

**UNESCO**  
**WORLD ANTI PIRACY OBSERVATORY**

**INDIA**

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## I. Legislation

### 1. Laws

Copyright is protected in India through international Agreements, the [Copyright Act No. 14 of 1957 as amended](#), the International [Copyright Order of 2000](#), and other legislation related to enforcement of copyright or affecting copyright protection.

The copyright law No. 14 was enacted on June 4, 1957. It entered into force on January 21, 1958 and was last amended by Act No. 49 on December 30, 1999 (in force since January 15, 2000).

[The International Copyright Order](#) was issued on January 1, 1991 and last amended on January 1, 2000. The Order was published in the Gazette of India, Extraordinary, Pt. II, Sec. 3, No. 561.

Copyright Rules implementing the provisions of the Copyright Act shall be issued by the Central Government. Until that date, current Rules ([Copyright Rules of 1958](#)) consistent with the copyright Act shall remain in force.

The Copyright Act of 1957 abolished all previous legislation contrary to its provisions including the Indian Copyright Act of 1914, and the Copyright Act of 1911 passed by the Parliament of the United Kingdom as modified in its application to India by the Indian Copyright Act of 1914.

### 2. Other laws/regulations:

- The Code of Criminal Procedure of 1973 as amended, in force since April 1, 1974.
- The Indian Penal Code promulgated by Act No. 45 of Year 1860 as amended.
- The Civil Procedure Code of 1908 as amended, in force since January 1, 1909.
- Customs Act No.52 of 1962 as amended.
- Evidence Act No. 1 of 1872 as amended.

### 3. Latest developments and perspectives:

The process is on for amending the Copyright Act of 1957 with a view, inter alia, to explore the possibilities of incorporating the relevant provisions of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WIPO Internet Treaties) to which India is not a member yet. The draft amendment to the Copyright Law is now being revised by stakeholders. Suggestions and Comments received from various sectors and other stakeholders are being carried out by the expert/ technical committees constituted for this purpose.

### 4. Brief summary of India's copyright legislation

- *Works protected by copyright*

Copyright applies to original literary, dramatic, musical and artistic works (including computer programs, tables and compilations such as computer databases; any piece for recitation, choreographic works or entertainments in dumb shows; graphical notations; paintings, sculptures, drawings such as diagrams, maps, charts or plans; engravings or photographs,

works of architecture and any other work of artistic craftsmanship); cinematograph films; and sound recordings provided the following conditions are met (Articles 2 and 13 of the Copyright Act):

- In the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of India.
- In the case of an unpublished work other than a work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India.
- In the case of a work of architecture, the work is located in India.

Copyright protection shall not apply to any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work; or any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed (Article 13 of the Copyright Act).

- *Exclusive rights of the authors and of the owners of neighbouring rights*

Under Copyright holders have the exclusive right to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely ([Article 14 of the Copyright Law](#)):

- **in the case of a literary, dramatic or musical work including computer programs** to reproduce the work in any material form including the storing of it in any medium by electronic means; to issue copies of the work to the public not being copies already in circulation; to perform the work in public, or communicate it to the public; to make any cinematograph film or sound recording in respect of the work; to make any translation of the work; to make any adaptation of the work; to do, in relation to a translation or an adaptation of the work, any of the aforementioned acts. **In the case of a computer program**, copyright holders have also the exclusive right to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer program, provided that such commercial rental does not apply in respect of computer program where the program itself is not the essential object of the rental.

- **in the case of an artistic work**

to reproduce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work; to communicate the work to the public; to issue copies of the work to the public not being copies already in circulation; to include the work in any cinematograph film; to make any adaptation of the work; to do in relation to an adaptation of the work any of the aforementioned acts.

- **in the case of a cinematograph film**

to make a copy of the film, including a photograph of any image forming part thereof; to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions; to communicate the film to the public.

- **in the case of a sound recording**

to make any other sound recording embodying it; to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions; to communicate the sound recording to the public.

In addition to the aforementioned economic rights, the author of a work enjoys special/moral rights which include the right to claim authorship of the work; and to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honor or reputation (Article 57 of the Copyright Act).

Every **broadcasting organization** shall have a special right to be known as “broadcast reproduction right” in respect of its broadcasts ([Article 37 of the Copyright Act](#)).

