CHAPTER 3

COPYRIGHT IN INTERNATIONAL PERSPECTIVE
The idea of Copyright began with a view to protect the creativity in terms of copyrights and related rights purely on municipal basis. The gradual addendum of value in the copyright related work makes this a property of international community. The international economic philosophy behind the copyright is playing the vital role in this respect. Actually there is no such thing as an 'international copyright' that will automatically protect an author's creations throughout the world. Protection against unauthorized use in a particular country depends on the national laws of that country. However, most countries offer protection to foreign works under certain conditions that have been greatly simplified by international copyright treaties and conventions. Though the copyright laws now a days has become of international character but originally the notion of copyright began in England where it evolved following the introduction of the printing press at the end of the fifteenth century. As book publishing and selling (activities that were not readily distinguished from one another at the time) became profitable, the stationers (publishers) sought ways to protect their trade. The 'stationer's copyright' gave a particular member of the Company of Stationers, the right to copy a particular work. It was awarded and enforced by the Company. Lyman Ray Patterson describes the purpose in his book on the history of copyright:

"The stationer's copyright was literally a right to copy, that is, a right to reproduce a given work for sale. The basic purpose of this right was to provide order for the book trade by establishing a method to enable publishers to have the exclusive right to publish a work without
competition as to that work. And the sanctions for copyright came from the company, for it was the company, not the author, which granted the copyright. From the stationers' viewpoint, copyright was protection against rival publishers, not against authors."

Since, authors were not members of the Company; they could not hold the copyright. Copyright was perpetual. During the course of the seventeenth century copyright became entangled with politics and censorship. The Company of Stationers which received its legitimacy from a royal charter rode through the turmoil of the civil war and restitution of the crown but the previous arrangements to bring order to the trade slowly changed into arrangements to control the press. The Licensing Act that governed the book trade expired in 1692 and the House of Commons refused to renew it. There were many reasons but one of them was the belief that the Stationers had abused their monopoly and chaos ensued. The book trade went from a tightly regulated enterprise to a wide-open free-for-all. The stationers petitioned Parliament for relief and it finally came in 1709 with the Statute of Anne. The outcome wasn’t exactly what the stationers wanted.

In the field of Copyright, the Statute of Anne was an attempt to restore order to the book trade and, at the same time, to address perceived abuses by the stationers. It provided two kinds of copyright. For past works, it extended the stationer’s copyright for a period of 21 years. For future works it gave the author (or any assignee) the exclusive right to print the work for 14 years with the stipulation that the right could be extended by an author for another 14 years. There are two important points here: Firstly, the statute allowed people outside the Stationer's Company to hold the copyright (although it was the assignees rather than the authors who normally held it). Secondly, the statute attempted to break the monopoly of the stationers by limiting the term of

copyright, a radical change for the stationers, who until then had enjoyed perpetual copyright. The booksellers were outraged. While the statute restored order to the trade, it also fundamentally changed the nature of their monopoly. A copyright that expired meant a decrease in its value, as well as an increase in risk. The booksellers fought back.

3.1 PHILosophy of international copyright law:

Copyright continued to change, often driven forward by the call for author’s right. Nowhere were authors rights more embedded in the notion of copyright than in France. During the mid-eighteenth century, French copyright was both a tool for control of literature and a system of trade agreements just as it had been a century before in England. Copyright was perpetual and administered by powerful guilds but increasingly regulated by the crown (much to the displeasure of the guilds). But while the stationers in England used legal challenges to the Statute of Anne, the French used philosophy. When the Paris Book Guild saw its literary privilege threatened by the royal Administration of the Book Trade, the guild hired the great encyclopedist, Denis Diderot, to write a treatise that defended the guild’s right to literary property. According to Diderot, ‘Ideas’ were the highest form of property because they were so closely associated to the individual who created them:

“What form of wealth could belong to a man, if not a work of the mind, if not his own thoughts, the most precious part of himself, that will never perish, that will immortalize him?”92

This was the strongest possible form of an ‘author’s copyright’, grounded in epistemology rather than finance. It was based on high moral principles, glorifying the rights of individuals and their creative intellect. It was written at the request of a guild, the publishers of Paris. Of course, there were opposing philosophical arguments. For over 100 years, intellectuals had argued that the

92 Infra F.N. 95, p. 101.(Diderot)
enlightenment was grounded on the free exchange of ideas that belonged to the world and not to the individuals who discovered them. This was a view eloquently expressed in 1776 by the marquis de Condorcet. Individuals could not own ideas as they did property, he argued:

"There can be no relationship between property in ideas and that in a field, which can serve only one man. Literary property is not a property derived from the natural order. It is not a true right, it is a privilege." 93

As a consequence, copyright existed to protect the free exchange of ideas not the rights of authors. 94 This view, however, was soon overwhelmed in 1788-89 by the Revolution. In the Declaration of the Rights of Man, the National Assembly officially sanctioned freedom of the press. Without effective copyright, the freedom was wild and destructive. Naturally, anonymous and seditious pamphlets appeared; piracy of literary works was rampant; publishers faltered and became insolvent. Officials recognized the need to act but they debated endlessly ensnared by the politics of censorship in the midst of the Revolution's turmoil. 95 As early as 1790, Condorcet himself co-sponsored a proposal that provided copyright for the author's life plus ten years. The proposal violated the principles Condorcet had declared just 14 years earlier but he now had another goal in mind following the Revolution (to make authors accountable for what they wrote). His proposal did in fact place some limitations on literary property but not surprisingly; these were widely criticized by the Paris Book Guild and the royally privileged theatre directors. Once again they used author rights as their central argument 96. The proposal never came to a vote.

93 Infra F.T. 95, p. 103.(Condorcet)
94 Condorcet went so far as to propose a publishing industry that sold ideas rather than works by authors. Such an industry would be based on the subscription model of periodicals rather than the sale of individual books.
96 Ibid, p. 110.
Astonishingly, after the original sponsors departed almost exactly the same measure was passed into law in 1793 without discussion partially propelled by the revolutionary call to respect individual rights and property. French copyright law was a compromise. The law sanctioned the notion of literary property yet it limited such property and created the notion of public domain. It gave something to those with corporate interests in literary property but it also took something away. During the nineteenth century those corporate interests worked steadily to take back whatever they had lost.

Some claim that French copyright law was delivered in the Revolution as droit d'auteur author rights. But French copyright continued to change for one-hundred years following the Revolution (Ginsburg, 1990). What was initially an uneasy compromise between the philosophies of Diderot and Condorcet slowly became dominated by the notion of authors and moral rights until copyright became synonymous with droit d'auteur in France.

The lacking of unified international law of copyright for the global recognition of author’s creation round the globe laid the basic foundation for the establishment of international law in respect to Copyright which enabled the protection of creativity of authors particularly, and encourage creative works throughout the world generally.

3.2 REASON OF INTERNATIONAL COPYRIGHT PROTECTION:

The brief history shows that copyright is far more complicated than Peter Givler suggests:

“Copyright is not merely giving authors legal control over their own texts. Copyright is far more complex, more nuanced.”

But why should we care? Why bother with esoteric subtleties? Why worry about publishers who boast that their only goal is to protect authors? Because

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allowing such boasts to go unchallenged may lead us to seek the wrong solutions to the copyright problem. It's hard to solve a problem if you don't know its cause. A good example is the recent attempt to fix copyright for scholarly journals by demanding that authors retain the copyright. Give authors control of their work, the argument goes and the publishers' monopoly will be thwarted. Give authors control and the real owners will once again be in charge. Give authors control because it's fair. The argument sounds convincing at first but in practice the case was not so. A single publisher produces journals with thousands of articles by thousands of authors each year. If all authors retain the copyright but give the publisher an exclusive license to publish for a period of time then who really benefits? After the exclusive period expires anyone who wants to make the journals available to the public (for example, in a new format online) will have to contact all those thousands of authors to obtain permission. Some authors will decline; some will be hard to find; some will be missing. Who then controls the journals? Surely not the public, the publishers retain control of the journals even if they do not control the individual articles themselves.

