

comments on the draft WIPO Treaty on Protection of Audiovisual Performances (SCCR/19/9), which are as below:

- In Article 2: "Definition" of the draft text, with a view to make the definition of 'Performer' inclusive and broad, the following amendment is suggested:
"performers" [are] *includes*, actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore *or otherwise engage in performance*".
- Regarding Article 12, i.e. 'Transfer of Rights', India is of the view that Performers' Rights should not be automatically transferred to Producers under any presumptive clause. The Rights could be made transferable by way of Contracts/Equitable Remuneration and Contractual terms should be determined by the legislation of the Contracting Parties. There should be restrictions on assignment of rights as given in section 19 of the Indian Copyright Act.

In this regard, the Indian position may need adequate support from other WIPO member countries. The italicised text in the Indian comments in relation to Article 2 reflects the concern regarding the possibility of including traditional art performances largely in the context of the Indian subcontinent and South-East Asia. Since the definition in the WIPO draft is exclusive and provides an exhaustive list of who can be treated as a 'performers', the Indian submission endeavours to make the definition inclusive by incorporating "includes" to replace "are" and by incorporating "or otherwise engage in performance". It also reflects the Indian position laid down in the Copyright Act, 1957, which provides for an inclusive definition and also allowing "any other person who makes a performance" to be considered as a 'performer'. The comments by the Government of India to the draft WIPO text is thus largely in line with the legal position under the Copyright Act, 1957. However, the Amendment proposed in the Copyright (Amendment) Bill, 2010 under clause (qq) regarding the definition of 'performer' provides for a proviso that in a cinematograph a person whose performance is casual or incidental in nature and, in the normal course of practice in the industry, is not acknowledged anywhere including in the credits of the film shall not be treated as a performer except for the purposed of clause (b) of section 38B dealing with moral right to integrity of his performance. Interestingly, India has not suggested any limitation on this issue of limiting the definition of 'performer' by clause (qq) in the Copyright (Amendment) Bill, 2010 in its comments on the draft WIPO text.

On the issue of transfer of rights, although India has not suggested any specific textual wording in its comments on the draft WIPO text, its position is largely in line with section 19 of the Copyright Act, 1957 and the amendments proposed under the Copyright (Amendment) Bill, 2010. As explained in the WIPO document SCCR/19/9 three positions are largely followed in different jurisdiction across the world. In the USA, for example, under the work made for hire doctrine in its application to audiovisual works, where a work is specially ordered or commissioned by a producer for use as a contribution as a part of a film or other audiovisual work and the parties agree in writing that the work is to be considered a work made for hire, all of the rights comprised in the copyright vest with the producer as a matter of law and the

producer is considered the sole author of the work. In this case there it is not necessary to have an agreement concerning transfer or assignment of rights from the creator to the producer. In cases of employment context, such rights shall automatically vest with the producer during the course of employment. In some other countries, a "presumption of transfer" under the rule that creators themselves are also the original owners of rights is followed. However, this comes with a presumption that when they contribute to a cinematographic production, they transfer their rights to the producer (such a presumption may be rebuttable or irrebuttable). In other countries there is no specific regulation of the transfer of rights from the performer to the producer and the matter is left to the contractual freedom of the parties involved. India, in its comments to the WIPO text has suggested that 'Performers' Rights should not be automatically transferred to Producers under any presumptive clause. The Rights could be made transferable by way of Contracts/Equitable Remuneration and Contractual terms should be determined by the legislation of the Contracting Parties. Thus Indian position reflects a proposition that performers have the first ownership in their performances and further contracts and equitable remuneration principles should govern the mode and extent of transfer. Further, India suggests that there should be restrictions on assignment of rights as given in section 19 of the Indian Copyright Act.

The position paper provides a comparative analysis of positions of various countries on the issue of scope of definition of the term 'performer/s' and in relation to the issue of transfer of rights. Domestic legislation of US, EU directive, South East Asia, China, Japan, Latin America, African and Arab countries have been examined. Further, any position paper submitted by such countries on these two issues is also taken into consideration for drawing remarks.

