

# INDIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that India remain on the Priority Watch List in 2011.<sup>1</sup>

Executive Summary: India has the potential to be a leading market for the creative industries – both foreign and domestic. The country produces the greatest number of films in the world (1,288 full-length feature films, and a staggering 2,961 films overall), boasts a creative and diverse music market, a prolific publishing industry (70,000 titles in 2009), and a vibrant software market. Key economic studies (including by international organizations like UNCTAD and the Motion Picture Distributors Association) indicate that growth will continue. However, piracy stifles the market and keeps India's creative industries from reaching their potential. Nearly two out of every three software applications is unlicensed. The legitimate music market shrank over 23 percent between 2006 and 2009, according to the Indian music industry group, IMI. Physical piracy displaces legitimate sales. Illegal camcording of movies off the screens in India and pay TV theft rob creators of their due. Print and photocopy piracy continue to hinder the development of the trade and educational publishing markets in India. Increased Internet access and mobile penetration translate to growth in illegal downloads as well as mobile device piracy allowing rampant digital piracy of copyright materials.

The Indian Government, particularly in some localities, has taken some important measures to combat copyright infringement, yet more needs to be done given the scope of the problem. The Indian Government must be more proactive in addressing the concerns of industries which by any measure contribute significantly to India's GDP (for example, it is estimated that software and services industries alone accounted for nearly 5% of the entire Indian GDP in 2008, according to NASSCOM). IIPA welcomes the Indian Government's announced initiative to develop a national IPR policy and to engage with industry stakeholders in this process. It is critical that this effort lead to better coordinated, national government level efforts to bolster IP enforcement. State nodal officers have been established throughout India, but to IIPA's knowledge, they do not take sufficient numbers of *suo-moto* raids (without complaint) to deter physical piracy. Cases that reach the court system experience significant delays in adjudication, usually resulting in non-deterrent fines or sentences. While the current law creates an adequate basic structure for copyright protection, it needs modernization. In this regard, the Copyright Bill 2010 put forward to implement the WCT and WPPT, and make other changes, contains some serious deficiencies that need to be addressed. To achieve Prime Minister Manmohan Singh's call for India to experience a "decade of innovation," the Government of India will have to develop the political will to support creativity and innovation as a driver of economic development for the country, and pass and implement in practice adequate laws for copyright protection.

Priority actions to be taken in 2011:

### Enforcement

- Create a national anti-piracy task force with goals to reduce piracy, *inter alia*, by working with State nodal officers, providing them with significantly increased resources; provide more accountability and power to the recently constituted task force by FICCI under the aegis of the Ministry of Human Resource Development (MHRD).
- Reinvigorate "IP cells" within the state police, provide them with significantly increased resources, and establish specialized IP prosecutors.
- Continue training police authorities to be more effective in addressing rapidly growing mobile device and Internet piracy
- Increase the number of *suo-moto* raids, including against corporate end-user software piracy.

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<sup>1</sup> For more details on India's Special 301 history, see IIPA's "History" appendix to filing at <http://www.iipa.com/pdf/2011SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.



- Encourage judicial reform, including accelerating the adjudication process in criminal and civil cases, and imposing deterrent fines and imprisonment; and establish specialized IP courts, judges, and prosecutors.
- Legalize use of books and journals at educational institutions.
- Empower customs to effectuate *ex officio* seizures, followed by destruction, of pirate goods.

#### Legislation

- Ensure the Copyright Bill 2010 contains WCT- and WPPT-consistent protections, and takes into account right holders' comments to the Standing Parliamentary Committee.
- Adopt effective anti-camcording provision, either as part of Copyright Bill or as standalone bill.
- Adopt statutory damages in civil cases; allow restitution to be awarded in criminal cases; and establish enhanced penalties for "pre-release" piracy.
- Reject attempt to recast unauthorized imports as non-infringing, as would result from the proposed revision of Section 2(m).
- Adopt an optical disc law.

#### Market Access

- Eliminate market access barriers, including those imposed on motion pictures, entertainment software and business software.

## PIRACY AND ENFORCEMENT UPDATES IN INDIA

IIPA's previous reports describe in detail various piracy and enforcement issues in India and the harm caused to the U.S. content industries. The following provides updates on ongoing and new issues over the past couple of years.

**Retail Piracy:** The retail trade in pirated hard goods continues to harm the content industries in India. Pirate optical discs remain available openly in major cities, including music, movies, software, and PC ("burned") and console (factory) videogames.<sup>2</sup> The high rate of piracy of entertainment software in India is made possible by the widespread availability of circumvention devices used to bypass technological protection measures (TPMs).<sup>3</sup> Because India has yet to implement the protection for TPMs mandated in the WCT and WPPT, vendors openly sell circumvention devices on the Internet, in retail stores and kiosks, or sell game consoles that are already modified. There is almost no legitimate rental video market in India, since cottage pirate rental video stores dominate the market. The harm to the motion picture industry due to piracy of films has been well documented, but in Mumbai, DVD piracy at the street vendor level declined due to continual enforcement activities by the Alliance Against Copyright Theft (the Bollywood-Hollywood anti-piracy coalition) and law enforcement.<sup>4</sup> In 2010, AACT was involved in 301 hard goods (DVD) raids in Mumbai and 19 hard goods (DVD) raids across Northern India. Software piracy at the retail and wholesale level is also prevalent, including hard disk loading and the open sale of pirate software in markets throughout India. Pirated PC and console games are widely and openly available in smaller retail establishments throughout the country.

Industry's relationships with law enforcement remained good in 2010, with law enforcement generally willing to conduct complaint-based raids, but not *suo-moto* raids. The music industry reports physical piracy remains serious

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<sup>2</sup> There were reportedly 36 OD factories in India as of 2009. In recent years, draft optical disc legislation emerged, but a major company in India, Moser Baer, which owns an OD factory in India, opposes the inclusion of blank disc licensing in such a law. Imports of pirate discs, from Malaysia and other Asian countries, also continue to be a problem. The predominant form of optical disc piracy in India is burned recordable discs, with content including music compilations in MP3 formats, pre-release music (primarily Indian titles and some international repertoire), motion pictures on VCDs, DVDs, and CD-Rs (most of which are available in major cities well before the local theatrical release of the title), and CD-ROMs and DVDs of business software, entertainment software and books/reference materials. Publishers continue to report, for example, cases where many best-selling medical and technical textbooks are being loaded onto CD-ROMs and being sold for US\$5 or less.

<sup>3</sup> The industry reports that "mod chip" to modify consoles for pirate game play are generally imported from the Middle East and China and sell for around Rs.200 (US\$4.39) to Rs.700 (US\$15.35) per chip.

