



## Security of data piracy: A critical examination of India's intellectual property rights in cyberspace

Akansh Patel<sup>1</sup>, Piyush Kumar Trivedi<sup>2</sup>

<sup>1</sup> Department of Legal Studies, Khwaja Moinuddin Chishti Language University, Lucknow, Uttar Pradesh, India

<sup>2</sup> Assistant Professor, Department of Legal Studies, Khwaja Moinuddin Chishti Language University, Lucknow, Uttar Pradesh, India

### Abstract

Data piracy occurs when individuals access and claim intellectual property as their own. With permission, piracy involves profiting from another's intellectual property. One of the major challenges in cyberspace is software piracy. The illegal copying, distribution, or usage of software is known as software piracy. The BSA estimates that 36% of current software is stolen. Today, software piracy significantly reduces publisher revenue. Intellectual property rights refer to the ownership of one's mental inventions. The inventor typically receives exclusive rights to utilize their creation for a specific duration. Intellectual property includes literacy, art, and science. This article examines the economic implications of protecting intellectual property rights (IPRs) inside the WTO TRIPS agreement. The article discusses the role of IPR protection in encouraging growth and development and its relationship with other economic policies. Policy education and testing are essential for employee knowledge and compliance, rather than just writing it and expecting compliance. Additionally, policy development requires employee input and updates as technology, legislation, and business environment evolve. Policy shelf life is unacceptable for an organization. Concerns are developing concerning India's legal system's inability to protect data transported from other nations for processing. This report suggests India establish specialized courts to address cyber infringements and data privacy.

**Keywords:** Legislation, piracy, privacy, TRIPS, world trade, world trade organization (WTO)

### Introduction

In recent times, there has been a surge in global concern regarding data piracy and intellectual property rights (IPR) matters. Therefore, we must prioritize our focus on IPR and data protection, considering its significant economic ramifications. A challenge encountered in carrying out this research has been the quantification of intellectual property rights (IPR) and data protection. Previous efforts have been constrained in their capacity to encompass intellectual property rights (IPR) safeguarding, primarily on legal frameworks while neglecting the actual enforcement practices employed by states. The enforcement component is of utmost importance, particularly in light of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement established by the World Trade Organization. According to the TRIPS agreement, the majority of countries are obligated to meet the basic standards for intellectual property rights (IPR) protection by 2006.

The implementation of intellectual property laws has been a crucial matter, especially in economic relations between industrialized and developing nations. Data piracy and data security in India are currently facing increased scrutiny. The lack of suitable legal provisions in India is becoming a growing worry for investors, corporations, the government, and the public in other countries. India is highly motivated to establish a comprehensive data protection system that sets clear guidelines for the collection, storage, and utilization of personal data by both private and government websites. The current enforcement regime in India's legal system is inadequate. India cannot sufficiently safeguard data. The article proposes the establishment of specialized courts to handle cases related to data protection and other cyber infringements. Additionally, it suggests a method for

evaluating the effectiveness of intellectual property rights (IPR) protection, which takes into account the robustness of national intellectual property laws and the enforcement methods of these laws by different countries. After conducting a thorough analysis of specialized courts in different jurisdictions and evaluating their feasibility in India, a proposal is put up outlining particular characteristics of a Cyber Infringement Court in India.

### Intellectual property rights in India

knowledge and expertise in utilizing, protecting, and upholding the intellectual property (IP) rights that we or our organization possess if we intend to engage in economic activities in India.

### What are Intellectual Property Rights

Intellectual property rights are legal rights given to individuals or organizations for their creations or innovations. These rights safeguard intangible assets, such as innovations, artistic works, designs, symbols, and brand names, from unauthorized use or replication.

Intellectual property (IP) refers to legally protected intangible assets, such as brands, inventions, designs, and other creative works, that grant individuals or businesses exclusive rights. Most companies have some form of intellectual property (IP), which is regarded as a valuable asset for the organization.

