AN UNDERSTANDING ON COPYLEFT AND ENFORCEABILITY OF SUCH LICENSE AGREEMENTS

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ABSTRACT

Copyright has one of the most fashionable legal tool of recent time. Every author tries to create a monopoly over his/her work. Copyright law has gone through a series of changes to become author friendly and granting sufficient rights to authors over their work. While the copyright law was gaining confidence, there were a group of people who were not very excited about these rights. They believed in distribution of work and collaboration between authors for better community. They revolted against the copyright law by creating something called copyleft. Copyleft is a philosophy where the authors believe that their work should remain free and everyone should be able to gain access to their work, use it, modify it and redistribute it. They used the existing copyright regime to convert it into a dispense rights rather than curtail them. In this paper, I have tried to present an overall understanding on what is copyleft and then compare it with the existing copyright laws. At first instance it seems that copyleft is opposite to copyright but I have tried to present how copyleft works within the copyright regime and not against it. The copyleft has not been legally recognised through a legislation, thus creating a doubt a on its enforceability

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and validity. I have tried to present a compilation of different laws and cases which would elaborate how copyleft agreements are valid contracts and can be enforced under copyright law sand contract laws. Establishing copyleft agreement as a valid contract would provide the licensor and licensee more trust and belief in the philosophy and help them gain certainty for the protection of their rights. Copyleft is a Marxist approach to combat the proprietary software models to break the girdle of monopoly and provide and spread knowledge to the masses.

1. INTRODUCTION

Computers, internet and software have become a part of our everyday life. We download software and applications everyday on our computers and mobile phones. These softwares are often redistributed by the user under the terms and conditions of a license agreement. These softwares are of two types- 1. Proprietary software and 2. Non-proprietary software.

Proprietary softwares are that softwares over which the owners have monopoly rights and they decide the usage, modification and distribution policies for their software. Non-proprietary software on the other are not bound under the clutches of the owner and are free to be used, modified and redistributed.

Non-proprietary software licenses such as free software and open source software model is gaining popularity in the legal arena. The legal scholars and legislators have avoided the development for a long time. The concept is working on its own with the help of its propagators and believers.

There a number of concerns and issues that arises from the said concept. The validity of the license agreement under copyright law and contract law is still between lines. No formal legislative recognition has been given for this kind of license agreement. Validity and enforceability of these agreements are not clear in its perspective. A few judicial decisions have thrown some light but this concept still needs a formal recognition and better understanding. An effort has been made in this paper to gather the general understanding on the subject along with providing some insight into the legal validity and enforceability of the agreement with a specific focus on India.

1.1. WHAT IS COPYRIGHT?

Copyright is a branch of 'intellectual property rights'.[1] It gives the owner, the rights to control the use of his 'work' which are the result of his/her skill or investment of time, effort or money.[2] Copyright protects the original expressions of ideas[3] and not the underlying ideas in itself.[4] Copyright gives the authors certain rights over their work. The authors are called the rights holders.[5] The rights includes the right to reproduce, right

[1] *Copyright Laws of the United States*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/title17 (last visited Jan. 15, 2018).
[2] *Copyright and Related Rights*, GOVT. OF U.K., THE NAT'L ARCHIVES, http://www.nationalarchives.gov.uk/documents/information-management/copyright-related-rights.pdf (last visited Jan. 15, 2018).
[3] Daniel A. Tysver., *Works Unprotected by Copyright Law*, BITLAW, https://www.bitlaw.com/copyright/unprotected.html (last visited Jan. 15, 2018).
[4] LEE A. HOLLAAR, LEGAL PROTECTION OF DIGITAL INFORMATION (Bloomberg B.N.A. Library 2016).
[5] IAN S. BLACKSHAW, SPORTS MARKETING AGREEMENTS: LEGAL, FISCAL AND PRACTICAL ASPECTS (T.M.C. Asser Press 2011).

