

# Analysis of the Copyright (Amendment) Bill, 2010

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*CIS analyses the Copyright (Amendment) Bill, 2010, from a public interest perspective to sift the good from the bad, and importantly to point out what crucial amendments should be considered but have not been so far.*

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The full submission that CIS and 21 other civil society organizations made to the Rajya Sabha Standing Committee on HRD (which is studying the Bill) is available here. Given below is the summary of our submissions:

## **Existing Copyright Act**

The Indian Copyright Act, 1957 has been designed from the perspective of a developing country. It has always attempted a balance between various kinds of interests. It has always sought to ensure that rights of authors of creative works is carefully promoted alongside the public interest served by wide availability and usability of that material. For instance, our Copyright Act has provisions for:

- compulsory and statutory licensing: recognizing its importance in making works available, especially making them available at an affordable rate.
- cover versions: recognizing that more players lead to a more vibrant music industry.
- widely-worded right of fair dealing for private use: recognizing that individual use and large-scale commercial misuse are different.

These provisions of our Act have been lauded, and India has been rated as the most balanced copyright system in a global survey conducted of over 34 countries by Consumers International.

The Indian Parliament has always sought to be responsive to changing technologies by paying heed to both the democratisation of access as well as the securing of the interests of copyright holders. This approach needs to be lauded, and importantly, needs to be maintained.

## Proposed Amendments

### Some positive amendments

- **Fair Dealings, Parallel Importation, Non-commercial Rental:** All works (including sound recordings and cinematograph films) are now covered the fair dealings clause (except computer programmes), and a few other exceptions; parallel importation is now clearly allowed; and non-commercial rental has become a limitation in some cases.
- **Persons with disabilities:** There is finally an attempt at addressing the concerns of persons with disabilities. But the provisions are completely useless the way they are currently worded.
- **Public Libraries:** They can now make electronic copies of works they own, and some other beneficial changes relating to public libraries.
- **Education:** Some exceptions related to education have been broadened (scope of works, & scope of use).
- **Statutory and compulsory licensing:** Some new statutory licensing provisions (including for radio broadcasting) and some streamlining of existing compulsory licensing provisions.
- **Copyright societies:** These are now responsible to authors and not owners of works.
- **Open licences:** Free and Open Source Software and Open Content licensing is now simpler.
- **Partial exemption of online intermediaries:** Transient and incidental storage of copyrighted works has been excepted, mostly for the benefit of online intermediaries.
- **Performer's rights:** The general, and confusing, exclusive right that performers had to communicate their performance to the public has been removed, and instead only the exclusive right to communicate sound/video recordings remains.
- **Enforcement:** Provisions on border measures have been made better, and less prone to abuse and prevention of legitimate trade.

### Some negative amendments

- **WCT and WPPT compliance:** India has not signed either of these two treaties, which impose TRIPS-plus copyright protection, but without any corresponding increase in fair dealing / fair use rights.
- **Increase in duration of copyright:** This will significantly reduce the public domain, which India has been arguing for internationally.

- **Technological Protection Measures:** TPMs, which have been shown to be anti-consumer in all countries in which they have been introduced, are sought to be brought into Indian law.
- **Version recordings:** The amendments make cover version much more difficult to produce.
- **Moral rights:** Changes have been made to author's moral rights (and performer's moral rights have been introduced) but these have been made without requisite safeguards.

### Missed opportunities

- **Government-funded works:** Taxpayers are still not free to use works that were paid for by them. This goes against the direction that India has elected to march towards with the Right to Information Act.
- **Copyright terms:** The duration of all copyrights are above the minimum required by our international obligations, thus decreasing the public domain which is crucial for all scientific and cultural progress.
- **Criminal provisions:** Our law still criminalises individual, non-commercial copyright infringement.
- **Libraries and archives:** The exceptions for 'public libraries' are still too narrow in what they perceive as 'public libraries'.
- **Educational exceptions:** The exceptions for education still do not fully embrace distance and digital education.
- **Communication to the public:** No clear definition is given of what constitute a 'public', and no distinction is drawn between commercial and non-commercial 'public' communication.
- **Internet intermediaries:** More protections are required to be granted to Internet intermediaries to ensure that non-market based peer-production projects such as Wikipedia, and other forms of social media and grassroots innovation are not stifled.
- **Fair dealing and fair use:** We would benefit greatly if, apart from the specific exceptions provided for in the Act, more general guidelines were also provided as to what do not constitute infringement. This would not take away from the existing exceptions.