

# Benefit Sharing in a Globalized India

Mapping Innovation and the IP Environment



# SPAG | STRATEGIC PARTNERS GROUP

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# INDIAN INDUSTRY LEADERSHIP SPEAK

# PREFACE



Whether it's the first use of the light bulb or the birth of the Internet, innovations have always been the catalyst for the success and evolution of humankind. Some of these path breaking inventions brought about radical changes while others laid the groundwork for equally important developments down the line.

Cut to the present. As India strives towards a robust and sustainable economy to secure all-round development of its people; innovation continues to be the most important tool to remain viable in a climate of volatility, and continuous change.

A successful country is often defined by its economy and cutting-edge, high-value technology that is used to transform lives. Building on this premise, India's current logic model is rooted in change and development with a clear mandate for creativity and innovation.

Intellectual Property thrives in an environment of collaboration and benefit-sharing. However, protecting this intangible asset needs a shift in the cultural mindset of a country like India where piracy is home spawned. Often, people fail to perceive the dangers of piracy and knowingly or unknowingly participate in the process. This is the most challenging part as cultures are deep-seated and difficult to influence or alter. The Indian administration needs to provide the impetus to bring about this transformation by promoting a culture of shared decision making and rewarding pioneering approaches to change. This has to be backed with transparency and consistency in policy making along with its strict enforcement.

For innovation to realize its true merit, the government needs to widen the scope of safeguarding innovation across sectors, and not just limiting it to Pharmaceuticals or Information Technology. This will build the climate for product innovation across sectors.

This white paper presents a snapshot of the IPR survey conducted by SPAG Asia with the Indian corporate leadership. The idea of Intellectual Property emerging as the key driver to attract foreign investment and create jobs found resonance among all industry leaders through sectors. This study aims to provide a baseline of how IP is perceived in India. It also goes on to examine the awareness, attitudes and resultant behavior of some groups towards innovation and intellectual property, while highlighting challenges and the way forward.

This IP survey can work as a tool for policy makers to assess what the corporate leaders of India are thinking and thereby provide a direction to develop a framework for India's long-term interest.

With the creation of the US-India Trade Policy Forum to enhance cooperation and exchange information with the U.S and the formation of a six-member IPR Think Tank by the Department of Industrial Policy & Promotion, the new administration has been able to project their progressive intent to some extent.

Recently, the Commerce and Industry Ministry under the leadership of Narendra Modi presented the first draft of the new IPR policy. As the next vital step, it is important that the positive aspects of the policy are followed by concrete actions to bring real policy change.

## **Aman Gupta**

Managing Partner

Strategic Partners Group

# EXECUTIVE SUMMARY

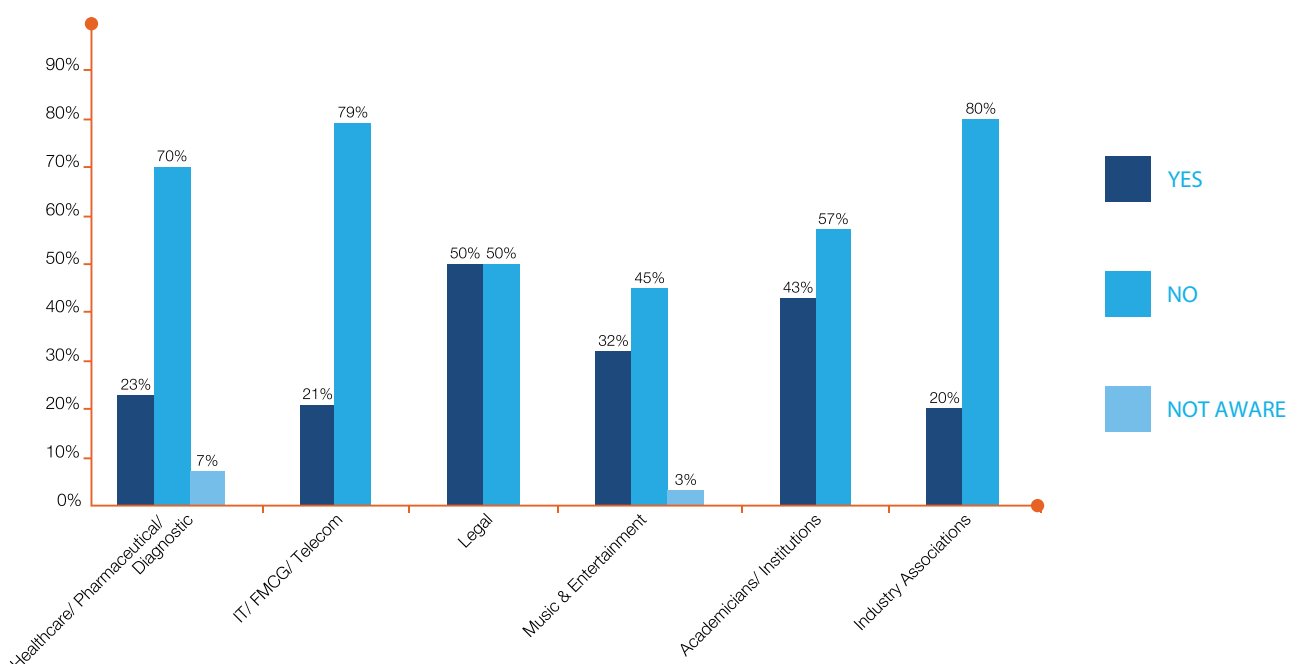
The unique quality of the human mind is the ability to create new ideas. When knowledge is produced out of these ideas; knowledge that is viable both socially and techno-commercially, it takes the shape of Intellectual Property (IP). This like any other movable or immovable property becomes the sole prerogative of the creator, who can also prevent others from using it without seeking prior permission. This legal safeguard that protects creative and innovative products is called Intellectual Property Rights. These laws take the form of patents, copyrights and trademarks to cover the range of creative and intellectual expressions and innovations.

