

Materials for
Ph.D. Scholars 2019-20
NGB (DU)

RPE 03: PUBLICATION ETHICS

- PUBLICATION MISCONDUCT
- INFRINGEMENTS OF
INTELLECTUAL PROPERTY RIGHTS
 - COPYRIGHTS
 - PATENTS
 - DESIGNS
 - TRADEMARKS
 - TRADE SECRETS/
LAW OF CONTRACTS
- IT ACT 2000
- THEIR VALUATION & REMEDIES

R C TRIPATHI.

01.06.2020

91st SESSION 2003-2004

SECTIONAL PRESIDENTIAL ADDRESS

**INFORMATION AND
COMMUNICATION SCIENCE
& TECHNOLOGY
(INCLUDING COMPUTER SCIENCES)**

Valuation of E & IT-IPR'S

President

Dr. R. C. Tripathi



The Indian Science Congress Association
14, Dr. Biresw Guha Street
Kolkata - 700 017

II. The Need for IPR's

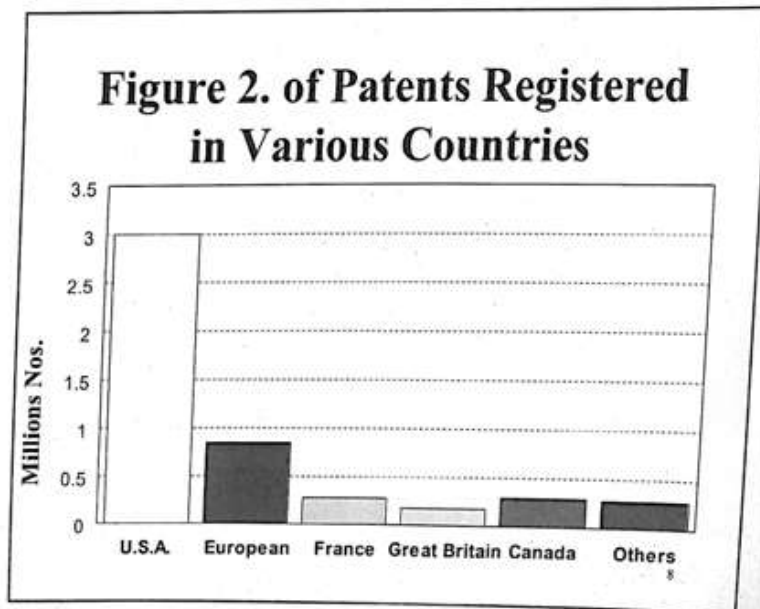
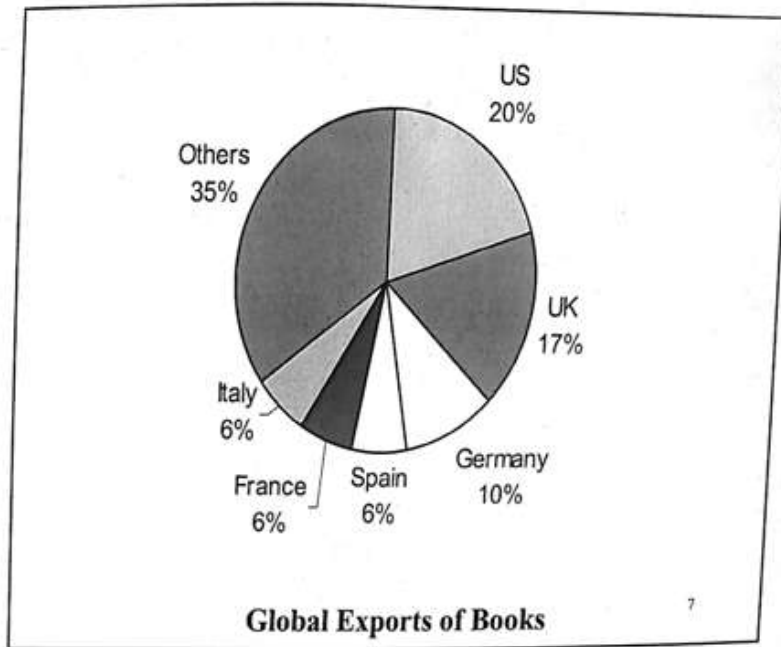
- New Business is based on knowledge driven economy.
- New products, brands, and designs are creating new markets.
- IPR gives legal tools for all players to get their shares.
- Without IPR's, those with financial and human resources may capture all the fruits of labour of brains made by others.
- Enables the real creators/ inventors/ financiers/ investors/ producers/ genuine business persons having long and sustained stakes in serving the humanity through business/ market and get their shares as due.
- India and Pakistan, both are party to Paris Convention for Industrial Property-1883 and WIPO Convention.