over control of derivative work, distribution, public performance and other moral rights like attribution.[6] Software also come under the protection of copyright. Article 4 of the WIPO Copyright Treaty, 1996 provides, "Computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. Such protection applies to computer programs, whatever may be the mode or form of their expression". TRIPS Agreement, Article 10 (1) provides that, "Computer programs, whether in source or object code shall be protected as literary works under the Berne Convention". Indian Copyright Act, 1957 through Section 2(o) includes computer programs as literary works. Thus it is evidently clear that the world community as a whole has accepted that the developer of a software has copyright over his work and that they possess all the rights that a copyright holder possess over his work.

1.2. WHAT IS FREE SOFTWARE MOVEMENT?

Free software and open source software represents a philosophy regarding the optimal manner for the distribution and development of software.[7] The main idea behind the movement is to make the source code[8] of the software available to transferees of the software and making the software available to others with limited or no restrictions on its use along

[6] YU PETER K., INTELLECTUAL PROPERTY AND INFORMATION WEALTH: COPYRIGHT AND RELATED RIGHTS 346 (Greenwood Publ'g Group 2007).
[7] David McGowan, *Legal Implications of Open-Source Software*, U. ILL. L. REV. 241, 268, 274 (2001); *see also* Greg R. Vetter, *The Collaborative Integrity of Open Source Software*, UTAH L. REV. 563 (2004).
[8] Marci Hamilton & Ted Sabety, *Computer Science Concepts in Copyright Cases: The Path to a Coherent Law*, 10 HARV. J.L. & TECH. 239, 266 (1997).

with a right to modify[9] and redistribute the software. Open source software presents a paradigm shift in the field of software development. The copyright law protects the software under the category of 'literally work'. This protection prevents the subject matter available to others by entitling other people to see how the software functions by accessing the executing program but not the original expression of the source code.[10] This was the very reason for the birth and the development of the free software movement which opposed this monopoly and believed in availability of the technical information to all, promoting the functioning of the software along with modification,[11] redistribution and adaption.

1.3. BIRTH OF COPYLEFT

The philosophy of the open source software was brought to the forefront by Richard Stallman, founder of the GNU Project[12] and President of the Software Foundation. The idea behind the GNU project was to provide a platform where Richard Stallman and numerous other developers can distribute their software under a "copyleft" agreement that allows reproduction and distribution of their works, while preventing the

[9] R. Stallman, *The Free Software Definition*, GNU OPERATING SYSTEM (1996), https://www.gnu.org/philosophy/philosophy.html, (last visited Jan. 15, 2018).
[10] Christian H. Nadan, *Open Source Licensing: Virus or Virtue?*, OPEN SOURCE INITIATIVE (2002), https://opensource.org/docs/definition.html (last visited Jan. 15, 2018).
[11] R. Stallman, *Selling Free Software*, FREE SOFTWARE FOUNDATION (1996), http://www.fsf.org/philosophy/selling.html. (last visited Jan. 15, 2018).
[12] R. Stallman, *The GNU Manifesto*, GNU OPERATING SYSTEM, https://www.gnu.org/gnu/manifesto.en.html (last visited Jan. 15, 2018).

subsequent licensors from placing further restrictions on them.[13] "Copyleft is a play on the word copyright. It describes the practice of using copyright law to remove restrictions on distributing copies of modified versions of a work to others by requiring that the same freedoms be preserved in modified versions."[14] When a developer makes any new software, he gets the copyright over the software and possess proprietary rights over the software. He gets the right to license it, and distribute it. This monopoly right allows the developer to control the market for the software and exploit its users. If in a situation where the developer does not want to possess any proprietary rights over the software and wants it to be available to everyone for use, modification and development he can put the software into public domain and let other people use its codes. This vision of the developer can be compromised when any other user modifies the software using his code as foundation and then copyright the same, thus stealing away the free availability vision of the developer. Here is when the copyleft clause licensing comes into play. Copyleft is a tool used by software developers to prevent their software from being bound by further restrictive copyright.[15]

