PIRACY IN THE INDIAN FILM INDUSTRY

Copyright and Cultural Consonance

Arul George Scaria

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At the centenary of the Indian cinema
this book is dedicated to
the creative artists in the Indian film industry
who bring
colour, melody and fragrance
to the lives of millions!

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Preface

This book is an attempt to explore the question how copyright law works at the grassroots level in India. It specifically looks at the social, cultural, historical, legal and economic dimensions of copyright piracy in the Indian film industry with this objective. What makes this book unique is the primacy given to the perspectives of the people and the proposals for legal and policy changes. The bottom-up approach analysis of the working of copyright law illustrates how local factors influence copyright enforcement. This perspective is visibly absent in most of the current discussions on copyright enforcement. The book offers insightful empirical findings as it captures the complexity of perceptions regarding piracy. It also provides insights about the diversity of perspectives within Indian society, particularly between the urban and the rural sectors and between genders. Based on qualitative and quantitative findings, the book proposes a mix of positive and negative incentives to increase the voluntary compliance of copyright law in India.

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This book is the result of inspiring thoughts, critical comments and unconditional support from many people. First I acknowledge my gratitude to Professor Josef Drexl, Director of the Max Planck Institute of Intellectual Property and Competition Law, Munich. He was my doctoral research supervisor, and his unreserved support and great academic vision have always been helpful to navigate through new areas of knowledge. I would also like to thank Professor Reto M. Hilty, Director of the International Max Planck Research School for Competition and Innovation (IMPRS-CI), for providing intellectual and administrative support for carrying out an empirical project like this within the IMPRS-CI framework. Let me also thank the Max Planck Society for the financial and institutional support received for this research.

One of the integral components of this book is the data from an empirical survey conducted in India, regarding the perceptions of piracy among consumers. Thanks to all the students who participated voluntarily and enthusiastically in this survey. Though I am unable to mention here the names of the institutions to which these students belong (due to the need for protecting the privacy of those students), I thank all those institutions as well as their staff for helping me to conduct the survey in their campuses. The questionnaire developed for this study benefited immensely from comments and suggestions of many scholars including Mr Filipe Fischmann (Max Planck Institute for Intellectual Property and Competition Law), Dr Carl-Benedikt Frey (University of Oxford), Professor Jonathan Klick (University of Pennsylvania), Mr Moritz Lichtenegger (University of Zurich), Dr P. T. Mathew (Sameeksha, Kerala), Dr Frank Müller-Langer (Max Planck Institute for Intellectual Property and Competition Law), Professor Jennifer Robbennolt (University of Illinois), Dr Stefan Wagner (Innotec, Ludwig Maximilians Universität) and Dr Andrea Wechsler (European University Institute). Thanks to all of you! I must also express my thanks to Mr Thankachen Mulavana (Anugraha Graphics) for his help in designing the layout of the questionnaire.

The interviews conducted as part of this study helped in getting diverse perspectives from different stakeholders. I thank all those eminent professionals from different fields who shared their precious time and perspectives with me. This includes Mr Nikhil Advani (Movie Director), Mr Pravin Anand (Anand and Anand), Mr Farokh T. Balsara (Ernst & Young), Mr Harish Dayani (Moser Baer Entertainment Ltd.), Mr K. M. Gopakumar (Third World Network), Mr Adoor Gopalakrishnan (Movie Director), Professor N. S. Gopalakrishnan (School of Legal Studies, Cochin University of Science and Technology), Professor Anil K. Gupta (Indian Institute of Management, Ahmedabad), Mr Issac Thomas Kottukapallil (Music Director), Mr Amit Mohan (Myth Productions), Professor Raman Mittal (University of Delhi), Dr M. G. S. Narayanan (Former Chairman of the Indian Council of Historical Research), Mr S. M. Rajeevan (Lawyer, District Court, Thiruvananthapuram), Ms Prathiba Singh (Lawyer, Supreme Court of India), Mr Sanjay Tandon (Reliance BIG Pictures), Mr Jomy Thomas (Malayala Manorama), Mr Zakir Thomas (Former Registrar of Copyright, India) and Mr C. H. Unnikrishnan (Mint). My special thanks also to those who shared the perspectives of piracy from the supply side, though I do not name them here for protecting their privacy. I must also thank the lawyer who arranged my meeting with them by assuring anonymity and safety to them. Obtaining contacts with professionals in the film industry is never an easy task, and I must thank Mr Benny Kuriakose, Ms Liz Mathew, Mr Mathew Paul and Mr Santhosh Thundiyil for their overwhelming help in this regard by personally introducing me to some of the eminent professionals in the Indian film industry.

Dr Dominik Ruderer (Dii Munich) and Dr Ilja Rudyk (Innotec and Max Planck Institute for Intellectual Property and Competition Law) have to be thanked for their unwavering support as friends and for their critical reviews of the economic and empirical dimensions of this research at all stages. Professor Josef Straus and Professor Adolf Dietz have always been sources of inspiration and the thoughtful suggestions shared by them during many informal conversations need to be specifically acknowledged here. Professor Stefan Bechtold (ETH Zurich), Professor Georg Von Gravenitz (University of East Anglia), Professor Tobias Kretschmer (Institute for Strategy, Technology and Organization, Ludwig Maximilians Universität), Professor Annette Kur (Max Planck Institute for Intellectual Property and Competition Law) and all my colleagues at the Max Planck Institute for Intellectual Property and Competition Law need to be thanked for their insightful comments

at different stages of research. Dr Sylvie Nerisson, Dr Frank Müller-Langer and Dr Andrea Wechsler also need special mention here for their excellent support as Coordinators of the IMPRS-CI. I would also express my gratitude to all my colleagues at the Center for Philosophy of Law, Catholic University of Louvain (UCL), particularly Professor Tom Dedeurwaerdere, for encouragement and support. The library staff of Max Planck Institute for Intellectual Property and Competition Law, Ludwig Maximillians Universität and Bayerische Staatsbibliothek must be thanked for their excellent support for this research. The administrative staff of Max Planck Institute for Intellectual Property and Competition Law, particularly Karin Haase, Elfriede Stangl and Gabriele Zinzuck, must be thanked for helping in all the administrative matters, including those for the field work.

I would also like to thank the anonymous peer reviewers of Cambridge University Press, who helped in further refinement of the manuscript through their highly thoughtful comments. I would also like to express my hearty thanks to Qudsiya Ahmed and Debjani Mazumder for their excellent support during the publication process.

I must also thank my family and friends for their support and encouragement. Sandy needs to be thanked for her love, care and patient support during all these years. Amma and Achachan must be thanked for being with me in all my endeavours and raising me with the intellectual freedom to explore new paths. Achachan must also be thanked for patiently reading the earlier versions of this work and providing critical reviews from a cultural studies perspective. Suma and Varghese need to be thanked not only for their love but also for their critical feedback on economic and historical dimensions of this work. Jesammamma, Kochachan, Dona and Dantes need to be thanked for their affectionate support and encouragement. Professor Sukumari Antherjanam needs to be thanked for her unwavering support. My special thanks also to Arun, George, Hardeep, Mrinalini, Pramod, Prasanth and Sinu for their cheerful support during all these years.

