

The Impact of Parallel Imports of Books, Films / Music and Software on the Indian Economy with Special Reference to Students

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Foreword

The economic and social development of a country depends on the continuous generation of creative ideas and access to those ideas from around the world. Such ideas originate from the efforts of authors of many kinds, including writers, artists, designers, dramatists, musicians, architects, scientists, and producers of sound recordings, films and software. To reward creativity, authors should to be rewarded suitably. Copyright rules and professional ethics provide the minimum protective safeguards the rights of authors over their intellectual property.

While authors deserve this protection, an excessively rigid and inflexible protection regime may fail to generate the full social benefits expected from authors' creations. A balance therefore often needs to be struck when there are conflicting interests of creators and of society. Certain exceptions may be required to protect the larger interests of society, of which authors, of course, form a part.

In November 2010 Report, the Parliamentary Standing Committee with oversight over India's Ministry of Human Resource Development made several observations on the need to amend the copyrights provisions for textbooks in the *Indian Copyright Act, 1957*. The Committee urged the government to ensure that the purpose for which the copyright amendment was proposed, i.e., to protect the interests of students in India, was not lost sight of in moving forward.

The parallel international trade in books and other copyrighted material is often understood as a grey-market trade that occurs through unofficial channels. Thus, while the goods themselves are genuine, the channels of trade are not the same as originally desired by the producers. In this context, the Standing Committee in its 2010 Report had suggested that a new proviso should be introduced in the proposed amendments stating, "provided that a copy of a work published in any country outside India, with the permission of the author of the work and imported from that country into India, shall not be deemed to be an infringing copy."

However, at the urging of industry representatives, the proposed proviso was not inserted into the *Copyright (Amendment) Act, 2012*. This led to intense debate in Parliament. The Union Minister for Human Resource Development, Shri Kapil Sibal, informed the House that the National Council of Applied Economic Research would be asked to examine the issue of the inclusion of the new proviso. The Ministry would then study the NCAER report and, if necessary, a further amendment would be introduced.

The primary objective of this NCAER research study commissioned by the Ministry of Human Resource Development is therefore to examine parallel import restrictions and outline the issues of concern for the producers of copyright material who import their own or their subsidiaries' goods produced abroad, and equally important, to outline the concerns of the consumers of these products in India.

Parallel import restrictions refer to post-sale controls that prevent an alternate channel, other than the authorised agency, from selling legitimate IP products in a different country. At one level, restrictions on parallel imports go against the spirit of free trade that has been the core principle of multilateral and regional trade agreements. But the issues are complex because of the three regimes of national,

regional, and international “exhaustion” of copyrights after the IP protected good is sold for the first time. And they are made more complex because an agreement on parallel imports could not be reached under WTO Rules, implying that each member country may adopt its own policy of exhaustion even as the Rules urge countries to adopt a balanced position catering both to the interests of producers and consumers.

Against its goal, the NCAER Study does a thorough job of exploring the economic logic underlying the concerns expressed on both sides of the parallel book import divide. It is the first comprehensive, evidence-based attempt at documenting and assessing the views of the stakeholders in favor of and against incorporation of the new proviso in a further amendment of India’s Copyright Act. The specific focus of the Study, as desired by the Parliamentary Committee, is on the issue of the availability of academic textbooks for students. In this process, the NCAER team also consulted stakeholders in education, films and music, and computer software.

The NCAER Study points to the near complete lack of understanding between the two sides of the divide, viz. the producers and their consumers. Producers argue that parallel imports, particularly of “remainders,” will destroy India’s publishing industry. Consumers argue that the fear of remainders is baseless. While producers must appreciate the economic logic of introducing the proviso as suggested by the Parliamentary Standing Committee, consumers must also look at safeguards to allay the fears expressed by publishers about the likely decay of publishing activity in India and the consequent loss for Indian students and other readers.

A strong publishing sector adds value to knowledge as well as to the national income of a country. The NCAER Study takes the view that a mature publishing industry in India must mean an industry with a strong base in India of publishing, producing and printing, along with import and rational distribution regimes. It must provide ample opportunities for authors to generate ideas for new books, and publishers to design, copyedit, print, and sell.

Where does the NCAER Study come out? I would urge readers to delve into the Study to learn this for themselves and to appreciate the balancing of concerns that the study team has attempted. The evidence does suggest that permitting parallel imports of printed books is not likely to have an immediate damaging effect on the publishing industry or on the economy. But, its impact does need to be monitored over time. The best way forward would be for mutual understanding and a healthy exchange of views between producers, consumers and other stakeholders to replace the current acrimonious debate between them. The evidence presented in this NCAER Study can help this process. In the end, as with much in policymaking, both parties and the economy stand to gain from arriving at an acceptable solution, even if it does not fully meet each side’s fullest initial demands.

Shekhar Shah
Director-General

New Delhi
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Project Team

Project Leader

Rajesh Chadha

Research Team

Anjali Tandon

Sourabh Bikas Paul

Roopali Aggarwal

Lekshmi R Nair

D V Sethi

Computer and Design Support

Praveen Sachdeva

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1. Publishers' Representatives
2. Consumers' Representatives
3. National Council of Applied Economic Research, New Delhi
4. Delhi School of Economics, University of Delhi
5. Indian Institute of Technology, Delhi
6. Indian Institute of Technology, Madras
7. Tamil Nadu Government Dental College, Chennai
8. Voluntary Health Services, Chennai
9. Madras Medical College, Chennai
10. Institute of Financial Management and Research, Chennai
11. University of Calcutta
12. Indian Institute of Management, Calcutta
13. Ramakrishna Mission Vidyamandir, Kolkata
14. Indian Institute of Technology, Bombay
15. University of Mumbai
16. Indira Gandhi Institute of Development Research, Mumbai
17. Motion Picture Distributors Association (India) Pvt. Ltd (MPDA), Mumbai
18. Film and TV Producers Guild of India Ltd., Mumbai
19. Institute of Social and Economic Change, Bangalore
20. Mount Carmel College, Bangalore
21. Book Distributors Delhi
22. NASSCOM, Delhi

The study has used data from a number of published sources which have been acknowledged to the best of our diligence. We shall be happy to rectify any inadvertent omission.

Table of Contents

1. Introduction	1
1.1. Context of this study	1
1.2. Objectives	4
1.3. Parallel trade and the issue of copyright	4
1.4. Debate on parallel imports	7
1.5. Intellectual property rights and the World Trade Organisation	11
1.6. Competition & trade policy implications of parallel import restrictions	13
1.7. Organisation of this report	14
Annex-1. Indian Copyright Act, 1957	15
Annex-2. Standing Committee Report (Section VII Clause 2): Objections Raised by Organisations and Associations	19
2. Overview of the publishing sector in India	21
2.1. Backdrop	21
2.2. Book readers in India	22
2.3. Printing and publishing activities: Share in GDP	24
2.4. Printing and publishing industry in India: Economic linkages	26
2.5. Indian printing industry: International trade	28
Annex-1. Indian Trade Classification (selected Codes)	41
3. Analysis of price behaviour	45
3.1. Backdrop	45
3.2. Submission 1: Price comparisons	47
3.3. Submission 2: Price comparisons	58
Annex-1: Details of Publishers (Publishers' submission to NCAER)	63
4. Academic Books: Student perceptions	67
4.1. Backdrop	67
4.2. Purchase of books	67
4.3. Interest in buying books	69
4.4. The issue of edition	70
4.5. Foreign authors and editions	70
4.6. Syllabi revision	71
4.7. Prices of books	71

5. Films, music and software issues	73
6. Debate in India: Producers versus consumers	75
6.1. Backdrop	75
6.2. Infringing copy	75
6.3. The size of publishing and printing industry in India's economy	75
6.4. Income generated in the printing and publishing industry	76
6.5. International trade	76
6.6. The debate	77
6.7. Publishing in India	78
6.8. Prices of books	80
6.9. Judicial issues of copyright in India	82
6.10. WTO regulations on international trade	84
6.11. Reminders	86
6.12. The issue of export of books	89
6.13. Additional observations on consumers' submission	90
6.14. Additional observations on publishers' submission	91
Annex-1. Discussions Held With Stakeholders	95
7. Concluding remarks	97

Appendix – I. Publishers' Presentation to NCAER

Appendix – II. Proponents of Parallel Imports (Presentation to NCAER)

Appendix - III. Note on Section 2(m) of the Copyright (Amendment) Bill, 2010 by Prof. N.S. Gopalakrishnan

Appendix – IV. Availability of Readable Formats for Differently Abled Persons

References

List of Tables

1. Introduction	1
Table 1.1: Trade in copyright material	8
2. Overview of the publishing sector in India	21
Table 2.1: Youth demographics.....	23
Table 2.2: Distribution of literate youth by level of education.....	23
Table 2.3: Enrolment in degree and higher programmes.....	23
Table 2.4: Share in GDP, publishing, printing and paper industries (%)	25
Table 2.5: Cost structure of the printing & publishing industry	25
Table 2.6: Share in value added, publishing and printing industry, select countries.....	26
Table 2.7: World exports of printed matter (SITC group 892), % shares	30
Table 2.8: World imports of printed matter (SITC group 892), % shares	31
Table 2.9: Export-to-import ratio of printed matter (SITC group 892)	32
Table 2.10: Destination of India's exports of printed books (Code 49011010)	33
Table 2.11: Sources of India's imports of printed books (Code 49011010).....	34
Table 2.12: Exports based on HS 2002 Classification (US\$ Million).....	35
Table 2.13: Imports based on HS 2002 Classification (US\$ Million).....	36
3. Analysis of price behaviour	45
Table 3.1: Profile of book titles by publisher	47
Table 3.2: Type of publication by publisher	48
Table 3.3: Exchange rates used in the study	49
Table 3.4: Type of education book by education publisher.....	50
Table 3.5: Education books used in the sample.....	50
Table 3.6: Distribution of education books in the sample by subject.....	51
Table 3.7: Publications by subject	51
Table 3.8: Price behaviour of education books.....	52
Table 3.9: Price behaviour of education books by subject	52
Table 3.10: Price behaviour of education books by publisher.....	53
Table 3.11: Editions and publication gap	54
Table 3.12: Later editions available abroad (including books with both publication gap & later editions)	54
Table 3.13: Price behaviour of education books.....	55
Table 3.14: Trade books by publisher	56
Table 3.15: Trade books in the sample by publisher	56
Table 3.16: Indian price versus international price.....	57
Table 3.17: Comparison of prices by publisher	57

Table 3.18: Comparison between Indian and international prices.....	58
Table 3.19: Distribution of book titles provided by academic publishers	59
Table 3.20: Distribution of education titles with reported local price	59
Table 3.21: Sample of importable education books	60
Table 3.22: List price distribution of importable education titles.....	61
Table 3.23: Price comparison of importable education titles	61
Table 3.24: Price comparison between publishers and an alternate source	61
Table 3.25: Comparison of net prices of importable education titles	62
Table 3.26: Distribution of price difference for importable education titles, discounted prices	62
4. Academic Books: Student perceptions	67
Table 4.1: Responses by city	68
Table 4.2: Responses by institute	68
Table 4.3: Responses by academic stream.....	69
Table 4.4: Distribution of the respondents by gender.....	69
5. Films, music and software issues	73
Table 5.1: Exports and imports of softwares and films in 2010-11 (in US\$).....	74

List of Figures

2. Overview of the publishing sector in India	21
Figure 2.1: Linkages of the printing & publishing industry in India	28
Figure 2.2: India's exports of printed matter	29
Figure 2.3: India's imports of printed matter.....	31
Figure 2.4: Destination of India's exports of printed books (HS Code 49011010), 2011-12 (% of shares)	33
Figure 2.5: Sources of India's imports of printed books (HS Code 49011010), 2011-12 (% of shares).....	34
Figure 2.6: Trade in printed books (HS Code 49011010)	37
Figure 2.7: Trade in printed books, brochures, leaflets, etc. (HS Code 4901)	37
Figure 2.8: Trade in printing industry (HS Code 49)	38
Figure 2.9: Exports of the printing & publishing industry.....	38
Figure 2.10: Imports of the printing & publishing Industry	39

Executive Summary

The present study aims at understanding the role of books, films/music and software on the Indian economy with special reference to students. The background of this work relates to the sixth amendment of the Indian Copyright Act, 1957. The Ministry of Human Resource Development Department-Related Parliamentary Standing Committee, chaired by Shri Oscar Fernandes, had made several deliberations on Copyright Amendment issues. The Committee has rightly noted that the government must ensure that the purpose for which the copyright amendment is proposed, i.e., to protect the interests of students, is not lost sight of.

Its report was presented to the Rajya Sabha and laid on the table of the Lok Sabha on November 23, 2010. The Bill was approved by the Rajya Sabha on May 17, 2012 and the Lok Sabha on May 31, 2012. It received the assent of the President on June 7, 2012.

The Standing Committee sought to insert the following proviso to Clause 2 (m), Chapter-1 of the Indian Copyright Act, 1957:

‘provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy’ (parallel imports).

The Parliamentary Committee had received memoranda on the proposed insertion of a proviso to the definition of the term ‘infringing copy’ from a large number of organisations/associations representing books, films / music and software. In the view of the Standing Committee the proposed inclusion of the proviso in the definition of the term ‘infringing copy’ seems to be a step in the right direction. It cautioned the government that the purpose of the amendment was to protect the interests of students so that they can have access to the latest editions of books at affordable prices. However, the insertion of the proposed new proviso to Clause 2 (m) was dropped from the Copyright (Amendment) Act, 2012, which resulted in debate in the Parliament. The Union Minister for Human Resource Development, Shri Kapil Sibal, suggested that the National Council of Applied Economic Research would be asked to examine inclusion of the new proviso. Human resource development is one of the fundamental factors that ensures the economic development of a country. While this requires excellent educational institutions and teachers, equally important is the availability of world-class textbooks for students at affordable prices.

Parallel trade is often understood as *grey-market* trade that occurs in goods and through unofficial channels. Thus, while the goods are genuine, the channels of trade are not as were originally desired by the producers. The producer might have desired to sell the goods in a particular region or in another region through his authorised trade channel. Such trade is often seen as ‘official’. Trade conducted by a channel not authorised by the producer, in competition with the authorised channel is generally considered to be ‘non-official’ or ‘parallel trade’. Parallel Import Restrictions (PIR) refer to the post-sale controls that prevent an alternate channel, other than the authorised agency, from selling legitimate IP (Intellectual Property) products in a different country.

The issues of copyright constitute an important component in understanding the subject of intellectual property. Copyright-based industries include publishing, music, films and computer software. The output of these industries helps in disseminating knowledge and provide 'raw material' for education, scientific innovation, advances in information technology and socio-cultural aspects of regions and countries around the world.

There are three major regimes of exhaustion of copyrights after the IP protected good is sold for the first time, i.e., the 'first sale' doctrine. Under the 'national exhaustion' regime the exclusive right of the owner of the copyright holder ceases after the first sale within the national boundary. Under 'regional exhaustion', the exclusive rights cease after the first sale in a particular region, although imports into this region from outside countries may be banned. 'International exhaustion' refers to the rights of the copyright holder getting ceased once the IP-protected good is first sold anywhere in the world.

It has been argued that parallel import restrictions (PIRs) strengthen IP holders' control over distribution channels, thereby permitting market segmentation and leading to price discrimination. The third party (unauthorised) has an incentive to operate parallel imports due to the feasibility of price arbitrage. The producers have argued that price discrimination, as compared with uniform price, benefits consumers because it encourages production in different segmented markets. However, restrictions on parallel imports go against the spirit of free trade that has been the core principle of multilateral and regional trade treaties. Trade restrictions lead to undesirable economic side effects. The principle of 'international exhaustion' opens up trade channels that benefit consumers.

The producers of copyright material (books, films / music and software) argue that:

- Parallel imports would dilute the 'commercial potential of exploitation of a work'.
- National exhaustion is beneficial to the economy. It allows exclusive distribution arrangements to be formed and respected. It keeps prices low in the country and helps build a strong domestic copyright industry.
- Parallel import would lead to imbalance of trade. Counterfeiting activities would increase across borders. There would be total disruption of authorised distribution channels. It would be impossible for customs and border police to apprehend the import of illegal copies.

The consumers including some of the IP law experts have countered the arguments put forth by the producers of copyright material. They argue that:

- Indian copyright law from the very inception recognised the principles of international exhaustion.
- Parallel imports and the concept of international exhaustion promote free trade and reinforce the principle that 'ownership' of property.
- India would reap the benefits of an intelligent copyright regime. The students would have to the latest editions of books at affordable prices

The two groups – producers and the consumers - hold highly dogmatic views and opinions about whether India should explicitly accept the principle of international exhaustion and, hence, allow parallel imports of copyright material. The two groups are clearly divided across two sides of the fence, with each side claiming that it holds the right position and the views of the other side are absolutely erroneous. Hence, there is no common meeting ground for the two sides.

The international trade discipline vide the World Trade Organisation is guided through the Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement emphasises the need for trade openness subject to protection of IPRs: ‘Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.’ While the TRIPS agreement outlines some suggestions on the issue of international trade in copyright goods, it does not interfere with any national law on the principle of exhaustion of rights. Thus, WTO member states are free to adopt their own policies on the issue of parallel trade.

An agreement on parallel imports could not be reached under the WTO rules. This implies that each member nation may adopt its own policy of exhaustion and no complaint can be filed against such measure. It states, however, that ‘The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.’

International trade in printed books generates significant surplus for India. India’s export of printed books in 2011–12 was valued at US\$ 188.6 (Indian Trade Classification HS Code 49011010). The corresponding import was valued at US\$ 53.4 million, thus generating a trade surplus of US\$ 135.2 million. However, it is not clear how the exports are divided between India’s publishing industry and outsourced printing for publishers in foreign countries.

There has been a major transformation in the export destinations of printed books from India. The UK and the US were the two most important destinations for printed books until the mid-2000s, accounting for 18 per cent and 14 per cent, respectively. The share of exports to the UK and the US declined to 10 per cent and 12.6 per cent, respectively, during the triennium ending (TE) 2011–12. The share of exports to Nigeria increased from an average of 3.3 per cent in TE 2005–06 to 15.5 per cent in TE 2011–12. The shares for Africa (including Nigeria) during the corresponding periods are 10 and 28 per cent, respectively.

The major import sources of printed books were the UK, the US and Singapore during TE 2005–06 and remained so during TE 2011–12. A major transformation has taken place in imports from China and Hong Kong. Imports from China accounted for an average of 2.2 per cent in TE 2005–06, which increased to 10.3 per cent in TE 2011–12. On the other hand, imports from Hong Kong slipped from 15.6 per cent to 1.6 per cent during the same period.

The consumers state that that there was no need to introduce a new proviso in Section 2(m) yet it was done to clarify that India follows the policy of international exhaustion. However, this implies that the Copyright Act had some fuzzy clause that needed further clarity, requiring an amendment in 2(m).

There are contentious issues on the validity of the Indian courts' judgments. However, as economists, we are not competent to provide views on the constitutional validity of the courts' judgements and this issue belongs to the arena of trained law experts. While the courts' views are in general agreement with the claims made by the publishers the consumers, however, are in strong disagreement and argue that 'Indian courts have fundamentally misunderstood the doctrine of first sale, and consequently have wrongly held that parallel importation is disallowed by Indian law'.

The present study has looked at various aspects relating to the issues of copyright. The specific focus, as desired by the Parliamentary Committee, has been given to the issue of availability of academic books for the students. The study team has interacted with various stakeholders including those in education, films / music and computer software sectors. The prices of books in India have been carefully compared with those abroad. It is found that the prices of books in India are, in general, comparable to those in international markets. However, there are some examples where outdated edition reprints are being sold in India and some of the reprints come out after a lag of some years.

The pivot around which the producers have woven much of their logic against parallel imports is the issue of import of remainders which would destroy India's publishing industry. The consumers have argued that the fear of remainders is baseless. We view these as two extreme positions. The study notes that most of the catalogued titles of international publishers are importable and not published in India. One should therefore read the threat of remainders to India's publishing industry cautiously since what we are currently protecting are the channels of books being imported into India rather than books published, produced and printed (PPP) in India.

Further, the fear of the destruction of India's publishing industry has been built on the premise that most of the publishers abroad print most of the titles most of the times in numbers exceeding demand. This would be naïve to assume that foreign publishers print an excess number of books as a norm rather than as an exception. There has not been a documentation of how many times India has been flooded with import of the remainders. There is no convincing reason to believe that the publishers would not ship their surplus stocks/ remainders to India through 'official channels' and at low enough prices that Indian consumers would be ready to buy. It is thus clear that the publishers' major concern would get diluted if steps can be taken to thwart the inflow of remainders.

One more concern expressed by the publishers is that the books get outdated sooner in the West (*frontlist*) than in India where the books have longer shelf life (*backlist*). The issue of books being 'frontlist' in the West and 'backlist' in India needs to be examined carefully. Whether a book is *frontlist* or *backlist* would differ for education and trade books. While a fiction book might have a short shelf life the same may not be true for an education book.

Hence, the fear of frontlist remainders might hold well for trade books but not for education books.

The fear of exports of cheap books from India is somewhat misplaced. Our understanding is that exports and imports are two different subjects and need separate attention. Exports of infringed copies may be controlled at the border by administrative authorities as is done for the export of all prohibited items and the import surveillance authorities in destination countries are expected to play their role in checking for illegal imports. The regime of imports of books has in any case been opened up in the US after the Supreme Court judgment of March 2013 in favour of international exhaustion.

Further, if the low-price editions printed in India are dated or of low print quality these might not be acceptable to buyers in the Western markets where consumers are ready to pay much higher for the latest editions with high print quality. The publishers have indicated that the prices in the West are extremely high - 'mark-up of 8–12 times from cost' compared with India's 'range between 2.25 to 5 times at best'.

PIRs challenge the basic tenets of demand and supply, consumers' love for variety and rational behaviour by consumers as well as producers. It is consumers' prerogative to decide which books they should buy.

A strong publishing sector activity adds value to knowledge as well as to the national income of a country. It provides jobs at the stages of generating ideas by authors for new books, the process of design and copyediting and the final printing. We refer to these as publishing, producing and printing (PPP). While imports of good books are important, mere distribution of imported volumes does not meet the PPP criteria. The Copyright Act may not necessarily be used to protect the distribution channels of books.

How then should one proceed?

There are some hard questions that the producers must answer. The consumers must look at the fears expressed by publishers about the likely decay of publishing activity in India and the consequent loss for Indian students and other readers.

Thus, it is of the utmost importance that serious data and evidence-based studies are undertaken to assess the real situation rather than create a sensation of life after death if the new proviso is added to Clause 2(m).

In our view, a mature publishing industry in India must mean PPP in India along with import and rational distribution regime.

We do not envisage that permitting parallel imports of printed books will have an immediate damaging effect on the publishing sector or on the economy as a whole. The impact of the effect of amending Clause 2(m) will be tested over time.

A cautious opening may be a good way to start. Acrimonious debate must give way to harmonious meetings between producers, consumers and other stakeholders. It is only

through mutual understanding and healthy exchange of views that we can come to an optimal solution.

If such a meaningful exchange is not feasible, we suggest going ahead to add the new proviso to Clause 2(m) with the requisite safety valves. India must learn to manage its affairs with its own logic and on its own terms.

