

# The Economics of Intellectual Property and Economic Entrepreneurship of Copyrights

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**Abstract** Intellectual property rights have been recognized on the foundation of economic viability and entrepreneurship. Concernment of copyright also provides for economic entrepreneurship in certain industries in particular in the creative industries including the media. Perhaps, law of copyright developed in the lines of development of creative industry and the media. Copyright which was once considered not as a commercially viable right, has become significant contributor to the commercial entrepreneurship in the creative industry and the media. The growth of various winds of media such as print media, electronic media film media and the digital media have contributed vehemently in realizing the commercial entrepreneurship in copyright. In the contemporary world, when we analyze the fabric of creative industry and observe the nuts and bolts of activities of the media, one can understand the significance of copyright and the important role that it plays in these sectors. It is argued that more than scientific, technological or creative contribution; it is the commercial viability and the economic entrepreneurship that drives the intellectual property rights regime. Infact, the basic justification for the conferment of intellectual property rights including copyright is largely dependent on the entrepreneurship flavor of these rights. In this background, the current chapter examines the economic justifications of intellectual property rights and the commercial entrepreneurship of copyrights.

## 1 Introduction

Creation of knowledge and access to knowledge have transformed the economy. Intellectual property rights are the modes and means of knowledge economy. Perhaps it is a term which has been named after the world of knowledge. In 1969

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‘Peter Ducker’ coined the term ‘knowledge economy.’<sup>1</sup> It is all about value and value addition to the knowledge when such knowledge is extremely useful in the growth of the economy. In the second half of the twentieth century, the knowledge economy transformed capitalism to the point where knowledge replaced plants, equipment, and labor as the means of creating value.<sup>2</sup> Today if knowledge is the means for creating value, then intellectual property is the means for extracting that value.<sup>3</sup> Similarly, being a branch of intellectual property, copyright has been the basis of economic entrepreneurship for certain industries in the contemporary world. The current chapter dwells on the economic background and basis for intellectual property rights. At the same time, it analyses the economic entrepreneurship of copyrights in select industries.

## 2 Economics of Intellectual Property Rights

Economic factors largely determine the law and policy with reference to protection and promotion of intellectual property. Perhaps, it is more so in case of intellectual property in the modern context. It is very much felt that economic reasons have influenced in the promotion of intellectual property rights all over the world.<sup>4</sup> At this juncture an inquiry into the economic dimensions and justifications for intellectual property is an interesting business. There are various types of intellectual property rights recognized by the law where the creator of knowledge would enjoy certain privileges and rights. The driving force behind all these different types of intellectual property rights is their economic significance. In general, intellectual property rights are conferred upon those innovations and creations which are useful or have commercial value. Industrial demand or commercial viability is one among the different requirements of conferment of intellectual property rights. It is not just creativity or innovativeness but the economic significance of the same is required to be honored with intellectual property rights. In the market driven world, economics is of greater significance. The intellectual property regime perceives that research and development should not be just of academic interest, but rather it should have some economic and industrial significance in the market to entail protection and reward through conferment of intellectual property rights. Although intellectual property is intangible in character, it consists of bundle of property rights. For instance, patent gives right to make, use, sell, transfer the patented invention. The objective of the intellectual property regime is to promote and protect innovation and creation and reward innovative and creative activity.<sup>5</sup> For the functioning of the

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<sup>1</sup> Ducker 1969.

<sup>2</sup> Florida and Kenny 1991.

<sup>3</sup> Arena and Carreras 2008.

<sup>4</sup> Sreenivasulu 2013.

<sup>5</sup> US Council for International Business 1985.

economy in an effective way, innovation and creation are essential. Especially in the competitive free market economy, innovations and creations keep the upsurge of the economy guaranteed.