The problem of copyright is not author's rights but the problem is the balance between rights and unauthorise use. Copyright is control with a purpose. Copyright controls the dissemination of works in order to provide incentive to creators and to publish that's good for everyone, authors and the public alike. But perpetual (or nearly perpetual) control works against the public interest and that's true whether it's the publisher or the author who exercises the control. Encouraging every author to retain copyright simply replaces the deliberate tyranny of the few by the inadvertent tyranny of many.

It should be noted that copyright experts who advocate reform do not make these mistakes. Lessig (2001) makes a number of suggestions for reform in Chapter 14, none of which merely shift copyright to authors.

3.3 BENEFIT OF INTERNATIONAL COPYRIGHT PROTECTION:

The problem of copyright is balance. It is therefore ironic that Peter Givler ends his essay on copyright's benefit to authors with a quote from Justice Ruth Ginsburg:

"Indeed, copyright's purpose is to promote the creation and publication of free expression".\(^{100}\)

Justice Sandra Day O'Connor in Harper & Row Publishers, Inc. Vs National Enters., observed:

"It should not be forgotten that the Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas."\(^{101}\)

Justice Ginsburg was writing the majority opinion in a recent Supreme Court case\(^{102}\) upholding the extension of copyright to 70 years beyond the life of the author (or 95 years for corporations). The decision was remarkable for its lack of balance. And surely no one can argue that extending copyright to 70 years after an author is dead (or 95 years for Walt Disney Inc.) benefits authors. Given the title of his essay, Givler might have quoted instead a portion of the dissenting opinion in that case from Justice Steven Breyer, who wrote:

"It is easy to understand how the statute might benefit the private financial interests of corporations or heirs who won existing copyrights. But I cannot find any constitutionally legitimate, copyright-related way in which the statute will benefit the public."\(^{103}\)

\(^{100}\) Supra F.N. 97.

\(^{101}\) 471 US 539 (1985)


\(^{103}\) Supra F.N. 97.
Justice Stevens was concerned about the public good. He was concerned about bringing balance to copyright. Copyright has drifted out of balance over the years. What can we do to bring it back? Alas, there are no simple answers. Changing copyright laws is difficult. The U.S. Supreme Court ruling above shows why; so does the entire history of copyright. As authors, however, we may be able to restore balance to copyright without changing the law itself. There are many groups working to find appropriate ways for authors to dedicate their work to the public domain after a suitable length of time. That’s a solution that addresses the real problem balance. For centuries, publishers have convinced authors that they are helpless victims in need of protection. Copyright is for authors, copyright is fair and resistance is futile and foolish. But it’s possible to resist that’s why we should do so in spite of the difficulty.

Thus, International copyright at one hand provide international protection to the authors and at the another footing disseminate the knowledge and information throughout the word which shall certainly encourage creative works of the creators/authors/publishers. It also provided bigger market to the creator in terms of economic benefit of the creator. So, to provide a common mode of protection to all the creators throughout the globe and at the same time to provide source to the information and knowledge for everyone after a certain period of monopoly of creators/authors, a uniform international copyright law is highly sought for.

3.4 CURRENT POSITION OF INTERNATIONAL COPYRIGHT LAW:

The international laws of Copyrights are the law which provides new guidelines to entire community of the globe. The member state shall follow the

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104 In Feist Publications, Inc. Vs Rural Telephone Service Co., 499 U.S. 340, 349 (1991), Justice Sandra Day O'Connor wrote: "The primary objective of copyright is not to reward the labor of authors, but 'to promote the Progress of Science and useful Arts.' To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art."
guidelines in the process of making their own domestic laws relating to copyright. The laws of copyright working in the international community are the product of the whole community and any contracting parties shall implement the international principles of copyright laws at the time of making their own municipal copyright laws. Since the inception of the copyright and related laws in the world many international Conventions, Treaties, Agreements and Covenants have been adopted by the international communities in order to protect the copyright of the authors /owners but still the result is not very encouraging and proper laws are still lacking in the national scenario because the member countries are not under compulsion to adopt the international principles in totality.

3.5 EVOLUTION THROUGH INTERNATIONAL INSTRUMENTS:

In course of time many international agreements, conventions, treaties etc. have been adopted out of that some are highly remarkable like Berne Convention, UCC and TRIPs Agreement and having global admiration in the area of protective measures of copyright. The international instruments having contribution and influential force in the development of copyright laws throughout the globe are as follows:

3.5.1 (I). THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, 1886:

The Berne Convention in 1886 first settled the recognition of copyrights between sovereign nations. It set out the scope of copyright protection and is still enforce to this day. Copyright’s history has taken it from a legal concept regulating copying rights in the publishing of books and maps to one with a significant effect on nearly every modern industry covering such items as sound recordings, films, photographs, software, and architectural works.
The Berne Convention similar to the Paris Convention had its beginnings in the world meet that took place in the late 19\textsuperscript{th} century. The making of numerous bilateral treaties for the protection of copyright had not served to protect the interests of the authors who were denied protection from rampant plagiarism in the foreign market. An International Literary Association came to be established under the guidance of renowned litterateurs like Victor Hugo. The association held regular meetings and at the Berne session in 1883 produced a draft text for an international agreement on copyright. Three inter-governmental meets came to be organized at Berne in 1884, 1885 and 1886 the Berne Convention for the Protection of Literary and Artistic Works was opened for signature, envisioning an international system for the protection of copyright and related rights. Formulated on parameters as laid out for the Paris Convention, the Berne Convention too, was based on the principle of minimum standards and national treatment\textsuperscript{105}. The important feature of the international system ushered in by the Paris and Berne Conventions was the abandonment of the principle of reciprocity. The Berne Convention signed in 1886, underwent a series of changes in the succeeding decades and the authoritative text of this convention till this date is the Paris text of the Convention. This text was adopted in 1971 to incorporate changes suggested by the Revision Committee that met at Stockholm in 1967\textsuperscript{106}. The objective of the Berne Convention as agreed upon by the signatories provided as “equally animated by the desire to protect, in as effective and

\textsuperscript{105} Matt Elsmore, Intellectual property Rights Within the International Community at http://www.solent.ac.uk/law/netsc.html

\textsuperscript{106} The Paris Act of July 24, 1971, was amended on September 28, 1979; the Treaty a it stood on September 9, 1886, was completed at Paris on may 4, 1896, reviewed at Berlin on November 13, 1908, completed at Berne on March 20, 1967, and at Paris on July 24, 1971 and amended on September 28, 1979.
uniform manner as possible, the rights of authors in their literary and artistic works". 107

Before the Berne Convention, national copyright law usually only applied for works created within each country. Consequently, a work published in United Kingdom (UK) by a British national would be covered by copyright there, but could be copied and sold by anyone in France. Likewise, a work published in France by a French national could be copyright there, but could be copied and sold by anyone in the UK. The Berne Convention followed in the footsteps of the Paris Convention for the Protection of Industrial Property of 1883, which in the same way had created a framework for international integration of the other types of intellectual property: patents, trademarks and industrial designs etc.

