flimsy links to the community. For example if a film maker records dancing which represents a particular cultural story, the Indigenous community's Communal rights of integrity relating to the work will end at the death of film maker.

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<sup>75</sup> Fiona Macmillan, Fiona Macmillan, "New directions in copyright law", 6. Available at <[http://books.google.com.pk/books?id=F-T-MMoRpn4C&pg=PA235&dq=copyright+amendment+indigenous+communal+moral+rights+bill:&hl=en&ei=ZlnmTZrPCcPC8QPng8T3Cg&sa=X&oi=book\\_result&ct=result&resnum=1&ved=0CCkQ6AEwAA#v=onepage&q=copyright%20amendment%20indigenous%20communal%20moral%20rights%20bill%3A&f=false](http://books.google.com.pk/books?id=F-T-MMoRpn4C&pg=PA235&dq=copyright+amendment+indigenous+communal+moral+rights+bill:&hl=en&ei=ZlnmTZrPCcPC8QPng8T3Cg&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCkQ6AEwAA#v=onepage&q=copyright%20amendment%20indigenous%20communal%20moral%20rights%20bill%3A&f=false)> (Last accessed June 1, 2011).

### ***CHAPTER III***

## ***GLOBAL APPROACH TO MORAL RIGHTS***



In this chapter I am going to focus on global approach of moral rights that to what extent moral rights apply in France, UK, USA, Canada, Australia and India. All countries have different approaches towards moral rights as Germany and Italy both are most devoted followers of the moral rights doctrine. But United States and Great Britain did not recognize moral rights but now both are member of Berne Convention.

### 3.1 France:

It is generally acknowledged that France has offered the most comprehensive code for the protection of moral rights, including the rights of disclosure, retraction, attribution, integrity, and resale royalties, as well as protections against misattribution, excessive criticism, and attacks on the creator's personality. France did not accept moral rights laws till 1957. French moral rights are incorporeal to the creative work and attach to individual creators, not corporations. Moral rights are perpetual unlike other nations which terminates moral rights on the death of the author. After author's death his heirs can claim for his copyrighted work. Moral rights are inalienable under French copyrighted law and cannot be waived or transferred but French courts allowed some limited waivers in contracts if courts thinks that those waivers as reasonable and not substantive alterations or distortions of the creative work.<sup>76</sup>

#### 3.1.1 French Act on Moral rights:

In France Copyright Act of 11 March 1957 is the legal framework for the protection of author's work. There are four rights which are protected by the French Act these are the rights of disclosure, withdrawal, attribution and integrity. Moral rights are embodied in the Act with the combination of property rights.<sup>77</sup>

<sup>76</sup> Carol G. Ludolph, Gary E. Merenstein, "Author's Moral rights in the United States and the Berne Convention", Available at <<http://www.garymerenstein.com/StetsonLawReviewArticle.pdf>> (Last accessed July 5, 2011).

<sup>77</sup> Jadwiga Majdan, "Copyright, Moral Rights & Architects", (2003). Available at <[http://www.raic.org/resources\\_archives/research/moralrights.pdf](http://www.raic.org/resources_archives/research/moralrights.pdf)> (Last accessed August 24, 2011).

### 3.1.2 Test of Reasonableness:

In practice, the exercise of one's moral rights is subject to a test of reasonableness. For example, in spite of the French law granting authors an almost absolute right of integrity, an author, in making a contract, gives permission to make modifications inherent to the mode of exploitation of his work. The moral rights of authors can only apply to completed work, which in the case of architecture, means a finished structure. Because the Code is seen by some to be lacking in the area of protecting the creative process, in addition to its completed form, such as a building, there is currently a strong push within the architectural environment to recognize and apply moral rights also to design.<sup>78</sup>

When a person has received some benefits in exchange for transferring the economic rights to the intellectual property it does not eliminate all the rights that the person has against the transferee. "French courts have often honored contractual transfer or relinquishing of such a right by the artist". So it gives an artist, a very broad protection for his creation.<sup>79</sup>

Under French Law remedies for infringement of moral rights include damages (which can be significant) as well as a permanent injunction to prevent further infringing use.<sup>80</sup>

## 3.2 USA:

There has been a basic difference among Berne signatory countries for the protection of moral rights. Berne countries provide moral rights to authors but United States did not provide the protection to that extent.

<sup>78</sup> *Ibid.*

<sup>79</sup> Moral Rights, Colorizations & the Romantic", (1998). Available at <<http://www.taradji.com/color.html>> (Last accessed August 24, 2011).

<sup>80</sup> "Artists Moral rights" Available at <[http://egressfoundation.net/egress/index.php?option=com\\_content&view=article&id=88&Itemid=368](http://egressfoundation.net/egress/index.php?option=com_content&view=article&id=88&Itemid=368)> (Last accessed August 28, 2011).

### 3.2.1 Historical Background:

In 1790 first Copyright Act was implemented in USA. After many revision of this Act, the Copyright Act of 1976 came and gain legal position on January 1, 1978.<sup>81</sup>

Copyright Act was amended by congress in 1990 and they included in it "Moral Rights" with respect to works of art.<sup>82</sup>

There was no any express Law on moral rights till 1990. Through the extension of common Law rights or trade mark laws the US courts offered the protection of interests which were similar to moral rights. Certain US states made their own legislation for the protection of moral rights like California and New York. The California Art Preservation Act 1979 forbid intentional "defacement, mutilation, alteration or destruction" of "fine art".<sup>83</sup> In 1997 11 US states recognized moral rights, notwithstanding VARA.<sup>84</sup>

Moral rights obtain protection through judicial interpretation of more than a few copyright, trademark, privacy, and defamation statutes, and through 17 U.S.C. §106A, which is known as the Visual Artists Rights Act of 1990 (VARA) under USA laws.<sup>85</sup>

First time United states recognized moral rights in 1990 and these rights are given under "Visual Artists Rights Act" of 1990, and are now embodied in Section 106-A of the American

<sup>81</sup> Sandi Towers-Romero, "Media and Entertainment Law" 149. Available at [http://books.google.com.pk/books?id=gGs9\\_LVWzBIC&pg=PA149&dq=moral+rights+in+copyright+law+in+USA&hl=en&ei=cNsOTve0OMTWrQe2m8CIBA&sa=X&oi=book\\_result&ct=result&resnum=2&ved=0CC8Q6AEwAQ#v=onepage&q&f=false](http://books.google.com.pk/books?id=gGs9_LVWzBIC&pg=PA149&dq=moral+rights+in+copyright+law+in+USA&hl=en&ei=cNsOTve0OMTWrQe2m8CIBA&sa=X&oi=book_result&ct=result&resnum=2&ved=0CC8Q6AEwAQ#v=onepage&q&f=false) (Last accessed July 2, 2011).

<sup>82</sup> Kenneth D. Crews, Dwayne K. Buttler, "Copyright law for librarians and educators" Available at [http://books.google.com.pk/books?id=s\\_eYhjQsQC&pg=PA31&dq=moral+rights+in+copyright+law+in+USA&hl=en&ei=cNsOTve0OMTWrQe2m8CIBA&sa=X&oi=book\\_result&ct=result&resnum=7&ved=0CEsQ6AEwBg#v=onepage&q&f=false](http://books.google.com.pk/books?id=s_eYhjQsQC&pg=PA31&dq=moral+rights+in+copyright+law+in+USA&hl=en&ei=cNsOTve0OMTWrQe2m8CIBA&sa=X&oi=book_result&ct=result&resnum=7&ved=0CEsQ6AEwBg#v=onepage&q&f=false) (Last accessed July 2, 2011).

<sup>83</sup> It is defined as including original paintings, sculpture, drawings etc of recognized quality

<sup>84</sup> Simon Stokes, "Art and copyright" Available at [http://books.google.com.pk/books?id=h-XBqKlryaQC&pg=PA75&dq=moral+rights+in+copyright+law+in+USA&hl=en&ei=cNsOTve0OMTWrQe2m8CIBA&sa=X&oi=book\\_result&ct=result&resnum=4&ved=0CDoQ6AEwAw#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20USA&f=false](http://books.google.com.pk/books?id=h-XBqKlryaQC&pg=PA75&dq=moral+rights+in+copyright+law+in+USA&hl=en&ei=cNsOTve0OMTWrQe2m8CIBA&sa=X&oi=book_result&ct=result&resnum=4&ved=0CDoQ6AEwAw#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20USA&f=false) (Last accessed July 2, 2011).

<sup>85</sup> Betsy Rosenblatt, "Moral Rights Basics" Available at <http://cyber.law.harvard.edu/property/library/moralprimer.html> (Last accessed June 2, 2011).

Copyright Act of 1976.<sup>86</sup>

### 3.2.2 Berne's minimum requirements and Moral Rights in USA:

The United States has joined the Berne Convention that contains an express recognition of an author's rights of paternity and integrity. The question is whether moral rights meet Berne's minimum requirements or not? According to Congress United States meets with all requirements like other member states and also many other individuals, industry groups, scholars, and lawyers agree that current United States law now affords sufficient protection for creative artists so as to meet Berne requirements in the moral rights area.<sup>87</sup>

### 3.2.3 Berne Convention as a Non-Self executing treaty:

There is a question which arises when USA joined the Berne Convention that question is whether the United States automatically accepted the Convention's provision regarding moral rights or not? Or in other sense Berne Convention a self-executing treaty in the United States?

