

Consumers International IP Watchlist 2012 — India Report

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Pranesh Prakash prepared the India Report for Consumers International IP Watchlist 2012. The report was published on the A2K Network website.

Summary

India's Copyright Act is a relatively balanced instrument that recognises the interests of consumers through its broad private use exception, and by facilitating the compulsory licensing of works that would otherwise be unavailable. However, the compulsory licensing provision have not been utilized so far, because of both a lack of knowledge and more importantly because of the stringent conditions attached to them. Currently, the Indian law is also a bit out of sync with general practices as the exceptions and limitations allowed for literary, artistic and musical works are often not available with sound recordings and cinematograph films. There are numerous other such inconsistencies. Positively retrogressive provisions, such as criminalisation of individual non-commercial infringement also exist. India's Copyright Act is a relatively balanced instrument that recognises the interests of consumers through its broad private use exception, and by facilitating the compulsory licensing of works that would otherwise be unavailable. However, the compulsory licensing provision have not been utilized so far, because of both a lack of knowledge and more importantly because of the stringent conditions attached to them. Currently, the Indian law is also a bit out of sync with general practices as the exceptions and limitations allowed for literary, artistic and musical works are often not available with sound recordings and cinematograph films. There are numerous other such inconsistencies. Positively retrogressive provisions, such as criminalisation of individual non-commercial infringement also exist.

It is unfortunate that the larger public interest in copyright-related issues are never foregrounded in India. For instance, the Standing Committee tasked with review of the Copyright Amendment Bill has held hearings without calling a single consumer rights organization, and without seeking any civil society engagement, except for the issue of access for persons with disabilities. This was despite a number of civil society organizations, including consumer rights organizations, sending in a written submission to the Standing Committee.

This lopsidedness in terms of policy influence is resulting in greater imbalance in the law, as evidenced by the government's capitulation to a handful of influential multinational book publishers on the question of allowing parallel importation of copyrighted works. Furthermore, pressure from the United States and the European Union, in the form of the Special 301 report and the India-EU free trade agreement that is being negotiated are leading to numerous negative changes being introduced into Indian law, despite us not having any legal obligation under any treaties. Such influence only works in one direction: to increase the rights granted to rightsholders, and has so far never included any increase in user rights.

It is true that copyright infringement, particularly in the form of physical media, is widespread in India. However this must be taken in the context that India, although fast-growing, remains one of the poorest countries in the world. Although India's knowledge and cultural productivity over the centuries and to the present day has been rich and prodigious, its citizens are economically disadvantaged as consumers of that same knowledge and culture. Indeed, most students, even in the so-called elite institutions, need to employ photocopying and other such means to be able to afford the requisite study materials. Visually impaired persons, for instance, have no option but to disobey the law that does not grant them equal access to copyrighted works. Legitimate operating systems (with the notable exception of most free and open source OSes) add a very high overhead to the purchase of cheap computers, thus driving users to pirated software. Thus, these phenomena need to be addressed not at the level of enforcement, but at the level of supply of affordable works.

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