Chapter 3
Conceptual Framework
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The literature surveyed in Chapter 2 covered seven broad themes of the theory of economics of Copyright and copying, piracy in the analog and digital spheres including the Internet, Software, practical applications of theory, enforcement, international dimensions including trade and possible threads for future research. An attempt will now be made to develop a conceptual framework for research on the subject.

Background

The subject matter of the law of Copyright pertains to creative works. However, these creative works can be in myriad of forms, such as literary, dramatic, musical and artistic works, and cinematograph films. However the law goes beyond only creative works to also seek to protect the investment made in the way these works are communicated to the public in the form of sound recordings and broadcasts. Additionally, performances of creative works are also recognised as creative works and the right to fix these performances in any medium is also protected by the same law. There is one innovation in this context, which is by classifying software as literary work, the law of Copyright pulls this form of creativity into its fold. The law of Copyright protects the expression of the idea and not the idea itself. This idea-expression dichotomy is an issue that has seen not only substantial theoretical debate but also has been at the core of a number of legal disputes on which Courts have pronounced nuanced judgements67.

The main rationale for providing protection for creative works is based on the presumption of the existence of a heuristically convincing virtuous cycle of creativity-reward-more creativity. In case this cycle does not exist, the society might be locked in to a situation where there will not be any incentive for creativity. Thus, Copyright is an issue of failure of the market for creative goods and the attempt to intervene legally to recreate the same by building this virtuous cycle.

Relevance of the Study

As was discussed in Chapter 1, India comes under considerable bilateral pressure from its trading partners regarding the need to curb infringement of IPRs including that of copyright works. There is a large and influential domestic constituency of rightholders which also frequently agitates in enhancing protection of copyright works. This set of rightholders works through industry and lobby groups. The Film Federation of India (FFI) and the Indian Music Industry (IMI) are active industry groups. Both these industry groups raise the issue of piracy at many forums within the country. In addition, the IMI actively pursues copyright infringements through its anti-piracy teams.

While the Internet is fast becoming the preferred mode of accessing copyright films and music in the developed world, the same is not true in India as yet. This can be gauged from the following statistics about the penetration of PCs and the Internet in India:

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68 Film Federation of India is the apex body of Film Producers and Distributors in India. It claims to represent the interests of most of the major interests in film production, distribution and exhibition in India. It is also represented on the Copyright Enforcement Advisory Council constituted by the Government of India (constitution at [http://www.copyright.gov.in/frmCEAC.aspx](http://www.copyright.gov.in/frmCEAC.aspx) accessed on 12 January 2010)

69 From the webpage of the IMI at [http://www.indianmi.org/brief.htm](http://www.indianmi.org/brief.htm) accessed on 12 January 2010 “Indian Music Industry was established on 28th Feb 1936 as the Indian Phonographic Industry (IPI), and is Second oldest music companies’ associations in the world engaged in defending, preserving and developing the rights of phonogram producers, and actively promoting and encouraging advancement of creativity and culture through sound recordings. Rechristened Indian Music Industry (IMI) in 1994, it is a non-commercial and not for profit making organization affiliated to the International Federation of Phonographic Industry (IFPI) and is registered under the West Bengal Societies Registration Act.”

70 IMI claims to have a well laid out plan on anti-piracy operations:

The functions of these anti-piracy teams essentially entail:

- Identifying units manufacturing pirated audio cassettes and compact discs and also identifying retailers and wholesalers of pirated recordings.
- Assisting Law Enforcement authorities to conduct raids on those violating Copyright Law.
- Helping in the identification of pirated cassettes & CDs.
- Providing documentation needed in the course of investigations along with necessary evidence, witnesses etc. for the successful completion of the case.
- Conducting Police Training Programmes.
The penetration of the Internet in India is much lower than even other developing countries such as Brazil and China as shown in figure 3.1 above. While this may still convert into a large absolute number, compared to the countries sampled above the number is still low as shown in figure 3.2 below.

In addition, a report also shows the following status of legal sales of music by category of medium:

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These figures have been called to question since the supplier of these figures was the music arm of a mobile phone manufacturer (Motorola) which has now ceased to exist. Yet, there is reason not to doubt the figures on legal online sale of music as brought out by the evidence on internet penetration above. The IMI had projected a turnover of Rs. 777 crore in the year 2010 from legal sale of music, bulk of it from discs.\(^{72}\) This is substantially less than the Soundbuzz figure:

\(^{72}\) Available at [http://www.indianmi.org/national.htm](http://www.indianmi.org/national.htm) accessed on 12 January 2010
In light of the information available, the relevance of this study relates to the physical medium related to music and films.

**Economic Analysis of Copyright**

Landes and Posner\(^\text{73}\) were the first to give a clear direction to the entire discipline of the economics of Copyright. They subjected the law to rigours of economic analysis and postulated the key concerns for the law and how it operates. It is important to dwell at length on this work since most of the concepts developed therein would recur during the course of subsequent discussions.

They identified the central problem of Copyright law as that of striking a balance in the trade-off that Copyright protection creates between the costs of limiting access to a work and the benefits of providing incentives to create the work in the first place. Thus, there is one aspect is ex-ante, i.e. creation of works and the other ex-post i.e. revenues that flow after the creation. From this flows the objective function of Copyright law:

\[
\text{Maximise:} \quad \begin{vmatrix} \text{Benefits from creating} \\ \text{additional works} \end{vmatrix} - \begin{vmatrix} \text{loss from limiting} \\ \text{access} \\ + \text{costs of administering Copyright protection} \end{vmatrix}
\]

The basics of the economics of Copyright were then developed by them from this postulate. They identified the factors that determine the number of works that are created.

There are costs associated with producing a Copyright work which include, inter alia, the direct cost of creating the work which is incurred by the author-publisher, the cost of production of copies of the work. A work would be created only if the expected revenues exceed the cost of expression and the cost of making copies. This situation would continue till the marginal revenue equals marginal cost. They qualify this assertion with two statements – some degree of price discrimination is always possible because no two intellectual works are perfect substitutes and thus

\(^{73}\) Landes and Posner (1989), *op.cit.*
arbitrage is preventable; and, demand for a work depends not only on the number of copies of that work but also on the number of competing works.