Under the constitution of United States treaties are the supreme law of the land. So they succeed the existing laws which are in conflict. Some treaties are self executing and some are not self executing. Without the governmental action on the approval some treaties became self-executing. But the treaties which are not self-executing they take effect only after additional governmental action, such as implementing legislation.<sup>88</sup> In some countries after approval "the Convention becomes part of that country's law. If its constitution is apt to confer rights directly, individuals may bring actions based on the Convention itself to enforce them."<sup>89</sup>

In USA treaty became binding on the citizens on March 1, 1989. Before joining the Berne Convention there was also another important issue that whether the current law fulfill the

<sup>86</sup> Anurag K. Agarwa & S.S. Sagar Priyatham, "Moral Rights in Copyright Law", (2003) Available at <<http://www.ebc-india.com/lawyer/articles/2003v8a3.htm>> (Last accessed July 3, 2011).

<sup>87</sup> Carol G. Ludolph, Gary E. Merenstein, "Author's Moral rights in the United States and the Berne Convention" Available at <<http://www.garymerenstein.com/StetsonLawReviewArticle.pdf>> (Last accessed July 5, 2011).

<sup>88</sup> *Ibid.*

<sup>89</sup> According to the Guide to the Berne Convention, published by the World Intellectual Property Organization (WIPO)

requirements which are given under Article 6bis of the Convention? There is no any statute in US which exclusively provides moral rights. However Committee on the Judiciary of the House of Representatives determined that existing law enables the United States to adhere to the Berne Convention. As a result the Implementation Act is completely neutral toward the issue of whether and how protection of paternity and integrity rights should develop in the future. The courts are free to apply common law precedent and existing statutes, and to consider the experience of foreign nations to the same degree as they would if the United States had not joined Berne.

### 3.2.4 Case law:

There is a case law on which court rejected the claim. Clemens<sup>90</sup> did not protect his work through copyright that's why his work can be copy by any person. Clemens sued a publisher because that person reprinted Clemens work. Clemens claimed that the publisher infringed his trademark, "Mark Twain". Court rejected Clemens claim on the grounds that:

Undoubtedly an author has the right to restrain the publication of any of his literary work which he has never published or given to the public. So, too, an author of acquired reputation, and, perhaps a person who has not obtained any standing before the public as a writer, may restrain another from the publication of literary matter purporting to have been written by him, but which, in fact, was never so written<sup>91</sup>

In other words, no person has the right to hold another out to the world as the author of literary matter which he never wrote. Any other rule would permit writers of inferior merit to put their compositions before the public under names of writers of high standing and authority, thereby committing a fraud not only on the writer whose name is used, but also on the public.

### 3.2.5 Today's status of moral rights protection in USA:

"The moral right, as such, is not recognized in this country."<sup>92</sup>

<sup>90</sup> *Clemens v. Belford, Clark & Co.*, 14 F. 728, 730-731 (C.C.N.D.Ill. (1883).

<sup>91</sup> Ronald B. Standler "Moral Rights of Authors in the USA", (1998). Available at <<http://www.rbs2.com/moral.htm>> (Last accessed March 20, 2011).

<sup>92</sup> It has been announced by the Second Circuit Court of Appeals

The Copyright Act of United States does not recognize moral rights in the same sense that the word is used in other Berne countries. Moral rights are protected by other means like by: breach of contract, libel, Invasion of privacy, unfair competition, and copyright infringement.

First three causes of action based on state law, which means that an author's protection of his moral rights may vary depending on where he brings his suit. The unfair competition cause of action is based on federal law, so an author will receive uniform treatment throughout the country under this cause of action. These causes of actions are given as below:

### **I. Contract**

An artist in the United States can best acquire protection for his moral rights by demanding an appropriate clause during contract negotiations. Like if an artist can insist that there should be no any changing in his work without his consent. This would protect his integrity interests. So in USA moral rights can be protected against the contractual parties.

### **II. Libel**

Libel is another cause of action which protects moral rights. Unauthorized publishing of a work in the name of a well known author is libel, if the author's reputation is harmed.

### **III. Privacy**

Courts recognize the appropriation of an author's name or likeness for the benefit of another to be an invasion of privacy. It has been held that the unauthorized publication of a professor's notes with the use of the teacher's name is an invasion of privacy.

### **IV. Unfair Competition**

Section 43(a) of the Lanham Act protects both the integrity and the paternity interests. According to this section any person who shall affix or use in connection with any goods or

services which are placed into commerce a false designation of origin,<sup>93</sup> or any false description<sup>94</sup> or representation, shall be liable in a civil action by any person who believes that he is, or is likely to be, damaged by the use of any such false description or representation.

## V. Copyright Infringement

There is a case in which court applied the doctrine of copyright infringement to the unauthorized editing of a script that led to the broadcasting of a distorted version of the work. The copyrighted holder just grants limited rights to a licensee. Copyright infringement occurs when licensee goes beyond time or media restrictions on his license, or makes an unauthorized use of the underlying work by publishing it in a distorted version. The court in *Gilliam* held that:

“Unauthorized editing of the work by a sub licensee, if proven, would be an infringement of the work's copyright, just as any other use of a work that exceeded the license granted by the copyright's owner”.<sup>95</sup>

Like in the case where a video game licensee creates a faster version of the copyrighted game in this situation licensee makes changes in copyrighted owner work so copyright infringement occurs.

## VI. State Moral Rights Laws

The recent public debate over moral rights has brought wider recognition of these rights. Increased interest is evidenced by the acts of state legislatures. Several states have now passed statutes expressly protecting various aspects of moral rights. The New York moral rights statute is clarifying the rights and obligations involved. New York's statute is known as the Artists' Authorship Rights Act.

<sup>93</sup> The “false designation of origin” language can be applied to protect an author's paternity right.

<sup>94</sup> Possibility of misleading the public through a false description may be used to protect an author's integrity interest.

<sup>95</sup> *Gilliam v. ABC*, 538 F.2d 14 (2d Cir. 1976)

“Unauthorized public display or publishing of a work of fine art or a reproduction thereof in an altered, defaced, mutilated, or modified form”<sup>96</sup>

This prohibition applies only if the work is displayed, published, or reproduced as being the work of the artist, or under circumstances under which it would reasonably be regarded as being the work of the artist, and damage to the artist's reputation is reasonably likely to result therefrom.

### **3.2.6 Moral Right's future in United States:**

There are arguments on both sides that after joining Berne Convention status of moral rights will change or not. These arguments are given as below:

#### **3.2.6.1 Moral Rights Will Not Change:**

Arguments which supports moral rights are on the basis that adherence to Berne may slow down the adoption of strict moral rights legislation because “we have done all we are required to do.” Now the current situation is that the law of United States already meets the minimum requirements of Berne on moral rights which indicate reluctance to change United States law on this subject. The law of United States would change if the implementing legislation changed it. The Berne Implementation Act did not change United States law as it relates to author's moral rights. Congress expressly stated that any rights in a protected work under United States, copyright law would not be expanded or reduced by virtue of this country's adherence to the Berne Convention. There is also a point that under Article 5 of the Berne Convention, there finds a reason that our adherence to Berne should not affect the state of moral rights in this country. Article 5 describes that the moral right protection in the country of origin is governed by domestic law and the protection which is other than in the country of origin is governed by the law of the country where protection is required, and that such protection will be the same as that

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<sup>96</sup> Section 14.53 Artists' Authorship Rights Act prohibits it.



granted to nationals of that country.

### 3.2.6.2 Moral Rights Will Change:

On the Other hand there are arguments of those who think that after the admission of United States into Berne, it will increase the protection afforded authors' moral rights.

“Adherence to Berne will cost the United States the high price of substantial changes in our law, and potential disruption of established business practices structured upon that law, and will limit future legislative options”<sup>97</sup>

“The European concept of ‘droit moral’ . . . which is inconsistent with the United States tradition of copyright as an economic incentive.”<sup>98</sup>

According to CPACT, introduction of moral rights into United States will disturb the historical balance among authors, publishers, and the public and will also upset decades of settled practices, contract conventions, expectations, and risk allocations. According to them moral rights would interfere and restrict the flow of information to public and will also change the United States law. United States adherence to Berne with legislation that contains only a narrowly prescribed, alienable moral rights provision will ultimately “lead to expanded moral rights protection in the judicial interpretation of United States law.” The World Intellectual Property Organization's guide to the Berne Convention suggests that member states can choose whether to make moral rights alienable or inalienable.

The United States has historically failed to protect author's moral rights by refusing to clearly recognize an author's rights of paternity and integrity. The future of moral rights of an author in the United States remains doubtful. There is an intention of Congress that while the United States

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<sup>97</sup> This Is a statement of Ralph Oman against the joining of Berne by United States before Congress

<sup>98</sup> The Coalition to Preserve the American Copyright Tradition (CPACT) was opposed to United States adherence to Berne because it believed that adherence would introduce

enter into the Berne Convention and that would have no any effect on the state of authors' moral rights. It is impossible to predict how the courts will rule on future moral rights cases, since they will be faced with interpreting a treaty whose literal meaning clearly conflicts with interpretation of Congress. It can only be said that the United States has finally taken a long-awaited step in this arena of intellectual property. It remains to be seen in which direction that step was taken.

### 3.3 United Kingdom:

#### 3.3.1 Historical Background:

Moral rights laws derive from international intellectual property conventions which have been signed by most countries in the developed world, including the UK. It is a requirement of this convention that signatory governments make their state laws which comply with the terms of the convention.<sup>99</sup> In the beginning protection of moral rights is not part of English legal system. Creators of works were protecting themselves by means of contracts.<sup>100</sup> The difference between early legal system of U.K and France, Moral rights in the U.K did not develop as excitedly as their French counterparts. The 1709 Statute of Anne was the first codified copyright law which was established an author's ownership of a creation for a fixed term. To print future work Statute of Anne granted an author a renewable fourteen-year. It was required by the Statute that authors to register their copyrights with the Stationer's Company.<sup>101</sup>

Early courts of UK did not grant to authors the right to control the changing of their published

<sup>99</sup> "The Right to Destroy Artwork" Available at <http://www.artquest.org.uk/artlaw/copyright/basics-of-moral-rights/the-right-to-destroy-artwork.htm> (Last accessed December 4, 2010).

