
THE JOURNEY FROM THE STATUTE OF ANNE TO THE BERNE CONVENTION ON COPYRIGHT LAW: TRACING THE ROUTE OF COPYRIGHT EXCEPTIONS IN A COMPARATIVE PERSPECTIVE

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ABSTRACT

This paper examines and traces the history of copyright law and its exceptions from the Statute of Anne (1710) to the Berne Convention 1886) by analysing the way copyright evolved from a state of monopoly to exclusive rights of the author and granting copyright exceptions for public interest. It explores the root of copyright law in the form of the Statute of Anne(1710), which marked the first legislation of copyright law, shifting the monopoly from the publishers to authors and fixing the time duration during which rights granted under the statute could be claimed. Subsequently, this paper delves into how copyright exceptions evolved by judicial interpretation in different jurisdictions. The paper also explains the Berne Convention and its important principles, such as the three-step test for copyright exemptions, national treatment, automatic protection of any work and the time duration of copyright. The paper further explains how the USA, UK and India adopted the Berne Convention and its exceptions clause in their domestic legislations. The UK adopted a narrower approach to copyright exceptions by enumerating the situations where copyright holders can not object to the use of the work. On the other hand USA adopted judge-made law, which is based on judicial decisions, and its scope is wider than the approach taken by the UK. As far as India is concerned, it adopted a hybrid model by incorporating actions which are not considered copyright exceptions and also relied on judicial decisions.

Keywords: copyright, fair use, fair dealing, Berne Convention, intellectual property, GATT, TRIPS, Statute of Anne.

I. INTRODUCTION

Copyright is an exclusive right given to the person who creates the work in which copyright subsists. After life, the most important thing to which human beings give more value is their property. In his social contract theory, Sir John Locke said that in the state of nature, people lived peacefully because there was no concept of individual property at that time; they were not settled at any place but continuously moving here and there in search of food. As soon as they started settling at a particular place, the concept of property came into existence; they wanted to save their property from among themselves and from outsiders as well. As John Locke in his theory of social contract said, there should be a superior authority to protect their life, liberty and property.

From the statements of Locke, we can say that from the development of civilisation, people are very conscious of their property rights. But intellectual property rights are a new form of property, although it is intangible, but no less valuable than tangible property. Intellectual property, from its literal meaning, is a property which is created by the intellect of human beings in the form of patents, copyrights, trademarks, trade secrets, etc.

As reward theory states that if a person creates any work by their effort, a reward must be given to them in the form of incentives so that the motivation is being sent to people that creation of work not going to be vested, it would ultimately give compelling force to innovation and development which consequently would be beneficial to the society.

Copyright protects original expression. Original in the sense that work in which copyright subsists would not be altogether new or non-obvious, rather than not copied from other works. The word expression denotes that work in which copyright is claimed must be expressed; without expression, the work will be considered as an idea, and there is no copyright in an idea. The idea-expression dichotomy in copyright law distinguishes between an idea itself and the specific way in which the idea is expressed. Copyright does not protect abstract concepts, principles, or methods because these are considered as ideas, but if these abstract ideas are expressed in the form of specific words, characters, and plots, then these are protected under copyright law.

England's Statute of Anne (1710) is often regarded as the first modern copyright law.¹ It is very interesting to note that before the legislation of 1710, there was the monopoly of the Stationers' Company over printing and publishing. They often exploited authors, preventing them from profiting from their work and restricting them from the dissemination of their works. The act of the printing press company was not only detrimental to the rights of the author but also to the general public at large.

The primary reason for introducing the Act of 1710 was to reform copyright law and shift the monopoly from publishers to the authors of the work. The Act aimed to combat various methods adopted by publishers, which were unfair practices because publishers had held significant control over the works at the expense of Authors. The Act also introduced a time limit, 14 years to the authors and 21 years for those works which were already published. At the expiration of 14 years granted to the authors, if he or she were still alive, it was renewable for a further term of 14 years, which means a total of 28 years of those works published after the Statute of Anne came into force and 21 years of those works which were already published. When the time fixed is over, the work enters the public domain, and any person can use the work without permission from the copyright holder.

