

COPYLEFT: “COPYING” DONE “RIGHT”

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“For masterpieces are not single and solitary births, they are outcome of many years of thinking in common, of thinking by the body of the people, so that the experience of the mass is behind the single voice.”

Virginia Woolf, A Room of One’s Own, 1929

ABSTRACT

Since its inception, mankind has come a long way. And ever since then, it has been continuously evolving towards a better world. Humans tend to develop new ideas over already accumulated knowledge and thereby constantly enhancing the existing knowledge. Soon after realizing their worth, copyright came into existence, protecting such ideas and giving their thinker a monopoly over it. However, subsequently came the concept “copyleft”, standing for how there should be a free movement of information and knowledge in society. “Copyleft” (wordplay of copyright itself) is the practice where a work is freely distributed amongst the public with the right to modify or amend it and hence making it a form of licensing just like copyright, only in a contrary sense. Where the Copyright license empowers the author to prohibit others from

using, modifying or reproducing his work, Copyleft on the other hand empowers the author to freely distribute his work to the public for the purpose of using, adapting, modifying or reproducing it. To Copyleft a program, it is first protected as copyright and later by the means of distribution terms it’s made available to everyone for the purpose of modification, distribution or reproduction with the term that any such act will not further restrict such right. Copyleft is both, highly supported and criticized by socialists and capitalist respectively. Surprisingly, this movement is extending its reach in multiple directions which also include art and religion (Kopimism).¹ This article deals with the history and present status of copyleft, issues with copyleft in relation to competition law, moral rights, etc., theory of Kopimism and the relevance of Copyleft in today’s society.

Key Words – Copyleft, Free Access, Uncopyrighted

INTRODUCTION

There always have been debates about how the information should flow in the society but lately

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there has been an upsurge in demands of free and ‘accessible to all’ information around the globe. Whether should it be free for everyone to use or should it be the sole property of the owner who is the author of such information. This question regarding free flow of content throughout had a fissiparous effect over the society. It came down to question the significance of copyright as well which allows author of the work to prevent others from reproducing, adapting or amending his work without his permission. Believers for copyright say that it is necessary not only because it encourages the author but it also because is beneficial for the economy. However, sceptics argue that copyright obstructs free flow of information in the society and hinders the right of free speech deriving support from the scientific study that a better idea can be built over a previous idea only if it is free to acquire and use². Owing to these and multiple other factors, the concept of ‘Copyleft’ and other related forms of free licensing emerged. It is important to note that even though Copyleft is about free information in society, it find high regards by believers of liberty, freedom and free markets as well. This is because Copyleft is not about distribution of free goods or other political philosophies but is about freedom and

²http://ogc.harvard.edu/files/ogc/files/ogc_copyright_and_fair_use_guide_5-31-16.pdf, (last accessed on July 25, 2017).

progress of technology. Founding its supporters worldwide, Copyleft is not just trending but is also gaining popularity among people who believe in such free flow of content and licenses. So much has it affected the movement that a religion came up based on whole ideology of Copyleft that is discussed in the later part of this article. Hence, Copyleft is a mechanism devised by believers of free dissemination of knowledge in society backed with strong reasoning and jurisprudence. Nonetheless, Copyleft, though debatable, has become a choice of a lot of authors who believe in such free speech and ‘welfare for all’ believes.

ORIGIN

Copyleft comes from a wordplay of the word copyright.³ It is a regime wherein copies of one’s work can be distributed freely and can be modified as per one’s wish on the condition that the modified work will also be available freely and the same rights will be maintained as the work goes down the line.⁴ In simple terms, a work under Copyleft is free to distribute, acquire and amend on a stipulation that work resulting from such Copyleft work will also be free and in public domain for people to acquire. The earliest use of the word “Copyleft” was by

³http://research.omicsgroup.org/index.php/Copyleft#cite_note-1, (last accessed on July 23,2017).

⁴ *What is Copyleft*, GNU OPERATING SYSTEM., (July 25, 2017), <https://www.gnu.org/copyleft/>.

Li-Chen Wang during late 1970's in his Palo Alto 'Tiny Basic's' distribution notice wherein he wrote that "COPYLEFT all wrongs reserved". However it was just a term and no meaning was accredited out of it neither he had any intention to do that because Tiny Basic was a free version of a basic computer programming language.⁵ However, the true sense to Copyleft was given by Richard Stallman in his GNU manifesto in 1985. GNU is an operating system which is sponsored by 'Free Software Foundation'. Richard Stallman started GNU when in the year 1984, he was refused the access to an improved software by Symbolics, on which Richard worked. This incident prompted Richard Stallman to create a license which is free to acquire and work on without changing the original source code of the program. According to Richard Stallman, this was a win-win situation for everyone because in this manner improvements can be made without changing the original piece.⁶ Copyleft has then come a long way from its origin by founding the supporters worldwide and has resulted in a wide variety of open and free to use license which otherwise is copyrighted.