<sup>4</sup> According to a 2008 report "The Effects of Counterfeiting and Piracy on India's Entertainment Industry" published by the U.S. India Business Council and Ernst & Young, the Indian film industry lost an estimated US\$959 million and 571,896 jobs due to piracy.

with overall seizures in the millions, including some drops in seizures of MP3 discs in the Northern and Southern zones.<sup>5</sup>

**Corporate End-User Piracy of Business Software:** Corporate end-user software piracy – the unauthorized use of software by businesses and organizations – causes by far the largest losses to the U.S. software industry in India. Preliminary estimates by research firm IDC indicate that 64% of PC software deployed in 2010 in India was unlicensed, with the commercial value of such pirated software for U.S. vendors amounting to more than US\$1.05 billion.<sup>6</sup> This represents only modest progress since 2007 when the PC software piracy rate was 69%. Reducing piracy in India would bring benefits to the local economy. A 2010 study done by IDC, sponsored by BSA, entitled *Piracy Impact Study: Economic Benefits of Reducing Software Piracy*, found that decreasing India's PC software piracy rate by ten points over four years would deliver US\$4.7 billion in GDP, \$512 million in tax revenues and nearly 60,000 new IT jobs. The benefits would be even greater if the 10 point reduction was achieved in two years, yielding \$6.1 billion in GDP and \$676 million in tax revenues.

The Business Software Alliance reports continued good relationships with local enforcement authorities in 2010, with especially positive cooperation in the states of Punjab, Delhi, and Maharashtra,<sup>7</sup> and also with the Central Bureau of Investigations (CBI) & Indian Customs. As with retail piracy, police usually act upon the filing of a criminal complaint, but lack the capacity, training, and manpower to institute *suo-moto* cases and investigations. The civil end-user enforcement program relies upon *Anton Piller* orders from the courts to preserve the element of surprise and ensure that evidence is preserved. In 2010, BSA conducted 32 civil actions. BSA also notes greater levels of awareness among the Central Government and certain state governments about software piracy and a greater willingness to collaborate on programs to address this challenge. Specifically, BSA was invited to conduct two workshops on effective software asset management (SAM) within government organizations by the Ministry of IT in 2010 and has been invited to recommend guidelines to better manage the department's software assets. BSA also launched a first ever SAM/legalization program for state-owned enterprises with the support of the State Government of Karnataka, launched a program for the State of Andhra Pradesh with the positive support of that State Government, and in January 2011, initiated SAM and legalization trainings for departments of the State Government of Gujarat upon request.

**Camcording Piracy:** Camcording piracy has emerged in India as a harmful activity to both Hollywood and Bollywood (as well as Tollywood - Telugu films, and Kollywood - Tamil films).<sup>8</sup> In September 2009, a major initiative commenced to train theater employees and increase enforcement against camcording piracy, given the 16 forensic matches traced back to cinemas in India in 2009. Unfortunately, the number of unauthorized camcords in cinemas went up to 25 in 2010. The cooperation of the Indian industry with U.S. industry will hopefully spur passage of anti-camcording legislation and more enforcement against such illegal and harmful activity.<sup>9</sup> There was only one

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<sup>5</sup> The numbers, compiled by the music industry group, IMI, reveal a dramatic up-tick in pirate DVD seizures in Tamil-Nadu, but drops on other regions of the country. Numbers of raids remained nearly constant year-on-year between 2009 and 2010.

<sup>6</sup> BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in India. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2011 Special 301 submission at <http://www.iipa.com/pdf/2011spec301methodology.pdf>. BSA's final piracy figures will be released in mid-May, and the updated U.S. software publishers' share of commercial value of pirated software will be available at <http://www.iipa.com>.

<sup>7</sup> In the IIPA 2010 report on India, we reported that BSA had successfully partnered with the state of Karnataka in executing a software asset management (SAM) program, including recognizing companies for their compliance efforts, and that the state of Maharashtra also launched an educational and awareness program directed at companies in December 2009.

<sup>8</sup> The independent film industry notes that camcording is particularly damaging in India because it has fueled physical and online piracy, negatively impacting worldwide distribution and preventing the establishment of legitimate distribution.

<sup>9</sup> In November 2010, the City of Los Angeles and Indian producers made a Joint Declaration by which they agreed "to develop and strengthen motion picture production, distribution, technology, content protection and commercial cooperation between the two filmmaking communities." See Motion Picture Association, *Historic Cooperation Pact Between Hollywood And Bollywood: City of Los Angeles and Indian Producers To Encourage Joint Film Production and Commercial Cooperation*, November 10, 2010, at <http://www.mpa.in/press/Immediate%20Release%20-%20LAIndian%20Film%20Industry%20Joint%20Declaration%20signing.pdf>.

interdiction in 2010 involving an illegal recording on a cell phone, but no further action has been taken in that or other cases.

**Pirate Printing and Photocopying of Books and Journals:** Piracy of trade books, textbooks, professional books (scientific, technical, and medical), and scholarly journals continued to harm the publishing industry in India in 2010. Book piracy occurs in a variety of ways in the country: unauthorized photocopying, unauthorized compilations in the form of course packs, pirated re-prints of trade titles, and unauthorized and scanned copies of books (particularly in the scientific, technical and medical sectors) and the hosting of such copies on sites created and maintained by university students. Photocopying remains a severe problem for the academic and professional sectors of the industry, and continues on and around university campuses and in libraries, sometimes even condoned by the institutions. Wholesale copying of entire books is increasingly complemented or replaced by use of unauthorized compilations in the form of coursepacks, or "self instructional material" (SIM). These are used both for classroom teaching and distance learning, with the materials for the latter sometimes found in electronic form. Industry continues to wait, apparently in vain, for MHRD to issue a long-promised government order/circular to all educational and research institutions to combat illegal photocopying on university campuses.

