

## **Authors' rights and their scope**

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Allocation of exclusive rights enabling the authors and other producers of intellectual property to exclude non-paying users is the core aspect of copyright law. This exclusion was a foremost precondition before the market for goods containing intellectual property could come into existence. Exclusive rights are essentially monopoly rights but the extent of this monopoly is largely determined, among other factors, by the nature and scope of these rights. While these rights are critical to secure incentives to the creators so that adequate creation and development of intellectual property may take place, they may also impede the free flow of information and hence retard the creation. These rights are therefore drawn with proper delimitations to ensure that information and ideas are not unduly monopolized to the detriment of social and economic development. This paper looks into the nature and scope of the rights granted to the authors. It has six sections.

### **Introduction**

The principle that authors should be able to receive a share in the proceeds arising from any commercial exploitation of their works is the foremost concern of copyright law. The property rights granted by copyright law to the authors in the form of exclusive rights are means to this end (Bergh, 1998). They enable them to appropriate the value of their works by demanding payment for their use. In economic parlance, works protected by copyright and other forms of intellectual property rights are public goods. Such goods are almost impossible to charge for their consumption due to their inherent characteristics of non-rivalrousness, non-excludability, and low

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marginal cost of reproduction. Besides, they are much costlier to create and develop in the first place. But once they are developed the marginal cost of their reproduction is very low or almost zero. It is this situation that gave rise to free-riding eliminating any incentive for the original producer to incur the cost of creating intellectual property. It is therefore contended that free market may not invest and produce such public goods in optimal quantity unless non-paying third parties can be excluded from their use. The solution that was devised to address this problem of non-excludability and the resultant market failure is the grant by the State to the private producers of information or knowledge exclusive rights to the use of their works or output. This allocation of exclusive rights created a market for intellectual property that enabled authors and other producers of information to charge the users of their works. Central to the property solution is a legal device, the so-called exclusive rights, that enables its holders to restrict the access to the non-paying users. Allocation of these rights, therefore, constitutes a core aspect of copyright law since they define the extent of monopoly or market power of the authors and other right holders.

This paper explores the nature and scope of authors' exclusive rights with reference to the relevant provision of the Berne Convention for the Protection of Literary and Artistic Works (1971), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and the WIPO Copyright Treaty (WCT). The objective of this exploration is to shed light on how these rights are defined and interpreted and their relevance to the development of new technology in the field of information and communication by reference to a body of canonical legal texts on the subject of copyright.

Rights of the author are defined under two categories: economic or exploitation rights and moral rights. Economic rights refer to those rights that enable the authors or the owners of the rights to obtain compensation for the use of their works by third parties. The objective of economic rights is essentially to protect the

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material or pecuniary interests of the right owners. They include a number of specific rights which constitute a bundle of rights in one work. Moral rights are primarily concerned with the protection of immaterial interests of authors. Its main objective, according to Stewart (1989), is to “safeguard the author’s reputation, what Shakespeare called ‘that immortal part of myself.’”

### **Dualistic and the monistic theories**

Distinction between moral right and economic right has its root in the development of two important theories: the dualist theory and the monistic theory<sup>1</sup>. The former was developed in France and the latter in Germany. The dualist theory holds that an author’s moral right is rooted in his personality quite independently of his proprietary interests. As such, the dualist theory divides the whole set of prerogatives arising from copyright into two categories of rights –the moral right and the economic right. This separation is based on the fact that they serve different interest and objective which can be separately identified. The *droit moral* or moral faculties are perpetual, inalienable and imprescriptible whereas the economic faculties are limited in time, alienable and submitted to prescription. According to this theory, moral rights are chronologically and systematically primordial: they precede the real existence of economic rights and also last longer than the latter. If the economic prerogatives secure the authors a share in the income from work exploitation, *droit moral* and its prerogatives secure protection for the personal, intellectual and spiritual interests of authors. In view of their importance in modern society, moral rights cannot be signed away.