In this context, innovation and creation are very much required for economic growth and prosperity. The perspective that individuals are able to acquire property right over the result of their investment is encouraging individuals and enterprises to invest in research and development.<sup>6</sup> These property rights would be granted to one who can economically maximize profits.<sup>7</sup> Intellectual property rights enhance economic development of the nation. Therefore, it is more because of its economic dimensions that intellectual property rights are protected than the scientific or technological reasons. There is always an element of scientific or technological progress and importance that every protected intellectual property brings forth. But the reality is that the scientific or technological elements or features however meritorious, they may be not sufficient to grant intellectual property rights without the presence of economic dimensions of such scientific or technological progress. Hence, you don't get protection under the intellectual property regime for scientific or technological progress without economic value being attached to it. Any justifications for the protection of intellectual property rights have been influenced by the economic significances of these rights.

### **3 Economic Justifications for Intellectual Property Rights**

In general proprietary right resulted out of labor is known as property. Property is nothing but proprietary right resulted out of labor. One who labors, deserves certain reward in the form of proprietary rights. Here, there is no difference between physical or mental labor as such. But when it comes to intellectual property, it is always the result of mental labor. Since intellectual property is a form of property in the legal sense, it is always measured in terms of economic value attached to it in the market. In a market driven economy, goods and products having potential economic value would have huge demand and commercial viability. Jurisprudentially speaking, one deserves rights over his labor, irrespective of whether it is physical labor or mental labor. In this context, few theories on the jurisprudential meaning and connotations of property are very much relevant.<sup>8</sup> While searching for economics of intellectual property, generally jurists fall back on the original theories of property and proprietary rights.

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<sup>6</sup> Lunn 1985.

<sup>7</sup> Lehmann 1989.

<sup>8</sup> Sreenivasulu 2011.

## 4 Economics of Labour Value

Intellectual property rewards the efforts involved in the production of some work. Efforts are always measured in terms of labor and labour, either physical or mental attached with some material or commercial value. The classical labor theory of jurisprudence is of great relevance in the context of property and proprietary rights. Famous English jurist John Locke propounded the labor theory. John Locke states that human labor deserves certain proprietary rights. According to him, whoever labors deserves reward in the form of proprietary rights.<sup>9</sup> Originally, labor theory does not specifically talk about physical or mental labor. Perhaps when Locke propounded the theory since labour was understood merely as the physical labour, the justifications for property and proprietary rights were all around physical labour only. The opponents of intellectual property contend that at the time when Locke propounded this theory he may not have thought of mental labor. The proponents of intellectual property protection however contend that his theory seems to have no reservations in its application and it needs not be restricted only to physical labor. According to the pro intellectual property thinkers; it is felt that conceiving and executing ideas involve mental work, which could be considered as mental labor. Since there are no restrictions or reservations with respect to the concept of labour which could be either physical or mental, there shall be equal application of jurisprudential theories. Therefore, the labor theory, which rewards the one who labors, could also justify reward for the one who does mental labor. On these lines, protection of intellectual property rights which are result of mental labor, could be justified under the Locke's Labor theory.

## 5 Economics of Utility

Further, the Utilitarian theory<sup>10</sup> propounded by the English jurist Jeremy Bentham states that maximum benefit of the maximum members of the society should be guaranteed by the law in force and in the regulation there under. In terms of economics, intellectual property should provide benefits both at micro level and at macro level as well. At micro level, intellectual property should reward those who endeavored in creating the intellectual property while attaching value to it. At macro level, creation and use of intellectual property should provide overall benefit to the mass or the society in terms of providing the addition to the existing knowledge in the society which is commercially sought after. Intellectual property rights serve the purpose of being an initiative or encouragement for innovative or creative work, which does ultimately benefit the society. The owner of the intellectual property is supposed to work on the subject of intellectual property and

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<sup>9</sup> Chisum 1998.

<sup>10</sup> Ibid, pp. 45–47.

make it and its proceeds available to the public. Hence, the proceeds of mental labor or intellectual property rights ultimately reach the public. Besides, intellectual property rights are granted to the owner for a particular period of time after which the intellectual work falls into the public domain and there could be no restrictions on public usage of such work thereafter. Further, intellectual property rights are protected only when they are capable of industrial application. The purpose of industrial application of any innovative work is to exploit the work commercially, market it and make it available to the public. Considerably, the maximum benefit of any subject of intellectual property protection would be reaped by the public at large. In this way, intellectual property rights serve the purpose of maximum benefit of the maximum members of the society. Therefore, it is argued that the utilitarian theory also justifies the reward for intellectual efforts in the form of conferment of intellectual property rights and their protection.