There is a basic aspect of the economics of intellectual property which normally does not find discussion in the economics of property, which is risk of failure to succeed. The difference between the Price and the marginal cost of the successful work must cover the cost of expression and the risk of failure\(^\text{74}\).

They argue against 6 normally forwarded arguments against the law of Copyright\(^\text{75}\). In fact they succinctly point out that the protection provided by Copyright law corrects many distortions that might enter into the market for creative works. Without such protection, publishers would strive to lengthen their head start by very little prepublication information; the incentive to produce faddish and ephemeral works would increase to exploit the first-mover advantage\(^\text{76}\); there would be a movement towards works that would be difficult to copy either by design or by limiting the circulation; and contractual restrictions of copying would increase.

On the flip side, they accept that overprotection might end up increasing the cost of access and consequently the cost new creation.

“The less extensive Copyright protection is, the more an author, composer, or other creator can borrow from previous works without infringing Copyright and the lower, therefore, the costs of creating a new work.”

\(^{74}\) In fact, since there are a string of failed works before a moderately successful work comes about, the latter, de facto, has to recompense the previous failures as well.

\(^{75}\) They have identified these as:

a. Copies are not perfect substitutes;
b. Copying involves some degree of originality of expression;
c. Copying follows the original in time which would be established by the time the copy enters the market;
d. Contractual relations can render Copyright redundant;
e. The author can appropriate substantial returns of the copier by restricting his access to the first copy; and
f. Authors have been seen to derive benefits from works that are beyond royalties

\(^{76}\) It has often been said that the general trend to produce flighty movies with very low artistic content but high on non-serious elements, including perhaps risqué elements, is because of the need to recoup costs in the first few weeks before piracy makes inroads into the revenues.
Through their mathematical model on optimal Copyright protection, they identified 7 different implications:

1. the optimal amount of Copyright protection is greater for classes of work that are more valuable socially;

2. strengthening Copyright protection beyond an optimal level would increase the incentive to create more works but would not be worth the costs in reduced welfare per work, the higher costs of expression, and the greater administrative and enforcement costs;

3. If the number of works created is in response to the level of Copyright protection, for more works to be created, the optimal level of protection would have to be higher to reach equilibrium;

4. if, over time, growth in income and technological advances enlarge the size of the market for any given work, and the cost of copying declines, Copyright protection should expand;

5. the less that welfare per work is affected by Copyright protection, the higher will be the optimal level of that protection because of the benefits of Copyright in increasing the number of works;

6. if it is feasible to differentiate in infringement proceedings between individuals who make literal copies and those who use Copyrighted material to create new, albeit derivative, works, there will be broader Copyright protection against the former group than against the latter; and

7. The lower the cost of administering and enforcing a Copyright system is and the more responsive authors are to pecuniary incentives, the greater will optimal copyright protection be.

They applied their results to the nature of Copyright protection and argued against Copyright protection against accidental duplication (not copying) but stated that inspiration, especially in musical works need to be dealt with strictly. They also used their model to provide an economic rationale against protecting ideas under Copyright law – a perennial problem in the operation of the law due to the idea-
expression dichotomy. In the case of derivative works, they arrived at a contra-intuitive conclusion that ‘the incentive to create the derivative work will be seriously impaired if the work is not Copyrightable.’ They also developed a detailed economic rationale for fair use which today is the cornerstone of the entire approach to ‘limitations and exceptions’ in the law of Copyrights. Finally, their model actually led to an argument in favour of the Copyright term extension debate in the US, despite a strong economic argument against such extension by a group of Economists led by Kenneth Arrow.

This sphere of economic analysis of Copyright law owes a great deal to this seminal work.

After this analysis by Landes and Posner, many mainstream economists, as well as lawyers, have started examining Copyright in the perspective of Economics. The literature in this regard, is extensive and has been surveyed to some extent in this thesis in Chapter 2. The exact intersection between Economics and Law in the sphere of Copyright reveals a few interesting features about the discourse on the subject. The first point made in this regard is that while Copyright is a method of extending legal guarantees to the author-rightholder the right to exclude others from making economic gains from the use of the entire chain of rights or part(s) thereof, as long as the consumer has alternatives to choose from, this guarantee of rights cannot be considered an economic monopoly. To recall, a monopolist, in the economic sense, is an actor whose market has certain specific features: there are barriers of entry of other suppliers; there are no close substitutes; and the monopolist faces a downward sloping demand curve. If a consumer, in real life, cannot access a Copyright work due to its price, he can either remain frustrated in this market or choose an alternative Copyright work to gain satisfaction. Thus, though each Copyright work can be considered a monopoly, if the consumer can gain similar satisfaction from another Copyright work in that sense the work does not become a monopoly. This aspect can

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77 Basic conditions of an economic monopoly described in textbooks are:

(i) Single seller;
(ii) barriers to entry for other sellers; and
(iii) no close substitutes
lead to an interesting conclusion that the economic monopolies created by some type of Copyright works such as films and music are of short duration as close qualitative substitutes render them dated very fast. This feature emanates from another feature of these two classes of work, in that they are experience goods. To that extent, such goods show lower price elasticity of demand because lower prices indicate possibly lower capacity to satisfy wants.

The essential feature of the guaranteed rights under the law of Copyrights is that it enables the rightholders to appropriate part of the consumer surplus as economic rent.

**Piracy**

The current research seeks to examine the Indian paradigm of the Economics of Copyright in the context of piracy. Piracy of a Copyright work is essentially an infringement of two of the chain of rights covered under the Law of Copyright, viz. the right of reproduction also known as the right to copy and the right of distribution by which the copies are to introduced into the supply chain that culminates in the access of the work by the consumer. That there is economic value related to both these rights is clearly established by the fact that at each step in the supply chain actors receive payments as share of the final price paid by the consumer. In case consumer gets the work for free then none of the agents in the supply chain would be paid. In case the consumer is provided satisfaction from the same work by a

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78 Obsolescence from the point of view of the consumer is high since much of the consumption stems from the novelty value and only some from nostalgic value.

79 First used by Philip Nelson "Information and Consumer Behaviour", 78(2) *Journal of Political Economy* 311-329 (1970). Such goods are those where the consumer becomes aware of the quality or otherwise only after consumption.

