Access to information and intellectual property in the international system of human rights: Coexistence or Conflict

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Abstract: One of the basic foundations transparent governments, citizens' right of access to information. This right is one of the most important examples of intellectual freedom. Because with the help of the right information and evaluated the ability to cultivate their minds and publish your thoughts. Today, intellectual property and right of access to information in cyberspace are common discourse. Between the two discourses real contradiction there, because that intellectual property by granting exclusive rights to their holders access to the information contained in literary and artistic works and controls the right to access to information as a manifestation of the fundamental right to human freedom of expression requires access to information is subject to intellectual property rights. This conflict was limited once the domestic level, both now with the progress and development of communication technology, international attention has been drawn. Mechanism of exceptions and limitations to the effectiveness of conflict resolution, intellectual property and right of access to information requires strengthening through the human rights exceptions and limitations, and underscores the commitment of government, especially the commitment to international cooperation in the field of respect, protect and fulfill the right humanitarian access to information.

Key words: right to information, intellectual property rights, conflict, coexistence, virtual space.

Introduction

Right to information is a fundamental human right. The Aforesaid Right first time in 1766 in the Swedish press law and was recognized for journalists¹, getting information and ideas to shape opinion and expression is necessary. A person who wishes to comment on the matter, should be able get the information that others have and are willing to transfer it and to be able to consciously express his views and comments. On the other hand, the data transfer is a two-way relationship that one side of it the transferor and the other side of it the recipient. The existence of such a relationship to the creation and development of concepts such as freedom of information, right to information or the right to information has helped. On the other hand, due to the emergence and spread of new information and communication tools, intellectual property rights, in order to support the Material and moral of new species of literary and artistic and computer works, is consisted and Lasted. this principle leads to Attempting to predict legal rules for financial and moral support of the rights of intellectual creators of such works at cross-border level and as a result, leads to the signing several international conventions and, ultimately, the World Intellectual Property Organization of Copyright Treaty, in the definition of intellectual property rights, it can be concluded that this right is a subset of private law that the originator of a work has it and thereby illegal exploit of the work of the Creator by another person or persons, provides civil and Criminal liability of unauthorized exploiter. Infringement of intellectual property rights "is an action that allows access to data, sales trends and other people's confidential information that is subject to copyright law², intellectual property of Non-material forms such as ideas, inventions, symbols, Information and terms will also be included, and thus creates Proprietary Rights for the main forms of intellectual production; Such as patents, trade mark, trade secret, copyright and industrial designs. ³ these rights in both the economic and moral rights are placed. Intellectual property rights in all follow three major goals: 1-giving reward and remuneration to the Creator in order to benefit from the results of its intellectual activity and work that were created, released to the market; 2-encourage creators of works and reassure them that the legal tools to support of the profitability of the work will be used; ³-policy and cultural policy advancement is meant to support and regulate the spread and movement of ideas and culture. ⁴That is why, in legal systems and international documents, rules and regulations to protect the creator’s rights have limitations and exceptions that its aim to balance between the interests of

the copyright holders on the one hand and the public interest in access to and use of these works. these restrictions in its various forms While emphasizing the support for speech instead of thinking, limit the duration of these rights and by determining the conditions of support such as originality and stabilization, rolling out some works from support. Exceptions of the rights is also rolling out of support the special or fair use of work. Whenever there was talk of conflict of intellectual property rights and the right of information, this conflict with these limitations and exceptions in intellectual property and also limits access to information, including the need to protect the rights of others to be resolved. But the emergence and development of virtual environment in a world of imaginary of connect computer networks and online communication via the Internet and social network has disrupted the old balance and coexistence of intellectual property rights and the public interest. Cyberspace to anyone with Internet access, allows to enter to engage, exchange and sharing of ideas and information, and freely media folder such as books, music, paintings, videos, games, applications and like it that have been as digital form, Easily and with high quality and with high speed send to thousands of people around the world or receive them from others. Several factors are involved in the popular tendency to freedom of information. Among these factors, the transition to democracy from the 1990s onwards in many parts of the world has happened along with vast improvements in IT that in overall affected the community’s relations, has increased the importance of the right to information in public opinion\(^5\). these developments again are raised the issue of the relationship between intellectual property rights and the right of access to information on both domestic and international arena. What has intensified this conflict in the international arena is the difference between developed countries and developing countries in terms of their citizens’ access to works covered by intellectual property rights. Access to literary and artistic works requires the payment of cost that these people couldn’t do that. This study tries to find an answer to this main question that the right of access to information what relation and Proportion with intellectual property rights in cyberspace is established. Actual or apparent conflict between these two-human achievements how can be plotted?

