
6. Problems and Prospects of Copyrights for Myanmar Today

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This paper attempts to focus on copyright protection in the digital age, and also tries to explain the problems of intellectual property rights in future. To contribute the global arena of copyright protection, Asia is also trying to project the awareness on future intellectual property rights. This paper is organized in two parts. Part-1 presents the basic idea of copyright in modern perspective and Part-2, reviews the problems which we can face in future. The theme of this paper is related to Asian Copyright Handbook and tries to collaborate the objectives of the Book.

I. Intellectual Property (IP) comprises legally protected rights in products of the mind, including useful inventions, novel designs, creative works, symbols of origins or sponsorship, non-business information, and the like. Abstract ideas, however, are generally not protected as IP. Intellectual property includes copyrights, patents, trademarks and trade dress and trade secrets.

In the industrial countries and are increasing number of developing nations, owners of IP rights of different kinds, receive limited, defined exclusive rights to make, use, sell, copy, distribute, and or license their inventions or creations.

Without economic incentives and rewards, and without security against infringement; misappropriation and outright piracy, developing nations are unlikely to secure either foreign or home-made technologies critical to tackling their endemic, economic and social problems.²

As globalization permeates gradually integrated, the emergence of confirmed national IP laws has become important and urgent. One of the most important parts of IP, copyright is an area of the law that deals with intangible property — property that a person cannot touch or hold or lock away for safe keeping. This concept is sometimes confusing to people;

How can the law protect something you can't hold or touch?

One good way to explain this concept is to think for a moment about a personal letter you have written to your friend. After the letter has been received by your friend, who owns it?

Your friend owns the piece of paper that contains the words.

That is his/her personal property now, and is protected by property law. But you retain ownership of the words and the words are protected by copyright law. Your friend could not publish the letter without your permission. But he/she could throw it away or set fire to it and destroy the paper. In such a case, your friend is not using your words, your property, but merely destroying the letter.³

Copyright vests automatically in original works of authorship as soon as they are “fixed in tangible form, i.e., embodied in a permanent, tangible object. No notice or registration is required. But the copyright in the book came into being as published.⁴

Copyright laws vary from country to country with slight differences in contexts and concepts, however as a basic copyright knowledge and rule they are not contradict. But countries should aware that if they wish to enact the fair and fast national copyright legislation, the public policy needs to put aside their commercial interests and bias policy. Practically, some national copyright legislation make differences but not minimal that something protected in one country is not protected in another country. To this contrary, WIPO be a catalyst to establish consensus with regards to copyright protection. Even the interpretation and definition of copyright are in differences. To this difficulties, WIPO should be the moderator to establish consensus with regards to copyright definition. In this Asian Copyright handbook, the definition is quite simple and in

general. It is very common and easy to understand, and elaborate some category related to their national identity.

Asian Copyright Handbook (ACH) tries to differentiate the author's right and copyright owner. The context is quite related to the sense of WIPO.

As an organization of the United Nations, WIPO should be considering the needs of all the citizens of all its member states, including developing countries, by respecting the concepts of fair access to, and use of, knowledge as well as safeguarding the needs of creators and other rights-holders. The two are not incompatible, so long as a balance is maintained.⁵

To sum up the basic concept of copyright, the answer to the question "what is a copyright?" is as follows: -

Copyright is a protection that covers published and unpublished* literary, scientific and artistic works, whatever in a tangible or materials form. This means that if we can see it, hear it, and touch it — it may be protected. If it is an essay, if it is a play, if it is a song, if it is an original dance move, if it is a photograph or a computer graphic that can be set on paper, recorded on tape or saved to a hard drive, it may be protected. Copyright laws allow the creator the right to produce, prepare derivative works, distribute, perform and display the work publicly.⁶

To cover this definition, almost any work we find today in the library, or on the internet is presumably protected by copyright.

II. Copyright has a critical impact on the flow of literary, scientific, musical and artistic works, information and culture from one country to another. All countries therefore have an interest in copyright. The regulation of copyright is consequently a major task facing developing countries.⁷

Developing countries have special needs that relate directly to copyright. They need easy access to copyrighted works via internet access. But it has some difficulties to harmonize the needs of developing countries.