[13] *Licences*, GNU OPERATING SYSTEM, https://www.gnu.org/licenses/licenses.html (last visited Jan. 15, 2018).
[14] *Copyleft Definition*, LINUX INFORMATION PROJECT, http://www.linfo.org/copyleft.html (last visited Jan. 15, 2018).
[15] Chris Sontag, *No, the GPL is not Good for the Software Industry*, NETWORK WORLD, https://www.networkworld.com/article/2337296/software/no--the-gpl-is-not-good-for-the-software-industry.html (last visited Jan. 27, 2018).

A copyleft license redistributor cannot develop proprietary applications from the software.[16]

2. IS COPYLEFT AN ANTITHESIS TO COPYRIGHT?

The open source movement or the copyleft licensing basically stands against the current 'proprietary' model of copyright protection for software[17] because they believe that the proprietary model restricts the benefits to the society.[18] A superficial understanding of copyleft license agreement is likely to confuse people about its working. Since copyleft is a play on the word copyright, it is construed to be an antonym to the concept of copyright. It is believe to be antithesis to copyright in the sense that copyright tends to create monopoly right over original work by their author, while copyleft propagates open source software wherein it is believed that work should be available to people for use, modification and redistribution. Copyleft is not an antonym to copyright but it uses the existing legal foundation upon which the proprietary software exists.[19] Where in the existing proprietary model, copyright is used to exclude, copyleft licensing used the same copyright model to promote inclusion.[20] The modus operandi

[16] R. Stallman, *What is Copyleft*?, FREE SOFTWARE FOUNDATION, http://www.fsf.org/copyleft/copyleft.html (last visited Jan. 15, 2018).
[17] S. Potter, *Opening up to Open Source*, 6 RICH. J.L. & TECH., no. 2, 2004, at 24.
[18] N. Patel, *Open Source and China: Inventing Copyright*?, 23 WIS. INT'L L.J., no. 1, 2005, at 781.
[19] S. Dusollier, *Open Source and Copyleft: Authorship Reconsidered*?, 26 COLUM. J.L. & ARTS, no. 3, 2003, at 281.
[20] C. McMains C & E. Seo, *The Interface of Open Source and Proprietary Agricultural Innovation: Facilitated Access and Benefit-Sharing under the New FAO Tre*aty, 30 WASH. U. J.L. & POL'Y 405 (2009).

of the copyleft license is to copyright a software and then use the exclusive rights to mass license for its use, improvement, modification and redistribution with a contingency that the following user need to license with the same terms.[21] Copyleft licensing is not an antithesis to copyright, in fact, it is entirely dependent on copyright law.[22]

3. COPYLEFT AS A CONTRACTUAL OBLIGATION

Copyleft is a contractual solution to stop companies from converting free softwares into proprietary softwares.[23] General Public License is such a standard contract which ensure that the software is passed on, making it obligatory for the redistributor to pass along the same freedom to further copy and change it. Copyleft is not a right in itself like copyright, patent or trademark. It is a contractual obligation that the licensor and the licensee agrees upon while transacting for the software code. The copyright holder of the software used his primary distribution right[24] as a contingency in the license agreement that the user needs to pass on the same rights given to him by his licensor. GPL is one of the most commonly used copyleft licensing agreement. It is a mixture of the legal contract law and the

[21] D. McGowan, *Intellectual Property Challenges in the Next Century: Legal Implications of Open-Source Software*, 1 U. ILL. L. REV. 241 (2001).
[22] M. Maher, *Open Source Software: The Success of an Alternative Intellectual Property Incentive Paradigm*, 10 FORDHAM INTELL. PROP. MEDIA & ENT. L.J., no. 2, 2000, at 619.
[23] H. Meeker, *Why You Need to Understand Open Source Licences*, 19 INT'L TECH. L. REV. 24 (2001).
[24] P. Lambert, *Copyleft, Copyright and Software IPRs: Is Contract Still King?*, 23 EUROPEAN INTELL. PROP. REV., no. 4, 2001, at 165.

ideological manifesto believing in free software and non-proprietary approach. The preamble reads like:

> *For example, if you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. You must make sure that they, too, receive or can get the source code. And you must show them these terms so they know their rights.*[25]

The objective of the free software is achieved by licensing through two means:

a. By protecting the software through the existing copyright laws;
b. By providing the users a license, giving them the freedom to use and modify the software, provided they pass along the same rights.