Like the Paris Convention, the Berne Convention set up a bureau to handle administrative tasks. In 1893, these two small bureaus merged and became the United International Bureau for the Protection of Intellectual Property (best known by its French acronym BIRPI) situated in Berne. In 1960, BIRPI moved to Geneva to be closer to the United Nations and other international organizations in that city. In 1967, it became the World Intellectual Property Organization (WIPO) and in 1974 became an organization within the United Nations. The Berne Convention was revised in Paris in 1896 and in Berlin in 1908, completed in Berne in 1914, revised in Rome in 1928, in Brussels in 1948, in Stockholm in 1967 and in Paris in 1971, and was amended in 1979. India signed it on April, 1st 1928 and Bilateral in August 15, 1947 and by its subsequent legislation implemented some principles in national level. The UK signed in 1887 but did not implement large parts of it until 100 years later with the passage of the Copyright, Designs and Patents Act of 1988. Since, almost all nations are

107 Objective of the Berne Convention, 1886.
members of the World Trade Organization, the Agreement on Trade-Related Aspects of Intellectual Property Rights requires non-members to accept almost all of the conditions of the Berne Convention. As of November 2009, there are 164 countries that are parties to the Berne Convention. The Berne Convention requires its signatories to recognize the copyright of works of authors from other signatory countries (known as members of the Berne Union) in the same way it recognizes the copyright of its own nationals. For example, French copyright law applies to anything published or performed in France, regardless of where it was originally created. In addition to establishing a system of equal treatment that internationalised copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyright law. Copyright under the Berne Convention must be automatic; it is prohibited to require formal registration (note however that when the United States joined the Convention in 1988, they continued to make statutory damages and attorney's fees only available for registered works).

The Berne Convention states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author's death, but parties are free to provide longer terms, as the European Union did with the 1993 Directive on harmonising the term of copyright protection. For photography, the Berne Convention sets a minimum term of 25 years from the year the photograph was created and for cinematography the minimum is 50 years after first showing or 50 years after creation if it hasn't been shown within 50 years after the creation. Countries under the older revisions of the treaty may choose to provide their own protection terms and certain types of works (such as phonorecords and motion pictures) may be provided shorter terms. Although the Berne Convention states that the copyright law of the country where copyright is claimed shall be applied. Article 7.8 states that "unless the legislation of that country
otherwise provides, the term shall not exceed the term fixed in the country of origin of the work”, i.e. an author is normally not entitled a longer copyright abroad than at home even if the laws abroad give a longer term. This is commonly known as the rule of the shorter term. Not all countries have accepted this rule. The purpose of the Berne Convention is to protect the rights of authors in their literary and artistic works. This convention is based on two principles: National Treatment and Automatic Protection.

**National Protection:**

The Berne Convention Provides that works originating in one of the member states of the Berne Union must be given the same protection in each of the other member states as the latter grants to the works of its win nationals.

**Automatic Protection:**

The Berne Convention also based on the principles of automatic protection which provides that enjoyment and the exercise of rights under the national treatment principle shall not be subject to any formality and such enjoyment and such exercise shall be independent o the existence of protection in the country of origin of the work. This means that the protection is granted automatically and is not subject to any registration, deposit or to any formal notice in connection with the publication.

Apart from two basic principles, the Convention also contains a set of provisions of minimum standards of protection that each member state undertakes to implement through its national legislation. Developing countries may depart from these minimum standards of protection with regard to the right of translation and the right of reproduction for certain works under certain circumstances.
3.5.2 (II). THE UNIVERSAL COPYRIGHT CONVENTION (AND PROTOCOLS), 1952:

The Convention brought into force on September 6, 1952 and subsequently revised in Paris in 1971. The reason for the adoption of UCC was that many states, including two most powerful states, the United States and the Soviet Union were not members of the Berne Convention. The countries were not willing to join Berne Convention due to the reason that its level of protection was high. The Copyright system of the United States and many Latin American countries also differed from that of the Berne Convention. Ultimately the UNESCO adopted UCC by removing several hurdles which came in its way.

The Convention was initiated as a result of an urge to ensure copyright protection of literary, scientific and artistic works in all countries. The members agreed to accord recognition to work produced in any member country just as if the work had been composed within their own territory. Thus, universality came to be accorded to works of authors without discrimination of any kind. The agreed term of protection came to be not less than the lifetime of the author and to twenty-five years after his/her death. The Convention also came to provide separate provisions relating to the position of copyright for the developing nations.

All signatories came to acknowledge their obligation to provide, inter alia, for the 'adequate and effective' protection of the rights of authors as well as others to copyright proprietors in literary, scientific and artistic works. The UCC obligates contracting states to adhere to the principal of 'national treatment'. The symbol © together with the year of publication and the name of the copyright owner may be required by any contracting states under the UCC as satisfying all formalities which are otherwise required by the domestic laws in such contracting states.
3.5.3 (III). THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS, 1961:

International Convention for the Protection of Performers and Producers of Phonograms and Broadcasting Organisations commonly known as Rome convention was concluded on October 26th 1961 and brought into force on May 18, 1964. Its object is to protect neighbouring rights which has also been called related rights. It came to provide protection to performers, producers of phonograms and broadcasting organizations based on parameters of the performance/broadcast/phonograms either undertaken by its nationals, fixed first within their territory, first published within their territory or where the head office is located within the territory of such State. The signatory States agreed to accord 'national treatment' to performers, producers and broadcasting organizations only on the satisfaction of the conditions set out in the convention.

The Rome Convention contains the principle of reciprocity in respect of certain rights expressed by reservations which any contracting states can make at any time. Like the UCC, under the Rome Convention also, the symbol P in a circle together with the year date of first publication and the name of the owner of the rights of the produces may be required by any contracting states as satisfying all formalities which are otherwise required for the protection of the rights of producers of phonograms and the performers by the domestic law in such contracting states.

3.5.4 (IV). THE CONVENTION ESTABLISHING THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (STOCKHOLM, 1967):

The Convention establishing the World Intellectual Property Organization known as WIPO Convention came to be signed at Stockholm on July 14,
1967 and entered into force in 1970 and amended on September 28, 1979. Since 1974, WIPO has the status of a specialised agency of the United Nations. The Convention\textsuperscript{108} elicits the scheme of the signatory states to contribute to a better understanding and co-operation among States for their mutual benefit on the basis of respect for their sovereignty and equality so as to encourage creative activity, promote the protection of intellectual property and the protection of throughout the world and modernize and render more efficient administration of the Union established in the fields of the protection of industrial property and the protection of literary works, while fully respecting the independence of each of the Unions.

The objectives of the Organization are twofold, firstly, to maintain and increase respect for intellectual property throughout the world, in order to favour industrial and cultural development by stimulating creative activities and facilitating the transfer of technology and the dissemination of literary and artistic works. Secondly, the promotion of the protection of intellectual property throughout the world through the co-operation among the states in collaboration with any other international organization and ensuring administrative co-operation among Unions like Paris Union, Berne Union etc.\textsuperscript{109} The Organization also undertakes to facilitate services relating to the protection of IPR’s especially with regard to the co-ordination of

\textsuperscript{108} Initially there were two secretariats (one for industrial property, one for copyright) for the administration of the two conventions, but in 1893 the two secretariats united. The most recent name of the organization, before it became WIPO, was BIRPI, the acronym of the French-language version of the name: United International Bureau for the Protection of Intellectual Property (in English). In 1960, BIRPI moved from Berne to Geneva.

