Software Patents and the Commons

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Over the past few years, commons-based approaches have emerged as a significant source of knowledge creation and innovation. Today, Free and Open Source Software (FOSS) power 455 out of the top 500 supercomputers[1] in the world, and almost 56 percent of the web servers on the Internet[2]. Wikipedia, the online encyclopedia developed collaboratively by users around the world is today the most used reference material in the world.

Driven by the tremendous growth of the Internet, which now connects 1.4 billion people; and the legal framework of FOSS, that emphasizes sharing and collaboration, three important developments have taken place:

1) The FOSS model based on collaboration, community and the shared ownership of knowledge has lead to the creation of extremely complex technology tools like operating systems.
2) The knowledge artifacts thus created embody a huge amount of technology, business model and social innovations. These artifacts also have immense value in and of themselves. Fedora, a popular community distribution of the Linux kernel and related FOSS software was found to have 204 million lines of code worth $10.8 billion[3]. Similarly, a study estimated that the commercial value of Wikipedia would be around $7 billion.
3) Apart from the intrinsic value of FOSS artifacts, they also create immense value for society by encouraging the sharing of knowledge. From supercomputing, to stock exchanges to schools in Kerala, the usage of FOSS tools has increased access to knowledge and lead to the democratization of technology.

In a country like India, which is on the path of development, the commons-based FOSS model has several important implications. For example, many linguistic groups across India have translated the user interfaces of FOSS based tools to Indian languages, thus enabling computing in Indian languages. For linguistic groups interested in promoting computing in Indian languages, FOSS is a natural choice because the liberal licenses of FOSS encourage sharing and collaboration. These groups can build on top of a pool of tried and tested software, and share the improvements they make with others, thus leading to important social gains.

Analyzing these changes, Baldwin and Von Hippel say that, "...we believe we are in the midst of a major paradigm shift: technological trends are causing a change in the way innovation gets done in advanced market economies. As design and communication costs exogenously decline, single user and open collaborative innovation models will be viable for a steadily wider range of design. They will

1 See http://www.top500.org/stats/list/35/osfamThe data refers to Top 500's June 2010 study of supercomputers around the world.
2 Netcraft Survey dated August 2010. See http://news.netcraft.com/archives/2010/08/11/august-2010-web-server-survey-4.html
3 Estimating the Total Development Cost of a Linux Distribution . See http://www.linux.com/learn/whitepapers/doc/4/raw

present an increasing challenge to the traditional paradigm of producer-based design – but, when open, they are good for social welfare and should be encouraged.[4]”

This one day seminar, "Software Patents and the Commons" will look at these broad issues, and the specific issue of software patents, from the viewpoint of the "Knowledge Commons," as against the more commonly explored viewpoint of "Intellectual Property."

The genesis of the term Intellectual Property (IP) Rights is of recent origin. An IP perspective seeks to club together under an omnibus IP description, disparate types of property rights. For example,artistic or creative rights for authors or copyright has nothing in common with trademarks that are owned by corporations. Yet both are termed as Intellectual Property. Creating this category is what is facilitating the expanding boundary of "Intellectual" Property and a means of "enclosing" of the Knowledge Commons. What was earlier considered science and always free and open, is now under threat. Mathematics and algorithms are being enclosed as software. Life form and bioinformation -- e.g., genetic code -- are also threatened with such enclosures. While technology of the Internet and social networking can transcend narrow boundaries of laboratories and allow the enormous potential of collective collaboration not just for software but also for science and technology, a narrow IP perspective comes in the way of unleashing this power. That is why it is important not only to discuss about software patents, but also to locate this in the larger context of establishing a balance between emerging Knowledge Commons and Intellectual Property.

4 Modeling a Paradigm Shift: From Producer Innovation to User and Open Collaborative Innovation . Carliss Y. Baldwin and Eric von Hippel.

Software Patents and the Commons

Time	Session	Speakers
10:00 AM – 11:30 AM	Inaugural Session: *An alternative perspective from the commons*	**Welcome Address:** Prabir Purkayastha, Chairperson, Society for Knowledge Commons. **Inaugural Address:** Dr. Abhijit Sen, Member, Planning Commission. “Importance of the Commons perspective in policy making.” **Keynote Address:** Prof. Eben Moglen, Professor of law and legal history at Columbia University, and is the founder, Director-Counsel and Chairman of Software Freedom Law Center. “The Commons As An Actor in Transforming Global Political Economy.” Screening of the film, “Patent Absurdity.”
11:30 am -noon	TEA BREAK	
12PM – 1PM	Knowledge as a Commons -- Global developments	Speakers: Venkatesh Hariharan, Corporate Affairs Director, Red Hat. “Knowledge Commons as a Source of Collaborative Innovation.” Mishi Choudhary, Executive Director, SFLC, India. “A Legal Strategy for Pro-Commons Activism: Patent-Breaking in IT and the Life Sciences.”
1PM - 2PM	Lunch	
2PM –3.00PM	The Commons and its relevance to Public Policy in India	Prabir Purkayastha, **“**Knowledge Commons as a counterpoint to Intellectual Property.” Dr. Zakir Thomas**,** Project Director, Open Source Drug Discovery, “A commons based approach to medical research.” T.C. James, Director, National Intellectual Property Organization. “Open Source and Open Government.”
3PM - 4PM	Software Patents and the Commons	Prof. Sudhir Krishnaswamy Pranesh Prakash, Center for Internet Society
4PM – 4.15PM	Tea Break	
4.15 – 5.30PM	Panel Discussion: “Establishing the Commons as a factor in Indian policy making: Opportunities and challenges.” Current innovation policies are based on the	Prabir Purkayastha, Chairperson, Society for Knowledge Commons Madhukar Sinha, Center for WTO Studies

	thesis that private actors are the major source of innovation. However, there is growing evidence that the FOSS model of collaborative innovation leads to important social benefits. How can policy frameworks be altered to suit these new realities? What policies does India need to take advantage of these new trends? What are the challenges that need to be overcome so that these policies enable, rather than hinder, the new collaborative modes of innovation?	Prodyut Bora, Former National Head of the IT Cell, BJP & General Secretary, Assam Unit of BJP Dr. Jaijit Bhattacharya, Adjunct Faculty at IIT Delhi
5.30PM - 6PM	Conclusion and Vote of Thanks	