In contrast, the monistic, or unitary, theory holds copyright itself to include an inalienable moral aspect. Hence, it regards

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<sup>1</sup> The discussion on dualism and monism heavily draws on Dietz, (1993). Acknowledgement is made only where direct quotations are used.

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all the prerogatives belonging to the author, both personal and pecuniary, as expression of a unitary right which guarantees, as a whole, both the intellectual and economic interest of the author. In short, it is copyright as a whole which serves to protect intellectual and moral as well as economic interests of authors. This is most vividly illustrated in Prof. Ulmer's 'copyright tree' where the roots of the tree represent moral and economic interests of the author, and the stem represents the unitary and integrated copyright as a whole. The branches and shoots growing from the stem represent the different faculties (legal prerogatives) which, like the branches on the stem, at times derive their force from both roots – the personal and the economic – and at others, draw more heavily on one of them (Cited in Lipszyc, 1999; Dietz, 1993).

Accordingly, the proponents of monistic theory hold that the exercise of moral rights can serve financial interests while the exercise of pecuniary rights can serve personal and intellectual interests. For example, the exercise of the right of attribution has important economic dimension in that it is only when his name is correlated with his work, his talent become known in the market. Attribution of his name in this case serves to procure new business to him (Dietz, 1993). Similarly, the exercise of integrity right may also serve the material interest of the author particularly under such circumstances where distortion or mutilation of the work damages its potential market.

In contrast, when a successful entrepreneur would write and publish his biography or business success story profit motive will probably be only of secondary importance. In this case he exercises his economic right primarily to serve his moral interest: "to fulfill his personal interests of self-realization and perhaps also of vanity" (Ibid.) These examples clearly illustrate that "what is commonly called moral right or moral rights, on the one hand, and pecuniary right or pecuniary rights, on the other hand, is not so unequivocally moral or economic as it would generally appear." These designations, according to

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Dietz, are “rather based on terminologic convenience; only taken together all these faculties (legal prerogatives) cover the whole spectrum of interests protected by copyright as a whole”(Ibid). He maintains that the so-called dualistic interpretation of copyright in French theory is not as dualistic as one would have thought. This is so because *droit moral* is understood more in the sense of a bundle of special faculties within the unitary copyright than as a compact and separated concept of copyright.

### **The economic rights**

The enumeration of economic rights differs across national legislations in respect to terminology and the precise scope of each right. However, the following rights constitute the basic rights:

- (a) Reproduction right
- (b) Rdaptation right
- (c) Distribution right
- (d) Public performance right
- (e) Broadcasting right
- (f) Cablecasting right
- (g) Rental right
- (h) *droit de suite*

### ***Reproduction right***

It is the most fundamental of all the economic rights which is accorded to authors in every national copyright law. The importance of this right is evident from the fact that copyright is essentially the right to prevent others from making copies, and this right to control the act of reproduction is the legal basis for further acts of exploitation of protected works, such as distribution (WIPO, 2001).

The right of reproduction is the prerogative of exploiting the work in its original or modified form by its material fixation on

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any medium whatsoever and by any procedure which permits its communication and the obtaining of one or more copies of all or part of it (Lipszyc, 1999). The term 'reproduction' is understood to mean the making of one or more copies of a work or of a substantial part thereof in any material form whatsoever, including sound and visual recording.

The coverage of the right of reproduction under the Berne Convention (Paris Act, 1971) is absolute; it extends to reproduction "in any manner or form," covering both the present and future processes of reproduction (Ficsor, 2003).<sup>2</sup> As such, the right embraces every means whatsoever by which a work of authorship may be reproduced – from traditional methods of printing such as engraving, lithography, typography, offset to the modern methods of photocopying, the mechanical and magnetic reproduction of works in the form of sound recordings (phonograms) and audiovisual fixations produced by mechanical means.