## 6 Economics of Personality

The third theory which is being considered for justifying the intellectual property rights would be personality theory propounded by Hegel. The personality theory also has got to say something with respect to protection of property rights in intellectual efforts. The theory states that property is extension of one's personality and it is personality which blooms through the protection of one's proprietary rights. Here, one can assume that individual personality has got some economic importance in terms of bestowing the outcome with individual or personal identification and status which is nothing but personal extension or extension of personality of the creator or the owner. Intellectual property values the economics of personal extension. Though, people might argue that Hegel's personality theory does not say anything specifically about intellectual property. However, the theory was general in nature and non-specific with respect to neither physical property rights nor non-physical property rights. Besides, there is nothing according to Hegel's theory which would prohibit protecting and possessing non-physical property rights. Therefore, there is nothing wrong if one say that Hegel's personality theory is in support of protecting and possessing property rights. There may not be anything specific and particular about protection of intellectual property rights under the theory, but there is nothing against intellectual property rights. Nevertheless, the jurisprudential notions and philosophical foundations of the theory justify possessing property rights in general. Logically, intellectual property is also a form of property; it might be a peculiar type of property but still a property which is logically justified and having rationale under the theory. Besides, any theory, policy and practice for that matter would not have contingency arrangement or would not be wholly comprehensive to meet the various needs. Moreover, when the logic and rationality is firm and viable, specificity is irrelevant. The advocates of intellectual property and people in support of protection of intellectual property do take account of John Locke's Labor theory, Jeremy

Bentham's Utilitarian theory and Hegel's Personality theory<sup>11</sup> for justifying the protection offered to non-physical property rights such as intellectual property rights. Infact, in the market driven world of contemporary times, it is economic factors which play vital role in the policy making than the other reasons. No doubt intellectual property rights are having enormous economic value and viability and therefore there should not be any problem for offering protection and promotion to intellectual property rights.

## 7 Economics of Copyright

Having discussed the economics of intellectual property and the justifications for protecting intellectual property which are majorly based on economics involved there in, let us have an idea on economics of copyright in detail. Works in literary, scientific and artistic domain are evidently both the creation and the expression of the culture of a society. They are the reflections of the norms and values a society lives by and of the activities, aspirations and achievements of its people in various fields. These works influence the people in a very fundamental way. Who has not been molded by books of history, religion or literature? Who has not been swayed by music coming to him via radio, television, a CD, a film or a live concert? The cultural significance of creative works is self evident from the way they enrich the lives of the people, entertain them, uplift their mood, become a vehicle of emotional catharsis and give a meaning and substance to life. The cultural significance of copyright and related rights lies in the extent to which they spur creation of such works and bring them to the public. Their economic significance lies in their ability to contribute to the national economy, through the industries, which are essentially based on products/activities in which copyright subsists, e.g. publishing, music, films, and computer software. In recent years, scholars and researchers have undertaken studies which reflect and provide substantial evidence for the tremendous contribution of copyright and related rights, to the national economies. It should be understood that intellectual property in general and its link with economic development is a complex issue and is a subject matter of intense debates in academic realm. The focus of this chapter is basically to analyze the economic characteristics of copyright and related rights, which till date have been studied basically from a legal perspective. However, it is increasingly becoming clearer that copyright plays an important part in our everyday lives in all fields which may be production or distribution or consumption. The discussion will be initiated with a listing of industries where the economic character of copyright can be easily visible and thereafter a brief survey of some of these main industries or economic activities.

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<sup>11</sup> Sreenivasulu 2013.

## 8 Industries Based on Copyright and Related Rights

WIPO in its Guide on Surveying the Economic Contribution of the Copyright based Industries, on the basis of the comparison between the various studies and approaches, has listed nine groups of core copyright industries and they are as follows:

1. press and literature;
2. music, theatrical productions, operas;
3. motion picture and video;
4. radio and television;
5. photography;
6. software and databases;
7. visual and graphic arts;
8. advertising services; and
9. Copyright collective management societies.