Any **performer** who appears or engages in any performance shall have a special right to be known as the “performer’s right” in relation to such performance (Article 38 of the Copyright Act)

- *Allowed use of a work without the permission of the owner of the copyright*

Limitations to exclusive rights include a fair dealing with a literary, dramatic, musical or artistic work (not being a computer program) for the purposes of private use, including research; criticism or review; the making of copies or adaptation of a computer program by the lawful possessor of a copy of such computer program, from such copy in order to utilize the computer program for the purposes for which it was supplied, or to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilize the computer program for the purpose for which it was supplied; the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer program with other programs by a lawful possessor of a computer program provided that such information is not otherwise readily available; the observation, study or test of functioning of the computer program in order to determine the ideas and principles which underline any elements of the program while performing such acts necessary for the functions for which the computer program was supplied; the making of copies or adaptation of the computer program from a personally legally obtained copy for non-commercial personal use; a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events in a newspaper, magazine or similar periodical, or by broadcast or in a cinematograph film or by means of photographs; the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding; the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature exclusively for the use of the members of that Legislature; the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force; the reading or recitation in public of any reasonable extract from a published literary or dramatic work; the publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions, of short passages from published literary or dramatic works under specific conditions; the reproduction of a literary, dramatic, musical or artistic work by a teacher or a pupil in the course of instruction; the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a sound recording if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution or the communication to such an audience of a cinematograph film or sound recording; the making of sound recordings in respect of any literary, dramatic or musical work provided specific conditions are met; the causing of a recording to be heard in public by utilizing it, in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein, or as part of the activities of a club or similar organization which is not established or conducted for profit; the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution; the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction; the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public; the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in

India; the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access provided specific conditions are met; the reproduction or publication of any matter which has been published in any Official Gazette except an Act of a Legislature, any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter, the report of any committee, commission, council, board or other like body appointed by the Government, and any judgment or order of a court, tribunal or other judicial authority; the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders under specific conditions; the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture; the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work if such work is permanently situated in a public place or any premises to which the public has access; the inclusion in a cinematograph film of any artistic work permanently situated in a public place or any premises to which the public has access, or any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film; the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work provided that he does not thereby repeat or imitate the main design of the work; the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed, provided that the original construction was made with the consent or license of the owner of the copyright in such drawings and plans; in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein provided specific conditions are met; the making of an ephemeral recording, by a broadcasting organization using its own facilities for its own broadcast by a broadcasting organization of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character; the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority (Article 52 of the Copyright Act).

The aforementioned limitations shall apply *mutatis mutandis* to the translation or the adaptation of a literary, dramatic, musical, or artistic work (Article 52 of the Copyright Act).

Copyright protection shall not apply to any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work; or any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed (Article 13 of the Copyright Act).

Copyright Protection shall not apply to any design which is registered under the Designs Act of 1911. Copyright in any design, which is capable of being registered under the Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person (Article 15 of the Copyright Act).

Compulsory licenses are allowed in India under specific conditions in Indian works withheld from public; in unpublished Indian works; to produce and publish translations of a work other than an Indian work; and to reproduce and publish works for certain purposes. The Copyright Board may direct the Registrar of Copyrights to grant to the complainant/applicant a license to republish, perform, communicate to the public, publish or translate, produce and publish a translation, or reproduce and publish a work, as the case may be, that meets specific

conditions, provided that fair compensation is paid to the author of the original work and that terms and conditions determined by the Copyright Board are met (Articles 31 to 32B of the Copyright Act).

Limitations to the broadcast reproduction right or performer's right include the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or such other acts, with any necessary adaptations and modifications, which do not constitute infringement of the Copyright Act (Article 39 of the Copyright Act).

