



Explaining the Distinctive Nature in Protection of Intellectual Property Law in UK and USA

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ABSTRACT

The purpose of this thesis is to explore the characteristics of copyright legal protection system between the United Kingdom and the United States. Through case analysis, comparative study, and empirical re-search, this thesis analyses the application, scope, restrictions, and privileges of copyright system, for raising public's attention and vigilance on intellectual property protection system, then proposes better measures to promote the development of copyright protection system.

Keywords: *Intellectual Property, Copyright Protection, Distinctive, Restriction.*

1. INTRODUCTION

The general classification of property includes the **Intellectual property (IP)**: a class that deals with intangible creation as a result of intellect and can be classified into [15]; Industrial Property: a class that includes trademarks, patented products and processes, descriptions of origin, industrial models as well as designs; and copyright which includes artistic works.

Like any other law, every jurisdiction bears a significant structure of law that is inclusively essential and applicable to all subjects and scopes. Therefore, the goal of intellectual property law is to establish grounds to encourage creativity while protecting creators' rights. [6]. Coverage of the protection of intellectual property includes individuals, as well as business corporates for the creation of intellectual products and information content for a specific period of time. Moreover, such protection provides the economic incentives accruing from their creativity and as expected these incentives essentially stimulate innovation which makes a great impact and contribution in the technological sphere according to the extent of protection provided in every jurisdiction [10].

Considerably, the nature of intellectual property is intangible. Therefore, its execution is comparatively challenging than other types of legislation, particularly where there is a jurisdictional difference. The U.K and the USA legal systems respectively recognise the

classification of intellectual property harmoniously, however, the provision and protection of their laws differ on various grounds.

2. CLASSIFICATION OF INTELLECTUAL PROPERTY

Patent: It is a form of the legal privilege accorded to an inventor or a successor that prevents unauthorized people to use, selling, offering to sell, or importing a protected innovation for a specific timeframe. Patents are generally invented solutions which may either be a product or the process to a specific problem. A patent should satisfy the following parameters: the product or process should have industrial applicability; and should be new and innovative.

It is an essential obligation of patent owners to disclose to the public the valuable information regarding their information so as stimulate more innovation.

Copyright: They are exclusive privileges owned by the creator of original content for a limited time. The scope of copyright falls under various forms of artistic creativity works. It covers the form or manner used to express creation, yet does not include ideas as well information itself [11].

Industrial design rights: They are rights that protect the visual design elements of products including their shapes, patterns, colours. Protected industrial design can either be a two or three dimensional element for

packaging a product or an industrial commodity to be visually more appealing, hence, to increase the commercial value of such product [16].

Trademarks and Trade Secrets: Trademarks include signs, designs, as well as expressions whose recognition creates a distinction among merchandise and services of different traders dealing analogous goods or services; trade secrets cover methods, practices, and collection of generally undisclosed information that is rationally ascertainable, and uphold economic benefits for traders against their competitors. Every trader or business entity should observe the essential requirements as per the legislative provisions under their respective jurisdiction units for seeking such protection [3].

3. THE DISTINCTION BETWEEN PROTECTION OF COPYRIGHT AS INTELLECTUAL PROPERTY IN THE UK AND USA

As mentioned, the intellectual property covers various types of creations. Among all, copyright up-holds legislative provisions for protecting original creators from the use or theft creations. Laws offering such protection vary among jurisdiction units for currently there is no any guideline for International Copyright protection across territorial limits. Therefore, the coverage and provision of copyright protection depends on countries legal systems and policies, wherein most analysis high-lighted they vary across. Signatory states of the copyright treaties and conventions must observe certain grounds where an element of international concern is involved in relation to copyright protection [8].

3.1 Copyright Protection

In the United States, the protection of copyright is accorded under “The Copyright Act of 1976” [26]. According to the Act, the establishment of copy-right protection is only recognised after first revision is made by its original creator. In *LB (Plastics) Ltd. v. Swish Products Ltd.* [22] the court conditioned that, every copyrighted creation must be created by the owner and may as well be made in any particular form of the solid method of communication, which may be direct, indirect or through technological devices [2]. Therefore, in the US, the protection of copyright is accorded to the specified works, and the various forms have distinctive protection with specific conditions.