The Impact of Parallel Imports of Books, Films/ Music and Software on the Indian Economy with Special Reference to Students

1. Introduction

1.1. Context of this study

The present study aims at understanding the role of books, films/music and software on the Indian economy with special reference to students. The background of this work relates to the sixth amendment of the Indian Copyright Act, 1957 through Copyright (Amendment) Bill, 2010.¹ The Ministry of Human Resource Development Department-Related Parliamentary Standing Committee, chaired by Shri Oscar Fernandes, had made several deliberations on Copyright Amendment issues. The Committee has rightly noted that the government must ensure that the purpose for which the copyright amendment is proposed, i.e., to protect the interests of students, is not lost sight of. Its report was presented to the Rajya Sabha and laid on the table of the Lok Sabha on November 23, 2010.² The Bill was approved by the Rajya Sabha on May 17, 2012 and the Lok Sabha on May 31, 2012. It received the assent of the President on June 7, 2012.³

One of the major objectives of this study is to look at Clause 2 (m) of the Indian Copyright Act, 1957.⁴ This clause deals with ‘infringing copy’:

- (i) in relation to a literary, dramatic, musical or artistic work, a reproduction thereof other than in the form of a cinematographic film;
- (ii) in relation to a cinematographic film, a copy of the film made on any medium by any means;
- (iii) in relation to a sound recording, any other recording embodying the same sound recording, made by any means;
- (iv) in relation to a programme or performance in which such a broadcast reproduction right or a performer's right subsists under the provisions of this Act, the sound recording or a cinematographic film of such programme or performance, if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act.

The Standing Committee sought to insert the following proviso to Clause 2 (m):

¹ <http://copyright.gov.in/Documents/CopyrightAmendmentBill2010.pdf>

² <http://copyright.gov.in/Documents/227-Copyrightamendment.pdf>

³ http://copyright.gov.in/Documents/CRACT_AMNDMNT_2012.pdf

⁴ There are two other clauses that deal with important aspects of copyright: Clause 14 (Chapter III) and Clause 51 (Chapter XI) See Annex1 in this chapter.

‘provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy’.

The Committee received memoranda on the proposed insertion of a proviso to the definition of the term ‘infringing copy’ from a large number of organisations/ associations. The Committee also had the opportunity to interact with representatives of these bodies. Strong objections were raised on the proposed amendment. These organisations and associations included the South India Music Companies Association, the Indian Motion Picture Producers’ Association, the Motion Picture Association, the Indian Broadcasting Foundation, the Association of Publishers in India, the Federation of Indian Publishers, the Indian Reprographic Rights Organisation and the Business Software Alliance. The Authors Guild of India was the only body that welcomed the provision.⁵

The following quotations (7.10 to 7.13) are taken from the Report of the Standing Committee:

‘7.10 All the reservations/objections raised by the various stakeholders were taken up by the Committee with the Department with the intent of having full understanding of the background necessitating the proposed amendment and its exact impact on the various stakeholders. As clarified by the Department, the main purpose of this amendment was to allow for imports of copyright materials (e.g. books) from other countries. It was in accordance with Article 6 of the TRIPS Agreement relating to exhaustion of rights whereunder developing countries could facilitate access to copyright works at affordable cost. Exhaustion of rights (popularly called as parallel import) was a legal mechanism used to regulate prices of IPR protected materials. This was viable only if the price of the same works in the Indian market was very high when compared to the price in other countries from where it was imported to India.’

‘7.11 Committee’s attention was drawn to the fact that majority of educational books used in India were imported from other countries particularly from US and EU. There was an increasing tendency by publishers to give territorial licence to publish the books at very high rates. The low price editions were invariably the old editions than the latest ones. This provision would compel the Indian publishers to price the works reasonably so that it would not be viable for a distributor to import same works to India from other countries. This would also save India foreign exchange on the payment of royalties (licence fee) by the Indian publishers to foreigners.’

⁵ For details, see Annex 2 in this chapter.

'7.12 Committee was also given to understand by the representatives of the publishing industry that Scheme of the Copyright Law was entirely different from the Trade Marks Act, 1999 and the Patent Act, 1970. The application of the standards and principles of these two laws through the proposed amendment of section 2(m) would completely dismantle the business model currently employed, rendering several industries unviable. On a specific query in this regard the Department informed that the concept of international exhaustion provided in section 107 A of the Patent Act, 1971 and in section 30 (3) of the Trademarks Act, 1999 and in section 2 (m) of the copyright law were similar. This provision was in tune with the national policy on exhaustion of rights.'

'7.13 After analysing the viewpoints of all the stakeholders along with the clarifications given thereupon by the Department, the Committee is of the view that proposed inclusion of the proviso in the definition of the term 'infringing copy' seems to be a step in the right direction, especially in the prevailing situation at the ground level. The present practice of publishers publishing books under a territorial license, resulting in sale of books at very high rates cannot be considered a healthy practice. The Committee also notes that availability of low priced books under the present regime is invariably confined to old editions. It has been clearly specified that only those works published outside India with the permission of the author and imported into India will not be considered an infringed copy. Nobody can deny the fact that the interests of students will be best protected if they have access to latest editions of the books. Thus, apprehensions about the flooding of the primary market with low priced editions, may be mis-founded as such a situation would be tackled by that country's law. The Committee would, however, like to put a note of caution to Government to ensure that the purpose for which the amendment is proposed i.e. to protect the interest of the students is not lost sight of.'

Thus, in the view of the Standing Committee the proposed inclusion of the proviso in the definition of the term 'infringing copy' seems to be a step in the right direction. It cautioned the government that the purpose of the amendment was to protect the interests of students so that they can have access to the latest editions of books at affordable prices. However, the insertion of the proposed new proviso to Clause 2 (m) was dropped from the Copyright (Amendment) Act, 2012, which in intense debate in Parliament. On May 17, 2012 the Union Minister for Human Resource Development, Kapil Sibal, asked the National Council of Applied Economic Research to examine the inclusion of the new proviso. The ministry will study the NCAER report and, if necessary, a further amendment may be introduced.

1.2 Objectives

This study provides a comprehensive description and analysis of the costs and benefits of introducing parallel imports of books, films/ music and software on the Indian economy. The major part of the study addresses the benefits that may accrue to students in India.

The following terms of reference will be addressed in this study:

1. Perspective of the legislative issues of parallel imports of books, films/ music and software against the backdrop of the Indian Copyright Act (1957) and the Copyright (Amendment) Bill, 2010 within the broader policy environment of opening the economy to foreign trade during the past two decades.
2. Outlining the regulatory regime in other countries, both developing and developed, with regard to parallel imports of copyright material.
3. Issues of fair competition in the domestic markets of books, films/ music and software.
4. Concern for new investments, incomes of the existing players and overall welfare of the economy.
5. Surveys to be conducted in NCR, Bengaluru, Chennai, Kolkata and Mumbai.
6. Any other issues which emerge during the course of the study and in consultation with the Copyright Office of the Department of Higher Education, Ministry of Human Resource Development; Department of Information and Technology, Ministry of Communications and Information Technology; Competition Commission of India; and other stakeholders.

7. 1.3 Parallel trade and the issue of copyright

Parallel trade is often understood as *grey-market* trade that occurs in goods and through unofficial channels. Thus, while the goods are genuine, the channels of trade are not as were originally desired by the producers. The producer might have desired to sell the goods in a particular region or in another region through his authorised trade channel. Such trade is often seen as 'official'. Trade conducted by a channel not authorised by the producer, in competition with the authorised channel is generally considered to be 'non-official' or 'parallel trade'. Parallel Import Restrictions (PIR) refer to the post-sale controls that prevent an alternate channel, other than the authorised agency, from selling legitimate IP (Intellectual Property) products in a different country.

‘Parallel trade occurs when products produced under the protection of a patent, trademark, or copyright in one market are subsequently exported to a second market and sold there without the authorization of the local owner of the intellectual property (IP) right.’⁶

‘Parallel imports are one of the most iridescent and enigmatic phenomena of international trade. On the one hand, they strictly follow the laws of the market; yet on the other hand, the laws of the market are not the only ones that apply to this kind of activity. While industrial producers are pressing for general barriers in order to maintain price differences of goods among various countries, consumers find such differences puzzling in a world that is increasingly heading towards international trade and the removal of trade barriers. Easy resolution of the problem is not in sight.’⁷

There are three major regimes of exhaustion of copyrights after the IP protected good is sold for the first time, i.e., the first sale doctrine. Under the ‘national exhaustion’ regime the exclusive right of the owner of the copyright holder ceases after the first sale within the national boundary. Under ‘regional exhaustion’, the exclusive rights cease after the first sale in a particular region, although imports into this region from outside countries may be banned. ‘International exhaustion’ refers to the rights of the copyright holder getting ceased once the IP-protected good is first sold anywhere in the world.

The underlying principle of intellectual property (IP) is to protect the interests of the creator. An IP property can be protected through trademarks (use of an exclusive symbol), patents (exclusive rights for disclosure), industrial designs (that protect the aesthetic value), trade rights (confidential information on the product) or copyright (exclusive rights to copy/ adapt).

The issues of copyright constitute an important component in understanding the subject of intellectual property. Copyright-based industries include publishing, music, films and computer software. The output of these industries help in disseminating knowledge and provide ‘raw material’ for education, scientific innovation, advances in information technology and socio-cultural aspects of regions and countries around the world.

‘The creation and ownership of knowledge products are of increasing importance because of the centrality of information and knowledge to post-industrial economies. The concept of copyright, originally intended to protect authors and publishers of books, has broadened to include other knowledge products such as computer programs and films... Copyright has emerged as one of the most important means of regulating the international flow of ideas and knowledge-based products, and will be a central instrument for the knowledge industries of

⁶ Matthews, Duncan and Viviana Munoz-Tellez (, 2007), ‘Parallel Trade: A User’s Guide’. Available at: <http://www.iphandbook.org/handbook/chPDFs/ch15/ipHandbook-Ch%2015%2004%20Matthews-Munoz-Tellez%20Parallel%20Trade.pdf>

⁷ Heath, C. ‘Parallel Imports and International Trade’, footnote: Cornish, ‘Intellectual Property’ 661 (3rd ed., London 1996).

the twenty-first century. Those who control copyright have a significant advantage in the emerging, knowledge-based global economy. The fact is that copyright ownership is largely in the hands of the major industrialized nations and of the major multimedia corporations, placing low per capita income countries as well as smaller economies at a significant disadvantage.’⁸

The economic and social development of a country, region and the world depends on the continuous generation of creative ideas. Such ideas originate from efforts by authors including writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software. The authors ought to be rewarded suitably for their creative works. The provisions of copyright rules provide certain minimum protective safeguards of the rights of authors over their creations.

‘Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, *inter alia*, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work’ (Handbook of Copyright Law, MHRD).⁹

While authors deserve a reasonable degree of protection, a rigid and inflexible protection regime may be counterproductive to the cause of social benefits expected to arise from authors’ creations. A balance needs to be maintained between the conflicting interests of the creators and society. Certain exceptions are, thus, required for the larger interests of society, which include the authors as well.

The Handbook suggests exceptions to certain types of usage of the works without specific permission of the owners of the copyright. Some such exemptions are:

- i) For the purpose of research or private study
- ii) For criticism or review
- iii) For reporting current events
- iv) In connection with judicial proceeding
- v) Performance by an amateur club or society if the performance is given to a non-paying audience
- vi) Making of sound recordings of literary, dramatic or musical works under certain conditions

⁸ UNESCO (1998). *World Information Report 1997/98*, UNESCO, Paris, p.320.
http://www.unesco.org/webworld/com_inf_reports/wirenglish/chap23.pdf

⁹ <http://copyright.gov.in/Documents/handbook.html>

The Indian Copyright Act was enacted in 1957 to amend and consolidate the law relating to copyright in India.¹⁰ The Act has been amended five times since then—in 1983, 1984, 1992, 1994 and 1999—in order to meet national and international requirements and to keep the law updated. A major amendment was made in 1994 to harmonise the provisions of the Act with the Rome Convention, 1961 that provides protection to the rights of performers, producers of phonograms and broadcasting organisations.¹¹ It also introduced the concept of registration of Copyright Societies for collective management of the rights in each category of copyrighted works. The amendment in 1999 introduced some minor changes to comply with obligations under Trade Related Aspects of Intellectual Property Rights (TRIPS).

1.4 Debate on parallel imports

There has been ongoing debate between the proponents and opponents of the first sale principle constituting international exhaustion.¹²

It has been argued that parallel import restrictions (PIRs) strengthen IP holders' control over distribution channels, thereby permitting market segmentation and leading to price discrimination. The third party (unauthorised) has an incentive to operate parallel imports due to the feasibility of price arbitrage. Producers have argued that price discrimination, as compared with uniform price, benefits consumers because it encourages production in different segmented markets. Price discrimination permits access to the consumer who could have been deprived under the uniform (relatively high) price mechanism. Also, higher output allows producers to reap economies of scale and, thus, lower the costs. Monopoly profit is used to finance further research and development. Thus, parallel import restrictions (PIRs) benefit consumers (Katz, 2012: p. 18).

However, restrictions on parallel imports go against the spirit of free trade that has been the core principle of multilateral and regional trade treaties. Trade restrictions lead to undesirable economic side effects. 'Market democracy rather than entrepreneurial dictatorship should be the rule of the future' (Heath, 1999). The principle of international exhaustion opens up trade channels that benefit consumers. Further, PIRs adversely affect the operations of authorised IP licensees in developing countries because they are not permitted to export their production to other countries. Producers do not prefer such international trade since it affects their geographic market segmentation and limits their ability to charge different prices in different markets. Market segmentation is likely to increase producer surplus but lower consumer welfare (Abbott, 2007).

¹⁰ <http://copyright.gov.in/Documents/CopyrightRules1957.pdf>

¹¹ http://www.wipo.int/treaties/en/ip/rome/trtdocs_wo024.html

¹² In this study we refer to consumers as proponents and producers/ copyright owners as opponents of parallel imports, i.e., the principle of international exhaustion.

IPR matters are practiced differently across countries and also across types of IP products (Table 1.1). There have been confusing judgments in the case of the United States, although the most recent one on March 19, 2013 has spoken in favour of parallel imports.

Table 1.1: Trade in copyright material

Term	Meaning	Countries
Allowed	Parallel imports are permitted	United States, Argentina, Chile, Costa Rica, Mexico, Mongolia, Singapore, South Korea, Brazil
Banned	Parallel imports are not permitted	Ecuador, Paraguay, Peru
Partly Allowed	Parallel imports are generally not permitted, but are permitted in a few instances.	Armenia, Australia, Cameroon, China, Egypt, Hong Kong, New Zealand, Philippines, Vietnam
Partly Restricted	Parallel imports are generally permitted, and are restricted in a few instances.	Bolivia, Colombia, Guyana, Israel, Japan, Malaysia, Switzerland, Venezuela
Presumably Allowed	Restrictions on parallel importation are not mentioned in the copyright law or in any other law, and hence are presumably allowed.	Pakistan, Uruguay

Source: Centre for Internet and Society, Bangalore.

We received written submissions from producers as well as consumers in October 2012. While producers expressed their dissatisfaction with the proposed amendment of clause (2m), consumers were vociferous in favour of the proposed amendment.

The written submissions are attached in this report as Appendices I to IV. Details of the debate are provided in Section 6.

Brief summary/ extracts of the publishers’ submission (Appendix 1)

The Copyright (Amendment) Act, 2012, [earlier called the Copyright (Amendment) Bill 2010] was passed by both houses of Parliament in May 2012. The deliberations around sections of the Act were somewhat controversial, both in its early stages (largely in relation to views and responses from the music and film industry) as well as in the last stages (responses from the publishing industry).

The current Copyright Act like most other copyright statutes across the world recognises the territorial integrity of India—i.e., it is possible for a publisher to own exclusive rights to sell or distribute their books within India as distinct from other ‘territories’/ regions. The Courts in India have consistently upheld this principle including in cases of ‘transit’ imports/ exports. The principle of territory segmentation in relation to copyright has been recognised by the Delhi High Court in the cases of *John Wiley & Sons & Ors. v. Prabhat Chander*

Kumar Jain & Ors. CS (OS) No.1960/2008 and John Wiley & Sons v. International Book Stores & Ors.CS (OS) No. 2488/2008.

The Copyright (Amendment) Bill, 2010, *inter alia*, proposed to amend Section 2(m) of the Copyright Act, 1957, by amending the definition of an ‘infringing copy’. The term ‘infringing copy’ is relevant to the Act, as the Act allows for injunctions against and seizures of infringing copies and all infringing copies are treated as being owned by the owner of copyright. The amendment stipulated that: ‘a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy’. The inclusion of this provision would have meant that books published in any country could be made freely available and sold in India without this amounting to an infringement of copyright. India’s territorial integrity would be lost, the principle of ‘market segmentation’ ousted and it would become an open market. Simply put, the proviso sought to remove the protection that India had as a copyright territory (as understood in the print publishing business). Any book published anywhere in the world could have been sold here, which would infringe an exclusive Indian edition—published or imported — and also potentially put publishers in breach of their publishing agreements with affiliates and/or authors.

India is already the lowest priced market in the world in each publishing segment, with price mark-downs ranging from 30% to as much as 90% for educational textbook pricing. These pricing structures have evolved keeping in mind the socio-economic realities of our country. Low as these prices are, they are still vulnerable to remainders and targeted exports that undermine the ability of local industry to compete.

It can easily be verified that every textbook or trade book has the most current edition released here at the same time and much cheaper than the international price.¹³

Brief summary/ extracts of the consumers’ submission (Appendix 2)

Having established that parallel imports and the concept of international exhaustion promote free trade, adhere to the undisputed principle that ‘ownership’ of property is unconditional and benefit all the parties interested (publishers, libraries, galleries, museums, libraries, second-hand stores, theatres, music enthusiasts and consumers), all that needs to be done by the government is to add the proviso to Sec. 2(m) so that India can reap the benefits of an intelligent copyright regime. The absurdities, uncertainties and adverse effects that will be created by criminalising such imports show that the need of the hour is to bring in this amendment to clarify the Indian position on parallel imports. The law should reflect the needs and expectations of its society and given the mischief created by the ‘license raj’ in relation to

¹³While academic books are specific to the educational curricula trade books are for general reading.

copyrighted works (including but not limited to books), it is time for Parliament to remedy this mischief and give the people of India what they expect and need. The empirical study that was analysed shows the glaring gap between the requirements of society and the law. Given that many developing nations have adopted international exhaustion of copyrights and have benefitted immensely from it, it is time for India to tread the same path. This submission concludes by urging the government to bring in the amendment to Sec 2(m) and by noting the change in language that is required— substituting ‘permission of the author’ with ‘made in accordance with the law of the country’— and legalising parallel imports in copyrighted work at the soonest.

India has followed the principle of international exhaustion of intellectual property rights. Since importation right was not recognised in any of the IP laws in India until recently, there was no need to introduce special provisions that expressly recognised international exhaustion. The Indian Copyright Act also recognised this principle. This is evident from the absence of importation rights for owners of copyright. The only prohibition was import of infringing works from other territory (see Section 51(b)(iv)). Once the works are sold in the market, anyone can import or export the works and the owner of copyright has no right to prevent the same. To defeat the objectives of exhaustion of rights, owners of copyright used territorial contracts to prevent the movement of goods from one territory to another. The amendment in the Copyright Act was necessitated due to the courts interpreting the contractual provisions and the provisions of Copyright Act to prevent import and export of works.

Indian copyright law from the very inception recognised the principles of international exhaustion. But the Delhi High Court in the Penguin case (AIR 1985 Del 29) interpreted the distribution right of the owner of copyright ‘issue of copies’ in Section 14 to include the right to sell copies imported from other countries.

Without taking note of the legislative intent, high courts relied on these provisions in the Copyright Act and prevented the free movement of copies particularly importation from other countries into India at cheaper price or export to other countries of books printed in India. For example, see the Eurokids case of the Bombay High Court in 2005, the Warner Bros case of the Delhi High Court in 2005 and the John Wiley case of the Delhi High Court in 2009.

The Amendment, it is felt, was needed to end the distorted interpretations by the courts against the legislative intent. The courts were trying to protect the interests of publishing houses, which restricted the freedom of movement of goods from other territories that facilitate affordable access by the public to copyright works.

While there are some studies on the impact of parallel imports in developed countries such as Australia and New Zealand, no studies have been conducted on the impact in the developing

countries. Maskus (2000) recommends a case-by-case and country-specific investigation of the policy to ascertain the claims of each side.

1.5 Intellectual property rights and the World Trade Organisation

The World Trade Organisation (WTO) was established in 1995 to administer trade agreements on the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS). Special rules on settling trade disputes have also been implemented under the WTO.

The TRIPS Agreement defines Intellectual Property Rights (IPRs) as the rights given to persons over the creations of their minds. The creator is given an exclusive right over the use of her/his creation for a certain period of time. These include two categories of rights, viz., copyrights and industrial property. The rights on industrial property are sub-divided into protection of distinctive signs (trademarks) and protection of innovation, design and technology (patents). Geographical indicators constitute yet another category under industrial property. All three major WTO Agreements—GATT, GATS and TRIP—follow two major rules of non-discrimination, viz., national treatment and most-favoured nation (MFN). The national treatment mandates treating one's own nationals and foreigners equally. The MFN implies equal treatment for nationals of all trading partners in the WTO.

The present study focuses on rights related to copyrights. The Berne Convention for Protection of Literary and Artistic Works (1986) was amended for the sixth time in 1979.¹⁴ The detailed rules of TRIPS are provided in Annex-1C of the TRIPS Agreement.¹⁵

The TRIPS Agreement emphasises the need for trade openness subject to the protection of IPRs: 'Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.'

TRIPS Annex-1C Part I Article 1 states that 'Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.'

¹⁴ http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html

¹⁵ http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

Thus, while the TRIPS Agreement outlines some suggestions on international trade in copyright goods, it does not interfere with any national law on the principle of exhaustion of rights. Thus, WTO member states are free to adopt their own respective policies on the issue of parallel trade.

An agreement on parallel imports cannot be reached under the WTO rules. Article 6 of TRIPS Annex-1C, which deals with the principle of exhaustion, states: ‘For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.’ This implies that each member nation may adopt its own policy of exhaustion and no complaint can be filed against such a measure.

However, Article 6 must be read in conjunction with Article 7, which expresses concern about barriers to legitimate trade: ‘The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.’

Part III of TRIPS Annex-1C outlines issues of enforcement of intellectual property rights through special requirements related to border measures (Sections 4 and 5).

Section 4 of Annex-1C (Article 51) deals with suspension of release by customs authorities: ‘Members shall, in conformity with the provisions set out below, adopt procedures¹⁶ to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods¹⁷ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.’

¹⁶ It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

¹⁷ For the purposes of this Agreement:

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

(b) ‘pirated copyright goods’ shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

Section 5 of the Annex-1C (Article 61) outlines the issue of criminal procedures: ‘Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.’

1.6 Competition & trade policy implications of parallel import restrictions¹⁸

The holders of IPRs often consider such rights as ‘absolute’. However, under other property rights, the law places limits on such rights, because rights cannot be exercised without affecting others. The question is how far IPRs should extend. It is inherently difficult to resolve issues of moral arguments of rights versus obligations. However, economic analysis provides guidance to the fact that, in general, a freely competitive market maximises society’s total economic welfare.

There is merit in the argument that the production of copyright products is characterised by market failures due to a contradiction between ‘public goods’ and ‘non-exclusivity’. The issue of non-exclusivity is meant to be dealt with through copyright protection. This, however, may not be construed as justification for extending copyright controls into the sphere of distribution. ‘Controls over free trade in goods and services, such as those contained in the importation provisions, tend to limit the “wealth of nations”’

There is intense international debate on the economic justification for putting IPRs on parallel imports of copyright goods. This requires a serious examination of the difficult interface between IPRs and competition policy. This subject has received scant attention in the past.