India, a country with multifarious and ubiquitous problems needs an IP environment that stimulates growth and produces a battery that maps out the design for its future progress. Over the past two decades of globalization at work, the economy has changed from being labor/land based to capital/technology/media-based. With the advancements in techno-media, mode of production too, evolved from being physical to knowledge based. In this scenario, the only way for a country to move ahead is through healthy competition and benefit-sharing.

There is an urgent need to create a strong IP policy so that creative work and innovation are duly protected. At the same time, cost effective products should also be made available to the grassroots. So, in India, the IP environment should act as a bridge between producers and consumers; wherein producers are incentivized to invest in innovation and creativity, while consumers are assured that the end products are authentic and safe.

Knowledge-based industries have the potential to create thousands of jobs for Indian workers, tremendous revenues for the government and substantial increases in India's exports. But to realize these benefits, IPR must be taken seriously by all those involved. This means political will from the top and dedicated resources to improve the institutions and train the personnel needed to safeguard IPR on the ground.

A meaty cartography of a country's IP policies, protections, and enforcement guides business leaders to invest in a country's developmental programs. A sound IP policy with its emphasis on patents, copyrights, trademarks, and enforcements allows not only steady flow of FDI and related modes of economic development, but also ensures the safety of artists, researchers, academicians and other industry associations in terms of their contribution to innovative research and creative output.

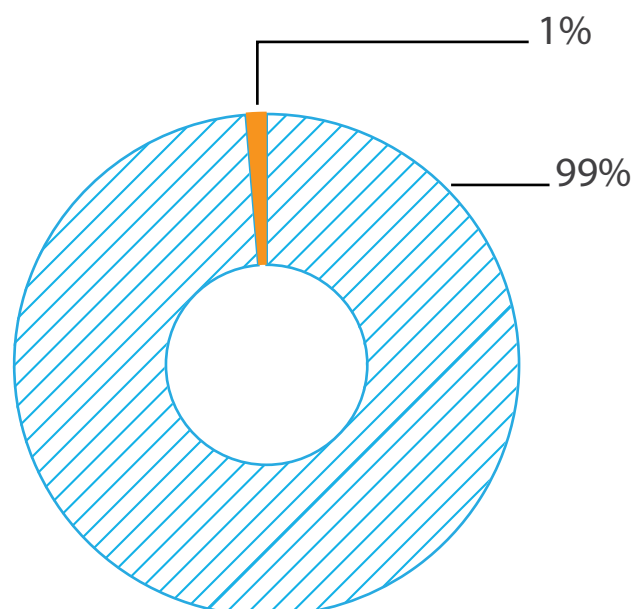


Does India have a sound IP Policy ?



*A strong patent law will encourage, stimulate and sustain innovation in the field of Pharmaceuticals, which is a research-based and technology-intensive Industry. The proper implementation of a world-class patent law will encourage foreign direct investment and technology transfer, stimulate local research by Indian and international companies and be beneficial to the Indian Pharmaceutical Industry and the people of India, leading to the availability of newer and better medicines.*

Ranjana Smetacek, Director General, OPPI



YES



NO

Does Intellectual Property Play an Important Role in your Industry?

## New Developments

The newly elected BJP- led Indian government is responding to the need for development of IPR infrastructure. The Government has taken a comprehensive set of initiatives to streamline the administration in view of its strategic significance. The government recently came out with a draft policy on IPR and set up a think tank to strengthen the country's patent regime and encourage innovation.

The new team of consultants in the proposed think tank would comprise experts (15-20) including professors, end-users and lawyers, who will constantly keep the government informed about developments on international IPR issues and flag off concerns, thus enabling it to handle these IP-related issues better going forward. Commerce and Industry Minister, Nirmala Sitharaman acknowledged that, "India does not have an IPR policy. This is the first time we are coming out with an IPR policy. IPR policy issues have been hanging for quite a long time. It will give direction in terms of protecting IPR in India", she said.

### Modi's Visit to the US: Silver Lining in the Indian IP Sky

The dynamism of the new PM is expected to commit India to a path of global best practices in IPR. This will encourage innovator companies to invest in India, which will not only benefit foreign investors, but also Indian innovators, who will enjoy the benefit of getting home grown innovations protected.

## Conclusion

We need to understand that while developing countries stand to gain by strengthening their systems to enforce IP protection, it comes at a huge infrastructure and manpower cost. The least developed countries may not be able to justify this cost in the face of more pressing needs like Housing, Education, and Health for its citizenry. In such an event, these countries should be able to approach organizations like the World Intellectual Property Organization (WIPO) and the World Trade Organization for financial and technical help. There has to be some form of economic and social pay offs to make IPR work on the ground in developing nations.

We must also acknowledge that the political will to enforce intellectual property protection depends largely on the prevailing socio-economic environment. The developed world implements IPR laws more vigorously as it has a higher ratio of R&D in its GDP and more scientists in their workforce and consequently more inventions to protect compared to their counterparts in the developing world. So the task at hand is to strike a balance between innovation and its dissemination and reopen the IPR debate.

# IPR SURVEY

## Thumbnail

The survey revealed the relevance of Intellectual Property Rights (IPR) across sectors in a large way. Almost all the interviewees believed that IPR is an essential determinant that will go on to chart the course for India's economic development, job creation, industrial growth, and more. A strong IP culture allows for both economic and attitudinal advantages. Therefore, IPR should not only be seen as a source for the protection of rights and ideas of innovators, but also as a fountain head of motivation for future innovations.