The general idea of WIPO should be focus on developing nations, to prevent them from being blocked in gaining access to materials needed for educational purposes, process of nation-building. Today the developing nations encounter the challenge of how to drive national interest in electronic communities. Copyright is one of the factors to resolve in global sense. The enactment of national copyright legislation does not automatically being about the desired results. As UNESCO mentioned in "The ABC of Copyright";

Public education to explain their rights to those affected is necessary to make the system work. Authors' societies can play an important role in implementation of copyright laws. National authorities must mobilized behind the creation of effective copyright administrative bodies.⁸

This idea of implementation leads to more benefits can add-up from joining the collective measures such as regional or international copyright systems. WIPO also states that;

It is the duty of the state to ensure with diligence the protection of the arts and inventions

may be an inspiration for and an encouragement to all developing nations. These stimulations alarm the global nations, the awareness of IP protection. All nations should initiate their own national legislations. But the problems are waiting to implement.

The minor problems which we can face in copyright are;

- (a) translations need permission of the original author to translate a work into another language because translator has merely translated an existing work into another language. We own the full copyright of the translation only. To follow this context, there need a contract which should compromise the terms and conditions between the original author and translator. (see also ACH 2004, p-53)
- (b) Internet the common sense notion is that anything that we found on the Internet is public domain and may be taken without permission,⁹ bits of web pages may be store in one's cache, because certain browsers allow to do so. These are false statement;

internet and public domain are not the same. Some web-page indicate “contact me” means belongs to someone and if you use without permission may violate copyright. (see also ACH 2004, p 57-58)

The major problems are concerning with public policy.

- (c) The political economy of IP Protection. In the age of globalization every facets toward the global economy. For instance, up till now people were too cautious for “Brand”. Conventional obsession made them to use their familiar brand. No matter what it is, the Brand is important. To this practice IP protection became in crucial role. In global economy, there is a paradox. Both the content community and producers. IP Protection can not assure the quality of commodity behind the brand. But the copyright protection is slightly different. Readers are always take care of the writer. They never notice the publishing house; nor photocopied copy (pirate copies). That is why copyright awareness is more sensitive and thin.
- (d) the global crisis in the governance of knowledge, technology and culture. (This call comes in the Geneva Declaration on the future of WIPO joint statement, released on September 29, 2004.)
- (e) electronic age ... make the world regions and nations without borders.

Rapid developments in technology, increasing awareness of IP considerations at the public-policy makers have underestimate potential as follows;

1. relevance to business practices and governmental and non-governmental partners
2. governance to make them more transparent and openness
3. interdependence to build relations between IP Protection and International forum and organizations.

To set-up these factors in flexible way is all parties (nations) interested to extend IP protection should participate in international dialogue conducted by WIPO and other related organizations

An expert in Intellectual Property, chairperson of American IP Law Association made the following criteria (s) for strong protection of IP rights.

1. Strong protection of IP gives developing countries better access to foreign technology.
2. Strong protection of IP provides incentives for domestic researchers to invest their resources and efforts in new innovations and technologies.¹⁰

To sum up these facets, the copyright concept is not merely for author’s rights and owner’s right as IP protection; it is also the concept of incentive and innovative for technology and nation’s economic growth. Without the sound and confirmed IP laws (copyright ... etc) the new global economy is not permeated to developing countries.

ACH asks for every country that national copyright laws are being revised to include systems for compensation and limitation on copying for private use to response to the drastic changes in types of exploitation, the amount of infringement, etc. caused by digitalization. Digitalization makes copying in easy way. This problem is at large today. To protect this problem, there is a conventional concept called “fair use or fair dealing”. But it is very difficult to underestimate, whether the use of fair dealing is commercial or educational. It is also difficult to consider the consequence and effect on the market value of the original work. For example, if a person copies seven pages from a book for educational purpose, (he can also pass to his colleagues) or research work, he is covered by fair dealing. But if the person copies the entire book and sells it at a lower price than the original, he has infringed the copyright (owner’s right). However, fair use is hard to noticeable and slovenly. The expensiveness of book price and commercially produced parodies are challenged to this concept. The copyright protection awareness should deeply consider this issue.

