

STUDY ON COPYRIGHT PIRACY IN INDIA

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STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter I

ABOUT THE STUDY

Introduction

After the conclusion of the Uruguay Round of General Agreement on Tariffs & Trade (GATT), which led to the establishment of World Trade Organisation (WTO) in 1995, the issues relating to protection of intellectual property rights (IPRs) are assuming increasing importance world wide. India is witnessing a live debate on the pros and cons of the outcomes of the Uruguay Round, especially in the case of IPRs. But gradually there has been a attitudinal shift towards exploiting the avenues opened up by the new international trade regime from the pedagogic discussions on the subject. Copyright constitutes an important part of the wider concept of intellectual property rights. Although the concept of copyright has been in existence in the country for long, there is now a sense of urgency to sort out matters connected with it. This may be due to the realisation that in the post WTO scenario, apart from its socio-cultural importance, copyright is likely to be a factor to reckon with in the economic front as well.

Given its rich cultural heritage, India had always remained a powerful force in the field of copyright. The activities that come under the subject of copyright are largely prevalent in the country and they are growing. India is counted among the top seven publishing nations of the world with a sizeable portion of her publications being in English. It constitutes the largest market for audio cassettes and films produced in the country exceed 600 per annum. India has a huge potential in the field of computer software. The software industry has been growing at an amazing rate of above 50% for consecutive years since the beginning of the current decade.

On the legislation front, copyright laws in India are comparable to those of many developed countries. In order to keep a pace with the contemporary technological developments, India's copyright legislation had been amended from time to time, e.g. in 1983, 1984 and 1994, since its commencement in 1958. The punishments for copyright violations had been made progressively more stringent. The present law is also almost in full conformity with the Uruguay Round Agreement on Trade Related Intellectual Property Rights (TRIPs). In spite of all these, awareness on copyright is rather poor in the country and piracy is believed to be wide spread.

Worldwide it is recognized that copyright piracy is a serious crime which not only adversely affects the creative potential of the society by denying the creators their legitimate dues, it also causes economic losses to all those who had invested their money in bringing out copyrighted materials in various forms for use by end-users. Globalization forced the copyright issues to the forefront because a large number of copyrighted products are traded internationally. Protection of copyright, therefore, is a priority matter with in the national agenda of many countries especially from the developing world. Surely, it also has emerged as an important factor governing international relations.

In developed countries, the copyright based industries comprising mainly the print & publishing industry, audio cassettes/CDs industry, film and video industry and computer softwares etc. contribute handsomely to the state exchequers. Results from past studies indicated that in some of these nations (e.g. USA, Germany, Sweden, Australia, U.K.) the contribution from copyright based industries to their respective Gross Domestic Product (GDP) is significantly high. Unfortunately in the Indian context no systematic effort is undertaken to arrive at fair indicators of the sector's contribution to GDP, even though it is believed that copyright industry has a place of importance in the economic arena of the country. By the same token, there is no reliable estimates to give an account of the losses arising out of copyright piracy. The claims on the extent of piracy and corresponding losses made by various stake holders of the copyright industry are also found to be too general and at times exaggerated and conflicting with each other.

In this background the Ministry of HRD, Government of India, which is an apex body in the country in copyright matters, initiated a comprehensive study to know the ground level realities of the copyright piracy phenomenon. The study which is the first of its kind was assigned to the National Productivity Council with the following objectives :-

1. Assessing the extent of copyright piracy prevailing in various segments of the copyright industry namely cinematographic works including video, sound recordings, computer software, literary works and the performers.
2. Assessing the impact of piracy on copyright holder and the national economy.
3. Evolving a phased programme for tackling the situation by improving the enforcement of the Copyright Act as well as to promote schemes of awareness creation.

Methodology

1. The study being undertaken for the first time in India suffers from certain disadvantages. The greatest handicap perhaps arises from the information requirements. The study, to begin with, did not have the basic information on the Indian copyright industry itself. One reason for this is the dominance of unorganised sectors in various segments of the industry. As a result, precise data on investment, production, demand - domestic as well as overseas- and the like are not available. Even in the case of the organised sectors, the data base is far too inadequate, except perhaps in case of computer software. In some of the industry segments, information on physical dimensions (e.g. number of publishers and the number of titles published annually in case of the book publishing industry) are available. But to translate these into monetary values like the industry turnover becomes extremely difficult due to vast variations in the industry practices among the players of the industry.
2. Given the above limitations, we approached the study by seeking information from various stake holders of the copyright industry. Firstly, the channel through which the copyrighted materials flow from its origin (i.e. the creators) to the places of final use was identified. Attempts were made to extract information on various aspects of copyright matters from the main pillars of this channel. Information was also sought from apex industry associations, copyright enforcement authority and the experts from the field :
3. Discussions with the apex level organisations and associations including those registered as copyright societies (List in Annexure 1)
4. Discussions with the copyright holders such as book publishers, film producers including video and cable right holders, software companies, music producers etc.
5. Based on the discussions with the copyright holders, copyright industry associations and the experts, questionnaires were developed to gather information/data.
6. Five different sets of questionnaires were developed covering copyright enforcement authority at the State\UT level, copyright industry associations, rightholders, distributors\sellers of copyrighted products and the end users of copyright work, at individual as well as organisational levels (Annexure 2). The target groups are chosen from among those who are either producers, distributors or end-users of copyrighted items. The enforcement authorities are also contacted for gathering information on copyright violations and the difficulties faced by them in enforcement of laws at the State \UT level.
7. Selection of samples for the study was a tedious task. This is because of the fact that a suitable sample frame was not available for some of the copyright industry segments. Secondly, given the large size of the population in certain target groups, determining an appropriate sample size, which would truly represent the group, was difficult. Therefore, the sample size in each copyright industry segment was decided by striking a balance between the number of players (e.g. manufacturers, suppliers) involved in the segment and the time & cost involved in conducting the field survey. Based on these considerations, it was decided to interview about 100 rightholders and 150 sellers from each copyright segment. This number, however, was reduced in the case of music companies, software producers and film producers including video film producers from

the rightholders category and authorised distributors of video cassettes from the sellers category, because of the fact that the proposed sample is too high in relation to the total number of players in the respective segments. As per the list available with the Indian Music Industry(IMI) , the association of leading music companies in the country, there are about 50 large manufacturers of audio products in India commanding more than ninety percent of the total production. In this segment, therefore, we restricted the sample size to 30 only. Similarly, in the software segment the sample includes 5 large software producers whose products capture a major part of Indian software market and are supposed to be the target of the pirates.

8. Selecting sample endusers was more complex as copyrighted products are used in varying intensities by almost all the urban households. Even one per cent sample would be beyond the scope of the present study. Therefore, as a thumb rule we decided to interview 120 endusers in each of the copyright segment. Regarding selection of respondents, the procedure varied from stratified and purposive sampling depending upon the target group nature to ad-hoc selection based on the availability of respondents. For example, in case of endusers (individuals) samples were selected from the places of purchase and/or final use of copyrighted products such as shops, libraries, households, etc. In the rightholders and sellers/distributors category, the larger ones were preferred to their smaller counterparts based on the consideration that they may be maintaining data in a better manner. The distribution of sample units over the survey locations was done based on the concentration of production activities in that location. For example, the number of sample rightholders and sellers related to cinematographic works and sound recordings are more from Mumbai as majority of the production activities in these segments take place there. However, in the case of endusers, the total sample respondents are evenly distributed over all six survey locations based on the consideration that the purchase of copyrighted products could be expected to take place almost uniformly among the selected cities chosen for survey.
9. Canvassing of questionnaires took place in six major cities of India namely Mumbai, Calcutta, Delhi, Chennai, Bangalore and Hyderabad. Even though copyrighted products are produced and used all over the country, the intensity of use and therefore the tendency towards copyright violations is generally concentrated in urban centres compared to their rural counterparts. Therefore, we selected the six major urban centres mentioned above for conducting the field level survey. In any case, an extensive coverage of all the urban and rural locations is beyond the scope of the study, because of time and cost constraints.
10. Field survey was undertaken during June - August 1997. The survey covered all the target groups mentioned earlier. In most of the cases personal contacts were established with the sample respondents by the NPC consultants and \or field investigators. In some cases where the final consumers (e.g. organisations such as software users, hotels) are spread far and wide in the country, questionnaires were mailed to the target respondents. Thus, structured questionnaires were mailed to about 2000 users (organisations) of computer softwares and about 300 hotels (3 star and above). The hotels were contacted personally also seeking information on copyright violations relating to cinematographic works and sound recordings. Besides these, the copyright enforcement cells (crime branches) of all the States and UT's were contacted through mailed questionnaires. But responses were received from only 13 states/UTs.
11. The overall response from the field survey was satisfactory. Against the target number of 1420, we received responses from 1329 sample respondents. The success rate is about 94 %. In the case of music companies, however, the response has been rather poor. We could receive only 14 filled in questionnaire in this category against a target of 30. The city wise response rate is the highest in Chennai 107%) followed by Hyderabad (105 %) and Bangalore (95%). The detailed break up of responses received against the target numbers is presented in Table1.
12. Some international agencies like WIPO, were also contacted to know about the extent of piracy in various segments and methodologies adopted to arrive at the same. The list of such agencies is given in Annexure 3. However, only few of them responded to our queries.

Limitations

The present study, being the first of its kind in India, suffers from certain limitations. The first and the foremost is the non-availability of any reliable database on the country's copyright industries. The study had the handicap of starting from almost a zero base in this respect, except to some extent in segments like computer software and sound recordings. The attempt to gather information from alternative sources mainly through questionnaire survey also did not meet with the desired success. Even though the overall response from the field survey was 94 per cent, quite a large number of filled-in questionnaires did not mention of crucial information like investment, production, sales etc., which were required to estimate market size as well as extent of piracy. Besides, some of the rightholder groups notably the music companies and a number of copyright industry associations such as the IMI, Film Federation of India etc. did not return us the filled-in questionnaires in spite of several visits being made to their premises by NPC consultants and/or the field investigators. Apart from being non co-operative, some of the respondents in the field survey particularly the sellers of audio/video products, turned hostile to the study team based on the suspicion that the information shared would be passed on to other government machinery e.g. the sales tax department and the police. The non availability of sample frame in the case of some of the copyright segments made the sampling task complex. The resultant estimates derived from the analysis of the responses could be treated as indicative of the magnitude of the piracy phenomenon rather than a true representation of the reality, in the case of some of the copyright segments. More details of the limitations of the study are mentioned in the sections dealing with specific copyright segments.

Table1: Number of Samples and Responses Received from Different Target Groups

Target Group	Delhi		Mumbai		Chennai		Calcutta		Bangalore		Hyderabad		Total		Percent Achieved
	T	A	T	A	T	A	T	A	T	A	T	A	T	A	
Book Publishers	40	39	5	4	15	16	25	17	10	11	5	5	100	92	92.0
Book Sellers	40	37	20	20	30	30	30	24	15	15	15	15	150	141	94.0
Endusers of Literary Work	20	20	20	20	20	20	20	20	20	20	20	20	120	123	102.5
Music Cos	2	0	16	1	4	6	5	4	1	1	2	2	30	14	46.7
Sellers of Audio Products	30	30	25	25	25	34	30	13	20	19	20	20	150	141	94.0
Endusers of Audio Products	20	20	20	20	20	24	20	19	20	20	20	25	120	128	106.7
Film Producers	-	-	25	25	10	18	5	4	-	-	10	10	50	57	114.0
Video Film Producers	5	0	10	10	4	7	3	3	-	-	3	3	55	23	41.8
Sellers of Video Cassettes	15	15	15	14	15	21	15	4	15	14	15	15	90	83	92.2
Cable Operators	20	20	25	25	15	17	10	7	10	10	10	10	90	89	98.9
Endusers of Video Cassettes	20	21	20	20	20	23	20	22	20	22	20	23	120	131	109.2
Software Cos.	4	0	1	0	-	-	-	-	-	-	-	-	5	0	nil
Sellers of Computer Software	25	24	25	25	25	25	10	5	45	35	20	20	150	109	72.7
Endusers of Computer Softwares	20	5	20	21	20	20	20	10	20	20	20	21	120	97	80.8
Public Performers	10	10	30	32	20	20	20	20	10	9	10	10	100	101	101.0
Total	271	241	277	262	243	259	233	172	206	196	190	199	1420	1329	93.6
Percent Achieved		88.9		94.6		106.6		73.8		95.2		104.7		93.6	

Note: T= Target A = Achieved

STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter II

COPYRIGHT PIRACY: THE BACKGROUND

Introduction

The world today has entered into an era of instant communication. A person sitting in the remotest corner of India can enjoy live performance taking place in the far away places like America or Africa, thanks to electronic (parallel) media. Telephone and fax have made it possible to communicate oral or written messages across the globe within seconds. The computer-aided communication technologies such as E-Mail and Internet have added altogether a new dimension to today's communication process by making it more speedy, informative and economical. The ways through which different types of information can be communicated have also undergone a sea change. These days a film song can be put in or accessed by a single device alongwith a textual message and even a painting. While all these have made communication among people more effective and efficient both in terms of time and cost, they pose the greatest threat to the copyright world. Modern communication channels, being intensively relying on a variety of copyrighted products, are liable to be pirated in large scale, if adequate precautions are not exercised.

Copyright is the right given by law to the creators of literary, dramatic, musical and a variety of other works of mind. It ordinarily means the creator alone has the right to make copies of his or her works or alternatively, prevents all others from making such copies. The basic idea behind such protection is the premise that innovations require incentives. Copyright recognises this need and gives it a legal sanction. Moreover, commercial exploitation of copyright yields income to the creators and thus making pecuniary rewards to individual's creativity.

The origin of copyright had a link with the invention of printing press by Gutenberg in the fifteenth century. With the easy multiplying facility made possible by the printing press, there was voluminous increase in the printing and distribution of books which ,in turn, led to adoption of unfair practices such as unauthorised printing by competing printers.

Though piracy was born by the end of the fifteenth century, it was only in 1710 the first law on copyright in the modern sense of the term came into existence in England. The law which was known as 'Queen Anne's Statute' provided authors with the right to reprint their books for a certain number of years. The 1710 law was confined to the rights of authors of books only, and more particularly the right to reprint. It did not include other creative works such as paintings, drawings etc. which also by that time became targets of piracy, in addition to other aspects relating to books (e.g. translation, dramatisation etc.) To overcome this problem a new enactment namely 'Engravers Act' came into existence in 1735. There followed a few more enactments in the subsequent periods and ultimately Copyright Act 1911 saw the light of the day.

Developments in this regard also took place in many other advanced countries, notably among them being France, Germany and the USA. In France a copyright decree was adopted in 1791 which sanctioned the performing right and another decree of 1793 established author's exclusive right of reproduction. In Germany author's rights were recognised by a Saxon Order dated Feb 27, 1686. In America the first federal law on copyright, the Copyright Law 1790 provided protection to books, maps and charts.

Copyright and National Economy

Besides protecting creative potential of the society, copyright contributes to a nation on economic-front as well . The copyright based industries together generate huge employment in the country of its origin.

The national exchequer benefit from the contribution made by these industries in the form of excise duty, sales tax, income tax etc. from the production and sale of copyrighted products. Given the natural demand for such products from across the national boundaries exports help consolidate country's foreign exchange reserves position.

While there is no two views on the economic importance of copyright, it is not easy to assess it properly. The first and the foremost difficulty arises in defining the copyright based industries. In simplistic term copyright industries include all those activities which directly or indirectly depend on copyrighted materials for their commercial success. But the range of activities that come under the subject of copyright is so wide that the task of defining the copyright industry becomes difficult. These industries are drawn from a large number of different industry classifications and they are also not readily identified as an industry in the usual sense. This makes the issue more complicated.

However, there is a general consensus on the activities that come under copyright industries. It include printing and publishing of books, newspapers, journals & other periodicals, production and sale of audio products (Cassettes/CDs), production & distribution of cinemas, videos and cables, creation of computer softwares & databases and their distribution, radio and television broadcasting, advertising, photography, dramatic and musical performances etc. The list is not exhaustive. But the present study is confined to only the main segments of the copyright industry and covers cinematographic works (including video), sound recordings, literary works (mainly book publishing), computer softwares and performances.

The economic importance of copyright had been amply illustrated by a number of studies undertaken in the past in various parts of the world, notably in USA, Germany, Australia, U.K., Sweden and some other developed countries. For example, a study conducted in 1993 for the U.S.A. showed that the core copyright industries comprising motion picture, computer software, music & recording and book publishing industries accounted for \$ 238.6 billion in value added to the US economy, which approximately accounted for 3.47 % of the country's Gross Domestic Product (GDP). These industries grew at more than twice the annual growth rate of US economy as a whole between 1991 and 1993 (5.6% as against 2.7% for the economy as a whole). The total copyright industries taken together (i.e. core industries plus those distribute copyrighted products and other products those depend on wholly or principally on copyrighted materials) employed more than 5.7 million workers (about 4.8% of total U.S. workforce) and accounted for approximately 5.69% US GDP in 1993.

In India, no estimates are available to ascertain contribution of copyright based industries to the national economy. However, given the rich cultural background and huge population of the country, it is believed that copyright industries collectively contribute enormously to the economy. India is the largest audio cassette market in the world in terms of number of units sold. In 1996, India sold more than 350 million audio cassettes & CDs and the industry's sales turnover stood at Rs.105,605 million. India's software industry is showing a phenomenal growth. During 1996-97, the software industry in India with its size of Rs.63,100 million achieved a remarkable growth rate of above 50% over its previous year's performance. During the same period India could export softwares worth Rs.39,000 million and the software industry provided employment to more than 160,000 people.

The publishing industry is also quite large in the country. About 11,000 publishers are engaged in producing more than 57,000 new titles every year, of which about 22% is published in English language. In 1995-96 India exported Rs.1120 million worth of books and other printed material. A sizeable portion of this (about 29.1 percent) went to advanced countries in the Europe. The print media in India comprising daily newspapers and numerous other periodicals e.g. weekly, monthly and annual journals/magazines is huge. In 1997, it had a total circulation of 10,57,08,191 and the turnover from print media is estimated to be as high as Rs. 8000 crores (table 2.1). The other core copyright industry namely film and video, also occupies an important place in the country. Film is considered as one of the best means of entertainment for the common people. India annually produces more than 600 films in major languages such as Hindi, Telugu, Tamil, Malayalam & Kannada. The demand for cable & satellite TVs are also on the rise. It is estimated that during 1996 cable connection in the country had reached about 20 million houses covering approximately 10 percent of the total households in the country.

Copyright and International Relations

The scope of copyright is not confined merely to the arena of creativity and its economic exploitation in the country of its origin. It has emerged as a major factor in international relations. In the recent past, the trade relations between the US and China deteriorated considerably over the issue of protection of Intellectual Property Rights (IPR). The US maintained that China is the worst violator of IPRs and the loss to the US economy is more than 2 billion dollars annually because of violation of its IPRs in China's territory. The dispute took a serious turn when US trade groups wanted trade relations with China to be stopped completely. It was only after the intervention of the heads of both the countries any further deterioration was averted.

The importance of IPRs in general and copyright in particular in the relationships among the countries can be comprehended clearly from the above example. The Sino-US piracy dispute, though a recent one, is not the only case. With the advancement in technologies copyrighted items started flowing freely across the boundaries and piracy assumed an international dimension. Since the nineteenth century the countries felt the necessity of having copyright protection in foreign soil as well. As a result, negotiations were held between countries which in some cases resulted in the conclusion of multilateral treaties.

The first multilateral agreement on copyright is the Berne Convention which was concluded in 1886 and was meant for providing protection to literary and artistic works. A country joining the Convention has to provide copyright protection to literary and artistic works of member countries in its own territory and also entitled for enjoying reciprocal protection from others. The Berne Convention was revised seven times in 1896 (at Paris), 1908 (at Berlin), 1928 (at Rome), 1948 (at Brussels), 1967 (at Stockholm) and 1971 (at Paris) and finally in 1978. Among these, the 1971 revision (the Paris Act) is of particular importance to the developing countries as it provided special concessions to these countries in making translations and reproduction of foreign literary works for educational purposes. Ninety countries are at present member of the Berne Convention.

The post Second World War era saw the emergence of the need for protecting copyright on an universal basis. Till then countries in the North America were not party to the Berne Convention and copyright protection in these countries were governed by various national and regional agreements. In August, 1952 the Intergovernmental Copyright Conference was convened in Geneva which led to the adoption of another historical copyright convention, namely the Universal Copyright Convention (UCC). The UCC is not a substitute for the Berne Convention. Rather it tried to establish the link between the countries on the Bern Union and those in North America. India is a member of both the Berne Convention and the UCC.

In recent years, the issue of IPRs figured prominently in the Uruguay Round of General Agreement on Tariffs and Trade (GATT). It is for the first time the GATT went beyond its usual mandate to include the IPRs. The Trade Related Aspects of Intellectual Property Rights (TRIPS) is set out in Annex 1C of the Final Uruguay Round Text. The text comprises 73 articles grouped in seven different parts. The standards for specific IPRs such as copyright and neighbouring rights are discussed in part II.

Copyright in India

The copyright in India has travelled a long way since it was introduced during the British rule. The first law on copyright was enacted in the year 1847 by the then Governor General of India. When Copyright Act 1911 came into existence in England, it became automatically applicable to India, being India an integral part of British Raj. This act was in force in the country until after independence when a new copyright act (the Act of 1957) came into effect in 1958. Thereafter the Act has undergone many amendments. The latest in the series is the 1994 Amendment, which came into force in May 1995.

The Indian Copyright Act confers copyright on (i) original literary, dramatic, musical and artistic works, (ii) cinematographic films and (iii) sound recordings. The word 'original' means that it should not be copied

from other works or alternatively it should be the outcome of independent efforts. The Act empowers copyright holder(s) to do or authorise doing a number of activities. The important among these are:

- a. to reproduce the work in material form
- b. to publish the work
- c. to perform the work in public or communicate it to the public
- d. to produce, reproduce, perform or publish any translation of the work
- e. to make any cinematographic film or a record in respect of the work
- f. to make any adaptation of the work
- g. to do, in relation to a translation or an adaptation of the work, any of the acts specified to the work in sub clauses to (a) to (f).

The above mentioned rights are 'exclusive' in the sense that the creator (or rightholder) alone has the right to enjoy these to the exclusion of others. The author by virtue of his creation becomes the 'owner' of the copyright in the work. However, there can be exceptions to this as in the following two cases :-

- a. The creator may be employed by some one and having been employed to create a work, the rights belong to the employer - not the creator(s), and
- b. The creator may transfer his copyright by a document in writing to another person. This is known as assignment.