**Internet and Mobile Piracy:** Development of the Internet was relatively slow in India despite universal appeal in the country. As a result, early on, Internet cafés were the primary method of accessing the Internet in India, with reportedly 180,000 in 2009, according to Internet Service Providers Association of India (ISPAI).<sup>10</sup> In recent years, home and business subscriptions from two incumbent phone companies/service providers, and from new entrants like Tata following the breakup of the duopoly, has meant rapid Internet growth, to 71 million by the beginning of 2010 (compared with 52 million in 2009). Broadband penetration has been much slower, but with development of ADSL in the country, there were an estimated 10.52 million broadband users as of October 2010.<sup>11</sup> Mobile penetration consists of a staggering 706.69 million wireless customers, but only two million users reportedly access the Internet via mobile phones due to slow download speeds and the relatively recent launch of 3G.<sup>12</sup>

Internet and mobile piracy causes increasing harm to all the copyright industries in India, via P2P filesharing, BitTorrents, cyberlockers, and auction sites.<sup>13</sup> For the motion picture industry, sites like tamilwire.com, moviesmobile.net, bharatmovies.com, tamilthunder.com, bwtorrents.com, desitorrents.com, tamiltorrents.net, doregama.in, dctorrent.com, hindilinks4u.net, and many others cause significant harm.<sup>14</sup> These sites feast on the demand for local language dubs of U.S. films as well as Indian films.<sup>15</sup> A study undertaken by MPDA has India among the top ten countries in the world for Internet piracy.<sup>16</sup> For the business software industry, Internet piracy takes the form of auction sites and sites offering unauthorized copies of software for download. The entertainment software industry continues to report an alarming rise in online piracy in India, including over eBay India which continues to be a primary point of auction sales of pirated PC games. The music industry reports that Internet piracy has grown and it is estimated that 95% of all such uses are unauthorized. They also report that mobile device piracy, in which retail establishments sell or offer for free flash cards or other storage devices for mobile phones preloaded with music to customers (sourced either from pirate or legitimate CDs or downloaded from pirate websites or through P2P filesharing services), remains a significant problem with similar piracy rates as those experienced in the online

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<sup>10</sup> Harsimran Julka, *Indian Internet Users Grow to 71 Million: IMRB*, The Economic Times, March 20, 2010, at <http://economictimes.indiatimes.com/infotech/internet/indian-internet-users-grow-to-71-million-imrb/articleshow/5703745.cms>.

<sup>11</sup> Telecom Regulatory Authority of India, *Telecom Subscription Data as on 31st October 2010*, December 24, 2010, at <http://www.trai.gov.in/WriteReadData/traif/upload/PressReleases/780/PRcodiv24dec10.pdf>.

<sup>12</sup> See *supra* note 10.

<sup>13</sup> The independent film and television segment of the motion picture industry (IFTA) reports that Internet piracy remains a significant export constraint for independent producers and distributors, the majority of which are small to medium sized businesses. Independent producers partner with local authorized distributors in India to finance and distribute their films and programming. These authorized distributors find it almost impossible to compete with the pirates. Internet piracy also prevents the establishment of legitimate online distribution platforms and services for consumers, which independents can use to finance future productions.

<sup>14</sup> Pirate Internet sites are rarely hosted/operated in India. They are mainly hosted/operated in Indian immigrant countries.

<sup>15</sup> For example, Vishal Bharadwaj's *Kaminey* was downloaded a record number of times (estimated at 350,000 times) in India and abroad. The situation is equally bad for regional language films with 88 percent of Telugu and 80 percent of Tamil films being downloaded from the internet.

<sup>16</sup> See Motion Picture Distributors Association (MPA) (Prepared by PricewaterhouseCoopers), *Economic Contribution of Indian Film and Television Industry*, 2010, at <http://mpda.in/press/EconomicContribution.pdf>, at 10.

market. The Entertainment Software Association (ESA) reports that during 2010, ESA vendors detected 4.09 million connections by peers participating in unauthorized file sharing of select member titles on P2P networks through ISPs located in India, placing India eighth in overall volume of detections in the world.<sup>17</sup> Breakdowns by ISP show that National Internet Backbone (NIB), Bharti Broadband and Mahanagar Telephone Nigam Ltd. subscribers were responsible for approximately 82% of this activity occurring in India.

Internet enforcement is still nascent in India, and so far, voluntary notice and takedown is not working. The film industry has commenced a site blocking criminal action against 66 pirate websites. Under the criminal laws of Maharashtra, the industry is hopeful that the magistrates will issue such interim site blocking orders (until final adjudication) to ISPs if the operators of the pirate websites fail to show at the criminal proceeding. The domestic recording industry is working intensively with the Mumbai, Delhi and Hyderabad police on Internet piracy issues. A major problem has been locating pirate operating websites. The Indian music industry reported that while enforcement against mobile device piracy has improved, the problem continues to grow. The industry is bringing to the police more than 70 mobile device piracy cases per month. Without a statute dealing with online infringement and the role of ISPs, the industries have had limited success in having pirate content or online pirate services taken down.<sup>18</sup>

Signal Theft and Public Performance Piracy: Cable operators in India routinely “underdeclare” the number of subscriptions for which they are being paid, so they pay right holders in movies and television content substantially less than they are rightfully owed. Given the size of the Indian market, the loss to the industry from such levels of underdeclaration is huge, conservatively estimated (from 20% to 80% underdeclaration depending on the location) to be just over US\$1.1 billion in 2009. These practices result in substantial losses in tax revenue to the Indian states, and several of the states have begun complaining loudly about losses. In addition, public performance infringement, including video parlors in small- and medium-sized cities showing pirated film product in competition with legitimate theaters. Public performance piracy is also widespread also for the music and sound recording industry.

Enforcement Through State Cells in India Could be Enhanced Through National Coordination: The Indian Government, in its 2010 Special 301 Submission, indicated, “[e]nforcement Cells have been set by the state governments in their respective police headquarters. Nodal officers have been appointed by the state governments to handle IPR related offences.”<sup>19</sup> However, there is no Federal Government-led initiative to coordinate enforcement with and between the state governments. The state cells, first established in 2002, did not run significant numbers of *suo-moto* actions but the local music industry reports some police *suo-moto* raids against physical piracy. Raids are almost always complaint-based, and are usually small-scale, with some exceptions.<sup>20</sup> Each industry has its own experiences with the state authorities. The publishing industry reports that it has received relatively good cooperation from law enforcement authorities in a number of cities including Jabalpur, Gwalior, Delhi, Mumbai, and Kolkata. IMI reports that the cells that function most effectively are in Delhi, Tamil Nadu and Kerala. BSA reports that they work well with the cells in Delhi and Mumbai, as well as with those in Bangalore, Chennai and Hyderabad.<sup>21</sup> For the motion picture and record industries, the Punjab state government established a state cell with to proactively address video and audio piracy, and the collaboration with the local Indian film industry has also led to some joint enforcement work

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<sup>17</sup> These figures do not account for downloads that occur directly from hosted content, such as games found on “one-click” hosting sites, which appear to account each year for progressively greater volumes of infringing downloads.

<sup>18</sup> In 2009, BSA sent over 1,500 takedown notices to ISPs and the IMI sent over 1,000, with only the occasional takedown.

<sup>19</sup> See Government of India, Ministry of Human Resource Development, Department of Higher Education, Copyright Office, *State – wise Nodal Officers for Enforcement of Copyright: List of the Nodal Officers nominated by States/UTs*, at <http://copyright.gov.in/firmStateWiseListNodalOfficers.aspx>. There was even an anti-piracy coordination cell launched in October 2010 by FICCI.