- *Protection of the foreign works*

All the provisions of the Copyright Act, except those related to the Rights of Broadcasting Organization and of Performers, and those other provisions which apply exclusively to Indian works, shall apply to any work first made or published in a Berne Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 Text of Convention, a Universal Copyright Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 text of the Convention, or a World Trade Organization Country, in like manner, as if it was first published in India; to any work first made or published in a country the author of which was, at the date of such publication, or, where the author was dead on that date, he was at the time of his death, a national of a Berne Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 Text of Convention, a Universal Copyright Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 text of the Convention, or a World Trade Organization Country, in like manner, as if the author was a citizen of India at that point of time; to an unpublished work, the author whereof was, at the time of the making or publication of the work, a national or a domiciled in a Berne Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 Text of Convention, or a Universal Copyright Convention Country which has ratified/accepted/acceded to the 1971 text of the Convention, in like manner as if the author was a citizen of, or domiciled in, India; to any work first made or published by a body corporate incorporate under any law of a Berne Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 Text of Convention, a Universal Copyright Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 text of the Convention, or a World Trade Organization Country, in like manner, as if it was incorporate under a law in force in India; and to a sound recording first made, the producer of which was, at the date of such production, a national of a country of the Phonograms Convention or a World Trade Organization Country, or a body corporate incorporated under a law in force in such a country, in like manner as if the producer was the citizen of India; or a body corporate incorporated under a law in force in India, as the case may be, at that point of time (Articles 40, 40A and 42 of the Copyright Act and Article 3 of the Copyright Order of 2000).

However, the provisions of the Copyright Act related to the Rights of Broadcasting Organization and of Performers shall apply to a Broadcasting Organization and a performer of a World Trade Organization country (Article 42A of the Copyright Act and Article 4 of the Copyright Order of 2000).

The provisions of the Copyright Act related to compulsory license to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work, shall not apply to a work first made or published in any Berne Convention Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 Text of Convention; in any World Trade Organization

Country; however, it shall apply to a work first made or published in any Universal Copyright Country which has ratified/accepted/acceded or which is yet to ratify/accept/accede to the 1971 text of the Convention, only in respect of the translation of such work into any language specified in the Eighth Schedule to the Constitution of India (Article 5 to 6 of the Copyright Order of 2000).

The provisions of the Copyright Act related to compulsory license to produce and publish a translation, in printed or analogous forms of reproduction, of a literary or dramatic work, other than an Indian work, in any language in general use in India after a period of three years from the first publication of such work, if such translation is required for the purposes of teaching, scholarship or research, and those related to compulsory license to reproduce and publish works for certain purposes as well as those related to the termination of compulsory licenses shall apply to a work first made or published in a Berne Convention Country which has ratified/accepted/acceded to the 1971 Text of the Convention, in a Universal Copyright Convention Country which has ratified/accepted/acceded to the 1971 text of the Convention, or in a World Trade Organization Country (Article 6 of the Copyright Order of 2000).

The term of copyright in a work shall not exceed that which is enjoyed by it in its country of origin (Article 7 of the Copyright Order of 2000).

Works made or first published by or under the direction or control of certain international organizations which are not protected in India at the time of the making or of the first publication thereof, should be protected in India in limited cases and provided specific conditions are met (Article 41 of the Copyright Act).

- *Terms of copyright protection*

As a general rule, copyright protection is provided for the lifetime of the author and 60 years from the 1st of January of the year following the author's death for any literary, dramatic, musical or artistic work (other than a photograph); 60 years from the 1st of January of the year following the date of the death of the last surviving author in the event of co-authored literary, dramatic, musical or artistic work (other than a photograph); 60 years from the 1st of January of the year following the year of the first authorized publication for anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) - or 60 years from the 1st of January of the year following the author's death when the pseudonym adopted by the author leaves no doubt as to his identity or if the author of an anonymous or pseudonymous work discloses his identity during the above mentioned period; 60 years from the 1st of January of the year following the year of the first authorized publication or, where an adaptation of the work is published in any earlier year, from the 1st of January of the year following that year in the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or, in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which, or any adaptation of which, has not been published before that date; 60 years from the 1st of January of the year following the year of the first authorized publication for photographs, sound recordings, cinematographic films, Government works (where Government is the first copyright owner), works of public undertakings, and works of international organizations (Articles 24 to 29 of the Copyright Act).

The broadcast reproduction right lasts for 25 years from the 1st of January of the year following the year in which the broadcast is made; the performer's right lasts for 50 years from the 1st of January of the year following the year in which the performance is made (Articles 37 and 38 of the Copyright Act).

Foreign works are protected for a term not exceeding that which is enjoyed by it in its country of origin (Article 7 of the Copyright Order of 2000).