The grant of copyright is a limited monopoly. It is limited in the 'scope' of the rights granted and in terms of 'time'. In India, copyright on a literary work is provided for the lifetime of the author plus sixty years after his death. In case of joint authorship, the sixty years period is calculated from the beginning of the calendar year following the year in which the last (surviving) author dies. Copyright with respect to photographs, cinematographic works and sound recordings spans for 60 years of its first publication. In order to strike a balance between the society's need for access to knowledge and the need to rewarding creators, limited uses of copyright protected works are permitted without authors consent. These are called 'fair use' of copyright. Section 52 of Indian Copyright Act permits certain activities which do not amount to infringement. Important in this 'exception list' are reproduction of literary, dramatic, musical or artistic works for educational purposes, e.g. research, review etc., and reporting in newspapers, magazines and periodicals etc.

The Copyright Act of India provides rightholders a dual legal machinery for enforcing their rights. The enforcement is possible through (1) the Copyright Board and (2) the courts. Legal remedies include imprisonment and/or monetary fines - depending upon the gravity of the crime. Sometimes remedies also include seizure, forfeiture and destruction of infringing copies and the plates used for making such copies. The 1984 amendment has made copyright infringement a cognizable non-bailable offence. Under the provisions of the Act any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of six months imprisonment which may extend to three years and a fine between fifty thousand and two lakhs rupees. The 1994 Amendment has incorporated a special penal provision for knowingly using an infringing computer software. The punishment provided for this act is imprisonment for a term of seven days to a maximum of three years and a fine between fifty thousand and two lakh rupees. In case the infringing copy of the computer software is used not for pecuniary gain or in the course of trade or business, the imprisonment can be relaxed and fine can be maximum of fifty thousand rupees.

Beside amending the Copyright Act the Indian Government has taken few more steps in strengthening the enforcement in the country. A Copyright Enforcement Advisory Council has been set up for advising the Government on measures for improving the copyright enforcement. Training programmes and seminars are arranged for police personnel. Necessary legislation was made for bringing video shops, cable operators under regulation. State governments are encouraged to set up IPR cells for exclusively dealing with copyright and other IPR violations. In spite of all these, enforcement of IPR violations, particularly copyright violations has not been strong enough in the country and piracy prevails exits in all types of copyright works notably musical works, video films and softwares.

Copyright Piracy

Copyright piracy is a phenomenon prevalent worldwide. Piracy means unauthorised reproduction, importing or distribution either of the whole or of a substantial part of works protected by copyright. The author of a copyrighted work, being the owner, enjoys certain exclusive rights with respect to his or her works. These include right to reproduce, to publish, to adopt, to translate and to perform in public. The owner can also sell, assign, license or bequeath the copyright to another party if he wishes so. If any person other than the copyright owner or his authorised party undertakes any of the above mentioned activities with respect to a copyrighted product, it amounts to infringement of the copyright. Copyright piracy is thus like any other theft which leads to loss to the owners of the property. Besides economic loss, piracy also adversely affects the creative potential of a society as it denies creative people such as authors and artists their legitimate dues.

There are different ways through which piracy takes place. A computer software is pirated by simply copying it onto another machine not authorised for its use. Book piracy takes place when a book is reproduced by someone other than the real publisher and sold in the market. A performer's right is violated when a live performance of an artist is recorded or telecasted live without his/her permission. In a cinematographic work piracy generally takes place through unauthorised reproduction of the film in video forms and/or displaying the video through cable networks without taking proper authorisation from the film producer (the right holder). In fact, there are numerous other ways through which piracy of copyrighted works take place. The nature and extent of piracy also vary across the segments of the copyright industry. It is, therefore, necessary to discuss the nature and extent of piracy problems segment wise. Such an attempt is made in the following paragraphs.

Literary Works

Piracy of literary works means illegal reproduction of books and other printed materials and distribution/selling of these for profit. In India, the journals/magazines and other periodicals are not pirated much. Here piracy of literary works generally takes place in three principal ways. : 1) wholesale reprinting of text and trade books 2) unauthorised translations and 3) commercial photocopying of books/journals. Many a time piracy takes the form of publishing fake books, where authors shown in books are not the real authors.

Book piracy, in India, primarily depends on two factors, namely, the price of the book and its popularity. These two factors positively contribute to piracy. Piracy is generally confined to foreign and good indigenous books. Because these books are demanded in large quantities and are also priced high. The types of books pirated mostly are medical, engineering and other professional books, encyclopaedia and popular fictions. The piracy is also wide spread with respect to books published by National Council of Educational Research & Training (NCERT), National Open School and Board(s) of Secondary Education. These books even if priced low are having large demand.

The pirates first identify books to be pirated and then get the same printed in large numbers through unscrupulous printers. The pirated books are normally sold with other (legitimate) books by usual retailers identified by the pirates. The number of printers/sellers involved in piracy is generally less. The piracy is also seasonal in nature. The entire process of printing through selling get over within a month or two.

Besides the above, piracy in the form of mass photocopying of books is largely prevalent in India, especially in and around educational institutions. Students borrow books from libraries and then get these photocopied from the photocopier kept at the institution where from the books are borrowed. While copyright law permits photocopying of literary works for limited private uses such as research, review or criticism what happens, many a time is that the entire book is photocopied including the cover pages. In the process student community and the photocopy operators gain, but the publishers lose a huge revenue. Unfortunately, the institutions turn a blind eye to this.

Sometimes even some renowned publishers involve themselves in piracy by way of selling books beyond the contract period. This happens when an Indian publisher buys re-print rights from some foreign publishers and keeps on selling books even after the expiry of the period mentioned in the agreement. This is done in the pretext of clearing old stock. Thus an impression is created that books are printed during the contract period but in reality are sold beyond the contract period just to exhaust the old stock.

The other way through which piracy takes place is printing/selling of books meant for review. Many foreign publishers send books to India for review. The pirates somehow get access to such books and make quick prints to sell in Indian market. All these happen much before the authorised Indian distributors get their copies for selling in India. Naturally, the distributors' sales get affected adversely.

Piracy of literary works leads to loss of revenue to publishers (in terms of less sales), authors (non-payment of royalty) and the national exchequer (non-payment of income tax and other levies payable by publishers/authors). While it is believed that book piracy is high in India, it is very difficult to arrive at an estimate. Only information from secondary sources (e.g. publishers, police records etc.) can be gathered to form a rough idea on piracy. But that would reflect only the tip of the iceberg. In terms of percentage, it is believed that about 20-25 percent of books sold (in number) in the country are pirated. Actual monetary loss due to piracy is anybody's guess.

Anti piracy drive with respect to books is generally weak in India. The industry associations are not very active in this regard. Whatever action is taken is done by the respective publishers. The enforcement machineries (such as police) are also not very active in controlling piracy for a variety of reasons. The public awareness is also very poor.

Besides the above, Indian books are also pirated abroad, especially in the neighbouring countries such as Pakistan, Bangladesh etc. India exports books to a large number of countries including developed countries from Europe. During 1995-96 India exported books to the tune of Rs.1120 million. Exports earnings could have been much more in the absence of wide spread piracy of Indian works abroad. Similarly, foreign literary works are pirated in India. Given the low and rapidly declining value of rupee in terms of hard currencies good foreign books (e.g. US books) cost very high in India. As a result majority of the readers individually can not afford to buy these books. In such circumstances, piracy provides the escape route, because a pirated foreign book in India can be as cheap as half the original price or even less. The International Intellectual Property Alliance (IIPA) estimated that in 1995 trade loss due to piracy of US books in India amounted to \$ 25 million.

Sound Recordings

The sound recording industry faces three types of piracy. First, there is a simple way by which songs from different legitimate cassettes/CDs (and thus different rightholders) are copied and put in a single cassette/CD. These are then packaged to look different from the original products and sold in the market. Second, there is counterfeiting, when songs are copied in to and packaged to look as close to the original as possible using the same label, logos etc. These products are misleading in the sense that ordinary end users think that they are buying original products. The third form of music piracy is bootlegging, where unauthorised recordings of performance by artists are made and subsequently reproduced and sold in the market. All these happen without the knowledge of the performers, composer or the recording company,

Earlier the music piracy was confined to cassette tapes only. With the advent of CDs in the eighties it was thought that piracy of sound recordings would become things of the past. But in reality CD piracy is the greatest threat to today's music world. Infact, with CDs piracy has got an international vigour. Fortunately or unfortunately, CD industry is still in it nascent stage in India. At present CD market is just 2 to 3 percent of the overall music market in the country. CDs have not taken off mainly because of high prices. In India CDs are sold on an average price ranging between Rs.150 to Rs.550. Considering price

of cassettes, the price differential (between cassettes and CDs) is quite high and prohibitive for ordinary music lovers.

Cassette piracy in India is as old as the cassette industry itself. Govt. policy put music industry in the small scale category and volume of a record company's cassette production was restricted to 300,000 units per annum. This led to a wide gap in the demand supply front which was ultimately bridged by the pirates. Even if music piracy percentage has declined from a high of 95% in 1985 to about 30% in 1995, India is the world's sixth largest pirate market in value terms (table 2.2) but third in volume terms (table 2.3). In 1995, more than 128 million pirated cassettes/CDs were sold as against the sale of 325 millions of legitimate audio products. The sale of pirated cassettes/CDs (both in number & value) is also on the rise in the country. However in contrast to many developed countries piracy of CDs is low in India. At present CD piracy is below 10% level.

The popularity of Indian music has gone beyond the national boundaries. There is large demand for Indian music in the neighbouring countries such as Pakistan, West Asia as well as far off countries like USA, Canada and the UK. Indian music is also pirated in some of these foreign countries, the notable among these being Pakistan and the West Asia. Similarly, foreign audio products are also subject to piracy in Indian soil. As per IIPA's estimate the trade losses due piracy of American audio products alone in India was to the tune of US \$ 10 million in 1995.

Cinematographic Works

Copyright in cinematographic works is more complex in nature as there exists a variety of copyrights in a single work and many a times these rights are also overlapping. The first right in a film is the 'theatrical right' i.e. the right to exhibit films in theatres. The producer is the copyright holder. The distributors buy theatrical rights from producers and then make some arrangements with the theatre owners for actual exhibition to the public. The theatrical rights are limited by territory and time. Films are also released in video cassettes. In fact, these days viewing film at home has become more popular than seeing the same at theatres. The producers sell the video rights to another party, who makes video cassettes for sale in the market. These cassettes are meant for 'home viewing' only i.e. one can buy a copy of it for seeing at home with family members and friends. Such cassettes can not be used for showing the film in cables or through satellite channels. Because showing films in cables or satellite channels require acquisition of separate sets of rights namely 'cable rights', and 'satellite rights'.

A cable network is generally limited to local areas as it requires receivers (viewers' TVs) which are to be physically connected through cable wire to the operators. In case of satellite channels, however, there is no such physical limit as transmission takes place through air and received at the users end by dish antenna(s). Interestingly in India satellite transmissions, in most of the cases, reach to endusers through cable networks only.

The cable networks in India work in a two-tier system. At the top there are main operators who transmit their programmes through numerous small local operators on a franchise basis. As mentioned earlier programmes of satellite channels reach the viewers through cable networks. The (main)cable operators do not pay anything to satellite channels for showing latter's programmes in the network, except for pay channels (e.g. ESPN, Zee Cinema, Movie Club etc). The small cable operators, however, share their incomes with their respective main operators. The revenue for small operators come from the subscription of viewers.

Music is an integral part of any cinematographic work. In India, film sound tracks account for almost 80% of the total music market. Even if film producer has the copyright in the film, the music included in the film is the outcome of efforts undertaken by a separate group of creative people such as the composer, lyricists etc.- each of which is a rightholder of its own right. Generally the producer sells this right to a music company who makes cassettes/CDs of such songs for sale in the market. The incidence of a large number of rights in a single work and the involvement of a variety of right holders make the

copyright issue very complicated in cinematographic works.

Piracy of cinematographic works takes two principal forms, namely 'video piracy' and 'cable piracy'. However, piracy in one form can spill over and affect the revenues of the other. Video piracy takes place when a film is produced in the form of video cassette without taking proper authorisation from the right holder i.e. producer. Many times producers of films sell video rights to another party (generally after six weeks or more of release in theatres) who makes video cassettes for selling or lending. The video cassettes kept for sale are meant for home viewing only. Any commercial use of such cassettes like in video parlours or in cable networks amounts to copyright violation. Two types of video piracies are common in India. One, where video right for films has not been sold at all (by the producer) but video cassettes are available in the market for buying or borrowing. And two, when video right is (legally) sold to a party, but cassettes are made and sold by others (pirates) as well.

Cable piracy is unauthorised transmission of films through cable network. As mentioned above, showing a film in a cable network requires acquisition of proper authorisation from the rightholder. But many a time, films , especially the new releases, are shown through cables without such authorisation, which tantamounts to piracy.

Piracy is a rare phenomenon in satellite channels because such channels are organised and generally do not show films without buying proper rights. But there are cases where right of one channel operator is violated by others.

It is very difficult to give even a rough estimate of video piracy in India because information in this regard is scanty and not accessible. But video piracy in both the forms are quite rampant here. Besides this, piracy through video parlours is largely prevalent normally in the rural India or smaller towns. Perhaps more widespread and damaging is the cable piracy. These days almost all new releases are shown in the cable simultaneously with the exhibitions in theatres . As per a resolution adopted by the Film Makers Combine, video release of a film can be made only after six weeks of theatrical release. But cable operators show such films much before the stipulated time period. This is a clear case of cable piracy and its extent is considerably high in country.

All parties involved in the legitimate transaction of films - from the producers to the theatre owners, lose heavily because of widespread video or cable piracy. The Government also loses because pirates' activities do not bring in any revenue such as entertainment tax at theatres and excise duty and sales tax at the points of legitimate production/selling.

Computer Software

The piracy in computer software simply means copying and distribution of computer programmes without the copyright holders permission. The software industry, generally, consists of creation and distribution of computer programmes. Creation of computer programme is similar to writing a novel or other literary works and it requires intellectual skill and training in software programming. Though a software can be written by individual programmer, most of the major software's are the outcome of group efforts, where medium to large sized teams spend months or even years to write a complete programme.

Distribution of computer programmes in most of the developed countries occurs through a two-tiered system of wholesalers and dealers, similar to that of many other industries. The software publishers make a substantial amount of their shipments to a small number of distributors in any given country, who maintain well-stocked warehouses and can respond quickly to orders from hundreds or thousands of individual retail dealers or resellers. The dealers market and provide the software products directly to end-users of computers. The end users can be individuals, commercial enterprises, educational institutions and government establishments. Sometimes, software publishers also deal directly with a small number of the largest dealers or resellers in an individual country. Licensing is a common practice in software industries. The publisher of a software generally authorises its end users through the

mechanism of the shrink-wrap license contained in the package.

Like other copyright based industries, the software industry also faces several forms of piracy. In fact, piracy in software is more than in others because it is relatively easy to copy a software in computers especially in PCs and for all practical purposes the pirated version looks and performs in an identical manner as the original. The five principal types of software piracy involve (1) counterfeiters (2) resellers (3) mail order houses (4) bulletin boards and (5) end-user piracy. Counterfeiters are relatively new phenomenon in the software industry and most flagrant software counterfeiters produce disks, documentation and packaging that look very similar to those of the software publisher. Reseller piracy occurs in the software distribution channel, when distributors or dealers either make copies of software onto floppy disks, or the internal storage device or the "hard disk" of computers that they are selling, without authorisation from the software publisher. Mail-order piracy consists of the unauthorised copying of software onto diskettes, CDs, or other media and distribution of such software by post. Bulletin board pirates engage in unauthorised reproduction and distribution of software via telecommunication. Typically, this involves an individual computer user who has installed a number of software programmes on his computer, and who allows other users to connect to his computer through the telephone line via modem and copy the programmes onto discs. The pirate in most cases has copied the programme onto his own computer without authorisation of the copyright holder's consent is also a copyright violation. End-user piracy takes place when a user copying software onto hard disks of more computers than the number authorised by the publisher. This form of piracy perhaps takes place on a wider scale than other forms because end-users often make substantial copies of the softwares possessed by them and then distribute or exchange the same. Though this harms the interests of rightholders, endusers definitely gain out of it because this leads to obvious economic advantages for them.

Identifying a pirated software is not an easy task. This is primarily for two reasons. First, as mentioned earlier there is hardly any difference between an original software and a pirated software, once it is copied onto a hardware. Second, detection of piracy requires access to software or hardware or both, which may not be feasible in many cases. However, there are some ways through which an unauthorised copy of a software can be identified. Many a times publishers supply softwares in packaged form which contain software on diskettes with printed labels giving manufacturer's name, full product name, version number, trade mark and copyright notices. Besides these, the packages also typically, contain professionally printed documentation, a keyboard template, enduser license and registration cards and other printed materials pursuant to a standard bill of materials that would apply to all packages of that particular product. In such cases, the most simple pirated copies may be spotted easily on "black-disks", which do not contain manufacture's label but rather type written, hand-written or crudely printed labels indicating the programmes contained on the diskettes. In case of installed software it is more difficult to identify a pirated copy. Once a computer is searched, the programmes copied onto it can be found and identified. Then users can be asked to produce the proof of original possession (e.g. original packages, documentation, purchase record, license cards etc.) of such programmes. If users fail to do so, there is a prima facie case of infringement. In some cases even test purchases can be made to secure evidence of piracy.

The extent of software piracy and losses due to such piracy cannot be given in exact quantitative terms though it is believed that piracy in this sector is wide spread. In Europe alone the software industries lose an estimated \$ 6 billion a year. In fact, Europe holds the dubious distinction of accounting for about 50 per cent of world wide losses from software piracy, more than any other region including the number two Asia. According to a study of Software Publishers Association, a US based body, losses due to piracy of personal computer business application softwares nearly equalled revenues earned by the global software industry. In 1996, piracy costed the software industry US \$ 11.2 billion, a 16 percent decrease over the estimated losses of US \$ 13.3 billion in 1995. The country-specific data show that in 1996 Vietnam and Indonesia had the highest piracy rate of 99 per cent and 97 percent respectively, followed by China (96%), Russia (91%), Thailand (80%) etc. In India software piracy is costing the IT industry quite dear. According to a survey conducted jointly by Business Software Alliance (BSA) and NASSCOM in May 1996, total losses due to software piracy in India stood at a staggering figure of about Rs. 500 crores (US \$ 151.3 million) showing about 60 per cent piracy rate in India.

Conclusion

Piracy of copyrighted products is a problem as old as the copyright itself. Only in recent years it has received prominence, especially in the academic and policy circles. In India, no official estimate is available to indicate the extent of piracy and associated economic loss. But perceptions are that the piracy is a big problem.

The main reasons behind copyright piracy are poor enforcement and lack of awareness on copyright matters. The copyright laws of India are as good as those of many advanced countries in Europe and America, where concern for copyright is at a high level. Punishments prescribed for violators are stringent and comparable to those of many countries in the world (Table 2.4). But laws alone can do little justice unless implemented properly. The enforcement mechanism is weak in the country.

Even police personnel, who can play a major role in combating piracy, are not fully aware of various provisions of the law. There is also lack of adequate number of personnel who can fully devote to copyright crimes alone. The police is more concerned with usual law and order problems and copyright related crimes are attached least priority.

The awareness level among end-users is also very low. While buying a copyrighted product, majority of consumers do not look at copyright notification (e.g. C or P). As long as price is low (as generally is the case with pirated products) users do not mind buying pirated products even knowingly.

Table 2.1: Turnover from Print Media in India (1997)

Periodicals	Circulation ('000)	Publication Frequency	Av. Price* (Rs.)	Value (Rs. '000)
Daily Newspaper	45914	365	2	33517220
Tri/Bi-Weekly	538	104	5	279760
Weekly	35475	52	15	27670500
Fortnightly	8502	26	30	6631560
Monthly	13442	12	75	12097800
Quarterly	637	4	100	254800
Halfyearly	450	2	150	135000
Annual	750	1	200	150000
Total				80736640

* Arrived at based on discussions with some producers/sellers of periodicals

Source: Computed using circulation figures from the Press in India, 1998 published by the Ministry of Information & Broadcasting, Govt. of India

Table 2.2 : Top Ten Pirate Territories (Value)

Country	Pirate sales in US \$ (million)	Pirate % of total sales	% of world pirate sales
Russia	363.1	62%	17%
USA	279.4	2%	13%
China	168.0	48%	8%
Italy	145.6	20%	7%
Brazil	118.8	10%	6%
Germany	92.2	3%	4%
Mexico	85.3	22%	4%
India	82.1	23%	4%
Pakistan	62.1	94%	3%
France	58.5	2%	3%
T o t a l	1,455.0		68%

Source: International Federation of Phonographic Industry (IFPI), London

Table 2.3 : Top Ten Pirate Territories (Units)

Country	Pirate sales in (millions)	Pirate % of country's total sales	% of world pirate sales
Russia	222.3	73%	23%
China	145.0	54%	15%
India	128.4	30%	13%
Pakistan	75.4	94%	8%
Mexico	70.0	54%	7%
Brazil	62.4	45%	7%
USA	26.6	3%	3%
Italy	21.5	33%	2%
Romania	21.5	85%	2%
Turkey	16.4	30%	2%
T o t a l	789.5		83%

Source: Same as Table 2.2

Table 2.4 Summary and Comparison of Criminal Penalties for Copyright Infringement in Selected Countries

Country	Fines/Penalty	Imprisonment Terms
U.S.A	Upto \$ 250,000 for a first offence of infringement by an individual done in “ Willfully and for purposes of commercial advantage or private financial gain”.	Upto 5 years
	Upto \$ 250,000 for a second offence by an individual.	Upto 10 years
	Upto \$ 50,000 for first offence by an organisation.	Upto 5 years
	Upto \$ 500,000 for a second offence by an organisation.	Upto 10 years
France	6,000 to 120,000 Francs (about US \$ 1070 to US \$ 21,428) for a first offence of infringement.	3 months to 2 years
	Double the above penalties for second offence.	
Poland	Unspecified fines for unauthorised dissemination for purposes of economic gain.	Upto 2 years in jail
	Unspecified fine if the infringer turn the above offence into a regular source of income for a criminal commercial activity and organises or direct such acitivity.	Not less than 6 months and not more than 5 years.
	Unspecified fine for unauthorised fixation or reproduction activity.	Upto 2 years in jail.
	(Reported the maximum criminal fine under the penal code is 250 million zloty (about \$ 11,075)	Upto 3 years in jail.
Hungary	Unspecified fine for infringements causing considerable damage.	Upto 3 years.
	Unspecified fine for infringements causing particularly high pecuniary damage.	Upto 5 years.
Greece	1 to 5 million Drachmas (about \$ 4,050 to \$ 20,485) for infringing acts	Atleast 1 year.
	2 to 10 million Drachmas (about \$ 8,100 to \$ 40,485) applies if the intended profit or damage threatened by infringing acts are particularly large.	Atleast 2 years.
Portugal	The equivalent of between 150 and 250 days for infringements of enumerated acts.	Upto 3 years.
	The above penalty doubles for repeated offence, provided that the offence in question does not constitute an offence punishable by a more severe penalty.	
Singapore	Upto \$ 10,000 for the article or \$ 100,000 whichever is lower.	Upto 5 years
	Upto \$ 6,666 or \$ 66,000 for violation of the reproduction and the display rights and to the sale or importation of infringing copies.	Upto 3 years.
	Upto \$ 50,000 (US \$ 33,335) for violation of the distribution right.	Upto 3 years.
	Upto \$ 20,000 (US \$ 13,333) for making or possession of a “plate or similar contrivance for the purpose of making infringing copies of sound recordings or audio - visual works and for violation of the public performance right.	Upto 2 years.