80 Posner (2002) states, “intellectual property presents a more serious problem of what economists call "rent seeking" than physical property does. A "rent," in economics, is not a rental; it is an excess of revenue over cost. It is pure profit, which is to say profit in excess of the cost of capital (which is not "profit" in an economic sense but merely another cost of doing business). Rent seeking can be bad from a social standpoint because it can lead to excessive investment.”

He further states, “intellectual property is created rather than found, which means that if rights to intellectual property are defined too broadly, the rents generated by them will be so great that excessive resources will be drawn into efforts to be the first to create a valuable piece of intellectual property and thus to obtain the property right to it. Limiting the duration of the property right is one way of cutting down its value to the owner and thus reducing the amount of rent seeking.”
parallel supply chain then again none of the actors in the established supply chain gets paid his share of the price paid by the consumer. If this latter supply chain originates from a person other than the author-rightholder then even the fountainhead does not get paid any part of the price paid by the consumer. This in essence is what the economic concern with piracy is.

The main advantage that the pirate is seen to have over the rightholders is that he operates in the market with very low fixed costs. Thus, his ability to operate close to the industry average marginal cost is unparalleled. The ethos behind criminal enforcement against the pirate is to introduce an additional cost to his cost function.

The cost function of a legitimate publisher would be:

\[ C_L = C_{\text{Acquisition of IP}} + C_{\text{Production}} + C_{\text{Distribution}} \]

The pirate’s cost function would be

\[ C_P = 0 + C_{\text{Production}} + C_{\text{Distribution}} \]

It is to be expected that even these costs would be substantially less for the pirate owing to the informal methods adopted by him in both production and distribution. The entire effort of enforcement is to impose another item of cost in the cost function so as to render his operations uneconomic. Thus, under effective enforcement, this cost function looks like:

\[ C_P = C_{\text{Production}} + C_{\text{Distribution}} + C_{\text{Enforcement interdiction}} \]

The need for such interdiction can be felt because of the price advantage the pirate can have in the market for entertainment goods. The following figure would show how the costs under the threat of piracy looked in the year 2000.

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81 In this case, the production relates to the production of physical copies which is the subject of the current research as shall be developed in the following chapters.
Fig. 3.5

The cylinder on the left shows the upper limits of the costs of a legitimate producer and the middle cylinder shows the lower limits of the same. The cylinder on the right was introduced to compare the cost at which the pirate can operate. It is evident that there is very little that the legitimate producer can do with his existing cost structure to rival the pirate for the market.

What this picture does not reveal is the equity consideration of these prices. Karagnis (2011) states that the prices for media products that are charged in developing country markets actually mirror the prices charged in their markets of origin by the multinational media companies. The demand for higher enforcement in developing country markets is actually to protect the home markets. Till recently, the US did not protect domestic rightholders from parallel imports. This meant that it was technically possible for seepage of cheaper products that the discriminating
The monopolist would seek to introduce in markets with lower purchasing power could threaten the home market as well. Hence, it stood to reason that these countries be forced to accept the international prices despite the difference in the ability to pay.

Liang and Sundaram (2011) found on comparable purchasing power (CPP) basis the media for entertainment goods were grossly overpriced in India. The following figure is derived from the data used by them. What it shows is that aggressive pricing can bring legitimate products in much closer competition with pirated media.\(^{82}\)

\[
\begin{array}{cccc}
\text{Dark Knight} & \text{Beautiful Mind} & \text{Ghajini} & \text{Oye Lucky Oye} \\
14.25 & 9.1 & 8.5 & 2 \\
46.5 & 46.5 & 46.5 & 46.5 \\
663 & 421 & 395 & 93 \\
\end{array}
\]

\[\text{Price comparison-Actual and CPP (In USD)}\]

\[\text{Derived from data at source}\]

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\(^{82}\) From the point of view of the consumer, at purchasing power parity levels, even the comparatively lower priced ‘Ghajini’ was beyond reach. In fact, Liang and Sundaram found evidence of piracy on a large scale in the case of ‘Ghajini’ because of its late entry in to the DVD market. In comparison, ‘Oye Lucky Oye’ was able to considerably affect the pirated copy market owing to aggressively priced legitimate medium and an early Television release.
There are many arguments against piracy as well some which find piracy actually enhancing social welfare overall. These points of view are enumerated in the survey of existing literature on the subject in the succeeding chapter. It would be sufficient at the stage to point out that while the actor in the value chain of Copyright works directly suffers economic losses if piracy decreases his revenues, it shall be the point of examination of the current research whether piracy actually does decrease revenues for such an actor. However, the counter view in favour of piracy rises from the equity in access to information goods (in this case entertainment goods) that piracy provides to those consumers who would otherwise have been frustrated due to the high prices of such goods. There is some evidence that piracy actually forces the monopolist to adopt price discriminatory behaviour and thus enhances access overall.

There are some common misconceptions about what constitutes piracy. Under law, works which are derived from existing works, without permission, may constitute a violation of right of adaptation but do not constitute violation of right of reproduction and hence cannot be considered as pirated works. However, in case such works are then put into multiple copies and vended then there may be case of piracy where the same rights of the author of the derivative work would be violated. Plagiarism, which may be coping of ideas as well as expressions, with or without acknowledgement, is not the subject matter of law of Copyright unless it is proved that there was substantial copying which resulted in loss either of revenues or of reputation, to the author-rightholder. Since the law of Copyright does not protect ideas, borrowing of ideas is not piracy. Further, the legal position on replication with variation and inspired works as infringement of Copyright has not achieved any degree of consistency. Additionally, counterfeiting should not be confused with piracy as the TRIPS Agreement, which is governing international law in this area, clearly delinks the two.

83 Alvisi (2002)
84 The author’s moral rights are protected by law thought these moral rights are non-transferable and thus the subsequent rightholder(s) do not enjoy these rights even after full assignment of economic rights.
85 Refer footnote 14 of the TRIPS Agreement
A question is often asked that since the rights in the copy of a work are exhausted on being distributed under the First Sale Doctrine\textsuperscript{86}, how would making a copy from the legitimate copy be construed as piracy. The answer lies in the concept of exhaustion and two other explanations. Exhaustion of the rights pertains only to the copy in question and not to rights in general. Further, it can be readily appreciated that (a) the manner in which the right of reproduction were to be assigned would determine the extent of infringement, i.e. if the right was assigned on non-exclusive basis then the right of reproduction of the original rightholder (and not only the assignee) would be violated by copying from the legitimate copy without permission of both the original rightholder and the assignee; and (b) if the rights were assigned on exclusive basis then the rights of the original rightholder stood exhausted the vis-à-vis the assignee, i.e. making of copies from the legitimate copy without permission of the assignee would still constitute an infringement of the right of reproduction. Thus, copying remains the prerogative of the rightholder. In any case, this doctrine does not have universal acceptance in that the European legal concept of droit de suite maintains rights of the author even in resale and enables her to receive fee from the resale.