I might have missed some important names here. But I remain grateful to all of you. I would like to end this note with the disclaimer that though many people have generously supported in the completion of this book, all errors you may find in this book are my own!

List of Abbreviations

A.I.R. – All India Reporter

ACTA – Anti-Counterfeiting Trade Agreement

Art. – Article

BRIC – Brazil, Russia, India and China

Cardozo J. Int'l & Comp. L. – Cardozo Journal of International and Comparative Law

CD – Compact Disk

CPP – Comparative Purchasing Power

DTH – Direct to Home

DVD – Digital Versatile Disc

E.I.P.R. – European Intellectual Property Review

Edin.L.R. – Edinburgh Law Review

Edn – Edition

Eds – Editors

Ent.L.R. – Entertainment Law Review

FICCI – Federation of Indian Chambers of Commerce and Industry

Harv.L.Rev – Harvard Law Review

I.P.Q. – Intellectual Property Quarterly

ICC – International Chamber of Commerce

Intell.Prop.&Tech.L.J. – Intellectual Property & Technology Law Journal

IP – Intellectual Property

IPR – Intellectual Property Rights

IP Address/Location – Internet Protocol Address/Location

J.I.P.R. – Journal of Intellectual Property Rights

Law Libr. J. – Law Library Journal

MPA – Motion Picture Association

MPAA – Motion Picture Association of America
N.C.L.Rev. – North Carolina Law Review
NGO – Non-Governmental Organization
SCC – Supreme Court Cases
Sec. – Section
SSRC – Social Science Research Council
TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights
USGAO – United States Government Accountability Office
USIBC – United States–India Business Council
VCD – Video Compact Disc
VCR – Video Cassette Recorder
WIPO – World Intellectual Property Organization
WTO – World Trade Organization
Yale L. J. – Yale Law Journal

1 Introduction

Bachelor Party is a recent Indian movie directed by Amal Neerad.[1] Although the movie did not receive favourable critical reviews or success in the box office at the time of release, it later made headlines across India for another reason. For the first time in the history of India, the Police department in one of the states registered cases against more than 1000 individuals/websites for uploading/downloading the pirated copies of a movie.[2] Although the appropriateness and legal validity of a massive police action solely based on IP addresses is questionable, the incident is a clear illustration of the direction of copyright enforcement actions in India.[3]

But copyright piracy and such enforcement actions against copyright piracy are not just restricted to India. For example, a few months earlier, in an armed operation resembling Hollywood action movies, the New Zealand Police had arrested Kim Dotcom, founder of the cyberlocker

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1 This 2012 movie was from the Malayalam film industry, one of the regional film industries within India. See <http://www.nowrunning.com/movie/9971/malayalam/bachelorparty/index.htm> accessed 25 January 2013.

2 See Anupam Saxena, 'Kerala Police Registers Cases Against 1010 Users & Sites for Pirating Movie "Bachelor Party"' *Media Nama* (12 September 2012) <http://www.medianama.com/2012/09/223-torrent-bachelor-party-arres/> accessed 25 January 2013, and Press Trust of India, 'Kerala Police Cracks Down on Film Piracy, Case Against 1000' *NDTV* (9 September 2012) <http://movies.ndtv.com/regional/kerala-policecracks-down-on-film-piracy-case-against-1000-264960> accessed 28 January 2012.

3 Interestingly, *Bachelor Party* is alleged to be very similar to a 2006 Hong Kong movie, *Exiled (Fong Juk)*, directed by Johnnie To. Subsequent to the filing of the cases for illegal uploading/downloading, *Bachelor Party* became a subject of discussion in social media networks, and many people are reported to have approached Johnnie To, requesting to initiate legal action against the director of *Bachelor Party* for plagiarizing his work. See 'Agent Jadoo not to pursue case of Bachelor Party as it will be in trouble', <http://www.ukmalayalee.com/keralanews/news.php?id=MjUzMg==> accessed 25 January 2013.

service, *Megaupload.com*.[4] This action was at the request of the Federal Bureau of Investigation (FBI), and the most important charge against Kim Dotcom was the extensive use of his cyberlocker service for online piracy.[5] The domain name and the servers were seized and Kim Dotcom is now facing extradition to the United States.[6] Although the justifiability of extra-territorial copyright enforcement actions is debatable, it is yet another example of the contemporary global approaches in the area of copyright enforcement.

But what makes copyright piracy an important subject of concern for nations today? While the usage of the term 'piracy' for intellectual property violations dates back to the seventeenth century, it is the developments in digital frontiers that have made copyright piracy a subject of extreme anxieties, intense discussions and panic reactions in the contemporary world.[7] Unlike earlier times, digital technologies have enabled the creation of near perfect copies of information products in easily accessible and affordable ways for most segments of the public. Although the extent of damage that piracy inflicts on creativity in different industries is not clear cut, piracy is considered by most creative industries as a serious threat challenging their existence.[8] Hence many countries, particularly those

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4 See 'Kim Dotcom Raid Video Shows Helicopters, Police Vans Used in Arrest of Megaupload Founder' *Huffington Post* (8 September 2012) <http://www.huffingtonpost.com/2012/08/09/kim-dotcom-raid-video-megaupload_n_1758317.html> accessed 4 February 2013.

5 See Department of Justice, 'Justice Department Charges Leaders of Megaupload with Widespread Online Copyright Infringement' (19 January 2012) <http://www.justice.gov/opa/pr/2012/January/12-crm-074.html> accessed 28 January 2012. FBI alleges that Megaupload.com has caused more than $500 million in losses for the copyright holders.

6 See, also, <http://megaupload.com/> accessed 28 January 2013.

7 Scholars like Adrian Johns who have attempted to trace the evolution of the term 'piracy' are of the view that the beginning of the usage of this term for intellectual property violations can be precisely traced back to the years between 1660 and 1680. See Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago, University of Chicago Press 2009) 24. For an excellent discussion on piracy from a cultural studies perspective, see Ravi Sundaram, *Pirate Modernity* (Oxon, Routledge 2010) 105–138.

8 As some scholars have illustrated through detailed case studies, it is also important to recognize that piracy may not have detrimental effects on creativity in all situations. There are also industries where piracy can stimulate innovations and creativity. For an excellent discussion in this regard, in the background of different examples including the fashion industry, see generally Kal Raustiala and Christopher Sprigman, *The Knockoff Economy: How Imitation Sparks Innovation* (New York, Oxford University Press 2012).

characterized by the presence of strong creative/information industries, can now be seen actively pursuing enforcement actions against copyright-related violations.

