

Report on First Annual National Workshop “Rethinking Intellectual Property Rights – Indian Copyright Law: A social Perspective”

The first Annual National workshop on Rethinking Intellectual Property Rights – Indian Copyright Law: A social Perspective” was held on March 10th to 12th, 2011 at CUSAT. Around thirty students from all over India participated in the Annual National workshop. The workshop comprised of five technical sessions with five sub themes. The technical sessions were between 8 am to 12 pm and 4 pm to 8 pm. Each technical session started with students' presentations and the concepts behind each sub-theme were further explicated using exercises comprising of debates, role plays, parliamentary debates etc. In between two technical sessions there were invited talks and corner discussions. A brief summary of the first Annual National workshop is as follows:

The **1st technical session** was on “Preserving Public Domain: Role of Originality in promoting creativity” Prof. N.S. Gopalakrishnan & Adv. Benoy K. Kadavan were the Resource Persons. The Power Point presentations on this topic were presented by Ms. Mridushi Swarup & Mohar Majumdar HNLU, Raipur & Ms. Rhea Roy Mammen, SLS, CUSAT. It was followed by students exercise – Case discussion prepared by Mr. M. Sakthivel, Research Fellow, IUCIPRS, CUSAT.

A brief summary of the session is as follows:

Summary:

The role of copyright law is to ensure access to information facilitating social, cultural, and economic growth of a nation and there by promote creativity than being used as tool for preventing access to information. So the role of originality in preserving public domain is very crucial. In this era of information explosion the modes of communication have undergone radical changes. One can have inspiration from works in public domain as well as from the copyright works and by adding creativity in way of expressing their ideas or themes and can develop original works. At the same time the idea from which it is taken remains in public domain while protecting the author and authorship. Thus public domain encourages growth of creativity as well as access to cultural heritage. But the amount/degree of modicum of creativity in determining the originality and the creativity on the other hand determines the extend of preserving public domain. So the judiciary must be cautious while interpreting originality of works, narrowing down of public domain hampers creativity. It is not the economic factor which has to be taken in to consideration but the amount of creativity in expressing the idea. It was further illustrated by way of a case discussion on *Zee TV V. Sundial Communication*. So public domain should be understood not as the realm of material that is undeserving of protection, but as a device that permits the rest of the system to work by leaving the raw material of authorship available for authors.

There was a corner discussion on “New Technologies and promoting access to works: Social Concerns by Mr. Sunil Abraham, Director, Centre for Internet Society, Bangalore where the social concerns in the context of new technological advancement and promoting access to work on live practical real life situation was well depicted throughout.

After the first session we had an invited talk on “copyright amendment bill 2010 and reflections on social concern” by Mr. G.R. Raghavender, Director & Registrar Copyright, MHRD, Department of Higher Education, New Delhi. where the need of including the author, performer and the director as owner of their work was pointed out and explained how the music industry developed and the poor authors remained un incentivised. And the role of collective societies in tackling this problem and reasons for still remaining ineffective and the various amendment on the Copyright bill was discussed.

The **second technical session** was on “Access to protected works limits of permitted use”. Mr. Prasanth Iyengar, Alternate Law Forum, Bangalore & Prof.N.S Gopalakrishnan, Director IUCIPRS & MHRD were the resource persons. The powerpoint presentations on this topic were presented by Ms. Manasa Reddy, Christ University, Bangalore & Ms.

Parvathy. K, SLS, CUSAT. It was followed by students exercise – Debate on s.52 of copyright amendment bill prepared by Rujitha T.R, Res earch Fellow, IUCIPRS,CUSAT.

A brief summary of the session is as follows:

Summary:

In this era of information explosion the modes of communication have undergone radical changes. The role of copyright law as an instrument for development of cultural industries and a mechanism to ensure access to information, especially in the sphere of education needs re-examination. In this context the relevance of fair use provisions given under section 52 is immense and plays an important role. In the case of educational purpose, social and cultural events and visually challenged persons ,the present copyright law is inadequate to meet the needs of public especially, in this era of digital technology where access to copyrighted work for educational purpose is denied as well as in the case of access to work in public library. So the main concern is how to view the section52 whether to be treated as an independent provision giving fair use of works ,ie as an exceptions to rights given under s.14 of the copyright Act or one has to look from the exceptions to the rights given under the s.14 than from viewing it from 14 to 52. The privilege under the exception of fair use provisions must be effectively used by the judiciary without tilting the balance of public interest vis-à-vis authors rights. So rather than trying to fix or push in to the three step test one must effectively utilize the flexibilities provided under TRIPS. In the case of amendment to public library clause provision in copyright bill whether the term non commercial public library has widened or curtailed the exception perspective of the public has to be considered.

