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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

COPYRIGHT LAW AND ARTIFICIAL INTELLIGENCE: A STUDY BASED ON THE CONCEPT OF UNIVERSALISATION AS GLOBALISATION

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Abstract

This article makes an effort to explore the intersection of globalization, artificial intelligence (AI), and copyright law, highlighting the need for harmonization of laws. It does so by assuming the correctness of the premise that globalization as a concept means to include the concept of universalization. The article then proceeds to explain the benefit of such harmonization, but in the process the legal challenges that are encountered are also discussed, particularly in the light of the European Union directive of 2019. The article then briefly suggests the alternatives to the concept of harmonization that would satiate the concept of harmonization and bring fairness and justice whilst doing so.

INTRODUCTION

Globalization is a “contemporary” process that amongst the other things, also works towards unifying the world. It may be done so by the globalizing factors by spreading diverse elements be it socio-economic, political, or cultural, to all people in every corner of the globe, with an ultimate aim of benefiting the humanity. At the very outset, globalization signifies and, emphasizes the growing interdependence of nations, by fostering a greater awareness of how socio-economic and political actions in one region can have significant effects on others¹.

¹ Michael Uzomah, Paul Olorunsola Folorunso, *Globalization: an inexorable phenomenal force*, International Journal of Humanities and Innovation (IJHI), Vol. 3, No. 2, 2020.

The premise that globalization has imbued almost every aspect of life holds true on account of globalization being an omnipresent concept, regardless of the fact what the effect is on the, it is safe to assume that, globalization has become a buzzword, often associated with interconnectedness and the rapid dissemination of ideas, goods, and services². However before the premise becomes juxtaposed, the antecedent to this article lies in the understanding that, globalization should not be viewed through the narrow lens of specific disciplines, it can also be understood as a philosophy, a process, and a phenomenon the three P's of globalization.

Globalization is not a concept that can be classified and put into pigeon boxes so as to breed homogeneity. Rather, it encourages heterogeneity, in which every town, nation, and culture adds something distinctive to the global fabric in terms of politics, economy, identity, and culture. Globalization promotes diversity rather than homogeneity. This diversity protrudes the growing interdependence among nation-states and the rise of transnational interactions. Such interactions amplify the need for frameworks that can accommodate multiple perspectives and jurisdictions, particularly as technological advancements accelerate the pace of global integration.

The idea of multiple perspectives in multiple jurisdictions has led the current Intellectual Property Rights regime to look past the concept of law being confined to the boundaries guarded by territorial limitations. In the digital age, and particularly in the context of artificial intelligence (AI) and copyright laws, the concern grows over copyright infringement by LLM Models and generative texts models. It's imperative to understand that AI technologies, are becoming more and more involved in the production of works that are typically covered by copyright, such as software, music, visual arts, and literature. Artificial intelligence (AI) systems, such those driven by natural language processing and machine learning, may already produce content that equals or sometimes even exceeds human creativity. This change presents significant legal and moral dilemmas regarding the applicability of copyright law, a system that was originally intended to safeguard human innovation, to works produced by computers.

² What Is Globalization? And How Has the Global Economy Shaped the United States?, Peterson Institute For International Economics, available at <https://www.piie.com/microsites/globalization/what-is-globalization>.

In this context, it also becomes a fact that copyright regulations now in place are far from being uniform. Diverse legal traditions, cultural norms, and policy aims are reflected in the vast variations observed between jurisdictions. For instance, copyright rules in certain nations place a greater emphasis on preserving human authorship, while those in others define authorship more broadly and may eventually include non-human entities like companies or artificial intelligence (AI) systems. In an increasingly globalized digital economy, where AI-generated works may readily traverse borders and reach viewers globally, this fragmented legal framework presents considerable concerns³.

Furthermore as AI continues to transcend national borders, creating content that is consumed globally, the inconsistencies between national copyright laws become more pronounced. Without a unified approach, creators, users, and AI developers may face legal uncertainties, with questions arising about who owns the rights to AI-generated works, how those rights should be enforced, and what protections exist for the original human creators involved in the process. The lack of coherence in copyright law creates a legal vacuum that hinders innovation and could stifle the potential of AI in the creative industries.

It is with this idea that, there arises a need for harmonization of copyright laws. This harmonization contours the idea that harmonization of law is effectively a part of globalization⁴. The correctness of globalization being universalization is not the subject of discourse. The piece tries to lineate between the harmonization and non-harmonization of law (copyright laws serve as domain through which the concept is being explored) and contrast it with questions pertaining to fairness.