As seen from across the world, the most commonly suggested and used remedies against copyright piracy arising from panic reactions are infliction of severe legal punishments and criminalization of more and more activities. The jury verdict of $2.2 million as statutory damages for sharing 24 songs, in the first file sharing case to reach the trial stage in the United States, represents one example of this contemporary approach towards copyright enforcement.[9] The debates in several national parliaments over laws that can authorize total disconnection of a user from internet under the so-called three strikes or graduated response policy, although access to internet connection is a basic human right in the modern world, show yet another example in the same direction.[10]

But have we been able to achieve higher copyright compliance levels through such intimidating efforts? Well, it is an accepted fact that copyright compliance has remained at a low level in most countries, despite all such intimidating and incriminating measures. The fact that copyright piracy remains highly prevalent even in many countries with strong enforcement systems suggests us to explore reasons beyond conventional

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[9] See *Capitol Records Inc v Thomas-Rasset* 2011 WL 3211362, 1 (District Court of Minnesota). After over three trials, the District Court reduced the damages to $54,000, citing the violation of due process. Ibid., 14–15. However, the record labels have appealed against this verdict.

[10] For a critical analysis of the graduated response policy, see generally, Peter K. Yu, 'The Graduated Response' (2010) 62 Florida Law Review 1373. France was one of the countries that had adopted a three strikes policy. See LOI n° 2009-669 du 12 juin 2009 favorisant la diffusion et la protection de la création sur internet (Legislation number 2009-669 of 12 June 2009 to Promote the Dissemination and Protection of Creation on the Internet, as amended on 30 October 2009). However, the three strikes policy in France was recently replaced with a system of automatic fines. See Siraj Datoo, 'France Drops Controversial "Hadopi law" After Spending Millions' *The Guardian* (9 July 2013) <http://www.guardian.co.uk/technology/2013/jul/09/france-hadopilaw-anti-piracy> accessed 16 July 2013. See, also, Sec. 17 (1) of Digital Economy Act 2010 in the United Kingdom, which authorizes the Secretary of State to bring regulations that allow courts to disconnect internet users or slow down the internet connection speeds in cases of copyright infringements. For a comparative analysis of the graduated response policies under the French (earlier Hadopi law), UK, and US laws, see Enrico Bonadio, 'File Sharing, Copyright and Freedom of Expression' (2011) 33 E.I.P.R. 619, 624–626.

paths of inquiry.[11] The two critical questions to be asked at this point is whether there is anything fundamentally wrong in our present approach towards copyright enforcement and whether we are missing something important in the present solitary approach of increasing criminalization and infliction of severe legal punishments.

The conventional economic wisdom suggests that it is the demand that drives up supply in any market in the long run and the same must apply for pirated goods also, although this factor has not attained due attention in most of the legal research in this area.[12] So while discussing enforcement measures relating to piracy, it is highly important to understand why consumers buy pirated goods. In other words, we also have to engage in a demand-side approach, besides the existing supply-side approach. Copyright scholars like Goldstein are seen taking cognizance of this aspect when they acknowledge the conversion of copyright rules into a norm of public and private behaviour as the most important challenge in the direction of higher copyright compliance in today's digital world.[13]

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[11] Some scholars are of the view that piracy rates will reduce with increase in national income. But as some other scholars have shown through the huge variation of software piracy rates in Western Europe, piracy cannot be explained merely in terms of the differences in GDP. See Mark Traphagan and Anne Griffith, 'Software Piracy and Global Competitiveness: Report on Global Software Piracy' (1998) 12 International Review of Law, Computers and Technology 431, 441. Similarly, some studies have shown that while the average national piracy rates continued to decline from 76 per cent in 1994 to 55 per cent in 2002, the decline in piracy rates were not perfectly correlated to economic growth rates in individual countries. For example, while China's national income grew by 104.5 per cent, piracy rates fell just by –5.2 per cent, whereas when the national income of Ireland rose by 108.1 per cent, piracy rates fell by –43.2 per cent. See Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates' (2008) 81 Journal of Business Ethics 39, 40. When countries with similar economic growth rates or similarly high per capita incomes diverge radically on copyright compliance levels, one may try to attribute it to the existence (or non-existence) of strong laws. But this cannot be a major reason today, as the punishments prescribed in most national copyright legislation for piracy are highly similar, by virtue of the minimum standards adopted under the TRIPS Agreement, which is an integral part of the WTO system.

[12] See Gail Tom and others, 'Consumer Demand for Counterfeit Goods' (1998) 15 Psychology and Marketing 405, 406; Wendy W. N. Wan and others, 'Do Traditional Chinese Cultural Values Nourish a Market for Pirated CDs' (2009) 88 Journal of Business Ethics 185, 185; and Kenneth K. Kwong and others, 'The Effects of Attitudinal and Demographic Factors on Intention to Buy Pirated CDs: The Case of Chinese Consumers' (2003) 47 Journal of Business Ethics 223, 224.

[13] See Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (Stanford, Stanford University Press 2003) 214–215. For an interesting article that illustrates how some of the current norms are incompatible with the current copyright laws, using the fictional example of an ordinary day in the life of a law professor, see John Tehranian, 'Infringement Nation: Copyright Reform and the Law/Norm Gap' (2007) 2007 Utah Law Review 537.

However, this is a challenging task in view of the *public goods* characteristics of many of the information products in the digital age.[14] The two most important characteristics of information goods in this regard are the non-rivalrous character of consumption and the relative non-excludability of most information goods.[15] A product is considered as non-rivalrous in consumption, when the use of the product does not deplete the product.[16] For example, when we share the digital copy of a movie with a friend, it generally does not reduce our possibilities of watching that movie or even sharing it further. On the other hand, when we share tangible goods like a pen or a book with friends, we won't be able to use them concurrently. This difference gives most of the information goods in the digital era a non-rivalrous character of consumption. The second characteristic, relative non-excludability, is also equally important here. It is a fact that it is relatively very difficult for the right holders to ensure that people will not share the copyrighted product with others.[17] To view it differently, the transaction costs for the right holders to monitor the activities of users and enforce rights are very high when compared with the benefits from such monitoring, and this gives most information goods a relatively non-excludable character.[18] These *public goods* characteristics make it difficult for most information products to attain exclusivity as a social norm in any country, when compared with acceptance of exclusivity in tangible goods. This is visible from the high piracy rates even in many of the Western countries with deeper legislative roots in the area of intellectual property laws.[19]

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[14] See, for example, Tarleton Gillespie, *Wired Shut: Copyright and the Shape of Digital Culture* (Cambridge, MIT Press 2007) 25–27.

[15] Ibid. See, also, Anne Barron, 'Copyright Infringement, "Free Riding" and Lifeworld' in Lionel Bently, Jennifer Davis and Jane C. Ginsburg (eds), *Copyright and Piracy: An Interdisciplinary Critique* (Cambridge, Cambridge University Press 2010) 94.

[16] See Yochai Benkler, *The Wealth of Networks* (New Haven, Yale University Press 2006) 36; Tarleton Gillespie, *Wired Shut: Copyright and the Shape of Digital Culture*, 25; and Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox,* 214.

[17] See Tarleton Gillespie, *Wired Shut: Copyright and the Shape of Digital Culture*, 25.

[18] Copyright scholars like Goldstein are of the view that the transaction costs might drop down with the evolution of new technologies that could monitor each and every use made by a consumer. See Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox,* 201–203.