While on one hand, the IP structure in India is not absolutely bleak, on the other hand, the capacity available for upholding the structure portrays a dismal scenario. Almost all the interviewees were of the impression that policy makers (in the previous government) were not doing enough for IP-related issues from a global standpoint.



The overall cost of obtaining a patent in India is prohibitive for some applicants resulting in unequal opportunity to access and protection.

## Viewpoint

Do you think India has a sound IP policy and structure?



*I do believe the Indian government has strengthened the IP laws. There is a perceptible increase in patent litigations in Indian courts which reflects the growing importance of IP. India has fulfilled*

*its obligations towards international treaties like TRIPS, GATT etc. by amending its old patent law of 1970, wherein, product patents are now a norm and a 20 year patent term protection is granted in India.*

**Kiran Mazumdar Shaw,**  
Chairman and Managing Director of Biocon

## Counterpoint

*Although we have a few IP legislations in place, it's been so poorly executed that it does not have any existence at all in the Indian corporate market.*

**Ashwin Wadalkar, KPMG**



## Key Challenges

Implementing a sound IP policy in India can be difficult because our laws have not kept pace with our rapidly changing consumption patterns. A huge backlog of cases is pending at both civil and criminal courts with no redress in sight.

In some cases, it has been found that policy makers and enforcers lack technical qualification or knowledge to mediate or settle a issue. There is complete absence of coordination among the different arms of the governments, working in silos.

Ground level awareness is abysmal and is coupled with a complete lack of respect for IP-related issues. A culture of "juggad"<sup>1</sup> fuels piracy, no less.

<sup>1</sup>Jugaad is a colloquial Hindi-Urdu word that can mean an innovative fix or a simple work-around, sometimes pejoratively used for solutions that bend rules, or a resource that can be used as such, or a person who can solve a complicated issue.



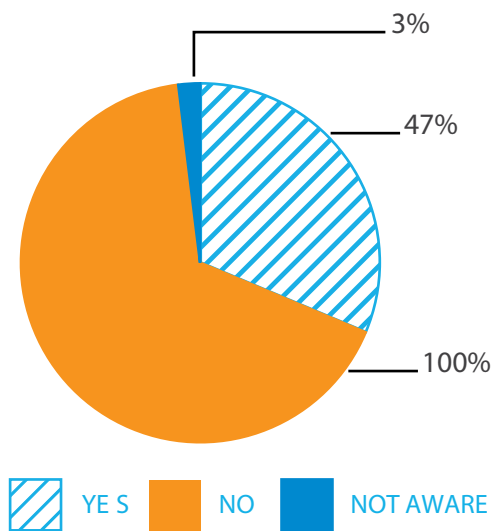
## The Curious Case of India

In response to India's low position in the global analysis of IP regimes, the interviewees believed that awareness and implementation were more serious issues than the policy structure itself. India, being a developing nation is less able to absorb the associated costs of implementing IPR on the ground, and less likely to benefit from domestic innovation compared to its more developed counterparts. However, the government of the day must also discern the large revenue generated from the IP industry and invest appropriately in it. Therefore, we require a policy tailored to suit our context. Implementing a global IPR model is not the way out. However, now is the time to move out of the shadow of imitation and take on the challenges of competition in a level playing field.

## The Way Forward

The overall IP environment in the country can be improved by:

- + Provisioning for new laws and its implementation
- + Recruitment of effective human resources with suited administrative skills
- + Training and creation of more innovative scientists and researchers
- + Establishment of mechanisms that assure rewards for innovations
- + Making IPR a compulsory subject
- + Creating awareness generation at SME level
- + Increasing protection to gain an increase in investors
- + Making the profession financially attractive
- + Centralization of registration and quicker hearing
- + Forming contracts and imposing high penalties
- + Building a culture around IP
- + Building a strong legal and monitoring system
- + Government funded research, training and development
- + Formation of an autonomous body guarding IP rights and ensuring transparent judicial procedure
- + Activating redressed forums



Does India have a sound IP Policy and Structure?

## Conclusion

The protection of innovation in an industry provides security to an innovator that in turn, boosts confidence for more free thinkers to invest their time and effort in it. Subsequently, a strong culture for return-on-investment is generated. This reduces the gap in uneven remuneration and stimulates an environment for quality work. This is a cyclical approach to growth.

An understanding and healthy respect for IP protection needs to be extended to the grassroots as well for it to be sustainable in the long run. If domestic talent is awarded with handsome royalty when the invention is commercialized, it attracts the community to innovate, knowing that it will be able to recover costs to cover the risk of development and still make a profit. At the same time consumer interests are secured by providing quality and safe products. Thus the circle stands completed.

The task for the day is to include the masses in the process. For a populous country like ours, mass mobilization needs to happen for anything to work out.

However, the IP debate is a recent phenomenon in India and this transition phase must be acknowledged. India's strong cultural and intellectual ethos has the potential to directly benefit the economy and mark a respectable position globally, provided we engage effectively in the mammoth task that lies ahead of us

# INFORMATION TECHNOLOGY

## Thumbnail

Even as the Indian IT scenario represents constant growth and a number of positive trends, most Indian software companies focus on providing low cost solutions in the services sector. Even after becoming a giant in the sector, we are not known for our product development. This can be linked to the lack of a culture of innovation in India.

As of reports in the 2011 edition of the 66-nation IT Industry Competitiveness Index, India increased its position by 10 ranks in the list. However, this phenomenal growth is not matched with a strong IP climate. Software piracy poses an enormous threat to the growing software product industry. It has a negative effect not only on the economy but also creates competition between legitimate software business and the illegal parallel trade of piracy.