\textsuperscript{109} The unions referred are Paris Convention, the Special Union and Agreements created in relation to it, as for instance the International Union for the protection of New Plant Varieties (UPOV), the Berne Convention and such other agreements which have been created for the purpose of protection of intellectual property, whose administration is assumed by the WIPO in accordance with the provisions of Article 4 (iii).
registration services and the publication information regarding registrations\textsuperscript{110}.

The functions for which WIPO has been established are as follows:

- Normative activities, involving the setting of norms and standards for the protection and enforcement of intellectual property rights through the conclusion of international treaties;
- Programme activities, involving legal technical assistance to states in the field of intellectual property;
- International classification and standardisation activities, involving co-operation among industrial property offices concerning patents, trademarks and industrial design documentation; and
- Registration activities, involving services related to international applications for patents for inventions and the registration of international marks and industrial designs.

\textbf{3.5.5 (V). THE CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS AGAINST THE UNAUTHORISED DUPLICATION OF THEIR PHONOGRAMS (GENEVA, 1971):}

The Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms, commonly known as the Phonograms Convention, was concluded at Geneva on October 29, 1971, and came into force on April, 1973.\textsuperscript{111}

The Geneva Convention of 1971 came to be signed by 72 members as on April 2003 to curb the widespread and increasing unauthorized duplication of phonograms and the damage to the interest of authors, performers and

\textsuperscript{110} Article 3 WIPO Convention.

producers of phonograms. The signatories agreed upon the working of a nationality status being conferred upon nationals of the Union States. The protection accorded however, varied in accordance with the enforcement mechanism of the individual States. It aimed at international protection against the piracy of sound recordings. The Contracting states, concerned at the widespread and increasing unauthorized duplication of phonograms and the damage, this is occasioning to the interests of authors, performers and producers of Phonogrammes. They convinced that the protection of producers of phonograms against such acts will also benefit the performers whose performances, and the authors whose works, are recorded on the said phonograms. This convention was to recognise the value of the work undertaken in this field by the United Nations Educational, Scientific and Cultural Organization and the World Intellectual Property Organisation. The members were also anxious not to impair in any way international agreements already in force and in particular in no way to prejudice wider acceptance of the Rome Convention of October 26, 1961, which affords protection to performers and to broadcasting organisations as well as to producers of phonograms.

3.5.6 (VI). VIENNA AGREEMENT FOR THE PROTECTION OF TYPE FACES AND THEIR INTERNATIONAL DEPOSIT 1973:

The Vienna Agreement for the protection of typefaces and their international deposits, 1973 was concluded on June 12, 1973 at Vienna. This agreement for the protection of the typefaces concluded within six chapters apart from introduction having 41 articles. This agreement was formulated in order to encourage the creation of typefaces and provide an effective protection thereof. According to the provisions of this agreement the contracting states undertake to ensure the protection of the type faces,
by establishing a special national deposit, or by adapting the deposit provided for in their national industrial design laws, or by their national copyright provisions

3.5.7 (VII). THE CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAMME-CARRYING SIGNALS TRANSMITTED BY SATELLITE, 1974:

The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite came to be concluded at Brussels on May 21, 1974. The Convention's main aspect is to curb the appropriation and distribution of programmes transmitted by communications apace satellites. The Convention covers transmissions made through point-to-point satellites and through distribution satellites that transmit signals to earth stations for subsequent retransmissions, such as by cable distribution systems. The main consensus to provide for a global system to restrain the unintended distribution of program carrying signals transmitted by satellite by distributors as this had its impact felt on the use of the satellite communications. The Brussels Convention enjoyed a membership of 24 nation states as on the 15th of April 2003. The Brussels Convention was concluded because the member states were aware that the use of satellites for the distribution of programme-carrying signals is rapidly growing both in volume and geographical coverage and this convention was to convinced that an international system should be established under which measures would be provided to prevent distributors from distributing programmes carrying signals transmitted by satellite which were not intended for those distributors. This is popularly known as Satellite Convention.

3.5.8 (VIII). GENEVA TREATY OF INTERNATIONAL REGISTRATION OF AUDIO-VISUAL WORKS, 1989:

The Treaty on the International Registration of Audiovisual Works is also known as film Register Treaty. It was concluded on April 20, 1989, came into force in 1992. It is concluded with a view to increase the legal security in transactions relating to audiovisual works and thereby to enhance the creation of audiovisual works and the international flow of such works and to contribute to the fight against piracy of audiovisual works. 'Audiovisual work' means any work that consists of a series of fixed related images, with or without accompanying sound, capable of being made visible and, where accompanied by sound, capable of being made audible. The International Register of Audiovisual Works is established for the purpose of the registration of statements concerning audiovisual works and rights in such works, including, in particular, rights relating to their exploitation.

Any natural person who is a national of, is domiciled in, has his habitual residence in, or has a real and effective industrial or commercial establishment in, a contracting state; and any legal entity which is organised under the laws of, or has a real and effective industrial or commercial establishment in, a contracting state is entitled to make an application for the registration of statements concerning his/its audiovisual works. It is basically connected with registration of audio-visual works at international level. It is administered by WIPO's International Bureau. In the Register of the bureau, the information about particular works, their nature, rights as to reproduction, distribution and performance, place of enforceability of such rights, and limitation if any on such rights are to be kept and maintained.
(IX). THE AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS (GENEVA, 1993):

This agreement was concluded at Geneva on December 15, 1993. The agreement desired to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. This agreement was required due to new rules and disciplines concerning:

- The applicability of the basic principle of the GATT 1994 and of relevant international intellectual property agreements or conventions;
- The provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- The provisions of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
- The provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
- Transitional arrangements aiming at the fullest participation in the results of the negotiations;

This agreement contains VII part, 73 articles and 5 sections covering different aspects of international relations and control of intellectual property rights internationally.

114 Concluded at Geneva on December 15, 1993, GATT document MTN/FA II-AIC
(X). THE AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPs), 1994:

On September 20, 1986, a Special Session of the Contracting Parties to the General Agreement on Tariffs and Trade, held in Punta del Este, Uruguay, and attended by representatives from more than seventy countries, formally launched the Uruguay Round of GATT. A Ministerial Declaration identified the Round negotiating objective for intellectual property:

"In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines."

By the time the 'Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations' was presented on December 20, 1991, the parties had agreed that the Agreement on Trade Related Aspects of Intellectual Property Rights should incorporate the norms of the major intellectual property treaties, including the Berne and Rome Conventions augmented by specific minimum standards introduced by the Agreement. Yielding to vigorous objections from the United States, the negotiations expressly excluded the Berne Convention's moral rights obligations from the obligations enforceable under the TRIPs Agreement. The Negotiations specified extensive remedies including measures for interdicting infringing goods at national borders and made concessions to

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developing and least developed country members in the form of an extra four years’ and ten years’ leeway, respectively, from the date of entry into force of the Agreement Establishing the WTO to bring their intellectual property laws into compliance with all but a prescribed handful of TRIPs standards.

The Trade Related Aspects of Intellectual Property Rights Agreement is Annex-I C of the Marrakesh Agreement which established the World Trade Organization. This agreement was signed on April 14th 1994 at Marrakesh, Morocco. An endeavor came to be made for the very first time in the history of international affairs to conjoin issues of trade and intellectual property rights. This objective of the WTO came to be crystallized in the preamble to the TRIPs Agreement, which explicitly lays down that at the conclusion of the agreement the signatories had been desirous of flattening the curves acting as impediments to international trade, simultaneously ensuring the prevalence of efficient and adequate measures to combat infringement of intellectual property rights.