[19] The result from one of the recent surveys conducted in the United States on perceptions of the people regarding copyright infringement and enforcement is a good example in this regard. See Joe Karaganis, 'The Copy Culture Survey: Infringement and Enforcement in the US' <http://piracy.ssrc.org/the-copy-culture-survey-infringement-and-enforcement-in-theus/#more-1306> accessed 30 November 2011. See, also, Loraine Gelsthorpe, 'Copyright Infringement: A Criminological Perspective' in Lionel Bently, Jennifer Davis and Jane C. Ginsburg (eds), *Copyright and Piracy: An Interdisciplinary Critique* (Cambridge, Cambridge University Press 2010) 393–394 and 401.

The challenges for gaining acceptance of exclusivity in information goods as a social norm are considered to be even higher in countries with higher social emphasis on sharing and where IP laws grow not out of a natural domestic legislative process but evolve through political or economic pressure from outside.[20]

Although the importance of the attitude of consumers and the local socio-cultural factors have not received much attention in legal research in this area, they have been undergoing discussion and exploration in other fields like management, psychology, sociology and economics. Two categories of literature can be broadly seen from those fields. While the first group of literature are seen attempting to explore the relationship between the attitude of consumers and piracy, the second group of literature can be seen exploring the relationship between local cultural factors and piracy.

The group of works that have attempted to explore the relationship between attitude and piracy suggests that attitude is one of the most significant predictors of the intention to purchase pirated or counterfeit products.[21] Some of the studies specifically observe that consumers who have a favourable disposition towards pirated or counterfeited products are even more likely to recommend them to their friends.[22] Some of the significant factors that are considered to influence the attitude of a person towards piracy include perceptions regarding the lawfulness

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[20] For an interesting research work that analyses this issue in the context of intellectual property law evolution in China, see generally, William P. Alford, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford, Stanford University Press 1995). See, also, Andrew Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China* (Ithaca, Cornell University Press 2005) 210–217.

[21] See, for example, Timothy Paul Cronan and Sulaiman Al-Rafee, 'Factors that Influence the Intention to Pirate Software and Media' (2008) 78 Journal of Business Ethics 527, 535; Chechen Liao and others, 'Predicting the Use of Pirated Software: A Contingency Model Integrating Perceived Risk with the Theory of Planned Behavior' (2010) 91 Journal of Business Ethics 237, 244; Chow-Hou Wee and others, 'Non-price Determinants of Intention to Purchase Counterfeit Goods - An Exploratory Study' (1995) 12 International Marketing Review 19, 29; and Lori N. K. Leonard and others, 'What Influences IT Ethical Behavior Intentions-Planned Behavior, Reasoned Action, Perceived Importance, or Individual Characteristics?' (2004) 42 Information & Management 143, 150. It may be noted here that many works from fields other than law does not make a clear demarcation between pirated products and counterfeit products in their analyses. For example, a careful analysis of the questionnaires used in most of those empirical studies show that they include both pirated CDs that comes generally within the domain of copyright infringement and the counterfeited brands that generally comes within the domain of trademark infringement.

[22] See, for example, Swee Hoon Ang and others, 'Spot the Difference: Consumer Responses Towards Counterfeits' (2001) 18 Journal of Consumer Marketing 219, 232.

of the act in question,[23] perceptions of morality of the act in question,[24] ethical attitude of the people,[25] perceived risks[26] including legal risks (risks that people perceive regarding punishment probability and punishment severity), product performance risks (risks that people perceive regarding performance of the product in question), financial risks (risks that people perceive regarding real financial value of the product), social risks (risks that one's esteem might be lowered in the minds of others if one engages in a particular conduct) and psychological risks (risks regarding potential loss of self-image from a behaviour), cognitive beliefs[27] (beliefs of a person regarding the attributes or characteristics

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[23] Some studies show that a consumer invokes his or her lawfulness attitude selectively, when she or he is confronted with a moral conflict during a purchase. See, for example, Victor V. Cordell and others, 'Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants' (1996) 35 Journal of Business Research 41, 49. Some studies have also addressed the issue of perceptions of lawfulness in a cross-cultural context. See, for example, W. R. Swinyard and others, 'The Morality of Software Piracy: A Cross-Cultural Analysis' (1990) 9 Journal of Business Ethics 655, 659 and Xuemei Bian and Cleopatra Veloutsou, 'Consumers' Attitudes Regarding Non-deceptive Counterfeit Brands in the UK and China' (2007) 14 Brand Management 211, 218.

[24] For a study that explores the differences in perceptions of morality of software piracy in a cross cultural context, see W. R. Swinyard and others, 'The Morality of Software Piracy: A Cross-Cultural Analysis', 659.

[25] See, for example, Kenneth K. Kwong and others, 'The Effects of Attitudinal and Demographic Factors on Intention to Buy Pirated CDs: The Case of Chinese Consumers', 226.

[26] See, for example, Xuemei Bian and Luiz Moutinho, 'An Investigation of Determinants of Counterfeit Purchase Consideration', (2009) 62 Journal of Business Research 368, 370; Benjamin Tan, 'Understanding Consumer Ethical Decision Making with respect to Purchase of Pirated Software' (2002) 19 Journal of Consumer Marketing 96; Victor V. Cordell and others, 'Counterfeit Purchase Intentions: Role of Lawfulness Attitudes and Product Traits as Determinants', 48–50; Jyh-Shen Chiou and others, 'The Antecedents of Music Piracy Attitudes and Intentions' (2005) 57 Journal of Business Ethics 161, 168–171; and Chechen Liao and others, 'Predicting the Use of Pirated Software: A Contingency Model Integrating Perceived Risk with the Theory of Planned Behavior', 240–241. Studies differ with regard to the influence of different types of risks. For example, in one of the studies that focused on the Taiwanese society, it was found that performance risks, social risks and prosecution risks had non-significant influence on the attitude of people, while psychological risks had significant influence. See Chechen Liao and others, 'Predicting the Use of Pirated Software: A Contingency Model Integrating Perceived Risk with the Theory of Planned Behavior', 243–244.