The implication of reproduction right in the network environment is significant. The storage of a work into a computer system, whether into its internal storage or external storage unit, is regarded as reproduction of that work within the meaning of Article 9(1) of the Berne Convention which extends this right to cover 'any form and manner.'

### ***Adaptation right***

It is the right to control or authorize the abridgement, adaptation, arrangement, translation, revision or other transformation of a work. Adaptation is generally understood to mean the modification of a pre-existing work from one medium or genre to another, such as cinematographic adaptations of

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<sup>2</sup> Article 9(1) of the Berne Convention (Paris Act, 1971) provides that: "(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works in any manner or form."

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novels or musical works. It may also involve alteration to a work in the same medium to make it suitable for different conditions of exploitation, such as rewriting a novel for a juvenile edition (WIPO, 1980). New editions of existing works may enjoy a separate copyright independently of the copyright in the first edition if it contains significant alterations (Laddie, Prescott, Vitoria, Speck, and Lane, 2000).<sup>3</sup> The adaptation right does not extend to mere ideas taken from the source work. It applies only where the source work is changed in some order.

Adaptations are protected independently of the original works from which they are derived. However, the act of adapting a protected work requires the authorization of the copyright owner. Copyright in an adaptation, as maintained in Article 2(3) of the Berne Convention, is without prejudice to the copyright in the original work. This means any reproduction from an adopted work requires authorization from both the owner of the copyright in the original work as well as of the owner of copyright in the adaptation. Hence, in the case of translation, copyright subsists both in the translation and the original work of which it is the translation; anyone who wishes to copy the translation must acquire authorization from the translator and the author of the translated work.

Of various forms of adaptation, translation carries special significance since it is the only medium that “gives literary works their international dimension”. The economic value of translations is obvious from the ever-increasing demand for such works for the educational activities in the developing countries (Stewart, 1989). This was the first right recognized in the Berne Convention in 1886 (Ricketson, 1987). Although translation is just another form of adaptation, and is treated as such in many national laws it is separately enumerated in both

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<sup>3</sup> Laddie, Prescott, Vitoria, Speck, and Lane (2000) argue that a new edition which contains few alterations but whose author has laboriously verified that the text is still up to date, as in the case of a legal, medical or scientific textbook, will be of value on that account and thus enjoys copyright.

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the Berne and the Universal Copyright Convention. This reflects the importance accorded to this right in both the Conventions.

The adaptation right is provided in the Berne Convention under Article 12 as the exclusive right of authorizing “adaptations, arrangements and other alterations of their work” (WIPO, 1996).

### ***Distribution right***

The right of distribution is the right to distribute copies of the work to the public by sale, lease, or rental, lending or any other procedure such as transfer of ownership or possession of copies of the work. It is the author's exclusive prerogative to bring into circulation the original or copies of his work.

This right to authorize distribution of copies of works is limited by ‘first sale’ or ‘exhaustion’ doctrine. It is confined to the first sale of any one copy and exerts no restriction on the future sale of that copy (Gorman & Ginsburg, 2002). According to this ‘first sale’ or ‘exhaustion’ doctrine, the distribution right of the copyright owner is deemed to be exhausted after he has sold or otherwise transferred ownership of a particular copy of a work; the subsequent owner of that copy is free to dispose it any way – for example, by selling it, leasing it or giving it away for which he does not need copyright owner's further permission. The copyright owner has only the right to authorize or prohibit the initial distribution of a particular lawful copy of a copyrighted work. But once the copyright owner transfers ownership of a particular copy ( a material object) embodying a copyrighted work, the copyright owner's exclusive right to distribute copies of the work is ‘extinguished’ with respect only to that particular copy (Lehman, 1995). The distribution of an unlawfully made copy will subject any distributor to liability for infringement.

