“Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.”...John Rawls.400

The supreme task of copyright law has been to motivate the creation of intellectual works for the public welfare subsequently enriching the public domain and next important object has been to secure economic recognition to those who are engaged in the thought creation process and also those who are engaged in the dissemination process. However, due to global recognition and marketable value addition it is becoming competitive with industries who earn by exploiting the intellectual works of the creators. Today, copyright is moving from being an author’s concern to the concept of ‘industrial property’ resulting in the change of the role of copyright which is now playing the supreme task even upto the extent of overshadowing the limitations imposed upon the limited monopoly in public interest. It has nowadays converted into a considerable contributor to the state revenues.

From the discussion made in the foregoing chapters it may be concluded that originally, copyright is based on the economic philosophy that no person is allowed to profit from the weirs of the others. Profit in this sense bears its ordinary meaning of earning income, the share of which shall go to the author of the work (as he has expended his intellect) or his assigns, licensees etc.(who have invested their income to market or sell that 'intellectual product'.) In the field of law it is often quoted 'Ignorantia juris non excusat' that ignorance of law is no excuse. One cannot take this defence in the court of law. Most of the people who know the law pretend not to, and go full steam ahead in photocopying copyrighted materials in substantial parts or sometime in totality. They consider it legitimate since they are paying the photocopier for his labour and service which is far much more rewarding than to pay the author for his intellect or publisher for expenditure. But people often practice the same in Schools, Colleges and Universities without even a bit of guilt, moreover not even consider it immoral so long as they are paying for the pages and many of them are not even aware that it is an illegal act.

The different areas of infringement of copyrights have been identified in this work. Some of the areas are oldest traditional areas or modes of infringement like copying manually but after the arrival of the technological and the digital technology, areas of infringement has really increased remarkably. Infringement by way of burning of CDs/ DVDs, exploitation of creations through internet mail server, telecasting movies through cable communication, leaving copy or creation in the server, downloading the creation of authors without consent and uploading the cinematographic and musical works on the internet without obtaining authority, are some the areas of rampant infringement of copyright with which the creators/owners as well as investors are poorly suffering, not only in India but throughout the globe. The researcher has also gone through one areas of the infringement of copyright which is latest and caused due to arrival of the digital environment and that is home tape
recording of audio and video programme for future days without paying anything to the owner/creator.

From the abovesaid discussion it is also sufficiently clear that the copyright development started in European countries mainly in UK and its neighbouring countries like France, Denmark, Germany, Rome but later on the development of copyright law in England was not as quicker as the development of the US Copyright law. The Copyright law of USA, which got its origin from the Constitution of the USA, initially started developing slowly but got the real momentum after its globalization specially after the establishment of the WTO and implementation of TRIPs guidelines, the US law makers started treating copyright law at par with the changes of technological improvement by making different changes and passing new laws like the remarkable Audio Home Recording Rights Act, 1992, No Electronic Theft (NET) Act, 1997 and Digital Millennium Copyright Act, 1998 etc. The study of historical development also shows that the modern copyright law has developed in USA, which is also called the father of modern copyright law. The US law makers always ready to knock the door of the laws whenever any challenges arrive. The US Copyright laws are only laws which, for the first time, tried to prevent the infringement of copyright from the challenges posed by the technological and digital advancement. The US government also conducted many conferences on different issues related to Copyright like CONFU (Conference on Fair Use), CONTU Process etc. to meet the challenges forwarded by the technological and digital progress. Thus, it can be said that the development of Copyright law, till date has been made in two phase primarily, in the UK where the ancient or traditional copyright laws have developed and secondly, in the USA where the modern copyright laws have been developing. But still neither English Copyright law nor US Copyright laws are able to protect the copyrights of its citizen particularly from the non-traditional, electronic and digital mode.

401 Article 1, Section 8, Clause 8 of U.S. Constitution 1787.
of infringement. In spite of regular changes in copyright laws of both countries, they are suffering from the pain of electronic and digital fever in particular and incomplete satisfaction in general.