A view held by a group of economists and other scholars is that restrictive import provisions have been introduced through the influence of producers to further their interests at the expense of consumer interests. This effect may become even more detrimental for countries that are net importers of intellectual property products, and hence there is need to liberalise trade of copyright material across the world. At the same time, the counterarguments highlight the impact that removal of IPRs will have on the incentives of producers and authors.

¹⁸ Fels, Allan (2001), Meeting on Competition, Trade & Development Intellectual Property, Rome.

1.7 Organisation of this report

This report is organised in five sections. The chapter that follows provides an overview of the publishing industry in India. It discusses the contribution of the printing and publishing industry to India's economy and outlines international trade in books and published material. Section 3 provides a detailed comparison of the prices of books in India and abroad that is based on information provided by publishers as well as information extracted from web portals. A summary of our discussions with students in various higher education institutions is provided in Section 4. Section 5 provides a brief note on the issues in the film, music and software sectors. Section 6 discusses the debate on the proposed new addition on the definition of 'infringing copy' in Clause 2(m); we have also given our observations on this issue. Finally, we summarise our suggestions in Section 7.

Annex-1: Indian Copyright Act, 1957

Chapter III: Copyright

14. Meaning of copyright.-For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, -

- (i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
- (ii) to issue copies of the work to the public not being copies already in circulation;
- (iii) to perform the work in public, or communicate it to the public;
- (iv) to make any cinematograph film or sound recording in respect of the work;
- (v) to make any translation of the work;
- (vi) to make any adaptation of the work;
- (vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

- (i) to do any of the acts specified in clause (a);
- (i) 51A “(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.”

(c) in the case of an artistic work,-

- (i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- (ii) to communicate the work to the public;
- (iii) to issue copies of the work to the public not being copies already in circulation;
- (iv) to include the work in any cinematograph film;
- (v) to make any adaptation of the work;
- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);

(d) In the case of cinematograph film, -

- (i) to make a copy of the film, including a photograph of any image forming part thereof;
- (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the film to the public;

(e) In the case of sound recording, -

- (i) to make any other sound recording embodying it;
- (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
- (iii) to communicate the sound recording to the public.

Explanation: For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.

Chapter XI: Infringement of Copyright

51. When copyright infringed. -Copyright in a work shall be deemed to be infringed:

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

- (i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or
- (ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

- (i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
- (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- (iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

Annex-2: Standing Committee Report (Section VII Clause 2): Objections Raised by Organisations and Associations

7.3 The South India Music Companies Association pointed out that such a move would act as a huge disincentive for sound recording labels to obtain license from foreign producers. The Indian Motion Picture Producers' Association were of the view that it would result in copies of a work published outside India to be imported without consent of the owner thereby divesting the rights of owner of copyright in such works and diluting the commercial potential of exploitation of a work. The viewpoint of the Motion Picture Association was that repealing India's long-existing national exhaustion rule for copyright would not be a good policy choice as all the important copyright producing nations in the WTO have the rule of national exhaustion for copyright national. The national exhaustion is beneficial to the economy as it allows exclusive distribution arrangements to be formed and respected and at the same tune, keeps the prices low in the country and helps build a strong domestic copyright industry. It was suggested that the concerns over impact of the existing rule on persons bringing in small quantities of parallel imported copy-righted material for personal use can be taken care of by an amendment creating an exception which could be narrowly crafted.

7.4 Creation of a parallel market of foreign contents/works in India was the main objection raised by the Indian Broadcasting Foundation. It was apprehended that it would be possible for any person to buy a copy of a foreign work including a movie and other media content in any country and import and resell it in India before the work in question could be formally released in India. Any content specifically produced or edited for a foreign audience could be freely imported by anyone in India without license/ permission from the broadcaster.

7.5 Similar serious concerns were raised by the Publishers. The Association of Publishers in India pointed out that the books published in one country could be freely made available and sold in India without amounting to infringement of copyright. Publishers/agents/authors would hesitate from designating India as an exclusive territory in which (cheaper) Indian Editions could be produced as India would not be a "secure" market. It would not be possible for Indian publishers to sell Indian Editions into protected markets abroad since other countries recognize territoriality. According to them, it was a retrograde step diluting the ability of various stakeholders in the publishing industry to uphold and enforce the territorial division of rights, the very basis upon which the publishing industry operated.

7.6 Clarification given by the Federation of Indian Publishers was that the rights were commonly split up and assigned territorially. Indian publishers often enjoyed the right to publish and sell a book in India, while some other publishers did so in some other country (ies). Author was given the right to allow parallel imports regardless of whether or not he was

the current owner of copyright. It was mentioned that as the amendment would be benefitting authors at the disadvantage of the publishers and it would also give rise to litigation between authors and publishers. The Indian Reprographic Rights Organization contended that the provision was likely to upset the whole pattern of commercial exploitation of most kinds of copyright works, by legitimizing the circumvention of territorial rights acquired by assignees at some cost.

7.7 Equally strong objections were raised by another stakeholder i.e., the Business Software Alliance. According to them, such a move would cause serious imbalance of trade, counterfeiting activities across borders and total disruption of authorized distribution channels. It would be impossible for customs and border police to apprehend illegal copies. Further, this would make working and enforcement of Licence Agreements for computer programmes more complex and burdensome for users, software publishers and the courts.

7.8 The Authors Guild of India was the only body which welcomed the provision. According to them, copy of a work published in a foreign country with the permission of the author and on being imported to India, not being considered as infringing copy, was a step taken in the right direction. It was pointed out by them that in the age of globalization where the borders were becoming highly irrelevant, this was the need of the hour.

7.9 During the course of the oral evidence before the Committee, the Federation of Indian Publishers and the Association of Publishers in India further elaborated upon their opposition to the insertion of a proviso in section 2 (m). According to them, in the publishing industry, the internationally accepted business model was the territorial division of rights wherein the publisher had the right to publish territory (country), specific editions. It was also contended that other stakeholders including the authors and consumers benefitted from territorial division of rights. The existing provision had an added advantage in cases of books meant for academic purposes. With the proposed amendment, the student community would be hit the hardest. It was pointed out that in higher education, especially in medical and engineering, a lot of foreign books were being made available in India at low prices in spite of their being priced at much higher rate in the country of their origin. With this amendment, the low priced editions meant for Indian sub-continent could be exported back to the country of their origin where they were priced at much higher rates. Consequently, the publishers would lose the incentive to sell books in India or in the Indian sub-continent at subsidized prices. Reason being that foreign publishers would not like to grant the reprint rights to Indian publishers fearing low priced Indian editions flooding and diluting their own markets.

2. Overview of the publishing sector in India

2.1 Backdrop

The Indian books market is valued at Rs. 14,000 crore. About 30 per cent of this, valued at about Rs. 4,200 crore, is accounted for by trade books. Education books account for the remaining share of 70 per cent.

In trade books, Rs. 700 crore worth of business is done through local publishing, and the remaining Rs. 3,500 crore worth of business is done through selling imported books. The share of e-books is about 3 to 4 per cent in total book sales. This is significantly below the 30 per cent share in the United States (data for February 2011). Nevertheless, sales of e-books in India are expected to post smart growth in the coming years. These would provide publishers with a source of increased revenue.¹

There are about 19,000 publishers in India, of which 12,400 have ISBN numbers. About 90,000 titles are published every year, i.e., about 80 titles per million of population. About 40 per cent of books are academic, 30 per cent for children and 30 per cent are trade books. Only 7 per cent sales are through organised retail. Some of the major retailers are Crossword, Landmark, Odyssey and Reliance TimeOut, while Flipkart and Infibeam are online booksellers.²

While scattered facts are available about India's publishing industry, there is not much detailed documentation and information. In 2008, Rob Francis wrote 'India: The Publishing Market Profile', which was published by the Publishers Association, UK and supported by the UK Trade and Investment's Export Market Research Scheme. This report is based on information collected from secondary sources. Intelligent estimates are made based on interactions with people in the publishing industry. Much of the discussion today is based on the information provided in this report.

John Makinson of the Penguin Group commented in Live Mint & the Wall Street Journal on April 14, 2010: "One of the challenges facing the Indian book market is the lack of consumer data. People ask me from time to time what the size of India's book market is. I haven't the faintest idea. Publishing in India is a step in the dark at the moment. That's not true not just of the US and the UK, but of South Africa. We need to get smarter at that. Booksellers, retail chains, wholesalers and publishers together need to find ways to know what books people are buying, where they're buying them from and how much they want to pay for it."³

¹ Neelini Sarkar, FAQ, Moving India, July 2011.

² Report by German Book Office (GBO), New Delhi, published in Frankfurt Academy Quarterly (FAQ), BRIC Markets, 2012/13.

³ <http://www.livemint.com/Companies/dhk91S9MW2Cwhxnjvk3bsJ/John-Makinson--Publishing-in-India-is-a-step-in-the-dark.html>

2.2 Book readers in India

The National Council of Applied Economic Research (NCAER) conducted a study in 2009 sponsored by the National Book Trust – ‘Indian Youth: Demographic and Readership – National Youth Readership Survey’. It brought out some interesting facts. India’s youth population of 459 million (13 to 35 years) was 38 per cent of the total population in 2009 and will touch 574 million by 2020 (Table 2.1). The youth population of 459 million includes 333 million literate people – 27.4 per cent of the total population and 73 per cent of the total youth population. Of the 333 million youth, 62 per cent live in rural areas and about 44 per cent are female. About 76 per cent have studied up to Class X, 14 per cent up to Class XII, 7.4 per cent are graduates, 1.7 per cent are postgraduates and 0.4 per cent have professional degrees. The main medium of instruction is Hindi (39.3 per cent) with English being at 8th rank with 4.1 per cent. At the Class X level, 35.3 per cent go to Hindi medium schools and only 6.7 per cent go to English medium schools. At the graduate level, 37 per cent students go to Hindi medium colleges and 25 per cent go to English medium colleges.

About 83 million of the 333 million literate youth (25 per cent) identify themselves as book readers (books other than course books, such as trade books). Of these, 39 million are urban (47 per cent) and 44 million are rural (53 per cent). The preferred languages for reading trade books are Hindi (27.8 per cent), Marathi (11 per cent), Bengali (6.5 per cent), Kannada (5.1 per cent), Tamil (5 per cent), Malayalam (4.9 per cent), Gujarati (4.7 per cent) and English (only 4.4 per cent). These constitute about 70 per cent of the leisure/trade book reading population. The remaining 30 per cent readers have other preferred languages that are grouped under ‘Other’ category.

Indian book publishing has increased over the years, due to increasing readership. One reason for the increase in readership is that literacy rates have improved from 52.2 per cent in 1991 to 74 per cent in 2011.⁴ Readers can be categorised into those enrolled in schools or in higher education at colleges and universities. School enrolment increased by 2.1 per cent⁵, while enrolment in higher education increased by as much as 7.2 per cent⁶. The number of literate youths increased by 2.49 per cent, from 273 million to 333 million (Financial Express, 2010).⁷ Moreover, the growth in youth readers who are graduates and above has been the highest compared with youth readers who have attained either primary or secondary education (Table 2.2). The increase in the number of graduate youth will impact book publishing in higher education. Rising enrolment in higher education, such as degree courses

⁴ Indiastat.com

⁵ Growth period refers to number of students in Class I to Class XII over the period 2010–11.

⁶ Growth period refers to student enrolment and excludes pre-University/Intermediate and pre-Professional levels for the period 2009–10.

⁷ Financial Express, February 9, 2010; NBT-NCAER National Readership Survey, 2009.

and above, has created an enormous demand for education books from the publication industry (Table 2.3).

Table 2.1: Youth demographics

Population (million)	Census 2001	NYRS 2009	2009 Growth (%)
Total (All-India)	1,029	1,213	2.08
Youth (13–35 years)	390	459	2.05
Literate youth (13–35 years)	273	333	2.49

Source: Financial Express, February 9, 2010, NBT-NCAER National Readership Survey, 2009.

Note: NYRS: National Youth Readership Survey, 2009.

Table 2.2: Distribution of literate youth by level of education

	Population (million)		% distribution		
	Census 2001	NYRS 2009	Census 2001	NYRS 2009	Annual growth (%)
Primary	102.8	100.3	37.6	30.1	–0.31
Secondary	149.6	200.5	54.8	60.3	3.73
Graduate+	20.8	31.9	7.6	9.6	5.49
Total	273.2	332.7	100.0	100.0	2.49

Source: Financial Express, February 9, 2010; NBT-NCAER National Readership Survey, 2009.

Table 2.3: Enrolment in degree and higher programmes*

	1996	2001	2002	2003	2004	2005	2006
Degree and above	1,184	1,421	1,575	1,637	1,808	5,193	6,069
Engineering/ Technology/ Architecture	328	606	692	717	795	1,668	2,504
Medicine**	230	276	301	313	348	306	319
Agriculture/ Forestry	74	53	55	59	64	NA	NA
Education	116	115	133	146	161	245	272
Veterinary Science	20	14	15	15	16	NA	NA
Other	412	358	379	387	424	2,974	2,974

Source: Manpower Profile (2009); Institute of Applied Manpower Research, Govt. of India

Notes:

Figures as on September 30 of the relevant year.

* Refers to post-matriculation courses.

** Medicine includes Allopathy, Homoeopathy, Ayurveda and Unani.

2.3 Printing and publishing activities: Share in GDP

Despite the rapid growth of the printing and publishing sectors in India, the share of these sectors is miniscule in India's gross domestic product (GDP). It is the same case with paper, paper products and newsprint material. India's input-output transaction tables provide some information. While printing and publishing are documented under one category, paper, paper products and newsprint material is listed as a different category. Despite all the published growth figures, the share of printing and publishing in India's GDP has been declining since 1993–94 (Table 2.4). The share declined from 0.32 per cent in 1993–94 to 0.26 per cent in 2003–04 and further down to 0.15 per cent in 2009–10. The share of paper, paper products and newsprint material, which are major inputs in printing and publishing activities, has gone down from 0.24 per cent in 1993–94 to 0.19 per cent in 2009–10. Although it is not clear, the decline may be due to the fact that a significant proportion of the books sold in India are imported rather than books actually published, produced and printed (PPP) in India.⁸ An important question that needs to be highlighted is the strict definition of a publisher – a company that deals in actual publishing of books (PPP) in a country or a company that acts as an importer and distributor of books published abroad. The distinction between the roles of a publisher and a distributor, which have differences as well as overlaps, is provided in Neavill (1975)⁹.

The publisher acts as a gatekeeper, determining which works will be made available to the public. He oversees the reproduction of works in multiple copies, determining the kind of book which is made from a work. Although normally not responsible for the distribution of books to consumers, the publisher plays a role in distribution both across geographical space and to different groups of readers. Through his role at the stages of production, assessment, reproduction and distribution, the publisher influences the consumption of knowledge.

Strictly speaking, the publisher is not responsible for distribution. The publishing function is completed once the publisher starts a book off through some system of distribution, and the rest of the job is up to the distributive agencies of the book trade. Nevertheless, the publisher retains considerable influence at the stage of distribution. Sometimes, due to the inability of the existing distributive agencies to reach all potential consumers, the publisher assumes responsibility for distribution himself.

The printing and publishing industry has experienced a rising share of inputs used in its output. The share of total inputs used in the output of this industry increased from 56.6 per cent in 1993–94 to 62 per cent in 2003–04 and further up to 73 per cent in 2009–10 (Table

⁸ Neelini Sarkar, FAQ, Moving India, July 2011 (graph on p. 19).

⁹ Neavill, Gordon B. (1975). Role of the publisher in the dissemination of knowledge, *American Economy of Political and Social Science*, 421, 23-33.

2.5). A serious implication is that the share of gross value added (GVA) has been concomitantly going down.¹⁰ The share of GVA in the output of printing and publishing industry was 38.7 per cent in 1993–94; it went down to 31.6 per cent in 2003–04 and further down to 23.4 per cent in 2009–10. The sector is, therefore, facing an increasing proportion of input costs and a declining proportion of incomes generated for its factors of production. The share of indirect taxes (production taxes) in total output varied at 4.6, 6.4 and 3.7 per cent, respectively.

The publishing industry depends on raw material inputs from other industries, such as the paper industry. However, the share of paper and paper products in total inputs has been going down, implying that the share of other inputs has been going up. Over time, the printing industry has suffered due to rising input costs. The share of paper, the most important input, has declined in the total raw material inputs of the printing industry from 41.4 per cent during 1993–94 to 38.7 per cent during 2003–04 and then to 32.9 per cent in 2009–10.

A comparative statement of the combined shares of the printing, publishing and paper industry in a country's GDP is provided in Table 2.6. The share of India is the lowest when compared with developing countries such as Brazil, China and Thailand or developed countries such as Canada, France, Germany, Japan, South Korea and the United States of America.

Table 2.4: Share in GDP of printing, publishing, and paper industries (%)

	Printing & publishing	Paper, paper prods. & newsprint	Printing & paper
1993–94*	0.32	0.24	0.56
2003–04	0.26	0.20	0.46
2009–10	0.15	0.19	0.35

Source: Computations based on CSO, various years; NCAER, 2012.

Notes:

* Printing & publishing industry is represented by Sector 053 of the Input–Output Transaction Table, 1993–94 and by Sector 058 in the IOTT for all following years.

* Paper, paper prods. & newsprint industry is represented by Sector 052 of the Input–Output Transaction Table, 1993–94 and by Sector 057 in the IOTT for all following years.

Table 2.5: Cost structure of the printing & publishing industry

	1993–94	2003–04	2009–10
	Share (%)		
Total material inputs	56.6	62.0	73.0
Net Indirect Tax	4.6	6.4	3.7
Gross Value Added (GVA)	38.7	31.6	23.4
Output (Rs. lakh)	665750	2093162	4025088

Source: Computations based on CSO, various years; NCAER, 2012.

¹⁰ The share of GVA in output refers to the returns to the factors of production, viz., labour and capital.

Table 2.6: Share in value added of publishing and printing industry, select countries

	Share in GDP
Brazil	1.34
Canada	2.28
China	1.47
France	1.07
Germany	1.57
India	0.44
Japan	1.71
Korea	1.54
Thailand	0.80
USA	1.95

Source: Computations based on OECD

http://stats.oecd.org/Index.aspx?DataSetCode=STAN_IO_TOT_DOM_IMP

2.4 Printing and publishing industry in India: Economic linkages

The international trade classification of the printing and publishing industry consists of: a) printed books, brochures, leaflets and similar printed matter; b) newspapers, journals and periodicals; c) children's picture, drawing or colouring books; and e) other printed material.¹¹ Within these categories, trade in printed books constitutes the most significant component.

The economic linkages of the printing & publishing industry are important for their role in the growth of the country. These linkages are of two types: backward linkages and forward linkages (Hirschman, 1958). Backward linkages refer to the impact of increase in the output of a downstream industry on its demand for inputs from upstream industries. For example, increased production of passenger cars would boost demand for steel, rubber (tyres), auto components, etc. The extent of backward linkages differs across upstream industries since the downstream industry does not buy inputs equally from all industries. Forward linkages refer to increased production of an upstream industry on requirements of downstream industries. Thus, increased production of petroleum products would make its availability easy for downstream industries that use petroleum products as inputs. The extent of forward linkages is not uniform across downstream industries since their requirements of input from an upstream industry are not uniform. An industry may be strong in its backward linkage effects, forward linkage effects, both or neither.

We used the Hirschman–Rasmussen Index to compute backward and forward linkages from India's IOTM (2003–04). Backward linkages refer to the demand–pull concept and forward

¹¹ Refer to Chapter 49 of the Indian Trade Classification (Harmonised System - HS) for details.

linkages to the supply–push concept developed by Rasmussen (1958) and Hirschman (1958).¹²

The computations of backward and forward linkages are based on the standard input–output model of an economy:

$$AX + F = X$$

and

$$X = (I - A)^{-1} F \text{ or } X = BF$$

where X is the $n \times 1$ vector of total output requirement of the economy with n sectors of production; A is the $n \times n$ matrix of input coefficients; F is the $n \times 1$ vector of final demand; and B is the $n \times n$ matrix of $(I - A)^{-1}$. a_{ij} are $n \times n$ elements of input coefficients of the A -matrix of the IOTM and b_{ij} are $n \times n$ elements of the $(I - A)^{-1}$ matrix.

The b_{ij} values ($i = 1$ to n ; $j = 1$ to n) represent the backward linkage multiplier an $n \times n$ matrix. The sum of b_{ij} values in column j is the output multiplier of that sector.

The backward linkage index, BL_j is computed as:

$$BL_j = \frac{1}{n} \sum_{i=1}^n b_{ij} / \frac{1}{n^2} \sum_{i=1}^n \sum_{j=1}^n b_{ij}$$

The backward linkage for sector j reflects the effects of one unit increase in the final demand in this sector on overall economic activity.

The forward linkage effect, FL_i , is computed as:

$$FL_i = \frac{1}{n} \sum_{j=1}^n b_{ij} / \frac{1}{n^2} \sum_{i=1}^n \sum_{j=1}^n b_{ij}$$

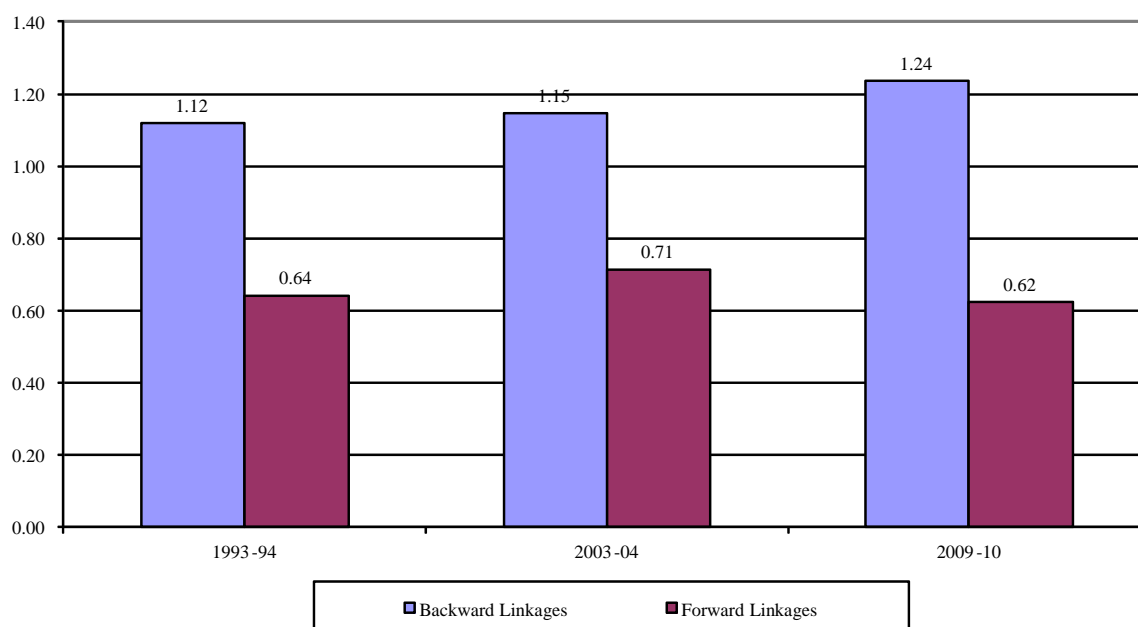
The forward linkage for sector i reflects the effects of one unit increase in production of sector i on overall economic activity.

¹² Refer to CSIRO (2007) for details on the computation of backward and forward linkages.

If the backward linkage of a sector is greater than unity, then an increase of one unit of final demand in the sector will cause an increase in economic activity above the average increase due to one extra unit of final demand in other sectors. Similarly, if the forward linkage of a sector is greater than unity, then an increase in the production in this sector would cause an increase of economic activity above the average increase due to an extra unit of production in other sectors.