Much of the demand for greater enforcement of IPRs including Copyrights is based on revenue losses claim to be incurred by rightholders. Heuristically, it can be quickly appreciated that when a case for greater enforcement is to be made more revenue losses shown will look better than less. However, in many cases these losses are found to be either overstated or entirely fictitious\textsuperscript{87}. As such, reliability and accuracy of date is always an issue with piracy related statements and debates.

\textsuperscript{86} The Doctrine of ‘First Sale’ was developed in the United States in the year 1908 in the context of a specific case, Bobbs-Merrill Co. v. Straus, whereby it was held by the US Supreme Court that the right of distribution of the rightholder in the copy which was sold was exhausted after it was legitimately sold for the first time. However, the other rights were not so exhausted.

\textsuperscript{87} In the context of estimates on counterfeiting and losses suffered by the American industry the following makes for interesting reading:

“Three commonly cited estimates of U.S. industry losses due to counterfeiting have been sourced to U.S. agencies, but cannot be substantiated or traced back to an underlying data source or methodology.

First, a number of industry, media, and government publications have cited an FBI estimate that U.S. businesses lose $200-$250 billion to counterfeiting on an annual basis. This estimate was contained
Evidence of piracy by the Industry

Piracy of music and films, in the legal sense, relates to infringement of the rights of reproduction and distribution. However, many industry bodies tend to extend the term to many other forms of infringement; e.g. the IMI\(^{88}\) holds piracy to mean the following:

in a 2002 FBI press release, but FBI officials told us that it has no record of source data or methodology for generating the estimate and that it cannot be corroborated.

Second, a 2002 CBP press release contained an estimate that U.S. businesses and industries lose $200 billion a year in revenue and 750,000 jobs due to counterfeits of merchandise. However, a CBP official stated that these figures are of uncertain origin, have been discredited, and are no longer used by CBP. A March 2009 CBP internal memo was circulated to inform staff not to use the figures. However, another entity within DHS continues to use them.

Third, the Motor and Equipment Manufacturers Association reported an estimate that the U.S. automotive parts industry has lost $3 billion in sales due to counterfeit goods and attributed the figure to the Federal Trade Commission (FTC). The OECD has also referenced this estimate in its report on counterfeiting and piracy, citing the association report that is sourced to the FTC.

However, when we contacted FTC officials to substantiate the estimate, they were unable to locate any record or source of this estimate within its reports or archives, and officials could not recall the agency ever developing or using this estimate.

These estimates attributed to FBI, CBP, and FTC continue to be referenced by various industry and government sources as evidence of the significance of the counterfeiting and piracy problem to the U.S. economy."


\(^{88}\) The IMI extends the term piracy to include the following:

1. End User Piracy
   - copying the same software onto more than one computer
   - copying office software onto a home computer
   - loaning your software to someone else so that the person can make a copy
   - making a copy and selling the software to someone else
   - selling old software

2. Reseller Piracy
   - an individual or company who takes one copy of software and deliberately reproduces it with fake certificates so that those who purchase it believe it is being purchased from the company which developed it
   - many fakes may have the same serial number

3. BBS/Internet Piracy
   - distribution of copyrighted software via the Internet or a bulletin board system
   - sites which are set up to distribute software have made arrangements with the software
The definitional issue has been at the core of many a debate on counterfeiting and piracy. In the only international instrument on IPRs which deals with all the conventional forms of IPRs, viz. the TRIPS Agreement, the distinction between counterfeiting and piracy has been clearly made\(^89\). So the first point to be made in this context is that it would be desirable to continue with the definitions that are internationally accepted.

- owners who make their software available
- Peer-to-peer (P2P) Downloading – giving Enhancement to Internet Piracy
  - P2P networks don’t look at individual requests for media to determine if they are for licensed materials or not
  - Even though as much as 90% of files shared on P2P networks are copyright protected, making a copy of copyrighted song available to others on P2P service without a license is illegal
  - Sharing uncopyrighted artistic creations and files over a P2P network is completely legal
- Downloading MP3s
  - Creating a compilation of songs from CDs & converting to MP3 does not in itself constitute infringement.
  - Infringement occurs when you facilitate the distribution of those files
  - Permission is always required unless use meets criteria of Fair Use

4. Trademark/ Trade Name Infringement

- improper use of a registered trademark

\(^89\) Footnote 14 of the TRIPS Agreement:

‘For the purposes of this Agreement:

(a) “counterfeit trademark goods” shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

(b) “pirated copyright goods” shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.’
The second aspect relates to the industry estimates on piracy. The last comprehensive study on estimate the extent of copyright piracy in India was conducted by the National Productivity Council in 1998-99 and its report was made public in 1999\textsuperscript{90}. The study was plagued with many data related problems. Yet, till date it is the most authentic and methodologically sound study in this field, which reveals its methodology in detail and also admits to possible problems with the data\textsuperscript{91}. The study, however, did estimate extent of piracy of copyright works in India. These estimates tend to vary substantially from the current industry estimates.

The NPC estimates are reproduced below verbatim from its Table 10.1:

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|}
\hline

\hline
\end{tabular}
\end{table}

\textsuperscript{90} Available at http://www.copyright.gov.in/Documents/STUDY\%20ON\%20COPYRIGHT\%20PIRACY\%20IN\%20INDIA.pdf accessed on 12 January 2010.