Apart from the above core industries which have been explained as industries that are wholly engaged in creation, production and manufacturing, performance, broadcast, communication and exhibition, or distribution and sales of works and other protected subject matter, there are other categories of industries where copyright plays an important role though not dominant. These categories are:

*Interdependent Copyright Industries:* Industries that are engaged in production, manufacture and sale of equipment whose function is wholly or primarily to facilitate the creation, production or use of works and other protected subject matter. Though not an exhaustive list, some of the industries included in this category are TV sets, Radios, VCRs, CD Players, DVD Players, Cassette Players, Electronic Game equipment, and other similar equipment; computers and equipment; and musical instruments. Photographic and cinematographic instruments; photocopiers; blank recording material; and paper.

*Partial Copyright Industries:* Industries in which a portion of the activities is related to works and other protected subject matter and may involve creation, production and manufacturing, performance, broadcast, communication and exhibition or distribution and sales. Some of the industries included in this category include apparel, textiles and footwear; jewellery and coins; other crafts; furniture; household goods, china and glass; wall coverings and carpets; toys and games; architecture, engineering, surveying; interior design; and museums.

*Non-dedicated Support Industries:* Industries in which a portion of the activities is related to facilitating broadcast, communication, distribution or sales of works and other protected subject matter, and whose activities have not been included in the core copyright industries. Industries included in this category include general wholesale and retailing; general transportation; and telephony and Internet. Clearly these industries play a very important part not only in our everyday lives but in national economies in general. Of course the new technology especially the

development of information technology is challenging the set norms.<sup>12</sup> Similarly copyright-based industries played a very important role in other economies including India where it contributed about 5% of the GNP with film industry, book industry and computer software industry taking the lead. Clearly from above as of date the role of copyright in economic development need not be further highlighted. We will now discuss the role of copyright industries in the national economy of India with respect to few sectors and also briefly highlight the challenges faced by them as of date. Some of these sectors are:

1. Software Industry
2. Entertainment Industry
3. Publishing Industry.

## 9 Computer Software Industry

The rapid development of the software industry has caused it to be identified as a key resource for economic development. Though compared to some other economies, the Indian software industry is still considered to be in its infancy though as per the provided by National Association of Software and Services Company (NASSCOM) the industry was worth US \$ 22 billion in the year 2004–05. Also over a million people are employed in this industry and with a rapid expansion rate approximately at 30% annually has ensured that the IT industry's dominant role in the national economy. The Standard Industrial Classification Codes (SIC) of the United States Government lists nine industries as part of computer software industry i.e. Custom Computer Programming Services, Pre-packaged Software, computer Integrated Systems Design, Data Processing and Preparation, Information retrieval Services, Computer Facilities Management, Computer rental and Leasing, Computer Maintenance and repair and Computer related Services. Of the above segments, Custom Computer Programming Services, custom Designing Services and Pre-Packaged Software can be described as the "Core" Software industry.

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<sup>12</sup> The important role of copyright industries in the GDP of a national economy can be simply gauged from the statistical figures as follows: In the United States Economy "total" copyright industries accounted for an estimated \$1.38 trillion or 11.12% of GDP in 2005, up from 11.09% of the U.S. GDP (\$1.3 trillion) in 2004. In terms of employment the "total" copyright industries employed 11.3 million workers in 2005 (8.49%), up from 11.2 million workers in 2004 (8.53%). In the fifteen member European Union copyright based industries contributed about 5.27% of the GDP in the year 2004. In Singapore copyright based industries generated about 8.7 billion, i.e. about 5.7% of the GDP. In Australia in the year 2006/2007 Australia's copyright industries employed about 8% of the nation's workforce and generated about \$97.7 billion in economic activity, i.e. 10.3% of GDP.