Based on the computations, the printing & publishing industry has been identified as a key backward-oriented sector ($BL_j > 1$ and $FL_i < 1$). The industry has strengthened its backward linkages with the economy because it generates stronger stimuli to other sectors through stronger demand for upstream supplies (Figure 2.1).

Figure 2.1: Linkages of the printing & publishing industry in India



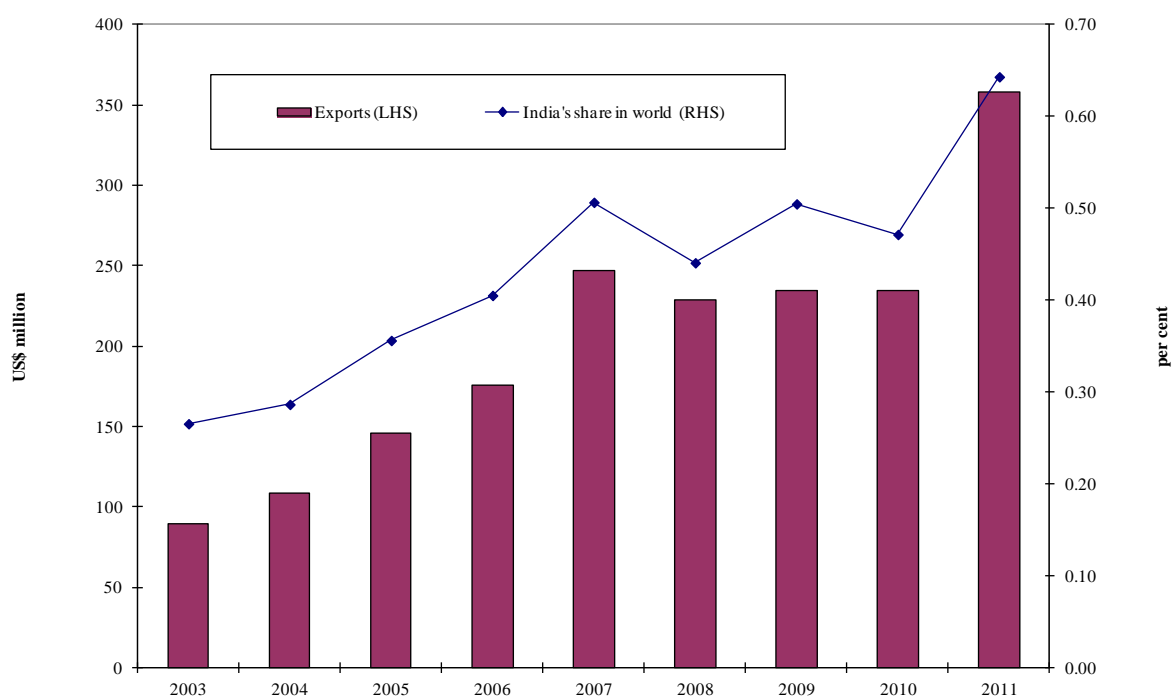
2.5 Indian printing industry: International trade

Published books are broadly classified as educational books or trade books. Educational printing in India is characterised by public sector as well as private publishers that include domestic and foreign publishing houses. Publishing in trade titles has evolved over time. Although the thrust of trade publishers continues to be in selling imported titles, the industry has evolved from about 98 per cent of trade titles being imported to a 75 per cent share of imported titles.

2.5.1 Standard International Trade Classification (SITC)¹³

Despite the increasing volume of India's trade in print material, its global position remains low in comparison to many other countries. This is surprising given the popularity of English as an important language for reading. World exports of printed material increased from US\$ 36.4 billion (annual average of triennium ending, TE 2005)¹⁴ to an average of US\$ 47.2 billion during TE 2008 and further up to an average of US\$ 50.6 billion during TE 2011. India's share in world exports of printed matter has increased from 0.31 per cent as the average of TE 2005 to 0.46 in TE 2008 and to 0.54 per cent in TE 2011. During 2003–2011, India's exports increased at an average rate of 20.5 per cent per annum. However, its export share is insignificant compared to many other countries (Figure 2.2 and Table 2.7).

Figure 2.2: India's exports of printed matter



¹³ Data available in calendar years.

¹⁴ Triennium ending (TE) refers to the three-year period ending 2005 (2003, 2004 and 2005). The data in Tables 2.8–2.10 and Figures 2.2 and 2.3 are based on calendar years (UN database).

Table 2.7: World exports of printed matter (SITC group 892), % share

	TE 2005	TE 2008	TE 2011	Growth Rate per annum (2003 – 2011)
USA	14.4	13.5	12.1	3.4
Germany	14.0	14.1	12.1	4.7
UK	11.3	9.6	8.2	2.9
China	2.9	4.8	6.3	21.7
Thailand	0.2	1.7	5.1	109.1
France	5.7	5.0	4.6	3.2
Hong Kong	4.8	5.1	4.6	7.0
Italy	4.9	4.6	3.9	3.6
Netherlands	2.9	3.1	3.3	9.6
Belgium	4.1	3.6	3.2	3.3
Singapore	2.2	2.3	3.1	19.6
Cambodia	1.5	1.8	2.8	32.0
Czech Rep	2.0	2.3	2.4	10.6
Canada	4.6	3.5	2.3	-3.6
Spain	3.6	2.8	2.1	-1.3
India	0.31	0.46	0.54	20.5
World	100.0	100.0	100.0	7.2
World (US\$ million)	36,380	47,229	50,636	-

Source: Calculations based on International Trade Statistics Year Book, Various Issues; UN COMTRADE online database.

Notes:

TE: Triennium averages

SITC=Standard Industrial Trade Classification, United Nations.

India's imports of printed matter increased at 12.3 per cent per annum during the period 2003–2011 (Table 2.8). Its corresponding share in world imports of printed matter increased from 1.1 per cent to 1.28 per cent (Figure 2.3). However, these are low compared to countries such as USA, Canada, the UK and France. India exported US\$ 273 million and imported US\$ 609 million worth of printed material as its yearly average in TE 2011.

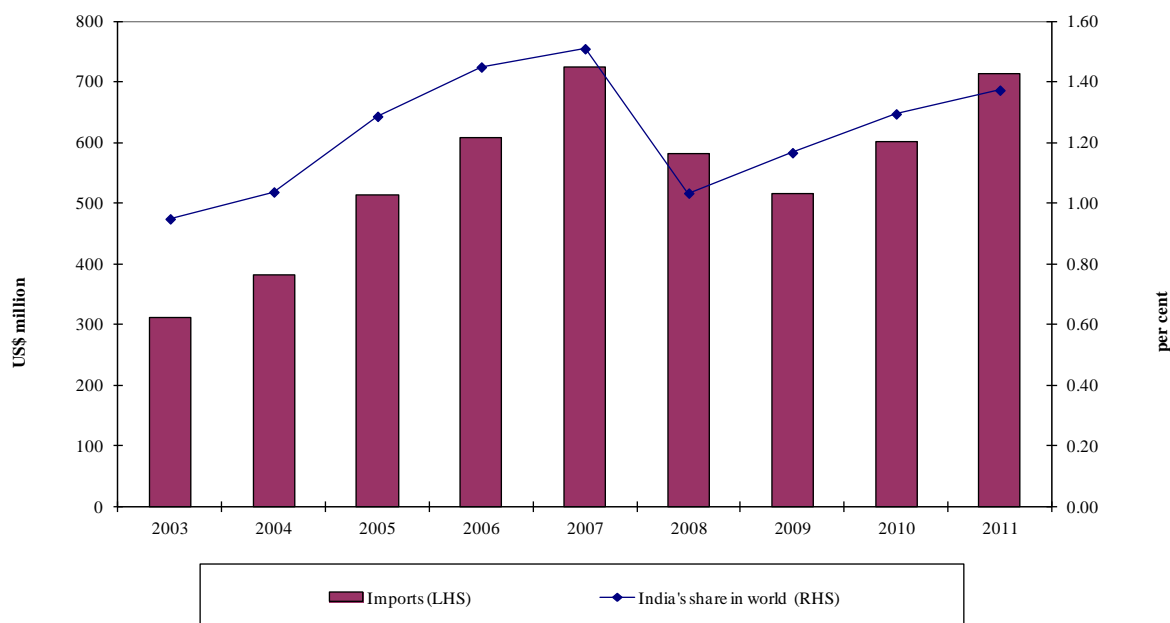
Table 2.8: World imports of printed matter (SITC group 892), % share

	TE 2005	TE 2008	TE 2011	Growth Rate per annum (2003–2011)
USA	13.0	11.5	9.8	1.6
Canada	7.5	7.4	7.0	4.4
France	6.2	5.8	6.0	5.2
UK	7.9	6.9	5.9	2.6
Germany	6.3	5.4	5.6	2.4
Switzerland	4.3	4.0	4.1	5.1
Hong Kong	2.7	3.0	3.3	9.4
China	1.8	2.0	3.3	14.9
Belgium	3.4	3.0	3.1	4.6
Netherlands	2.3	2.4	2.7	8.5
Austria	2.5	2.5	2.6	5.7
Japan	2.4	1.9	2.2	4.6
Mexico	2.9	2.3	2.1	0.1
Singapore	1.2	1.2	2.0	25.5
India	1.10	1.31	1.28	12.3
World	100	100	100	6.6
World (US\$ million)	36,536	48,745	47,571	-

Source: Calculations based on International Trade Statistics Year Book, various issues; UN COMTRADE online database.

Note: TE: Triennium averages.

Figure 2.3: India's imports of printed matter



A comparison across countries shows that India's imports of printed matter exceed its exports. India's export-to-import ratio continues to be below 1. This is in contrast to the observation for several other countries such as Singapore, Germany, China, Hong Kong, the UK, the Netherlands, USA and Belgium (Table 2.9). However, an increase in the ratio for India is observed over a period; the export-to import ratio increased from 0.28 during TE 2005 to 0.34 during TE 2008 and further up to 0.45 during TE 2011.

**Table 2.9: Export-to-Import ratio of printed matter
(SITC group 892)**

Country	TE 2005	TE 2008	TE 2011
Singapore	1.81	1.88	1.63
Germany	2.19	2.52	2.31
China	1.62	2.32	2.05
Hong Kong	1.77	1.64	1.48
UK	1.43	1.34	1.47
Netherlands	1.24	1.24	1.33
USA	1.10	1.14	1.32
Belgium	1.21	1.16	1.10
France	0.91	0.83	0.81
Canada	0.61	0.46	0.35
India	0.28	0.34	0.45

Note: TE: Triennium averages

2.5.2 Harmonised Commodity Description and Coding System (HS)¹⁵

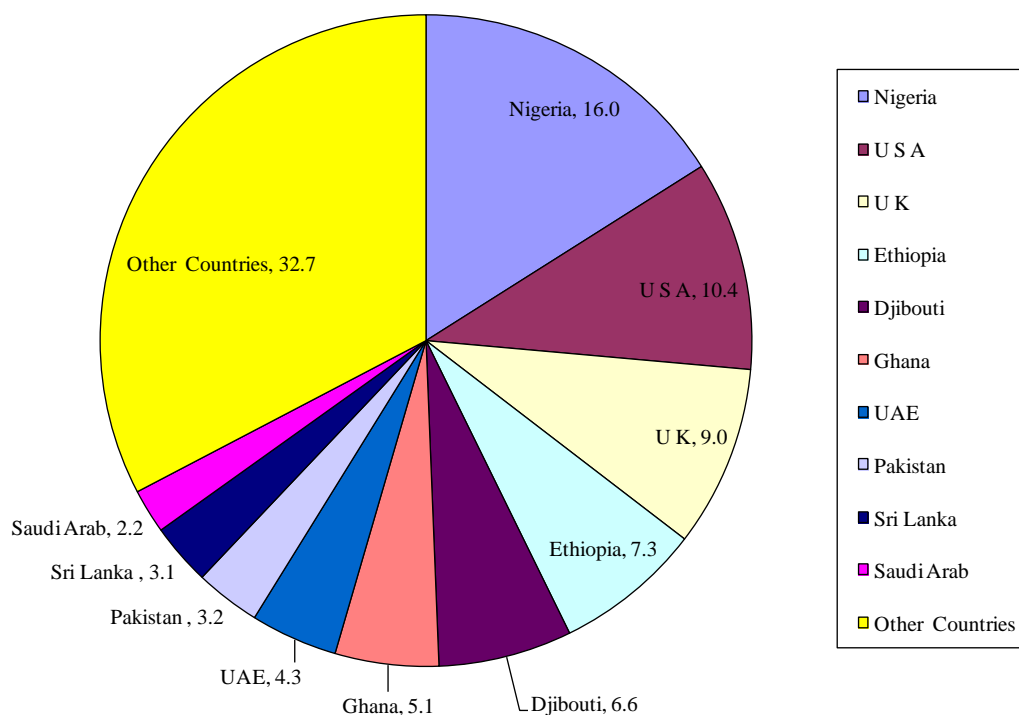
The earlier government policy towards the publishing industry limited trade in books until the late 1990s. Imports were generally allowed against licences based on past performance, while exports were practically unviable (Thakur et al, 1998.). However, the EXIM policy of 1997 freed imports and exports of books on educational, scientific and technical subjects without any restrictions. Indian publishers are present in all fields and subjects.

According to data from the Directorate General of Commercial Intelligence and Statistics (DGCI&S), books are mainly exported to the US, UK, countries in Africa such as Nigeria, Ethiopia and Ghana, the UAE, Sri Lanka, Pakistan and Saudi Arabia (Table 2.10 and Figure 2.4).¹⁶ (Annex 1 of this chapter presents the details of HS codes covered under Chapter 49).

¹⁵ Data is sourced from DGCI&S and corresponds to financial years.

¹⁶ Data given in Tables 2.11–2.16 and used for Figures 2.4–2.9 are on India's fiscal year basis (April–March).

**Figure 2.4: Destination of India's exports of printed books (HS Code 49011010)
2011-12 (% of Shares)**



Source: DGCI&S: see Indian Trade Classification (Harmonised System – HS Code).

Table 2.10: Destination of India's exports of printed books (Code 49011010)

Country	Share (%)		Value (US\$ million)
	TE 2005-06	TE 2011-12	2011-12
Nigeria	3.3	15.5	30.2
USA	14.2	12.6	19.6
UK	17.9	10.0	17.0
Ethiopia	2.4	3.5	13.8
Djibouti	1.2	2.7	12.5
Ghana	2.7	5.7	9.7
UAE	4.4	4.3	8.1
Pakistan	4.1	3.3	6.1
Sri Lanka	6.0	4.0	5.8
Saudi Arabia	1.5	2.1	4.2
Other Countries	42.3	36.3	61.6
Total	100.0	100.0	
World (US\$ million)	70.3	153.7	188.6

Source: Calculations based on DGCI&S Monthly Statistics of Foreign Trade of India, various issues.

Note: TE: Triennium averages

Imports of printed books are sourced from the UK, USA, Singapore, China, Germany, Hong Kong, Korea, Australia, Lebanon and Saudi Arabia (Table 2.11 and Figure 2.5).

Figure 2.5: Sources of India's imports of printed books (HS Code 49011010), 2011-12
(% of Shares)

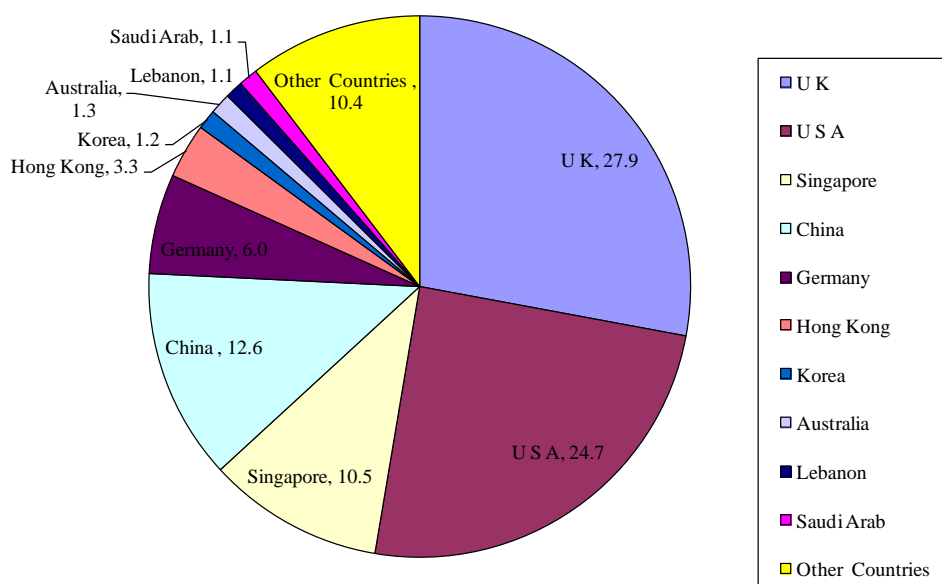


Table 2.11: Sources of India's imports of printed books (Code 49011010)

Country	Share (%)		Value (US\$ million)
	TE 2005-06	TE 2011-12	2011-12
UK	27.7	31.2	14.9
USA	31.5	26.5	13.2
Singapore	11.0	13.1	5.6
China	2.2	10.3	6.7
Germany	3.5	4.9	3.2
Hong Kong	15.6	1.6	1.7
Korea	0.8	1.1	0.6
Australia	0.6	1.0	0.7
Lebanon	0.0	0.6	0.6
Saudi Arabia	0.1	0.5	0.6
Other Countries Total	6.9	9.2	5.5
All countries	100.0	100.0	
Total imports (US\$ million)	36.7	43.7	53.4

Source: Calculations based on DGCI&S Monthly Statistics of Foreign Trade of India, various issues

Note: TE: Triennium averages

The printing industry has undergone a major transformation in its structure on the external front as can be seen in the significant changes in exports as well as imports. India's exports of printed material (including books) increased from US\$ 93.9 million during 2003–04 to as much as US\$ 336.4 million in 2011–12, registering an average growth of 20.7 per cent per annum during this period (Table 2.12). The share of books, brochures, leaflets and similar printed matter, whether or not in single sheets (HS code 4901), in total exports of printed material is significant at about 75 per cent. Its sub-group of printed books accounts for about 55 to 60 per cent share of exports of printed material (HS code 49011010). The exports represent the exports of printing jobs that might have been outsourced by other countries to avail of the cost advantage in the Indian printing industry. However, we do not have separate data on these two components.

Table 2.12: Exports based on HS 2002 Classification (US\$ million)

Code 49					
Code 4901					
	Code 49011010	Others*	Total	Other**	Total
2003–04	57.4	6.2	63.6	30.3	93.9
2004–05	65.7	9.3	75.0	29.2	104.2
2005–06	90.8	11.0	101.8	41.2	143.0
2006–07	108.9	12.8	121.7	131.5	253.1
2007–08	125.9	19.5	145.3	54.1	199.4
2008–09	131.4	32.9	164.4	60.6	224.9
2009–10	125.9	25.4	151.3	51.6	202.9
2010–11	146.7	37.9	184.6	52.2	236.8
2011–12	188.6	52.9	241.5	95.0	336.4

Source: DGCI&S, Monthly Statistics of Foreign Trade, various issues.

Note:

Code 49: Printed books, and other products of the printing industry.

Code 4901: Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.

Code 49011010: Printed books. For detailed description, refer to Annex 1.

*Includes all other products under sub-group 4901.

**Includes all other products under Chapter 49.

India's imports of printed material increased from US\$ 295 million to US\$ 607.2 million between 2003–04 and 2011–12, posting an average growth of 11.8 per cent. The share of books, brochures, leaflets and similar printed matter, whether or not in single sheets (HS code 4901), in total imports was about 25 per cent. The share of imported books in total imports of printed material has remained less than 10 per cent in recent years (Table 2.13).

Table 2.13: Imports based on HS 2002 Classification (US\$ million)

	Code 49				
	Code 4901			Others**	Total
	Code 49011010	Others*	Total		
2003–04	32.9	47.0	79.9	215.1	295.0
2004–05	31.4	63.2	94.7	274.4	369.1
2005–06	45.8	85.2	131.0	344.1	475.1
2006–07	56.3	82.1	138.4	429.6	568.0
2007–08	47.0	112.7	159.7	535.8	695.5
2008–09	54.1	103.7	157.9	281.3	439.1
2009–10	36.4	69.2	105.7	333.4	439.1
2010–11	41.3	111.3	152.6	404.3	556.9
2011–12	53.4	123.7	177.1	430.1	607.2

Source: DGCIS, Monthly Statistics of Foreign Trade, various issues.

Note:

Code 49: Printed books, and other products of the printing industry.

Code 4901: Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.

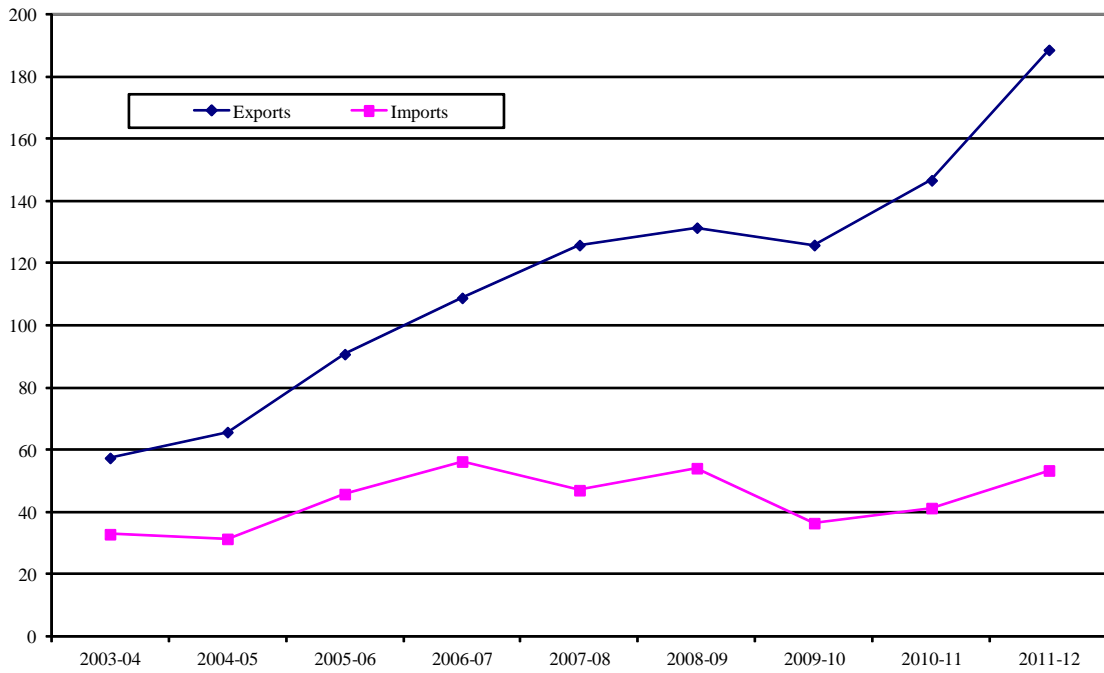
Code 49011010: Printed books. For detailed description, refer to Annex 1.

*Includes all other products under sub-group 4901.