\textsuperscript{91} Refer the section on limitations given below:

\textbf{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.
As compared to these estimates, the present day estimates of the extent of piracy of copyright works in India range from 64% for software piracy to Rs. 450 crore loss to the music industry in India estimated by IMI. The main issue with these industry estimates is that their methodology is not always revealed and if revealed does not stand rigorous scrutiny. In light of this situation, the estimates are not likely

Table 3.1

<table>
<thead>
<tr>
<th>Copyright Segment/Products</th>
<th>Industry Turnover (Rs. crores)</th>
<th>Trade Loss (Rs. crores)</th>
<th>Piracy Rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Cinematographic Works</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Cinema</td>
<td>2500.00</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>b. Cable</td>
<td>93.64</td>
<td>1100.00</td>
<td>8.5</td>
</tr>
<tr>
<td>c. Commercial Rights</td>
<td>6.84</td>
<td>2.0</td>
<td>41.0</td>
</tr>
<tr>
<td>d. Video</td>
<td>714.00</td>
<td>137.4</td>
<td>19.2</td>
</tr>
<tr>
<td>Total (a+b+c+d)</td>
<td>4320.84</td>
<td>233.85</td>
<td>5.4</td>
</tr>
<tr>
<td>II. Sound Recordings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Audio Cassettes and CDs</td>
<td>1102.29</td>
<td>270.00</td>
<td>24.5</td>
</tr>
<tr>
<td>III. Literary Works</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Book Publishing</td>
<td>1267.00</td>
<td>266.00</td>
<td>20.9</td>
</tr>
<tr>
<td>b. Print Media</td>
<td>8073.66</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>IV. Computer Software</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Domestic Sector</td>
<td>2410.00</td>
<td>1063.00</td>
<td>44.1</td>
</tr>
<tr>
<td>b. Exports</td>
<td>3900.00</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total (excluding Print media &amp; software exports)</td>
<td>9100.13</td>
<td>1832.84</td>
<td>20.14</td>
</tr>
<tr>
<td>Total (I+ IV)</td>
<td>21073.79</td>
<td>1832.84</td>
<td>8.69</td>
</tr>
</tbody>
</table>

Source: Chapter II through VI of this Report


94 IMI does not reveal how the figures were arrived at. There is no mention of any study or estimation techniques.

95 The BSA estimates are stated to be based on simple arithmetical equations which rely on data collected from the actual market sales. The only problem is that this data is so disaggregated that its collection is nearly impossible except with very small sample sizes. This approach lends itself to questions on the rigour used in the estimation process. E.g. the series of equations used are as follows:

\[
Piracy\ rate = \frac{Unlicensed\ Software\ Units}{Total\ Software\ Units\ Installed} \tag{1}
\]

\[
Total\ Software\ Units\ Installed = \frac{No.\ of\ PCs\ getting\ software\ X\ Software\ Units\ per\ PC}{Total\ Software\ Units\ Installed} \tag{2}
\]

It is not known how the number of software units per PC is arrived at. Secondly, in a country like India, where there is a large market for assembled PCs, how the no. of PCs was estimated was also not revealed.
to be accurate. This may be true by way of underestimation as well as overestimation. Liang and Sundaram (2011) have cited industry estimates from various sources which are substantially higher than the 1999 estimates but much lower than some of the industry estimates referred to by them.

Piracy of music and films exists in India. What is needed is to establish the drivers of piracy from the demand side as well as the supply side.

Recent developments in Enforcement

The first mover for enforcement of rights has to be the rightholder. However, differential approaches are seen to exist in different countries. In countries of the West such as the U.S., the rightholder is seen to be more alert to his economic rights and possible revenue losses due to infringement. Developing countries like India have seen greater reliance on the government machinery to enforce the law. This different manifests itself in the form of the ratio of civil suits for Copyright infringement to criminal cases for the offence. Copyright piracy is essentially a matter of criminal jurisprudence owing to a direct and perceptible violation of the law. In addition, the rightholder is also given access to criminal remedies in the law. Thus, it stands to reason that the infringements of rights by the pirate which cause revenue

\[
\text{Legitimate Software Units=} \frac{\text{Software Market Value}}{\text{Average Software Unit Price}} \quad (3)
\]

What was the method adopted to calculate the average software unit price has not been revealed by BSA.

\[
\text{Unlicensed Software Units} = \text{Total Software Units installed} - \text{Legitimate Software Units} \quad (4)
\]

When equation (2) itself is based upon an assumption which has not been revealed, there is no mechanism to verify the estimation attempted in equation 4

\[
\text{Commercial Value} = \text{Unlicensed Software Units} \times \text{Average Software Unit Price} \quad (5)
\]

96 Liang and Sundaram (2011)

“Reported rates of piracy have remained relatively stable over the past several years—66% in 2008 for software, 55% for recorded music, 89% in the last Entertainment Software Association (ESA) survey of game piracy (released in 2007), and 29% in the last MPAA survey of film piracy (released in 2005).

97 “… 90% piracy in the DVD market and 99% in the digital music market.” – Liang and Sundaram (2011)

98 “It is up to the right-owner to act as his own policeman.” Paragraph 4.1, WIPO Intellectual Property Handbook (2004)
loss attract criminal enforcement. The question to ask in such a situation would be whether the application of criminal remedies would attract the same level of stringency if it were found that there were indeed no direct revenue losses to the right holder. As it stands now, the law is based upon this presumption and, therefore, courts are not likely to question whether direct economic loss to the rightholder did occur due to the incidence of piracy.

The international regime of enforcement is governed primarily by the TRIPS Agreement, the enforcement provisions in which have been much commented upon. Two specific points need to be made in this context. First, the TRIPS Agreement lays down certain minimum standards to be adopted by all its members regarding enforcement whereby not only should rightholders have access to both civil and criminal remedies but also the law should provide for penalties which are deterrent to further infringement activities. The important point in this context is that in case the stakeholders in the Copyright law of a country do not perceive the provisions of the law as a deterrent then the mere existence of such provisions might not be sufficient to satisfy the requirement under TRIPS. Second, through the system of dispute settlement at the WTO, not only are the member countries obliged to have enforcement provisions in their respective laws but they should also enforce the same for the rightholders from their trading partners if the latter’s economic interest are affected. This is a crucial feature of this Agreement in that even when private rights are infringed and are not effectively enforced in another country the aggrieved party may cause the matter to be taken up at sovereign level at the WTO.