The 3rd technical session was on “Access to protected work limits of compulsory license and parallel import”. Dr. T.G. Agitha, Research Officer, HRD Chair on IPR, CUSAT& Mr. Anand Padmanabhan, Advocate, High Court of Madras were the resource persons. The PowerPoint presentations on this topic were presented by Ms. Ajitha Pillai, NUALS, Cochin & Ms. Aayushi Agarwal and Trisha Mitra, Symbiosis Law School, Pune. It was followed by student exercise - Play role performed by students of SLS,CUSAT – “Compulsory Licensing in India: Is it Still Alive?” prepared by Dr. T.G. Agitha. A brief summary of the session is as follows:

Summary:

The WTO jurisprudence and the interest of the developed countries is being reflected in the Art 6 of the TRIPS Agreement, even utilised IP to restrict trade for the benefit of the developed countries. While the compulsory licensing and parallel importation provisions in the copyright Act is to provide access to copyrighted works and to ensure availability of copyrighted works at reasonable/cheaper rates, the judicial trend is to ignore the philosophy of copyright, ie., in a social perspective but giving protection to the interest of the publishers even interpreting ‘importation rights includes exportation right. Thus without availing maximum flexibility of TRIPS. This results in undue benefits to authors/publishers by exploiting their work and results in non availability of copyrighted works at cheaper rates. The complex procedures in applying for compulsory licensing prevents applicants from using this provisions. But neither the compulsory license nor parallel import provides a permanent solution, where building a strong domestic industry can be a long time solution. The new modes of distribution and production such as digital technology can be a new mode of distribution of work may be a better solution.

After the 3^d session we had an invited talk of Prof. Sam Taraporevala(XRCVC),St.Xavier’s College,Mumbai and Mr.PrashantNaik, Projectmanager, St.Xavier’sCollege, Mumbai on “ Access to works for Disabled : the social problems” .He explained the barriers in accessing the work for the disabled persons in the context of,new diverse technology and the limits of the fair use allowed by the copyright law and the inadequacy of the present copyright law to meet the needs of disabled persons.

The **4th technical session** was on “Opensource an alternative to copyright. Mr.T.Narendran,Research Scholar,IUCIPRS and Ms. Mishi Choudhary,Counsel,Software freedom law Centre, NewYork were the resource persons. The power point presentations on this topic were presented by Mr. Manoranjan, Government Law College, Trivandrum & Ms. Aparna Jayaram & Anjali Prabhakaran, Jamia Millia Islami University, New Delhi.It was followed by students exercise prepared by narendran T – discussion/interview performed by Ms. Aruna & Ms. Rohini, SLS,CUSAT.

A brief summary of the session is as follows:

Summary:

When copyright itself is being used as a tool for exploitation ,open source give users the freedom to run, copy, distribute, study, change and improve the software. Where in proprietary software there is control over source code where, cost is high and cannot be transferred. So there is no development by information sharing and user is at the mercy of the vendor. So free software means freedom to run, copy, distribute, study, change and improve. Where copy left is enforceable as commercial agreement prevents privatization, also reverse engineering. So copyleft is a better solution than copyright. But at the same time the challenges posed by the opensource are the danger involved if the software developed is in public domain, issues relating to transfer of the economic rights as well as moral rights on actual authors or there is automatic transfer of rights and how the contributors in the development of software are incentivized. The possibility of the concept confining only to software or with all works has to be seriously viewed. So one has to seriously ask whether the open source promotes creativity or is it another incentive model, or a new business model exploiting the actual authors , open software another mode of exploitation of capitalism, by creating new middle men of different characteristics and incentivized at the expense of author. Is open source a liberal subset of a copyright or an alternative to copyright?

The **5th technical session** was on "Rethinking copyright: Should it be Individual private property or Collective property". Mr.Yogesh Anand Pai,Assistant Professor,National law university,jodhpur and Prof.N.S Gopalakrishnan, Director IUCIPRS & MHRD were the resource persons. The power point presentations on this topic were presented by Mr.Karni Singh,NUALS,Cochin & Ms.Meetu.CUSAT.It was followed by student exercise – Parliamentary Debate prepared by Yogesh Pai.

A brief summary of the session is as follows:

Summary:

'Knowledge', which the intellectual property system zealously tries to protect, has public good characteristics of non-rivalry and non-excludability. Hence copyright protected works may be viewed as global public goods that must be shared for maximising efficiency in consumption, but probably at the cost of its creation. No wonder why the copyright system has survived through ages, even though as a second best solution to the problem of free-riding. This paradox presents immense challenges to the copyright system when viewed from the point of accommodating further (democratised) creativity and access to copyrighted works, largely from a socio-economic and developmental perspective. Hence copyright law must be understood as an instrument of balance rather than a sacred monopoly. The copyright system that largely evolved in the non-digital context may at times seem irrelevant in the digital context where the role of intermediary distributors is becoming irrelevant. However, any conclusion on the continued effectiveness of copyright system as an instrument to foster creativity and to create an effective public domain of expressed knowledge must involve a very nuanced debate informed by economics and that which places reliance on contextual empirics. The existence of a socially inclusive copyright system largely depends on the next set of copyright reforms, which may consider the system not as an exclusionary property right but as an instrument to foster creativity and access by regulating the ability of copyright owners to appropriate and accumulate in some limited sense. Thus the concept of rights (how a property right is construed with its attributes) is central to the issue of whether or not the copyright system must retain its exclusionary character, or must be based on liability rules (compensatory liability regime) with certain definitive legal prescriptions.

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