**First clause-** the right of access to information in the international system of human rights

In the 1990s only 13 countries have national laws of access to information, while today more than 70 countries, have imposed comprehensive rules of freedom of information that provide access to records held by government agencies and about 50 other countries also in the study phase or draft of freedom of information laws. \(^6\). At the global level, in parallel with the aforesaid codification of laws by countries, international organizations were also recognized this Aforesaid rights. this idea (Freedom of Information), over the years, was recognized by the United Nations. In 1948, the General Assembly of the United Nations, adopted the Universal Declaration of Human Rights. Article 19 of the Declaration which called the right to freedom of opinion and expression, it points to the right of searching, moving, and getting the information. In the following, in 1946, the UN General Assembly By passing the Resolution stating that freedom of information is one of the most fundamental human rights and freedoms that the United Nations has come to realize it. this resolution, in this case provides: “Freedom of Information is a fundamental human right and ... the touchstone of all the freedoms to which all nations Consider it holy.” Therefore, invited the Economic and Social Council to arrange a conference on this issue. this conference, in 1948, Was formed in Geneva, and three conventions with title of protocols is gathered and international news section, conventions of international right is corrected and international conventions of getting information is prepared and submitted that the two first plan, in 1949 was approved by the general Assembly and the third plan in 1962 as a declaration issued by the economic and social Council and announced\(^7\).

Later, NGO and international organization with Article 19 organization, which takes its name from Article 19 of Universal Declaration of Human Rights, with the aim to defend and promote freedom of expression and freedom of information were created and are already working on. In addition, covenants and several other international Commission after the Universal Declaration of Human Rights have stressed on this right that among the most important of them the International Covenant on Civil and Political Rights can be noted.

Protection of basic human rights, today has become a principle and an important measure of good and evil of the government. this right of the results of freedom of expression right is considered and although has traditional and historical roots, but the explosion of information through the development of contemporary technology have almost changed its definitions. Until recently, access to information within the information and documents in government agencies and in some cases, were kept private is translated and consequently this right was respected for citizens. That if necessary, information which don’t have Legal Prohibition to be release, be available for them. Today, with the growing spread of new technologies such as Internet and capabilities that make use of this phenomenon, Almost the concept of information and access to it sees profound transformation in itself. in the same proportion that technological developments bring welfare and technical progress and experience, Humanity is expected that the concepts of human

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6. Same.
7. Mohammad Hassan Habibi, Study the right of people to know as a fundamental right. Fundamental Rights 1, p. 70.
The right to access to information and the free flow of news is one of the Human rights that have wide dimensions. This right in transparent and public Governments has privileged status, and provides an opportunity for citizens to be informed of government policies and on the basis of this information, make more measured decisions. This right has two narrow and broad sense. Access to information is a legal and moral right. Various theoretical justification can be provided for the right of access to information, the Benefit from life Coupled with the dignity and Having right such as education, health, environment, development, labor rights, political participation in society and interaction with other people and communities depends on access to information. Therefore, the Legality of the right to information does not require further explanation. Article 11 of the Universal Declaration of Human Rights, Article 11 of the International Covenant on Civil and Political Rights, Article 13 of the American Convention, Article 12 of the European Convention on Human Rights and Article 1 of the African Charter with terms similar to what still needs to be explained and described, the content of the right of access to information and obligations is arising from this right. In Europe, the right of access to information has tremendous growth and in the context of Article 10 of the European Convention on Human Rights states: Everyone has the right to freedom of expression. This right includes freedom to receive or send information or ideas without interference by public authorities and regardless of frontiers is applied. Thus, Article 10 by using the general term of freedom of expression, guarantees freedom of opinion and freedom of information and provides the realization of one of the fundamental rights of the person.

