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**ROLE OF COPYRIGHT
IN CULTURAL
AND
ECONOMIC DEVELOPMENT
OF
DEVELOPING COUNTRIES:
The Asian Experience**



SHAHID ALIKHAN

**RAJIV GANDHI INSTITUTE FOR
CONTEMPORARY STUDIES**

Shri Shahid Alikhan is a distinguished civil servant who served in senior capacities in various ministries of the Government of India. He was a Director in the World Intellectual Property Organisation, Geneva from end 1976 till his election as Deputy Director General in May 1988. In 1992, he was given the rank of Under Secretary General in the United Nations.

He is an internationally renowned Authority in Intellectual Property Rights, and has Written Extensively on the subject. Since his retirement in 1993, Shri Alikhan has been on lecture tours, addressing professional audiences—on the subject of protection of intellectual property rights—at international and national institutions.

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ROLE OF COPYRIGHT IN CULTURAL AND ECONOMIC DEVELOPMENT OF DEVELOPING COUNTRIES: THE ASIAN EXPERIENCE*

Shahid Alikhan

Introduction

An updated, modern copyright legislation and an effectively enforced copyright system could be an important factor in the process of economic reform and the restructuring of economic and trade policies. It could also help in the promotion of the so-called cultural industry that depends on effective copyright protection for its sustenance and in national socio-economic growth and development.

The economic value of copyright protection is quite considerable in an electronic age as it covers mass media communication including virtually all forms and methods of public communication, not only printed publications but also sound and television broadcasting, films and, in a number of countries, extends to the protection of computer programmes and to computer systems for the storage of information.

This paper confines itself to the role of intellectual property rights and that of copyright in the social, cultural and economic development of countries, with particular reference to the Asian region.

Increasing Globalisation of Economies: Challenges and Opportunities

Globalisation is transforming the world economy. With the increasing internationalisation of corporate activities, importance of the protection of intellectual property rights is widely being recognised as a determining factor in safeguarding the results of technological development as well as in engendering, nourishing and sustaining national creative endeavour.

Intellectual property rights are assuming an increasing role and importance in international trade in investment, in economic relations and in economic growth. In the present global economic scenario of challenges and opportunities for us in the developing countries, the thrust in every direction of the productive sector, including in the so-called copyright or cultural industry, should be on invigorating domestic efficiency and qualitative management in the context of promoting creativity, creative works and products, in a growingly open and competitive global economy with greater opportunities for investments and exports.

Intellectual property deals with creations of the human intellect. Confidence in the intellectual property system is a powerful stimulus for intellectual creativity. The protection of intellectual property rights also enables countries to participate more actively in international trade. International merchandise trade is slated to grow at more than 6 per cent per annum over the next ten years, more than at any time in the last three decades.

* The paper was first written in August 1996 for a UNESCO publication, and has since been updated.

In this context, the importance and usefulness of the protection of intellectual property rights, its linkage with competitiveness in trade as well as with economic and social development, needs to be increasingly emphasised, particularly amongst policymakers, in private and public sectors, economists, lawyers, administrators, and the public at large.

Role of Copyright in Socio-economic Development

As one of the main branches of intellectual property—and it hardly needs to be repeated that—copyright provides for protection, *inter alia*, of literary, musical, artistic, photographic and audio-visual works and of computer programmes. In the field of copyright, creative intellectual activity is encouraged by according to the authors, as creators of literary and artistic works, the exclusive rights in their works. These rights also provide a legal basis for contractual arrangements/agreements between the author and the producer or the distributor of the expression of the author's ideas, whether it be in the form of a book or a play or music, performed in a theatre or other public place, or as an audio or visual recording of a programme broadcast by radio or television. The recognition of the creator, the protection of his rights and the rights of those who invest in the making of his creations, contribute positively to socio-economic development of a developing country.

Copyright laws in most countries now protect computer programmes. India, for example, was one of the first 15 countries to protect computer programmes by amending its copyright law on September 14, 1984. India was one of the foremost countries in Asia to do so. Many countries also protect the works of applied art. In the national laws of countries, generally following the Anglo- Saxon legal tradition, protection under copyright also extends to certain so-called neighbouring rights or rights neighbouring on the rights in literary and artistic works viz., the rights of performers, producers of phonograms and broadcasting organisations.

Protection of authors' works encourages them to create more and better literature and music. This applies to all types of works, including school and university textbooks. In addition, the investment needed for film-making, book printing, book publishing, record manufacturing, etc., will be more easily available if effective protection exists. As such, copyright protection is often indispensable for encouraging the necessary investments. Encouragement of creativity in literary and artistic works and its protection through copyright, as in the case of inventions and innovations through patents, is also an important contributory factor in socio-economic and cultural development.

Therefore, it is essential that greater awareness should be created about the importance of efficient and effective intellectual property protection and its impact on socio-economic growth. If we, in developing countries, are to use the system for our benefit, an intellectual property 'culture' needs to be promoted. It would encourage intellectual creativity and concentrate on the necessary human resource development. At a recent meeting I was addressing, a participant, for instance, propounded the theory that protection of copyright could only result in a considerable outgo of capital to foreigners in royalty payments and much less inflow. This has to be explained in detail, but is again an indication that the need for greater awareness building is imperative.

The users of copyrighted works should also be made aware about their legal obligations for using such works. This is necessary because for a long time, the people have become accustomed to using protected music, for example, in restaurants, bars, hotels, etc., without either getting a licence for the use of such copyrighted material or paying for such use.

The principal objective for protecting the intellectual property is to foster and nourish creativity and to provide to the largest number of people the benefit of such activity. An important priority in the development process in developing countries is to encourage national and indigenous creation of works. This could help in the improvement and strengthening of an education system relatable to national needs, and for producing a sound base of qualified manpower that is essential for a broad-based human resource development which, in turn, would help in ensuring faster technological and socio-economic growth. Such encouragement requires not only the recognition of creators, but also providing for them a means of obtaining a reward for their creative endeavour.

In the context of the role of copyright in socio-economic development and growth, with particular reference to the Asian region, it is interesting to note that the 1994 *World Bank Survey, Global Economic Prospects and the Developing Countries* indicated that while the growth between 1994 and 2003 A.D. in industrialised countries would remain low, it is expected to continue its persistent growth in respect of both the Gross Domestic Product (GDP) and exports in a number of developing countries. World GDP growth, only 1.1 per cent a year in 1991-93, is expected to recover to more than 3 per cent a year during 1994-2003, mainly due to economies of some 30 per cent of developing countries which are on the aggregate growing at a rate more than those of the major industrialised countries. Quite a few of these developing countries are in the Asian region.