⁵Linux Information Project, (July 25, 2017), <http://www.linfo.org/copyleft.html>.

⁶ *Supra* 2.

DIFFERENCE BETWEEN COPYRIGHT AND COPYLEFT

Copyleft is generally denoted by a reverted image of copyright symbol. This means it is a mirrored image of copyright and hence in terms of its meaning. Copyright is a right given to the author of any work to reproduce, distribute, and commercially exploit his or her own work. Most importantly, copyright is the right to prevent others from using your copyrighted work without your consent. These rights duly recognize author's work and give them the authority to use or hide it, depending upon their will. Copyleft on the other hand give author the right to freely use distribute their work and pass on the rights to even modify the work only on one term that the Copylefted work cannot be copyrighted and the modified work will also be available freely for the public to use and work upon.⁷

WHY COPYLEFT

The ideology behind Copyleft, as Richard Stallman also puts it is that the work which can benefit the society should be free for everyone to use.⁸ If a work is free to use and work upon and still its originality is intact, then the idea

⁷ K.G. Kumar, *Beyond the Market*, FREEDOM MATTERS, ECONOMIC AND POLITICAL WEEKLY, Vol. 36, No. 36 (Sep. 8-14, 2001), pp. 3435-3439 .

⁸ <https://www.gnu.org/philosophy/pragmatic.en.html>, (last accessed on July 21, 2017).

should be welcomed because it is benefitting the society largely. Human ideas and thoughts tend to develop over preexisting ideas and notions available around.⁹ That is how the civilization has come a long way and has developed so much since its start. That is how the wheels from wood by primitive man have developed into rubber wheels by modern man. Such progress over existing ideas makes it necessary that the viable information should be free in the society to both, acquire and use. However, Copyleft was needed because only providing such information to public and putting it in public domain for free was not a solution. The problem faced was that the people can always use such content, modify it and get it copyrighted and later converting it into a proprietary work thereby restricting its free flow. Thus, mere abandoning of the copyright by one who is willing to distribute it freely in public is not a solution because someone else can always get a copyright over it.¹⁰ It has been observed in the past that in absence of Copyleft, the person who wants to give his work for the public to use freely was embittered because others tried to make personal gains out of it by making mere modifications and getting copyright over the work. This is where Copyleft and other

such licensing practices came to rescue to facilitate such free flow and ensure the maintainability of the same.

JURISPRUDENCE OF COPYLEFT

Copyleft in a way is a direct criticism of the concept of copyright. Where copyright believes that an author should get the right to prevent others from using his copyrighted work, Copyleft critiques that and frames on an ideology that a work should be free for everyone to use and ideas should be free to think and develop upon. Owning a property is not an issue of modern era. Owning a property and ownership of resources has always been a subject of debate. Many jurists have presented their view and reasoning, some favoring it and some dissenting with such concept of one person holding a source of production all by himself. Information in this context is relatively a new term. It is not since always that knowledge and information have been considered as a valuable source for society. That probably is a reason why Intellectual Property laws took a lot of time to develop. It is rather a newer concept relatively if seen in light of how valuable land and labor were considered by Karl Marx as a source of production in his labor

⁹ R Neethu and Zehra Shakeri, *My Religion: My 'Copy' Right*, JOURNAL OF INTELLECTUAL PROPERTY RIGHTS, vol. 18, November 2013, pp 566-575.

¹⁰ Ira V. Heffan, *Copyleft: licensing Collaborative Works in The Digital Age*, STANFORD LAW REVIEW, Vol 49.

theory.¹¹ However, the importance of information and knowledge now cannot be avoided as they have, if not replaced, become at par with the most vital sources of production. Many theories concerning information and its flow have come up and formed the jurisprudence regarding the flow of information and its importance in a community.¹² If theories of historical materialism are to be abided by, the underlying assumption is that human consciousness is fostered and conditioned through its surroundings and physical environment.¹³ However, to fit knowledge and information in the Labor Theory of Karl Marx, let us once assume that as the society and its needs have changed, with it changed the means of production and knowledge has become an important integral part of the same. Assuming that, it is now not difficult to see how the labor theory would back the Copyleft knowing that Karl Marx talks for the welfare of society and is against the ownership of one person over any means of production because that will give him absolute rights over the property. Copyright may not be an absolute right but gives enough

power to the author to stop others from using his copyrighted work legally. Thus if creators of socialism would have been alive, copyright would not have come into existence. This also is a reason why it faces strong opposition from staunch socialists. Marxism offers protection to society against ownership in the hand of one person of vital resources. The success of free software against the paid or commercial ones shows how Marxism has succeeded in the theory while stating that production will become more and more societal. It seconds the claims of autonomist Marxists that production is becoming social and with time the gap between collective labor power and economy based on private property will only raise.¹⁴

