OPEN SESAME: UNLOCKING IP TO UNLEASH THE COMMONS

A JOINT CONFERENCE UNDER THE CONSILIENCE BANNER BY:

THE LAW AND TECHNOLOGY SOCIETY (NLS)

AND

SPICYIP

SUPPORTED BY:

MHRD CHAIR IN IP, NLS

DATES: 28 AND 29 MAY

VENUE: National Law School (NLS), BANGALORE

INTRODUCTION

Open access is now part of our IP vocabulary, thanks to a powerful campaign in the last few decades. Building on the success of the open source movement in software, the open access philosophy is predicated largely on the notion of "freedom" from IP related restrictions. Today, it finds resonance in a number of diverse areas such as educational content (Khan Academy), encyclopedias (Wikipedia), publishing (PubMed), biotechnology (BiOS) and lately, even pharmaceuticals and drug discovery (OSDD).

Thus far, the IP vs open access debates have focused on two core issues:

i) Access to Knowledge Goods at Affordable Prices (A2K)

IP rights often lead to monopolistic pricing, causing loss of consumer welfare and sharp inequities; particularly so in developing countries where most consumers are unable to afford excessively priced drugs or books. Open access on the other hand, yields content that is relatively more affordable for the average consumer.

ii) Closed vs Open/Collaborative/Shared (Creative) Process

While an IP driven innovation model is closed, secretive and bounded, an open source/access process is relatively more open, collaborative and unbounded, drawing far more participants and talent, tending to result in a more diverse array of creative expressions.

Further, most IP regimes don't leave much room for tinkering and improving upon/remixing the existing IP good. Contrast this with an open access model, which fosters more freedom on this front, permitting a wide range of improvements on the parent product.

Consilience: A Joint Conference by NLS and SpicyIP

In order to revisit these core issues and generate fresh perspectives, the Law and Technology Society at NLS, SpicyIP and the MHRD Chair in IP (NLS) have come together under the "Consilience" banner. This thematic conference on IP and open access will also mark ten years of the birth of SpicyIP and its fight for openness/transparency in the IP/innovation ecosystem.

In particular, this joint conference seeks to foster newer areas of enquiry as outlined below:

i) The Developing Country Dimension

Most discussions around IP and open access revolve around "developed countries" and their specific socio-economic context. To this extent, the frame fails to account for developing countries and their concerns. Illustratively, while developed countries take "bandwidth" for granted, developing countries may face serious issues on this front, preventing them from meaningful participation in the open access movement (which largely relies on content publication/ dissemination via the internet).

This conference will therefore bring some attention to the developing country dimension and deliberate on the current frame and how it might need to be adapted and/or overhauled.

ii) Fostering Openness within IP Regimes

The classic IP vs Open Access frame is predicated on the notion that IP regimes are inherently "closed". While this may hold true (to a significant extent), it fails to account for the potential openness in IP regimes. In other words, IP regimes could be pried open to foster greater levels of openness and transparency.

One could even argue that openness lies at the heart of IP regimes; for it is the sine qua non for the grant of the right in the first place. Illustratively, patents are to be compulsorily disclosed and published, should the applicant desire a twenty-year monopoly protection. Such disclosure is meant to aid the public in accessing and working the patented invention, and learning from it in the process. And yet, not many have focused on this important disclosure function of patents.

Further some regimes such as the Indian patent regime mandate that all patentees to compulsorily disclose the extent to which they have translated their patent into commercial wares and "worked" it. Failing such working, the patented invention could be subject to a compulsory license. Unfortunately, this provision meant to shed more light on the patent innovation nexus and the extent to which patents serve the public interest is currently observed more in the breach.

Similarly, provisions such as compulsory licensing aim to permit competitors to access patented technology in a bid to produce more accessible and affordable technological wares and serve the public interest better.

Though far from ideal, an effective deployment of these various provisions is likely to yield an IP regime that is far more "open" and "transparent" than is currently the case. Developing countries that are newer entrants to the patent land-space and have less of an entrenched IP centric system possess far greater latitude to experiment and unleash more openness within their IP regimes.

A diverse range of speakers from India and abroad will present on the aforementioned issues. While the conventional frame around the IP and open access will be revisited, the key thrust will be in exploring newer dimensions i.e. the developing country perspective and the potential for openness within IP regimes.

Some of the broad themes sought to be discussed in the conference are outlined below:

Join us for an exciting two days where we try to make some sense of this polarizing debate that goes to very heart of what it means to be a knowledge economy!