A-concept of narrow right of access to information

Narrow approach to the right of access to information, is the right to limit access to information that are at the disposal of public authorities. Although the right of access to information in public documents, human rights are not come with the same phrase, but the term “seek, receive and transfer information” requires access to information. Search and receiving information without access is not possible. In fact, we can say that search and receive is the access. Thus, this fundamental right gives every human the right to access information in any form and shape and regardless of frontiers. Information are under the control of the authorities and public institutions or public or private entities. Governments produced, collected or maintained variety of information. Private parties such as researchers, scholars, journalists and in general creators of literary and artistic works are in the production of information and possess or control them. This information may relate to persons and their records, including medical, educational, social and criminal records or decision-making processes in the field of public affairs and studies about the implementation of development projects and works of these projects such as the environment or the level of employment and as it is related.

B-concept of broad right of access to information

The right of access to information is much wider than those that on the tight enclosures of access to information held by public organizations and authorities is limited. The extent of this right from two important angles can be considered. First, the extent to which the holders of information that is not restricted to the public sector and also encompasses the private sector; the second is widespread due to geographic. The right of access to information to every human regardless of national boundaries is awarded. Since today information are available at the international level, everyone has the right to access information placed in cyberspace. The international level of the right to information will have specific consequences in terms of obligations arising from this right. The international community gradually move towards a broad approach to the right to information. At no time in history human beings to this amount have not been able to express views, transfer and share information and ideas. In fact, the expansion of cyberspace has led to the democratization of information and public access to news, data, opinions and views. It is clear that private sector is the owner and holder of Social Networks, database, Mobile Technology infrastructure to Internet access. As well as the private sector that invests in the development of this space, bears the cost of its maintenance and supply and product various productions related to this space. again, is the private sector that holds controls of this space and design, manufacturing and maintenance of tools or store services of personal information, including financial information, health, emails, text messages, search history on the Internet, photos, videos and exchanged clips. In summing up the narrow and broad approaches to the right to information, must said first approach is focused to access to information of a particular type and specific origin, means Information held by public authorities. Of course, the right of citizens' access to this information, also with observance of conditions and restrictions that governments determine in its domestic law. In this narrow approach, governments have no obligation to disclose such information and Regional judicial institutions procedures of human rights, put no obligation on the shoulders of countries. On the other hand, the narrow interpretation of the right of access to information doesn’t conflict with intellectual property rights, because most of the information

8. Reza Eslami, the right of access to information on the Internet; tools to strengthen citizen participation, Journal of Legal Studies, No. 60, 1394, Page 235.
9. Elham Soleman Dehkordi, Ali Afrasiabi, the right to free access to information on national and international legal system, police International Scientific - promoting Studies Journal, No 21, Spring 1394, p. 76.
that the public organizations have according to the laws of many countries of the inclusion of intellectual property rights was excluded; on the other hand, lack of access of people to this information not because of Intellectual property rights belonging, but special considerations of state, such as confidentiality, security, and so on makes this access to be denied, but the extended approach to the right of access to information, considers this right contains of information with any origin and regardless of national borders. Deep and profound Acts of right to access as a part of freedom of expression requires a diversity of channels of obtaining information and the plurality of media sources, and finally, the cost of access to the information that others want to release it should not be such that the public not be able to pay it and right to access is practically be ruled out10.

Second Clause: Identify the conflict between the right to information and intellectual property rights

One of the issues in relation to access to information, on the one hand and the protection of intellectual property rights, on the other hand, is raised, is the possibility of conflict between these two-legal entities. Some authors emphasize that people have enough time that without taking ideas, or without using other words to express their ideas and apply freedom of expression11.

