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THE SIGNIFICANCE OF IPR IN AN INTERNATIONAL SCENARIO

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ABSTRACT

Associated with literature, music, and movies, computer software is a relatively new form of intellectual property. Computer software is such a diverse phenomenon that any attempts to arrive at conclusions claiming general validity are bound to fail. IPR And International scenarios do not prevent additional forms of protection for computer programs and a member can offer patent, copyright, and trade secret protection for computer programs. The object of copyright protection in a computer program is not the underlying idea but the computer language used to express the idea. Copyright is the most commonly used to protect computer programs because the writing of a software code is similar to a literary work. Under copyright laws, protection is available only to the form and expression of the idea and not to the idea itself. The indication is that software law awaits new social consensuses and requires new legal approaches; and all this ultimately rests upon legislative action or treaty negotiation, whose doctrinal development is a slow process.

KEYWORDS: IPR, Copyright, International Law, Protection, Software

INTRODUCTION

Intellectual Property is a term pertaining to creations of the intellect for which a monopoly is assigned to designated possessors by law. Intellectual properties are non-obvious, novel, and original creations of the mind. These are classified as patent, trademark, copyright, industrial design, and trade secrets and are regulated by intellectual property laws. Intellectual property law protects those innovations and inventions which are published registered or register able. Modern society relies heavily on computer technology. Without software, a computer cannot operate.

In the early days of computers, little attention was given to the topic of laws related to IPR. Computers were rare. However, today's society relies heavily on it. And therefore the importance of computers and their related

entities have come to the fore. Both hardware and software work in unison. The rights relating to software became extremely important in the software age, the rights of the software creators. With the globalization and changing global landscape, new problems arise each day with respect to safeguarding the innovations, this problem is no more being limited to the developed nations.

Copyright is the most commonly used to protect computer programs because the writing of a software code is similar to a literary work. Under copyright laws, protection is available only to the form and expression of the idea and not to the idea itself. The object of copyright protection in a computer program is not the underlying idea but the computer language used to express the idea. The code of the specific program is carried out independently. The new code thus constitutes the expression (of the underlying idea) and is protected but the methods and algorithms within the program are not protected.

Over the past numerous years, advances: a computer software have brought us time-saving business programs, educational software that teaches basic skills and cultured subjects, graphics programs that have revolutionized the design industry, and Internet applications that help connect and join us with other computer users, and an increasingly composite variety of computer games to entertain us. As the software industry raises, everyone stands to benefit. Associated with literature, music, and movies, computer software is a relatively new form of intellectual property. Nevertheless, the software is protected and safe under the very same laws that govern music, literature, movies, and other copyrighted contents.

IPR And International Scenario

TRIPS does not prevent additional forms of protection for computer programs and a member can offer patent, copyright, and trade secret protection for computer programs. Keeping in mind the higher standards of creativity mandatory required by patent law the software developer can choose or elect any form of protection that is most desirable to him. As the source code is understandable only by trained programmers and not by normal persons, the proprietors usually protect the source codes under the trade secret regimes and the object code is protected as a copyright.

In India, the software in a computer does not form the subject matter of patents as the requirement of the patent law is that the process must result in something "tangible" and "vendible." Though not many in India demand and request software protection, it is much-needed protection seeing the growth of the Information Technology industry in the country. India has adopted and approved most of the particulars of the international instruments discussed and has combined its law on software protection based on 'the die essentials of these instruments.

The 1978 World Intellectual Property Organization (WIPO) Model Provisions, though favoring patent protection for software, identified several difficulties in the arena of conducting the examination relating to the novelty in inventiveness, establishing prior art, and finding qualified examiners. Additionally, the innovation stifling agenda of software patents has also been much debated. The indication is that software law

awaits new social consensuses and requires new legal approaches; and all this ultimately rests upon legislative action or treaty negotiation, whose doctrinal development is a slow process. What India needs to realize is that reliance should not be placed on the assumption that IP law, as 'currently applied to software, is infallible. The essence of any IP regime is the advancement of science and the useful arts. However, the current regime that is established in the context of computer programs is certainly being employed to fail in this objective.

The exclusive rights granted by a patent diminish competition, and interfere with market mechanisms. A patent owner enjoys and adores a monopoly that enables him to demand a higher price. To a certain extent, this is an unavoidable and accepted consequence of the patent system. Specifically for software, it is a well-known fact that even without patents there is a natural tendency towards monopolies due to a need for standardization.