[27] See Sulaiman Al-Rafee and Timothy Paul Cronan, 'Digital Piracy: Factors that Influence Attitude Toward Behaviour' (2006) 63 Journal of Business Ethics 237, 241 and Kimi van der Byl and Jean-Paul Van Belle, 'Factors Influencing South African Attitudes Toward Digital Piracy' (2008) 1 Communications of the IBIMA 202, 204. Individuals with strong cognitive beliefs were found to have a more lenient attitude towards digital piracy. See Kimi van der Byl and Jean-Paul Van Belle, 'Factors Influencing South African Attitudes Toward Digital Piracy', 207–208 and Sulaiman Al-Rafee and Timothy Paul Cronan, 'Digital Piracy: Factors that Influence Attitude Toward Behaviour', 246.

of an object or the outcomes of a behaviour, in a situation where she or he is confronted with an ethical decision making), subjective norms[28] (norms of other people who are important to a person, like parents, teachers or friends, which is often comprehended as the 'social pressure' on the person), previous purchase experiences,[29] perceived social costs of piracy[30] and perceived social benefits of piracy.[31] Some of the previous studies suggest that demographic factors like gender and age also have a significant influence on attitude towards piracy, although a uniform opinion is lacking in many of these matters. For example, many studies show that males have a more favourable attitude towards piracy.[32]

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[28] See, for example, Sulaiman Al-Rafee and Timothy Paul Cronan, 'Digital Piracy: Factors that Influence Attitude Toward Behaviour', 247. This work shows that in the context of digital piracy, it is the most significant factor determining attitude towards piracy. Ibid., 248. See, also, Jenessa Malin and Blaine J. Fowers, 'Adolescent Self-control and Music and Movie Piracy' (2009) 25 Computers in Human Behavior 718, 720–721 and Martha M. Eining and Anne L. Chirstensen, 'A Psycho-Social Model of Software Piracy: The Development and Test of a Model' in Roy Dejoie and others (eds), *Ethical Issues in Information Systems* (Boston, Boyd & Fraser Publishing Company 1991) 182–188, 186. In the empirical findings of Eining and Chirstensen also subjective norms have the highest significance, though one should note that they have used the term 'normative expectations' instead of 'subjective norms' for referring to internalized norms of the individual as well as the impact of the opinions of friends and associates regarding the correctness of the specified behaviour. Ibid., 184.

[29] See, for example, Gail Tom and others, 'Consumer Demand for Counterfeit Goods', 409 and Swee Hoon Ang and others, 'Spot the Difference: Consumer Responses Towards Counterfeits', 227.

[30] See, for example, Kenneth K. Kwong and others, 'The Effects of Attitudinal and Demographic Factors on Intention to Buy Pirated CDs: The Case of Chinese Consumers', 225–226 and 230–231. See, also, Gail Tom and others, 'Consumer Demand for Counterfeit Goods', 408–410.

[31] See, for example, Kenneth K. Kwong and others, 'The Effects of Attitudinal and Demographic Factors on Intention to Buy Pirated CDs: The Case of Chinese Consumers', 226 and 230–231; Gail Tom and others, 'Consumer Demand for Counterfeit Goods', 408–410; and Swee Hoon Ang and others, 'Spot the Difference: Consumer Responses Towards Counterfeits', 227.

[32] See, for example, Susan L. Solomon and James A. O'Brien, 'The Effect of Demographic Factors on Attitudes Toward Software Piracy' in Roy Dejoie and others (eds), *Ethical Issues in Information Systems* (Boston, Boyd & Fraser Publishing Company 1991) 181; Darryl A. Seale and others, 'It's Not Really Theft!: Personal and Workplace Ethics That Enable Software Piracy' (1998) 17 Behaviour & Information Technology 27, 36; Ranjan B. Kini and others, 'Shaping of Moral Intensity Regarding Software Piracy: A Comparison Between Thailand and U.S. Students' (2004) 49 Journal of Business Ethics 91, 102; Swee Hoon Ang and others, 'Spot the Difference: Consumer Responses Towards Counterfeits', 229; and Kenneth K. Kwong and others, 'The Effects of Attitudinal and Demographic Factors on Intention to Buy Pirated CDs: The Case of Chinese Consumers', 228–229.

But in some studies gender is found to have no significant effect on piracy.[33] Similar differences can also be seen with regard to the influence of age.[34] The contradictory findings on demographic factors may also lead us to think about the possibilities of cultural aspects suppressing the demographic differences.[35]

As mentioned earlier, the second group of literature from those disciplines has attempted to explore the relationship between local cultural factors and piracy. Most of the works in this category use the data provided by Geert Hofstede on national cultural differences and the data provided by various industry organizations on piracy to find correlations among cultural factors and piracy. For a better understanding of the major findings from such works, it is important to have an overview of Hofstede's cultural dimensions. Hofstede is one of the most cited authors in the area of cross-cultural studies, and he defines *culture* as the collective programming of mind that distinguishes the members of one group or category of people from another.[36] On the basis of extensive empirical analysis, he argues that the national cultures differ on five important dimensions, namely power distance, collectivism versus

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[33] See, for example, Xuemei Bian and Luiz Moutinho, 'An Investigation of Determinants of Counterfeit Purchase Consideration', 375 and Alok Mishra and others, 'Software Piracy Among IT Professionals in Organizations' (2006) 26 International Journal of Information Management 401, 408–409. One of the studies observes that there are no statistically significant differences between genders, once age and personality are taken into consideration. See Viren Swami and others, 'Faking It: Personality and Individual Difference Predictors of Willingness to Buy Counterfeit Goods' (2009) 38 The Journal of Socio-Economics 820, 824.

[34] Many studies show that young people have a more favourable attitude towards piracy. See, for example, Alain d'Astous and others, 'Music Piracy on the Web – How Effective Are Anti-Piracy Arguments? Evidence From the Theory of Planned Behaviour' (2005) 28 Journal of Consumer Policy 289, 307; Gail Tom and others, 'Consumer Demand for Counterfeit Goods', 418; Susan L. Solomon and James A. O'Brien, 'The Effect of Demographic Factors on Attitudes Toward Software Piracy', 173 and 181; Viren Swami and others, 'Faking It: Personality and Individual Difference Predictors of Willingness to Buy Counterfeit Goods', 824; and Alok Mishra and others, 'Software Piracy Among IT Professionals in Organizations', 409. But some studies are of the view that age is an insignificant factor. See, for example, Swee Hoon Ang and others, 'Spot the Difference: Consumer Responses Towards Counterfeits', 229 and Xuemei Bian and Luiz Moutinho, 'An Investigation of Determinants of Counterfeit Purchase Consideration', 375.

[35] For example, in one of the cross-cultural studies, demographic factors of gender and age are found to have influence on the counterfeit brands purchase intention among the British consumers, while it did not have much influence among the Chinese consumers. See Xuemei Bian and Cleopatra Veloutsou, 'Consumers' Attitudes Regarding Non-deceptive Counterfeit Brands in the UK and China', 216.

[36] See Geert Hofstede, *Culture's Consequences* (Thousand Oaks, CA, Sage Publications 2001) 9.

individualism, femininity versus masculinity, uncertainty avoidance and long-term orientation versus short-term orientation.[37]

The first dimension, power distance, refers to the extent to which the less powerful members of organizations and social institutions like family expect and accept that there is unequal distribution of power.[38] The second dimension, individualism versus collectivism, relates to the degree to which individuals are integrated into groups in a society.[39] For example, in individualistic societies, the bonds between individuals are considered to be weak, and everyone is expected to look after herself/himself and their immediate family, whereas in a collectivist society people are integrated into stronger and bigger groups.[40] The third dimension, masculinity versus femininity, refers to the distribution of roles between the genders.[41] While the masculine countries show a wider gap between values of women and values of men, feminine countries show similar values for both women and men.[42]