TRIPs agreement is divided into seven parts and consists of 73 articles. Part I deal with general provision and basic principles; part II deals with standard concerning the availability, scope and use of intellectual property rights; part III deals with the enforcement of intellectual property rights; part IV deals with acquisition and maintenance of intellectual property rights and related inter-parts procedures; part V deals with dispute prevention and settlement; part VI deals with transitional arrangements; and part VII deals with institutional arrangements and final provision.

United States of America was the first nation to identify the relevance of the conjugality and pursuant thereto it amended the Trade Act of 1974 to include Section 301 which effectively imposed trade sanctions on countries without an effective Intellectual Property Protection System.
Part I of the agreement sets out general provisions and basic principles, notably a national-treatment commitment under which the nationals of other parties must be given treatment no less favourable than that accorded to a party's own nationals with regard to the protection of intellectual property. It also contains a most-favoured-nation clause, a novelty in an international intellectual property agreement, under which, any advantage a party gives to the nationals of another country must be extended immediately and unconditionally to the nationals of all other parties.

Part II of the agreement sets the minimum substantive standards of protection for the intellectual property i.e. copyright and related rights; trademarks; geographical indications; industrial design; patents; layout-designs(topographies) of integrated circuits; undisclosed information(trade secrets) and control of anti-competitive practices in contractual licensed.

With respect to copyright, parties are required to comply with Articles 1 to 21 of the Berne Convention (Paris Act 1971), except Art 6bis and the appendix thereto. It ensures that computer programs will be protected as literary works under the Berne Convention and lays down on what basis databases should be protected by Copyright and Rental rights have also been added in the area of copyright and related rights.

1 (XI). THE WIPO COPYRIGHT TREATY (WCT), 1996:

After adoption of the TRIPs Agreement, it was realised that all challenges posed by the new technologies have not been addressed by the agreement. Some of the issues raised by the spectacular growth of the use of digital technology particularly through the Internet were not addressed by the TRIPs Agreement. In order to fill this gap, the WIPO Diplomatic Conference on Certain Copyright and Neighbouring Right questions adopted the WIPO Copyright Treaty 1996 at Geneva in between December 2 to 20, 1996.
WIPO Copyright Treaty (WCT) 1996 is a special agreement within the meaning of Article 20 of the Berne Convention, as regards contracting parties that are countries of the union established by that convention and obligate them to comply with Articles 1 to 21 and the appendix of the Berne Convention. It lays down provisions for contracting parties to protect two subject matter, firstly Computer Programme, whatever may be the mode or form of their expression, and secondly, compilations of data or other material (database) in any form which by reason of the selection or arrangement of their contents constitute intellectual creations. It obligates the contracting parties to provide legal remedies against the circumventions of technological measures e.g. Encryption, used by authors in connection with the exercise of their rights and against the removal or altering of information, such as certain data that identify works or their authors, necessary for the management e.g. Licensing, collecting and distribution of royalties of their rights (right management information).

The WIPO Copyright Treaty reflected the aspiration to develop and maintain the protection of rights of authors in their literary and artistic works in a manner as effective and uniform as possible on a universal scale. The Treaty having 25 articles had a membership of 51 countries as on the 19th of July of which 8 nations had ratified the same. Member countries were provided the privilege of prescribing limitations or exceptions to the rights granted to the authors of literary and artistic works by way of their domestic legislation. Authors of computer programs, cinematographic works and works embodied in phonograms received the exclusive right to authorize for the commercial rental of their works either of originals or copies thereof, subject however to the rules prescribed by the domestic laws of such member states.

118 The Instrument came to include material which constituted an intellectual creation even by virtue of its selection or arrangement.
3.5.12 (XII). THE WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT), 1996:

The WIPO Performances and Phonograms Treaty 1996 (WPPT) was also concluded at Geneva in between December 2 to 20, 1996. The WIPO Performances and Phonograms Treaty, 1996 having five Chapter and 33 Articles, came to usher in the modernity to the realm of copyright, a characteristic of the age of information technology. This treaty was concluded to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible in order to introduce new international rules to provide adequate solutions to the questions raised by economic, social, cultural and technological developments, protects performances of performers (actors, singers, musicians, etc.) and phonograms of the phonograms procedures. Unlike, WCT and WPPT do not have any connection with any other treaties.

The Protection under WPPT is to be accorded to the performers and producers of phonograms who are nationals of other contracting parties. The nationals of other contracting parties will have to meet the eligibility criteria as laid down in the Rome Convention. The contracting parties are required to adhere to the principle of national treatment with regard to the exclusive rights specifically granted in WPPT and to the right to equitable remuneration provided under Article 15 of the WPPT. However, this obligation does not apply to the extent that another contracting party makes use of the reservations permitted by Art. 15(3) of the WPPT. It is noteworthy that the provisions of WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty are fully applicable in the digital environment. The compatibility came to correspondingly provide for
authors, composers, writers, performers and artists using the internet\textsuperscript{119} in furtherance of expanding their target audience\textsuperscript{120}. The WPPT established in 1996 came into force on May 20\textsuperscript{th} 2002. As on 19\textsuperscript{th} July 1999, 50 countries had signed the treaty of which six had ratified.

3.6 RATIFICATION OF INTERNATIONAL COPYRIGHT LAW BY INDIA:

Many international Conventions like Berne, Rome, Universal Copyright, Geneva, Paris, Stockholm, Vienna, Brussels, TRIPs, WCT, WPPT etc. have been concluded and among them Berne Convention is the world’s most important international copyright convention. Except for one section, all of the important sections of the Berne Convention have now also become part of the 1994 Agreement on Trade-Related Intellectual Property Rights, better known as the TRIPs Agreement. It would be possible to discuss the key concepts of international copyright with reference to the particular clauses of the TRIPs Agreement. It is easier, however, to explain these concepts within the Berne Convention context because this is their original source and because in various ways, the architecture of the TRIPs Agreement is based on the Berne Convention.\textsuperscript{121} Some of the changes that TRIPs have made to international copyright are also duly noted. Though, India is not the contracting members of all of the above Conventions till date like WCT, WPPT etc. India concluded Berne Convention in April 1, 1928, Bilateral in August 15, 1947, it also adopted United Copyright Conventions on January 21, 1958, Convention on

\textsuperscript{119} The Internet means a public network of computer networks known by that name which enables the transmission of information between users or between users and a place on the network. For further information see Internet Industry Code of Practice, Code for Industry and Self-regulation in Areas of internet content Pursuant to the Requirements of the Broadcasting Services Act, 1992 as amended May, 2002, Version 7.2; http://www.iia.net.au.

\textsuperscript{120} http://www.usinfo.state.gov/topicaUecon/ipr03012001.htm

Protection Producers of Phonograms on Feb 12, 1975, Universal Copyright Convention was entered by India on April 7, 1988, and finally India ratifies TWO on January 15, 1995.