Copyright gives certain exclusive rights to the copyright holder, such as the right to reproduce the work, create derivative works, distribute copies, publicly perform and display it, and in some jurisdictions, claim moral rights and protect the work's integrity. However, there are exceptions to copyright which allow limited use of copyrighted materials without permission from the copyright holder in certain contexts, like teaching, research, criticism, and review. Etc.

II. Copyright exemption before the Berne Convention (1886)

UK

The reason behind the copyright exemptions is that copyright gives exclusive rights to the person who creates the work. If the exemption is granted to use the work not given to society for some specific purposes, then it would create a monopoly in the hands of the creator. So,

1.W.R. Cornish & D. Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks, and Allied Rights* (8th ed. Sweet & Maxwell 2013).

copyright exemptions are a measure which balances competing interests between copyright holders and society at large.

The **Licensing Act of 1662** vested the Stationers' Company with powers of censorship and publication monopoly, without recognising any rights of authors or readers.² There were no provisions in the Act which gave any copyright exemptions. The **Statute of Anne (1710)** provides a paradigm shift. It vested rights in authors for a limited period, reflecting the growing Enlightenment idea that access to knowledge was essential for societal progress.³ Specifically, **Section 4** of the Statute of Anne provides that if the price of a book was deemed too high, a complaint could be made to the Lord Chancellor or other judges, who could set a reasonable price and impose penalties for overcharging.

This is an early form of **compulsory licensing or price control exemption**.⁴ Judicial decisions soon played a very constructive role in formulating policy and paved the way for the development of copyright exemptions.

In **Millar v. Taylor**⁵. The majority of the judges held that copyright is an exclusive right and perpetual without taking any consideration of the societal needs. However, dissenting opinions by Yates, J., emphasised that monopolies over knowledge were dangerous and inconsistent with societal needs. The learned judge said that, *"The right of publication is derived from the public, and the moment an author publishes his work to the world, he dedicates it to the public. A monopoly is only tolerated for the public good. But perpetual copyright would create a monopoly not for public advantage, but for the mere emolument of individuals. The great object of the Statute [of Anne] was to promote learning, and the monopolies given to authors were intended as means, not ends."*

Dissenting opinion of Yates J. influenced the later landmark decision in **Donaldson v. Beckett**.⁶ The House of Lords rejected the perpetual copyright and held that **copyright is limited to a statutory term** after publication. The majority of judges rejected perpetual copyright, emphasising that authors' rights are protected only through the **Statute of Anne (1710)**, which provided limited terms. The case clarified that common law copyright exists

² Lyman Ray Patterson, Copyright in Historical Perspective 4 (Vanderbilt Univ. Press 1968).

³ Statute of Anne, 8 Anne, c. 19 (1710).

⁴ Statute of Anne, 8 Anne, c. 19, & 4 (1710).

⁵ Millar v. Taylor, (1769) 4 Burr. 2303.

⁶ Donaldson v. Beckett, (1774) 4 Burr. 2408.

before publication, but once a work is published, it falls under statutory regulation. The decision reinforced that copyright aims to **benefit the public**, promoting learning and ensuring broader access to knowledge, rather than serving perpetual private interests.

Throughout the 19th century, particularly after the **Copyright Act of 1842**, courts continued to recognise that the purpose of copyright was not private enrichment but the broader encouragement of learning and innovation. While statutory exemptions were still minimal, doctrines evolved to allow incidental uses and abridgements necessary for education and criticism.⁷ Although the exemption under copyright law was neither clear nor codified by any legislation, but court, by its interpretation, gives certain exemptions for private use and in some specified situations for granting the compulsory license. The reason behind granting certain exemptions is classical liberal thought that monopolies must be limited to ensure the free flow of ideas vital for a democratic and progressive society.

USA

The **Copyright Act of 1790**, of the USA, which was based on the UK's Statute of Anne, did not mention any list of exemptions. However, courts developed jurisprudence that recognised limitations. In **Wheaton v. Peters**⁸. The U.S. Supreme Court affirmed that copyright existed only by statute, not by natural law. Justice McLean noted that copyright is not a natural right but a **privilege granted by the government**, and it can only exist through **legislative enactment**. He emphasised that copyright protections under common law were **not perpetual**, but instead, could only be defined by **statutory law**, reinforcing the idea that copyright is a **statutory right** that exists solely by the will of the legislature and cannot extend beyond statutory boundaries.