Except as otherwise provided in the Copyright Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copyright or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force (Article 79 of the Copyright Act).

- **Registration**

Copyright protection is automatic and it does not depend on formalities. However, registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright (Article 48 of the Copyright Act).

The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar of Copyrights at the Copyright Office for entering particulars of the work in the Register of Copyrights. Details relating to registration of works and any act of disposal thereof are provided in Articles 44 to 50A of the Copyright Act.

## **5. International treaties/conventions:**

India is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#) (Paris Act 1971), in force since April 1, 1928.
- [Universal Copyright Convention](#), ratified on October 21, 1957 to UCC of 1952 and ratified on January 7, 1988 to UCC of 1971.
- [WTO TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#), in force since January 15, 1995.
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since February 12, 1975.

India signed the following Conventions but did not ratify them yet:

- [Treaty on the International Registration of Audiovisual Works](#) (Film Register Treaty), signed on April 20, 1989.
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), signed on October 26, 1961.

## **II. Measures and remedies**

### **1. Copyright infringement**

The Copyright Act defines copyright infringement as follows (Articles 4 and 51 of the Copyright Act):

- Doing an act related to the exclusive rights of the copyright owner without a license granted by the owner of the copyright or the Registrar of Copyrights or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority.

- Permitting for profit, without a license granted by the owner of the copyright or the Registrar of Copyrights or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority, any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless the person is not aware and has no reasonable ground for believing that such communication to the public would be an infringement of copyright.
- Making for sale or rental, or selling or letting for rental, or by way of trade displaying or offering for sale or rental any infringing copies of the work.
- Distributing either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright any infringing copies of the work.
- Exhibiting in public any infringing copies of the work by way of trade.
- Importing into India any infringing copies of the work excluding import of one copy of any work for the private and domestic use of the importer.
- Reproducing a literary, dramatic, musical or artistic work in the form of a cinematograph film.
- Publishing or performing in public, without the license of the owner of the copyright.

Additional acts are punished by the copyright Act and hence are considered to be infringing its provisions. These are found under Articles 63, 63B, 65, 67, 68 and 68A of the Copyright Act, in particular:

- Knowingly infringing or abetting the infringement of the copyright in a work, or any other right conferred by the Copyright Act.
- Knowingly making use on a computer of an infringing copy of a computer program.
- Knowingly making, or possessing, any material/equipment for the purpose of making infringing copies of any work in which copyright subsists.
- Publishing a sound recording or a video film without displaying the information prescribed by the Law on the sound recording and on any container thereof, or in the video film, when exhibited, and on the video cassette or other container thereof.
- Making or causing to be made a false entry in the Register of Copyrights; making or causing to be made a writing falsely purporting to be a copy of any entry in such register; or knowingly producing or tendering or causing to be produced or tendered as evidence any such entry or writing.
- Knowingly making a false statement or representation with a view to deceiving any authority or officer in the execution of the provisions of the Copyright Act, or with a view to procuring or influencing the doing or omission of anything relating to this Act or any matter there under.

***Infringement of broadcast reproduction right:***

Any person who, without the license of the owner of the broadcast reproduction right does any of the following acts of the broadcast or any substantial part thereof shall be deemed to have infringed the broadcast reproduction right (Article 37 of the Copyright Act):

- Re-broadcasting the broadcast.
- Causing the broadcast to be heard or seen by the public on payment of any charges
- Making any sound recording or visual recording of the broadcast.
- Making any reproduction of such sound recording or visual recording where such initial recording was done without license or, where it was licensed, for any purpose not envisaged by such license.
- Selling or renting to the public, or offering for such sale or rental, any such sound recording or visual recording.

***Infringement of performer's right:***

Any person, who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof, shall be deemed to have infringed the performer's right (Article 38 of the Copyright Act):

- Making a sound recording or visual recording of the performance.
- Reproducing a sound recording or visual recording of the performance, which sound recording or visual recording was made without the performer's consent; made for purposes different from those for which the performer gave his consent; or made for purposes different from those related to the limitations to performer's right and broadcast reproduction right from a sound recording or visual recording which was made in accordance with those limitations.
- Broadcasting the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with the limitations to performer's right and broadcast reproduction right, or is a rebroadcast by the same broadcasting organization of an earlier broadcast which did not infringe the performer's right.
- Communicating the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast.

