The History of Copy Right for the Author

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ABSTRACT

The concept of copy right started in England in 1476 after William Kickstand invented the printing method with the movable printing letters. The artistic and literary ownership has been considered since a long time especially since the emergence of the printing industry. The law of all the developing countries has considered some rules for supporting the rights of the authors and the artists of their countries. Since most of the scientific, artistic and literary works are used internationally, supporting the rights has become an international issue and international contracts have been done in this regard, the most important of them are the Bern contract the international contract of the copy right (Geneva), the global institute of the intellectual right (Vipo). The present article states the history of the copy right and literary ownership in the primary societies and ancient time and then describes the privileges and then the changing process of them until reaching the present condition and meaning of the present time. Here some issues of the process of defining the internal law of the countries such as France, German and Iran and define the copy right in some Islamic countries, middle Asia, South East Asia and the international conventions in supporting the intellectual property of the author.

INTRODUCTION

The intellectual property in the present century has been more important due to the growth of the technology and the relationship between the nations and cultures more than before. Here, the cultural works especially the scientific and literary works has been written and given to the readers and have special value for them. Technological advances and the existence of the information networks including internet has caused the fast distribution of these works for the audiences. On the other side, the violation of the intellectual properties of others has been increased so that the legislator of different countries has paid special attention to this fact. In this regard, the countries have provided some law for supporting the right which due to the relationship between the nations and the national laws, they could not support the rights alone. So, the international conventions for supporting the intellectual and material properties of the authors have been taken into account so that they could support them as much as possible.

The intellectual rights:

is a new legal term and concept and is considered as the right for the creator of any intellectual work including the scientific cultural and industrial ones. Different concepts have been provided for this term such as the intellectual privilege or the state privilege, the exclusive privilege on the information, the intellectual rights, the right of the inventor and the right of the intellectual works.

The intellectual right is divided into two main parts: 1) the intellectual right or right of the author or copyright of all the written and non-written works such as: books, novels, plays, film, status and other works, the oral works (speeches) and software. 2. The right of the industrial property which has some subdivisions such as the right of innovation, brands, geographical signs, the business secrets. The copyright is one of the main branches of the intellectual rights, the aim of which is to support and protect the literary works. However, the authors and scholars of some countries use the term “authors right” instead. At the first look, it seems that the authors right is not a comprehensive combination of the literary ownership and is mostly used for the writers and is not devoted for the photographers or the sculptor but the historical problem is related to the codification of the intellectual properties; since at the beginning, only the writers and authors have been supported which later gradually has been supported by development of technology.

Following definitions are provided by the legislators about this kind of property:
The right of the author is the domination and the authorities of the author on his work which has been created by him.

2. It is a legal collection which law has created for the author about the work and these rights include the exclusive right of using the work for a limited time for the creator and after his death for the one who inherit him (Jafari langeroudi, 2001, p.164).

3. In an exchanging contract, the issue of which is the exchange of the literary or artistic property or something such as them. Exchange is the right of the author and the change is the property which gives the author the right to use the products of his mind and the name of the author (ibid, p.164).

4. In article 1 of the supporting law of the rights of the authors and artists approved in 1959, considering the law what is created through knowledge or art is called the work without considering the method of expressing or creation of it.

As the definitions show, the right of the author includes two types of intellectual and material right, the intellectual right is the right that makes the author to be able to support the personal relationship between himself and its work.

The artistic and literary ownership is as long as the historical background. The ambiguous past which is only mentioned in the stories and in the books of the ancestors of us which made us to study the copyright right in past times (Layeghi, 1999, p. 17). For example, those who consider the intellectual right as a natural right approves its history in all the societies and the times while others consider the history when they have already entered the issue. Here, we express the history of the artificial ownership in the societies and ancient times and describe the privileges of the time and the changing process until the present time.

The history of changes about the intellectual properties (the right of the author):

After devotion of the privileges by the king and monarchy to the publisher which due to lack of time limitation was considered as the royal generosity and the relationship between the authors and their works was gradually considered by them. At this time, different views existed about the legal relationship between the author and the work and in other words there was a kind of conflict between the authors and the judges and also the officials.

This was one of the views expressed that copyright ownership is permanent and cannot be limited by the time. Another view was that the author has a privilege granted by the king. Others believed that the author has the right to obtain financial privileges but this right is not enough to translate the property.