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Contd..

- In E&IT, IPR's are now available for inventions (Patents), original expressions (Copyrights), add-ons enhancing ornamental features to the products (designs), genuine identification of the producers (Trademarks) and original layout design of semi-conductor integrated circuits (masks).
- IPR protections are supported legally by all Governments in their territories so that nobody infringes and makes money without rewarding financially or otherwise to the real creators/ inventors/ financiers etc.
- IPR system is slowly becoming global in nature to reward creators/ inventors on one hand and the public at large who utilises the fruits of new intellectual creations.

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SOME TYPICAL IPR RELATED CYBER CRIMES

- Linking, framing and meta tagging
- Cyber squatting
- Blocking the web sites
- Hacking the databases: WCT and WPPT
- Breach of confidentiality and privacy: the data protection act
- Viruse, worms
- Employee extortion

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Indian IPR Acts As Relevant To Electronics & IT

- Copyrights- 1957 last amended 1999
- Patents - 1970 amended 1999, 2002, 2005
- Designs - 1911 overtaken 2000
- Trademarks - 1959 overtaken 1999
- Layout Design of ICs SLD ICs 2000
- Supplementaries - Law of Contracts
IPC & CPC
IT Act 2000

India now is Conformant to TRIPs

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III. An Overview of IPRs.

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Important forms of Intellectual Properties in India and their characteristics.

	PATENT	COPYRIGHT	TRADEMARKS, SERVICE MARKS AND TRADE DRESS	TRADE SECRETS
Definition	A grant from the government that gives an inventor exclusive rights to an invention.	An intangible property right granted to authors and originators of a literary work or artistic production that falls within specified categories.	Any distinctive word, name, symbol, or device (image or appearance), or combination thereof, that an entity uses to identify and distinguish its goods or services from those of others.	Any information (including formulas, patterns, programs, devices, techniques, and processes) that aids a business possess and that gives the business an advantage over competitors who do not know the information or processes.

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	PATENT	COPYRIGHT	TRADEMARKS, SERVICE MARKS AND TRADE DRESS	TRADE SECRETS
Types or Categories	Utility (general), Including Microorganisms	<ul style="list-style-type: none"> •Literary works (including computer programs). •Musical works. •Dramatic works. •Pantomime and choreographic works •Pictorial, graphic, and sculptural works. •Films and audiovisual works. Multimedia •Sound recordings. 	<ul style="list-style-type: none"> Strong, distinctive marks (such as fanciful, arbitrary, or suggestive marks). •Marks that have acquired a secondary meaning by use. •Other types of marks, including certification marks and collective marks. •Trade dress (such as a distinctive decor, menu, or style or type of service). 	<ul style="list-style-type: none"> •Customer lists •Research and development •Plans and programs. •Pricing information •Production techniques. •Marketing techniques. •Formulae. •Compilations.

	PATENT	COPYRIGHT	TRADEMARKS, SERVICE MARKS AND TRADE DRESS	TRADE SECRETS
Rights	An inventor has the right to make, use, sell, assign, or license the invention during the duration of the patent's term. The first to file has patent rights.	The author or originator has the exclusive right to reproduce, distribute, display, license, or transfer a copyrighted work.	The owner has the right to use the mark or trade dress and to exclude others from using it. The right of use can be licensed or sold (assigned; to another).	The owner has the right to sole and exclusive use of the trade secrets and the right to use legal means to protect against misappropriation of the trade secrets by others, the owner can license or assign, trade secret.
Duration	Twenty years from the date of application;	The life of the author, plus 60 years	Unlimited as long as it is in use the registration is renewed by filing every Tenth year.	Unlimited, as long as not revealed to others.