The evolution of ideas regarding enforcement against piracy of Copyright products at the international level can be traced from the documents and initiatives of international agencies entrusted with the task of looking after protection of Copyrights at the international level. The paper noted lack of awareness among

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99 For a general set of discussions on the subject, see Li and Correa (ed.) (2009)
100 If it can be argued that there is a systemic infirmity that leads to rights being infringed then a country may be able to move a case for a dispute against another member state at the WTO. The case of US-China Copyright dispute as briefly discussed in the Annex to Chapter 2 is a case in point.
101 These are the World Intellectual Property Organisation, the World Customs Organisation, the Interpol, and the UNESCO
stakeholders and consumers, insufficient technologies, rising demand for pirated products and lack of expertise in Third World countries as major factors behind piracy. The paper also listed the consequences of piracy as factors behind reduction of investments in innovation and destroying jobs, losses of tax revenues due to a reduction in declared sales and piracy being attractive to organised crime.

It would be interesting to recall the Malaysian legislative initiatives in the effort to respond to bilateral pressures by creating a separate law for enforcement against optical disc piracy. Malaysia had a copyright law in the form of Copyright Act, 1987. This law has specific provisions related to prohibition of and enforcement against manufacturing, sale and use of pirated goods. In the year 2001, Malaysia enacted another law on licensing and regulation of optical media production facilities in the country called the Optical Disc Act. This law had provisions regarding production facilities being licensed under it and required them to mandatorily put unique Source Identification (SID) codes on each disc being manufactured therein. The penalties under this law for failing to do so as well as for indulging in piracy at the manufacturing stage included withdrawal of licence and closure of the facility. Despite such provisions and repeated raids and confiscations of pirated goods, equipment, and fines, the impact of the law was seen to be mixed. The lobby group International Intellectual Property Alliance in its submission to the USTR for the Special 301 Report, stated in 2003, citing enforcement figures in Malaysia that though 976 raids were conducted in the period and 962 cases were filed during 1997-2002, there was not one conviction leading to jail sentence and in only 28 cases criminal fines were imposed. This figure was zero and three in 2006 as per the IIPA. Yet IIPA reported substantial piracy as evidenced from night-time vending of pirated products. In 2011, the IIPA asked the Malaysian Government to... ‘Amend the optical disc laws to ensure that source identification (SID) code applies to recordable discs, to prohibit “gouging” of source identification codes from discs, to allow inspections at any location and at any time, day or night, and to make other needed changes.’ That the reason for piracy may lie elsewhere was seen in Malaysia once again where an attempt was made to impose price controls on optical disc products under their Price

102 Refer note 47 supra.
Control Act, 1946 for the year 2004 because the Government felt that high prices for legitimate products was forcing consumers to choose cheaper alternatives. After much hue and cry from the industry, especially foreign IP right owners, the proposal was not continued beyond 2004.

The Malaysian experience revealed two specific aspects with enforcement. First, the demand for enhanced levels of enforcement can continue ad infinitum as long as there is any perception of piracy affecting the revenues of the industry. What is relevant here is to recall that the methodology of the industry in estimating extent of piracy does not seem to have theoretical rigour. Second, this can impose substantial costs on the enforcement regimes in developing countries because it might become necessary to combine different tactics to make any directed enforcement legislation effective. The Optical Disc Law of Malaysia was made to carry a high administrative cost of a detailed licensing and regulatory structure. Yet it was found to be insufficient in controlling piracy by itself.

**Legislative efforts in India to strengthen the law of Copyright**

The Copyright Act, 1957 has undergone 5 amendments since its enactment. In June 2010, a fresh set of amendments were introduced in the Rajya Sabha vide the Copyright (Amendment) Bill 2010. The intent behind these proposed amendments was given in the Statement of Objects and Reasons of the Bill. Surprisingly, the SOR clearly stated that the amendments would allow India to comply with the provisions of the WCT and the WPPT. This was perhaps a unique instance where an IP Act was sought to be amended to comply with an international instrument without compulsion to do so. There are specific provisions in the proposed amendments which seek to enhance the level of protection of the rights and

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105 Amendments to the Copyright Act, the Patents Act and the Trademarks Act to comply with the provisions of the TRIPS Agreement were necessary since they were part of the international commitments made while becoming signatories to the Agreement.
their enforcement both in physical and digital contexts. Thus, India would be attempting to harmonise its laws with international standards.

**International processes and the Indian Copyright law**

It is also on record that the USTR in the Special 301 Report pertaining to the year 2011 had concluded that the proposed did not go far enough to meet international standards. In addition, the ongoing negotiations with the European Union for an Indo-European Bilateral Trade and Investment Agreement (BTIA) are also likely to have substantial provisions on enforcement.

This series of developments needs to be seen as part of the process that started with the TRIPS Agreement. By introducing specific provisions on enforcement of rights, the TRIPS Agreement sought to develop uniform benchmarks for enforcement for all its members except the Least Developed

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106 Paragraph 3 of the SOR:

“3. The amendments proposed in the Bill, inter alia seeks to,—

(i) make the provisions of the Act in conformity with World Intellectual Property Organisation’s WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) and to ensure protection to the copyright holders against circumvention of effective technological measures applied for purpose of protection of their rights and circumvention of rights management information and to provide for punishment for two years and fine for violation of such rights;

(ii) provide exclusive rights and moral rights to performers in conformity with the WIPO Performances and Phonograms Treaty (WPPT);

... (iv) make provision for storing of copyrights material by electronic means in the context of digital technology and to provide for the liability of internet service providers;

... (viii) give independent rights to authors of literary and musical works in cinematograph films;

... (xix) strengthen enforcement of rights by making provision of control of importing infringing copies by the Customs department, disposal of infringing copies and presumption of authorship under civil remedies.”

107 Entry on India in Special 301 Report – Quoted in Chapter 1

“… Improvements in 2010 included the introduction of a Copyright Amendment Bill, which may assist in addressing some aspects of the widespread piracy of Copyrighted materials on the Internet. However, the bill may not fully implement the WIPO Internet Treaties. The United States encourages India to revise and enact these amendments, and to thereby bring India’s Copyright law into line with international standards…”

108 Part III comprising 5 Sections and Articles 41 to 61
Countries (LDCs)\(^{109}\). These standards are justiciable in the international context due to the Dispute Settlement Understanding\(^{110}\) that the Members of the WTO have accepted as part of the Single Undertaking\(^{111}\) of the Marrakech Agreement. In this process, the mandatory nature of these standards is emphasised. Through the bilateral processes that developed countries adopt many of the TRIPS standards have been substantially upgraded; e.g. the Internet Treaties (WCT and WPPT) of 1996 form the minimum standards in many of the bilateral instruments between the US or EU for one part and developing countries, either singly or as a bloc, for the other\(^{112}\). These TRIPS plus provisions have been accepted by many developing countries in return for the market access to the developed country markets that these treaties ostensibly allow to the former.