## 10 Protection Under the Copyright Law

Under the Act, computer programs are included in the definition of ‘literary work.’ The term ‘computer’ includes any electronic or similar device having information processing capabilities, and ‘computer program’ means a set of instructions expressed in words, code, schemes or in any other form including a machine readable medium, capable or causing a computer to perform a particular task or achieve a particular result. The TRIPs Agreement<sup>13</sup> vide Article 10(1) mandates that ‘computer programs’, whether in source or object code, shall be protected as literary works under the Berne Convention (1971)’. Further the WCT states that ‘computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention. In brief, the need for protection of rights in computer programs was first felt in 1970s with the development of microprocessors and consequently cheap personal computing machines. Owing to such developments it became possible to make copies of computer programs cheaply and easily. Since the costs of creation of software was high and the cost of copying in comparison was almost negligible a need was felt for a law that could adequately protect legitimate interests of the creators of the software. Thereafter, the WIPO Model Provisions on the protection of Computer Programs, 1978 (the Model Provisions) provided a framework to protect computer programs within the existing intellectual property rights regime. The Model Provisions though never were formally implemented found expression in the TRIPs Agreement and WCT<sup>14</sup> wherein computer programs are protected as stated above. In literary works, copyright protection extends to computer programs and to instructions encoded on silicon chips. The words “*schemes or in any other form*” in the definition of the term ‘computer program’ would seem to indicate that the source code and object code of a computer program are entitled to copyright protection. To emphasize, we go back to Article 10 (1) of the TRIPs Agreement, which clearly states that computer program whether in source or object code shall be protected as literary works. Of course copyrightability is subject to the normal requirements of originality in a literary work as discussed previously. It should be stated that predominantly, the courts are in favour of extending copyright protection to the object code of a computer programme and have extended protection beyond the program’s literal code to their structure, sequence and organization.

## 11 Challenge of Piracy

Software piracy is the theft of software through illegal copying of programmes or through counterfeiting and distribution of imitation software products or unauthorized versions of software products. Technological advancements, particularly,

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<sup>13</sup> Sreenivasulu 2013.

<sup>14</sup> Sreenivasulu 2013.

faster transmission online transmission speeds, sophisticated compression software and faster Internet connections have facilitated the emergence of the Internet as an international piracy facilitator. Globally, piracy has increased to such a level that for every two dollars of software bought legally, one dollars worth is obtained illegally. Clearly, piracy is a challenge to the software industry and it has been found that the problem is endemic in large as well as small Indian companies while the problem at retail and wholesale level is a regular practice. With the software piracy rate in India estimated to almost 74%, clear impact is being felt at all levels of the industry. Therefore, an effective intellectual property regime helps to fight such a menace. A research study conducted by IDC titled *Expanding Global Economies: The Benefits of Reducing Software Piracy* estimates that even a 10% reduction in piracy rate will create 50,000 new high tech jobs and add an additional USD 92 million in tax revenues. The study also indicates that reduction in piracy rates by even 10% would ensure the global IT sector grow at 49%. Example is being given of United Arab Emirates where with an intellectual property regime, piracy rate has come down making the country a sort after IT hub. Apart from civil remedies, the Indian Act also contains penal provisions to fight piracy, the industry suggested further amendments to ensure stricter enforcement of copyrights with respect to software. Some amendments have been suggested namely:

1. Ensuring continuous trial of infringement cases and speedy disposal of cases.
2. Increase the penalties with substantial penal sanctions and a comprehensive implementation plan.
3. To address the issue of Internet piracy in the Act.
4. To address the issue of circumvention of copyright protection technologies and to specifically make such circumvention a criminal offence.
5. Optical Disc regulations be enforced wherein manufacturers of CD's/Optical Discs are required by statute to be licensed and registered with an appropriate government authority.
6. To sensitize officers of the enforcement regime with respect o the serious nature of the offence and the consequences arising thereof and other suggestions.