TYPES OF FREE LICENSE

Copyleft is a kind of free license of a work to the world. Advocates fighting for such free flow of information in society is not new and this concept is a work of many years and multiple debates. There are different kinds of free licenses available.¹⁵ Some of them are discussed below:

¹¹David L. Prychitko, Marxism, Library of Economics and Liberty, (July 26, 2017), <http://www.econlib.org/library/Enc/Marxism.html>.

¹² Latypov I.A., *Copyleft or Moral Rights Involved In Copyright?* INTERNATIONAL JOURNAL OF APPLIED AND FUNDAMENTAL RESEARCH, 2014-No 2, (July 24, 2017), <http://www.science-sd.com/457-24688>.

¹³ G. Cohen, *Karl Marxs Theory of History: a Defence*.

¹⁴ Johan Soderberg, *Copyleft Vs. Copyright: A Marxist Critique*, First Monday, PEER REVIEWED JOURNAL ON INTERNET, Vol 7 No. 3, 4 march 2002.

¹⁵ <http://www.shlomifish.org/philosophy/computers/open-source/foss-licences-wars/foss-licences-wars/types-of-licences.html> , (July 22, 2017).

PUBLIC DOMAIN LICENSE

These licenses are also known as ‘permissive free software license’ or ‘copy centre license’. These licenses allow one to freely do almost everything that can be done with a software. That is to freely acquire, use, modify, sell it further, distribute it, etc. this license is however no more recommended because it is not compatible with General Public License. Examples of such license are BSD license, Apache license etc.

WEAK COPYLEFT LICENSE

These licenses are free programming licenses that states that the source code that plunged from programming authorized under them, will stay under the same weak Copyleft permit. Be that as it may, one can connection to frail Copyleft code from code under an alternate permit (counting non-open-source code), or generally fuse it in a bigger programming.¹⁶ Apart from this, these licenses permit free dispersion, use, offering duplicates of the code or the doubles (the length of the pairs are joined by the (obfuscated) source code), and so forth. Case of powerless Copyleft licenses includes GNU Lesser Public License, Mozilla Public License etc.

¹⁶ Raymond, Eric Steven, *Licensing HOW TO*, (July 27, 2017), <http://www.catb.org/~esr/Licensing-HOWTO.html#id2789302>.

STRONG COPYLEFT LICENSE

These licenses go above and beyond from powerless Copyleft licenses and order that any appropriated programming that connection or generally joins such code be authorized under perfect licenses, which are a subset of the accessible open-source licenses. Thus, these licenses have been called "viral". Examples of such license are GNU General Public License, Sleepy Cat License etc.

CREATIVE COMMON LICENSE

Another very popular form of free licensing is CC (Creative Commons) License. It is a tool that enables free distribution of work which is otherwise copyrighted under laws. An author can use when he/she wants to give people right to share, use, modify and develop upon the work they have created. These licenses create and maintain a balance between the traditional “All Rights Reserved” methods which was created by the copyright law.¹⁷ These licenses allow everyone, ranging from individuals to large companies, a standardized and simple way to grant copyright permissions for their creative work. The CC license tools and its users worldwide is huge and still a growing world of digital commons. It is basically a pool of

¹⁷ About the Licenses, <https://creativecommons.org/licenses>, (last accessed on July 26, 2017).

content which can be simply edited, copied, remixed, distributed and developed (built upon), well within the boundaries of copyright law. All CC licenses have features between them in common. The creators of license are known as Licensors and if they use CC tools, they are allowed to retain their original copyright while allowing others to copy, distribute and make use of their work, though non-commercially. It is also ensured that every licensor receives the credit for their work, which they deserve. Every CC license so developed is available for access to everyone around the world and lasts as long as copyright under any law.¹⁸ The licensors can above the CC license decide on some additional permission to be given as to how their work is to be used. The CC licenses do not encroach upon the freedoms granted to users of creative works as under the copyright law viz. Fair use or fair dealing.¹⁹ These CC licenses require the licensees to take permission to do anything with a work which only licensor can do under law and license does not allow expressly. Some duties of licensees are: to give proper accreditation to the original licensor, to keep copyright notices of all copies of work preserved and intact and link the license to

¹⁸ Carver, Brian W., *Share and Share Alike: Understanding and Enforcing Open Source And Free Software Licenses*, BERKELEY TECHNOLOGY LAW JOURNAL.