3.7 GLOBAL RECOGNITION AND PROTECTION OF NATIONAL COPYRIGHT WORKS:

At several points in the text that follows, the words 'world-wide protection' or 'global' are occasionally used. This is not strictly accurate because not every single country in the world is a member of the Berne Convention. For example, a few countries in the globe such as a number of small island nations situated in the Pacific Ocean are not Berne Union members. Two populous Middle Eastern countries, Iran and Iraq, are also not Berne Convention members. But 'world wide protection' is a helpful phrase to describe the impact and sweep of the Berne Convention because, as of November 2009, a total of 164 countries became the Berne Union members and most of the major countries in the globe are members.122 'Global protection' and 'global restrictions' means protections and restrictions which include all 164 Berne Union members. The discussion of other international copyright agreements giving international protection in certain aspects such as the WIPO Copyright Treaty 1996 etc. has not been made as India still has not signed those International instruments. Another leading international copyright agreement formulated as a substitute of Berne Convention, the Universal Copyright Convention (UCC) 1952. This also encourages the 'national treatment' concept by which the creation of one country shall be equally treated and protected by any member countries of UCC, like their own.123

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122 For the list of Berne Convention member countries, see http://bit.ly/4Dddvo.
3.8 RELATION BETWEEN INTERNATIONAL AND NATIONAL COPYRIGHT LAW:

In a strict legal sense, there is no such thing as 'International or global copyright law'. National copyright law such as the Indian Copyright Act 1957 for example called the national and territorial in nature and scope. This means that such laws cover a single political unit or territory, usually a self-governing country. Each national law has sovereignty or jurisdiction over that sole particular political unit. Just as the rape laws of Pakistan have no binding impact on or legal power over neighbouring Bangladesh, it might appear that Pakistan's copyright laws (or those of other countries) by themselves would have no power to regulate Bangladesh's copyright affairs. Moreover, copyrights are created within a single national territory and the national copyright laws of that country, whether those of India, Pakistan or Bangladesh, are supreme in most circumstances.

In fact, Indian copyright laws are only seemingly supreme and independent of the laws that exist in other countries and the rest of the world generally. Legislatures and parliaments operate under strict legal constraints as to what they can and what they cannot include in their own domestic copyright laws. This is somewhat unusual though not unique in international law. In the case of copyright, a number of international agreements, treaties and conventions establish binding standards or constraints which provide the framework within which all national governments must operate. When passing and amending their own laws regulating copyright on their own national terrain, countries must follow, without significant deviation, the international rules such as those found in the international laws like Berne Convention on all major issues.\(^{124}\)

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\(^{124}\) The Berne Convention has a number of 'central content or core' sets of protections which must be included in the copyright laws of all Berne Convention members; Sam Ricketson, The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986, London, Centre for Commercial Law Studies, Queen Mary College & Kluwer Law International, 1987, p.206.
short, the International Union operates much like an international copyright cartel.\textsuperscript{125} To be a member, a country must not only obey all of International Copyright's tightly worded rules with few exceptions but also establish its own national laws which collude in propagating the International Convention's restrictive copyright ideology. This ideology provides the legal basis for the huge revenue streams and cultural power that flow to global copyright owners. In brief, international copyrights' central operating assumption is that all countries and their citizens have essentially the same copyright interests. The obvious consequences of this strict international regime and the associated 'cartel-like' or insiders' club mentality is that, to be clear, no country in the world is absolutely forced to join the cartel by signing up to any of these international agreements such as the Berne Convention. A few countries in the South world still have not joined and hence they are not bound by its provisions. Yet, to join or not join the international instruments like Berne 'club' is actually quite a hollow choice. If a country wants to become a member of the 153-member (August 2009) World Trade Organisation and become an active world trader, it must also sign the other leading international agreement regulating copyright, the 1994 TRIPs Agreement.\textsuperscript{126} TRIPs, which is administered by the WTO also regulates other forms of intellectual property rights. By signing up to the TRIPs Agreement a country also agrees to abide by Articles 1 to 21 of the Berne Convention as well as its Appendix; this is one exception.\textsuperscript{127} These global treaties and conventions mark out the field of play;

\textsuperscript{125} The Oxford English Dictionary defines a cartel as "an agreement or association between two or more business houses for regulating output, fixing prices, etc.; also, the businesses thus combined; a trust or syndicate".

\textsuperscript{126} A copy of the TRIPs Agreement can be found at http://www.wto.org/english/docs_e/legal_e/27-TRIPs.pdf; A WTO overview of main contents of TRIPs is available at http://www.wto.org/english/tratop_e/TRIPs_e/intel2_e.htm.

\textsuperscript{127} Article 9(1) of the TRIPs Agreement, Chiefly as a result of pressure from the US, countries signing TRIPs are permitted to ignore the non-economic (moral) rights provisions found in Article 6bis of the Berne Convention.
they define all of the important rules and they establish what are called the mandatory ‘minimum standards’ in national copyright law.

Additionally, agreements such as TRIPs are having an increasingly influential effect over the terms of national laws because, among other reasons, these international treaties have required countries to modify, read and tighten copyright restrictions over users. TRIPs gave new legal rights and freedoms to copyright owners such as the inclusion of new categories of protected/restricted works and new restrictions on users. Copyright users across the globe did not, by comparison, gain a single new right in the TRIPs Agreement. The situation has now become even worse. Not satisfied with its major 1994 victory in the signing of TRIPs, certain countries chiefly the United States and those of the European Union have put new coercive pressures on other countries to enact even stricter copyright laws than are required by the Berne Convention or the TRIPs Agreement. TRIPs itself required countries to add new copyright enforcement laws to their statutes; the fact that copyright infringement now must be treated as a potential criminal offence by all countries is also a direct result of TRIPs. These new rights awarded to owners and related legal pressures have had a major global impact in the past decade because, copyright over products created in one country are often automatically valid rights in many other countries as well. The overall conclusion is the purported independence of national copyright laws and their supposed flexibility is mostly a myth; the objective is global harmonisation.

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128 As the World Bank concluded, the TRIPs agreement, which incorporated much of Berne, decidedly shifted the global rules of the game in favor of rich countries. Global Economic Prospects and the Developing Countries, New York, World Bank, 2002, p. 129.

129 Article 61 TRIPs.

130 Christophe Geiger et al., Declaration on a Balanced Interpretation of the Three-Step Test in Copyright Law, IIC 39, 2008, p. 707, 708: This article concludes, ‘international harmonisation primarily serves the interests of copyright-exporting countries in a secure and predictable trade environment’.
3.9 INTERNATIONAL, NATIONAL COPYRIGHT LAW AND COMMUNICATION SYSTEM:

There are three main consequences of the Berne Convention for individual member countries, for the copyright goods produced within them, and, of course, for users:

a) There is automatic world-wide protection for most copyrighted works; b) Foreign (non-national) copyright holders must receive the same level and type of protection as local (national) copyright holders receive; the technical legal term is 'national treatment'; and c) Copyright laws in all countries must protect copyrighted expressions at a level above what are called 'minimum standards'. Let's look at these three consequences which are interlinked and reinforce each other:

3.9.1 (a) Automatic World-Wide Protection:

Acquiring copyright in one product in one country is relatively easy. But in addition, a product that gains copyright in one country which is member of the Berne Union also acquires copyright protection in all other member countries. This global copyright stretch means that a poem, play or computer software program written in India or the England gets legal protection in USA and Switzerland as well as in their country of creation.

The potent overall result is the following:

- Legal rights to copyright in one country become world-wide rights in more than 160 other countries. And they gain this protection without the creator or owner having to take any legal action, without carrying out any foreign or domestic government registration requirements, without having to spend any further money or indeed, without informing anyone. And legally, these properties like protections or legal claims as well as restrictions on users are established automatically and immediately.
In the case of books, the owner's claim to global copyright, which also acts as a copyright infringement warning to users can be found on its copyright page. Such notification is often located on the reverse side of a book's title page.\footnote{In a film, one of its final frames usually contains its copyright notice.} Hence, the words 'Copyright Burdwan University Press 1994' found within a book informs the reader that starting in 1994 and continuing on for many decades, this book is copyright protected in every other Berne Convention country in addition to the country, The India, where the copyright was first acquired. At the same time, this same notice informs all readers that it is illegal for anyone to infringe copyright in this book in either in India or any other Berne Union countries, this legal stranglehold will remain in place for many decades until its copyright expires.