## 12 Entertainment Industry

The Indian entertainment industry consists of film, music, television, radio and live entertainment.<sup>15</sup> The Indian entertainment industry has many segments. The software segment comprises of films, music and programmes, which are basically involved in the creation of content. The hardware segment includes studios and

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<sup>15</sup> According to a report released by CII-KPMG146, the size of the Indian entertainment industry with an annual growth rate of about 18% would be about Rupees 588 Billion by 2010. The report also suggests that television industry will form the largest chunk overtaking the film industry, and constitute over 60% of its revenues.

other services that support the creation of entertainment software. The services segment encompasses distribution, exhibition, film procurement and banking services. Finally, the front-end media segment, which includes film magazines, videocassettes and theatres, act as an interface between the entertainment industry and the audience. Each of the above mentioned segments has a stake in the success of the entertainment industry and more so with the content creation segment. In the year 2001, film was accorded industry status by the Central Government thus making it eligible for film financing from banks and financial institutions.<sup>16</sup> The Indian entertainment industry is today in the midst of a paradigm shift where the largely unregulated industry is increasingly adopting business systems and processes to provide a corporate like structure with a focused eye on the financial aspects of entertainment. The Indian film industry is showing signs of transformation at the operating level as it begins to embrace corporatization and organized business structures. New technology is another peg contributing to rapid expansion. The key driver for the entertainment industry in next decade would be technology. In the new converged paradigm, its boundaries will be merged with those of the telecommunications and information technology segments. This will give rise to a host of value added features for consumers and new revenue streams with the players in cash segment. Mobile entertainment with its abilities to dissect the boundaries of time and space will be the biggest growth driver. The main drivers to growth of the entertainment industry are the addition of new platforms in different segments such as satellite radio and DTH for the television industry.

### 13 Protection Under the Copyright Law

Copyright plays an important role in the entertainment industry and the Act provides comprehensive protection to various categories of works namely—musical works, sound recordings, and cinematograph films. The Act also extends protection to performers and broad casting organisations. Apart from protection to the economic rights, the Act also envisages protection to the moral rights, i.e. the right of paternity and right of integrity. Clearly the Indian Act is in conformity with the TRIPs Agreement and is one of the most modern statutes. The courts too have strictly dealt with infringement or any violation of copyright in the entertainment industry. In *R.G. Anand v. Deluxe Films*<sup>17</sup> the Supreme Court commented that “it seems to us that the fundamental idea of violation of copyright or imitation is the violation of Eighth Commandant: ‘*Thou shalt not steal*’, which forms the moral basis of the protective provisions of the Copyright Act.”

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<sup>16</sup> The Industrial Development Bank of India (IDBI) set up the country's first film fund worth Rs. 100 crores.

<sup>17</sup> 1978 AIR 1613, 1979 SCR (1) 218.

## 14 The Problem of Piracy

However amidst all the brouhaha is the monster of piracy, which is arguably the biggest challenge, facing the Indian entertainment industry. US-India Business Council (USIBC) in its study titled 'The Effects of Counterfeiting and Piracy on India's Entertainment industry' states that the industry loses some 820,000 jobs and about USD 4 billion every year to piracy.<sup>18</sup> Though piracy is a non-bailable cognizable offence under the Act, its enforcement is, to say the least, tardy. Another problem in tackling piracy stems from advancement of technologies such as Digital Versatile Discs (DVD). For instance 30,000 copies of DVDs appeared in the American market barely a week after the theatrical release of film *Devdas* there. Similarly, pirated cassettes of Indian films appear in the Pakistani market barely 2 or 3 days after they are released internationally. Malaysia is another big centre for piracy of Indian films.<sup>19</sup> Courts in India have been strict with infringement and piracy activities and have generally recognised the role of stringent copyright laws in combating piracy. In *State of Andhra Pradesh v. Nagoti Venkataramma*<sup>20</sup> the Supreme Court while commenting upon the 1984 amendments in the Act held that:

The object of amending the Copyright Act was to prevent piracy which became a global problem due to rapid advances in technology. The legislature intended to prevent piracy and punish the pirates, protecting copyrights. The law therefore, came to be amended introducing Section 52-A. Thereafter, the piracy of cinematograph films and of sound recordings etc. could be satisfactorily prevented." The court went on to add that, "it is unnecessary for the prosecution to track on the trace out the owner of the Copyright to come and adduce evidence of infringement of copyright. The absence thereof does not constitute lack of essential element of infringements of copyright. If the particulars on video films etc. as mandated under Section 52-A do not find place, it would be infringement of copyright.

