COPYLEFT LICENSING: FREEDOM THAT COMES WITH A COMPREHENSIVE COPYRIGHTED MANUAL

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ABSTRACT

Imagine living in a world where the principle of "sharing is caring" is taken so literally that it's codified into law. Welcome to the realm of copyleft! In an era where corporations heavily guard their intellectual property, copyleft swoops in as the counterforce of the digital age, redistributing the rights from the resourceful to the broader public. This socialistic concept under the copyright law picked up momentum after personalities such as Richard Stallman advocated for the precedence of community collaboration rather than commercialisation of source codes and the like.

While non-proprietary licensing sounds all utopian and undemanding, au contraire, there exist some interesting legal quandaries and contractual obligations that require serious consideration. Not to mention the jurisdictional issues given the very nature of copyleft being the enabler of boundary-forgoing development. What this paper thus aims for, is to accent the parallels that exist in the ideologies of both, copyright and copyleft, and further delve into the peculiar and somewhat paradoxical world of copyleft- where the freedom to copy and modify comes with specific conditions and altruism is mandated by law.

I. INTRODUCTION

Intellectual property in a nutshell is an umbrella term encompassing all intangible assets that are the creation of the human mind and are provided protection from various infringements under respective statutes. Copyright is one such asset that equips the originator of original works of authorship such as artwork, literature, software et cetera with a positive right to produce, reproduce, distribute and sell, exclusively and at discretion and a negative right to take action in case someone else tries to use the original work/creation, without the consent of the creator.

Intellectual properties come with a bundle of rights, *inter alia*, the right to use, reproduce, adapt, display, commercialise, **license** and assign their original works. For the purpose of this paper, we would be solely focussing on the right of the IPR holder to license and the multiple facets so entailed.

Section 2(1)(j) of the Copyright Act 1957 defines "exclusive licence" as "*a licence which confers on the licensee or on the licensee and persons authorised by him, to the exclusion of all other persons (including the owner of the copyright) any right comprised in the copyright in a work, and "exclusive licensee" shall be construed accordingly*". In simpler terms, licencing is like renting your intellectual property to another person. In traditional licensing, the IPR holder typically knows who the licensee is and such licence does not grant the licensee any right to sub-license the work, unless otherwise agreed upon. Herein, the decision to grant license rests solely upon the discretion of the original creator.

However, sometimes, given the need of the hour, instead for going for proprietary licence some intellectual property owners may opt for licenses that permit community collaboration for larger development, and to further modify, copy and share the work of the creator and along with it carry forward the right to continue the aforesaid, onto all subsequent users, while still retaining the recognition as to having created originally, said intellectual property. This practice is what is termed as 'copyleft'.

Although the term 'Copyleft' can be *prima facie* misleadingly construed to be an antithesis of all that copyright and copyright law stand for, that is not entirely the case. The concepts 'Copyright' and 'Copyleft' are themselves both subsets of the larger set of Copyright law and 'Copyleft' is nothing but a clever wordplay upon the term 'Copyright', reflecting the somewhat

opposing ideology behind the licenses it encompasses. Thus, copyleft can be simply understood as a form of copyright license that allows the creators to grant others the right to use, modify and distribute their work with a simple licensing term that any modified/derivative work of the original work, must be shared with others too. This is done to ensure that the work and any modifications thereof, remain freely accessible and open to all future users.

This paper is an attempt at tracing the emergence and the philosophical considerations behind the both, copyleft and copyright- and further analysing the parallels, intersection and overlap between copyright and copyleft licensing, as well as the legal validity and positioning regarding the same in India as well as globally.

While the application of copyright and its license applies to much more than software, copyleft still to a large extent revolves around the usage of software and digitally accessible content. This is why the aforementioned analysis will be focused around the digital realm, all while trying to incorporate the physical world into the study as well.

II. HISTORICAL BACKGROUND

1. EMERGENCE AND EVOLUTION OF 'COPYRIGHT'

1.1. Early history: Copyright as a concept has existed ever since the advent of writing and publishing, though legal recognition to the same was given much later. Nevertheless, the first instances of legal regulation surrounding copyright were the provisions of the Licensing of Press Act of 1662, England, which largely aimed at regulating printing and the printing presses. At the time, copyrights and rights alike were largely printing guilds rather than authors.

In the 18th century, the Statute of Anne (enacted 1709-1710), long title being "*An Act for the encouragement of Learning, by vesting the Copies of Printed books in the Authors or Purchasers of Such Copies, during the Times therein Mentioned*." was introduced in England as the first official copyright law. This law had a great impact on the evolution of understanding of copyright from merely being a printing monopoly to being recognised as an author-centric right. The Statute of Anne granted authors exclusive rights to print, publish and sell their work for 14 years in case of a new work and 21 years in case of an already existing work with the

possibility of renewal for another 14 years, in case the author was alive. The statute also provided for penalties upon the infringement of rights. Lastly, for a suit to be brought about with respect to infringement it was necessary that the title of the book be entered in the register kept with the Stationers Company, before publication.

Following this, the USA enacted the Copyright Act 1790, for the encouragement of literary works by way of protecting the interests of the authors and the proprietors of the works covered therein. Later on, copyright laws were passed in France in 1793, and by 1852, France had extended the protection of copyright to authors irrespective of their nationality.

1.2. Legislation in colonial India: In India, the first Copyright Act was passed in 1847[1] during the realm of the East India Company with the intention to encourage learning. This law provided protection to the rights of the author all throughout the author's lifetime, as well as extending to another 7 years post-mortem. If these 7 years ended before the completion of a total of 42 years from the date of publication, then the copyright protection would last for an extended period until the total time of copyright protection comes to 42 years. The Act also granted permission to the government to grant publishing licence for a work (typically with cultural, scientific, or historical significance) after the authors death, particularly in situations where the owner of the copyright (usually an heir) had refused to release such work.

This act was then repealed and replaced by the Copyright Act of 1911[2] which was applicable to all British colonies and covered dramatic works, non-dramatic works, artistic works, musical works, cinematographic films and their translations. This Act extended copyright to the author during lifetime, and for further 50 years after death of the author.

The provisions of the Copyright Act of 1911 were modified and added onto in the

[1] India, *The legislative acts of the governor general of India in Council, from 1834 to the end of 1867; with an analytical abstract prefixed to each act; table of contents and index to each volume; the letters patent of the High courts, and acts of Parliament authorizing them. (To be continued annually.)*, (May 5, 2015), https://ia601305.us.archive.org/24/items/IndianCopyrightAct1847/Indian%20Copyright%20Act%201847_text.pdf.

[2] *The Copyright Act, 1911, India, WIPO Lex*, https://www.wipo.int/wipolex/en/legislation/details/15847.

Indian Copyright Act, 1914[3], extending portions of the United Kingdom Copyright Act of 1911 to India and introducing criminal sanctions for copyright infringement as well as modifying the scope of the term copyright.[4] This Act remained in force till the enforcement of the Copyright Act of 1957 in post-independence India.

1.3. Legislation in independent India: Independent India's first copyright law was the Copyright Act of 1957[5] which extended to the whole of India. It has been time and again amended in 1983, 1984, 1992, 1994, 1999 and then in 2012 latest, to accommodate the dynamicity of the law and society. Further, in exercise of the Section 78 of the Copyright Act of 1957, the government introduced the Copyright Rules of 2013, replacing its 1958 counterpart. This was a significant move to make the copyright regime in the country, compliant with the judicial precedents, various international treaties that India has been a signatory to as well as the technological, scientific and social advancements.

While, the 1994 amendment brought the Act in harmony with the provisions of the Rome Convention, 1961; the 1999 amendment made the act compliant with the TRIPS Agreement; The Copyright (Amendment) Act of 2012 was brought about with the intention to extend protection of copyright over digital networks. This was done by way of synchronisation with the provisions of WIPO Internet Treaties, specifically the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonograms Treaty (WPPT). The amendment further provided for:

i. Definitions to earlier non-defined terms such as 'visual recordings', 'performer' and 'work of joint authorship';

ii. Enhancement in the duration of copyright in certain works and situations;

iii. Provision of independent rights to authors of literary and musical works in cinematograph films;

iv. Clarifications with regard to the grant of royalties and benefits to the authors,

[3] *The Indian Copyright Act, 1914, India, WIPO Lex*, https://www.wipo.int/wipolex/en/legislation/details/15848.
[4] Suvrashis Sarkar, *History and Evolution of Copyright in India*, 5 PARIPEX IJR 1-2 (2016).
[5] The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

especially with reference to commercial exploitation;

v. Making the law more compatible to the physically challenged persons;

vi. Introduce various licensing that were earlier missing from the legislation;

vii. Strengthen legal enforcement by introducing provisions that enable the Customs Department to control the import of infringing copies by the Customs Department, the disposal thereof while simultaneously providing for presumption of authorship under civil remedies.

