

Consumers International IP Watchlist 2011 — India Report

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Pranesh Prakash prepared the India Report for the Consumers International IP Watchlist 2011. The report was published on the A2K Network website.

The report says:

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.

While India has not acceded to the WIPO [23] Copyright Treaty or the WIPO Performers and Phonograms Treaty, yet a set of amendments have been proposed which would bring the Indian law in compliance with both the WCT and the WPPT. These amendments would expose India's consumers to the same problems experienced in other jurisdictions which have prohibited the use of circumvention devices to gain access to legally-acquired copyright material. These amendments also propose a substantial increase in the copyright term for photographs (from 50 years to life plus 60 years), and a conditional increase of ten years for cinematograph films to 70 years if a special agreement is entered into by the producer with the director. 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. Physically challenged persons 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 in a suitable format.

Over the last year, the Standing Committee tasked with review of the Copyright Amendment Bill has held hearings and presented its findings and recommendations to the HRD Ministry. However, not a single consumer rights organization was called by the Standing Committee, and no civil society engagement was sought except for the issue of access for persons with disabilities. This was despite a number of civil society organizations sending in written submissions to the Standing Committee. The government is going to re-table the Bill in this session of Parliament (February-April).

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