As part of technical support, Mr. Yogesh Pai is invited to regular meetings to discuss issues pending in the Standing Committee of Copyrights and Related Rights (SCCR) of World Intellectual Property Organisation (WIPO) held under the chairmanship of Secretary, Department of Higher Education, Ministry of Human Resource Development, New Delhi.

V. Research based advocacy

The Chair is actively engaged in research based advocacy. In the year 2011, the Chair's advocacy was centred on two important issues:

- 1) Comments on DIPP Consultation Paper on Utility Models:
http://dipp.nic.in/English/Discuss_paper/Ministry_of_HRD_Chair_on_IPR_National_Law_University_Jodhpur.pdf
- 2) Letter to the Leader of Opposition highlighting concerns regarding the inclusion of Data Exclusivity Provisions in Pesticides Management Bill, 2008

VI. IP Repository

The MHRD IPR Chair has established a repository on Intellectual Property Law at the National Law University, Jodhpur. The objective is to have a state of art library facility to enable quality research and education in IP and related areas. A list of books available in the repository can be

procured from the office of the MHRD IPR Chair. The repository adds to the exhaustive collection of books on intellectual property in the following areas:

- Intellectual Property- General/ text/ case book series
- Patent Law
- Copyright Law and Neighbouring Rights/ Designs Law
- Trademark Law/ Geographical Indications/ unfair competition law
- Trade Secret Law/ Data Exclusivity
- International Intellectual Property
- IP and Competition Law
- Innovation Policy/ Technology Transfer/ IP Reforms
- Philosophy of IP/ Politics of IP/Critical Perspectives/ History of IP
- Economics of IP
- IPR and Technology Law/Computer Law/Entertainment and Media Law/Internet Law
- IPR Licensing/Litigation and Practice/Strategy/Management
- Traditional Knowledge, Biodiversity, PVP and IP
- Intellectual Property and Development/ Human Rights/ Constitution/Free-speech
- Patent Drafting/Claim Construction

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Activities Proposed to be Undertaken from April 2012 to March 2013:

(1) IPR Awareness / Outreach/ Sensitization Activities:

We propose to organize two outreach programs to spread IPR awareness amongst the various holders in Rajasthan and across the country through lectures or otherwise

(2) Academic research in theory and application of IPRs :

Towards achieving the objective of academic research as set by the norms, it is proposed to establish a system of publishing (online-open access) working papers in areas of law and policy of intellectual property rights after an external peer review. Two working papers involving good quality research will be published this year.

(3) Extended Research support for Government of India:

As per "General conditions for grants", the MHRD IPR Chairs are expected to provide "policy advice to the Ministry in matters of Copyrights and related rights": It is suggested this should be one of the major activities of the IPR Chair at NLU, Jodhpur. Both national and international law and policy work in all areas of IPRs should be considered.

(4) Training of Trainers programme :

We propose to organize a 5 day Training of Trainers programme (IP Teacher's orientation programme) this year. This program will deal with various IPR topics including emerging significant areas in the domain of IP studies. We propose to confine the participation to various teachers from the State of Rajasthan.

(5) Workshops:

- We propose to organize a 1 day workshop for Judicial Officers National Law University, Jodhpur. The broad theme of this workshop will be Enforcement of IPRs: Copyright and Trademarks. We will invite resource persons/ experts from various parts of the country.
- We propose to organize the distinguished lecture series as parts of IPR workshops. We propose to invite eminent speakers and experts in the area of Intellectual Property from various parts of the country. They will deliver lecture to undergraduate and postgraduate students pursuing different course of IPR. Moreover, we propose to organize interactive sessions with these resource persons to facilitate students and faculty members for extensive learning in the area of IPR.

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(6) Sensitisation:

We propose to organize a 2-day workshop for IP enforcement Authorities (legal and administrative) or to other relevant stakeholders.