Global copyright harmonization, long championed by the United States as a net exporter of creative works, has encountered growing resistance due to diverging domestic interests. For decades the U.S. promoted stronger international standards mirroring its own framework, but the expansion of powerful tech companies such as Google and Twitter/X that depend on processing and displaying copyrighted material for search, content aggregation, and platform services has

³ Clark Asay, *Rethinking Copyright Harmonization*, Indiana Law Journal, Vol 96, Issue 4.

⁴ Scholte, J. A. (2007) "Defining Globalization", *Clm.economía*, 10, 15-63

created sharp conflict with traditional rightsholders who seek tighter protections. This tension has eroded U.S. enthusiasm for further upward harmonization and contributed to increasing global fragmentation, most visibly through the European Union's Copyright Directive of 2019 (Directive 2019/790), especially Article 17 on intermediary liability for user-uploaded content.⁵

The emergence of generative AI has added even greater complexity. These systems raise two fundamental copyright questions: (1) the protectability and ownership of AI-generated outputs, and (2) the lawfulness of using copyrighted works as training data. The massive ingestion of protected materials during training has prompted widespread infringement litigation against AI developers, while debates continue over whether such use qualifies as fair use (in the United States) or benefits from text and data mining exceptions (in the EU and elsewhere). Because AI outputs frequently compete with original human creations, current legal doctrines often fall short. Scholars therefore advocate innovative solutions data-sharing agreements, remuneration mechanisms, transparency requirements, and a comprehensive re-examination of copyright frameworks to reconcile technological advancement with the protection of creators' rights.⁶

Collectively, these trends underscore the pressing need for more adaptive, future-oriented copyright rules capable of balancing the interests of content industries, technology platforms, and transformative AI technologies in today's rapidly evolving digital ecosystem.

THE CALL FOR HARMONIZATION: WHY IT'S NEEDED

Harmonization of laws and regulations should be viewed as a solution to a number of important problems faced when the subject matter of issue remains the same across the borders. In the upcoming paragraphs the article tries to look out as to why the laws need to be harmonised in first place. This concept over here takes cues from copyright law but could become an argument for any other subject where the emerging issues are relatively similar to the one that has set a base for this article.

- Externalities:- The first problem that can be solved by the harmonization are the ones that

⁵ Clark Asay, *Rethinking Copyright Harmonization*, Indiana Law Journal, Vol 96, Issue 4.

⁶ Lucchi, N. (2023) *ChatGPT: A Case Study on Copyright Challenges for Generative Artificial Intelligence Systems*, *European Journal of Risk Regulation*, pp. 1–23.=

concern the negative externalities of the particular subject matter. Externalities are those costs incurred by one party to an agreement that are not compensated for, and harmonization can assist in addressing externalities. A case considering an externality could be made out with respect to digital piracy domination especially unauthorized distribution of any copyrighted work that is available over the network. The externality arises in this case because the price of protecting their copyrights is predominantly born by the creators, producers, and copyright holders and the purported benefits such as access to the content without paying for it is enjoyed by other people (i.e., the users who do the pirating or downloading and other forms of content)⁷.

- Another major reason for harmonization is to reduce unnecessary transaction costs. In a globalized economy, businesses often operate across multiple jurisdictions, each with its own set of legal requirements and compliance procedures. With the rise of a global economy, AI driven technologies such as automatic content creation and data operation are easy to cross the borders. On the other hand, the fact that there are varying national copyright laws presents business obstacles for other companies that require AI to evaluate copyrighted items like videos, songs, or books. In the absence of harmonized legal systems, organizations have to deal with different laws relating to piracy, Normal usage rates, and some operating licensures need higher spending levels for managers and other employees. These regulations, which lack cohesion further pose extra costs on the management as well as the efficiencies due to the fact that organizations have to modify them to cope with every jurisdiction's legal provision⁸.
- In the area of AI, which incorporates massive amounts of data and copyrighted materials in building machine learning constructs, coalesced copyright frameworks can greatly help in the elimination of transaction barriers⁹. For example if everyone was under the same requirement to respect copyrights on data usage, AI authorship and licensing across the borders, business could be more effective and develop further. This would ease the international operations since the number of legal counsels required to be consulted in

⁷ Goodman, Nathan and Lehto, Otto, *Intellectual Property, Complex Externalities, and the Knowledge Commons* (August 22, 2023). Forthcoming, Public Choice, Available at SSRN: <https://ssrn.com/abstract=4548526>, Page 10.

