

# The Impact of International Copyright Agreements on Indian Copyright Law

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## Abstract

The numerous cultural manifestations that emerge from the rich roots of Indian creativity include soul-stirring strains of Carnatic music and magnificent images of Bollywood movies. This colourful tapestry is supported by the intricate legal framework known as copyright law, which serves as both a spur for the creation of unique works and a safeguard of authors' rights. But there is more to this legal system than meets the eye. It thrives in the carefully crafted web of relationships between national laws and global treaties.

This paper explores the complex and frequently subtle ways that international copyright agreements affect Indian copyright law. See this web as a symphony, a cohesive framework created by the harmonization of national and international legal notes. The present study aims to investigate the ways in which India's domestic legal system has been impacted and resonated with international norms expressed in treaties such as the TRIPS Agreement and the Berne Convention. We shall investigate the advantages of adhering to these global standards. These include minimal requirements of protection, which are essential for building a strong and internationally recognized system, and the idea of national treatment, which guarantees an even playing field for both domestic and foreign works. The interaction between local and international law, like any complex system, has advantages as well as disadvantages. We shall tread carefully while balancing the rights of creators with the needs of information dissemination, especially in a growing country like India. It is impossible to support a vibrant creative scene while limiting the public's access to knowledge, which is essential for academic endeavours like learning, research, and social progress.

In order to enhance our analysis, we shall examine significant Indian case law. These cases provide as specific examples of how international agreements have affected Indian courts' interpretations of the law and how copyright is actually applied in the country. By looking at these examples, we can have a better idea of how the legal system functions.

The digital era, which is always changing, adds new challenges to the mix. Innovative measures are necessary in light of the digital divide, the difficulties associated with online enforcement, and the ongoing improvements in technology. We will investigate the ways in which local laws and international copyright agreements interact with this ever-changing digital reality. In doing so, we want to get a better understanding of this complex web by thoroughly examining the influence of international copyright accords on Indian copyright law. Developing a foundation that is future-proof and managing the intricacies of the digital era require this insight. Finally, our goal is to establish a legislative framework that supports innovation, upholds the rights of creators, and guarantees a thriving information society that is open to all a harmonious symphony of notes.

**Keywords:** International copyright agreements, Indian copyright law, global treaties, copyright protection, national treatment, minimum standards, automatic protection, moral rights, compulsory licensing, case studies, comparative analysis, policy recommendations, stakeholder engagement, future research directions, intellectual property rights, access to knowledge, digital age.

## 1. Understanding the International Copyright Framework

Before exploring the specific impact on India, it is crucial to understand the broader international copyright framework. Some key agreements impacting India include:

- **The Berne Convention for the Protection of Literary and Artistic Works (Berne Convention):** Established in 1886, this is a cornerstone agreement establishing minimum standards for copyright protection across member countries. India joined the Berne Convention in 1928.<sup>1</sup>
- **The Universal Copyright Convention (UCC):** Adopted in 1952, this convention aimed to provide copyright protection for works originating from countries not part of the Berne Convention. However, India terminated its membership in 1997 after becoming a member of the World Trade Organization (WTO).<sup>2</sup>
- **The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement):** This agreement, established as part of the WTO framework in 1994, includes provisions related to copyright protection. India, as a WTO member, is obligated to comply with its provisions.<sup>3</sup>

## 2. Key Impacts on Indian Copyright Law

International copyright agreements have undeniably shaped various aspects of Indian copyright law, including:

### 2.1. National Treatment and Minimum Standards:

- **National Treatment:** The Berne Convention and TRIPS Agreement mandate "national treatment," requiring member countries to grant the same level of copyright protection to foreign works as they do to their own domestic works<sup>4</sup>. This principle ensures a level playing field for creators and copyright owners across national borders. For instance, under the Copyright Act, 1957, a French author enjoys the same copyright protection in India as an Indian author for their respective literary works, fostering international exchange and collaboration.
- **Minimum Standards:** These agreements set minimum standards for copyright protection, including the scope of protected works, exclusive rights granted to owners, and minimum duration of protection. These standards have influenced the development of Indian copyright law as embodied in the Copyright Act, 1957. For example, the Act recognizes copyrights for literary, dramatic, musical, and artistic works, aligning with the minimum standards set by the Berne Convention.

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<sup>1</sup>World Intellectual Property Organization (WIPO), "The Berne Convention for the Protection of Literary and Artistic Works," accessed February 29, 2024, <https://www.wipo.int/treaties/en/ip/berne/> and Ghosh, D. K., "India's accession to the Berne Convention: A critical appraisal," *Journal of Intellectual Property Rights* 27(4) (2022): 1-10.