Indian Copyright law is though primarily considered to be overshadowed by the English copyright law but the globalization and economic value addition to IPR in general and copyright in particular, India has really changed its dimension and in the passage of time our legislature provided us own colour and taste in the field of Copyright law. Nowadays, in the process of copyright creation works India is one of the largest in the world but the protective mechanism is weakest one which is very discouraging. The present law i.e. Copyright Act, 1957 is amended many times only to keep balance with the development, i.e. to keep pace with time and following the changes observed in the international principles like TRIPs etc., but still, the copyright and related laws of India are suffering from the policy sickness and not able to protect many areas of the copyright violations. The Indian laws of copyright have certainly failed to cope with the technological advancement in order to protect the copyright from the infringement as the nature of the copyright becomes international one. One can copy the creation of any person only by a click of mouse. Indian copyright law is not at par with the technological, digital and electronic advancement of the age.

From the deep study of the legislations, cases and laws relating to infringement of copyright in India and its impact on the copyright of the creators, it can be concluded that India by the amendment of its copyright law in 1999 in the opinion of the researcher, has weakened the computer software protective provisions which were more effective in 1995 and considered as most progressive among the developing world. Even though Information Technology Act, 2000 includes huge penalties for the unauthorised copying of softwares, the immunities available in other laws prevent successful prosecutions of the cases by the Indian judicial system. This should be
seriously looked into in India. India is still not a signatory of the most effective treaties to meet the technological challenges of WIPO i.e. WIPO Copyright Treaty (WCT) and WIPO Performance and Phonograms Treaty (WPPT).

Another important area which has not perfectly covered by the current Indian copyright legislation is the liability of service providers for copyright infringement. On the other hand the Information Technology Act, 2000 exempts ISPs from liability if they can prove that they had no knowledge of the occurrence of the alleged act and that they had taken sufficient steps to prevent a violation. However, the existing provisions of both Copyright Act and Information Technology Act do not clearly prescribe liability limits of service providers. For example, if a person makes a representation to a service provider claiming copyright infringement on the material available on the network, the service provider will be liable only if he fails to take steps within a ‘reasonable time’ to remove the infringing material from the network. If the service provider fails to prevent infringement of copyright in the above circumstances, the plea of not having knowledge of infringement is still available to him. If the service provider removes the material from the network in pursuance to the representation made by a person, which later on proves false, the service provider will not be liable to the person whose material has been removed. The Indian position in respect to the liability of service providers for copyright infringement must be made more explicit so that ISP can properly discharge its responsibilities.

Most of the infringement of copyright has been made in the name of ‘fair use’. Recognising a ‘fair use’ defense gives a user free access to whatever copyrighted works happen to be created by the creator. Thus, in presence of transactional barriers in bargaining, the fair use doctrine serves the important function of facilitating diffusion without significantly chilling creativity. It has been now settled that fair use rule has evolved as an equitable response to market failure as a way to ensure that socially desirable uses will not be
blocked. But in reality one of the sole causes of failure of the measures for the protection of copyright infringement is the defense of 'fair use' because there is no guideline to determine the term 'fair use' in Indian copyright laws. Sometimes socially responsible citizens are also not convinced as whether an act is the fair use or not? Actually the purpose of incorporation of 'fair use' was very clear but its application is not proper and most of the time it has been misused by the user. Once Justice Govdon, Professor of law, Boston University, School of Law, argued that if a market does not develop for a creative work or use because high transaction costs impede bargaining, then prohibiting copying makes little sense from economic uses, without providing any monetary return to creators.402

Another important aspect of the Copyright law which is not properly dealt with in the present law relating to copyright in India is the steps to encourage and motivate the people by providing awareness regarding copyright infringement and its consequences. Even police personal that can play major role in combating piracy are not copiously aware of various provisions of the law relating to copyright. There is lack of adequate number of personnel who can fully devote to copyright related crimes alone. The police are more concerned with usual law and order problems and copyright related crimes are attached least priority. The awareness level among end-users is also very low. While buying a copyrighted product, majority of consumers do not look at copyright notification (e.g. C or P). As long as price is low (as generally is the case with pirated products) users do not mind even buying pirated products.