<sup>20</sup> One exception in 2009 involved a raid involving the largest ever seizure of pirated academic and scientific, technical and medical (STM) books in India. During the last quarter of 2009, a raid in Delhi against a printer, binder and distributor producing pirated academic and STM books revealed 80,000 prints and 124 negatives of a single publisher’s titles on hand. This led to raids on two warehouses belonging to the distributor, leading to at least 160,000 more suspected pirated titles. The distributor/book seller appeared to be supplying pirated books to locations in Agra, Kanpur, Delhi, Gwalior, Bhopal, Indore, Kolkata, Cuttack, Bhubaneswar, Guwahati, Chennai, Hyderabad, Bangalore, Mumbai, Pune and Nagpur.

<sup>21</sup> The Mumbai police have both a copyright cell, dealing with OD and other piracy, and a cybercrime cell which deals with software piracy. *Mumbai Police: Organization and Functions*, at [http://www.mumbaiipolice.org/%5Cspecial%5Corg\\_fun5.htm](http://www.mumbaiipolice.org/%5Cspecial%5Corg_fun5.htm).

in Mumbai.<sup>22</sup> BSA has urged specific states who have or are considering state specific anti-piracy legislation to ensure inclusion of software within the scope of the legislation. Submissions have been made to state governments of Delhi, Punjab, Tamil Nadu, and Maharashtra. The State Government of Delhi has so far been the most receptive and indicated that software would find a place in the proposed legislation. We would like to see this move forward in other states as well.

**Civil and Criminal Courts Largely Fail to Deter Piracy:** There remains a lack of overall deterrence in judicial enforcement in India, with some exceptions. Problems usually begin with the raid and lead all the way to final judgment in the courts. The Indian Government, in its 2010 Special 301 Submission, did not have recent statistics available but noted an overall trend of decreasing numbers of raids, arrests, and convictions for copyright violations. The government indicated no further information regarding raids which led to indictments, nor any information about penalties imposed.<sup>23</sup> Court procedures are mired in problems, including lack of training among prosecutors to bring piracy cases, very long delays (both criminal and civil cases, implicating TRIPS Articles 41, 41(2), 42 and 61),<sup>24</sup> occasional obstruction of the raid process or other irregularities,<sup>25</sup> and spoilage of evidence.<sup>26</sup> Police often fail to investigate links up the supply chain to the source of pirate production and investigations are often cursory.

While historically, there had been relatively few convictions for piracy, and mostly non-deterrent fines and no imposition of jail terms, in the past few years, the music industry has experienced some positive success with higher fines and settlement amounts, especially in Delhi.<sup>27</sup> It remains the case, however, that there has never been a criminal conviction for software or book piracy in India. The strongest remedy copyright owners have to date in India involves pretrial detention of up to one year under the Goondas Act, which has had copyright offenses added as a predicate offense in Tamil Nadu. State Governments in Punjab, Delhi and Maharashtra have been asked to include piracy of all forms of copyright products under the purview of the Goondas Act (although Maharashtra already includes "video piracy" in its existing Maharashtra Prevention of Dangerous Activities (MPDA) Act, under which second time offenders can be detained for 90 days without bail). This remedy, which provides a significant deterrent, should be employed in appropriately egregious circumstances.

While most industries rely on criminal enforcement to achieve deterrence, civil procedures can be useful for achieving enforcement objectives in India, depending on the industry. The business software industry has traditionally used civil litigation as the preferred enforcement route, given the difficulties in the criminal system, and given their reliance on interim injunctions and *Anton Piller* orders (e.g., there were 34 of these for BSA in 2009) to avoid spoilage of evidence and to retain the element of surprise.<sup>28</sup> The industry enjoys a very high success rate with respect to the grant of such orders at the Delhi High Court. Unfortunately, in 2010, such enforcement efforts have become much less effective due to judges imposing conditions on such orders.<sup>29</sup> Proper issuance of interim

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<sup>22</sup> *Other States: Anti-piracy cell for Punjab*, February 27, 2009, at <http://www.thehindu.com/2009/02/27/stories/2009022752740300.htm>. See Sampurn Wire, *Anti-Piracy Raids Seize Close to 15000 Pirated Discs Mumbai Police Along With AA Khan and Associates Conduct Raids Across the City*, Thaindian News, May 13, 2010, at [http://www.thaindian.com/newsportal/entertainment/anti-piracy-raids-seize-close-to-15000-pirated-discs-mumbai-police-along-with-aa-khan-and-associates-conduct-raids-across-the-city\\_100363186.html](http://www.thaindian.com/newsportal/entertainment/anti-piracy-raids-seize-close-to-15000-pirated-discs-mumbai-police-along-with-aa-khan-and-associates-conduct-raids-across-the-city_100363186.html).

<sup>23</sup> See Government of India, *Submission by India Under Special 301 for 2010*, February 26, 2010, at 5 (on file with IIPA). They note twice in the submission "In 2007, 6628 cases of copyright violations were registered by the police. In that year 8149 persons were charge sheeted and 1622 were convicted." These statistics not only suggest a downward trend in criminal enforcement, but they are too outdated to be able to judge progress and deterrence in the country.

<sup>24</sup> For example, following a raid, police often take up to a year to prepare the charge sheet on a defendant. Industry reports it is not uncommon for a typical open-and-shut piracy case to take four to seven years to adjudication.

<sup>25</sup> Obstruction of the raiding process is still common, with pirates often being tipped off about impending raids.

<sup>26</sup> Because criminal cases proceed so slowly, the investigative officers are often transferred to remote locations by the time of trial or otherwise fail to appear, which only further delays the trial. By the time of trial, evidence is often missing or unusable.

<sup>27</sup> The recording industry reports improvements with the Indian courts, with fines of more than Rs.70 lakhs (US\$230,000), and settlements of 40 cases through plea bargaining in Delhi alone. One case in Delhi led to a settlement payment of Rs.14 lakhs (US\$30,000). Criminal convictions began to increase in 2009 in both the music and video area under the criminal copyright piracy provision of the Copyright Act (Section 63) and under Section 52A, which criminalizes failure to use the required certificate on videos or sound recordings. The Indian music industry (IMI) reported that they received an unprecedented 60 convictions under Section 63 in 2008, which carries far more severe penalties than Section 52A. Fines under this latter section rarely exceed \$1,000 but the offense has historically been far easier to prove.

<sup>28</sup> In addition, BSA has pressed for the courts to allow the grant of John Doe orders to allow court-appointed commissioners to enter the premises of any suspected infringer whose name is unknown and therefore not named in the complaint and collect evidence of infringement.