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The first sale doctrine is one of the important limitations on the exclusive rights of the copyright owner in that it prevents him from controlling subsequent transfers of copies of that work. This limitation is fundamental to the whole mechanism of modern distribution and marketing system where the good passes many levels of channels before it reaches consumers. It is difficult to conceive under the complex modern marketing practices how the goods will flow to the consumers if the copyright owners are to assert their distribution right in each successive level where the sales takes place. This limitation is therefore important as it allows

“wholesalers who buy books to distribute those copies to retailers and retailers to sell them to consumers and consumers to give them to friends and friends to sell them in garage sales and so on – all without the permission of the copyright owner of the work.”(Ibid.)

The first sale doctrine does not apply with respect to two types of works – computer software and phonograms. The owner of a particular copy of a computer program or a particular copy of a phonogram may not rent, lease or lend that copy for the purpose of direct or indirect commercial advantage. The exception to these exemptions is imposed in consideration of their potential impact on the sales of the original copy which may prejudice the economic interests of the right owners.

### ***Public performance right***

The public performance right is the right to authorize or prohibit the performance of a work in public. The right applies to all types of works that are capable of being performed – literary, musical, dramatic, dramatico-musical, choreographic works, pantomimes, motion pictures, and other audiovisual works. Sound recordings, however, are not covered by this right. The performance right is covered under Berne article 11(1) which states that authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing

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“the public performance of their works...by any means or process and “any communication to the public of the performance of their work”.

The public performance right covers both direct and indirect communication of the work to the public. The former is referred to as live and the latter as recorded performance fixed in such medium as phonographic records, magnetic tapes, films, videocopies and so on. A performance is live when it is performed by actors, singers or musicians on the spot and it is recorded when it is transmitted through mechanical means, such as by radio, record player or television. The public performance right is based on the private/public dichotomy in which authorization from the copyright owner is needed for public performance of works while private performances are exempted from this authorization. Performances in clubs, factories, residential training establishments, holiday camps, hotels, and the like are normally held as ‘public’ performances.

### ***Broadcasting right***

Broadcasting right is regarded as one of the most important rights in view of the important place now taken by this medium in the world of information and entertainment (Masouye, 1978). The social and political importance of this medium is apparent from the impact which it can exert on the decision and perception of the people. Development of broadcasting technology during the first half of the nineteenth century brought an entirely new dimension into the way protected works could be communicated to the public. With the advent of space satellite, diffusion of programs from one continent to another became possible with the result that national boundaries are now of little relevance (Ricketson, 1987). As such, in a very short span of time broadcasting has come to assume the most influential medium of communication not only in the world of information and entertainment but equally so in the field of trade and commerce, diplomacy and defense. The rise of this medium had profound impact on the authors' rights as

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significant portion of the programs transmitted over this communication network comprises literary and artistic works protected by copyright. Most notably, copyright issues related to the use of satellite broadcasting involve the legality of the transnational distribution of protected works; the condition under which these acts of public communication are made; the payment of the remuneration generated by successive exploitation and the distribution of program-carrying signals by an organization or distributor for whom the signal is not intended. The need for broadcasting right thus arose in order to safeguard the interests of the copyright owners against the unauthorized exploitation of their works in the broadcast programs.

The broadcasting right is the right to authorize the transmission of a work by any wireless means for public reception of sounds or of images and sounds. It is primarily concerned with the transmission of work by radio and television. Broadcasting rights of the authors are recognized under Article 11<sup>bis</sup> of the Berne Convention.

### ***Cablecasting right***

There are two forms of cable transmissions: simultaneous and unchanged retransmission of broadcast, and transmission of cable-originated programs. The former is commonly known by cable retransmission and the latter by cable origination. Copyright owner's consent in any work included in the cable signal is needed for both forms of cable transmission. A retransmission by cable of broadcast works applies to such cases where the "transmission is simultaneous with the original broadcasting, and where no change is made in the stage of retransmission to what is broadcast by the originating organization" (Ficsor, 2003) It is, however, not retransmission of the original program, "if the broadcast work is recorded and transmitted by wire (cable) at a later time, or, if changes are made" (Ibid.). In such cases, according to Ficsor, it would be considered a completely new communication by cable in a

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cable-originated program (Ibid.). Cable retransmission is included in the Berne Convention under Article 11 bis (1)(ii) as one of the secondary rights under the broadcasting right. In some jurisdiction this right is treated as a form of public performance right.