Considering that the total GDP of the Asian-Pacific countries was around US \$ 4,500 billion, the importance of protection of copyright and of the cultural industry it protects is self-evident. Incidentally, of this GDP in Asia, the major share was of Japan, Australia, New Zealand, China, India and the countries of the Association of South-East Asian Nations (ASEAN). The cultural industries in most of these countries are quite a sizeable portion of the total GDP of each one of them.

Despite this growth in Asia, considerably increased investment in education and human resource development is still needed, as is, of course, awareness building in respect of the advantages of a well-enforced, well-administered intellectual property and copyright system as an important factor in socio-economic development.

Copyright and Emerging Technologies

The rapid advances in technology in relation to intellectual property rights is an important feature of the contemporary scenario. Technological development has created new ways in which products of creative cultural activity can be made available to the public. Dissemination also by new interactive technological systems is overtaking the traditional means by which literature, music, and films were made available to the public through retail outlets selling books, video records, etc. The new interactive online systems enable the people to have access to databases from which

they can cause a book, musical recording, film, etc. to be transmitted to them by wireless or cable, and have the option of reading it on the screen, viewing it, listening to it, or making copies of it.

This is a system which is no longer national. It is a global system. People sitting in their homes in one country can have access to information from other countries. Whereas the time-honoured methods of providing these products have been through the sale of physical copies, these methods are being replaced by the transmission of material copies to the receiving equipment which enables the people to create their own physical copies instead of going to bookshops, libraries and music stores.

Another important feature of technology is that it is making it possible to have technological devices which permit the automatic monitoring of the use to which the people put this wealth of material to which it has access. Thus, what is often described as a problem created by technology could be solved by technology itself, enabling an author or copyright owner to keep track of the volume of use which the public makes of his product. Signals are thus possible to be built into the digitalised version of a book, music or film which could record information about the work. These signals could be read by electronic devices which have to be embodied in the equipment made available to the public. The copyright owners can then know as to how many copies have been made of their works. But for the protection of copyright owners, it is necessary to have updated legislation and the required infrastructure. There is necessity for a legislation that makes it an offence for people who circumvent these 'copy protection' systems. In this way, not only can technology make it possible for digital texts to be read, but could also enable technological systems being used to prevent copying without compensation.

Hence, there is an increasing realisation that national copyright legislations need a constant review and updating, since technology is developing very fast. Qualitative new problems have been emerging with the advent of digital technology, of interactive digital networks, digital 'superhighways' and digital delivery systems. The INTERNET, originally for researchers, is becoming a WORLD WIDE WEB connecting millions of users. This number is growing exponentially.

It has correctly been said that copyright was born out of technology, with Gutenberg having invented the printing press. But, during the process of its coming of age, the rapid growth of emerging, sophisticated high technologies, while posing new challenges, is also providing new opportunities.

Technology-based companies are, as we see, facing exciting times, to say the least, that would constantly change the practices in many industries. Intellectual property rights protection is becoming a priority for managements which are willing to confront the realities of competition.

The invention of computers and computer programmes has virtually led to the introduction of digital technology in copyright. During the 1970s and early 1980s, the debate on the way in which these programmes should be protected led to a quasi-unanimous decision in favour of copyright protection. Today, the fact that computer programmes in any form, or in any storage medium, are protected by copyright cannot be disputed.

Another important issue concerns the consequences of the utilisation of technology for the creation, dissemination and use of works. One such issue is the change in the terminology that is used. The expression 'computer technology' is progressively being replaced with 'digital technology'. The word 'digital' refers to the fact that computers work with digit-based binary systems. The consequence of this change has been that, with technological evolution, almost anything can now be stored in digital form: image, text, voice, sound, or music. The key to the impact of it all is that for the computer these various elements, once they have been digitised, are all 'equal'. They can be merged, transformed, manipulated or mixed to create an endless variety of new works.

All types of information can be stored in a single carrier, for example, a hard disc or a CD-ROM. If a multimedia CD-ROM, for example, deals with geography, it will enable the user not only to read the text on the subject and view photographic pictures as in a textbook, but it could also supply statistical material in figures or graphic representations, maps of various kinds (topographic, political or statistical) through which the user may get as many details as the encoded material allows, and also illustrations in the form of sound (such as a recording of the national anthem, important political speeches, etc.) and moving images (films showing landscapes and significant events). This has a number of important consequences for copyright.

The speedy creation through the use of digital technology of digital versions of works originally produced in the analogue domain, for example, sound recordings, motion pictures, etc., and the capacity to produce an enormous number of low-cost, distortion-free copies, raise questions regarding the recognition of new rights relating to the creation of digital copies of existing works, concerning the need for legal structures, as well as rights associated with broadcasting, where the recipient of the broadcast signal will have the ability to make any number of copies of the material broadcast, and concerning the cooperation between rights holders and manufacturers and distributors of equipment that will have the capacity to create, reproduce and manipulate digital information.

The digital format not only affects creation, but also communication and diffusion of works. Works and material stored on a digital medium can be communicated by cable and then received in its original quality. Such communication networks are often referred to as the national (or global) information infrastructure or the 'information superhighway'.

The 'information superhighway' has yet another crucial aspect in that it will allow interactive communication with the listener or viewer—who, in reality, will become the interactive user. This digital distribution of works upon request, for instance, is raising problems on quite a different scale. Using these systems which are being developed, the user can, at his home, ask for and receive a film, a musical work or text or any other type of work by contacting a huge digital database linked to a cable or telephone system.

The impact of this kind of distribution of works on copyright will be gigantic. From a legal standpoint, it is a question as to how one should deal with such "transmission on demand" and several suggestions are currently under consideration. Such suggestions include the application of the existing rights of reproduction,

communication to the public or distribution. The current international discussions on these issues are also expected to cover protection against unauthorised manufacture, importation, sale and other distribution devices, and other means of technical protection, as well as protection against omission or distortion of copyright-management information, which will be transmitted with the works in order to enable computerised management of rights, including the transfer of payments for use.