<sup>29</sup> With periodic changes to the roster of judges on the Original Side Jurisdiction of the Delhi High Court (which is done as a matter of routine and procedure where the roster changes every 6 months), BSA reports: 1) the imposition of security costs on Plaintiffs; 2) the grant of local commission orders without orders to

injunctions and *Anton Piller* orders has over the years encouraged infringers to settle, thus freeing court resources. Civil cases have been less fruitful, but in 2009, BSA got its first civil judgment with a damages award of Rs. 20 lakhs (US\$43,860) as compensatory and punitive damages against a company engaging in the unlicensed use of software. Damage awards have been issued against hard-disk loading of software. The motion picture industry has had some success over the years in using the civil system to obtain preliminary injunctions against pirate cable systems that transmit U.S. films and TV programs without authorization, and these have had some deterrent effect, even though the cases rarely come to judgment.

IIPA has noted in past submissions the hope that court reforms might lead the way to quicker dockets and greater effectiveness in court outcomes. For example, judges in Bangalore have been appointed specifically to hear criminal and civil IP cases in June 2008. Another example of court reforms involved the 2006 Ministry of Home Affairs (MHA)<sup>30</sup> Notice outlining a plea bargaining system under the Criminal Procedure Code. The Tis Hazari court in Delhi approved the Notice and appointed a plea-bargaining judge.<sup>31</sup> In October 2009, IMI was successful in getting a conviction pursuant to this process including a Rs.12 lakh (US\$26,315) criminal fine. Approaches like these could be helpful in clearing backlogged dockets, enforcing deadlines for adjudication/resolution of piracy cases and preventing unjustified continuances, encouraging completion of a set number of cases, adopt further case management techniques and extend plea bargaining further; and, treat piracy as a serious economic crime.

Enforcement at the Border: Customs should be empowered to seize *ex officio*, and should destroy pirated goods. IIPA understands that many seized goods have in the past been resold to shops working with the Customs Service. If done more than just in exceptional circumstances, this would amount to a TRIPS violation. Additionally, the customs process, while improving, continues to be cumbersome. Customs should take significant action to: a) reduce the substantial imports of pirate product, b) stem the parallel import of and rental of legitimate DVDs entering India prior to the film's Indian theatrical run, and c) continue the strong action taken in 2008 and 2009 to prevent the export of pirate and low-cost India editions of textbooks, including to the U.S. Customs must develop a database of pirates and counterfeiters, link port information and conduct *suo-moto* actions against infringing imports and exports, given the vast import and export problem.

## COPYRIGHT LAW AND RELATED ISSUES

Copyright in India is governed by The Copyright Act, 1957 as amended last in 1999, and related laws and regulations.<sup>32</sup> Amendments to the Copyright Act have been considered for many years (the previous known draft

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seize and seal computer systems containing pirated/unlicensed software; 3) granting the right to Defendants to obtain back up copies of their proprietary data while at the same time ensuring that the evidence of infringement is preserved in electronic form; 4) assigning a low number of technical experts for large inspections, making carrying out orders more time-consuming and raising court commissioners' fees; and 5) ineffective implementation and lack of deterrence from contempt proceedings against defendants who disrupt or defy *Anton Piller* orders.

<sup>30</sup> See Ministry of Home Affairs, at <http://www.mha.nic.in/>.

<sup>31</sup> *Office of the Chief Metropolitan Magistrate Tis Hazari Courts: Delhi, Plea Bargaining: Practice Directions*, at <http://delhicourts.nic.in/plea%20bargaining.pdf>.

<sup>32</sup> According to the explanation of the Indian Government in its 2010 Special 301 Submission,

Chapter XIII of the Indian Copyright Act, 1957 provides for penalties for offences committed under the Copyright Act and empowers the police to take necessary action. These are the following:

- Imprisonment for a term of six months to three years and a fine of Rs. 50,000 (US\$1,096) to Rs. 200,000 (US\$4,385) for the offence of infringement of copyright or other rights under the Act. (section 63).
- Imprisonment for a term of one year to three years and with fine of Rs. 100,000 (US\$2,192) to Rs. 200,000 (US\$4,385) on second and subsequent convictions. (section 63 A).
- Imprisonment for a term of 7 days to three years and with fine of Rs. 50,000 (US\$1,096) to Rs. 200,000 (US\$4,385) for knowingly using an infringing copy of the computer programme (section 63 B).
- Seizure of infringing copies (Section 64).
- Imprisonment for a term up to 2 years and with fine for possession of plates for purpose of making infringing copies (section 65).
- Disposal of infringing copies or plates used for making infringing copies (section 66).
- Imprisonment for a term up to one year or fine or both for making false entries in the register (section 67).
- Imprisonment for a term up to one year or fine or both for making false statements for the purpose of deceiving or influencing any authority or officer (section 68).
- Imprisonment for a term up to three years and with fine for publication of a sound recording or video film in contravention of provisions of Section 52A (section 68 A).

dated from 2005). On April 19, 2010, the Copyright Bill 2010 was introduced into the Indian Parliament and referred to a Standing Parliamentary Committee which requested comments from stakeholders and held extensive hearings through the summer and fall of 2010. The Bill makes few changes to the 2005 draft but adds a number of new provisions, some of which are troubling to copyright owners. The Bill does not make amendments that adequately implement the WCT and WPPT, nor does it properly address dealing with online infringement/Internet piracy or contain adequate measures promoting ISP responsibility and fostering cooperation with right holders to combat such infringements.<sup>33</sup> IIPA submitted extensive comments to the Bill to the Standing Parliamentary Committee overseeing the MHRD on May 31, 2010 as did IIPA members, MPA and BSA, and many local stakeholders. IIPA members and local stakeholders also presented lists of deficiencies in the Bill in the hearings before the Standing Committee. On November 25, 2010, the Standing Committee issued a detailed report of its views of the Bill<sup>34</sup> and agreed with a number of positions taken by right holders, but failed to recommend changes to remedy key deficiencies outlined in IIPA's and IIPA members' submissions. The Committee's report is not binding on the Copyright Office in the MHRD and it is as yet unclear if even the positive changes recommended by the Committee will be accepted. It is expected that the Amendments may be re-introduced in Parliament during the spring budget session. IIPA urges the U.S. government to engage the Indian authorities on an expedited basis to correct these deficiencies, many of which could result in violation of India's international obligations.