<sup>100</sup> Paul Torremans, "Copyright law: a handbook of contemporary research" Available at [http://books.google.com.pk/books?id=wHJBemWuPT4C&pg=PA338&dq=moral+rights+in+copyright+law+in+uk&hl=en&ei=NbEWTr2slYPirAed9eijAQ&sa=X&oi=book\\_result&ct=result&resnum=1&ved=0CCsQ6AEwAA#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20uk&f=false](http://books.google.com.pk/books?id=wHJBemWuPT4C&pg=PA338&dq=moral+rights+in+copyright+law+in+uk&hl=en&ei=NbEWTr2slYPirAed9eijAQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCsQ6AEwAA#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20uk&f=false) (Last accessed July 8, 2011).

<sup>101</sup> "Protecting Moral Rights in the United States and the United Kingdom: Challenges and opportunities under the U.K's new performances Regulations" Available at <http://128.197.26.35/law/central/jd/organizations/journals/international/volume24n2/documents/213-282.pdf> (Last accessed July 6, 2011).

work by others. This law remained enforce until the passage of the Act of 1911, which recognized the author's possession of various derivative rights in his work, including the right to control translations, cinematic developments, and dramatizations of his work. In 1928 moral rights received first formal legal protection when UK adopted Article 6<sup>bis</sup> of the Berne Convention. After the enactment of Copyright, Designs and Patents Act (CDPA) the United Kingdom recognized moral rights independently.<sup>102</sup>

### 3.3.2 Time Duration:

In UK, time period of rights to be identified and to object to derogatory treatment is same as the copyright in the work. The right against false attribution exists for 20 years after the death of the person on whom it is conferred.<sup>103</sup>

### 3.3.3 The rights of employees:

In U.K, if any third party without the authority of the employer infringed moral rights than employees can claim for moral rights.<sup>104</sup>

### 3.3.4 Current position in UK:

Berne Convention was revised in 1967 for the protection of moral rights after the death of the author, and extends the protection until the economic rights in the work expired. In 1977, as a

<sup>102</sup> Robert C. Bird and Lucille M. Ponte, "Protecting Moral rights in the United States and the United Kingdom: Challenges and opportunities under the U.k.'s new performances regulation" Available at <<http://www.bu.edu/law/central/jd/organizations/journals/international/volume24n2/documents/213-282.pdf>> (Last accessed July 14, 2011).

<sup>103</sup> Pascal Kamina, "Film copyright in the European Union" Available at <[http://books.google.com.pk/books?id=PqJYG9ihusC&pg=PA313&dq=moral+rights+in+copyright+law+in+uk&hl=en&ei=b7EWTqf6IM6lrAfvu\\_HPAQ&sa=X&oi=book\\_result&ct=result&resnum=1&ved=0CCsQ6AEwADgK#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20uk&f=false](http://books.google.com.pk/books?id=PqJYG9ihusC&pg=PA313&dq=moral+rights+in+copyright+law+in+uk&hl=en&ei=b7EWTqf6IM6lrAfvu_HPAQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCsQ6AEwADgK#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20uk&f=false)> (Last accessed July 8, 2011).

<sup>104</sup> Joachim Fleury, "The Status of Certain Recent Copyright Developments in the European Community", Development in EEC Copyright, 4:1 (1993), 30. Available at <<http://ipli.net/blog/wp-content/uploads/2011/02/4FordhamIntellPropMediaEntLJ191993-1994.pdf>> (Last accessed July 7, 2011).

result of the findings of the influential Whitford Committee Report, the British Government expressed uncertainty as to whether current U.K. law or any previous U.K. law fully satisfied the obligations of the Berne Convention and also whether moral rights were actually protected in the United Kingdom. So the moral rights gained international force so the legislators of UK should keep moving speedy for the enforcement of these rights.

UK law has been being criticized that it does not fully meet with the requirements of Berne Convention because there are many restrictions particularly because of the need for authors to clearly declare their moral rights.<sup>105</sup> So the current status of moral rights leaves many issues unresolved and the first issue is that to what extent an artist's judgment about derogatory treatment of his work is relevant in determining whether a breach of moral rights exists.<sup>106</sup>

### 3.4 Canada:

Moral rights are protected under copyright law of Canada.<sup>107</sup> In the development of moral rights in the copyright countries, Canada stands as predecessor.

#### 2.4.1 Historical Background:

In 1928 when Berne Convention introduced moral rights for the first time, Canadian legislators firstly accept this law. Canada became the first copyright countries for the enactment of moral right provisions.<sup>108</sup> The Canadian Copyright Act of 1924 was amended in 1988. Than

<sup>105</sup> Jadwiga Majdan, "Copyright, Moral Rights & Architects" Available at [http://www.raic.org/resources\\_archives/research/moralrights.pdf](http://www.raic.org/resources_archives/research/moralrights.pdf) (Last accessed August 28, 2011).

<sup>106</sup> *Ibid.*

<sup>107</sup> Philip B. Kerr, "Copyright Law in Canada" Available at <http://users.rytel.com/~pbkerr/copyright.html> (Last accessed December 4, 2010).

<sup>108</sup> Ysolde Gendreau, "An emerging intellectual property paradigm: perspectives from Canada" [http://books.google.com/books?id=V6guvIPozrEC&pg=PA163&dq=moral+rights+in+copyright+law+in+canada&hl=en&ei=J-Z0TcKzBMqJrAfD0vTRCg&sa=X&oi=book\\_result&ct=result&resnum=3&ved=0CD0Q6AEwAg#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20canada&f=false](http://books.google.com/books?id=V6guvIPozrEC&pg=PA163&dq=moral+rights+in+copyright+law+in+canada&hl=en&ei=J-Z0TcKzBMqJrAfD0vTRCg&sa=X&oi=book_result&ct=result&resnum=3&ved=0CD0Q6AEwAg#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20canada&f=false) (Last accessed March 8, 2011).

the Canadian law provides strong provisions on the author's right of integrity it also provided the concept of Paternity.<sup>109</sup>

Moral rights were first discussed in *Morang v. LeSueur*, and they were treated as part of "Literary Property". In 1931, the legislators draft the rights in the same form as Art 6<sup>bis</sup> of the Berne Convention. Under section 14 of Canadian copyright Law the author has a right of integrity, a right to be associated with a work as its author, and a right to remain anonymous. First two rights are given in Art 6<sup>bis</sup> of the Berne Convention, but the last one is not given in Art 6<sup>bis</sup>. Under section 28 of the Act infringement of moral rights are discussed as anything which is contrary to the rights and without consent of author that right has been used that will consider as infringement.

### 3.4.2 The Right of Anonymity:

The right of Anonymity is not required by Berne Convention but Canadian law provides it. This provision for anonymity points out commitment for protection of author in Canada.<sup>110</sup>

### 3.4.3 The absence of Express Defenses:

The Canadian statute does not cut back the authorial rights through the granting of express defenses. The defendant in Canada can argue neither fair dealing nor fair use. Likewise, despite the concept of reasonableness being built into the right of attribution, the reasonableness of an act is no general defense to infringement of moral rights in Canada.

### 3.4.4 The absence of Indirect Infringement:

While the absence of express defense work in favor of the plaintiff, the absence in Canada

<sup>109</sup> Philip B. Kerr, "Copyright Law in Canada" Available at <<http://users.trytel.com/~pbkerr/copyright.html>> (Last accessed December 4, 2010).

<sup>110</sup> Ysolde Gendreau, "An emerging intellectual property paradigm: perspectives from Canada" Available at <[http://books.google.com/books?id=V6guvIPozrEC&pg=PA163&dq=moral+rights+in+copyright+law+in+canada&hl=en&ei=JZ0TcKzBMqJrAfD0vTRCg&sa=X&oi=book\\_result&ct=result&resnum=3&ved=0CD0Q6AEwAg#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20canada&f=false](http://books.google.com/books?id=V6guvIPozrEC&pg=PA163&dq=moral+rights+in+copyright+law+in+canada&hl=en&ei=JZ0TcKzBMqJrAfD0vTRCg&sa=X&oi=book_result&ct=result&resnum=3&ved=0CD0Q6AEwAg#v=onepage&q=moral%20rights%20in%20copyright%20law%20in%20canada&f=false)> (Last accessed March 9, 2011).

of any idea of indirect infringement of moral rights (infringement through sale or importation of, or dealing with, infringing material) reduces the number of parties who may be joined as defendants. It is not possible to assert the right in relation to indirect violations. In this respect Australia, unlike the UK or the US, provides more complete protection to the plaintiff author, since this country provides expressly for infringement through importation and sale.

### **3.4.5 Canada's short protection period:**

After the death of author the time duration is 50 years but it is different from other countries like in France where the author has indefinite moral rights protection and nor is the 50 year period consistent with the US approach of generally not allowing the counterpart (Visual artists') rights to continue beyond the author's death. The basic term of protection is now 20 years shorter than the basic term in Australia, and in those countries of continental Europe where the moral rights are coextensive with the economic rights. Unlike Australia, Canada has created no exceptions to its duration rule for particular types of work.