This can be reiterated by looking at the section clause of the agreement which reads like. Section 1 for example states:

> *1. You may copy and distribute verbatim copies of the Program's source code as you receive it, in any medium, provided that you conspicuously and appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty; keep intact all the notices that refer to this Licence and to the absence of any warranty; and give any other*

[25] *Supra* note 13.

> *recipients of the Program a copy of this License along with the Program.*[26]

The thing to notice here is that the license gives the user the freedom to make monetary changes when passing the copy till it is consistent with the general free software characteristics. The restriction against using the software as commercial software is specified in the following section:

> *2. You may modify your copy or copies of the or any portion of it, thus forming a work based on the Program, and copy and distribute such modifications or work under the terms of Section 1 above, provided that you also meet all of these conditions: […] b) You must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.*[27]

The software and its derivatives should be available to the public for free. A derivative user should get the same equal rights as given by the original licensor. This license has been termed as 'viral contract' by Professor Radin, who define them as "contract whose obligations purport to 'run' to successor of immediate parties".[28] The terminology is justified by the working of these contracts. The contract spreads in a viral form as every

[26] *Id.*
[27] *Id.*
[28] M. J. Radin, *Humans, Computers, and Binding Commitment*, 75 INDIA L.J. 1125 (2000).

licensee have to include the same terms of the copyleft agreement in all he further licenses as a part of their contract with the original licensor. The copyleft agreement is a contract in the eyes of law and it fulfils all the basic requirement of a valid contract. The owner of the software is the offeror and the user is the offeree. The offeror is not asking for any consideration in terms of monetary value but the consideration of knowing the source code and able to use, modify and redistribute the software[29] is that the subsequent user will also get all the similar rights and the user will not create a proprietary right over the software or any of its derivative work.

4. ENFORCEABILITY OF A COPYLEFT CLAUSE

The copyleft agreements are based on the existing copyright upon a software[30] and any infringement of the license agreement would allow the copyright holder to initiate proceedings for infringement of copyright as well as breach of contract.[31] It is propounded by several copyleft advocates that it is not a contract but a license[32] that is "a unilateral permission the property of the licensor without an obligation"[33]. They believe that it only consists of freedoms with a minimum allowance to redistribute in

[29] ProCD, Inc. v. Zeidenberg, 908 F. Supp. 640, 655 (W.D. Wis. 1996).
[30] M. Stoltz, *The Penguin Paradox: How the Scope of Derivative Works in Copyright Affects the Effectiveness of the GNU GPL*, 85 B.U. L. REV., no. 5, 2005, at 1439.
[31] Nat'l Car Rental Sys. v. Computer Assoc. Int'l, 991 F.2d 426, 431-32 (8th Cir. 1993).
[32] Greg R. Vetter, *The Collaborative Integrity of Open Source Software*, UTAH L. REV. 563 (2004).
[33] ANDREW LAURENT, UNDERSTANDING OPEN SOURCE AND FREE SOFTWARE LICENSING, *available at* https://people.debian.org/~dktrkranz/legal/Understanding%20Open%20Source%20and%20Free%20Software%20Licensing.pdf (last visited Jan. 27, 2018).

accordance within the restraints of the license.[34] The argument bases their logic on the absence of privity of contract which makes it unenforceable as a contract before the court of law. This confusion arises because they believe that all the subsequent user are bound by the original license agreement between the copyright holder and the first user but as the software is downstream, a new contract takes place at every stage.[35]

The case of *Jacobsen v. Katzer*,[36] has identified the enforcement of both copyright and contract law on a copyleft license agreement. In this case Jacobsen was the copyright holder who sued a software developer for infringing his copyright due to non-compliance of the terms of an open-source licensing agreement. The court held that if a condition placed on the agreement is infringed by the licensee, the licensor's copyright is infringed upon. The court also resounded that such license agreement does not lack consideration and thus they can be enforced under contract law thus giving the court the power to grant injunctions as reliefs.