As this century draws to a close, newer and more sophisticated technologies are emerging very fast. Among those that can, for the present at least, be said to affect the exercise of copyright are, inter alia, the possibilities offered for and by, in addition to digital technology, in respect also of private copying or home taping, reprographic reproduction, video and record rentals, computer programmes and databases, and satellite broadcasting. Fiber optics and the merging of the telephone, the computer and the TV are making instantaneous communication in the global village more than possible.

Development of the Copyright or Cultural Industry, Its Contribution to National Economies: The Protection Required

Encouragement of creativity in literary and artistic works, its protection through national copyright legislation and the determined enforcement of such legislation in the face of the emerging technologies is an important contributory factor in socio-economic and cultural development and in encouraging, attracting and sustaining investments in what has come to be known as the cultural industry. This includes, institutions and enterprises that undertake the production and distribution of educational, scientific and cultural material as well as that covering information technology, sophisticated high technologies, computer software and the entertainment fields.

The cultural industry which depends for its sustenance on an updated, modern, effective and well-enforced copyright legislation, has also come to be known as the 'copyright industry', it is growing rapidly in developed as well as in a number of developing countries. The core of this industry is book publishing, newspapers, periodicals, printing and publishing; advertising, radio and television, broadcasting; sound recordings, music and audiovisual works, motion pictures and films; and computer software and data processing industry. Most of such industries deal with the generation of new copyright material. The software and data processing companies deal both with the generation of copyright material and its application. And then, there are related non-core industries and institutions whose activities are in some measure copyright-dependent. These include those industries that deal with the production of equipment or hardware needed for the use of copyrighted material (radios, televising sets, computers, recording and listening devices, etc.) as well as the output of printers, binders, paper and printing machine manufacturers to the extent of their contribution to output needed for copyright industries; and, of course, such institutions as libraries, theatres, etc.

The so-called copyright industry represents, in some countries, the fastest growing sector of the economy, creating considerable employment generation and having an increasing export performance and potential. The contribution of this industry to the gross national product (GNP) is bound to increase in the years to come, also in a

number of rapidly growing developing countries, particularly in the Asian region, which are taking up both the new challenges and the new opportunities thrown up by the increasing borderless dimension of trade and economy. The globalisation of socio-economic activities and the fillip it has provided to the information industries has made some developing countries active participants both as agents and beneficiaries of the change.

The economic importance of copyright and of the copyright industry in those countries which are major creators of copyright material has been well established. All the studies carried out so far indicate that it contributes considerably to national wealth.

While it is difficult to be precise about which of the economic activities comprise the copyright industry and their exact contribution to the national output, all studies indicate that the industry ranks in size with other major conventionally defined industries in those countries.

To give examples of some countries where such studies have been conducted over the last decade or so, the contribution of the copyright industries to their GNP was: (taking them in the alphabetical order) Australia 3.1 per cent; Germany 2.9 per cent; the Netherlands 4.5 per cent (according to the latest 1993 study by the Foundation of Economic Research by the University of Amsterdam commissioned by the Dutch Copyright Federation); New Zealand 3.2 per cent. Sweden was stated to be as high as 6.6 per cent (although Jennifer Skilbeck in 'The economic importance of copyright' (International Publishers Association 1988) places this at 3.16 per cent¹, the United Kingdom 2.6 per cent (according to a 1993 update of the study on the United Kingdom, based on figures of 1990, this was placed at 3.6 per cent); the United States of America 3.3 per cent for the core industry and 5.8 per cent for the total copyright including the dependent industry.

Other economic indicators contribution of the copyright industry were that these provided employment, for example, in Australia for over 200,000 persons or 3 per cent of the labour force; in New Zealand, employment in copyright-based activities grew by 8.1 percent in the five years 1986-91 ; in Germany such activities provided employment for about 800,000 people or 3.6 percent of the total job market; in the united kingdom for over 800,000 persons; and in the united states of America they created 2.2 million jobs.

This employment potential of the cultural industry is an important factor for the region we are considering, namely, Asia. By 1993, the population of this region had reached 60 per cent of the world's total. The world's population of around six billion-again largely in Asia-was on the whole estimated to grow at an almost frightening average of nearly 2, 40,000 people a day, the equivalent of another Switzerland in thirty days! At last, if we cannot this spurt in population, we should provide, in particular in the Asian region where the copyright industry is sizeable, effective copyright protection where the copyright industry is sizeable, effective copyright protection for it, in view also of its employment potential.

¹ Quoted by H.C.Jehoram, Professor of Law, University of Amsterdam, in his article in the *International Review of Industrial Property and Copyright Law* No. 4, 1989.

Again, to go back to our examples, these industries in Germany were estimated to have recorded, between 1980 and 1986, a rate of growth higher than the average rate of growth higher than the average rate of growth of the entire economy, and, according to a study published in 1989, provided an annual income of Dm, 54 billion. In the Netherlands, 19.8 thousand million guilders. In the United Kingdom, the export earnings from copyrighted material alone amounted to over 4,000 million pound sterlings and in the United States of America they accounted for over US \$ 34 billion in foreign sales during 1990.

It may also be interesting to note that the share of the copyright industries of the GNP in the United Kingdom exceeded the share of the GNP of the motor car and food manufacturing industries. In the United States of America, a recent (January 1995) study² showed that these industries were one of the largest and fastest growing sector, growing at over twice the annual rate of growth of the economy during 1991 and 1993 (5.6 per cent versus 2.7 per cent).

Some of these already published figures are being mentioned here especially because it is felt that most of us perhaps do not realize that copyright industry in some of the countries of our region is also possibly a sizeable proportion of the total GNP and is by no means a negligible portion of the economy.

In **India**, this is obviously so, considering that it has a substantial, growing and sophisticated book-publishing industry which ranks amongst the top ten in the world. The industry publishes books in fourteen major languages, including English in which it is the third largest in the world. The total number of books published on an average are around 20,000 a year. Its total turnover in 1995 was around Rs. 15,000 million, or about US \$ 455 million a year.

In addition to the book industry, India has a very large and well developed film industry. In the production of films, we have the biggest Hollywood on earth, producing nearly 800 films a year and together with documentaries, having a turnover of more than Rs. 18,500 million or just over US \$ 560 million. The attendance in cinemas was 4.3 billion persons in 1991.