1.4. International treaties and orders that India has acceded to:

i. **The Berne Convention for the protection of Literary and Artistic works, 1886:** It was aimed at protecting the rights of authors of literary and artistic works. It laid down the minimum standard of protection required to be undertaken by each member state by way of its national legislation. The core principles of the convention included:

   a. **National Treatment:** This means that a work originating in a member country to be treated the same by the other member countries as the latter would have, had the work been originated in their own.

   b. **Independence of Protection:** This calls for copyright protection to be granted in a member country without the imposition of any formalities, even if the same does not exist in the member country where the work originates.

   c. **Automatic protection**: As per this provision, copyright in a work subsisted the moment it was created without any need for formal registration. Basically, copyright protection was automatic upon creation.

ii. **The Universal Copyright Convention of 1951:** This protects literary, scientific and artistic works and obligates contracting states to provide for sufficient protection of rights of authors and other proprietary workers.

iii. **The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961:** This obligates the

contracting members to protect the aforementioned. It further allows for some flexibility in the domestic laws vis-à-vis duration for the copyrights of certain works covered, setting the minimum bar to 20 years.

iv. **The TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement of 1995:** TRIPS is a part of the World Trade Organisation (WTO) framework, sets the minimum standards for the protection of Intellectual Property, including copyright. It further works upon the global harmonisation of Intellectual Property Laws. Article 10(1) of the **TRIPS Agreement** calls for the protection of computer programs, irrespective of them being in source code or object code.

v. **The WIPO Copyright Treaty (WCT)**: While the TRIPS Agreement covers the minimum standards for intellectual property laws and only establishes the foundational standards for protection of computer programs, it fails to delve deep into the technological advancements. The WCT is thus a particular treaty that came into being by way of Article 20 of the Berne Convention. It largely concentrates upon the protection of computer programmes and compilation of data and other material in any form. Article 4 of the **WIPO Copyright Treaty (WCT)**, 1996 provides for the recognition and protection of computer programs under literary works under correspondence with the provisions, specifically, Article 2 of the **Berne Convention**. It further states that "*Such protection applies to computer programs, whatever may be the mode or form of their expression*".

vi. **The WIPO Performances and Phonograms Treaty (WPPT)**, designed especially for performers and producers, recognises certain economic and moral rights of the same, obligating the contracting member states to legislate adequate legal measures and remedies to deal with infringements, taking into account the technological advancements and further the protection of electronic rights management information.

vii. Lastly, the **International Copyright Order of 1999** was established in India to offer protection to authors and owners of works generated outside of India. This order transcends national boundaries. This order provides protection in

accordance with the Copyright Act, 1957 to foreign copyrights in a manner as though they were primarily published in India. However, there are certain provisions which remain exclusive to Indian works. Protection under this order only extends to foreign works originated in the nations who have acceded to the Berne Convention, the Phonograms Convention, the Universal Copyright Convention, and those that are members of the World Trade Organisation and have ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

2. EMERGENCE AND EVOLUTION OF 'COPYLEFT'

2.1. Origin: Although Li-Chen Wang, during late 1970's in his Palo Alto 'Tiny Basic's' distribution notice used the term copyleft when he wrote "COPYLEFT all wrongs reserved", the same accredited no actual interpretation of the term. 'Copyleft' was first used in its truest sense by Richard Stallman in 1985, as a term in furtherance of his project titled "GNU (**G**NU's **N**ot UNIX!) 'the General Public Licence (GPL)'".

GPL is a legally enforceable and binding licence that extends the distribution and copying rights to anyone, conditional to the fact that the same must be available to the subsequent users. The same was done to promote open and freely accessible software in the interest of society and technological development, in pursuance of Stallman's "Free Software Foundation".

2.2. Introduction to India: In 1985 Stallman founded the Free Software Foundation (FSF), dedicated to promoting computer users' rights to use, study, copy, modify and redistribute computer programs. The Free Software Foundation of India (FSF India), the official Indian affiliate of the FSF, was formally inaugurated by Richard Stallman at the Freedom First! Conference at Thiruvananthapuram, Kerala on 20 July 2001. The same is the national agency for the promotion of the use of free software, i.e. software distributed under the GNU General Public Licence (GNU GPL) or other licences approved by FSF, in all domains.[6] The agency also provides

[6] *Free Software Movement,* Free Software Foundation India, https://fsf.org.in/.

for services such as adjudication and conflict redressal within the free software domain.

Furthermore, the Ministry of Electronics and Information Technology has undertaken various initiatives[7] in the area of Free and Open Source Software over the years. **NRCFOSS - National Resource Centre for Free & Open Source Software** was established to ensure a systematic framework and aid for the carrying out of indigenous FOSS projects and other Research and Development works for the furtherance of the global FOSS ecosystem and effective contribution to the open source pool. Some of the major projects that have been undertaken by NRCFOSS have been BOSS – Bharat Operating System Solutions, BOSS Support Centers, BOSS Linux deployment, Enhancing Accessibility of FOSS desktops, GNU Compiler Collection Centre (GCC), Open Source e-Learning Laboratory, Technology / applications development for Mobile platforms, HR development in FOSS, Development of Service oriented Architecture for Kernel services, Bharti Sim: An Advanced Micro-architectural Simulator, Localization and Hardware, Interface for Android Based mobile devices, Educational domain projects and INDO-US R&D Projects.

2.3. International instances of recognition of Copyleft and copyleft licenses as legal concepts: The 'Free Art License' (*License Art Libre*) is a French copyleft license that applies the concept of "copyleft" to artistic creation.[8] Further, the American case of **Wallace v. International Business Machines Corporation[9]**, has recognised GPL as benefiting consumers by allowing for the distribution of software at no cost, other than the cost of the media on which the software is distributed. Additionally, in the German case of **Welte v. S. Deutschland[10]**, the learned district court of Frankfurt Am Mainl, German Court has upheld the validity and enforceability of GPL and stated that "*In particular, the conditions of the GPL can in no case be interpreted to contain a waiver of legal positions afforded by copyright law.* "

[7] *Major FOSS Initiatives,* Ministry of Electronics and Information Technology https://www.meity.gov.in/content/major-foss-initiatives.
[8] *FAQ_eng*, Copyleft Attitude https://artlibre.org/faq_eng/.
[9] Wallace v. IBM Corp., 467 F.3d 1104 (7th Cir.) (2006).
[10] Welte v. S. Deutschland, Docket Number 2-6 0 224/06 (2006).

3. LEGAL ENFORCEABILITY OF COPYLEFT IN INDIA

Although there exists no separate legislation or express recognition in any existing legislation for copyleft licenses, the terms of copyleft are governed by the provisions of licensing as provided by and under the Copyright Act, 1957 as well as the Indian Contract Act 1872. Further, Hon'ble Supreme Court in the case of **Tata Consultancy Services v. State of A.P.**[11] has clarified that the term 'computer programmes' as mentioned under section 2(o) of the Copyright Act entails, *inter alia*, the term 'software' under it.

Furthermore, the creator of an Open Source Software (OSS) is not necessarily entitled to royalties, since same would defeat the purpose of an OSS. Further, section 14 of the Copyright Act, while defining the meaning of copyright, specifically states under sub-clause 14(a)(ii) that copyright includes the right '*to issue copies of the work to the public not being copies already in circulation;*' and sub-clause 14(b)(i) that states '*to do any of the acts specified in clause (a);*'. These provisions completely fall silent on profitability or consideration which enable the option of free distribution and redistribution of OSS or copyleft licenced works.

III. COPYRIGHT: AN OVERVIEW

Let 'A' be a world-renowned programmer, 'B' be a buyer of software.