Some others believe that copyright is a property right for the author; however, due to the interests of the community, the property shall be restricted and limited to a certain period of time. After the confusion and disputes, the recent theory was fixed at least among lawmakers and judges, although still the differences persist among lawyers about the nature of it.

A: Primitive societies:

According to research by anthropologists, some examples of intellectual property in primitive societies are also found that will continue in present social life.

Because the initial societies are not very different from those of the past lifestyles, the result of these investigations is the study of Intellectual property is in the far past. Exploring the economic life of primitive tribes shows that in many cases the concept of ownership over material objects was associated with the immaterial properties (Servant, 2011, p 25). In Andaman Island (Andaman) home Furnishings are considered as the property of the client, but the songs that are made for the clan forums are owned by the creator and the copyright is owned by its author.

B) The literary and artistic property in Antiquity:

No sign of the concept of copyright or literary property can be observed about the existence of copyright in the writings of ancient Greek antiquity had The fact that the works of Homer, the Greek epic poet of the Iliad and the Odyssey with two famous works attributed to him (some recent scholars have questioned his historical character) was executed in public places ha Nothing about the authors ownership (khedmatgozar, 2011, p 27).

As in ancient Rome, a remarkable sign of the intellectual property can be found. The existence of copyright in this era (ancient) was based on the studies by the scholar named Mrs. "Doc" related to the "Cicero" the distinguished Roman orator. In a letter to his publisher "Aytecous" who without the consent of him has allowed the person called "Balbous" to publish his works which he had not decided about publishing it yet, he blamed him (Ayati, 1996, p 24).

It seems that these signs and stories are the reasons for the existence of copyright in ancient times although they have not been mentioned as they have to and they cannot be a correct reflection of the copyright at that time and used for a definite conclusion.
2. Medieval times:

Medieval times is the time when the power is owned by the church and the church played an important role in political and cultural era. The historians of this period can be divided into two parts: The early century until the 12th century and since 12th century and after that when different universities existed in Europe and which is called the century of intellectualism.

“most of the historians of the legislation who has studied the rights of the writers during the medieval times believe that this age was culturally poor considering the cultural signs and copyright issue. This judgment is generally true.

In spite of the ambiguity about the right of the author in the dark corridors of history, some facts cannot be denied: first, nearly all the societies damned using the rights of others which was already mentioned in the ancient history.

Second, the written works have been considered by the officials since they have a significant effect on the public mind and so they practiced the most cruel control and censorship on the authors and the thinkers. So, this sensitivity gradually made the officials and the kings to take the control of the copyright and gave it to everyone they liked (Lotfi, 1959, p.103).

Since the 16th century the political, social and cultural changes covered the modern societies especially in Europe. These important events include the innovation of printing, the movement of correcting the religion, renaissance and holding the parliament systems instead of the royal states.

The conditions which have been created due to these changes including relying on the personal independence and the liberal ideas made the thinkers and intellectuals to have a significant role in development of the modern thinking and improving the social condition. Now that a general image of the copyright is given considering the historical background, it is proper to investigate some parts of the changes in form of the legislations in this regard.

The stage of legislation:
A: the national law of the countries:

Support and protection of the copyright was improved in two periods:

1. After the passage of time, the innovation and writings were added and so th issue of copyright became more serious by development of the works. The legislators found that more works have to be supported.

2. By increasing the writings and books and other intellectual works, new methods of violating the copyright were created and some legal support was needed in order to prevent these violations (Lotfi, 1959, p.112).

Par.1: England:

The first law which was created for supporting the rights of the authors was the literary copyright that was hold for the writers and faced serious disagreement of John Lock the famous English philosopher. In 11th of January 1709, the draft of the article was discussed in the public House of England. Later, this draft changed to the law of the 10th of April 1709 called the law of “Kevin Ann”. The law was the first law of copyright in its new meaning which made the right of the authors a legal issue and in fact it was the first law of copyright in the world (Jalal, 2005, p.35).

However, the law was not implemented even in the limited form due to the intervention of House of Lord and led to the approval of another law in 1842. In the new law, the protection time for the right of the published works was all the life of the author and seven years after his death and about the books which were published after the death of the author, is 42 years. In 1911 another law was approved for protecting the right of the author. This law transformed all the previous laws and in order to support it, some conditions were also added, too (Lotfi, 1969, p.105).

After the previous corrections and completing process, finally more perfect laws in 15th of November 1998 was approved in 212 articles as the Copyright Law of Great Britain and was administered since August 1998 (Imami, 2007, p. 2 and p.55).