⁸ Id

⁹ id, page 5.

various jurisdictions would be less and the chances of facing lawsuits also reduced. Over time however, harmonization encourages the development of a more efficient and stable business climate which will aid the growth of AI-based technologies that do not suffer from the effects of conflicting copyright policies.

- A third factor driving the push for harmonization is the growing interdependence of nations in the global economy. As businesses and industries become more integrated across borders, the use of diverse national standards can create inefficiencies and complications. The benefits of harmonization are perhaps most evident in situations where interdependence is so high that the actions of one nation directly impact others.

Besides aiding in the reduction of externalities as well as the transactional or administrative costs, harmonization helps in enhancing and expediting international cooperation and development. The cooperative efforts of the nations in the drafting of uniform legal norms may spur enhanced inter-state relations and shared accountability among the nations.

The rationale of harmonization especially with respect to the utility in fostering international cooperation and collaboration is becoming clearer by the day, as nations of the world continue to be more and more interdependent.

THE COMPLEXITIES AND CHALLENGES OF HARMONIZATION

While there are compelling reasons to advocate for unified legal frameworks such as cultural, historical, the contextual differences among nations complicate the pursuit of a single "ideal" standard. The process of harmonization may at times however be deceptive, it might appear to offer simple solution, to complex legal processes. Globalization is an intricate and multifaceted endeavour that aims towards adopting the best practises for resolving complex legal issued. Inevitably and consequently, harmonization isn't without its challenges, which makes the path to achieving legal harmony a convoluted approach.

Furthermore, the problem with harmonization also becomes more clear as discrepancies start to arise from different jurisdictions, and these differences sometimes cause exorbitant costs and needless complications in cross-border transactions. The impact of disparate legal norms and

practices intensifies with the speed of globalization, compelling people, organizations, and governments to pursue harmonization.

The value of diversity in national legal systems poses one of the challenges to harmonization which cannot be achieved. Every nation has its rules and regulations which are derived from its cultural, historical and social environment. What is successful in some country may not work out in another one since different legal systems, economic fields and societal worldviews are present. For instance, in an individualistic society, the laws enacted would lean more on personal liberty and autonomy, whereas in a collectivist society; the laws passed would be aimed at social and community advancement¹⁰. These aspects of different countries make it hard to come up with one conceptualization of the „best“ standard“ that could satiate the need for diverse legal systems.

National sovereignty is another factor that makes the harmonization efforts difficult. Countries regard most of the external laws, including those emanating from external agencies or even other nations, with suspicion such laws are viewed as interference in the internal affairs of that nation. Such worries arise more so when large nations seek to export their legal requirements to smaller nations. In that case, harmonization becomes less a means of collaboration and more of subjugation, whereby stronger countries impose their own rules on weaker countries with little or no regard as to whether these rules appropriate in that context.

This encourages some countries to harbour a feeling of bitterness which, in turn, leads to resistance against harmonization, all which work against the attainment of the advantages of harmonization.

A significant obstacle is also practical viability. Achieving harmony is challenging unless countries already have similar ideals and objectives. When there are major differences across legal systems, attempts to harmonize laws may need extensive compromise, which can reduce the efficacy of the final legal framework. Furthermore, harmonization negotiations can be expensive and time-consuming. Drafting, discussing, and putting into practice harmonized standards requires a large investment of time and money from governments and legal professionals, and the results aren't

¹⁰ Fox, Eleanor M. "Harmonization Of Law And Procedures In A Globalized World: Why, What, And How?" *Antitrust Law Journal* 60, no. 2 (1991): 593–98. <http://www.jstor.org/stable/40841393>.

usually immediately apparent. The costs of seeking harmonization may occasionally exceed the benefits, especially if it results in concessions that fall short of the initial objectives.

Additionally, harmonization initiatives may have unforeseen repercussions, like the reduction of legal innovation and flexibility. Nations may no longer be able to try out novel legal strategies or modify their legal systems in response to evolving conditions if laws are uniformly applied throughout national boundaries. Overly inflexible legal frameworks can become antiquated and incapable of adapting to fresh issues and advancements. On the other hand, legal diversity enables nations to modify their legal systems to suit their unique requirements and to adapt to new legal challenges. As an illustration, certain governments have led the way in developing novel environmental laws that have subsequently been embraced by other countries. Harmonization might discourage this kind of experimentation, ultimately resulting in less functional legal systems.

BREAKING THE PATTERN: THE COPYRIGHT DIRECTIVE

While this article till now has been presenting an academia-based approach towards the universalisation of copyright law, that balances the arguments both pro and anti- harmonisation of laws, this is an opportune junction to state the case of European Union passing a new copyright directive in 2019¹¹.

