PUBLISHERS' LAW BOOK



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Foreword

The publishing industry is one of the oldest industries, which has witnessed tremendous change in productivity, output and distribution. From the evolutions of printing press to the recent e-readers, the industry has seen many innovations. The Indian publishing industry, with a CARG of 30 per cent, is poised to grow into one of the major sectors in India.

Publishers not only publish books but also perform the duty of encoding innovative ideas into intellectual property, thus creating a pool of intangible assets which could be monetized. The protection and management of these assets are of utmost importance. With the advent of new technologies, industry is witnessing alternate content creation and distribution mechanism. The industry has strong linkages with various stakeholders in the value chain, both vertically and horizontally; and these linkages could result in multiplier effect. It is, therefore, imperative to have a robust legal mechanism in place.

Considering this, FICCI and S.S. Rana has come up with the Publishers' Law Book. The Law Book brings together various regulatory aspects pertaining to publishing in India, evolution of publishers' associations, recent technological developments in marketing and distribution, copyright amendments and intellectual property right under one umbrella. It is a first-of-its kind initiative in the publishing sector.

The FICCI-S.S. Rana Publishers' Law Book is a unique concept to bring together important development in the legal and regulatory framework in Indian publishing industry and juxtapose it with technological developments in production, distribution and consumption. I am confident that this Law Book will be of immense value to various stakeholders.

A. Didar Singh
Secretary General, FICCI



Foreword

"As surely as the acorn becomes the oak tree, the images in your mind become your reality" …are the befitting lines for the ever evolving publishing industry. Propelled by author's creative expressions, requiring influx of ideas, embracing technological developments, it sure has been witnessing many a cultural, social and economic reforms for centuries and has always emerged as a dynamic industry.

Standing in a queue, eagerly waiting for my turn to grab a copy of Hardy Boys or Secret Seven, and then feeling awful after not getting one on the pretext of *"not enough copies published this time" or "still not published"* was perhaps my first rendezvous with anything related to a publisher or publishing industry. It may not have started on a positive note as I would often complain to the book seller who in turn would point to the nearest rack and say "…reserve your comments for them not for me…" It goes without saying that *"them"* in this case were the publishers. However I did realize that publishers were the bosses and I cannot read my favorite book without the bosses' intervention. Times changed and so has *(thankfully)* my initial impression about the *"bosses"* who play indispensible role in the interlinked economic activity that ranges from editing, designing, packaging and even ensuring that author's work enters appropriate trade and distribution channels.

Today as one of the biggest drivers of the financial sector, the contours and nature of the industry is being redefined everyday with the digital technology marking a paradigm shift in the publishing landscape. When *Kindle's* first model sold out in five and a half hours and when Amazon's e-book sales surpassed sales of its paperback books, it did not take enough for the industry experts to unspool the changed publication dynamics and realize commercial bankability of the e-products. E-Books, E-Readers, tablets, i-Pads all have radically transformed the traditional methods of printing, publishing and distribution of work and have given new dimensions to the industry. While this opens up new avenues for publishers to experiment and reach out to the masses in new ways it also presents an ambivalent situation where publication houses are left with little alternatives but to adapt and evolve.

In addition to the risk of failure, this knowledge driven sector is also marred by the risk of the content being copied or appropriated by the competitors. The encoding of ideas into intellectual property (copyright, trademarks, and trade secrets) in addition to the tangible expression is thus the need of the hour to put a barrier to the unfair appropriations and to guarantee appropriate financial return to the publishers for taking the monetary risk.

It has been our endeavor to present a comprehensive analysis of the vibrant publishing sector in this Law Book and hope that it meets the goal of providing the publishers a ready reference with respect to all the legal aspects governing and affecting the Publication Industry.



Vikrant Rana
Managing Partner
S.S. Rana & Co.

CHAPTER: 1

Publishing Industry in India: Evolution and Growth

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Publishing Industry in India: Evolution and Growth

With a country of 1.2 billion population, 24 major languages, 74.04% literacy rate, 523 universities, and 33,023 colleges, India provides incredible opportunities to the publishing industry which is an indispensible component of India's vibrant economy. It is counted among the top seven publishing nations and is one of the best book markets in the world. With 140, 000 printing presses and 19,000 publishing houses, the industry provides employment to more than 2 million people. Retail revolution, proliferation of international publication houses and diversification in publication categories and genres of have taken this sector to new realms. Operation of international giants including **Bloomsbury, Simon & Schuster, Random House, Hachette, HarperCollins, Penguin** and **Macmillan** goes on to substantiate the country's global footprint. Overseas publishers have never been more willing to collaborate and enter into joint ventures or licensing agreement with local publishers to explore India's robust economy and offer niche products.

Apropos to the booming Indian economy, a dynamic and fast growing market, demographic dividends including increased literacy and a growing English speaking audience, allowance of 100 % foreign direct investment (FDI) for non-news publication and 26 % for news publication, India is placed at a significant vantage point that attracts overseas investment within the publishing and print industry.

Recognition of India's publishing Industry at global platforms:

India was the guest of honor at the 2006 Frankfurt Book Fair and at Beijing International Book Fair in 2010. The Graph Expo 2007 in Chicago had an "India Day".

Table 1.1: Printing and reproduction of Recorded Media

(Value Figures in Rs. Lakhs & Others in Numbers)

Year	Factories	Fixed Capital	Productive Capital	Invested Capital	Workers	Total Persons Engaged	Wages to Workers	Total Emoluments	Total Input	Total Output	Depreciation	Net Value Added	Rent Paid	Interest Paid
2008-09	3290	1002876	1213757	1246448	85840	129368	61878	162996	1486206	1950897	92321	372370	19231	74175
2009-10	3173	958505	1097045	1220306	91070	133901	73456	189661	1516791	2130362	99898	513672	21097	71398

Source: Annual Survey of Industries 2008-09 and 2009-10

India: Emerging Outsourcing Destination

The 2 billion dollar Indian publishing industry is becoming the preferred destination for firms outsourcing their work. Value Notes, a market research firm, estimates that the Indian publishing outsourcing industry is expected to grow to a $1.2 billion by the end of 2012. Value Notes further identifies over 140 Indian players in the publishing outsourcing industry. The disparate category of outsourced work includes content, design and technology with content contributing 72 % of industry's total revenues.

Of the total outsourced work to India, 60 % are books by the academic publishers, followed by educational publishing segment, magazines, corporate and business-to-business newsletters etc. It is estimated that the outsourcing industry engages over 35,550 people in direct employment.

In addition to outsourcing, the publishing industry is estimated to grow at an average annual growth rate of 15 %. Indian publishing industry is exporting its books and publishing services to over 120 countries and the export market is estimated to be worth $ 550 million.

Source: Joydeep Gupta, "Outsourcing Signals Boom in India's Publishing Industry" < http://www.indiaafricaconnect.in>.

Industry Components

The publishing industry can be largely segregated into content generation, materials used in printing process and subsets such as publishing houses, service providers, equipment vendors, and distributers. While the industry mainly covers printed products ranging from books, newspapers, reports, journals, magazines, cards etc. its operation is also dependent on processes like bookbinding, plate making, trimming, mounting and lamination.

The advancement in electronic technology in the printing processes has resulted in consistent and high quality productivity. The foray of digital and e-publication has led to radical changes as newer technologies are incorporated in the printing processes with usage of screen printing, digital imaging and electronic publishing systems. **Flipkart** and **Infibeam** have stimulated growth in the sector by hinting at the large future of e-books in the country.

Press in India: 2010-2011

The number of registered publication grew by 6.25 %

4,853 new newspapers registered in the year 2010-11

The total number of registered newspapers stood at 82,237

With a figure of 32,793, the largest number of newspapers and periodicals registered in any Indian language is in Hindi

English has the second largest number of registered newspapers and periodicals (with a figure of 11,478)

Hindi newspapers continue to lead the circulation with 15,54,94,770 copies

followed by English with a circulation of 5,53,70,184 copies

The total circulation of newspapers stood at 32,92,04,841 as against 30,88,16,563 copies in 2009- 10

The highest number of newspapers are published in Hindi (7,910), followed by English (1,406), Urdu (938), Gujarati (761), Telugu (603), Marathi (521), Bengali (472), Tamil (272), Oriya (245), Kannada (200) and Malayalam (192)

The Registrar of Newspapers for India approved 13,229 titles for the year 2010 ending March 31st 2011

Source: Registrar of Newspapers for India

Industry Operations

Twilight, Stephenie Meyer's best selling debut novel was rejected 14 times before being finally accepted and published by **Little, Brown and Company**. This clearly hints at the axiomatic principle that even the finest work would not be accessed by readers unless the publisher accepts it. The content as produced by the creators is evaluated, assessed and edited by various categories of editors. The analyzed content is

then transferred to the printing office before reaching the shelves of bookstores and other marketing and distribution networks and finally to the end users/readers. Suppliers also play a very fundamental role in the operation by furnishing raw materials such as printing software, scanners, finishing equipments, laminating machines etc.

Table 1.2: World Top 25 Publishers

Top Publishing Firms of the World

Publishing Company	Publishing Group	Revenue 2011($m)	Revenue 2010($m)
Pearson	Pearson	8,411	8,097
Reed Elsevier	Reed Elsevier	5,686	7,149
Thomson Reuters	Woodbridge Company	5,435	5,637
Wolters Kluwer	Wolters Kluwer	4,360	4,719
Hachette Livre	Lagardere	2,649	2,873
Grupo Planeta	Grupo Planeta	2,304	2,427
McGraw-Hill Education	McGraw-Hill Companies	2,292	2,433
Random House	Bertelsmann	2,274	3,844
Holtzbrinck	Georg won Holtzbrinck	1,952	1,512
Scholastic	Scholastic	1,906	1,912
Cengage	Apax Partners	1,876	2,007
Wiley	Wiley	1,743	1,699
De Agostini Editore	Grupo De Agostini	1,724	1,843
Shuesisha	Hitotsubashi Group	1,714	1,597
Kodansha	Kodansha	1,551	1,498
Shogakukan	Hitotsubashi Group	1,444	1,441
Readers Digest	RDA Holdings	1,438	582
Houghton Mifflin Harcourt	Education Media & Publishing	1,295	1,673
Springer Science & Business	EQT & GIC Investors	1,138	1,149
HarperCollins	News Corporation	1,100	1,269
Informa	Informa	1,069	1,039
Gakken	Gakken	1,043	956
Oxford University Press	Oxford University Press	1,004	941
Gruppo Santillana	PRISA	936	852
Bonnier	Bonnier Group	909	927

Source: Livres Hebdo - www.livreshebdo.tr

Evolution of Publication in India[1]

Rome was not built in a day and so wasn't the transition from printing on a humble birch bark to the present day digital publication. It all started when transcripts of the Holy Scriptures were preserved on birch barks *(bhojpatra)*. Thereafter some of the statute and special teachings were put on copper plates *(tamapatra)* by kings of ancient India. After the innovation of hand-made paper important documents and holy books were written and preserved on it. It is said that owing to the valuable nature of these books and documents only few privileged people could afford to keep it.

Later when secular printing press was established after Christian missionaries brought the modern press to India from Europe, books started getting printed on regular basis. With the advancement in technology

[1] Federation of Indian Publishers-"60 years of Book Publishing in India 1947-2007", New Delhi: The Federation of Indian Publishers

a number of type-faces replaced the moveable type which was initially used. "Nirnaya Sagar Press" of Bombay was one of the earliest foundries that gained reputation for its well designed and well shaped type-faces. Platen-press was mostly used for printing of books and other documents. These platen press were also known as "treadle machine" as they were run by foot owing to non-availability of electricity at most places.

A Glimpse Into India's Publishing History

The Aryans used copper plates *(tamrapatra)*, palm leaves *(tadapatra)*, iron sheets (lohapatra) and birch barks *(bhojpatra)* for preserving Vedic scriptures and other philosophical works.

The art of paper making art was brought into India by the Arabs, who had in turn learned it from the Chinese.

Kagzis, paper making families, flourished in India flourished during the Mughal Empire.

1556: The first press in India was set up by the Portuguese in Goa (with the first printing press being established at the Jesuit Saint Paul's College in Old Goa).

1780: The British bought the concept of **printing machine** in India.

1780: India's first newspaper Bengali Gazette was started in Bengal by James Augustus Hicky

1812: The first paper mill was established in India by William Carey at Serampore, West Bengal.

1818: First vernacular newspapers Digdarshan and Samachar Darpan were printed and published from Calcutta.

1822: Bombay Samachar, the oldest surviving newspaper in India was established.

1870: Paper production by the first ever paper machine at Bally Paper Mills, Hoogly, West Bengal.

The impetus to publication of paperbacks on mass scale was started by Hindi publishers. It goes without saying that the publishing industry flourished and attained new heights post-independence. With the emergence of publication houses like **"Hind Pocket Books"** voluminous editions of books on disparate subjects were brought out from the mid-1950s. While in 1958 where 10,000 or 20,000 copies of an edition of book were usually sold, an all time record was created in 1973 when half-a-million copy of one edition of book was sold.

Gharelu Library Yojana

India's first ever book club was established by Vishwanath Malhotra (head of Rajpal & Sons Publishing). The club soon gained popularity and had over 35,000 members at one point. It aimed and ensured that the people residing and soldiers deployed in the remote areas of the country had access to books. The scheme also ensured that members would get 10 new books delivered through post every month. The Yojna also won accolades from then Prime Minister Pandit Jawaharlal Nehru.

Established in 1912, Rajpal & Sons is accredited with spearheading the paperback revolution in India in the early 1960s. For the first time, books written by top authors were made available at an affordable price of Re.1. These books were marketed and distributed from stores at railway stations and bus stops.

Source: Vishwanath Malhotra; "How I made it", The Telegraph, October 18, 2005.

Emergence and Growth of English Publication Houses in India

English is the lingua franca that unites the fragmented linguistic landscape of India. Proliferation of publication houses producing books in English bears testimony to the prominence of English in this multilingual nation. India in fact is the third largest publisher of books (in English) after US and UK.

The beginning of the twentieth century saw the foray of foreign presses with **Oxford University Press, Macmillan, Blackie & Sons, Longman, Green & Sons** setting up offices in India. However it was the **Asia Publishing House** (founded in 1943) that dominated the publishing scene for two decades post-independence before fading into oblivion by the end of 1960. The era also saw entry of notable American publishers to India including Prentice-Hall, Wiley, McGraw-Hill, Van Nostrand, Addison-Wesley, CBS Books and Academic Press.

Some prominent Indian publishers

Popular Prakashan (1924): Ganesh R. Bhatkal, a former employee of the Oxford University Press India, established the Popular Book Depot as an independent bookseller. In 1962, his successors Sadanand G. Bhatkal and Ramdas G. Bhatkal created Popular Prakashan Pvt. Ltd. as a publishing company.

Popular Prakashan have published a series of storybooks in association with **Chandamama** (one of the oldest children's magazine in India), the Brainworks series of books in association with Leopard Learning Systems, USA, as well as other early learning titles. They have published famous authors like Shobha De, Sanjeev Kapoor, Asha Khatau and Jeroo Mehta. They have also published titles with Encyclopedia Britannica, National Geographic etc. They have also published early learning books in collaboration with Modern Publishing, USA and children's books in conjunction with Walt Disney.

Allied Publishers (1934): The academic and literary publication house was established by M. Graham Brash, and was later acquired by R.N. Sachdev, presently founder Chairman of Allied Publishers in 1947. It publishes text books and reference books for schools, colleges and higher academic institutes. It is also one of the leading exporters of books in India. It has brought out collections of Keki N. Daruwalla, Arundhathi Subramaniam, Prabhanjan Mishra, Jerry Pinto, Sheila Gujral among other literary and critical texts.

S. Chand & Co. (1937): It is one of India's leading textbook publishers and exporters. Their books are distributed across India, South Asia, South-East Asia, Middle East and Africa with its publication largely confined to educational materials. S. Chand publishers were the first in India to get ISO 9001:2000 certification.

The publication house boasts of having worked with more than 1,200 authors and contributing more than 7,000 titles for students. In the 1980s, the company came up with the comic books like Chitra Bharti Kathamala. In 2008, S. Chand established a joint-venture with **Houghton Mifflin Harcourt's International division EMPGI. S. Chand Harcourt** distributes digital content to public and private schools in India.

Jaico (1946): Founded by Jaman Shah as a book distribution business for U.S. paperback publishers, Jaico was India's first publisher of paperback books in English and was one of the first publication houses in India to publish English translations of non-English writings by Indian authors.

Jaico publishes over 1,500 titles on subjects including Indian and international literature, history, politics, sociology, religion, philosophy, law, health and self-improvement. It sells many titles in business management and textbooks in information technology, computer science and engineering.

Munshiram Manoharlal Publishers Pvt. Ltd. (MRML) (1952): Established by Manohar Lal Jain, MRML has published over 3000 academic and scholarly publications. It also co-publishes scholarly titles with governmental institutions and bodies such as Indian Council of Philosophical Research (ICPR); Centre for Studies in Civilizations which is known for the series of scholarly publications namely Project of History of Science, Philosophy and Culture (PHISPC); Indira Gandhi National Centre for the Arts (IGNCA); and Indian Council of Historical Research (ICHR). In addition to this, MRML publishes and reprints books in collaboration with university presses, independent publishers, scholars, and institutions around the world.

India Book House (1952): Headquartered in Mumbai, IBH has now merged with the Oxford Bookstore and Stationery Company to become Oxford and IBH. It published paperback editions of authors such as Enid Blyton and Frederick Forsyth, and magazines like Tintin and Asterix, often in Indian languages as well. Amar Chitra Katha comics is their most famous series that retells stories from the great Indian epics, mythology, history, folklore, and fables.

The publishing house claims to represent over 200 Indian magazines and over 100 international magazines including names like National Geographic, Financial Times, Bloomberg Business Week, Business India, Autocar, Cybermedia group, Forbes Asia.

Orient Paperbacks (1975): Orient Paperbacks, a division of Vision Books Pvt. Ltd., is a multilingual, multi-location publishing house, publishing both in English and Hindi. The company has a list of over 800 titles on a wide range of subjects including fiction and literature, health, mind and body, self development, puzzles, religion and culture, new age and esoteric, and humor. The combined list of its group imprints runs to more than 3,000 titles.

Changes brought by FERA and FEMA

Early 1970s saw the enactment of Foreign Exchange Regulation Act (FERA) by the Indian Parliament that imposed stringent regulations on certain kinds of payments, dealings in foreign exchange and securities and the transactions which had an indirect impact on the foreign exchange and the import and export of currency. It also required any foreign entity to be owned to the extent of 60 % by Indian promoters in order to carry on its operations in India. While at one hand it led to many American firms functioning in India to enter into joint venture partnerships (Tata-McGraw Hill, Wiley Eastern, Prentice-Hall of India, Affiliated East-West Press, Sage Publications Inc., Penguin Books etc.) it also witnessed exodus of publication firms such as Blackie & Sons that sold its assets to S. Chand & Co.

FERA was later repealed in 1999 by the government of Atal Bihari Vajpayee and replaced by the much liberal Foreign Exchange Management Act (FEMA). With the liberal foreign exchange controls and foreign investment, the fully owned subsidiaries of foreign firms were allowed to function in India. Publishing houses such as Picador, Random House, Routledge, Pearson Education, Butterworths, HarperCollins,

Scholastic, Cambridge University Press entered Indian market. McGraw Hill and Sage later bought out their Indian partners.

Digitization- The New Age Publishing: Emerging Trend

The advent of Information and Communication Technology (ICT) coupled with rapid development of World Wide Web led to the evolution of Internet from a mere technological infrastructure to a network linking people and forerunner of information and digital age, which now plays a major role in global economy. The progress of ICT engendered an era of digitized information and print media is gradually giving way to e-books. The digital media and e-publishing promotes transference of knowledge at a much lower cost system of storage, transfer, reproduction and archiving. E-books are profitable options for all publishers as they have low production and shipping cost. Industry experts believe that with the emergence of e-books, the traditional publishing industry has received a major setback. Statistics reveal that there has been a decline in print distribution and sales of printed book.

Dictated by competitive forces and market demand, large and medium scale publishers around the globe are publishing electronic version of books in addition to the print form. Techniques such as Electronic Publishing on Demand (EPOD) are gaining momentum on portals such as Amazon.com and Barnes & Noble. Contrary to traditional printing method, EPOD allows use of digital printer to create the book without having the need to maintain inventory. The need for the author to pay the upfront cost is also obviated. Reportedly Amazon is selling more e-books than printed books on its websites. Then there are other options of downloading electronic books such as on Apple's iPad, computers, and cell phones. Spurred by price cuts on e-book readers and sales of digital books Barnes & Noble dropped prices of its e-ink-reader **"Nook"** to match the ever increasing competition.

It is interesting to note that the Indian market for e-books forms the second largest e-book market in the world.[2] Owing to the burgeoning English speaking middle class with increasing disposable income, India is touted to have a huge potential for e-books. Demographic alterations, increase in the level of education and penetration of internet are the major drivers of the huge e-publication market.

E-book Facts

It is estimated that:

114 million e-books were sold in 2010;

e-book sales came in at just under 970 million in 2011. That is a 117% increase from 2010;

e-book sales are expected to reach 9.7 billion by 2016;

CISCO's report states that there will be 25 billion internet users by 2025 (e-marketing of books therefore assumes significance);

54% of eReader owners say they read more now than 6 months ago. Only 18% of non-eReader users say the same;

At the end of August 2010, e-book sales made up 9% of all trade book sales. In August 2009, they only represented 3.3%;

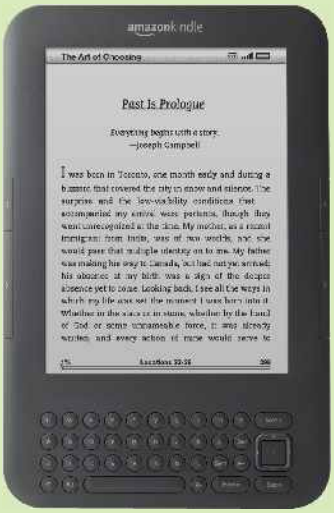
The Confession by John Grisham was released simultaneously as a hardcover and in e-book format. One week sales were 160,000 hardcovers and 70,000 e-books. It is obvious that when given the opportunity, readers are flocking to e-book versions of popular books.

Source: publishgreen.com <www.publishgreen.com>

[2]Netscribe: E-book markets in India. 2012

Amazon Kindle: Revolutionizing the Digital Media

The Kindle Saga[3]



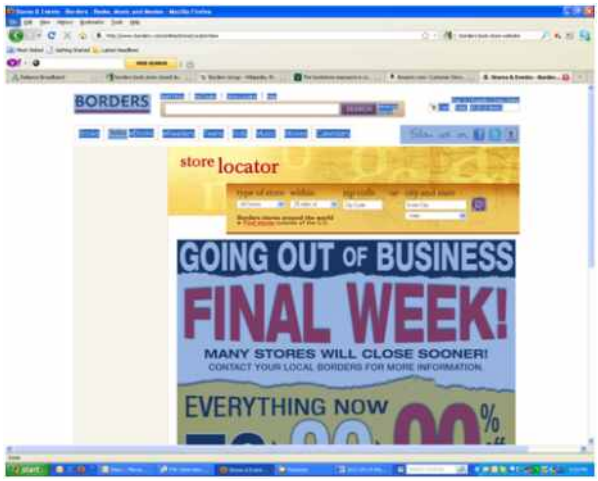
The Amazon Kindle is a series of e-book readers produced and developed by Amazon.com. Branding consultant Michael Cronan and partner Karin Hibma suggested the name Kindle (meaning to light a fire). The duo felt that it was an apt metaphor for reading and intellectual excitement. It uses wireless networking to enable users to shop for, download, browse, and read e-books, newspapers, magazines, blogs, and other digital media. Amazon released the **Kindle First Generation** on November 19, 2007 and was sold out in five and a half hours.

The Kindle software can be used on several platforms and devices including Microsoft Windows, iOS, BlackBerry, Mac OS X, Android, webOS, and Windows Phone. Amazon also provides for a "cloud" reader to allow users to read, and purchase, Kindle books from a web browser. The readers can purchase the content for the Kindle or download using either standard Wi-Fi or Amazon's 3G "Whispernet" network. Through a service called "Whispersync", customers can synchronize reading progress, bookmarks and other information across Kindle hardware devices and other mobile devices.

In the last three months of 2010, Amazon announced that in the United States, their e-book sales had surpassed sales of paperback books for the first time. The success of the e-book reader clearly goes on to show the changing scenario in the publication industry.

The World without Borders[4]

Borders Group, Inc., was an international book and music retailer based in Ann Arbor, Michigan. The company employed approximately 19,500 people throughout the U.S., primarily in its Borders and Waldenbooks stores. The company operated 511 Borders superstores in the US. The company also operated 175 stores in the Waldenbooks Specialty Retail segment, including Waldenbooks, Borders Express, Borders airport stores, and Borders Outlet stores. It also operated stores in Australia, New Zealand and Singapore.



On February 16, 2011, Borders applied for Chapter 11 bankruptcy protection and began liquidating 226 of its stores in the United States. Despite an offer from the private-equity firm Najafi Companies, Borders was not able to find a buyer before its July 17 bidding deadline, and therefore began liquidating its remaining 399 retail outlets on July 22, with the last Borders New York store being closed on September 14, 2011.

[3] *"Amazon Kindle", Wikipedia.org*
[4] *"Borders Group", Wikipedia.org*

Rival bookseller Barnes & Noble acquired Borders' trademarks and customer list. On October 14, 2011; Borders' former Website was replaced by a redirect to Barnes & Noble's website.

What went wrong?

Borders made the decision to outsource its e-commerce to Amazon.com in 2001 as it was struggling with its online store. However the company never really took steps to rearrange its organization so as to incorporate the digital world into its core business. The personalized Amazon experience provided more convenience to readers than the traditional retail experience of Borders' retail chain and it was becoming increasingly difficult for Borders to compete with it. It is reported that the last time Borders made a profit was in 2006 and that its yearly income dropped by $1 billion over the next four years.

The Borders online store was closed on September 27, 2011. A banner although then appeared on its website allowing users to browse, but instead directed them to Barnes & Noble to complete their purchases. It however provided all its customers a time period of one month (i.e. until October 29, 2011) to prevent their personal contact and purchase information from being transferred to Barnes & Noble. Later on October 1, 2011 all Borders cardholders were informed by email: "As part of Borders ceasing operations, we [Barnes & Noble] acquired some of its assets including Borders brand trademarks and their customer list."

The road ahead

Amazon knows its readers, the book they buy, recommends books to them, notify when the customer's favorite author's book is available and establishes a bond with them. Then again the downloadable e-books meet the demands of contemporary lifestyle with speed, ease, instant availability and integrated features. The bankruptcy of Borders in 2011 testifies the shrinking landscape of traditional retail chains. The traditional method is indeed losing ground to the rapid digital publication with the heavy machinery set-up being replaced by software.

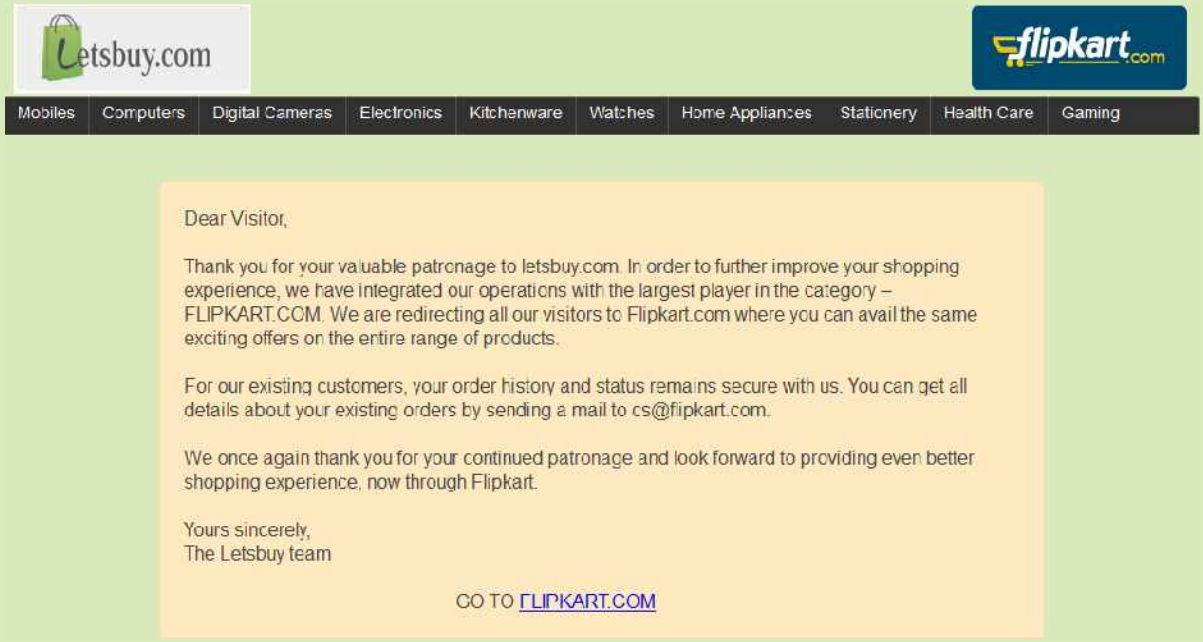
The digital publication has undoubtedly caused an upheaval by challenging the centuries old practices of traditional publication. Print-on-demand, self publishing, e-books, apps are all carving their niche in the highly competitive market. The problem of the archaic distribution methods that plagues the publishing industry has been effectively tackled in the digital age.

For some the downsizing of traditional publication seems inevitable, for others it is apocryphal. The paradigm shift from print to digital is certain and shall continue, the organizations may thus contemplate new methods of doing business so as to avail the maximum benefit of new technologies. A mixed economy of traditional and new age printing methodology enabling businesses to take advantage of both the methodology can only be obtained by perpetual innovation and endeavors on the part of publication houses to take on the shifting market. In addition dissemination of relevant information on economic and financial issues related to digital platform, pricing and distribution strategies, legal matters, transference or rights, contracts etc is required to meet the demand of readers and smooth migration to digital world.

Flipkart ... a success story

Established in 2007, Flipkart is the largest online bookstore in India. Headquartered in Bangalore, India, Flipkart was established by Sachin Bansal and Binny Bansal. Both are alumni of Indian Institute of Technology Delhi and worked for Amazon.com before quitting and establishing their own company.

Initially they used word of mouth marketing and social networking websites to popularize their company. A few months later, the company sold its first book on flipkart.com **- John Woods' Leaving Microsoft to Change the World.** In 2010, Flipkat acquired **"WeRead"** (a social book discovery tool) to provide a social recommendation platform for buyers to make informed decisions based on recommendations from people within their social network. Within two years, Flipkart became one of the top 100 Indian sites and was credited for being India's largest online bookseller with over 7 million titles on offer.



Owing to the low penetration level of credit card and net banking in India, the cash-on-delivery model adopted by Flipkart proved to be an instant success. Flipkart though started with a meager initial funding of INR 400,000, is all set to cross the INR 5 billion in the current financial year. The success of the e-retailer is further fuelled by the high internet usage in the country with more and more people getting accustomed to e-commerce.

Flipkart till March 2008 claims to have had at least 100% growth every quarter since its founding. In 2010, Flipkart branched out to selling CDs, DVDs, mobile phones, cameras and other electronic gadgets. In 2012 Flipkart acquired Letsbuy.com (India's second largest e-retailer in electronics) Flipkart claims to sell nearly 20 products per minute and is aiming at generating a revenue of INR50 billion (US$1 billion) by 2015.