It seems today no doubt there is conflict between intellectual property rights and the right of access to information, even the European Court of Human Rights in recent years recognize this conflict and knows this restrictions on this right as interfere in the freedom of expression, and then study the legitimacy of this intervention based on the European Convention on human rights was conducted. this court in the case of Ashibi Donald and others against France, verdict of Tribunals of France based on copyright infringement by the plaintiff as though considered interference in the freedom of expression stipulated in Article 12 of the Convention, but in the end ruled that this interference within the allowed limits in the Convention was justified. In this case several fashion photographers took photos of Fashion salons and without the permission of these salons put them on its website, and was put on sale. European Court while consider applicability of the freedom of expression in cyberspace emphasized the commercial nature of photos, therefore, Plaintiffs intend to sell photos that according to French law of copyright they belonged to the Fashion salons, highlighted tension between the applicant's right on Possession or dissemination of information about fashion shows in the form of digital photos, on the one hand and copyright of Fashion salons on the other hand. The case here Just to show acceptance of the conflict between copyright and freedom of expression. But this case does not help a lot to portray the conflict between copyright and access to information and ideas, it seems drawing this conflict depends on the prove of these two propositions. First, it must be proved that copyright is the obstacles of information access; second, the right of access to information involves obligations on the shoulders of others to realize this right. The first proposition is no need to argue and copyrights because of the increased cost of access to literary and artistic works is the obstacle to access to information. Empirical studies also support such a proposition12.

Thinkers, professors, students and the general public to shape their opinions and ideas and adding to their information. Need access to works subject to copyright and copyright to raise prices and cost to access to these works is effective. in developed countries, perhaps because of the high level of income of people such access is possible, but in developing countries, and less developed even institutions and scientific and research centers could not afford to procurement these works. What in these countries helps to the complexity of the issue is that the international system for the protection of copyright that in the Agreement of Trade Related to Intellectual Property Rights of WTO has embodied, has the minimal character. In paragraph 1 of Article 1 of this Agreement states that "Members may, but are not required, in their own rules, wider support than what is prescribed in this agreement, to be executed that such protection does not conflict with the provisions of this Agreement"13.

Must see Access to Information what entitlements and the ability give to the right holder and what commitments put on the shoulders of the carrier or carriers of duty. Intellectual property rights in general is a human right that in the Article 27 of Universal Declaration of Human Rights and paragraph 1 of Article 15 of the International Covenant on Economic, Social and Cultural Rights have been identified. so, the right to information is limited to those that respect the human rights of creators of works that protected by copyright. In this way, the balance between the right to access and intellectual property rights is established, but this balance can be successful if both right to be provided. The cost of access to literary and artistic works should not be so heavy that this right removed from the scene. This cost should be reasonable, that different circumstances, including consider the general level of income in a society, because the right of access to information in the Universal Declaration and the International Covenant on Civil and Political Rights through any media and regardless of frontiers is recognized, the right of access includes foreign works, too. But there are deep divisions between citizens of rich and poor countries in access of works of information carrier that led to

inequality in the information. How can use Legal mechanisms to address this inequality? This is where to analyze the obligations arising from the right of access to information. In the international human rights, this question has been posed that whether human rights are the right that people have against government. And in connection with the behavior of government is attributable or private parties are also had duty? Everyone, including public and private parties may have duty for access to information. Interference in the benefit from this right is not unique to the state and its organizations, perhaps individuals or private legal also prevent exercise of this right. Article 2 of the International Covenant on Civil and Political Rights explicitly defines Member states of the Covenant Holder of obligation to rights: "Each State of the present Covenant committed to respect the recognized rights at present Covenant and guarantee for all individuals within the territory and subject to its jurisdiction". The reason for this is that compliance of international law relating to civil and political rights ... occurs within a state and depends on its legal system, courts and formal Organizations. The Human Rights Committee in General Comment No. 31 about the obligation of member States of the Convention, considers the governments guarantor of the rights enshrined in the Covenant: the obligations of paragraph 1 of Article 2 of the Convention creates the obligation on member states and in itself not have a direct horizontal effect in terms of international law. Covenant cannot be considered the replacement of criminal law or civil rights. Of course, this does not mean that governments not have obligation for violations of these rights by private parties, because Positive obligations of member states to ensure the rights of the Covenant, only fully play that the government, not only individuals against violation of Covenant rights by its agents, but also support against acts committed by private persons.

B- the nature of the obligations for right to information.