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[37] Ibid., 29. The first four factors were identified from an empirical study based on nearly 116,000 questionnaires. This study was conducted by him for IBM Corporation, and the survey was conducted among the IBM employees in more than 50 countries between the years 1967 and 1973. Ibid., 41–77. The fifth dimension, *long-term orientation versus short-term orientation*, was intended to cover the Eastern cultural values and the findings were based on a questionnaire developed by Dr Michael Harris Bond. This study was conducted in a comparatively smaller sample of students in 23 countries. Ibid., 351. Some scholars have questioned the extent of validity of the findings of Hofstede, based on the methodological issues including reliance on data from employees within one big international corporation to draw conclusions about different national cultures. See, for example, Brendan McSweeney, 'Hofstede's Model of National Cultural Differences and Their Consequences: A Triumph of Faith - A Failure of Analysis' (2002) 55 Human Relations 89. However, Hofstede has responded to many of those criticisms. The fact that no similarly comprehensive data are still available on national cultural dimensions makes his work one of the most cited works on cross-cultural issues. For a brief overview of the responses of Hofstede towards the criticisms against his work, see Geert Hofstede, 'Dimensions Do Not Exist: A Reply to Brendan McSweeney' (2002) 55 Human Relations 1355. See, also, M. L. Jones, 'Hofstede - Culturally Questionable?' <http://ro.uow.edu.au/commpapers/370/> accessed 26 October 2011.

[38] For detailed discussions and the country scores on this dimension, see Geert Hofstede and Gert Jan Hofstede, *Cultures and Organisations - Software of the Mind* (New York, Mc Graw Hill 2005) 39–72 and Geert Hofstede, *Culture's Consequences*, 79–143.

[39] For detailed discussions and the country scores on this dimension, see Geert Hofstede and Gert Jan Hofstede, *Cultures and Organisations - Software of the Mind*, 73–114 and Geert Hofstede, *Culture's Consequences*, 209–278.

[40] Ibid.

[41] For detailed discussions and the country scores on this dimension, see Geert Hofstede and Gert Jan Hofstede, *Cultures and Organisations - Software of the Mind*, 115–162 and Geert Hofstede, *Culture's Consequences*, 279–350.

[42] Ibid.

The fourth dimension, uncertainty avoidance, refers to a society's tolerance for uncertainty and ambiguity, and it shows the extent to which a culture programs its members to feel comfortable or uncomfortable in unexpected situations.[43] The fifth dimension, long-term orientation versus short-term orientation shows two categories of values.[44] The values associated with long-term orientation are thrift and perseverance, while those relating to short-term orientation are respect for tradition, fulfilling social obligations and protecting one's 'face'.[45]

Most of the studies that have analysed the relationship between local cultural aspects and piracy using Hofstede's cultural dimensions show that many of the cultural dimensions are relevant for a better contextual understanding of piracy. For example, many studies are of the view that whether a country is individualistic or collectivist in nature is a significant factor in determining piracy levels in that country.[46] This is hardly surprising as collectivist societies place greater emphasis on sharing, and information goods are also subject to the same expected standards of sharing.[47] Some studies also observe that power distance can slowdown the decline of piracy rates.[48] The logical argument here is that societies with high power distance may have higher tolerance for unethical behaviours.[49] For example, whistle-blowing

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[43] For detailed discussions and the country scores on this dimension, see Geert Hofstede and Gert Jan Hofstede, *Cultures and Organisations - Software of the Mind*, 163–205 and Geert Hofstede, *Culture's Consequences*, 145–208.

[44] For detailed discussions and the country scores on this dimension, see Geert Hofstede and Gert Jan Hofstede, *Cultures and Organisations - Software of the Mind*, 207–238 and Geert Hofstede, *Culture's Consequences*, 351–372.

[45] Ibid.

[46] See, for example, Bryan W. Husted, 'The Impact of National Culture on Software Piracy' (2000) 26 Journal of Business Ethics 197, 206–207; Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates' (2008) 81 Journal of Business Ethics 39, 43; and Barry Shore and others, 'Softlifting and Piracy: Behavior Across Cultures' (2001) 23 Technology in Society 563, 577. But there are also some studies which suggest that this dimension is insignificant in determining piracy levels. For example, Ki et al. observe in their study that the individualism–collectivism dimension does not have an effect on music piracy. See Eyun-Jung Ki and others, 'Exploring Influential Factors on Music Piracy Across Countries' (2006) 56 Journal of Communication 406, 418–419.

[47] See Bryan W. Husted, 'The Impact of National Culture on Software Piracy', 202–203.

[48] See, for example, Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates', 43–45 and Barry Shore and others, 'Softlifting and Piracy: Behavior Across Cultures', 577. There are also some studies that do not find the power distance factor as significant. See, for example, Bryan W. Husted, 'The Impact of National Culture on Software Piracy', 206–207.

[49] See Bryan W. Husted, 'The Impact of National Culture on Software Piracy', 202–203.

and resulting punishments for unethical behaviours are generally not promoted in such societies, and this may also slowdown the decline of piracy.[50] Similarly, some studies show that masculinity–feminity dimension may also give us some hints about the piracy levels in a country.[51] One of the possible reasons behind the negative relationship between masculinity and piracy rates is that masculinity involves an element of acquiring prestige by having more material possessions, as compared to peers.[52] The quest for exclusivity may result in lesser incentives to share those possessions with others, and this may reduce piracy rates.[53] The fourth dimension, uncertainty avoidance, is also found in some studies to be a significant factor that could slowdown the decline of piracy rates.[54] Some scholars suggest that countries which are high in uncertainty avoidance index are characterized by a large number of rules and regulations for reducing uncertainty, including those relating to intellectual property. The publicity regarding those intellectual property legislation might persuade people in high uncertainty avoidance countries to reduce piracy.[55]

Interestingly, most of the socio-cultural works that focused on Asia suggest that Asians have a more lenient attitude towards piracy.[56] The fact that works like that of Hofstede point towards many differences in the values of Westerners and Easterners makes this result not that surprising but at the

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[50] See Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates', 41.

[51] For example, in the context of software piracy, Shore et al. show that masculinity is negatively correlated to software piracy. See Barry Shore and others, 'Softlifting and Piracy: Behavior Across Cultures', 577. See, also, Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates', 45. As in the case of influence of other dimensions, there are also some studies that show masculinity–feminity dimension as an insignificant factor in determining piracy levels. See, for example, Bryan W. Husted, 'The Impact of National Culture on Software Piracy', 206–207.

[52] See Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates', 46.

[53] Ibid.

[54] See, for example, Barry Shore and others, 'Softlifting and Piracy: Behavior Across Cultures', 577. See, also, Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates', 45. In some studies, this dimension is found to be insignificant. See, for example, Bryan W. Husted, 'The Impact of National Culture on Software Piracy', 206–207.

[55] See Trevor T. Moores, 'An Analysis of the Impact of Economic Wealth and National Culture on the Rise and Fall of Software Piracy Rates', 47–48.