Source: "Flipkart", Wikipedia.org

CHAPTER: 2

Legal and Regulatory Framework in the Publishing Industry

2
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Legal and Regulatory Framework in the Publishing Industry

India in the last decade, has witnessed a boon in the books and publishing industry. The ushering in of the knowledge-based economy in the new millennium has contributed to the surge in the demand for books.

The literature of a country is no doubt an index of the opinion and condition of its people, and therefore it is inevitable for good governance that the rulers of a country should posses such an index. The need had been recognized even during the British rule, and the 20th century saw the enactment of stringent anti-press laws, particularly when the freedom movement gained momentum. British government wanted to curb the activities of revolutionaries and the right of newspapers to report these. Reporting was closely monitored and comments against government were not tolerated.

The **Vernacular Press Act** was passed in 1878 with the sole intention of curbing and controlling the Indian language newspapers. This, however, led to widespread protest in India and to some extent in England and was finally **replaced in 1881**.

The **Newspapers Act** in 1908 was passed to empower magistrates to cease a press wherein a newspaper containing matters which incited murder or any other act of violence or offences (falling under the Explosives Substance Act) were printed. In 1910, the **Indian Press Act** came into existence which aimed at restricting publications inciting offences like violence and seditions and which gave the government right to demand security deposit from the press or forfeit the publication. This Act was made more regress in 1913 and later on was repealed.

In 1923, came another piece of stringent law called the **Official Secrets Act**. This Act prohibited the democratic concept of transparency of governance by forbidding the publication of classified official information. Lots of information vital to the public was withheld from the press in the name of **Official Secrets Act.**

In 1951, **The Press (Objectionable Matters) Act** was passed to provide against the printing of objectionable matters including matters which may provoke a crime. This Act provided for a judicial enquiry before demanding security deposit from a printing press or forfeiting it. The now non-existent Act was initially intended for 2 years, though it extended up to February 1956.

Finally in 1955, following the recommendations of the First Press Commission **Working Journalists and other Newspaper Employees and Miscellaneous Provisions Act** was passed which made provisions to ensure the welfare of working journalists and other newspaper employees. This was followed by **The Working Journalists Act** in 1958 passed to overcome certain difficulties regarding wage fixation.

The Press and Registration of Books Act, 1867

One of the oldest laws passed and subsisting in India, **The Press and Registration of Books Act**, 1867, was enacted for the regulation of printing-presses and newspapers, for the preservation of copies of books and newspapers printed in India and for the registration of such books and newspapers with an appointed Authority.

History

The British era in India saw the advent of printing presses and with that writing of books and other informatory material on almost all subjects and periodicals that touched different aspects of life. Thrust on education further led to printed materials becoming available on a large scale.

The necessity for an organized system for keeping a record of the publications was therefore felt by those in the field of writing, publishing and printing. The then **East India Company**, recognizing the urge to keep a record of the publications, made efforts in the form of collections of the books and other publications emanating from the various printing presses throughout India. Instructions were issued by the Board of Directors of the **East India Company** to dispatch copies of every important and interesting work published in India to England and deposit the same in the library of India House. However, such an instruction had a slow impact. Yet again, the Royal Asiatic Society in London urged the then Secretary of State for India to repeat the instructions of the late Board of Directors of **East India Company** and also desired that catalogues of all works published in India should be sent to England. A system of voluntary registrations of publications was evolved but it failed.

A system for compulsory sale of three copies of each work in India to the Government was then devised and to achieve this purpose, a Bill was introduced in the Legislature and thereafter the **Press and Registration of Books Act, 1867** was enacted for the regulation of printing presses and newspaper for the preservation of copies of books and periodicals containing news printed in the whole of India and for the registration of such books and periodicals containing news.

Relevant Provisions of the Act

The Act of 1867 makes provisions regarding particulars to be printed on books and papers (Section 3), declaration to be made by the owner of any press for the printing of books or publications before the specified authority within whose local jurisdiction such press is operative (Section 4) and rules regarding publication of newspapers, including a mandatory declaration by the printer/ publisher of every newspaper before a District, Presidency or Sub-divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published (Section 5).

The Act further lays down that copies of books printed in India, finished and colored in the same manner, and copies of each issue of every newspaper, as soon as the same is printed, shall be delivered gratis by the printer to such an officer as directed by the State Government, by notification in Official Gazette. (Section 9 and 11-A). The publisher of every newspaper in India further is also to deliver free of expense one copy of each issue of such newspaper to the Press Registrar as soon as it is published (Section 11-B).

Penalty

The Act provides for penalties (Section 12-17) in case of non-compliance of its provisions in the form of fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months or by both.

Where a newspaper is printed or published without conforming to the rules laid under the Act, the Magistrate, in addition to the above punishment, may also cancel the declaration made in respect of the said newspaper.

Authorities constituted under the 1867 Act - Registrar of Newspapers of India

The office of the Registrar of Newspapers for India, popularly known as RNI came into being on 1st July, 1956, on the recommendation of the First Press Commission in 1953 and by amending **The Press and Registration of Books Act**, 1867. The Act contains the duties and functions of the RNI and entrusts the following statutory as well as non-statutory responsibilities on it:-

Statutory functions

- Compilation and maintenance of a Register of Newspapers containing particulars about all the newspapers published;
- Issue of Certificate of Registration to newspapers published under valid declaration;
- Scrutiny and analysis of annual statements sent by the publishers of newspapers every year under Press and Registration of Books Act containing information on circulation, ownership etc.;
- Informing district magistrates about availability of titles, to intending publishers for filing declaration;
- Ensuring that newspapers are published in accordance with the provisions of 1867 Act and the rules made thereunder;
- Preparation and submission to the Government on or before December 31 each year, a report containing all available information and statistics about the press in India with particular reference to the emerging trends in circulation and in the direction of common ownership units etc.

Non-Statutory Functions:

- Formulation of Newsprint Allocation Policy - Guidelines and issue of Eligibility Certificate to the newspapers to enable them to import newsprint and to procure indigenous newsprint;
- Assessing and certifying the essential need and requirement of newspaper establishments to import printing and composing machinery and allied materials.

Case Laws

The judiciary has clarified various provisions of the Act vide following judgments:-

- Section 3 of the Act regarding particulars to be printed on books and papers only refers to the printing of a book and not its publication. Therefore, the publication of a book which is not printed in conformity with the rule contained in section 3 is not an offence under the said section – **(Abdul Hakim versus State of Uttar Pradesh, AIR 1960 All 450)**.
- Section 3 of the Act is not violative of Article 19 (1) (a) of the Constitution as it does not in any way restrict the freedom of expression – **(In re: G. Alavander, AIR 1957 Mad 427)**.
- A declared keeper of the press is not necessarily the owner thereof so as to be able to confer title to the press upon another. The ownership of the press is a matter of the general law and must follow the law – (**S.S. Apparao versus B. Lakshminarayana, 1962 AIR 586**).

- Presumption as to awareness of contents of newspapers can be raised only against the editor whose name appears in declaration published in newspaper – (**S. Nihal Singh versus Arjun Das, 1983 CriLJ 777**).

- Author of a printed pamphlet who is a literate person and who admits that he has written the subject matter dealt with in the printed pamphlet, cannot escape liability by merely saying that he is not connected with the press or having anything to do with its actual printing – (**Biman Chandra versus State, 1970 CriLJ 1596**).

Delivery of Books and Newspapers (Public Libraries) Act, 1954

Objective of the Act

The basic aim of the Act is that the publishers of books and newspapers are required to deliver, free of cost, a copy of every published book to the National Library at Calcutta and one copy each to three other public libraries specified by the Central Government.

Authorities/ Bodies Constituted

According to Section 6 (1) of the Act no court shall take cognizance of any offence punishable under this Act save on complaint made by an officer empowered in this behalf by the Central Government by a general or special order. Further, Section 6 (2) provides that no court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

Penalty

Section 5 provides for penalty in case of contravention of the provisions of this Act by any publisher. It states that any publisher who contravenes any provision of this Act or of any rule made there under shall be punishable with fine which may extend to fifty rupees and, if the contravention is in respect of a book, shall also be punishable with fine which shall be equivalent to the value of the book, and the Court trying the offence may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation to the public library to which the "book" or "newspaper" as the case may be ought to have been delivered.

The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955

Objectives of the Act

The Act provides for regulation for certain conditions of service of working journalists and other persons employed in newspaper establishments. The Act provides that for the purpose of fixing or revising rates of wages in respect of working journalists, the Central Government as and when necessary shall constitute a **Wage Board**.

Authorities/ Bodies Constituted

Section 9 of the Act gives the Central Government power to constitute a Wage Board for the purpose of fixing or revising rates of wages in respect of working journalists under this Act.

In addition, the Act provides for establishment of a separate Wage Board for non-journalist newspaper employees under Section 13C, the constitution of which shall be the same as that of the Wage Board under Section 9 except that there shall be two persons representing non-journalist newspaper employees.

Further the Act also provides for constitution of a separate Tribunal both for working journalists as well as for non-journalist newspaper employees under Sections 13-AA and Section 13-DD respectively. These Tribunals are to be established where the Central Government is of opinion that the Wage Boards established under the Act have not been able to function effectively and it shall consist of a person who is or has been, a Judge of a High Court or the Supreme Court

Section 17-B of the Act provides for appointment of Inspectors by the State Government for fulfillment of purposes of the Act.

Relevant Provisions of the Act

The powers and procedure of the Wage Board constituted in respect of working journalists are governed by Section 11 of the Act whereas the powers and procedures of the non-journalist newspaper employees is governed by Section 13 D. The Act provides for the appointment of Inspectors under Section 17 B and their powers thereof under Section 17 B (2). Any Inspector appointed may for the purpose of ascertaining whether any of the provisions of this Act or of the Working Journalists (fixation of Rates of Wages) Act, 1958, have been complied with in respect of a newspaper establishment –

- require an employer to furnish such information as he may consider necessary;
- at any reasonable time enter any newspaper establishment or any premises connected therewith and require for examination any accounts, books, registers and other documents relating to the employment of persons or the payment of wages in the establishment;
- examine the employer, his agent or servant or any other person found in charge of the newspaper establishment or any premises connected therewith;
- make copies of or take extracts from any book, registers or other documents maintained in relation to the newspaper establishment;
- exercise such other powers as may be prescribed.

The Central Government has also been conferred with certain powers under the Act:

- to enforce recommendations of the Wage Board (Section 12)
- to fix interim rates of wages (Section 13A)
- to make rules (Section 20)

Penalty

Section 18 of the Act provides for penalties in case of contravention of the provisions of the Act. It states that if any employer contravenes any of the provisions of this Act or any rule or order made thereunder, he shall be punishable with fine which may extend to Rs. 200 and further in case of second conviction involving the contravention of the same provision shall be punishable with fine which may extend to Rs. 500

The section further provides that no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this section.

The Newspaper (Prices and Pages) Act, 1956

This statute empowers the Central Government to regulate the price of newspapers in relation to the number of pages and size and also to regulate the allocation of space to be allowed for advertising matter.

Objectives of the Act

In order to eliminate unfair competition and equalize opportunities for newspapers, especially with smaller resources, the Press Commission recognized the need to regulate prices of newspapers in relation to their sizes. Accordingly, one of the major recommendations of the Press Commission was that legislation be enacted empowering Government to issue from time to time a price page schedule fixing a minimum price at which papers of a particular size can be sold. Further recommendations were also made by the Commission in the form of restriction of total space allotted to advertisements in newspapers to a specified proportion; such that the reader gets an adequate proportion of news and views and also that the advertisements are not reduced in effectiveness because there are too many of them.

Consequently, an Act called **The Newspaper (Prices and Pages) Act** was enacted by the Parliament to provide for the regulation of the prices charged for newspapers in relation to their pages and of matters connected therewith for the purpose of preventing unfair competition among newspapers so that newspapers may have broader opportunities of freedom of expression.

Relevant Provisions of the Act

Section 3 (1) of the Act empowers the Central Government to make orders, by notification in the Official Gazette, providing for the regulation of the prices charged for newspapers in relation to their maximum or minimum number of pages, sizes or areas and for the space to be allotted for advertising matter in relation to other matters therein. The Act further provides that the Central Government shall, before making any order, consult associations of publishers and such publishers likely to be affected by the Order (Section 3 (4)).

Section 4 specifically prohibits publication and sale of newspapers in contravention of any Order made under the provisions of this Act.

Regulatory Bodies

The Act empowers the Press Registrar, appointed under the Press and Registration of Books Act, 1867, to verify compliance of different newspapers with the Orders made by the Central Government under Section 3. The Press Registrar may, from time to time, direct the publisher of any newspaper to which such an Order applies, to furnish to him such weekly returns and statistics as the Press Registrar may require and the publisher of every newspaper shall comply with such direction (Section 5).

Penalty

Non-observance or contravention of provisions of the Act by any newspaper may penalize its publisher in the form of a fine, which may extend to one thousand rupees, and on any second or subsequent conviction, with fine which may extend to two thousand rupees (Section 6 (1)).

Case Laws

In **Sakal Papers Ltd. versus Union of India, 1962 AIR 305** the *Daily Newspapers (Price and Control) Order, 1960*, which fixed a minimum price and number of pages, which a newspaper is entitled to publish, was challenged as unconstitutional. The State justified the law as a reasonable restriction on a business activity of a citizen. The Supreme Court struck down the Order rejecting the State's argument. The Court, however, opined that the right of freedom of speech and expression couldn't be taken away with the object of placing restrictions on the business activity of the citizens. Freedom of speech can be restricted only on the grounds mentioned in clause (2) of Article 19.

The Copyright Act, 1957

According to this Act, 'copyright' means the exclusive right to commercially exploit the original literary, dramatic, artistic, musical work, sound recordings or cinematographic films as per the wishes of the owner of copyright subject to the restrictions imposed in the Act.

Copyright and the Publishing World

"The bundle of rights under copyright includes the right to reproduce, translate, adapt and disseminate."

In the publishing world, it is the author of a book who "assigns" the publisher the right to exploit the above said bundle of rights in return for royalty or license fees. The author has the choice to assign either all or some of his rights and such an assignment, for the sake of avoiding any future misunderstandings or exploitation of authors, should be in writing (Section 19).

When the creator of the work assigns publishing rights to a publisher vide an assignment deed, the publisher becomes the custodian of the copyright, or in other words, becomes the owner of the copyright in respect of the rights so assigned. The provisions of the Copyright Act shall then have effect on such an *owner* accordingly.

It is interesting to note, that despite such rights conferred on the publishers vide assignment by the authors' so as to tag the publisher as the *owner* of the work assigned, the Copyright Act makes provisions for protection of authors in these circumstances also. These provisions are known as Authors' Special Rights or Moral Rights.

Moral Rights

In all cases, authors or creators of the original work enjoy "moral rights" to be identified as the creator of the work ('right to paternity') and to object to any distortion or modification of the work ('right to integrity') – Section 57.

Publishers' Related Rights

Publishers enjoy 'related rights', i.e. they have the right over the edition they publish. The soft copy of layouts, films, plates, stocks and publicity material are the publisher's property. The author is not allowed to produce a competing work that could harm the sale of the book while it is in print.

The Copyright law further makes provisions for balancing the commercial and public interests in the production and dissemination of literary works by listing out acts which do not amount to infringement

(Section 52). One of the pertinent points under this may be mentioned as the fair dealing with copyrighted material.

Fair Deal

Fair dealing refers to conditions under which a fair use of copyrighted material is permitted – for research, study, criticism, review, news reporting or in library and schools and in the legislature – without specific permission of the owners. The law has also specified the usage under which exemptions are made.

The underlying principle behind fair dealing is that one should not be allowed to derive economic gain from the copyrighted work of someone else, unless the right is voluntarily surrendered.

Compulsory License

The Copyright Board in India is authorized to issue a "Compulsory License" (Section 31) to publish copyrighted works under certain conditions, viz.

- Where any work is withheld from the public in India or the owner thereof is dead or cannot be traced, then to the person who makes an application in this regard (Section 31A);
- Where any copyrighted work is for the benefit of disabled persons, then to the person working for benefit of such disabled persons for profit or for business (Section 31B).

Term of Copyright

The 'term of copyright' (Section 22) subsists for life of the author plus 60 years after that. When a work comes into the public domain, it loses restrictions of the copyright law. Such works can be copied, reused, shared or published without restrictions. An author, in the alternative, could also donate his/ her work to the public and make it available freely.

Penalty

In case of infringement or non-compliance of its provisions, the Copyright Act provides civil remedies, viz. injunction, damages or account of profit, delivery of infringing copy and damages for conversion (Section 55). However, where criminal proceedings are instituted against an infringer, the Act awards penalties in the form of imprisonment, which may extend from a mandatory punishment of 6 months to a maximum of 3 years and with a fine not less than fifty thousand rupees and extending up to two lakh rupees (Section 63).

The Defence of India Act, 1962

History

This Act came into force during the Emergency declared in 1962. This Act aimed at restricting the freedom of the Press to a large extent keeping in mind the unrest prevailing in India due to the war against China.

Objective of the Act

This Act provides for special measures to ensure the public safety and interest, the defence of India and civil defence and for the trial of certain offences and for matters connected therewith.

Relevant Provisions of the Act

Section 3 of the Act gives powers to the Central Government to make rules necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essentials to the life of the community.

The Section also covers rules with regard to prohibition of publication or communication prejudicial to the civil defence/military operations, prevention of prejudicial reports and prohibition of printing or publishing any matter in any newspaper.

Authorities Constituted under the Act

Special Tribunals have been constituted under Section 13 of the Act which can try any offence under any rule made under Section 3 by a general or special order issued by the State Government during the period of proclamation of Emergency. The jurisdiction of the Special Tribunals has been dealt with in Section 14 of the Act and the procedure to be followed is laid down in Section 15. According to Section 17 of the Act, a Special Tribunal shall have all the powers as conferred by the Code of Civil Procedure, 1908 on a Court of Session exercising original jurisdiction.

Penalty

Section 5(1) of the Act provides that if any person contravenes, with intent to wage war against India or to assist any country committing external aggression against India, any provision of the rules made under section 3 or any order issued under any such rule, he shall be punishable with death or imprisonment for life, or imprisonment for a term which may extend to ten years and shall also be liable to fine.

The Civil Defence Act, 1968

The Civil Defence Act was enacted on May 24th, 1968 to make provisions for civil defence and other matters connected therewith. The Statute, applicable to the whole of India, empowers the Central Government to make rules *inter-alia* to impose restrictions on the printing and publication of books, newspapers and other documents in certain cases.

Relevant Provisions of the Act

Section 3 (1) of the Act empowers the Central Government to make rules, by notification for securing civil defence and clause (w) of Section 3 (1) provides for making rules for;

- prohibition of printing and publication of any newspaper, news-sheet, book or other document containing matters prejudicial to civil defence;
- demanding security from any press used for the purpose of printing or publishing, and forfeiting the copies of, any newspaper, news-sheet book or other document containing any of the matters prejudicial to civil defence.

Authorities Constituted under the Act

To carry out the objectives of the Act, the State Government is empowered to constitute, for any area within the State, a body of persons who would be called the Civil Defence Corps and a Controller, not below the rank of a District Magistrate, to command such Corps.

Penalty

Section 3 (3) of the Act lays down that a contravention of any provisions made under the Act shall be punishable with a fine which may extend to five hundred rupees, and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for everyday, after the first, during which such contravention continues.

The Press Council Act, 1978

History

The First Press Commission (1954) recommended the setting up of a Press Council. In pursuance of this recommendation, the Press Council of India was constituted by the Government of India under the Press Council Act, 1965. The Press Council of India was first constituted on July 04, 1966 as an autonomous, statutory and quasi-judicial body under the Chairmanship of Justice J. R. Mudholkar, who was a sitting judge of the Supreme Court of India and presided over the Council from November 16, 1966 to March 01, 1968. The Council set up under the Act of 1965 functioned till December 1975. During the internal Emergency, the Act was repealed and the Council was abolished with effect from January 01, 1976. Thereafter, a fresh legislation was enacted in 1978 providing for the establishment of the Council and the same came into being in 1979. The revived Press Council was set up in 1979 under the Press Council Act of 1978.

Objective

The objective behind the enactment of the Press Council Act, 1978 was to establish a Press Council for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.

The Press Council is a statutory, quasi-judicial body which governs the conduct of the print media and acts as a watchdog of the press. In this regard, it has the power to take suitable action where appropriate, for violation of norms of journalistic conduct. It adjudicates the complaints against and by the press for violation of ethics and for violation of the freedom of the press respectively. In fact, the Council on July 12, 2006 censured the following newspapers, viz. Alsafa of Srinagar, Anand Bazar Patrika of Kolkata, Times of India (Delhi and Pune editions), Punjab Kesari (Delhi) and Mid Day (Mumbai) for breaking the norms of journalistic conduct.

Authorities Constituted under the Act

The Council consists of a Chairman and 28 other members of whom 20 represent the press and are nominated by the press organizations or news agencies recognized and notified by the Council as all India bodies of categories such as editors, working journalists and owners and managers of newspaper; 5 members are nominated from the two Houses of Parliament and 3 represent cultural, literary and legal fields as nominees of the Sahitya Academy, University Grants Commission and the Bar Council of India. The members serve on the Council for a term of three years. The Council was last reconstituted for its eleventh term and effective from January 07, 2011. The present Chairman of the Press Council of India is the retired judge of the Supreme Court of India, Justice Markandey Katju.

Relevant Provisions of the Act

The Council has been assigned objects and functions under Section 13 of the Press Council Act including:-

- to help newspapers and news agencies to maintain their independence;
- to build up a code of conduct for newspapers, news agencies and journalists;
- to keep under review any development likely to restrict supply and dissemination of news of public interest and importance;
- to concern itself with the developments such as concentration of or other aspects of ownership of newspapers and news agencies which may affect the independence of the press.

The Press Council Act under Section 15 (4) empowers the Press Council to make observations in respect of conduct of any authority including Government, if considered necessary for performance of its functions under the Act. It can further warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist if it finds that a newspaper or a news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct (Section 14).

The 1978 Act has also framed the following rules and regulations for better functioning of the Council:-

a) Press Council (Procedure for Nomination of Member) Rules, 1978

b) Press Council Rules, 1979

c) Press Council (Procedure for Inquiry) Regulations, 1979

d) Press Council (Procedure for Conduct of Meeting and Business) Regulations, 1979

e) Press Council (Budget and Accounts) Rules, 1981

Case Law

In **S. Ameenul Hasan Rizvi versus Press Council of India and Another**, 91 (2001) DLT 492, Justice Anil Dev Singh of the Delhi High Court, while deciding whether any direction can be given to the editor or owner of a newspaper to publish any news, article, correspondence or any other matter, held the following,

"Under our Constitution though there is no separate guarantee of freedom of the press, it is implicit in the freedom of expression which is guaranteed to the citizens under Article 19(1) (a). This freedom can be claimed by an editor or an owner of a newspaper. Freedom to publish an article or material also includes the right not to publish the same. An editor of a newspaper controls the selection of the material that is to be published in a newspaper. She/he has discretion to select or to reject the material.

The liberty of press will be jeopardized if it is forced and compelled to print a particular news, comment, letter, advertising, etc. In case a newspaper is compelled to print what it does not wish to, such would violate Article 19(1) (a) of the constitution except where the restriction is covered by Article 19(2)."

CHAPTER: 3

Managing IPR in Publishing Industry

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CHAPTER

Managing IPR in Publishing Industry

The author's creative expressions are only able to reach the readers after publisher's input, be it by way of editing, designing or packaging, the publisher plays a significant role in the chain of interlinked economic activity. The disparate activities ranging from creation of work to its dissemination and the corresponding products (books, journals, magazines etc.) makes publishing industry as one of the biggest drivers of financial sectors. It is thus imperative for a healthy and thriving publishing industry that incentive for taking the monetary risk is guaranteed to assure appropriate financial returns. In addition to the risk of failure, this knowledge driven sector is also marred by the risk of the content being copied or appropriated by the competitors. The encoding of ideas into intellectual property (copyright, trademarks, and trade secrets) in addition to the tangible expression is thus an effective way to put barrier to the unfair appropriations.

Entrusted with the responsibility of protecting and monetizing IP rights to the mutual benefit of the authors and themselves, the publishers not only are right holders on behalf of the authors and creators of the original work, but are themselves the custodians and managers of valuable intellectual property rights (IPR).

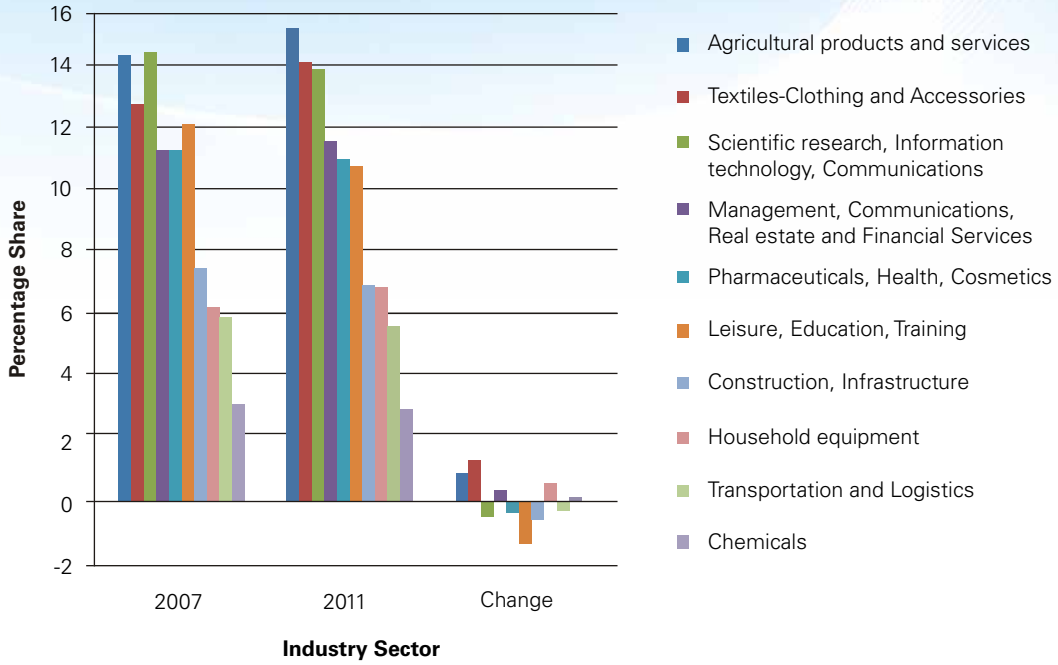
Why Manage IPR?

It is estimated that if Coca-Cola happens to lose all its tangible and physical assets, the brand name "**Coca-Cola" and other IP** assets would be valuable enough to enable positive cash flow within one year. Similarly value of the brand "**Apple**" is almost half of its market capitalization. Same analogy can also be drawn for the publication houses. Today the value of any publishing firm is not only determined by its tangible property or books, journals or periodical produced by it, but also by the assets that would continue to garner revenues even if the firm stop publishing or happens to lose all its physical properties. The intangible capital is rightfully touted to be the most powerful asset of the company. IPR protection and enforcement lays the foundation of a company's dominance in the market and is a source of continuing revenue stream and profitability for them.

The publishing industry is a cluster interlinking authors, illustrators and designers with the publishers, freelance workers, editors, paper manufacturers, printers, booksellers, the deliverers and ultimately the consumers, where all are in a kind of interrelated partnership. The intellectual property in the form of copyright, trademarks, trade secret is the common link that offers protection and tremendous growth opportunity to all in the cluster.

If the work of human mind and intellect are not protected and managed there would be little incentive for the authors to create and they would be at a disadvantage especially in view of rivals who would replicate and appropriate their creation. Adequate protection and enforcement of IP rights also encourages strategic investment, information management and skill development. This becomes more pronounced in the developing country like India, where public policy considerations, like access to information, affect legislative development in the country.

Graph 1: Trademark Applications by Industry Sector- WIPO Statistics



Sources: WIPO Statistics Database and Edital®, October 2012
See Annex A

Now that the publishing landscape has undergone transformation with the advent of e-publishing and digital media, the mode of distribution and delivery, all has undergone sea changes. Concurrently the scope of IP rights has also widened, while traditionally the firms were securing copyrights, trademarks etc to obtain ownership, they are now using the IP portfolio to extract long term value by selling, pooling, licensing or exchanging it. It has therefore become apparent to address the IP rights and obligations as it forms the crux of today's global economy.

What is an IPR?

The term "intellectual property" is reserved for types of property that results from creation of the human mind, the intellect. The Convention Establishing the World Intellectual Property Organization offers an inclusive list of the rights as relating to: *"Literary artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and "all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields."* (Convention establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967; Article 2, § viii).

Copyright is the most significant intellectual property right relevant to the publishing industry and is dealt in detail later in the chapter. The other relevant rights being trademarks, domain names and trade secrets.

Harry Potter and his magical IP asset

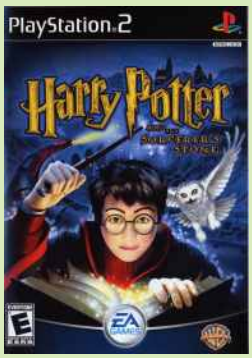


The entire generation of the last decade practically grew up with *Harry Potter* and his friends Ronald Weasley and Hermione Granger. The chronicles of the whiz kid is etched in our heart but what we might not know is the effort that J.K. Rowling, her publishers and film distributors Warner Bros have taken to secure, protect and enforce their IP rights. The publishers (**Bloomsbury** in the United Kingdom and **Scholastic Press** in the United States were the major initial publishers) left no stone unturned to protect the copyright, which included banning the sale of *Harry Potter* imitations and targeting the owners of websites over the *"Harry Potter"* domain name.

BLOOMSBURY SCHOLASTIC

Legal action was also taken against author Nancy Stouffer to counter her accusations that Rowling had plagiarized her work.

The hugely popular *Harry Potter* series has brought substantial financial returns for not only the author and the publishers but for all other *Harry Potter* related license holders as well. Rowling is touted to be the first and by far the only billionaire author. The book sales motivated New York Times to create a separate best-seller list for children's literature in 2000. For the release of **Goblet of Fire**, 9,000 FedEx trucks were used with no other purpose than to deliver the book. The books have sold more than 400 million copies worldwide and have also given rise to the popular film adaptations produced by Warner Bros. The films have in turn inspired production of **eight video games** and have led to the licensing of more than 400 additional *Harry Potter* products (including an **iPod**).







The worldwide merchandising rights to the *Harry Potter* trademarks are owned by Warner Bros. It is reported that Warner Bros have divided the rights among its licensees for use on different products. Toymakers **Hasbro** are licensed to distribute **Harry Potter sweets** (such as **Cockroach Clusters, Chocolate Frogs and Fizzing Whizbees**); **Mattel** has the right to make Harry Potter action figures, games and puzzles; **Electronic Arts** have rights to produce Harry Potter **computer and video games**; and Coca Cola secured rights in marketing the film along with its products. **The *Harry Potter* brand has been estimated to be worth as much as $15 billion.**





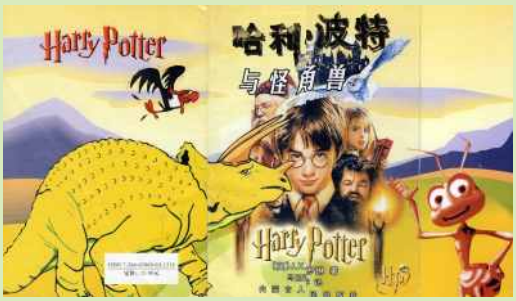




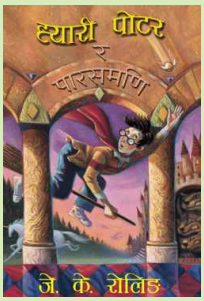
There is no iota of doubt that such feat could only be achieved by the fierce enforcement strategies adopted by Rowling. When the entire scanned copy of the book was uploaded and distributed on the internet, Rowling took several legal actions against users of online auction site **e-bay**. Later in 2012 Rowling herself launched a website called **Pottermore** featuring many of her thoughts, texts that were not included in the original *Harry Potter* novels, some 18000 words of additional content and a service that sells e-books and audio books of the *Harry Potter* series.



