UNIT 14 PROMOTIONS OF GLOBAL COMMONS

Structure

14.1   INTRODUCTION

Internet is a non-monetized domain of communications, it is global in nature, an open global commons, and is made up of a host of other publicly accessible networks for the common benefit. It has drastically reduced the cost of long distance communication as it connects a hundred- thousand networks of the entire world, which may be hosted, by Government agencies, private companies, universities etc. Similarly the content of Internet is a voluntary common, anyone can be publishers, and every type of subject matter of all levels of quality is available. As the Internet is the most suitable medium for global trade and exchange of services, it becomes necessary to understand the idea of global commons being articulated in the context of politics of protection of legal rights in artistic and literary works, inventions, trademarks and other original creations. Such rights are collectively known as Intellectual Property Rights (IPR) in this era of globalisation.

14.2 OBJECTIVES

After studying this unit, you should be able to:

- explain the concept of global commons as identified with the realms of high technology (cyberspace);

- identify the idea of commons as articulated in the context of protection of intellectual property rights;

- describe the usage of the term 'public' in India within the realm of cyberspace and new media;

- illustrate the global publics in India used as symbolic fiction to critically evaluate the intellectual property rights;

- determine the impact that globalisation has on intellectual property rights; and

- know about the creative commons movement, icommons and digital commons.

14.3 THE IDEA OF THE COMMONS

The idea of the commons is not new and goes back to hundreds of years, it originated in Roman times, when three types of property were recognised first was res private (things capable of being possessed by individual or family), second was res publicae (things built by state for use of public in general); such property could not either be sold or purchased for e.g. roads. The third was res communes (natural things common to all mankind) for e.g. water and air. In the United Kingdom during the Middle Ages, land was not owned by any person or institution and it was shared and used by all villagers for planting crops and harvesting wood; other natural resources such as forests, fisheries, and minerals were treated as res communes belonging to the public. However in the 17th century, the doctrine of terra nullius (land is not the property of the state and anybody who first occupies it can keep it) emerged. In the 18th century there was emergence of privatisation of property by elite group (land owners). Today it means privatisation by corporation, any way what we notice is the fact that property which earlier belonged to all, now belongs to a few, declining the idea of commons. In the era of globalisation various business transactions take place through Internet. Commerce on Internet involves the sale and licensing of intellectual property. For the promotion of any business it is necessary that the intellectual property will not be pirated and the buyer must know that they are obtaining authentic and not pirated products. This can be done through copyright by which the creativity and knowledge of the creator/author/artist has become his private intellectual property right. However in recent times, a new task of rebuilding the idea of commons recognising the common heritage principle has emerged where free availability or free access to content is the key characteristic. In the world of technology, the use of internet and thereby creation of cyberspace has broken the notion of boundaries. Now we are concerned with the concept of global commons, and the open source software movements also generate the idea that there should be open publication and open access to content.

14.4 INTELLECTUAL PROPERTY RIGHTS AND GLOBAL COMMONS

The basic concept of intellectual property law arose in the 18th century out of the technological and social individualism of cultural production. According to Lawrence Liang, IPR has come to dominate almost every aspect of life, what we call the public domain is now dominated by images, signs, inventions and products which are protected by one form of intellectual property or another and those who oppose current practices of Intellectual Property Law, often argued that:

1) Expansion of IPR into public life has resulted in a privatisation of the public domain itself, where increasingly almost every cultural resource is the subject of protection and therefore has caused shrinkage of the public domain.

2) Scholars like Rosemary Coombe have consistently argued that the very practice of a political public domain has relied on the ability of various people (consumers) to engage in critical dialogic practices and these practices do not merely take existing signs for what they are but through processes of appropriation, re-codification and transformation determine what meaning itself has.

3) If all signs are the subject of IPR and entitled to protection, there is a danger that dialogic practices themselves are under threat as the owner of the sign will have the ability to determine the scope of the use of such signs, and that the owners of these signs will have the ability to freeze the meanings of these signs and hence curtail the very possibility of critical dialogue.

However at a wider level it raises the larger issue of the relationship between information and property and the forms and the implications that the internet and cyberspace have for the classical understanding of information and property.

No doubt the commerce on Internet has paved the way for a global trade: Some of the potential IPR issues that arose with regard to electronic copyrights are:–

1) The liability of on-line service providers.

2) Fair use of copyrighted material, effective management of copyright information.

3) An effective patent system.

4) International standards for determining the validity of patent claims.

5) Litigation that may arise due to trademarks.

6) Similarity of Internet domain names and registered trademarks.