### **3.4.6 Position of Moral rights in Canada:**

The parliament of Canada in limited circumstances proposed to authors for holding moral rights, and that moral rights therefore need not be purely personal in nature. For proponents of the "traditional" view of moral rights, this may be uncomfortable and unfamiliar territory, but it appears that its good legislative scheme which has been set out in Canada's Copyright Act. Canadian corporations should rearrange their intellectual property management to make flexibility and longevity afforded to certain moral rights by the Canadian parliament.<sup>111</sup>

The provisions on moral rights in Canada's Copyright Act are carefully reviewed, as is Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works. Canada's

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<sup>111</sup>Emir A C Mohammed, "A Closer Look at the Canadian Copyright Act: Can Corporations Hold Moral Rights?" (2008) Available at <<http://www.law.ed.ac.uk/ahrc/script-ed/vol5-2/mohammed.asp>> (Last accessed August 24, 2011).

Parliament has purposely intended for corporate entities to hold moral rights in respect of photographic works.<sup>112</sup>

### 3.5 Australia:

In recent years Australia has considered giving authors and artists greater control over their creative output.<sup>113</sup> Australian Copyright Act of 1911 was amended by the Copyright Amendment (Moral Rights) Act of 2000 by providing two new “moral rights” for individual creators which are given as, the right of attribution of authorship and the right of integrity of authorship. The Australian legislation lays down a number of matters on the determination of reasonableness, including the nature of the work and its potential to change (such as a change in the course of performance, or a change in the client’s need), as well as the purpose, manner and context of its use and relevant industry practice. Under this Act any restoration or preservation work which has been done in good faith does not constitute an infringement of moral rights.

In February 1999 the Copyright Law Review Committee (CLRC) completed its report on the Simplification of the Copyright Act 1968. The CLRC recommended that specific legislation should be enacted for the recognition and protection of two ‘moral rights’ which has been given in article 6<sup>bis</sup> of the Berne Convention.

#### 3.5.1 Moral rights disputes under the new regime:

In Australia since the introduction of moral rights in 2000, there are number of disputes which involved moral rights.<sup>114</sup> These disputes are given as below:

<sup>112</sup> Emir Aly Crowne Mohammed, “Moral rights and mortal rights in Canada” *Journal of Intellectual Property Law & Practice*, 4:4 (2009), 261-266. Available at

<<http://jiplp.oxfordjournals.org/content/4/4/261.abstract>> (Last accessed August 24, 2011).

<sup>113</sup> Phillip Bailey, “Moral Rights and Copyright”, (March 23, 1999), Available at

<<http://www.apf.gov.au/library/pubs/rn/1998-99/99rn17.htm>> (Last accessed August 23, 2011).

<sup>114</sup> Rachel Chua, “The Moral Rights of the story: Moral Rights in Australia” (January 11, 2008), Available at

<<http://www.agps.gov.au/publications/agspubs/legalpubs/commercialnotes/CN25.pdf>> (Last accessed August 24, 2011).

### **3.5.1.1 National Gallery of Australia:**

There is a first major controversy back in June 2001 when there came the issue for the renovation to the National Gallery of Australia. Col Madigan was the principal architect of the Gallery; he came to know about some changes like to add a multi-storey glass enclosure to the front entrance of the building. He claimed on these changes. However, despite there being no legal requirement to do so, the Gallery continued its discussions with Madigan in an effort to reach a mutually acceptable position. Renovations to the Gallery commenced last year.

### **3.5.1.2 The Garden of Australian Dreams:**

In 2003, the Carroll Report on the National Museum of Australia sparked controversy when it recommended that alterations be made to the Museum's Garden of Australian Dreams. The Garden is described by the Museum as a 'symbolic landscape'. It gives mixture of images and concepts such as the dingo fence, explorer's tracks, a map of the linguistic boundaries of Indigenous Australia and the word 'home' repeated in 100 different languages. There was an infringement of moral rights of Richard Weller who was the architect on the proposal of Carroll Report's to add lawn, trees, reproductions of Aboriginal rock art and a sundial to the Garden. These changes will violate Weller's integrity right and made a complete mockery of the entire process by which the Garden was chosen and created. The proposed changes were never proceeded.

### **3.5.1.3 Meskenas v ACP Publishing Pty Ltd:**

Moral rights has been successfully established under the case<sup>115</sup> where the publication of a photograph of Her Royal Highness Crown Princess Mary of Denmark standing in front of a

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<sup>115</sup> *Meskenas v ACP Publishing Pty Ltd*, 2006 FMCA 1136



portrait of the late Dr Victor Chang during her visit to the Victor Chang Cardiac Research Institute in 2005. The photo was published in March 2005 in the Australian Woman's Day magazine, which is possessed by ACP Publishing. The magazine Woman's Day wrongly attributed authorship of the painting to Jiawei Shen. ACP Publishing was liable for infringement of Meskenas's moral rights of attribution of authorship and against false attribution of authorship. For economic loss nominal damages of \$1,100 were awarded. But additional or aggravated damages of \$8,000 were also awarded for the additional harm caused to Meskenas as a result of the magazine's conduct after it became aware of its mistake. The main point in this case is that the court held that the damages payable for moral rights infringement are comparable to those payable for copyright infringement and the principles which is used to work out additional or aggravated damages for moral rights infringement are the same as those applicable in copyright cases.

### 3.5.2 Role of Agencies to protect Moral Rights:

Almost over seven years since moral rights were introduced in Australia under the Copyright Amendment (Moral Rights) Act 2000. Moral rights protection has since been extended to performers in July 2007, and the feasibility of recognizing and protecting moral rights for Indigenous communities has been under consideration for a number of years.<sup>116</sup>

Agencies are required to have their intellectual property (IP) policies in place by 1 July 2008, each agency should also consider developing a moral rights policy as part of its IP policy. The moral rights policy could identify common situations which arise in dealing with copyright material or performances created by employees or contractors and define a preferred approach to

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<sup>116</sup> Phillip Bailey, "Moral Rights and Copyright", (March 23, 1999), Available at <<http://www.apf.gov.au/library/pubs/rn/1998-99/99rn17.htm>> (Last accessed August 23, 2011).

dealing with moral rights in each of these situations. The moral rights policy should be circulated amongst employees and, where applicable, contractors. If an agency acts in accordance with its moral rights policy in dealing with copyright material or performances, it should be better placed to rely on the defense of reasonableness. An agency could further strengthen its position by having its employees and, where appropriate, contractors sign acknowledgments that they have been made aware of the agency's moral rights policy. This kind of acknowledgment is already part of some standard moral rights clauses used in agency agreements.<sup>117</sup>

Moral rights have great significance in Australia. So agencies should consider moral rights when dealing with copyright material even if they are the copyright owners or licensees of that material or have a valid defense to copyright infringement, because moral rights will in all cases remain with the author. Agencies should develop a specific moral rights policy as part of this process. Developing and implementing a moral rights policy will assist agencies to manage moral rights more effectively, and to defend their use of copyright material as 'reasonable'. It is obvious that moral rights have become increasingly important for agencies to consider. Agencies should make suitable mechanisms to ensure effective management of moral rights which will in turn minimize their risk of liability for infringement.<sup>118</sup>

### 3.6 India:

Indian Copyright Law<sup>119</sup> is an old law and the Indian judiciary always struggled for the protection of author's rights though judiciary having many challenges.<sup>120</sup> Before 1995 there was no any separate law for author's right. Some people argue that the author by a contract cannot dispose his authorship right since it is a natural right arising on the creation itself. They argue for

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> The first Copyright Act was passed in 1914.

<sup>120</sup> Anurag K. Agarwa & S.S. Sagar Priyatham, "Moral rights in copyright law", (2003). Available at <<http://www.ebc-india.com/lawyer/articles/2003v8a3.htm>> (Last accessed August 28, 2011).

a moral right of the author that moral rights remain with author even if all the rights comprising in the copyright are transferred.<sup>121</sup>

### 3.6.1 Relevant provisions of Indian Law:

According to Section 57 of the Indian Copyright Act, 1957 moral rights are include as author's special rights which means that when author transfer his copyrighted rights he remain have authorship right which would be prejudicial to its honor or reputation and after his death his legal representatives have right to claim.<sup>122</sup> The basic principle under this section is that damage to the reputation of an author is something apart from infringement of the work itself. Under this section damages can claim after the assignment of wholly or in partial of the copyrighted work. The assignee of a copyright cannot claim any rights or immunities based on the contract which are inconsistent with the provisions of Section 57. So the moral rights are similar to the Fundamental Rights guaranteed under the Constitution, as they cannot be waived.<sup>123</sup>

"Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the Author"<sup>124</sup>

### 3.6.2 Judicial Precedents by Indian courts on Moral Rights:

India courts are very careful on the case of moral rights. There are some judgments on this issue which are as follows:

There is a case<sup>125</sup> in which court acknowledged the moral rights of plaintiff (author) even

<sup>121</sup> Somu Giriappa, Copyright Law, Economy and Development (India: Daya publishing House, 2002), 22.

<sup>122</sup> "Indian Copyright Act 1957" Available at <<http://www.ircc.iitb.ac.in/webnew/Indian%20Copyright%20Act%201957.html>> (Last accessed June 22, 2011).

<sup>123</sup> Mrinalini Kochupillai, "Moral Rights under Copyright Laws", A peep into Policy- part 1, (December 4, 2007). Available at <<http://spicyipindia.blogspot.com/2007/12/moral-rights-under-copyright-laws-peep.html>> (Last accessed December 4, 2010).