SCHEDULE

DAY I

I.   INAUGURAL AND KEYNOTE

1. Welcome Address (9.30 am)

Prof Venkata Rao (Vice Chancellor, NLS)

2. Other Welcome Address (9.40 am to 10.20 am)

Prof Shamnad Basheer (SpicyIP)

Prof Ramakrishna (MHRD IP Chair, NLS)

Aditya Singh Chawla (Convenor, Law and Technology Society, NLS)

3. Keynote Address (10.30 am to 11.10 am)

Prof Richard Jefferson (Founder, Cambia and Professor, Queensland University of Technology [QUT])

"Open Innovation Cartography: Building an Inclusive and Transparent IP Ecosystem"

Tea Break (11.10 am to 11.25)

4. Special Address (11.30 am to 11.50 am)

Justice Ravindra Bhat

II   SESSION: OPEN INNOVATION

Duration: 11.50 am to 5.45 pm

1.   **From Software (OSS) to Drug Discovery (OSDD):** 11.50 am to 1.20 pm

         Mishi Choudhary (SFLC)
         Venkatesh Hariharan (i-Spirt)
         Dr Tanjore Balganesh (Open Source Pharma Foundation)
         Moderator (TBD)

         Lunch Break: 1.20 pm to 2.20 pm

2.   **Open Access Music Video** (by SpicyIP)
          2.20 pm to 2.30 pm

3.   **Open Standards and Licensing (SEP issues):** 2.30 pm to 4.00 pm

         Rajiv Choudhary (IP lawyer)
         Sunil Abraham (CIS)
         Prof Yogesh Pai (NLU Delhi)
         Prof Natasha Nayak (Jindal)
         Moderator: Prof Ramakrishna (MHRD IP Chair, NLS)

         Tea Break: 4.00 pm to 4.15 pm

4.   **Compulsory Licensing and a Compensatory Commons: 4.15 pm to 5.45 pm**

         Prof Srividya Ragavan (Texas A&M University)
         Jayashree Watal (WTO)
         Dilip Shah (Indian Pharmaceuticals Alliance)
         Prof Vivekanandan (NALSAR)
         Moderator: Prof Shamnad Basheer (Founder, SpicyIP)

         Dinner: 7 pm onwards (sponsored by Texas A&M University)

DAY II

III   SESSION: OPEN EDUCATION
Duration: 10.00 am to 11.30 am

Lawrence Liang (Founder, ALF)
Prof Dev Gangjee (University of Oxford)
Prof Arul Scaria (NLU Delhi)
Prof Shubha Ghosh (Syracuse University)
Moderator: Swaraj P Barooah (Editor in Chief, SpicyIP)

Tea break: 11.30 am to 11.45 am

IV   SESSION: OPEN LAW/POLICY
(Transparency in IP, Open Patent data, Open IP Policy etc)
Duration: 11.45 am to 1.15 pm

Prof (Dr) Richard Jefferson (Cambia and Prof, Queensland University of Technology)
GR Raghavender (Joint Secretary, DIPP, Ministry of Commerce)
Prashant Reddy (IP Consultant)
Prof Prashant Iyengar (Jindal)
Open Access IP Dictionary (Presentation by team of Nirma University/SpicyIP)
Moderator: TBD

LUNCH: 1.15 pm to 2.15 pm

V   SESSION: FUTURE OF THE COMMONS (Opportunities and Challenges)

Duration: 2.30 pm to 4.30 pm

Panel Discussion
Zakir Thomas (Former Director, OSDD)

Dr Tabrez Ahmed (Director, UPES, Dehradun)
Murali Neelakantan (IP Consultant)
Arun Mohan (IP lawyer)
Sunita Sreedharan (IP Lawyer)
Moderator: TBD

Tea Break: 4.30 pm to 4.45pm

VI   SUMMARY/CONCLUSIONS

 4.45 pm to 5.15 pm

VII   CLOSING/VALEDICTORY

5.15 pm to 5.45 pm

REGISTRATION DETAILS

This conference is open to the public. However, in order to attend, you must register and have a confirmation from the registration desk prior to attending.

The registration fees for attending both days of the conference (inclusive of lunch and tea on both days, and gala dinner on the 28th) is as follows-

* Corporates/For profit organizations- Rs 5000

* Non-profit organizations and inviduals- Rs 2500

* Students- Rs 1000

To register, please send an email stating your name, designation and institutional affiliation to ltech.nls@gmail.com with subject "Registration for Consilience".