14.5 PROMOTION OF GLOBAL COMMONS IN INDIA

During the past several years, India has not taken any major initiatives in the direction of protection of Intellectual Property Rights, in tune with global developments. Now attempts have been made to analyse the tenability of the copyright system to decide whether it is just or unjust. What can be done to protect the author's right and what alternative can be offered to prevent privatisation of creativity?

Ravi Sundaram in his article "Beyond the Nationalist Panopticon: the Experience of Cyberpublics in India", has analysed the usage of the term public in India in the context of cyberspace. He has tried to map the "user" into three, overlapping cyberpublics. The term "public" is used very loosely, indicating a cyber community in the making, where mutual rituals of initiation and excursion are only now being invented. The three cyber publics identified are: the national state, the trans-national elite, and the space between the market and the state. He says that if one were to adopt a certain diffusionary model of the spread of cyber practices in India, we would have to consider the following:

a) The simple fact of India being a peripheral society in the capitalist world-economy, with one of the lowest saturation rate of telephones in the world and only a small minority of the population having electricity.

b) India has no tradition of cyberpunk; in fact there is no indigenous science fiction tradition. Most existing cultural communities have remained ambivalent about technology. Historically, representations of science and technology have been state-sponsored and social-realist in form. Despite this, a significant number of people are linked to electronic networks in India and the number is fast growing. For a Third World country with inequalities like India this is quite remarkable. What is significant is that 'cyberspace' has emerged as a significant term in public discourse in India, becoming the focal point of much coverage and speculation in the media. Behind all of this is the growing community of users. There are various publics at play in the use of the idea of the public.

Let us now discuss the cyber publics in India. The first is the nation state, Ravi Sundaram has identified three movements in the formation of the public in India, the first is nation building which can be categorised as 'national public'. This public was formed through various discursive practices of the state from the 50s to the 60s and by the 80s, through the first media revolution initiated by the establishment of the National Informatics Centre (NIC). National Informatics Centre set up in the mid 1970s to promote computerisation in administration, is a premier Service and Technology (S&T) organization of the Government of India in the field of Informatics Services and Information Technology (IT) applications. It has been instrumental in steering Information and Communication Technology (ICT) applications in Government Departments at Centre, State and District level, facilitating improvement in government services, wider transparency in government functions, and improvement in decentralized planning and management. To facilitate this, NIC has established a nationwide ICT Network, NICNET – with gateway nodes in about 53 Central Government Departments, 35 State/UT Secretariats and 603 District Collectorate, for IT services. This nationwide Computer-Communication Network, NICNET has been designated as the Government Network. NICNET has been offering network services over KU-band VSATs (SCPC DAMA & FTDMA Satellite broadband DVB), Wireless Metropolitan Area Networks (MANs) and Local Area Networks (LANs) with NICNET gateway for Internet resources. According to Sundaram the significance of NICNET was not only that it brought more computers in to administration and education and that it intended to change the very deployment of power. It also had an aggressive 'public' profile and sought to mould a new state cyber public from the late 1980s onwards, through regular, well-publicised demonstrations on networking, e-mail and international connectivity. It was unusual for a state organization in India to adopt such an aggressive public profile and this brought NICNET into conflict with other institutions of the state which argued for the older, more centralized bureaucratic forms of control.

The second cyber public are the translational elite, i.e. cyber elites developing the web sites. The elite cyber public occupies a hybrid space in the cross border practices, attempting to emancipate itself from the nation, its border and its political public. Today in the 1990s, both state and private networks had spread to connect around 120,000 users in India. The third cyber public as identified by Sunderam is that of space between market and the state. However there are a number of cyber publics in India unconstrained by either the state or the trans-national market and similarly there are also a number of global publics in India. The developments in the entertainment and film industry with the developments in the open source movements (open source is the means by which the development of non proprietary software is ensured, facilitating innovation and creativity) etc can be taken to illustrate various global publics in India.

Please answer the following Self Assessment Question.

Self Assessment Question 1 *Spend 3 Min.*

What does the term 'public' used by Ravi Sundaram include?

....

....

....

....

....

....