## 2. Remedies to protect copyright holders

The Copyright law, the Code of Criminal Procedure, the Indian Penal Code, the Civil Procedure Code, the Customs Act and Evidence Act provide for a number of remedies that may apply for protecting copyright and neighboring rights holders in the case of violations of their rights. These remedies include the following:

- Provisional measures may be taken to prevent an imminent or continuation of infringement of copyright. Remedies are limited to an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work (Article 55 of the Copyright Act).
- Legal action may be instituted at the request of the copyright holder including fair and equitable civil judicial procedures. Where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right is entitled, to the extent of that right to the remedies provided by the Copyright Law and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding (Articles 55, 56 and 61 of the Copyright Act, Article 26, 27, 30, 31, 33, 35 to 35B, 96, 97, 100, 142, 148, and Orders I to XX of the Civil Procedure Code, Articles 4, 287, 303, 353 of the Code of Criminal Procedure and Articles 101 and 102 of the Evidence Act).
- Proceedings may be taken by the copyright owner against persons possessing or dealing knowingly with infringing copies (excluding construction of a building or other structure which infringes copyright in some other work), in order to recover the possession of the infringing copies and material used or intended to be used for the production of such infringing copies (Articles 58 and 59 of the Copyright Act).
- Seizure of all copies of the work, and all plates used for making the infringing copies of the work, wherever they are found, by any police officer, not below the rank of a sub-inspector, if he is satisfied that an offence in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed. If the proper Customs officer has reason to believe that any goods are liable to confiscation under the Customs Act, he may seize such goods, including any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the

Customs Act (Article 64 of the Copyright Act, Article 110 of the Customs Act and Article 102 of the Code of Criminal Procedure).

- Confiscation by the Customs of suspected infringing goods, including any documents or things which might be useful for, or relevant to, any proceeding under the Customs Act. Prohibited goods, including goods infringing copyright, which are improperly imported, attempted to be imported, attempted to be improperly exported or smuggled, shall be liable to confiscation (Article 110 to 114 of the Customs Act).
- Delivery up of all infringing copies of the work and all plates used in the reproduction to the owner of the copyright may be ordered by the court (Article 66 of the Copyright Act).
- Fair and adequate damages may be imposed including moral damages, account of profits, trial expenses and attorney's fees. The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court (Article 55 of the Copyright Act and Articles 357 and 359 of the Code of Criminal Procedure).
- Criminal sanctions may be imposed, in particular imprisonment for a minimum term of six months and a maximum term of three years, and a fine varying from fifty thousand rupees to two lakh rupees, provided where the infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees. In case of recidivism, imprisonment shall be for a minimum term of one year and a maximum term of three years and the fine shall vary between one lakh rupees and two lakh rupees, provided where the infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees. Sanctions are also imposed against co-conspirators (Articles 63, 63A, 63B and 65 of the Copyright Act, Articles 37, 120A, 120B, of the Indian Penal Code).
- Publication of the court decision in such newspapers or in such manner as the court may direct at the expense of the convicted person under the Customs Act for contravention of any of its provisions (Article 135B of the Customs Act).

In the case of groundless threat of legal proceedings or liability in respect of an alleged infringement of a copyright, the aggrieved person may institute a declaratory suit to obtain an injunction against the continuance of such threats; and recover such damages, if any, as he has sustained by reason of such threats (Article 60 of the Copyright Act).

### 3. Provisional measures

The Copyright Law (Articles 47 and 53) allows the court, to take provisional measures to prevent an imminent or continuation of infringement of copyright. Remedies are limited to an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work (Article 55 of the Copyright Act).

### 4. Penalties for copyright infringement

The Copyright law, the Code of Criminal Procedure, the Indian Penal Code and the Customs Act provide for penalties in case of copyright or neighboring rights infringement. These penalties include the following:

- Fair and adequate *damages* may be imposed including moral damages, account of profits, trial expenses and attorney's fees. The costs of all parties in any proceedings

in respect of the infringement of copyright shall be in the discretion of the court (Article 55 of the Copyright Act and Articles 357 and 359 of the Code of Criminal Procedure).