In 2002, an unauthorized Chinese-language sequel titled ***Harry Potter and Bao Zoulong*** (Harry Potter and Leopard-Walk-Up-to-Dragon) was put on sale in the People's Republic of China. Copies of the book were distributed around the world, even its e-book copies were traded on the Internet. Rowling and Warner Bros. took immediate steps to stop its distribution. Following this the **Bashu Publishing House** agreed to pay a £1,600 (US$3,400) fine and published an apology in China's Legal Times for printing and distributing the *"fake"* novel.







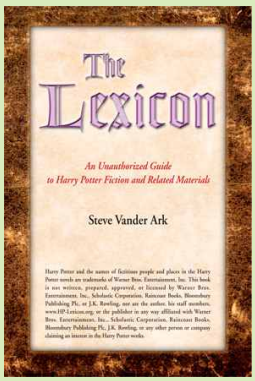
In 2003, **Sahitya Tirtha and Nandita Publishers** the Kolkata (India) based publishing houses published ***Harry Potter Kolkataye*** and ***Harry Potter O Paras Mani*** (Harry Potter and The Philosophers Stone) respectively. Legal action was initiated against both the publishers for trademark infringement and copyright violations. The cases were however amicably settled out of Court and the publishers agreed to stop the publication of the books.

In Russia the **Tanya Grotter** books by author **Dmitry Yemets**, featuring a magical teenager with round glasses at the Abracadabra school for witches also gained popularity. The publishers of the *Harry Potter* series successfully restricted (in 2003) distribution of Dutch translation of Tanya Grotter and the Magical Double Bass outside of Russia when the Dutch Court ruled in favor of them rejecting Yemets and his original Moscow-based publisher Eksmo's arguments that the book constituted parody of the original work and thus was allowed under Copyright.

In 2007, Warner Bros. and Rowling sued Michigan-based publishing firm RDR Books to prevent the publication of a 400-page **book version** of the Harry Potter Lexicon, an online reference guide to her work. The site was created by school librarian Steve Vander Ark and contained detailed information of all seven published *Harry Potter* books. The Lexicon also listed characters, places, creatures, spells, potions and magical devices, as well as analyzed magical theory and other details of the series. Rowling stated on her website that she intended to write a Harry Potter encyclopedia, and that the publication of a similar book before her own would hurt the proceeds of the official encyclopedia, which she planned to give to charity.

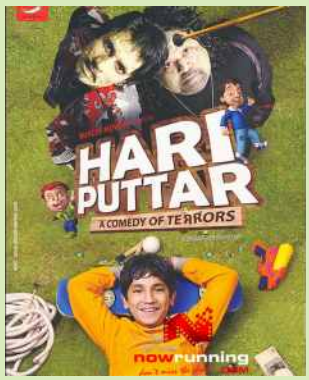
The Judge ruled in Rowling's favor, stating that the book would violate the terms of fair use. The Judge held that *reference materials were generally useful to the public but that in this case, Vander Ark went too far* and that *"while the Lexicon, in its current state, is not a fair use of the Harry Potter works, reference works that share the Lexicon's purpose of aiding readers of literature generally should be encouraged rather than stifled."*

In December, 2008, a modified (and shorter) version of the of Vander Ark's Lexicon was approved for publication and was released on 16 January 2009 as **The Lexicon: An Unauthorized Guide to Harry Potter Fiction.**



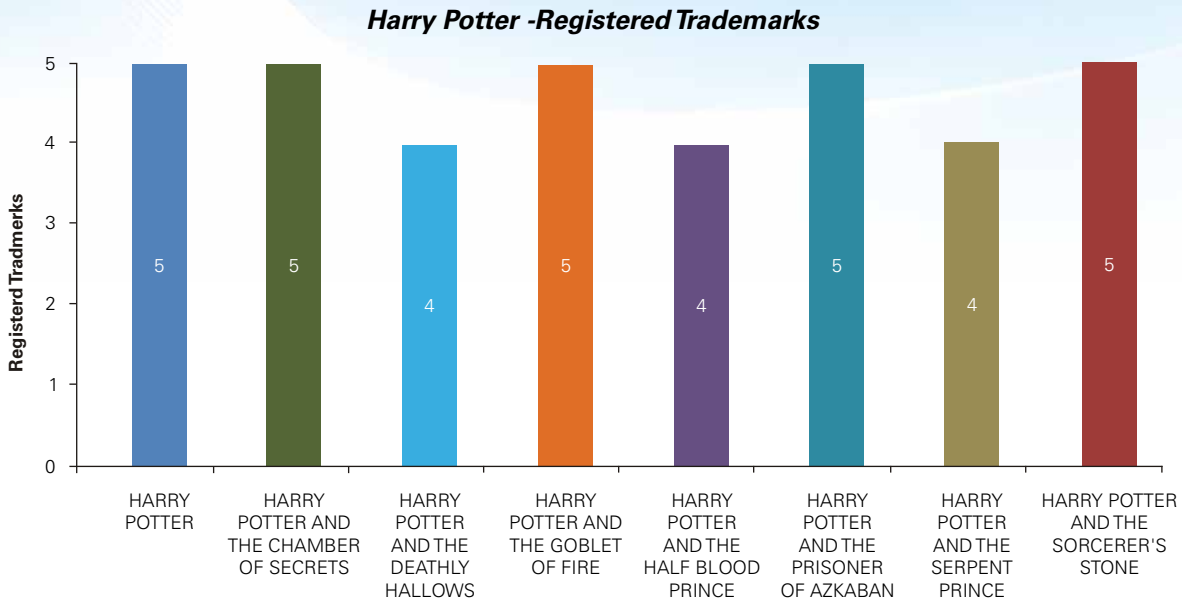
Other successful court actions include restraining order against City Publication (India) from selling fake version of Harry Potter and the Deathly Hallows (Ms. J.K. Rowling & Ors. v. City Publication & Anr., **CS(OS) No.1785/2007].**

The journey was however not hunky-dory for the author. In 2008 a lawsuit was filed by Warner Bros. against Mirchi Movies over the similarity of the movie titled ***Hari Puttar: A Comedy of Terrors*** with their film series. The Court however ruled against Warner Bros stating that Harry Potter's readers were able to distinguish between the two works.



It goes without saying that Rowling is the creative genius and has attained the heights she deserved, yet the same would not have been possible without the efficient IP enforcement strategies and exploitation of the international system of the IP rights. Potter's magical wand is indeed symbolic of the Rowling's magical IP strategies.

Graph 2: "Harry Potter"- Registered Trademarks in India



Source: Online records on Indian Intellectual Property Office (Upto January 2013)
See AnnexB (i) and B (ii)

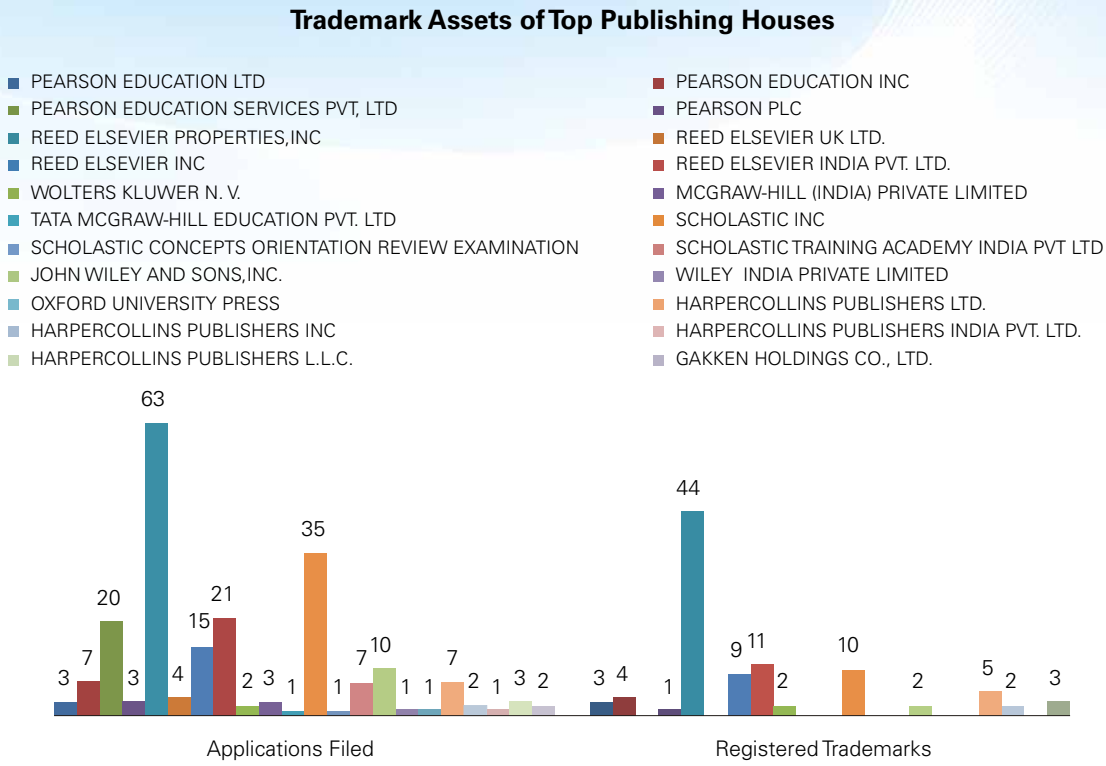
Content Source:

1. *"Harry Potter and the IP Bonanza" WIPO Magazine (October 2007), WIPO*
2. *"Pottermore" <http://www.pottermore.com/>*
3. *Warner Bros Entertainment Inc and Anr v Harvinder Kohli and Ors 2008 (38) PCT 185 (Del)*
4. *Intellectual Property Office, India, Official website < http://www.ipindia.nic.in/>*
5. *Wikipedia.org*

Trademarks and their Importance in the Publishing Industry

Trust, reliability, responsiveness and recognition are engendered by famous brands. A trademark is a sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors, to obtain finances and is a vital component of franchising agreement. The purpose of this facet of intellectual property is to protect the name of the product rather than the invention or idea behind it. The fierce competition among the firms trading in more than one country has increased the significance of trademarks. Since the consumer identifies the goods, its quality and value with a trademark, it is beyond any doubt that a trademark is a potent marketing tool that aids in communication with the consumers.

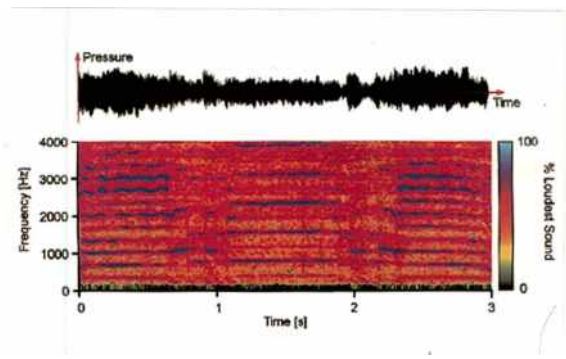
Graph 3: Trademark Assets of Top Publishing Firms



Source: Online records on Indian Intellectual Property Office (upto January 2013)
See Annex C

Unlike Copyright, trademark once registered can be renewed as long as the owner wishes to use it. The publisher may register as a trademark any or all of the following: single letters, words, initials, names of characters, titles, phrases, logos, the distinctive size or shape.

Even applications for the famous "Tarzan Yell" and "Yahoo Yodel" have been filed for registration as a trademark.



The mark consist of the sound of a human voice yodeling the word "yahoo!"

Tarzan Yell
(Edgar Rice Burroughs Inc)
[TM Appl. No.1748778]

Yahoo's Yodel
(Yahoo Inc.)
[TM Appl. No. 1270406]

Source: Indian Intellectual Property Office

Table 1: Famous characters that are registered as Trademarks

Application No.	Trademark	Date of Registration	Proprietor	Class	Status
1236728	TARZAN	15-Sep-03	EDGAR RICE BURROUGHS INC	38,41,42	Registered
1536670	ALICE IN WONDERLAND	2-Mar-07	DISNEY ENTERPRISES, INC.	14,16,18,20,21, 24,25,28,30,9	Registered
1479535	PINOCCHIO	17-Aug-06	DISNEY ENTERPRISES, INC.	14,16,18,20,21,24, 25,28,3,30,41,9	Registered
1272329	PETER RABBIT	15-Mar-04	FREDERICK WARNE & CO. LTD.	16,25	Registered
1556124	7 BROTHERS	7-May-07	VIRGIN COMICS LLC	16,41,9	Registered
1556127	SNAKE WOMAN	7-May-07	VIRGIN COMICS LLC	16,41,9	Registered

Source: Online records on Indian Intellectual Property Office (Upto January 2013)

The protection of names, characters or titles of books however varies with the national legislation. **Domain names** used in association with websites and e-commerce can also be registered and protected as trademarks. The title of the books and its characters can also be registered as domain names. This serves as publishers own unique identity as long as she/ he continue to use that name. Tintin, Tarzan, Harry Potter have all been registered as domain names.

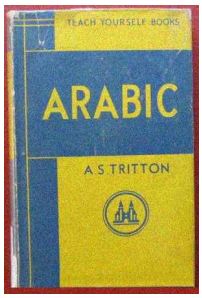
Table 2: Names of characters registered as "Domain Names"

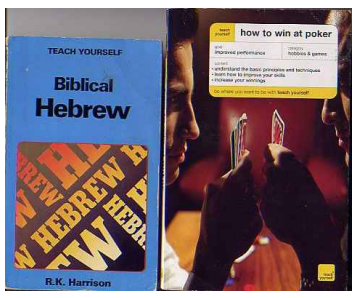
Domain Name	Registered Proprietor
www.harrypotter.co.in	Warner Bros. Entertainment Inc.
www.harrypotter.in	Warner Bros. Entertainment Inc.
www.tintin.com	Moulinsart SA
www.tarzan.org	Edgar Rice Burroughs, Inc.
www.batmanbegins.com	Warner Bros. Entertainment Inc.
www.champak.in	Delhi Press Patra Prakashan Pvt Ltd

Source: Online records of IN Registry and whois

Series titles of the books have also been registered as Trademarks. The **'Teach Yourself'**[1] series (Hodder), first published in 1938, is now a well-established and distinctive brand. The name 'Teach Yourself', its designs, appearance, even the colors of the book covers are all part of the overall protected brand.

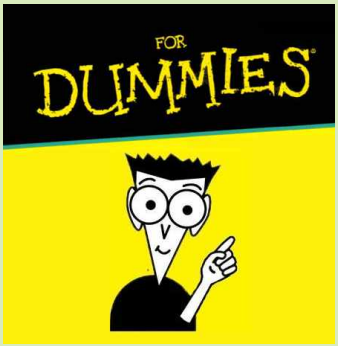






[1] *"Teach Yourself" Wikipedia.org, last modified October 11, 2012*

For Dummies!!! A reference for the rest of us



The *For Dummies* series, a series of instructional/reference books sporting a distinctive cover usually yellow and black with a triangular-headed cartoon figure (known as the "Dummies Man") and an informal, blackboard-style logo, are classic example of media franchise.*[2]

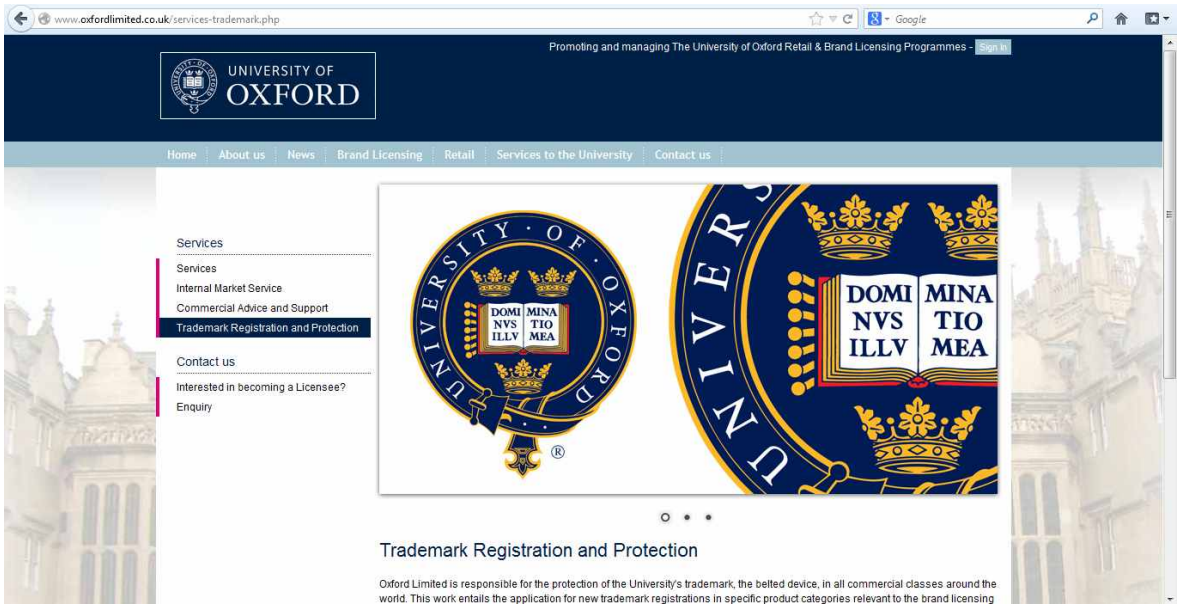
The first title, **DOS For Dummies** was written by Dan Gookin (in 1991) and published by IDG Books. The book soon became popular because of the rarity of beginner-friendly materials for using DOS. It was followed by the "Windows title" written by Andy Rathbone. Though initially the series focused on the software and technology specific topics it later branched out to more general-interest titles such as Guitar for Dummies, Birds for Dummies and Twitter for Dummies. The series is now published by John Wiley & Sons, Inc., which acquired Hungry Minds (the new name for IDG Books as of 2000) in early 2001.

It is worth mentioning that the "**Dummies Man**" (TM Regd No. 805676), the word "**For Dummies**" (TM Regd No. 638844), "**Hungry Minds**" (TM Regd No. 984681, 984680) are all Registered with the Indian Trademark Registry.

Source:

1. *Intellectual Property Office, India, Official website < http://www.ipindia.nic.in/>*
2. *Wikipedia.Com*

Several renowned publishers around the globe have also registered their names and products. For example, 'Oxford' is the registered name of Oxford University Press when used in association with any publication.[3]



[2]* A media franchise is the licensing of intellectual property of an original work of media, such as literature, to others (for merchandising or endorsements) and usually involves licensing of trademarked characters and settings.

[3]"Managing Intellectual Property in Book Publishing Industry", WIPO Publication No. 868(E), ISBN 978-92-805-1644-9 ,WIPO

Trade Secrets

The Publishers receiving scripts and original works have the legal responsibility of not disclosing the work to other entities. Publishers of sensitive commercial information, for instance those publishers receiving information relating to defense purposes would always be under pressure not to disclose discreet and confidential information. In such cases a non-disclosure agreement between the author and publisher acts a comprehensive agreement that prevents disclosure of confidential and commercial information and ideas by the proposed publisher.

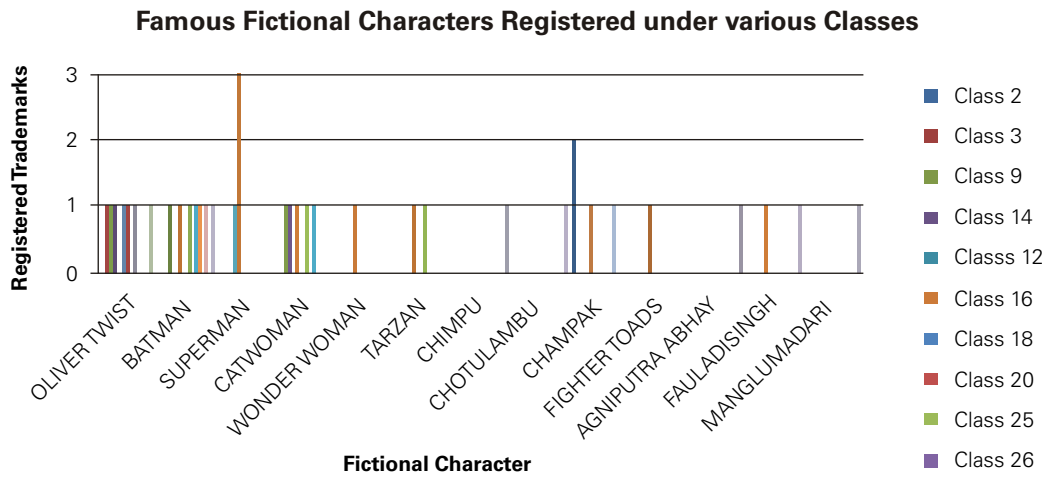
Character Merchandising*

Character merchandising is defined as the adaptation or secondary exploitation, by the creator of a fictional character or by a real person or by one or several authorized third parties, of the essential personality features (such as the name, image or appearance) of a character in relation to various goods and/or services with a view to creating in prospective customers a desire to acquire those goods and/or to use those services because of the customers' affinity with that character.

Though for centuries secondary exploitation of the character has existed, like representation in form of sculptures, puppets and toys of the religious characters of **Rama and Sita** from Ramayana, there was no commercial connotation attached to it. The inception of character merchandizing as an organized sector can be traced back to 1930, when the Walt **Disney Studios** in Burbank (California, USA) established a department that specialized in secondary commercial exploitation of its cartoon characters- **Mickey, Minnie, Donald** etc. Walt Disney soon succeeded in granting number of licenses for the manufacture and distribution of low-priced mass market merchandise such as posters, T-shirts, toys, buttons, badges, drinks.

As far as literary characters are concerned, its secondary commercial exploitation started with the works of Beatrix Potter (the books **Peter Rabbit** and **Squirrel Nutkin** with the animal characters which still are represented in the form of soft toys or other articles for children) or with the work of Lewis Carroll **(Alice in Wonderland**), the characters of which also became soft toys and were later adapted into a motion picture.

Graph 4: Famous Fictional Characters Registered under various Classes



Source: Online records on Indian Intellectual Property Office (Upto January 2013) See AnnexD

As far as legal protection is concerned, the legislations on copyright, trademark, designs along with protection against unfair competition are relevant in this regard.

Copyright protects translations, adaptations, arrangements of music and other alterations of a literary or artistic work as original works. The advancement in communication media has opened up new avenues for creation of derivative and adaptive work. **Pinocchio and Cinderella** cartoons by the Walt Disney are better known today than **the original stories written by Collodi and Charles Perrault**. Books, pamphlets, drawing, cinematographic and photographic works are therefore most relevant aspect of copyright with respect to merchandising of fictional characters.

In India, copyright protection is however denied where the work is industrially exploited or mass produced due to the overlap between the concept of artistic work and industrial design as the two form of protection could not be enjoyed at the same time. Thus if the character from a book is intended to be embodied in mass produced article like dolls, robots etc., it could be protected under design.

Other important question that creators are often intrigued with is whether the name of fictional character can also be protected under copyright. It is pertinent to mention that the same is possible when the fictional character per se has acquired distinctiveness and is recognized by public independently from the work in which it appears (eg. **Tarzan**). Similarly drawings, cartoons (like adaptation of literary character Cinderella by Walt Disney), audiovisual works, physical and/or pictorial appearance of a fictional character will all enjoy copyright protection if it meets the required criteria.

Designs: A design protects the ornamental or aesthetic aspect of an article. As per the Indian Design Act, the article has to be new and original and if registered is accorded protection against unauthorized copying and imitation for a period of 10 years which can be further extended for another five years. The three dimensional articles (projection of the literary characters) as dolls, robots, puppets, action figures etc. can all be protected under design. The design registration of the literary characters may play a pivotal role when a publisher or an author contemplates to enter into any kind of license agreement.

Trademarks and Service Marks: Trademark rights are perpetual and its main advantage over other form of proprietary rights is that it enables the owner to enjoy exclusive rights for an unlimited period of time. Other important aspect is that a proprietor can concomitantly enjoy both copyright and trademark, and even for some of the works which are not eligible for protection under copyright. Similarly if copyright in a work has expired, the owner may protect different aspect of the work, such as its title, image or appearance of the fictional character as trademark for merchandising purpose. The **characters Harry Potter, Tarzan, Pinocchio, Tintin, Nutkin, Oliver Twist, Alice** are all fictional characters that are registered as trademarks.

Unfair Competition: Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. Protection against unfair competition effectively supplements the industrial property rights such as trademarks and designs.

How merchandising of IP rights can prove useful for authors and publishers: - Tintin- a classic example of savvy marketing strategy

Licensing of IP rights to other companies provides excellent opportunity to generate fee and royalties. An author can license his copyright in the work to reproduce, sell and distribute his work on merchandised product. It enables the firm to explore new business model.

Tintin, a young Belgian reporter aided in his adventures by his faithful fox terrier dog Snowy created by Belgian artist **Georges Remi** (who wrote under the pen name of Hergé) is one of the most popular and one of the best known cartoon strip characters of the 20th century. It is translated in more than 50 languages and more than 200 million copies of the books have been sold till date.



The character's popularity and relentless marketing strategies has led to the creation of multi-million Euro merchandising market. Tintin's images has been used to sell a wide variety of products, **like wallpaper, bed linen, kitchenware, furniture, shower curtains, alarm clocks, watches, key rings, underwear, etc.** There are now estimated to be over 250 separate items related to the character.

Tintin memorabilia and merchandise has enabled chain of stores based solely on the character to become viable. The first shop was launched in 1984 in Covent Garden, London and since then has been opened in number of countries including Bruges and Brussels in Belgium, and in Montpellier, France. The British bookstore chain, Ottakar's, founded in 1987, was named after the character of King Ottokar from the Tintin **book King Ottokar's Sceptre**, and their shops stocked a large amount of Tintin merchandise until their takeover by Waterstone's in 2006.







Since Hergé's death, the Hergé Foundation has maintained control of the licenses, through Moulinsart, the commercial wing of the foundation.

Source: VERBAUWHEDE, Lien; "Savvy Marketing: Merchandising of Intellectual Property Rights" WIPO

*Source: *"Character Merchandising," (December 1994) (WO/INF/108), WIPO*

Copyrights

As per the World Intellectual Property Organization, Copyright and related rights protects the rights of authors, performers, producers and broadcasters, and contribute to the cultural and economic development of the nation. This protection fulfills a decisive role in articulating the contributions and rights of different stakeholders and the relation between them and the public. The purpose of copyright and related rights is twofold - to encourage a dynamic creative culture, while returning value to creators so that they can lead a dignified economic existence, and to provide widespread, affordable access to content for the public.

Copyright protects works that are the expression of thoughts, and not ideas. While there is no requirement for the literary and artistic work to be good or to have artistic merits, it should however, be original. The exact meaning of this requirement varies from country to country, and it is often determined by case law.

Economic and Moral rights

The rights in a literary or artistic work consist of economic and moral rights. The rights of adaptation, reproduction or communication of a work to the public, (broadcasting and public performance) are the economic rights. As recognized in Article 6bis(I) of the Berne Convention, **Moral rights** are non-assignable and inalienable rights of the author enabling him to claim authorship of the work and to object to any **distortion, mutilation or other modification of, or other derogatory action in relation to**, the said work, which would be prejudicial to his honor or reputation.

The Copyright system

The **Statute of Anne**, recognizing authors to be the primary beneficiaries of copyright law is considered to be the first copyright statute. The statute titled *"An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned"* was enacted in England in 1710 and was named as "Statute of Anne" due to the passage of its bill during the reign of Queen Anne. This landmark law established that copyright is to be granted for a fixed limited time period, a term of 14 years, with a provision for renewal for another 14 years, during which only those printers could publish the protected work to whom the licenses were given by the author. The copyrighted work would fall in the public domain after expiry of the aforesaid period. This statute remained in force until the **Copyright Act 1842** repealed it. Laws similar to the Statute of Anne were soon enacted in Denmark (1741), the **United States** (1790), and **France** (1793). 19th century saw most of the other countries establishing laws to protect the work of native authors. Later France in 1852 extended protection to all authors regardless of their nationality.

The **Berne Convention** (formally known as the International Convention for the Protection of Literary and Artistic Works), an international agreement governing copyright, was first accepted in Berne, Switzerland, in 1886 and played pivotal role in international harmonization of copyright laws. The core of the convention was the principle of "national treatment" which required each signatory to provide the nationals of other signatory the same right that it accords to its citizen. In addition to establishing a system of national treatment, the agreement also required member states to provide strong **minimum standards for copyright law**, further under the convention the copyright protection was given by **virtue of creation of work with no requirement of formal registration**. The convention which started with 10 members is now adopted by 166 countries.

The convention has been revised five times since 1886. The revision of Berne Convention by the Berlin Act (1908) is of particular significance as it provided additional protection to authors due to the new technologies (photography, sound recordings and cinematography). Today the copyright systems of most of the countries are similar largely due to Berne Convention and also because all member countries of the World Trade Organization are required to establish minimum levels of copyright protection.

In order to meet the challenges posed by advancement of the Information and Communication Technology along with the development of World Wide Web, the Copyright Law has been modified in several courtiers. For instance the **Digital Millennium Copyright Act** (DCMA), passed in the US in 1998, criminalizes production and dissemination of technology, devices, or services intended to circumvent measures that control access to copyrighted works and the act of circumventing an access control, whether or not there is actual infringement of copyright itself. In addition, the DMCA heightens the penalties for copyright infringement on the Internet.

Cathach- The case of first copyright infringement

The Cathach, a book of Psalms, written in the late 6th or early 7th century AD is considered as the earliest surviving Irish manuscript. The book derives its name from the Irish Gaelic word, cath [KAH] meaning 'battle'. It is traditionally associated with St. Columba and was identified as the copy made by him of a book loaned to him by St. Finnian. It soon became a holy relic for the Donegal clans. It became customary for a chosen monk from the Donegal clan to wear the Cathach around his neck, before a battle, and then walk around the Donegal troops three times in order to give them protection and victory.



The book sparked the first ever dispute over 'copyright infringment'. Columba loved books and when his old master, Finnian, brought back a Psalter from Rome, Columba surreptitiously made a copy with parts written in Gaelic. When Finnian discovered this, he laid claim to the copy. Columba refused to give it up and the question of ownership was put before King Diarmaid. The judgment went against Columba. The king proclaimed: *"To every cow her calf, and to every book its son-book; therefore the copy you made, O Colum Cille, belongs to Finnian."* The dispute however escalated resulting in the Battle of Cúl Dreimhne in 561, during which many men were killed.

Source: Celtic Quill Ireland <www.celticquill.com>

The Indian Copyright Act

The development of printing press and mass scale reproduction of books necessitated the development of Copyright Laws. Based on the UK Copyright Act 1911, the Indian Copyright Act (first copyright legislation in India) was passed in 1914. The Copyright Act of 1957 was the revised comprehensive Act that has so far been amended six times (1983, 1984, 1992, 1994, 1999 and 2012) to meet the constitutional status, national requirements and the international obligations.