In recorded music, India is a very major producer with sales in 1995, of nearly US \$ 360 million (the second largest amongst developing countries of Asia after the Republic of Korea); and in the enormous number of unit sales, being the largest in developing countries of Asia. The growth in unit sales of pre-recorded music registered an increase of 18.6 per cent, almost the highest in Asia. The total turnover of the music industry is around Rs. 15,000 million or approximately US \$ 455 million.

Likewise, in computer software (which is protected since 1984 as a literary work under the copyright law), the industry, which is now one of the foremost in the world,

² See release dated February 16, 1995 of the International Property Alliance, Washington, entitled 'Copyright industries Continue as One of the Largest and Fastest Growing Sectors of the U.S. Economy: Employment in These Industries Grew at some Four Times the Rate of the Overall U.S. Economy Between 1998-1993' I am indebted to Mr. Eric H. Smith, Executive Director and General Counsel, for sending me this release and an updated study entitled 'Copyright Industries in the U.S. Economy 1977-1993.'

has recorded an exceptional performance, with software exports increasing from a level of US \$ 225 million in 1992-93 to US \$ 340 million in 1993-94 and over US \$ 450 million in 1994-95. According to the estimates of the National Association of Software and Service Companies (NASSCOM), this is expected to rise to over US one billion dollars before the end of the century. The turnover of the software industry at present is estimated to be nearly US \$ one billion. The total domestic market in software registered a 70 per cent growth in 1995.

Add to these the turnover of the newspaper and advertising industry (together being over Rs. 42,000 million or nearly US \$ 1,300 million); the entertainment industry (live shows, concerts, etc.); radio and television broadcasting and the cable network; and the economic performance of these copyright based or cultural industries, measured in terms of gross value added, i.e., their contribution to the generation of national income is very sizeable, to say the least.

Even taking one of the latest estimates of the total GNP for 1995-96, which at 1980-81 prices was expected to show a growth of 62 per cent over the estimates for 1994-95 (released on February 1, 1996 by the Government's Central Statistical Organisation), *the percentage of India's GNP contributed by its cultural or copyright based industries works out to 5.06 per cent or say 5 per cent.*

This is important since India's economy is one of the world's larger economies. It is as advanced technologically as many of the more progressive Asian countries. It has placed in geo-stationary orbit, using its own launching rockets, an Indian-designed and Indian-made satellite for, inter alia, telecommunication and television broadcasting. In addition, with its other great advantage, which is its growing, well-educated, consumerist middle class, almost the size of the population of the United States of America, and with the increasing GNP, the cultural industry in India is bound to grow.

Meanwhile, since encouragement of exports has been given a priority in the restructuring process, and interestingly, because exports of computer software have a high growth potential, full tax exemption had been accorded to profits earned from exports of computer software for one more year up to the tax assessment year 1995-96.

Now, to turn to the position in some other Asian countries. While precise figures of the generation of gross amounts in value-added, as contributed by each of the cultural industries to their respective GNP, were not available in most cases, even an approximate percentage of their share of the GNP could not be calculated except in one case. However, this share of the economy is obviously considerable as some of the following examples highlight.

In **China**, with an increasing GNP and an economy that has grown at near record pace, with a growth rate of over 12 per cent in 1992 and 1993, and 10.5 per cent in 1994, and trade having escalated from around US \$ 30 billion in 1980 to over US \$ 135 billion in 1992, its economy is reckoned to be the world's fourth largest and is expected to increase eight times more by 2002 than what it was in 1978 when the reforms began.

China has a huge cultural industry. The book publishing industry, for example, had published 104,000 titles in 1994 of which 61,000, were new titles. The number of printed copies of these titles were over 3 billion. There were more than 7,300 magazine titles, more than 1,800 newspaper titles; nearly 150 films were produced in 1994 and the attendance in cinemas was slated to be nearly 14.5 billion people (according to 1991 figures). Then again, sales of prerecorded music in 1995 amounted to over US \$ 346 million.

In **Indonesia**, the overall economic performance has steadily improved in all important dimensions of economic development. In terms of GNP, it has one of the larger economies amongst the Asian developing countries. Economic growth has been sustained at an average of 6.5 per cent to 7 per cent.

The book publishing industry, although not very large, nevertheless produces between 4,000 and 6,000 new titles each year, with a circulation of about 500 copies of each title. Interestingly, a very sizeable percentage of the total number of publishers are said to operate largely in Java. As for unit sales by value, of prerecorded music, it has risen to US \$ 263 million in 1995, with growth rate of nearly 13.5 per cent. The number of films produced in 1991 was around 30.

In **Malaysia**, their Intellectual Property Division in the Ministry of Domestic Trade and Consumer Affairs, and its Enforcement Division, are in charge of intellectual property rights protection.

Prudent macro-economic policies implemented by impressively well-managed public institutions, have led to a sustained growth rate averaging 8.7 per annum in the five years ended 1995, against their Five-Year Plan target of 8.1 per cent for the same period. The government, at the highest levels, is keen on and is using the intellectual property system for furthering economic growth.

During their Seventh Plan (1996-2000), the Government of Malaysia, particularly conscious of the critical role of information in decision-making and in global competition, has put information technology in the forefront of economic development for improved efficiency, productivity and competitiveness. A National Action Plan is proposed for coordinating, planning and managing of information technology development. This includes construction of a multi-media super corridor in the capital, to provide world class physical and information infrastructures, for encouraging private sector multi-media companies to set up their business institutions.

Malaysia's book publishing industry concentrates its efforts on educational books and children's books. The number of new titles produced in 1991 was nearly 3,800 with about 13.6 million copies. The turnover in 1994 of book publishing was around 30 million Malaysia ringgit; that of newspapers, 450 million ringgit, and of advertising industry, about 696 million ringgit. These themselves add up to around US \$ 471 million. In addition, in pre-recorded music, the total sales were of the order of US \$ 91 million in 1995. Just these industries alone, for which figures were available, come to a reasonable percentage of the GNP. There is also a film industry, although it is small, and, of course, the software and other cultural industries.