On the other hand, although in *Donaldson v. Beckett* [19] the court established that copyright is not perpetual, the protection of copyright in the UK is accorded under the “Copyright, Designs, and Patent Act of 1988” [25], and other critical regulations with direct legal impact that are authoritatively applicable within the European Union [4].

3.2 Application for Copyright Protection

In the US, once the owner of original work applies for copyright protection, such protection is embedded to the property, and it is also not necessary for the owner to file paperwork to request for protection or registration of the created work. The basic formal registration of copyright with the US Copyright Office is *a prima facie* evidence that affords enforcement through the courts. However, in *Reed Elsevier, Inc. v. Muchnick* [24], the court established non-registration does not extinguish the right to redress the violation of unregistered works.

Unlike in the US, in the UK, the protection of copyright is perceived to automatically exist once the work has been created, and it is not essential to file certain paperwork or the registration of such work to avail protection to the property and the owner. In practice, the protection of copyright work is subject to the originality of the created work, and a clear indication of input skills and labour for such creation. Considerably, creators of copyright works can register their work for protection through a mail to the Copyright Service in the UK or online, which otherwise is an optional procedure to establish evidence of their work’s originality that may be useful in potential scenarios of disputes.

Moreover, the owner of the copyright has the privilege to determine the usage of his work in terms of broadcasting, the creation of copies, modifications, adaptation, performing and rentals. Furthermore, the rights of the author include registration of objections in relation to any misrepresentations [14].

3.3 The Scope of Copyright Protection

In *Mazer v. Stein* [23] the court extended copyrights to applied arts. However, not all artistic creation can be accorded with copyright protection. According to law provisions in the US, the Act affords protection of original works and excludes others, but not limited to; works of literature, drama, music and artworks like poetry, original novels, created movies, composed songs, IT software, and works or architecture. Therefore, impliedly protection of copyright does not include facts, thoughts, structures, or operation methods, but where necessary, the law may protect how such creations are expressed. The law requires the owner to apply for such protection through the appropriate procedure, and such owner is the exclusive entitled individual of the production of copies, modification, produce production, and distribution of copies to the public through sales, licensing or other methods by preference [13].

The scope of copyright protection is not absolute and the use of such works without authority, according to sections 110(2) and 112(f) which considers exceptions on the grounds such as fair use and other reasons that the law, may be considered rational. The owner of copyright

can opt to create the availability of their works through the **Creative Commons license** as established in *Carter v. Helmsley-Spear Inc.* [18] And as a result, any unauthorized copies, modifications and derivatives and distribution of such copies that may amount to the infringement of copyright rights attracts redress in form of damages, injunction and destruction of the unauthorized copies [1].

On the other hand, scope of protection under the copyright laws in the UK has been systematically classified, and includes: Works of Literature, which includes lyrics of songs, documented scripts, and computer programs, documents developed for commercial purposes, articles and other works, that the court may agree to. Works of Drama, such as dance routines and plays, music and recording works. Artwork, in the nature of photographs, painting, curved sculptures, architectural designs and technical drawings among others. Typographical collection of published editions such as magazines as well as other periodicals, recorded sounds and filming in form of videos, movies, broadcasts as well as cable programs.

3.4 The Limitation Time Span of Copyright Protection

To encourage creativity, legal protection of the created works is one of the core pillars. However, such protection is not eternally accorded but subjected to expiry as specified by the law according to jurisdiction. In the US, before the 1st day of January 1978, the period of protection for any creations is determined by laws. When the work was created, they were in force during that particular time. These works that may fall under this period include the Protection of copyright during the author's life which is extended to seventy (70) more years. Where the alleged work is a creation of more than one author the protection of such copyright extends to seventy (70) years after the death of the last author; Further, the legislative provisions regard works created in the capacity of an employee as required by the employer as a product for hire. The protection for such work is up to ninety-five (95) years after its first publication or a hundred and twenty (120) years after the creation of such work. Lastly, once the above period has lapsed, the rights of the work are no longer exclusive as the work becomes available in the public domain hence extinguishing the copyright rights of the respective holder. Once the time period lapses, the rights of work are no longer exclusive as it becomes available in the public domain