<sup>124</sup> Under article 27(2) of the Universal Declaration of Human Rights

<sup>125</sup> *Amar Nath Sehgal vs. Union of India*, Decided on 21.02.2005 by Hon'ble Mr. Justice Pradeep Nandrajog

after transfer of economic rights. The plaintiff was a well known artist who was selected to create a mural to decorate the wall of the lobby of Vigyan Bhawan. The artist, after a broad research and hard work of over half a decade, created a mural which was soon recognized as an important part of Indian cultural heritage. But the mural was removed from its place and was kept in a warehouse.<sup>126</sup> On this occurrence artist claimed on the matter on these points that:

“Return of the work; declaration that all rights in mural vest in favor of author; declaration that the author (Mr Seghal) will have absolute right to recreate the mural at any place and sell the work; and damages and costs of the suit”<sup>127</sup>

Court thinks that the work was very precious so the relieves should be in favor of the author. So the Court not only provides the injunctions but also awarded damages of Rs. 500,000/- (US\$11,000 approximately) to the artist, on the reason that artist lost his reputation but also his peace of mind due to mutilation of the mural. The Court also held that all the rights in the mural vested in the plaintiff and he has absolute right to recreate the mural at any place and to sell the same. The Court rejected the arguments which have been raised by the Union of India, which mostly revolved round the assignment of the copyright and the contractual terms that were agreed by both parties, holding that moral rights are independent of author's copyright. They exist even after the assignment either wholly or partially.<sup>128</sup>

There is another case<sup>129</sup> on this issue is that, the objection of plaintiff was to screening of the motion picture on the grounds that the picture was a distorted version of her novel that would weaken her reputation before students, research scholars and the literary world if it was allowed to be presented in its present form. The author objected to the change in name, alterations in character and dialogues, and the climax of the movie which according to the plaintiff was

<sup>126</sup> Khuram Shehzad Chughtai, “Moral Rights of an Author” Available at <<http://www.qic.edu.pk/publications/pdf/Moral%20Rights%20of%20An%20Author.doc>> (Last accessed August 28, 2011).

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

<sup>129</sup> *Mamnu Bhandari vs. Kala Vikas Pictures (Pvt) Ltd.*

changed. Providing due respect to the moral rights of the author (even after economic rights were duly assigned), the Court held that the dialogues which had been deleted from the film could not be described as necessary variations for the change in the medium i.e., from literary to audio-visual. Also the Court agreed that the novel's name should find a place in the title of the film. So the Court supported the moral rights of the author. The decision also corrects the view that a film producer cannot make such modifications in the original work of the author which will result in distortion of original work without the author's consent.<sup>130</sup>

This case<sup>131</sup> law is also gives the position of moral rights in India as, the plaintiff with his co-authors, licensed the economic rights in their works to the defendant to print and publish their works. After the exclusive license was created, the plaintiff found that the defendant had been publishing their works in an altered form which mutilated and distorted the original works. So the plaintiff withdraws from the agreement because of these changes. But the defendants still continued publishing the works. Once again upholding the moral rights of an author even after licensing the economic rights, the Court held that after the revocation of agreement by the plaintiffs no right was left with the defendants to continue publishing and selling their works. It is important to note that Indian Copyright Act, 1957 does not provide any mechanism of transfer of moral right rather it clearly distinguishes the rights under Section 57 from author's copyright.

On moral rights of authors, there is another case on the very famous and entertaining movie "3 idiots", which not only is a perfect entertainer but has also set the record in terms of revenue collection at the Box-Office. The whole debate is whether Chetan Bhagat, the author of the novel "Five point someone" has been given his due credit in the movie, despite his agreement with the

<sup>130</sup> Khuram Shehzad Chugtai, "Moral Rights of an Author" Available at <http://www.qic.edu.pk/publications/pdf/Moral%20Rights%20of%20An%20Author.doc> (Last accessed August 28, 2011).

<sup>131</sup> K.P.M. Sundhram v. Rattan Prakashan Mandir AIR 1983 Del 461.

Producer Company. The dispute is with respect to the "placement of the credits" only.

According to the clause 2 of the agreement which had been made between the producer and the author, clause mentions that, "The Author, hereby, upon the execution of this Agreement forthwith assigns and grants, solely, exclusively and perpetually, in favor of the Producer the Rights in, of and to the Novel" Rights under this clause shall mean and include "to read, refer, interpret, adapt, title, create and produce the Novel (including its title, theme, story, characters, narration and any other contents), in any way or manner whatsoever, in any format or form of audio-visual moving image in and through any media or medium whether now known or existing or hereafter invented or developed and which in the opinion of the Producer may be fit or necessary".

So the producer has the right to adapt and produce the Novel in any way or manner. Thus, incorporating new scenes or dialogues in the movie is within the ambit of the contract and in any way does not violate any Copyright or any moral right of the author.

Clause 4 of the agreement states that:-

It shall be obligatory on the part of the producer to accord credit to the Author in the rolling credits of any audio-visual moving image software (of any format or form in any media or medium) produced by the Producer in terms of the exercise and execution of the rights.

It is important to mention that the Producer is free to place the credit at any place, before or after the movie, as the place to mention this credit is silent in the agreement. Thus, by putting the credit at the end of the movie, the Producer has reasonably complied with the Contract.

To conclude I must say that the Producer has not violated any right, including copyright,

moral right, paternity right or any integrity right of the Author. In this case the relationship between the Producer of 3 Idiots and Novelist Chetan Bhagat was on contractual basis.

“After the war of words over the credit issue in blockbuster '3 Idiots', author Chetan Bhagat today apologized to actor Aamir Khan and the filmmakers, saying he would like to put a lid on the controversy and "move on".<sup>132</sup>

### 3.6.3 The Copyright (Amendment) Bill, 2010:

This Bill amends the Copyright Act, 1957. Copyright in a film currently rests with the producer for 60 years. The Bill extends copyright to a director as well, but for 70 years. In some Cases, this amendment also applies to films produced before the Bill. The Act gives authors, or their representatives, the right to claim damages against use of their work (while under copyright), in a way which adversely affects their reputation. The Bill allows such a right to be exercised indefinitely, as opposed to being restricted to the term of copyright, as is the case currently.<sup>133</sup>

The Amendment Bill makes the following changes to rights of authors of different types of work: (a) it changes copyright provisions for films (b) it gives artists such as lyricists or composer's greater control over rights in their work, (c) it broadens the 'moral' rights that authors enjoy over their work and extends this right to performers.

The Bill also makes the following changes to the rights of users of various types of works: (a) copyrighted works can now be produced in 'special' formats for the use of disabled persons without infringing copyright (b) it allows for the free import of copyrighted works from other countries (c) it prescribes penalties for persons who circumvent technologies used to protect

<sup>132</sup> A news item published in „Times of India” 7<sup>th</sup> January, 2010

<sup>133</sup> The Bill was introduced in the Rajya Sabha on April 19, 2010. The Bill was referred to the Standing Committee on Human Resource Development, (Chairman Shri Oscar Fernandes) on April 23, 2010

copyright (d) it provides for statutory licenses to be issued to broadcasters and producers of version recordings.

The Copyright Act, 1957 defines the rights of authors of creative works such as books, plays, music, films and other works of art, and computer software. Such authors are the original owners of copyright in these works and have a 'bundle of rights' such as the right to distribute, perform, translate and adapt the work. These rights can also be assigned to others. The Act provides for copyright societies, which issue licenses for copyrighted works and collect royalties on behalf of authors or rights holders.

Copyright in literary, dramatic, artistic and musical works lies with the author and his heirs till 60 years after his death. Copyright in photographs, films and sound recordings persist for 60 years after the work is made. The Act also defines the limits of authors' rights and the extent to which users can make fair use of a work without infringing copyright. It prescribes penalties for infringement of copyright. It provides for a registrar of copyrights as well as a copyright board, which shall adjudicate disputes under the Act. The amendment Bill seeks to make changes to the rights of authors, as well as those of users. It also seeks to bring relevant provisions of the Act in line with the World Intellectual Property Organization (WIPO) Copyright Treaty and Public Performances and Phonograms Treaty, 'to the extent considered necessary and desirable'.

India has not signed these treaties as yet. It is a signatory to the Berne Convention, 1886, under which countries recognize copyright of authors from other member countries

#### **3.6.3.1 Moral Rights under the Copyright (Amendment) Bill, 2010:**

The Act gives all authors moral rights over their work, which exists independently of copyright. Authors have the right to claim authorship of their work, and the right to claim



damages against any distortion or modification of their work which adversely affects their reputation (the right to integrity). While the right to claim authorship exists at all times, the Act restricts the right to integrity to the term of copyright. The Bill extends this right indefinitely, as well. By allowing the right to integrity to subsist indefinitely, the ability to create new artistic works (e.g. remixes or parodies), which are inspired by existing works, may be adversely affected. Also, legal representatives of long-deceased authors will have the right to judge whether or not a new work adversely affects that author's reputation.

### **3.6.3.2 Critical Analysis of the Act:**

There are some points on the critical analysis of the Act which are as follows:

1. It is unclear why directors are allowed copyright in a film for 70 years, whereas producers, and authors of other works, are allowed copyright only for 60 years.
2. The Bill gives a special set of rights to authors of work used in films and sound recordings (such as scriptwriters and music composers). As these rights are not given to creators of other works, the Bill discriminates between different types of authors.
3. The procedure prescribed for the issue of licenses to reproduce work in non-specialized formats, for persons with disability, is not time bound. This may make the process less accessible.
4. Authors and their representatives may claim damages against the use of even those works which are out of copyright, on grounds that they damage the author's reputation. This provision may affect creativity and artistic expression of others who build upon an author's work.