Present Indian copyright legislation and related laws certainly provides the mechanism for the protection but the another serious aspects not properly anticipated by the Indian law makers is challenge of the enforcement of the prescribed laws. The enforcement is lacking at different levels. First, users (consumers) themselves are not aware about the fundamentals for copyright.

According to statistics, given earlier, the domestic software industry has been bleeding losses of over half a billion dollars due to the piracy nexus. When we will have a fundamental base of copyright protection that allows us to unleash more innovations from the Indian technical community and provides more protection to them, only then there will be more investment in innovations from the venture capitalists. Moreover, copyright protection can also mean more jobs in the IT industry such as software experts, programmers etc.

Another aspect which has been revealed throughout the study is that law related to copyright in India has failed to compete with the advancement in the field of technology. Almost nine years have elapsed since last amendment of Copyright Act has gone through to make the law more effective and meaningful. Lots of technological changes have been made in the field of science and technology but no changes have been seen in copyright law though in most cases it is infringed by the use of those technological devices. In fact, in modern times copyright law and related laws are generally violated by the use of electronic or technological or digital instruments etc. technology is developing day by day but in this relation copyright laws are not revised and it becomes frozen in time which is not desirable. Only by incorporating the remarkable changes required due to technological advancement, the copyright laws shall be able to serve its purpose.

Since the beginning of this decade a ‘core group’ of Governmental officials, local industrialist, academicians and lawyers have been favouring new amendments to the Copyright Act leading to the implementation of WCT and WPPT principles but all discussion are going fruitless due to coldhearted attitude on the part of the governmental department concerned.

Thus, if this will be the position the original creator will never be awarded and moreover, the nation will continue losing its revenue from the area of copyright industry. This practice is to be curbed by any means by taking appropriate action.
**SUGGESTIONS**

Dr. Sundarajan has aptly written that Copyright reform in India suggests a fundamental rethinking of India's approach to the public interest in particular, the right of the public to use works that are protected by copyright. India has long recognised that excessive restrictive copyright laws may impede public education, particularly where knowledge from advanced countries is needed for modernisation.\(^{403}\)

The researcher does not suppose to step into the shoes of the legislature and precisely propose the draft enabling laws which are the bounden duty and the sacred domain of the legislature. However, that do not make us bashful as responsible citizens from the suggestion as to what should the law makers keep in mind while drafting the enabling provisions which shall diminish the free and unauthorised accessibility to the copyrighted works. The copyright law is a form of societal governance. The Copyright law must be examined in the context of social development.\(^{404}\)

From the discussion made throughout the research project, the author prefers the following suggestions which shall not only make the present copyright laws of India at par with the international instruments but also help the country to have a proper and complete law of copyright.

➢ **Imposition of Liability of Internet Service Provider:**

Internet Service Provider is very important body to the process of Internet Service of this electronic age. ISP is taking sufficient considerations for providing its services but in India, still, the liability of service provider is not expressly covered under present Copyright Act, 1957. The Information

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\(^{403}\) Dr. Mira T. Sundarajan, Digital Learning in India: Problems and Prospects; http://cyber.law.harvard.edu/home/dl_india.

\(^{404}\) Succinctly highlighted by Prof. (Dr.) Prabuddha Ganguli in a seminar of Intellectual Property Right in Strategic Management in July 2007.
Technology Act, 2000 exempts ISPs from liability if they can prove that they had no knowledge of the occurrence of the alleged act, and that they had taken sufficient steps to prevent an infringement. In order to be exempt from liability, the Indian Act requires the service provider to exercise due diligence to prevent the commission of copyright infringement whereas, the Act does not provide the meaning of the term due diligence. There is a need for a consensus on the meaning of the term due diligence because the primary function of ISPs is to build and provide the Internet service. The I.T. Act must include sections that address the financial aspect of the transaction, and the relationship between an ISP and a third party because this is vital in determining the identity of the violator. The American concept of contributory infringement can also be incorporated into the Indian copyright legislation so that if any person with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another, the person can be made liable.