The Business Software Alliance is a leading body in India that works towards the promotion of a strong IPR environment in India. They not only assist policy makers with their IPR initiatives, but also create policy solutions that promote innovation, job creation and economic growth. According to BSA Global Software Survey 2014 released by The Software Alliance, 43 percent of the software installed on personal computers around the world in 2013 was not properly licensed. The commercial value of these unlicensed software installations amounted to \$62.7 billion.

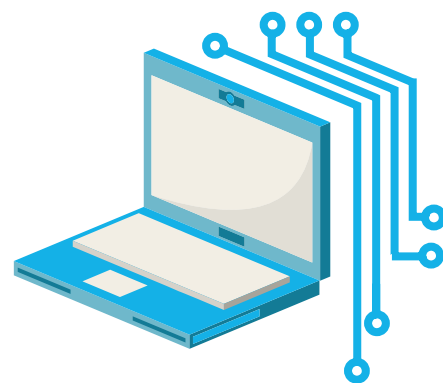
## Key Observations

Piracy is detrimental to the country's economy and legal order. This is corroborated by the following:

- + According to the BSA Global Software Survey, the rate at which PC software was installed without proper licensing in India was 60% in 2013. The commercial value of that unlicensed software totaled over INR 179 billion (US \$2.9 billion). A significant percentage of these admitted pirates revealed that they acquire software illegally "all the time," "most of the time" or "occasionally."
- + Software Piracy not only results in massive loss to the economy, but also opens up a dangerous space for cybercrimes. Thus, in the pursuit of saving money by buying pirated software, users unfortunately end up spending much more in managing their PC security from identity and malware attacks.
- + Patents are prohibitively expensive for a large number of people. The fee for obtaining a patent added to the cost of maintaining the rights and the potential costs arising from

patent litigation have an influence on its functioning, or otherwise.

- + Only 33% of companies in India have written policies in place requiring use of properly licensed software..



### A Case Study of a successful IT firm

Arun M from IBM says, "Our Company invests in IPR. We have the largest amount of patents certified every year by a company. Our culture has been to empower Individuals to drive new and innovative solutions that can be used for the community and for the company".

## Key Challenges

The patenting process in the country is not congenial to the protection of IPR because the Indian Patents Act does not allow evergreening. It defines inventions as to be those that improve the known efficiency of an existing formulation or those that involve discovery/invention of an entirely new property. However, this provision is under challenge in the Apex court (Supreme Court of India).<sup>2</sup>

### Stop Piracy

According to the International Data Corporation (IDC), a US-based market research company 64% of software used in India is pirated. It is believed that India loses \$900 million every year in taxes as a result of software piracy.

## The Way Forward

However, a silver lining can be expected because India now has in place a National Intellectual Property Rights Strategy. This committee recommended the establishment of the National IP Enforcement Task Force to mainly oversee that central and state agencies worked in conjunction to avoid delays and confusion.

Microsoft through its major campaign is tirelessly working with consumers, corporates and the government to spread awareness about piracy. It has started consumer-oriented education and enforcement programs to fight this menace. Access to original software is the most critical element to counter piracy in India. Microsoft's efforts are directly channelized towards this problem. It has launched a campaign to provide original software online and telephonically, making it easily accessible for users. Some of the key initiatives by Microsoft include telephonic availability across 1068 cities, Microsoft eCommerce platform and the Get Genuine Solution (GGS).

To reduce red-tapism in the process of enforcing a sound IP policy, the IT sector needs to move a step ahead on seed funding by government agencies and private players for freelancers trying to establish technological trademarks, copyrights

and patents. An autonomous body guarding IP rights and ensuring transparent judicial procedure towards it needs to be formed.

A centralized data base system to track all the IPs filed and granted is more or less in place now. There is a strong case for fast track judgments in IP- related cases to ensure speedy redress.



*A strong IPR regime will help the industry grow. It will encourage innovation as opposed to the culture of copy-paste programming!*

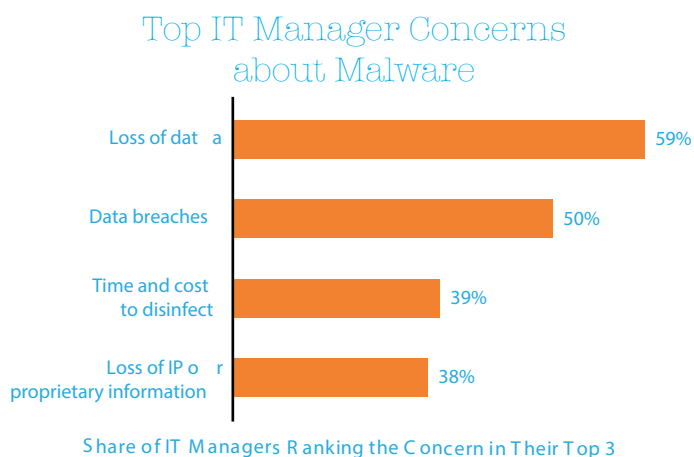
*As a first step, we need to have strong processes in place as well as transparency in policy making. Low ranking in the IP Index is a matter of concern, but we first need to put our house for things to improve on the ground.*