- *Seizure of all copies of the work*, and all plates used for making the infringing copies of the work, wherever they are found, by any police officer, not below the rank of a sub-inspector, if he is satisfied that an offence in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed. If the proper Customs officer has reason to believe that any goods are liable to confiscation under the Customs Act, he may seize such goods, including any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the Customs Act (Article 64 of the Copyright Act, Article 110 of the Customs Act and Article 102 of the Code of Criminal Procedure).
- *Confiscation by the Customs of suspected infringing goods*, including any documents or things which might be useful for, or relevant to, any proceeding under the Customs Act. Prohibited goods, including goods infringing copyright, which are improperly imported, attempted to be imported, attempted to be improperly exported or smuggled, shall be liable to confiscation (Article 110 to 114 of the Customs Act).
- *Delivery up of all infringing copies of the work* and all plates used in the reproduction to the owner of the copyright may be ordered by the court (Article 66 of the Copyright Act).
- *Criminal sanctions* may be imposed, in particular imprisonment for a minimum term of six months and a maximum term of three years, and a fine varying from fifty thousand rupees to two lakh rupees, provided where the infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees. In case of recidivism, imprisonment shall be for a minimum term of one year and a maximum term of three years and the fine shall vary between one lakh rupees and two lakh rupees, provided where the infringement has not been made for gain in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than one year or a fine of less than one lakh rupees. Sanctions are also imposed against co-conspirators (Articles 63, 63A, 63B and 65 of the Copyright Act, Articles 37, 120A, 120B, of the Indian Penal Code).
- *Publication of the court decision* in such newspapers or in such manner as the court may direct at the expense of the convicted person under the Customs Act for contravention of any of its provisions (Article 135B of the Customs Act).

## 5. Requirements for foreign persons

As a general rule, foreign natural and legal persons shall enjoy the right to take action in Indian courts.

Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any Court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such court (Article 83 of the Civil Procedure Code).

### III. Enforcement

#### 1. Enforcement authorities

##### a) Authorities responsible for enforcing the copyright law

Police officers (not below the rank of a sub-inspector) public prosecutors, the judiciary, customs officials, and the Registrar of Copyrights are the competent authorities responsible for enforcing the copyright law and combating piracy in India (Articles 53 and 64 of the Copyright Act).

The Registrar of Copyrights, following an application by the owner of the copyright in any work or by his duly authorized agent and after the payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of India of the work which if made in India would infringe copyright shall not be imported. The Registrar of Copyrights or any person authorized by him in this behalf may enter any ship, dock or premises where any imported infringing copies may be found and may examine such copies. All imported infringing copies shall be deemed to be goods of which the import has been prohibited or restricted under the Customs Act, and all the provisions of that Act shall have effect accordingly: The confiscated copies shall not vest in the Government but shall be delivered to the owner of the copyright in the work (Article 53 of the Copyright Act).

Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for making the infringing copies of the work, wherever they are found. All seized copies and plates shall, as soon as practicable, be produced before a Magistrate (Article 64 of the Copyright Act and Article 102 of the Code of Criminal Procedure).

##### b) Enforcement bodies entitled to act *ex-officio* in copyright infringement cases

Any police officer, not below the rank of a sub-inspector, may, *ex-officio*, if he is satisfied that an offence in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for making the infringing copies of the work, wherever they are found. All seized copies and plates shall, as soon as practicable, be produced before a Magistrate (Article 64 of the Copyright Act and Article 102 of the Code of Criminal Procedure).

Any proper officer authorized in this behalf by the Commissioner of Customs may, *ex-officio*, at any reasonable time, enter any suspected place (permitted under the Customs Act) and inspect the goods kept or stored therein and require the person in charge thereof, to produce for his inspection the accounts maintained and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported (Article 106A of the Customs Act).

##### c) Courts dealing with copyright cases

The court having jurisdiction over civil remedies in copyright cases is the district court within whose jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant (Articles 62 and 70 of the Copyright Act and Article 9 of the Civil Procedure Code).

The District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court (Article 3 of the Civil Procedure Code).

India follows common law tradition and judicial precedents do have binding force. Hence the decisions of the Supreme Court bind the lower judiciary of the country.