In the **Republic of Korea**, economic growth continued at 8.5 per cent during 1980-85 and rose to 10.2 per cent during 1985-90. There is a sizeable book publishing industry which, in respect of the titles published, increased by 41 per cent between 1982 and 1992. The number of new titles published in 1994 was 29, 564. The total copies printed were nearly 160 million in the same year. The total turnover in book sales increased more than five times during 1982- 92, and in 1993 further rose to a little over US \$ 2.7 billion, which alone accounted for about one per cent of the GNP. Then, there is a film industry that produced nearly 65 films in 1993. The sales of their pre-recorded music industry were US \$ 539 million in 1995— the highest of any developing country in Asia.

In **Singapore**, its remarkable economic growth pattern in almost every aspect of competitiveness has been based on close cooperation between the State and business, with a reputation for strict governance.

Continuing political stability, a well-established infrastructure and considerable foreign investments, have enabled Singapore to become one of the world's strong economies, with a growth rate averaging 8.1 per cent in 1994 and 1995.

There is an active book publishing industry. A little over 100 publishing companies are members of the National Book Publishing Association. More than ten thousand copies are published of each title, and in case of best-sellers, this could go up to 20,000 copies. Its copyright law is felt to be very sternly enforced with piracy almost becoming a thing of the past. Book exports in 1993 were of a value of nearly US \$ 250 million while imports were nearly US \$ 115 million in this trade alone. Recorded music sales in 1995 were of the order of US \$ 83 million.

The turnover in respect of selected industries in 1993 was (in Singapore dollars) around 182 million of periodical, book and magazine publishing; 459 million in software development services; 1,039 million in advertising services; 375 million in respect of motion pictures, video distribution, radio and television broadcasting; 117 million for cinemas; 211 million for cabarets, discotheques and karaoke lounges.

On the basis of the government's published economic data and taking the GNP figure for 1993, since most of the gross amounts for the cultural industries pertain to that year, and taking only the output of the above-mentioned industries, the percentage of the GNP constituted by these in Singapore works out to 2.73 per cent.

Protection/Promotion of Creativity and the Cultural Industry for Socio-economic Development: Some Proposals in the Asian Context

In a world of hyper-competition, how could and should we protect, foster and promote creativity in our countries of the region as also help the growth of this very promising and large copyright-related industrial sector, which not only has a vast employment potential, but contributes substantially to socio-economic growth?

Among others, there are some important and basic factors on which to concentrate and which are critical for sustaining and encouraging growth in these areas.

First, legislation. With the rapid growth in sophisticated technologies, our copyright laws need constant updating in order to keep in step with the onslaught of emerging technologies. Legislation oftentimes, in ours as well as most other countries, developing and developed, lags behind the emergence of new technologies. It is germane to note that growth follows technology and creativity, and creativity follows strong, effective and efficiently protected intellectual property and copyright legislation.

In so far as the Asian region is concerned, unlike only two decades ago, legislation regarding copyright is now not only in force in most countries, but also new laws have been promulgated and existing legislation has been updated to keep abreast of technological developments as well as national law and incidentally, international requirements. A number of countries of the region have also legislated for stern penal provisions against infringement of copyright protection.

Among the developing countries of Asia, a copyright law exists in **Bangladesh** (Copyright Ordinance of 1962, as amended in 1974 and 1978); **China** (Copyright Law of 1990 and later supplementing regulations); **India** (Copyright Act of 1957, as amended in 193, 1984 and 1995); **Indonesia** (Copyright Law No. 6 of 1982, as amended in 1987); **Malaysia** (Copyright Act of 1987, as amended in 1990); **Mongolia** (Copyright Act of 1993); **Pakistan** (Copyright Ordinance of 1962, as amended in 1973 and 1992); **Philippines** (Presidential Decree no. 49 of 1972, as amended in 1985); Republic of **Korea** (Copyright Law of 1987, as amended and promulgated in 1994); **Singapore** (Copyright Act of 1987, as recently amended); **Sri Lanka** (Code of Intellectual Property, as the Intellectual Property Act of 1979 is popularly called; as amended in 1980, 1983 and in 1990); **Thailand** (Copyright Act of 1970 as amended in end 1994).

In **Fiji** and **Myanmar**, the United Kingdom Copyright Acts of 1956 and 1911, respectively, apply, the latter as the Copyright Act of 1914 which is in force in Myanmar from February 24, 1914. Both countries were in the process of drafting an updated, modern copyright legislation. In **Tonga**, a Copyright Bill was approved by the Legislative Assembly in 1985 and received Royal Assent on March 31, 1986. However, its application is awaiting drafting of implementing regulations under the supervision of the Commerce Division of the Ministry of Labour, Commerce and Industries. In **Viet Nam**, a new Copyright Law entered into force in 1996.

Laws of some of the countries mentioned above are not only modern, but also provide for fairly stern penalties for infringement, as illustrated by the following examples:

In **China**, the Copyright Law of the People's Republic of 1990 has been in force since June 1, 1991, followed by supplementing regulations. Further, the law and regulations provide for protection for computer software; They also provide for the duration of protection for the lifetime of the author plus fifty years. In 1992, China joined the Universal Copyright Convention as well as the Berne Convention for the Protection of Literature and Artistic Works. On July 5, 1994, according to a decision taken at the eighth session of the Standing Committee of the Eighth National People's Congress, Supplementary provisions were added to the Criminal Law for Criminal Sanctions Against Copyright Infringement. These included, in addition to confiscation

of infringing copies, etc., punishment where the amount from illegal income from reproduction and distribution of copies of works without the consent of the copyright owner was great, or there were other serious circumstances, to imprisonment of not less than three years and not more than seven years and a fine. The punishment for those selling infringing copies for profit is a minimum of two years imprisonment and a maximum of five years and a fine. The administration of copyright is under the National Copyright Administration of China (NCAC), headed earlier by a Director General.

In **Indonesia**, the 1987 amendment of the Copyright Law of 1982 extends protection, inter alia, to sound and video recordings, and to computer programmers; the duration of protection has been extended to fifty years after the author's demise; and for infringement copyright works, the penalty has been increased from three years to a maximum of seven years imprisonment and/or a fine of 100 million Indonesian rupiah. Copyright is administered by the Directorate General of Copyrights, Patents and Trademarks under the Ministry of Justice.