¹⁹ Fitzgerald, Brian and Ian oi, *Free Culture, Cultivating the Creative Commons*, MEDIA AND ARTS LAW REVIEW 9(2).

available copies of work. Also, the licensees are prohibited from using any technical measures which restrict others from accessing the work by licensors.

KOPIMISM AND COPYLEFT

Copyleft, as already stated, has gained a lot of popularity. So much that its belief and believers have created a new religion based on an idea that information should be free for everyone. The newly found religion by Isak Gerson, a 19 year old philosophy student, is devoted to the act of free file sharing and this was subsequently recognized as an official religion by Swedish Government.²⁰ The religion advocates sharing of files to be absolutely legal and beneficial for the public at large. The propagators of this religion state that it was difficult to get Kopimism registered as a religion and after three hard tries and one year of struggle, the religion was finally recognized. The followers conduct this religion via Church and have followers in thousands by now. Since, the religion is conducted through Church, the question as to mode of engaging of prayers is quite pertinent here to know. The followers of Kopimism regularly engage in Prayer and meditation sessions but what makes them different is, they pray not by physical assembly

²⁰ <http://www.bbc.com/news/technology-16424659>, (last accessed on July 27, 2017).

but through servers and web pages. Kopimism in other words can be defined as Religion of Law where copying information is considered to be a sacred virtue. The followers of Kopimism are known as Kopimists and they find this idea to be engrained in bible itself. According to them, “COPY ME” phrase is mentioned in the Bible and is forwarded through internet as a meme. “Copy me, my brothers, just as I copy Christ himself”²¹

Kopimi simply means File Sharing and it cannot be said to be an excuse or destination for file sharers. Since, the Kopimism is now an officially recognized religion, the preachers and followers have come out with Kopimist Constitutional Law, which sets out what the Law is all about, its essentials, its principles and it is followed by the religion strictly.

Kopimist Constitutional Law states some of the following points²²:

- 1) Copying of information is ethically right.
- 2) Dissemination of information is ethically right.
- 3) Copy mixing is a sacred kind of copying, more so than the perfect, digital copying,

²¹ Bible: 1 Corinthians 11:1[1], (July 28, 2017), <https://www.biblegateway.com/passage/?search=1+Corinthians+11&version=PHILLIPS>.

²² <http://ethics.wikia.com/wiki/Kopimism>, (last accessed on July 26, 2017).

because it expands and enhances the existing wealth of information

- 4) Copying or remixing information communicated by another person is seen as an act of respect and a strong expression of acceptance and Kopimistic faith.
- 5) The Internet is holy.
- 6) Code is law.

Kopimism, to promote and create their new identity also has their own sign which reflects their ideology. There is the “kopimi” logo, inside which is written the letter ‘K’ with a pyramid made outside it. It is a symbol used online to portray that one wants to be copied. There are other symbols also such as that represent and encourage copying, for example, “CTRL+V” and “CTRL+C”.²³

LEGAL VALIDITY OF COPYLEFT

There are more than ten types of free software recognized by no proprietary proponents and out of those most important and most popular means of distribution is Copyleft licensing. According to surveys most nonproprietary software in their contractual mechanism uses

²³ <https://www.newscientist.com/article/dn21334-kopimism-the-worlds-newest-religion-explained>, (last accessed on July 25, 2017).

Copyleft license.²⁴ To use a Copyleft programme a person or a company or any other human being has to abide by the license agreement which is made before issuing a software for Copyleft. This idea of Copyleft is very good as it helps public in general and it does not restrict a user to use the software according to the creator of the software and he can modify it according to his personal use. In software development programmes also the Copyleft license plays a great role in connecting the developers with the general public. There are different types of work that are freely shared on internet by the developers or any other person and to protect their right Copyleft license plays a major role. There are many different types of licenses of Copyleft out of which most popular type of licenses are GPL (General public license) and LGPL (Lesser general public licenses).