Certain disputes are settled by the Copyright Board, the jurisdiction of which extends to the whole of India. The Board deals with disputes relating to copyright registration, assignment of copyright, grant of Licenses in respect of works withheld from public, unpublished Indian works, production and publication of translations, works for certain specified purposes, and other miscellaneous matters. The Copyright Board shall be deemed to be a civil court for the purposes of Articles 345 and 346 of the Code of Criminal Procedure, and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of Articles 193 and 228 of the Indian Penal Code. Any person aggrieved by any final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Copyright Board. Any person aggrieved by any final decision or order of the Copyright Board, may, within three months from the date of such decision or order, appeal to the High Court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain (Articles 6, 11, 12, 19A, 23, 31, 31A, 32, 50, 52, 53A and 72 of the Copyright Act).

The Registrar of Copyrights and the Copyright Board shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, in respect of the following matters, namely (Article 74 of the Copyright Act):

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of any document;
- receiving evidence on affidavits;
- issuing commissions for the examination of witnesses or documents;
- requisitioning any public record or copy thereof from any court or office; any other matter which may be prescribed.

## **2. Enforcement at the border**

- The Customs is the Authority responsible for combating piracy at the borders. All imported infringing copies shall be deemed to be goods of which the import has been prohibited or restricted under the Customs Act, and all the provisions of that Act shall have effect accordingly: The confiscated copies shall not vest in the Government but shall be delivered to the owner of the copyright in the work (Article 53 of the Copyright Act and Articles 2, 11 of the Customs Act).
- Any proper Customs officer authorized in this behalf by the Commissioner of Customs may, ex-officio, at any reasonable time, enter any suspected place (permitted under the Customs Act) and inspect the goods kept or stored therein and require the person in charge thereof, to produce for his inspection the accounts maintained and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported (Article 106A of the Customs Act).
- If the proper officer has reason to believe that any goods are liable to confiscation under the Customs Act, he may seize such goods (including any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the

Customs Act), provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. In this case, the Customs officer shall prepare an inventory of such goods containing such details he may consider relevant to the identity of the goods in any proceedings under the Customs Act and shall make an application to a Magistrate for the purpose of certifying the correctness of the inventory so prepared; or taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn. The Magistrate shall, as soon as may be, allow the application. Where no notice in respect of the seized goods is given to the owner of the goods within six months of the seizure, the goods shall be returned to the person from whose possession they were seized if the aforesaid period of six months has not been extended by the Commissioner of Customs for an additional period not exceeding six months (Article 110 of the Customs Act).

- Prohibited goods, including goods infringing copyright, which are smuggled, improperly imported, attempted to be imported, or attempted to be improperly exported shall be liable to confiscation. Any person responsible for such goods shall be liable to a penalty (Articles 111 to 114 of the Customs Act).
- No order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty; is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and is given a reasonable opportunity of being heard in the matter, provided that the notice and the representation may, at the request of the person concerned be oral (Article 124 of the Customs Act).
- Where any person is convicted under the Customs Act for contravention of any of the provisions, thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct (Article 135B of the Customs Act).

## **IV. Public awareness**

### **1. Awareness campaigns and actions**

### **2. Promotion of legal exploitation**

### **3. Associations and organizations with awareness-raising purpose**

- **ICC-India Commission on Intellectual Property**

The intellectual property policy of the International Chamber of Commerce (ICC) is formulated by its Commission on Intellectual Property, which gathers over 300 business executives and private practitioners from 50 countries. The commission identifies key intellectual property issues facing the international business community and contributes the business voice to debates to resolve these. It also works to raise awareness of intellectual property by initiatives such as its annual *Roadmap on Current and Emerging IP Issues for Business and other publications*. The Commission on Intellectual Property meets twice each year in plenary, but carries out work constantly throughout the year in issue-specific task forces. The Commission also works closely with intergovernmental organizations involved in intellectual property policy-making, such as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO) where ICC has observer status. <http://www.iccwbo.org/policy/ip/id2465/index.html>

#### 4. Best practices

## V. Capacity-building

### 1. Trainings

### 2. Specialized units

Private bodies have been created to promote intellectual property in India and to fight against piracy, in particular the following:

- **Special Cells for Copyright Enforcement**

The States and Union Territories of Assam, Goa, Gujarat, Haryana, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Rajasthan, Sikkim, Tamil Nadu, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Daman & Diu have either set up copyright enforcement cells or special cells in the Crime Branch to look after copyright offence cases. <http://copyright.gov.in/mainspcell.asp>