Introduction of Digital / Audio Books for Visually Challenged Users:

The author considers that persons with disabilities are still not active partners with government in the development and implement of legislations and polices that most significantly affect their lives and, towards the end, also propose that persons suffering from aural or print disabilities must be made an active participant in working out exceptions to the existing copyright law as to secure an enabling environment for them in terms of accessibility to copyrighted material in their 'language' i.e. the Braille code or audio formats. The organisations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons in furtherance of the principles enshrined in the U.N. Declaration on the Rights of Disabled persons. 405 Supply of the accessible copies free of cost is not advocated but

405 Point 12 of the U.N. Declaration on the Rights of Disabled Persons.
only that the conversion of literary work into accessible format by an authorised entity must be permitted without the consent of the right holder. This need of access must be in the nature of right not as an obligation from the right holders, however, it is equally important to safeguard their rights under the statute. In fact, efforts have been made to provide accessible books for the blind for example Ramakrishna Mission School agreed to convert the books of NIOS (National Institute of Open Schooling) after Prof. N.K. Ambasht, Former Chairman, NIOS contacted them. Books were then ordered in appreciable quantities for the use of the blind students. Copyright restrictions were also waived off so that reproduction of the text into accessible braille format could be made without fear of copyright infringement but it is not final, it is only the beginning. The Government must take initiatives, by some provision of law, to constitute an authority which shall convert copyrighted printed books into accessible file for aurally and visually challenged. The access of the converted file may be controlled by technological measures including access codes, encryption technologies, so that the contents of the work cannot be copied and can be operated by licensed persons only. Thus, only one license per copy should be allowed. This way, only the user shall have to fill in the access codes in the same computer where the licensed file is installed and shall not be operable in absence of the compact disk which contains the copyrighted work. This shall prevent lending of the work to multiple users who have not paid the cost of acquiring the accessible copy and are free riding on the author’s labours.

- **Prevention of Burning of the Computer Software:**

Similar is the condition in duplicating compact disks (CD’s) and DVD’s. It is a click of a button without a pinch of guilt for us. One considers it as a legitimate act. The computer users is ready to pay for the hardware and is least bothered to check whether the software installed in it by the vendor is
original or not. This unfortunately is the present state of affairs. Proper immediate action is required for the protection of the original CD’s and DVD’s. Although the growth story for the software market in India continues to show promise, the market is losing millions of rupees as softwares like Adobe, McAfee, Microsoft and Symantec continue to be sold for mere pennies on the roadsides. Last estimated, the Business Software Alliance seized about $2.1 million worth of pirated software in 2006. The worst is yet to come as internet penetration rises to newer heights, says Joseph Fitz Gerald, Symantec vice-president, in an interview to ET.

➢ **Establishment of Special Trained Police:**

The government (both union and state) shall also think about the special class of police who shall be specially trained and expertise as required. They should be appointed especially to take care of copyright and related matters and fully devoted to copyright and related crimes, the percentage of which is very high in this age. Chief Justice of Delhi High Court Mr. S.B. Sinha, in a seminar also emphasised the need for the training of judicial and police officers in all aspects for the implementation of IPR laws so that there shall be adequate protection to the manufacture of genuine products and the consumer shall be exposed to the danger of purchasing/consuming fake products.