Now, as soon as 'A' creates software 'xyz', 'A' acquires all rights of ownership, sale, distribution etc. to 'xyz'. All of these rights are not only exclusive to 'A', but further fall under the umbrella term 'copyright'.

Now, in order for 'A' to commercially profit from her creation, she would have to actually license this property to 'B'. In order to ensure that 'B' would use the software as it is, for the intended purpose and would not further modify, sell or distribute 'xyz' without the authorisation of 'A', she creates a license agreement, that 'B' must assent to, before using the software.

In the above scenario, the only person with copyrights to the software 'xyz' is 'A', the original creator of 'xyz'. Furthermore, once the license is complete, 'B' becomes the owner of a copy of 'xyz' and acquires the right to hold and use 'xyz' as per the terms of the license. 'B' doesn't, by

[11] Tata Consultancy Services v. State of A.P., A.I.R. (2005) 1 SCC 308 (India).

reason of license, acquire ownership and subsequent copyrights to the actual work of 'A'. Here, not only is the work of 'A' protected by copyrights, but 'A' further reserves the right to enforce said copyrights by way of remedies provided under competent copyright laws, such as a suit against 'B' or any other person upon detected infringement. Further, A, being the licensor, retains complete right to govern the scope and manner of use of the licenced work by the B the licensee.

As has been established above, copyright is an umbrella term encompassing all rights granted to the originators for their original works of authorship including original literary, artistic, musical, and dramatic works as specified under section 13 of the Copyright Act 1957 (hereinafter referred to as "the Act"). Below are the specifications clarifying the term copyright for a better understanding:

1. **Meaning & Purpose:** A copyright is a form of intellectual property that provides the owner of original creative works with exclusive rights and protection of the work so produced. Such original creative works include Literary Works, Artistic Works, Software, Cinematography Works, Musical Works, Sound Recording Works etc. Generally all works which are a result of author's creativity, labour, skill and judgement and have a tangible form of expression (such as written text, recorded music etc.) can be termed as a copyright.

   Copyright encourages the creativity, innovation leading to the development of culture, society and the economy. As stated by the Hon'ble Supreme Court in **Eastern Book Company v. D.B. Modak**[12], "*The object of the Act is to protect the author of the copyright work from an unlawful reproduction or exploitation of his work by others. Copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. A copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute.*"

2. **Scope:** A copyright extends to a wide range of original work falling under the purview of section 13 of the Act and includes any literary work such as novels, poetry, textbooks, question papers, timetables, guide books, road maps, rules of games, question papers for exams, recitation of any work, mimes, dumb shows, choreographic work, painting,

[12] Eastern Book Company v. D.B. Modak, (2008) 1 SCC 1 (India).

sculpture, drawings, engravings, photographs, irrespective of whether it possesses artistic quality or not[13]. It is however, imperative to remember that Copyright lies in the specific expression of the idea and not the idea itself. The same was held in the case of **R.G. Anand v. Delux Films[14]**, wherein the Hon'ble Apex Court held that "*There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.".* This is a fundamental principle of copyright law to ensure that no monopoly could be claimed over generalised ideas while ensuring that protection is granted to specific creative expression. And so, while software named 'xyz' is granted protection under the Copyright Act of 1957, the mere idea of it before the software came into being, was not. Furthermore, the scope of copyright law extends to copyright licensing and copyleft, thus efficiently providing for the enforcement mechanisms and remedial measures in case of violation.

Territorially, the Act extends to the whole of India, while the International Copyright Order of 1999 operates on a global scale, extending to the countries that have acceded to the same, including India as of March, 1999.

3. **Rights of copyright holders:** Under the Act, as well as by way of treaties mentioned above, the owners of copyright are entitled to certain rights such as the economic rights over the commercial gains that their copyrighted property makes, and other rights such as the right to reproduce, distribute and communicate their work to the public (by way of broadcasting, webcasting etc.), the right to adapt their work and rearrange at their pleasure, the right to translate and make adaptations of their works etc. Apart from this, copyright also provides moral rights such as the right to paternity, right of integrity and right to retraction as have been discussed in the case of **Amar Nath Sehgal v. Union of India[15]**, and further the rights of assignment, dispute redressal of certain kinds, transmission and relinquishment.

4. **Duration of a copyright:** As per the Act, a copyright generally lasts for the life of the author + additional 60 years after author's death for Literary, Dramatic, Musical, and Artistic Works[16]. In case of joint ownership, it is construed with regards to the author who

[13] MATHEW THOMAS, UNDERSTANDING INTELLECTUAL PROPERTY 3-4 (Abhinandan Malik, 2016).
[14] R.G. Anand v. Delux Films, 1978 AIR 1613 (India).
[15] Amar Nath Sehgal v. Union of India, A.I.R. 2005 SCC OnLine Del 209 (India).
[16] The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).

dies last. However, the term of copyright may differ with regards to the different copyrights as specified in the chapter V of the Act itself. Copyright protection for Cinematography Films, Sound Recordings and Photographs extend for 60 years from the year following their publication as clearly outlined under section 25, 26 & 27[17] of the Act. Further, in cases of anonymous and pseudo-anonymous works, the copyright term is 60 years from the year of publication, so long as the copyright holder is not disclosed during this period. After the duration of copyright protection, such work comes in the public domain.

5. **Assignment:** Assignment refers to a transfer of one or more Copyright rights to any other person by the owner. Such assignment may be full or partial subject to limitations in duration or purpose. Section 18-19A of the Act deal with the assignment of a copyright, clarifying the procedural aspects, agreement requirements, royalties, considerations, lapse of rights in case of non-exercise of the assigned rights and the applicability if the assignment in certain cases, amongst other things.

6. **Limitations and exceptions:** Limitations and exceptions refer to the provisions and circumstances that allow for the non-consented use of copyrighted works upto certain extents. The same are more often than not done in the interest of the general public. In India, some limitations of copyright include, *inter alia*, fair dealing[18], reproduction of work for judicial proceedings, reproduction of any work in accordance with law in force and other things covered under section 52 of the Act.

7. **Infringement:** As per Section 51 of the Act, any action done in contravention to the terms of the license or sans-license that infringes upon the exclusive rights of the owner of the copyright amounts to infringement. Some issues of copyright infringement include plagiarism, i.e., copying someone else's work and claiming it as own; modifications of the original work without proper licensing etc. In the case of **Associated Electronic & Electrical Industries (Bangalore) (P) Ltd. v. Sharp Tools[19]**, the Hon'ble High Court of Karnataka has laid down the test for copyright infringement and stated that "*One of the surest test to determine whether or not there has been a violation of copy right is to see if the reader, spectator, or the viewer after having read or seen both the works would be*

[17] The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India).
[18] Archi Jain, *Deciphering The Doctrine Of Fair Dealing In The Indian Copyright Context*, J.P. Associates (Dec. 26, 2023), https://jpassociates.co.in/deciphering-the-doctrine-of-fair-dealing-in-the-indian-copyright-context/.
[19] Associated Electronic & Electrical Industries (Bangalore) (P) Ltd. v. Sharp Tools, A.I.R. 1991KANT406 (India).

clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first."

8. **Moral Rights:** Moral rights, although not explained in detail in the copyright law, also plays and integral right to ensure the preservation of author's personal connection with their original work. **Right to Paternity and Integrity** are two integral and fundamental rights encompassed under the broad term Moral Rights. Right to Paternity ensures due recognition of the creator as the author of the work and prevents any denial of authorship. Right to Integrity on the other hand prevents changes, alterations or modifications in the work such that such change could cause harm to the author's reputation or honour.

9. **Practical aspects of copyright:** As soon as an original work comes into existence, the creator is granted right to first ownership under Section 17 of the Act and along with it all rights to the creation itself covered above. Along with it, they can further license their rights to others for specific purposes or otherwise.

