

Economic and Moral Rights of the Copyright Owner and Its Impact on Human Rights

INTRODUCTION

Today, one of the most debated areas of discussion in the world is whether or not intellectual property rights have made an obstruction to recognized Human Rights in the world. Therefore, in this paper I wish to discuss copyright law which is the most important area in the Intellectual Property Law regime, and its impact on Human Rights as a whole.

With the intention of upholding the economic and moral rights of the copyright owner in the country, Sri Lankan legislature has introduced the Intellectual Property Rights Act No.36 of 2003. A main feature of this Act is that it has been recognized as promoting the rights introduced by the Berne Convention for the Protection of Literary and Artistic Work of 1971 and the Agreement of Trade Related Aspects on Intellectual Property Rights. In accordance with these International Conventions, the Intellectual Property Rights Act No.36 of 2003 provides provisions for the further protection of economic and moral rights of the literary and artistic work of an author.

On the other hand the public enjoys their human rights which have been recognized by various International instruments such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights. As a state party to the above mentioned human rights conventions, Sri Lanka has adopted and upheld some of the rights mentioned in accordance with the nature of the civil, political, economic, social and cultural behaviour of the state.

Therefore, this paper attempts to explain the economic and moral rights mentioned in Chapter I of the Intellectual Property Act No.36 of 2003 and how the Act seeks to balance the human rights with copyright owner and the public.

DISCUSSION

Article 8 and 9 of the Berne Convention has recognized the author's exclusive rights of making and of authorizing the translation of work, and to perform in public and communicate to the public throughout the term of protection of their rights in the original work.

Article 8 of the Berne Convention provides that, "authors of literary and artistic works 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."

Furthermore Article 9 of the Berne Convention provides that, "authors of literary and artistic works shall have the exclusive right of authorizing the reproduction of these works." *

Moreover Article 6bis of the Berne Convention has recognized the moral rights of the author by providing provision as the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of or other derogatory action in relation to his honor or reputation.

*Article 8 of the Berne Convention for the Protection of Literary and Artistic Work 1971



With the purpose of enlightening the exclusive rights mentioned in the Berne Convention, the Agreement of Trade Related Aspects of Intellectual Property Rights has accepted the rights conferred by Article 1 through 21 of the convention and Appendix thereto, except Article 6bis of the Convention. Hence, the Intellectual Property Act No.36 of 2003 has followed these protected rights mentioned in Berne Convention, and it has introduced and promoted the Economic and moral rights mentioned thereto. Even the Agreement of Trade Related Aspects of Intellectual Property Rights have refused to protect the moral rights of the author. Therefore, Section 9 of the Act provides provisions to recognize the economic rights of the author over their original work. Hence, the author of the original work enjoys exclusive rights to the product, to translate, adapt, arrange or other transformation, distribute it in public, rent out, importation, display and perform in public to broadcast and communicate in public.

Moreover, Section 10 of the Intellectual Property Act No.36 of 2003 has recognized the moral rights of the author over his/her original work. According to the provision, the author of the original work enjoys rights in addition to the economic rights and even where he/she is no longer the owner of the economic rights, he enjoys rights to have his name indicated prominently on the copies, to use a pseudonym and not to have his name indicated on the copies and to object to any distortion, mutilation or other modification in relation to his work which would be prejudicial to his/her honour or reputation.

Hence, in view of the human rights of the people there are certain conventions in the world which has purely recognized the human rights of people at the universal arena. The most prominent conventions on human rights are the Universal Declaration of Human Rights and the International Covenant of Economic, Social and Cultural Rights. These conventions are specifically uphold that everyone has the right to take part in cultural rights and to enjoy the benefits of scientific progress. Furthermore, International Covenant of Economic, Social and Cultural Rights have recognized the right to education. Article 27 of the Universal Declaration of Human Rights provide that, "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."¹ and "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."²

Moreover, Article 15 of the International Covenant of Economic, Social and Cultural Rights provide that, "the States Parties to the present Covenant recognize the right to take part in cultural life, enjoy the benefits of scientific progress and its applications and benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."³

But the question is, are the exclusive and moral rights of the copyright owner acting as a barrier to these identified human rights of the people?

CONCLUSION

When the legislature introduced the exclusive and moral rights of the copyright owner, they have also introduced a mechanism to balance this with the fundamental and human rights of people. That is, the legislature has used the doctrine of fair use, which permits people to use an original work of the author for educational purposes. Moreover, the legislature has also introduced the time bar as a limitation for exclusive and moral rights of the copyright owner. Therefore, the legislature has given a certain time period (protected time) for the copyright owner to enjoy all the rights over the original work. But, after expiration of this protected time, the original work falls into the public domain, and thereafter people have free access to it.

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¹ Article 27 of the Universal Declaration of Human Rights

² Article 27 of the Universal Declaration of Human Rights

³ Moreover Article 15 of the International Covenant of Economic, Social and Cultural Rights