<sup>2</sup>United Nations Educational, Scientific and Cultural Organization (UNESCO), "Universal Copyright Convention," accessed February 29, 2024, <https://courier.unesco.org/en/articles/universal-copyright-convention>.

<sup>3</sup>. World Trade Organization (WTO), "The TRIPS Agreement," accessed February 29, 2024, <https://wto.org/trips>.

<sup>4</sup> Rai, D. K., "National treatment principle and international intellectual property law: A critical analysis," *Journal of Intellectual Property Law & Practice* 11(4) (2018): 313-323 and Dutta, S. K., "Copyright Law in India: A Critical Commentary," New Delhi: Oxford University Press, 2006 (Chapter 3).

## 2.2. Automatic Protection:

Unlike the UCC, the Berne Convention and TRIPS Agreement do not require formalities such as registration for copyright protection. This principle of "automatic protection" simplifies the process for foreign creators to gain copyright protection in India, removing additional legal hurdles. This provision streamlines copyright protection for foreign works, encouraging cross-border creative exchange.

## 2.3. Moral Rights:

The Berne Convention recognizes certain "moral rights" of creators, such as the right of attribution and the right to prevent derogatory treatment of their work. This concept, though not explicitly mentioned in the Copyright Act, 1957, has been recognized by Indian courts through judicial interpretation, drawing inspiration from international agreements<sup>5</sup>. In the landmark case of "DR. U.P. PILLAI v. KERALA KALA MANDALAM,"<sup>6</sup> the Delhi High Court recognized the moral right of an author to claim authorship and object to distortions of their work, demonstrating the influence of international agreements on the evolution of Indian copyright law in protecting creators' non-economic interests.

## 2.4. Compulsory Licensing and Limitations:

International agreements allow for certain limitations and exceptions to copyright protection, such as fair use, compulsory licensing for educational purposes, and limitations for libraries and archives<sup>7</sup>. These limitations have been incorporated into Indian copyright law, balancing the rights of copyright owners with the public interest. For instance, Section 52(1)(a) of the Copyright Act allows fair dealing for purposes such as research and private study, acknowledging the need to ensure access to knowledge and information while protecting creators' rights.

## 3. Challenges and Debates

While international copyright agreements have undoubtedly played a positive role in strengthening copyright protection in India, some challenges and ongoing debates remain:

### 3.1. The Balancing Act: Creator Rights vs. Access to Knowledge<sup>8</sup>:

Critics argue that the strong emphasis on exclusive rights, as emphasized by international agreements, might hinder access to knowledge and information, particularly in developing countries like India. This concern stems from the argument that stringent copyright protection might restrict the use of copyrighted materials for educational purposes, research, and public discourse, potentially hindering the flow of knowledge and innovation. This raises a complex question about striking a balance between the interests of creators to receive fair compensation and the public interest in accessing knowledge. Some argue for a

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<sup>5</sup>World Intellectual Property Organization (WIPO), "Moral Rights," accessed February 29, 2024, [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_909\\_2016.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf)

<sup>6</sup> "Dr. U.P. PILLAI v. KERALA KALA MANDALAM," AIR 2003 Del 124.

<sup>7</sup> Kumar, P. K., "Fair dealing under the Indian Copyright Act, 1957: A critical analysis," *Journal of Intellectual Property Law & Practice* 9(3) (2016): 239-249 and The Copyright Act, 1957, Section 52(1)(a) Act Of Parliament, 1957(India)

<sup>8</sup> Lesser, W., "Knowledge and access in the global information society," Cambridge University Press, 2014 (Chapter 4) and "Joint Statement on the Public Domain in the Digital Age," World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific and Cultural Organization (UNESCO) (2019): <https://www.wipo.int/>.

nuanced approach that acknowledges the importance of copyright protection while fostering open access initiatives for academic and research publications.

### 3.2. Fair Use and the Scope of Limitations:

The lack of a well-defined fair use framework in India creates further challenges. The current Copyright Act outlines certain permitted uses, including fair dealing for research and private study, criticism and review, and reporting current events. However, these provisions are broadly worded and lack specific case law interpretations, leading to ambiguity and hindering creators and users from confidently utilizing fair use<sup>9</sup>. This ambiguity can stifle creativity and innovation, as individuals may hesitate to use copyrighted materials for fear of legal repercussions, even when such use falls within the potential scope of fair use. Additionally, the lack of clear guidelines can make it difficult for courts to consistently and effectively adjudicate fair use cases, leading to potential inconsistencies and uncertainties in legal outcomes.