Cable origination involves the transmission by cable of an original signal. It is included in Article 11 (1) (ii) of the Berne Convention as part of the public performance right.<sup>4</sup> By this article “any communication to the public of the performance of their [authors’] work” in respect of dramatic, dramatico-musical and musical works requires the consent of the copyright owner. The question that arises here is the precise meaning of the expression “any communication to the public.” The meaning, however, becomes clear when this provision is read in conjunction with Article 11 bis (1) (ii) which covers communication to the public by cable of broadcast works. As such, the expression communication to the public as employed in Article 11 (1) (ii) is intended to cover communication to the public by wire where the program is not already a broadcast program. According to Ficsor (2003), the expression “any communication to the public” should be understood to mean any kind of communication other than broadcasting since the latter is separately covered by Article 11bis.<sup>5</sup>

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<sup>4</sup> Article 11 of the Berne Convention states that authors in respect of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

“(i) the public performance of their works, including such public performance by any means or process;

(ii) any communication to the public of the performance of their works.”

<sup>5</sup> Cf Masouye (1978): “It [the communication to the public] covers all public communication except broadcasting which is dealt with in Article 11bis.” By way of example where a broadcasting organization

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***Rental right***

The rental right is expressly recognized under Article 11 and 14(4) of the TRIPS Agreement which explicitly forbids the commercial rental to the public of originals or copies of computer programs and phonograms for commercial purposes without the authorization from the copyright owner. By Article 11, it is obligatory for the member countries to provide exclusive rental right in relation to computer programs and cinematographic works while Article 14(4) requires this right to be extended to the producer of phonograms and ‘any other right holders in phonograms.’ The rental right with respect to cinematographic works needs to be provided only if the commercial rental has led to a widespread unauthorized copying of such works materially impairing the exclusive right of reproduction. But in respect to computer programs to which it is obligatory to provide exclusive right of rental to its authors, exception is permitted only “where the program itself is not the essential object of the rental.” This means, for example, the exclusive right of rental does not apply to computer programs included in such mechanical devices as cars or aircraft in which it is the cars or aircraft, not the computer program as such, which is the essential object of the rental. This, however, does not apply to the rental of computer where computer program have been uploaded since the latter is an essential component to the operation of computer (Ficsor, 2003).

The rationale for imposing restriction on the commercial rental of computer programs and phonograms is the ease with which reproduction of these works can be made at a relatively cheaper cost than the original without any loss of quality. It is thus argued that the availability of computer programs,

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broadcasts a chamber concert, Article 11bis applies. But where the broadcasting organization or some other body diffuses the music by landline to subscribers, this is a matter for Article 11.

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phonorecords and cinematographic works by rental makes it easier to reproduce the rented material without having to purchase the original copy. This in turn would reduce sales to the prejudice of the copyright owner's interest. Prohibition of rental by the author could thus prevent the negative effect on sales of newly released phonograms and compel customers to purchase the phonograms without causing a restraint on the sales thereof.

### ***Droit de suite* (Artists' resale right)**

The *droit de suite*, or the artists' resale right in English, refers to an interest in any sale of the work subsequent to its first sale. It is the right of the authors with respect to artistic works to obtain a share of the proceeds of the successive sales of the originals of these works. The right applies only to graphic or three dimensional works of art such as drawings, paintings, statues, engravings and lithographs, but not to works of applied art where the work involved is rarely the original, but generally a replica (UNESCO/WIPO, 1976). Also excluded from this right are works of architecture. However, the right may be invoked with respect to the manuscripts of writers and composers, where such works and manuscripts are sold either by public auction or through a dealer. The *droit de suite* is restricted to the originals of such works. To be 'original', the work must be considered to have been made by the artist himself or following his instructions so that the material copy can be said to reflect the author's personality.