### Some common types of IP are

**Copyright:** This protects things that have been written down or released, like songs, movies, books, websites, and art.

**Ministry in charge of the IPR**

Government Office for Human Resource Development This law was passed in 1957.

The Copyright Act, of 1957 (as modified) is the IP act in question.

**Patents**

What it protects: Commercial inventions, like new business products or processes.

Administered by: "Department of Industrial Policy and Promotion, Ministry of Commerce & Industry."

Relevant law: The Patents Act, 1970 (updated in 2005).

**Design**

What it protects: Designs, including drawings or computer models.

Administered by: "Department of Industrial Policy and Promotion, Ministry of Commerce & Industry."

Relevant law: Designs Act, 2000.

**Trademark**

What it protects: Signs, symbols, logos, words, or sounds that differentiate your products and services from those of competitors.

Administered by: "Department of Industrial Policy and Promotion, Ministry of Commerce & Industry."

Relevant law: Trade Marks Act, 1999 (updated in 2010).

**Protected Designations**

Geographical indications are used to identify agricultural, natural, or manufactured goods as having originated or been made in a specific country, region, or locality within that country. These goods are characterized by qualities, reputations, or other attributes that are largely related to their geographical origin, or, in the case of manufactured goods, by one of the activities associated with that origin. Sector responsible for overseeing intellectual property rights: Industrial Policy and Promotion Department. The relevant intellectual property law is the *Geographical Indications of Goods (Registration & Protection) Act, of 1999*, which is overseen by the "Ministry of Commerce & Industry".

**Global Factors**

"India became a member of the World Trade Organisation (WTO) in 1995". WTO member nations are required to incorporate some intellectual property (IP) safeguards into their domestic legislation. When conducting business with India, we should expect to encounter similarities between the local intellectual property laws and enforcement methods, and those that are now in effect in the UK.

**Agreements**

India is a part of the following international intellectual property agreements

"The Paris Convention" allows individuals from a signatory state to seek patents or trademarks in other signatory states, granting them the same rights and status as a national of that country.

"The Berne Convention" ensures that each member state acknowledges the copyright of authors from other member states, treating it the same as the copyright of its citizens.

"The Patent Cooperation Treaty" provides a centralized system for obtaining multiple national patent applications in various jurisdictions through a single application.

**Intellectual property rights system in India**

India became a part of the World Trade Organisation (WTO) in 1995. Member nations are obligated to create intellectual property (IP) rules that are at least as effective as those of other industrialized countries.

**Copyright**

India is a signatory to the Berne Convention, which grants copyright protection. Registering our copyright is advisable as it serves as evidence of ownership, particularly in the event of legal action against those who violate our rights. Generally, registration is not required to assert a copyright infringement claim in India. Registration is conducted either in person or through a representative at the Copyright Office. Internet piracy of films, music, books, and software is a prevalent problem in India.

**Patents**

Patent in India are governed by the Patents Act of 1970 and the 2003 Patent Rules. Similar to the UK, utility model patents are not provided for. The Patent Registrar, under the jurisdiction of the Controller General of Patents, Designs, and Trade Marks, operates as the regulatory body for patents in India. This authority falls under the Ministry of Commerce and Industry. Patents have a validity period of 20 years starting from the day when the application is filed. However, this validity is contingent upon the payment of an annual renewal fee. India's patent law follows the 'first to file' principle, which means that if two individuals apply for a patent on the same idea, the one who applies first would be granted the patent.

**Design**

The legislation that regulates designs consists of the Designs Act 2000 and the Designs Rules 2001. The validity of designs is limited to a maximum of ten years, with the possibility of renewal for an additional five years.