[56] See, for example, W. R. Swinyard and others, 'The Morality of Software Piracy: A Cross-Cultural Analysis', 656–657.

same time worthy of more exploration. For example, some authors cite the example of evaluation of good and bad in the Chinese culture.[57] The Chinese culture views good and bad as social evaluations, rather than objectively defined cognitive objects.[58] Many scholars also point out the emphasis in the traditional Chinese cultural values on sharing, and they cite the Chinese proverb 'He who shares is to be rewarded, he that does not, condemned' as a classical example that represents this traditional value.[59]

Some studies also report that people in some of the Asian countries tend to make moral decisions on the basis of consequences of their moral behaviour and less on the basis of rules.[60] This view is more or less extended to a wider Asian context, when we see from another comparative study that the Japanese judge morality in situational contexts, while Americans are more likely to view morality in absolute terms, based on principles of right and wrong.[61] Another interesting comparative study, which attempted a comparison of similarities and differences in the development of moral intensity regarding software piracy among students in Thailand and the United States, has also shown that there are significant differences between the groups.[62] An exceptional legal research that analysed the working of intellectual property law in China from a socio-historical context also illustrates how China's unique political culture and cultural attitude of the people influenced the evolution and features of its present IP laws and enforcement rates.[63]

Some studies also show that different cultural values within one society may even be conflicting in some contexts. For example, in one of the recent works that focused on China, the authors analysed how two different traditional cultural values, face consciousness and other orientation, might interact in

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[57] See E. Kin-wai Lau, 'Factors Motivating People Toward Pirated Software' (2006) 9 Qualitative Market Research 404, 408.

[58] Ibid.

[59] See W. R. Swinyard and others, 'The Morality of Software Piracy: A Cross-Cultural Analysis', 656. See, also, Swee Hoon Ang and others, 'Spot the Difference: Consumer Responses Towards Counterfeits', 221.

[60] See, for example, W. R. Swinyard and others, 'The Morality of Software Piracy: A Cross-Cultural Analysis', 657.

[61] See Millie R. Creighton, 'Revisiting Shame and Guilt Cultures: A Forty-Year Pilgrimage' (1990) 18 Ethos 279, 297.

[62] See Ranjan B. Kini and others, 'Shaping of Moral Intensity Regarding Software Piracy: A Comparison Between Thailand and U.S. Students', 102.

[63] See generally, William P. Alford, *To Steal a Book is an Elegant Offence - Intellectual Property Law in Chinese Civilisation*.

contexts like buying pirated goods.[64] The term 'face consciousness' refers to emphasis on prestige, recognition and status, and it has the general meaning that one's visible attributes are more important than one's invisible qualities.[65] The second traditional value they analysed, other orientation, refers to being considerate and accommodating and being able to see things from other people's perspectives.[66] Their empirical results show that consumers with face consciousness are more likely to buy counterfeit/pirated products and other material possessions to gain face and the authors argue that the high level of face consciousness overshadows the illegality as well as the potential shame that may arise from the purchase of pirated CDs.[67] The study also argues that face consciousness can lead to risk aversion, which in turn leads to greater compliance with traditional practices.[68] According to the authors, the traditional Chinese practice of learning is by copying, and this supports and legitimizes the buying of pirated CDs.[69] They also make the observation that face consciousness has a direct positive effect on the amount of perceived social benefits of piracy, and one of the possible explanations suggested by the authors is that the Chinese look pirated CDs from a mere practical utility point of view, as they are products consumed in private.[70] Their empirical analysis shows that the cultural value of other orientation is too weak to overcome the positive effects caused by the cultural value of face consciousness.[71]

If the attitude of consumers and the local socio, cultural and economic factors have a significant influence in determining the piracy levels in a country, it becomes obvious that the present solitary approach of strong enforcement measures may never achieve the objective of higher copyright compliance levels in this digital era. As some scholars have shown, for better copyright protection in even developed countries, cultural norms must support the protection.[72] Interestingly, so far no comprehensive studies have attempted to inquire about the attitude of people in India towards piracy, although the issue of IP enforcement in India has been a subject of discussion

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[64] See Wendy W. N. Wan and others, 'Do Traditional Chinese Cultural Values Nourish a Market for Pirated CDs', 187.

[65] Ibid.

[66] Ibid.

[67] Ibid., 192–193.

[68] Ibid., 193.

[69] Ibid.

[70] Ibid.

[71] Ibid., 194.

[72] See M. Traphagan and A. Griffith, 'Software Piracy and Global Competitiveness: Report on Global Software Piracy', 449.

in many studies. Considering the fact that Asia is a heterogeneous society, there is a strong need for such an inquiry, so as to get a better understanding of the perspectives of the people in India. This would also help to initiate steps for higher voluntary compliance of copyright law in India.

This book aims to contribute in this direction by exploring three questions, in the background of piracy in the Indian film industry – (1) What are the perceptions of the people in India regarding copyright piracy? (2) What are the social, cultural, historical, legal and economic dimensions of copyright piracy in India? and (3) What are the appropriate legal and policy options ahead, given the findings from the previous two questions? This inquiry of interface between the 'social' and the 'legal' assumes special significance as the world recently celebrated the 300th anniversary of the Statute of Anne, the first 'modern' copyright law in the world.[73]

Unlike most of the previous works that focused on either legal or economic factors, this book attempts a more comprehensive and more interdisciplinary approach by engaging in participatory research with different intellectual communities to understand the diverging perspectives surrounding piracy in India. The mixed methods research framework used in this regard is described in detail in Appendix 1. The choice of describing methodology in detail in an appendix is to ensure transparency in this exploratory study. This would also enable replications of similar studies within and outside India. Such replications are necessary for ensuring the validity of the findings from any exploratory study and thereby the overall scientific progress in the area. Some of the important aspects investigated through an empirical survey conducted as part of the research include perceptions of consumers regarding morality of piracy, social costs of piracy, social benefits of piracy, lawfulness of many of the pirating acts, perceived legal risks and subjective norms. The interviews with other stakeholders in the field, including people from the film industry, consultants, academicians, journalists, historians and lawyers working in this area, complement the data from the empirical survey and bring forward novel insights about the legal, social and economic factors

[73] The full title of this legislation was '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, 1710, 8 Anne, c.19'. The full text of this legislation is available in Lionel Bently and Martin Kretschmer (eds), *Primary Sources on Copyright (1450–1900)* <http://www.copyrighthistory.org> accessed 15 October 2011. For an interesting historical analysis of this legislation, see Lionel Bently, Uma Suthersanen and Paul Torremans (eds), *Global Copyright: Three Hundred Years Since the Statute of Anne, from 1709 to Cyberspace* (Glos, Edward Elgar Publishing Ltd. 2010) 7–78.

surrounding piracy in India. On the basis of those findings and the analysis of the present legal provisions relating to copyright enforcement, the book identifies some of the areas where legal and policy reforms are required. The legal reforms suggested in the area of copyright law through this bottom-up approach may even have positive implications for reforms in other areas of law. The study also identifies some of the affirmative measures required from the side of industry to increase the accessibility and affordability of movies for the common man. The suggested simultaneous (and not sequential) approaches from the side of the state and the industry can increase the total welfare, by increasing access of copyrighted works to the common people and increasing the incentives for the industry to produce more creative works.

Why India and Indian Film Industry?