Three obligations to the right to information in the literature and practice of human rights has been recognized: 
15 the obligation to respect, obligation to support, and obligation to play. Obligation to respect the right of access implies that governments not to interfere in the Benefit of these rights by parties and do not create obstacles. The obligation to protect means that governments must prevent violations of these rights by others and in the event of a breach, provide ways of advocacy and adjudication for the people. obligations to play, requires positive measures to facilitate and provide the conditions required for the benefit of this right. 16

J-The scope of Obligations for right to Information

According to paragraph 1 of Article 2 of the International Covenant on Civil and Political Rights, governments must guarantee the rights enshrined in the Covenant for all people in the territory and subject to its jurisdiction. According to the Human Rights Committee in General Comment No. 31, while article 2 of the Covenant in the form of the obligations of members States against the people as holders of rights under the Covenant is expressed, any member State in the implementation of obligations from other governments has Legal benefits. It is due to this that the rules relating to the fundamental rights of the human person, are universal obligations for everyone, as well as that in the fourth paragraph of the introduction of Covenant has come, obligations arising from the Charter of the United Nations to promote universal respect for human rights and fundamental freedoms. On the other hand, perhaps the actions of a government that not violates the rights of individuals within its territory, affected the benefit of persons located in the territory of another state. This support may be reasonable and justifiable support in developed countries, but have unreasonable and disproportionate effect on the right to access of developing and poor countries. From what we said well it becomes clear that intellectual property rights and the right of access to information have conflict with each other, but these conflicts is not due to the increase in the cost of access to works protected by copyright. On the other hand, the right of access to information also not guarantees free access to mentioned works. conflict occurs when the increase in cost as unreasonable and disproportionate that overthrow the right of access in terms of benefit. Works that in a country produced may with reasonable cost and proportionate to the economic situation of citizens of countries be at their access and their possession but these works when in other countries with the same price offered cause the power Reduction or exclusion of a large part of that country citizens to access to it 17.

Fourth clause: Solution to the conflict between Intellectual property rights and the right of access to information

Traditionally, the conflict between intellectual property rights and the right of access to information viewed through the lens of real-world and capacities for access to embodied works that embedded in the form of material and physical, but with the expansion of cyberspace these capacities faced serious challenges and its efficiency called into question. In the real-world works protected by intellectual property rights, there are generally three types of capacity for conflict resolution: 1 -limitations and exceptions of intellectual property rights; 2 - special provisions for developing countries; 3- parallel imports. Today, new ways have emerged to support these works. One of these methods is the use of

Law of contracts. Many suppliers of digital content, consider access conditions signing the contract that imposes restrictions on user authority, such as copying, rent and so on. Another way is to use digital protection techniques, such as access control, rights control and tracking tools, in the access control way, protected content, such as text, videos or any other thing, is encrypted. Access to the encrypted content, subject to conditions, including payment in exchange for the copyright. In the rights control method, the consumer cannot have unauthorized use of the supported work, for example, if the user only pay money to read a text, he cannot print, copy or save it. In tracking mode, copyright holders can track and identify the source of use without the permission.

Conclusion

In this research, we studied the relationship between intellectual property rights and the right of access to information and discussed this issue that each of them play what role to limit or expand each other. The importance of this subject arises since that today the system of intellectual property, speak of a right as the right of access to information, especially among developing countries has expanded, and sometimes claim to be the intellectual property, especially in the decades the more recent the right to have confined. This claim is somewhat correct, but more than that the two are in conflict with each other. Can have a positive effect on each other in the Implementation level. The nature of these two rights in the Declaration and international treaties have been studied. ownership as dominant and Seizure in the analysis of the aforementioned decree have been used. By enumerating the issues of intellectual property rights, its proportion in the matter with the right of access to information has been measured. Access to information is of great importance for the development of the human personality, the progress of science and technology, the elimination of poverty and underdevelopment, spreading a culture of tolerance, combating violence and extremism, promote peace and international security and the benefits of many human rights. The advent and development of cyberspace has increased the access to information. On the other hand, the supply of literary and artistic works in the virtual space have highlighted the issue of support of these works, in this article draws conflict of intellectual property rights and right to information, and we have seen that valves that are traditionally in the intellectual property rights for public access to literary and artistic works has opened in the virtual space is not effective. Should seek solutions outside of this system to reduce or eliminate the conflict. It seems the obligations that governments in providing access to information have on their shoulders, could help to resolve the conflict. Primary committed is the access rights of citizens of a country to the same information in their respective countries, but international cooperation for the realization of human rights as international obligations arising from the Public documents of human rights.

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