10. **Notable examples from the real world:** While there exist tonnes of real life examples of copyright, one of the more well-known may be the American singer song-writer Taylor Swift's decision to re-record a substantial part of her discography in her 'Taylor's version' series of albums in order to reclaim the copyright of her work in a dispute with Big Machine Records.[20]

11. **Criticisms to Copyright:** While the concept of copyright ensures commercial gains and protection to the owner of the copyright, the same by default results in certain constraints upon the subsequent users and the public at large. The same has been briefly discussed below:

    11.1. **Restricted Public Access:** Depending upon the conditions of the license in use, a copyright may sometimes end up impeding access to vital information that would have otherwise benefited the masses. The works that are copyrighted are sometimes controlled by large corporate houses and not the creators themselves. By design, it is not the creator of the copyright that controls the conditions of access to the content, but instead some big profit making company backing the creator. Consequently, the

[20] Khyati Kushwah, Taylor Swift vs. Big Machine: Decoding Copyright Quandaries, J.P. Associates (Jan. 9, 2024), https://jpassociates.co.in/taylor-swift-vs-big-machine-decoding-copyright-quandaries/.

same ends up deterring benefits to both, the creators (due to unfair consideration) and the public (due to enhanced conditions that pre-requisite the access) especially considering their applicability in developing countries like India and alike.

11.2. Monopolisation of Markets: Keeping in mind the very nature of a copyright, it may be claimed that excessive copyrighting does not only restrict access to important information, but may further create unsolicited hindrances in an otherwise healthy and competitive market and may result in monopolised pricing vis-à-vis cultural growth and discriminatory development in society.

11.3. Jurisdictional Issues: Given the variations in copyright laws globally, unless the issue under consideration is one that is regulated by international treaties and until the countries under consideration have acceded to said treaty, the resolution of the problem has to face first the problems regarding appropriate jurisdiction and inconsistent laws relating to copyright.

11.4. Lack of Proper Systems for Detecting Copyright Infringement: One of the major and practical issues faced while enforcing copyright laws is the lack of adequate systems, mechanism, records & software to detect infringement or to verify whether a similar copyright already exists or is registered. This not just leads to rampant piracy & unauthorized use, but also leads to the grant of statutory registrations for identical or similar works to multiple persons, further heavily complicating enforcement of copyright laws.

IV. COPYRIGHT LICENSES

Chapter VI of the Act covers the types of licenses pertaining to copyrights, the applicability and termination thereof, being governed by sections 30 to 32-B. A licensor generally enjoys the option of reckoning the license at will, and said license confers upon the licensee a personal right that is neither inheritable nor transferable, unless and until the terms of the licence assent to the same.

Licenses vary upon the basis of their terms and duration, a list of kinds of licenses has been provided below for better understanding.

1. **Exclusive license**: When only one licensee has the exclusive right to use the licensed work in the ways specified as per the terms of the license and others are excluded from being licensees.

2. **Non-exclusive license**: A non-exclusive license is one where the licensor can enter into as many agreements with as many licensees as the former pleases. There exists no clause for exclusivity on the licensors' side.

3. **Cross-license**: A license that two or more parties enter into mutually, becoming the licensor and licensee for each other's copyrights and other intellectual properties.

4. **Non-sub/ Non-Transferable license**: Unless specifically restricted, other licenses such as the non-exclusive license permit the transfer of license and the rights acquired therewith to other licensees. Unlike such licenses, a non-sub license restricts such a transfer and concentrates the power of transferring and/or creating such licenses to only the licensor. Basically this is a licence where sub-licencing is explicitly prohibited.

5. **Irrevocable license**: A license such as this creates perpetual rights in favour of the licensee for usage of the intellectual property for the specified purposes and as per the terms of the license. The same can thus not be revoked by the licensor so long as the terms of said license are followed in accordance.

6. **Perpetual license**: This license is sans a time limit, however, it lasts till the duration of the intellectual property right itself. The opposite of such licenses are term-limited licenses wherein the time duration for the usage of the license is specified and expressly mentioned.

7. **Royalty Free license**: Such a license is a cost-effective access to a copyright, wherein the same can be used without having to pay any consideration as royalty in return. the same allows for broader utilisation of license so long as the terms of license are met.

8. **Shrink-Wrap license**: Typically used for software, is the kind of license that is included within the package in which the software is purchased. Once the package is torn, the license comes into effect.

9. **Click-Wrap license**: This type of license comes into effect when the software is

installed and the terms of usage are agreed to. One of the examples may be the anti-virus software that we install on our computers come with licenses in the form of usage terms and agreements that we have to agree to upon installation for the software to start working.

While an assignment is generally without limitations, licenses are granted with limitations that exist as terms of the license. It is essential to clarify that licenses do not transfer the copyright in itself, but instead, create an interest in said copyright so long as certain conditions are met with.

But what happens when a copyright holder refuses to grant license for creation of interest in said copyrights to a work that has already been published or performed, to a willing potential licensee?

This is where **compulsory licensing** comes in. A compulsory license is an state-mandated involuntary or forced contract between an unwilling seller and a willing buyer imposed by the state.[21] the condition for the same is the work having been performed in public or published by the author. In order for such a grant to be fair to both- the buyer and the seller, the Berne convention recommends a 3 step test.

Under its well-known terms, exceptions are only permitted (1) in certain special cases; (2) which do not result in a conflict with the normal exploitation of a work and (3) which do not unreasonably prejudice the legitimate interests of the author (or other right-holder).[22]

Section 31 of the Copyright Act, 1957 states that:

"*(1) If at any time during the term of copyright in [any work] which has been published or performed in public, a complaint is made to the [Appellate Board] that the owner of copyright in the work—*

(a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work, and by reason of such refusal the work is

[21] MATHEW THOMAS, UNDERSTANDING INTELLECTUAL PROPERTY 40-42 (Abhinandan Malik, 2016).
[22] Jonathan Griffiths, *The 'Three-Step Test' in European Copyright Law - Problems and Solutions* Queen Mary School of Law Legal Studies Research Paper No. 31/2009, Sept. 22, 2009, at 1.

withheld from the public; or

(b) has refused to allow communication to the public by [broadcast] of such work or in the case of a [sound recording] the work recorded in such [sound recording], on terms which the complainant considers reasonable;

the [Appellate Board], after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that the grounds for such refusal are not reasonable, direct the Registrar of Copyrights to grant to the complainant a licence to republish the work, perform the work in public or communicate the work to the public by [broadcast], as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the [Appellate Board] may determine; and thereupon the Registrar of Copyrights shall grant the [licence to such person or persons who, in the opinion of the [Appellate Board], is or are qualified to do so] in accordance with the directions of the [Appellate Board], on payment of such fee as may be prescribed."

Accordingly, if 'J', the writer of a play "A- A Tale" refuses 'I' from the license to reproduce 'A- A Tale', when it has already been performed in public, 'I' has the right to file a complaint to the Copyright Board against 'J''s refusal. If the grounds of refusal by 'J' are not found to be reasonable, the Board has the power to direct the Registrar of Copyrights to grant the sought after remedy in favour of the complainant and establish the required consideration upon grant in favour of the respondent.

Compulsory licensing can further differ in terms of grant with works withheld from public, unpublished works, and compulsory licenses for the benefit of disabled, as has been elaborated in Sections 31A, 31B and 31C, respectively.

The Act also provides for **statutory licensing** (i.e., license that is applied for, to be granted by the Copyright Board, after having provided a notice to the owner of such rights and having stated the duration, territorial coverage and having paid royalty to the owner) for cover versions that are the sound recordings of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work and statutory licensing for broadcasting of literary and musical works and sound recordings as per the provisions of the Act (Section 31C and Section 31D respectively). While

both statutory and compulsory licenses involves state's intervention and might seem similar at first, however they differ in a way that while compulsory licenses typically allow the copyright owner to set terms & conditions of licences and negotiate regarding the rate of royalty, on the other hand statutory licenses impose terms upon the copyright owner.

The **termination** of copyright licenses (covered under Section 32B of the Act), is to take place:

1. In case the owner of the copyright or any person authorised by the aforesaid publishes a translation of or a work so licensed (to be translated and published by the licensee in a particular language), in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject.

   The Act further grants a 3 month period starting from the service of a notice by the owner to the licensee intimating the publication of the translation as aforesaid, wherein the works already translated and published by the licensee shall stand valid. furthermore, all works produced and published by licensee before such termination stand valid till exhaustion of copies so produced and published.