The following is a summary of some of the key issues in the Copyright Bill or other issues to be addressed:

- Inadequate Protection For Technological Protection Measures Against Unlawful Circumvention: The Bill left unchanged the previous draft amendments which sought to implement the anti-circumvention provisions (regarding technological protection measures (TPMs)) of the WCT and WPPT. The proposed Section 65A remains seriously deficient, and if enacted in its present form would be incompatible with the WCT and WPPT. The provision: a) does not cover access controls as is required by the treaties, b) covers only the "act" of circumvention and only when the person engaging in circumvention activities acts "with the intention of infringing" only the exercise of exclusive rights, c) does not prohibit the manufacture, importing or trafficking in circumvention devices or services and merely requires that person to keep a "record" of the names and addresses and other "particulars" of the person using such device or service to circumvent,<sup>35</sup> d) does not define an "effective technological measure", e) would permit circumvention to take advantage of any exception, such as fair dealing, contained in the Copyright Act (thereby almost completely eviscerating any protection), f) creates

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Government of India Submission, *supra* note 23. The Submission also indicates, "The provisions on IP protection in these laws are further supplemented by appropriate provisions for border measures in the Customs Act, 1962, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and the Department of Revenue Notification No. 49/2007-CUSTOMS (N.T.) dated 8<sup>th</sup> May, 2007 notified under section 11 of the Customs Act, 1962." *Id.* at 9. The Submission indicates, "The Customs authorities are also empowered to take action on their own initiative suspending clearance of goods where they have *prima facie* evidence or reason to believe that the imported goods are infringing the IP rights of any right holder," and notes "In 2008-09, there were 28 cases of suspension of clearance of imported goods on account of IPR infringements. In 2009-10, the number of cases increased to 55."

<sup>33</sup> The Indian Government, not surprisingly, has taken a more generous view of the amendments, stating,

"The Department of Higher Education has moved another proposal to amend the Copyright Act, 1957 in order to address the newer issues that have been seen in the context of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which were negotiated in 1996, (collectively called the Internet Treaties). The proposed amendments would address the challenges posed to the protection of Copyrights and Related Rights by digital technology, particularly with regard to the dissemination of protected material over digital networks such as the Internet, the protection for the authors of literary and artistic works, such as writings, computer programs; original databases; musical works; audiovisual works; works of fine art and photographs."

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The proposed amendments to the Copyright Act, 1957, *inter alia*, relate to:-

- Provisions to bring the Act in conformity with WCT and WPPT. These include making provision for protection of technological measures of protection used by a copyright owner as well as provision against tampering with Rights Management Information in any work. They also include extending new rights provided to performers, on par with authors, in the WPPT. The Copyright Act already extends the rights available to literary authors to producers of phonograms, which are now provided in the WPPT.
- Provisions to protect the music industry and resolve its current concerns.
- Provisions to address the concerns of the physically challenged and to protect the interests of the author of any work.
- Incidental changes

*Id.* at 11.

<sup>34</sup> Cite to Committee report

<sup>35</sup> With circumvention devices and services widely available globally on the Internet and from sources without any locus in India, it is naive to think that mere "record keeping" obligations can ever come close to meeting the treaties obligation to provide "adequate legal protection and effective legal remedies" against circumvention of TPMs

other overbroad exceptions, and g) provides for only criminal and not civil remedies. The Standing Committee in effect approved this provision as drafted, suggesting that the judiciary could evolve the law to ensure that access to works was facilitated (but not that circumvention activities would be deterred).

- **Online Infringement, and ISP Responsibility:** The Bill does not deal adequately with the issue of online infringement and the role to be played by ISPs over infringements of third parties.<sup>36</sup> Clarity on such issues is indispensable to the fight against online piracy. IIPA urges that detailed provisions which provide expeditious remedies to removing infringing material be adopted, including provisions encouraging ISPs to cooperate with right holders in dealing with online infringements. The industries note that based on their comments, the Parliamentary Committee urged that the Bill be brought in tune with the Information Technology Act, 2000, which provides for power to intercept, monitor or decrypt information through any computer source on certain grounds mentioned therein. The IT Act provides that local ISPs bear responsibility for infringements on their networks after they have been put on notice and have knowledge of infringement. The Committee recommended that a designated authority for managing copyright issues and piracy should be created with sufficient policing powers. Industry is thus awaiting the Ministry of Information, Communications, and Technology issuance of 'comments and explanatory notes' that accompany IT Act Sec 79. These will have significant bearing on the interpretation of service provider liability, and will hopefully inform the direction of the Committee with the Bill on this issue of critical importance to all the content industries.
- **Introduction Of Berne And Trips-Incompatible New Compulsory Licenses:** The Bill extends two existing compulsory licenses, which were applicable only to Indian-origin works, to include all foreign works. The proposed amended Section 31 would extend to foreign works where the author is "dead, unknown, or couldn't be traced." The new Section 31A compulsory license now covers foreign works which have been published or already performed but are not republished, offered anew for public performance or broadcast under reasonable terms. The extension of these compulsory licenses to foreign works clearly cannot meet the three-step test under Berne and TRIPS. The Standing Committee was also concerned about the international implications of these provisions and recommended they be reviewed. Two other new compulsory licenses (Sections 31B and 31D) were proposed for the benefit of the disabled and for the broadcast of literary works, music and sound recordings, respectively. Section 31B fails to contain necessary protections to ensure that such works are not limited solely to the disabled and that they otherwise fully meet the three-step test. The all-inclusive broadcast compulsory license is unnecessary and unprecedented.
- **India Should Adopt an Anti-Camcording Provision:** With the increase in illegal camcording of movies in theaters in India, IIPA calls upon the Indian Government to adopt legislation making it unlawful to use a video camera or other device to make (or attempt to make) a copy of a motion picture while inside a theater, and to prohibit the unlawful onward distribution or transmission (e.g., wireless upload to the Internet) of the camcorded copy. The U.S. has such a statute, and several other countries have statutes or are considering bills prohibiting illegal camcording.
- **Repeal of Protection Against Parallel Imports:** India's regime of national exhaustion has resulted in a vibrant trade in low-cost India-only editions of books, software and other works, and the ability of the Indian copyright industries – a central economic force in India – to acquire rights with the assurance that their important territorial rights will be protected. The Indian government has framed this proposed amendment to Section 2(m) of the Copyright Act 1957 as providing its citizens with greater access to less expensive editions of copyrighted works from abroad, a rather confounding assertion since the lowest cost editions of many copyrighted works are produced in and especially manufactured for the Indian market. Furthermore, a regime of international

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<sup>36</sup> The Bill deals in a very rudimentary way with this issue, at least in part in Section 52(1)(c), but that treatment is far too terse and oversimplified as to be appropriate for this complex area. IIPA notes, for example, that obtaining a court order within 14 days is required to mandate the taking down of infringing material for which the right holder has provided a takedown notice. The Committee concluded that the 14 day period be "reviewed."

exhaustion will likely make it more difficult to enforce the law against pirate copies entering India. The Standing Committee rejected the arguments of all stakeholders and supported this damaging change.