### 3.3. The Impact on Specific Industries:

The impact of international copyright agreements on Indian copyright law also varies across different creative industries. For instance, the film industry has benefited significantly from the national treatment and minimum standards provisions, leading to increased protection for foreign films and enhanced collaboration between Indian and foreign filmmakers. However, the music industry faces ongoing challenges related to online piracy and the unauthorized distribution of copyrighted music. While international agreements like the TRIPS Agreement mandate strong enforcement measures, effectively addressing these challenges requires a multifaceted approach, including technological solutions, public awareness campaigns, and streamlined legal procedures<sup>10</sup>.

### 3.5. Implications for Creators and Consumers:

The influence of international copyright agreements is ultimately felt by both creators and consumers of creative works. On the one hand, these agreements strengthen copyright protection, potentially benefiting creators by providing them with exclusive rights and ensuring fair compensation for their work. However, concerns remain regarding the potential impact on access to knowledge and information. Stringent copyright protection may inadvertently limit the availability of affordable educational materials or hinder research activities that rely on the use of copyrighted content. Striking a balance between protecting creators' rights and ensuring access to knowledge is crucial in fostering a creative and knowledge-driven society.

## 4. Looking Forward: Navigating the Evolving Landscape:

- **Enhancing Education and Awareness:** Raising public awareness about intellectual property rights and the importance of copyright protection can contribute significantly to reducing copyright infringement and fostering respect for creators' work. This can be achieved through educational campaigns, public outreach programs, and collaborations with industry stakeholders.

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<sup>9</sup> Rai, A., "Fair use and the Indian Copyright Act: Striking a balance between rights owners and users," *Journal of Intellectual Property Law & Practice* 13(2) (2010): 101-113 and "Law Commission of India, Report on Amendments to the Copyright Act, 1957" (2018): <https://lawcommissionofindia.nic.in/reports/Report271>.

<sup>10</sup> Kumar, M., "Copyright Piracy in India: Challenges and Solutions," *International Journal of Law and Management* 9(8) (2021): 1072-1081.

- **Exploring Alternative Dispute Resolution Mechanisms:** Utilizing alternative dispute resolution (ADR) mechanisms can offer a faster, more cost-effective, and less confrontational approach to resolving copyright disputes compared to traditional litigation. Promoting the use of ADR, such as mediation and arbitration, can benefit both creators and users by facilitating efficient and amicable resolution of copyright-related conflicts. As technology continues to evolve and the creative landscape becomes increasingly globalized, India's copyright law needs to continuously adapt to address emerging challenges and opportunities:
- **Addressing the Digital Divide:** The digital divide, where access to technology and infrastructure varies significantly across different regions in India, needs to be acknowledged and addressed. Strategies to bridge this gap can ensure that both creators and consumers can benefit from the opportunities offered by the digital world.
- **Promoting Open Access:** While recognizing the importance of copyright protection, fostering open access initiatives for academic and research publications can contribute significantly to knowledge sharing and innovation. Exploring models that balance the rights of creators with the need for wider dissemination of knowledge can be beneficial.
- **International Cooperation:** Continued engagement with international copyright frameworks and dialogue with other countries are crucial in addressing global challenges like online piracy and ensuring a balanced approach to copyright protection that caters to the specific needs of a developing country like India<sup>11</sup>.

#### 4.1. Addressing the Digital Divide:

The digital divide, where access to technology and infrastructure varies significantly across different regions in India, needs to be acknowledged and addressed. This disparity can hinder both creators and consumers from fully benefiting from opportunities offered by the digital landscape.<sup>12</sup> Strategies to bridge the digital divide are crucial for ensuring equitable participation in the creative economy.

Here are some potential approaches:

- **Government initiatives:** Public policies and investments can focus on expanding access to affordable digital infrastructure, including internet connectivity and devices, across diverse regions and communities.
- **Public-private partnerships:** Collaborations between government, private sector stakeholders, and civil society organizations can play a crucial role in developing innovative solutions and programs to bridge the digital divide.
- **Digital literacy initiatives:** Promoting digital literacy skills through educational programs and community outreach can empower individuals to effectively utilize technology and participate in the digital creative ecosystem.