American courts developed doctrines that were later recognised as “fair use” under copyright law. In the case of **Folsom v. Marsh**⁹ Justice Story made significant observations regarding the scope of **copyright protection** and the **doctrine of fair use**. The case involved the unauthorised publication of an abridged book version, and Justice Story provided one of the earliest articulations of what would later be known as **fair use**. He emphasised that copyright law must balance the interests of authors in protecting their creative works and the public's need for

⁷. Kevin Garnett et al., *Copinger and Skone James on Copyright* (11th ed. Sweet & Maxwell, 2016).

⁸. *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834).

⁹. *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841) (N0. 4,901).

access to knowledge. He articulated criteria — purpose, amount, and effect on market value — that would guide determinations of permissible use without infringement of the work. Educational, critical, and transformative uses were often found exempted from infringement claims, even without express statutory authorisation.

The American approach was influenced by Republican political theory, emphasising public welfare over private property rights. In the USA, copyright exemptions were explicitly linked to republican values: fostering education, debate, and innovation. Copyright was never seen as an end in itself but as a means to societal development. Judicial innovation filled gaps left by statutory law to preserve the balance between authors' rights and public benefit. The **Copyright Clause** of the U.S. Constitution (1787) authorised Congress to secure rights to authors "to promote the Progress of Science and useful Arts¹⁰."

INDIA

The Indian Copyright Act of 1847 was mainly introduced for the British copyright protection in India, modelled on the British Copyright Act of 1842. No indigenous philosophy of copyright exemption existed independently; colonial governance dictated the adoption of British norms¹¹. Nevertheless, education was a central concern for colonial administration. Lord Macaulay's **Minute on Indian Education (1835)** proposed creating a class of English-educated Indians to assist in governance.¹² Indian courts, largely subordinate to British legal authority through the Privy Council, did not develop independent doctrines of exemption. The judicial interpretation of copyright, including any permissible uses, mirrored British law without significant adaptation to Indian social conditions. Exemptions, where they existed in India, were tolerated rather than legally structured. The underlying motive was colonial administrative efficiency — creating a manageable, educated class without necessarily empowering broader societal access to knowledge.¹³

III. POSITION AFTER THE BERNE CONVENTION (1886)

Before the Berne convention for protection of artistic and literary works internationally, author

¹⁰. U.S. Const. art. I, & 8, cl. 8.

¹¹. Nandita Saikia, *Copyright and the Rule of Law: Mapping the Borders of Copyright Law in India* (2015).

¹². T.B. Macaulay, *Minute on Indian Education* (1835).

¹³. Nandita Saikia, *Copyright and the Rule of Law: Mapping the Borders of Copyright Law in India* 26-28 (Springer, New Delhi, 2015).

often found their work into other jurisdiction without any protection because at that time copyright was territorial, no uniform time limit for the rights given to the creator of the works, widespread unauthorised reproduction resulting monetary loss, authors also noticed that the work reproduced with modification and alteration through which moral right was also violated. The convention introduced the principle of “National Treatment” so that the author of one country received the same protection from all the member nations. The principle ensured protection of both economic and moral rights, and there was no requirement of formal registration, which means copyright is automatic not as unlike the case of a patent, which requires formal registration. It also mentioned a minimum duration of the work, which is life lifetime of the author plus 50 years, which means member nations can not fix the duration of copyright less than prescribed by the Convention.¹⁴

Exemption of Copyright under the Berne Convention

The words free use or fair dealing are not mentioned specifically because these terms are used by nations in their domestic legislation. However, the convention recognised certain limitations and exceptions to the author's exclusive rights. **Article 9(2)** of the convention allows for exceptions in criticism, review and news reporting. It states that: "It shall be a matter for legislation in the country of origin to permit the reproduction of works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author".¹⁵

The Three-Step Test:

- **Special cases only**

It means that exemptions under the copyright should be limited only to specified purposes; it is not the rule but an exception to protect public interest under defined conditions, such as parody, education, and news reporting. It gives clarity to lawmaker while incorporating the principle under their domestic legislations.

¹⁴. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 828 U.N.T.S. 221 (1971).

¹⁵. Berne Convention for the Protection of Literary and Artistic Works art. 9(2), Sept. 9, 1886, 828 U.N.T.S. 221 (1971).