- **Definition of Commercial Rental (2(fa)):** The Bill proposes substituting the word "hire" with the words "commercial rental" in Section 14(d), along with the addition of a definition of "commercial rental" in Section 2(fa) which excludes rental for non-profit purposes by non-profit libraries and educational institutions without defining those terms. The definition is unclear as to the entities that qualify for the exception, and IIPA is concerned this ambiguity will enable pirates to circumvent the law. The Standing Committee was also concerned about the lack of clarity of this provision and recommended that it be narrowed. We concur with the Standing Committee.
- **Overly Broad Exceptions:** The proposed changes to Section 52 would create a number of new and overbroad exceptions to protection, some of which are particularly dangerous in the networked environment. These include: a) a broad "private copying" exception,<sup>37</sup> b) overbroad exceptions for copying of computer programs, including a provision allowing such copying for any "noncommercial personal use" beyond the usual making of a back-up copy, c) an exception for making transient or temporary copies that goes far beyond what would be permitted, for example, in the EU Copyright Directive, a provision which IIPA considers overbroad in itself, d) an overbroad exception permitting the performance of films in educational contexts and in "clubs", and e) an overbroad exception with respect to reproduction of books by libraries. These and certain other exceptions would violate India's obligations under the Berne Convention and the TRIPS Agreement.
- **Limiting Membership in Copyright Societies Only to Authors:** This surprising and unprecedented amendment was recognized by the Standing Committee as unworkable and unnecessary and recommended that copyright society membership also be available to "owners of rights" that are not authors.
- **Unclear Protection For Temporary Copies:** The Copyright Bill defines the reproduction right to include copies "stored" in a computer, and contains a "transient and incidental" copy exception, implying that such temporary copies fall under the reproduction right. Coverage and protection of temporary copies like other copies "in any manner or form" (Berne Convention/TRIPS) should be expressly confirmed (e.g., in the definition of reproduction).

IIPA also calls upon the Indian Government to: 1) deal with damaging "pre-release" piracy, with provisions comparable to those adopted in the U.S. (the Family Entertainment and Copyright Act of 2005, containing effective civil and criminal provisions to deter online pre-release piracy), 2) allow restitution in criminal cases, and 3) adopt statutory damages, since proving actual damages, e.g., in end-user software piracy cases, can be difficult, and in order to expedite the slow civil judicial processes and provide much-needed deterrence to a civil regime which relies almost completely on interim injunctions and *Anton Piller* to deal with piracy.

**India Should Adopt an Optical Disc Law:** With a reported 36 optical disc factories, India should adopt an effective optical disc law. FICCI has been engaged in the drafting process and IIPA has weighed in. Adopting an effective OD law has long been delayed by the controversy over coverage of blank discs.

**Pending Criminal Procedure Amendments on Arrest:** In our 2009 submission, IIPA reported that there was a Code of Criminal Procedure (Amendment) Bill, 2006, which has been passed by the Lok Sabha and the Rajya Sabha and was awaiting presidential assent. It contained a disturbing amendment that would allow for issuance of

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<sup>37</sup> The motion picture industry is concerned that this exception in Section 52(1)(a)(1) can also be interpreted to permit the making of camcorder copies in theaters under the pretext of the copies being for private and personal use. It appears that the HRD has attempted to alleviate industry concerns that the exception for private use could be read to permit video recording or camcording in theaters by further limiting the exception for private use to "private and personal use." However, this does not alleviate the foreseeable difficulties with such an exception as a broad exemption can completely undermine the anti piracy efforts currently being undertaken by the film industry to stop camcording in theatres. A private use exception, even one further limited to "private and personal use" is covered under the three-step test in the Berne Convention and TRIPS. Since India must adhere to *minimum* international standards of copyright protection and its treaty obligations and for clarity in application, MPA strongly urges the HRD to further revise this Section to explicitly incorporate the three-step test into the law and remove any potential for camcording in theatres as permitted personal use.

written warnings instead of arrests for crimes with punishments less than seven years. The amendment would leave the decision of arrest or warning to the investigating officer's discretion. The Criminal Procedure Code (Amendment) Act 2008 came into force with effect from December 31, 2009, but sections 5, 6 and 21b of the Act are still not in force, e.g., the provisions relating to the powers of the police to make arrests and also the power of the court to grant and refuse adjournment of cases. This amendment could have a negative impact in India by undermining an already weak system of deterrence that comes with the threat of arrest and having to post bail.

## MARKET ACCESS ISSUES

As described in detail in previous IIPA submissions, many market access barriers hinder copyright owners' abilities to participate fully in the market in India.

**Motion Picture Barriers, Including Services Taxes and Discriminatory Entertainment Taxes:** The U.S. motion picture industry faces numerous market access barriers, including: 1) the imposition of a 10.3% service tax assessed against the "transfer" of intellectual property rights, 2) inordinately high and discriminatory entertainment taxes on theatrical admissions, including unconstitutional taxes based on the language of the film,<sup>38</sup> 3) foreign ownership restrictions, 4) unreasonable and burdensome documentary demands by Customs (e.g., proprietary and financial documents for the past five years to determine supposedly delinquent taxes, extraction of inflated duty payments for release of goods), 5) double taxation by the Federal Government on the "transfer" or exploitation of copyright, 6) price fixing on tickets in South India as well as quotas on the number of screenings per title per day, 7) onerous regulations on uplink and downlink of satellite signals beaming into India,<sup>39</sup> and 8) disruptive content control rules for television.<sup>40</sup>

**TRAI Ban on Exclusivity and "Must Provide" in the Pay TV Sector:** A January 2007 Telecom Regulatory Authority of India (TRAI) regulation creates a potentially Berne- and TRIPS-incompatible ban on exclusivity (prohibiting broadcasters from granting exclusive contracts with any distributors)<sup>41</sup> combined with a "must provide" requirement (obligating broadcasters to provide channel programming to all requesting distributors on a non-discriminatory basis). This regulation eliminates all potential for competition and any incentive to develop programming or buy any "rights" and should be deleted or significantly altered.

**High Tariffs on Entertainment Software Products:** Entertainment software publishers continue to be hindered by the existence of high tariffs on PC game products (with the applied duty rate currently at 30-35 percent), console game products (tariffs also as high as 30 percent), and game console hardware. Additional taxes compound to create an environment where legitimate commerce in game consoles is virtually non-existent, and where penetration rates of unauthorized consoles are only a fraction of what they would be under less restrictive market conditions. There is also an excise duty assessed on PC and other locally replicated products. The current duty rate is at 8.24 percent of the wholesale price, or about 5 percent of the MRP. With tariff rates at this level, the ability of legitimate publishers to compete in the market and establish legitimate distribution channels is severely hampered.