2. In case if after having granted the license to produce and publish the reproduction or translation of any work under section 32A, the owner of such reproduction rights or any person authorised by aforesaid, sells or distributes copies of such work or a translation thereof, in the same language and with a substantially same content and at a substantially related price as is normally charged in India for works of same standard on the same or similar subject. However, the conditions of a 3 month period and service of notice and validity of works reproduced prior to termination, in this scenario, are subject to the same conditions as have been mentioned above.

V. COPYLEFT: AN OVERVIEW

"I consider that the golden rule requires that if I like a program I must share it with other people who like it. I cannot in good conscience sign a nondisclosure agreement or a software license agreement."

-Richard Stallman

Suppose, 'C', a software developer and social worker, develops software 'abc' that helps detect domestic violence in a particular area, by way of lodging an anonymous complaint and automatically alerting the competent authorities and further systematically laying down the remedial measures that may be used by the victim if said victim so pleases. 'C' launches this software under a GPL (General Public License) GNU license, so that not only is this software available for use for free, but can be further modified as per the legal system of the jurisdiction where the software will be used, and for other modifications such as language fluidity and user authentication which would make the software more user-friendly and credible.

This Copyleft software comes with certain clauses in its license that ensure, inter alia, that any modification so made does not contradict the intention of the software created, that the source codes are shared and open, etc.

Copyleft (generally denoted by a reverted image of copyright symbol, which has no legal standing), as covered above, is the philosophical and legal method of licensing creative work such as software and similar intellectual property in such a manner that the same is available to other users vis-à-vis usage, modification and distribution, along with the distribution of derivatives of the same. Copyleft is also generally known as open source licensing and free licensing, though it is imperative to remember that not all open source licences are copyleft as some open source licences do not require the derivative works to be licenced under the same terms.

Note: It is a legal mistake to use a backwards C in a circle instead of a copyright symbol. Copyleft is based legally on copyright, so the work should have a copyright notice. A copyright notice requires either the copyright symbol (a C in a circle) or the word "Copyright." A backwards C in a circle has no special legal significance, so it doesn't make a copyright notice.[23]

The attributes of copyleft have been covered as below:

1. **Purpose:** Copyleft says that anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it.[24] Copyleft licensing is a way of promoting intellectual freedom of creation and addition to pre-existing work, for the furtherance of society and technology. It preserves openness and community

[23] What is Copyleft?, Free Software Foundation https://www.gnu.org/licenses/copyleft.en.html.
[24] *What is Copyleft?*, Free Software Foundation https://www.gnu.org/copyleft/.

collaboration by way of underscoring unrestricted, free access to a particular work and further enables derivation from said work.

> That being said, the term 'free' denotes free in the sense of freedom and not necessarily free in the sense of price. i.e., the intention being that nobody should pay for **permission** to use, modify or distribute the GNU system, although distribution costs may apply. In the words of Stallman himself, "*Free software is software that users have the freedom to distribute and change. Some users may obtain copies at no charge, while others pay to obtain copies—and if the funds help support improving the software, so much the better. The important thing is that everyone who has a copy has the freedom to cooperate with others in using it.*"[25]

2. **Scope:** Copyleft is not an intellectual property in itself like copyright, patent or trademark. Copyleft is a licencing model of copyright which operates within the framework of copyright law and not a standalone form of IP. It is a contractual obligation that the licensor and the licensee agrees upon while transacting for the software code[26], which ensures that derivative works remain freely accessible to all under terms similar to the initial licencing terms. The scope of copyleft licensing extends to the freedom of usage, study, modification and distribution of an original work with a copyleft license, with certain conditions such as ShareAlike requirement and source code availability to ensure credibility and fairness in the process.

   The scope of copyleft falls under the purview of copyright laws, with the latter protecting the licenses covered under copyleft and providing for enforcement mechanisms and remedial measures in case of infringement.

3. **Rights and obligations of copyleft users:** inter alia, copyleft users have the right to unrestricted usage, study and modification as long as certain terms or 'obligations' such as source code sharing, ShareAlike requirements, compliance with terms of the license and preservation of notices are met.

[25] *FSF History*, Free Software Foundation https://www.fsf.org/history/.
[26] Nikunj Poddar, *An Understanding On Copyleft And Enforceability Of Such License Agreements*, 5 RFMLR, 42-49 (2018).

4. **Duration of a copyleft:** in general, copyleft licenses enjoy perpetual existence without the diminution of rights and obligations; however, some copyleft licenses may call for updates and versioning in the licenses as per the requirement of the time and advancement in technology. It is however pertinent to note that, the copyright licences cannot override or extend beyond the term of the licenced copyright work itself. The duration of copyright work varies based on jurisdictions. In India, the copyright term of software is the author + 60 years following the author's death. Once this duration expires, the copyright work comes into the public domain. Thus, any and all copyright licences associated with the said work will become void as on date of expiration of copyright term.

5. **Modes of transfer:** Copyleft licensed work grants unrestricted access to the original work for the purposes detailed out above. In essence thus, the primary modes of copyleft turn out to be distribution, modification into the original work, integration of smaller projects with copyleft licenses into larger ones, access to the source code and the licensing of derivatives of the original work.

6. **Limitations and exceptions:** The common limitations of copyleft include compatibility issues with other copyleft licenses or with other proprietary licenses. Further, while copyleft covers copyright issues, it may not adequately cover trade-marks and patents associated with licensed works.

   Other limitations include the potential non-extension to hardware or firmware, which may require additional consideration while ensuring compliance in copyleft licenses that involve embedded systems and the like.

   Additionally, international legal compliances and the interpretation of derivative works under copyleft licenses may constitute further challenges and pose as limitations in the effectiveness of such licensing.

7. **Infringement:** *inter alia***,** distribution without source code, modification without compliance with the terms of the license and further distribution thereof, adding additional restrictions to the original license beyond what has already been specified by the originator, non-compliance with ShareAlike Requirements that are generally necessitated by majority of copyleft licenses and unauthorized commercial use all constitute grounds for infringement of a copyleft license and enable potential legal action such as a suit for

injunction by the party whose rights have been infringed, although the same may differ with the facts of the case and the specificities of such licenses. In the case of **Artifex Software v. Hancom (2017)**[27], the plaintiff sued the defendant for using plaintiff's open-source software in defendant's proprietary software without sharing the source code to others. The plaintiff filed a suit in court against this clear breach of GPL terms by the defendant. The court ruled in favour of the plaintiff and held that open-source licenses like GPL are enforceable and protected under contract law thus, the defendant was obligated to share the derivative work with the public and comply with the terms of the GPL. By not doing so, the defendant had evidently breached the GPL terms.

8. **Practical aspects of copyleft:** practical aspects of a copyleft licensed work include enjoying all rights and freedoms attached to the same, along with the availability of the source codes, the community collaboration that helps advance own work as well as the society in general and the global reach and the legal considerations attached to the compliance of the terms ad obligations of such licenses.

9. **Notable examples from the real world:** the common examples of copyleft licensed projects include GNU/Linux, Apache HTTP Server, Mozilla Firefox Web Browser and perhaps the most well heard of them all, Wikipedia.

10. **Criticisms to Copyleft:** *Inter alia*, the issues that exist vis-à-vis copyleft licensing are:

    10.1. There exist **no required warranties** for such free software. Reason being the very nature of this software being that of modifiability and voluntariness. It thus a general rule that licensors have a shied from warranties under GPL, unless such clause is deliberately added. It becomes the discretion of the licensor so as to add a warranty clause in the GPL licenses, ridding the licensor of any legal obligation and potential liabilities that may have otherwise arose with use and modification.

    10.2. **Incompatibility of copyleft software** that occurs with certain devices that refuse the installation or modification of software inside them. The same contradicts the very purpose of such licensing and thus does not fall under the purview copyleft.

[27] Artifex Software, Inc. v. Hancom, Inc., 2017 WL 4005508, 3-4 (2017).

10.3. Thirdly, **patent claims** over computer programmes threaten their free existence and use. This is why copyleft licenses such as GNU GPL aim to assure that patents do not create hindrance over usage on general purpose computers by way of introducing clauses that restrict patent holders from utilizing their patents to restrict or sue developers of GPL software. Copyleft licenses like the GPLv3 (GNU General Public License version 3) inherently include a 'patent retaliation' clause which ensure that contributors are prohibited from enforcing patent rights against other GPL users. On the other hand, GPLv2 (GNU General Public License version 3) lacks any such patent protection, exposing the GPL users and other contributors to patent litigation as well as patent-based restrictions on the software usage. This is why GPLv3 is often said to give stronger protection as compared to its predecessor GPLv2 which was considered to have weaker set of protection.