14.6 GLOBAL PUBLICS IN INDIA

If one has to define the term global commons, the task is not easy. What comprises the global common is a matter on which there is no clear agreement; basically the term conveys that what crosses the national boundaries becomes part of the global common. In the realm of cyberspace the idea of global commons can be used to support the open source movement and to reappraise the development of the public domain of creativity and knowledge. The privatisation of our past and present cultural heritage is devastating for the further development of our cultural life (Locke in Boyle 1966:9). Lawrence has taken the idea of global public to criticize the politics of Intellectual property, the example of the filmstar Rajnikant is taken, who decided to protect a particular sign that he used in a particular film. In the past few years the importance of the 'overseas' market has resulted in a few changes in the very structure of the film industry in India which has found a new audience in the US and the UK. There is a shift in the value of the star as a national or local commodity to being a global commodity; this is the entry point of the star into the global entertainment industry. This uses the dialect of intellectual property, i.e. the star is a valuable commodity which has been create through various procedures of investment, and these investments need to be protected from unauthorized appropriations. This shows that there is conversion from a popular and informal use of the language of intellectual property. 'Rajnikant's trademark style' is concerned into a formalised language with no other option, i.e. Rajnikant actually trade marking his style. An Indian techno artist has become a global common, dealing on equal terms with global contemporaries. Lawrence says the star value cannot be framed and crafted in a manner which is independent of the investment made by his/her

fans and the mimic artists. And that the Rajnikant persona is itself a result of various acts of appropriation and transformation. Thus when he seeks to protect his image from these fans and the mimic artists, it sounds deceptively like the story of the emergence of intellectual property enforcement in India with the state being asked by its new found global alliance to crack down on infringement. The story of India's emergence as an IT superpower cannot be a story told only within nationalist framework of software engineers from the various IITs but also about the countless vendors of software and hardware who have provided the infrastructure backbone of the IT industry, a backbone used by both the cyber elite and the many experimental users living on the marginality of the electronic industry experiencing their version of 'new media' to transform their contemporary realities. Therefore, if Rajnikant did not previously have a problem with the mimic artists, the state did not either understand nor could it control the 'grey economy' and in that version of the story, this economy existed in the marginal spaces of legality and illegality. With the mapping of the global upon the local, various domains of relationships and transactions gain a visibility which they previously did not have, transforming them into acts clearly illegal and volatile of the very structures that would make their entry point into the global possible.

Within this large complex scenario, there are also many cyber elites who do not watch films or rather do not have the need to. These users could be metaphorically equated to the various users in India having great access to the global debate on intellectual property and contributing and shaping the new reality of software ownership and production. They have the greatest access to the terms of the debate on the global commons in cyberspace and in code, but because of the time that they have spent in cyberspace have had little time to see the changes that have taken place in the landscape outside their doors. And yet their practices (free operating systems for instance) could also facilitate the conditions of the mimic artists' re entry into electronic culture after their existing market places have been shut by the global offices of Microsoft and at all.

14.7 GLOBAL AND LOCAL TENSIONS

In an attempt to map out the space of the global within that of national or local, some of the tensions that arise while making such an attempt as examined by Lawrence are as follows:

14.7.1 Impact of the Globalisation of Intellectual Property on the Practices of the Marginal Electronic Culture

Today the information and communication technology, especially the internet, plays a great role in constituting the very process that we now understand as globalisation. There have been various levels of descriptive frameworks used to understand the ongoing process. The trans-national organizations such as the World Bank and the World Trade Organization have played a great role in the process of globalisation. The chief aim of the WTO is the establishment of standard rules and regulations for trade, and ensuring that legal systems across the world comply with the established global standard for the protection of intellectual property rights. WIPO (World Intellectual Property Organization) is also an International agency that works for promotion of international agreements on copyright, patents, trademarks and other original creations. It is playing a great role in educating intellectual property officials worldwide about the importance of establishing and implementing strong intellectual property laws. In India, there has been a copyright law in place from 1957 and it has only in the years 1992 that there has

been an active demand to enforce IPR more stringently. The need for enforcement has translated into a public-private partnership between the info entertainment industry and the state. It is therefore acceptable to say that all the debates that take place in the world currently on intellectual property are preceded by the socio economic forces of globalisation, and that these forces are have even makes the debate possible.

14.7.2 Recent Claim Made by Rajnikant to Protect the Sign that he Uses in his Latest Blockbuster Baba (2002)

In 2002, the biggest star of the South Indian film industry Rajnikant launched his megasection film *Baba* amid much fanfare which included an announcement that Rajnikant had decided to protect a particular sign that he uses in the film. It was unclear as to how he could protect this sign and under what law but from our point of view what was interesting was the fact that he had decided that it was important for him to have this sign protected. For many years Rajnikant has been cultivating a certain image which has included a number of antics like the way he lights his cigarettes or the manner in which he wears his sun glasses etc to the extent that one would always in popular usage refer to them as Rajnikant's trademark style. So what then was the motivation in 2002 for him to want official protection for these signs? There are a number of attributed reasons, one of them being the fact that given his popularity, within days or weeks of the release of his film, elements of the film are incorporated into other films or his actions are emulated by other artists across Tamil Nadu. Rajnikant felt that he needed to protect himself against such appropriation and the best way for him to do this would be through claiming intellectual property rights over his image.