The court in the case of *Wallace v. International Business Machines Corporation*,[37] has accepted the philosophy of GNU GPL and held that the agreement is not only valid on the original software but also on all the derivatives created from the original work. In the case of *Caldera Systems, Inc. v. International Business Machines Corporation*,[38] the plaintiff had

[34] *GPL Violations Legal FAQ*, http://gplviolations.org/faq/legal-faq.html (last visited Jan. 15, 2018).
[35] Robert Merges, *The End of Friction? Property Rights and Contract in the "Newtonian" World of On-line Commerce*, 12 BERKELEY TECH. L.J. 115, 129 (1997).
[36] Jacobsen v. Katzer, 535 F.3d 1373 (Fed. Cir. 2008).
[37] Wallace v. Int'l Bus. Mach. Corp., 467 F.3d 1104, 1105 (7th Cir. 2006).
[38] Caldera Sys., Inc. v. Int'l Bus. Mach. Corp., No. 03-CV-0294 (D. Utah 2003).

claimed that the defendant has infringed their copyright and trade secrets by incorporating SCO's proprietary UNIX code into open source code Linux operating system. A number of companies were sued by SCO for providing UNIX code to Linux. The court held that 326 lines of code in Linux kernel were potentially infringed. The verdict clearly propounded that the open source agreement used existing copyright laws. The courts have again protected the copyright holder in the case of *S.O.S., Inc. v. Payday, Inc.*[39] The court held that though under a copyleft agreement the user works with the freedom given to him by the holder but if the user goes outside the scope of the agreement and violates any provision of the agreement, the copyright holder as the right to initiate a proceeding against the licensee for infringement of his copyright.

This was further clarified in the case of *Graham v. James*,[40] where the court held that if the provision of the agreement were merely a covenant, then the holder has no remedy under copyright law and he could initiate proceedings only under contract law and ask for damages for breach of contractual obligation. In another case of *Welte v. S. Deutschland*,[41] district court of Frankfurt Am Mainl, German Court has upheld the validity and enforceability of GPL. In this case the Plaintiff was the owner of three softwares which were licensed under the GNU GPL. In 2006, the defendant offered certain service to its users using the programs of the plaintiff without satisfying the conditions of GPL. The court held that the GPL stipulates the

[39] S.O.S., Inc. v. Payday, Inc., 886 F.2d 1081, 1087 (9th Cir. 1989).
[40] Graham v. James, 144 F.3d 229, 236–37 (2d Cir. 1998).
[41] Welte v. S. Deutschland, Docket No. 2-6 0 224/06.

freedom to use, modify and distribute the corresponding software which is granted by a non-exclusive license to everyone and is automatically terminated upon the violation of the policies of GPL. In the most recent case of *Artifex Software, Inc. v. Hancom, Inc*.,[42] a California district judge refused to dismiss the case for breach of contract claims for alleged violation of the GNU GPL thus resounding the acceptance of contract law for addressing breaches of GPL. What happened in the case is that Artifex software is a commercial licensor of a software called 'Ghostscript', which is a widely used PDF interpreter. They have two models to distribute it

a. Purchase the commercial license
b. Obtain the free copy under the terms of GPL.