In India, video/cable piracy is on the rise and takes away significant portions of revenues from the producers of films and records and also the access to the legitimate markets of copyright holders. The judiciary has been proactive in granting injunctions against such activities. In *Mirabai Films Pvt. Ltd. v. Siti Cable Network*,<sup>21</sup> the Delhi High Court granted a temporary injunction restraining telecasting/screening/exhibiting of the film 'Monsoon Wedding' on cable networks. In *Entertaining Enterprises v State of Tamil Nadu*,<sup>22</sup> the unauthorized exhibition of a film through videotapes was held to be violative of the copyright in the

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<sup>18</sup> The CII-KPMG report estimates losses due to piracy at about Rupees 4.3 Billion which amounts to over 40% of the industry's total revenues.

<sup>19</sup> The International Intellectual Property Alliance 2005 Special Report 301 states that pirated VCDs, DVDs, and CD-Rs containing U.S. motion pictures cause severe damage in the markets in India. Most are available in major cities well before the local theatrical release of the title (so-called "pre-release" piracy).

<sup>20</sup> 1996 INSC 991 (20 August 1996).

<sup>21</sup> 2003 (26) PTC 473 Del.

<sup>22</sup> AIR 1984 Mad 278.

cinematograph film. Recent developments in the USA need to be looked at, where new modes of copyright infringement are emerging, with which both law and technology must keep pace. In the case of *MGM Studios Inc. v. Grokster Ltd.*,<sup>23</sup> the rule pronounced by the US Supreme Court was that “it is illegal to distribute a device (including software), with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement.” However, the problem of piracy looms large over the Indian entertainment industry and various industry forums and initiatives have made representations to the government to bring in reforms in the copyright laws and its enforcement. Some of the suggestions made are as follows:

- Ensuring continuous trial of infringement cases and speedy disposal of cases.
- Mandatory punishment of convicted offenders with the minimum sentence of six months imprisonment.
- Requiring the infringer to pay statutory damages to the concerned owner of the copyright.
- To address the issue of Internet piracy specifically in the Act.
- Appointment of a special Public Prosecutor in relation to software related offences.
- Addressing Internet Piracy and ratifying the WIPO Treaties.

## 15 Publishing Industry

The publishing sector of India is the seventh largest in the world with about 70,000–80,000 titles and includes books, newspapers, magazines, periodicals and academic journals being published every year and the industry growth rate is estimated between 10 and 30%. The value of the publishing market in India is estimated to be about Rs. 11,000 crores of which publications in English are 40%, followed by Hindi at 25% and thereafter in other regional languages. There are about 16,000 publishers, many of them small, publishing in about 30 languages. Publishing in India however is fragmented and there are no real figures available anywhere. It should be stated that the growth in the publishing sector is also indicative of the economic growth, increase in the children going to schools and colleges, increase in the literacy rates, better standards of education and better marketing and retailing of books.<sup>24</sup> Also with an improvement in paper quality and printing, there is a growing market for outsourcing publishing and high-end pre-press work, which includes editing, typesetting, proofing and printing in India.

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<sup>23</sup> 545 U.S. 913.

<sup>24</sup> There is ample scope for growth in educational books, as the world average for enrollment in higher education is 35% whereas in India it is only 10% of the population.

Also, digital technology is revolutionizing publishing industry. E-publishing has opened up channels for self publishing and entrepreneurs who encourage new authors to come to light and reach wider audience.