**Includes all other products under Chapter 49.

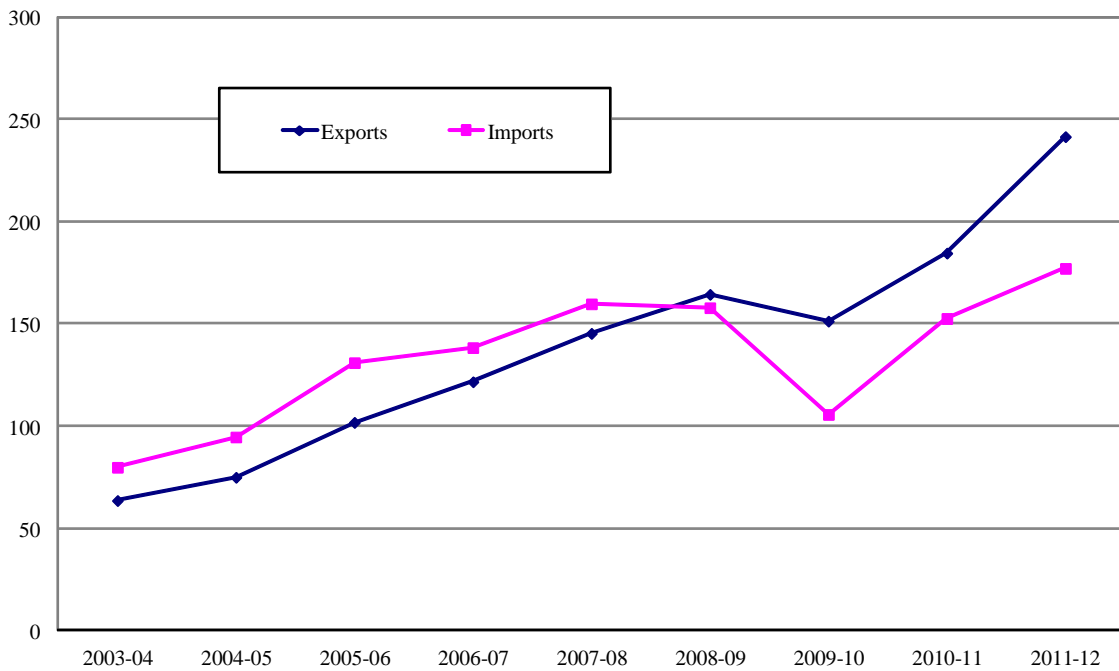
Exports of printed books (HS Code 49011010) have increased at a faster rate than imports. While India exported US\$ 188.6 million worth of books in 2011–12, imports were valued at only US\$ 53.4 million (Figure 2.6). Trade in books, brochures, leaflets and similar printed matter, whether or not in single sheets (HS code 4901), has remained balanced (Figure 2.7). There has been a significant deficit in international trade of India's overall printing industry (HS code 49) (Figure 2.8). Figures 2.9 and 2.10 provide separate depictions of exports and imports.

Figure 2.6: Trade in printed books (HS Code 49011010)



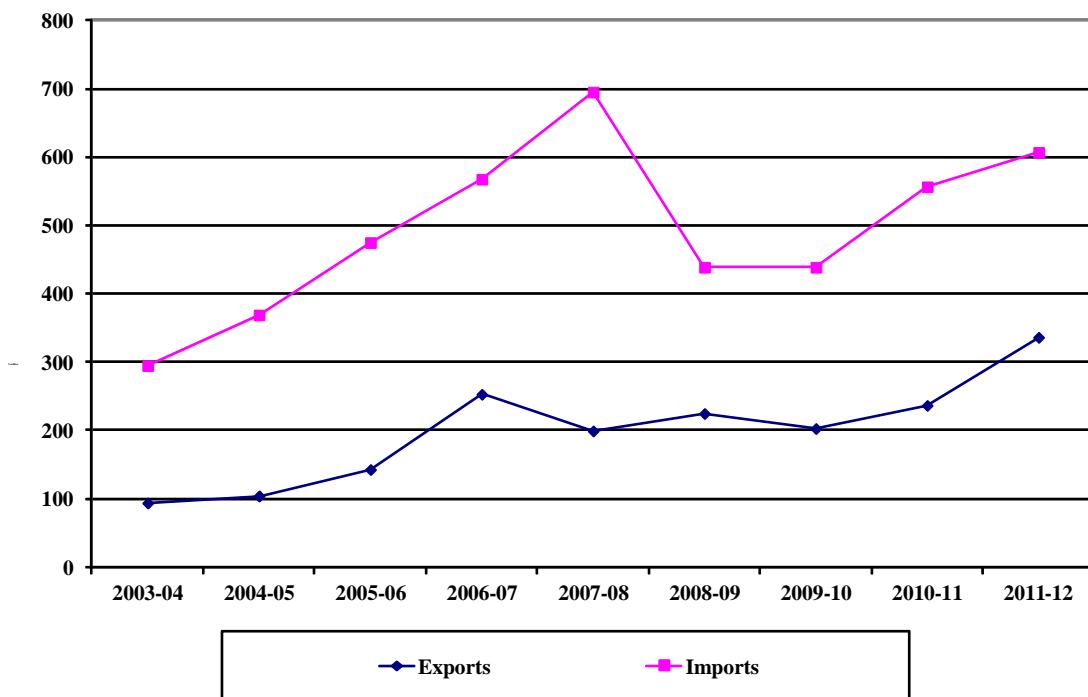
Source: DGCI&S.

Figure 2.7: Trade in printed books, brochures, leaflets, etc.
(HS Code 4901)



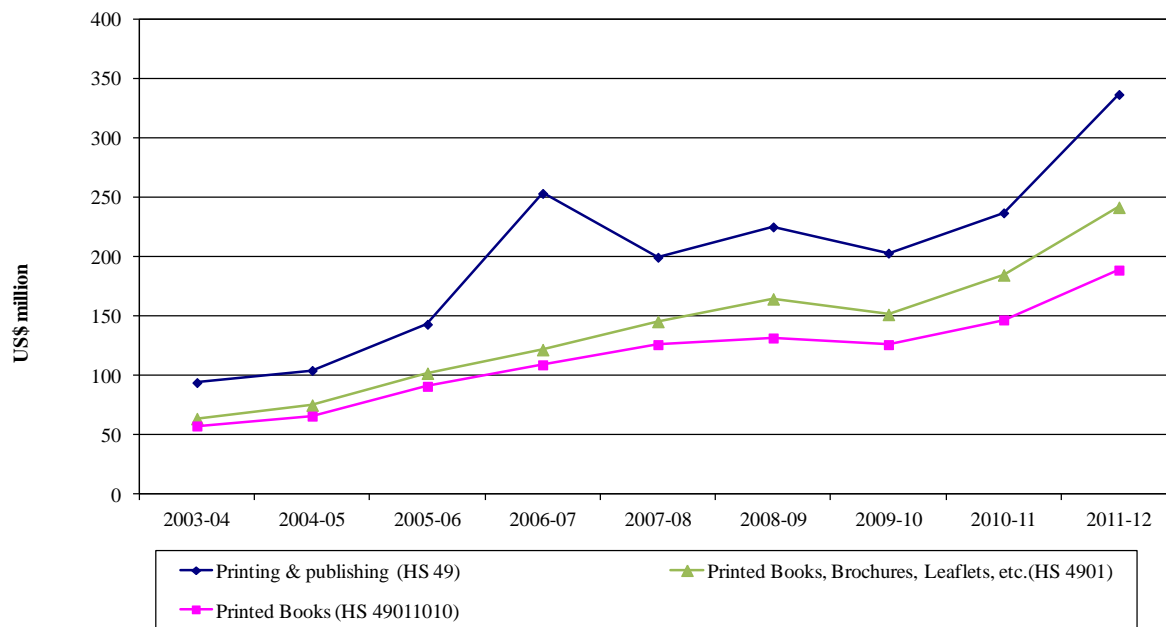
Source: DGCI&S.

Figure 2.8: Trade in printing industry (HS Code 49)



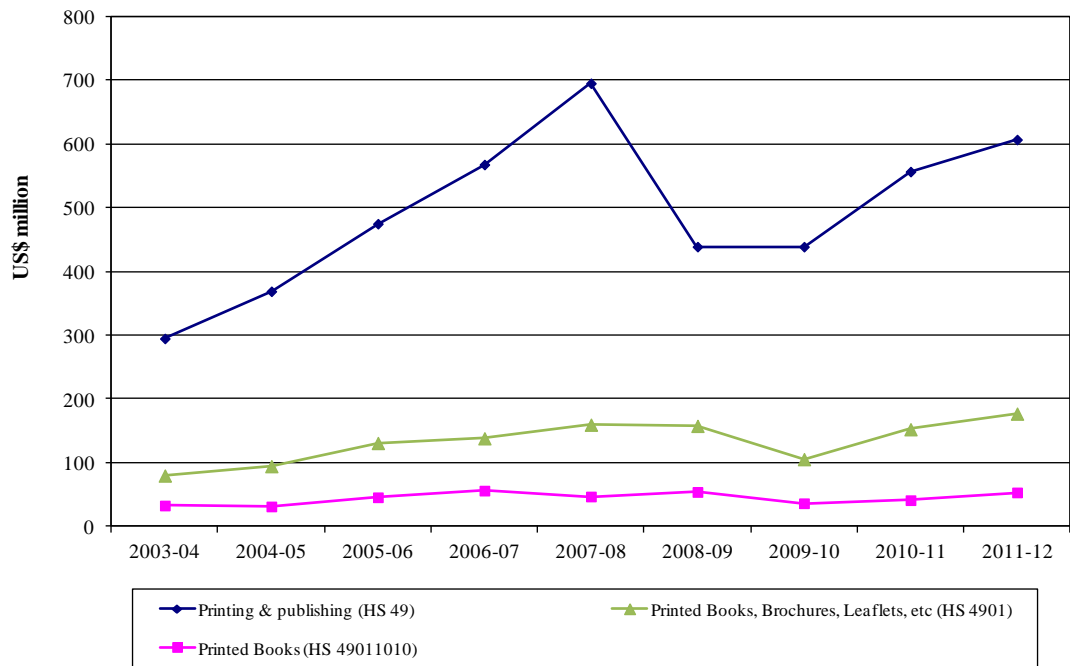
Source: DGCI&S.

Figure 2.9: Exports of the printing & publishing industry



Source: DGCI&S.

Figure 2.10: Imports of the printing & publishing industry



Source: DGCI&S.

ANNEX-I: INDIAN TRADE CLASSIFICATION: HARMONISED SYSTEM (HS)

Heading No.	HS Code	ITC(HS) Code	Description	Unit of Quantity
4901			PRINTED BOOKS, BROCHURES, LEAFLETS AND SIMILAR PRINTED MATTER, WHETHER OR NOT IN SINGLE SHEETS	
	490110	-	In single sheets, whether or not folded :	
		49011010 ---	Printed books	kg.
		49011020 ---	Pamphlets, booklets, brochures, leaflets and similar printed matter	kg.
		-	Other :	
		49019100 --	Dictionaries and encyclopaedias, and serial instalments thereof	kg.
		49019900 --	Other	kg.
4902			NEWSPAPERS, JOURNALS AND PERIODICALS, WHETHER OR NOT ILLUSTRATED OR CONTAINING ADVERTISING MATERIAL	
	490210	-	Appearing at least four times a week :	
		49021010 ---	Newspapers	kg.
		49021020 ---	Journals and periodicals	kg.
	490290	-	Other :	
		49029010 ---	Newspapers	kg.
		49029020 ---	Journals and periodicals	kg.
4903		-	CHILDREN'S PICTURE, DRAWING OR COLOURING BOOKS	
	490300	-	Children's picture, drawing or colouring books :	
		49030010 ---	Picture books	kg.
		49030020 ---	Drawing or colouring books	kg.
		49040000	MUSIC, PRINTED OR IN MANUSCRIPT, WHETHER OR NOT BOUND OR ILLUSTRATED	kg.
4905			MAPS AND HYDROGRAPHIC OR SIMILAR CHARTS OF ALL KINDS, INCLUDING ATLASES, WALL MAPS, TOPOGRAPHICAL PLANS AND GLOBES, PRINTED	
		49051000 -	Globes	kg.
		-	Other :	
		49059100 --	In book form	kg.
	490599	--	Other:	

**INDIAN TRADE CLASSIFICATION (HS)
EFFECTIVE FROM 1ST FEBRURARY 2003**

Page no: 347

Heading No.	HS Code	ITC(HS) Code	Description	Unit of Quantity
		49059910 ---	Geographical, hydrological, astronomical maps or charts	kg.
		49059990 ---	Other	kg.
		49060000	PLANS AND DRAWINGS FOR ARCHITECTURAL, ENGINEERING, INDUSTRIAL, COMMERCIAL, TOPOGRAPHICAL OR SIMILAR PURPOSES, BEING ORIGINALS DRAWN BY HAND; HANDWRITTEN TEXTS; PHOTOGRAPHIC REPRODUCTIONS ON	kg.
4907			SENSITISED PAPER AND CARBON COPIES OF THE FOREGOING UNUSED POSTAGE, REVENUE OR SIMILAR STAMPS OF CURRENT OR NEW ISSUE IN THE COUNTRY IN WHICH THEY HAVE, OR WILL HAVE, A RECOGNIZED FACE VALUE; STAMP-IMPRESSED PAPER; BANK NOTES; CHEQUE FORMS; STOCK, SHARE OR BOND CERTIFICATES AND SIMILAR DOCUMENTS OF TITLE	
	490700	-	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value; stamp-impressed paper; bank notes; cheque forms; stock, share or bond certificates and similar documents of title :	
		49070010 ---	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognized face value	kg.
		49070020 ---	Bank notes	kg.
		49070030 ---	Documents of title conveying the right to use Information Technology software	kg.
		49070090 ---	Other	kg.
4908			TRANSFERS (DECALCOMANIAS)	
		49081000 -	Transfers (decalcomanias), vitrifiable	kg.
		49089000 -	Other	kg.
4909			PRINTED OR ILLUSTRATED POSTCARDS; PRINTED CARDS BEARING PERSONAL GREETINGS, MESSAGES OR ANNOUNCEMENTS, WHETHER OR NOT ILLUSTRATED, WITH OR WITHOUT ENVELOPES OR TRIMMINGS	
	490900	-	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings :	
		49090010 ---	GREETING OR WEDDING CARDS	kg.

**INDIAN TRADE CLASSIFICATION (HS)
EFFECTIVE FROM 1ST FEBRURARY 2003**

Page no: 348

Heading No.	HS Code	ITC(HS) Code	Description	Unit of Quantity
4910		49090090 ---	Other CALENDARS OF ANY KIND, PRINTED, INCLUDING CALENDAR BLOCKS	kg.
	491000	-	Calendars of any kind, printed, including calendar blocks :	
		49100010 ---	Advertising calendar	kg.
4911		49100090 ---	Other OTHER PRINTED MATTER, INCLUDING PRINTED PICTURES AND PHOTOGRAPHS	kg.
	491110	-	Trade advertising material, commercial catalogues and the like :	
		49111010 ---	Posters, printed	kg.
		49111020 ---	Commercial catalogues	kg.
		49111030 ---	Printed inlay cards	kg.
		49111090 ---	Other	kg.
		-	Other :	
		49119100 --	Pictures, designs and photographs	kg.
491199		--	Other :	
		49119910 ---	Hard copy (printed) of computer software	kg.
		49119920 ---	Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices	kg.
		49119990 ---	Other	kg.

3. Analysis of price behaviour

3.1 Backdrop

It is important to get evidence on the prices of books available in India. The discussion on prices also takes into account the issue of editions and the ease of availability of books. The publishers claim that every textbook or trade book is the most current edition released here at the same time and much cheaper than the international price. However, consumers have made other arguments that are based on empirical research.

Basheer *et al.* (2012) reviewed the prices of 53 books in two law libraries in India. They found that the prices of these books are equivalent to or higher than prices quoted in the US and the UK.

Another study analysed data from Flipkart and Amazon for 226 books that form part of the college syllabus for engineering students (CIS, as quoted in Prakash, 2012). The following are excerpts from this study provided in Section III of Appendix 2 of this report.

“26% of these books that are available in India are out-dated versions. The average difference in editions available in the US and in India is of two editions. For example, students in the US have access to the 4th edition of ‘Mechanics of Materials’ by Stephen P. Timoshenko and James M. Gere but students in India have access only to the 2nd edition. The maximum difference in editions goes upto 7. That means, if a student in the US is using the 7th edition of a book, a student in India is still using the 1st edition!

However, the average price at which flipkart makes these books available in India is Rs. 431, whereas the same books in the US on an average cost US\$ 137. This shows that these books are, on an average, about 17 times less expensive in the India than that available in the US at current exchange rate, due to the existence of parallel imports through flipkart. Only 9% of the books available in India were the latest editions. The average price of these books was found to be Rs. 443 in India and US\$ 92 in the US. Thus, showing that these books are about 11 times less expensive in India due to flipkart. For example, the book ‘Digital Image Processing’ by Richard E. Woods, Rafael C. Gonzalez is available at Rs. 508 on flipkart and is the 3rd edition, and the 2nd edition of this book is available on Amazon at US\$ 140.1. The remainder of the books were found to be of same edition both in India and the US. The average price of the same editions in India was found to be Rs. 478 and in the US\$ 121, thus showing that these editions are, on a average, about 13 times less expensive in India due to parallel imports. For example, the book ‘Computer Architecture’ is available on flipkart for Rs. 449 and is the 5th edition, and the same 5th edition is available on Amazon at US\$ 89. This analysis shows us that allowing for parallel imports will surely help decrease prices, increase availability and ensure updated versions of books.”

According to information in the submissions by publishers to the NCAER, the major education book publishers are Sage, Springer India, Taylor and Francis, Wiley India, Wolters Kluwer, Cambridge University Press, Cengage Learning, Elsevier, LexisNexis, McGraw Hill, Oxford University Press and Pearson Education.

The major trade book publishers are Rupa & Co., Hachette India, Random House India, Penguin Books India, HarperCollins Publishers India, and Scholastic India. Rupa is the only fully Indian-owned publishing company, while the others are Indian branches of international publishers. Hachette and Random House are owned by their US counterparts. Penguin India is a joint venture between Penguin UK and the Ananda Bazar Patrika (ABP) group. HarperCollins India is a joint venture between HarperCollins UK and the Living Media Group. Some of the publishers publish both education and general books.¹

We received two sets of detailed information on publishers' comprehensive catalogues along with prices for the titles. While the first set provided comprehensive information on general/trade book publishers, the second set emphasised both education and trade book categories. We received information on about 151,000 educational book titles and about 92,500 general/trade book titles. The information includes details of importable books as well as books reprinted or published in India. The comparative price in terms of Indian rupees and foreign prices has not been made available for many of the book titles.

We adopted two separate methods of price comparison. The first set of submissions was used to compare the revealed Indian prices with international Web prices, while the second set was used to compare Indian and foreign prices as given by the publishers. For importable titles, the publishers' catalogue price in the foreign currency was compared with an alternate price available from online Web sources.

One important concern in allowing parallel imports in India is the possibility of importing cheaper books from other countries. This is possible only if the same book is available in another country at a much lower price so that it is profitable to import and sell it. We attempted to find out whether there are countries where the books are much cheaper than in India so as to assess the threat of parallel import.

We focused on collecting book prices in other Asian countries and the African region, but it is difficult to find book prices in third countries such as Nigeria, Ethiopia, Ghana, Bangladesh, Pakistan and Sri Lanka. One source for book prices was the official websites of online bookstores or book banks in these countries, such as Saeed book bank, Paramount online bookstore, Sarasvi bookshop and Vijitha online bookstore. However, none of these sites provided prices for the selected books. So, we accessed the parent page of book

¹ Information and Web links for the major publishers are given in Annex 1 of this section.

publishers specific to these countries, such as the Taylor and Francis website with Sri Lanka as the shipping region. While the sites of a publisher in specific countries either mentioned prices in the local currency or the foreign currency, the books were predominantly regional titles and were, therefore, not comparable to the books in Indian catalogues.

Some randomly selected books could be located with comparable prices. In other cases, either the regional or country-specific sites of publishers did not exist or were redirected to the website of the parent publisher. Thus, it was not possible to obtain prices for comparable books in third countries for a large number of book titles. A price search on the publishers' sites in other Asian countries such as Singapore, Philippines and Malaysia was redirected, or the books could not be found, or the prices were higher than those in India.

3.2 Submission 1: Price comparisons

We used information on price, edition and the date of publication from a universe of more than one lakh books published by 18 publishers.² The profile of these titles is summarised in Table 3.1. About 88 per cent of the books in the database belong to the trade category and only 12 per cent of books come under the category of education books. While some publishers are exclusively into the business of education books, others publish both categories of books.

Table 3.1: Profile of book titles by publisher

Publisher	No. of Titles		
	Education	Trade	Total
Penguin Books India		31,573	31,573
Random House		533	533
Research Press		1,084	1,084
Sage	124		124
Scholastic India		8,946	8,946
Springer India	1,351		1,351
Taylor & Francis	1,273		1,273
Wiley India	1,297		1,297
Wolters Kluwer	194		194
Cambridge University Press	1,096	136	1,232
Cengage Learning	2,267		2,267
Elsevier	277		277
Hachette		37,434	37,434
Harper Collins		10,827	10,827
LexisNexis	1,935		1,935
McGraw Hill	1,503		1,503
Oxford University Press	336	1,900	2,236
Pearson Education	1,301	15	1,316
Total	12,954	92,448	105,402

² While price-related information is largely available for many titles, information related to editions and date of publication is less frequent. An introduction about the publishers is given in Annex 1 of this chapter.

Education books refer to school, graduate and postgraduate courses. Trade books include general, fiction and children’s books, and some trade books may also be used for education courses. Hence, there may be an overlap between the two categories.

Table 3.2 shows that about 87 per cent of the books are importable, 10 per cent are reprints and about 3 per cent are special editions. Interestingly, education titles are largely reprinted as can be seen from many publishers that exclusively publish education titles and reprint these titles. Oxford University Press and Cengage Learning import books as well as make reprints. LexisNexis and Oxford University Press have large proportions of importable books vis-à-vis reprints.

Table 3.2: Type of publication by publisher

Publisher	Type of Publication				Total
	Importable	Reprints	Special edition	Other	
Penguin Books India	29,600		1,973		31,573
Random House	533				533
Research Press	1,056	28			1,084
Sage		124			124
Scholastic India	8,359	487		100	8,946
Springer India		1,351			1,351
Taylor & Francis		1,273			1,273
Wiley India		1,297			1,297
Wolters Kluwer		194			194
Cambridge University Press	469	763			1,232
Cengage Learning	1,633	634			2,267
Elsevier		161	100	16	277
Hachette	36,793	641			37,434
Harper Collins	9,315	722	790		10,827
LexisNexis	1,808	12	115		1,935
McGraw Hill		1,403	100		1,503
Oxford University Press	2,236				2,236
Pearson Education		1,148	168		1,316
Total	91,802	10,238	3,246	116	105,402

Selection of the sample

Book titles were randomly selected for each publisher. The books have been stratified as trade and education books. In view of our focus on the impact of parallel imports on students, 5 per cent of education titles were randomly selected for each publisher, and for trade books, only 0.5 per cent of the titles were selected. The higher percentage of education books is also required for a representative analysis of the much smaller share of education books (12,954 titles) as against trade books (92,448 titles) in the population that was studied here. For each

selected/ sampled title, information on the price, edition and publication was collected through alternate sources available on the Web³. Efforts were made to collect alternate prices for a title, referred to as the ‘Web price’, for identical editions and binding similarities (paperback and hardbound). The availability of the list and discounted prices has been documented in our study.

The titles were analysed for price differences between domestic and international markets, edition differences and delays in publication. The price analysis compares the Indian discounted selling price (i.e., the publisher’s local price) of a particular title vis-à-vis the discounted Web price available through a Web source, mainly Amazon.⁴ Since students get a 10 per cent discount on the print price, we considered a minimum discount of 10 per cent on the retail price of books in India. Books are noted as cheaper if the Indian (selling) price is lower than the Web-discounted price.