**Trademark**

India's trademark legislation comprises the Trade Marks Act of 1999 and the Trade Marks Rules of 2002, which came into force in 2003. The Controller General of Patents, Designs, and Trade Marks, operating under the Department of Industrial Policy and Promotion, serves as the regulatory authority for patents. The police now have enhanced authority in enforcing trademark legislation. However, the police's powers are limited by the need to consult the Trade Mark Registrar for their view on the mark's registration before proceeding with any action. In India, trade names are considered a type of trademark and are protected, regardless of the existence of other trade names. This protection applies to individuals who want to conduct business using their surname. Due to the prevalent occurrence of 'cybersquatting', where third parties register domain names for well-known marks to sell them to the original rights owners, it is recommended that rights owners promptly register their domain names in India as trademarks. The registration process can go on for a maximum of two years. In India, a trademark is initially valid for a term of ten years

and can be renewed indefinitely for additional ten-year periods.

### **The significance of registering intellectual property**

Developing new products and processes, brand names, content, etc. can be quite demanding in terms of resources and often require significant investments. It is the expectation of the individuals or entities creating them that they have exclusive rights over their creation, excluding others. The exclusivity is essentially provided by the Intellectual Property system and laws. For certain forms of intellectual property, such as trademarks and copyrights, the rights are established on the day the work is created. While registration is not mandatory, it does offer certain benefits and advantages.

### **Establishing and implementing intellectual property rights in India**

Registering intellectual property (IP) rights in India is necessary to fully enjoy its benefits.

Individual registrations must be made in India for patents, whereas for rights other than industrial designs, you have the option to apply under the rules of the Patent Cooperation Treaty, which is generally a more convenient and faster process. To protect your trademarks, it is advisable to register them within the jurisdiction of India. While it is not mandatory to register copyrights, it is recommended to do so with the copyright authorities for protection. Intellectual property rights can be upheld by initiating legal proceedings in civil courts or by pursuing criminal prosecution. The laws in India that regulate all types of intellectual property establish protocols for both civil and criminal legal actions, as does the Competition Act. The Indian Government, like governments in other nations, initiates criminal proceedings. However, in most situations, these measures are taken after complaints are made to magistrates or police authorities by rights owners. Legal actions taken against those who violate the law have the potential to result in more severe consequences, such as monetary penalties and incarceration.

### **Indian Data Protection Law**

“Data protection includes legislative restrictions, standards, and methods to reduce privacy breaches from data collection, keeping, and sharing. Personal data is commonly used to identify an individual. Governments, businesses, and agencies can obtain this data.

The Indian Constitution does not guarantee privacy. Data protection and privacy laws are lacking in India. India's Information Technology Act of 2000 and Indian Contract Act of 1872 protect data. An Indian data protection law is imminent. The Information Technology Act of 2000 addresses civil compensation and criminal punishment for unauthorized disclosure, misuse, and breach of contractual obligations related to personal data.

Under Section 43A of the Information Technology Act, 2000, a company that possesses, deals with or handles sensitive personal data or information and fails to implement and maintain reasonable security practices and harms or profits an individual may be required to compensate the victim. It should be noted that the affected party might request any amount of compensation. Section 72A of the Information Technology Act, 2000 in India makes it illegal to divulge information without authorization or in violation of a contract. This violation can

result in a three-year prison sentence and an INR 5,000,000 fine. Data protection is mostly governed by contracts. These parties can contract their relationship, define personal data, sensitive data, data that cannot be transmitted in or out of India, and data handling protocols.”

### **The Information Technology Act of 2000**

“The Information Technology Act, 2000 (IT Act) is a legislation that grants legal recognition to transactions conducted by electronic data exchange and other forms of electronic communication, popularly known as electronic commerce. According to Section 69 of the IT Act, the Government-appointed Controller has the authority to instruct a subscriber to provide the necessary resources to decrypt, intercept, and monitor information.”

### **Sanctions for Harm to Computer, Computer Systems, and other related entities as under the IT Act**

“Section 43(b) of the IT Act of 2000 provides limited safeguards to prevent data breaches. Section 43 (b) specifically pertains to the unauthorized acquisition, duplication, or removal of data from a computer system, which effectively refers to the unauthorized access and theft of data from computer systems.”