It perhaps takes a few minutes to completely grasp the potency of the global power which this geographic stretch creates. At a stroke it establishes both immense money earning capacity and immense cultural power. This stretch is, for example, at the very core of the reason why Bill Gates and Ajim Premji become a multi-billionaire with Microsoft's and Wipro's copyrighted software programme respectively.\footnote{Alan, Story, Intellectual Property and Computer Software: a Battle of Competing Use and Access Visions for Countries of the South, Issue paper #10, International Centre for Trade and Sustainable Development/United Nations Conference on Trade and Sustainable Development, Geneva, May 2004, The electronic copy of the article is available at http://www.iprsonline.org/unctadictsd/docs/CS_Story.pdf.} Multi-billionaire media owners throughout the globe are rewarded. Few other legal rights operate in a similar global fashion and these provisions are undoubtedly the most important global consequences of the Berne Convention, the TRIPs Agreement and other similar copyright agreements. What has happened requires us to update the pithy conclusion reached by Macaulay in 1841.
that copyright's main principle acts as 'a tax on readers for the purposes of giving a bounty for writers'.

Today, 170 years later, copyright has become an international tax on readers (and listeners and viewers and Internet surfers) for the purposes of primarily giving a bounty to publishers (and film and software multinationals). Certainly few other commodities acquire such a global protective legal sheath so easily and at such a low, in fact non-existent, cost. For a start, these agreements make copyrighted products potentially very valuable and very profitable globally, especially digital products such as music, books and films which can be cheaply delivered over the Internet. It is not an easy matter to precisely calculate the specifics of how much some countries benefit from this global expansion of enforceable legal copyrights but one conclusion is indisputable; those countries and corporations which are the biggest copyright producers and exporters are the largest beneficiaries of this one sided system based on the primarily one way traffic in cultural and technical goods. This guarantee of automatic global protection is not explicitly stated anywhere in the text of the Berne Convention or any other international instruments. It is, however, the direct result of the operation of the two other basics of international copyright, namely national treatment and minimum rights. It should be noted that every copyrighted product created in one country is not necessarily protected in all other countries on the globe.

3.9.2 (b) National Treatment in International Community:
Essentially, the legal concept of national treatment means that national copyright holders and non-national (in other words, foreign) copyright

133 Macaulay was speaking in the British House of Commons against a bill to increase the duration of copyright. His speech is worth reading in its entirety, available at http://www.chaos.org.uk/-eddy/politics/Macaulay.html.

134 The word 'potentially' is important here because such products must also be globally marketed and sold, though the Internet often takes on a delivery and revenue-collection function as well.
holders must be treated, for copyright purposes, in exactly the same fashion. Established as a cardinal principle of the Berne Convention in 1886, national treatment has remained essentially unchanged since that date. It is sometimes labelled a rule of non-discrimination. It means, for example, that the laws of Country A must treat non-nationals (those from Country B) and the copyrighted works they produce as if they were produced by its own nationals (in Country A). In other words, the works of both nationals (from Country A) and foreigners (from Country B) must be protected equally in Country A, that is, on the same legal basis and without any discrimination against those from Country B. Put another way, an author’s and an owner’s rights are protected in another country as if the author and the owner actually were nationals or citizens of the protecting country and vice versa. This same national treatment rule means that within India the Indian government must treat the works of an Indian author on the same basis of the works of an author from England. National treatment also means that if a country increases its duration of copyright or adds new categories of products which can be copyrighted, the copyright for all goods, whether national or foreign must be treated in the same or non-discriminatory manner within its borders.

National treatment provisions create one of the bases for the automatic global protection of copyright products explained in the previous section. Here is how these two features of Berne work in cycle. Corporations located in Country B may export their copyrighted products to Country A. Corporations located in Country A may also own copyright products which are sold within the borders of Country A. If the laws of Country A state that owners of a work are the only ones who can allow the translation of copyrighted work into another language (and the Berne Convention requires that such a privilege must be included in the copyright laws of all member
works produced in Country B and Country A (or anywhere else for that matter) must get the same protection within the borders Country A. And because the laws of Country B must also include the same Berne Convention translation privileges found in Country A (and everywhere else), here is the end result: works produced within Country A get automatic protection against unauthorised translation not only in Country A, but also in Country B and in all other 160 Berne Convention members countries. This is another concrete example of how automatic global protection works.

3.9.3 (c) Establishing Mandatory Minimum Standards:

The Berne Convention’s third main requirement is that all members must establish and enforce a wide number of minimum copyright standards within their own borders. There are various mandatory minimum standards in the Berne Convention. They include the following:

All countries must include national treatment protections in their own domestic law. All countries must protect a broad variety of expressions and products. All countries must not require any formal registration requirements for a work to become copyrighted; protection must commence as soon as a work is created. All countries must ensure that authors, actually owners, of copyrighted works get a number of exclusive rights, such as the right to copy their works and related rights, including those related to translations, which have just been mentioned in the previous section. The personal or non-economic rights of authors, more commonly called “moral

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135 Berne Convention, Article 8, Right of Translation. Article 8 states: “Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works”.

136 Berne Convention, Article 5.

137 For a complete list, see Article 2 of the Berne Convention.

138 Berne Convention, Article 9.
rights", must be also protected for all authors.\textsuperscript{139} And all countries must establish a minimum copyright term of protection of the life of the author, plus 50 years, or an alternative term of 50 years from the date of first publication or release, for example, in the case of a book or film respectively.\textsuperscript{140}

If these are some examples of the fixed and mandatory minimum copyright legal standards included in the Berne Convention, the 1994 TRIPs Agreement added several others in the field of copyright. TRIPs states that all countries must protect computer software as a copyrighted literary work.\textsuperscript{141} As well, new requirements protecting databases regulating the rental of computer programs, films and requiring the strict enforcement of copyright laws were also added.\textsuperscript{142} Taken together, it is these Berne and TRIPs minimum standards which, when linked with the national treatment, ensure automatic global protection. As a result, owners of copyrighted works in Country A can feel totally confident that the works they own in Country A will be legally protected in the domestic laws of all other countries because all other countries must establish the same minimum standards that exist in Country A. In reality then copyright ownership rights established in one country expand dramatically to become global ownership rights or property like rights that are enforceable, at least in theory, anywhere in the world.

In the current era, it is the linking of these two legal threads, national treatment and minimum standards, 'Trips Plus' which also give an additional impetus to rich copyright exporting countries to both spread and

\textsuperscript{139} Article 6bis of the Berne Convention.
\textsuperscript{140} Article 7 of the Berne Convention.
\textsuperscript{141} Article 10 (1) of the TRIPs.
\textsuperscript{142} Articles 11-14 and Articles 41-62 of the TRIPs,
extend the ‘Trips Plus’ agenda, mentioned above. 143 When a country such as the United States was able to put enough pressure on a country such as Chile to tighten its own copyright laws and create even higher standards than the already high minimum standards of the Berne Convention, the United States was ensuring that the world’s largest copyright exporter, namely itself, would be a prime beneficiary. If such new Chilean laws favoured Chilean copyright owners or restricted gains to non-Chileans, they would be declared discriminatory as offending national treatment principles. All copyright owners everywhere must receive the equal potential benefit of the law; the most powerful ones, such as those located in rich industrial countries, receive the greatest real benefit. Conversely, all users everywhere must pay and some users have far more ability to pay than others. In short, ratcheting up copyright laws in one location in the name of ‘Trips Plus’ or the prevention of piracy ratchets up potential benefits to all copyright owners involved in this subsidised monopoly system. 144

During the 1980s and early 1990s some countries such as the United States, Japan and the United Kingdom, decided that software should be a copyrighted product. Other countries, especially in the global south, where cheaper software was (and is) badly needed, disagreed with this approach. So these countries did not explicitly protect software in their own national copyright laws. And they were not ignoring or breaking any laws when they took this decision. At that time there was no international treaty or agreement such as the Berne Convention which placed software in the category of a protected work.