	PATENT	COPYRIGHT	TRADEMARKS, SERVICE MARKS AND TRADE DRESS	TRADE SECRETS
Civil Remedies for Infringement	Monetary damages, which include reasonable royalties and lost profits, plus attorneys' fees. (Treble damages are available for intentional infringement)	Actual damages, plus profits received by the infringer, or statutory damages of Rs. 50,000 to Rs. 2,00,000 plus imprisonment of 6 months for first offence. Subsequent imprisonment maybe of 1 to 3 years plus fine of Rs.1 to 2 lakhs plus costs and attorneys' fees.	<ul style="list-style-type: none"> •Injunction prohibiting future use of mark. •Actual (damages, plus profits received by the infringer (can be increased to three times the actual damages, destruction of infringing articles. Plus costs and Attorneys' fees. 	Monetary damages for misappropriation, punitive damages up to twice the amount of actual damages for willful and malicious misappropriation plus costs and attorneys' fees.

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IV. The Computer Software and Service and their IPR Protections in India and the global perspective.

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The Importance of Copyrights

- **The items covered under copyright act ranged to entertainment sector and computer softwares**
- **Today they account for entire movie industries, music industries, publication of books, periodicals, magazines, news papers, softwares for TV broadcasts and the computer software and services industries / Databases.**
- **They account to a total of about 10% of indian GDP**

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Meaning of copyright

- **the exclusive right**
 - **to reproduce the work in any material form including the storing of it in any medium by electronic means;**
 - **to issue copies of the work to the public not being copies already in circulation;**
 - **to perform the work in public, or communicate it to the public;**
 - **to make any cinematograph film or sound recording in respect of the work;**
 - **to make any translation of the work;**
 - **to make any adaptation of the work;**
 - **to do in relation to a translation or an adaptation of the work**
 - **to sell or give on hire, or offer for sale or hire any copy of the computer programme**

6/30/2005

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Copyright of an artistic work

- to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- to communicate the work to the public;
- to issue copies of the work to the public not being copies already in circulation;
- to include the work in any cinematograph film;
- to make any adaptation of the work;

6/30/2003

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The Importance of Copyrights and the Neighbouring Rights.

I. Profile of Indian IT software and services industry:

i) The quantitative profile (2003-04)

- India today has 65 companies of SEI-CMM Level 5 competency
- 275 Indian software and ITES-BPO companies have acquired quality certification and about 80 more companies are in pipeline.
- Currently India's vibrant IT software and services industry has total annual turnover of US\$ 15.7 billion including exports worth US\$ 12.3 billion
- It accounts for about 2.64 per cent of India's GDP and 21.3 per cent of exports.
- It is projected to grow to 7% of India's GDP and 35% of exports by year 2008 to provide 8 millions jobs from current level of 0.8 million presently.

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The qualitative profile of Computer Software

THE TECHNOLOGICAL CAPACITY BREADTH SPANS OVER

- **Business software and large database application services**
- **Personal Computing, Scientific and Engineering Computing**
- **CAD including Semiconductor Chip Designing**
- **Process Control Systems**
- **Multimedia and Animation Systems**
- **Image processing including Space imagery Interpretations**
- **Computer Inter-networking & Computer based Communications**
- **Internet Information Security Systems**
- **High Performance Computing**

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The qualitative profile

Contd.

Wide applications developed an installed include

- **Business intelligence (BI) solutions for**
 - Banking and Finance
 - Telecom
 - Retail
 - FMCG companies (fast moving consumer goods)
 - Call Center Companies
- **Customer relationship management (CRM) solutions**
- **Supply Chain Management (SCM) Solutions**
- **E-Governance systems to enable people to adopt systems for payments of taxes and retrieval of govt. land records, plans etc.**

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A. The Copyrights

Contd...

- It is projected with an export potential of \$57-65 billion by year 2008 with share of 6% of the relevant global market
- Domestic software and services segment has grown to reach level of Us \$ 3.4 billion per annum now.
- Domestic ITES and hardware services markets are estimated to contribute about 19.5 per cent.
- Contribution from packaged software is estimated as 13.7 per cent of total

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INTERNATIONAL COPYRIGHT

- **The Central Government Gazetted/published an Official order dated 30-09-1991, that all or any provisions of this Act shall apply to citizens of notified countries,**
 - to works first published in any territory outside India to which the order relates in like manner as if they were first published within India
 - to unpublished works, the authors whereof were at the time of the making of the work, subjects or citizens of a foreign country
 - in respect of domicile in any territory outside India to which the order relates in like manner as if such domicile were in India