Conversion rates used for price comparisons

To calculate the exchange rate, we tried to work with averages over two sub-periods. The publishers’ quotes on October 2012 were compared with the alternate prices available on the Web that were accessed over a four-month period from October 2012 to January 2013. Since the variations in exchange rates are not significant over the two periods (see Table 3.3), we used the exchange rates for the period May–October in the present analysis.

Table 3.3: Exchange rates used in the study

	6-month average (May 2012–Oct. 2012)	4-month average (Oct. 2012– Jan. 2013)
INR per US\$	54.78	54.20
INR per GBP	86.68	86.69
INR per EUR	69.25	70.76

3.2.1 Education books

We selected 632 education books for our analysis of price, editions and publication gaps. Of the 12 education book publishers, nine are exclusively in the business of education titles (Table 3.4) and three of them also deal in trade titles. The selected books include 412 reprints (65 per cent) and 208 importable books (33 per cent) (Table 3.5). Local price was available in the database for more than one lakh books. Additional information was compiled for an alternate Web price and Web-discounted price where possible.

³ Web price refers to the price on amazon.com

⁴ Care was taken to exclude the prices of second-hand books.

Table 3.4: Type of education book by education publisher*

Publisher	Type of Publication				Total of Education Books
	Importable	Reprint	Special edition	Other	
Sage		124			124
Springer India		1,351			1,351
Taylor & Francis		1,273			1,273
Wiley India		1,297			1,297
Wolters Kluwer		194			194
Cengage Learning	1,633	634			2,267
Elsevier		161	100	16	277
McGraw Hill		1,403	100		1,503
Oxford University Press	336				336
Total	1,969	6,437	200	16	8,622

* These publishers publish only education titles.

Table 3.5: Education books used in the sample

Publisher	Importable	Reprints	Special edition	Other	Total of Education Books
Sage		6			6
Springer India		68			68
Taylor & Francis		63			63
Wiley India		66			66
Wolters Kluwer		9			9
Cambridge University Press	21	33			54
Cengage Learning	83	31			114
Elsevier		9			9
LexisNexis	87			4	91
McGraw Hill		69			69
Oxford University Press	17				17
Pearson Education		58	8		66
Total	208	412	8	4	632

To identify and address the price-related concerns of students of specific subjects, the price behaviour of books across subjects was also analysed. The major subject classifications in our sample include education books on the subjects of law (97 titles), medicine (37 titles), engineering (162 titles), management (79 titles) and math & economics (35 titles) (Table 3.6). Publishers may have a concentration in specific subject areas. For instance, LexisNexis

mainly publishes law books, while engineering books are mainly from Wiley India and Pearson Education.

Table 3.6: Distribution of education books in the sample by subject

Publisher	Law	Medical	Engineering*	Management	Math & Eco	Others	Total
Sage				2		4	6
Springer India		8	25	1	12	22	68
Taylor & Francis		4	12	3	4	40	63
Wiley India			42	8		16	66
Wolters Kluwer		9					9
Cambridge University Press	2	5	7	5	1	34	54
Cengage Learning	1	1	20	22	12	58	114
Elsevier		9					9
LexisNexis	91						91
McGraw Hill			21	22	3	23	69
Oxford University Press	3	1	2	2		9	17
Pearson Education			33	14	3	16	66
Total	97	37	162	79	35	222	632

Note: * The 162 books in engineering also include books related to science.

Reprints have a strong presence across the subjects as can be seen from Table 3.7. However, law books are importable.

Table 3.7: Publications by subject

Subjects	Importable	Reprints	Special edition	Other	Total
Law	91	2		4	97
Medical	3	34			37
Engineering	13	146	3		162
Management	21	56	2		79
Math & Economics	8	26	1		35
Others	72	148	2		222
Total	208	412	8	4	632

Comparison of Indian and web-discounted prices

Discounted Indian prices were compared with the Web-discounted prices (on Amazon). A minimum discount of 10 per cent was considered on the Indian price for the local reader, while Web-discounted prices were taken to be the international revealed price. This comparison can be used to understand the difference between domestic and international

prices. A comparative analysis of prices is provided in Table 3.8. The table shows that only 8 of the 632 sampled books are more expensive, whereas 507 books (80 per cent) are cheaper in India. The 507 cheaper books include 377 reprints; they also include 250 paperbacks and 101 hardbound books. We could not get binding information on the remaining 26 titles. For as many as 117 books, a price comparison was not possible due to the lack of an alternate price; many of these are law books from LexisNexis.

The comparison in Table 3.8 excludes the freight cost that would be applicable on the purchase of an individual book from a Web source. These expenses may be in the range of US\$ 5 to US\$ 10. Inclusion of such costs while ordering from Amazon may result in a greater difference between the domestic and the foreign price; hence, domestically bought books would now become even cheaper. The price comparison by subject is given in Table 3.9 and Table 3.10 gives the price comparison by publisher; of the eight more expensive books, seven are from Cengage Learning.

Table 3.8: Price behaviour of education books

Category	Book Type				Total
	Importable	Reprints	Special edition	Other	
Indian discounted price > Web discounted price	8				8
Indian discounted price < Web discounted price	123	377	7		507
Comparison not possible	77	35	1	4	117
Total	208	412	8	4	632

Table 3.9: Price behaviour of education books by subject

Category	Subjects						Total
	Law	Medicine	Engineering	Management	Math & Economics	Other	
Indian discounted price > Web discounted price	1			2		5	8
Indian discounted price < Web discounted price	19	36	147	71	34	200	507
Comparison not possible	77	1	15	6	1	17	117
Total	97	37	162	79	35	222	632

Besides price, two other important issues for students are whether the book is the latest edition and the time lag between the editions published abroad and in India. Of the sampled 632 books, 68 titles (11 per cent) were found to have a later edition available abroad (Table 3.11). Most of the dated editions are reprints; in fact, 44 reprinted titles are editions older than the latest available international editions. While most of these books are priced cheaper in India (52 out of 68), the price competitiveness is against a dated edition. The availability of a dated edition, as found on a Web source, simultaneously with a later edition implies that the dated edition is still in supply abroad.

Table 3.10: Price behaviour of education books by publisher

Publisher	Category			Total
	Indian discounted price > Web discounted price	Indian discounted price < Web discounted price	Comparison not possible	
Sage		6		6
Springer India		68		68
Taylor & Francis		57	6	63
Wiley India		59	7	66
Wolters Kluwer		8	1	9
Cambridge University Press		49	5	54
Cengage Learning	7	100	7	114
Elsevier		9		9
LexisNexis	1	14	76	91
McGraw Hill		58	11	69
Oxford University Press		17		17
Pearson Education		62	4	66
Total	8	507	117	632

Information on the date of publication was available for 341 of the 632 sampled titles. Among these, 60 books (17.3 per cent) are published with a time lag of more than three years. Nearly all these books are reprints and most are priced cheaper in the domestic market. Further, nine more titles have a dated edition in the Indian market besides being published with a delay. A total of 15 books have a significant edition gap where the editions differ by more than one successive edition.

Table 3.11: Editions and publication gap

Category	Later editions available abroad					Publication gap					Both					
	Imports	Reprints	Special Edition	Other	Total	Imports	Reprints	Special Edition	Other	Total	Imports	Reprints	Special Edition	Other	Total	
Indian discounted price > Web discounted price	1				1					0					0	1
Indian discounted price < Web discounted price	12	36	4		52	1	53	1		55	5	1		6	113	
Comparison not possible	7	8			15		5			5	2	1		3	23	
Total	20	44	4	0	68	1	58	1	0	60	0	7	2	9	137	

A total of 77 books in our sample are available with later editions (Table 3.12). This includes 9 books that have lagged editions and also have publication gaps (Table 3.11).

Table 3.12: Later editions available abroad (including books with both publication gap & later editions)

Category	Subjects							Total	
	Law	Medicine	Engineering	Management	Math & Economics	Other			
Indian discounted price > Web discounted price								1	1
Indian discounted price < Web discounted price	1	4	13	10	4	26		58	
Comparison not possible	6		6		1	5		18	
Total	7	4	19	10	5	32		77	

The education books were classified as cheaper or more expensive books. The details of price comparison, percentage price difference (as per cent of alternate international price), the book type (whether import, reprint or special edition) and the local price of the publisher are shown in Table 3.13. Most of the cheaper importable education books in our sample (123 out of 215) are priced above Rs. 1,000. These 123 books include 31 books cheaper by up to 25 per cent, 32 cheaper by 26–50 per cent and 49 books cheaper by 51–75 per cent. The remaining

11 books are cheaper by 75 per cent or more; the price of five of these books is below Rs. 1,000. Most of the cheaper books are reprints. The low prices can be attributed to local adaptations, binding differences, paper quality, colour prints, or a combination of these attributes. The reprints are concentrated at price band below Rs. 500, with the maximum number of books being cheaper by 75 per cent or more. All the eight more expensive books are importable and priced above Rs. 1,000. All these books, except one, are more expensive by less than 25 per cent of the international price.

Table 3.13: Price behaviour of education books

Price Bands of Cheaper Books (cheaper in India than Amazon price)													
Indian price cheaper by (in per cent)	Importable				Reprints				Special edition				Total
	Up to Rs. 500	Rs. 500 to Rs. 1000	Above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	Above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	Above Rs. 1000	Total	
0 to 25	-	-	31	31	-	-	-	0	-	-	-	0	31
26 to 50	1	-	31	32	9	3	2	14	-	-	-	0	46
51 to 75	4	7	38	49	47	42	11	100	1	-	-	1	150
75 and above	4	1	6	11	159	90	14	263	3	3	-	6	280
Total	9	8	106	123	215	135	27	377	4	3	-	7	507
Price Bands of More Expensive Books (more expensive in India than Amazon price)													
Indian price costlier by (in per cent)	Importable				Reprints				Spcl ed.				Total
	Up to Rs. 500	Rs. 500 to Rs. 1,000	Above Rs. 1,000	Total	Up to Rs. 500	Rs. 500 to Rs. 1,000	Above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1,000	Above Rs. 1,000	Total	
0 to 25	-	-	7	7	-	-	-	0	-	-	-	0	7
26 to 50	-	-	-	0	-	-	-	0	-	-	-	0	0
51 to 75	-	-	-	0	-	-	-	0	-	-	-	0	0
75 and above	-	-	1	1	-	-	-	0	-	-	-	0	1
Total	-	-	8	8	-	-	-	0	-	-	-	0	8

3.2.2 Trade books

We have information on 92,312 trade books on their type of publication, viz., importable, reprints, special editions and other (Table 3.14). These include 95 per cent importable books, 2 per cent reprints and 3 per cent special editions and other. Hachette and Penguin are the largest trade book sellers in India, accounting for 75 per cent of the total titles; the share of importable books is 98 per cent in the case of Hachette and 94 per cent for Penguin.

Table 3.14: Trade books by publisher

Publisher	Type of Publication				Total of Trade Books	Importable books as % of Total
	Imports	Reprints	Special edition	Other		
Penguin Books India	29,600		1,973		31,573	93.8
Random House	533				533	100.0
Research Press	1,056	28			1,084	97.4
Scholastic India	8,359	487		100	8,946	93.4
Hachette	36,793	641			37,434	98.3
Harper Collins	9,315	722	790		10,827	86.0
Oxford University Press	1,900				1,900	100.0
Pearson Education				15	15	0.0
Total	87,556	1,878	2,763	115	92,312	94.8

A sample of 461 books was randomly selected for our analysis (details given in sub-section 3.2). Most of these are importable (91 per cent) (Table 3.15).

Table 3.15: Trade books in the sample by publisher

Publisher	Trade Sample				Total
	Importable	Reprints	Special edition	Info NA	
Penguin Books India	133		8	18	159
Random House	3				3
Research Press	6				6
Scholastic India	42	2		1	45
CUP		3			3
Hachette	179	6			185
Harper Collins	47	1			48
Oxford University Press	9				9
Pearson Education		3			3
Total	416	15	8	19	461

Comparison of Indian prices and web discounted prices

We compared the Indian selling price discounted by 10 per cent on the list price with the Amazon discounted price. Of the 461 titles in the sample, 30 titles are priced higher by the publisher than through an alternate Web source, while 343 books are priced lower (Table 3.16). The price comparison could not be done for 87 titles since data on international prices was not available. The comparison of prices across publishers is provided in Table 3.17. Most publishers sell books at a lower price in India than is being sold on the Web.

Table 3.16: Indian price versus international price

Category	Book Type				Total
	Importable	Reprints	Special edition	Info NA	
Indian discounted price > Web discounted price	29			1	30
Indian discounted price < Web discounted price	312	13	5	13	343
Indian discounted price = Web discounted price	1				1
Price comparison not possible	77	2	3	5	87
Total	416	15	8	19	461

Table 3.17: Comparison of prices by publisher

Publisher	Indian price > Web discounted price	Indian price < Web discounted price	Indian price = Web discounted price	Price comp. not possible	Total
Penguin Books India	9	117	1	32	159
Random House		3			3
Research Press		5		1	6
Scholastic India	3	22		20	45
Cambridge University Press		2		1	3
Hachette	12	146		27	185
Harper Collins	6	36		6	48
Oxford University Press		9			9
Pearson Education		3			3
Total	30	343	1	87	461

Table 3.18 show the percentage price difference (as a percentage of the international price) between Indian and international prices for the two categories of books: cheaper in India and more expensive in India. It is broken down by book type (importable, reprint or special

edition) and the local price of the publisher. In the cheaper category, 219 books are priced at less than Rs. 500 and 77 books are priced between Rs. 500 and Rs. 1,000; only 16 books are priced above Rs. 1,000. The 312 importable books include 87 titles that are cheaper in India by up to 25 per cent, 150 titles are cheaper by 25–50 per cent and 63 titles are cheaper by 50–75 per cent. There are 12 titles that are cheaper by 75 to 100 per cent.

Table 3.18: Comparison between Indian and international prices

Price Bands - Cheaper Books																		
Interval of price diff (in %)	Importable				Reprints				Special editions				NA				Total	
	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total		
0 to 25	48	31	8	87	1	-	-	1	-	3	-	3	-	-	-	-	91	
26 to 50	112	34	4	150	1	-	-	1	-	9	-	9	-	-	-	-	160	
51 to 75	50	10	3	63	4	-	-	4	1	1	-	2	-	-	-	-	69	
76 to 100	9	2	1	12	7	-	-	7	4	-	-	4	-	-	-	-	23	
More than 100	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total	219	77	16	312	13	-	-	13	5	-	-	5	13	-	-	-	13	343

Price Bands – More Expensive Books																		
Interval of price diff (in %)	Importable				Reprints				Special editions				NA				Total	
	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total	Up to Rs. 500	Rs. 500 to Rs. 1000	above Rs. 1000	Total		
0 to 25	3	6	8	17	-	-	-	-	-	-	-	-	1	-	-	-	1	18
26 to 50	-	1	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	1
51 to 75	1	1	2	4	-	-	-	-	-	-	-	-	-	-	-	-	-	4
76 to 100	-	1	1	2	-	-	-	-	-	-	-	-	-	-	-	-	-	2
More than 100	3	2	1	6	-	-	-	-	-	-	-	-	-	-	-	-	-	6
Total	6	11	12	29	-	-	-	-	-	-	-	-	1	-	-	-	1	30

3.3 Submission 2: Price comparisons

Publishers submitted a separate dataset of book titles for our study. The data was structured between academic and trade publishers with specific information on the titles for each of the 18 publishers. The academic publishers in the dataset are Cambridge University Press, Cengage Learning, Elsevier, LexisNexis, McGraw Hill, Oxford University Press, Routledge TF, Sage, Springer, Wiley India and Wolters Kluwer. The publishers of trade titles are Hachette, HarperCollins, Penguin Books India, Random House, Research Press and Scholastic India. Publishers cover a large number of titles in both categories. The total number of titles amounts to 151,013 (Table 3.19). There are 32,688 education titles for which prices are available in the local currency (Table 3.20).

Table 3.19: Distribution of book titles provided by academic publishers

Publisher	Number of				Total titles
	Reprints	Local titles	Importable	Other	
Sage	86	615	9,403	1,459	11,563
Springer India	1,351		11,633	-	12,984
Taylor & Francis	1,273	224	17,926	-	19,423
Wiley India	1,297	119	1,135	-	2,551
Wolters Kluwer - Health	194	21	4,776	-	4,991
Wolters Kluwer - TAL	33	106	457	6,236	6,832
Cambridge University Press	1,407		48,394	7,001	56,802
Cengage Learning	634	69	6,931	-	7,634
Elsevier	243	100	4,117	247	4,707
LexisNexis	30	399	1,820	-	2,249
McGraw Hill	1403	690	100	5	2,198
Oxford University Press	392	41	2,136	16,510	19,079
Total	8,343	2,384	108,828	31,458	151,013

Table 3.20: Distribution of education titles with reported local price

S. No	Publishers	No of titles with price in INR		
		Reprints	Local titles	Total titles
1	Sage	86	615	2,159
2	Springer India	1,318		1,318
3	Taylor & Francis	1,228	224	1,452
4	Wiley India	1,297	119	1,416
5	Wolters Kluwer - Health	194	21	215
6	Wolters Kluwer - TAL	33	106	139
7	Cambridge University Press	1,407		9,815
8	Cengage Learning	634	69	2,336
9	Elsevier	243	0	590
10	LexisNexis	30	398	2,363
11	McGraw Hill	1,403	690	2093
12	Oxford University Press	392	41	8,792
	Total	8,384	2,283	32,688

We found that not all the educational titles in the dataset are necessarily important from the perspective of higher education, which is the focus of this study. These include dictionaries, encyclopaedia and books for primary school. Thus, even though academic publishers display a large collection of titles, not all of them are intended for students pursuing higher education.

3.3.1 Price comparison for importable books

To analyse the prices at which books are available to Indian students in the present setting, we needed to know the prices of books as quoted by the publishers. These prices were then compared with alternate prices available through channels to assess whether the books are cheaper through other sources. Information on book prices was provided by the publishers in two submissions. The submissions were comparable in terms of the coverage and prices of trade books, but they differ in their coverage of education books, specifically importable education book titles. In the first submission, the titles in higher education were dominated by reprints. These books were analysed for their price behaviour in Section 3.2 of the report. Nearly 80 per cent of the reprinted titles were found to be available at cheaper rates through the publishers than the foreign editions. However, the number of education books in the first submission was very small; only 12 per cent of all the titles would be of interest to students of higher education. Given our specific interest in academic books, we took up the task of examining additional academic books besides the reprinted titles. At this point, the second submission by the publishers became useful as it provided a large number of education books in the non-reprint category. More than 70 per cent of the education titles (1,08,928 out of 1,53,239 titles) were classified as importable education titles.

The earlier analysis of 632 education titles showed that as many as 507 books are available at lower prices through the publishers. We selected another 200 education titles from the second submission by the publishers. The sample of importable education titles was randomly drawn from all importable education titles. The distribution of the sample of importable education titles by publisher is presented in Table 3.21.

Table 3.21: Sample of importable education books

Publisher	No. of Books
Sage	20
Springer India	25
Routledge (TF)	39
Wiley India	3
Wolters Kluwer (TAL)	1
Cambridge University Press	98
Elsevier	9
Oxford University Press	5
Total	200

As many as 72 of the 200 books have a catalogue price of up to US\$ 50, followed by 68 books priced at above US\$ 100; the remaining 60 titles are priced between US\$ 50 and US\$ 100 (Table 3.22). Very few books (20 titles out of 200) are apparently available at lower prices if procured through publishers. While as many as 85 titles are available at comparable

prices and a similar number of books (83) are available at a lower price through alternate sources (Table 3.23). Of the 83 more expensive books, 73 are costlier by less than US\$ 10 (Table 3.24). This difference may be more than offset by freight cost so that even these books may become cheaper than listed on the Web source.

Table 3.22. List price distribution of importable education titles

Catalogue price	Number of titles	% of titles
Below US\$ 50	72	36
US\$ 50–100	60	30
Above US\$ 100	68	34
Total	200	

Table 3.23: Price comparison of importable education titles

CATEGORY	No. of importable books
Catalogue price of foreign publication > Web list price	83
Catalogue price of foreign publication < Web list price	20
Catalogue price of foreign publication = Web list price	85
Price comparison not possible	12
Total	200

Table 3.24: Price comparison between publishers and an alternate source

Absolute price difference	More Expensive Books	Cheaper Books
Up to US\$ 10	73	15
US\$ 11–20	5	2
US\$ 21–30	3	2
US\$ 31–40	0	0
More than US\$ 40	2	1
Total	83	20

More than one-third of the importable titles (75 out of 200) are available at a higher price through the publisher after considering the available discounts (Table 3.25). However, the prices from an alternate source exclude freight and delivery charges. Therefore, it is important to find the difference in net prices. A marginal price difference of, say, up to US\$ 10 may be attributed to freight and handling costs. Our price comparisons show that publishers' prices for 65 importable titles are higher than those quoted by the alternate channel by not more than US\$ 10 (Table 3.26). Such books would not be expensive after

considering the transportation costs for a purchase from an alternate source. On the other hand, books that are available cheap from the publisher would become even cheaper after including the freight cost payable to the alternate channel; there are 102 such books. It can be seen that only 21 importable education titles are available at significantly different prices that vary by more than US\$ 10.

Table 3.25: Comparison of net prices of importable education titles

Category	No. of importable books
Discounted catalogue price of foreign publication > Web discounted price	75
Discounted catalogue price of foreign publication < Web discounted price	113
Discounted catalogue price of foreign publication = Web discounted price	0
Price comparison not possible	12
Total	200

Table 3.26: Distribution of price difference for importable education titles, discounted prices

Absolute price difference	Expensive Books	Cheaper Books
Up to US\$ 10	65	102
US\$ 11–20	6	8
US\$ 21–30	0	1
US\$ 31–40	0	0
More than US\$ 40	4	2
Total	75	113

To summarise, the publishers primarily import educational titles although they also have some reprints/ Indian editions. With regard to the prices of books, publishers' prices are found to be competitive with world prices. However, the majority of the titles are importable by the publishers or their authorised agents.

Annex-1: Details of Publishers (Publishers' Submission to NCAER)

1. Cambridge University Press

<http://cambridgeindia.org/>

Cambridge University Press publishes the finest academic and educational writing from around the world. Since publishing its first work in 1584, Cambridge now publishes over 2,500 titles and 200 journals every year.

2. Cengage Learning India

<http://www.cengage.co.in/>

Cengage Learning India provides learning solutions to higher education, professional, library reference and school markets in the Indian sub-continent. Cengage Learning is a leading provider of innovative teaching, learning and research solutions for the academic, professional and library markets worldwide. The company's products and services are designed to foster academic excellence and professional development, increase student engagement, improve learning outcomes and deliver authoritative information to people whenever and wherever they need it.

3. Elsevier India

<http://in.linkedin.com/pub/elsevier-india/20/22/2a4>

Elsevier in India is a division of Reed Elsevier India Pvt. Ltd. (REIPL), which is a wholly owned subsidiary of Reed Elsevier, a FTSE 100 company and the world's leading publisher and information provider in the Health Sciences. Elsevier serves more than 30 million scientists, students, and health and information professionals worldwide.

4. Hachette India

<http://www.hachetteindia.com/About.aspx>

Hachette India is the Indian arm of the UK's largest general books publisher, [Hachette UK](#), which is made up of companies like Headline, Hodder & Stoughton, Little, Brown, Octopus, Orion, Chambers-Harrap, Piatkus, Hodder Education including Arnold, and Hachette Children's Books.