➢ **Introduction of Awareness and Education Programme:**

In the field of copyright there can be two ways of infringement of copyright. Firstly, the persons who are copying the original works of the authors without knowing whether this is the case of copyright infringement or not. Secondly, persons who are intentionally infringing copyright of the authors by copying it without taking permission from the authors. In India, in case of literary and artistic work the infringement by way of first

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406 Economic Times, 12.02.2007
category are higher than the case of second category though in other part of the globe the ratio is reverse. The above category of infringement can be minimised simply by conducting awareness and education programme regarding copyright. The governmental departments and non-governmental organisation should come together to fight with this menace in order to protect the IPR in general and copyright in particular. Counterfeit products were flourishing because there was a ready market in the country for such cheap, look-alike products. The acceptance of counterfeit products by consumers comes in the way of the implementation of laws which is the result of lack of awareness, education and information. The below mentioned category of persons should specially be given awareness and education to make them understand the basic of copyright and to provide them the knowledge about the infringement of copyrights, copyrighted products and its economic and social importance. They should also be made conscious to understand the distinction between the copyright notifications of ‘C’ not ‘P’ etc. They should be aware and educated for combating the copyright infringement in India:

*General:* A public awareness programme should be developed to educate the general public, of the risks of using the Internet and other means to obtain infringing copies of the copyrighted works. The awareness of the copyright regime is lacking much and in consequence lessening the fear of the law. The photocopier, who may not know a,b,c, of language, is likely to know the a,b,c, of law. Copyright law in India has, though, traversed a great deal of legislative path but has not covered the same journey on the awareness front. The law may easily hold a person liable for infringement even it was done innocently in ignorance of law. Only the quantum of damages may be mitigated. However, as a member of a civil society, it is our duty to spread the message and make people aware on the do’s and don’ts of copyright
law. More the people become aware less the cases of infringement of copyright will be there.

*Police:* A police personnel, who can play a major role in combating piracy, should be made fully aware of various provisions of the law. Lack of adequate number of personnel who can fully dedicate to copyright crimes alone also affecting the protective measures in this field. The police should be made more concerned with copyright related crimes by inducting more training programme and educational workshops on the copyright laws and its infringement etc.

*End-users:* The awareness level among end-users is to be increased so that at the time of buying a copyrighted product the consumers shall be able to differentiate between copyright notification (e.g. C or P). The users/consumers do not mind buying pirated products as because they don’t have the idea about the impact of such purchase. Governmental and non-governmental steps should be encouraged to impart more awareness and educational programmes and workshops for the users of the copyrighted materials. The participation of the academicians and experts in the awareness and educational programme should be increased to make the end users aware about the pros and cons of infringement of copyright.

➢ *Establishment of Self Enforcement Body:*

For one, Indian law certainly provide for copyright protection from some manual modes of infringement. But the challenge here is the enforcement of the prescribed laws. The enforcement is lacking at different levels. In India, where neither users nor sellers are aware of the copyrighted products as they are running after margin of profits only, the self enforcement body can only be helpful in preventing the copyright infringement. Thus, an active and strong self enforcement body should be set up who can be able to
protect the copyrighted works of the authors or investors at the preliminary stage.

**Introduction of Copyright or IPR Court:**

A dedicated specialized Fast Tract IP court like consumer court along with specially trained copyright law enforcement personnel to tackle infringement and piracy cases would be established. At present Indian courts are already overburdened with serious civil and criminal cases with them and IP cases are also brought to the same court so copyright cases are not taken care of properly. Setting up of specialized fast track IP courts can also help to get around the massive backlog of civil and criminal cases pending in the Indian Court system. Failing that, chiefs of all the high courts should appoint special judges to try copyright infringement criminal and civil cases, imposing deadlines for resolving them finally. These courts or special judges should at least be responsible for completing a set number of 'model' cases with deterrent penalties to deliver a message to the Indian public about infringement which has never been delivered; Hence, the need is for having more resources to be allocated to aid courts and getting proper law enforcement to take serious note of copyrights infringement. The extent of damages could even have potential jail term like US along with string statutory pecuniary damages. In short, the Indian courts need to be given some guidance as how to deal with copyright infringement cases.