Please answer the following Self Assessment Question.

Self Assessment Question 2   *Spend 3 Min.*

What is the chief aim of WTO?

....

....

....

....

....

....

14.8 POSSIBILITY OF EXPANDING THE COMMONS THROUGH RECIPROCITY

The world has previously faced analogous barriers, in the form of protectionist restrictions to free trade, restrictions that appeared to serve national self interest and in fact deprived all the benefits of free trade. Through the GATT (the General Agreement on Tariffs and Trade), which was negotiated in 1947, and converted into the WTO (the World Trade Organization) in 1995, diplomats found a way to lower protectionist restrictions by negotiating on the basis of reciprocity: "I'll lower my tariffs and help your exports if you'll lower yours and help my exports." The resulting GATT/

WTO system has a variety of codes and rules requiring the dismantling of particular trade barriers. These are regularly revised and improved in negotiating rounds such as current Doha Round or the Uruguay Round that led to the 1995 creation of the WTO. The process has been so successful that the last half of the 20th century has seen an unprecedented growth in International Trade.

14.9   CREATIVE COMMONS MOVEMENT

Creative Commons is an American charity founded by the radical libertarian legal scholar, Lawrence Lessig. Its aim is to help cultural creators to give up some of their copyrights by creating the required legal framework of licences. David M Berry says Creative commons laudably wishes to encourage the sharing and openness in wider culture that have typified movements like the Free/Libre and Open Source movement, who freely share computer codes, expertise and knowledge across the internet. According to Becky Hogge, Creative Commons licences allow authors to release their works "some rights reserved" selectively asserting the different rights that are established by copyright law, such as distribution, attribution and releasing the right to provide derivative works, and releasing the rest to the "network of ends". Their inspiration is the Free Software or "copy left" licence, the GNU General Public, which is used in free and open source software and allows programmers to read, adapt and release new version of a computer program's source code. But creative commons could not pick and choose who uses its licences since they are tools made available to all. As the popularity of the licences grows, they are sure to be embraced by organizations that are less than attractive to the early adopters. To counter negative effects on the free culture, enthusiasts who form the core of the movement have established a new arm, the iCommons.

14.9.1   iCOMMONS

The iCommons is an international organization that has grown out of the creative commons movement. In the words of Becky Hogg, the iCommons aims to incubate and connect projects that are working towards a global digital commons. As it is less concerned with the legal code that is available to all and more connected with common practice, the iCommons is the perfect altar at which free software and free culture pioneers may lay their aspirations for the movement. But will they? For many, the message behind iCommons isn't clear. According to Lawrence Lessig, creative Commons does not tell you how you should be free, it provides you with tools, real things, which let you achieve the freedoms you believe in, and commons will be the same. But no matter what the Creative Commons Board believes. Their self-appointed advocates around the world were drawn to Creative Commons in part because of a perceived shared ideology. "We need trust and faith in each other", counters Lessig, "We need a recognition that we have a common purpose. Don't tell me that I need to tell you what that is, because we'll never agree, but we do have a common purpose."

14.10   DIGITAL COMMONS

An enriching form of individual creativity and technology is inventing a new global space, the digital commons, that recognises that creation is not produced out of a vacuum; we inevitably build upon the works of others, be it consciously or subconsciously and this is because of advances in digital technology and communications networks that we are entering a new era of creative production.

In Digital commons, users are creating culture and knowledge, be it by blogging, making videos, remixing songs, or writing software. While it may manifest itself in different ways in different places, this movement, much like the nature of the internet itself, has become a truly global one, and has served to transcend barriers across cultures. Elizabeth Stark explains by giving an example of her posting a mix of Brazilian Baile funk music on her blog online and allowing others free access to it, that she had entered the "cultural commons", or a common space of cultural information that is available for the public at large to share, rework, and remix. Another example, she quotes is of old books or films (before 1923 in the US) where the copyright has expired and is now in the public domain as well as the massive amount of knowledge contained in 'Wikipedia', the world's largest user-created encyclopaedia, would be a part of this growing pool of global information. As opposed to opting for traditional copyright, which would lock down a work and prevent such access or reworking, creators may opt for various licences, including those of Creative Commons, to add to this knowledge space. But there are certain threats to the progress as be enter the era of democratic cultural production, the law is increasingly out of touch with reality. There's a complete lack of congruence between what is on the books and what is actually happening in the real (or digital) world. The vast majority of the remixes out there, believe it or not, are illegal. Ranging from video lip synching to recreating film trailers, they infringe on the copyright law that has been harmonised throughout most of the modern world. Digital rights management (DRM), or technologies that restrict access to a particular digital work, such as not allowing users to print pages of e-Books or make a copy of a digital music file, poses a serious threat to the development of the digital commons. In spite of this, David M Berry argues, the project of free culture deserves support — it has a commitment to open knowledge, the transferability of information goods between rich and poor countries and offers an alternative way of producing and organizing culture. It also raises important questions about the wider co modification of our cultural sphere.