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STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter III

COPYRIGHT PIRACY IN INDIA

Cinematographic Works

When we discuss copyright in cinema, there are four distinct groups. The original producers of a cinema, who are the sole rightholders, can sell cinematographic rights, Video rights, Cable rights, commercial rights and satellite rights. In the eyes of the law copyright in cinema has five components and each of the five components are divided again into three distinct parts. These are:

1. Cinematic Rights

- Theatrical
- Non theatrical
- Public Video

2. Ancillary Rights

- Airline
- Ship
- Hotel

3. Video Rights

- Home rental
- Home see through
- Commercial

4. Pay TV Rights

- Terrestrial
- Cable
- Satellite

5. Free TV Rights

- Terrestrial
- Cable
- Satellite

It is generally mentioned in the agreement under which of the above the rights are sold. For example, if cinematic rights were sold, the agreement would state whether rights were sold for showing in theatres or other places or for showing to public through video. The agreement would also clearly mention the duration and territory over which one has the right. If one has the right to show only in theatres (mainly the distributors in the case of India) then the buyer does not necessarily have the right to show these movies through video or through any other media to the public. If he does, then it would be a clear

violation of the copyright law. Similar is the situation in case of Pay Vs Non Pay TV rights. A TV company may run Pay TV channel as well as Free TV channel for the public. The TV company might buy right to show a film through its pay TV channels. But if the company showed this film in their free to air channels then it would be a violation of the copyright law. There has been instances where some satellite channels had violated copyright in this manner. However, these instances are not many and account for a very small part of the total violations in cinematographic works including cable and home video violations.

It has been observed from discussions with various producers & distributors of films, video & cable right holders and satellite channels, that copyright violations of films occur mainly in video, cable and commercial rights, i.e. showing movies through video parlours (which at present are prevalent only in the rural India) and at hotels to a large extent. In fact, while interacting with some of the film producers, it was not clear whether commercial rights of films have even been sold at all. Most of the hotels are connected through cable operators while some of them (mainly in the 5 star and 4 star categories) have their own dish antenna and in some cases they show movies through their VCRs. Our discussions on the extent and nature of copyright violations will be mainly related to video Rights, Cable rights and commercial rights only.

Kinds of Copyright Violation (Piracy) in Films

Home Video

Video rights are generally sold for home rental and home see through. In the case of home rental rights, the right holders after producing the cassettes rent these out to the homes for a specified time for which some fees are charged. They mostly arrange these through the video libraries. Similarly, for home see through the video cassettes can be bought from dealers/shops etc. and can be seen at home only. However, in both the cases, these video cassettes cannot be utilised for cable or any other commercial purposes e.g. showing in video parlour, hotels, transport carriers, etc. If the cassettes are used for any of these commercial purposes it would be violation under Indian copyright law. In India, though home rental rights and home see through rights exist as per the law, however in practice the video cassette producers buy rights for home video only. They, in turn, do not produce cassettes exclusively for home rental or home see through. According to them persons can either borrow the cassettes from video libraries or buy from the dealers/retailers to see them at home. However, depending on the popularity of the films, these cassettes are infringed in the sense that mass copies of these are made by the violators alongwith printing of inlay cards, etc. It is very difficult for endusers to know whether they are original or infringed by merely looking at these cassettes. Not only are cassettes infringed, but some are also involved in making back to back copies. These are mainly done at video libraries most of whom have VCRs with them. The video libraries in turn rented/sold these to the customers. These can be easily identified as duplicates since there will not be any inlay card or any certification from the authorities. These kinds of cassettes may at the most have photocopies of the certificate stuck on top of the cassette cover.

Another form of copyright violation in the video is that even if the producers have not sold the right for a film, the same can be seen in cable network as well as cassettes containing such films can be borrowed/bought from video libraries/shops. This takes place mainly in two forms :

1. through laser disc brought from abroad
2. With the help of camera print taken from the movie halls when the movie is in progress.

As per the law, one can bring a laser disc containing movie from abroad for home viewing only. When the films are released abroad these are copied in laser discs and brought back to India from which mass copies in video cassettes are made. Similarly, when the movies are shown in theatre halls, the films are shot clandestinely from the screen with the help of a video camera. Then it is made into mass copies. The prints of such movies are generally of low quality and one can easily identify this while viewing on TV.

Cable TV

Movies are also brought to the homes by the cable network. Since cable network is a commercial venture, movies shown through cable are required to have the authorisation from the right holders. The cable operators violate the provision of the law while showing movies of camera print, home viewing cassettes and infringed copies. More will be discussed with respect to cable right violation in the later part of this chapter.

Commercial Right (Ancillary Rights)

Another form of rights arising in case of cinematographic works is known as commercial rights or ancillary rights. These are rights taken for showing movies through cable or home video that normally, by law, cannot be shown in commercial places. But in India, commercial rights at present are virtually non-existent. Most of the hotels barring some five and four star hotels are connected through cable operators and whichever movies the cable operators are showing through their cables or in house VCRs are shown in the hotels. This can be taken as copyright violation from the point of view of commercial right of movies

Extent of Violation and Economic Loss

Brief about the Film Industry

India produces the largest number of feature films in the world. During the years 1931 to 1996, India has produced 27809 feature films in various languages. The share of Hindi Films was about 29 per cent while that of Tamil and Telugu films, was about 18 and 17 per cent respectively. These three languages accounted for nearly two-thirds of the total films produced till now. About a fourth (25%) of the films produced were in Bengali, Kannada and Malayalam. During 1996, of the total 683 films produced, 126 (18 percent) were in Hindi, 154 (22.5 cent) were in Tamil, 138 (20.2 percent) were in Telugu, 85 (12.4 percent) were in Kannada, and 65 (9.5 percent) were in Malayalam.

The total turnover of the film industry during 1996 was about Rs.2500 crores. This turnover is worked out only from the films shown in the cinema houses. As per the official statistics, there are 12623 cinema houses spread all over the country with an audience of about nine to ten crores per week. Taking the audience of about 9 crores per week, number of persons visiting the cinema houses annually work out to be 468 crores. Even if we take a conservative estimate of only Rs. 5 per seat on an average this works out to be about Rs.2340 crores, i.e. to say about Rs.2500 crores. A 30 percent entertainment tax, would yield about Rs. 750 crores as tax revenue to the authorities.

Copyright Violation by cable operators in India

Brief about Indian Cable Industry

With the liberalisation of the economy, Indian Television was also thrown open to other satellite channels. With this the home entertainment industry has gone through revolutionary changes. The satellite channels are clamouring for an increase in their viewership and are offering varieties of entertainment through their channels. Added to this are the cable networks which have been instrumental in bringing these satellite channels to the homes. Since it is cost prohibitive for an individual to get connection of the satellite channels through dish antenna the households are receiving the satellite channels through cable network only.

There are no reliable estimates of cable and satellite (C & S) households connection in the country. Generally cable operators underplay their figures in order to conceal their revenue earned from the fees collected from their connected households. According to the studies conducted by Margsat, NRS '95, IRS '96 for Zee Television, it was estimated that there were about 20.8 million cable households in India as on

1996, covering about 12 percent of the total households in the country. Because of the high returns compared to the investments made, large industrial groups including multinationals are showing great interest in cable industry. This may be the reason behind most of the small independent operators which existed about 2 years back had ceased to operate or had become franchisees (sub operators) of large cable operators like Siticable and Incable in all major cities, the exception being Chennai and relatively small cities.

Cable Right Violations

There are only a few companies which buy cable right from the producers (in case of Hindi films, there are two main companies). These companies after procuring the rights produce the video cassettes, which, in turn, rented out to the cable operators on a license fee basis. On an average they charge Rs.5 per connection per month for 30 movies. These cassettes can not be bought from the market.

The cable right violations of movies can be classified into following categories;

- i. Movies for which cable rights are not sold at all sometimes get transmitted in the cable network.
- ii. Movies for which only home video rights are sold are relayed to the public in cable network (quite common among the small independent operators and the franchisees of big operators)
- iii. Someone buys cable rights and after producing the cassettes sends them to his members/subscribers on a license fee basis. Some cable operators do not subscribe to this but continue to show these movies in their cable network by borrowing from video libraries/buying cassettes from market which are only for home viewing.
- iv. Infringed home video copies (popularly known as duplicate video cassettes) are also relayed in the cable network.

The estimate of 20.8 million cable and satellite (C&S) households by Zee Television works out to be about 49.6 percent of the total urban households in India as on 1997. This seems to be a tall order. It was observed that 28.5 per cent households in Delhi, 40.8 percent households in Mumbai and 25 percent households in Chennai have cable connections. This shows that Zee Television estimation on C&S households for all India is higher than even cities like Mumbai and Delhi where it is believed that the concentration of cable viewership is maximum in the country. Therefore, for estimation of cable piracy and associated economic loss we opt for an alternative measure of cable households in the country. Our estimation is based on the percentage of total urban households in India on the assumption that only urban households have access to cable television.

The estimation is worked out for the cities having population of one million or more. The assumption is that it is only in these cities there exist severe competition among the cable operators. As a result, the cable operators try to woo as many customers as possible by providing various programmes through their VCR channels. Many of the franchisees and small independent cable operators offer the new releases for which cable rights or in some cases even home video rights are not sold at all.

As per the Census 1991, 23 cities each had a population of one million or more. As per our estimation based on the growth rate of urban population between 1981 and 1991, another 4 cities would have been added to this list by 1997. The city wise estimated population for these 27 urban centres are presented in table 3.1. As mentioned earlier, in the year 1997 about 28.5% households in Delhi, 40.8% households in Mumbai and 25% households in Chennai had access to the cable television. We assume that in the remaining 24 cities also about 25 per cent households are connected to the cable network. Based on an average size of 5 persons per household and the above information and assumptions on cable connectivity in the country, it can be estimated that during 1997 about 50 lakhs of households located in 27 cities had cable connection (**table 3.1**).

Table 3.1 : Number of Households and Population in 27 Cities

Cities	Population in 1991 (lakhs)	Estimated population (Lakhs) in 1997	No. of household in 1997 (Lakhs)	No. of C & S Homes in 1997 (Lakhs)
Greater Mumbai	125.96	153.4	30.7	12.5
Calcutta	110.21	126.9	25.4	6.3
Delhi	84.19	106.0	21.2	6.0
Chennai	54.22	62.28	12.5	3.1
Hyderabad	43.44	53.9	10.8	2.5
Bangalore	41.30	51.2	10.2	3.1
Ahmedabad	33.12	39.5	7.9	1.9
Pune	24.94	30.4	6.1	1.5
Kanpur	20.30	24.7	4.9	1.2
Lucknow	16.69	20.3	4.1	1.0
Nagpur	16.64	20.3	4.1	1.0
Surat	15.19	18.1	3.6	0.9
Jaipur	15.18	18.5	3.7	0.9
Kochin	11.41	15.2	3.0	0.7
Vadodara	11.27	13.4	2.7	0.6
Indore	11.09	13.9	2.5	0.6
Coimbatore	11.01	12.3	2.5	0.6
Patna	11.00	12.9	2.6	0.6
Madurai	10.86	12.1	2.4	0.6
Bhopal	10.63	13.3	2.7	0.6
Visakhapatnam	10.57	13.1	2.6	0.6
Ludhiana	10.43	12.1	2.4	0.6
Varanasi	10.3	12.5	2.5	0.6
Agra	9.48	11.5	2.3	0.5
Jabalpur	8.89	11.1	2.2	0.5
Vijayawada	8.46	10.5	2.1	0.5
Allahabad	8.94	10.3	2.1	0.5
Total	897.8		179.4	49.6

If we assume that the spread of cable network in the country is wider and include urban centres having population of 5 lakh and more , the number of cable and satellite households in the country is estimated to be 91.8 lakhs in 1997. This is based on the assumption of 25 per cent cable connectivity across the places. With a monthly fee of Rs. 100/- per connection the turnover from the country's cable industry is worked out to be Rs. 1101.60 crores i.e. about Rs. 1100 crores per annum (in the year 1997).

From the discussions with some cable operators, cable households and through our survey of cable operators and cable homes in the six cities selected for the present study, it was found that the two large operators viz. Siticable and Incablenet operating through their franchisees (sub operators) constitute about 80 to 90 per cent of the total cable connections except in Chennai where small independent operators dominate the cable network. For example, in Delhi, about 80 percent of the cable homes is controlled by Siticable and Incablenet put together. The majority of the franchisees also run their own VCR channels to show various programmes including movies. Most of the films shown through their VCRs are either borrowed from video libraries or bought from the retailers. This is done in order to attract more customers because of the keen competition among the operators. It is also observed that the franchisees do not take cable right independently. Generally the franchisers buy the rights from the cable right holders on a license fee basis besides buying rights on their own. In this case, the franchisees are like relaying stations. But franchisees have the option to block channels and show their own programmes like movies through VCR.

From our survey of the independent cable operators as well as the franchisees, it was observed that on an average at least two movies per day are shown by each cable operator across the country in their VCR channels (main operator i.e. franchisers are excluded). When asked about the sources of procuring video cassettes for showing movies in the cable, 34 (85%) of the 40 cable operators, who responded to this question, mentioned that they were procuring cassettes either on a rental basis from video libraries or on outright purchase from the retailers or borrowed from friends or relatives. All these are blatant violations of copyright laws.

More importantly, about 27 (68%) cable operators admitted that they procure 100 percent of the cassettes shown in their VCRs on rental basis from the video libraries. Forty nine (55%) out of the total 89 responding cable operators did not provide any information on their sources of procuring video cassettes and, in all probabilities, they might be borrowing cassettes from libraries or buying from retailers, which are meant for home viewing only.

It was learnt from discussions with cable operators that cable right holders of movies charge the cable operators an average of Rs.5 per connection per month for supply of 30 video cassettes a month (i.e. one cassette a day) as license fees. As mentioned earlier, the survey of cable operators revealed that about 85% of them are showing 2 video cassettes daily in violation of copyright laws. It could therefore be estimated that 85 per cent of the 49.6 lakhs cable homes, i.e. 42.16 lakhs households, in 27 cities having more than 10 lakhs population each, are viewing at least two pirated cassettes per day. This violation in monetary term would be about Rs. 5059.20 lakhs ($\text{Rs.5} \times 2 \text{ cassettes} \times 42.16 \text{ lakh cable homes} \times 12 \text{ months}$) annually. If we cover the cities having more than 5 lakhs population, the total violations of cable rights in India works out to be about Rs.9363.60 lakhs ($\text{Rs. 5} \times 85 \% \text{ of } 91.8 \times 12$). This is about 8.5% of the total cable market in the country.

Let us now take the case of the city of Delhi alone. It is reported that there are 6 lakhs cable homes in Delhi (Table 3.1). It is also reported that Siticable and Incablenet together covers 80 percent of the total cable homes in the city. The remaining 20 per cent i.e. about 1.2 lakhs cable homes is controlled by other small independent operators. Based on the discussions with some of the independent operators and cable viewers (end users) at various localities in Delhi and the cable right holders it was observed that independent operators on an average show 3 films a day for which they do not have the rights. Thus, following the above methodology, the total violations in monetary terms by the Delhi based independent operators (barring Siticable and Incablenet operators) would be about Rs.216 lakhs based on a license fee of Rs. 5 per connection per month for 30 cassettes.

It is generally found that large franchisers like Siticable and Incablenet do not violate cable rights though there have always been allegations and counter allegations of violation of the movies for which they have the cable right. But the franchisees (sub operators) of these two large cable operators show at least one movie a day to their subscribers through their own VCR channels by blocking the programmes shown by the franchisers. Such operators serve about 80 per cent of the total cable homes in Delhi. That is to say that 4.8 lakh (80% of 6 lakh) cable households are watching one movie in a day in violation of copyright

laws. This works out to be about Rs.288 lakhs in a year (1997) which is estimated based on Rs.5 per connection per month. Thus the total cable right violations i.e. violation by independent operators as well as sub operators in a year in Delhi alone is estimated to be about Rs.504 lakhs (Rs.216+288), which is 7% of the total income from the cable industry. The income from the cable network in Delhi is estimated to be Rs.72 crores based on an average monthly fee of Rs.100/- per connection.

Commercial Rights (Ancillary Rights)

Besides theatrical, cable, video rental and video see through rights, the right holders in cinematographic works (mainly the producers of films) can also sell video right for showing films in commercial places like hotels, ships, video parlours, etc. Our estimation for violation of commercial rights of movies will be confined to hotel sector only. It has been found through our survey on the hotel industry that most of the hotels including some 5 star hotels are now connected by the cable operators only. Thus they receive programmes whatever is shown by the cable operators. Some hotels (particularly in the five star categories) have their own dish antenna and also show movies through their own VCR channels.

The hotels are generally showing on an average 3 Indian films and 3 English films per day. Even if movies are shown through the channels of cable operators and if hotels have taken cable connections from the operators and thereby showing movies to their guests in the hotel rooms (excepting the movies on satellite channels), it would be a violation of copyright law from the view point of commercial right holders of movies.

It was also found that in some of the leading hotels on an average six English and six Hindi movies are shown simultaneously. In the case of two large groups, it was found that they are showing these movies through a contract by leading video/audio company which is supposed to have taken the right. However, this could not be investigated in detail. But from the discussions with the video producers, film producers and their associations it was observed that rights are sold mainly for home video, cable video and satellite channels. They are not much aware if anybody has bought commercial right of showing movies.

Therefore, it appears that commercial rights market with respect to films is yet to be tapped in India. This makes the estimation of market for commercial rights very difficult. One way of doing this can be looking at the matter from producers' angle i.e. by estimating the revenue the producers would have received if commercial rights were sold. As mentioned earlier in this chapter, during 1996, 683 films were produced in India of which 154 were Telugu films, 138 were Tamil Films and 126 were Hindi films. It is true that commercial rights for all the films could not be exploited as among films produced in Indian languages only Hindi and to some extent south Indian films are in demand from the hotels. Thus, if we assume that only 50% of the total movies produced in a year for which commercial rights could have been sold, then even at a conservative rate of only Rs.2 lakhs per film, the producers would have received about Rs.6.84 crores in 1996.

From the survey and discussions it was found that hotels in the category of 3 star and above are violating the law by showing movies without procuring commercial rights. It can be assumed that on an average these hotels are showing 6 movies a day either with the help of the cable operators (through cable operators channels) or through their own VCR channels or both.

As per the statistics available, India during 1996 had about 52,000 hotel rooms in the approved category. About 75% of these rooms belong to 3 star categories and above. This means that about 39,000 rooms belong to this category. Suppose commercial rights for movies would have been sold to certain agencies, which in turn would have charged a license fee of say Rs.10 per room per month for using 30 cassettes (Rs.5 per month per connection for 30 cassettes is charged by the cable operators for cable home. It is assumed here that they would charge double the rate, since these are used for commercial purposes and also the subscribers base is very small), the amount of loss in the commercial rights front would be about Rs 2.8 crores (Rs.39000 rooms X Rs.10 X 6 cassettes per day X 12 months) in a year (1996). This forms about 41 per cent of the total market for commercial rights as estimated above.

Extent of Video Rights Violations

It has been found that home video right is generally sold after six weeks of commercial release of a film to be shown in theatre halls. There are no authentic data on the home video right sold. The producers of the films as well as the buyers of rights i.e. mainly the video producers are tight lipped about the information on this issue. Most of the producers whom we contacted are reluctant even to disclose whether video rights of their films have been sold not to talk about to whom and at what price. Similarly, video producers are not willing to provide us any information regarding the price at which rights are bought. They are also reluctant to provide any information on the number of cassettes produced and sold per movie. This would have indirectly helped us to estimate the turnover of the video industry since no macro level information/data is available.

From the survey of the end users, it was found that out of 131 respondents owning VCRs in the six cities, 78 (59.5%) households bought on an average eight video cassettes containing Indian films in 1996. It has also been reported that in India about 25 per cent of the TV households own video cassette player/recorders. There are about 40 million TV households and therefore about 10 million households owning VCP/VCR in the country. Based on this, it was estimated that about 47.6 million (10 X 0.595 X 8) Indian film cassettes were sold during 1996. Therefore, the total market for the video cassette industry in India is estimated to be Rs. 714 crores based on a rate of Rs.150 per cassette.

It was reported in the survey that 24 endusers (18.32 per cent of the VCR owners) had bought on an average 8 pirated cassettes in a year out of which 5 cassettes were of Indian films. Based on the above, it has been estimated that about 9.16 million (5 X 18.32% of 10 million) pirated cassettes belonging to Indian films have been sold in India. The loss to video right holders is, therefore, turns out to be Rs.137.4 crores (9.16 million cassettes x Rs.150) during the year 1996, which is about 19.2 per cent of the total video cassettes market in the country.

To sum up, in India the copyright violations with respect to cinematographic works relate mainly to cable, video and commercial rights. The study revealed that the extent of violations as measured by the trade loss as a percentage of total market size is varying across the segments of the film industry. It is maximum (41%) in case of commercial rights and minimum (8.5%) in the cable, the video lying in between with a violation rate of 19.2 per cent.

The violations of commercial rights of films are wide spread mainly due to the fact that markets for the same have not yet been organised properly in the country. As had been indicated in the chapter, the film producers have not been very keen to exploit the commercial rights. The users, on the other hand, were either ignorant of the need for taking proper authorization for using commercial rights or they had taken advantage of casualness on the part of the rightholders. In fact, the extent of violation in commercial rights as revealed by the present study (41%), is an underestimate. This is because the study was confined to the hotel sector only. The inclusion of other places where commercial rights of films are exploited (e.g. video parlours, ships etc.) would have definitely pushed the violation rate up.