## 16 Piracy Issues

The Indian statute is one of the most modern statutes in the world and is in conformity with the TRIPs Agreement and other Treaties and Conventions on the subject. However, piracy is emerging as one big challenge in this sector as well. According to the IIPA report of 2009, rampant piracy of trade books, textbooks, professional books (scientific, technical and medical), and scholarly journals continues to plague the publishing industry, despite the fact that prices for legitimate titles in India are among the lowest in the world. All varieties of pirate books, from poor quality cover to-cover photocopies and obviously pirated cheap reprints, to hardbound, high quality copies of medical reference volumes, remain readily available. The marketing of trade books at stoplights in New Delhi has reached epidemic proportions, despite repeated complaints to the Delhi authorities. It should be stated that book piracy, in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors positively contribute to piracy. Piracy is generally confined to foreign and good indigenous books. The reason is that these books are demanded in large quantities and are also priced very high. The types of books pirated mostly are medical, engineering and other professional books, encyclopedia and popular fictions.

The piracy is also wide spread with respect to books published by National Council of Educational Research and Training (NCERT), National Open School and Board(s) of Secondary Education. These books even if priced low are having large demand. In terms of percentage, it is believed that about 20–25% of books sold (in number) in the country are pirated. Also, piracy by unauthorized photocopying remains a severe problem for the academic and professional sectors of the industry. Increasingly, sophisticated techniques are allowing photocopy shops to tap into high-end medical markets more than ever before. Raids in 2008 revealed use of high-quality scanning techniques to produce color copies of medical titles, printed straight from the electronic file created on the shop's computer. This allows for clearer reproduction of drawings and figures for students, and such reproductions have been marketed to medical colleges in Madhya Pradesh, Maharashtra, Karnataka, Rajasthan, Delhi, Mumbai and elsewhere. Copying continues at educational institutions as well, sometimes even condoned by the institutions. Wholesale copying of entire books is increasingly complemented or replaced by use of unauthorized compilations in the form of course packs, or "self instructional material" (SIM). These are used both for classroom teaching and distance learning, while the materials for the latter are sometimes found in electronic form. Clearly, the loss to the sector due to rampant piracy is huge and authorities are taking strong

actions against such activities.<sup>25</sup> However, enforcement in universities is rare. Clearly not just in India but world over piracy is emerging as one big challenge to the copyright industries and the Internet is further compounding the problem. It has been suggested that a national anti-piracy strategy be formed at the central government level, with the ability to link in the State governments (IPR enforcement is a state responsibility in the Indian federal system,) in a meaningful, enforceable way. Such a strategy could start with a National Anti-Piracy Task Force with a membership that includes judges, prosecutors and police coupled with significant technical training. Most challenging, however, would be judicial reform. Piracy levels will remain essentially unchanged in India without the creation of efficient and deterrent judicial remedies. Recommendations would certainly include the need for reinvigorating the IP cells, setting up special IP prosecutors in each state and establishing specialized IP courts or appointing specialized IP judges. The principal objectives of such courts or judges would be to:

- ease backlogs (IP judges or courts should begin free of backlogs);
- enforce deadlines for adjudication/resolution of piracy cases, and prevent unjustified continuances;
- encourage completion of a set number of “model” cases with deterrent penalties to deliver a message to the Indian public about piracy;
- adopt case management techniques (we understand progress has been recently made on this and on instituting plea bargaining); and,
- Treat piracy as a serious economic crime.

## 17 Inferences

The objective of the intellectual property regime is to promote and protect innovation and creation and reward innovative and creative activities.<sup>26</sup> For the functioning of the economy in an effective way, innovation and creation are essential. Especially in the competitive free market economy innovations and creations keep the upsurge of the economy guaranteed. In this context, innovation and creation are very much required for economic growth and prosperity. The perspective that individuals are able to acquire property right over the result of their investment is encouraging individuals and enterprises to invest in research and development.<sup>27</sup> These property rights would be granted to one who can economically maximize profits.<sup>28</sup> Intellectual property rights, enhances economic development of the nation.

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<sup>25</sup> The year 2008 saw several notable seizures of outward bound shipments by Indian Customs as well as good cooperation from courier and postal services in this respect.

<sup>26</sup> US Council for International Business 1985.

<sup>27</sup> Lunn 1985.

<sup>28</sup> Lehmann 1989.

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Copyright Law in the Digital World

Challenges and Opportunities

Sinha, M.K.; Mahalwar, V. (Eds.)

2017, X, 328 p., Hardcover

ISBN: 978-981-10-3983-6