(7) Conference:

We propose to organize a 2-day International conference tentatively in winter 2013. We propose to invite experts in international IP and other areas of international economic law as speakers to deliver talks on issues of contemporary significance. Participation to the conference may be either by invitation or by research contribution. We also propose to publish the selected contributions of the conference as proceedings.

(8) Publications:

- We propose to publish a book contemporary IP issues.
- We also propose to publish two working papers as mentioned above in this report.

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Budget Requirement
(From April 2012- March 2013)

For carrying out these proposed activities under MHRD IPR Chair, recurring and non-recurring grant is required. A detailed estimate of expenditure with break-up of the proposed programme i.e. revised budget estimate is as follows:

Detailed recurring and non-recurring grant proposal for the MHRD IPR Chair (from April 2012 to March 2013)

S.No.	Expenditure Head	Fund Required(Rs.)
A. Recurring		
1	Coordinator's Salary	7,50,000/-
2	Two Research Associates @ 25,000/- per month	6,00,000/-
3	One secretarial assistance and one Group 'D' staff	4,11,000/-(approx.)
4	Two Ph.D. fellows @ 12000/- per month (as per norms)	3,38,000/-
5	Travel grants (for Participation in conference/seminars, meetings, Studies etc. and other academic activities of Chair coordinator)	2,00,000/-
6	Misc. expenses (telephone, internet, postage, stationary etc.)	1,00,000/-
Total Recurring		23,99,000/-
B. Non-Recurring Head		
1	IPR Awareness / Outreach/ Sensitization Activities	3,50,000/-
2	Training of trainers	5,00,000/-
3	International Conference	10,00,000/-
4	Workshops (2 x 5,00,000)	10,00,000/-
5	Publications	3,50,000/-
6	Subscription to online libraries & IP Journals	7,50,000/-
7	IP Repository	10,00,000/-
Total Non-Recurring Expenditure		49,50,000/-
Total Recurring (A)+ Total Non-Recurring(B)		73,34,900/-
Balance Account as on 31st March, 2012		6,45,646/-
Amount Requested from the Ministry		67,03,354/-

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Details of personnel associated with IPR Chair at National Law University,
Jodhpur:

- Mr. Yogesh Pai, Assistant Professor of Law and Coordinator, MHRD IPR Chair
- Mr. Bhawani Shankar Maheshwari, Research Associate, IPR Chair
- Mr. Arun Gaur, Office support staff
- Mr. Kamlesh Purohit , Group 'D' employee

Expenditure Statement (April 2011 to March 2012)

S.No.	Expenditure Head	Expenditure (Rs.)
1	Salary	15,15,994/-
2.	Honorarium of visiting faculty	70,000/-
3.	Books purchased	4,82,212/-
4.	IPR workshop	2,14,985/-
5.	Sensitisation programme	60,094/-
6.	Roundtable symposium	1,95,096/-
7.	Lecture series	82,853/-
8.	Bank charges	135/-
Total Expenditure		26,21,369/-

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SIREHMAL JAIN & COMPANY

CHARTERED ACCOUNTANTS

Off. : 0291-2654960
Resi. : 0291-2510046
Mob. : 94138-47774

CA. SIREHMAL JAIN
M.Com., F.C.A.

INSIDE SOJATI GATE,
JODHPUR - 342 002 (Raj.)

Ref. No.

Date 24/05/2012

NATIONAL LAW UNIVERSITY, JODHPUR RECEIPTS & PAYMENTS ACCOUNT FOR THE PERIOD 01.04.2011 to 31.03.2012 OF IPR CHAIR PROJECT UNDER SCHEME FOR INTELLECTUAL PROPERTY EDUCATION, RESEARCH AND PUBLIC OUTREACH

RECEIPTS	AMOUNT (₹)	PAYMENTS	AMOUNT (₹)
OPENING BALANCE			1,515,994.00
STATE BANK OF PATIALA, S.B.A/C, Jodhpur	3,156,740.00	ROYALTY & TRAVELING FACILITIES	70,000.00
INTEREST ON S.B.A/C	100,275.00	BOOKS PURCHASED	482,212.00
		IPR WORKSHOP	214,985.00
		SENSATIZATION PROG.	60,094.00
		ROUND TABLE SYMPOSIUM	195,096.00
		LECTURE SERIES	82,853.00
		BANK CHARGES	135.00
		CLOSING BALANCE STATE BANK OF PATIALA, S.B.A/C, Jodhpur	645,646.00
	<u>3,267,015.00</u>	TOTAL	<u>3,267,015.00</u>