While nothing could be said in definite terms about the video rights violations due to scanty information available in this segment, the cable piracy figures estimated by the study at 8.5% seems to be on the lower side when compared to the reality. The section of film distributors and theatre hall owners whom the study team met at various stages of the study had mentioned cable piracy as an acute problem for the film industry and pointed out that the losses suffered by them for this are of very high dimensions. Even if their pronouncements can be termed as exaggerated ones, we feel the reality may be lying somewhere in between what the affected parties (the film distributors, theatre hall owners etc.) said and what the study revealed.

STUDY ON COPYRIGHT PIRACY IN INDIA
Chapter IV
COPYRIGHT PIRACY IN INDIA

Sound Recordings

Background

In India music has always remained as the principal means of entertainment. The Gramophones were first sold in the country way back in 1895 by the Mutoscope Biograph company. But the first record factory came into existence in the year 1907 when the Gramophone and Typewriter Company (Gramco) was established in Calcutta. In the next year the company started a recording studio and a record pressing plant simultaneously with similar factories in U.K. Soon afterwards the Calcutta factories obtained exclusive rights to use in India the trade mark 'His Master's Voice' (HMV). Even today the HMV brand is the most popular and widely recognised music trade marks in the country.

The 1920's saw competition hotting up in the music market with the entry of Viel-O-Phone and Ramagraph, Odeon and Ruby Recording Company. But by 1943, with the extinction of others, the HMV again regained supremacy. In 1950 came the revolutionary magnetic tape recorder with a frequency response of 50 to 10,000 cycles per second. This resulted in improved sound quality with minimum losses of raw materials. By the mid-1960's better tape recorder with higher frequency response became available. Subsequently stereophonic recording was also started.

For nearly half a century from its beginning, the Gramophone Company of India, which was better known as HMV- its brand name - enjoyed a virtual monopoly position. In 1969, Polydor of India Ltd. was started as a subsidiary of the European multinational Polygram of West Germany. In the early 1970's the HMV and Polydor ruled the Indian market having a market share of 60:40 respectively. The glory, however, did not last long as by 1980's records started giving way to audio cassettes and the market leaders could not make a quick switch over. Besides this, the entry of Super Cassettes Industries in the mid-eighties with its low-cost, cheap varieties of both pre-recorded and blank tapes made a significant shift in the Indian audio market. The competition started soaring up both in the areas of price and quality.

Today there are about a dozen big manufactures of audio products with hundreds of other small producers spread all over the country. The Gramophone Company of India Ltd. (GCIL) is still the market leader with 15-20 percent market share. The other major players are Tips, Polygram, Venus, BMG-Crescendo, Magnasound, Time and Ultra. If 1980's saw change over from record to cassettes, the 1990's is witnessing a shift from cassettes to Compact Discs (CD's). Even though today CD market is limited to metros and other major urban centres, in the coming years CDs has the highest growth potential for Indian music companies.

Further, Indian music industry in the present decade is noteworthy in many other respects as well. For the first time in the current century, the music industry is trying to make a move from its traditional arena, which has so far been preoccupied by a single medium i.e. film sound tracks. These days music video is coming up in the country and Indian pops and raps are attracting audience both inside and outside India. Another important feature is the presence of satellite based music channels such as MTV, Channel V, ATN etc, which are popularising music across a variety of listeners. Yet another development is the participation of foreign majors. After the liberalisation policy in 1991, restrictions on equity ownership have been relaxed and foreign companies, on application to the Foreign Investment Promotion Board, can be granted a controlling share of their affiliated business. As a result, a few foreign collaborations have taken place. Polygram has taken a 51 % share in Music India (formerly Polydor) and since 1995 the company has been renamed as Polygram India Ltd. Similarly, BMG International has got a majority equity share in Crescendo Music and the collaboration is now known as BMG Crescendo (India) Pvt. Ltd.

Foreign participation has given a new dimension to Indian Music industry. The industry has started plugging some of their existing loopholes. Distribution, a hitherto neglected area, is taken up for rejuvenation. More selling outlets are established, especially in the semi-urban and rural areas and big manufacturers are thinking more in terms of distribution and marketing tie-ups. Music companies are also diversifying into movies, videos and concerts. The present trend is towards entertainment business covering films, music and television programmes.

The Market Size

In India so far no study has been conducted to find out the contribution of the copyright industry in general and the music industry in particular in the country's Gross Domestic Product (GDP). Therefore, no reliable secondary source of information is existing today in the country which can be used as benchmarks to arrive at the market estimates. Even at the industry association level no data pertaining to production or sales for the entire industry are available. Of course, journalists in their despatches, sometimes, give information on sales turnover, piracy levels etc. based merely on bits of information, generalised to yield estimates. To cite one example, one article in the Economic Times (Corporates Dossier, Sept 5-11, 1997) mention total industry turnover as Rs.1500 crores. Another article in the same daily within a weeks time (Brand Equity, Sept.17-23) mentions a turnover figure of Rs.750 crores. In the absence of any reliable data at the secondary level, the figures quoted in such articles are largely based on the guessing capacity of the authors.

The London based International Federation of the Phonographic Industry (IFPI) publishes data on sales and piracy of the music industry on regular intervals. Their latest publication (The Recording Industry in Numbers '97) shows India as among the top 20 music sellers of the world (**Table 4.1**). According to this report, India is the largest market for audio cassettes in the world at present. The country, in 1996, sold 353 million cassettes and 4.4 million CDs and it had a sales turnover of Rs 10560.50 million. The Industry is also growing at about 10 % per annum (**Table 4.2**). Although with about 1 per cent share in the world market, India is one of the leading music markets in the Asian region (**Table 4.3**).

Market Estimates based on Survey Findings

As a part of our survey we contacted 30 leading music companies in the country. But the response from the music companies was very poor. In spite of our repeated efforts, the big manufacturers did not supply us any information on their (respective) production and sales. Even their opinions regarding extent of piracy, public awareness and enforcement of the Copyright Act, which do not have any bearing upon their secret business information such as sales etc. could not be obtained. We could get only 14 filled in questionnaires from the small producers confined mostly to regional level. This poses a real handicap to arrive at any supply side estimate.

On the demand side, we could get responses from 128 endusers of audio products scattered over 6 survey locations. According to a report from IFPI (India Market Report, 1996), India had 32 million cassette recorder owning households in the year 1993-94. Another report (Economic Times, Jan 15, 1997) indicates the market for audio systems in the country to be increasing at an average of 3 million sets per annum. Taking this into account the total number of cassette recorder owning households in India by 1996-97 would be in the range of 41 million. Our survey reveals that average number of audio cassettes bought by a household in 1996 is the highest in Chennai (28.9) and the lowest (8.9) in Delhi (**Table 4.4**). The overall (i.e. average of six cities where survey took place) average number of cassettes bought by a household during the year 1996 is 14.64. If we multiply this (14.64) with the number of households owning cassette recorders, we may arrive at the aggregate demand for audio cassettes in the country. But this has a limitation. This is because the number of cassettes bought in the small urban and rural centres would be less than what we found in the six big cities of the country. The reason being in rural areas, due to poor distribution network, the availability of audio cassettes would be less. Secondly, the proportion of households who can afford to buy audio products would definitely be less in the rural areas when compared to their urban counterparts. However, since our survey was confined to only urban areas we do not have any knowledge of the rural purchase pattern. A study conducted by

the ORG-MARG during Feb-Mar '96 on various aspects of the Indian Music Industry assumed that average number of cassettes bought by a rural household was six. If we take this figure for the rural households and 14.64 for the urban households, the mean of these two (i.e.10.32) would give us the national average. This when multiplied by 41 million cassette recorder owning households would give us the estimate of market size at 423.12 million cassettes during 1996.

In India CDs market is still confined to only major urban centres, especially metro cities. Our survey reveals that only 27 households out of 128 are using CDs as against all of them are using cassettes. Thus the penetration level of CD is about 21%. For the country as a whole the proportion of CD users is very low (about 1 to 2 percent). The IFPI sales figure for 1996 shows (**Table 4.2**) that CDs constitute just 1.23 % of the total sales (in number) of cassettes & CDs. Taking this into account the number of CDs demanded can be estimated as 5.27 million in a year. In our survey the average price of a cassette and a CD are found to be Rs 23 and Rs 245 respectively. The number of units multiplied by unit price would give the size of the market in value (Rs) terms at Rs. 9731.76 million for cassettes and Rs. 1291.15 million for CDs. The aggregate size of Indian Music market is thus estimated to be Rs.11022.91 million. The schematic presentation of the demand side estimation is shown at **Table 4.5**.

Extent of Piracy

As mentioned earlier (chapter II), the piracy in sound recordings takes three principal forms. First, songs from different cassettes/CDs are copied in a single cassette/CD without taking proper authorisation. These are generally copied in blank tapes, mostly at the instance of buyers. A large number of music lovers in the country demand recent hits in a single medium. Since no single legitimate cassette/CD can fulfil this demand (as songs belong to different rightholders and are available in separate medium), pirates step in. Second, there is the counterfeiting where pirated version is similar to that of original in almost all respects including appearance and price. Buyers at the time of buying feel that they are buying original products. Only during use it can be found out to be a pirated one. The third category is bootlegging where unauthorised recordings of performance are made without the knowledge of anybody.

Another related problem that arises in this segment is noticed while producing cover versions, though strictly speaking this is not purely a copyright violation. Cover version is the reproduction of (old) songs by different artists (singers) using the same tune and lyrics. The law permits cover version production subject to fulfilment of certain formalities such as payment of fee to the original producer (the rightholder). But problem arises when the producers of cover version try to give the impression of bringing out the same songs (by using similar inlay cards as that of the original producer) with lower price. The ordinary endusers feel as if they are buying the same songs at cheaper rates. But the fact remains that cover version songs are sung by different (generally less familiar) artists and thus different from the original ones. This sometimes may incur loss of sales revenue to the original producer(s). In the past years two big music companies in India are seen to be involved in legal battles with respect to a number of cover version productions.

The reasons behind copyright piracy in sound recordings are numerous. Of course the first and the foremost among these is pecuniary in nature. If ordinary buyers can get certain products at lower price, they do not mind buying these even if they may be pirated ones. The pirates also can afford to sell at lower prices because they need not spend in advertising, infrastructure and payments towards the state exchequer. Therefore, pirates always enjoy price advantages compared to the legitimate sellers. The instruments to beat the pirates could be only through quality. Generally pirated products are of lower qualities. But with advancement of technology, copying has become simpler and less costly. Therefore, many a times pirated products are also equally of good quality, which makes the task of legitimate producers more difficult.

Besides the above, piracy also thrives because of demand-supply gap. When there is demand for a product and the legitimate market is not in a position to supply, piracy creeps in. The distribution network with respect to audio products is still not very strong in the country. This leaves a wide gap-especially in

the semi urban and rural areas. The pirates reign in such areas. The rural markets having buyers without much knowledge of piracy are thus controlled by the pirates.

While piracy is an integral part of the Indian music market, the exact extent of it is very difficult to know. The IFPI India Market Report (1996) mentions that piracy level has come down from as high as 95 % in 1985 to about 30% in 1995. The piracy Reports published by IFPI shows that in 1995 India is the world's third largest pirate market in volume terms and the sixth in value terms. **Table 4.6** shows the sale of pirated audio products against their legitimate sales in India during 1991-95. As can be seen from the table, the pirate sales (in number) has almost doubled within four years between 1991 and 1995. The pirated sales in value has also increased from \$ 69 million to \$ 82.1 million during the same period, thus achieving a growth rate of 19 percent (**Table 4.7**). The piracy percentage, however, is showing a regular decline when measured in value terms and it is fluctuating in terms of units sold during the same period (**Table 4.6 & 4.7**). Another point to be mentioned here is the extent of piracy in CDs (measured in percentage term) is much lower than in cassettes. In 1995, against a piracy level of 29 % in cassettes, the CD piracy stood at single digit level at 9%. This may be due to low penetration of CD players among Indian consumers. With the spread of use of CDs this may change drastically in the years to come.

The Survey Findings

During the survey we asked a number of questions through a set of structured questionnaires which are directly or indirectly aimed at finding the piracy levels. The target groups comprises manufacturers, sellers and endusers of audio products. As mentioned earlier, the response from the manufacturers were very poor. But we got overwhelming response in case of other categories. 10 out of 14 (71%) music companies are aware of some kind of copyright violations of their respective works. But most of them could not furnish reliable information on number of violations and loss due to such violation. Since the exact extent of piracy is not known even to the right holders, such responses are not surprising. Similarly, 63% of the sellers (authorised dealers/distributors) feel their products are being pirated. But only 31% of them admit loss due to such piracy.

Among endusers, 47 out of 128 (37%) admitted buying pirated audio products. Of these, 24 (51%) are buying it knowingly and the rest 49% had no knowledge of piracy at the time of buying. This 49% can be considered as the extent of counterfeiting, where endusers buy pirated products thinking these as originals. The purchase of total and pirated cassettes by the endusers in six survey locations are given in **Table 4.8**. The shows the extent of piracy at endusers level is the highest in Mumbai (33%) and the least in Calcutta (17%), the overall rate being about 25 percent.

The music companies and the sellers of audio products were asked what they perceive as the existing piracy levels in the country with respect to audio products. According to music companies the average piracy level has increased from 56.7% in 1994-95 to 58.6% in 1996-97. The sellers, however, feel that piracy in music is not that high as has been perceived. According to them, from a low of 34% piracy in 1994-95 it has increased to 38% in 1996-97 (**Table 4.9**). Regarding trend in piracy level in the current decade as compared to the 1980's, the majority of the music companies (86%) feel piracy has increased in 1990's. A large proportion (67%) of sellers also feel likewise. This contradicts the IFPI findings which claim that piracy level has come down drastically from 95% in the mid eighties to about 30% in the mid nineties.

Among the types of music pirated the most, film songs are ahead of others. About 79% of the music companies feel that a high degree (more than 50%) of piracy takes place in case of film songs. The corresponding figures for the sellers category is 68%. This is quite expected for a country where film songs especially Hindi film songs historically occupy a larger chunk of the market. Out of 128 endusers interviewed in the survey 120 (94%) are found to buy Indian film songs.

The music companies as well as sellers of audio products were asked their opinion on reasons for audio piracy in India. The majority of the sellers identified high price of original cassettes/CDs as the main

factor responsible for piracy (**Table 4.11**). The music companies on the other hand, feel the tendency of people to record songs of their own choice in a single cassette/CD is the main factor leading to audio piracy (**Table 4.10**). The observations from the endusers support the above findings. When asked why bought pirated products knowingly, 67% of the endusers cited either low price (36%) or non availability (31%) of the product of their choice as the reasons.

Loss due to Piracy

The piracy takes away certain portion of revenue from the legal owner of copyrights. The commercial exploitation of copyrights also yields income to the creative persons in the form of royalties. The state gets income in the form of excise duty, sales tax, income tax etc, which pirates do not pay. Therefore, piracy brings in losses for all involved in the legitimate production and distribution of copyright items. The important among these are the trade loss and loss to the state exchequer.

The trade loss could be determined from the percentage of sales lost to the pirates. However, arriving at a unique percentage is not a simple task. As discussed earlier the piracy level is varying across various estimates. The estimates using IFPI data showed piracy level in terms of value at 22% (**Table 4.7**) in 1995. Our survey findings based on purchase behaviour of endusers show the piracy level (in terms of units bought) in 1996 was 25 %. The sellers, on the other hand, perceived an average piracy level of 38 % in 1996-97. But when asked to quantify their own loss (gross as well as a percent of sales), only 31 out of 42 admitted losing, and could provide the figures for 1996. The distribution of these respondents in terms of percentage lost are presented in **Table 4.12**. As can be seen that in 1996, while 9 out of 30 (30%) reported losing between 10-20 percent and 8 (about 27 %) seemed to have lost between 20 to 30 % loss. 7 (23%) seemed to be losing in the range of 40 to 50 percent and another 6 (20%) happened to lose within 10% of their sales. The (weighted) average loss per seller in 1996 is calculated to be 23.67 percent. This shows that even though sellers perceived a higher piracy percent for the audio market as a whole, their own experience is different. Similarly, the piracy percent as perceived by the music companies are somewhat on the higher side and therefore needs to be discounted.

The piracy level estimate based on endusers purchase behaviour is closer to that of estimation based on sellers losses. If we take the average of these two, the estimated piracy level in 1996-97 could be 24.5 percent. This falls in between IFPI estimate based on units sold and value of sales. The trade loss thus can be estimated as about Rs. 270 crores in 1996-97.

Table 4.1 : Top 20 Countries in the Music Industry

Country	Sales(Million US \$)	Share in World Sales (%)
USA	12297.70	30.88
Japan	6762.30	16.98
UK	2709.80	6.80
France	2318.00	5.82
Brazil	1394.50	3.50
Canada	911.60	2.29
Australia	815.20	2.05
Netherlands	660.10	1.66
Italy	637.50	1.60
Spain	584.90	1.47
South Korea	516.60	1.30

Belgium	443.40	1.11
Taiwan	415.90	1.04
Sweden	402.60	1.01
Switzerland	401.30	1.01
Mexico	399.30	1.00
Austria	396.70	1.00
Denmark	306.80	0.77
India	298.00	0.75
Total of Above	32672.20	82.04
Total World Sales	39825.00	

Source : The Recording Industry in Numbers '97, IFPI, London, 1997.

Table 4.2 : Sale of Pre-recorded Music in India During 1991-96

Year	Sales in Units (Million Nos.)				Retail Values million (All products)		Growth Rates (%)		
	Cassettes	CDs	Records	Total	US \$	Rupees	Cassettes (No.)	CDs (No.)	Retail Values (Rs.)
1991,	155.0	0.5	0.5	156.0	180.3	4100.0,	-	-	-
1992,	190.0	0.8	-	190.8	194.4	5300.0,	22.6	60.0	29.27
1994,	270.0	2.4	-	272.4	254.4	7980.0,	42.1	200.0	50.56
1995,	321.0	4.0	-	325.0	292.9	9564.0,	18.9	66.7	19.85
1996	353.0	4.4	-	357.4	298.0	10560.5	9.97	10.0	10.42

Source: Same as Table 4.1.

Table 4.3 : Sale of Pre-recorded Music in 1996 in the

Asian Region

Country	Retail Value (millions US \$)	Share (%)
Japan	6762.30	74.09
China	177.50	1.94
India	298.00	3.27
Hong Kong	167.30	1.83
Indonesia	269.60	2.95
Malaysia	99.90	1.09
Pakistan	3.50	0.04

Philippines	50.30	0.55
Singapore	79.70	0.87
South Korea	516.60	5.66
Taiwan	515.90	5.65
Thailand	186.40	2.04
Total,World Total	9127.00	100.00
Share of Asia in World Sales	39825.00	22.92

Source : Same as Table 4.1

Table 4.4: Purchase of Audio Cassettes by Endusers

City	Avg. No.of Cassettes bought by household
Delhi	8.90
Mumbai	13.84
Chennai	28.90
Calcutta	13.12
Bangalore	17.68
Hyderabad	12.24
Overall	14.64

Source : NPC Survey

Table 4.5 : The Demand side Estimate of Indian Music Industry

Steps	Available information	Source	Estimated figures
Step1: Estimation of Households owning cassette recorders	a. No. of households in 1993-94	a.IFPI (1996)	41 million House holds (32+3x3)
	b. Growth rate of the market for audio systems during 1994-95 to 96-97	b.Economic Times Jan 15, 1997	
Step 2: Estimation of Average No. of cassettes bought by a household in 1996	a. Avg. no. of cassettes bought by an enduser family in 1996(Survey location)	a. NPC survey	10.32 cassettes per household
	b. Avg.No. of cassettes bought per household in rural areas	b. ORG-MARG Report Aug.'96	urban = 14.6 Rural =6.00 Overall=10.32
Step 3: Estimation of total cassettes bought in a year (1996)	a. No. of households owning cassette recorders	a. Step 1	432.12 million (41x 10.32)
	b. Average no. of cassettes bought per households	b. Step 2 above	

Step 4: Estimation of CDs market in 1996	a. CD Sales constitute only 1.23% of total sales of audio products	IFPI (1997)	5.27 Million (432.12 million is 98.77% of the total)
Steps 5: Estimation of average price of a cassettes \$ CDs	a. Total No. of cassettes sold and total no. of CDs sold in 96-97	NPC Survey	Average Price of cassettes Rs.23
	b. Sales values for cassettes and CDs in the same year		Average price of CD =Rs.245
Step 6 : Estimation of market size for audio products	a. No. of units in demand (cassettes & CDs)	a. Steps 3 & 4	a. Cassettes Rs. 9731.76 million
	b.Average Price of a Cassettes and a CD	b. Step 5	b.CDs Rs.1291.15 Million
			Total: Rs.11022.91 million

Table 4.6 : Sales of Legitimate & Pirated Audio Products in India During 1991-1995

year	Legitimate Sales in Units (Million) Cassettes-CDs Total			Pirated Sales in Units (Million) Cassettes- CDs Total			Extent of Piracy (%) Cassettes-CDs Total		
	1991	155.0	0.5	155.5	64.4	0.0	64.4	29.35	-
1992	190.0	0.8	190.8	74.4	0.0	74.4	28.14	-	28.05
1993	225.0	1.4	226.4	111.0	0.0	111.0	33.04	-	32.90
1994	270.0	2.4	272.4	120.0	0.0	120.0	30.77	-	30.58
1995	321.0	4.00	325.0	128.00	0.4	128.4	28.51	9.09	28.32

Note: Extent of piracy is calculated as pirated sales as a percentage of total (legitimate & pirated) sales

Source: Pirate sales are from Piracy Reports (various years) and legitimate figures are from Recording Industry in Numbers '97 both from IFPI, London

Table 4.7: Extent of Piracy in Audio Products in Terms of Sales Value (Retail)

Year	Legitimate Sales (Million US \$)	Pirated Sales (Million US \$)	Extent of Piracy (%)
1991	180.30	69.00	27.68
1992	194.40	69.00	26.20
1993	213.00	73.80	25.73
1994	254.40	76.50	23.12
1995	292.90	82.10	21.89

Source: Same as Table 4.6

Tables 4.8 : Piracy Extent as Observed from Buying Behaviour of Endusers During 1996

City	Avg. Nos. Bought	No. of Pirated Products Bought			Extent of Piracy (%)
		Cassettes	CDs	Total	
Delhi	8.9	2.5	-	2.5	28.09
Mumbai	13.84	3.6	1	4.6	33.24
Chennai	28.9	3.0	4	7.0	24.22
Calcutta	13.12	2.2	-	2.2	16.77
Bangalore	17.68	5.0		5.0	28.28
Hyderabad	12.24	2.6	-	2.6	21.24
Over All	94.68		-	23.9	25.24

Source: NPC Survey

Table 4.9 : Extent of Piracy During 1994-95 to 96-97

Year	Avg. Piracy level as perceived by Music CO's	Avg. Piracy level as perceived by Sellers of Audio Products
1994-95	56.7	33.97
1995-96	58.3	34.15
1996-97	58.6	37.74

Source : NPC Survey

Table 4.10 : Reasons for Music Piracy in India as Perceived by Music Companies

No. of Respondents giving (Ranks)

Reasons	I	II	III	IV	V	VI	VII
Genuine copies not available	-	1	-	1	1	5	1
Price of original is high	3	1	4	2	1	1	1
People wants songs of their choice	7	2	2	-	1	1	-
Lack of awareness of Endusers	1	6	1	-	2	1	-
Right holders do not take precaution	-	2	1	4	3	-	-
Copyright Laws are ineffective	1	-	4	2	1	1	5
Poor enforcement of the Law	1	1	-	3	1	1	5
Others	-	-	1	-	-	-	-

Source : NPC Survey

Table 4.11. Reasons for Music Piracy in India as perceived by Audio products Sellers

No. of Respondents giving (Ranks)

Reasons	I	II	III	IV	V	VI	VII
Genuine copies not available	20	22	21	11	9	3	6
Price of original is high	67	26	12	4	3	7	2
People wants songs of their choice	30	47	18	8	5	4	1
Lack of awareness of Endusers	4	16	27	21	12	6	2
Right holders do not take precaution	-	5	16	14	24	8	8
Copyright Laws are ineffective	7	4	7	16	15	23	6
Poor enforcement of the La	2	6	4	12	6	11	-

Source : NPC Survey

Table 4.12 : Loss (as % of Sales) suffered by Audio Products Sellers

No. of Respondents suffering losses

Percentage Distribution	1994-95	1995-96	1996-97
Upto 10%	2	2	6
10%-20%	3	7	6
20%-30%	5	3	5
30%-40%	1	2	3
40%-50%	3	3	7
Above 50%	-	-	-
Total	14	17	30

Source: NPC Survey

STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter V

Computer Software

What is Software Piracy[1]?