The Indian film industry is a cluster of different regional film industries within India.[74] It has a rich history spanning more than 100 years.[75] The first indigenously produced movie in India, *Raja Harischandra*, was released in 1913.[76] This was a silent movie, based on the famous Indian epic *Mahabharata*,

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[74] Although many people tend to use the term 'Bollywood' as a synonym for the film industry in India, it is important to note that Bollywood is just one of the regional film industries within India, representing the Hindi language movies. Data regarding the number of movies produced in India in the year 2011 show that Hindi movies constitute only 17 per cent of the total number of movies and that the remaining 83 per cent of movies came from other regional film industries. Among the other regional film industries, Telugu (18 per cent), Tamil (18 per cent), Kannada (13 per cent), Bengali (12 per cent), Marathi (10 per cent) and Malayalam (9 per cent) constitute the highest in terms of the percentage of movies certified. See KPMG, *Digital Dawn: FICCI-KPMG Indian Media & Entertainment Industry Report 2012* (2012), 70–71.

[75] The history of the Indian film industry has not yet received due academic attention, although it has a rich history almost dating back to the invention of *cinematographe*. Though there are considerable controversies as to who can be considered as the first inventor of what we now broadly refer as *motion pictures* or *movies*, the first public screening of a cinematographic film in the world is generally attributed to the year 1895, when Lumiere brothers used their invention *cinematographe* to project *Sortie d'usine*, the first version of *La sortie des usines Lumière* (Workers Leaving the Lumière Factory). Cinematographe technology reached India the very next year (1896), through the representatives of Lumiere brothers. For a good overview of the historical debates regarding the 'first' inventor of motion pictures, see André Gaudreault and Tom Gunning, 'Introduction' in André Gaudreault (ed.), *American Cinema 1890–1909: Themes and Variations* (New Brunswick, Rutgers University Press 2009), 1–10. For an overview of the initial days of Indian cinema, see Geoffrey Jones and others, 'Can Bollywood Go Global?' *Harvard Business School Cases* (9-806-040, 9 July 2008) 6.

[76] <http://archive.org/details/RajaHarishchandra1913> accessed 4 February 2013.

and was a commercial success. The first Indian movie with sound, *Alam Ara*, was released in 1931, and it was made in two languages – Hindi and Urdu.[77] Reports suggest that it was a 'goldmine at the box office', and its success further fuelled the growth of the film industry in India to the present form.[78] It is the biggest film industry in the world today, in terms of the number of movies produced per year.[79] But more than those rich historical aspects, diversity and size of the Indian film industry, there are a few other factors that significantly influenced the choice of Indian film industry (and also India) for this exploratory study on piracy.

The choice of India was influenced primarily by four factors. The first one, as mentioned earlier, is the clear dearth of research relating to India in this direction. So far, no independent academic studies have attempted to analyse the perspectives of consumers in India regarding piracy, and no works have tried to bring forward suggestions based on those perspectives. As visible from the discussions in the earlier section, most of the previous works were conducted in other Asian countries like China, and some scholars have extended their findings to whole of Asia, although Asia is a highly heterogeneous society.[80]

Second, India is generally considered as one of those countries with a weak IP enforcement system. The recent Special 301 Report from the US Government is a good example in this regard.[81] The 2012 Special 301 Report has retained India on priority watch list and has specifically asked the Indian government to strengthen the protection and enforcement of IP, including copyright.[82] The specific suggestions put forward in the report include strengthening of the criminal enforcement system by imposing *deterrent-level* sentences.[83] A study like the present one has more importance in a country with a weak IP enforcement system.

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[77] <http://www.imdb.com/title/tt0021594/> accessed 4 February 2013.

[78] Like most of the Indian movies of the present time, this movie also contained many songs. See Surendra Miglani, 'Talking Images: 75 Years of Cinema' *The Tribune* (26 March 2006) <http://www.tribuneindia.com/2006/20060326/spectrum/main1.htm> accessed 10 May 2010.

[79] Data as on 2011. <http://www.uis.unesco.org/culture/Pages/movie-statistics.aspx> accessed 6 February 2013.

[80] See, for example, W. R. Swinyard and others, 'The Morality of Software Piracy: A Cross-Cultural Analysis', 656–657.

[81] See Office of the United States Trade Representative, *2012 Special 301 Report* (April 2012) 35–36, <http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report_0.pdf> accessed 2 January 2013.

[82] Ibid.

[83] Ibid.

Third, although India has seen impressive economic growth in the past two decades by virtue of its economic liberalization policies since 1991, more than 37 per cent of the population in India still lives below the poverty line.[84] In other words, one in every three Indians lives below the poverty line even today. While some may cite this reason for forestalling any further protection of intellectual property in India and the need for a softer position with respect to enforcement actions against piracy, this book wishes to put forward a different view on the issue. If India has to enhance its economic growth in an inclusive manner and if it has to make sure that the benefits of information goods reach every segment of the society, it has to rely on its most fundamental strength – knowledge capital. In other words, if we have to bring forward the millions of economically poor, but intellectually rich, people out of the vicious circle of poverty, we have to see them not just as passive consumers of information but also as active producers of information, whose intellectual products have to be protected.[85] The perceptions of the people regarding intellectual property creation and protection will play an immense role in this new development paradigm, and hence, there is immense importance for a study that explores these dimensions. As illustrated in the next chapter, if better intellectual property protection and positive actions from the side of the industry go hand in hand, the legitimate access to information goods and cultural goods for millions of people in India could be increased substantially. It could also simultaneously increase the incentives for the industry, thereby increasing the overall welfare.

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[84] For data on real GDP growth during the period from 1993 to 2010, see International Monetary Fund, 'Emerging and Developing Economies: Real GDP', *World Economic Outlook: Slowing Growth, Rising Risks* (September 2011) 183, <http://www.imf.org/external/pubs/ft/weo/2011/02/pdf/text.pdf> accessed 30 October 2011. See, also, 'Every Third Indian Under Poverty Line' *BBC* (11 December 2009) <http://news.bbc.co.uk/2/hi/south_asia/8407506.stm> accessed 30 October 2011. It may be noted here that there are different estimates on poverty in India and most of them differs substantially by virtue of the differences in methodologies adopted for poverty estimation. For a critical overview of the poverty estimates in India, see generally, Nilakantha Rath, 'Measurement of Poverty: In Retrospect and Prospect' (2011) XLVI Economic & Political Weekly 40.

[85] This view is also supported by scholars like Anil K. Gupta, who have documented enormous number of innovations and traditional knowledge practices from different rural areas in India. He argues for a portfolio of material and non-material incentives aimed at individuals as well as communities to prevent knowledge erosion and augmenting social growth based on knowledge power. Intellectual property is considered by him as one of the constituent elements in those incentives. See, for example, Anil K. Gupta, 'CBD and TRIPS: Empowering Knowledge Rich, Economically Poor People Through IPR Reforms', 6, <http://www.sristi.org/anilg/papers/CBD%20and%20TRIPS,%2024%20Aug%2005.doc> accessed 30 October 2011.