Let us now summarize the points covered in this unit.

14.11   SUMMARY

- Internet is an open global common connecting a number of networks of the entire world thereby reducing the cost of long distance communication.

- In the era of globalisation, the idea of the common got articulated in the context of protection of intellectual property rights.

- To understand the spread of cyber practice in India, the concept of 'public' in relation to India has to be understood.

- The term 'public' as identified in the Indian context can be categorised as national public, cyber elites and global public.

- The idea of global common can be used as symbolic fiction in determining the policies framed for protection of intellectual property rights and this can be done by identifying global publics in India, pointing the global economy through the instance of entertainment and film industry.

- In mapping out the space of global common within that of nation or local, the issue of the impact of globalisation on practices of electronic culture often arises.

- For the growth of international trade, the need is to promote global commons through the principle of reciprocity.

- Creative commons movement was founded by Lawrence Lessig with the aim to help creators to give up some of their copyrights to encourage sharing and openness.

- icommon is an international organization and has grown out of the creative commons movement.

- Now there is a move towards formation of new global space of digital commons where users are creating culture and knowledge for e.g. by making videos, remixing songs etc.

14.12   TERMINAL QUESTIONS

1) What was the concept of Global commons in Roman times and in England?

2) What is the new concept of Global Common and with which technology is it identified?

14.13   ANSWERS AND HINTS

Self Assessment Questions

1) The term 'public' used by Sundram includes national public, trans-national elites and the space between market and the state.

2) The chief aim of WTO is the establishment of standard rules and regulations for trade, and ensuring that legal systems across the world comply with the established global standard for the protection of intellectual property rights.

Terminal Questions

1) Refer to section 14.3 of the unit.

2) In the era of globalisation, the commons has emerged as the new global marketplace for products and services i.e., the market whose rules of engagement and terms of operation have been substantially altered by the prominence that it gives to intellectual property and is particularly identified with the realms of high technology in the form of cyberspace and the various open source movements in software itself. Refer to sections 14.5, 14.6, 14.9, and 14.10.

14.14   REFERENCES AND SUGGESTED READINGS

1. "History of the commons". friendsofthecommons.org. 14 Sept. 2006. 20 Dec. 2006 <http://friendso fthecommons.org/understanding/history/html>.

2. BeckyHogge. "what moves a movement?" open democracy.net. 27 June.2006. 21 Dec.2006 <http://www.opendemocracy.net>.

3. David M Berry. "The Global Digital Commons and other unlikely tales''. open democracy.net. 26 June.2006. 21 Dec. 2006<http://www.opendemocracy.net>.

4. Elizabeth. "free culture and the internet a new semiotic democracy". <u>open democracy.net</u>. 20 June.2006. 21 Dec. 2006<http://www.opendemocracy.net>.

5. Lawrence Liang. "Global Commons, Public Space and Contemporary IPR". <u>Media Development</u> 18 Dec. 2004. 19 Oct. 2006<http://www.altlawforum.org/ PUBLICATIONS/document.>.

6. Ravi Sundaram. "Beyond the Nationalist panopticon: the experience of cyberpublic in India". 18 Dec.2005. 19 Oct. 2006 <http://amsterdam.nettime.org/lists-archuis/ nettime-1 - 9611/mss00018.html.>.

7. Ravi Sundaram. "Recycling modernity; pirate electronic cultures in India". Sarai Reader 01. <u>The Public Domain</u>. pp.93-99.

8. Richard K. More. "Democracy and Cyberspace". presented at "International Conference on Discourse and Decision Making in the Information Age. 1997. 23 Aug. 2006. 20 Dec.2006 <http://cyberjournal. org/cj/rkm/TS/ sep97cyberspace.html>.

9. <u>Satellite Communication Group</u>. NIC, DIT, MoCIT, Govt of India. 2 Jan. 2007 <http://satcom.nic.in/about.html.>.

10. Suresh t. Vishvanathan. <u>The Indian Cyber Laws</u>. 2nd ed. New Delhi: Bharat Law House, 2001.