Software Piracy or counterfeiting is defined as the illegal copying of software combined with unauthorised duplication of genuine trademarks and documents. Software piracy takes place in many forms, the most common occurrence being in the following :

Office Copying

Generally, licenses for one or a few copies of a computer package/programme may be purchased for a business or in a workplace. As, requirements increase, illegal copies are made from one of the licensed programmes and installed in other computers. In addition, office software is often illegally copied into the home computer of an employee or vice-versa.

Network Piracy

Software piracy often occurs on computer networks when a software program is accessed by more users than what a license permits. Many network user organisations fail to realise this as a violation of copyright law.

Internet Piracy

With the advent of internet and the increasing use of internet, the software piracy has grown dramatically in recent years. Through Internet, programs are uploaded to bulletin board systems or commercial on-line services which, in turn, can be downloaded or sent via electronic mail to individuals who may not hold a license to use these.

Resellers

The sellers of computer software particularly the unauthorised retailers are also involved in selling pirated softwares. They simply copy the original (licensed) softwares into floppy discs or in CD ROMs and sell them to the end users or install them in users' hardwares.

Hardware Sellers

Computer dealers more particularly, the unauthorised hardware suppliers who assemble components and sell computers to the users with software already installed. Unfortunately, in most of the cases these computers are loaded with unlicensed softwares. In such cases, unless a license and software manuals are provided with the sale, it is likely that programs have been illegally copied.

Counterfeiting

Counterfeiters try to fool the consumers by selling duplicate softwares. The purchasers feel that they have bought a legitimate product in the sense that the packaging and manuals look like original products.

These may actually be fakes and carry the common risk of operational defects and viruses.

Copyright (Amendment) Act 1994 on computer programmes

The Copyright (Amendment)/Act, 1994 has enlarged the scope of protection of computer programs. The Amendment Act confers the copyright holder with the additional exclusive right to sell, give on hire or offer for sale or hire any copy of the computer programs regardless of whether such a copy has been sold or given on will on earlier occasions. In other words, even the legitimate owner (e.g. purchaser) of a copyrighted work can not sell or rent his copy of the work. The Amendment effectively eliminates the 'First Sale' doctrine, under which a legitimate owner of a copyrighted work could further sell, transfer, lease or rent the work to another. Taking advantage of the First Sell doctrine, many rental companies used to purchase software programs (packages) and offer them for short term rentals - a practice which resulted in widespread reproduction of copyrighted works. The 1994 Amendments brings Indian law in conformity with the TRIPs Agreement. However, the TRIPs Agreement is less stringent than the amended Indian law in that it allows a purchaser of a copyrighted work to sell his copy and adds the caveat that, in respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Copyright of software programs (packages) is therefore quite different than what exist for book publishing and other areas like music, film etc. What constitutes a 'fair dealing' in publishing or in music may not be so for computer software. A traditional exclusion from infringement allows use of copyrighted work for research, criticism or private use known as 'fair dealing'. The Amendment eliminated the 'fair dealing' concept with respect to computer programs. At the same time a new exclusion from copyright infringement of computer programs has been added. A lawful professor or a researcher using a computer program may make up back-up copies purely as a temporary protection against loss, destruction or damage in order to use the computer programme for the purposes for which it is supplied. Such act will not constitute either the copyright infringement or violation of moral right of the author.

Present status of Computer Software Industry

The computer software perhaps is the fastest growing industry in India. The sector is growing at an annual compound growth rate of over 50 per cent during the last four years as indicated in table 5.1. Even in US dollar terms the sector has grown at an annual compound growth rate of about 45.8 per cent. In 1996-97, the size of the Indian software industry stood at Rs. 63100 million comprising the domestic software market worth Rs. 24100 and exports of Rs. 39000 million. The share of exports (about 62 per cent) in the industry's turnover is also the highest among all sectors. The Indian computer software industry has made its presence felt in the world software market. This is also reflected in a World Bank Survey which ranked India as number one in the preference list of US vendors for offshore software development. Taking cognisance of the potential of this environmentally friendly industry, the Government has identified this as a thrust sector, both for export as well as for the domestic market. The Amendment of Indian Copyright Act alongwith the reduction of import duty on hardwares in subsequent budget besides providing various incentive schemes like software parks, etc. have also resulted to a great extent in the growth of this industry.

Table 5.1 : Software Industry in India

Years	Total Production		Exports	
	Rs. Million	US \$ Million	Rs. Million	US \$ Million
1992-93	11650	388	6750	225
1993-94	17150	560	10200	330
1995-96	1900	1124	25200	734

1996-97	63100	1755	39000	1085
Compound Growth Rate	52.5	45.8	55.0	48.2

Source: The Software Industry in India, 1997-98, NASSCOM

There has been quite a mismatch between the figures supplied by NASSCOM and those available from Directorate General of Commercial Intelligence and Statistics (DGCI&S), Ministry of Commerce with respect to exports of computer software. The figure of Rs.2596 million provided by the DGCI&S for the year 1995-96 forms only about 10.3 percent of the export figures provided by NASSCOM. It follows from the above that on-site development which measures expertise offered at the client site and off-shore services accounted for nearly 90 percent of the exports. Therefore, there is very little, i.e. about 10 per cent of the exports is accounted by package software. This has not proved to be a major stumbling block as India's exports are relatively small and the global market for software services is larger than that for packaged software. Ignoring the export of package software could be misleading if, over time, the market for packaged software becomes larger than that for software services. Such a situation can not be ruled out as the PC revolution spreads which in turn will increase greater demand for products that can be bought off-the shelf.

Perhaps, Indian software companies are happy in exporting mainly the services since they do not have to worry much about the copyright piracy as has been taking place in the packaged software. Marketing of packaged software costs tremendous amount of resources. Indian companies would find the going difficult against the well established companies abroad.

BSA/SPA Piracy Study Methodology

International Planning and Research (IPR) on behalf of BSA/SPA has developed a methodology to estimate piracy by a country. The piracy estimate is arrived at by taking the difference between software application installed (demand) and software applications legally shipped (supply). The piracy rate is defined as the amount of software pirated as a percentage of total software installed in each country. By using the average price information from the SPA data program, the legal and pirated software revenue is calculated. This is a wholesale price estimate weighted by the amount of shipments within each software application category which is basically divided into three main components.

Software Piracy: Global scenario

As per the BSA/SPA estimation the piracy rates and thereby revenue loss for different countries across the world during 1996 are given in Table 5.2.

Table 5.2 : Piracy Rates And Amount Of Losses in 1996

Country	Retail Revenue Pirated(US \$ 000)	Piracy Rates (%)
Japan	1,190,323	41
United States	2,360,934	27
France	411,966	44
Italy	340,784	55
U.K.	337,344	34
Germany	497,950	36
China	703,839	96

Korea	515,547	70
Brazil	356,370	68
Russia	383,304	91
Netherlands	221,144	53
Spain	148,823	65
Australia	128,267	32
Canada	357,316	42
India	151,300	60
Belgium & Luxemburg	49,197	39
Thailand	137,063	80
Hong Kong	129,109	64
Norway & Iceland	103,852	54
Portugal	36,183	53
Switzerland	99,545	43
Sweden	112,498	47
Malaysia	121,488	80
Taiwan	116,980	66
Israel	77,261	69
South Africa	43,783	49
Denmark	37,531	35
Singapore	56,553	59
Finland	36,335	41
New Zealand	29,271	35

Source: The Software Industry in India 1997-98, NASSCOM

Different countries show vastly different piracy rates and losses. The more developed nations in general have lower rates of piracy as compared to the developing nations. But absolute level of piracy in software in the developed countries will be higher because of the larger size of the computer market. The largest information technology markets - the United States, Japan, United Kingdom and Germany have higher losses due to software piracy even though their piracy rates are relatively low. In the Asia-Pacific region revenue losses from software piracy were estimated at US \$ 3.7 billion in 1996 out of which Japan's contributions was \$ 1.2 billion. Vietnam and Indonesia have the highest piracy rate at 99 per cent and 97 percent respectively followed by China at 96 per cent and Korea at 70 percent. India's piracy rate at 60 per cent is better placed than many Asian countries.

Software Piracy-Indian Scenario

National Association of Software and Service Companies (NASSCOM) is doing pioneering work in the field of combating computer software piracy. Besides, promoting the concept and advantages of using legalised software, the Association is actively involved in educating the end users, law enforcing authorities and, if need be, helping the police in conducting raids in the premises of sellers of illegal softwares to their customers. NASSCOM also estimates the software piracy in the case of India based on BSA/SPA Piracy study Methodology.

Based on NASSCOM, BSA/SPA estimate of 60 per cent piracy rates during 1996, revenue loss to the software companies due to this works out to be about Rs.545 crores (US \$ 151.3 million). Based on the methodology adopted by BSA/SPA, it is estimated that total value of installed softwares (both legal and illegal) works out to be about Rs.908 crores. Therefore, only Rs.363 cores worth of legal software has been installed in India. This works out to be only about 21.7 per cent of the total domestic software market which was Rs.1670 crores during the year 1995-96.

It can easily be assumed that the entire amount of Rs. 363 crores worth legal software installed in India belong to the imported softwares especially belonging to the seven member companies of BSA. It has also been reported in the official statistics of Ministry of Commerce that during 1995-96, Rs.374.1 crores worth of computer softwares were imported. This is basically related to packaged software since figures provided by the Ministry refers only to those which are cleared through customs. As such work done by foreign companies through satellite communications and services rendered by them are not reflected in the import figures.

From the discussions with some of the leading computer software companies, it was observed that the copyright violations with respect to Indian software are negligible. This is because Indian companies are mostly involved in customised softwares rather than packaged softwares. Though few companies are releasing packaged softwares in the field of accounting, antivirus etc., but their sales in the domestic market is negligible as compared to other imported packaged softwares in the field of Word Processing, Data Base Management Systems, Statistics, Graphics, etc. They are also of the view that copyright violation with respect to imported package software is relatively much higher.

It therefore follows from the discussions that the copyright violation (piracy) estimated for software in the case of India mainly relates to the packaged software sold by the SPA companies. The Indian software companies are not losing much on account of software piracy. However, Government of India has lost import duty worth of about Rs. 54 crores (10% duty) which would have been collected if Rs.545 crores would have been spent on importing the packaged softwares.

Software Piracy Estimates :An Alternative Approach

In order to estimate the piracy rate as per the BSA/SPA methodology, one has to arrive at the actual number of software installed per PC both legal as well illegal and also the total number of legal softwares installed or sold per PC. It is not known how the actual number of software per PC is arrived at by BSA/SPA. It is also not known whether it is based on sample survey or information provided by their detective agencies. How accurate these estimates are ? Besides, it is also difficult to get information related to number of package softwares sold in a year. It is also not known whether grey market for PCs have also been included in their estimates. It may be possible for NASSCOM to get the information from their member companies particularly with respect to legal softwares sold but most of the prominent companies including those of multinational companies refused to divulge this information to NPC. Attempt to contact NASSCOM to get this kind of information also failed in many occasions. We, therefore, tried an alternative approach to estimate the percentage of software piracy for the country as a whole for the year 1996-97.

About 20 organisations from manufacturing as well as service establishments (end users) were contacted through a structured questionnaire in each of the six cities where field survey took place. The organisations were told to furnish the information related to number and type of application software procured. Information was also sought with respect to number of independent PCs where these softwares were installed besides connections regarding LAN/WAN. Information was also sought with regard to mass application softwares like Word Processing, Spreadsheet, Statistical, etc. Some companies refused to provide any information while some of the companies provided incomplete information because of obvious reasons. However, some responded to the questionnaire. Based on the complete information received from some of the organisations the following could be observed from the table 5.3.

Table 5.3: Number of PCs Vis-a-vis No. of Application Software

Package (1)	No. of PCs (2)	No. of copies of software's (3)	Ratio (Col. 3 as % of col. 2)
Word Processing	581	53	11.0
Data Base Mgt.	420	30	14.0
Spreadsheet	255	20	12.7
Statistical	155	31	5.0
Graphics	94	58	1.6
Anti Virus	170	12	14.2
Others	414	23	18.0
Total	2089	227	9.2

The information received was with respect to 4068 PCs where 2297 number of softwares were installed. The table provided is for those PCs where pirated softwares are installed (i.e. where the ratio of independent PCs to application software is more than one. Out of 4068 PCs from which information was received, 2089 (51.3 per cent) PCs had more than one copy of software. It is observed from the table that on an average one software is installed in about 9 independent PCs. This is as high as 14 in the case of software packages related to Data Base Management System and Anti Virus, to as low as 1.6 for Graphics package. From the survey, it was also found that about 35.9 per cent of these PCs were connected to LAN/WAN. The following calculations as shown in table 5.4 were done to arrive at the computer software piracy in India more particularly in the case of the application software.

Table 5.4 : Estimate of Software Piracy in India

I	Total Number of Independent PCs covered in the survey	9766,
II	Total No. of Independent PCs attached to LAN/WAN	5465,
III	Percentage of PCs attached to LAN	35.9,
IV	Number of Independent PCs for which information is received regarding installation of software.	4068,
V	Number of Independent PCs where piracy occurred	2089,
VI	V as percentage IV	51.3
VII	Number of PCs sold in India as per official statistics	445424
VIII	Number of PCs sold to the home segment	65000
IX	Number PCs sold to various organisations (VII - VIII)	380424

X	Estimated number of PCs where illegal software's are installed (for the country)	125096
XI	Estimated total number of illegal software's sold taking the ratio of PCs to per application software as 8	10.01 lakhs
XII	Value of illegal software @ \$ 250 (Rs.9000) per application software	Rs 900.9 crores

As per the Copyright Act relating to computer software, one legal software can be installed in only one independent machine. By this logic it is followed that on an average about 8 illegal softwares are installed in a PC. The price of \$ 250 per software has been based on the BSA/SPA figure which has been given as \$ 200 to \$ 300 per software. (Ref. Interview of Ron Eckstrom, Vice President, Business Software Alliance (BSA) which appeared in Computer Today, October 1994).

Besides, the computer hardware being sold in the legal market, about 20 percent, i.e. 90,000 computers are also sold in the grey market (informal market). These are mainly sold by some individual assemblers in prominent cities. On demand they could also provide the necessary softwares in CD ROM with Multimedia Kit virtually at throw away price Such vendors can be seen at prominent business centres in the big cities. In Delhi, visits were made to Nehru Place where some of these vendors were contacted. They were also willing to provide the necessary softwares in CD ROM (price ranging from Rs.1000 to Rs.1500) provided one buys the hardware from them. Even if we assume that they are selling 2 application software's per PC sold then the total number of software's sold in the grey market works out to be about 180,000 which at \$ 250 per software would be about Rs.162 crores. Thus, according to our estimates the total value of illegal application softwares comes to about Rs.1063 (Rs. 900.9 + Rs. 162) crores which is about 44 per cent of the total domestic software market (Rs. 2410 crores) in 1996-97.

Why software Piracy ?

The main reason of software piracy is the large difference in price of the original software vis-a-vis the pirated software. With technological development copying the packaged software into a CD-ROM has been an easy and inexpensive proposition. The counterfeiting of software in India is virtually negligible as compared to other developing countries of Asia. In India, softwares are basically copied from the legal ones and are installed in different machines.

Based on discussions with some of the country distributors of imported softwares, it was observed that the multinational companies generally dictate the price and they are not flexible with respect to licensing policies. Multinational companies also charge the same rate for softwares in developing countries like India as would be prevailing in their own country. As such they do not have any differential price rate based on average purchasing power of a country. Besides, these companies also do not generally give corporate license for using a particular packaged software and as such each PC has to have one legal software.

There are no commitments on the part of the chief executives of many user companies regarding the use of legal softwares. The chief executive of the organisation should give direction in buying legal software. In this direction, the companies themselves should carryout regular audit of the software. The raids by police personnel or by any other means to combat piracy particularly in software will not be much helpful if the users themselves are not disciplined.

STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter VI

Literary Works

The publishing industry in India is old. The 200 years of British rule had a profound impact on Indian education as well as publishing. The Britishers had a very limited purpose. They had to provide English education to their children while they were in India and at the same time train a limited number of Indians to do their office jobs - mostly clerical in nature. Hence only a handful of schools, colleges and universities came into existence and all these had a very little or no impact on country's mass illiteracy. By the beginning of the twentieth century some British Publishers such as Oxford University Press, Macmillan, Blackie's etc. set up their offices in India to capture the market for text books for Indian schools and colleges.

The printing industry also did not come up properly. The printing presses were imported into the country either by the government or by the Christian Missionaries for their own use. The Indian firms were not in a position to own printing presses because of the high cost of imported machines and the technology, by then, was not available in the country. But this did not deter the publishers in Indian languages to bring out a large number of revolutionary books which had tremendous impact on the country's on-going freedom struggle movement. By 1947 when India gained independence, the publishing industry in the country was not properly developed. Yet publishing in Indian languages was quite active by then. The scene on English publishing was dominated by a few British publishers who were interested to supply to the assured market for school and college text books.

The post-independence era saw phenomenal changes in the publishing industry. With the rapid increase in the number of educational institutions in the country, the Indian publishers started entering into the field. In 1961, the government set up the National Council of Educational Research and Training (NCERT). By late 1960's all the states of India set up its (state) textbook boards. The NCERT developed model textbooks for schools for adoption and publication by the state textbook boards. That means there was virtual nationalisation of school text books in the country. This brought in a new trend in the publishing industry in the country as till that time the scene was dominated by the private publishers.

Even today, the government is the largest publishing house in India. The NCERT, the State Text Book Boards, the National Book Trust (NBT), the Publication Division of the Government of India taken together must be contributing the largest share of the publishing industry in the country both in terms of volume (number of titles published and copies printed per title) and value of production.

The publishing firms in the private sector is also quite large in number and these are scattered throughout the country. But majority of these are very small in operation and each one of these may not be producing more than a dozen titles in a year. These are also confined to producing titles in Indian regional languages and catering to the needs of the local markets. Only a few (about 10%) of the publishing concerns in India are reasonably large producing more than 50 titles annually and are equipped with proper infrastructures such as printing presses and distribution networks. In totality, today Indian publishing is one of the greatest in the world and the country is counted among the top seven publishing nations.

The Market Size

While publishing industry is quite old in India, the statistics on publishing are very poor in the country. Even data on number of publishers and number of titles produced are either non-existent or outdated. This is because no systematic research has been carried out in the country on publishing industry except the one undertaken by the National Council of Applied Economic Research (NCAER) during 1976. The NCAER undertook another study on the problems of small publishers in 1985. But both these studies are

quite old and thus have lost their significance today, especially to fulfil the informational requirements.

Thus, we have very scanty information on publishing activities in the country. The estimation of the size of the market, is therefore, a guessing game. One reliable source of statistics on Indian publishing is the National Bibliographic Centre (NBC) at the National Library Calcutta who compiles the language-wise data on the titles received by it under the Delivery of Books Act. Table 6.1 presents these data for the period 1990-91 to 1995-96. The number of titles, as evident from the table, are either declining or constant during the period. It is observed from the table that English language has the maximum share (40% in '95-96) in total titles published followed by languages like Bengali, Hindi and Tamil. The data from National Library, however, do not present the real picture on titles published in the country because many publishers do not send a copy of each of the published titles as required under the Act. As experts suggest, the number of titles would be more by at least 20 per cent in the case of English language and by 30 percent for other languages. The book division of Chemicals & Allied Product Export Promotion Council (CAPEXIL) estimates the number of new titles published in the country at about 50,000 per annum. Even this seems to be a underestimate.

Fortunately, the Federation of Indian Publishers (FIP) in recent times had compiled the latest statistics on Indian book publishing, which was published in a book titled " 50 Years of Book Publishing in India since Independence". According to this source about 11,000 publishers in India bring out nearly 60,000 titles in a year. To be more specific, in 1997 57,386 books were published in the country in 17 Indian languages and English, which had a share of about 22 per cent. The FIP data which were collected through various Indian languages publishers' associations appear to be more reliable compared to the incomplete information provided by NBC & the CAPEXIL.

Even if number of titles published in a year is known with certainty, the estimation of publishing market in India remains difficult. There is no consensus over average print runs per title and average price of a title. The print runs for a title can be as high as one lakh for a popular novel and can be even a few hundreds for another. Similar is the case with the variability in prices.

The Central Statistical Organisation (CSO) of the Govt. of India conducts an Annual Survey of Industries (ASI) covering manufacturing units registered under the Factories Act 1948. The results of the survey are presented for two and three digit National Industrial Classification (NIC) level for all the states as well as for All India. The data on value of output for printing and publishing industry (NIC Industry group 285) for the last ten years available from this source (table 6.2) shows that the value of output is growing at an average rate of 12.6 percent per annum. Taking this growth rate into account, the value of output for the year 1996-97 could be estimated at about Rs.1267 crores.