The *droit de suite*, according to Stewart, arises on every sale after the first. As such this right, like the rental right, may be regarded as a limited exception to the first sale or exhaustion doctrine (Stewart, 1989).

The *droit de suite* basically arises from the nature of artistic works where the value lies in the uniqueness of the original. Unlike a book or a piece of music where the basis of economic exploitation is their reproduction, the commercial exploitation

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of these works is restricted to the act of selling the original copy of the work. Once the author disposes his work he has no further share in the subsequent acts of exploitation which generally takes place when the creation has acquired a resale value and has become a source of profit for those engaged in sales. More often such works are bought as a lucrative future investment. In justification of this right, it is argued that authors of artistic works are generally obliged to sell their works at a throw-away price to meet their needs at the beginning of their career when they are little known. As the author begins acquiring recognition and fame, these works over the course of time assume considerable value and becomes a source of revenue for those engaged in sales. Hence the idea underlying the *droit de suite* is that the author of artistic works such as painters and sculptors should have the right to 'follow' the fortunes of his work and to collect a percentage of the sale price for the work each time it changes hands. profit from the increase in its value each time it changes hands

### **Moral rights**

The concept of moral right developed in the continental Europe during the nineteenth century. It first appeared in French law. France is therefore known as the mother country of moral right from whence it spread to all continental European and Latin American laws and into the Berne Convention. Moral rights as such are not recognized in the common law countries except in the United Kingdom where it was introduced as late as 1988.<sup>6</sup> What is denominated as moral right is protected in these countries by such laws as the torts of passing off, injurious falsehood, defamation, unfair competition laws, and so on. Since moral right is essentially a product of European countries, particularly France, Germany, and Italy, it can be better understood and appreciated in all its aspects only with reference to the laws of these countries.

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<sup>6</sup> The enactment of the Copyright, Designs and Patents Act 1988 first introduced moral rights in the United Kingdom.

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Moral rights “stem from the fact that the work is a reflection of the personality of the creator, just as much as the economic rights reflect the author’s need to keep body and soul together” (Masouye, 1978). They are invariably tied to the person of the creator of a work. There are three basic moral rights:

- (a) right of publication
- (b) right of paternity
- (c) right of integrity

### ***Right of publication***

The right of publication, or the divulgation right, is the most basic right. It is the right of the author to decide whether the work is to be made public. It consists of two rights: (i) the right of the author to decide whether and when his work is to be published, and (ii) the right to withdraw the work after publication if the author wishes to do so. In the continental Europe, such as France which is the mother country of *droit moral*, the right of divulgation is considered the most basic moral right of the author “since it reserves to the author the fundamental decision whether at all and when and how to release his work from the private sphere and to expose it the public” (Dietz, 1993). This decision is an absolutely personal and discretionary act of the author. It determines the moment when the work enters the financial or commercial sphere.

### ***Right of paternity***

The right of paternity, or the right of attribution, includes three rights: (i) the right to claim authorship of the work, or the right to be identified with the work. (ii) the right to prevent others from claiming authorship of the work; and (iii) the right to prevent others from using his name in connection with the work of another (right against false attribution of authorship). The first requires the name of the author to appear on all copies of the work. The second protects the author from plagiarism of his

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work, and the third provides protection against false attribution of authorship.

### ***Right of integrity***

The right of integrity is the right of the author to have the integrity of his work respected. It is the right to object to any distortion, mutilation or other modification of the author's work. The basic objective of this right is to protect the honor or reputation of the author. By virtue of this right the author can authorize or prohibit any modification of his work. In the same way he has the right to prevent any distortion of his work that may be prejudicial to his honor or reputation.