5. HarperCollins India

<http://www.harpercollins.co.in/BookCategory.asp>

Fiction, children and general books.

6. LexisNexis

<http://www.lexisnexis.co.in/en-in/products.page>

LexisNexis is a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets.

7. McGraw Hill India (Tata McGraw Hill)

<http://www.tatamcgrawhill.com/>

Education books.

8. Oxford University Press

<http://www.oup.co.in/content/about-us>

Oxford University Press is a department of the University of Oxford and publishes academic and educational books. OUP India has long been an important publishing centre for the Press.

9. Pearson Education India

<http://www.pearsoned.co.in/web/book-category-list.aspx>

School and higher education books .

10. Penguin India

<http://www.penguinbooksindia.com/en/content/about-us>

Penguin Books India is an English language trade publisher in the subcontinent. It is known for its strong fiction and narrative non-fiction list. Penguin India publishes across virtually every segment including biography, travel, business, politics, history, religion and philosophy, lifestyle, cookery, health and fitness, sports and leisure, visual books and children's books.

Penguin India is also the exclusive distributor partner in the region for books published by several leading publishing houses, including the Penguin Group, A&C Black, Atlantic Books, Bloomsbury, Faber & Faber, Granta, Hay House, Icon, Kyle Cathie, Marshall Cavendish, Mira, Quercus, Sterling, Constable & Robinson, Oneworld and Zubaan.

11. Random House India

<http://www.randomhouse.co.in/AboutUs.aspx>

Random House is an English language general trade book publisher.

[The Random House Group](#) is based in London and has subsidiary companies in Australia, New Zealand and India.

12. Research Press India

<http://www.researchpress.co.in/>

This is a sales and marketing company that brings trade books to the Indian subcontinent.

13. Sage India

http://www.sagepub.in/about/sage_india.asp

Sage Publications India Private Ltd is a quality publisher of topical debates in all areas of the social sciences as well as contemporary business books. Founded in 1981, SAGE India is known for its commitment to quality and innovation and is a leader in its chosen scholarly, educational, and professional markets.

14. Scholastic India

http://www.scholastic.co.in/index.php/activity-1.html?_SID=U

Children's fiction and children's books.

15. Springer India

<http://www.springer.com/about+springer/locations+worldwide?SGWID=0-173904-2052-653447-50>

The markets in India, Pakistan, Nepal, Bangladesh and Sri Lanka are served by Sales & Marketing of Springer India in New Delhi. Springer has developed an exciting package of reduced and low-price textbooks for high-level graduate and postgraduate courses.

16. Taylor and Francis

<http://www.taylorandfrancisgroup.com/>

Taylor & Francis Group partners with researchers, scholarly societies, universities and libraries worldwide to bring knowledge to life. Routledge is also a part of this group. It publishes scholarly journals, books, e-books and reference works. Our content spans all

areas of Humanities, Social Sciences, Behavioural Sciences, Science and Technology.

17. Wiley India

<http://www.wileyindia.com/>

Education books

18. Wolters Kluwer (Health) India

<http://wolterskluwerindia.co.in/Professional-Education.aspx>

It publishes textbooks, references, reviews and practitioner journals in print and electronic formats. It specialises in medical, nursing and allied health publications.

4. Academic books: Student perceptions

4.1 Backdrop

An important component of this study is to gauge student perceptions about the availability and quality of the academic books they need for their coursework. A set of questions was prepared to facilitate discussion with students. During October–December 2012, the team met with 418 students in five cities, viz., Bangalore, Chennai, Delhi, Kolkata and Mumbai (Table 4.1) that covered 22 institutions (Table 4.2). The subjects covered were economics, engineering, management, law, medicine, mathematics, physics, chemistry, commerce and arts (Table 4.3) at various levels: undergraduate, postgraduate, M.Phil, and PhD. Of the 418 students, 255 were male (61 per cent) and 163 were female (39 per cent).

The major objective was to get an idea of the purchase pattern for academic books. The issues of interest were students' feel on purchase pattern, availability (in the library, market and online), source of publication (foreign or Indian), edition, syllabi, affordability and knowledge about parallel imports.

With regard to parallel imports, only 105 of the 418 students had some idea. Others were not aware of this term.

4.2 Purchase of books

The text and non-text books for the current semester/ year were bought by 295 of the 418 students (71 per cent). The remaining 123 students had not bought any books; for textbooks they relied on libraries, books provided by the institution, online resources, photocopying and borrowing from friends.

Of the 295 students who reported that they had bought books, 137 students bought only textbooks, 19 students bought only non-text/ trade books and 139 students purchased a mix of text and trade books. They provided information on multiple sources of purchase, which gave us 835 responses. The major sources are new books from booksellers (263), online (210), photocopy (177) and used books (130). Two other sources are also mentioned: There were 28 distributors / publishers and 27 from 'any other source'.

Table 4.1: Responses by city

City	Frequency	Percent
Mumbai	139	33.3
Kolkata	120	28.7
Chennai	85	20.3
Bangalore	42	10.0
Delhi	32	7.7
Total	418	100.0

Table 4.2: Responses by institute

Institutes	Frequency	Percent
IIT Madras	27	6.5
Tamil Nadu Govt. Dental College, Chennai	3	0.7
Madras Medical College, Chennai	25	6.0
Institute of Financial Management and Research (IFMR), Chennai	15	3.6
University of Madras	15	3.6
IIM Calcutta	9	2.2
University of Calcutta	70	16.7
Ramakrishna Mission Vidyamandira, Belur Math	41	9.8
University of Mumbai	34	8.1
IIT Bombay	50	12.0
Indira Gandhi Institute of Development Research, Mumbai	55	13.2
Institute for Social and Economic Change (ISEC), Bangalore	19	4.5
Mount Carmel College, Bangalore	4	1.0
BMS College for Women, Bangalore	5	1.2
Mount Carmel Institute of Management, Bangalore	2	0.5
Municipal College of Education, Bangalore	1	0.2
M.S. Ramaiah Institute of Technology	1	0.2
City Engineering College, Bangalore	8	1.9
Gogte Institute of Technology, Bangalore	1	0.2
Gems B School, Bangalore	1	0.2
IIT Delhi	20	4.8
Delhi School of Economics, University of Delhi	12	2.9
Total	418	100.0

Table 4.3: Responses by academic stream

Stream	Frequency	Percent
Economics	151	36.1
Management	75	18.0
Engineering	61	14.6
Mathematics	47	11.2
Chemistry	21	5.0
Mixed	20	4.8
Medicine	14	3.4
Law	10	2.4
Commerce	7	1.7
Physics	6	1.4
Arts	6	1.4
Total	418	100.0

Table 4.4: Distribution of respondents by gender

Gender	Frequency	Percent
Male	255	61.0
Female	163	39.0
Total	418	100.0

4.3 Interest in buying books

The majority of the students like buying textbooks. Students were asked how much they would spend on buying books related to their subject if they received an untied cash award of Rs. 10,000. Of the 418 students, 8 students said that they would spend Rs. 8,000 or more on textbooks and 50 students said they were willing to spend between Rs. 5,000 and Rs. 8,000. About 45 per cent of the students (187) would spend between Rs. 2,000 and Rs. 5,000 and a group of 123 students put this figure at less than Rs. 2,000; 41 students said they would not spend the money on buying textbooks and 9 students did not respond.

4.4 The issue of edition

The issue of the edition of a book was also discussed. About 90 per cent of the students (373) said they would check which edition they were buying. This group included some students who had not bought any books during their current semester/ year, but were mindful of the importance of the edition. 264 students said that they were ready to pay extra if they had the option to buy a newer edition and 233 students felt that the latest editions were significantly better than the older ones in terms of content, presentation, appearance and clarity.

Another revealing fact is that 260 students prefer to buy a newer edition even if their syllabus prescribes an older edition but this depended on the difference in prices. 227 students were willing to pay up to 10 per cent extra, 92 students said they would go up to 10–20 per cent extra and 12 students would pay more than 20 per cent extra. However, the general perception is that educational books are expensive.

4.5 Foreign authors and editions

With regard to the authors of textbooks, 60 per cent of the students (251) perceive that the books written by the foreign authors are superior to books written by Indian authors on the same subject. About 25 per cent of the students (103) are indifferent and 61 students disagree with this statement. The remaining 3 students did not respond to this question.

More than 60 per cent of the students (256) observed that the share of books by foreign authors exceeds 50 per cent of the books prescribed in their syllabi, while 109 students placed this share between 25 and 50 per cent. Thus, three-fourth of the students (365) observed that the number of books by foreign authors prescribed in their syllabi is above 25 per cent.

However, many of these books appear to be Indian editions of foreign books. Only 40 per cent of the students (166) said that the share of foreign editions in their syllabi was more than 50 per cent and 98 students placed the share between 25 and 50 per cent. Thus only 264 students mention the share of foreign editions in their prescribed syllabi to be more than 25 per cent compared with 365 students who observed that the share of foreign authors' books was above 25 per cent. This implies that many of the books by foreign authors have Indian editions.

With regard to the foreign published books, 301 students purchased these online or from the market. The most common method of purchase is through the web (Amazon, Flipkart, Abe, etc.), which was mentioned in 209 of the 377 responses. 144 students bought these from booksellers; this group included 131 students who had to place their orders with booksellers and then wait for delivery. More than 60 per cent of these students received the deliveries on time.

4.6 Syllabi revision

When asked about the frequency of syllabi revision, 107 students said their syllabi are revised every year, 59 said every alternate year, 96 said once in five years and 32 said once in 10 years. The remaining 124 students had no idea about syllabus revision.

When asked if they had kept updated with the syllabi of foreign universities, 249 students said they did not do so, but 150 students answered in the affirmative. However, 50 per cent of the students (221) perceive that the textbooks prescribed in their syllabi are at par with international standards. 270 students feel their libraries are well stocked and 247 students find their libraries to be well equipped with the latest editions of foreign titles.

While 190 students feel that the books prescribed in the syllabus are sufficient for their study and coursework, a group of 226 students found the books insufficient. 144 out of 226 students buy books that are outside their syllabi.

4.7 Prices of books

The students were asked about the prices of textbooks. 78 per cent of the students (326) felt that textbooks are expensive, among whom 140 students (one-third of the 418 students) perceived textbooks to be 'very expensive'.

5. Films, music and software issues

Issues related to software, films and music were also examined. Trade in these categories is reported by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) vide Harmonised System (HS) Chapters 37 and 85 (Table 5.1), which has reported data for the year 2010–11.

HS Chapter 37 reports trade in cinematographic films. India exports about US\$ 19.4 million worth of films and imports only about US\$ 2.5 million. India, thus, has a trade surplus of about US\$ 17 million under this category.

The total trade in recorded CDs, DVDs and IT software reported under Chapter 85 is much higher. India exports US\$ 91.5 million worth of these items and the corresponding import is valued at US\$ 1,228.6 million. India thus has a huge trade deficit of about US\$ 1,137 million in these items. IT software is the single largest category, posting exports of US\$ 70.8 million and imports of US\$ 1,133 million. A significant trade deficit is also reported in the category of computer graphics. Children's video films earn a trade surplus for India.

The study team met with representatives of NASSCOM in New Delhi. Meetings were also held with film and music industry representatives in Mumbai. These included the Motion Picture Association (India office) and the Film and TV Producers Guild of India Limited.

The responses we received were in line with the objections raised by the representatives of these organisations as reported in the Standing Committee Report (refer to Section 1, Annex 2 of this Report). The objections raised by the films and music representatives are outlined in Paragraph 7.3 and those by the software alliance in Paragraph 7.7.

The arguments provided by these associations echo their earlier stand on the Amendment in Clause 2(m):

- Parallel imports would dilute the 'commercial potential of exploitation of a work'.
- National exhaustion is beneficial to the economy. It allows exclusive distribution arrangements to be formed and respected. It keeps prices low in the country and helps build a strong domestic copyright industry.
- There would be serious imbalance of trade. Counterfeiting activities would increase across borders. There would be total disruption of authorised distribution channels. It would be impossible for customs and border police to apprehend the import of illegal copies.

These arguments are similar to the ones discussed for books. Hence, we do not provide a separate discussion on the same.

Table 5.1: Exports and imports of softwares and films in 2010–11 (in US\$)

HS 2007 Code	Description	India's Exports	India's Imports
		2010–11	2010–11
	Chapter 37: Photographic or cinematographic goods*		
370610	Cine Film of a Width 35mm/more	18,884,391	2,338,464
370690	Other Cinematographic Films	491,784	203,221
Total of 3706	CINEMATOGRAPHIC FILM, EXPOSED & DEVELOPED W/N INCORPORATING SOUND TRACK/CONSISTING ONLY OF SOUND TRACK	19,376,175	2,541,685
	Chapter 85: electrical machinery, unrecorded and recorded media*		
85238010	Learning Aids, such as Language Records	52,562	74,734
85238020	Disc with Information Technology Software	70,840,468	1,132,991,365
85238030	Audiovisual News/Views Mtrl include News Clpng with TP WD<=4mm	58,855	190,185
85238040	Children's Video Films TP WD<=4mm	586,228	11,043
85238050	Video Compact Disc of Educational Nature	273,217	264,310
85238060	2-D/3-D Computer Graphics	3,426	539,687
85238090	Other	19,678,741	94,568,490
852380	Total Recorded CDs/DVDs/Software etc.	91,493,497	1,228,639,814
	Other categories in 8523 (Unrecorded CDs, DVDs, Cassettes, etc.)	321,166,425	463,204,965
Total of 8523	PREPARED UNRECORDED MEDIA FOR SOUND RECORDING/SIMILAR RECORDING OF OTHER PHENOMENA, OTHER THAN PRODUCTS OF CH.37	412,659,922	1,691,844,779

Source: DGCIS, 2011.

Note:

Code 3706: Cinematographic film, exposed & developed W/N incorporating sound track/consisting only of sound track.

Code 8523: Prepared unrecorded media for sound recording/similar recording of other phenomena, other than products of Chapter 37.

Code 852380: Total Recorded CDs/DVDs/Software etc/ (Code originally named 'Other' is HS classification).

*4-digit classification 3706: it has only two 6-digit categories.

**6-digit classification 852380 is under 4-digit classification 8523.

6. Debate in India: Producers versus consumers

6.1 Backdrop

There has been an ongoing debate on the issue of parallel imports of copyright material. The NCAER research team held discussions with various stakeholders: representatives of *copyright holding bodies* (publishers, software, film companies and one IP law firm) and representatives of *consumer bodies* who advocate parallel trade (some professors, IP lawyers, representatives of differently abled persons and students). For convenience, we refer to the two groups as publishers and consumers, respectively. A list of the stakeholders is provided in Annex 1 of this section.

One of the most revealing observations is that both the groups hold highly dogmatic views and opinions about whether India should explicitly accept the principle of international exhaustion and, hence, allow parallel imports of copyright material. The two groups are clearly divided across two sides of the fence, with each side claiming that it holds the right position and the views of the other side are absolutely erroneous. Hence, there is no common meeting ground for the two sides.

We will provide the major arguments put forward by the two groups in the following sections. An evidence-based summary of our work has been provided in the preceding sections. One of the most important caveats of our study is to avoid entering into the legal aspects of the intense debate due to the obvious limits on our understating of the court cases in India and abroad. We have confined ourselves to the economic evidence that we were able to collect. A serious review of the claims and allegations put forth by both groups will also be one of the major highlights of our study.

6.2 Infringing copy

The core of the debate lies in the proposed addition to Clause 2(m) of Chapter 1 of the Indian Copyright Act (1957). Clause 2(m) deals with ‘infringing copy’ and has four sub-sections (see Section 1 of this Report). The addition to Clause 2(m) would mean adding one more sub-section to this clause:

‘provided that a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy.’

6.3 Size of the publishing and printing industry in India’s economy

Our first observation is that there are no reliable data on the size of the printing and publishing industry in India. There are bits and pieces available from diverse sources, but

their interpretation is ambiguous. We are not sure how the size of the Indian book market at Rs. 14,000 crore has been estimated. The count of 19,000 publishers and 90,000 titles published every year also needs clarity on the source of these figures.

Much of the discussion on the Indian publishing industry is thus based on facts and figures that need serious verification. It is not clear how much business is generated by indigenous publishing and how much through imports. For example, the available numbers claim Rs. 4,200 crore worth business of trade books, which is 30 per cent of the total market of Rs. 14,000 crore. Only 17 per cent of the trade book business is done through local publishing with nearly 83 per cent business accounted for by imported books. This leads one to the obvious questions on what is more important: indigenous publishing or imports. Domestic publishing of trade books accounts for only 5 per cent of the Rs. 14,000 crore worth of books business in India.

6.4 Income generated in the printing and publishing industry

Despite all the published growth figures, we observe that the share of printing and publishing in India's gross domestic product (GDP) has been declining since 1993–94. The share declined from 0.32 per cent in 1993–94 to 0.26 per cent in 2003–04 and further down to 0.15 per cent in 2009–10. These figures refer to the entire printing and publishing industry and not just to printing and publishing of books. This slowdown may be attributed to the fact that a significant proportion of Indian book market sales are based on the distribution and sale of imported books rather than books actually published in India.¹

The share of total inputs used in the output of this industry increased from 56.6 per cent in 1993–94 to 62 per cent in 2003–04 and further up to 73 per cent in 2009–10. A serious implication is that the share of gross value added (GVA) has been concomitantly going down. The share of GVA in the output of the printing and publishing industry was 38.7 per cent in 1993–94; it went down to 31.6 per cent in 2003–04 and further down to 23.4 per cent in 2009–10. The sector is, therefore, facing an increasing proportion of input costs and a declining proportion of incomes generated for its factors of production.

Publishing and printing has strong backward linkages with the economy that have increased between 1993–94 and 2009–10. This implies that the increase in the final demand of this industry has a relatively strong effect on economic activity in the economy.

6.5 International trade

India exported US\$ 336.4 million and imported US\$ 607.2 million worth of printed material (including books) in 2011–12 (Indian Trade Classification HS Chapter 49). There was, thus, a

¹ Books actually published in India refer to books published, produced and printed (PPP) in India.

deficit of US\$ 270.8 million. In fact, a significant trade deficit prevailed during the previous years as well.

International trade in printed books generates significant surplus for India. India's export of printed books in 2011–12 was valued at US\$ 188.6 (Indian Trade Classification HS Code 49011010). The corresponding import was valued at US\$ 53.4 million, thus generating a trade surplus of US\$ 135.2 million. However, it is not clear how the exports are divided between India's publishing industry and outsourced printing for publishers in foreign countries. While exports of books constitute 56 per cent of the export of printed material, their share in import of printed material is only 8.7 per cent. This makes three things clear: a) the export of books is happening in a big way; b) the import of books is tiny compared with their export as well as their share in printed material; and c) increased imports of books would not tilt trade surplus into deficit unless there is an unexpected massive increase in imports.

India has a surplus on trade in books with the UK and the US. The surplus in 2011–12 was US\$ 2.1 million with the UK and US\$ 6.3 million with the US. India exports more to both these countries than it imports.

Export destinations

There has been a major transformation in the export destinations of printed books from India. The UK and the US were the two most important destinations for printed books until the mid-2000s, accounting for 18 per cent and 14 per cent, respectively. The share of exports to the UK and the US declined to 10 per cent and 12.6 per cent, respectively, during the triennium ending (TE) 2011–12. The share of exports to Nigeria increased from an average of 3.3 per cent in TE 2005–06 to 15.5 per cent in TE 2011–12. The shares for Africa (including Nigeria) during the corresponding periods are 10 and 28 per cent, respectively.

Import sources

The major import sources of printed books were the UK, the US and Singapore during TE 2005–06 and remained so during TE 2011–12. A major transformation has taken place in imports from China and Hong Kong. Imports from China accounted for an average of 2.2 per cent in TE 2005–06, which increased to 10.3 per cent in TE 2011–12. On the other hand, imports from Hong Kong slipped from 15.6 per cent to 1.6 per cent during the same period.

6.6 The debate

There has been bitter debate between the two groups—producers and consumers. At one extreme is the view that allowing parallel imports would greatly benefit readers and students without any harm to the publishing industry in India. The other extreme group has announced

the imminent death of books in India if parallel imports of lawfully published books in other countries are permitted in India. We are not convinced by either of the two extreme positions, because of the lack of evidence in the reasoning put forward by each group.

Much of our discussion in the following sub-sections is based on the information provided to us by the publishers (Appendix 1 in this study) and representatives of consumers who advocate parallel imports (Appendices 2, 3 and 4). The price, edition and publication date information for more than 2,40,000 books has been provided to us by the publishers who argue in favour of restrictions on the parallel trade of books in India. We have also used information computed on the importance of printed material including books extracted from published and authentic government data; this provides information on the share of this industry in India's GDP, the share of income generated in its output, international trade and economic linkages (Section 2). Information on price comparisons of education and trade books have also been used (Section 3). The discussion in the following sub-sections is based on facts rather than on building an argument in favour of one side.

The proposed addition to Clause 2(m) aims at enabling differently abled persons to gain easy access to reading material. Such access involves the conversion of books into readable formats without having to take the consent of the copyright owner as long as the conversion was not done for profit. This would have enabled more books being translated into formats such as Braille and DAISY.² The conversion would not be possible if some of the books are not available in India or if it is not easy to import titles that have already been converted. A detailed note on this topic is attached as Annex 4.

6.7 Publishing in India

Extract from publishers' submission³

India is the third largest publishing nation hub in the world today after the US and UK. There are over 17,000 publishers in India, and given the regional spread of English medium education, it is estimated that over half of them deal with English language publishing.

Educational publishing has always been the central part of the publishing industry. The presence of overseas publishers and/or the local licences with local publishers has meant India has access to state of the art scholarship at affordable prices for over a hundred years.

² DAISY is the Digital Accessible Information System which is a multimedia standard that supports the representation of text, audio, animation, and video. Producing content in the DAISY format is advantageous since from a single source document, many accessible formats (such as Braille, large print, e-text etc.) can be made very easily.

³ Paragraphs in italics have been extracted verbatim from various papers submitted by the publishers.

Leisure reading apart, trade publishing has contributed to literature (Amitav Ghosh, Anita Desai are part of the school syllabus today), to the cultural fabric of the Indian nation state as well as knitting the country together—through books that travel all over and taking translations from Indian languages to other regions. This growth has happened only because of the current book industry structure—the most fundamental basis of which is territorial copyright.

Extract from consumers' submission

As stated above, the sole purpose of the copyright act is not to confer complete monopoly to the creator of copyrightable work. This is evident from the existence of all sorts of limitations that the copyright act imposes on such rights. Among this includes, a limitation of the length of the right (which is limited and not indefinite), a limitation on the scope of the right, such as - the copyright owner cannot prevent non-substantial copying, he cannot prevent copying of idea, he cannot prevent people from using a work for personal purposes, he also cannot prevent a singer from making a cover version, etc. This established that any copyright regime comes baked in with exceptions and limitations.

The rhetoric employed by the publishers seems to hinge a lot on copyright giving them absolute control over “territorial” rights. It doesn't. If that argument were true, then nothing in the copyright act would prevent a publisher from granting a ‘Delhi-specific licence’ and preventing resale of a book outside of Delhi.

The copyright act is meant to encourage the production of creative works, and it cannot be seen as a means of establishing monopolies of distribution.

Our observations

Even though India is the third largest publishing nation hub in the world, the share of printing and publishing in India's GDP declined between 1993–94 and 2009–10. India is a tiny player in international trade. The data provided by the publishers states that their total number of titles include more than 1,51,000 education titles and about 92,500 trade book titles. More than 72 per cent of the educational books and about 95 per cent of the trade books are reported in the imported category. One of the most contentious arguments between the two groups is on the claim made by publishers that *‘this growth has happened only because of the current book industry structure—the most fundamental basis of which is territorial copyright.’* Although territorial copyright protects publishers' own channels of imports and the distribution of books from competition from parallel channels, its role in boosting 'domestic publishing' is not clear. Many people may see this as a way to protect publishers' monopoly rights over imports and distribution channels.