Lately, Artifex discovered that Hancom Inc. had been distributing 'Ghostsrcipt' along with their other softwares. Artifex realised that Hancom has not bought the commercial license but have the GPL license and thus it is violating he GPL license agreement by not disclosing the source of 'Ghostscript' as required under GPL. In lieu of this, Artifex sued Hancom for breach on copyright and contractual obligation.

Another major issue in enforceability of copyleft agreement is the third-party rights. Suppose X is the copyright holder of a software and Y is a copyleft licensee of the software. Further Y licenses the software to Z. Now, if Z breaches the license agreement, whether X will be able to initiate proceedings against Z. This question was answered by court in the case of

[42] Artifex Software, Inc. v. Hancom, Inc., No. 16-CV-06982-JSC, 2017 U.S. Dist. 2017 W.L. 1477373 (N.D. Cal. Apr. 25, 2017).

Beta Computers v. Adobe Systems,[43] in which Beta Computers provided a software by third party named Informix. The court held that though Informix is not a party to the contract between Beta Computers and Adobe, they have a third- party right. This has been criticised by MacQueen who says that when the subject of the agreement is the licensing rights, it cannot create rights to the third party.[44]

Thus, looking at the various judicial pronouncements by the court, it is clear to us that the courts accept the copyleft licensing agreement as a valid agreement and though it has no formal recognition in any legislation. The courts have accepted that the basis of these agreements is found in contract law and all the ingredients and necessities of contract law have to be followed by these agreements. Apart from the courts have also recognised that these agreements cannot work in isolation without his enforceability of copyright law. These agreements stem their strength from copyright law while fulfilling the conditions of contract law.

5. VALIDITY OF COPYLEFT CLAUSE IN INDIA

In India, there is no specific law regarding copyleft. No legislation talks about the validity or enforceability of copyleft. We need to then see the validity of the same through existing laws regarding copyright and contract. In the case of *Tata Consultancy Services v. State of Andhra*

[43] Beta Computers v. Adobe Sys., 1996 S.C.L.R. 587.
[44] H.L. MCQUEEN, SOFTWARE TRANSACTIONS AND CONTRACT LAW, LAW AND THE INTERNET: REGULATING CYBERSPACE (Edwards & Waelde ed., 1997).

Pradesh[45], The Supreme Court has held that 'software' is an Intellectual Property. It will be covered under Section 2(o) of the Indian Copyright Act, 1957 under literary works which includes computer programs. Open Source software and copyleft license is not specifically recognised under the Information Technology Act, 2002, the Copyright Act or the Indian Patent Act, 1970.

For the working of copyleft license agreement in India, Section 14 of the Copyright Act comes into play. Section 14(a) (ii) and 14(b) (i) allows the copyright holder of a computer programme "to issue copies of the work to public not being copies already in circulation". This ambiguity in Section 14 regarding, whether the distribution should be free or not helps the developers under copyleft agreement to license and re-distribute their software for free. Also Section 30 of the Act provides the copyright holder the right to license "any interest" in his work. The rights which are passed on by this holder to the licensee is equivalent to the rights attained by the assignee of the copyright. Section 19(3) specifically provides for an option to the licensor to license his work for free. This is further safeguarded by Section 19(2) which makes it obligatory on the licensor to specify the rights licensed, with the duration and the extent of it. Though the copyright law does not specifically recognises open source software but it does provides for enough protection for the copyright holder to enact a copyleft agreement within the legal framework of the country.

[45] Tata Consultancy Serv. v. State of Andhra Pradesh, A.I.R. 2005 S.C. 371.

Another aspect of such agreements is to look whether these copyleft agreement fulfil the requirement of the contract law in India. Section 10 of the Indian Act provides for the ingredients of a valid contract which includes

a. Free consent
b. Competent to contract
c. Lawful consideration
d. Lawful object
e. Not expressly declared to be void.