### 3.6.4 Future of Moral rights in India:

Section 57 of Indian copyright Act of 1957 was established from the Article 6<sup>bis</sup> of the Berne Convention. Indian legislation is broader in scope and also it is open to more flexible interpretation than art 6<sup>bis</sup> because section 57 reflects the Indian cultural value and traditions. Over the past decade India has seen the development of a significant jurisprudence on moral right issues. Indian Courts also give their consent for the protection of Indian authors. Indian Copyright must achieve a delicate and fine balance of interests. The development of moral rights protection in India depends on the maintenance of flexibility in order to accommodate the ever shifting social equilibrium of a developing society in the cultural sphere. Judge made law offers one of the most flexible and adoptive mechanism for the development of moral rights but the limits of Indian courts like costs and delays in litigation, only give to consideration for the need of legislative framework which protects the moral interests of authors. There are some questions which are in the mind of Indian experts regarding moral rights. These questions are who should be responsible for litigating moral rights claims and what type of work moral rights should protect. For example, moral rights can be declared as professional association on behalf of their member or cultural association which represents the public and the moral rights can be extended to protected community, groups, or other types of corporate creation.<sup>134</sup>

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<sup>134</sup> Mira T Sundara Rajan, "Moral Rights in developing countries", *Journal of Intellectual Property Rights*, 8(2003):357-374. Available at <[http://nopr.niscair.res.in/bitstream/123456789/4907/1/JIPR%208\(5\)%20357-374.pdf](http://nopr.niscair.res.in/bitstream/123456789/4907/1/JIPR%208(5)%20357-374.pdf)> (Last accessed August 24, 2011).

## ***CHAPTER IV***

### ***THE STATUS OF MORAL RIGHTS IN PAKISTAN***

This chapter is about the status of moral rights in Pakistan that to what extent moral rights exist in Pakistan and how they are applicable in daily routine life and for which time these rights remain with the author of the work. Pakistan gave legal protection to moral rights in the shape of special rights of the author. There are some enforcing agencies which are doing their work to protect moral rights; I will discuss all these agencies in this chapter.

#### 4.1 Copyrights in Pakistan:

Copyright protects “original work of authorship” which includes published and unpublished literary, dramatic, musical, artistic, and certain other intellectual works. Copyright protects the rights of a creator for limited period, and after that period the work will become available for the public. Copyright only protects expressions not the idea, procedure, methods of operations or mathematical concepts.<sup>135</sup>

“Copyright does not protect an idea but only the expression of an idea”<sup>136</sup>

There is also a judgment by a court in which the court held that:

“Copyrights can be assigned only by a written agreement. Mere circumstances that an author has been engaged by a publisher to write a book for remuneration would itself not vest the copyright in the publisher.”<sup>137</sup>

##### 4.1.1 Registration of Copyrighted work in Pakistan:

Registration of copyrighted work had such a great advantage that it became prima facie evidence in the shape of certificate that all the facts are stated in it. But in Pakistan registration of copyright is not compulsory. Work is protected automatically when for the first time it becomes

<sup>135</sup> Ferdaus Ara Begum, “Copyright: Protection of professional capacities” Dhaka, (July 21, 2011) Available at <[http://www.thefinancialexpress-bd.com/more.php?news\\_id=143436&date=2011-07-21](http://www.thefinancialexpress-bd.com/more.php?news_id=143436&date=2011-07-21)> (Last accessed August 2, 2011).

<sup>136</sup> *Independent Media v. Ali Saleem and Anr.* 2006 C L D 97 (Karachi)

<sup>137</sup> *Shakeel Adilzadah v. Pakistan Television Corporation Ltd. and other* 1989 C L C 2447 (Karachi)

fixed in a copy or phonorecord.<sup>138</sup>

There is a case law in which a court gave its judgment regarding registration of copyrighted work that if a person fails to register his work that does not mean that his work will not be protected or he cannot sue anyone who infringes his right. But in the case of dispute if the work was registered that will become prima facie evidence.<sup>139</sup>

#### **4.1.2 Rights of copyrighted owners in Pakistan:**

Copyrighted owner have certain rights regarding his work that owner can:

- i. Reproduce his work in any material form
- ii. Issue copies of the work to the public
- iii. Perform his work in public
- iv. Communicate his work to the public
- v. Make any cinematographic film
- vi. Make any sound recording
- vii. Make any translation of his work
- viii. Make any compilation of his work
- ix. Make any adaptation of his work
- x. Offer his work for sale
- xi. Offer his work for rental or hire

#### **4.2 The Evolution of Copyright Law in Pakistan:**

Different Conventions and treaties supported the historical development of Copyright law. Berne convention played an important role in its development. In 1886

<sup>138</sup> "Copyright" Available at <[http://free-books-online.org/mastering\\_communication/media-laws-and-ethics/copyright/](http://free-books-online.org/mastering_communication/media-laws-and-ethics/copyright/)> (Last accessed August 2, 2011).

<sup>139</sup> *Messers Ferozesons Pvt. Ltd. v. Dr. Col. Retd. K.U. Kureshi and others*, 2003 C L D 1052(Lahore)

Berne Convention came into force for authors and revised in 1967 and in 1971. And the second one was the Rome Convention which came into force in 1961 for performers, producers of phonogram. The Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) 1994, which played an important role in the protection of copyrighted work. In 1996 an agreement made between World Intellectual Property Organisation (WIPO) and World Trade Organisation (WTO), that agreement includes that WIPO will control over the TRIPS agreement.

Pakistan always plays an effective role to give protection to intellectual property rights. Pakistan fulfills all the requirements of TRIPSs agreement relating to intellectual property rights as to replace the old laws with new one, and, in Copyright law, to amend some laws which already exist. Some principles which are not available in other countries, but Judiciary of Pakistan laid down these principles.<sup>140</sup> Pakistan is a member state of TRIPS agreement. In TRIPS agreement there are provisions of Berne Convention regarding the protection of Literary and artistic work.

#### **4.2.1 The Copyright Act, 1911:**

The copyright Act, 1911 came into force in 1 July 1912. This Act repeals previous Acts and for the first time this Acts provided provisions on copyright into a single Act.<sup>141</sup> This Act was modified in its application to Pakistan by the Copyright Act, 1914.

#### **4.2.2 The Copyright Act, 1914:**

This Act was modeled after the U.K. Copyright Act, 1911. In the beginning Pakistan adopted Copyright Act, 1914. This Act was applicable before Copyright Act

<sup>140</sup> Hasan Irfan Khan, "Recent developments in legislation and enforcement of intellectual property laws" Available at <[http://www.buildingipvalue.com/05\\_AP/331\\_334.htm](http://www.buildingipvalue.com/05_AP/331_334.htm)> (Last accessed August 2, 2011).

<sup>141</sup> "Copyright Act 1911" Available at <<http://www.ipa.gov.uk/types/copy/c-about/c-history/c-history-1911.htm>> (Last accessed August 2, 2011).

1962.

#### 4.2.3 The Copyright Ordinance, 1962:

Copyright Ordinance, 1962 replaced the earlier copyright Act of 1914.<sup>142</sup> Pakistan gave protection to copyrighted work through Copyright Ordinance, 1962.

Under section 57 of the Act, the author of a work has the right to claim the authorship of the work. He also has a right to restrain the distortion or mutilation of his work or to claim damages for the distortion even after assigning the copyright. The contract of assignment will require being consistent with section 57. Provisions regarding author's special rights are also dealt in this Ordinance. Pakistan is one of the member countries of the Berne Copyright Union and the Universal Copyright Convention.<sup>143</sup>

#### 4.2.4 The Copyright (Amendment) Ordinance, 2000:

Copyright Ordinance, 1962 was amended and the new Copyright (Amendment) Act 1992 was enforced to protect new material.<sup>144</sup> Objective behind the amendment is to fulfill the major requirement of TRIPs agreement. These are some key features of amended ordinance:

- i. Rights were recognized which were falling under audiovisual works in addition to dramatic and cinematographic works and in musical works
- ii. The definition of literary work was modified to include works relating to physical sciences, compilation of data, as well as computer programs
- iii. Protection was given to copyrighted owners in relation to computer programs, and cinematographic works were recognized with reference to rentals.

<sup>142</sup> "Copyright" Available at <[http://islamabad.usembassy.gov/root/pdfs/ipr\\_copyrights.pdf](http://islamabad.usembassy.gov/root/pdfs/ipr_copyrights.pdf)> (Last accessed November 7, 2010)

<sup>143</sup> Khurshed khan and associates, "Copyright Protection in Pakistan" Available at <<http://www.pakistanlaw.com/copysoft.htm>> (Last accessed August 2, 2011).

<sup>144</sup> *Ibid.*

- iv. To prevent infringement of copyright through importation and exportation of infringing material effective border measures were added in new amended ordinance
- v. Effective provisional measures were also introduced.

### **4.3 Moral Rights under Copyright Ordinance, 1962:**

In Copyright Ordinance moral rights of an author recognize as author's special rights under Sec 62. This section describes moral rights as, the right to restrain or claim damages in respect of distortion, mutilation or other changing in the work. It remains with the copyrighted owner even when he gave up or assigned his work. He can take any step against the person whose conduct is prejudicial to his reputation or honor. The legal representatives of the author also have right to claim authorship.<sup>145</sup> The Ordinance gives author two rights under sec 62 which are as follow:

#### **4.3.1 Right of Paternity**

This right gives author a right that he can claim authorship of exhibited work or published work.

#### **4.3.2 Right of Integrity**

This right gives author a right to avoid the changing in author's work which may cause harm to author's honor or reputation.

#### **4.3.3 Duration of author's special rights**

The duration of moral rights or in other words author's special rights in literary, dramatic, musical or in artistic work is the life time of the author plus fifty years. But in the case

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<sup>145</sup> "The copyright Ordinance, 1962" Section 62



of joint authorship, the time limit will remain until the last author dies.<sup>146</sup>

#### **4.4 Infringements and Remedies under Copyright Ordinance, 1962:**

There are provisions regarding civil and criminal remedies against the infringement of copyrighted owner in the Copyright Ordinance, 1962. Infringement means under this Ordinance that, any act which can only be performed by the original creator and no one have right on that act to perform.<sup>147</sup>

For example, in the film and music industry, infringing activities include the following:

##### **1. Piracy:**

Piracy means the illegal copying of music products that have been released without permission from the copyright owner. Piracy can be done by copying music onto or from a cassette, CD, a hard drive or the Internet. Pirate products are not necessarily packaged in the same way as the original, as opposed to counterfeit products.