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The important provisions as relevant to ICT Sector

The following acts shall not constitute an infringement of copyright, namely,-

(a) a fair dealing with a literary, dramatic, musical or artistic work [not being a computer programme] for the purposes of

2[(i) private use, including research;]

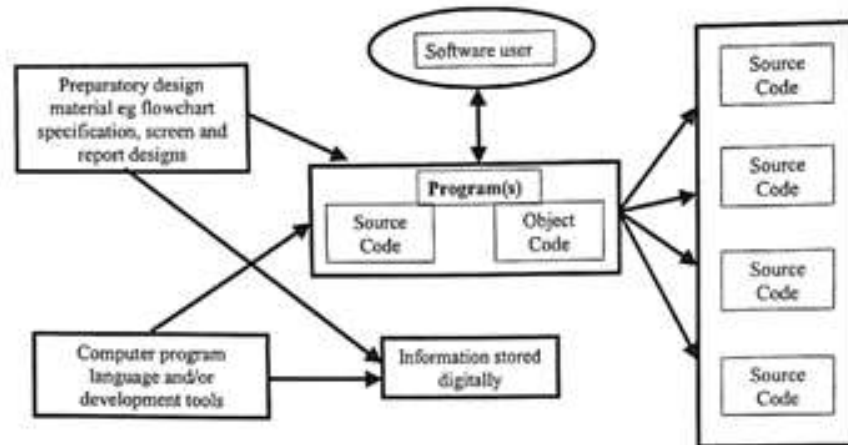
(ii) criticism or review, whether of that work or of any other work;

[(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy ²⁵

Cont...../

- the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy--
 - in order to utilise the computer programme for the purpose for which it was supplied; or
 - to make back up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;

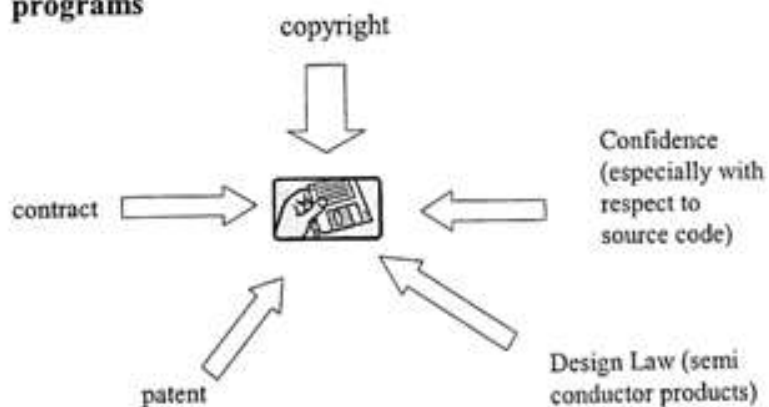
Figure 1. Computer Software Items



Source : Software © Copyright Law-Forth Edn -David Bainbridge Butterworths Publication UK, 1999

Infringements Remedy by Owners

Figure 1. Various Forms of legal protection for computer programs



Source : Software © Copyright Law-Forth Edn -David Bainbridge Butterworths Publication UK, 1999

Ongoing Piracy Curtailment Measures Initiatives

- Cooperation with BSA & INFAST
- Anti-Piracy Hotline of NASSCOM
- Software Duties - Zero
- Regular Media Campaigns/ Seminars
- Training for Enforcement Agencies by ILI, Delhi and National Law School University Bangalore.
- Several Indian Websites providing crucial informations.
- Emphasis on open Domain s/w under a DIT Project to IISc. Bangalore.

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V. The Computer Hardware and Patents.

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V. The Computer Hardware and Patents.

B. The Indian Patent Act 1970

The Patentable Subject Matters include

- Machines, equipment and apparatus
- Physical Devices
- Products and processes of manufacturing
- Micro-organisms
- Materials
- Embedded system involving inventions both in H/W & S/W

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Items Not Patentable

- Scientific Theories and facts, Principles and formulæ
- Perpetual machines disobeying Laws of nature
- Abstract ideas not demonstratable for reduction to practice
- Generally other forms of IPR's

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The touch stones for Grant of Patents

- New/ Novel
- Non obvious to skilled workers of that Technical area/ inventive step(s)
- Potential for Industrial Application

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Advantages of Patents

- Provides monopoly for use by any one including Govt.
- Full protection as responsibility of State
- Allows the inventor to file Patents of Addition & Convention Patents in various countries.
- Members of Patent Cooperation Treaty (PCT) may obtain Patents in various countries by filing single application to PCT Headquarter at WIPO, Geneva.