In conclusion, it seems inappropriate to ask for the benefits and disadvantages of software patents in general. Computer software is such a diverse phenomenon that any attempts to arrive at conclusions claiming general validity are bound to fail. Hence, future efforts should be directed at defining and enforcing a proper distinction between patentable and non-patentable software. For that purpose, it might be more important to prevent "trivial" software patents than to prevent "non-technical" software patents. In addition, it is important to control software piracy all over the world. If software piracy has to be legally controlled through copyright law then the two alternatives emerge. Either extend the present copyright law with or without modification to software piracy also or make new provisions to meet new situations. Since information technology is still fast-growing, any legal regime controlling information technology must have an in-built mechanism suited to accommodate any further developments. It is humbly submitted that to bring computer programs within copyright protection, instead of extending the traditional definition of literary work to the computer programs, a separate new chapter covering exclusively computer-related provisions may be added in the forthcoming computer legislation. This will enable us to accommodate the new changes that eventually emerge. The blending of new and old rules is thus possible.

CONCLUSION & SUGGESTIONS

As per the approach of this study following suggestions' are being advanced:

A. Legal and Technical Consistency and Completeness

1) It must build on an existing legal foundation. Although an entirely new regime would be theoretically attractive, it probably is not feasible. The new framework should supplement existing laws without overlapping them.
2) It must focus on the most serious problems. No legal framework can solve all of the industry's problems, but it must focus on the most serious issues.

3) It must be predictable in scope and duration of protection. To encourage investment and reduce litigation, the protection given must be reasonably predictable.
4) It should flow from and be responsive to the nature of the technology protected. The protection must be geared towards that which is of true value in software, namely: behavior, the industrial designs that produce behavior, and conceptual metaphors.
5) It should make legal distinctions that are technically coherent. Without this element, legal questions may be impossible to answer meaningfully when presented to technical witnesses or experts.
6) It should be independent of the current state of technology. The framework must be capable of evolving as the technology itself evolves.

B. Encouragement of Innovation

1. It should encourage the spreading of program know-how and new applications. The regime must protect program "know-how" not by blocking access to it, but by regulating its use.
2. It should encourage product-enhancing innovations and discourage mimicking. It must allow for improvements that increase the utility at the same cost or decrease cost while maintaining utility. However, it must discourage the simple variations that are created to appear different in legal categories.
3. It should encourage innovation by avoiding market failures. Innovation will arise naturally given the opportunity. It must provide a forum where "natural selection in the ongoing breeding of innovation" can occur.
4. It should provide innovators with a reasonable lead time. Products imitating an innovation should not be able to arrive faster than necessary to provide innovators with reasonable incentives to invest in new products. To encourage innovation, an innovator must have an unobstructed opportunity to seek market rewards before, imitations can lawfully appear.

C. Protection of the Innovator

1. The scope and duration of protection must be coordinated to the rate of change in the market. This would allow members of the technical community to adjust the legal regime so that it is attuned to the rate of development in the market and thus avoid cycles of overactive and underactive innovation.
2. It should provide innovators an opportunity to regain their research and development costs and earn a return on this investment. This would provide the innovator with a head start in the marketplace allowing them to recoup their investment. It would also reward only productive innovations.
3. It should avoid wasteful reduplications of effort. This would provide a framework for software technology licensing agreements. Thus reducing efforts and spreading the cost of research and development.
4. It must recognize that innovation may be separate from the specific product and must reward them separately. The market may recognize the value of innovation even if it does not value the product in

which the innovation is first implemented. These innovations should somehow receive recognition and reward.

D. Encouragement of Market Growth

1. It should provide incentives to agree rather than to litigate. This should create an atmosphere where innovators and those who desire to use the innovation can reach an agreement rather than litigate.
2. It should be able to distinguish among the different kinds of "second corners." This would determine if second corners should have to pay a standard fee or be blocked altogether from the use of the innovation. It would distinguish among the different kinds of second corners based on the market effects of their borrowing.
3. It should minimize the cost of obtaining protection. It should minimize bureaucracy, time, and overhead expenses. "The more 'self-executing' a legal regime is, the more and extra 'market-friendly' it is likely to be." Perhaps some form of automatic protection.
4. It should minimize and reduce barriers to entry. Innovation in the market will most likely be improved by increasing opportunities to participate in it. It should promote consumer welfare. Innovation will occur only if there is an incentive. There will only be an incentive if the consumers provide it. These are the ideal conditions that should exist in an extension of the current laws. We will next discuss some solutions and compare them to the criteria.

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