### **Tampering with Computer Source Documents as provided for under the IT Act, 2000**

“Tampering with computer source documents is covered by the IT Act, 2000 Section 65. Anyone who knowingly or intentionally hides, destroys, or modifies computer source code for a computer, computer program, computer system, or computer network that is legally required to be preserved can be imprisoned for up to three years or fined up to INR 2,000,000.”

### **Computer-related offenses**

Previously, the IT Act, namely Section 66, established the definition of the term "hacking" and prescribed the corresponding punishment. Nevertheless, the term "hacking" has been eliminated due to the implementation of the IT Amendment Act, of 2008. The revised Section 66 now states that any individual who engages in any act mentioned in Section 43 with dishonesty or fraudulence shall be subject to imprisonment for a maximum period of three years, or a fine of up to five lakh rupees, or both.

### **Sanctions for Violation of Confidentiality and Privacy**

“According to Section 72 of the IT Act, penalties can be imposed for breaches of confidentiality and privacy. As per the Section, unauthorized access and subsequent sharing of electronic records, books, registers, correspondence, information, documents, or other materials without consent can result in a maximum penalty of two years imprisonment, a fine of up to INR 100,000, or both. Section 79 of the legislation incorporates the inclusion of modifiers such as "knowledge" and "best efforts" before the imposition of fines. A network service provider or intermediary is not liable for the infringement of any third-party data that they offer access to if they can prove their lack of knowledge or awareness of the offense or violation, or if they have taken all necessary measures to prevent it.”

### Recent amendments as introduced by the IT Amendment Act, 2008

“Section 43A of the Information Technology Act stipulates that entities must compensate individuals for any failure to protect their data, emphasizing the importance of data security. Section 66 addresses computer-related offenses, laying the groundwork for penal actions against such crimes. Section 66A specifies penalties for sending offensive messages through communication services, highlighting the need for responsible communication. Section 66B deals with the punishment for dishonestly receiving stolen computer resources or communication devices, targeting the receivers of stolen digital assets. Section 66C focuses on identity theft, prescribing punishments for those who fraudulently use others' identity information. Section 66D punishes individuals for cheating by impersonating others using a computer resource, addressing fraud in the digital domain. Section 66E imposes penalties for the violation of privacy, protecting individuals' personal space and information. Section 67 penalizes the act of publishing or transmitting obscene material in electronic form, aiming to safeguard online decency. Section 69 grants authorities the power to issue directions for the interception, monitoring, or decryption of information through any computer resource, ensuring national security and public order. Section 79 provides immunity to intermediaries in certain conditions, reducing their liability for third-party content. Section 84A discusses the modes or methods for encryption, setting standards for secure communication. Finally, Section 84B prescribes punishment for the abetment of offenses under the Act, deterring individuals from aiding in the commission of cybercrimes.”

### Conclusion and Suggestion

The country has prioritized enhancing service delivery in intellectual property offices by improving infrastructure, developing capacity, and using advanced technologies. Data privacy is becoming increasingly important as the interchange of private information across national borders expands. The Indian laws are inadequate in providing data protection. India is expected to shortly pass legislation that will offer enough security to private data. The unresolved matter in the Indian context is significantly more extensive than simply passing stringent protectionist legislation. If laws are enforced with precision and speed, they effectively discourage wrongful behavior. Unfortunately, the Indian legal system lacks these crucial elements. If the systemic challenges of enforcement in India, particularly the unsolved cases caused by court delays, are not dealt with, India's data protection legislation will remain insufficient.

“This paper proposes the implementation of a robust intellectual property (IP) system in the country.” It suggests improving the efficiency of IP application processing by hiring more staff, enhancing IT infrastructure, and implementing automation in Intellectual Property Offices. It also recommends adopting the best practices in IP processing, strengthening the public delivery of IP services, and ensuring the highest levels of transparency and user-friendliness. Cyber Infringement Courts, which have authority over intellectual property and data protection matters, are an essential remedy for India's enforcement challenges. India should promptly establish this system of specialized courts to ensure sufficient protection for data.

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