In **Malaysia**, the Copyright Act of 1987, promulgated on December 1, 1987, improved on its 1969 Law, to bring it largely in harmony with international standards; extended the duration of protection to life plus fifty years; provided for protection of computer programmes; and against infringement, a fine not exceeding 10,000 Malaysian Ringgit for each infringing copy and/or imprisonment up to five years. The amendment to this Act in 1990 (effective from October 1, 1990) was largely to ensure removal of incompatibilities with international multilateral conventions/agreements. The administration is under a Director in the Intellectual Property Division of the Ministry of Domestic Trade and Consumer Affairs.

In the **Republic of Korea**, the Copyright Law of 1987 came into force on July 1 of that year and was amended in December 1993, promulgated on January 7, 1994, became effective from July 1, 1994 and was also partially revised in November 1995. These revisions now bring the Act fully in compliance with obligations under the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) and cater to requirements of new media and to rapid technological developments including the electronics industry. It created a rental right for sound recordings, increased the term of protection of neighbouring rights to fifty years; improved protection for databases, and for infringement of copyright works; increased the fines ten times to 30 million Korean won and/or imprisonment. The administration is under a Director of the Copyright Division in the Ministry of Culture and Sports.

In **Singapore**, the Copyright Act of 1987 is an elaborate legislation with 245 sections, and provides for protection of computer programmes, for a duration of protection of fifty years after the death of the author and for penalty for infringement including a fine of up to 10,000 Singapore dollars for each infringing article or to a total of not more than 100,000 Singapore dollars; or to imprisonment for a term not exceeding five years or to both. This Act has also been recently amended in some respects. The administration is under the Attorney-General's Chambers and the Ministry of Law.

In **Thailand**, the Copyright Act of 1994 provides for protection of computer programmes as literary works; of sound recordings; of performers' rights. The

duration of protection of copyright extends to fifty years after the death of the author, and in respect of performers' rights, to fifty years from the last day of the calendar year in which the performance takes place. Infringement committed for the purpose of commercial gain is punishable by imprisonment between six months and four years or a fine between 100,000 and 800,000 Thai Baht or both. The administration is under the Director General of the Department of Intellectual Property in the Ministry of Commerce.

While still considering the question of updating of legislation to be in tune with the constant eruption of new technologies, and some examples in Asia of countries which have done this and others that are doing so, I wish here to seek, as a great World War II general, statesman and poet said in his publication of an anthology of poems, 'Outside this gate of other men's flowers, (i.e., the other countries mentioned above) to plant this dandelion of my own'. It is no small dandelion by any stretch of imagination, however, but I refer to my country, India.

In **India**, the Copyright Law of 1957 was revised in 1983 and in 1984 to provide for enhanced penalties for infringement and against the piracy of works, as well as to protect computer programmes as literary works. In fact, it was one of the first few countries to so protect computer programmes. The penalties for infringement include imprisonment which shall not be less than six months, but which can extend to three years, and a fine which shall be not less than Rs. 50,000 but which may extend to Rs. 200,000.

The latest amendment of the Indian Copyright Law was passed by Parliament on May 1, 1994. Thereafter, the Rules and Regulations required for promulgating the Law were discussed at length, considered, completed and published on May 5, 1995, and the amended Act came into force on and from May 10, 1995.

This new legislation which, in important respects, amends the earlier Copyright Act, not the least by modernising some of its sections which deal with emerging new technologies, is now one of the most modern copyright legislations in the world. Issues covered by the new law include, *inter alia*, satellite broadcasting; digital technology; protection of computer programmes, where it modifies the definition of such programmes; modernisation of rules concerning cinematographic films; and sound recordings. It also improves the protection of works of fine art; introduces new rights for performers of works and establishes new rules concerning the collective administration of rights. The duration of protection has also been increased from 50 years to 60 years after the death of the author. Thus, this legislative back-up provides for fairly strong copyright protection. In many respects the new Indian legislation is well ahead of the provisions in the Agreement on Trade Related Aspects of Intellectual Property (TRIPS).

Having first considered the importance of, and situation concerning modernised legislation, it is necessary to add that *legislation not only requires to be updated* but also to be *effectively and efficiently enforced*. *Effective enforcement* helps national creativity and contains piracy. Piracy of literary and artistic works has to be sternly checked through special squads in the police establishment, and through an enlightened judiciary that would pronounce prompt and stringent sentence under the law in such cases. Piracy of intellectual works is plain and simple theft. And in its

staggering proportions, it is increasingly tending to become an organised one on a scale that draws on grey and black areas of financing and, in some cases at least, has all the trimmings of an underworld activity.

According to estimates made some years ago by the International Publishers Association (IPA), books were pirated to the extent of US \$ one billion around the world; in addition, the latest estimates by the International Federation of the Phonographic Industry (IFPI) for 1995 indicate that unauthorised pirated sales of pre-recorded music were to the tune of 955 million units of cassettes, CDs and LPs, estimated at US \$ 2.1 billion. If one adds to this the piracy of films, software, etc., one has the dimensions of a problem of staggering proportions mentioned earlier.

As far as the regional countries of Asia are concerned, a number of them have legislated for stern penal provisions against infringement of copyright protection as has also been specified above. Other countries in the region that have not so far done so also need to legislate thereon, as otherwise this becomes a severe limitation in the process and machinery of enforcement.

However, with the technological progress and with the increasingly sophisticated equipment also available to pirate firms, and with their own research on ways to circumvent the law, it is unrealistic to expect violations and infringements to vanish overnight. It must be remembered that piracy is a double-edged sword available also to infringers.

Anti-piracy measures need to be directed not only at the person making infringing copies but also at those who are directly involved in the sale of such copies. I would suggest that the concerned authorities in each, country consider conducting a sample survey of the main centers of piracy for law enforcement action.

Meanwhile, stern action taken in Hong Kong and Singapore, in Malaysia and India and latterly followed in China, needs to become more broad-based.

To take some examples of *enforcement measures* taken in certain Asian countries. In **India**, the enforcement of the new legislation is being followed up very creditably by the Central Government in the Ministry of Human Resource Development. It has organised awareness-building seminars, including on enforcement after the new law was passed by Parliament, and not only between that and the enactment of the new Copyright Act in 1995 but also thereafter. These seminars were attended by Home (Department of Interior) Secretaries of a large number of State Governments together with senior officials of the ranks of Inspectors General and Deputy Inspectors General of Police. Some easily understandable brochures including “Enforcement of Copyright: the Indian Scene” and “Manual of Copyright Enforcement” have been prepared and circulated to the State Governments for distribution, *Inter alia* to police officers. Also upon request by the Ministry, some State Governments and Federal Union Territories have set up special cells in the Police Departments to deal with infringement cases.