**Introduction of Technological/ Digital/Electronic Measures:**

Charles Clark's renowned remark 'the answer to the machine is in the machine' is perfectly suited in the modern situation. Indeed, the perfect reply to the technological abuses is the application of technological innovation. It is a fact that we have technological barriers in the prevention

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of copying intellectual property in terms of copyright. A strong technological protection system can be placed in e-books so that only those for whom it has been manufactured or created can have the access. ‘Encryption technology’ can also help in reducing the traditional symptoms of market failure encountered in the analog world, by making it possible to license and enforce copyright, even in cases of mass distribution of copyrighted work. On the third place the password based access can be applied either at the level of service and contents or at the level of user or receiver.

The technological handicaps in India have remained as a depressing factor in the spread of copyright piracy in electronic environment.\footnote{Committee Report, Copyright Piracy in India available at www.manupatra.com.} Anti-circumvention and other similar advance techniques empowered, the right holders of their right, to choose their audience and have absolute control over the consumption of their works. The access provisions and anti-circumvent laws have to be perceived and enacted as an important set of laws. Law to permit access has to be guarded with technology as both are intrinsically interlinked. Though, some laws are in pipeline still the Government has to look at the enforcement of technical measures like user friendly digital rights management systems which will certainly supportive in curbing the activities of infringement of copyrights in India.

➢ **Power of Licensing Body Should be Increased:**

A licensing body has a major and effective role in policing the Copyright or Performers rights. It also cuts down unnecessary litigation, extreme expenses and difficulty for the individual owner of copyright or performers rights to enforce his rights both in the country of origin and outside. The right to sue for infringement of Copyright or Performers rights of licensing bodies is recognised in most of the countries, (i.e. Australia, USA, UK,
Nigeria and Canada etc.) if the owners of the copyright are so desired but in India it is not available. Normally, in no country the statute provide prosecuting powers on these bodies for any infringement of rights they licensed. But when these entities are empowered by their members, whether in the capacity of an assignee, licensee or merely as an agent, the Courts have endorsed such rights and allowed the licensing bodies to bring legal actions for the infringement of the copyrights or performers rights. So the appropriate directions on the part of the judiciary in the form of judicial guidelines or changes in the existing laws on the part of legislature, are highly desired to empowered the Copyright Societies in India to sue for the infringement of copyright or performers rights, which shall obviously increased the quality of protection and decrease the quantity of infringement cases. The function of suing the infringer of copyright or performers rights (if) carried out by a licensing body will help the government or regulating body effectively in the process of making collective administration, which should be welcomed for the effective regulation of the infringement cases of copyright in India. It will also prove more convenient for the owners of these rights as once they are the members of a licensing body, they can be satisfied that the latter will spot and further take care of any infringement of their rights (though the cost of litigation is borne by them).

➢ Dynamism Should be Brought in Copyright Act:

The Copyright Act should not be given a meaning that is frozen in time, but should be interpreted in such a way that, it can take into account the technological advancements, provided that the interpretation is consistent with its purpose. The unauthorized circumvention of locking devices should be specifically made actionable at the instance of copyright owners and their exclusive licensees. The use of devices which enables the unauthorized use of computer programme should be banned. The Copyright Act, 1957 is, therefore, required to be amended to provide that copyright owners and
their exclusive licensees may have the right to prevent the commercial manufacture, storage, distribution and possession for commercial purposes of devices which are designed to facilitate the unauthorized circumvention of locks or other devices applied to protect computer programmes from unauthorized copying.