143 Only two countries in the world, the United States and the United Kingdom, are net exporters of copyrighted goods, meaning they are the only two countries which export, in total, more copyrighted goods than they import. For graphic representation of the global flows of royalties for all types of intellectual property look at http://bit.ly/IjiejW.

Consequently, while software became a copyrightable commodity in the above three rich countries and some others which was not necessarily protected everywhere on the globe because the Berne Convention did not include computer software in its list of protected works, proprietary software corporations such as Microsoft could not take legal action under copyright law against some countries in the world that choose to copy this software or to develop their own. This was one infrequent case where global protection was not automatic although since, 1995 copyright’s control over software has been guaranteed everywhere.\footnote{Article 10 (1) of the TRIPS Agreement which makes copyright protection of software a new minimum standard for all WTO members.} This past and relatively brief absence of world-wide protection for software is another reason why countries which are the main exporters of both software and of the materials sent out using this software are so anxious that all countries sign up to the WIPO Copyright Treaty, this treaty deals with communication and information technology and places restrictions on Internet use.\footnote{Till August, 2009, less than 50\% of WTO and Berne Convention members have signed the 1996 WIPO Copyright Treaty. \url{http://www.wipo.int/treaties/en/ip/wct}.}

3.10 POSITION OF NATIONAL ELECTRONIC COPYRIGHT UNDER INTERNATIONAL COPYRIGHT LAWS:

So far this primer has mostly examined laws that controlled traditional copyrighted products, such as printed books and CDs and films. In other words, it has concentrated on the situation in the pre-Internet era. This era, it should not be forgotten, still remains the norm in most parts of the world. In the United Kingdom, for example, 79.8\% of the population has Internet access compared to only 23.4\% in India and many countries in Africa have an even smaller percentage.\footnote{These are the statistics as of 30 June 2009 found at \url{http://www.internetworldstats.com/stats.htm}.} Yet, the rapid global increase in the number of computers in the past 15 years, the communication possibilities by which
digitalisation opened up and the spread of the Internet created new challenges for traditional copyright doctrine to use the neutral sounding language of policy papers. We perhaps forget the Internet and the World Wide Web were created as tools for the global sharing of knowledge and for collaboration. But corporate copyright interests soon grasped that the Internet could also become a tool for the advertising, sale and delivery of their copyrighted products. 148

Would traditional copyright doctrine continue to protect the interest of the copyright owners in this new Internet era? No, absolutely not and considering the fact only in the international scenario, international body drafted two new international treaties i.e. WCT and WPPT, commonly known as WIPO Internet Treaties. At present (September 2009), 70 countries have signed the WCT. Many countries signed as result of free trade agreements with the US and others have joined voluntarily. In many African countries which have signed, less than 2% of the population even has Internet access. 149

The preamble to the WCT states that the contracting parties recognise the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works. It is perhaps a hint that the Berne Convention of 1886 has passed its sell by date. But any hope that things were perhaps moving ahead is quickly dashed when another preamble concludes that the Berne Convention already reflects a balance between the rights of authors and the larger public interest, particularly education, research and access to information. The real aim becomes even clearer when the first section of the first article of the WCT states that this Treaty is a special agreement within the meaning of Article 20 of the Berne


149 Internet usage statistics for three African members of the WCT: a total of 1.8% of people in Benin uses the Internet. In Mali and Burkina Faso, the figure is 0.9 %. Found at http://www.internetworldstats.com/stats1.htm. Brazil and India are two of the more prominent countries not signed, but China signed in 2007.
Convention. Article 20 of the Berne Convention gives Berne members the authority *solely to increase*, but not decrease in any way, the rights of rights holders.\(^{150}\) And so we are right back on the same old Berne Convention territory; this 1996 Internet treaty merely takes the 1886 elevator up another floor for the 21st century. The most important preamble states that countries recognise the need to introduce new international rules and clarify the interpretation of certain existing rules in order to provide adequate solutions to the questions raised by new economic, social, cultural and technological developments.

Carrying out the basic purpose of copyright law, namely to stop people from doing things, the WCT imposes two new main rules on countries and, in turn, on users:

1. Countries must bring in 'adequate legal protection' which will stop people who try to avoid or evade or otherwise find a way around what are known as technological protection measures (or TPMs);\(^ {151}\)
2. Countries must bring in 'effective legal remedies' against any person who deliberately tries to remove or interfere with or disable such technological protection measures.\(^ {152}\)

Technological Protection Measures (TPMs), sometimes called anti-circumvention devices because they attempt to stop people circumventing copyright restrictions, are technical features or devices inserted into digitalised (and copy-righted) products. A system itself may be designed with the same anti-circumvention objectives in mind. TPMs attempt to prevent uses of a product in any fashion which the owner does not want the user to do, primarily sharing with other people or changing the format for one to another for own

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\(^{150}\) Article 20 of the Berne Convention.

\(^{151}\) WCT Article 11, Obligation concerning Technological Protection Measures.

\(^{152}\) WCT Article 12, Obligations concerning Rights Management Information. It must also be a crime to distribute copyrighted products in which TPMs have been removed or import such anti-TPM equipment.
personal use. TPMs may also act as a tool of surveillance against users, as an evidence gathering device for later prosecution, and can even disable products or set a time span during which that product can be accessed. When time is up the product, such as a music file, may no longer be playable. And consumers may not even be aware that the product they have purchased contains such a TPM. Examples of TPMs include digital watermarking, content scrambling devices, root-kits, DVD region codes, encryption and a wide range of other devices and systems.¹⁵³

The idea of copyright though began in a domestic perspective but flourished rapidly and very quickly became the subject matter of international community. The domestic treatment of a law is highly influenced by the character of the national environment but getting international recognition and protection of a national creation obviously has added multi-dimensional features to the copyright system. It brings recognition and uniformity to this law and moreover, added special economic value and cultural weight to the creators or authors or producers of the copyright related matters. Specially, after the advent of WTO, the universal principles enunciated by the international conventions, like Berne, UCC, WCT and WPPT etc. really supplemented momentum in the task of contributing not only to the knowledge and information world but forward a world of economic renaissance in the copyright related industry after which the real booming has been observed in the field of copyright and related aspects throughout the globe. If the national laws providing protection to the creative works, international law obviously providing international recognition and impulse to provide more protection to that works and moreover encouraging creativity in the domestic as well as international level.

¹⁵³ The forms of TPMs are changing regularly and which ones are legal and illegal obviously depends on the particular laws in a country.
Despite the fact that the present international copyright law has taken the position to become international law in its nature, it is important for the global processes to critically consider local circumstances. Despite this anxiety to protect copyright, it is also important to understand and be aware of the danger that copyright law may inflict upon the area of knowledge distribution. In the knowledge based economy, the understanding of intellectual property rights, particularly copyright, is important in order to make a well-informed policy decision on various aspects of human development. Further research should aim to contribute to the development of international copyright system by providing possible mechanisms or instrument that could be used to improve our current international copyright laws to suit the need for erudition based advancement in the digital age, especially in the developing countries. This is imperative in the way to ensure that copyright law will not deviate from its original intention of promoting learnings and creations of beneficial knowledge for the public good.