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For : NATIONAL LAW UNIVERSITY

REGISTRAR / ACCOUNTS OFFICER



Checked & found Correct as per Voucher Produced

For : SIREHMAL JAIN & COMPANY
CHARTERED ACCOUNTANTS

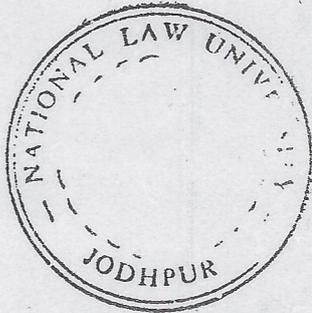


(S.M. JAIN)
M.No.008374

UTILISATION CERTIFICATE

This is to certify that out of Rs. 40,00,000/- only (Rupees Forty Lacs only) sanctioned by the Ministry of Human Resource Development, Department of Higher Education vide No. No 1) - 10/2008/-C dated 8 December 2010 under the Scheme of Intellectual Property, Education, Research and Public Outreach, Rs. 26,21,369/- only (Rupees Twenty six Lacs / Twenty one Thousand / Three hundred / Sixty nine / only) has been actually incurred by the National Law University Jodhpur from the remaining balance as on 1.4.2011. The amount has been utilized for the purpose, for which it has been sanctioned.

2
Signature of Head of Institution
with rubber stamp



For SIREHMAL JAIN & CO.
CHARTERED ACCOUNTANTS

S.M. JAIN
M. Com., F.C.A.
M. No. 8374

24/05/2012
Certified by Chartered Accountant/
Authorized Auditor
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SEP litigation in India is comparable to international SEP litigation on broader issues raised, specifically competition law concerns, but differs crucially where the parties are concerned. International SEP litigation is largely between multinational corporations with substantial patent portfolios, capable of engaging in long drawn out litigations, or engaging in other strategies including setting off against each other's patent portfolios. Dynamics in the Indian market differ – with a larger SEP holder litigating against smaller manufacturers. Particularly with this market dynamic, it is argued that the intervention by the CCI and competition law is crucial for the survival of the low cost mobile device in India.

IV. The Abuse of Dominance in India

The case for competition law intervention in mobile phone SEP litigation is directly made out on the issue of curtailing abuse of dominance. Section 4(1) of the Competition Act prohibits abuse of dominant position by an enterprise of a group. Dominance is defined as a position of strength enjoyed by the enterprise in the relevant market, which enables it to either operate independently of competitive forces or affect its competitors or consumers or the relevant market in its favor.⁵⁸

The Competition Act outlines several factors that should be taken into account to determine market dominance. The first step towards establishing abuse of dominance is establishing the relevant market, which is with reference to the relevant product market and the relevant geographic market.⁵⁹ Whether or not a market is a relevant product market is determined in terms of substitutability, i.e., whether the products are substitutable among themselves given a small but significant non-transitory increase in price (SSNIP).⁶⁰ A relevant geographic market is defined as the area in which 'the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous

Soni & Satyoki Koundinya, *Taking the FRANDLY Approach, a First Look at FRAND Battles in India*, REMFRY AND SAGAR (2015), <http://www.iammedia.com/Intelligence/IAMYearbook/2015/Countrybycountry/TakingtheFRANDlyapproach-a-first-look-at-FRAND-battles-in-India>.

58 *Guide to Abuse of Dominance*, COMPETITION COMMISSION OF INDIA, http://www.cci.gov.in/images/media/Advocacy/Awareness/Abuse_Dominance.pdf.

59 §2(r), Competition Act, 2002

60 §2(t), Competition Act, 2002.