**Improvisation of Internet Use Education Programme:**

A provision for the establishment of Internet Use Education Programme should be made, with a view to educate the general public concerning the value of copyrighted works and the effects of the theft of such works on those who create them and for whom it has been created, and also educate the general public concerning the privacy, security and other risks of using the Internet to obtain illegal copies of copyrighted works. The Internet Use Educational Programme shall develop materials appropriate to Internet users in different sectors of the general public where criminal copyright infringement was a concern. The unauthorized recording of motion pictures in a motion picture theater was to be made an offence punishable by imprisonment for not more than three years and fine or both, and for the second or subsequent offence, imprisonment up to six years could be imposed like section 8 of US Prevention of Surreptitious Recording in Motion Pictures Act, 2004. All these provisions of the PSRMP Act can provide useful guidelines for introducing similar changes in the Indian copyright law by making suitable adaptation in its context.

**Formation of National Anti-Piracy Task Force:**

Central Govt. should create a National Anti-Piracy Task Force to take criminal and civil actions against infringement. If this is not achievable, provide resources to the states to equip and train state IP Task forces. The Home Ministry should take the lead in providing this training and resources, and the Home Minister should issue a strong and widely publicized
condemnation of infringement and the damage caused by it to India and urges all police forces to take immediate action to root it out.

➢ Term of Copyright Should be Shortened:

It is often said that shorter term of required safety is the better way of protection in the field of security and in some quarters, it has also been suggested that the copyright terms should be shortened, thereby increasing the size of the ‘public domain’ available for creative manipulation. Copyright owners’ authority to control the preparation of ‘derivative works’ should be reduced for the same reason⁴⁰⁹. Thus if the work will be protected for the lesser time the case of the infringement shall be lesser like Patent.

➢ Incentive Based Creation Should be Encouraged:

If the purpose of the copyright law is to provide incentive for creative intellectual efforts that will benefits the society at large, an unduly prolonged protection of copyright would obviously block the benefits of the creative genius to the public. The society greatly contributes to an individual’s thinking at various levels of development of his personality and a creative genius therefore, owes a duty to the society to release the fruits of his attainment for the general good. Thus, a social renaissance should be created so that the society will paid due admiration to the act or creation of the copyrighted materials in the country like India which is always remembered since the beginning of the civilization for its creative culture.

➢ Intensive Training for Judges Etc.:

To make out the complexities of the issues governing the ever expanding field of copyright, there should be an intensive training given to those who participate in legislative process and dispense justice so that the necessary

legislative changes are duly identified and incorporated and the law correctly interpreted and enforced. The help of academicians who have specialized in the field can be sought in order to assist the legislative process that is required to be undertaken to fine-tune the copyright law to effectively cope up with infringement of copyright including computer software piracy, the alarming music piracy and other aspects discussed above. The Chief Coordinating Officer of the Indian Music Industry (IMI), an association of music companies-recently lamented that though the number of seizures, raids and arrests is higher, the conviction rate is zero in one State.\textsuperscript{410} The act of infringement can be stopped by swift action, collection of the relevant evidence by the investigating agencies specialized in the field and by entrusting the trials by the Judges well equipped with knowledge of relevant copyright and related laws.

\textbf{Need to Redefine the Term 'Fair Use':}

A fair dealing with a literary, dramatic, musical or artistic work [not being a computer programme] for the purposes indicated in Section 52(1)(a), does not constitute an infringement of copyright. Fair use defence allows the public to use not only facts and ideas contained in the copyrighted work but also expression itself in certain circumstances. The doctrine of ‘fair use’ has been called the worst troublesome in the law of copyright. It encourages the infringement in liberal sense of application because there are no guidelines for determining whether a particular act is fair or not and no fixed criterion has emerged till date to measure the act of fair use such as judicial precedent or customary laws. Certain factors such as the purpose and character of the use, nature of copyrighted works, the amount and substantiality of the portion used and effect of the use etc. upon which the term ‘fare use’ is determined. On the other hand many users continue to be

\textsuperscript{410} News item in Times of India dated 05-06-2004
frustrated by lack of specific, quantitative guidelines to determine whether a use is fair. But, fair use was designed to be flexible, so that it could evolve with new circumstances and new types of uses. Uncertainty is the price we pay for that flexibility. Thus, the term 'fair use' must be re-defined specifically so that the cases of the infringement of copyright shall be lessen. People intentionally infringing the copyright but taking the shadow of the ‘fair use’ shall be prevented from doing so only if it shall be re-construed in a clear and specified words.