The question before us is whether the copyleft agreement fulfil all these requirement. The first two requirements that are (i) free consent and (ii) competent to contract depends on specific facts. Contract act along with various case laws provides the laws regarding the above mentioned two and are case specific. The main point of contention is whether there is consideration in copyleft license agreement. In general understanding consideration is something done in return for the benefit which we get in the contract. Section 2(d) of the Contract Act defines consideration. This definition makes it clear that the consideration need not always be monetary term. His is further appreciated by the court in the case of *Kedarnath v. Gori Mohamed*. [46] In this case the plaintiff started some construction work based on the faith of the promise by the defendant. The court held the agreement enforceable stating that the consideration of faith was a valid consideration.

[46] Kedarnath v. Gori Mohamed. (1886) 14 Cal. 64.

Section 25 Explanation 2 clearly provides that the consideration in an agreement need not be adequate. Inadequacy of consideration is not a ground to hold a contract to be invalid. Thus in a copyleft agreement providing the same rights to subsequent users as given by the copyright holder and not to create a proprietary model of the software consists of valid consideration for the rights to use, modify and distribute the software.

We have already discussed above that neither copyright law nor any other law in India has held the copyleft license to be illegal or void, thus fulfilling the requirement of the contract act.

The above discussion clearly points out that a copyleft license agreement fulfils all the requirement of a valid contract. This makes any such license enforceable as a contract in the eyes of law. The licensor can sue a licensee for breach of contract. Not only that, but the copyright holder can sue the licensee for infringement of copyright.

6. CONCLUSION

Copyleft as a philosophy stands against the restrictive and monopoly system of copyright.[47] It uses the existing regime to fight against it. The copyleft advocates are motivated by individual and community centric welfare. A very strong argument that is made against copyleft is that it deters innovation.[48] This argument falls flat at the very premise because

[47] M. Satchwell, *The TAO of Open Source: Minimum Action for Maximum*, 20 BERKELEY TECH. L.J., no. 1, 2005, at 1757.

[48] Anthony DiSante, *Why the GPL is Incompatible with Commercial Software*, ENCODABLE,

copyleft does not forbid commercial usage,[49] but only provides for passing of the software within the framework of the license. The philosophy focus on other incentive rather than just monetary benefits. The copyright regime protects only the developer while the copyleft protects the developer as well as the user. For example if an individual programmer creates a software for a MNC, all the rights would rest with MNC. On the other hand if he copyleft licenses it, he retains the right to make copies of the program and further make improvements to it.

Software developers who want their software to reach the maximum number of people and want further development in their work should definitely consider copyleft license agreement as their best bet today, the copyleft license is working on the faith and morality of the developers and users. The public policy pressure enables them to respect open source rights.[50] The judiciary has tried to recognise the copyleft license agreements and the right associated with it but this is not enough. A formal legislative recognition or guidelines are required due to increasing popularity of copyleft. The traditional understanding that the developer likes to create a monopoly over his work is taking a paradigm shift. Authors now want to work in collaborations and like to disseminate their thoughts and opinions

https://encodable.com/tech/blog/2006/02/25/Why_the_GPL_is_Incompatible_with_Commercial_Software (last visited Jan. 27, 2018).

[49] DAVID BERRY, COPY, RIP, BURN: THE POLITICS OF COPYLEFT AND OPEN SOURCE 115 (Pluto Press 2008), *available at* http://tovarna.org/files0/active/2/8454-copy_rip_burn_the.pdf (last visited Jan. 27, 2018).

[50] T. McCullough, *Understanding the Impact of the Digital Millennium Copyright Act on the Open Source Model of Software Development*, 6 MARQ. INTELL. PROP. L. REV. 91 (2002).

through their work thus wanting it to reach as many as possible. Authors now welcome modification or change in their work from users by standing "on the shoulders of Giants instead of on their toes"[51].

Thus, it can be concluded that though copyleft has been around for a while, it has struck a chord in recent few years and it is time that the concept is formally recognised.

[51] Lotus Dev. Corp. v. Paperback Software Int'l, 740 F. Supp. 37, 77 (D. Mass. 1990).