10.4. The **overlapping over various statues** relating to the Contract law, Copyright law and Competition law that go into the regulation of copyleft licensing is one of the major areas that require deeper research for better manoeuvre of such licenses. One such case emphasising the issue of overlap is the case of **Jacobsen v. Katzer**[28], wherein one of the issues under consideration was the treatment of the clauses in the license. While the plaintiff Jacobsen argued that the Artistic License's terms were conditions limiting the license's scope, violation thus constituting copyright infringement, defendant Katzer argued these terms were merely covenants (Covenants are promises within the contract, and their violation results in breach of contract claims.), making any violation a breach of contract, not copyright infringement. In this case, the learned court sided with Jacobsen, recognizing the terms as conditions and allowing for the possibility of copyright infringement claims if those conditions were violated. Basically, the ruling reiterated that the open source licenses can be enforced as both a contractual breach and copyright infringement.

10.5. **Privity of contract** is one another major issue arising in copyleft licensing because the principle essentially restricts the enforcement of the terms of licensing to only the parties involved in the agreement. Which means that licensors cannot directly

[28] Jacobsen v. Katzer, 535 F.3d 1373, 1379 (2008).

enforce copyleft terms against third parties who modify or redistribute the software. Therefore, ensuring compliance with GPL can become challenging.

10.6. Lastly, since copyleft ideology intends to promote collaboration by way of eliminating secrecy and consequently competition, the same may lead to violation of antitrust laws. However, in the case of **Wallace v. International Business Machines Corporation (supra)**, the plaintiff's claim of defendant's violation of anti-trust laws by way of 'predatory price fixing scheme preventing plaintiff from marketing own computer operating system against competitor', the claim of the plaintiff was rejected upon plaintiff's failure to prove any anti-trust injuries. It was held by the court that GPL license is beneficial to consumers as it allows for free of cost distribution of software other than at the cost of media on which software is distributed.

VI. COPYLEFT LICENSES

Say, 'T', a software developer develops software 'm' that can be installed in peoples' watches and be used to detect onset diabetes. For the reasons of public interest, T develops and puts out this software as a copyleft software so as to encourage community collaboration and efficient upgrades in the software.

This raises an interesting question. Who's to stop a multi-billionaire pharmaceutical company from copyrighting *software 'm'* with a proprietary license and turning *'m'* into a proprietary software? Answer: The copyleft licensing.

As has been time and again iterated over the course of this paper, copyleft in itself is not an alternative to copyright but instead a general concept that governs the terms of a subset of licenses that fall under copyright. The licenses that thus fall under copyleft licensing are as follows:

1. **GNU General Public License (GPL)**: The license that is most frequently used in Free Software projects, is designed in a way that ensures freedom to use, modify & redistribute free software (free with regards to accessibility and usage, and not necessarily with regards to pricing).

The **terms and conditions**[29] that exist under this licensing are the passing on of the same rights and freedoms that were received, upon distribution. *Inter alia*, these come out to be conveying of verbatim companies by the user in appropriate manner, conveying of modified source versions by the user, conveying of non-source forms, protecting users' legal rights from Anti-Circumvention Law etc. however, the sharing of source code under this license remains the discretion of the user.

To be mentioned is that the originator of the software is entitled to assert his/her copyright over it, and the distribution of the software is done by way of license that allows use, distribution and modification further down the line.

2. **GNU Affero General Public License (AGPL)**: A free, copyleft license for software and other kinds of works, specifically designed to ensure cooperation with the community in the case of network server software.[30] While the GNU GPL allows for the user discretion with regards the sharing of the source code, the GNU Affero GPL calls for a mandatory sharing of the modified source code, even including web-based modification, in order to ensure community collaboration. The same thus gives subsequent users a public access of the source code of the modified version when operating a public accessible server.

3. **GNU Lesser General Public License (LGPL)**[31]: A compromise between strong form of copyleft and permissive licenses. LGPL is a weaker copyleft as it ensures certain freedoms for developers and users by allowing the integration of proprietary software with the open-source software without being required to release their own source code under the same license. This is done linking the proprietary software with open-source libraries. In LGPL, only modifications made to the LGPL-licensed component itself must be open-source, while the proprietary software can use the library without being forced to open-source itself.

4. **GNU Free Documentation License (FDL)**: made with the aim to enable the making of manuals, textbooks, or other functional and useful documents available in any

[29] *The GNU General Public License v3.0 - GNU Project*, Free Software Foundation https://www.gnu.org/licenses/gpl-3.0.en.html.
[30] *GNU Affero General Public License*, Free Software Foundation https://www.gnu.org/licenses/agpl-3.0.html.
[31] *GNU Lesser General Public License v3.0 - GNU Project,* Free Software Foundation https://www.gnu.org/licenses/lgpl-3.0-standalone.html.

medium ("free" in the sense of freedom), while providing the users the freedom to copy and redistribute it, with or without modifying it, either commercially or non-commercially.[32] All the while the originators and publishers are still credited for their work and are in no way held liable for the modifications made by subsequent users over the original works. This license enables copyleft to reach beyond softwares and enable access to and collaboration of resources beyond the world of programmers and developers.

This license applies by way of a notice placed by the copyright holder, enabling a world-wide, royalty-free license that has a perpetual existence, to use that work under the conditions stated under said license. The license can be availed by any number of persons, for gratis or for free and this license is deemed accepted upon copying, modification, or distribution of the work in a way that would otherwise require permission under copyright law. It is however, pertinent to note that, FDL specifically applies to documents and is not generally used for softwares.

5. **Community licenses:** Licenses such as the Mozilla Public License (MPL) for software works and Eclipse Public License (EPL)[33] weak copyleft licences which allow the modifications to remain proprietary if certain conditions are fulfilled. These are based on the principles of open source and prioritize community involvement amongst all else. For instance, MPL grants a "*world-wide, royalty-free, non-exclusive license:*

    a. *under intellectual property rights (other than patent or trademark) Licensable by such Contributor to use, reproduce, make available, modify, display, perform, distribute, and otherwise exploit its Contributions, either on an unmodified basis, with Modifications, or as part of a Larger Work; and*

    b. *under Patent Claims of such Contributor to make, use, sell, offer for sale, have made, import, and otherwise transfer either its Contributions or its Contributor Version.*"[34]

[32] *GNU Free Documentation License v1.3 - GNU Project,* Free Software Foundation https://www.gnu.org/licenses/fdl-1.3.html.
[33] Wayne Beaton, Eclipse Public License 2.0 (EPL), The Eclipse Foundation https://www.eclipse.org/legal/epl-2.0/.
[34] *Mozilla Public License, version 2.0*, Mozilla Foundation https://www.mozilla.org/en-US/MPL/2.0/.

Branching from the Free Software Movement that was initiated by Richard Stallman to promote the freedom of exchange and modification of source code is the **Open Source Movement.** The term open source was coined during a strategy meeting in February 1998 in Palo Al to California by a group of software developers with links to the Linux operating system.[35]

The movement largely differs from its predecessor in the sense that the latter promotes a collaboration with proprietary software and focused upon the practical benefits of such collaboration while still rooting for an open exchange of the source code, while the former disapproves of such collaboration since the same restricts user freedom, i.e., the *sine qua non* of the Free Software Movement.

Some open source software licenses have further been provided as below:

1. **Permissive licenses:** These are copyleft licenses such as the MIT license[36], Apache license or the BSD license, that allow the right of usage, copy, modification, merging, publishing, distribution, sub-licensing and/ or sale of copies of software with fewer restrictions than with the GNU copyleft licenses such as near zero costs and the retained option of commercializing the final result with minimum legal issues[37]. These licenses prioritise users' freedom over freedom to work of said users. The same allows for enhanced flexibility in commercial and proprietary use.

2. **Specialised licenses:** These licences apply to creative works rather than software. These include, inter *alia*, the **open content licenses** such as the creative commons license[38] that allows for users to be granted public permission for usage of creative work under copyright law with various versions allowing for various liberties such as commercial use by way of adaptation and distribution by reusers (CC BY) and licensing of modified materials under identical terms (CC BY-SA) to name a few.