In early 2019, the European Union (EU) introduced a significant shift in copyright law with the passage of a new Copyright Directive, which was widely seen as a departure from the trend of harmonization between the EU and the United States. In the historical context, these two regions Over the years these two had confided their trust on mutual understanding to establish somewhat a common framework for copyright protection, and such a convergence led to a stable environment for American content owners to export intellectual goods abroad, contributing to a more integrated and predictable global market for creative works.

But this relatively new directive by European Union, stoked a wedge between the U.S. and European copyright regimes, suggesting that this harmonization era may be coming to an end. The

¹¹ DIRECTIVE (EU) 2019/790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

disparities between U.S and EU copyright regime raises significant challenges especially for large U.S. technology businesses with international operations, like ChatGPT, Gemini based google model amongst others. It puts a great deal of responsibility on these service providers to make sure that European copyright rules are followed, holding them directly accountable for the illegal actions of their customers (this should be contrasted with the Digital Millennium Copyright Act, that has been offering a "safe harbor" to such companies, provided that adherence to certain rules and regulations are followed such as removing anything that violates user rights upon notification). The size and importance of the European market, makes it a compulsion, upon those companies in United States to apply the stricter EU regulations globally to avoid creating different operational standards for each region.

The EU's chosen path to abandon harmonization raises more important questions about fairness and justice in a society that is becoming more interconnected. Harmonizing laws, particularly those concerning intellectual property, was thought to level the playing field globally by guaranteeing that content creators, irrespective of their nation of origin, would have similar protection for their works. It enabled more predictability and reduced the risk of doing business in foreign markets. However, the new EU guideline disrupts this trend, raising doubts and making it more difficult for US companies to adhere to the same laws that regulate their home markets.

This unfair imposition is having a penalizing effect on American innovation and technology leadership, and such discourse presents a compelling case for reconsidering the goals and methods of harmonization. Harmonization was initially pursued to protect the interests of content owners in a world where intellectual property could easily cross borders. This hints the authors to believe that the various interest at play, may no longer be served by a total harmonization of laws because doing so exacerbates inequities rather than fostering fairness.

In this case, the question of fairness becomes very important. Should firms be subject to disparate regulations depending on the sector in which they operate, or should the global digital economy be regulated by a patchwork of conflicting laws? Should a new effort be made to find a middle ground that strikes a balance between the demands of content creators, tech companies, and consumers in a way that promotes innovation and protects intellectual property?

The EU's directive also challenges fundamental notions of justice in a global society. An excessive amount of harmonization could lead to legal imperialism, whereby the rest of the world is forced to abide by regional laws. This is particularly troublesome when the interests of larger regions, like the EU, conflict with those of smaller or weaker countries, who lack the resources to fully comply with new legislative requirements. The unsuitability of a one-size-fits-all approach to copyright law is underlined by the enforcement of EU copyright restrictions on U.S. IT corporations, which might potentially extend similar regulations to users in other nations.

Alternatives To Full Harmonization

Given the impracticality of attempting to achieve absolute harmonization on all counts, one can advocate for the use of differentiated gradualism instead of harmonization on one count. One such strategy is the mutual recognition in which countries agree to recognize and enforce legal requirements of one jurisdiction in other jurisdictions even if they are different from the laws of that country. It allows for greater flexibility while at the same time reducing the barriers to international trade and cooperation. For example, two countries may have very different sets of rules governing consumer goods, but they may decide to accept each other's safety certifications to facilitate trade between the two countries.

Regulatory convergence is the other alternative which is characterized by dialogue and interaction between countries in pursuance of harmonization of their respective regulatory regimes in the long run. Rather than enforcing universal standards all at once, countries might collaborate to establish best practices and then voluntarily embrace them. As a result, harmonizing becomes less top down. There is likely to be increased convergence of laws through regulatory convergence in the future making the requirement of regulatory harmonization agreements unnecessary.

CONCLUSION

We can sum up by restating that the idea of universalization as a component of globalization is what drives the process of harmonizing copyright protection laws, especially in light of new technologies like artificial intelligence. However, there are several obstacles in the way of accomplishing this. The EU's Copyright Directive is an example of how competing regional interests can make harmonization more difficult.

Another dimension of this harmonization can be understood in the sense that adopting a one-size-fits-all strategy may not be appropriate sometimes. More scalable approaches include mutual recognition and regulatory convergence, which let nations gradually synchronize while maintaining their legal independence. In the end, it's important to find a balance that upholds the various legal and cultural factors that influence international copyright law while also fostering innovation and protecting creative expression.

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