India’s National Association of Software and Service Companies (NASSCOM), which is a kind of chamber of commerce for software industry in India, is aggressively campaigning against software piracy. Simultaneously, it is helping create

awareness about software piracy amongst individual users, and feels such awareness-building would further consolidate India's development strength in computer software and encourage creation of world class products and packages in the country for the global software market. NASSCOM has reached an understanding with the Washington-based Business Software Alliance (BSA), which was formed by the world's leading software publishers, to eradicate illegal copying, sale, distribution, and use of computer software. As a result, both NASSCOM and BSA are jointly campaigning against software piracy in India since July 1994, having started with a series of public-awareness seminars, and through sending thousands of mailers to inform people on the risks of buying or using pirated software.

The anti-piracy hotline launched by NASSCOM in Delhi has reportedly been very successful. It has facilitated launching of raids on pirate centres since July 1995. NASSCOM's 1996 campaign plans launching of additional anti-piracy hotlines in Delhi and new hotlines in Bombay and Bangalore. Search, seizure and prosecutions are facilitated through information received via the hotlines.

In **Malaysia**, unlike in many countries where criminal sanctions are enforced by the Police, a special enforcement team has been established, namely, the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs, not only to apprehend but also to prosecute copyright infringers, in addition to action by the Police. A team of officers has been appointed by the Minister of the above-mentioned Ministry in exercise of his powers under Section.5 (1) of the Copyright Act of 1987, as amended in 1990. Part VII, Sections 44 to 55 of the Act empower the concerned officers in the Enforcement Division, with or without a warrant, to enter premises, conduct a search, seize infringing material, etc. In the first six years since the Act came into force on December 1, 1987 enforcement actions have led to seizure of equipment and infringing copies worth nearly 14 million Malaysian Ringgit (around US \$ 5.6 million) in some 3,000 cases. The government at the highest levels of the Chief Secretary to the Cabinet as well as the Minister in the nodal Ministry is taking a keen interest in promoting and strengthening IPR protection.

In **Singapore**, quite stern enforcement measures have been and are being undertaken by the Police which has wide-ranging powers in this regard, or through private investigation agencies entrusted by copyright-owners for the purpose. Swift action by the Police and these private agencies, strengthened and backed by effective and quick disposal through the judicial system, has helped control infringement.

In **Indonesia**, a programme for strengthening of the intellectual property system is being implemented with determination. During the last years, a regular programme of awareness-building in this regard has been organised by the government in different island cities through roving seminars. A senior executive, the Vice-Cabinet Secretary in the Office of the President of the Republic, personally guides the work of the intellectual property administration and deals with the international aspects of intellectual property protection.

In **Hong Kong**, also like in some Asian countries mentioned above, much stress has been laid on public awareness-building on the importance of copyright protection. This is being undertaken by the Intellectual Property Department in collaboration with the publishing industry, the software companies, etc. In addition,

the Customs and Excise authorities conduct periodical raids against infringement together with enforcement at border control points, etc. There is a well-developed realisation concerning the adverse effects of lack of intellectual property protection on Hong Kong's industrial development as well as on its international trade.

In **China** serious problems of infringement were said to exist in respect particularly of illegal copying and sale of compact discs, videotapes, films and computer software, and are being tackled quite determinedly by the concerned government agencies including the National Copyright Administration of China (NCAC). According to the International Federation of the Phonographic Industry's (IFPI's) brochure on pirate sales of pre-recorded music in 1995, China's pirate sales were shown as being of the order of US \$ 168 million, accounting for 48 per cent of the country's total sale and 8 per cent of the world's total sales of pirated music.

China has been taking fairly stern measures to tackle piracy of music, films and software. Over a dozen provinces have been subjected to lightning raids by hundreds of personnel.

The judicial system is being strengthened. In 1994, 14 property tribunals were established in various courts. Meetings have been constantly held in more than twenty provinces at the provincial government level to discuss intellectual property rights and to coordinate their protection.

In early February 1996, the Chinese authorities, while announcing their anti-piracy measures through the People's Daily, referred to a campaign called 'No fakes in 100 cities and 10,000 shops.' Efforts to stamp out pirated goods included not only improvement of legal systems, but also reinforcement of customs checks, and checks at markets and production sectors. It was stated that 3,000 inspectors had been deputed to monitor markets daily in a crackdown that since last year (1995) has resulted in the destruction of 3 million pirated compact discs and confiscation of 40,000 counterfeit software discs, as well as a little over a million illegal reprints and publications of books. Between 1992 and 1995, nearly 8,000 criminal cases of intellectual property rights infringements were dealt with.

The authorities acknowledge that piracy has continued despite action and a clean up is in the interest of the country's own growing economy. In its commitment to curb theft of intellectual property, China has closed down a number of plants illegally making compact discs, is constantly improving enforcement in Guangdong province near Hong Kong, and is forcing a number of other such plants to sign licensing agreements or joint ventures with foreign companies.

Since we are discussing the socio-economic role of copyright protection, it is interesting how the recent almost last-minute agreement between China and the U.S.A on June 17, 1996, concerning curbing the abuse of intellectual property rights and thereby averting trade sanctions on goods worth billions of dollars flowing from either side, has economic implications. For example, U.S. exports of around US \$ 12 billion to China in 1995, supported almost 170,000 employees in the United States' job market, a job potential that was stated to be growing at 20 per cent per year. Chinese exports the same year to the United States of America totalled over US \$ 45 billion. The agreement is further expected to lead to closure of factories producing counterfeit

versions of software, music and videos worth billions of dollars; to allow recording, film and software companies to enter into co-production ventures; to step up customs efforts to stop the export of pirate products; and to intensify verification procedures to protect authentic products of creative activity as a positive result of the enforcement efforts.

In **Bangladesh**, the law provides for a fine of just 5000 Bangladeshi Taka, or two years imprisonment, or both. There is said to be a growing awareness of the need to enhance those penal provisions to help more effective enforcement. Perhaps, this might be expected in a future amendment of its copyright legislation.