Swaraj Pal Singh  
Mercer



## Conclusion

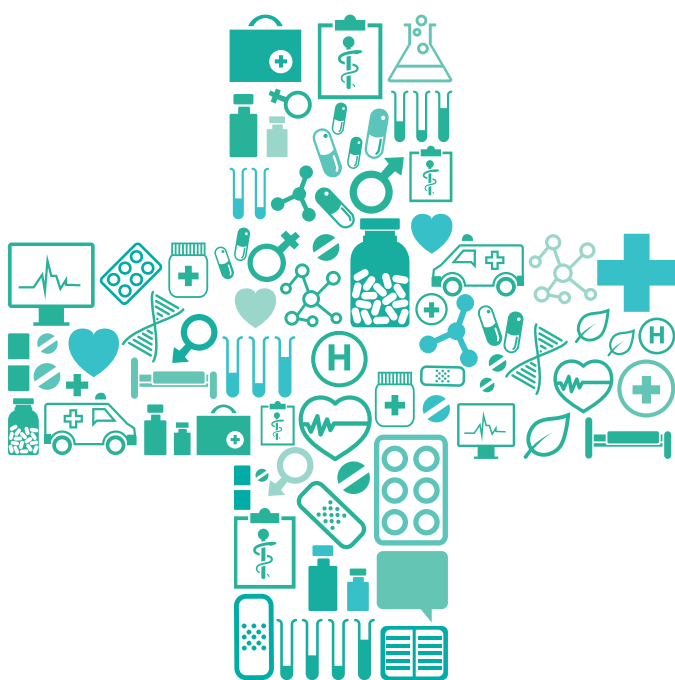
Research and Development are the future drivers for the Indian IT industry, with the focus shifting from programming technologies to cloud computing and software as a service. If the Indian software industry is to move in this direction, it has to create and promote an environment conducive for IP protection. Indian states like Karnataka, Andhra Pradesh and Maharashtra have initiated large-scale campaigns to sensitize people about the dangers of software piracy and have managed to buck the trend in the prevailing free loader culture.



# HEALTHCARE

## Thumbnail

In developing countries such as India, generic pharmaceutical companies offer life-saving drugs at a fraction of the price the innovator companies charge, democratising public access to otherwise unaffordable drugs. In the process, the generic drug companies in India have proliferated to become the largest manufacturer and supplier of generic drugs to the world. This brings in huge revenue for the government. However, a cause for concern is that the indigenous investments in research and development in the country are negligible. Most of the innovator companies operating locally are the big pharma. IP policy enforcements in terms of drug patenting are also abysmal. Mass support lies with the generic lobby. This in turn strongly affects the implementation of legislations, judiciary interpretations, media reportage and also law school curriculums.



invested to bring in a new medicine to the Indian market.

- + Diseases such as tuberculosis, malaria, leprosy, plague and dengue fever continue to pose serious problems in India and take millions of lives each year. Talented Indian scientists, attracted by adequate patent laws, are desperately needed in India to conquer these endemic diseases.

## Key Challenges

Patenting of drugs in India is a tough job because:

- + Unlike principles of trademark and copyright law, which have been well established over the past decades, patent litigation in India has started to gain momentum only recently. If patent laws are not strong or not interpreted in manner beneficial to patentees, then it puts an end to innovation. At the end of the day, it will be the patients who suffer. Most of the innovator pharmaceutical companies are American or European. Their view is that a lot of time, effort and money goes into drug discovery and innovation. So, at the very least, the process requires patenting.
- + Any favourable decision made by the judiciary for the innovator companies invites the ire of media, mainly bloggers and the Competition Commission of India which has shown an inclination to investigate into the legality of these settlements. This shows a strong trend in favour of generic companies in the field of pharmaceutical products.

## Key Observations

The diverse population of the developing country adds to its problems because:

- + On an average, drugs manufactured in India are more than 100% cheaper than the same drug in the U.S. So in a way, the government of India has achieved the Constitutional mandate of social economic balance by setting a maximum sale price while still leaving a reasonable profit.
- + India's health needs (including unique disease patterns) will not be met, if innovator companies are not able to recover the cost

## The Way Forward

However, there are good chances of development in the sector because:

- + India has a great clinical infrastructure and a good workforce, which together has the potential to cultivate an innovative Life Science industry.
- + The government has proposed to establish a fund worth (USD 2.2 billion) for drug discovery in India.

India has already begun to see some positive results as strong political will and growing awareness of the need for greater IP protection has increased.

Early implementation of a strong pharmaceutical patent regime can strengthen India's research and development sector, attract more foreign investment, and provide a basis for Indian firms to begin tackling diseases that have a serious effect on the country.

Local companies have the advantage of being close to disease patterns for indigenous communicable diseases and can develop drugs through local R&D. As India's knowledge-based economy grows, it will benefit not only India, but the rest of the world as well, and especially the developing world it leads.

### The Pricing Debate

Developing new medicines is a very expensive and laborious process. It has cost up to USD 1 billion to bring new drugs into the market. This figure also includes the expenses that went into research and sometimes ended up in failure. As far as pricing is concerned, though, India is not a rich country, there is a growing argument that it has a diverse population in terms of purchasing power. So the sections that can afford should be made to pay global prices for the medicines to fund the research that went into creating the product. Therefore, there are many who believe that the one-price approach for India is open to debate.

## Is Indian Pharma Moving up the Value Chain?

According to a paper titled, The R&D Scenario in Indian Pharmaceutical Industry published by Research and Information System for Developing Countries, over 50 NCEs/NMEs from Indian companies are at different stages of development for new drugs. Some of these domestic companies are also entering into licensing agreements with the global players like Sanofi, Forest Laboratories, Bristol Myers Squibb, Merck and Eli Lilly and AstraZeneca in the R&D space.<sup>3</sup>

However to put things into perspective, let's consider the following:

It is estimated that out of 10,000 molecules synthesized, only 20 reach the preclinical stage, 10 the clinical trials stage and ultimately only one gets regulatory approval for marketing. If one takes this estimate into consideration, the research pipeline of the Indian companies would require to have at least 20 molecules at the pre-clinical stage to be able to launch one innovative product in the market.