Further, there are other international processes which are adopted on plurilateral bases such as the recent Anti-Counterfeiting Trade Agreement\(^{113}\) of 2010. This agreement seeks to substantially enhance the cross-border protection measures by, \textit{inter alia}, redefining terms such as piracy\(^{114}\) and counterfeiting. However, the members are still in the process of ratifying the Agreement.

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\(^{109}\) LDCs are not a pejorative classification. Rather, the Economic and Social Council of the United Nations developed a set of criteria based upon which certain countries were so classified. These criteria are:

- a low-income criterion, based on a three-year average estimate of the gross national income (GNI) per capita (under $750 for inclusion, above $900 for graduation);
- a human resource weakness criterion, involving a composite Human Assets Index (HAI) based on indicators of: (a) nutrition; (b) health; (c) education; and (d) adult literacy; and
- an economic vulnerability criterion, involving a composite Economic Vulnerability Index (EVI) based on indicators of: (a) the instability of agricultural production; (b) the instability of exports of goods and services; (c) the economic importance of non-traditional activities (share of manufacturing and modern services in GDP); (d) merchandise export concentration; and (e) the handicap of economic smallness (as measured through the population in logarithm); and the percentage of population displaced by natural disasters.

\(^{110}\) The Understanding on rules and procedures governing the settlement of disputes or the Dispute Settlement Understanding forms Annex 2 of the Marrakech Agreement of 1994 that formed the WTO.

\(^{111}\) Single Undertaking is the principle that governs not only the negotiations at the WTO but also the membership of most of the agreements under the auspices of the WTO.

\(^{112}\) Please see Annex 3.1.

\(^{113}\) Please see Chapter 1, page 19

\(^{114}\) The term ‘commercial scale’ used in Article 61 of the TRIPS Agreement has been subject to various interpretations. Some countries have sought to interpret it as one which is a large scale operation; while
As such, the ongoing efforts at the international level to curtail piracy through a slew of measures from legislative to enforcement will impact India as well. The Copyright Dispute DS362 between the US and China related to not only the perceived legislative lacunae in the Chinese Copyright law but also the laxity that it brought about in enforcement of the same. In this context, it would be relevant to examine the working of the law in India, especially how the infringements of rights can be addressed not only through effective enforcement but also by addressing the underlying demand-side drivers of piracy.

Issues

The contextual point that has emerged from the discussion so far relate to the peculiar cost function of the author-rightholder in that it has a large fixed cost component and substantially lower (approaching zero) marginal cost component. This makes copying easy for both the rightholder and the copier who may or may not operate with the permission of the rightholder.

In case, the requisite permission of the rightholder, as envisaged under the law, is not obtained then the copier is infringing the rights of the former for which he is liable to face action under the provisions of the law. Two features of this schema need enunciation: first that the law seeks to protect private rights of the rightholder for the public need for creative works to be made available to it; and second that infringement affects the economic well-being of the rightholder. Thus, there are two time-separated activities that are part of this virtuous cycle. First there is an ex-ante stimulation of creativity by the possibility of the effort being rewarded and the second is the ex-post revenues on the commercial use of the work. In case the ex-post activity

others have sought to cover all such activities from which commercial advantage can be drawn. In ACTA, the second approach has been adopted by stating, "For the purposes of this section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage." (Article 2.14.1)

Further, section 5 of the ACTA pertains to enforcement in a digital environment. One specific provisions states that the Internet Service Providers (ISPs) can be required to identify such subscribers whose accounts had been used for the alleged infringements. The full extent of play of this provision cannot be estimated at present, yet it may have ramifications on the file sharing that takes place on non-commercial content such as education materials as well.
is not forthcoming, the first will not occur as well, since it is the guarantee of the latter under law ensures the first. Absent such a guarantee, the market fails.

It was seen that when the rights of reproduction and distribution of the rightholder are infringed resulting in mass copying and distribution without permission then piracy is said to have come into existence. It was also seen that there exist technologies that allow for such infringement to take place with ease and speed. In the process, piracy rapidly erodes the market value of the product in question in the eyes of the rightholder and thus can effectively reduce his private economic gains. Juxtaposed against this private loss, it was seen, was the possible social welfare gain of greater access to creative products by such consumers who would have been priced out of the market. Thus, the ex-post revenue loss may be more than balanced by the social welfare gain. What is uncertain is what will happen in the next part of the cycle to the ex-ante expected reward.

During the course of the survey of representative literature, which admittedly could not have covered the entire body of research, a few areas remaining untouched by extant research were discerned. First and foremost, there was not much evidence of any India-specific theoretical construct in the literature. The reason why it is being so stated is that there are specific considerations in India on account of purchasing power, illiteracy, and internet penetration, aspirations set on access to education and knowledge as well as the large population which magnifies small percentages into large absolute numbers. Further, India has been under considerable bilateral pressure from its trading partners to upgrade its Copyright enforcement regime to address the supposedly rampant scale of piracy here. Thus, certain India-centric studies would appear to be in order.

Second area was limited number of studies on small populations with a small set of hypotheses to address the attitude towards piracy. These studies owed their stimulus to Husted (2000). It was felt that such an effort could be repeated in India albeit with India-specific hypotheses. Also, it would be possible to draw certain policy lessons on access, equity and enforcement from such an exercise.

Third aspect was that most of the studies on copying now seem to focus on the latest trends in the west such as file-sharing, illegal downloads, Net-based
piracy, etc. The main concern on Copyright infringement in India remains on piracy on optical discs. This aspect has perhaps lost relevance in the developed world. This subject seems to be by-passing the piracy structure that is said to exist in India.