The Copyright Act of 1957 provided for setting up of a **copyright office** under the Registrar of Copyright, for the purpose of registration of books and other works of art. The Copyright Board was established to determine reasonableness of the rates of fees, charges or royalties claimed by performing rights societies, to consider applications for general licenses for public performances of works and compensation payable in certain circumstances. The Act also introduced civil and criminal remedies against infringement.

The Berne Convention and the Universal Copyright Convention were revised in 1971 to enable the developing countries to grant compulsory licenses for translation and reproduction of the work of foreign origin for the purpose of teaching, scholarship, research etc. Other significant change was the provision for publication of unpublished works in case the author of the work is unknown, or is dead or cannot be traced. The Copyright Act of 1957 was amended in 1983 to confirm to the revised provisions of the international conventions.

The amendments of 1984 were done with the aim of discouraging and preventing video piracy. The 1992 amendment extended the term of copyright protection in literary work from 50 to 60 years, mainly to benefit *Viswa Bharti*, owner of the copyright of all the works created by Nobel laureate Rabindra Nath Tagore. The amendment of 1994 included the definition of Computer Program and explained the rights of copyright holder, position on rentals of software, the rights of the user to make backup copies and the punishment and fines on infringement of copyright of software. The salient features of the 1999 amendments were the introduction of commercial rental rights for software, power to the central government to make broadcasting and performers rights applicable to some companies in other countries and introduction of inter operability fair use provision for software.

The Copyright (Amendment) Act, 2012: The last amendment to the Act was done in **2012**, which came into effect from June 26, 2012. The amendment, among other important changes, provided for independent rights to the lyricist and the composers, extension of term of copyright for photographic work and incorporation of provision that would make it more difficult to produce cover versions. As far as publishers are concerned, although the government was all set to introduce the provision that would have allowed parallel importation of copyright work (by virtue of amendment in Section 2(m)), it was dropped from the amended Act passed by the Parliament. Section 2(m) defines meaning of infringing copy and the proposed amendment intended to keep *"copy of a work published in any country outside India with the permission of the author of the work and imported from that country"* outside the ambit of infringing copy.

As far as copyright is concerned, Parallel Importation involves an "original" copyright work placed on the market of one country, being subsequently imported into a second country without the permission of the copyright owner in the second country. Passage of aforesaid provision would have meant that book purchased anywhere in the world could have been imported and sold in India. However, the then Minister for Human Resource Development Mr. Kapil Sibbal had commissioned National Council of Applied

Economic Research (NCAER) to submit its recommendation on the Parallel Importation and held that the aforesaid amendment would indeed be incorporated if favorable report on the same is submitted by NCAER.

It is pertinent to mention one of the decisions of the Delhi High Court (Penguin Books Ltd. vs. India Book Distributors & Ors., AIR 1985 Delhi 2) where it was held that importation of books which *are "infringing copies of the work" is an infringement. So is the sale thereof*. The Court had noted that *"An infringing copy as defined in section 2(m) of the Act means a copy "imported in contravention of the provisions of the Act. If any person, without the license of the copyright owner or his exclusive licensee, imports into India for the purpose of selling or distributing for purposes of trade the literary work, the copyright is infringed. Any importation of infringing copies is therefore an infringement unless it is for the importer's own use."*

Some of the other significant amendments were:

Exceptions for Person with Disability: (Section 52 (1) (zb) and 31 B)

Section 52 takes out the following from the ambit of copyright infringement - adaptation, reproduction, issuance of copies or communication to public of any work in any accessible format to the person with disabilities on a non-profit basis. The aforesaid acts can be performed by any person (including any organization), to facilitate the disabled to access such work for private or personal use, educational purpose or research. And such person/ organization has the onus of ensuring that copies of work in such accessible format does not enter into ordinary channels of business and are accessed only by the disabled. Similarly amendment in Section 31B provides that any person working for the disabled (on a profit basis or for business) may apply to the Copyright Board for a compulsory license to publish any work in which copyright subsists, for the benefit of disabled.

Extension of Fair Dealing to all works: (Section 52 (1) (a))

While the earlier Act covered only literary, dramatic, musical or artistic work as "fair dealing", it now covers all works (with the exception of computer program). A person can thus now use the copyright work for research, criticism, review, reporting of current affairs, delivering lecture, storing of work in electronic medium (for the aforesaid purposes).

Expansion of Moral Rights (Section 57 (1))

The amendment has now allowed authors and his legal heirs to restrain and claim damages in respect of any distortion, mutilation, or other act in relation to such work, even after the expiration of the term of copyright, if such a distortion or mutilation is prejudicial to the honor or reputation of the author.

Provision of Compulsory Licenses for all work (Section 31 and 31A.):

While the earlier Act provided provisions for compulsory license with respect to only Indian work withheld from public or unpublished Indian work, it is now extended to all work withheld from public as well as all unpublished or published work (that is including the foreign work as well). Thus any person may now apply for a compulsory license with the Copyright Board for the compulsory license if the work is published elsewhere but is withheld from public in India.

Libraries can now keep scanned copies of the work: (Section 52 (1) (n))

The amended Act allows non-commercial public libraries to store the work in any medium by electronic means for preservation, provided the library possesses a non-digital copy of the work.

The ambit of "Commercial Rental "defined: (Section 2(fa))

The Act has kept renting, leasing or lending of a lawfully acquired copy of a computer program, sound and visual recording, or cinematographic film for non-profit purposes by a non-profit library or educational institution outside the ambit of commercial rental.

Definition of Copyright

Section 14 of the Indian Copyright Act defines copyright, in case of literary, dramatic or musical work (not being a computer program) as the exclusive right to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

- To reproduce the work in any material form including the storing of it in any medium by electronic means;
- To issue copies of the work to the public not already in circulation;
- To perform work in public, or communicate it to the public;
- To make any cinematograph film or sound recording in respect of the work;
- To make any translation of the work;
- To make any adaptation of the work;
- To do, in relation to the translation or an adaptation of the work, any of the acts specified above.

First owner of Copyright:

The author of the work is first owner of the copyright, provided that in case of literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, **the said proprietor shall, in the absence of any agreement to the contrary**, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work.

In case of a work made in the course of the **author's employment** under a contract of service or apprenticeship, to which the aforesaid clause does not apply, the employer shall (in the absence of any agreement to the contrary) be the first owner of the copyright. Similarly, in the case of a **Government work**, the Government shall be the first owner of the copyright provided there isn't any agreement to the contrary.

Term of Copyright

In India copyright in case of original literary, dramatic, musical and artistic work lasts for **author's lifetime and 60 years from the year** following the death of the author. Knowledge about local copyright legislation and the term of the copyright is an important parameter that a publisher needs to know especially when the commercial activities are being carried in more than one country.

Copyright Enforcement In India

The Indian Copyright Act, 1957, provides penalties for the offences committed under the Copyright Act and empowers the police to take necessary action. The Central Government has taken various steps to improve enforcement of the Copyright Act to curb piracy. These measures include the setting up of a **Copyright Enforcement Advisory Council (CEAC)** which has as its members, representatives from all concerned departments and industry personnel to regularly review the implementation of the Copyright Act including the provisions regarding anti-piracy.

Several other measures taken by the Central Government include, persuading the State Government for:

- the setting up of **Special Cells in State Governments** for enforcement of Copyright Laws;
- **appointment of nodal officers** in the States for facilitating proper coordination between the industry organizations and enforcement agencies;
- holding of **seminars/workshops**, etc., for sensitizing the public about Copyright Laws; and
- **Collective Administration** by Copyright Societies.

The Copyright Act of India provides right holders dual legal machinery for enforcing their rights. The enforcement is possible through (i) the Copyright Board and (ii) the Courts.

Copyright Board is a quasi-judicial body empowered under the Copyright Act to:

- hear appeals against the orders of the Registrar of Copyright;
- hear applications for rectification of entries in the Register of Copyrights;
- adjudicate upon disputes on assignment of copyright;
- grant compulsory licenses to publish or republish works (in certain circumstances);
- grant compulsory license to produce and publish a translation of a literary or dramatic work in any language after a period of seven years from the first publication of the work;
- hear and decide disputes as to whether a work has been published or about the date of publication or about the term of copyright of a work in another country;
- fix rates of royalties in respect of sound recordings under the cover-version provision; and
- fix the resale share right in original copies of a painting, a sculpture or a drawing and of original manuscripts of a literary or dramatic or musical work.

Illustrations for Infringement:

- Fateh Singh Mehta v. O.P. Singhal, AIR 1990 Raj 8 – Where a person has copyright in a literary work, and any other person produces or reproduces the work or any substantial part thereof in any material form, he is committing an infringement of copyright.
- R.G. Anand v. Delux Films, 1978 AIR 1613 – It is not necessary that the alleged infringement should be an exact or verbatim copy of the original but its resemblances with the original in a large measure is sufficient to indicate that it is a copy.
- D. Narayan Rao v. V. Prasad (1979)2 APLJ 231 – The defendant had borrowed a part of the speech which took only two and a half minutes show in the cinematograph film which ran for 3 hours. It was held there was an infringement of copyright as a substantial part of the speech had been copied.

Copyright Litigation

A copyright in a work is said to be infringed when any person, without authorization,

- Does anything that violates the exclusive right of the owner as conferred upon him by the Act,
- Permits any place to be used for the communication of the work to the public for profit where such communication constitutes an infringement of the copyright in the work, or
- Offers for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, any infringing copy of the work, or
- Distributes any infringing copy either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,
- By way of trade exhibits in public any infringing copy, or
- Imports into India, any infringing copy of the work

Jurisdiction of Courts

Under the Copyright Act (Section 62), the suit for infringement can be instituted in the District Court having jurisdiction. The suit can be instituted at the place where the copyright holder or one of the copyright holders (in case if there are more than one copyright holder) actually and voluntarily resides or work for gain or carries on business.

It is therefore possible for a rights owner to initiate and pursue its entire anti-piracy operation from one location. However, to invoke Section 62, such a rights owner should cover in the plaint that he is voluntarily carrying on business within the territorial jurisdiction of the Court; otherwise the suit is likely to be dismissed for want of jurisdiction (P.M. Diesel Ltd. v. Patel Field Marshal Industries (1996) PTC 174 (Del)).

Limitation for Filing Suit

As prescribed in the Limitation Act, the rights holder has a period of three years from the cause of action for filing the suit.



However, as copyright infringement is a continuing offence and the infringer violates the exclusive proprietary right of the rights holder every time he commits a discreet infringing act, the limiting period will anew with each new act. Legal action should therefore be initiated against the infringer as promptly as possible in order to establish the seriousness of the rights holder's intent before the Court.

Who May Sue

The following persons can sue for infringement of copyright:

1. The owner of the copyright;

2. The assignee of the copyright, provided the assignment is in accordance with the relevant provision of the Copyright Act (Section 19);

3. In the case of a testamentary disposition of the copyright work, the legatee in accordance with Section 20;

4. An exclusive licensee if the owner of the copyright is made a joint plaintiff or a defendant, unless the Court otherwise directs – Section 61(1)

5. In the case of anonymous or pseudonymous work, the publisher of the work until the identity of the author is disclosed publicly – Section 54 (b).

A co-owner may sue alone to restrain infringement. He may also make a criminal complaint (Subiah v. Muniswamy AIR 1966 Mad 175).

More than one copyright owner may file an infringement suit in a representative capacity provided they establish a common interest, common grievance and a remedy which is beneficial to all the plaintiffs (CBS/Sony v. Television Broadcasts (1987) FSR 262 at p. 268)

Institution of Suit

A suit for infringement of copyright should be filed before the District Court having jurisdiction or before the High Court having original jurisdiction.

Such a suit is instituted by the presentation of a plaint (Section 26, Order 4, Rule 1 of Code of Civil Procedure). The procedure to be followed in suits is contained in Sections 26 – 35A of the Civil Procedure Code and the rules of procedure in the First Schedule.

The more important of provisions which are relevant in respect of institution of suits relating to copyright are summarized below:-

1. Parties to Suit: All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any question of law or fact would arise (Order 1 Rule 1).

2. Pleadings: Every pleading should contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defences as the case may be, but not the evidence by which they are to be proved (Order 6, Rule 2).

3. Plaint: The plaint shall contain inter alia the following, namely, (i) name of the court in which suit is brought; (ii) name, description and place of residence of plaintiff; (iii) name, description and place of residence of defendant; (iv) facts constituting cause of action and when it arose; (v) facts showing that the Court has jurisdiction; and (vi) relief which the plaintiff claims (Order 7 Rule 1).

4. Written Statement of Defences: A written statement by the defendant must not be a general denial of grounds alleged by the plaintiff; each allegation of fact of which the defendant does not admit the truth must be specifically dealt with (Order 8 Rule 3).

5. Discovery and Interrogatories: Interrogatories in writing may be delivered by the plaintiff or defendant for examination of the opposite parties (Order 11 Rule 1).

6. Inspection of Documents: Every party to a suit is entitled to inspect any document referred to in the pleadings or affidavit of any other party, by giving notice to that party (Order 11, Rule 15).

7. Verification of Plaint: Where the plaintiff is a company under the Companies Act, the plaint can be signed by an officer of the Company authorized to sign and verify the plaint by virtue of a resolution of the Board of Directors of the Company.

Defences:

Section 52 gives a list of acts which do not amount to infringement of copyright. Some of these Statutory are as follows:

- Fair dealing with any work not being a computer program;
- Reproduction of any work for the purpose of judicial proceeding;
- Reading or recitation in public of reasonable extracts from a published literary or dramatic work;
- Performance of a literary, dramatic or musical work in the course of any bona fide religious ceremony;
- Importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory material that is purely incidental to other goods or products being imported lawfully; etc.

Remedies for Infringement

The reliefs which may be usually awarded in a suit are civil remedies i.e., either injunction or damages. Criminal remedies such as imprisonment and fine are distinct and may also be availed of simultaneously.

Civil Remedies

Section 55 of the Copyright Act provides for civil remedies and states that, upon infringement, "the owner of the copyright shall be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right.

The plaint is to be supported by an affidavit of the plaintiff or its authorized signatory.

Civil suits are instituted at the appropriate District Court having jurisdiction – including where the plaintiff resides

Injunction can be of the following kinds:

- **Temporary or interlocutory injunction** is the immediate remedy against infringement available to an aggrieved party and is granted after the suit for infringement is filed, and during the pendency of the suit.
- The relief of **perpetual or permanent injunction** is granted to the plaintiff only at the conclusion of the trial to prevent the infringement of an artistic copyright in a trademark label.
- Award of damages, Penal damages and account of profit is determined by the concerned Court on the evidence produced by the parties. The Courts in India have now started awarding damages including penal damages in IPR matters.

It is possible to claim any or all of the above remedies in a single infringement suit and the Court can grant any or all of the above remedies against an infringer, except an innocent infringer. In other words, the remedy of injunction can be joined either with that of damages or accounts, but the remedies of accounts and damages can in no case be joined together. (P.Lakshmikantham v. Ramkrishna Pictures, AIR 1981 AP 224).

It is also possible to file a combined suit for infringement of artistic copyright in trademark label and trade mark passing off in the District Court having jurisdiction over the place of the owner of artistic copyright in label trade mark.

Illustrations:

- In Ushodaya Enterprises Ltd. v. T.V. Venugopal 2001 PTC 727 (AP)(DB), the plaintiffs were the proprietors of a trade mark consisting of the word EENADU written in a distinctive artistic style, in respect of newspaper. They also had various business activities including television channel, film production pickles, chit fund, etc. The mark had thus acquired great reputation and goodwill. The defendant started using the same name in a similar artistic style in respect of agarbathies. In an action for infringement of copyright, trademark and passing off, the Division Bench granted permanent injunction without any territorial restriction.
- Raja Pocket Books v. Radha Pocket Books (1997) PTC 84 (Del) – Comic characters Nagraj copied by defendants in his comic character Nagesh. Interim injunction granted.

Moral Rights

Apart from remedies of infringement of copyright, the Act expressly provides for the protection of certain special inalienable rights of the author known as Moral Rights or Author's Special Rights. These rights enable the author to decide whether to publish, when to publish, in what form, etc. in respect of his work, i.e., he has a moral right to be associated with his work. Another way to exercise his moral right is to prevent any alterations, changes or distortions in his work or image or honor. These rights remain even after the author has transferred or assigned his work, wholly or partially, even after the expiration of the term of copyright as provided in the 2012 Amendment Act (Section 57).

Illustrations

Amar Nath Sehgal vs Union Of India, 2002 IVAD Delhi 349 - Amar Nath Sehgal sought damages for infringement of his special rights or moral rights, as embodied under Section 57 of the Act, owing to mutilation or damage to a bronze mural created by him. The plea relating to assignment of copyright to the Union of India vide contract was held to bear no relevance to the issues involved. The issues involved in the suit were, thus, held to be beyond the purview of the agreement between the two parties, and, therefore, cannot be held to arise out of or in any way connected with the contract.

In brief:

Civil remedies include

- ➔ Injunction, damages or account of profit,
- ➔ delivery of infringing copy, and
- ➔ damages for conversion.

Criminal Remedies

Chapter XIII (Sections 63-70) of the Copyright Act provides for a range of criminal penalties for infringing copyrights which are typically punishable with terms of imprisonment of 6 months that "may extend up to three years" along with a fine not less than fifty thousand rupees and extending upto two lakh rupees. These offences would be taken cognizance of and tried at the Court of the Metropolitan Magistrate or Judicial Magistrate of the First Class (Section 70), in the same manner as all cognizable offences in India i.e., by following the procedures under the Code of Criminal Procedure, 1973.

However, where an infringer, having already been convicted once under Section 63 is again convicted of any such offence, such an accused is then subjected to an enhanced penalty including imprisonment for a term not less than one year, but which may extend to three years and a fine of not less than one lakh rupees, but which may extend to two lakh rupees. (Section 63A)

Illustrations

1. In Aggarwal S, in re (1984) LW (Cr) 123 it was held that the mere possession of infringing copies of the work (example, cassettes containing film songs) is not sufficient in law to hold the person liable under Section 63 of the Act.
2. In the case of Microsoft Corporation v. Yogesh Papat & Anr 2005 (30) PTC 245 (Del), the Delhi High Court awarded damages against the Defendants for Rupees 19.75 lakhs for loading the software owned by Microsoft Corporation on the computer of their customers without seeking any permission from Microsoft Corporation for use of the software.

Role of Police

The police have the power to *suo moto* conduct raid and seizure operations. The Copyright Act dealing with police powers was amended in 1984 to give plenary powers to police officers, of the rank of a sub-inspector and above, to seize without warrant all infringing copies of works "if he is satisfied" that an offence of infringement under section 63, "has been, is being, or is likely to be, committed". Such all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate. **(Section 64(1)**

However, the Act also provides **safeguards against the above clause** by adding that any person aggrieved under Section 64(1) can make an application to the Magistrate within 15 days of such seizure by the police officer for restoring the seized copies to him. In such a case, the Magistrate, on hearing the applicant and the complainant and making such enquiries as may be necessary, shall make an order on the application as he deems fit. **(Section 64 (2)**

Illustrations:

In Girish Gandhi & Ors. v. Union of India, AIR 1997 Raj 78 a case before the Rajasthan High Court, the petitioner, who ran a video cassette rental business, challenged the constitutional validity of the wide powers granted to police officers under Section 64. Citing various instances of violations of privacy that the abuse of the section could occasion, the petitioner contended:

"The provision of Section 64 itself gives arbitrary and naked powers without any guidelines to the police officer to seize any material from the shop and thus, drag the video owners to litigation."

Although the High Court dismissed the petition on the grounds that it did not disclose any actual injury to the petitioner, it upheld the constitutionality of the section by reading the word "satisfaction" to mean that the "police officer will not act until and unless he has got some type of information on which information he is satisfied and his satisfaction shall be objective."

'Anton Piller' Orders and 'John Doe' Orders

This section looks at two innovations by Courts – Anton Piller Orders and John Doe orders – which are mechanisms unwarranted by civil procedural law, but crafted by High Courts specifically to deal with copyright investigation.

In appropriate cases, the Court has inherent jurisdiction on an application by the plaintiff made ex-parte and in camera to require the defendant to permit the plaintiff to enter his premises and take inspection of relevant documents and articles and take copies thereof or remove them for safe custody. These are known as **Anton Piller orders**. The necessity for such an order arises when there is grave danger of relevant documents and infringing articles being removed or destroyed, so that the ends of justice will be defeated.

John Doe orders are the orders issued by the Court to search and seize against unnamed/ unknown defendants; aided by Court-appointed local commissioners, to raid any premises suspected to contain infringing material.

Illustrations:

In 2006, the Delhi High Court the pioneer among the Indian Judiciary in issuing John Doe orders added another feather to its cap by permitting the filing of a suit against an IP address. In a case of defamation by email from an unknown sender, a company was able to successfully file a suit against the IP address and obtain an order against the ISP to track down the user who was later impleaded as a party to the suit.

In brief:

Criminal remedies include

- ➔ Imprisonment of the accused, or
- ➔ imposition of fine, or both;
- ➔ Seizure of infringing copies,
- ➔ Delivery of infringing copies.

Administrative Remedies

The Copyright Board as constituted under the Act is entrusted with the task of adjudication of disputes pertaining to copyright registration, assignment of copyright, grant of licenses in respect of Indian works withheld from public, unpublished Indian works, production and publication of translations of works for certain specified purposes. Furthermore, a rights holder can make an application to the Registrar of Copyrights who may conduct an inquiry, and order that copies made outside of India, which if made inside India would infringe the work, not be imported. Such copies will be deemed to be goods for which the import has been prohibited and/or restricted under the Customs Act, 1962, and the Registrar of Copyright or any person authorized by him can enter any ship, dock or premises where such infringing copies may be found and may examine such copies.

Administrative remedies, thus, consist of moving the Registrar of copyrights to ban the import of infringing copies into India, when the infringement is by way of such importation, followed by the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery.

The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

In order to limit the adverse affects of counterfeit and unauthorized imports the **Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007** was issued by the Government of India, providing mechanism for registration of Intellectual Property Assets including Patents, Designs, Copyright, Trademarks and Geographical Indications with the **Central Board of Excise and Customs** (CBEC) to legally seize and restrict the unauthorized imports into the official channels of trade in India.

The aforementioned rules empowers the Customs Authority to intercept, seize, and confiscate goods found to be or suspected to be infringing Intellectual Property Rights (IPR) registered and in-force in India by any person other than the intellectual property right holder or without permission/authorization of the IPR holder. The registration can be obtained by filing a notice with the CBEC along with the documents as specified in the Rule.

It may be noted that though the notice/application for registration may be submitted to the Commissioner of Customs at any of the ports where counterfeit goods are likely to be imported infringing the IPR in respect of any trademark, copyright, patent, design or geographical indication and all formalities associated with the registration are undertaken by that Commissioner, protection will be accorded at all the ports as specified in the notice. Once registered the Customs Authority store the IPR in their electronic database which is flashed across all entry points in India. Custom Officials are thus empowered to detain the counterfeits before it enters the ordinary circulation of trade either on the basis of the registration appearing in the electronic database or even *suo-motu* in the interest of the trade and protection of intellectual property rights.

Technological Measures

Section 65A is introduced to provide for protection of technological measures used by a copyright owner to protect his rights on the work. The Section provides that any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by the Act, with the intention of infringing the copyright shall be punishable with **imprisonment** which may extend to **two years** and shall also be **liable to fine.**

However the section also creates a vast list of exceptions including research, testing, national security etc. which make it a comparatively soft tool in the hands of prosecutors. Among the list of exceptions is a clause that enables the circumvention of Technological Protection Measures in order to facilitate purposes that are 'not expressly prohibited' – including, conceivably, to exercise fair dealing rights under Section 52.

Illustration:

In a first of its kind, in 2005, the High Court of Andhra Pradesh permitted the prosecution, under the Copyright Act, of persons accused of having circumvented technological protection measures in mobile devices. The accused in Syed Asifuddin and Ors. v. The State of Andhra Pradesh, had altered the software on the mobile handsets provided by one service provider (Reliance), so that the same handset could be used to access the network of a rival provider (Tata Indicom). The Court observed that "if a person alters computer program of another person or another computer company, the same would be infringement of the copyright."

Digital Rights Management Information

Section 65B of the Act provides protection of rights management information. Any person, who knowingly (i) removes or alters any rights management information without authority, or (ii) distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

Business and legal consideration

Some of the important legal considerations for a publisher are:[4]

- Contract with authors: Terms and condition with respect to **assignment of copyright** and rights of reproduction, distribution and validity of contract in different languages and countries must be clearly delineated. An outright assignment where an author assigns all his copyright to the publisher (either in lieu of one-off fee or ongoing sales dependent royalty) enables the publisher to exploit the work in whatever way he wishes to;

- Agreements covering **third party rights** may also be drawn, where the publishers agrees to a non-exclusive license that will enable him to reuse illustrations or artwork from another publication (subject to the permission from the owner of the work);

[4] *" Managing Intellectual Property in Book Publishing Industry", WIPO Publication No. 868(E), ISBN 978-92-805-1644-9 , WIPO*

- **Secondary and subsidiary rights:** The economic potential of subsidiary rights should be taken into consideration by the publishers while calculating the expected revenue from a new title. Rights related to translation or adaptation of the work (in strip cartoons, drama, documentary and film), merchandising rights or mechanical reproduction of the work (audio and/or videos) must be addressed;

- Issues related to exploitation of the printed work in the **electronic and digital landscape** must also be addressed;

- The indemnification clause that **indemnifies the publishers** against any legal disputes must be included in all contracts that the publisher may have with authors. The publishers must all ensure that the work being published is original, has not been plagiarized, and is not libelous, obscene or blasphemous;

- Publishers may contemplate ensuring that the author does not write any competing work, during the tenure of the contract, that may **prejudicially affect the sales** of the work published by them;

Conclusion

A sustainable publishing market encouraging the publishers to invest is the need of the hour which can be achieved by relentless efforts on the part of publishers and legislative bodies alike. Intellectual property is an indispensible commodity that establishes legal relationship that a publishing firm has with the author and other allied industries. IPR has played vital role in making the smaller publication firm climb up the ladder of value chain and enable them to compete with successful and established large entities. In a publishing sector the IP rights are the greatest and most rewarding financial asset. A strong and effective legal and regulatory framework that accords protection to the creators for their intellectual output not only encourages the authors but also ensures publishers' return on investments.

CHAPTER: 4

Print and Publishing Industry in India - A Statistical Analysis

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CHAPTER

Print and Publishing Industry in India - A Statistical Analysis

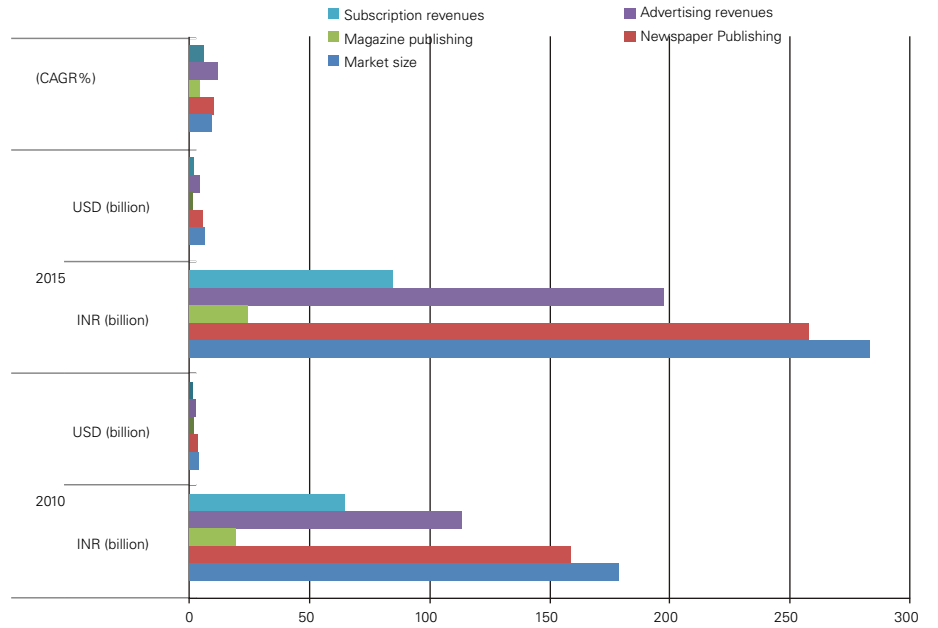
Since its inception in the late 18th century, the Indian print media continues to be one of the oldest and largest media of the world. Driven by the robust economic reforms, favorable macro-economic factors, and increase in literacy and purchasing power, the Indian publishing sector is beyond any doubt a lucrative option for overseas print, publishing and media houses and is expected to grow in the years to come.

The chapter presents statistical analyses of publishing sector in India and factors governing it.

Graph 1: Projected Compound Annual Growth Rate of the elements of the publishing industry.

The Compound Annual Growth Rate (CAGR) is a business term for the smoothed annualized gain of an investment over a given time period.[1] It describes the rate at which the investment would have grown if it grew at a steady rate.[2] The table below represents the CAGR of some of the elements governing the print and publishing industry in India including the market size, newspaper publishing, magazine publishing and the revenues generated from advertising and subscription.

Graph 1: Projected Compound Annual Growth Rate of the elements of the Print and Publishing Industry



	2010		2015		CAGR (%)
	INR (billion)	USD (billion)	INR (billion)	USD (billion)	
Subscription revenues	65.2	1.45	85	1.89	5.4
Advertising revenues	113.5	2.52	197	4.38	11.7
Magazine publishing	19.2	0.43	24.3	0.54	4.8
Newspaper Publishing	159.5	3.54	257.7	5.73	10.1
Market size	178.7	3.97	282	6.27	9.6

Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

[1] *"Compound Annual Growth Rate" Wikipedia.org, modified January 3, 2013*
[2] *"Compound Annual Growth Rate – CAGR" investopedia.com*

Graphs 2 and 3: Change witnessed by the Print Media Industry – 2006 to 2010

The table below represents the percentage change in growth rate of the print media industry with respect to the size of newspaper and magazine industry as well as the circulation of the same. The advertisement has also been considered as one of the parameter.