   Another example may be the Common Development and Distribution License

[35] A Guadamuz and A Rens, *Comparative Analysis of copyright assignment and licence formalities for Open Source Contributor Agreements*, (2013) 10:2 SCRIPTed 207 http://script-ed.org/?p=1065.
[36] *MIT License*, MIT https://mit-license.org/.
[37]Sergio Carlavilla Delgado, *Why you should use a BSD style license for your Open Source Project*, FreeBSD Documentation Portal https://docs.freebsd.org/en/articles/bsdl-gpl/.
[38] About CC Licenses, Creative Commons https://creativecommons.org/share-your-work/cclicenses/.

(CDDL)[39] which is a weak copyleft license that shares similarities with the Mozilla Public License (MPL) and the Eclipse Public License (EPL), while at the same time offering greater freedom as compared to its 'copyleft' counterparts. It requires only for the source code files to remain under the licensed part and enables commercial use, striking a balance between the stronger copyleft licenses and permissive licenses.

VII. CURRENT TRENDS AND FUTURE DIRECTIONS

1. Within the concept of copyright:

1.1. Digital Rights Management (DRM): DRM refers to digital supervision over usage, modification and distribution of copyrighted works available on digital media. The current age of technology is witnessing a surge in DRM mechanisms that prevent infringement of copyright holders' rights on a global scale. The trends in future too seem to be headed towards gradually increasing development in said technology and mechanisms for better protection while at the same time striking a balance with fair dealing and consumer rights.

1.2. Fair Dealing Expansion: The society today is witnessing growth in advocacy of fair use expansion, with a shift towards societal development and cultural growth by way of fair use of copyrighted material, instead of a stringent copyright regime that restricts inclusivity and overall development. The future direction thus seems to be leaning towards potential legal developments as well as reforms in mechanisms that ensure a balance between copyrights and consumer rights.

1.3. Global Harmonization: Given the advancement of technology and increasing globalisation, there exists today a level of accessibility to knowledge and art which was potentially unimaginable say, a hundred years ago. All this requires that international treaties (e.g., Berne Convention, WIPO Copyright Treaty) and enforcement mechanisms be in harmony with the domestic laws so as to supervise and protect copyrights and successfully prevent infringement on a global scale.

1.4. Integration of AI: The biggest concern perhaps in current laws relating copyrights is the work created with aid of artificial intelligence. The future direction in this regard

[39] *Common Development and Distribution License 1.0*, Sun Microsystems https://opensource.org/license/cddl-1-0.

points to the development of well-defined legal frameworks addressing issues related to AI in copyright law as well as policy reforms on a global scale.

1.5. **Enhanced Open Access and Public Domain**: The current society is increasingly shifting towards public accessibility of academic and literary work, with increased concerns for societal and cultural development and inclusivity. All this further translates to future developments in policies and legal frameworks advocating for open access of educational works in the interest of general public all while ensuring fairness for the copyright owners.

2. **Within the concept of copyleft**

2.1. **Copyleft beyond software:** Although traditionally copyleft has been used to license software and computer programmes, with increasing usage and technological advancements, copyleft has been extending more and more into the realms of creative works such as artwork, musical compositions and the alike by way of creative commons licenses, into open educational resources such as freely accessible research material that is licensed in a manner allowing for usage, modification and sharing and further scientific research and publications that have adopted open access models enabling free reach and accessibility.

Further, open Hardware projects such as Arduino and Raspberry Pi allow accessibility to their designs under copyleft licenses. Other examples of copyleft beyond software may be open software documentation, open government data and digital libraries and archives that use copyleft licenses or open licenses to make collections freely accessible online.

2.2. **Hybrid Licenses:** Much like in Copyright, Copyleft too is currently focused on optimally creating licenses that are increasingly compatible as well as combining features of different licenses to come up with enhanced versions that may in the future provide for better collaboration and simpler procedures, reducing technicalities involved.

2.3. **Enforcement of obligations:** the current enforcement mechanisms of copyleft licenses are largely community driven given the global nature of such licenses and thus

the jurisdictional issues that go hand in hand due to lack of proper legal mechanisms in place on a global scale.

However, with increasing advancements in copyleft licensing, it is the need of the hour that work be done in the direction of well-defined enforcing authorities and probable innovations with regards to the integration of artificial intelligence into automated reporting of infringements.

2.4. Reliable funding Sources: Given the fact that copyleft projects do not necessarily aim for commercial gains and in the process run the risk of financial exhaustion, there exists the need for research and development of sustainable financial sources that wouldn't run out such as collaborations with tech-giants in pursuance of CSR and similar social welfare requisites, instead of relying wholly on donations and crowdfunding the way most current copyleft projects function.

VIII. FINDINGS

A comparative study drawing out the parallels between both the concepts

S. No.	Basis of Comparison	COPYRIGHT	COPYLEFT
	ORIGIN	Absence of clear information regarding the precise moment of origin of Copyright, however, the Statute of Anne, which was enacted 1709-1710, is generally considered to be the first statute to recognise copyright & grant exclusivity to authors.	First used in its truest sense by Richard Stallman in 1985, as a term in furtherance of his GNU (GNU's Not UNIX!) 'the General Public Licence (GPL)' project.
3. 2.	**DEFINITIO N**	A legal concept under copyright law granting exclusive rights and control to creators over original works of authorship vis-a-vis use and distribution for a limited period of time.	A legal concept under copyright law allowing for the existence of licenses that allow community collaboration and societal development by way of enabling freedom to use, modify and distribute software freely, upon the condition that the same rights are passed over to subsequent users.

4.	**GLOBAL RECOGNITION**	Exists, owing to domestic statutes relating to copyright law that are specific to each country as well as various international treaties that ensure a certain level of consistency in said laws to promote global collaboration and benefit to copyright holders as well as prevention of jurisdictional issues.	Although no law as of yet expressly recognises or regulates the concept of copyleft, copyleft licenses are de facto regulated by copyright law, such licenses being a subset of licenses available under said law. The concept however has largely developed through various case laws and still requires research and development.
5.	**EVOLUTION OF CONCEPT IN INDIA**	Evolution in India can be divided into pre and post-colonial India, wherein, the statutes relating to copyright have regulated enforcement and checked infringement. Furthermore international treaties that India has acceded to have helped evolve law from time to time.	The Free Software Foundation of India (FSF India), the official Indian affiliate of the FSF, was formally inaugurated by Richard Stallman in 2001 and since then India has witnessed leaps in development of free and open source software, especially with the establishment of NRCFOSS (National Resource Centre for Free & Open Source Software).
6.	**PRACTICAL ASPECTS**	The terms and conditions of licenses of copyright and the enforcement thereof all constitute the practical aspects of copyright concept. furthermore, the acquisition and relinquishment of copyright as well as the duration and extent of copyright exercised are all important aspects in determining proper enforcement.	The various kinds of licenses involved in copyleft, terms and conditions thereof and the enforcement mechanisms all constitute practical aspects of copyleft. given the lack of proper legislation with regards to such licenses and ambiguities present in consequence, the enforcement mechanisms, i.e., the Courts play a crucial role in maintaining the practicality of such licenses as well as clearing out the ambiguities present.
7.	**SCOPE**	Copyright extends to various works of literature such as novels, poetry, textbooks, question papers, timetables, guide books, road maps, rules of games, question papers for exams, recitation of any work, mimes, dumb shows, choreographic work, painting, sculpture, drawings, engravings, photographs,	Copyleft extends to the philosophy backing licenses under copyright law that allow for the freedom of usage, study, modification and distribution of an original work with a copyleft license, with certain conditions such as ShareAlike requirement and source code availability to