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<sup>38</sup> Any film not produced in the same language that is predominately spoken in that state is charged a higher tax. The Supreme Court has ruled this to be unconstitutional, but states are still engaged in the practice. Meanwhile, entertainment taxes vary widely among Indian States, ranging from 15 to 40% in some key markets, 40 to 70% in other states, and in a small number of states, 100% or more of the admission price. The average tax rate, computed on a country-wide basis, is reasonably estimated to be 27 to 36%, and constitutes a significant disincentive to the much-needed cinema construction in India.

<sup>39</sup> Under 2005 Guidelines, foreign broadcasters are required, among other things, to set up offices in India, licensed by the government, and pay prescribed fees per channel beaming into India. In August 2006, the Ministry of Information and Broadcasting released a draft Broadcast Services Regulatory Bill, established a Broadcast Regulatory Authority (BRAI) tasked with setting policies on programming codes, licensing conditions, content regulation, and censorship.

<sup>40</sup> Also in August 2006, the Ministry of Information and Broadcasting issued a notification to broadcasters that only films rated "U" can be broadcast on TV channels, reportedly in response to public concern over increasingly offensive scenes shown on television. In addition, the Mumbai High Court issued a judgment that same month requiring broadcasters to recertify all films through the Central Board of Censors to ensure that only "U" rated films are aired. These decisions, unfortunately made without industry consultation and without supplementing Censor Board resources, have introduced uncertainty and disruption in the marketplace.

<sup>41</sup> Additionally, the MIB amended the Direct to Home (DTH) Guidelines to include, among other things: prohibitions against DTH operators from entering into exclusive contracts with any broadcaster; prohibitions against DTH operators carrying signals of any broadcaster who has entered into any exclusive contracts with any distribution medium and/or against whom any litigation is pending in such regard.

Double Taxation of Business Software: The packaged software industry in India continues to be doubly-taxed – attracting service tax at the central level and value-added tax at the state level due to a discrepancy between central and state level policies of treating software as a service or a good. The Finance Ministry has announced that taxation of packaged software will be clarified during the 2011 budget session of the Parliament.

Technology Mandates or Tech Transfer Mandates: The business software industry is concerned about several developments that continued to play out in 2010. The first involves new amendments to the IT Act passed in December 2009 (Section 43A related to Data Security and Section 84A related to Encryption) that raised concerns that the government will mandate specific modes and methods of encryption or data security tools and standards.<sup>42</sup> Draft Data Security regulations have recently been circulated for public comments by the Government which avoids technology mandates but would require all corporate entities to either adhere to ISO 27001 data security procedures or apply for Government approval of its security procedures through a common industry association representation. This process should be simplified or clarified to reduce the burden on industry. The second involves the Government of India requiring foreign telecom equipment manufacturers and software providers to transfer technology and share source code with local telecom service providers. This issue has been the subject of high-level engagement by the U.S. and Indian governments and the Prime Minister's Office has called on relevant agencies to review international best practices to determine whether the amendments should be revised. The third involves specific mandates for e-governance or procurement for e-governance. The Ministry of IT has published its policy and although the procurement for standards have been specified to be technology-neutral, the mandatory requirement for royalty free and non-patentable standards for e-governance continues to be a cause for future concern.

## TRAINING AND PUBLIC AWARENESS

IIPA member associations continued to conduct training in 2010. In 2010, BSA recognized 47 companies in Maharashtra for undergoing training and assessments on SAM in partnership with the State Government and FICCI. BSA also participated in several workshops for small and medium enterprises organized by FICCI on the importance of managing and respecting IP in software, launched the first ever SAM program for Public Sector Enterprises in partnership with the State Government of Karnataka and began engagement through initial workshops with the Federal Government, specifically the Ministry of IT. BSA recently launched an educational advertising campaign on genuine software targeted toward both corporate end-users and consumers. BSA continued to use the media to disseminate messages on the perils of non-genuine software as well as data security risks to enterprises through 2010. The local music industry group, IMI, ran intensive training programs and public awareness activities in 2010 for various enforcement authorities from various localities including: a) at-venue trainings, including more than 75 police training programs;<sup>43</sup> b) distance learning, consisting of a training manual created in 14 languages to educate enforcement authorities on various issues; and c) a specially-designed campaign created for MMXIndia (Mobile Music Exchange, the IMI affiliate providing legitimate licenses for mobile music) in Andhra Pradesh Punjab and West Bengal including press and TV advertisements along with programs for both anti-piracy personnel and MMXIndia marketing personnel.

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<sup>42</sup> The government has recently directed Research In Motion's Blackberry to provide its encryption keys for its enterprise mail servers however RIM has contested this and requested time till January 2011 to develop a solution for the Government's needs without compromising customer privacy.

<sup>43</sup> Programs included 1) "Music Piracy and the Role of Law Enforcement Agencies under the Copyright Act, 1957" in Katihar and Arrah in January 2010 for 40 police officials (including senior officials), 2) "Music Piracy, Concept, Issues and Challenges, etc." in Bhimrao Ambedkar Police Academy, Moradabad in January 2010 for over 400 officers, including senior police officers and investigators, 3) general anti-piracy and performing rights trainings for hundreds of police in Sitamadhi and Baxar (February 2010), Begusarai (March 2010), Indore, Chandigarh, Ernakulam, Calicut, Saraiya, and Gopalganj (June 2010), Kozhikode, Bagaha, and Kishanganj (July 2010), Balia, Begusarai (August 2010), Andhra Pradesh, Mattancherry (Ernakulam District), Thrikkakara (Ernakulam District), Malappuram (Malappuram District), Thirur (Dist. Malappuram District), Perinthalmanna Sub-Division (Dist. Malappuram District) (October 2010), Pala Sub-Division, Kottayam District, Kanjirappally Sub-Division, Kottayam District, Karunagapally Sub-Division, Kollam District, Kollam and Punalur Sub-Divisions, Kollam District (November 2010), Agali Sub-Division, Dist. Palakkad, Alathur Sub-Div. Dist. Palakkad, Palakkad Sub-Div, Thrissur Sub-Division, Irinjalakuda Sub-Division, and Kunnamkulam (December 2010), and 4) an educational talk at Rajasthan Police Academy, Jaipur (July 2010), 5) a seminar in Hyderabad (August 2010).

## GENERALIZED SYSTEM OF PREFERENCES

The GSP statute expired on December 31, 2010. In the past, India enjoyed preferential trade benefits under the program. One of the criteria of the program is that the country provides “adequate and effective protection for intellectual property rights.” In 2010, \$3.48 billion worth of Indian goods entered the U.S. under the duty-free GSP code, accounting for 11.8% of its total imports to the U.S. India needs to endeavor to meet the adequate and effective test under the statute to remain eligible, once it is reauthorized, to continue to receive favorable treatment under the GSP program.