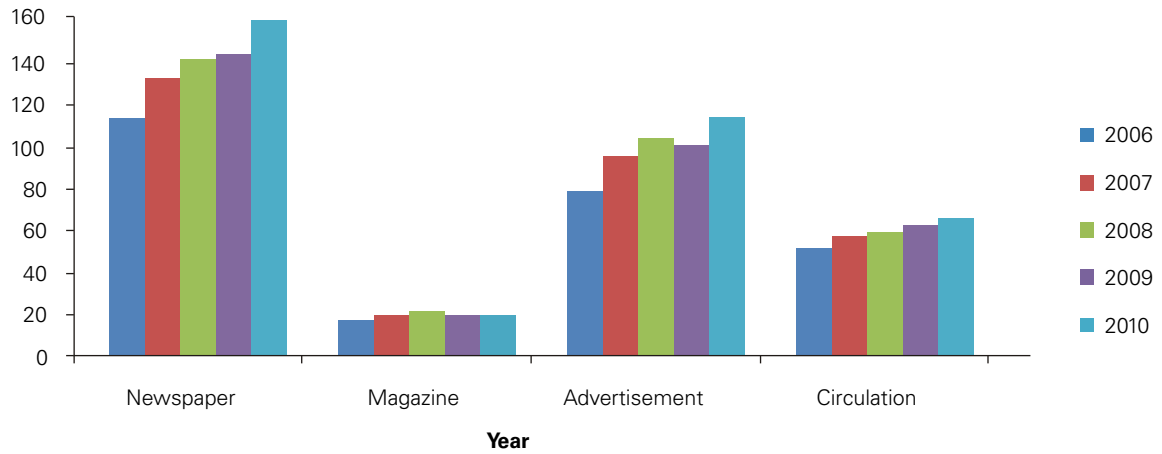
While the Newspaper industry has witnessed a steady change, from INR 112.1 billion in 2006 to INR 159.5 billion in 2010, there was a dip in the magazine industry. Overall with INR 178.7 billion, the industry registered a growth of about 10.7 % in 2010.[3]

Table 1: Growth in Print Media Industry (2007-10)

Components → / Year ↓	Newspaper		Magazine		Advertisement		Circulation	
	INR billion	% Change	INR billion	% Change	INR billion	% Change	INR billion	% Change
2006	112.1		16.5		78.0		50.7	
2007	131.5	17.3	19	14.9	94	20.5	56.5	12
2008	140.7	7	21	10.6	103.5	10.1	58.3	3
2009	142.8	1.5	18.6	-11.5	100	-3	61.5	5
2010	159.5	11.7	19.2	3.1	113.5	13.5	65.2	6.2
CAGR (%)	9.2		3.8		9.8		6.5	

Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

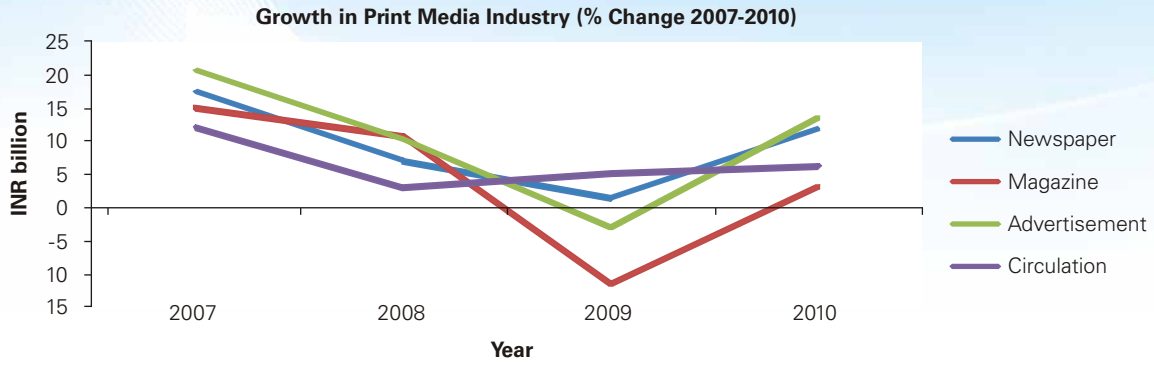
Graph 2: Growth in Print Media Industry (2006-2010)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

[3] *"India Entertainment and Media Outlook 2011" (July 2011), PricewaterhouseCoopers*

Graph 3: Percentage Change in Print Media Industry (2007-2010)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 4: The News Publishing Market: India Vs Rest of the World (2006-2010)

With more than 70,000 newspapers and over 100 million copies sold each day, India is perhaps amongst the biggest newspaper market in the world. The graph below clearly reflects that while in developed countries like the US and UK the traditional print industry is on the decline, in India it has gradually risen from USD 2491 million in 2006 to USD 3544 million in 2010 with a CAGR of 9%.

Except for the brief period of Emergency in 1975-1977, Indian media has been free and independent throughout most of its history.

- Started in 1780, ***The Bengal Gazette***, was the first major newspaper in India. It was started under the British Raj by James Augustus Hickey.
- ***The Bombay Samachar*** (founded in 1822) and printed in Gujarati is the oldest newspaper in Asia and is still in print.
- By 2007, 62 of the world's best selling newspaper dailies were published in China, Japan, and India.
- With the consumption of 99 million newspaper copies as of 2007, India stood at second position in the world market for newspapers.

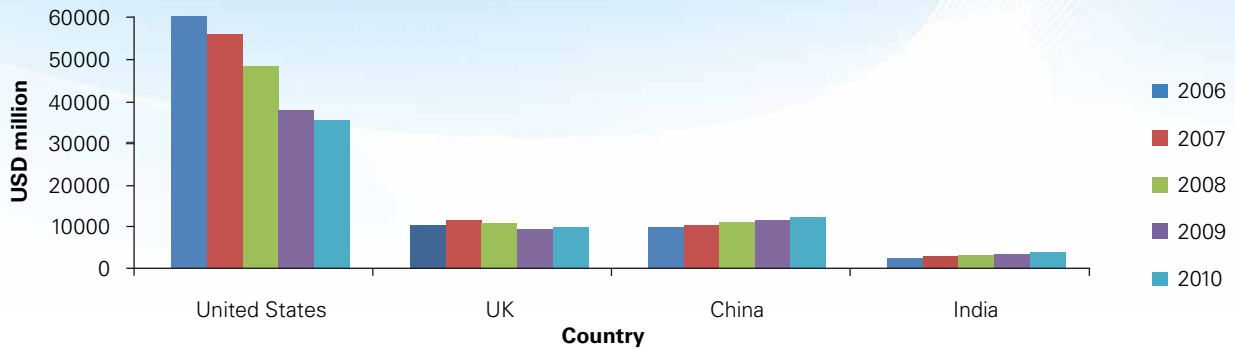
Source: Media of India, Wikipedia.org, modified January 15, 2013

Table 2: Newspaper Publishing Market (in USD million)

Country / Year	United States	UK	China	India
2006	59897	10402	9892	2491
2007	55740	11340	10347	2922
2008	48045	10695	11020	3126
2009	37771	9333	11318	3173
2010	35570	9592	12105	3544
CAGR (%)	-12	-2	5	9

Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 4: Newspaper Publishing Market – Growth in India vs. USA, UK & China (2006-2010)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

The coverage ratio (average percentage consumers reading more than one newspaper) of southern markets is significantly lower than the Hindi speaking states. In states such as Tamil Nadu, Karnataka, Andhra Pradesh and Kerala, on an average only 20% to 30% of consumers read more than one newspaper whereas in Hindi speaking states of Bihar and Jharkhand, this number is as high as about 40%.

Source: "India Entertainment and Media Outlook 2012", PricewaterhouseCoopers

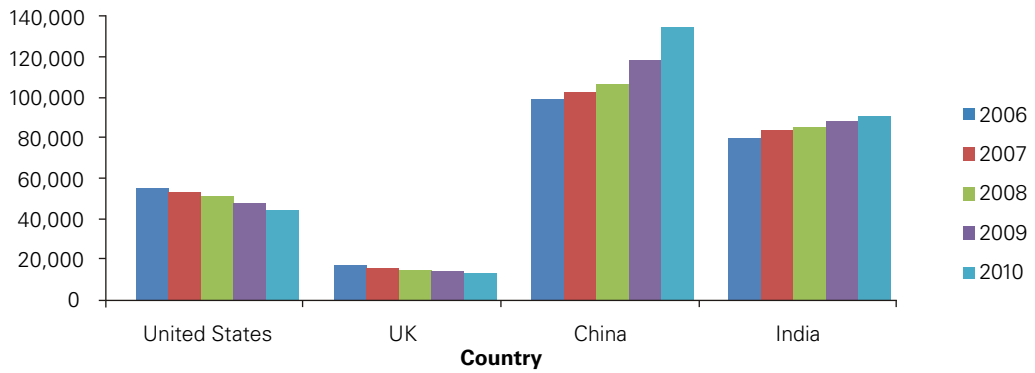
Table 3: Daily Newspaper Print Unit Circulation*

Country / Year	United States	UK	China	India
2006	54,829	16,650	98,700	79,000
2007	53,492	16,074	102,500	83,000
2008	51,497	15,500	107,000	85,000
2009	48,025	14,900	117,815	88,000
2010	44,800	14,340	134,190	91,000
CAGR (%)	-5	-4	8	4

Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

***The numbers above are in thousands**

Graph 5: Daily Newspaper Print Unit Circulation India vs. USA, UK & China (2006-2010)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Table 4 & Graph 6: Number of Newspapers published in different languages in India (2010-2011)

As per the records of the Registrar of Newspaper for India, the total circulation of newspapers in 2010-11 was 3,29,204,841 with a total of 4,853 number of newspapers registered in 2010-11.

Uttar Pradesh topped the list of the State with the largest number of registered newspapers (13,065) and is followed by Delhi with 10,606 registered newspapers.

Newspapers in regional language dominated the list of the largest circulated daily as ***Eenadu, Telugu, Hyderabad*** occupied the first position with 16, 74,305 copies of it being circulated daily. The second and third positions are occupied by ***The Hindu (English, Chennai:*** 14,82,658) and ***Ananda Bazar Patrika (Bengali, Kolkata:*** 12,08,682) respectively.

With 37,46,929 copies (12 editions) The Times of India [English] emerged as the largest circulated multi-edition Daily. The second largest circulated multi-edition Daily was Eenadu, Telugu (19 editions-29,55,300 copies).

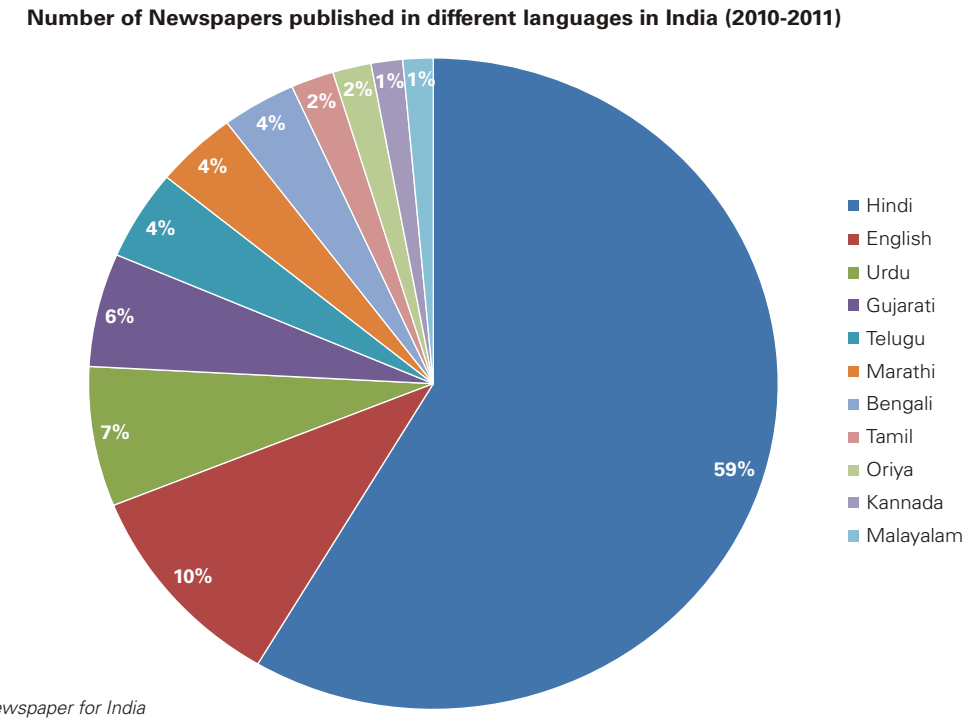
The Hindu Weekly [English] Chennai was reported to be the largest circulated periodical (13,48,160)

Table 4: Newspapers published in different languages in India (2010-2011)

Language	Hindi	English	Urdu	Gujarati	Telugu	Marathi	Bengali	Tamil	Oriya	Kannada	Malayalam
No of Copies	7910	1406	938	761	603	521	472	272	245	200	192

Source: Registrar of Newspapers for India

Graph 6: Newspapers published in different languages in India (2010-2011)



Source: Registrar of Newspaper for India

According to the list of newspapers with the largest circulation, published by the World Association of Newspapers and News Publishers (WAN-IFRA):

India led the world in 2011 in terms of newspaper circulation with nearly 330 million newspapers circulated daily;

In 2005, China had topped the list in term of total newspaper circulation with 93.5 million a day, India came second with 78.8 million, followed by Japan, with 70.4 million; the United States, with 48.3 million, and Germany, with 22.1 million;

Around 75 of the 100 best selling newspapers are in Asia;

The Times of India is the largest circulated English-language daily newspaper in the world, across all formats (Broadsheet, Compact, Berliner and Online).

Source: "Newspaper Circulation", Wikipedia.org,, last modified December 11, 2012

Table 5 & Graph 7: Average issue readership for top 10 dailies in India (2012 Q2 in millions)

As per the figures compiled by the **Media Research Users Council** (in the **Indian Readership Survey** (IRS) 2012 Q2), based on the readership in the three month period that ended on June 30, 2012, the largest read local language newspapers in India were ***Dainik Jagran*** (with 16.429 million readers) and ***Dainik Bhaskar*** (with 14.448 million readers) both published in Hindi.

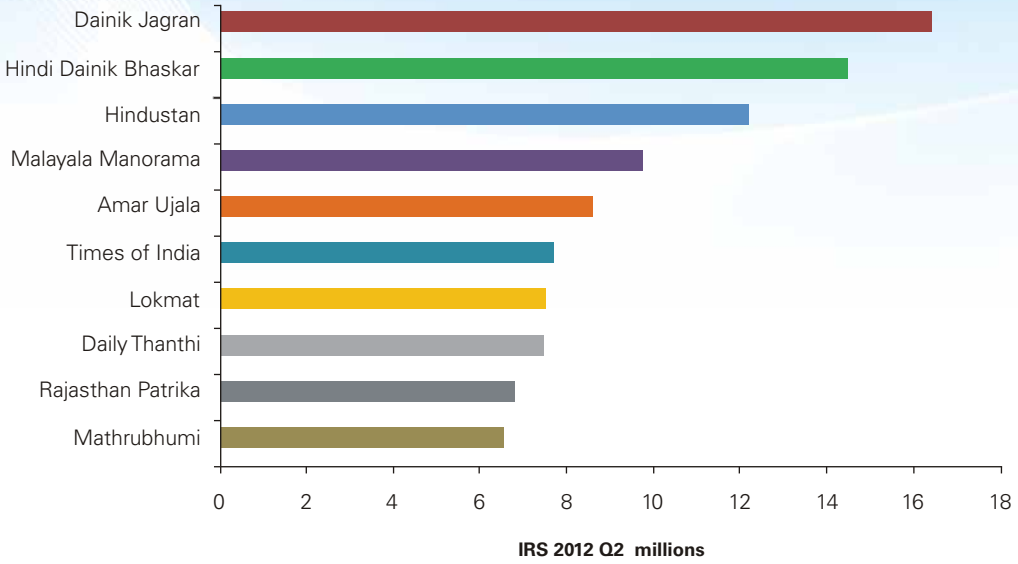
Malayala Manorama newspaper which is published in Malayalam has the most circulation in other languages with the readership of over 9. 710 million (and a circulation base of over 2 million copies).

Table 5: Average issue readership for top 10 dailies in India (2012 Q2 in millions)

Position	Language	Newspaper	IRS 2012 Q2 millions
1	Hindi	Dainik Jagran	16.429
2	Hindi	Hindi Dainik Bhaskar	14.448
3	Hindi	Hindustan	12.205
4	Malayalam	Malayala Manorama	9.710
5	Hindi	Amar Ujala	8.608
6	English	Times of India	7.643
7	Marathi	Lokmat	7.507
8	Tamil	Daily Thanthi	7.431
9	Hindi	Rajasthan Patrika	6.756
10	Malayalam	Mathrubhumi	6.493

Source: List of newspapers in India by readership, Wikipedia

Graph 7: Average issue readership for top 10 dailies in India (2012 Q2 in millions)



Source: List of newspapers in India by Readership, Wikipedia

Table 6 & Graph 8: Top English Newspapers (IRS 2012 Q2)

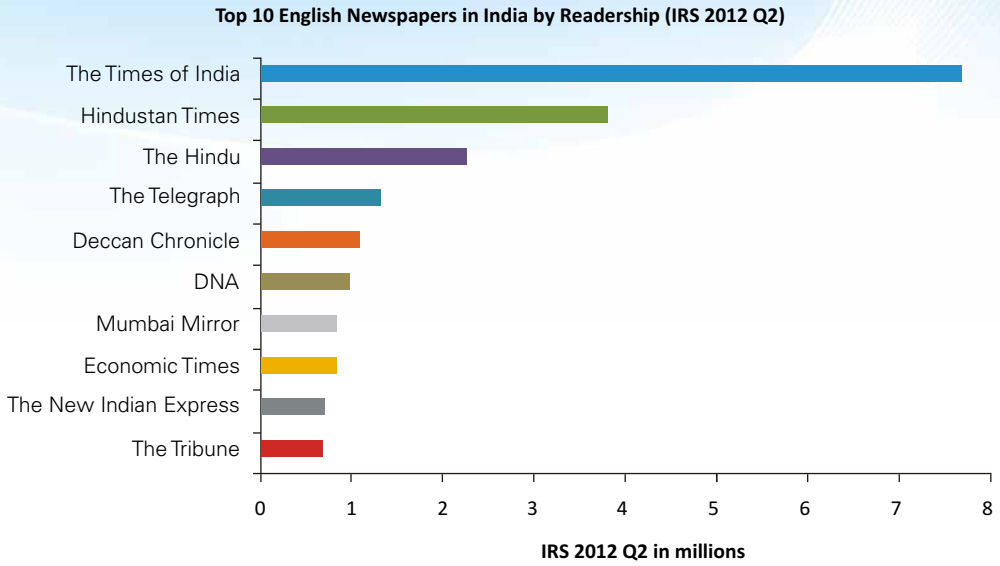
The survey established ***The Times of India*** as the most widely read English language newspaper (7.643 million), followed by ***Hindustan Times*** (3.767 million), ***The Hindu*** (2.208 million), ***The Telegraph*** (1.275) and ***Deccan Chronicle*** (1.038 million).

Table 6: Top English Newspapers (IRS 2012 Q2 in millions)

Position	Newspapers	IRS 2012 Q2 millions
1	The Times of India	7.643
2	Hindustan Times	3.767
3	The Hindu	2.208
4	The Telegraph	1.275
5	Deccan Chronicle	1.038
6	DNA	0.930
7	Mumbai Mirror	0.795
8	Economic Times	0.789
9	The New Indian Express	0.667
10	The Tribune	0.640

Source: List of newspapers in India by readership, Wikipedia

Graph 8: Top 10 English Newspapers (IRS 2012 Q2 in millions)



Source: List of newspapers in India by readership, Wikipedia

Table 7 & Graph 9: Top 10 India Magazines by Readership (IRS 2011 Q4 - 2012 Q4)

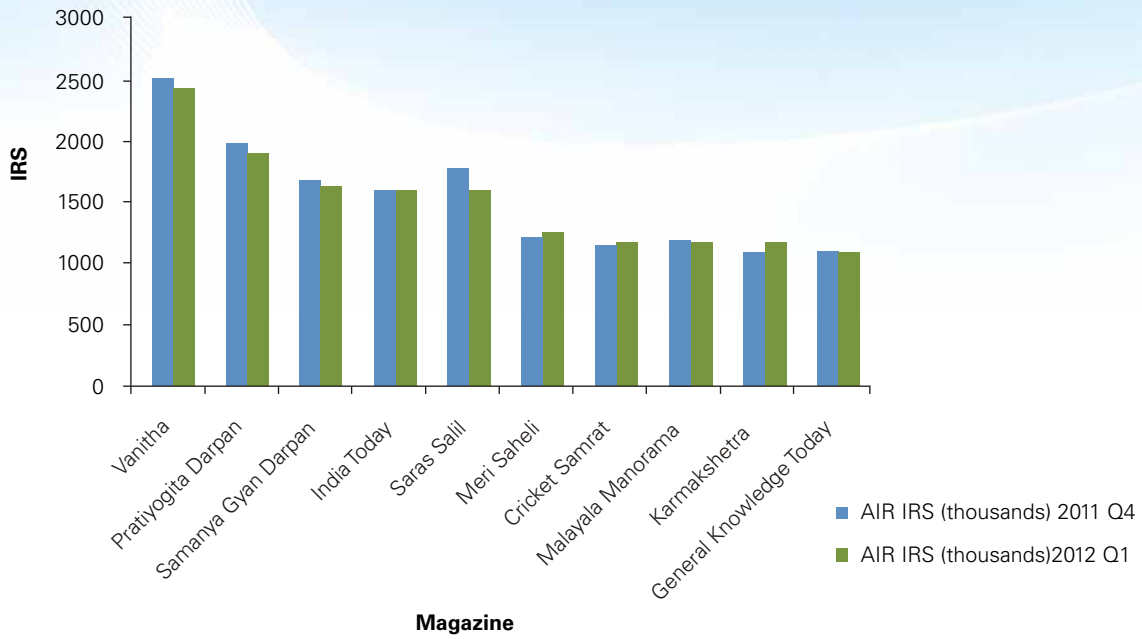
As far as the magazine readership is concerned, the Indian Readership Survey results reveals the current affairs magazines to be most preferred as three out of top ten positions is being occupied by ***Pratiyogita Darpan, Samanya Gyan Darpan and General Knowledge Today***. The Malayalam magazine ***Vanitha*** topped the list.

Table 7: Top 10 India Magazines by Readership (IRS 2011 Q4 - 2012 Q4)

Position	Name	Language	Type	AIR IRS (in thousands)	
				2011 Q4	2012 Q1
1	Vanitha	Malayalam	Fortnightly	2516	2444
2	Pratiyogita Darpan	Hindi	Monthly	2001	1893
3	SamanyaGyan Darpan	Hindi	Monthly	1678	1644
4	India Today	English	Weekly	1611	1613
5	Saras Salil	Hindi	Fortnightly	1768	1601
6	Meri Saheli	Hindi	Monthly	1213	1259
7	Cricket Samrat	Hindi	Monthly	1154	1176
8	Malayala Manorama	Malayalam	Weekly	1206	1163
9	Karmakshetra	Bengal	Weekly	1090	1142
10	General Knowledge Today	English	Monthly	1092	1086

Source: Indian Readership Survey, IRS 2011 Q1, Topline Findings, Hansa Research

Graph 9: Top 10 India Magazines by Readership (IRS 2011 Q4 - 2012 Q4)



Source: Indian Readership Survey, IRS 2011 Q1, Topline Findings, Hansa Research

Estimates and Projections

Table 8 & Graph 10: Global Newspaper Publishing Market (2006-15)

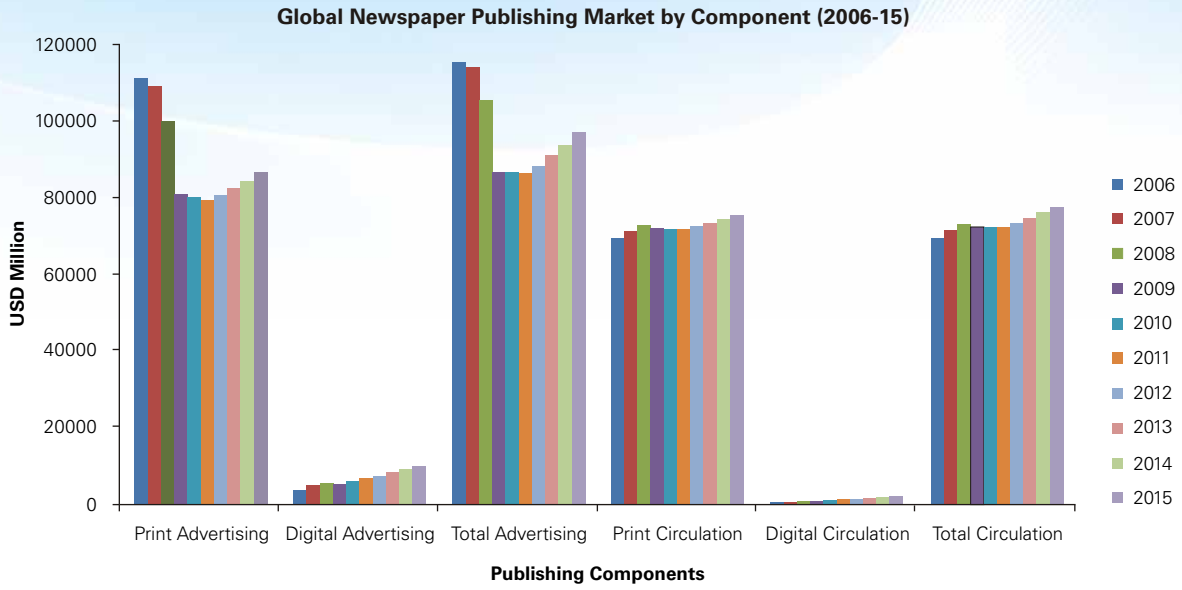
As per the estimates of the "India Entertainment and Media Outlook (2011)" the global newspaper market is expected to rise to USD 175.6 billion in 2015. The industry in the Asia Pacific region is expected to expand to USD 64.7 billion in 2015 and may overtake Europe, Middle East and Africa to become the largest newspaper market. Latin America is estimated to be fastest growing region with a projected annual increase from USD 7.3 billion in 2010 to USD 9.2 billion in 2015.

Table 8: Global Newspaper Publishing Market (2006-15)

Component / Year	Print Advertising		Digital Advertising		Total Advertising		Print Circulation		Digital Circulation		Total Circulation		Total	
	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change
2006	111962	1.4	4115	41.8	116077	2.4	69441	-0.4	62	17.0	69503	-0.4	185580	1.4
2007	109732	-2.0	5348	30.0	115080	-0.9	71686	3.2	70	12.9	71756	3.2	186836	0.7
2008	100341	-8.6	5808	8.6	106149	-7.8	73027	1.9	110	57.1	73137	1.9	179286	-4.0
2009	81525	-18.8	5599	-3.6	87124	-17.9	72394	-0.9	140	27.3	72534	-0.8	159658	-10.9
2010	80885	-0.8	6362	13.6	87247	0.1	72262	-0.2	195	39.3	72457	-0.1	159704	0.0
2011	79942	-1.2	7056	10.9	86998	-0.3	72276	0.0	290	48.7	72566	0.2	159564	-0.1
2012	81104	1.5	7909	12.1	89013	2.3	73216	1.3	461	59.0	73677	1.5	162690	2.0
2013	82888	2.2	8696	10.0	91584	2.9	74084	1.2	770	67.0	74854	1.6	166438	2.3
2014	84781	2.3	9495	9.2	94276	2.9	75027	1.3	1316	70.9	76343	2.0	170619	2.5
2015	87244	2.9	10354	9.0	97598	3.5	76003	1.3	1957	48.7	77960	2.1	175558	2.9
2011-15 CGRA %	1.5		10.2		2.3		1		58.6		1.5		1.9	

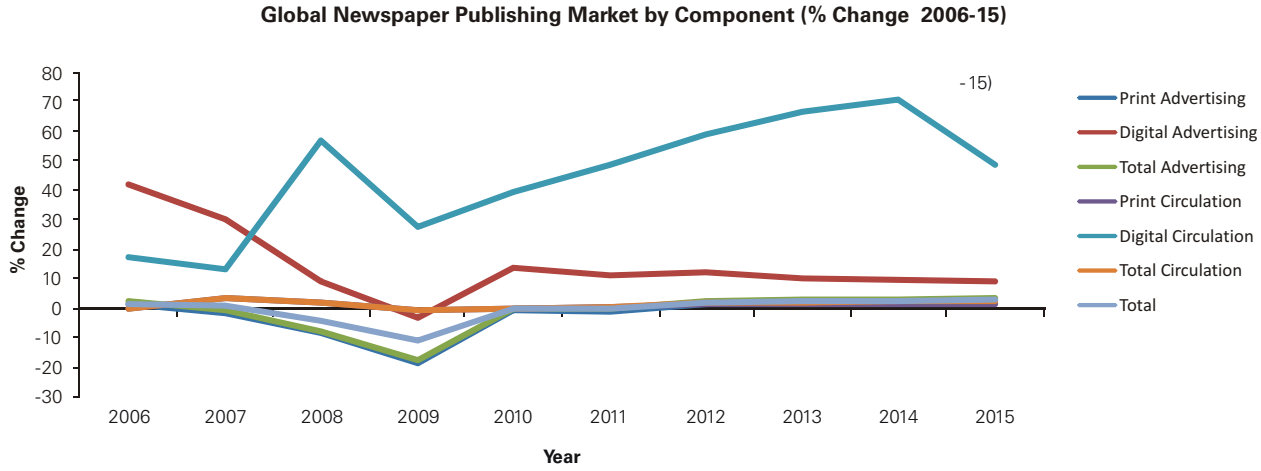
Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 10: Global Newspaper Publishing Market (2006-15)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 11: Percentage Change of Global Newspaper Publishing Market by Component (2006-15)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Table 9 & Graph 12: Global Consumer Magazine Publishing Market by Component (2006-15)

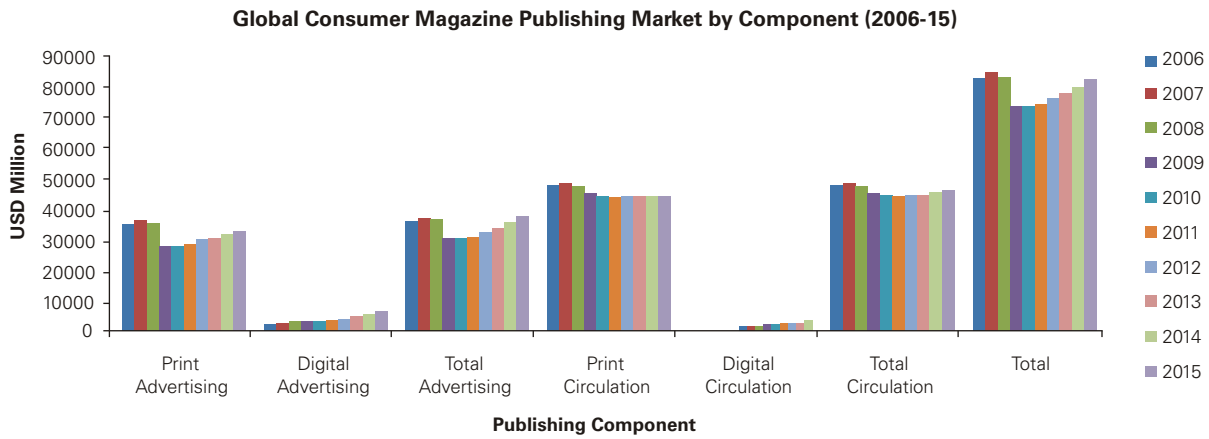
With respect to consumer magazines, the India Entertainment and Media Outlook (2011) projects the overall spending to reach USD 81.6 billion in 2015. The Asia Pacific market is expected to reach USD 18.0 billion in 2015.