Table 6.1 : Languagewise No. of Publications Received Under the Delivery of Books Act

Language	Number of Books Received During					
	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96
Assamese	232	220	250	263	331	219
Bengali	1337	1603	1489	1588	1586	1804
English	7368	8169	8119	5082	4493	5907
Gujarati	1140	362	435	480	331	219
Hindi	1882	1702	1514	1547	1815	1367
Kannada	1138	748	744	309	385	933
Kashmiri	12	12	10	10	12	15
Malayalam	860	774	631	646	673	682

Marathi	1119	973	849	828	1913	108
Oriya	383	376	178	148	155	150
Punjabi	405	402	402	273	301	332
Sanskrit	77	50	62	65	76	47
Sindhi	57	40	20	8	31	89
Tamil	958	2072	2341	1524	1572	1172
Telugu	686	719	727	706	641	605
Urdu	377	241	253	311	189	279
Other languages	34	30	27	36	19	15
Total	18065	18493	18051	13824	14523	14883

Source : National Library, Calcutta

The figures provided by the ASI related to printing and publishing industry together and as such they do not publish data exclusively for the publishing industry. The Annual Survey, as mentioned earlier, covers only registered factories under the Factories Act, i.e. factories employing 10 or more workers using power or those employing 20 or more workers without the use of power. But there are large number of publishing firms in the country employing less than 10 workers which do not come under the purview of ASI. Therefore, data provided by ASI do not include numerous small publishing concerns. If we assume the value of printing which should be deducted from above figures is equivalent to the value of output from small firms (employing less than 10 workers), which should have been included, the figures presented in table 6.2 represent a fair picture of the actual value of output from the publishing industry in the country. The discussions with the experts from the private publishing industry also provides the basis for such an approximation. According to a number of experts, the total turnover of the book publishing industry in India is the range of Rs.1000 crores. Given the factor that if large number of publishing firms are from the public sector and since no information is known about the public-private breakup in the total industry, the industry's turnover as suggested by private publishing experts can be an underestimation. Therefore, it would be reasonable to consider the estimated figure of Rs.1267 crores as the closest to the reality.

Table 6.2 : Value Of Output In Printing & Publishing Industry in India During 1984-85 to 1993-94

Year	Value (Rs. Lakhs)	Growth Rate (%)
1984-85	32376	-
1985-86	31780	-1.84
1986-87	37120	16.80
1987-88	40206	8.31
1988-89	43252	7.58
1989-90	45606	5.44
1990-91	55170	20.97
1991-92	65413	18.57
1992-93	75028	14.70
1993-94	91995	22.61

Average Annual Growth Rate 1996-97 (Est.)	126690	12.57
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Source : Annual Survey of Industries(Various years), Central Statistical Organisation, Govt. of India

Extent of Piracy

As mentioned earlier (chapter II), the piracy of literary works takes three principal forms. These are: 1) wholesale reprinting of trade & text books, 2) unauthorised translations and 3) commercial photocopying of books and journals. With the advent of digital technology the piracy of literary works is taking a new dimension. The piracy problems relating to digital publishing will be discussed separately in the later part of this chapter. In India piracy in literary works is synonymous with book piracy as other copyrighted materials of this segment such as newspaper, magazines and other periodicals are not pirated much. Among the books, text books and popular novels are pirated most as they have a large demand base.

The extent of piracy can be found out from the of sale of pirated books as a proportion to the total sales either in units or in value terms. But we have discussed earlier in this chapter that we do not have any data on number of books published in the country. We could only estimate the value of production coming from the publishing industry. But again for finding the extent of piracy we need to have the figures on pirated sales, which, unfortunately are not available from any secondary sources.

During our survey we had enquired on book piracy from the concerned target groups comprising publishers, booksellers and reading community (end users). The responses received from these categories are more than other forms of the Copyright Industry. 92 publishers, 141 booksellers and 123 readers responded to our survey. The findings are also noteworthy. The average piracy levels during 1994-95 to 1996-97 as perceived by the publishers and booksellers are presented in table 6.3. The perception of these two different groups do not differ much. The piracy levels vary between 15% to 24% during the period under consideration. About 33% (30 out of 92) of the publishers are aware of some kind of violation of copyright in their own works. 31% of the authorised sellers (44 out of 141) also felt that their books are pirated. Among buyers, 28% of the respondents (34 out of 123) admitted buying pirated books. Of these, as high as 82% bought pirated books knowingly. On an average an enduser found to buy a total of 37 (number) books in a year, of which of 7 were pirated. This shows the extent of piracy at 19 percent level.

Table 6.3: Average Piracy Level in Literary Works

Year	Piracy Level as Perceived by	
	Publishers	Booksellers
1994-95	15.03	14.64
1995-96	19.23	18.37
1996-97	20.76	23.60

Source : NPC Survey

Regarding type of books pirated most, publishers opinion do not differ much from that of book sellers. Both these categories of respondents feel novels/fictions are pirated most in India followed by text books for professional courses (e.g. engineering, medical, management, etc.) and other courses. Among different forms through which piracy takes place, according to sellers unauthorised printing/selling of books is above all others. The next important form is found to be the large scale photocopying (Table 6.4). More than 55% of the endusers as revealed by the survey, arrange photocopies of books in varying degrees. The detailed information on the extent of photocopying by endusers are presented in Table 6.5.

Table 6.4: Different forms of Book Piracy (as perceived by sellers)

No. of Respondents giving Ranks

Forms \Ranks	1	2	3	4
Unauthorised Printing/Selling	68	43	2	-
Unauthorised Translation	8	19	53	2
Large Scale Photocopying	42	43	24	1
Others	7	-2		3

Source : NPC Survey

Table 6.5: Extent of Photocopying by Endusers

Extent of Photocopying (%)	No. of Books Photocopied	No. of Respondents
100	70	19
50 - 75	34	7
25 - 50	76	15
Below 25	95	27
Total	275	68

Source: NPC Survey

Trade Loss

Book piracy brings in losses to the publishers and the authors in terms of reduced sales and non-receipt of royalty respectively. But such losses could not be known to the publishers or authors as they might not be knowing the extent of piracy with respect to their works. This might be the reason why only a few publishers could provide information on losses. In 1996-97, while 30 publishers admitted about the awareness on piracy of their respective works, only 5 could give some estimate of losses. This is not surprising.

At the aggregate level we found earlier that the extent of book piracy in 1996-97 as perceived by the publishers and booksellers are estimated to be 20.8 percent and 23.6 per cent respectively. During the same year, the purchase behaviour of buyers reveal that at the endusers' level piracy percentage stood at 19%. Thus book piracy rate in the country is varying between a high of 24% (as perceived by the book sellers) to a low of 19% (as revealed by the endusers). To arrive at a single figure, if we take the average of these three figures, the overall piracy percent in 1996-97 will be about 21%. Taking this figure, the estimated loss suffered by the book publishing industry in the country during 1996-97 is found to be about Rs.266 crores.

Digital Publishing & Piracy

The rapid advances in the field of information technology (IT) are affecting the society in more than one way. The new technologies have brought in considerable changes in almost all activities of human life be it manufacturing, trade & business, art or culture. The publishing industry is also no exception as we see the traditional printing & publishing activities are fast giving way to electronic publishing. Electronic

publishing is a process where activities relating to publication such as submission of manuscript, formatting, editing, printing and even distribution are carried out with the help of computers and telecommunication technologies. In its simplest form electronic publishing describes a situation where use of computers is confined to formatting, editing etc, but the final output is produced in the conventional print forms. The latest trend, however, is towards a paperless publication where the entire flow of information from the author to the readers takes in machine- readable forms. Technologically, electronic publishing is taking two prominent forms viz. Optical Disk (popularly known as CD-ROM) publishing and network publishing.

Digital refers to conversion of information in binary codes i.e. in the form of one and zero, current on is one and current off is zero. In common parlance digital publishing and electronic publishing are used interchangeably though in the stricter sense of the terms these two are not identical. All electronic publications need not be digital. Digital representation affords much greater potential for adding functionality and utility to a corpus of information. Once information is digitally encoded, new tools and systems can be invented to create altogether a new form of publication. One output from the application of digital technology is 'multimedia' which is the juxtaposition of text, picture, sound, video etc. in a single medium.

Electronic publishing or its digitized version has certain definite advantages over the traditional print medium. The first and the foremost is the facility to update a document almost instantaneously which enables the readers to get the latest versions of publications. Electronic publications allow easy search of documents and thus reduces users' search time. Another advantage from the users' point of view is that he/she need not buy an entire publication to access a part information from it. Many electronic publications are on-line and can be downloaded by an user as per his/her requirement. The new technologies are advantageous for publishers as they, especially the journal publishers, can drastically reduce their turn-around time i.e. the time lag in submission, referring, revision, editing, composing, printing, delivery etc by wide spread applications of computers and communication networks. The digital conversion allows media enhancement of existing materials with sound, animation and video etc. Electronic publications are easy to store. Conventional books take up substantial amount of shelf space, whereas a typical CD of twelve centimeter diameter can store 650 MB of information i.e. about 250,000 pages (of A4 size) of text. The digital publishing is economical too.

Network publishing is even more useful in terms of information provision and usage. The internet which is the network of networks is an enormous repository of information resources and this is growing in size every day. The most striking feature of internet is its easy accessibility. A vast world of information can be accessed in the desktops with just the click of a button. While this adds tremendous value to our activities, there are reasons for publishers/ authors to be concerned about it as in a networked environment like the internet copyright is under serious threat.

Firstly, given the sheer complexity of mixed media and interconnected rights in the digital environment determining what rights exist and how they apply to a publication under use is not an easy task. Therefore, the process of determining copyrights, tracking them and ultimately facilitating monetary compensation to the right holders for use of their works remains very complicated. Then there is the issue of what is 'free' and what is 'protected' in a vast sea of information that is available in the net. This is not always clear to the internet providers, the web users and sometimes even to the lawyers. As a result, the fear for loss of income due to unauthorized use is more in an electronic environment compared to the traditional publishing. Besides economic rights, moral rights of authors are at a grave risk of being violated by numerous users in a network.

The issue is far more complicated in case of multi-media work. Historically, copyright law has been split between different media. For example, text comes under literary works copyright, still images are artistic work copyright and moving images fall within the jurisdiction of cinematographic works copyright. In multimedia, all these are put together in a single product. Existence of a number of copyrights with different owners and perhaps with different terms of protection make a multimedia product an ideal battle ground in the cause of copyright protection.

But in spite of all these complexities, the world is moving towards the digital era simply because the advantages outnumber the disadvantages. A huge volume of publications are made available in electronic forms daily in various part of the world, especially in the developed economies. Of late, India has also joined this bandwagon, although less vigorously. There is no centralised source for data on electronic publishing in India. But it seems to be on rise in the country. Almost all renowned newspapers and magazines are available in the web. A large number of research journals published from India can be accessed from the internet. The CD -ROM publishing, on the other hand, is catching comparatively slowly. This may be due to narrow domestic market for CD products, the computer penetration in the country being very low. But some leading institutions such as the Indian National Scientific Documentation Centre (INSDOC) and the National Institute for Science Communication (NISCOM) are playing predominant roles in bringing out various scientific publications in CD-ROMs (e.g. Asian Health, Environmental & Allied Databases (AHEAD) published by NISCOM, CD-ROM on Indian Patents and the National Union Catalogue of Scientific Serials brought out by INSDOC etc.) Besides these, CD-ROMs are also available on other areas like Indian mythology (The Panchatantra by the Padmini Multimedia), tourism (Information on Goa & Taj Mahal by Kirloskar Computer Services) and info-educational products (Mystica India from Magic Software) etc. to cater to the needs of millions of endusers located in India & abroad.

It is needless to say that elsewhere in the world including in India electronic publishing in spite of its versatility, remains a soft target of the pirates for reasons well known by now. The solution to this problem lies in strengthening copyright laws by plugging the loopholes exposed by the new technologies and adoption of an appropriate Electronic Copyright Management Systems (ECMS) which is also practicable. The technological handicaps in India have remained as a depressing factor in the spread of copyright piracy in electronic environment. The dissemination of electronic data to a large extent depends on the degree of developments accomplished in information technology-both hardware & software and telecommunications. Production and use of electronic publishing involves considerable cost in terms of initial investment in computers and telephone lines by publishers, libraries, endusers and all concerned. Given the high prices of hardware and software in the country, only a select few from these groups (may be the elite ones), can afford to access electronic publication at the individual level.

Besides cost aspects, there is the question of 'mindset'. In India, the mindset is not favouring fast replacement of traditional print media by digital publications. The reasons could be many. For example, the readers may not get the same degree of pleasure from reading an electronic publication as compared to the 'printed books/journals'. The traditional print media has the ease of being read at one's convenience. On the contrary, digital publications are machine dependant and therefore could not be carried outside as easily as the printed materials. The availability of lap tops with CD-ROM drive is changing the balance. But many people do not like reading substantial amount of information from computer screen as it may be tiring for the eyes, especially if information are of low resolution. The authors also may not like to publish their works electronically. The basic purpose of publishing for an author is to get recognition in the academic circle. However, in electronic publishing the authorship remains to some extent intangible. Apart from these psychological factors digital publishing is not picking up in India as fast as in the developed world due to lack of infrastructural facilities in the vital IT and telecom sectors. Even though it is admitted that IT infrastructure is being developed in the country with a sense of priority and internet users are increasing manifold every year (e.g. between March 1998 & 1999 the number of internet subscribers has increased from 85,000 to 2,40,000 i.e. by a amazing growth of 180%), the digital piracy at present is only a potential problem in the Indian Context. But it would be wise to act before the problem actually knocks at our door.

STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter VII

Performers

The 1994 Amendment of the Indian Copyright Act provided for the first time, some protection to all performers by means of 'Performer's Rights'. Performer's rights cover any visual or acoustic presentation made live by one or more performers. The performers include "an actor, singer, musician dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance". As per the new Act, performer's consent is required for making any audio or audio-visual recording of the live performance and for communicating the performance to the public. Performer's rights are given in the new section substituting the section 38. The new section 39 specifies the cases where broadcast reproduction right or performer's right shall not be deemed to be infringed. These provisions are analogous to those contained in section 52 of the Principal Act.

During the survey we had contacted more than 100 performers from various categories such as singers, actors, dancers etc. (detailed break up in table-7.1). Most of these performers (93 Percent) are professionals. We asked for information on their public performances for the period June 1995 (since the new Act became effective) to March 1997. Available data indicate that extent of violations in both audio and video rights and broadcasting rights of performers are hovering around 20 percent during the period (Table-7.2). The extent of violation is calculated in terms of performance where audio/video recording and /or broadcasting of performances have taken place without the consent of performers as a percentage of total performances.

Unauthorised recording (audio or video) and /or broadcasting of performances cause monetary losses to the performers. Survey data reveal that 19 percent of the sample performers admitted loosing because of unauthorised recording and/or broadcasting of their performances. But when asked about the amount lost due to such violations, very few of the respondents could give any meaningful information. That is why no estimate could be made based on data collected through structured questionnaires. However, some estimate can be arrived at from data available from secondary sources and information obtained while discussing with some of the performers. The performers admitted of loosing on an average of Rs. 1000 per performance in case of unauthorised use (by others) of their performances. This amount can vary across the performers depending upon the type of performance (e.g. musical programme, dance programme, drama etc.) and the popularity of the performer(s) concerned.

The 1991 census data show India had 299 urban centres having population of one lakh or more . If we assume there are 300 such cities/towns at present and on an average one performance is taking place daily during the year, the total number of performances in a year in urban India amounts to 10,9500. Survey findings show the average extent of violation of performer's rights in 1996 stood at 21 percent. This implies that in the case of about 23,000 performances, the performer's rights are violated in some form or the other. Assuming a loss of Rs.1000 per performance, the amount lost due to such violations comes about Rs. 23 crores annually. This figure can, at best, be considered as a rough estimate of actual loss. In the absence of any concrete information in this regard, this can serve as an indicator of the loss suffered by the performers.

Table 7.1 : Category wise Number of

Respondents

Category	Number
Actors	23
Singers	31
Dancers	8
Musicians	31
Total	101

Source : NPC Survey

Table 7.2: Extent of Violation in Performer's Rights

Year	Violation(%)of Audio/video Rights	Violation (%) of Broadcasting Rights
1995	23	21
1996	23	18
1997 (upto June)	21	19

Source : NPC Survey

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STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter VIII

ENFORCEMENT & PUBLIC AWARENESS OF COPYRIGHT

The present chapter deals mainly with the problems associated with the enforcement of Copyright Act, 1957 (Amended in 1994). It also examines how these can be overcome. The chapter covers the public awareness of copyright and the necessary steps to be taken in order to reduce the extent of copyright violation (piracy), if not eliminate it.

Role of Police

The section 64 of the Indian Copyright Act confers the power on the police to seize infringed copies of copyrighted works. The section authorises any Police officer, not below the rank of a sub-inspector, to seize without warrant, all copies of the work wherever found if he is satisfied that an offence under section 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be committed and all copies and plates so seized shall, as soon as practicable, be produced before a magistrate. As per the sub section (1) of the section 64, the power of seizing infringing copies has been conferred on sub inspector and above. However, many police officers may refrain from implementing their powers because of the clause 'if he is satisfied'. Based on discussions with some of the owners of copyrighted works and some police personnel under Crime Branch, it was found that there have been allegations and counter allegations regarding the role of police personnel's. Police, in general, admits that infringement of copyright work has not been extended as high a priority as in the case of murders,

law and order problems, etc. They blame the rightholders for not coming forward to either lodge a complaint formally or failing to produce necessary proof/document before the court. The rightholders on the other hand, blame the police for not taking effective steps and for their apathetic attitude towards copyright violators. They mention that, in some cases there is a strong nexus between the violators and the police. We had approached the Police Departments in all the states and Union Territories to give their views about the enforcement of Copyright Act and related issues. Besides, questions were also raised to various target groups in six surveyed cities such as film producers, video cassette sellers, music companies, sellers of audio products, sellers of computer software, public performers, publishers and book sellers to know their views regarding enforcement of copyright laws in the country.

The filled in questionnaires were received from the Police Departments of only 13 states/UTs out of 30 contacted. It has been observed from their responses that in seven states/UTs there exists a separate cell dealing exclusively with copyright related crimes. These cells in some cases deal with violations related to trade marks as well. Some of the bigger states like Andhra Pradesh and Karnataka do not have separate copyright cell and their copyright cases are being handled by their respective Crime Branch. In case of Maharashtra state only Mumbai city has a separate copyright cell. In 5 states/UT's, there were no reports of violation of any kind during the last three years. One state did not furnish information on number of violations. For the remaining 7 states the total number of copyright violations in 1996-97 stood at a 151, the majority of which were reported from the states like Maharashtra, West Bengal and Karnataka. Segment wise, most of these violations have been reported for film and video only. Only two states had given information on violation of copyrights related to software, music and books. Because very few cases are being registered, it is obvious that extent of violation as per their records has been shown as negligible.

It has also been admitted by eight states that enforcement of copyright law in general is not satisfactory in India. The non satisfactory performance as per the police departments is mainly due to rightholders who fail to produce authentic and legally admissible evidence to prove ownership of their copyrights. This was also observed from the view points of the various target groups we have surveyed. While majority of the target groups (about 59.4 percent) though not satisfied (Table 8.1) with the performance of enforcement authority, about 36.2 percent of them stated that the main responsibility lies with the rightholders themselves (Table 8.2). If we exclude the target groups belonging to authorised sellers of these products i.e. if we take only the owners of copyright such as film producers, video film producers, book publishers, music companies, it was found that 42.1 percent blamed themselves (stated main reason) for non satisfactory performance of enforcement authority. This was also reflected in the survey of the rightholders with respect to complaints lodged with the police. It was found that during 1996-97 out of 57 film producers only one came to know of any violation of his films for which complaint was lodged with the police. None of the video producers lodged any complaints. While six publishers came to know 19 violations for which only one lodged the complaint, only one music company came to know eight violations for which no complaints were lodged. Only 9.5 per cent of them were of the view that police is mainly responsible for enforcing Copyright Act.

It was observed from the discussions with police personnel as well as the rightholders that in most of the States/UTs a majority of the police personnels in the Crime Branch/copyright cell are not familiar with the provisions of the Copyright Act. Information collected from 13 states through mailed survey also support this. The majority of the states admitted that their police personnels are either partially familiar or not familiar at all with the Copyright Act. Only for 3 states out of 13 responded to the survey, the percentage of police force fully familiar with Act exceeded 50%. Because of this reason they had to take help from the respective associations/copyright societies. They have been able to raid premises of persons indulging in making duplicates of music and film cassettes, selling copied software products etc mainly with the help of the associations like NASSCOM, Indian Music Industry, etc. But it becomes difficult for them to deal with violators such as cable operators. The premises of the operator has to be raided whenever a film is in progress i.e. during two to two and a half hours when the movie is being shown, that too with the help of right holders. Many a times, it is very difficult for the rightholders to be present even after the complaint. Of course, police personnel also find it difficult to allocate time to attend such complaints, since according to them they have many other cases to look after with few persons to

man the cell.

The police personnels in general also agreed that they lacked the orientation towards copyright laws, such as knowledge of distinguishing infringed copies (i.e. duplicate copies) from the originals, machines used for making duplicate copies etc and more particularly penalties for violations etc. The problem is more acute in case of computer softwares. As per the information received from the thirteen States/Union Territories, it is found that none of the states have arranged any training for their police personnel associated with the implementation of Copyright Act. When asked about the problems faced in arranging training programmes, the responses were in expected lines, that there is lack of adequate funds, shortage of good trainers in the copyright area etc. They also sometime find it difficult to spare police personnel for training since they are mostly busy not only in copyright related crimes but also in other engagements. Police personnel involved in combating piracy have to be trained in Copyright Act, kinds of violations under different segments of copyright industry. They have also to be trained to differentiate the original from the pirated products. The respective associations should take a lead in this area since ultimately the losses due to piracy affect their members the most. There can also be some sort of revenue sharing whenever raids are conducted between the police personnel and the rightholder/copyright societies. Towards the effective implementation of Copyright Act, the rightholders have to fully co-operate with the police departments not only in conducting raids but also appearing before the court as and when required with original documents and necessary materials.

