Incomplete laws

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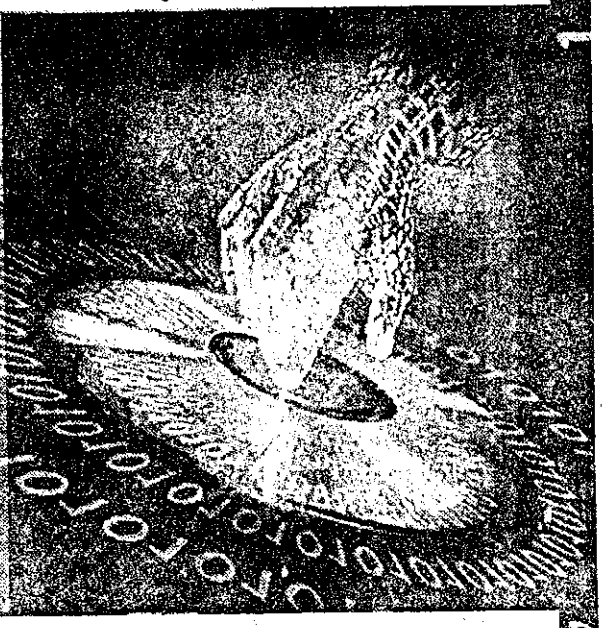

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PROTECTION of computer software is one of the most contentious issues in the field of Intellectual Property Rights (IPRs). The growing economic significance of computers and Computer Programmes (CP) gives software patents and copyrights this controversial status. The term CP is not defined under the Patent laws in India, but the Copyright Act, 1957 defines a CP under Section 2 (ffc) of the Act as "a set of instructions expressed in words, codes, schemes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result."

Copyright protection: Keeping in pace with the enhanced statutory protection to CP, the courts in India have taken a proactive role in effectively enforcing the provisions of the Copyright Act. In a landmark judgment, the Delhi High Court has awarded damages to the tune of Rs 1,795,000/- for copyright infringement in the case of Microsoft Corporation v/s Yogesh Papat (MANU/DE/0331/2005). In this case, Microsoft alleged that the defendant, who was in the business of selling assembled computers, was loading the software in which the Plaintiff had a copyright, without a license on the hard disk of computers being sold by them. By indulging in such activity the Defendant was infringing the Plaintiff's copyright causing financial loss to the Plaintiff. The court passed judgment in favour of the Plaintiff and issued decree for injunctive relief, order for delivery up and decree for damages. Accordingly damages for loss of profit was awarded to the Plaintiff, to the tune of Rs 19.75 lakhs .

Limitations: The protection under the Copyright Act is limited as it does not protect the idea behind the work, but protects only its expression. In contrast, patent laws would protect technological ideas underlying CP, even though the first mentioned CP is written differently.

Patent Protection: According to Section 3(k) of the Patents Act, 1970 CP *per se* are not inventions. When we look at the legislations in European Union (EU) we see that software is patentable in EU, provided they make a technical effect, hence the term software *per se* could be interpreted to mean software which has a technical effect.

Experts in India had begun to interpret the expression "CP per se" based on similar EU law. Like the EU countries, in India also, the ability to gain patent protection for software largely depends on the drafting skills of the patent attorneys. If the claims are drafted in a manner so as to reflect that the invention is not software *per se*, it has a better chance to qualify for patent protection. How patent protection for CP develops in India is something that is being keenly watched, not only by the Indian legal fraternity, but also by the software giants across the world that are slowly shifting their research and development base to India. ■

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