3. France:

In France, the copyright gradually replaced the common systems of giving privileges to some of the authors. In 1720, a biography titled as “the biography of the Parisian authors” was published which mentioned the views of the authors about the publishers of the time. Five years later in another biography, Louise De Hericourt the lawyer and specialists in the law of the church suggested the issue of copyright as an independent theory (Ayati, 1996, p.29).

Emperor of French, the 16th Louise, in 1777 ordered a privilege for the authors. After a while in 19th January 1791, the famous laws of Le Chapelier and in 19th of June 1793, the law of Lacanal were approved. One of them was related to the right of showing and the other was about the law of publishing the works of the writer and it was the first law of copyright in France. Another law of France about the copy right was called “the law of author’s ownership” approved in 11th of March in 1957 which includes 82 articles (ibid, p.30).
Another law was approved in 3 June of 1985 which corrected and complemented the previous law (Safaiee, 1997, p.30), in addition, about the new issues of radio, television, satellite and computer, some rules were considered. It should be mentioned that the law number 597-92 in 1st of January 1992 was approved which contained comprehensive rules about the right of the author and industrial ownership (Imami, 2007, p.54).

**Germany:**

The first recorded scores of copyright in Germany approved in 1501 by the Council of the Royal Court (Imperial Aulic council) to print poems of a poet (called Hroswitha) that six years had passed since his death and his poetry was gather by someone named Celtes at Nurenberg. The privilege only included in the realm of kingdom and therefore Celtes took similar privileges from judicial of Frankfurt by the Special Advisor on the Caesar Imperial (Imperial chancellor) and was named emperor issued (Ibid).

In 1531 the City Council of Basel (Basel) banned all the bookstore of reissuing the books with three years from the date of its publication and monetary penalties for violations of the law. Protection of literary property, was usually considered for a short period and sometimes in addition to his work at times, it also included the subject (as in the case of Dürer) (Ibid).

However, the first law of Germany, "the Prussian" was passed in 1837. After formation of the German Empire, the first of German regulations was adopted in 1870. According to this law, the renewal of the authors punishable. Other forms of legal protection of intellectual property rights law protecting creative works and musical works, and then, the protection of works of art, visual art, photography and samples tasting were born in 1876.

In more recent laws such as the law of 1936, more emphasis on the author's personality comes into operation because the matter of the recent regulations was effective protection against any loss, defect or damage. Laws of Switzerland, Italy and Austria follow the same idea of considering both the moral and material interests (Lutfi, 1956, p. 123, 124).

**USA:**

In America, the exclusive right to legal protection began from local laws. Beginning in 1873 in Connecticutt (Connecticutt) and Massachusetts (Massachusett) establishes copyright protection law. According to the law, the State monopoly was for 14 years with a right of renewal for another 14 years, if the author of the expiration of the term, was still alive. Congress gave authority to the progress of science and useful Arts, by securing the authors and inventors’ exclusive right to their respective writings and discoveries for limited support. After the adoption of the Constitution in 1789, Congress has enacted laws of several exclusive rights.

After World War II, legislation shifted efforts to join the Berne Convention was abandoned in the United States of America and in 1952, America instead joined efforts for the adoption of the Universal Copyright Convention (convention Universal copyright) or (UCC). The important point was that slight modifications in 1954 to join the Convention on the laws of the United States were insufficient. Hence, in 1955, it was signed with the entry into force of the said Convention (Davies, 2002, p82-83).

In 1971, a special law to establish copyright protection of sound recordings was approved and thus solves the problem to overcome Unauthorized Duplication of Sound (Davies, 2002, p84).

Copyright Notice Revision Act of 1976 was passed. This law was the result of over twenty years and discussed thoroughly revised rules on copyright contracts and a dual system based on common law and copyright laws abolished and instead the federal system of copyright protection of published and unpublished works was established which takes a wide range of subjects.

**Iran:**

Not much information is available about the history of literary and artistic property protection (copyright) of the law and so before the rise of the Pahlavi regime, provisions regarding copyright (copyright) did not exist. The first time, to protect the rights of Authors, Composers and Artists, in November 1920 an agreement between the government and the German literary property was approved by the National Assembly (the law of the seventh, 1920, p. 316-317).