- **Copyright Enforcement Advisory Council (CEAC)**

The Government has set up on November 6, 1991 a Copyright Enforcement Advisory Council (CEAC) to review the progress of enforcement of Copyright Act periodically and to advise the Government regarding measures for improving the enforcement of the Act. In its meeting of December, 2006, CEAC has decided to constitute three sub-committees for purposes of awareness building, issues relating to enforcement and shared experiences of the police officers, and mechanism to ensure that benefits of enforcement flow back to creators and the right holders. <http://copyright.gov.in/mainceac.asp>

- **Appointment of Nodal Officers to coordinate anti-piracy operations**

In order to facilitate the coordination between the stakeholders and the enforcement agencies in the matter of enforcement of copyright legislation, Nodal Officers were appointed by State Governments to coordinate anti-piracy operations. The list of the Nodal Officers is found under the Ministry's website <http://copyright.gov.in/mainnodal.asp>

- **Inter-Ministerial Coordination Committee on Intellectual Property Enforcement Issues**

An Inter-ministerial Coordination Committee on Intellectual Property Enforcement Issues has been set up with members drawn from various Government Departments concerned with

IPR matters, namely the Department of Industrial Policy and Promotion, the Department of Information Technology, the Department of Higher Education, the Department of Agriculture and Cooperation, the Department of Commerce, the Department of Health and Family Welfare, the Ministry of Information and Broadcasting, the Ministry of Home Affairs, the Central Board of Excise and Customs and the National Crime Records Bureau. It deals with all issues related to effective enforcement, such as legislation, enforcement, sensitization and data collection. [www.ficci.com/media-room/speeches-presentations/2008/apr/ip-presentation/session3/TCJames.ppt](http://www.ficci.com/media-room/speeches-presentations/2008/apr/ip-presentation/session3/TCJames.ppt)

### 3. Best practices

## VI. Other

### 1. Technological Protection Measures (TPM)

Indian Laws do not provide for Technological Protection Measures (TPM). However, the new amendments to the Copyright Act will provide such protection by incorporating the provisions of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (WIPO Internet Treaties) to which India is not a member yet. The draft amendment to the Copyright Law is now being revised by stakeholders. Suggestions and Comments received from various sectors and other stakeholders are being carried out by the expert/ technical committees constituted for this purpose. <http://copyright.gov.in/Logon.aspx>

### 2. Licensing Schemes

### 3. Optical Discs

### 4. Hotlines

### 5. Relevant contacts and links

#### Ministry of Human Resource Development

Mr. Lalmalsawma

Registrar of Copyright, Secretary, Copyright Board

& Deputy Secretary to the Government of India

Department of Secondary Education & Higher Education

Book Promotion & Copyright Division

B.2/W.3, Curzon Road Barracks

Kasturba Gandhi Marg

New Delhi 110 001

Telephone: (91 11) 338 2549/ 338 4687/ 338 2436/ 338 2458/ 338 4387

Telefax: (91 11) 338 4687/ 338 1355/ 338 2947

Web site address: <http://copyright.gov.in/>

<http://copyright.gov.in/mainwho.asp>

*In order to facilitate the coordination between the stakeholders and the enforcement agencies in the matter of enforcement of copyright legislation, Nodal Officers to coordinate anti-piracy operations were appointed by State Governments following a request by the Ministry of Human resource Development. The list of the Nodal Officers is found under the Ministry's website <http://copyright.gov.in/mainnodal.asp>*

*Contact Point for information on trade in infringing goods (TRIPS, Article 69)*

**Ministry of Commerce & Industry**

Mr. Jayant Dasgupta

Joint Secretary

Department of Commerce

Udyog Bhawan

New Delhi 110 011

Telephone: +91 11 2306 1971

Telefax: +91 11 2306 3583

E-mail: [jdasgupta@nic.in](mailto:jdasgupta@nic.in)

- **Database of Indian Laws:**

<http://www.vakilno1.com/>

<http://www.vakilno1.com/bareacts.htm>

- **Search Supreme Court of India judgments (From 1950 to 2006)**

<http://www.vakilno1.com/SC-Cases/query.php>