### **Moral rights under the Berne Convention**

The Berne Convention under Article *6bis* recognizes only the last two rights: the right to claim authorship of the work (paternity right or right of attribution) and the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to the work, which would be prejudicial to the author's honor or reputation (integrity right).<sup>7</sup> From the viewpoint of civil law countries where the moral right is especially developed, the Berne provision represents only a minimalist approach.

The right of integrity under the Berne Convention is not absolute and unconditional: it does not extend to all kinds of modifications of a work but only to those that are likely to be prejudicial to the honor or reputation of the author (Ficsor, 2003). This means unless the modification of the work is prejudicial to his honor or reputation, the author cannot exercise the right of integrity. The integrity right arises only where modification is "prejudicial to his honor or reputation."

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<sup>7</sup> Moral right was introduced into the Berne Convention at the 1928 Rome revision conference.

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The concepts of honor and reputation as embodied in the right of integrity under Article *6bis* (1) are employed to cover any action that would be liable to harm *the person* through distortion of his work. As such, the protection of the honor and reputation extends “not only to the honor and reputation of the author as an author (in close relationship with the quality of his work as such) but also to his honor and reputation as a person or human being (which may also concern as the context – for example, a politically charged context – in which the work is used.” It is this later aspect of the honor and reputation of the author to which the use of the phrase ‘or other derogatory action in relation to’ is primarily intended to cover (Ibid.). It is submitted that in most legislations, such as Germany and France, modifications of the work that are solely dictated by artistic and aesthetic convictions and concepts of those using the work in the process of exploitation are not permitted whereas those dictated by the concrete technical, financial and circumstantial condition of the exploitation of the work may be exempted (Dietz, 1993).

Moral rights as distinguished from economic rights are not transferable. They exist independently of the author's economic rights. These two principles, the independence and non-transferability of moral rights are two basic principles which are clearly articulated at the very beginning of paragraph (1) of Article *6bis*:

Independently of the author's economic rights and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of....

The Berne Convention under Article *6bis*(2) extends moral rights “at least until the expiry of the economic rights.” The use of the phrase “at least” signifies that it is a minimum obligation and national laws are free to provide perpetual protection (Masouye, 1978). However, there is an exception to this requirement that applies to the countries whose legislation at

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the moment of ratification does not provide for the protection after the death of the author of all moral rights. These countries may provide that some of rights comprising moral rights after the death of the author cease to be maintained. This exception reflects a compromise between the copyright laws of civil and common law jurisdictions. As regards the exercise of moral rights after the death of the author or the end of the economic rights, it is governed by the law of the country where the protection is claimed.

## **Conclusion**

The discussion above clearly points out that the nature and scope of exclusive rights granted to the authors determine the extent of their monopoly power to control or limit the access to their works. The wider and extensive the scope of these rights so much greater is the ability of the authors to exact monopoly rent from the use of their works. Creation of new rights, or any enlargement of the existing rights, would naturally result in the contraction of users' ability to access the works. This may also occur when courts are inclined to favor the interests of the authors or the right owners by giving a broader interpretation of the existing rights far stretching their scope. Such enlargement and court interpretation, however, may be highly prejudicial to the interest of the users, and against the very objective of copyright – to promote the dissemination and advancement of knowledge - if it went to the extent of diluting the very limitation and exception provided by law in the larger societal interest. Hence, it is indisputable that authors must be rewarded with exclusive rights to ensure adequate generation and flow of creative works. But the scope of these rights must not extend beyond the point that would limit the creation and impede the free flow of ideas and information, the basic ingredients for the advancement of learning. This clearly is the reason why these rights are not absolute rights; they are defined with proper delimitation to their scope to ensure free access to information needed for the wider social and economic development. Inherent to this is the fundamental tension in copyright law –

the need to maintain balance between the rights of authors and the larger public interest, such as education, research, and access to information. Has copyright really been able to achieve this balance? Or is it simply a myth? This perhaps is the most vexing question and the one which ever keeps on nagging copyright.

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