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Advantages of Patenting

- United States which has the greatest repository of patents is the world leader in technology.
- Helps inventors to gain honour as well as money.
- Protects their technology legally.
- Today, all MNC's basic strength for their world wide and safe market exploitation mostly on account of their patents.

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Advantages of Patenting

- In a global market economy capital investment is the key to development. According to a study majority of corporate executives were of the opinion that strong patenting in a country is one of the considerations for investment.
- Patent protection may encourage productive use of scientific output.
- India and Pakistan both are members of PCT.

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B. The Indian Patent Act 1970 as amended so far

The Patentable Subject Matters include

- Machines, equipment and apparatus
- Physical Devices
- Products and processes of manufacturing
- Micro-organisms
- Materials
- Combination of Computer H/w and S/w giving technical effect.

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Articles of the TRIPS Pertaining to Computer Software

Article 27.1: Patentable Subject Matter

- patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. ... patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

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Status of Software Patenting.. Europe

- Patentability requires a specific technical application in European Patent Convention (EPC).
- Article 52(2)(C) of EPC specifically excludes "programs for computers as such" as patentable inventions.
- However, if a computer program brings about, or is capable of bringing about, a technical effect which goes beyond the "normal" physical interactions between the program (software) and the computer (hardware) on which it is run, is patentable under the Technical Board of EPC guidelines.
- India soon to follow EPC.

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Disadvantages of Patenting contd...

- Innovation and Incremental growth is an essential need for the growth of a software industry. As patent will give a sole monopoly to the holder it will hamper incremental growth.
- In patent regime, software industry will face an increased financial/administrative burden due to patent related issues.
- Open source software movement is vulnerable to patent infringement lawsuits.

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VI. The Design and Trademarks and their protection in India and the Global Perspective.

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C. Industrial Designs

- **The ornamental are aesthetic aspect of an article**
- **May be 3D features like shape or surface of an article**
- **Also may be 2D features such as patterns, lines or colours**
- **Must appeal to the human eyes**
- **Any technical features of the article to which it is applied is generally not protected under designs**

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Advantages of Designs Protections -

- **Makes the article Attract you and appealing to the customers.**
- **Adds to the marketability to the product .**
- **Adds commercial value to the product.**
- **Enables use of traditional arts and crafts of a country for exports earnings.**
- **India has yet not become member of Hague Agreement on international deposit of industrial designs.**
- **So far only 7 Indian Designs registered in Europe including 3 in UK**
- **India as well as Israel not yet partner to Hague Agreement**

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D. Trademarks

- **A distinctive sign which identifies certain goods or services as those produce or provided by a specific person or interprise.**
- **Helps consumer to identify for purchase a product or avail a service of specified brand.**
- **It is the only IPR which may be renewed indefinitely**
- **India as well as Israel, both not yet partner to MADRID Agreement and Trademark Treaty 1994.**

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VII. The Road ahead for developing countries.

Salient Observations and Recommendations of The Commission on IPR (CIPR), UK on

IPR and Developing Policy, Chapter 5: Copyright, Software and the Internet

- Department of International Development, Govt. of UK earlier (May 2001) set-up a "Commission of IPR and Developing Policy" to incorporate voices on this topic from Developed as well as Developing Countries; from Science, Law, Ethics, Economics, Academics, Industry and Government.
- Secretary, DSIR (Dr. Mashelkar) participated in the above from India.

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• OBJECTIVES:

- How National IPR regimes could best be designed to benefit developing countries within the context of TRIPS Agreement.
- How the International Framework of Rules and Agreements may be improved in above regards.

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THE COVERAGE

- Meetings were held in May 2001, Feb. 2002 and visits of the Commission were made to Brazil, China, India, Kenya, South Africa, UK, Brussels, Geneva, Washington, etc.
- General feel gathered was that TRIPS Agreement has reinforced inequality - IPRs as useful to achieve objectives of the developed world but "uneven level playing field" for the developing countries.
- Commission has produced this report design to meet most of the reasonable requirements of both sides.