- **Does not conflict with a normal exploitation of the work**

Rights given to the author of the work are mainly for economic exploitation so that he can benefit from the work done by him. If by way of exception, people use it without authorisation from him, then the sole of copyright would be defeated. The word “normal exploitation” refers to sources from which rights holders generate income from the work, for example, by way of printing for sale, performance of the work, licencing, and digital distribution.

- **Does Not Unreasonably Prejudice the Legitimate Interests of the Author**

The third and final step addresses the fairness of the exception. "Legitimate interests" encompass both moral and economic rights of the author. "Unreasonable prejudice" means the exception must not disproportionately harm the author's interests, particularly in ways that are unjustifiable or excessive. The term "legitimate" introduces a balancing act between the author's rights and societal needs, such as education or access to culture. Even if the exception is specific and does not interfere with normal exploitation, it must still not result in harm that outweighs the public benefit. This step ensures that exceptions are fair, proportionate, and not used as a loophole to deny rightful authors their due.¹⁶

IV. APPLICATION OF THE BERNE CONVENTION AND ITS EXEMPTIONS BY THE USA, UK AND INDIA

USA

The United States, with its longstanding tradition of copyright formalities and its flexible fair use doctrine, was initially hesitant to join the Berne framework. However, in 1989, after over a century of resistance, the U.S. acceded to the Convention.¹⁷ The U.S. Congress enacted the **Berne Convention Implementation Act (BCIA)** in 1988 to bring domestic law in conformity with the Berne Convention rather than overhauling its copyright law entirely, the U.S. chose a minimalist strategy. The BCIA removed certain key formalities such as mandatory copyright notice and registration, both of which were deemed incompatible with Berne's prohibition on

¹⁶. *Berne Convention for the Protection of Literary and Artistic Works* art. 9(2), Sept. 9, 1886, as revised at Paris, July 24, 1971.

¹⁷. Paul Goldstein, *International Copyright: Principles, Law and Practice* 128-29 (Oxford Univ. Press 2001).

conditioning protection upon compliance with formalities. However, the BCIA clarified that the Berne Convention would not be “self-executing” in the United States. In essence, this meant that while the U.S. agreed to be bound by Berne’s principles internationally, the Convention itself could not be invoked directly in U.S. courts unless its provisions had been incorporated into domestic legislation. This approach allowed the U.S. to preserve core elements of its copyright system, including the fair use doctrine, without undergoing sweeping legal reform.¹⁸

Reasons for non-adoption of the Berne Convention

1. Moral Rights conflict

Article 6 bis of the Berne Convention grants authors certain moral rights such as right to attribution (also known as right to paternity or the right to authorship which means my work will be known my name) and right to integrity which means author has the right to object any kind of modification, alteration, distortion or mutilation of the work that could harm the reputation of the author. U.S copyright law did not recognise these rights to authors because the policy of the U.S is that copyright is purely an economic rights on the other hand, European nations treated copyright as a natural right.

2. Automatic Protection

Article 5(2) of the Berne Convention prohibits any formalities such as registration and notice means that the work of an author does not need registration for its protection and for exercising exclusive rights granted to the author. However, on the other hand, U.S law required registration and notice, particularly before the 1976 Copyright Act.

3. National Treatment

This principle means that member countries must grant the same copyright protection to the works originating from other member countries as they do for works of their nationals. The U.S. feared that joining Berne would compel it to grant automatic protection to all foreign works from member countries without requiring registration or publication in the U.S. This was viewed as economically risky, as it could expose the

¹⁸. U.S. Copyright Office, *Circular 38B: International Copyright Relations of the United States* (rev. 2021) <https://www.copyright.gov/circs/circ38b.pdf> (last accessed 5, May 2025).

U.S publishers and users to be liable without offering reciprocal benefits.¹⁹

The United States adopted the Berne Convention in 1989 primarily to align its copyright laws with global standards, facilitating better protection for American creators abroad. One of the major driving forces was the increasing globalisation of intellectual property and the need for reciprocal protection of U.S. works in Berne member countries. Before accession, American authors faced obstacles enforcing copyrights internationally, as the U.S. was not a party to Berne and hence could not claim the benefit of "national treatment" under Article 5 of the Convention. Moreover, technological advancement and the growing importance of the copyright industries—especially film, music, and publishing—prompted the U.S. to seek stronger international copyright enforcement. The Berne Convention offered a stable legal framework that was increasingly adopted by major trading partners. Additionally, accession was seen as a diplomatic move to enhance the credibility of the U.S. in international copyright negotiations, particularly in the Uruguay Round of GATT (General Agreement on Tariffs and Trade), which later led to the TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement. To join the Berne Convention, the U.S. had to pass the Berne Convention Implementation Act of 1988, which made limited but significant amendments to U.S. law, such as removing the requirement of a copyright notice.²⁰