Table 9: Global Consumer Magazine Publishing Market by Component (2006-15)

Component / Year	Print Advertising		Digital Advertising		Total Advertising		Print Circulation		Digital Circulation		Total Circulation		Total	
	USD million	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change	USD millions	% Change
2006	34351	2.7	453	253.9	34804	3.6	46677	0.0			46677	0.0	81481	1.6
2007	35385	3.0	783	72.8	36168	3.9	47153	1.0			47153	1.0	83321	2.3
2008	33926	-4.1	1436	83.4	35362	-2.2	46394	-1.6			46394	-1.6	81756	-1.9
2009	27087	-20.2	1436	0.0	28523	-19.3	44052	-5.0			44052	-5.0	72575	-11.2
2010	27512	1.6	1721	19.8	29233	2.5	43352	-1.6	33		43385	-1.5	72618	0.1
2011	27853	1.2	2128	23.6	29981	2.6	42968	-0.9	111	231.4	43079	-0.7	73060	0.6
2012	28846	3.6	2680	25.9	31526	5.2	43192	0.5	231	108.5	43423	0.8	74949	2.6
2013	29830	3.4	3261	21.7	33091	5.0	43308	0.3	509	120.7	43817	0.9	76908	2.6
2014	30757	3.1	3866	18.6	34623	4.6	43289	0.0	1065	109.0	44354	1.2	78977	2.7
2015	31749	3.2	4740	22.6	36489	5.4	43143	-0.3	1933	81.5	45076	1.6	81565	3.3
2011-15 CGRA %	2.9		22.5		4.5		-0.1		125.2		0.8		2.4	

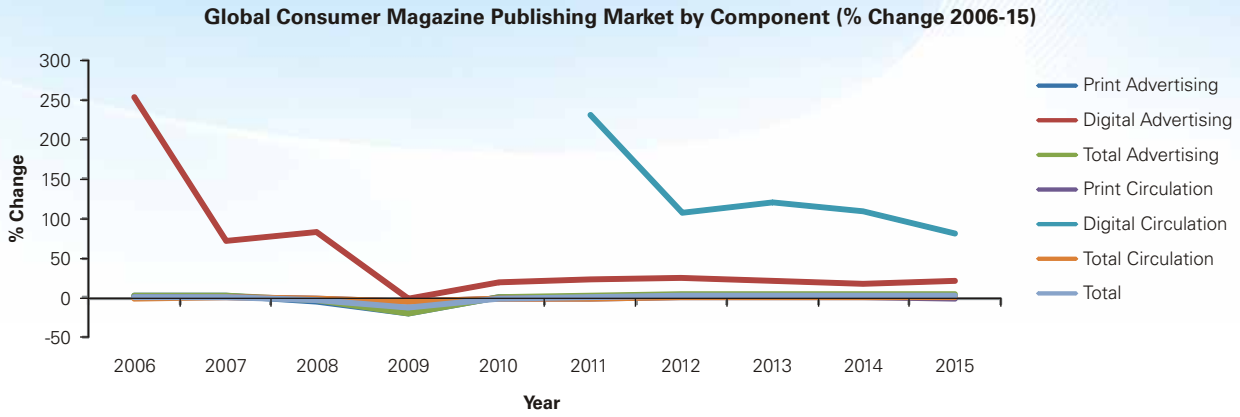
Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 12: Global Consumer Magazine Publishing Market by Component (2006-15)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 13: Percentage Change of Global Consumer Magazine Publishing Market by Component (2006-15)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Table 10 & Graph 14: Projected growth of the Indian Print Industry (2010-15)

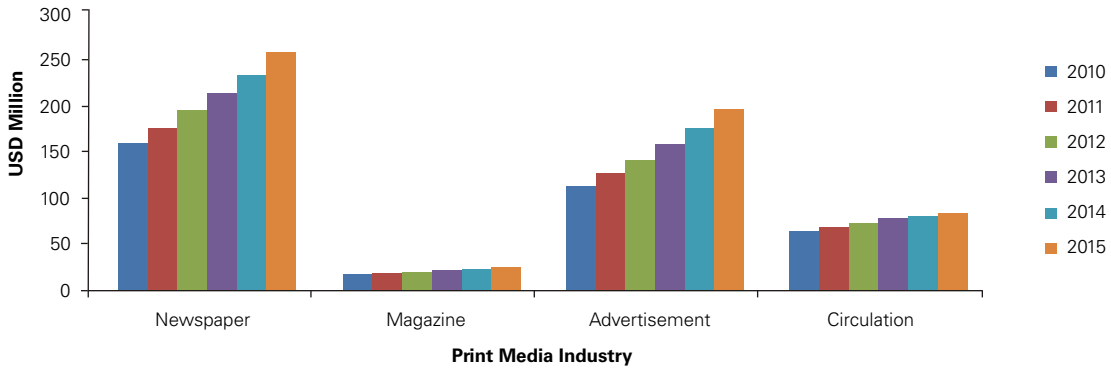
The Indian print media industry is estimated to grow by 9.6 % over the period 2010 -2015 to reach INR 282.0 billion in 2015. Further the newspaper industry is expected to have a major share in the print market in India and with advertising being its key revenue generator.

Table 10: Projected growth of the Indian Print Industry (2010-15)

Year	Newspaper		Magazine		Advertisement		Circulation	
	INR billion	% Change	INR billion	% Change	INR billion	% Change	INR billion	% Change
2010	159.5	10.4	19.2		113.5		65.2	
2011	176.2	9.9	20	4	127	11.9	69.2	6
2012	193.7	10.3	20.7	4	140.5	10.6	73.9	6.8
2013	213.5	10.3	22.1	6.4	157.5	12.1	78.1	5.7
2014	233.6	9.4	22.9	3.8	176	11.7	80.5	3
2015	257.7	10.3	24.3	5.9	197	11.9	85	5.5
CAGR (%)	10.10%		4.80%					

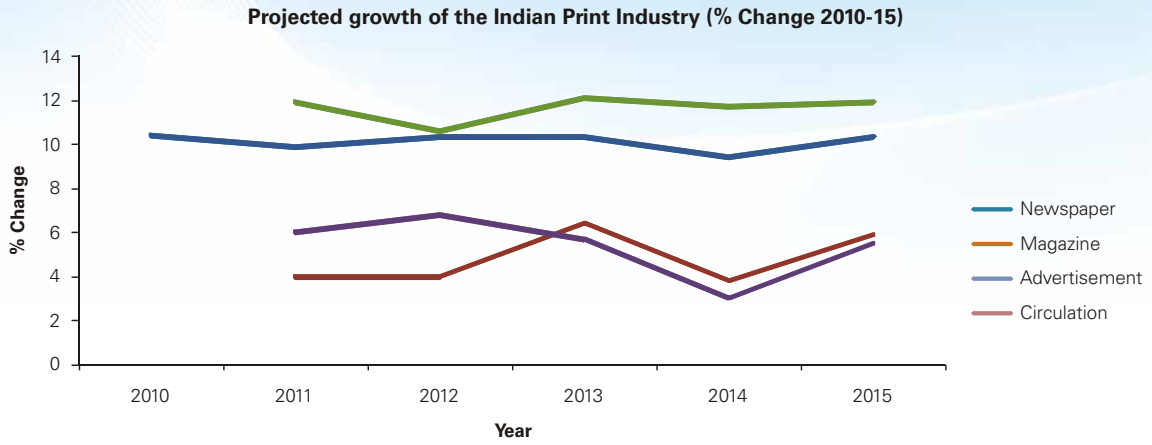
Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 14: Projected growth of the Indian Print Industry (2010-15)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

Graph 15: Percentage Change in Projected growth of the Indian Print Industry (2010-15)



Source: "India Entertainment and Media Outlook 2011" PricewaterhouseCoopers

THE PRESS FREEDOM INDEX

The **Press Freedom Index** is an annual ranking of countries compiled and published by **Reporters without Borders (RWB)**, a French-based international non-governmental organization. Founded in 1958, RWB has a consultant status at the United Nations and advocates freedom of the press and freedom of information. These annual ranking are based upon the organization's assessment of the countries' press freedom records in the previous year and considers several criteria including censorship of news media, the ability of the media to investigate and criticize.

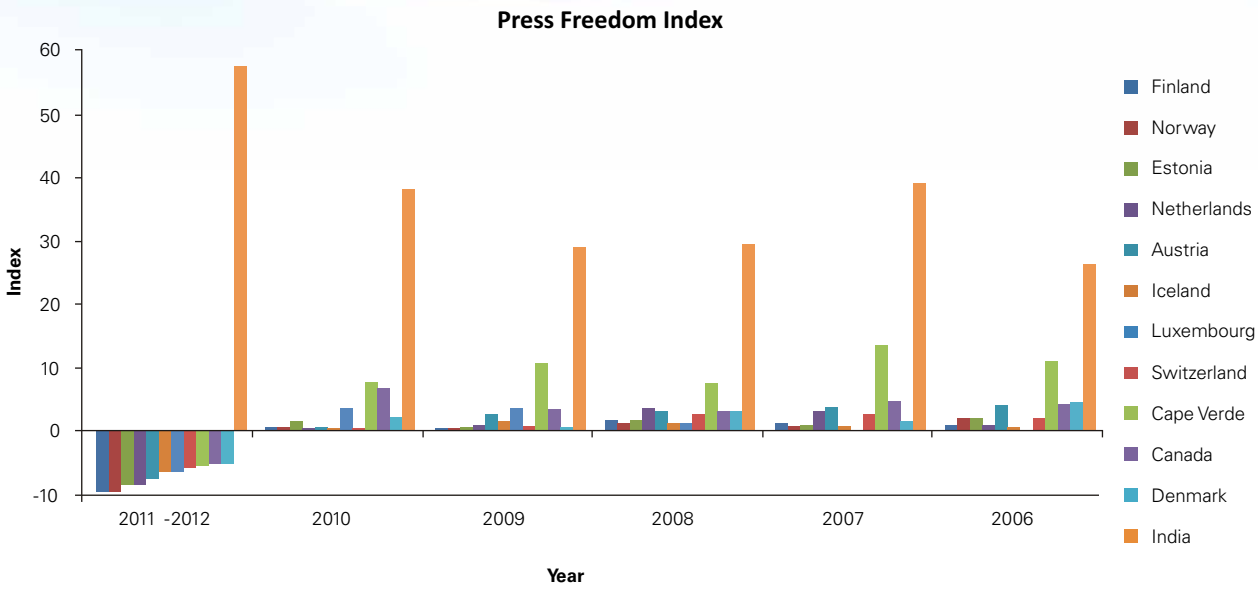
Table 11: Press Freedom Index (2011-2006)

Year → / Country ↓	2011-2012		2010		2009		2008		2007		2006	
	Rank	Index	Rank	Index	Rank	Index	Rank	Index	Rank	Index	Rank	Index
Finland	1	-10	1	0	1	0	4	2	5	1.5	1	0.5
Norway	1	-10	1	0	1	0	1	1.5	1	0.75	6	2
Estonia	3	-9	9	2	6	0.5	4	2	3	1	6	2
Netherlands	3	-9	1	0	7	1	16	4	12	3.5	1	0.5
Austria	5	-8	7	0.5	13	3	14	3.5	16	4.25	16	4.5
Iceland	6	-7	1	0	9	2	1	1.5	1	0.75	1	0.5
Luxembourg	6	-7	14	4	20	4	1	1.5				
Switzerland	8	-6.2	1	0	7	1	7	3	11	3	8	2.5
Cape Verde	9	-6	26	8	44	11	36	8	45	14	45	11.5
Canada	10	-5.67	21	7	19	3.7	13	3.33	18	4.88	16	4.5
Denmark	10	-5.67	11	2.5	1	0	14	3.5	8	2	19	5
India	131	58	122	38.75	105	29.33	118	30	120	39.33	105	26.5

Source: Press Freedom Index, Wikipedia

A smaller score in the index corresponds to greater freedom of the press. The index however only deals with press freedom and does not measure or reflects the quality of journalism. India's ranking has been falling significantly as it was rated 131st in (2011-12), down from 122nd in 2010 and 105th in 2009.

Graph 16: Press Freedom Index (2011-2006)



Source: Press Freedom Index, Wikipedia

Migration to digital world- Need of the hour

The technological advancements coupled with the new concepts, media platforms, adoption of internet and mobile technology have changed the media landscape. The effects of reforms that digitization has brought, can also be seen in the publishing and print industry as almost all major newspaper and magazines have online presence either through websites or e-papers. Mobile and app applications for tablets are launched and digital archiving of the content is also being done. The online platform not only caters to e-readers but also to advertisers by providing them the tools not available in the traditional print media.

APPLE- Newsstand

Apple Newsstand, referred by Apple as *"APP"* is a built-in application on Apple iOS devices -the **iPad, iPhone** and **iPod touch**. The *"APP"*downloads and displays digital versions of newspapers and magazines.



On the lines of a newsagent's shop, the APP provides virtual shelves that hold and present each newspaper and magazine that has been downloaded to view and read, in one place. The app icon updates with the latest front covers with a notification indicator of new editions. Newspaper and magazine brands have also been provided with the option to move their current iOS apps to be inside

the Newsstand app. It is currently available on iOS devices (since it was introduced on iOS 5.0) and works with iCloud, both for syncing and for re-downloading magazines and newspapers.

Source: Newsstand (application), Wikepedia.org last modified on January 16, 2013

Although being user friendly, the traditional prints could never be totally replaced, but as young readers are increasingly opting for digital media, reader retention and brand loyalty can only be maintained if traditional methods of printing are supplemented with the digital content. Undoubtedly the key to the future of profitable business in the publishing sector lies in balancing the traditional and digital platform.

CHAPTER: 5

Representatives of the Publishing Industry - Associations of Publishers in India.

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Representatives of the Publishing Industry - Associations of Publishers in India.

INTRODUCTION

It is said that in the evolution of the book, its trade and the publishing industry, the publisher was the last to arrive. The same holds true for the association of publishers as well. Publishers in India stayed disconnected from each other and were even disoriented. There was no flow of information among them. There was neither any forum to redress their common problems nor a platform to take collective redressal of grievances. It was only after independence that publishers at the national level thought it necessary to come together to form an association. The chapter attempts to collate information on some of the major associations in the publishing industry in India.

FEDERATION OF INDIAN PUBLISHERS[1]

The Federation of Indian Publishers is the representative body of publishers in English, Hindi and other regional languages, with an all India membership, representing more than 80 percent of the publishing industry. All the leading publishers of the country are its members, other publishers being represented through various local associations. The Federation is the only body of Indian publishers that is affiliated to the International Publishers Association. It also functions as the Regional Office for South Asia for the International Publishers Association.

The main objective of the Federation is to promote professional standards among members and provide a forum for publishers to discuss their problems at the national and international levels. It looks after the interests of publishers by taking an active part in all meetings with the Government and other professional bodies to proclaim and defend the publishers' right to publish and distribute books without hindrance or restriction.

- The Federation effectively serves the cause of Indian publishing by sponsoring and supporting proposals and projects for the benefit of industry and market alike. This is does by acting as an interface for the publishing industry with the ministries of Human Resource Development, Finance, Commerce, Defense, the National Book Trust and other Government Departments and agencies.

- The Federation's advice, cooperation and assistance on all matters of mutual assistance has invariably been sought by the Ministry of Human Resource Development, The National Book Trust, and other organizations and agencies in India and abroad concerned with the publishing industry, promotion of books, and cause of education and literacy in general.

- The Federation has expanded its activities and opened three separate Divisions (i) Export Marketing Council; (ii) Copyright Council and Copyright Centre; and (iii) Educational Publishing Council.

[1] Federation of Indian Publishers, official website< http://www.fipindia.org/>

- The main objective of the Export Marketing Council is to encourage Indian Publishers to develop their book business abroad. The Copyright Council organizes copyright seminars and copyright refresher courses in various parts of the country to create awareness about copyright and to stress India's deep commitment in copyright protection and anti-piracy. The Copyright Centre acts as the clearing house for giving information about various formalities required for exchange of translation and reprint rights and encourage Indian publishers in the exchange of translation rights both nationally and internationally. The Educational Publishing Council looks after all aspects of education publishing and promotion of educational books.

- The Federation brings out a journal, the 'Indian Book Industry', which is a bi-monthly journal devoted to the development of publishing.

ASSOCIATION OF PUBLISHERS IN INDIA[2]

Incorporated in 2001, the Association of Publishers in India (API) is a representative body of foreign publishers. Mr. Khan, then Managing Director of Oxford University Press was the first President of the Association. API deals with all matters pertaining to the promotion and advancement of foreign publishers having a presence in India and to protect the common interests of members and professionals engaged in Global Publishing in SAARC Countries.AIP is engaged in:

- Promotion of Employments in Publishing and Allied Industries
- Globalization of Indian Content and Promoting Indian Culture in larger market
- Promotion of low priced editions for the region, and
- Digitization of existing books

Activities

The Association claims to represent, promote and protect the interest of books, journals and electronic publishers by:

- Promoting India as a preferred destination for production, BPO activities, KPO and intellectual property and apprising the learned community about developments in the publishing Industry;
- Working together with other associations (such as American Associations of Publishers and Publisher Association UK) and helping the region in implementation of Intellectual Property Rights;
- Helping in better understanding of the requirements of region as per international standards thereby opening opportunities for further investment by global publishers in India.
- The Association further claims to interact with various bodies on issues relating to printing (such as piracy and export processing zones). It also addresses issues relating to websites, journals, online and electronic publishers' databases and trade publishing in subcommittees.

[2] *Association of Publishers in India , Official website <www.publishers.org.in>*

THE ASSOCIATION OF INDIAN MAGAZINES[3]

The Association of Indian Magazines (AIM) is the first industry representation for magazines in India. AIM intents to support and defend the freedom of the press, promote the cause of magazines, consolidate the industry as a group, represent the magazine publishers' interests in the country and to help revitalize the magazine industry editorially and economically. The association aims to establish better understanding, cooperation and unity among all magazine publishers with all key constituents such as consumers, advertisers, print and production agencies, advertising agencies, market research companies and the Government.

The main objectives of AIM as claimed is to include the following:

- Ensure development of magazines devoted to disparate fields including science, art, culture, women, literature, children, fashion, politics, current affairs etc.;
- Establish better understanding, cooperation and unity among all magazine publishers;
- Collect and obtain information on matters affecting their members, make representations to various authorities, appear before any authority in the interest of protection and betterment for the publishing of magazines and to publish and circulate these and any other matter to members and others;
- Assist members of the Association in settling their disputes inter-se or with others arising out of commercial transactions and to set up panels of arbitrators;
- Communicate with the Government, local and public authorities, other trade societies, chambers of trade and commerce in India and other countries and with individuals on all subjects;
- Conduct readership surveys either itself or through any suitable agencies;
- Educate the magazine publishers by sponsoring delegation(s), surveys and/or study teams;

THE FEDERATION OF PUBLISHERS' AND BOOKSELLERS' ASSOCIATIONS IN INDIA[4]

Federation of Publishers' and Booksellers' Associations in India was set up following a conference in Delhi (in 1953) that deliberated on the issue of setting up an all India platform for taking concerted action to cope with the growing needs of publishing and book selling industry. First registered under the Companies Act, 1955, the Federation was later registered as a Society under the Societies Act in 1969-1970. Member of the Federation includes publishers, wholesalers, booksellers, distributors, companies and corporations (whose business activities are concerned with production and promotion of books). The Federation's advice, cooperation and assistance has often been sought by the Department of Secondary Education and Higher Education, Ministry of Human Resource Development, National Book Trust, Capexil and other organizations and agencies in India and abroad that are concerned with the book industry.

[3] *Association Of Indian Magazines, Official website <www.aim.org.in>*

[4] *The Federation Of Publishers' And Booksellers' Associations In India, Official website <www.fpbai.org>*

The Federation claims itself to be the oldest and largest representative body of the Indian Book Industry with its activities and areas of operations extended all over the country. It has a membership of around 4,000 establishments and works in close cooperation with 13 State Associations of Publishers and Booksellers that are affiliated to it.

DELHI STATE BOOKSELLERS' AND PUBLISHERS' ASSOCIATION[5]

The Delhi State Booksellers' & Publishers' Association (DSBPA) has an interesting story behind its inception and came into being by force of circumstances. As early as in 1942, during the Second World War, the Government of India promulgated an ordinance called **"Anti-profiteering"** ordinance, that allowed just 15% margin of profit, over the landed cost to the trade people. The provision adversely affected traders especially those traders who were not direct importers, but got their requirements locally from importers. The situation was particularly difficult in items of stationery in which some booksellers were also dealing. Further an "Enforcement Department" was created by the Government which strictly and severely dealt with defaulters.

In order to deal with the situation the booksellers felt the need to get together and form a sort of joint body. As a result few booksellers including Oxford Book & Stationery Co., New Book Depot, E.D. Galgotia, S. Chand & Co., Dhomimal Ramchand, etc., got together and formed the Association. A regular Association with its constitution, memoranda etc., was formed later by separating business people dealing in stationary, who later formed a separate "Stationers' Association". This is how "Delhi State Booksellers' Association" came into picture with about half a dozen members.

After partition many booksellers flocked to Delhi and booksellers like The English Book Store, Rama Krishna & Sons, and scores of others joined the Association. Later, it was felt that "Publishers" should also be clubbed along with the booksellers; more so as some of the booksellers were also engaged in publishing business and the name "Delhi State Bookseller' & Publishers' Association" came into existence.

The Association has now over 350 members and has even acted as office of the secretary GOC for about four decades.

INDIAN NEWSPAPER SOCIETY[6]

The Indian & Eastern Newspaper Society since renamed as Indian Newspaper Society (INS) was founded in 1939 with membership spread over South Asian Countries and is often accredited as the spokesman of the newspaper industry. INS is involved in many spheres of activities including newsprint, advertising, licenses for machinery and freedom of the press, etc.

The early beginnings of the Society can be traced back to October 11, 1927, when a Society bearing the name, The India, Burma & Ceylon Newspapers' London Committee came into being, the name of which was changed to Indian & Eastern Newspaper Society (IENS) on October 4, 1935. This was an organization based in London representing and acting solely under the authority of newspapers, magazines, reviews and other journals published in India, Burma, Ceylon and other countries of Asia. The Indian & Eastern

[5] *Delhi State Booksellers' And Publishers' Association, Official website <www.dsbpa.in>*
[6] *Indian Newspaper Society, Official website <www.indiannewspapersociety.org>*

Newspaper Society came into being in India when the need was felt for establishment of a co-ordinating body in India comprising the proprietors of newspapers, which could deal directly and more expeditiously with the various day-to-day problems arising out of newspaper production. It was inaugurated at a meeting of the representatives of the following founding publications on February 27, 1939, at the Statesman House, New Delhi, with the primary object of serving as a Central Body for promoting the common interests of newspapers in India, Burma and Ceylon. (The Bombay Chronicle, The Times of India, The Rangoon Gazette, The Amrita Bazar Patrika, The Hindustan Times were amongst the few of such newspapers). The Society claims its foundation to be the first step in giving direction and cohesion to the newspaper industry as the Press till then had been growing at random, without organizational support, mutual co-ordination or any protection from the numerous pressure groups that independent publications were invariably exposed to.

Activities

- Advertising - Providing assistance to member publications in regard to monitoring the recovery of their dues from advertising agencies and advertisers. For bringing to the notice of advertisers, media managers and public, the advantages of advertising in the newspapers and periodicals, INS had launched a sustained campaign code-named "Project Press";

- Accreditation of Advertising Agencies - An institutionalized system of granting accreditation to advertising agencies enabling them to access certain facilities from the members. The system operates in terms of the "Rules Governing Accreditation of Advertising Agencies and Rulings of the Society" adopted by the Society, initially in the year 1943, and subsequently amended from time to time. Currently 619 agencies enjoy full accreditation from the Society with 229 agencies being provisionally accredited;

- Monitoring of Payments to Publications - The Society monitors payments to publications from the advertising agencies through a system of Monthly Review Verification (MRV);

- Resolution of Disputes between Publications and the Agencies;

- Advertising Committee - the entire gamut of the activities of the Society, relating to the area of advertising, is overseen by the Advertising Committee. All policy matters, position of arrears of advertising agencies, action taken against agencies for defaults including ratification of notices of dis-accreditation, cancellation of accreditation, granting of Provisional and Full Accreditation etc, are considered and decided at the meetings of the Advertising Committee.

NATIONAL BOOK TRUST[7]

Founded in 1957 as an autonomous body under the Ministry of Education within the Government of India the National Book Trust, (NBT) is a multilingual Indian publishing house, that works towards the promotion of books and developing reading habit among the masses. Envisioned by the late Prime Minister Pandit Jawaharlal Nehru as the bureaucracy-free structure that would publish low-cost books, the activities of NBT include publishing, promotion of Indian books abroad, assistance to authors and publishers, and promotion of children's literature. NBT publishes reading material in several Indian languages for all age-groups, including books for children and neo-

एकः सूते सकलम्
NBT INDIA

[7] *National Book Trust, Official website < www.nbtindia.gov.in>*

literates. NBT's children's books are known for their illustrations, by illustrators such as Pulak Biswas, Jagdish Joshi, Mrinal Mitra, Subir Roy, Atanu Roy, Manjula Padmanabhan, Mickey Patel and Suddhasattwa Basu. Painters Jatin Das and Krishen Khanna have also illustrated books for the Trust.

Activities

- Publishes books in 30 major Indian languages;
- Organizes book fairs/exhibitions throughout the country at regional, national and international levels;
- One of the significant international events, which the Trust organized, was the Presentation of India as the Country of Honour at the Beijing International Book Fair 2010. The presentation included a special exhibit of over 3500 titles published by more than 26 publishers, as well as panel discussions and cultural programs;
- The Trust has been trying to make books available to the people at their doorsteps through mobile exhibitions;
- Provides assistance to authors and publishers for the publication of reasonably priced university level text and reference books and for books on Medical Science under its Subsidy Scheme;
- The scheme of Financial Assistance to Voluntary/Private organizations for organizing Seminars/Training Courses/Workshops/Annual Conventions/Book Fairs related to the Book Promotional Activities was entrusted to the Trust by the Ministry of Human Resource Development. 226 organizations were given grant for organizing such book promotional activities by the Trust in 2010-11;
- The Trust organizes several book-related activities for the development of the publishing industry of the country including, workshops, author's meet and other literary activities such as book release functions from time to time;
- The Trust has a National Centre for Children's Literature (NCCL), which is the nodal agency to monitor, coordinate, plan and aid the publication of children's literature in various Indian languages. The NCCL has developed a library-cum-documentation centre of children's literature and organizes workshops, seminars and exhibitions to develop the children's literature of the country. With a view to promote and develop the reading habit of the children at the school level, the NCCL encourages setting up of Reader's Clubs at the schools throughout the country and also conducts surveys and takes up research work relating to Children's Literature;
- The Trust also organizes short term Training Courses in Book Publishing in various parts of the country with the objective to create a talent pool of trained professionals for the publishing industry.

CHAPTER: 6

Current Trends in the Publishing Industry - Emergence of Digital Era and Digital Rights Management

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CURRENT TRENDS IN THE PUBLISHING INDUSTRY - EMERGENCE OF DIGITAL ERA AND DIGITAL RIGHTS MANAGEMENT

INTRODUCTION

The digital technology marks a paradigm shift in the Printing Revolution pioneered by ***Gutenberg*** almost 500 years ago. It has radically transformed the traditional methods of printing, publishing and distribution of work and has given new dimensions to the knowledge and creative economy. The digital landscape while on one hand opens up new avenues for distributors and authors to directly interact with the readers, it presents an ambivalent situation for the publication houses leaving them with no alternatives but to adapt and evolve with the digital era.

History of electronic books[1]

Historians are not unanimous on the title and inventor of the first e-book; however following works are worth mentioning in this regard:

Index Thomisticus an electronic index to the works of Thomas Aquinas (an Italian Dominican priest) prepared in 1940 by **Roberto Busa** is speculated to be first electronic book. However as the digitized text was meant to develop an index and not a published edition in its own right, the *Index Thomisticus* is usually omitted from the list.

Bob Brown (born Robert Carlton Brown in Chicago in 1886) is credited with conceptualizing the idea of e-book. In 1930 he wrote a book titled ***"The Readies"*** on the idea of e-reader, which came to his mind after watching his first "talkie". Some of the famous lines from the book are… *"The written word hasn't kept up with the age,"… "The movies have outmaneuvered it. We have the talkies, but as yet no Readies." "Writing has been bottled up in books since the start," … "It is time to pull out the stopper" and begin "a bloody revolution of the word."…Brown wrote "To continue reading at today's speed, I must have a machine,"… A simple reading machine which I can carry or move around, attach to any old electric light plug and read hundred-thousand-word novels in 10 minutes if I want to, and I want to…"*

The NLS project headed by **Doug Engelbart** at **Stanford Research Institute (SRI)**, and the **Hypertext Editing System** and **FRESS** projects headed by **Andries van Dam** at **Brown University** are also considered to have started the concept of e-books in 1960s. The faculty at Brown made extensive use of FRESS for reading primary texts online, for annotation and discussions in courses including English Poetry and Biochemistry. Even the term "electronic book" is generally considered to be coined by Van Dam. With navy-funded projects for electronic repair-manuals, InterMedia (a large-scale distributed hypermedia system), Electronic Book Technologies that built DynaText (the first SGML-based book-reader system) and the Scholarly Technology Group's extensive work Open eBook standard, Brown continued to lead the e-book systems for many years.

Michael S. Hart is widely considered to be the inventor of e-books. The operators of the Xerox Sigma V gave Hart extensive computer-time in 1971, which he utilized by creating his first electronic document. He typed the United States Declaration of Independence into a computer. Soon afterwards *Project Gutenberg* was launched to create electronic copies of more texts. Hart named this project after the inventor of the printing press Johannes Gutenberg. He stored the vast contents of the library in electronic formats that would be searchable and retrievable.

[1] *"E-book" Wikipedia.org, last modified on January 22, 2013*

The Gutenberg Project



Founded in 1971 by Michael S. Hart, with the aim of encouraging creation and distribution of e-books, Project Gutenberg is a volunteer project to digitize and archive cultural works and is considered to be the oldest digital library. Most of the items in the collection are in public domain and as of January 2013, the Project claimed to have over 40,000 items in its collection. The releases are often available in plain text as well as other formats including HTML, PDF, EPUB, MOBI, and Plucker. It also has multiple affiliated projects that provides additional content (such as regional and language specific works) and is associated with Distributed Proofreaders, an internet based community that proofreads scanned texts.

Hart was a student at the University of Illinois when he obtained access to a Xerox Sigma V mainframe computer in the University's Materials Research Lab. With the help of some friendly operators, he received an account with a virtually unlimited amount of computer time. He started with the aim of making 10,000 most consulted books available to the public at little or no charge, by the end of the 20th century. He used a copy of the United States Declaration of Independence in his backpack, and this became the first Project Gutenberg e-text. He named the project after the fifteenth century German printer Johannes Gutenberg, who was the man behind the movable type printing press revolution.

Initially all the text was manually entered. It was only after improvement of image scanners and optical character recognition software that made book scanning feasible. Hart was joined in his efforts by several volunteers. Carnegie Mellon University agreed to administer the Project's finances.

In 2004, an improved online catalogue was improvised in the project that made the content to be easily browsed, accessed and hyperlinked. Pietro Di Miceli, an Italian volunteer, developed and administered the first Project Gutenberg website.

The Project Gutenberg verifies the copyright status of its e-books according to U.S. copyright law and the materials are only added to archive after copyright clearance is received. The Project does not claim new copyright on titles it publishes. However it does encourage their free reproduction and distribution. It distributes most of the books as public domain under US copyright law. Project Gutenberg is now hosted by ibiblio at the University of North Carolina at Chapel Hill.

Source: "Project Gutenberg" Wikipedia.org, last modified on January12, 2013

The now widely used e-books took almost thirty years to reach the masses. Today the market is flooded with number of e-book formats and e-reader devices including *Nook* (Barnes & Noble), *Kindle* (Amazon), *iBooks* (Apple), *Microsoft Reader*, *Adobe PDF* etc. The portability, containment of several books in one device, search tools and incorporation of images and videos are some of the distinct advantages that e-books have over the traditional books.

e-Books

Also known as the digital book or e-edition, an e-book is a book publication in digital form, consisting of text, images, or both, and produced on, published through, and readable on computers or other electronic

devices including dedicated e-book readers, tablets or even personal computers and smart phones using e-reader applications.