Table 8.1 : Views on Performance of the Enforcement Authority by Different Target Groups

Target Groups	Percentage of Respondents		Total No. of Respondents
	Satisfactory	Not Satisfactory	
Film Producers	34.5	65.5	55
Video Films Producers	31.8	68.2	22
Book Publishers	58.2	41.8	79
Music Companies	46.2	53.8	13
Public Performers	51.6	48.4	93
SUB TOTAL	48.1	51.9	262
Video Cassettes Sellers	56.8	43.2	81
Book sellers	2.9	97.1	137
Music Cassettes Sellers	54.8	45.2	135
Software Sellers	40.2	59.8	92
SUB-TOTAL	36.2	63.8	445
Total No. of Respondents	287(40.6)	420 (59.4)	707 (100.0)

Note: Figures in brackets show percentage to the Total.

Source: NPC Survey

Table 8.2 : Distribution of Target Groups According to the Responsibilities for Non-Satisfactory Performance of Enforcement Authority

Target Groups	Right Holders	Police	Endusers	Copyright office	Court	Others, if any	Total Respondents
Film Producers	19 (54.3)	1 (2.9)	3 (8.6)	12 (34.3)	-	-	35 (100)
Video Film Producers	8 (61.5)	-	1 (7.7)	3 (23.1)	1(7.7)	-	13
Book Publishing	12 (34.3)	3 (8.6)	8 (22.9)	7 (20.0)	1(2.8)	4 (11.4)	35 (100)
Music Companies	3 (37.5)	3 (37.5)	-	1 (12.5)	1 (12.5)	-	8 (100)
Public Performers	11 (31.4)	5 (14.3)	5 (14.3)	8 (22.9)	6 (17.1)	-	35 (100)
SUBTOTAL	53 (42.1)	12 (9.5)	17 (13.5)	31 (24.6)	9 (7.1)	4 (3.2)	126 (100)
Video Cassette Sellers	12 (34.2)	4 (11.4)	13 (37.1)	5 (14.2)	1 (2.9)	-	35 (100)
Book sellers	22 (36.2)	5 (8.3)	16 (26.7)	13 (21.7)	1 (1.7)	3 (5.0)	60 (100)
Music Cassette Sellers	19 (33.9)	2 (3.6)	23 (41.4)	11 (19.6)	-	1 (1.30)	56 (100)
Software sellers	13 (26.0)	5 (10.0)	19 (38.0)	10 (20.0)	1 (2.0)	2 (4.0)	5 (100)
SUB-TOTAL	66 (32.8)	16 (8.0)	71 (35.3)	39 (19.4)	3 (11.5)	6 (3.0)	121 (100)
TOTAL	11.9 (36.43)	28 (8.5)	88 (26.8)	70 (21.3)	70 (2.1)	7 (4.0)	327 (100)

Note: Figures in brackets are the percentages to the total

Source: NPC Survey

Public Awareness on Copyright

In the previous section of this chapter the role of enforcement authority more so for police has been highlighted and the problems associated with it. It was also observed from table 8.2 that a substantial portion (about 26.8 percent) of the respondents were of the opinion that the main responsibility of the piracy lies with the endusers i.e. ultimate customers who use/buy these products. It is the apathy of customers and their demand for cheaper products that give rise to copyright violations by the unauthorised persons/agencies. The other side is also true equally that if pirated products were not available, customers would not be able to procure them. The situation is like the popular chicken and egg story.

Before we go into the discussion on effective steps which are required in order to educate the people i.e. end users of these products, it is essential to know whether people are aware of the existence of copyright and also the extent of penalties for their violations may call for under the Copyright Act. These questions were looked into from two angles. On the one hand we approached the rightholders of copyright products and sellers/distributors of copyright products and on the other hand we also approached the end users themselves. The sample may not be fully representative to reveal all relevant aspects in the sense that the respondents are located in the large urban areas and were also confined to those who have acquired some education. In all the cases the end users were matriculates and above, a majority of them being graduates and above. Nevertheless, it would give the required leads in this regard.

About 27 percent of Copyright owners and sellers of Copyright products placed the main responsibility on the end users with regard to problem of enforcement. About 61 percent of the respondents belonging to this category stated that in general public awareness of copyright in India is poor. 26 percent opined this to be satisfactory whereas the rest (only about 12 percent) stated that it is either excellent or good(Table 8.3).

The arguments put forward by the rightholders and sellers of copyright products have been contradicted

by the end users. From the responses of the end users it was observed that 81.5 per cent of them are aware of phenomenon of copyright violations (Table 8.4). About 73 percent of the end users were also of the view that one should not buy pirated products even it is available at a lower price because it is detrimental to the interests of the rightholders and the society (Table 8.5). The majority of the respondents (about 78 percent) also admitted that they were aware of the punishment for copyright violation.(Table 8.6)

From the above, it has been found that public is generally aware of the fact that copyright violation is not a desired thing. They also admit that anything created/made/produced by somebody is not to be duplicated, copied and commercially exploited by others. Another interesting feature was revealed while carrying out the survey for software end users belonging mostly to the organisations from both service as well as manufacturing sectors. A question was addressed to the computer personnel whether by using one legal software in more than one independent computer machine, would amount to copyright violation or not. We found that a majority (about 59 per cent) out of 87 respondents mentioned that it is not a violation. The term end user may require a redefinition under the Act. The present machine specific definition may be too narrow to serve any useful purpose and could therefore encourage wilful violations.

Table 8.3 : Public Awareness of Copyright as perceived by various Target Groups

Target Groups	Rating on Awareness (%)				Total No. of Responses
	Excellent	Good	Satisfactory	Poor	
Film Producers	Nil	5.6	24.1	70.4	54 (100.0)
Video Film Producers	9.1	-	9.1	81.8	22 (100.0)
Music Companies	-	28.6	14.3	57.1	14 (100.0)
Book Publishers	-	7.9	20.2	71.9	89 (100.0)
Public Performers	1.0	9.2	24.4	65.3	98 (100.0)
Video Cassette Sellers	2.4	20.5	26.5	50.6	83 (100.0)
Music Cassettes Sellers	6.6	8.1	38.2	47.1	136 (100.0)
Computer Software Sellers	1.0	11.9	22.9	64.2	109 (100.0)
Total No. of Respondents	15 (2.5)	64 (10.6)	158 (26.1)	368 (60.8)	605 (100.0)

Source: NPC Survey

Table 8.4: Responses of End users about their knowledge on the phenomenon of copyright violations

End Users	Yes	No	Total No. of Respondents
Readers	96 (78.7)	26 (21.3)	122 (100.0)
Audio Products	105 (83.3)	21(16.7)	126 (100.0)
Film Viewers	107 (82.3)	23 (17.7)	130 (100.0)
Total	308 (81.5)	70 (18.5)	378 (100.0)

Source: NPC Survey

Table 8.5: Responses of End users Regarding buying of Pirated Products.

End Users	No. of Respondents		
	Statement 1	Statement 2	Total Respondents
Readers	40 (33.6)	79 (66.4)	119 (100.0)
Audio Products	32 (25.2)	95 (74.8)	127 (100.0)
Film Viewers	27 (22.3)	94 (77.7)	121 (100.0)
Total	99 (27.0)	268 (73.0)	367 (100.0)

Statement 1. There is nothing wrong in buying pirated product so long the product satisfies users requirements and priced less than original

Statement 2: One should not buy pirated product even if it is available at a lower price because it is detrimental to the interests of the rightholders and the society.

Source: NPC Survey

Table 8.6: Responses of end users regarding knowledge about the punishment on Buying Pirated products.

End Users	Yes	No	Total No. of Respondents
Readers	101 (82.8)	21 (17.2)	122 (100.0)
Users of Audio Products	97 (75.8)	31 (24.2)	128 (100.0)
Film Viewers	94 (76.4)	29 (23.6)	123 (100.0)
Total	292 (78.2)	81 (21.7)	373 (100.0)

Source: NPC Survey

What needs to be done ?

A massive publicity campaign regarding the ills of copyright violation mentioning its being criminal offence, consequences, etc. could be launched. This is however, a gigantic task. Everybody involved in this, like the Government, local authorities, rightholders, associations, copyright societies, law enforcing authorities, etc have to join hands together. To start with, the campaign could be launched through mass media like newspapers, journals, electronic media such as TV, Cinema halls, etc. The campaign should also highlight how to identify the pirated products as opposed to genuine products.

Education campaign can also be launched at the school and college levels since students are the major consumers of the goods produced by copyright industry. However, piracy is not a phenomenon that can be tackled through any short cut in the short term. This should be a long term effort to educate students of schools and colleges. Piracy related matters could be part of school or college curriculum especially for the students of electronics who may be exposed to implications and methods of software piracy. Simultaneously, lectures, demonstrations may be organised in various parts of the country with the principals of colleges/schools who in turn may teach their students. If this is to be successful, everybody involved in the copyright related works has to join hands together.

Though in a limited scale, NASSCOM, Indian Music Industry have been involved towards educating

people in various forums and through newspapers but their efforts have not been able to bring desired results. In the field of cinematographic and book publishing almost nothing has been done. The associations alongwith copyright office have to necessarily take very active part in this direction in order to reduce the extent of piracy if not eliminate it.

Not only the end users, the rightholders and the dealers/distributors are also to be educated on the Indian copyright laws. Many rightholders, though were aware of copyright, are not fully acquainted with the various provisions of the Indian Copyright Act. The rightholders in many cases are reluctant to do any thing even if they come to know about the violation of their works. This is more so in the case of cinematographic works, and music and to some extent book publishing. This got revealed while discussing with some of the rightholders. Therefore, the right holders also need to be trained in every aspect of copyright and they should be convinced that occurrence of any violation adversely affects their interests directly.

The police personnel including the constables have to be properly trained. Phased programmes have to be developed with the help of associations, prominent lawyers including prominent industrialists/rightholders. One day/two day workshops may be organised for the heads of the crime branches/copyright cells regarding all the related problems of copyright. Lead can be taken by copyright office. A training module could be made and circulated to these people at the workshops. In turn the heads of the crime branches/copyright cells in the respective states/UTs may educate their colleagues. If needed persons/associations like NASSCOM, IMI, IPRS, etc could be invited to address such workshops. Anti Piracy hot line in the line of NASSCOM can be installed at the respective associations, copyright societies and with the crime branch in respective states.

STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter IX

Socio Economic Aspects

Introduction

Copyright piracy, as mentioned earlier, is a theft and therefore is a crime. But because of its white colour nature, many a time copyright piracy is not perceived as a crime at all, or at least not as serious as thefts are ordinarily considered. This is perhaps one of the greatest problems associated with the effective control of the piracy phenomenon, more so in a developing country like India. Our society condemns a bank robbery or even a small household theft. But when a software, on the development of which large investments were made, is copied illegally by millions, no serious note is being taken. This is because copyright piracy unlike most other thefts may not involve physical products and, therefore, in many occasions it remains 'intangible'. What is stolen may not be the physical product itself but the 'intellectual property', which go unnoticed or ignored in many instances. That is why from a societal angle the copyright piracy is not always treated as a serious crime, even though it has far reaching consequences, both social and economic.

Is it true that piracy occurs because our society treats it rather casually? Or is it a phenomenon purely guided by economic motives? It has been argued by many that in the final analysis, the motive behind any piracy is the economic gains. But it is also true that the occurrence of a crime like copyright theft is influenced by the society's outlook towards the crime. This is perhaps to a large extent applicable to the copyright piracy phenomenon in India. In this chapter we propose to probe on this issue in the context of India through the identification of social and economic factors which contribute to the incidence of copyright piracy in the country.

Socio Economic Factors affecting Piracy

The socio economic dimensions of a country can be represented by factors like its population size, gross domestic product, literacy level, per capita income, occupational structure of labour force, quality of life enjoyed by people etc. **Table 9.1** presents a brief socio-economic profile of the country. It is difficult to establish any direct causal link between these socio-economic variables and piracy. However, some of them are expected to exert their influence on piracy phenomenon - directly or indirectly. Such factors include literacy, per capita income, poverty level etc. In the following paragraphs an attempt is made to examine how piracy is linked to some of them.

Illiteracy & Piracy

India houses the largest number of illiterate persons in the world. The extent of illiteracy is alarmingly high at 48 per cent level. Such a high degree of illiteracy is expected to have some impact on copyright matters, more specifically with respect to their effective protection. At the outset, higher illiteracy means lesser demand for books and other printed copyrighted materials. Going by this logic, in a less literate society, piracy rate is likely to be low especially with respect to books, journals and other literary works. This logic can be extended to software piracy as well. A country with low computer (hardware) penetration is expected to have lower incidence of software piracy. Because pirates would like to venture into only those segments of the copyright industry where the market is attractive either in terms of high volume and/or high prices. The lower demand for books and software may act as a disincentive for the pirates. But, on the other hand, illiteracy may boost the prospects of piracy in different ways. Illiterates cannot read, and are therefore, not in a position to judge the originality of products like the way an educated person can do such as by noticing copyright notifications etc. Besides this, the illiterate persons heavily depend on audio-visual media for satisfaction of their needs for entertainment and information, thus rendering a variety of audio-video copyright products susceptible to wide spread piracy. The low level of awareness which, in turn, is the result of a high degree of illiteracy among a large

number of endusers, might be exploited by a few crooks by selling pirated audio-video products.

The above discussion is a pointer to the fact that a country's literacy level has some impact on the extent of piracy prevailing there. In a highly literate society the consumers are expected to have a reasonably high degree of awareness on copyright and, therefore, there may be less tendency among the endusers to buy and/or use pirated products. But this is not true always, as is evident from data presented in **Table 9.2**. All the countries referred there are having higher literacy rates than India. But some of them experience higher incidences of piracy with respect to audio products and/or computer softwares. This suggests that piracy prevails not necessarily because of illiteracy or lack of awareness on copyright alone. There may be some other causes behind the phenomenon.

Poverty & Piracy

The economic gain is certainly one of the motives and perhaps the most important among all. Copyright piracy after all is an economic phenomenon. The pirates have only one objective i.e. to make pecuniary gains from others' creative efforts. They can do this because pirated products find ready demand from a few sections of the society whose demand remained unfulfilled by the normal sources of supplies. The pirates can afford to sell their products at lower prices because, unlike the legitimate producers, they need not pay any levy e.g. excise duty and sales tax etc. and also need not spend on advertising and other marketing infrastructure. For most of the ordinary endusers also the price of the product remains the main consideration while buying. They tend to buy cheaper products irrespective of their literacy levels and the levels of their copyright awareness.

The revelations from the field survey conducted during the course of this study supports this argument. The endusers of copyright products, as have been observed by most of the sellers of such products, insist more on price than other product attributes at the time of purchase. As can be seen from **Table 9.3**, a large number of endusers looked more at price than the other features such as name of the manufacturer(s), year of production etc. while buying a variety of copyright products. Another note worthy finding from the survey was that in many occasions buying pirated products was a 'deliberate decision' rather than a result of ignorance on copyright. All the endusers interviewed during the survey are not only literates but also have achieved a reasonably high degree of education. About 82 percent of them claimed that they were aware of copyright and more than three fourths (about 78%) knew punishments for copyright violations. In spite of all these, a majority of endusers admitted buying pirated copyright products with the full knowledge of the implications (**Table 9.4**). More interestingly, among the reasons cited for buying pirated products knowingly, 'such products being cheaper than original' topped the list (**Table 9.5**). If similar products are also available at lower prices, the consumers have a tendency to buy the cheaper ones irrespective of other considerations. This perhaps explains, to a large extent, the genesis of the piracy phenomenon. Illiteracy or the lack of awareness on copyright, though is a contributory, is of secondary importance as far as the incidence of piracy is considered. So long as the pirates can sell their products at a price lower than that of the original producers, there would not be any dearth of buyers provided the products are of some 'acceptable' quality or standard.

Is the tendency to buy cheaper products something peculiar to Indian consumers alone or is it applicable elsewhere? While economies of piracy is justified in any society, the phenomenon is undoubtedly more prevalent in developing countries like India. The obvious reason for this is that India is a poor country. Its GDP per capita is one among the lowest in the world; lower than even most of the Asian countries (**Table 9.6**). A sizeable section (36%^{1[2]}) of the country's population live below the poverty line. More over, most of the copyright products are treated here as luxury items. Naturally 'affordability' acts as the main constraint in the buying decision. The pirated products being cheaper than the originals, therefore, become the obvious choice for the majority consumers. Another contributory factor in this context may be the consumers' attitude towards quality. As of now the quality consciousness among Indian consumers is rather poor. Therefore, they do not mind buying cheaper products even if they are of lower

quality. This helps the pirates to concentrate only on quantity and not on quality. It would be difficult for the pirates to compete with the legitimate producers in terms of quality.

High Price Level & Piracy

The ill affordability of Indian consumers is not due to low income level alone. As has been pointed out by many respondents during the Survey, especially from the endusers group, that prices of copyrighted items are high and thus remain unaffordable not only to the poorer sections but also to the majority of the prospective customers. In India, an application computer software, on an average, is sold at US \$ 250, a good quality audio CD is not available below Rs. 200. The text books for professional courses such as engineering, medical and management remain beyond the buying capacity of many students. Under such circumstances, piracy provides the natural escape route for all those who cannot afford to buy the originals. The awareness of copyright is, therefore, of less material consequence. Almost a similar sentiment has been aired by the sellers of copyright products and even some of the rightholders notably the publishers. The sellers group was unanimous that high price of original copyright products was the main culprit behind the occurrence of piracy in India (**Table 9.7**).

Unemployment & Piracy

Besides illiteracy and poverty, unemployment can be another economic evil affecting piracy incidence in India, even though it is very difficult to establish a direct link between piracy and unemployment. Copyright based industries are labour intensive. But given the high volume of unemployment in the country, the legitimate segment of the industry can absorb only a fraction of the labour force. As a result, the unemployed persons venture into all kinds of activities including the illegal production and sale of copyright products. The immediate provocation to do so is influenced by the possibility of making "quick" and "high" returns from less investment and efforts, a feature typical to piracy.

Poor Enforcement & Piracy

The other important factor which may attract unemployed people to piracy field is the laxity in the country's copyright enforcement machinery. Copyright piracy is a cognizable offence as per the Copyright Act. But as in the case many similar laws, anti-piracy enforcement of law has remained very ineffective. In India, there is no serious threat of being caught and punished when found involved in piracy.

The laxity in enforcement is the result of slackness on the part of the enforcement machinery, viz. the police on one hand and the passive attitudes on the part of rightholders on the other. There is no denying the fact that catching the pirates is not among the priorities of the police force. A plausible reason for this, as pointed out by the State Departments of Police, is the greater involvement of the force in more demanding areas such as controlling murders, riots and terrorist activities etc. The strength of the force and the enforcement infrastructure are also not adequate to tackle effectively the problems of India's size and complexity. As a natural consequence, low order crimes like copyright piracy do not receive the highest attention from the police. Another problem admitted by the department is the lack of familiarity among the police personnel with country's copyright laws and inability of the personnel to distinguish a pirated product from the original.

The rightholders are also to be blamed for their "not so serious" attitude towards the piracy phenomenon. In any incidence of piracy, it is the rightholders, whose interests are at stake, should take more active part than others in combating it. But unfortunately the Indian rightholders lack this zeal. The rightholders across the segments of the copyright industry claimed that their copyrights were subjected to large scale violations. Simultaneously, the findings from our field survey indicated that only a small section among the rightholders volunteered to lodge a complaint with the law enforcement authority. The kind of active role played by the affected persons in booking the culprits involved in thefts of their physical properties is conspicuous by its absence in case of copyright violations. At the best the rightholders had remained

vocal occasionally just to blame the government in general and the police in particular for their alleged failures in controlling piracy. The organised efforts in combating piracy have been lacking from the rightholders except from the producers of audio products and computer softwares to some extent.

The rightholders argue that the inactive role on their part is not deliberate but emerges largely out of compulsions. Even if complaints are lodged with the police, no action is initiated against the culprits in most of the occasions. Sometimes taking the matter to the highest authority in the police also did not yield desired results. If, in some cases, pirates are booked by the police, the clumsy and sluggish judicial system ensures that the culprits remains unpunished for long if not for ever. This demotivates the rightholders from involving themselves actively in the battle against piracy. Many of them feel that it is better to tolerate the monetary losses due to piracy than to undergo sufferings involved in chasing the police and attending court cases with no definite outcomes in the foreseeable future. It is important to note that the "casual" attitude is not confined to copy right violations alone; it has now become universal to a significant part of Indian populace to other evils e.g. corruption. In this background crimes like copyright theft is not taken very seriously by all concerned.

Lack of Infrastructure & Piracy

The lack of infrastructural facilities in India is also expected to influence copyright piracy in some way or the other. It is a well known fact that available infrastructures in India fall short of actual requirement in the country and are of lower qualities when compared to international standard. The World Competitiveness Year Book 1998, brought out by Lausanne (Switzerland) based International Institute of Management Development (IMD) has accorded India the last rank in infrastructure among 46 countries whose performance were reviewed in the year book. The World Economic Forum's (WEF) Global Competitiveness Report 1998 also depicts a similar dismal picture for India in the infrastructure front; with India ranking at 50 out of 53 countries. Apart from shortages of basic infrastructures like roads, railways etc., India lacks in people's access to communication and information. India is lagging behind not only the developed countries like the USA, UK etc. but even some of the countries from the developing world are much better placed than India in this respect (**Table 9.8**).

This may be the reason for India not emerging as an integrated market place. The markets in India have remained fragmented ; thus giving enough scope to the local suppliers/sellers to manipulate the conditions in their favour. This provides an ideal environment for piracy to breed in. The pirates in India are seen more to operate at the local levels. Many rural and semi urban markets in the country are characterized by demand supply gaps which, in turn, exist due to a variety of reasons including shortages of infrastructure. Such markets are captured by the pirates who swing into action in the absence of concerted efforts from the legitimate producers. Footpath and petty shops selling audio-video products are too common a scene in India to go unnoticed. It is not a mere coincidence that a significant part of these products are pirated.

Conclusion

In this chapter we have attempted to identify a number of socio-economic factors which influence the incidence of copyright piracy in India. While it is very difficult to establish the extent to which these factors contribute to piracy, it can be surmised that each one of them, individually or collectively, has some influence on the phenomenon directly or indirectly. The factors identified here include social handicaps like illiteracy, poverty, unemployment on one hand and economic maladies like the high price, low per capita incomes, lack of infrastructures etc. on the other alongwith poor enforcement of copyright law. The list, however, is not exhaustive but only indicative.

The conclusion that emerges is that though social factors like illiteracy, unemployment etc. influence piracy, the phenomenon occurs more because of economic reasons than anything else. For pirates it is an easy way of making quick bucks. For the endusers it is a gainful arrangement for buying/using a variety of info-entertainment products which otherwise remain unaffordable at least to a vast majority.