## Conclusion

It must be noted that without any pipeline present for generic drugs over a long time period, generic drug manufacturers cannot contribute towards product creation. In comparison to the \$73 Billion patent expirations during the previous five years, the period from 2010-2015 marks a notable increase in the total value of patent expirations that is expected to reach US \$100 Billion. If the patent cliff is capitalized, then the Indian pharmaceutical companies can achieve a greater share of the growing generic market.<sup>4</sup>

It is, however, important for Indian drug manufacturers to differentiate their products and make it more competitive, more so due to the fall in New Chemical Entity (NCE) filings with the US Food and Drug Administration (FDA) over the last few years and the fact that the number of innovator drug patents reaching their expiry date has peaked.

K Satish Reddy, chairman of the Dr Reddy's Laboratories, and other India business leaders, have been stressing on the need to incentivizing innovation, saying that Indian drug makers need to do all that is possible to remain relevant globally.

<sup>3</sup> <http://www.tapanray.in>

<sup>4</sup> The upcoming cliff: Implications for Indian Pharmaceuticals, Zephyr Peacock India

# LEGAL PERSPECTIVE

## Thumbnail

There is a growing concern about the reconciliation of private rights (that IPRs represent) with the larger public benefit. One of the roadblocks in achieving this aim is that IPRs are increasingly perceived as conflicting with other norms.

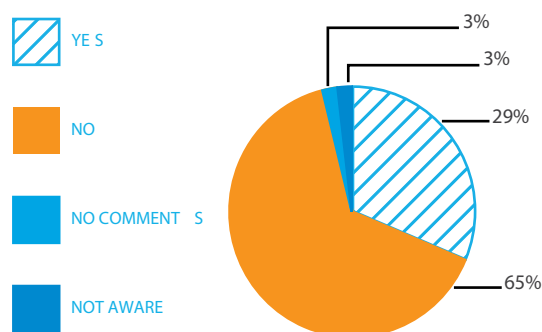
In addition, there is a different set of IPR issues in the legal sector in India. The Patent Law, Trademark Law, and Copyright law, when put under scrutiny are lopsided and filled with loopholes. For example, there is an absence of damages culture in patent infringement suits and licensee estoppels. The trademark law considers valid legality of parallel imports or grey market goods. The copyright law similarly upholds the proposals of Section 15(2) which strips the artist of the copyright in the artistic work if it is reproduced more than 50 times through an industrial process.

## Key Observations

While looking at the legal scenario around IPR in India, it must be observed that:

- + The relationship between intellectual property law and competition/antitrust law has assumed a black and white character respectively. However, this is an over-simplistic categorization that misinterprets the roles of both laws, while ignoring their interrelationship, and common goals.<sup>5</sup>
- + As opposed to the US and EU where billions of Dollars/Euros are granted as damages, the Indian government provides no damage cover. Even in trademark and copyright cases where damages have been granted in India, the average is around a USD 1000, which is meagre compared to other jurisdictions.

Type of IP	No. of Cases where damages granted
Trademark	128 (72%)
Copyright	48 (27%)
Patents	0
Publicity Rights	1 (1%)



Are the policy makers doing enough to establish a strong IPR Regime in India?

## Key Challenges

The current patent policies in the country need significant improvement. What it requires are the following:

- + Patentability: Apart from NCEs, all other forms should be patentable as long as they meet the criteria of patentability like novelty, non-obviousness and commercial applicability, which is not the case in India.
- + Compulsory Licensing: Compulsory Licence should always remain the exception rather than the rule in order to preserve patent protection that would allow the development of additional innovative therapies for treatments.
- + Regulatory Data Protection: A minimum of five years of RDP after grant of marketing approval is required in India.

<sup>5</sup> Gary Leaa and Peter Hallb



### An interesting case

On February 15, 2014, *The Times of India* reported “India has strong legal framework to protect intellectual property rights: Boeing”. The American multinational said in its remarks submitted to US Trade Commission (USITC), “In Boeing’s experience, India has a legal framework that is adequate to protect IP with no known cases of IP violation involving Boeing’s activities in the defense and aerospace sector.”

## Voices from Industry Associations

Being an industry chamber ASSOCHAM always looks at a scenario that will benefit the industry. However, more work needs to be done in this area. IP protection would lead to overall economic development, brand protection in a globally competitive environment and stronger trade relations.

Vipul B G  
ASSOCHAM

We should protect copyright and stop plagiarism immediately. The only way out is by creating awareness at all levels. We should look at greater participation of all stakeholders to help build a sound and effective IP policy. The government needs to look at enforcement mechanisms so that there are tangible results on the ground

The music industry stands to gain as “copycat” musicians will not find any takers and will lead to original and quality compositions.

Ravi Raj  
Music Composers Association of India

## The Way Forward

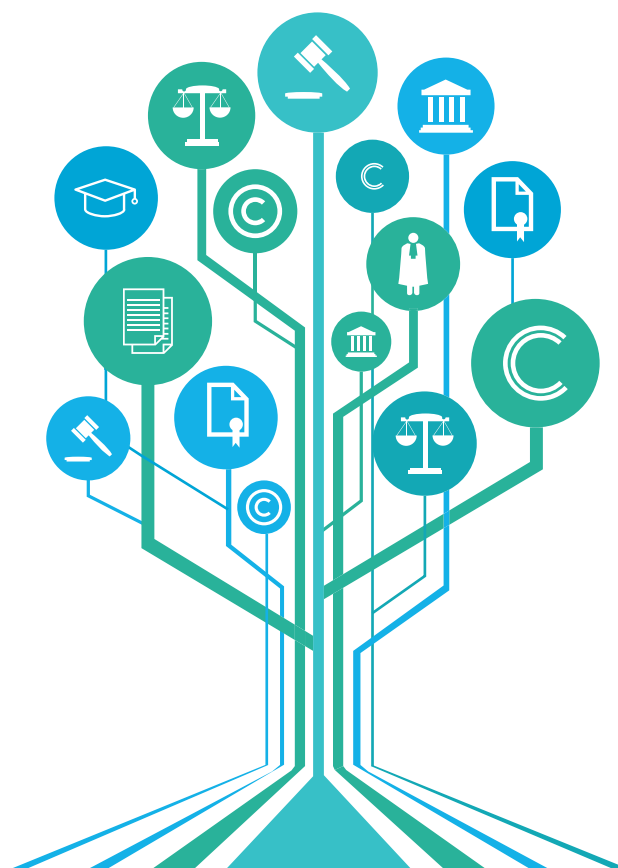
However, the future of patent policies in India does not look so bleak because:

- + The judiciary is being cautious and has softened its approach towards innovator companies. The Delhi High Court has granted a number of interim injunctions against potential infringers in the past one year. Many of these matters have also been amicably settled.
- + The Indian Government has made some incremental changes in the IPR laws. The government has provided greater intellectual property protection through pre and post grant opposition proceedings in Patents and Trademarks.
- + TRIPS’ attempts to strike a balance between the long term social objective of providing incentives for future inventions and creation, and the short term objective of allowing people to use existing inventions and creations.



*To bring in a stronger IP regime, we need a holistic approach, which includes effective provisions for protecting digital rights management; administrative remedies against infringement on the Internet; and police enforcement of criminal remedies.*

Jagdish Sagar  
Prominent Lawyer



# ENTERTAINMENT

## Thumbnail

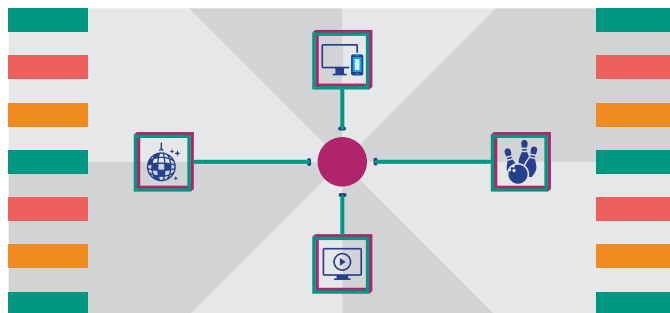
The coming together of the notions of “art”, “culture” and “enterprise” and conflation of the identity of the creative mind with the entrepreneur in recent times calls for a more stringent enforcement of IPR in the entertainment sector. To integrate creative cultural works into development policies and safeguard the entertainment sector (a cultural asset), India needs to increase its efforts to protect and promote the interests of their film federations and industries. The pressing issue is the need for a definitive and a dependable IP rights regime.

## Cinema Scope

India has one of the largest film industries in the world. At the same time India also reportedly accounts for maximum film piracy in any English-speaking country, if one goes by the number of broadband subscribers. Recent studies have shown that from April to September this year, India was among the top 10 countries in the world with the largest number of illegal P2P activities.<sup>6</sup>

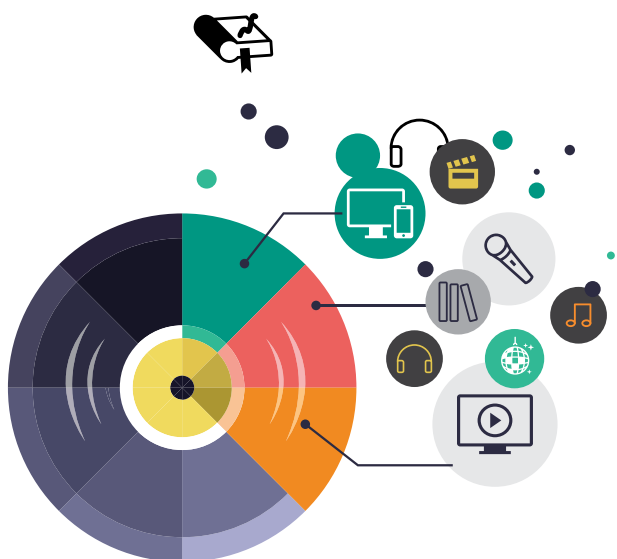
The issue of piracy exists not only in the case of foreign films, but home grown productions too. This is due to the increase in ticket prices with the coming up of multiplex theatres in India. Therefore in a film loving culture like ours, the average person (low income being a national problem) resorts to video piracy. The price for a legitimate film DVD works out to INR 300 to 400 (USD 5 to 6) in mainstream retail and the choice is somewhat limited as are the places to buy. This delta in choice, availability and, most of all, price

is what keeps piracy in business. Poor IP laws have crowded out legitimate products, therefore raising the price for the consumer. In the scheme of things, the combination of convenience and low price is way too compelling to resist.



## Music Industry

The sound recording industry faces three types of piracy. First, there is a simple way by which songs from different legitimate CDs/DVDs (and thus different right holders) are copied and put in a single CD/DVD. These are then packaged to look different from the original products and sold in the market. Second, there is counterfeiting, when songs are copied and packaged to look as close to the original as possible using the same label, logos etc. These products are misleading in the sense that most end users think that they are buying original products. The third form of music piracy is bootlegging, where unauthorised recordings of performance by artistes are made and subsequently reproduced and sold in the market. All these happen without the knowledge of the performers, composer or the recording company.



<sup>6</sup> According to studies commissioned by the Motion Picture Distributors' Association (MPDA), the local office of the Hollywood Motion Picture Association (MPA).



Music sales in India have gone down by around 70% according to reports from USIBC. This loss could eventually be somewhere close to INR1950 crores annually<sup>7</sup>. Music World which was an INR 14K Crore business shut down all its 100 stores across the country by 1st July 2013 due to the effects of piracy.