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- It addresses roles of IPRs in
 - i) development,
 - ii) health,
 - iii) agriculture and genetic resources,
 - iv) traditional knowledge, access and benefit sharing and geographical indication,
 - v) Copyright, s/w and the Internet,
 - vi) Patent reform,
 - vii) institutional capacity and
 - viii) The International Architecture.
- DIT is concerned with overall objectives and Commission's recommendations given in Chap. 5, Copyright, s/w and the Internet. These are summarised as below:

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1. The Report

1.1 Introduction: Copyright as a Stimulation to Creation

- International Flow of Ideas and knowledge based products is in the form of Copyrights.
- The current digital era may prove as basic instrument for regulating International flow of ideas and knowledge based products and this will create global fortune holders.
- Most of the Corporates owning the Copyrighted works are in developed world, but major customers are in developing countries making the money flow from poor to rich; a significant disadvantage to the former.

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- 2/3rd of all books published and exported the world over belong to US, UK, Germany, Spain, France and Italy only.
- Only developing country exception to the above trend is India having \$ 10.2 Billion Software Industry with \$ 7.8 billion exports in 2001-02.
- Developing countries should therefore create more infrastructure, financing measures and implementation schedules to reverse the trend.

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1.2 Collective Societies:

With their empowerment, initially it will close the knowledge gap to the poor users in getting text books, S&T Literature and Software.

1.3 Will Copyright rules allow developing countries to close the knowledge gap?

WCT and WPPT may restrict fair use and education unless provisions for exceptions in digital context are made in the laws of the developing countries.

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1.4 Copyright - based industries and Copying of Protected works.

- Developed world should allow free online access of academic journals to the Developing Countries.
- Simultaneous publication of current books in the developing countries should be the Policy of top book Publishers of the West.

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1.5 Copyright and Access:

- Expansion for Access to copyright materials should be more liberal in the laws of developed countries to meet the goals of education, knowledge transfer etc. to the developing countries.

1.6 Copyright and Computer Software

- More use of open sources software products be promoted in developing countries.
- Reverse Engineering should be allowed in their laws.

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1.7 Delivering the Potential of the Internet for Development

- Developing countries should expand provisions of 'fair use' of Internet based contents.
- Circumvention of Electronic Copyright Management Systems should not be regarded as illegal in the developing countries though prescribed in the Digital Millenium Copyright Act (DMCA) of USA and WIPO Copyright Treaty (WCT).

1.8 Technological Restrictions:

- Developing countries, by extending their fair use clauses, should ensure that distribution of digital material prohibited by Contract provisions be treated as void.

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2. Comments of NASSCOM

A. Role of Developed Countries

- CIPR Report has rightly said: Higher IP Standards should not be pressed on Developing Countries particularly for countries like Brazil, China and India, without a serious and objective assessment of their Development Impact.
- Copyright Holders in Developed Countries should price their works in a manner (e.g. budget editions) to enable greater number of users from developing countries access the authorised copies. Else, e.g., for s/w, Developing Countries may go for free and open domain s/w products.
- The Trade Pressure Tactics in form of performance on the lines of Super 301 and Special 301 lists ought to be put into effort with a lot of circumspection. 11

B. Developing Countries

- Role of collecting Societies like "Indian Performing Rights Society (IPRS)" as regulated by Copyright Board, Ministry of HRD is laudable.
- Developing Countries should also prioritise their concerns to IP Industries keeping in view their infrastructure, economy, concern to human life etc. so as to facilitate IP access to the public by relevant means solving the problems of changing needs, e.g. lowering the entertainment tax on Cinema Halls looking into new technical developments like Cable TV piracy.

3. View of the Public Forum

Linux India Bangalore & Free S/W Foundation, Mumbai favour use of open domain S/W to address the problem of Digital Divide

- 500 + Open Domain Software (ODS) products compiled under a DIT project are being popularised all over the country.
- Full support is being given by States like Kerela to implement their IT Policy promoting all e-Governance and other application softwares development needs of the Govt., wherever so possible, to be based on only free / open domain software products.

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Thank You.

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