Basically, this "Win-Win" situation for pirates & endusers keep the piracy alive and active in the society. Other socio-economic variables like poverty and high prices etc. only add to the degree of the problem.

But piracy entails a high cost to the creative people and also to those who invest their scarce resources in bringing out copyrighted materials for use by millions. Until the pirates are scared by giving exemplary punishments in cases of copyright violations and the common endusers realize that in the long run protection of copyright is beneficial not only to those who are involved in creation and commercialization of intellectual properties, but to all including themselves, piracy will prevail. What is needed, therefore, is an effective enforcement machinery along with a wide spread propaganda highlighting the adversities associated with piracy.

Table 9.1: A Brief Socio-economic Profile of India

ECONOMIC INDICATORS				SOCIAL INDICATORS			
Indicator(s)	Unit	Year	Value	Indicator(s)	Unit	Year	Value
(a) GDP at factor cost				(a) Total Population	Million	1996-97	936
(i) At Current Prices	Rs. Crs.	1996-97	1149215*				
(ii) At 1980-81 Prices	Rs. Crs.	1996-97	296845*				
(b) Agricultural Production (1981-82 = 100)		1996-97	175.7	(b) Life Expectancy at Birth		1996	
				(i) Male			62
				(ii) Female			63
(c) Industrial Production (1981-82 = 100)		1996-97	304.6	(c) Infant Mortality Rate (per ' 000 live births)	No.	1996	65
(d) Wholesale Price Index (1981-82 = 100)		1996-97	320.1	(d) Literacy Rate	%	1995	
				(i) Male			65.5
				(ii) Female			37.7
				(iii) Overall			52.0
(e) Imports	Rs. Crs	1996-97	138919	(e) Gross Enrolment Ratio		1996-97	
				(i) Primary(i - v)			
				Boys			98.6
				Girls			81.8
				Total			90.5
				(ii) Upper Primary(vi-viii)			
				Boys			70.8
				Girls			52.8
				Total			62.3
(f) Exports	Rs. Crs.	1996-97	118817	(f) Labour Force (as % of population)	%	1997	41.8

(g) Foreign Exchange Reserves (including gold & SDRs)	Rs. Crs.	1996-97	80368	(g) Occupational Structure	%	1990				
				People engaged in						
				(i) Agriculture						64
				(ii) Industry						16
(iii) Services						20				
(h) GDP Growth Rate(At 1980-81 prices)	%	1997-98	5.2	(h) Registered Job Seekers	Million	1996-97	37.6			
(i) Per Capita GDP (current prices)	Rs	1997-98	13462	(i) People Below Poverty Line	%	1993-94				
				(i) Rural						37.3
				(ii) Urban						32.4
				(iii) Overall						36.0

* Provisional (Quick Estimates)

Source : Economic Survey 1997-98, GOI (for economic indicators a to g), World Development Report 1998/99, The World Bank, Human Development

Report 1998, UNDP & Monthly Review of Indian Economy, Sept. 1998, Centre for Monitoring Indian Economy (CMIE).

Table 9.2 : Literacy and Piracy Rates for Select Countries

Country	Adult Literacy Rate (%) (1995)	Extent (%) of Copyright Piracy in	
		Audio Products (1995)	Softwares (1996)
United States	99.0	3.0	27.0
Germany	99.0	3.0	36.0
France	99.0	3.0	44.0
United Kingdom	99.0	1.0	34.0
India	52.0	30.0	60.0
China	81.5	54.0	96.0
Brazil	83.3	45.0	68.0
Russia	99.0	73.0	91.0
Italy	98.1	33.0	55.0
Hong Kong	92.2	13.0	64.0

Source : Human Development Report 1998, UNDP (for column 1), IFPI Pirate Sales '95, May 1996, IFPI (for column 2) & The Software Industry in India 1997-98, NASSCOM (for column 3)

Table 9.3 : Product Attributes insisted by Endusers at the time of Buying

Copyright Product(s)	No. of Respondents looking at the attributes				
	Manufacturer's Name	Year of Production	Content	Price	Others
Audio Cassettes/CDs	35	16	101	96	14
Computer Softwares	38	35	58	72	42
Books	51	51	60	90	43
Video Cassettes	16	23	51	54	13
Total	140	125	270	312	112

Source: NPC Survey

Table 9.4: Endusers Admitted buying Pirated Copyright Products

Copyright Products (1)	Total No. of Respondents (2)	Respondents admitted buying pirated products (3)	Respondents buying pirated products knowingly (4)	(4) as a % of (3)
Audio Cassettes/CDs	128	47	24	51
Computer Softwares	97	4	4	100
Books	123	34	28	82
Video Cassettes	131	24	16	75

Source : NPC Survey

Table 9.5 : Reasons for Buying Pirated Products Knowingly

Copyright Products	Percentage of Respondents citing Reasons			
	Original Not Available	Original Not Affordable	Pirated Products Cheaper than Originals	Others
Audio Cassettes/CDs	31	17	36	16
Computer Softwares	29	14	43	14
Books	32	30	36	2
Video Cassettes	54	13	29	4

Source : NPC Survey

Table 9.6 : Comparison of Per Capita GDP among Asian Nations

Country	GDP Per Capita (US\$)	Rank
Bangladesh	264.82	15
China	672.39	12
Hong Kong	24485.86	3
India	374.41	14
Indonesia	1072.97	10
Japan	33346.32	1
Korea, Rep	9620.50	5
Malaysia	4643.95	7
Nepal	213.00	16
Pakistan	469.78	13
Philippines	1138.70	9
Saudi Arabia	6263.30	6
Singapore	32106.34	2
Sri Lanka	840.45	11
Thailand	2578.08	8
UAE	15049.00	4

Source: Computed using Data available from World Development Report 1988/99

Table 9.7 : Main Reasons for Copyright Piracy in India as Perceived by the Sellers of Copyright Products

Reasons	No. of Respondents giving First Two (1 st & 2 nd) Ranks							
	Audio Products		Computer Softwares		Books		Video Cassettes	
	1 st Rank	2 nd Rank	1 st Rank	2 nd Rank	1 st Rank	2 nd Rank	1 st Rank	2 nd Rank
A	20	22	2	11	25	38	24	21
B	67	26	54	14	72	28	25	22
C	4	16	7	24	10	20	9	9
D	-	5	10	23	3	11	8	7
E	7	4	8	16	6	7	6	12
F	2	6	13	13	5	8	8	5

A: Genuine Copies Not Available, **B: High Price of Original**, C: Lack of Public Awareness

D: Rightholders Not Taking Enough Precaution to Protect Copyright, E: Ineffective Copyright Law

F: Poor Enforcement of Law

Source : NPC Survey

Table 9.8 : People's Access to Communication and Information in Some Select Countries

Country	Paved Road as % of total 1996	Per Thousand Population						
		Telephone Main Lines 1996	Fax Machine 1995	Daily Newspaper 1994	Radios 1996	TV Sets 1996	PCs 1996	Internet Hosts* July' 97
USA	61	640	64.6	228	-	806	362.4	442.11
UK	100	528	30.8	351	-	612	192.6	149.06
Germany	99	538	19.5	317	-	493	233.2	106.68
Japan	74	489	102.2	576	-	700	128.0	75.80
India	50	15	0.1	43#	105	64	1.5	0.05
Philippines	N.A.	25	0.7	65	168	125	9.3	0.59
Indonesia	46	21	0.4	20	-	232	4.8	0.54
Singapore	97	513	25.1	364	-	361	216.8	196.30
Sri Lanka	40	14	0.6	25	195	82	3.3	0.33
Malaysia	75	183	5.0	124	-	228	42.8	19.30
Thailand	98	70	1.7	48	204	167	16.7	2.11
Pakistan	57	-	1.2	21	-	24	1.2	0.07
China	N.A.	45	0.2	23	161	252	3.0	0.21

* per 10,000 people

In 1996 (Computed from information available from the Press in India 1998, published by the Ministry of Information & Broadcasting, Govt. of India).

Source : World Development Reports 1998 & World Development Indicators 1998.

STUDY ON COPYRIGHT PIRACY IN INDIA

Chapter X

SUMMARY, CONCLUSIONS & RECOMMENDATIONS

Summary & Conclusions

1. The study focused on the issues relating to the problem of copyright piracy in India. It attempts to arrive at a first hand assessment of the piracy phenomenon and covered the main copyright segments namely cinematographic works (including video), sound recording, computer software, literacy works and the performers. Besides examining why and how piracy occurs, it tries to assess its economic impact in the country. The main objective is to suggest measures to effectively tackle this malady.
2. The study is the first of its kind in India and ,therefore, suffers from disadvantages of the first timer. The study had no authentic information to base upon to begin with. Precise data on copyright industries in India were almost non-existent except in the case of segments like computer software and sound recording, to some extent. Most often the claims on piracy and associated losses by various stakeholders of the industry are found to be too general, exaggerated and at times conflicting with each other. The apex copyright industry associations also do not have data on crucial aspects e.g. investment, production, sales turnover, exports etc. relating to their respective industry segments. This posed a serious problem to the study at the beginning.
3. The study thus attempted to estimate turnover form each copyright industry segment covered by the study by making use of information collected through a questionnaire survey, discussions with copyright/IPR experts, leading producers/sellers of copyrighted materials and their associations along with the limited information available form the secondary sources.
4. The field survey through structured questionnaires covered five distinct target groups viz. the right holders, the authorized sellers of copyrighted products, the endusers, apex copyright industry associations including the registered copyright societies and the enforcement authorities at States/UTs in the six largest urban centres of India viz. Mumbai, Calcutta, Delhi, Chennai, Bangalore and Hyderabad. The survey was undertaken during June-August 1997. Besides this, questionnaires were also mailed to about 2000 users (at organizational level) of computer software and about 300 hotels (3 stars and above). The latter was contacted in order to seek information on copyright violations relating to audio-visual works.
5. The response rate from the field survey was high at 94%. However, responses from some of the important target groups were not encouraging. For example, only 14 music companies, mostly small in size and regional in character, had responded to the survey out of the 30 contacted. Some of the copyright industry associations also did not return the filled in questionnaires despite they were frequently visited by NPC consultants or investigators. From the copyright cells/crime branches at states/UTs also the response was low. We could get only 13 responses out of 30 of them.
6. The combined output from copyright industries in India comprising cinematographic works (cinema, video, cable & commercial rights) sound recording (audio cassettes & CDs), computer softwares and literacy works (book publishing) is estimated to be Rs.13,000 crores in 1996-97. If we add the output from the print media- a constituent of the copyright industry, which is estimated to be about Rs.8000 crores, the size of the industry goes above Rs.21,000 crores during 1996-97 (**table 10.1**). The segment wise contribution is shown in **Figure 10.1**.
7. The contribution of copyright industry to country's GDP is worked out by calculating the Gross Value Added (GVAs) arising from each of the copyright segments. The GVA is defined as the value of output less the cost of raw materials and intermediate inputs. But due to paucity of information on raw materials and intermediate inputs, GVAs could not be found out this way. Alternatively, if we assume that the ratio of value added to output is 40% for all the copyright

Industry segments except for computer softwares in whose case it would be about 90%, the contribution of copyright industries in India is worked out to be about 1% of the GDP²[3] during 1996-97. The point to be noted here is that the scope of the present study does not allow to include all activities that come under the copyright industries. The electronic media is a notable omission. It is felt that the actual contribution from copyright industries would be even more.

8. The total value of pirated copyright products sold in India during 1996-97 was about Rs.1833 crores which formed 20 % of the legal market. Segment wise, the piracy rate is found to be the highest in computer software (44%) and lowest in cinematographic works (5%). The detailed break-up of piracy rates and losses for all the copyright segments covered under the study is given in **table 10.1**.
 9. Contrary to general belief, the overall piracy rate in India found by the study is relatively low at 20% (which further goes down to 9% level when the turnover from print media and the software exports is included in the computation). This is lower in comparison with other nations such as Russia, China etc. The available data indicate that in 1996 the software piracy rate in China and Russia is 96% and 91% respectively as compared to India's 60% (**table 5.2**). In the case of audio products also, these two countries had higher piracy percentages than India (**table 2.2 & 2.3**). In this background, India's image as not a good protector of IPRs , as has been alleged by international agencies such as the IIPA, is unfounded. Lack of widespread complaints from the affected rightholders and from their associations itself could be interpreted as an evidence which substantiates this inference. The copyright piracy problem in India should be a matter of concern but it is not alarming.
 10. The copyright awareness among endusers is not as poor as it has been generally perceived. About 82 % of the endusers interviewed during the survey were aware of the copyright violation phenomenon. More than three-fourths of them (about 78%) also knew that copyright violation is punishable under the Act. But the majority (about 61%) of copyright owners and sellers of copyrighted items, on the other hand, felt the general awareness on copyright is poor in India . The mismatch between these two views may lie in the composition of the sample for the endusers group. The sample of endusers for this study was constituted by drawing from those who are urban based and also reasonably educated. They are expected to know about copyright. But for the country as whole this may not be true because a vast majority of India's population live in rural areas where people are generally less aware about copyright matters. This might have been reflected in the views of the copyright owners and sellers of copyrighted products.
 11. The police personnel mainly through whom copyright laws are implemented lack the required knowledge on copyright. This has been pointed out by a large number of respondents to the survey and has been admitted by the copyright enforcement authorities. The enforcement authorities from 8 states/UTs out of 13 who responded to our survey, admitted that the enforcement of copyright laws is not satisfactory in their respective states. They also mentioned that police personnel, in general, are not familiar with the law and some of them even cannot distinguish the pirated products from the legal ones. As per information available from the survey, none of the states/UTs had organised any training for the police on the subject of copyright. Apart from poor knowledge, the police force also could not accord high priority to copyright crimes because of their greater involvement in more demanding areas such as controlling murders, terrorist and other anti-national activities. This has rendered enforcement of copyright a weak area in the context of India.
 12. The study reveals that in India copyright piracy across the segments occurs more on economic grounds than anything else. The pecuniary gains to the pirates and the availability of products at cheaper rates to the endusers are identified to be prime motives leading to the genesis of the piracy problem in the country. The high prices of certain copyrighted products had helped the pirates to exploit the situation more conveniently. A large number of endusers especially of computer software and books had admitted buying pirated products due to their low price. The large scale photocopying of books relating to medical, engineering and other professional courses is also noticed because being costly such books remained beyond the buying capacity
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of a large number of students. The social evils like the illiteracy and unemployment etc. along with the technological developments which made copying easier and less expensive had also adversely affected the piracy problem to some extent, although they cannot be considered to be the primary cause behind the malady.

13. It has been observed from police records as well as responses from the right holders during the survey that a majority of right holders are reluctant to file any complaint regarding copyright violations of their works. Prima facie it implies that right holders are not very serious about the problem. This may be an indirect evidence to the fact that they are not losing much due to piracy. The police also pointed out that many times the right holders could not produce proof of their ownership in copyright works at the time of trial by the court.
14. The right holders revealed during discussions that they remained less active largely due to compulsions. They said even if complaints were lodged with the police, no action is initiated against the culprits in most of the occasions. The sluggish judicial system in the country involving lengthy proceedings also demoralised them.
15. The apex copyright associations including the copyright societies are not actively involved in combating piracy. The exceptions are NASSCOM and IMI, whose efforts in this respect are significant. Both these associations are not only trying to educate people about the usefulness of copyright protection with respect to their own products, they are also co-operating with the enforcement authorities at the time of raiding the violators' premises. They are also arranging training for the police personnel. But others, though are more in number, have remained relatively inactive when it comes to fighting against the piracy.
16. The problem of copyright piracy in India should be viewed in the background of the socio-economic dimension of the country. India is a large country with underdeveloped infrastructure and markets. Most of the copyrighted products find use in a large number of places and violations may occur in numerous forms, though all of them may not lead to large scale loss of commercial interest to the right holders. Given the complexity of the problem for a country of India's size, it is not feasible to control copyright piracy in its every manifestation through legal means alone. Large scale improvements in the general level of awareness among the public will be the first and foremost deterrent to the malady. Copyright law enforcement machinery must succeed in securing exemplary punishment to the king pins who are guilty of serious violations, rather than attempting to cope with a large number of petty violations.

Recommendations

1. Since the direct loser due to copyright piracy are the rightholders, the prime responsibility of protecting their copyrights lie with the rightholders themselves. Firstly, the rightholders should take enough precaution to protect copyright works. In case violations come to their notice/knowledge, they should file complaints with the police. They should also help the police in conducting raids and producing evidence (e.g. proof of ownership in works) during the trial by the court.
2. The copyright industry associations/copyright societies should launch an extensive campaign through print and electronic media highlighting the adversities associated with the piracy. Lectures, seminars, workshops etc. could be organised in schools, colleges, universities and other places to create a consciousness among people against the evils of piracy. The message should be conveyed in clear terms that in the long run piracy is against the interest of all in the society excepting the pirates.
3. The law enforcement authority like police needs to be imparted proper training in copyright fields. Apart from telling them how to differentiate original copyright products from the pirated ones, the

various provisions of the Copyright Act are also to be taught.

4. A dedicated institute may be established as a nodal agency to deal with matters of copyright and other constituents of IPR, particularly relating to education and training. The institution say the Indian Institute of Intellectual Property Rights (IIIPR) should offer regular courses on IPR and organise relevant training programmes for all concerned with copyright/ IPR like the producers and sellers of copyright products, industry associations, the police and the public at large. Besides, the institution should work in close liaison with the government and copyright industry associations and provide guidance in policy matters.
5. The registration of copyright works may be encouraged since it is found that as of now very few cases are registered. While copyright exists on creation and protection of copyright is not subject to any formality like the registration, registering a work helps to establish ownership in a work which, in turn, may be useful for the right holders to prove ownership in cases of litigation. Towards this, Copyright Office may publicise their activities including that of registration to the members of various associations and general public through different media.
6. The software copyright holders should adopt a corporate license system for using a particular software in the place of 'one software-one PC' system. They may consider bringing out low-priced editions of their softwares for developing countries like India, in their own interest.
7. Since chief executives of organisations/companies are held responsible for copyright violation of softwares in their respective premises, the NASSCOM alongwith copyright office should involve the chief executives in the effort of increasing copyright awareness among user organisations and in promoting anti-piracy campaign through out the country.
8. The video cassettes and cassettes for cable should carry all necessary details as mentioned in the section 52A(2) of the Copyright Act. Besides, they should also inscribe the duration of the right(s) on the cassettes
9. At present some of the states do not have copyright cells under the Police Department. A separate copyright cell in each state should be formed and headed by a DIG or SP depending on the size of the state. The copyright cells should publicise their activities and carry out mass campaign against the malady through pamphlets, seminars and related dissemination activities.
10. All the copyright industry associations and copyright cells at states/UTs should have an anti piracy hotline in line with that of NASSCOM. Through the anti piracy hot line, they should be able to provide information and register/record cases of piracy. The hotline should be able to provide information on sources of acquiring legal copies, various aspects of copyright laws in India and other related matters.
11. To control book piracy through photocopying, a Copyright Clearance Centre (CCC) for publishing could be launched in the country in similar line with the one that at present exists in the U.S.A. Copyright clearance centre's main job would be to authorise the user organisations to make photocopies of any registered title for internal use as well as for commercial use like

course materials, handouts at seminars etc. For this, service organisations could be made to pay some annual subscription fees. They could also provide service to the publishers for registering their titles. The Centre may function under the auspices of the Federation of Indian Publishers (FIP). For this the FIP may first register as a copyright society.

12. Keeping in view of increasing importance of intellectual property rights in the country and the growing convergence among various constituents of IPR at international levels, the government may consider to bring all departments/bodies looking after matters of IPR separately under one umbrella organisation. It is proposed that the Government of India may create an authority say the "Intellectual Property Authority of India" with jurisdiction over such aspects as patents, trademarks etc., in addition to copyright. The proposed institute IIPR may function under the overall control of the Authority.
13. Each copyright industry association should be encouraged to develop database with respect its own segment. The Copyright Office may help such endeavours by providing broad guidance and financial assistance, if required.

Table 10.1: Piracy Rates and Losses in India in 1996-97

Copyright Segment/Products	Industry Turnover (Rs. crores)	Trade Loss (Rs. crores)	Piracy Rate (%)
I. Cinematographic Works			
a. Cinema	2500.00	-	-
b. Cable	93.64	1100.00	8.5
c. Commercial Rights	6.84	2.8	41.0
d. Video	714.00	137.4	19.2
Total (a+b+c+d)	4320.84	233.85	5.4
II. Sound Recordings			
Audio Cassettes and CDs	1102.29	270.00	24.5
III. Literary Works			
a. Book Publishing	1267.00	266.00	20.9
b. Print Media	8073.66	-	-
IV. Computer Software			
a. Domestic Sector	2410.00	1063.00	44.1
b. Exports	3900.00	-	-
Total (excluding Print media & software exports)	9100.13	1832.84	20.14
Total (I- IV)	21073.79	1832.84	8.69

Source : Chapter II through VI of this Report

STUDY ON COPYRIGHT PIRACY IN INDIA

Annexure 1

List of Apex Organisations/Copyright Societies Contacted

1. Federation of Indian Publishers, New Delhi
2. Film Federation of India, Mumbai
3. National Film Development Corporation, Mumbai
4. Authors' Guild of India, New Delhi
5. Indian Music Industry, Mumbai
6. Federation of Publishers' & Book Sellers' Association of India, New Delhi
7. Indian Motion Picture Producers' Association, Mumbai
8. Eastern India Motion Picture Producers Association
9. Phonographic Performance Ltd. Mumbai
10. Indian Performing Rights Society, Mumbai
11. Society for Copyright Regulation of Indian Producers for Film & Television, Mumbai
12. National Association of Software Service Companies (NASSCOM), New Delhi
13. South Indian Film Chambers of Commerce, Chennai

Annexure 2

Questionnaires

Annexure 3

List of International Agencies Contacted

1. International Federation of the Phonographic Industry, London
 2. Ministry of Justice, Sweden
 3. Business Software Alliance
 4. Copyright Section, UNESCO, Paris
 5. World Intellectual Property Organisation (WIPO), Geneva
 6. International Federation of Film Producers (FIAPF), Paris
 7. The British Copyright Council, London
 8. Copyright Office of the United state of America, Washington
 9. The International Confederation of Societies of Authors and Composers (CISAC), Paris.
 10. International Federation of Association of Film Distributors (FIADF), Paris
 11. 3[1] This part of the text is taken from Computer Software Industry in India 1997-98, published by National Association of Software & Service Companies
 12. Copyright Clearance Centre, U.S.A.
 13. 4[2] As per Planning Commission Estimates (1993-94)
 14. 5[3] Rs. 1149215 crores in 1996-97 (Source: Economic Survey,1997-98, Govt. of India)
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