People in India continue to use freely available pirated music for the following reasons:

- + FREE/ Less Expensive
- + Lack of knowledge about piracy
- + Unable to differentiate between legal and illegal music files
- + India has tried to take on the issue of piracy through policing and prosecution. But, this has had minimal effect.

## Worms in the Books

In India, about 15,000 publishers publish about 70,000 books annually in 22 languages. Book piracy poses a major threat to the 7000-crore publishing industry in the country and results in a loss of 400 crores to publishers in India.<sup>8</sup>

A recent survey<sup>9</sup> indicates that three types of print piracy are prevalent in our country. The most common one is reprinting a book illegally. The second type involves publishing books using names of famous authors, but actually authored by imitators. Producing translated versions of foreign-language books is the third type of piracy. The pirates do not have to pay taxes, and, of course, no royalty to the author. Almost, 20 per cent of books sold in India are pirated.<sup>10</sup>

There are functioning copyright laws in India. In any given case of book piracy, complaints can be lodged by the Publishers' Association. Recently, two persons, who were indulging in piracy of books belonging to prominent publishers like Penguin, Tata McGraw Hill, Simson & Schuster, were arrested by the Central Crime Station (CCS) officials. But, such actions are few and far between.

DEMAND-SUPPLY GAP			
Piracy in publication of books			
	2007-08	2009-10	2011-12
Gross Supply	18,347	24,884	34,820
Gross Consumption	22,232	30,474	43,154
Piracy Estimate	3,885	5,590	8,334
Piracy Percentage	17.47%	18.34%	19.31%

\* Figures in Rs. crore

\* Source: CII Study

## The Game Zone

There was a record 16% growth in the video games industry (2013) over the previous year, the net worth of which rose to Rs 1500 crore (Rs 15 billion / \$277 million).<sup>11</sup> The report goes as far as to say that the games industry in India will grow at a 22% CAGR, and is set to surpass Rs 4000 crore (\$776m) by 2017. This means that the video games industry in India will triple itself in just five years. These are some serious numbers.

Not much piracy is reported in the world of gaming in the metropolitan cities. The urban Indian youth prefers spending money on originals. They prefer original games now, because it enables online modes and game updates. In comparison to their console variants, PC games make less of a dent in your wallet, and now with online retailers such as Game4U and Flipkart offering great deals fairly frequently, original games are being sold in moderate but consistent numbers.

However, the small town youth thrive on pirated games. The existence of a thriving grey market in the country (with almost 70%-80% of games being sold through this channel) coupled with high customs duty on gaming consoles are severely impacting the growth of gaming in India, said a study. High custom duty of about 25%, not only makes games out of reach for the majority of consumers, but also encourages the grey market as it is able to sell gaming consoles cheaper after avoiding duties and taxes.<sup>12</sup>

<sup>7</sup> EY (Ernst & Young)

<sup>8</sup> Federation of Booksellers and Publishers Association of India (FBPAI),

<sup>9</sup> Indian Human Resource Development Ministry

<sup>10</sup> Basant Kumar Mohanty in *The Telegraph*, New Delhi, July 9

<sup>11</sup> FICCI-KPMG Indian Media and Entertainment Industry Report 2013

<sup>12</sup> Study conducted by the Internet & Mobile Association of India (IAMAI) and IMRB International (formerly known as Indian Market Research Bureau or IMRB)

# EDUCATION AND RESEARCH

## Thumbnail

Research and development is the central agent for new ideas and innovations, making it a critical area that needs to be improved and secured. “Academic research is conceptualized as a research production process where research inputs (like research time and number of research scholars) are transformed into research outputs in the form of publications and patents.”<sup>13</sup>

Among the different forms of IPR, patents play an important role in resource generation in academic institutes or R&D organizations. A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.<sup>14</sup>



## Key Observations

Building a strong IP environment in academics in India is difficult because:

- + Critical knowledge of IPR is limited to the faculties of premier institutions. Most Indian universities emphasize regular curriculum studies and do not proactively encourage research initiatives. This knowledge needs to reach the grassroots. The rise in university patenting has occurred against a broader policy framework aimed at fostering a greater interaction between public research and industry in order to increase the social and private returns from public support to R&D.
- + As a landmark step for public-funded research initiatives, the Bayh-Dole Act was passed by the U.S. However, if we appropriate such models of institutionalization of IPR for developing countries like India, it may not be a viable option owing to the innumerable differences in culture, context and level of scientific research.

## The Way Forward

Several efforts have been made by the Copyright Office under the HRD Ministry, India. These include setting up of Copyright Enforcement Advisory Council, organization of seminars/workshops to create greater awareness about copyright law. The Copyright Division of the HRD Department, India has merged two schemes to produce a scheme namely ‘Scheme for Intellectual Property Education, Research and Public Outreach.’ This was done to create awareness among the general public/ intelligentsia. This scheme also provides financial grants to UGC- recognized universities and affiliations. The two schemes were:

- a. Scheme for Financial Assistance on Intellectual Property Right Studies,
- +
- b. Organizing Seminars and Workshops on Copyright Matters; and Scheme for Financial Assistance on WTO Studies,

=

An Open Source Innovation Policy will promote IP acquisition by the government for non-exclusive licensing for public and social goods sectors such as research and development. This will bring our government closer to the objective of faster, sustainable and more inclusive growth to ensure that benefits reach all sections of society.

<sup>13</sup> <http://shodh.inflibnet.ac.in:8080/jspui/bitstream/123456789/1457/1/walimbe%20vidula.pdf>

<sup>14</sup> [http://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip\\_panorama\\_3\\_learning\\_points.pdf](http://www.wipo.int/export/sites/www/sme/en/documents/pdf/ip_panorama_3_learning_points.pdf)



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