Fourth aspect that was seen to have remained untouched was again of relevance to India directly. If net-based infringements are likely to be the biggest threat to legitimate commerce in Copyright works then what would happen to those countries where the penetration of Internet has not yet yielded numbers that could compromise commercial interests of rightholders. Evidently, such countries, including India with its less than 10 percent penetration of home computers and access to the Internet, would still be looking illegal access models on physical media. Is there any direct or indirect lesson to be learnt from the evidence from those countries which have undergone similar experience.

Fifth aspect in this line of thought was that as the literature as surveyed shows that price does seem to play a role as a barrier in access to legitimate Copyright products in developed country markets. However, in developing country markets even non-luxury normal goods have been seen to be out of bounds owing to high prices. In this connection, Copyrighted entertainment goods in developing countries, including India, are often found to be out of bounds for consumers owing to the high prices associated with them. Again Liang and Sundaram’s (2011) assertion of the consumer being price frustrated in many markets for entertainment media products appears to hold true.

The last issue related to the preponderance of music and films in the Copyright industry in India. As such, piracy of music and films would have the biggest impact on the bottom-line of the industry if indeed it happened in the manner it is feared to happen. A related issue is the absence of discussion on the reliability of industry data. In fact, other than Karagnis (2011), none of the empirical studies covered in the survey even questioned the data being used for assessing the extent of piracy and the damage it is said to be wreaking.

With these issues in the background, a conceptual framework for the current research was attempted.
Films and music are the basic entertainment goods of mass consumption in India. Access to these products can be in a myriad of ways. Over a period of time, and with new technologies as well as new methods of doing business, new methods of delivery of content have developed whereas some of them have been rendered inaccessible either due to redundancy or due to price.

Given that the average Indian consumer has a reputation for optimising her objective function with price minimisation and utility maximisation; it stands to reason that this effort may lead her to explore new accesses to entertainment content of movies at equitable and affordable prices. Some of these new accesses may not be legitimate and hence may be available at lower prices.

If the consumer does not have any moral qualms about going against the law then she will always access the cheapest content, provided on other considerations such as quality she does not face negative satisfaction. If, however, the consumer does not want to break the law and for other causes such as quality seeks to aspire for content delivered via legitimate products, then there would be an occasion for a trade-off.

There would be a need to develop an insight into what considerations other than price affect her decisions. Further, what kind of behaviour in the market for entertainment goods does she exhibit, in so far as her choice of medium, legitimate or not, is concerned.

The non-legal content delivery mechanism would necessarily infringe the rights of the rightholder in the Copyright of the entertainment good in question. However, under simplest conditions only infringing two rights will be sufficient condition to create an illegal content delivery mechanism. These rights are of making copies or right of reproduction and of distributing them or the right of distribution. These two rights have been considered the cornerstone of the entire law of Copyrights since the revenue streams generated by any work emanate from these two rights. In
common legal terminology this type of infringement if carried out on commercial scale is termed piracy.\textsuperscript{115}

Once pirated products become available to the consumer as close substitutes to the legitimate products, they enter the objective function of the consumer. This means that she will now factor in the availability of alternatives as well as their prices in making a choice of any entertainment goods. Her choices would also be governed by the characteristics of the product being chosen, signified by its quality and the ease of access to such a product so that the overall transaction cost of access becomes the deciding factor in choice. These transaction costs can also be raised deliberately by way of introducing enforcement interdiction against pirated illegal goods.

With these aspects in mind an opportunity arises to examine what are the direct and indirect determinants of consumer choice between legitimate and pirated products.

The rightholder will also be interested in preventing entry of such alternatives to his product which do not have any intrinsic creative input of their own and are in fact free riders on the product of the rightholder. Towards this end the rightholder may adopt a mix of tactics and strategies. Some, though not all, would pertain to lowering quality and price to address the demand in the lower end of the market, preventing copying using technology, creating access in other means of diffusion of the work, following an aggressive enforcement strategy and so on. In the long run only such strategy mix will be continued with which is financially sustainable. Thus, there would be a reason to examine these options.

Finally, if the consumer of pirated products does not operate in the market for legitimate products then no revenue leakage from the latter market may exist. In that case, if the barriers to entry of the consumer to the legitimate product market are on account of rigid factors then an opportunity might arise for the rightholder, depending upon the elasticity of demand facing him, to either price discriminate or to lower his prices and make gains in overall volume. This choice of technique at

\textsuperscript{115} TRIPS Agreement, F.N. 14.
revenue maximisation would be crucially dependent upon a large number of market and product specific factors.

**Conclusion**

Piracy of physical copies of Copyrighted products has many probable stimulants and can be addressed in a variety of ways. The conceptual framework proposed above would be used to develop the methodology and the approach towards analysis of results in the ensuing discussion.
Annex
Chapter 3
Annex 3.1

Examples of provisions on Intellectual Property in Bilateral Agreements

1. Comprehensive Economic Partnership Agreement between Japan and the Republic of India

“Chapter 1
General Provisions
Article 1

The objectives of this Agreement are to:

…

(c) ensure protection of intellectual property and promote cooperation in the field thereof; …

Chapter 9
Intellectual Property
Article 102
General Provisions

1. The Parties shall ensure adequate, effective, and nondiscriminatory protection of intellectual property, in accordance with the provisions of the TRIPS Agreement. …”

2. Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership

“Chapter 1
General Provisions
Article 1
Objectives

The objectives of this Agreement are to:

…
(b) ensure protection of intellectual property and promote cooperation in the field thereof; …

Chapter 9
Intellectual Property
Article 80
General Provisions

1. The Parties shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, counterfeiting, and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties. …”

3. *Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part*

   “Article 46
   Intellectual property

   1. The Parties shall ensure adequate and effective protection of intellectual property rights in conformity with the highest international standards. The Parties apply the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) from 1 January 1996 and undertake to improve, where appropriate, the protection provided for under that Agreement …”

4. *Chile – United States Free Trade Agreement*

   “Chapter One
   Initial Provisions
   Article 1.2: Objectives

   1. The objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favored-nation treatment, and transparency, are to:
(e) provide adequate and effective protection and enforcement of intellectual property rights in each Party’s territory; …

Chapter Seventeen

Intellectual Property Rights

The Parties, …

Emphasizing that the protection and enforcement of intellectual property rights is a fundamental principle of this Chapter that helps promote technological innovation as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and that encourages the development of social and economic well-being; …”