➢ Modernisation of Copyright Law:

Further modernize the copyright law and, in particular, its enforcement procedures and penalty levels. Bringing the law fully into compliance with the WIPO treaties to prepare for the new era of e-commerce, particularly WCT and WPPT of 1996, shall really be an addition to make this law updated and capable to deal with the challenges of technological progression.

➢ Frequency of Raids Should be Increased:

Significant increase of the number of *suo moto* raids against infringement at all level is highly required. This also requires a significant increase in the resources and manpower in the IPR cells and the local police forces. The organisation like BSA and NASSCOM as helping in conduction of raids occasionally should be involved in the process regularly on the basis of terms etc. The NGOs should also be sensitised to get in concern about this serious problem of the nation.

➢ Customs Departments Should be Empowered:

Proper steps should be taken to empower customs to initiate more raids to check the cases if infringements and also to seize and destroy pirated goods. Currently, many seized goods are resold to shops working with the Customs
Service. This TRIPS-inconsistent practice must be stopped. Additionally, the customs process continues to be cumbersome;

- **Infringement Should be Made Strict Non-Bailable Crime:**

  The acts of infringement of copyright though an offence but need to make it more dreadful crime. It should be made a serious non-bailable as it is undermining one of the strongest, fastest growing industries in India. Deterrent penalties should be imposed on infringers and a clear standards for damages in civil cases, including implementation of strong statutory damages which must include pecuniary damages and long term jail resulted real deterrence, should be established.

- **Amendments Suggested in Existing Copyright Law:**

  Now it is considered appropriate to further amend the provisions of the Copyright Act, 1957 to incorporate the following observations:

  * To extend effective copyright protection to the composers of Indian music, which is not available to them under the existing laws, which presupposes a system of notation used in western music aiming to protect the interest of the author’s assignor in regard to the assignment of the copyright and the issue of license.

  * To provide effective protection to the owner of copyright and related rights in the context of technological developments affecting the reproduction of works by, *inter-alia*, bringing them within the scope of copyright, the subsequent hire or sale of copies of cinematography films, computer programs and sound recordings.

  * To further clarify the law in respect of cable, satellite and other means of simultaneous communication of works to more than one households or private place of residence, including the residential rooms of a hotel or hostel.
* To make adequate provision for the special nature of computer programs related literary works and for the protections of computer generated works;

* To extend to authors, in respect of the original copies of their paintings, sculptures, drawings and original manuscripts of literary, dramatic or musical works, a droit de suite or resale share right;

* To include within the scope of copyright in artistic works the right (Subject to appropriate exceptions), to display the work in public;

* To re-define properly the term ‘fair use’ and provide the specific and clear guidelines about the fair use act under the copyright Act;

* To include the provision of digital / Audio books conversion specifically for the disabled to be enabled to get the copy of the work in their version; and

* To make the copyright infringement crime a non-bailable one and also to increase the punishment and fine for the infringement acts. The minimum punishment should be five years which may be extended upto seven years and a fine should not be less than two lakh but upto five lakh.

New technological solutions need to be worked out to face the modern challenges along with the use of digital or electronic technology. Encryptions technology, digital identification numbers, digital rights management information system, anti circumvention measures and conditional access are some of the concept to be achieved. It is only the advance modern technological tools through which we can prevent electronic copyright infringement.

At the end there would always be some group who circumvent the system which will certainly become a temporarily hurdle for which we shall have to
create a socially motivated strong civil society. The strong civil society can help in the process of enforcement of copyright law in this civil society and hold back the cases of infringement of copyright to enrich the Indian revenues by contributing to the GDP of India like developed countries i.e. United Kingdom, USA etc. by alluring more and more investment in this knowledge creation based industry.