U.K

As the original signatory to the Berne Convention for the protection of artistic and literary work, the UK aligned its domestic copyright Act and subsequent amendments, after the Berne Convention, to the core principles, such as national treatment, automatic protection, etc, of the convention. Following the ratification, the UK enacted the Copyright Act, 1911, by consolidating all the earlier laws on copyright and incorporating principles in consonance with the provisions of the convention.

INDIA

India acceded to the convention on 28th April, 1928, while still under the control of British rule and continued its commitment even after independence. When the Indian government enacted

¹⁹. Jeffrey A. Ladd, *The U.S. and International Copyright: Past, Present and Future*, 29 J. Copyright Soc'y U.S.A. 315 (1982).

²⁰. Paul Goldstein, *International Copyright: Principles, Law, and Practice*, 156-62 (Oxford Univ. Press 2001).

legislation in 1957 on copyright law and replaced Copyright Act, 1914, it aligned the Copyright Act, 1957, with the Berne standards.

Important features of the Copyright Act, 1957, incorporating the principles of the Berne Convention include:

1. Automatic Protection:

Article 5(2) provides that copyright protection should not require any formality. According to section 17 of the Copyright Act 1957 grants authors copyright without registration or any other formalities.

2. Term of protection:

Article 7 of the convention provides that member states should not lower the time duration for protection of works to less than life lifetime of the author plus 50 years. While the Indian Copyright Act under section 22 provides a time duration for protection lifetime of the author plus 60 years, which exceeds the minimum standard provided under the Berne Convention.

3. Moral Rights:

Article 6 bis of the Berne Convention provides the author with moral rights in the form of the right of attribution and the right to object to any distortion of the work. Section 57 of the Copyright Act, 1957, gives the same right to the author of any work.

4. Fair Dealing of Copyrighted Work

The Berne Convention imposed limitations on rights by incorporating the “three-step test” under Article 9(2). Indian Copyright Act 1957 incorporates the principles in the form of fair dealing provisions under Section 52 of the Act by mentioning the conditions under which a person can use copyrighted work without the permission of the owner of the work.

Above mentioned few provisions reflect how the principles of the Berne Convention are incorporated by the Indian government in its domestic legislation.

V. Conclusion

As I mentioned from the beginning, the Statute of Anne (1710) was enacted to break the monopoly of publishers and to give certain rights to the real author for their intellectual production of work and empower them. It is also an incentive to the general people that their intellectual property in the form of artistic and literary work would be compensated in the form of copyright. In the United Kingdom, the scope of copyright expanded by judicial interpretation, particularly in the case of *Millar v. Taylor* (1769). The case is important because it cemented the concept that copyright is a statutory right, not a natural right and also right would be exercised within a certain time specified, not for a perpetual period of time. After the completion of the time duration, the work would fall into the public domain. This concept eventually paved the way for the development of fair use or fair dealing, which restrict the rights of an author for the benefit of society.

The United States has not joined the international convention on copyright laws but has relied on its domestic legislation and judicial interpretation due to the reasons mentioned above. The case of *Folsom v. Marsh* (1841) particularly gave rise to the principles of fair use. The principle of fair use reflects the US constitutional philosophy that copyright is not natural, but it is an economic right, so that it can be used for public welfare.

India at that time was under British rule, and copyright law by and large, similar to the British laws on copyright. After independence government of India enacted the Copyright Act, 1957, in line with the principles such as automatic protection, national treatment, etc, mentioned under the Berne Convention, and comprehensively deals with fair dealing provisions under section 52 of the Act.

In conclusion, we can say that the evolution of copyright law from the Statute of Anne to the Berne Convention not only shaped the various domestic legislation but also shaped the shifting approach taken by various nations. Gradually, it is not just the rights of the copyright holders to utilise their work for economic benefit, rather by incorporating the concept of fair use or fair dealing, society at large would benefit from the work.