In this agreement, the two governments pledged to nationals of the parties in the two countries in the fields of literary and industrial property of the citizens enjoy equal rights. The first article of the said Treaty, stipulates that nationals and companies of the two countries on opposite sides of the soil, will enjoy the same rights, that its citizens have the same rights (ibid)

The second matter is under way in this regard a series of penalties was also considered to guarantee the execution of this contract.

On 15 Persian date Mordad 1310 (1921), Iranian legislators approved the four articles (Articles 245, 246, 247, 248) in the eleventh chapter of the Criminal Code, the topic of conspiracy and fraud in business and commerce, practically the law to protect the rights of copyright. These articles are translation of articles 425 to 429 of the French Penal Code (Ayati, 1375, p 47). To commit crimes, printing, writing, and another song
without permission, use the intellectual property of others without citing the source; the penalty is foreseen to buy or enter the territory of another work printed, written or composed by a name other than the name of the artist.

In 1951 and 1953, the following set of measures "bill of authored and translated", "The bill of retains copyright law" was also submitted and the bills were approved. The 1962 plan was prepared by the Ministry as well as literary and artistic property which were not successful (Moshirian, 1957, p 236). In 1967, the Ministry of Culture of the authors’ protection bill, authors and artists of the new prepared and examined it and finally approved in January 1967.

Author’s rights in the Islamic Republic of Iran after the revolution:

After the Islamic Revolution and the Islamic Republic of Iran in Article 26 of the Constitution of the legitimate ownership of the business and everyone was stressed. This principle implies somehow the legitimacy of copyright. In addition, no legal provision in legislation enacted after the revolution, between 1951 and 1955 on copyright law. It should be noted that the issue of copyright in the early years after the revolution, the fatwa against the fatwa jurists including Grand Ayatollah Khomeini (RA) faced with uncertainty and ambiguity in Tahrir Book (face) was (Khomeini Mosavi, Qom, 1395 A.H, p 625).

The ambiguity and uncertainty in the validity or non-validity of the authors’ rights continued until the follow-up of the Ministry of Culture and Islamic Guidance and comment of the chairman of the Judiciary of Iran based on the opinion of Ayatollah Khamenei the Supreme Leader of the Islamic Republic of Iran (71-70) caused the doubt about the validity of the aforementioned rules (rules 48 and 52 years) were elevated and the procedure approved according to the law.

The Act of 51 to 2000, except for a series of other specific provisions of other laws were developed in the field of Intellectual Property Rights until the computer software Creators 2000 Act was approved by Parliament. In 2001, with the adoption of a single article in the Assembly, the government was permitted to accede to the Convention Establishing the World Intellectual Property and a representative of the organization of E-commerce law was passed in 2002 and now the last rule of law that part of the intellectual property rights of literary and artistic property rights are reserved.

International conventions on the protection of copyright:

From the late eighteenth century and early nineteenth century, many countries, each according to their social and cultural characteristics have provided the literary and artistic property law to protect the copyright material, the adoption of these laws, in part, provided the writers and artists in their respective countries with the legal support. As time passes and international relations, making his face more visible, the lack of international rules on the protection of Authors, Composers, was greater than ever. With the emergence of these problems, some countries have attempted to address this issue in bilateral contracts based on their interaction.

However, this action did not solve the problem of international protection and still multilateral international treaties have to require signatory countries to support large-scale use of foreign works (Ayati, 1996, p 144). The most important international treaties and conventions are Berne, Geneva and Paris Convention, each of which could protect the right of the author from abuse.

Conclusions:

Copyright is born of human thoughts and is a form of intellectual property. In all developed countries, it has also attracted the attention and support of the legislature. The purpose of this support is to protect the author’s personal interests and the interests of maintaining public order of society and respect the right of the author. Support of both the material and intellectual right of the authors encourages the composers and therefore would encourage the development of arts and culture.

Enough support of the innovators and the financial facilities for recording their works can protect the investment in the development activity, increased the motivation of the people whether persons or the legal entities for research and development. Preventing the innovations, precise publication of the innovations, preventing the repetitive and symmetrical activities with extra costs, facilitating technology and encouraging the investment in research and development can be the important effects and results.

However, not supporting the innovators and having no security and legal security for guaranteeing the rights of the innovators at national and international level causes that most of the innovations remain hidden and given to other countries. This fact in long run may have negative consequences such as depriving the country and creating an obstacle in making an advanced industry based on the strong bases, lowering the life level of people and having no motivation for foreign investment and preventing the transformation of higher technology.

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