		irrespective of whether it possesses artistic quality or not[1], however, it does not extend to ideas, facts, systems, or methods of operation that are not an authentic expression of the aforesaid. [1] *Understanding Intellectual Property* (Thomas, 2016)	ensure credibility and fairness in the process.
8.	**LIMITATIONS**	Certain limitations of copyright include free use doctrine, usage of copyrighted works in judicial proceedings and other exceptions that are provided in the Copyright Act of 1957.	Limitations that exist in copyleft licensing include compatibility issues when it comes to the integration of non proprietary licenses with proprietary licenses, incompatibility with certain media that do not allow for modification of software and further the incompatibility issues that exist when it comes to the integration of software with hardware or firmware. Other than that, international legal compliances and the interpretation of derivative works under copyleft licenses may be further listed as limitations, owing to the facts of the case under consideration.
9.	**FOCUS POINT OF THE CONCEPT**	Copyright is more concerned with proprietary rights and the protection of the owner of copyright against potential infringements.	Copyleft is majorly concerned with the free access and distribution of software and source code without commercialisation of the software, the point of contention differentiating copyleft's free software movement with that of open source movement.
10.	**USAGE FLEXIBILITY**	The licenses that operate upon the philosophy of copyright allow as much flexibility of usage as the owner of copyright permits. generally, such licenses offer little to no freedom and the licensee is not at a discretion to modify, use or	Such licenses focus mainly on the user freedom and the enablement of collaboration so as to encourage community development. accordingly, users have certain freedoms and flexibility with respect to usage,

		distribute such works as the latter may please.	modification and distribution so long as the same is passed on.
11.	**MOTIVE**	Commercial Gains and protection of own rights and control over own work.	Community collaboration and sharing of source code and the discouragement of proprietary softwares.
12.	**ETHICAL IMPLICATION AND REQUIREMENT OF CONCEPT**	Ethical implications of copyright include social justice by way of protection of owner's rights and further encouragement of innovation by way of promotion of competition and equity.	Ethical implications of copyleft include promotion of community collaboration, open and free access to knowledge, discouragement of monopolisation and localisation of development and growth.

A comparative analysis of licenses involved

S. No.	Type of License	Description	Rights Granted	Restrictions imposed	Examples
1.	**Copyright**	Licenses recognising the rights of copyright holder and providing for terms upon which the licensor waives off infringement of said copyright in favour of the licensee for a particular duration of time.	The copyright holder specifies the rights that licensee holds, the same can be with regards to distribution, publishing, translation etc. and include jurisdictional and territorial clarifications.	Licensee cannot violate terms and conditions of license without permission of the licensor as the same would otherwise constitute ground for violation of license.	Various novels, movies, proprietary software etc.
2.	**Copyleft**	Licenses that allow for users to modify, use, distribute software without restrictions upon certain conditions such as source code sharing and passing on the	Right to use, modify, distribute pre-existing software as well as allow for derivative works originating from such a software.	The mandatory passing of same rights to subsequent users as well as the requirement that derivative works cannot be released under any license other than copyleft license.	GNU GPL (General Public License), GNU AGPL (Affero General Public License) etc.

		rights to subsequent users.			
3.	**Open Source**	A corporatized variation of copyleft licensing that calls for source code sharing and other benefits provided by copyleft licenses so long as the licence does not forbid the selling or commercialising of said software.	Right to use, modify, distribute pre-existing software as well as allow for derivative works originating from such a software, along with collaborating with other proprietary software and the commercialisation of derivative works.	Fewer restrictions when compared to copyleft licenses, varies with type of open source license under consideration.	MIT license, BSD License, Apache License etc.
4.	**Open Content**	Concerned with the sharing and usage of content such as text, images etc., this license blends characteristics of copyleft licenses and open source licenses.	Rights to use, distribute, modify and distribute content licenses under open content license, however, conditions vary license to license.	Vary with licenses involved, while some licenses necessitate attribution, some may mandate ShareAlike clause while some may restrict commercialisation of derived content.	Creative Commons Licenses such as CC BY, CC BY-NC and CC BY-SA etc.

IX. RESULTS

In a nutshell thus, copyright is a wider term providing for the bundle of rights that relate to the original intellectual creations of certain specified kinds and provide exclusivity and protection to the creators along with the ownership and claim over said original work. Whereas, copyleft is a term that provides for a more free and unrestricted access to original work and a platform for collaboration that enables community advancement. Both the concepts fall under the purview of copyright law and the originators in both concepts are provided with protection against infringements in respective cases under the same. The major differences between the two are enlisted and examined as below:

1. **Primary Intent: Proprietary vs. Open Source:** Copyrighted material belongs to the owner exclusively with regards to ownership, distribution and sales of said property all while enabling the acquisition of royalties and considerations from the intellectual property so concerned.

   Copyleft licensing is more concerned with providing an open and unrestricted platform that does not enable proprietary benefits from distribution etc.

2. **Practical motivations: Self-interest v. Community collaboration:** The sale, distribution, publication etc. of copyrighted property result in commercial gains which cannot be disentitled from the owner of this property. The same results in a capitalistic approach and ideology that backs up the concept of copyright.

   Copyleft is more collaboration oriented, wherein, the originator cannot restrict the further usage, modification and distribution subject to the conditions mentioned in the GPL license. Herein, commercial gains take a back seat and the same enables a global cooperation resulting in societal and technological advancement. This approach is based on a socialistic leaning ideology wherein community advancement is prioritised over individualistic profits.

3. **Licensing Terms and Conditions:** the Terms and Conditions of copyright licenses are suited to the profitability and the will of the owner of the property, with the owner conserving certain rights to self in order to enable exclusivity over his/her work.

   On the other hand, Copyleft licenses enable unrestricted access and usage with the availability of the source code upon the condition that the same be carried forward and the modifications so made may not restrict but instead encourage further collaboration.

4. **Legal Enforcement and Compliance:** For Copyrights, the legal compliance concerns the non-infringement of exclusive rights retained by the owner of the intellectual work as well as the compliance of conditions of the license that has been handed down for further distribution and publication of the copyrighted work.

   However, in copyleft licenses, the legal compliance encompasses the royalty free availability, disclosure of the source code, free modification and the sharing of the

rights to distribute without restrictions, all while ensuring mutual benefit to the community.

5. **Equilibrium in society:** Copyright law as a whole is responsible for establishing a balance between the exclusive rights granted to the owner of an intellectual property and the overall promotion of public access to knowledge or lack thereof. Copyrights limit public access and potential derivatives of the original work. Whereas, it is necessary for the purpose of a copyleft project to be successful that the unrestricted access be fair and ensured to all, without any regressive modifications or the unavailability of the source code. The ideological gap between the two concepts helps establish an equilibrium between the consumer driven and creator driven concepts.

6. **Hindrances in cultural growth and thought evolution:** stringent enforcement of copyright ideology, especially in cases of works that are not easily accessible, such as works only available in print and only in certain languages hinders cultural exchange and community development. Traditional copyright law thus comes forward as a good Samaritan and provides for provisions that keep the interest of the public at large in mind while regulating the aforementioned. However, in situations where even such provisions lack, it is the ideology of copyleft and the regulation thereof by copyright law and contract law that help move forward the cultural and societal growth and help make an all the more larger impact in the world.

X. CONCLUSION

Copyleft licensing shares some similarities with what we know as the traditional copyright in a way that both aim to safeguard the ability to use, copy, modify, and distribute an original creative work. However, the crucial distinction between the two essentially lies in the beneficiaries of these rights. Under copyright, the author/owner retains exclusive right over all aspects of the creative work, on the other end, under a copyleft license, such rights are extended to the public at large.

And staying true to the very nature of copyrighting, while rights under copyleft are available to the public at large, the work does not enter the public domain. It remains under copyright protection, akin to traditionally copyrighted works.

This can be confusing as copyleft licenses and public domain works both allow for use, modification, and redistribution by anyone, however, the key difference between the two is that works in the public domain can be commercially exploited. Take for instance the episodes of "The Beverly Hillbillies" in the public domain that can be sold on DVDs or used as a part of other creative works to be generated without permission. Au contraire, works under copyleft licenses cannot be sold to convert such licenced work into a proprietary work. The license mandates that they only be freely distributed.

In cessation thus of the abovementioned account on copyleft licensing and having drawn out a hopefully coherent contrast with the traditional copyright licenses, it is necessary to remind oneself that human ideas and thoughts evolve by building upon pre-existing concepts and notions. This process of intellectual development has been instrumental in the progress and advancement of civilisation right from its inception. The concept of copyleft licensing too takes from this notion, and builds itself into a magnificent community-participation based activity. And it is this very collaborative spirit that lies at the heart of the copyright license that is copyleft.