In the **Philippines**, copyright is enforced by moving the courts for injunction or damages. Pirated copies of works if imported can be confiscated and disposed of by the customs authorities. In respect of cinematographic or audio-visual works, a Presidential Decree No. 1988 provides for even higher penalties than those in the Presidential Decree No. 49. In early 1993, an Executive Order by the President of the Republic created an Inter-Agency Committee on Intellectual Property Rights involving a dozen government agencies, whose Chairman is the Secretary for Trade and Industry. In order to step up enforcement, a Task Force of the said Inter-Agency Committee has been carrying out raids, seizing pirated material and prosecuting offenders.

In **Thailand**, the authorities rely for copyright enforcement not only on the 1978 Copyright Act, but on other legislative back up in respect of laws concerning Control of Audio/Video Tapes of 1979, the Consumer Protection Act of 1979 and the Revenue Code.

To conclude this second point, the authorities concerned in developing and other countries should be made aware of what the country would be losing by not enforcing intellectual property rights.

Thirdly, after the need for modernisation of legislation and its effective enforcement in the process of fostering, sustaining and encouraging the development of the vital cultural or copyright industries in the growth process, equally important is multilateral cooperation. Such multilateral coordination is not a zero sum game. Everyone stands to gain from a system where competing national interests could be followed in accordance with agreed rules. Everybody loses when such a system is not increasingly adhered to.

Sub-regional and regional cooperation in Asia, for example, is recommended through adherence to international multilateral treaties.

Of the countries in the Asian region, Bhutan, Brunei Darussalam, Democratic People's Republic of Korea, Indonesia, Maldives, Mongolia, Myanmar, Nepal, Singapore, Viet Nam and some of the Pacific Island countries, are not members of any of the international conventions on copyright. And yet, out of the countries mentioned above, at least five, i.e., Brunei Darussalam, Indonesia, Maldives, Myanmar and Singapore, are members of the World Trade Organization (WTO) and are party to the TRIPS Agreement. According to Article 9 of that Agreement, members shall comply with all the substantive provisions of the Berne Convention for

the Protection of Literacy and Artistic Works except for rights conferred in-Article 6 *bis* of that Convention that deals with moral rights or the rights derived there from. So these five countries at least should have no problem in acceding to the international treaties on copyright.

Again, of the Asian countries, the following countries are members of the Berne Convention and the Universal Copyright Convention (UCC): Australia, China, Fiji, India, Japan, New Zealand, Pakistan, the Philippines, Republic of Korea and Sri Lanka.

Malaysia and Thailand are members of the Berne Convention but not of UCC, while Bangladesh, Cambodia and Laos are members of the UCC and not of the Berne Convention. Here again, since Bangladesh is a member of WTO and party to the TRIPS Agreement, it should have no difficulty in acceding to the Berne Convention.

The next important point, fourthly, is the question of inter-and intra-regional flow of copyright works and material to be encouraged through the following: facilitation of licensing; negotiated royalty payments; bilateral, sub-regional and intra-regional agreements on avoidance of double taxation of copyright royalties; etc., aimed at easier mobility of copyright material; identification and reduction of obstacles; facilitation of access to copyright works under fair and reasonable terms; the adaptation of commercial practices in the flow of rights; strict enforcement of protection for copyright works and tax incentives and remissions for author's works to be taken up with the respective government as these will certainly be an incentive to creativity. All these are obviously important elements included in national and regional policies.

Finally, it would be appropriate to stress the need for institutionalised awareness-building with institutions for the purpose being set up at national and/or sub-regional levels. It is essential, imperative and urgent that in intellectual property rights and their protection, not only should a progressive new culture be developed in business, research and development, and in university circles, but also that the mindset among the community at large be helped through awareness-building. This has to extend not only to technocrats in industry and business, to the intellectuals, the universities and the public at large, but also to the police and the judiciary which play a very important part in enforcement.

The authorities concerned, both in government and in industry associations, should consider the setting up of a suitable institutional framework which could serve both the functions of an awareness- building institution and of a 'think-tank' for mooted policy options and initiatives. Such an institution could, in addition to producing its own research papers and informative monographs, make a positive contribution to general awareness-building and human resource development through periodical orientation courses at the national/ sub-regional levels for different sets of personnel named for technocrats concerned in different industries/businesses; for the legal profession; for enforcement agencies including the police; for officials required to deal with or contribute to policy-making in the various government ministries; for selected officials from industry associations, chambers of commerce, etc.; for research persons concerned in industry, R&D institutions, and in university research centers, as well as for professors from law faculties of universities for discussing also the

teaching of intellectual property law, devising optimal curricula and course content and producing relatable teaching material, etc.

Such institutionalised awareness-building could be through setting up a National Institute of Intellectual Property in each of the very large countries in the region, for example in China and in India, and on a sub-regional basis for the ASEAN countries. Similar institutions exist in, for instance, France, Germany and the United Kingdom.

In the ultimate analysis, these and other steps would help us utilise the intellectual property and the copyright system for further sophisticated and qualitative growth in industry, trade and overall socio-economic development. And higher growth would help tackle the problems of unemployment, poverty and deprivation in a region which has some of world's fastest developing economies. Growth rates in many of the ASEAN countries and in China and India have varied in the last years between 6 and 10 per cent with a very sizeable increase in exports of manufactured goods. For example, in Malaysia, such exports of manufactured goods constituted 70 per cent of total exports even in 1993. In Indonesia and in Thailand, likewise, the growth has been substantial. And Singapore's dynamic economy has very recently been rated as the world's most competitive by the World Economic Forum. In the aggregate, the economies of quite a few countries in this region are growing faster than those of major industrialised countries. The Indian economy, for instance, is now reckoned to be the world's fifth largest, larger than that of any country in the developing world other than China. And interestingly, many of these developing countries are currently in the process of using the intellectual property system as an engine of growth.

In conclusion, as a great leader had said, and this applies even to this day, "... the dogmas of the quiet past are inadequate for the stormy present. The occasion is piled with difficulties and we must rise to the occasion... we must think anew and act anew." There is a growing realisation, as has been said, that becoming a newly industrialised country means a lot more than merely having a bunch of factories. It calls for knowledge-based growth, greater concentration on and spread of education, requiring its own reservoir of scientists, technologists, inventors, innovators and creators who will constantly strive to produce tangible goods from scientific ideas and human creativity. It is the duty of national governments and of societies as a whole to provide effective protection for such creativity.