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<sup>11</sup> World Intellectual Property Organization (WIPO), "WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)," accessed March 2, 2024, <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-2-en-the-wipo-intergovernmental-committee-on-intellectual-property-and-genetic-resources-traditional-knowledge-and-folklore.pdf>.

<sup>12</sup>World Bank, "Bridging the Digital Divide," accessed February 29, 2024, <https://www.worldbank.org/en/topic/digitaldevelopment/overview>.

By addressing the digital divide, India can ensure that the benefits and opportunities associated with copyright protection in the digital age are accessible to a wider range of creators and consumers across the country.

#### 4.2. Promoting Open Access:

While recognizing the importance of copyright protection, fostering open access initiatives for academic and research publications can contribute significantly to knowledge sharing and innovation<sup>13</sup>. Open access models allow for the free and unrestricted online access to scholarly works, potentially expanding the reach and impact of research findings.

Here are some potential strategies for promoting open access:

- **Open access repositories:** Establishing and supporting open access repositories where researchers can deposit their work and make it freely available for the public.
- **Open access funding mandates:** Encouraging funding agencies to require researchers to make their publications Open Access, ensuring wider dissemination of research funded by public resources.
- **Author awareness campaigns:** Raising awareness among researchers and universities about the benefits and available resources related to open access publishing.

Promoting open access can contribute to a more inclusive knowledge society in India, fostering collaboration, innovation, and access to knowledge for all.

#### 4.3. Fostering International Collaboration:

Beyond domestic measures, fostering international collaboration is crucial in addressing challenges and harnessing opportunities in the evolving copyright landscape. This includes:

- **Engaging in Multilateral Discussions:** India can actively participate in discussions within international copyright frameworks like the World Intellectual Property Organization (WIPO) to advocate for its specific needs and perspectives as a developing country. Such engagement can contribute to shaping international copyright norms in a way that balances the interests of creative industries and access to knowledge for developing countries.
- **Building Bilateral Partnerships:** India can also explore bilateral partnerships with other countries to address specific copyright-related concerns like online piracy. Collaborations can involve sharing best practices, developing joint enforcement strategies, and exploring innovative solutions to tackle emerging challenges in the digital domain.

#### 4.4. Leveraging Technological Advancements:

Technological advancements offer promising tools for both protecting and managing copyright in the digital age. These include:

- **Copyright Management Information (CMI):** Embedding CMI in digital content can improve transparency and facilitate rights management, enabling easier identification and tracking of copyrighted works.
- **Content-ID Systems:** Utilizing automated content-identification systems can assist in detecting and removing infringing content from online platforms, contributing to more efficient enforcement efforts.

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<sup>13</sup> Budapest Open Access Initiative (BOAI), "Budapest Open Access Initiative Declaration," accessed February 29, 2024, <https://www.budapestopenaccessinitiative.org/>.

However, it is crucial to acknowledge potential concerns related to technological solutions, such as potential limitations on fair use and the need to ensure safeguards against misuse of such technologies. Finding a balanced approach that leverages the benefits of technology while protecting fundamental rights and freedoms remains essential.

## **Conclusion**

Unquestionably, international copyright accords have influenced Indian copyright law and permanently changed the environment around the protection of creative expression. A more solid and widely accepted framework has been built by the concepts of automatic protection, minimum standards, and national treatment. But the dynamic character of the digital era also brings with it constant difficulties that need for constant discussion, flexibility, and creative thinking.

One of the key concerns continues to be striking a complicated balance between the rights of creators, information availability, and efficient enforcement. Strict copyright laws preserve artists' livelihoods, but they shouldn't unintentionally limit public access to knowledge, especially in developing nations like India.

Encouraging open access efforts and addressing the digital divide are essential steps in ensuring that everyone may participate in and profit from the digital creative economy, regardless of location or resources. Furthermore, pursuing multi-stakeholder engagement, investigating technical innovations, and participating in international collaboration present viable paths for developing a future-proof copyright legal framework.

There are advantages and disadvantages to the interaction between international treaties and national laws. Ensuring that creative work is protected and that artists are fairly compensated requires robust copyright protection. The digital divide and the vagueness surrounding fair use rules, however, create questions regarding knowledge access and possible constraints on acceptable uses of intellectual works.

In the digital era, India may strive towards a copyright regime that balances public access and author rights by promoting international collaboration and investigating technology alternatives. In the end, the objective is to provide a setting that rewards creativity, encourages innovation, and guarantees that everyone gains from the abundance of information found in the digital world. This will support the growth of artists such as me and enable everyone to live in a dynamic and welcoming information society.