The different formats of e-book supported by different e-readers soon resulted in a fragmented e-book market. The International Digital Publishing Forum was therefore formed in 1990 to develop the Open eBook format by way of which the authors and publishers could provide a single source-document which many book-reading software and hardware platforms could handle. The Open eBook is a ZIP file plus a Manifest file. Inside the package a defined subset of XHTML may be used, along with CSS and Dublin Core metadata.[2] Google Books converted many public-domain works to this open format. Based on the technology developed by SoftBook Press and on XML, the Open eBook has now been superseded by EPUB format. EPUB along with PDF (developed by Adobe in 1993) continues to be the most common eBook file format supported by e-Readers today.

International Digital Publishing Forum

In order to establish a reliable and complete standard for eBook publishing, the International Digital Publishing Forum (IDPF) was established as a trade and standards association for the digital publishing industry. The IDPF is responsible for creation of Open eBook Publication Structure (1999), the OPS (Open Publication Structure), the OPF (Open Packaging Format) and the OCF (Open Container Format). These formats formed the basis of EPUB and Mobipocket e-book file formats, currently used by most e-readers

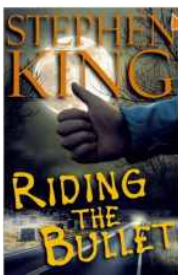
In addition to establishing the basic standards for e-books including pages, hyperlinks, definition of table of contents, authors etc. some standards for hardware field such as those for power and other features of the hardware reader devices are in the developmental stages. Further standards such as Digital Rights Management protection are also associated with the way an e-book is distributed, sold, managed and controlled by concerned vendors.

Source: "International Digital Publishing Forum", Wikipedia.com, last modified on January 7, 2013

The e-books that left indelible marks[3]

The internet, advanced information and telecommunication technology and ever evolving digital world presents innumerable opportunities to the authors, creators and publishers to experiment and reach out to the masses in new ways. Some of the e-books that had taken internet by storm amply highlighting how effective online strategies in the digital landscape can benefit authors and publishers are presented below:-

The story of Stephen King and Riding the Bullet



Stephen King's ***"Riding the Bullet"*** released in 2000 in digital file (such that it could only be read on a computer) is considered to be first ever mass consumption e-book. Though there were some technical difficulties, the book was reportedly downloaded over half a million times. In the same year King had published ***"The Plant"*** online and later released individual chapters of the book on his website. It is reported that his initiative was based on an honor system whereby the readers agreed to pay a sum of money to download the chapter. King reportedly had stated that the project generated **about half a million US dollars**.

[2] *"Open eBook" Wikipedia.org, last modified on December 21, 2012*
[3] *María Alejandra López García, Caracas, Venezuela, and Rodolfo Carlos Rivas Rea, "Changing places: a new role for creators in the digital world" (November 2012), WIPO Magazine*

Sullivan's Sluggers

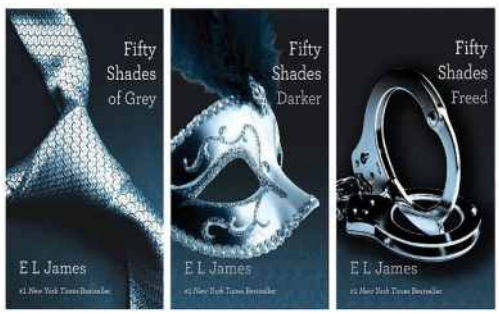
Sullivan's Sluggers, a graphic novel by Mark Andrew Smith and James Stokoe was launched on Kickstarter, a crowd funding platform. The page on the website read as:

Sullivan's Sluggers is a baseball horror graphic novel written by Mark Andrew Smith with art by James Stokoe (Orc Stain). Our goal is to use Kickstarter to complete Sullivan's Sluggers and to produce a beautiful 200 page, color, hardcover book. We're relying on your support to make Sullivan's Sluggers the reality we all so very much want it to be. $30 for 200 pages in glorious hardcover format is very reasonably priced, and Stokoe's art on its own makes Sullivan's "the not to be missed" book of the year. This book is exclusive only to Kickstarter backers and available here for a limited time.



The book went viral and was a rage. The author's initially sought to raise **US$6,000** to complete their work, however such was the impact of the e-book that they went on to generate some **US$100,000**.

Fifty Shades of Grey



Originally titled *Master of the Universe*, the *Fifty Shades* trilogy was developed from *Twilight* fan fiction and was published episodically on fan fiction websites under the pen name "Snowqueen's Icedragon". However when concerns were raised regarding the lascivious content of the novel, the author E. L. James removed the story from the fan-fiction websites and published it on her own website, FiftyShades.com. The *Master of the Universe* was split into three parts. The first was titled *Fifty Shades of Grey* and was released as an e-book and a print-on-demand paperback in May 2011 by The Writers' Coffee Shop, a virtual publisher based in Australia. The second volume, *Fifty Shades Darker*, was released in September 2011; and, the third, *Fifty Shades Freed*, followed in January 2012. The Writers' Coffee Shop had a restricted marketing budget and relied largely on book blogs for early publicity. The sales of the novel were boosted by word-of-mouth recommendation.

The success of the book was attributed to the discreet nature of e-reading devices. The license to the *Fifty Shades* trilogy was picked up by Vintage Books for re-release in a new and revised edition in April 2012. By

August 1, 2012 Amazon had sold more than 60 million copies of the book. Warner Bros., Sony Pictures, Paramount, Universal Pictures, as well as Mark Wahlberg's production company all wanted to secure the film rights with Universal Pictures and Focus Features eventually securing the rights to the trilogy in March 2012. It is reported that the film rights have been sold in 37 countries.

e-Readers- The Game Changers

An e-book reader (also called an e-book device or e-reader) is a mobile electronic device primarily designed for the purpose of reading digital e-books and periodicals. The device can not only display text on screen but also may optimize portability, readability and battery life.[4] It works with eInk and its display does not require any background lighting and are easy to read even in direct sunlight.

From Data Discman (launched in 1992 by Sony) to the Kindle and Nook, the e-book readers have come a long way. Data Discman was an electronic book device launched with the purpose of quick accession to electronic reference information on a pre-recorded disc. It had audio and video output capabilities, its software was prerecorded and usually featured encyclopedias, foreign language dictionaries, novels, and the like. Marketed to college students and international travelers, the Discman had little success outside Japan and the product was soon discontinued by Sony in 1993. Late 1990's saw the entry of several dedicated electronic book readers including the Softbook (released in 1998 by Softbook Press Inc.) and Rocket eBook (manufactured by NuvoMedia). Use of the SoftBook did not require a desktop computer or an Internet service provider; but had an internal modem which was used to connect it with the "SoftBookstore" to download books. It made available publishers such as HarperCollins, McGraw-Hill, Simon & Schuster, Warner Books and subscription to periodicals such as Newsweek, Time, and The Wall Street Journal. It was the first device to comply with the Open eBook specification. On the other hand the Rocket-compatible e-books were sold through the websites of Barnes & Noble and Powell's Bookstore. In 2000, both SoftBook Press and NuvoMedia was acquired and merged by Gemstar eBook Group and an updated e-Book Reader called the RCA eBook Reader was released.

The earlier e-book readers met with moderate success and were not accepted by the customers, probably due to shortage of books that were available on electronic format and issues regarding size, weight and price of the e-book and e-readers. The market however underwent a major change and complete transformation with the launch of **Amazon *Kindle***. Taking cue from Kindle's success, the market was soon flooded with the like e-readers including Nook, Kobo and Sony eReader.

KINDLE

Launched in 2007, *Kindle* was the first e-book reader that had an integrated mobile access link to an online store- the *Kindle* store. The *Amazon.com Kindle Store* contained over 88,000 books at time of launch and it offered books at an amount that was considerably lower than the printed books. The first model of *Kindle* sold out in five and a half hours and remained out of stock for five months.

Kindle incorporated Amazon's wireless Internet technology, *"Whispernet"*, which allowed users in the United States to have content delivered to their *Kindle* at their convenience, anytime and anywhere. In

[4] *"E-book reader",Wikipedia.org, last modified on January 12, 2013*

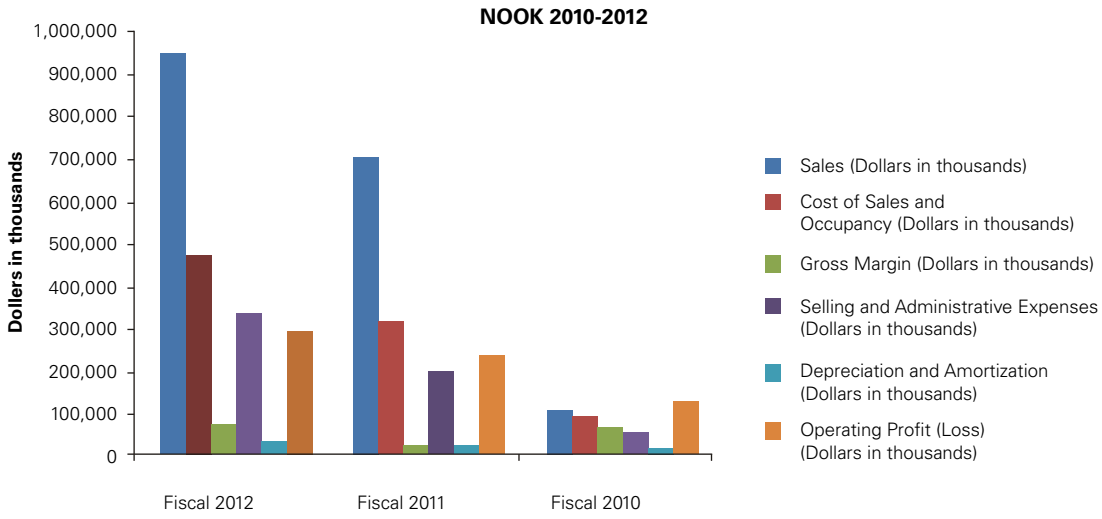
January 2009, USA Today decided to venture into the e-book realm and the journal was then made available on the *Kindle*. With the gaining popularity and acceptance of the *Kindle* versus physical newspapers, more and more newspaper companies and online blogs joined USA Today's lead and created e-book versions for the *Amazon Kindle Store*. Amazon quickly realized the customer demand for *Kindle* device apps and, accordingly, created an app to read *Kindle* on PC, Mac, iPhone iPod touch, iPad and on Blackberry.

In 2009 Amazon released *Kindle 2 e-book reader*, the next version of *Kindle*. The new model offered a number of technological and practical improvements over the earlier version including paper-like display, bigger vocabulary: built-in with 250,000 word dictionary and a five way joystick for better navigation. Amazon further progressed from Whispernet to Whispersync, enabling the e-book reader to transfer *Kindle* content to other portable personal devices such as the iPhone and the iPod Touch. In June 2009 *Kindle DX* was released incorporating more enhanced features. Since then other models such as *Kindle Fire, Kindle Fire HD, Kindle Paperwhite* have been introduced by Amazon incorporating features such as WI-Fi and Wi-Fi 3G, touch screen etc.

The "one-click buying" opportunity provided by Amazon further added to the impulse buying adding to the sale of the product. In addition to wide range of paid books, journals, periodicals and newspapers, Amazon provides access to more than 1.8 million free public domain books.[5]

NOOK

Based on the Android platform, the American book retailer Barnes & Noble launched *Nook* (e-reader) in 2009. The original *Nook* included both Wi-Fi and AT&T 3G wireless connectivity. It also included a six-inch E-paper display, and a separate, smaller color touchscreen that served as the primary input device. Later in June 2010, a Wi-Fi-only model of the original design was released.



Source: "Annual Report 2012" Barnes & Noble

[5] *"Turning the Page: The Future of eBooks", PricewaterhouseCoopers*



The original line of *Nook* was followed by *Nook Color* - a color LCD device (in 2010), *Nook Simple Touch* - a second-generation E-paper device (in 2011), *Nook Simple Touch with GlowLight* – claimed to be the world's first E Ink device with lighting technology that lets a person read in the dark (in 2012) and the 8GB and 16GB versions, respectively of the *Wi-Fi only Nook Tablet* (in 2012). Barnes & Noble provides a number of free e-Reader applications to permit reading on devices other than *Nook*. *Nook* eReading software provides customers the ability to purchase digital content and access to their *Lifetime Library* on a wide range of digital platforms, including iPad, iPhone, iPod touch, Android smartphones and tablets, as well as most PC and Mac laptops and desktop computers.

Barnes & Noble also offers *Nook Newsstand* that provides an extensive selection of digital newspapers and magazines, available in subscription and single copy format, *Nook Kids*, a collection of digital picture and chapter books for children and *Nook Study*, a platform and software solution for higher education. Through this digital platform, the B&N College began offering a textbook rental option to its customers in 2011 and expanded its electronic textbooks and other course materials. *Nook* sales increased $238.3 million, or 34.3%, to $933.5 million during fiscal 2012 from $695.2 million during fiscal 2011. Comparable sales for *Nook* increased 45.0% in fiscal 2012. This increase in sales was primarily due to higher sales of digital content and hardware.

KOBO

Produced by Toronto based company Kobo Inc., *Kobo eReader* was launched in 2010. The company's name *Kobo* is an anagram of 'book'. Like most e-book readers, the *Kobo* uses an electronic ink screen. Its models include *Kobo Touch, Kobo Mini* and *Kobo Glo*. Its LCD Versions *Kobo Vox* and *Kobo Arc* were launched in 2011 and in 2012. Kobo provides option of accessing nearly 3 million eBooks worldwide, from bestsellers and new releases to hidden gems — plus 1 million free titles from the Kobo eBookstore. An option of syncing eBooks and bookmarks to the smartphone, computer, or tablet and cover-to-cover reading with free Kobo Apps is also provided.

Table: Format supported by different e-readers

Format Reader ↓ Apple iOS Devices	Plain text	PDF	ePub	HTML	Mobi Pocket	Fiction Book (Fb2)	DjVu	Broadband eBook (BBeB)	eReader	Kindle	WOLF	Tome Raider	Open eBook
	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
Mac OS X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Na	Yes	Yes	Na	Na	Yes
Amazon Kindle	Yes	No	No	No	Yes	No	No	No	No	Yes	No	No	No
Amazon Kindle2, DX	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No	No	No
Amazon Kindle	Yes	Yes	No	Yes	Yes	No	No	No	No	Yes	No	No	No
Barnes & Noble Nook	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No	No	No	No
Barnes & Noble Nook Color	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No
Kobo eReader	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No
Sony Reader	Yes	Yes	Yes	No	No	No	No	Yes	No	No	No	No	No

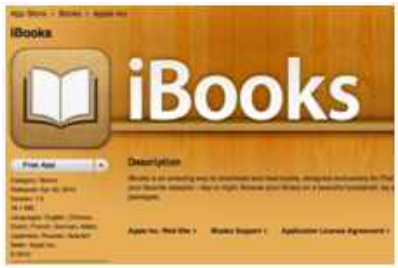
Source: "Comparison of e-book formats", Wikipedia.org, last modified date January 23, 2013

The Sony Reader

On the lines of *Kindle* and *Nook*, the *Sony Reader* was launched by Sony Corporation in 2012. The Sony Reader uses an electronic paper display developed by E Ink Corporation, is viewable in direct sunlight, requires no power to maintain a static image, and is usable in portrait or landscape orientation.

The Reader also can display Adobe PDFs, ePub format, RSS newsfeeds, JPEGs, and Sony's proprietary BBeB ("BroadBand eBook") format. It can also play MP3 and unencrypted AAC audio files. Its compatibility with PDF and ePub files allows Sony Reader owners to borrow ebooks from leading libraries in many countries. The DRM rules of the Reader allow any purchased e-book to be read on up to six devices, at least one of which must be a personal computer running Windows or Mac OS X.

There have been ten models of Reader till date. On August 31, 2011, Sony announced a new reader replacing all of their previous models, the PRS-T1, featuring a 6" screen and then PRS-T2 was launched in 2012 to replace PRS-T1.



With the launch of Apple's iPad and Apple promoting it as an alternative to e-Readers, the reading community is divided on the better reading device for e-Books. Introduction of iBook app and the iBookstore, availability of *Kindle* and *Nook* app for smartphones and laptops also adds fuel to the debate. It may be contended that for avid readers and for lengthy texts and professional applications the

e-reader may be a suitable option while iPads and tablets are ideal for occasional readers and for reading texts such as newspaper, journals etc. Nevertheless, competition between multinational giants, availability of supplies and foray of several eReaders along with Apple's iPad has led to reduction in the prices of the eReaders over the years. However with the speed with which the eReaders are becoming sophisticated and technologically advanced it is yet to be seen if similar trend would continue.

The road ahead…

The Digital transformation for sure has revolutionized the traditional method of business and is encouraging the companies to try the untested waters. Launch of *Kindle* by Amazon, *Nook* by Barnes & Noble and *Sony eReader* goes on to substantiate this. The traditional role of publishers in processing and distributing the content has also been modified in the current era where they are now entrusted with the task of managing and distributing the content on digital platforms as well. Additionally it opens up new avenues for them to generate income by adopting strategies such as putting a single chapter for sale or incorporating advertisements between chapters.

As far as authors are concerned, they may adopt a self marketing model and can directly distribute their books bypassing agents and publishers. Greg Bear (American science fiction and mainstream author), David Morrell (Canadian American Novelist), Stephen King (American author of contemporary horror, suspense and science fiction), Paulo Coelho (Brazilian lyricist and novelist), Stephen Covey (American author and educator) have all self published their books on one or the other online and digital platforms. The Amazon's *Kindle* Direct Publishing program, Sony Corp.'s online *ReaderStore* as well as Barnes & Noble's *Pubit* allows authors to directly sell their books online retaining a percentage of the list price. Through *Pubit* the independent publishers and authors can upload their e-Books and make them available for sale through the Barnes & Noble eBookstores. Similarly the Amazon's *Kindle* Direct Publishing allows the authors to reach global market by publishing in multiple languages within 5 minutes allowing them to earn 70 percent royalty. Like with *Pubit*, the e-books thus published through this program are available on *Kindle* devices and on free *Kindle* apps.

Though by self marketing the author may not be able to exploit publisher's expertise in distribution or marketing especially when the market is inundated with millions of titles, but retention of major portion of revenue generated continues to lure the authors to self publish their work.

The Odyssey of Andrew Wylie

Andrew Wylie, one of the world's leading literary agents stirred a major controversy in 2010 with the launch of his publishing venture Odyssey Editions that would produce e-book editions of titles by some of his major clients including *Salman Rushdie, V.S. Naipaul* and *Ralph Ellison* and would make the same available exclusively at Amazon's Kindle store for two years. Odyssey Editions started with 20 titles that were never been previously available in e-book format. [The titles included Midnight's Children, The Enigma of Arrival, Invisible Man, and Lolita]

While authors and Wylie argued that digital rights of the books were not owned by the original publishers as the books in question were published even before e-books existed and that its digital rights were not sold to the publishers, the deal enraged original publishers and booksellers. Both the parties made strong public comments so much so that Random House (the publisher that had originally published 13 out of 20 books) suspended its business with Wylies' agency affecting 700 of agencies' clients immediately. Negotiations followed ultimately leading to removal of 13 books

published by Random House from the deal brokered between Wylie and Amazon (that had led to e-books being exclusively available at Kindle store). Random House later went ahead with publishing books on non exclusive basis making it available through several distribution channels.

The road paved by Amazon *Kindle* has ushered an era of e-books and e-readers- an era that has already occupied a niche market and established itself as a juggernaut in the global publishing industry. e-Books and e-readers are reliable, user friendly, offers wide range of content, are attractive option for people with special needs- such as weak eyesight (they can adjust the font size of the text) or those who cannot go out to purchase books. It is difficult to predict if e-books could totally replace its physical counterpart but it certainly has challenged the functions, procedures and infrastructure of the existing industry. Publishers must therefore rethink and devise the strategy to gain maximum benefit from the onrushing digital future.

Opportunities and Challenges

Digital world challenges the traditional role of an interface that a publisher has been playing between authors and readers, presenting them with a daunting task of creating a platform where in addition to providing the text; features such as navigation tools, bookmark, interactive glossary and additional media (audio or videos) are to be incorporated. Nonetheless the numerous advantages of and opportunities that an e-book provides to readers, writers and publishers alike are:

- Enhanced connectivity with the potential buyers, where e-readers with integrated Internet access allow users to purchase varieties of books at competitive prices, enabling them to read it anytime and anywhere;
- Reduction in the lead time to reach the readers;
- As there aren't any investments associated with inventory, e-books provide publishers with higher margins at low cost in comparison to its traditional counterpart;
- Multiple platforms and media available for presentation of the books (such as inclusion of audio/video in books) provides ample opportunities to publishers to earn incremental revenues;
- Globally accepted by readers as market continues to be stimulated by multifunctional devices such as tabs and iPads;
- e-books are environment friendly and obviates problems associated with transport and storage.

Challenges:

- It may become increasingly difficult to manage and retain control over content and prices of e-books;
- Difficult time for bookstores as authors and publishers may completely circumventing it to directly reach the readers making it necessary for the bookstores to reinvent itself and complement existing products with online products;
- Though the market provides innumerable opportunities to the intermediaries – to provide services such as hosting, conversion, storage, delivery, - challenge for them would be to continuously invest in latest technologies and upgrade their skills to retain their foothold in the digital world;
- Effective strategies would have to be adopted to curtail digital piracy which not only leads to loss of revenues but violates authors and publishers intellectual property rights (IPR).
- Still difficult to comprehend the fate of physical books and the model – all digital or both digital and print- that would ultimately be adopted by industry and accepted by consumers.

Copyright Issues

The balance that a copyright system seeks to strike is facing challenge in the digital era with the rapid digitization and unauthorized copying, reproduction and distribution of the creative work causing the right owners to bear significant loses. With the improvement in compression technology and expansion of bandwidth even sharing of larger files have become very easy. Linking, framing, peer-to- peer file sharing has all led to rampant digital piracy.

The circumstances under which an Online Service Provider should be held accountable for infringing activities initiated by the subscribers is another issue which needs to be addressed. Different jurisdictions have dealt with the issue either through legislative provisions or judicial pronouncements. In India though the Copyright Act does not address the liabilities of online intermediaries, in so far as copyright infringement is concerned, the Information Technology (Amendment) Act, 2008, though directly not addresses any IPR issues, provides provision which would have impact on the IPR in digital environment. It also tends to clarify the scope of immunities available to intermediaries.

The copyright owners may themselves use technological protection measure such as encryption and watermarking to safeguard their rights. Also under the "digital rights management (DRM)" the IT tools can be employed to facilitate the right holder to exploit their proprietary rights. The DRM systems aim to enforce certain usage rules in respect of content protected by intellectual property such as the terms and price under which a person is entitled to use work. The following paragraphs cover DRM in detail.

Digital Rights Management

The advent of Information and Communication Technology (ICT) coupled with the rapid development of World Wide Web has led to the evolution of Internet from a mere technological infrastructure to a network linking people and ultimately to forerunner of information and digital age, which now plays a major role in global economy. What initially started as a scientific and academic network has unleashed an era of electronic commerce and digital economy with its easy access and multifunctional character. The progress of ICT has engendered an era of digitized information which can be copied, shared and exchanged innumerable number of times by innumerable number of people throughout the world connected by means of computer networks.

While in case of analog media the quality of copied material deteriorates every time a copy is generated, digital media files can be easily replicated without affecting quality of subsequent copies. Powerful computers, improvement in compression technology and expansion of bandwidth has even made sharing of larger files very easy. The rapid digitization and unauthorized copying, reproduction and distribution of their work has caused the right owners to bear significant losses. It is reported that the total number of users logged onto major P2P networks at any one time is approximately 10 million, sharing over 10,000,000 GB (10 Petabytes) worth of data.[6] It is difficult regulating those peer-to-peer (P2P) systems that are not using centralized servers but enable the user's computer to act as a search engine for processing each request and downloads. The Digital Rights Management (DRM) has therefore assumed significant importance as the development and the advancement of technology needs to be complemented with intellectual property so that the social, political and financial needs of the right holder is secured and fulfilled.

What is DRM?

Under Digital Rights Management, IT tools are employed to facilitate the right holder to exploit their

[6] *Source: CacheLogic.com*

proprietary rights. It aims to enforce certain usage rules in respect of content protected by intellectual property such as the terms and price under which a person is entitled to use the work. The rights holders are enabled by the DRM technologies to enforce accession policies in respect of copying or viewing of the content created by them. Restrictive Licensing Agreements, Encryption, Scrambling of expressive material, and embedding of a tag are some of the common DRM techniques.

From a functional perspective the DRM can be bifurcated into two broad areas:

- **Digital Rights Management**- Includes identifying and describing IPR in respect of work and parties involved in its creation and administration; and
- **Digital Management of Rights**- Includes the (technical) enforcement of usage restrictions

Drivers of DRM

World Wide Web, Internet and E-Commerce: Internet emerged as a key to successful commercial ventures all the while enabling easy distribution of copyrighted material and subsequently posing problems for rights holders to manage their IP assets in the dynamic environment.

Ripping Technology: Extraction of digital content from Compact or Digital Video Disc into other media such as the hard drive of the user coupled with web based applications (such as Napster and kazza) has made ripping a rampant problem and a threat to copyright holders.

Peer-to-peer file sharing: Peer-to-Peer networks incorporating technologies that does not require a central server, has not only made all the content vulnerable to copying and distribution but has also posed severe enforcement issues and has made legal pursuit even more difficult.

DRM: An indispensible tool in protecting IP and creating new business models

As the transmission technology coupled with internet based application has progressed over the years, so has the ease with which a work can be copied and distributed. The rights holders are challenged with the daunting task of protecting their copyrighted work from unauthorized use. Though perceived as the means of protecting digital media copyrights, DRM not only plays a crucial role in restricting the unauthorized distribution of digital content but also covers much larger landscape by addressing issues like providing new avenues for packaging, pricing, distributing and selling the protected contents. In coming years the traditional business models for content exploitation will undoubtedly be supplemented by new models, enabled by DRM technologies.

DRM services for texts, e-books and documents

The text industry is not aloof from the DRM initiatives and technologies. Microsoft has developed a DRM system for customized electronic publications called the **Digital Asset Server**. Adobe, Microsoft main competitor is selling the **Adobe Content Server**. Palm's software division, Palm Digital Media, has also developed a customized DRM system for distributing its eBooks. DRM aggregators such as **Overdrive**, are using technologies from several DRM vendors to build custom systems for the online publishing industry.[7]

[7] *"Digital Rights Management", Wikipedi.org*

POPULAR DRM SCHEMES USED IN PUBLISHING INDUSTRY

- There are three main ebook DRM schemes in common use today, one each from Adobe, Apple, and the Marlin Trust Management Organization (MTMO).
- Adobe's Adept DRM is applied to ePubs and PDFs, and can be read by several third-party ebook readers, as well as Adobe Digital Editions software.
- Apple's Fairplay DRM is applied to ePubs, and can currently only be read by Apple's iBooks app on iOS devices.
- The Marlin DRM was developed and is maintained in an open industry group known as the Marlin Developer Community (MDC) and is licensed by an organization known as the Marlin Trust Management Organization (MTMO).
- Barnes & Noble uses a DRM technology provided by Adobe, and is applied to ePubs and the older Palm format ebooks.
- Amazon uses a DRM which is an adaption of the original Mobipocket encryption, and is applied to Amazon's Mobipocket and Topaz format ebooks.
- Adobe Reader and Microsoft Reader are the PC and Macintosh software programs to view e-books. Each program uses a slightly different approach to DRM.
- The first version of Adobe Acrobat e-book Reader to have encryption technologies was version 5.05. In the later version 6.0, the technologies of the PDF reader and the e-book reader were combined, allowing it to read both DRM-restricted and unrestricted files. After opening the file, the user is able to view the rights statement, which outlines actions available for the specific document. However, when viewing a more highly restricted e-book, the user is unable to print the book, copy or paste selections. The level of restriction is specified by the publisher or distribution agency.
- Microsoft Reader, which exclusively reads e-books in a .lit format, contains its own DRM software. In Microsoft Reader, there are three different levels of access control depending on the e-book: sealed e-books, inscribed e-books and owner exclusive e-books.
- Sealed e-books have the least amount of restriction and only prevent the document from being modified.
- Inscribed e-books are the next level of restriction. After purchasing and downloading the e-book, Microsoft Reader puts a digital ID tag to identify the owner of the e-book. Therefore, this discourages distribution of the e-book because it is inscribed with the owner's name making it possible to trace it back to the original copy that was distributed.
- The most stringent form of security that Microsoft Reader offers is called owner exclusive e-books, which uses traditional DRM technologies. To buy the e-book the consumer must first open Microsoft Reader, which ensures that when the book is downloaded it becomes linked to the computer's Microsoft Passport account. Thus the e-book can only be opened with the computer with which it was downloaded, preventing copying and distribution of the text.

Source: "Digital Rights Management" Wikipedia.com.

DRM Application:

As stated above, DRM enables the rights holders to safely distribute their protected work online in digital format. The access rules thus devised by the content owners addresses several parameters including price of the content, frequency with which the data can be accessed, duration of accession and the authority provided to users to save, print, modify, transfer or share the data.

Several business models have also emerged on the basis of above parameters including trial before purchase, promotional previews, subscription and purchase of downloadable media.

The contents which come within the purview of DRM are:

- Audio and Video: -audio CDs, internet music, films, television content;
- Publishing: - books, e-books, documents, magazines, journals, articles;
- Software and computer games etc.

The DRM Technology used by the industry

The DRM is an amalgamation of disparate technologies, expertise and services which when installed either on user's device or network server enables the protection of the digital content. The WIPO standing committee on copyright and related rights (in its Tenth Session) has identified these technologies as follows:

Encryption

The process of encryption is employed to protect accession to owner's IP without proper authentication and authorization. It involves mathematical algorithms that scramble the digital information in such a way that it could not be accessed without the right holder's authorization.

For effective DRM the encryption system must have sufficient security depending on the type of content for which it is designed, it must be user friendly, and should be renewable and revocable in case the security of the same has been vitiated.

The management of keys used to unlock the encrypted content is the most important aspect of DRM encryption technology. Generally the Single Key encryption and Private Key/Public Key encryption are the two kinds of digital encryption employed in DRM. While the former is a much simpler, it is the latter process that involves complex Modular Arithmetic and the creation as well as processing of content secured with public/private key encryption requires a great deal of computing power.

Fingerprinting

Fingerprinting is a content-based identification technology that works by extracting the characteristics of a file and storing them in a database. When an unknown file is presented, the said technology calculates its characteristics and attempt to find its match with those that are stored in the database. The metadata is returned from the fingerprint database if appropriate match is found. The Fingerprinting systems are generally used to monitor peer-to-peer content distribution systems for copyright infringements. In comparison to computer graphics, these systems are more suitable for audio, video and audio-visual content.

Watermarking

A watermark is embedded information that is used as a part of system for Digital Rights Management. The watermarks are utilized for disparate purposes including recording of the copyright owner, distributer and distribution chain and identifying the purchaser of the work. Contrary to encryption technology that aids in transmission of data but not in the examination of the work in protected form, the watermark remains in the content of the protected work.

Watermarking however has certain shortcomings. For instance small graphic elements cannot effectively carry watermarks due to general limitation on the amount of data that can be embedded into the content. Secondly as embedding a watermark usually involves change in the original content, the quality of the material is susceptible to alteration if watermarks are repeatedly embedded in the same content.

Overview of the DRM technology:

The DRM involves two broad components: identification of the intellectual property and its enforcement. While watermarking and fingerprinting are efficient tools that enable identification of the IP, encryption plays a prominent role in enforcing the same by ensuring that the content is only used for the purpose that was agreed to by the owner of the copyright.[8]

The steps involved in providing and implementing DRM strategies are delineated below:

- Metatagging of the appropriate contents which are created and stored within databases
- Encryption of the information to ensure that the content is secured
- Once the user is authorized to access the content, a decrypted key is used to unblock the encrypted contents and the information is made available to the client.
- The technology that a client uses to view the decrypted information may include Acrobat Reader, Internet browser, Media Player etc. The aforementioned steps are explained in details in the following segment.