On the other hand, the grounds and terms of copyright protection in the UK is quite similar to that in the US but with minimal distinctive points. The span of protection covers works of literature, drama, music or art being accorded by copyright up to seventy (70) years computing from the preceding calendar once the author

deceases, or in case of works by multiple authors, the last author deceases [9]. In the case of sound recording works, the authors are protected by copyright for up to seventy (70) years post first publication. In relation to the works of broadcast, copyright protection sustains for up to fifty (50) years which computes after the first publication. Copyright protection for film works lasts for seventy (70) years which computes after the decease of the last author, director, or composer [5]. Production of works in magazine and publication of other periodicals, such owners are offered protection of twenty-five (25) years which counts from the preceding year after the end of the annual calendar of its publication. Therefore, according to the above analysis conditions under which the span of copyright protection exists differ on the classification of works and how such period is computed in UK and US.

3.5 Enforcement of Copyright Privileges

In the context of intellectual property rights, the enforcement of copyright generally implies the owners' rights and the authority to file claims or legal disputes against any act that possibly amounts to the infringement of their rights against the breaching party. In the US, the uses of such privileges are subject to minimal exceptions under the expression of Doctrine of Fair Use as applied in *Folsom v. Marsh* [20], which limits the courts while interpreting and applying the legislative provisions from considering the following acts as breach of copyrights: criticism of the author's work(s), production of news reports or commentaries, using the author's work either for the purpose of research or teaching, use of author's work to create new academic works.

Moreover, the law accords additional rights to works created by visual artists. Similarly known as **moral rights of attribution and integrity** as established in *Gilliam v. American Broadcasting* [21], such aims to prevent intended distortion and any other method that may possibly cause the destruction of artwork or breach that may damage their reputation [7].

On the other hand, the enforcement of copyright through legal claims in the UK can exclusively be instituted either by the owner or a licensed person. Similar to the application in the US, the UK copy-right law does not establish absolute protection, instead, is also subject to exception on specific grounds under the doctrine of fair dealing as applied in *Ashdown v Telegraph Group Ltd* [17], where a person can use copyright protected works without acquiring permission. Such usage should be of nature of research and study, as well as of review and educational purposes, and of aiding persons with disability and caricature without any form of commercial involvement, criticism of original work [12].

Analytically, in the UK, the exceptions from enforcement of copyright law against unauthorised use of

works are similar to those in the US under the doctrine of fair use. However, according to the UK jurisprudence, these exceptions fall under the doctrine of fair dealing which is both relied on in every jurisdiction to determine unlawful and lawful use of copyright. The result is not rigid, instead, falls under the discretion of the courts for determining its relevance where such defence is invoked depending on the filed claims which may differ from one case to another.

4. CONCLUSION

Undoubtedly, both the UK and the US have reflected their legislative provision on the protection of copyright to similar aims and policies whose intended end is to ensure a just balance of protection between the rights of copyright owners and public concerns that should also have rights and freedoms. However, there is a distinctive character in structure and wording of both jurisdictions, which extensively leads to different judicial interpretations and practical legal application. Whilst exceptions of copyright enforcement in the US are based on the doctrine of fair use, such in the UK from liability of breach are based on the principles of fair dealing.

In the context of the doctrine of fair use, in the application of the US law, the relevant factors that aid in such determination are: the purpose and nature of protected work, the quantity and substantiality of its usage, and its impact in potential market. The application of fair use doctrine is wide and flexible despite of where such copyrighted work was initially created. Contrary to the doctrine of fair dealing, copyright legislations the UK exempt a person from liability for breaching copyright if such use was for the purpose of: research and private study not being commercial, review and critical analysis, illustrating instruction and pastiche. Therefore, both jurisdictions possess a different approach in terms of the span of protection and grounds of exception according to legislative provision and judicial interpretation of matters in a contest.

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