##### **2. Counterfeiting:**

Counterfeiting involves duplication of both the music product and of its packaging. For this reason unwitting buyers are less able to recognize counterfeit copies than is the case with some pirate copies.

A counterfeit is a reproduction, usually one that is made with the intent of fraudulently passing it off as genuine. Counterfeit products are often produced with the intent to take advantage of the established worth of the imitated product.

##### **3. Forgery:**

Forgery is the process of making, adapting, or imitating objects, statistics, or documents with the intent to deceive. The similar crime of fraud is the crime of deceiving another,

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<sup>146</sup> "The copyright Ordinance, 1962" Section 18

<sup>147</sup> Khurshed Khan Associates, "*Protection of Layout-Designs of Integrated Circuits in Pakistan*" Available at <[http://www.pakistanlaw.com/Protection\\_Layout\\_Designs.php](http://www.pakistanlaw.com/Protection_Layout_Designs.php)> (Last accessed August 2, 2011).

including through the use of objects obtained through forgery. Forgery usually refers to money, paintings or documentation such as ID, diplomas or passports.

#### **4. Bootlegging:**

It means to make recordings of live performances without the performers' consent. Bootleg recordings are musical recordings that have not been officially released by the artist or their associated management or production companies. They may consist of demos, out takes or other studio material, or of illicit recordings of live performances. Fans of music may use the term "bootleg" to differentiate these otherwise unavailable recordings from "pirated" copies of commercially released material, but these recordings are still protected by copyright despite their lack of formal release, and their distribution is still against the law.

#### **5. Plagism:**

Plagism is a theft of another person's writings or ideas. Generally, it occurs when someone steals expressions from another author's composition and makes them appear to be his own work. Plagiarism is not a legal term; however, it is often used in lawsuits. Courts recognize acts of plagiarism as violations of copyright law, specifically as the theft of another creator's intellectual property. Because copyright law allows a variety of creative works to be registered as the property of their owners, lawsuits alleging plagiarism can be based on the appropriation of any form of writing, music, and visual images.

#### **4.4.1 Infringement in Copyrighted work:**

Infringement means that to copy the copyrighted work through any means like by direct or indirect way. Copyrighted work will infringe through these ways:

- a. When there is no consent of the author
- b. When any other person infringes the right which is the exclusively the right of the author by the Ordinance
- c. When any person through trade exhibits the work before public
- d. When any person imports the infringing copies of the work into Pakistan
- e. When any person trades the copyrighted work which affects owner's right
- f. When any person infringes the owner's right to perform anything in public which constitutes the infringement of copyrighted work.<sup>148</sup>

#### 4.4.2 Remedies:

There are three types of remedies which are given as:

##### 4.4.2.1 Civil Remedies

Ordinance recognize civil remedies under section 60 as the creator can file a suit in court if any other person infringes his rights and he can take damages .

##### a. Who May Exercise the Right?

The person who creates his work, he immediately becomes the copyrighted owner in legal term and he can claim copyrights. According to Ordinance the author or his legal representatives can exercise the Moral Right.<sup>149</sup>

##### b. Damages:

Author can claim damages under the Ordinance regarding any distortion, mutilation or other modification of his work.<sup>150</sup> Author can claim these damages from the court through the proper channel. Under this Ordinance author will be entitled for the remedies in the way of damages,

<sup>148</sup> "The copyright Ordinance, 1962" Section 56.

<sup>149</sup> "The copyright Ordinance, 1962" section 62.

<sup>150</sup> *Ibid.*

injunctions, accounts and etc. if the person did not know that the work was copyrighted or not, in this case the original creator will not be entitled to any remedy on the ground that the defendant was innocent at that time. But if court thinks fit than the original creator can take injunction on the sale of infringing copies from the defendant.<sup>151</sup>

#### **c. Limitations and Jurisdiction of Court:**

If the original creator did not take any legal action on the infringement of his work but any other person who have any interest in infringement of copyrighted work, he can file a suit for the prevention of infringement<sup>152</sup> in the court under whose jurisdiction the suit can be filed. Any interim order which passed by the Court will cease to have effect if the regular suit has not been filed within the maximum period of thirty days. Within twelve months the copyright infringement case should be decided by the relevant court.

Court will give its final order under section 65 of the Ordinance.

#### **d. Execution of Order:**

The order which was made by the court on the infringement of the copyrighted work will be executed under section 79 of the Ordinance.

### **4.4.2.2 Criminal Remedies:**

There are also criminal remedies for authors whose rights are infringed. Creator can take these remedies through these ways:

#### **a. False Attribution of Authorship and its penalty**

If any person affixes his name on the work of any other person who is the original creator of the work and he sells that work in public as it is his own work. Under this Ordinance, that person will be liable and punished with imprisonment, which may extend to tow years or with fine

<sup>151</sup> "The copyright Ordinance, 1962" Section 60.

<sup>152</sup> "The copyright Ordinance, 1962" section 65.

which may extend to one hundred thousand rupees or with both.<sup>153</sup>

#### **b. Cognizance of Offences**

The court which is inferior to the Magistrate of the first class will not handle any offence under this ordinance.<sup>154</sup>

#### **c. Power of Magistrate to Award Compensation**

On the matter of compensation Magistrate ordered that the amount of fine will not exceed fifty per cent of the fine imposed by him but equal with the loss suffered by the party shall be paid as compensation to the person whose right has been infringed or to the heirs or legal representatives of such person.<sup>155</sup>

#### **4.4.2.3 Administrative remedies:**

There are also other remedies which include the provisions regarding to motivating the Registrar of Copyrights to prohibit the export and import in Pakistan about the infringing copies. If there is any suspicion regarding the delivery of infringing copies in the way to be imported or exported out of Pakistan than for its examination application will be given to the Custom Officer who is functioning under Customs Act, 1969.

### **4.5 Enforcement of Copyrights:**

Copyrights can be enforced through these agencies which are as follows:

#### **4.5.1 Police:**

Police also plays an important role for the protection of copyrighted work as, when it comes to the knowledge of the police that at some place the infringement was taking place, in this situation the Copyright Ordinance 1962 provides powers under sec 74 that without warrant police can stop and take under possession all copies and the instruments

<sup>153</sup> "The copyright Ordinance, 1962" section 70.

<sup>154</sup> "The copyright Ordinance, 1962" section 72.

<sup>155</sup> "The copyright Ordinance, 1962" section 74A.

which are being used for making the infringing copies. Then immediately all these copies and equipments will be produced before the magistrate.

#### **4.5.2 Pakistan Customs:**

Customs Act 1969 provides the legal protection to original owners in the way that any other person cannot import or export the illegal copies of the work which is protected under copyright law. So the Pakistan Customs plays an important role for the detention of these persons.

There are certain provisions in the Copyright law and Customs Law, which are related to the owners of the work that they can make an application to a customs officer relating to the prevention of the delivery of the infringing copies to be imported into or exported out of Pakistan. The person will be liable under Customs Act 1969 if on the examination of customs officer the copies which are going to be imported or exported will be declared as infringing copies. The delivery of those infringing copies will be stopped.

Things which are prohibited under Customs Act are given under sec 15 of the Act, though the federal government can make restriction on import and export of anything by air, sea or by land.<sup>156</sup> If any person will violate the provisions under sec 15 or sec16, he will be liable to detention and his delivery of infringing copies will seized under sec 17 of the Customs Act 1969.

#### **4.5.3 Federal Investigation Agency (FIA):**

In all federal law enforcement agencies FIA is the broadest investigation authority. FIA investigates all federal criminal violations which the parliament did not assign to other federal agencies. FIA can investigate in all matters on the order of the president, Prime minister, Attorney General. Investigation of Crimes related to

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<sup>156</sup> "Customs Act 1969" Section 16.

intellectual Property Rights, Raids by the FIA Members are conducted with empty hands as they have no weapon to use for their protection in Crime Circles. FIA conducts the cases relating to spurious drug trafficking, espionage, terrorism, bank robbery, extortion and kidnapping etc. FIA also conduct cases on white-collar crimes like money laundering, bank fraud, embezzlement and corruption of all Federal Government departments (excluded Armed Forces) election-law violations, environmental crimes, and computer-related crimes (some of them if assigned). Beside the criminal inquires FIA also conduct non criminal investigations.

***CHAPTER V***  
***CONCLUSION AND SUGGESTIVE MEASURES FOR***  
***RECOGNITION AND ENFORCEMENT OF MORAL***  
***RIGHTS IN PAKISTAN***



## CONCLUSION

Copyright ensures certain minimum safeguards of the authors' rights over their creations, thereby protecting and rewarding creativity. One of the most important functions of copyright law is to act as a safeguard to originality. In this way copyright is essential in ensuring the development and continuation of writing, performing and creating and the existence of economic gain and financial reward for original creators. Without it there would be little encouragement for people to create anything as others would be able to take their work and use it as they wished and any financial reason would be removed.

Moral rights are rights of authors, which is to say that only those human beings who actually create the work in question qualify as owners of moral rights. Therefore, corporate entities and employers who hire third parties to create works for them do not qualify as authors. Moral rights are meant to protect authors who actually create the work in question as opposed to those who finance or commission the creation of that work and who may qualify as initial copyright owners. The author is free to remain anonymous or else to be identified as the creator of the work, with the distinctive sign of one's choice: a name, pseudonym, or symbol. The right of disclosure comes into play when an author who once hid his identity decides to reveal it.