Computer programs have been applied for copyright. This issue of the recognition of computer programs as a copyrightable work was actively sought by major computer developed institutions and software producers. As conventionally practice that copyright protection does not require applications and procedures. It is almost universal and automatic protection

without registration, since the very date of publication. Computer programs are also similar to book and automatic protection without registration, since the very date of creation of the program. The Trips Agreement clearly states that computer programs are to be protected “as literary works”.

Copyright only protects the expression of an idea, not the idea as such.

This basic dichotomy contained in some copyright laws has been explicitly stated in the Trips Agreement. (Article 9-2)

As a result of this dichotomy, the production of an identical copy of a program is prohibited by law, if it is the result of access to the preexisting program. There is no infringement if an identical program is independently created without such access.¹¹

The above mention issues are urgently need to consider for copyright protection in developing countries.

Conclusion

As Susan K. Sell pointed out in her book *Power and Ideas*:¹² — the most important factor in the recent spread of intellectual property protection policies has been coercion, the under-developing countries should take care for drafting their own copyright law. The United States has applied significant pressure on developing countries to offer stronger intellectual property protection. It is because; the United States possesses considerable market power and export-led strategies to safeguard its own national interest. US offers to help draft legislation (IP). But most of the developing countries rejected that this would constitute a breach of sovereignty.¹³ These countries have their own ideas and strategies to enact the national copyright legislation. Public Policy of these countries should opt for more liberal rules to make effort to globalize its emerging trade-based conception of intellectual property rights. This conception was incorporated into the Trips (Trade-related Aspects of intellectual property) accord.

Myanmar has impotent litigation for copyright (1911. Act). The only law for IP is

under-developed and under utilized. The other general laws for protection the IP are not sufficient for digital copyright era; and even they are not in active for those who want to secure their rights.

A key factor to promote economic development for a developing country is investment in every sector both local and abroad. To encourage and promote investment, there need transparent and effective laws. The protection to IP rights is crucial and is given great attention as an incentive and encouragement in promoting investment and economic development. The government is aware of the problems and is believed to be enacted in the near future. It is understood that the government is considering for these matters because of its ASEAN member role and satisfy the WTO agreement. Myanmar also acceded to the Berne convention will of course be to encourage the foreign investment and sound protection for the IP rights.

Professor Siva Vaidhyanathan¹⁴ made a good remark that;

Instead of bolstering IP, we should be forging intellectual policy.

Public Policy related to intellectual policy are constitutionally structured more secure arena for copyright protection. Without this factor, in the age of globalization authors or copyright owners would have very inferior protection; with this, they would have indicative but not definite, protection.

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August 4, 2005.

Endnotes

1. Griffith B. Price, jr. Protecting I.P (Economic Reform Today No 3) Washington CIPE 1995, p-22.
2. *ibid* p-21
3. Don R. Pember *Mass Media Law* (2000) Boston Mc Graw Hill 2000 p-493.
4. Jessica Litman *Digital Copyright* New York Prometheus Book 2001, p-17.
5. Grave Cost of WIPO bias Myanmar Library Association Newsletter No. 14.
6. Than Aung (Compiled by) *Copyright in the*

Digital Age Yangon University Library and Information Studies Magazine (1999-2003), p-94.

* Unpublished works can include diaries, letters, survey responses, manuscripts, photograph art or software — any type of work that has not been distributed to the public.

7. UNESCO The ABC of Copyright 1981, p-67

8. *ibid* p-67

9. Than Aung *op cit* p-97

10. Griffith *op cit* p-25

11. Carlos M. Correa Intellectual Property Rights, the WTO and Developing countries (The TRIPS Agreement and Policy Options)

Penang Zed & TWN Books, 2000.

12. Susan K. Sell Power and Ideas (1998), New York, State University of New York, p-68.

13. *ibid* p-70

14. Siva Vaihyantalan Copyrights and Copywrongs (The Rise of IP and how it threatens creativity) New York, New York University Press, 2001.