Components of DRM System

Primarily a DRM system has four important software components:

- Content Protection Software
- Content Distribution Server
- License Server
- Content Viewer Plug

The system is usually incorporated with an e-commerce system that manages payments and initiates the function of license server.

As stated above, the DRM process commences with encoding and metatagging of the content in the format supported by DRM software which in turn depends on the software vendor.

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[8] *GHATAK, P., TRIPHATI, R.C and CHAKARVARTI, A .K. (July 2004), Digital Rights Management: An Integrated Secure Digital Content Distribution Technology , Vol 9, 313-331*

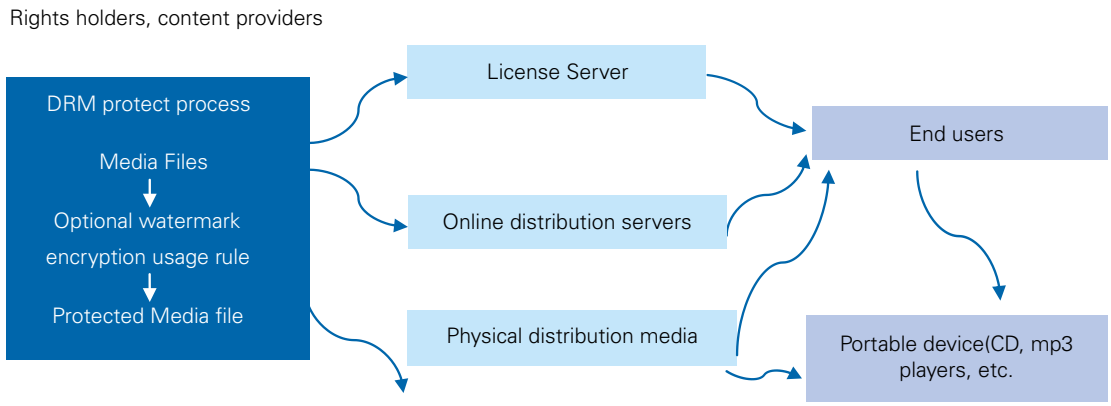
This is followed by encryption and packaging of the data. This is usually done by using special access, usage rules or a license key. The license key is saved either on license server or on physical distribution medium like CDs/ DVDs etc.

The encrypted and protected content is then transmitted to the distribution server or may be saved on physical distribution medium. The distribution can be done by using downloading or streaming.

When the online customer downloads the protected content and wishes to receive same appropriate rights and permission for the same is communicated by the software on the end user's device to the to the end user and ultimately back to the license server.

As soon as the end user completes the formalities of registration and meets the requirements of clearing methodologies and/or payment, the DRM license handler collects the relevant information and generates the license to decrypt the information on the user's device.[9]

DRM Process flow



Source: GHATAK, P; TRIPHATI, R.C and, CHAKARVARTI, A .K. (July 2004), Digital Rights Management: An Integrated Secure Digital Content Distribution Technology, Vol 9, 313-331

DRM free Works

- Apple Inc. has sold DRM-free music through its iTunes store since April 2007 and has been labeling all music as "DRM-Free" since January 2009. The music still carries a digital watermark to identify the purchaser. Other works sold on iTunes such as e-books, movies, TV shows, audiobooks and apps continue to be protected by DRM.
- Tor Books, a major publisher of science fiction and fantasy books, intends to sell only DRM-free e-books by July 2012. Smaller e-book publishers such as O'Reilly Media, Carina Press and Baen Books had already forgone DRM previously.
- Webcomic Diesel Sweeties released a DRM-free PDF ebook on author R Stevens' 35th birthday, leading to more than 140,000 downloads in the first month, according to Stevens. He followed this with a DRM-free iBook specifically for the iPad, using Apple's new software, which generated more than 10,000 downloads in three days. That led Stevens to launch a Kickstarter project -

[9] *GHATAK, P.; TRIPHATI, R.C and CHAKARVARTI, A .K. (July 2004), Digital Rights Management: An Integrated Secure Digital Content Distribution Technology , Vol 9, 313-331*

"ebook stravaganza 3000" - to fund the conversion of 3,000 comics, written over 12 years, into a single "humongous" ebook to be released both for free and through the iBookstore; launched February 8, 2012, with the goal of raising $3,000 in 30 days, the project met its goal in 45 minutes, and went on to be funded at more than 10 times its original goal. The "payment optional" DRM-free model in this case was adopted on Stevens' view that "there is a class of webcomics reader who would prefer to read in large chunks and, even better, would be willing to spend a little money on it."

Discussion and Conclusion

DRM covers disparate facet including technology, legal aspects, standardization and policy making. As the classical models of publishing have transgressed to the digital world, the need of technological solutions for efficient and acceptable management of intellectual property rights has assumed significance. An efficient DRM system should enable the rights holder to have flexibility of rights in adopting usage rules and policy within the legal framework and enjoy the liberty of deploying these technological measures for legitimate access to copyrighted works. At the same time the effect of widespread adoption of DRM technologies in the global digital economy should also be considered.

The Digital Timeline[10]

1949: Roberto Busat, author of the Index Thomisticus persuaded Thomas J. Watson (the founder of IBM) to sponsor **Index Thomisticus as a tool for performing text searches**. In 1989 a CD-ROM version followed and in 2005 a web-based version made its debut.

1971: Michael S. Hart, launched **Project Gutenberg** to create electronic copies of books for free, public use.

1985–1992: Robert Stein founder of The Voyager Company (in 1985), published the **first commercial multimedia CD-ROM**, and The Criterion Collection, a collection of definitive films on digital media with in-depth background information (including the first films with recorded audio commentary).

1990: Eastgate Systems published **hypertext, and electronic literature**.

Works published by Eastgate

1987, 1990: Michael Joyce: afternoon, a story (on diskettes)

1991 Sarah Smith: The King of Space

1992: Stuart Moulthrop: Victory Garden

1994: Kathryn Cramer: In Small & Large Pieces

1995: Shelley Jackson: Patchwork Girl

2001: Richard Holeton: Figurski at Findhorn on Acid



for directions click yes (y)-- to start press Return
©1987,92 Michael Joyce
Eastgate Press 3rd Edition 1992
PO Box 1307
Cambridge, MA 02238

1992: Sony Corporation introduced **"Data Discman"**

1992: Book Stacks Unlimited, an **online bookstore** created by Charles M. Stack. Stack's store began as a dial-up bulletin board. It moved to the Internet as Books.com, eventually attracting a half million visitors each month.

1992–1993: F. Crugnola and **I. Rigamonti** designed and created the first e-book reader, called **Incipit**, as a thesis project at the Politecnico di Milano.

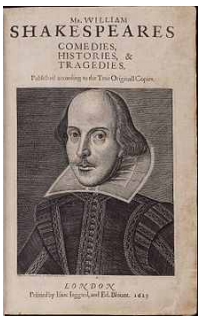
1994: C & M Online became the **first ebook publishers on the Internet**. C & M published e-books through its imprint, Boson Books.

Bitingduck Press acquired the Boson imprint in 2012.

1994: Project Gutenberg released its **100th e-book**-

The Complete Works of William Shakespeare.

1994: Jeff Bezos incorporated **Amazon**

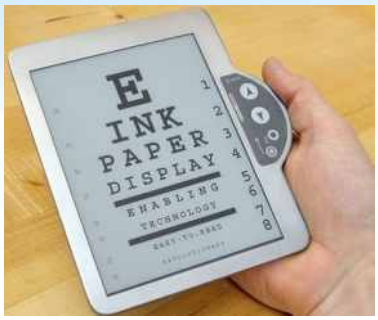


amazon

[10] *C&M Online Media, Inc., Official website<http://cmonline.com/>*
Four Decades of Digital Books <http://www.timetoast.com>
Wikipedia.org

1995: Amazon went **online as amazon.com** and **started** selling physical books on the Internet.

1997: E Ink Corporation co-founded by Joseph Jacobson, Jerome Rubin (LexisNexis co-founder), Russell Wilcox and two of Jacobson's students (Barrett Comiskey and J.D. Albert). E Ink is the manufacturer of **electrophoretic displays (EPDs)**.



E Ink has partnered with various companies, including Sony, Motorola and Amazon.com, to allow for the development of products like the Sony Reader, MOTOFONE F3, Barnes & Noble Nook, Kindle, and Hanlin eReader.

1998: First ISBN issued to an ebook was obtained by **Kim Blagg** .

1999: Baen Books introduced a digital library **"Baen Free Library"** to determine whether the availability of books free of charge on the Internet encourages or discourages the sale of their paper books. Baen sold e-books through Webscriptions. It was owned and operated by Webwrights, a Tennessee company run by Arnold Bailey.

2000: Microsoft Reader released. The Reader displays books in the .LIT (shortened from "literature") format, an extension of the Microsoft Compressed HTML Help format to include DRM.

2002: Random House and HarperCollins started selling **digital versions** of their titles in English.

2003: Adobe launched a website to sell **downloadable PDF versions of books, magazines and other materials**. The Adobe Digital Media Store carried content from major publishers, including Random House and HarperCollins.

2004: Sony Librie, first ebook that used **e-ink**.

Google announced plans to digitize the holdings of several major libraries, as part of what would later be called the **Google Books Library Project**.

2005: Mobipocket.com was bought by Amazon.com.

2006: Sony Reader launched

LibreDigital launched **BookBrowse** as an online reader for publisher content.

2007: Amazon introduced **Amazon Kindle**

2009: Barnes & Noble launched the **Nook.**

2010: Apple released the **iPad** with an e-book app called iBooks.

-Amazon.com reported that its e-book sales outnumbered sales of hardcover books for the first time ever during the second quarter of 2010.

-Google launched **Google eBooks**

2011: Bookeen launches its own e-books store: **BookeenStore.com** and started selling digital versions of titles in French.

- Amazon launched **Kindle Fire**

2012: Apple released **iBooks Author**

CHAPTER: 7

Role of Intermediary Agencies in Copyright Management

7
CHAPTER

Role of Intermediary Agencies in Copyright Management

Fifteenth century saw the origin of printing press that provided easy multiplying facility leading to large scale printing and distribution of the creative work. On the flip side it opened gates for unfair practices and unauthorized printing by competing printers. Starting from the Statute of Anne in England in 1710, copyright laws were framed throughout the world to tackle piracy and preserve authors' rights.

A study conducted by Ministry of Human Resource and Development revealed that piracy in the form of mass photocopying of books is largely prevalent in India, especially in and around educational institutions. While the study mainly holds price of the book and its popularity as the major factors responsible for it, it further went on to state that the institutions turn a blind eye to this kind of piracy. It is here, that strategies like differential pricing of the book may prove to be effective, more so in developing countries like India where price of the scientific and technical books are deemed to be quite high.

Further intermediary agencies may play significant role by providing fair photocopy access to the academic institutes and students all the while ensuring equitable remuneration and returns for authors and publishers. These organizations will not only prove to be beneficial in reducing the administrative burden of the publication houses but will also be instrumental in ensuring effective protection and enforcement of intellectual property rights. With the advancement in Information and Communication Technology and rapid digitization of work, the role of such agencies will become more pronounced.

Worldwide these intermediary agencies have flourished as **"Reprographic Rights Organization"** and provide licenses on behalf of the right holders to reproduce their work. The Indian Reprographic Rights Organization (IRRO) is one such copyright society in India that is authorized to issue blanket/transactional reprographic usage licenses to foreign and Indian authors and publishers in India by the Department of Copyright, Government of India, under Section 33(3) of the Copyright Act, 1957. The IRRO shall be dealt with in the chapter later on.

Case Study

While copyright issues have been in subsistence for more than a century, its prevalence in the academic institutions have never assumed enough momentum as it has now. **Oxford University Press, Cambridge University Press and Taylor and Francis** initiated proceedings against Rameshwari Photocopy Service, a photocopy shop located in the Delhi School of Economics, Delhi University and the University of Delhi seeking prohibition against unauthorized photocopying, reproduction and distribution of copies of their copyrighted books.

Both students and teachers raised alarm and protests against the petition filed by the publication houses contending that prohibition on photocopying would be a great loss as all sections of student cannot afford to buy original books or the whole book to read a particular chapter. Even a *"Campaign to Save DSchool Photocopy Shop"* was launched on a social networking site.

From the written statement of the Delhi University, the learned Single Judge note that *"The defendant no. 2 (i.e. Delhi University) has taken a stand that whatever they were earlier doing was under the bona fide impression with a view to achieve their goal in the larger interest of the students*

and in any case, they have no intention to breach any such law by making re-production of the copies or to commit any kind of violation of copyright" and held that the photocopier had no right to compile the course packs and books/articles published by plaintiff and more so when the University has taken a stand that that they had no intention to breach any law by making such reproductions as complained of by the plaintiff in the present suit. The ***Rameshwari Photocopy Service*** was accordingly restrained from making or selling course packs and also reproducing the plaintiff's publication or substantial portion thereof by compiling the same either in a book form or in the form of a course pack.

Aggrieved by **"its alleged admission"** [as produced above] being recorded in the order, Delhi University approached the appellate bench of the Delhi High Court. The appeal was however dismissed by the Bench and directions were given to the University to return to the Single Judge and clarify the scope of their alleged admission/undertaking.

Protection and exemption under the Copyright Act

The Copyright though subsist in all original and creative expressions, it is the literary work that is of particular concern in the academics. Section 13 of the Indian Copyright Act (read with Sections 40 and 41) accords protection to the original literary, dramatic, musical and artistic work. The publication houses' main contentions (in the aforesaid case study) against the photocopy shop and the University of Delhi was that the shop was not only engaged in 'cover-to-cover' reproduction of their publications, but was also selling unauthorized compilations of substantial extracts from the publications by compiling them into **'course packs'** /anthologies for sale. They had also contended that the faculty teaching at the University was directly encouraging students to purchase these 'course packs' instead of legitimate copies of the publications and were recommending 'course packs' for reproduction by the photocopy shop. Further the University library was also issuing books to photocopy shop for such reproduction.

Section 52 [sections 52(1)(g), (h), (i) and (p)] of the Indian Copyright Act provides statutory exemptions and limitations, which has so far being used to address issues regarding use of copyright material in educational institutions. While reproduction of any work by a teacher or pupil in the course of instruction continues to be permissible under the Act, the proceedings initiated by Oxford University Press, Cambridge University Press and Taylor and Francis does raised issues regarding the legality of the extent of reprography especially where entire work was reproduced by way of photocopying and where premises of the academic institution was used.

The Legislative Framework

Article 9 of the **Berne Convention** provides exclusive rights to the author of a literary or artistic work to authorize or prohibit reproduction of his work "in any manner or form" (such as printing, scanning, photocopying or storage in electronic database). The limitations to the aforesaid rights are provided under Article 9 (2) of the said convention that states *"…It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."* Article 13 of the **TRIPS** Agreement and Article 10 of the 1996 WIPO

Copyright Treaty also provides for the limitation and exception. Similarly the statutory exemptions and limitations provision is dealt under Section 52 of the Indian Copyright Act provides, which has so far been used to address issues regarding permissible use of copyright material.

Collective Management of Copyright and Reprographic Rights Organizations

Direct contracts between the authors and publishers usually covers the issue of copyright in the publishing industry, however collective management of copyright- by way of intermediary agencies are effective in cases where large scale photocopying or reproduction takes place making it unfeasible and impracticable for authors to enforce their rights individually. This becomes more pronounced in academic and educational sector where unauthorized photocopying, reproduction and distribution of copies of copyrighted books have become a commonplace.

The Reproduction Rights Organizations (RROs) have therefore been established to act as intermediaries between right holders and the user and issue copyright clearance. The right holders in this regard are all authors and publishers whose work can be copied i.e. authors of fiction and non-fiction work, dramatist, playwrights, journalists, translators, graphic designers, illustrators, photographers as well as publishers of books, journals, periodicals, magazines, newspapers etc.

RROs are thus entrusted with the task of issuing necessary licenses to the users, on behalf of the right holders, and monitoring the usage of the work, negotiating with users or their representative and collecting and distributing the appropriate remuneration to the authors or publishers.

Methods of Licensing

The license agreement setting out the terms and conditions of the permitted copying may be of any of the following two types:

i) **Blanket licensing** - Commonly employed for photocopying licenses that cover large sector, the blanket license enables the user to photocopy from any publication in the RRO's repertoire, within the limits of the agreement.

ii) **Transactional licensing** – This may be a work by work or title or fee specific license that enables a user to photocopy certain defined work. This kind of license is often issued in case of course packs.

Licensing Areas[1]

Though the relevance of licensing by RROs is more pronounced in academic sectors, the following are few of the other potential licensing areas:

a) Public Administration – Government, Regional or Local bodies;

b) Libraries;

c) Trade and Industry;

d) Cultural Institutions; and

e) Copy shops and other similar places.

[1] *KOSKINEN-OLSSON, Tarja, (April 2005), WIPO Publication No. 924(E), ISBN 92-805-1404-0, World Intellectual Property Organization (WIPO) and International Federation of Reproduction Rights Organisations (IFRRO)*

Functions

The Reprographic Rights Organizations (RROs) plays vital role in supporting the three essential tiers of a fair and equitable Copyright System i.e. - Effective **Legislation, Enforcement** and **Management**. It helps the copyright owners, authors, publishers, and users in more than one way, including:

- Enabling the users to secure permission from one source for photocopying or other large scale mass production of copyrighted work thereby restricting unauthorized photocopying and curbing piracy and copyright violation;
- Promotes a healthy creative environment where authors of the work are ensured remuneration for their work (which in turn inspires them to create without the fear of piracy), publishers are encouraged to invest and users are encouraged to resort to legitimate practices for using copyrighted work.

A) Model of Operation[2]

i) Voluntary Collective Licensing

Under the Voluntary Collective Licensing System, the RRO issues licenses, for reproduction of copyrighted material, on behalf of those Right Holders who have authorized the RROs to act on their behalf.

Eg. Copyright Clearance Center (1978- USA) – The organization issues collective licensing to the user based on non-exclusive contracts. The Authors and publishers determine which works are to be included in different licensing programs and in some cases may even set the prices individually for each work.

Japan Reprographic Rights Center (1991- Japan)

ii) **Voluntary Licensing with Legislative Support**

The voluntary licensing supported by legislation intends to cover the non represented right holders, as it is impracticable for any single collective management organization to represent the rights of all the right holders.

The two legislative support mechanisms in this regard are:

a) **Extended Collective License** – Under this system, the agreement between user and the collective management organization (that represents large number of right holders in a given category of work) would, by virtue of law, also be extended to the non represented right holders (i.e. the extension effect). However for this kind of work it is essential that the organization be nationally representative and the user is free to use all the materials procured from the RRO without the fear of facing the legal action.

Eg.- Copy Dan- the collective license system of Denmark

[2] *KOSKINEN-OLSSON, Tarja, (April 2005), WIPO Publication No. 924(E), ISBN 92-805-1404-0, World Intellectual Property Organization (WIPO) and International Federation of Reproduction Rights Organisations (IFRRO)*

b) **Compulsory Collective Management**- The system safeguards the position of the users as under this a right holder can only make claims through collective management organization.

Eg.- Centre Français du Droit de Copie (CFC) (1984, France)

iii) Legal Licenses

Under this system consent from the right holder is not required as license to copy is given by the law. The right holder however has the right to remuneration which is collected by the RRO. In some countries such licenses are introduced only for education or for government use while in others in may cover all copying.

E.g. Copyright Agency Limited (CAL) (1974, Australia)

Stichting REPRORECHT (1974, Netherland)

Based on the above model, some of the major Reprographic Rights Organizations are:

- The Copyright Clearance Center (CCC) in the United States of America;
- The Canadian Copyright Licensing Agency (Access Copyright);
- The Copyright Licensing Agency (CAL), Australia;
- The Centre français d'exploitation du droit de copie (CFC), France;
- The Centro Español de Derechos Reprográficos (CEDRO), Spain;
- The Copyright Licensing Agency (CLA), United Kingdom;
- The Verwertungsgesellschaft WORT, Germany.

Indian Reprographic Rights Organization[3]

Incorporated in the year 2000, the **Indian Reprographic Rights Organization (IRRO)** is a non-profit making organization, and is **exclusively permitted** to commence and carry on the Copyright business of "reprographic rights in the field of literary works" in India. The IRRO in-fact is the **sole licensing authority to issue license to users** of copyrighted works of its members and collect the royalties on their behalf and distribute them.

The society represents numerous Indian and foreign Authors and Publishers of India as well as societies of similar nature in India via its bilateral/unilateral agreements with similar societies of other countries. It has been registered by the Ministry of Human Resources Development, Government of India, in the field of literary works/2002 dated 28th June 2002, as a **Copyright Society under sub-section (3) of section 33 of the Copyright Act, 1957.**

[3] *International Federation of Reproduction Rights Organisations, Official website <www.ifrro.org>*
Indian Reprographic Rights Organisation, Official website <www.irro.in>

Section 33 (3) of the Copyright Act, as presented below, specifies criteria for registration of copyright society:

The Central Government may, having regard to the interest of the authors and other owner of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licenses in applicants, register such association of persons as a copyright society to such conditions as may be prescribed. [Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works].

IRRO identifies the users of published work of their members and collects royalties; issues **blanket licenses** (for courses packs, internal copies, press digests, documents delivery and any other reprography) and **transactional licenses**, which grant authorization of reproduction/copying of literary or published copyrighted work for limited purposes as per the law. Work license which covers books, newspapers, magazines, journals and other periodical publications in electronic and paper format and digital reproduction for internal information of organizations and for educational purposes is also issued by IRRO.

Conclusion

The advancement in technological tools, the digital era and ease of copying makes it imperative for the authors and publication houses to devise dynamic new policies to keep in pace with technological progress and facilitate access of copyright materials that does not baffle statutory rights of the copyright owner and is within the legislative framework of the government. At the same time it important that for effective management of copyright and for benefit of right holders and users, organizations like RRO be given legislative support and awareness about intellectual property rights be raised in the society.

Chapter Source: KOSKINEN-OLSSON, Tarja, (April 2005), WIPO Publication No. 924(E), ISBN 92-805-1404-0, World Intellectual Property Organization (WIPO) and International Federation of Reproduction Rights Organisations (IFRRO)

Annexures

Annexures

Annex A

Table 8.1.3.5 Trademark applications by industry sector			
Industry sector	**2007**	**Share(%) Industry sector 2007 2011**	**Change**
Agricultural products and services	14.5	15.4	0.9
Textiles -Clothing and Accessories	12.9	14.2	1.3
Scientific research. Information technology, Communications	14.6	14.1	-0.5
Management, Communications, Real estate and Financial Services	11.4	11.7	0.3
Pharmaceuticals, Health, Cosmetics	11.4	111	-0.3
Leisure, Education, Training	12.3	10.9	-1.4
Construction, Infrastructure	7.6	7.0	-0.6
Household equipment	6.3	6.9	0.6
Transportation and Logistics	6.0	5.7	-0.3
Chemicals	3.1	3.0	-0.1

Note: 2007 figures are based on NICE class data for 94 offices and those for 2011 are based on data for 105 offices.
Sources: WI PO Statistics Database and Edital®, October 2012

ANNEX B (i)

Harry Potter as Trademark and its Proprietors	Registered Trademark Application
TIME WARNER ENTERTAINMENT COMPANY, L.P.	4
WARNER BROS. ENTERTAINMENT INC.	16
HARRY POTTER	5
HARRY POTTER AND THE CHAMBER OF SECRETS	5
HARRY POTTER AND THE DEATHLY HALLOWS	4
HARRY POTTER AND THE GOBLET OF FIRE	5
HARRY POTTER AND THE HALF BLOOD PRINCE	4
HARRY POTTER AND THE PRISONER OF AZKABAN	5
HARRY POTTER AND THE SERPENT PRINCE	4
HARRY POTTER AND THE SORCERER'S STONE	5

Source: Online records on Indian Intellectual Property Office (Upto January 2013

Annex B (ii)

S.No	Application No	Trademark	Application Date	Proprietor Name	Class
1	917453	HARRY POTTER	11-Apr-00	TIME WARNER ENTERTAINMENT COMPANY, L.P	28
2	917454	HARRY POTTER	11-Apr-00	TIME WARNER ENTERTAINMENT COMPANY, L.P	25
3	1111702	HARRY POTTER	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	9
4	1111703	HARRY POTTER	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	16
5	1246560	HARRY POTTER	29-Oct-03	WARNER BROS. ENTERTAINMENT INC	41
6	1111704	HARRY POTTER AND THE SORCERER'S STONE	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	9
7	1111705	HARRY POTTER AND THE SORCEER"S STONE	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	16
8	1111706	HARRY POTTER AND THE SORCERER"S STONE	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	25
9	1111707	HARRY POTTER AND THE SORCERER'S STONE	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	28
10	1111708	HARRY POTTER AND THE CHAMBER OF SECRETS	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	9
11	1111709	HARRY POTTER AND THE CHAMBER OF SECRETS	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	16
12	1111710	HARRY POTTER AND THE CHAMBER OF SECRETS	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	25
13	1111711	HARRY POTTER AND THE CHAMBER OF SECRETS	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	28
14	1246567	HARRY POTTER AND THE CHAMBER OF SECRETS	29-Oct-03	WARNER BROS. ENTERTAINMENT INC	41
15	1111712	HARRY POTTER AND THE PRISONER OF AZKABAN	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	9
16	1111713	HARRY POTTER AND THE PRISONER OF AZKABAN	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	16
17	1111714	HARRY POTTER AND THE PRISONER OF AZKABAN	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	25
18	1111715	HARRY POTTER AND THE PRISONER OF AZKABAN	14-Jun-02	WARNER BROS. ENTERTAINMENT INC	28
19	1246566	HARRY POTTER AND THE PRISONER OF AZKABAN	29-Oct-03	WARNER BROS. ENTERTAINMENT INC	41
20	1114195	HARRY POTTER AND THE GOBLET OF FIRE	26-Jun-02	TIME WARNER ENTERTAINMENT COMPANY, L.P	9
21	1114196	HARRY POTTER AND THE GOBLET OF FIRE	26-Jun-02	WARNER BROS. ENTERTAINMENT INC	16
22	1114197	HARRY POTTER AND THE GOBLET OF FIRE	26-Jun-02	WARNER BROS. ENTERTAINMENT INC	25

S.No	Application No	Trademark	Application Date	Proprietor Name	Class
23	1114198	HARRY POTTER AND THE GOBLET OF FIRE	26-Jun-02	TIME WARNER ENTERTAINMENT COMPANY, L.P	28
24	1246559	HARRY POTTER AND THE SORCERER"S STONE	29-Oct-03	WARNER BROS. ENTERTAINMENT INC	41
25	1246565	HARRY POTTER AND THE GOBLET OF FIRE	29-Oct-03	WARNER BROS. ENTERTAINMENT INC	41
26	1292475	HARRY POTTER AND THE SERPENT PRINCE	25-Jun-04	WARNER BROS. ENTERTAINMENT INC	9
27	1292476	HARRY POTTER AND THE SERPENT PRINCE	25-Jun-04	WARNER BROS. ENTERTAINMENT INC	16
28	1292478	HARRY POTTER AND THE SERPENT PRINCE	25-Jun-04	WARNER BROS. ENTERTAINMENT INC	25
29	1292479	HARRY POTTER AND THE SERPENT PRINCE	25-Jun-04	WARNER BROS. ENTERTAINMENT INC	28
30	1293760	HARRY POTTER AND THE HALF BLOOD PRINCE	1-Jul-04	WARNER BROS. ENTERTAINMENT INC	25
31	1293764	HARRY POTTER AND THE HALF BLOOD PRINCE	1-Jul-04	WARNER BROS. ENTERTAINMENT INC	28
32	1293765	HARRY POTTER AND THE HALF BLOOD PRINCE	1-Jul-04	WARNER BROS. ENTERTAINMENT INC.	16
33	1293766	HARRY POTTER AND THE HALF BLOOD PRINCE	1-Jul-04	WARNER BROS. ENTERTAINMENT INC	9
34	1520947	HARRY POTTER AND THE DEATHLY HALLOWS	29-Dec-06	WARNER BROS. ENTERTAINMENT INC	9
35	1520948	HARRY POTTER AND THE DEATHLY HALLOWS	29-Dec-06	WARNER BROS. ENTERTAINMENT INC	16
36	1520949	HARRY POTTER AND THE DEATHLY HALLOWS	29-Dec-06	WARNER BROS. ENTERTAINMENT INC	25
37	1520950	HARRY POTTER AND THE DEATHLY HALLOWS	29-Dec-06	WARNER BROS. ENTERTAINMENT INC	28

Source: Online records on Indian Intellectual Property Office (Upto January 2013

Annex C

Publication House	Applications Filed	Registered Trademarks
PEARSON EDUCATION LTD	3	3
PEARSON EDUCATION INC	7	4
PEARSON EDUCATION SERVICES PVT, LTD	20	-
PEARSON PLC	3	1
REED ELSEVIER PROPERTIES,INC	63	44
REED ELSEVIER UK LTD.	4	
REED ELSEVIER INC	15	9
REED ELSEVIER INDIA PVT. LTD.	21	11
WOLTERS KLUWER N. V.	2	2
MCGRAW-HILL (INDIA) PRIVATE LIMITED	3	-
TATA MCGRAW-HILL EDUCATION PVT. LTD	1	-
SCHOLASTIC INC	35	10
SCHOLASTIC CONCEPTS ORIENTATION REVIEW EXAMINATION	1	-
SCHOLASTIC TRAINING ACADEMY INDIA PVT LTD	7	-
JOHN WILEY AND SONS,INC.	10	2
WILEY INDIA PRIVATE LIMITED	1	-
OXFORD UNIVERSITY PRESS	1	-
HARPERCOLLINS PUBLISHERS LTD.	7	5
HARPERCOLLINS PUBLISHERS INC	2	2
HARPERCOLLINS PUBLISHERS INDIA PVT. LTD.	1	-
HARPERCOLLINS PUBLISHERS L.L.C.	3	3
GAKKEN HOLDINGS CO., LTD.	2	-

Source: Online records on Indian Intellectual Property Office (upto January 2013)

Classes	OLIVER TWIST	BATMAN	SUPERMAN	CATWOMAN	WONDER WOMAN	TARZAN	CHIMPU	CHOTU LAMBU	CHAMPAK	FIGHTER TOADS	AGNIPUTRA ABHAY	FAULADI SINGH	MANGLU MADARI
Class 2									2				
Class 3	1												
Class 9	1	1		1									
Class 14	1			1									
Class 12			1										
Class 16		1	3	1	1	1			1	1		1	
Class 18	1												
Class 20	1												
Class 25		1		1									
Class 26	1												
Class 28		1		1									
Class 30		1											
Class 31									1				
Class 32		1											
Class 34	1												
Class 41		1					1	1			1	1	1

Source: Online records of Indian Intellectual Property Office (Upto January 2013)

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- S Chand & Company, Official website < www.schandgroup.com >
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- Munshiram Manoharlal Publishers Pvt. Ltd., Official website < www.mrmlonline.com >
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- "Borders Group", Wikipedia.org
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- Association of Publishers in India ,Official website < www.publishers.org.in >
- Association Of Indian Magazines, Official website
- The Federation Of Publishers' And Booksellers' Associations In India, Official website www.fpbai.org
- Delhi State Booksellers' And Publishers' Association, Official website < www.dsbpa.in>
- Indian Newspaper Society, Official website <www.indiannewspapersociety.org>
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