I must say that Moral rights are distinct from any economic rights tied to copyrights. Unlike copyright, moral rights cannot be transferred or sold. Berne Convention and WPPT clearly states "Independently of the author's economic rights" which shows that moral rights are different from

copyright, which consists of “economic rights” (such as the right to reproduce the work), which can be assigned or licensed. Even if an artist has assigned his or her copyright rights to a work to a third party, he or she still maintains the moral rights to the work. Economic Rights are separate from the moral rights as the economic rights are only concerned with financial benefits. Creators cannot assign, transfer or sell their moral rights. Creators can give consent for their work to be used in specific ways, but cannot assign the right to grant such consent. Where moral rights continue after the creator's death, they would be administered by the creator's legal personal representative. It is important to note that authors or creators must choose to assert their Moral Rights (they are not automatic as copyright is), but at the same time, “Moral Rights” can never be assigned they remain with the author even if he or she assigned the copyright to a publisher or some other organization. Therefore, contrary to some of their statements, publishers have no interest whatsoever in Moral Rights. It is also worth noting that in some circumstances, Moral Rights can never exist, e.g. if you are an employee who is paid to create copyright material, you cannot acquire Moral Rights to that material.

On the matter of alienation of moral rights I must say that Moral rights are inalienable in the sense that they can be neither transferred to third parties nor relinquished altogether. These rights are personal to the author. To the extent that moral rights extend beyond the life of the author, they are passed on to the author's heirs upon the author's death in accordance with the applicable local rules. However, this does not mean that the author cannot authorize a third party to bring a moral rights claim in the author's name. More specifically, in addition to prohibiting an absolute transfer of moral rights, it also sets a number of limits to the legally permissible content of copyright contracts. The determination of moral rights infringement will depend on the actions or inactions towards the work, and the surrounding circumstances of the claim.

Moral Rights of authors are very important issue throughout the world. In copyright law moral rights are very important but in practice implementation of these moral rights is very difficult. Moral rights, in the realm of intellectual property law, are related to an author's relationship to his or her creation. An author is not solely someone who writes literary works, but refers to any person or persons who create something in which copyright subsists. The preserving of the integrity of the work bars the work from alteration, distortion, or mutilation. Anything else that may detract from the artist's relationship with the work even after it leaves the artist's possession or ownership may bring these moral rights into play.

Though the nations under the Berne Convention are to abide by its instated regulations, the moral rights clause is one that is not strictly adhered to by many countries because of problems or contradictions it would ensure within their own copyright legislation systems, and such allowed for the optional adherence to moral rights. Moral rights and how they are actually enforced vary by international copyright laws. The United States is famously known for not applying moral rights in the general sense. A main reason as to why the United States did not join the Berne Convention until 1988 was because of the international copyright laws containing the moral rights provision. The U.S. reasoned that such adherence to moral rights would result in the necessity of restructuring its entire copyright law legislation. However, the United States does implement moral rights to certain kinds of copyrighted work, namely those of a visual arts nature. Hong Kong is an example of how moral rights may only be applied partially or only to certain works. Under international copyright laws, Hong Kong denied moral rights to the creators of computer programs. Furthermore, they also allowed for the transfer of moral rights to another party upon the death of the original moral rights holder.

In Berne convention there are some minimum standards for moral rights but this area is in

national issue because in TRIPS agreement there is no any requirement to implement these rights. Almost all member states fulfill the requirement of Berne Convention. Article 27 (2) of the Universal Declaration of Human Rights (1948) provides, "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". The need for protecting the moral interests of the author has also been provided in article 15 of the International Covenant on Economic, Social and Cultural Rights (1966). The moral rights, as well as property rights, guaranteed under the Covenant are further strengthened by the right to non-discrimination. According to article 2 of the Covenant the states parties to the Covenant shall apply these rights to all individuals (citizens and aliens) within their territory and subject to their jurisdiction and ensure that these rights are exercised without discrimination of any kind.

The awareness of moral rights is growing in the world as a very important point. In both national laws and international agreement, the clear global trend is towards greater recognition of moral rights for a broad range of creative works, including music. The new technological situation has caused moral rights to become one of the central issues in the international debate on intellectual property within the digital environment. To conclude I must say that the person who creates his work he should have his rights throughout his life. The limited time period should not be given to him he should be exclusive owner of his work. At the end I am going to discuss some recommendations to enforce Moral rights in Pakistan.

## 5.2 Suggestive Measures for Recognition and Enforcement of Moral

### Rights in Pakistan:

Pakistan provides a strong and sophisticated framework regarding intellectual property laws for the protection of owner's rights in economic and cultural activates. Courts also played an important role on the implementation of laws regarding the remedies for real owners. These are some suggestions for the implementation of moral rights in Pakistan:

- i. People should change their thinking and they should focus on the author's rights as it is very sensitive and important area
- ii. public awareness campaigns should be organized relating to author's rights
- iii. Awareness regarding moral rights should be organized through media
- iv. Enforcement of moral rights should not be limited to books it should apply in all those areas where any person creates the work by his own skills
- v. As an author's special rights are being used as moral rights so the word "Moral Rights" should be added in the Ordinance
- vi. Courts should be taken into confidence by enforcement bodies
- vii. The members of IPO should arrange at least one lecture in all educational institutions on copyrights
- viii. Infringements on paternity and integrity made possible by the plasticity of digital works and the development of the Internet. For instance, author information may be lost when a work is downloaded from the information network, or the work may be sent over the Web under a false author name (perhaps the user's name). Even if the author information appears intact, there may have been changes in the contents of a work, such as unauthorized omissions or additions of material. In this way, an author's name may

appear on a document that expresses ideas totally contrary to his or her convictions. So there should be a tracking system to remove all these infringements on digital work.

- ix. Both authors and publishers have been lobbying strongly in their respective realms. The author sector (authors and their representatives) push for international harmonization with reinforced moral rights; whereas the publishing sector (including publishers, producers, broadcasting companies, and the press) calls for a flexible regulation of moral rights so that authors may waive their rights to the publishers, thus facilitating the diffusion of digital intellectual creations. I must say that the use of a work implies its authenticity and the recognition of its origins, as guaranteed by moral rights.
- x. In the course work of school and college level ministry of education should add at least one portion regarding copyright violations and author's rights.
- xi. The moral rights of the author are most likely to be included in human rights. Moral rights as the rights that are the most directly related to creative activity are also natural rights. As long as disputes about the relation between intellectual property rights and human rights are yet in progress, moral rights may be called quasi human rights.
- xii. A strict application of moral rights would prevent users from making optimal use of the vast possibilities of handling digital information, and prove counterproductive for the information society as a whole: a certain amount of flexibility is needed to allow existing works to be used in the creation of new ones.
- xiii. There should be a strong coordination between enforcement agencies.
- xiv. The protection that copyright provides to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematography films and computer software, creates an atmosphere encouraging to creativity.

- xv. Copyright are the unique, tangible expressions of those ideas in forms such as articles, books, or podcasts. You are always free to write about the same ideas someone else does, but you must express those ideas in your own unique way. For example, if you created a site that simply rephrased the same content from another site paragraph by paragraph or translated it into another language, in my opinion that would be a pretty cut-and-dried case of an unauthorized derivative work, and therefore illegal if done without the copyright holder's permission.
- xvi. If these rights are not maintained, censorship will become a danger: the publisher acquiring the rights of a work may choose to omit or erase any parts of it which they consider inappropriate.
- xvii. In Pakistan it is very difficult to judge the authenticity of art work, that's why all the museums and art galleries should keep record of all paintings which they sold to public
- xviii. Artistes does not have enough knowledge about their art work that in which city their work is being used illegally so there should be a tracking system for the verification of original work
- xix. There should be talk shows on all Pakistani T.V channels regarding moral rights so that every citizen should have enough knowledge upon these rights
- xx. It is perfectly reasonable for the creator of an original work to retain control over his creation while at the same time providing the means for others to benefit from that work, to reference it, and to discuss and debate it without undue restrictions.
- xxi. The person who is not well educated and not well trained from any recognized institution but he perfectly copies all the original work these workers should be punished by law.
- xxii. In our country there are certain cases in which a teacher gets the credit of his student's

work and publish his name on the article as a co-owner. Credit should remain with the original creator.

xxiii. Authors' moral rights should be seen as the result of freedom of speech, and that they are rendered useless if the work might be later cut, mutilated, or misused without any legal control.

xxiv. An artist should not exhibit his work at the place where his work is not secured as he may be defamed by any person.

xxv. Before publishing author should keep secret his ideas as anyone can copy it.

xxvi. Artists, authors and original creator should have knowledge about their rights.

xxvii. Legal action against copyright violators is complicated and time consuming so this should be taken care of and made effective.

xxviii. The moral rights policy could identify common situations which arise in dealing with copyright material or performances created by employees or contractors and define a preferred approach to dealing with moral rights in each of these situations.

xxix. The moral rights policy should be circulated amongst employees and, where applicable, between contractors.

xxx. If you ever find a copyright thief generating income from your content, a few emails to their income providers will usually get their accounts banned and their funds seized.

xxxi. Copyright duration should be throughout the author's life as it is the exclusive work by the author so the right should remain with him throughout his life time and even after his death, no one can infringe his right through any means

xxxii. Public should know about the difference between moral rights and economic rights as economic rights related with financial benefits and moral rights related exclusively with



author's reputation

To adopt all these suggestion we can give strong protection to author's rights. Overall Copyright mechanism is very strong in Pakistan as there is a clear cut law on author's rights and he can claim for damages if his rights are infringed by any one. We must not forget that an author's reputation can be easily damaged by subjecting his work to serious deformations, mistakenly linking his name to the work of others, or transmitting false information about him or his work, which would lead to severe liability problems. Clearly, there is a need to ensure both the user's freedom and the author's dignity.

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