In GPL if a programmer has made a programme and has taken a GPL then he has to give the source code of the programme to the person who is receiving that programme either with the programme itself or to the person who ask for

the source code of the programme.²⁵ And if the person makes some changes in the source code to improve the programme then he has to abide by the GPL and in the same way he would be liable to give source code of the programme to others. A GPL'd programme is a valuable programme and author can also sell it to other and same goes to other who acquire that programme. It is legal to sell a GPL programme and there is no wrong in it but the main problem is buyer because it is hard to find a buyer for a GPL programme.

THE IMPACT OF RECENT CASES

The open source software is one of the widest growing departments of the sector; this could be seen via multiple case laws and federal court decisions. Such growth of the open source software has been observed as it caters the need and serves the branches of arts and science both in a way not many could think about few decades ago. Also, the growth of such software can be observed by a recent survey in which it has been observed that almost 85% of companies use open source software.²⁶ In the case of *Jacobson v Catzer*,²⁷ it was observed

²⁴ Andres Guadamuz Gonzalez, *Viral Contracts or Unenforceable Documents? Contractual validity of copyleft licenses*, WIPO, (July 27, 2017), http://www.wipo.int/edocs/mdocs/sme/en/wipo_unido_smes_msk_07/wipo_unido_smes_msk_07_www_73625.pdf.

²⁵ GNU General Public License, version 3, 29 June 2007, Available at, <https://www.gnu.org/licenses/gpl.html> , (last accessed on July 28, 2017).

²⁶ David Meyer, *Gartner: 85% use of open software*, (July 23, 2017), <https://www.cnet.com/news/gartner-85-percent-of-companies-using-open-source>.

²⁷ 535 F.3d 1373, 1378 (Fed. Cir. 2008).

that, the growth of open source software is largely based upon Copyleft licensing. Copyleft agreements are generally used to curb the availability of open-source software. The agreements are designed in such a way that it would allow a copyright holder for making a software program available to the public that too without charging any fee, and also require all modified and extended versions of the program to be available freely to the public. The idea behind the concept of Copyleft agreements is that an individual would be prevented from using or converting open source program which is freely available to proprietary software.²⁸ The most common type of Copyleft agreement is the General Public License which was founded by free software foundation. Under such license the authors along with giving right for others to copy also give creation of derivative work, thus not charging for such derivative work by the user. Around 65-70% of the users around the world use General Public licensing.²⁹

Criticisms-

1. The general public licensing is generally unenforceable, as there is lack of checks and balances by the court.
2. Also, it amount to price fixing schemes.

3. Main purpose is to eliminate the competition thus, many find it to be anti-competitive as it wants to capture the maximum share in the market.
4. It could constitute antitrust violations.
5. Also, the scope of the license being unlimited, the copyright holders right of bringing the suit for infringement when some user is using it out of his scope is violated.³⁰

While the law of Copyleft agreements is still in its earlier stages and is premature, by the recent judgments of the English court in cases such as of *Wallace* and *Jacobsen* recommend that Copyleft agreements is effective in ensuring that copies and modifications and changes to open-source software shall be treated as open source. Also, the courts have taken key notes for public interest in the judgment regarding open source software. Also, they have further tried to make sound public policies for the same and this shows how dedicated the courts are to the issue and thus, the courts shall remain favorable to continue and keep it effective with the Copyleft agreement which shall remain enforceable.³¹

²⁸467 F.3d 1104, 1105 (7th Cir. 2006).

²⁹Sapna Kumar, *Enforcing the GNU GPL*, 2006 U. Ill. J.L. TECH. & POL'Y 1, 1 (2006).

³⁰S.O.S., Inc. v. Payday, Inc., 886 F.2d 1081, 1087 (9th Cir. 1989)

³¹R. Scott Rhoades & Jon Rastegar, *The Impact of Recent Case Law on Copyleft Agreements*, (July 28, 2017), <http://apps.americanbar.org/litigation/committees/intellect>

CONCLUSION

Copyleft is indeed a noble idea if weighed in terms of what is beneficial for society. Not only its enforcement will benefit the society at large but efforts to make contracts under Copyleft enforceable will also prove the flexibility of our society towards the will of people. Success of licenses under copyleft not only reflects the will of people but also shows the changing phase of societal perspective towards means of production. Giving out information freely to use in itself shows how society is changing and challenging the idea of ownership in private players. However, it is irrespective of how

Copyleft challenges or questions the morality copyright, copyright still is a vital tool to encourage innovation. Not just that, copyright is the right thing to do. It reflects how state recognizes the rights of every individual and respects their prerogative of property. Thus, copyleft should be enforceable but only if the parties agree to such terms and conditions. It should not be imposed and should be construed harmoniously with other provisions of intellectual property. At last, the ultimate aim of every law is to facilitate the betterment of society and make every civilization better.