6.8 Prices of books

Extract from publishers' submission

This is a low priced industry and it is ironical that one of the reasons cited (without any data whatsoever) is that India is high priced market for books. India is indisputably the cheapest place on earth for regular priced books. All publishers publish to specific segment pricing, and relative mark-downs range as mentioned before from 30% to 90% from list prices in the west for the same book.

No real drop in prices: India is already the lowest priced market in the world in each publishing segment with price mark-downs ranging from 30% to as much as 90% for educational textbook pricing. These pricing structures have evolved keeping in mind the socio-economic realities of our country. Low as these prices are, they are still vulnerable to remainders and targeted exports which undermine local industry's ability to compete.

Extract from consumers' submission

Data for 226 books that form part of the college syllabus for engineering students was collected from Flipkart and Amazon. All of these books were found to be Indian editions. Due to the prohibition on parallel imports, 26% of the books available in India were out-dated versions and only 9% were the latest edition. Moreover, the average difference in editions available in the US and in India was of 2 editions. (For example, students in the US have access to the 4th edition of 'Mechanics of Materials' by Stephen P. Timoshenko and James M. Gere, but students in India have access only to the 2nd edition!). The maximum difference in editions has even gone up to 7. That means, if a student in the US is using the 8th edition of a book, a student in India is still using the 1st edition! This would definitely affect the quality of education and materials being made available to Indian students.

However, the average price at which flipkart makes these books available in India is Rs. 431, whereas the same books in the US on an average cost \$137. This shows that these books are, on an average, about 17 times less expensive in the India than that available in the US at current exchange rate, due to the existence of parallel imports through flipkart.

Only 9% of the books available in India were the latest editions. The average price of these books was found to be Rs. 443 in India and \$ 92 dollars in the US. Thus, showing that these books are about 11 times less expensive in the India due to flipkart.

Of the total 1,554 foreign titles acquired by two leading law libraries during 2009-11, there were hardly any titles with equivalent low-priced Indian editions. Even in rare cases where such editions were available, they were never the latest ones.⁴

Almost all foreign titles were available for prices equal to or higher than rates prevailing in the West. These had to be imported through websites such as Amazon or procured through leading local distributors who would place orders directly with publishers abroad. The shipping charges escalated the costs for India, and in one case, the price differential between India and the US was as high as 165%.

With the legalizing of parallel imports, more books of the latest edition will be accessible to Indians and they will also be at prices which are much lower than already existing due to increase in competition.

Our observations

The issue of whether the prices of books are low or high in India is somewhat murky. While publishers state that India is the lowest price market for books, the proponents of parallel import of books find the prices high. Basheer *et al* (2012) illustrate that the foreign edition books, quoted in foreign currency prices, would be extremely expensive for Indian students when measured in terms of Purchasing Power Parity (PPP). Consumer International (2006) has also emphasised this issue. This demonstrates the fact that the per capita GDP is low in developing economies and, hence, spending one dollar worth for a good by an average Indian consumer would be relatively more expensive than spending one dollar for the same good bought by an average US consumer. The gap is huge. This would be true of all commodities, including books. However, it is not clear how parallel imports would close this gap. A survey of 418 Indian students was conducted during this study. The students were asked about their perception of the prices of textbooks, and 78 per cent of them (326) felt that the textbooks are expensive, of which 140 students (one-third of the total 418) perceived textbooks to be ‘very expensive’.

We compared the prices of books quoted by publishers with those available on a Web source, such as Amazon. In a sample of 632 education books, only 8 books are more expensive in India. In contrast, 507 books (80 per cent) are cheaper; these include 377 reprints. This comparison excludes the cost of freight (in the range of US\$ 5 to US\$ 10) that would be applicable on the purchase of an individual book from a web source. Including such costs when ordering from Amazon may result in a greater difference between the domestic and the foreign price—domestically bought books would become further cheaper.

⁴ Shannad Basheer, ‘Government for legalizing parallel import of copyright works; Publishers oppose’, available at <http://economictimes.indiatimes.com/opinion/policy/govt-for-legalising-parallel-import-of-copyright-works-publishers-oppose/articleshow/7723572.cms>.

Besides price, students face two other issues: the latest edition and the time lag between the same edition published abroad and in India. Of the sampled 632 books, 68 titles were found to have a later edition available abroad. Most of the dated editions are reprints, and 44 of the reprinted titles are older editions than the latest available international editions. While most of these books are priced cheaper in India (55 out of 68), the price competitiveness is against a dated edition.

One more set of 200 importable education titles was examined. When we compared discounted prices offered by the publishers with discounted web prices and also controlled for freight and delivery charges, the prices offered by the publishers were comparable with the web prices.

The sample size for trade books is 461. While 30 books are more expensive in India, 343 books are cheaper.

6.9 Judicial issues of copyright in India

Extract from publishers' submission

The current Copyright Act like most other copyright statutes across the world recognizes the territorial integrity of India—i.e., it is possible for a publisher to own exclusive rights to sell or distribute their books within India as distinct from other “territories”/ regions. The Courts in India have consistently upheld this principle including in cases of “transit” imports/ exports. The principle of territory segmentation in relation to copyright has been recognised by the Delhi High Court in the cases of John Wiley & Sons & Ors. v. Prabhat Chander Kumar Jain & Ors. CS (OS) No.1960/2008 and John Wiley & Sons v. International Book Stores & Ors. CS(OS) No. 2488/2008.

Territorial copyright restrictions that officially prevent re-export of these books outside India. There are cases of High Court rulings that have prevented “rogue traders” who are doing this to maximize trading profits, but hurting the global authors and publishers who have created this content.

India have followed one consistent line of reasoning or thought, guided by legislative aids and the stature in question namely that the principle of “International Exhaustion” does not find place in the Copyright Act, 1957.

Extract from consumers' submission

Section 2(m) embodies these ideas and principles and enables India to put these intelligent theories into practice. The next section will highlight the fact that the intention behind allowing parallel imports is evident in various sections of the Indian Copyright Act and how

due to a series of dubious interpretations given by Indian courts, the legislature brought in an amendment to Section 2(m) to clarify the issue of parallel imports.

The amendment in the Copyright Act was necessitated due to the courts interpreting the contractual provisions and the provisions of Copyright Act to prevent import and export of works.

Without taking note of the legislative intent high courts relied on these provisions in the Copyright Act and prevented the free movement of copies particularly importation from other countries into India at cheaper price or exporting to other countries of books printed in India. (For example see Eurokids case of Bombay High Court in 2005; Warner Bros case of Delhi High Court in 2005 and John Wiley case of Delhi High Court in 2009).

The Amendment, it is felt, was necessitated to put an end to the distorted interpretations by the courts against the legislative intent. The courts were trying to protect the interest of publishing houses depriving the freedom of movement of goods from other territories to facilitate affordable access to copyright works to the public.

Our observations

There are contentious issues on the validity of the courts' judgments. However, as economists, we are not competent to provide views on the constitutional validity of the courts' judgements and this issue belongs to the arena of trained lawyers. What we can read from these submissions is that the courts' views are in general agreement with the claims made by the publishers. The consumers, however, are in strong disagreement and argue that 'Indian courts have fundamentally misunderstood the doctrine of first sale, and consequently have wrongly held that parallel importation is disallowed by Indian law. I further look at the ingenuity displayed by a court in prohibiting export of low-priced editions from India, and come to the conclusion that this is also incorrect in law. Finally, I note that there is an easy way out of this quagmire that we find ourselves in due to judicial inventions, which is of accepting the proposed amendment to the Copyright Act, 1957' (Prakash, 2012).

In a recent development, the Supreme Court of the United States delivered an historic judgment: 'Respondent, John Wiley & Sons, Inc., an academic textbook publisher, often assigns to its wholly owned foreign subsidiary (WileyAsia) rights to publish, print, and sell foreign editions of Wiley's English language textbooks abroad. Wiley Asia's books state that they are not to be taken (without permission) into the United States. When petitioner Kirtsaeng moved from Thailand to the United States to study mathematics, he asked friends and family to buy foreign edition English language textbooks in Thai book shops, where they sold at low prices, and to mail them to him in the United States. He then sold the books, reimbursed his family and friends, and kept the profit.'

This judgment by the Supreme Court has commented on whether publishers have special privileges on the copyright law. In the case of Supap Kirtsaeng, DBA, Bluechristine99, Petitioner v. John Wiley & Sons, Inc the Supreme Court of the United States gave a judgment on March 19, 2013 in favour of parallel imports of copyright material. In one observation it states: ‘Wiley and the dissent claim that a non-geographical interpretation will make it difficult, perhaps impossible, for publishers (and other copyright holders) to divide foreign and domestic markets. We concede that is so. A publisher may find it more difficult to charge different prices for the same book in different geographic markets. But we do not see how these facts help Wiley, for we can find no basic principle of copyright law that suggests that publishers are especially entitled to such rights.’

‘The ‘equal treatment’ principle, however, is difficult to square with a geographical interpretation of the ‘first sale’ clause that would grant the holder of an American copyright. (perhaps a foreign national), permanent control over the American distribution chain (sales, resales, gifts, and other distribution) in respect to copies printed abroad but not in respect to copies printed in America. And it is particularly difficult to believe that Congress would have sought this unequal treatment while saying nothing about it and while, in a related clause (the manufacturing phase-out), seeking the opposite policy goal.’

‘For these reasons we conclude that the considerations supporting Kirtsaeng’s non-geographical interpretation of the words ‘lawfully made under this title’ are the more persuasive. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.’ *It is so ordered.*

6.10 WTO regulations on international trade

Extract from publishers’ submission

In each of these cases except for the Eurokids case (which relied on the Penguin case), each case exhaustively examined the International conspectus as well as International Treaties including Article 6 of TRIPS (Wiley Case) and came to the conclusion that (a) the importation of lawfully published copyrighted works could be a controlled and (b) [in the Warner and Wiley Cases] that the rule followed in India was at best national exhaustion and NOT International Exhaustion.

Given that Article 6 “The Trade Related Intellectual Property Rights” (TRIPS) permits national legislations to choose to disregard or follow international exhaustion if it suites their domestic requirements, there is clearly no “treaty compulsion” to follow the principle of International exhaustion.

Extract from consumers' submission

Rules restricting parallel importation are non-tariff barriers to trade and can be argued to be inconsistent with the general terms, structure and spirit of the WTO and GATT 1994.

Restrictions on parallel import of copyrighted works infringe Article II and XI of the GATT 1994 and are not protected by the safeguard created for intellectual property rights under Article XX(d). The safeguards do not apply because rules restricting parallel imports are not 'necessary' to protect national IPRs because by definition, parallel import goods are placed on markets with the consent of rights holders. Moreover, vertical territorial allocation of distribution of copyrighted works can be achieved in a less trade restrictive way i.e. by private and intra-corporate contracts. Also, since Article 6 of the TRIPS does not address the question of exhaustion of rights, such an interpretation of the GATT provides a basis for reading in international exhaustion over national exhaustion. Therefore, in the interest of free trade and economic and social welfare, parallel imports should not be prohibited. The positive and negative implications of such a restriction and its impact on the social and economic welfare of India will be examined in detail in part III of this submission.

Our observations

The WTO was established in 1995 to administer various trade agreements negotiated by member states. Three major agreements refer to the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and Trade-Related Intellectual Property Rights (TRIPS). The WTO encourages its members to have open markets and transparent trade policies. The two major principles underlying WTO philosophy are Most Favoured Nation (MFN) and National Treatment (NT).⁵

The MFN principle states that member countries cannot discriminate between their trading partners. A country cannot grant a special favour to another country, like discretionary low customs duty. Its importance may be judged from the fact that it is Article 1 of GATT, Article 2 of GATS and Article 4 of TRIPS agreements.

The principle of national treatment requires equal treatment to imported and locally-produced goods particularly after the foreign goods have entered the market. The same principle should apply to foreign and domestic services and to foreign and local trademarks, copyrights and patents. This principle of 'national treatment' is also enshrined in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), even though the principle is handled slightly differently in each agreement.

⁵ http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm

The TRIPS Agreement emphasises the need for trade openness subject to protection of IPRs: ‘Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.’

TRIPS Annex 1C Part I Article 1 states that ‘Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.’

Thus, while the TRIPS agreement outlines some suggestions on the issue of international trade in copyright goods, it does not interfere with any national law on the principle of exhaustion of rights. Thus, WTO member states are free to adopt their own policies on the issue of parallel trade.

An agreement on parallel imports could not be reached under the WTO rules. Article 6 of the TRIPS Annex 1C deals with the principle of exhaustion and states: ‘For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.’ This implies that each member nation may adopt its own policy of exhaustion and no complaint can be filed against such measure.

However, Article 6 must be read in conjunction with Article 7 which expresses concern about barriers to legitimate trade: ‘The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.’

6.11 Remainders

Extract from publishers’ submission

Remainders are the single biggest issue confronting publishers (mainly trade but also educational) today. It was assumed by those supporting 2m that parallel importation (including remainders which was given no thought) would actually help widen range, bring down prices and bring more players into the fray. Nothing could be further from the truth.

Targeted 'undercut' exports: We need to say a clear no to targeted spoiler exports into India. The big brands would be hit first by this.

Remainders and dumping will kill the market: This is an inevitable process that will result, and will hit authors, publishers and consumers alike. Authors will be hit by loss of royalties and future opportunity; publishing will lose margins and investment power; and booksellers will (due to the indiscriminate flowing in of imports) be forced to change stocking patterns, actually reducing choice; and pricing will be a constantly fluctuating mechanism offering no certainty of best buy.

The bulk remainders will see a tidal wave of undiscerning product. Remainder books fairs sell these by the 'room full' (called bins and bales) like we do 'raddi' by the kilo. But here you can't really choose your product. So these books are by and large picture books, or hardbacks a year down the line or a mixed bag of books that would normally see no demand here would all just come in. So, yes, this will become cheaper, but is the consumer gaining? No, because it's not a situation where increased supply is lowering price. Some book that nobody wants will be available now really cheap. This is what we mean by saying that when you open it up for books, it's not the same market (or product therein) becoming lower priced, it's a whole lot of relatively unwanted stuff that will force its way on to shelves. Before you ask why booksellers will keep unwanted books presuming there will be no demand for them, they will do so because they have no choice; that will become the default stocking pattern. Example: If a bookseller gets a whole stack of budget western (as in cowboy) novels (which by current demand does not occupy more than 3 shelves in any bookshop) which he can sell at lower price points (by perception) but that gives a much higher margin because they were throwaway (and the distributor keeps it because if he doesn't his competitors will), the bookseller will enlarge that shelf space to at least 5 shelves. That's two shelves of something else that he kept (because readers wanted them) now gone. Expand this over time and stores will change their stocking patterns. Yes it won't happen overnight, but all of this will add up to squeeze the small Indian writer off first, then the publisher itself will reprioritize and shrink publishing programmes leading to a conversion to what we call a trading market.

Infringing imports will still be cheaper: One rationale for this amendment is that books from overseas are more expensive and therefore incapable of hurting local lower priced editions. This is completely untrue if one studies the dynamics of publishing. Given that the west is a 'frontlist' market (over 85% of shelf space is new books), books on an average have a shelf life of just 3-4 months. India by contrast is still largely a 'backlist' market (where established books run on longer) and it is every publisher's endeavour to create books that backlist.

Extract from consumers' submission

Another issue that needs to be highlighted is the claim that publishers make of the inherent difference between the US and Indian book markets. They fear that it is due to this difference parallel imports in India cannot be allowed as parallel imports will result in a deluge of remainders in the Indian bookstores. We submit that this fear is baseless. The US and Indian book markets are not as different as the publishers wish them to be. Books of different prices are sold in the Indian book stores and books from the highest to the lowest priced move and are being bought. Therefore, first the fear of remainders is overdone and second if the US can manage the issue of remainders so can India.

Our observations

The consumers have put forward an extreme statement that the fear of remainders is baseless. The producers have written their note based mainly on how remainders would damage the benefits accrued with the books being sold in India – published, reprinted and imported titles. These are two extreme positions.

The pivot around which the producers have woven much of their logic against parallel imports is the issue of remainders. Most of the catalogued titles are importable and not published in India. One should therefore read the threat of remainders to India's publishing industry very carefully since what we would be protecting are books being imported into India rather than books published in India.

The fear of the destruction of India's publishing industry has been built on the premise that most publishers abroad print most of the titles most of the times in numbers exceeding demand. This would be naïve to assume that foreign publishers print an excess number of books as the norm rather than as an exception. It would be nice to have documentation on how many times publishers in India have detected this happening given that the import flood of a single title is not an extraordinarily difficult task to track. This would make the case convincing. Also, the publishers' submission mentions that import of a few copies would not affect their business. In any case, remaindering is a bigger threat in markets where books are priced high than in the case where books are the 'cheapest' in the world.

Further, the issue of books being 'frontlist' in the West and 'backlist' in India needs to be examined. Whether a book is frontlist or backlist would differ for education and trade books. While a fiction book might have a short shelf life, the same may not be true for an education book. Hence, the fear of frontlist remainders would hold well for trade books, but not for education books.

It is difficult to document the difference between ‘alleged remainders’ and ‘official remainders’. There is no reason to believe that the publishers would not ship their surplus stock remainders to India through ‘official channels’ and at low enough prices that Indian consumers would be ready to buy. Other dealers would lose their incentive to flow in the ‘alleged remainders’.

Finally, the publishers might retain control over their books abroad such that these do not get sold as remainders but get sent back to the publisher. This may be difficult to implement but is worth considering.

It is, thus, clear that the publishers’ major concern would get diluted if steps can be taken to thwart the inflow of remainders.

6.12 The issue of export of books

Extract from consumers’ submission

In addition to this the 2012 Amendment also introduced section 52(1)(zc) which reads as follows: “importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory materials, that is purely incidental to other goods or products being imported lawfully”. This is considered not an infringement of the rights of the owner of literary and artistic works. This it appears is to ensure that importation of goods permitted under other IP laws such as Patent Act and Trademark Act are not defeated by using rights under the Copyright Act. This provision also makes it clear that the Parliament recognizes the policy of Government of India to follow international exhaustion in all IP laws.

In the above context there was no need to introduce the proviso in section 2(m). It appears that section 2(m) was inserted in the Amendment Bill to give further clarify of the legislative intent that the policy followed in the Copyright Act is international exhaustion.

Extract from publishers’ submission

It was also contended that other stakeholders including the authors and consumers benefitted from territorial division of rights. The existing provision had an added advantage in cases of books meant for academic purposes. With the proposed amendment, the student community would be hit the hardest. It was pointed out that in higher education, especially in medical and engineering, a lot of foreign books were being made available in India at low prices in spite of their being priced at much higher rate in the country of their origin. With this amendment, the low priced editions meant for Indian sub-continent could be exported back to the country of their origin where they were priced at much higher rates. Consequently, the publishers would lose the incentive to sell books in India or in the Indian sub-continent at

subsidized prices. Reason being that foreign publishers would not like to grant the reprint rights to Indian publishers fearing low priced Indian editions flooding and diluting their own markets.

Our observations

Our understanding is that exports and imports are two different subjects and need separate attention. In any case, the US now permits import of cheaper editions of books. However, the Indian courts have viewed the subject in a different way.

6.13 Additional observations on consumers' submission

The need for addition to 2(m)

In addition to this the 2012 Amendment also introduced section 52(1)(zc) which reads as follows: "importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory materials, that is purely incidental to other goods or products being imported lawfully". This is considered not an infringement of the rights of the owner of literary and artistic works. This it appears is to ensure that importation of goods permitted under other IP laws such as Patent Act and Trademark Act are not defeated by using rights under the Copyright Act. This provision also makes it clear that the Parliament recognizes the policy of Government of India to follow international exhaustion in all IP laws.

In the above context there was no need to introduce the proviso in section 2(m). It appears that section 2(m) was inserted in the Amendment Bill to give further clarify of the legislative intent that the policy followed in the Copyright Act is international exhaustion.

These statements are contradictory. The consumers state that that there was no need to introduce a new proviso in Section 2(m) yet it was done to clarify that India follows the policy of international exhaustion. This implies that the Copyright Act had some fuzzy clause that needed further clarity, requiring an amendment in 2(m).

Foreign buyers would purchase imported books from India

Publishers heavily opposed to this amendment, arguing that it would be detrimental to their interests. According to them the prices are cheap in India and this provision will prevent territorial licensing practices. It was also advocated that this will affect the printing and distribution of low price editions of the books particularly educational books in India and also books with special pricing for India.

These arguments are not correct for the following reasons: If the prices are cheap in India the publishers need not worry about this provision since it is not going to be economically viable for anyone to import books with higher price from other countries and sell it in India.

There is no ban on territorial licence. The copyright owners can continue with the practice of territorial licensing of works. But the provisions create obligation to the licensee to keep the prices low as far as possible so that third parties will not venture for parallel import of same works from cheaper markets. It is true that this puts a check on unreasonable profit making by following the practice of differential pricing.

The low price editions books are not always the latest edition of the books. It is the out dated edition of books that are printed and sold in India as low price editions. Latest edition of books published in foreign jurisdiction are sold in India with the same price and not with any special prices. Only after a period of two or three years low price edition of these books are sold in India.

We do not find a flaw in these arguments. If the low-price editions are dated, these would not be acceptable in markets where consumers are ready to pay for the latest editions, although consumers with budget constraints may prefer to buy them. Further, the print quality of low-price editions may not appeal to consumers abroad who buy books at mind-boggling prices with a 'mark-up of 8–12 times from cost' compared with India's 'range between 2.25 to 5 times at best' (as stated in the Publishers' Submission). The purchase decision would thus be left to consumers in India and abroad. Consumer welfare is thus maximised. India's printing industry would get more business through outsourced work from abroad once publishers have to bring down their 800–1200 per cent margins for sales in the West. Hence, consumers and printers in India need not worry.

The issue of export of books needs to be separated into two parts. While export of books issued under compulsory licences can be prevented, others may be exported. Exports of infringed copies may be controlled at the border by administrative authorities as is done for the export of all prohibited items and the import surveillance authorities in destination countries are expected to play their role in checking for illegal imports. The regime of imports of books has in any case been opened up in the US after the Supreme Court judgment.

6.14 Additional observations on publishers' submission

Price undercut

Some of the issues pointed out in the publishers' submission need careful examination. It is stated that *'even without remainders, books from the west would be sent here at targeted*

'undercut' price levels that will undermine local Indian publishing investments and therefore eventually local writing (with absolutely no justifiable long term consumer gains).'

The data provided to us by the international publishers does not indicate any special boost that local writing is getting from their operations in India. As already discussed, much of the business in books is through imports, although some reprints/ imprints are printed in India.

Substitutes versus complements

The submission also states: *'Not about protectionism: Competition does not exist the same way in most publishing. Unlike the consumer industries, where a Coke sold is a Pepsi not sold, a Vikram Seth sold is not an Amitav Ghosh unsold.'*

This may be true of trade books, but not for education books and textbooks. A student on a limited budget might buy a low-priced textbook (Book A) on macroeconomics, or any other subject, instead of a high-priced substitute (Book B). This means that 'Book A' sold is 'Book B' unsold – exactly as happens in the cited case of Coke versus Pepsi.

Reciprocity

Another argument specifies: *'No reciprocity and mature market: The amendment would remove the level playing field. Indian publishers would not be able to sell their editions abroad, but every overseas English language market would be able to freely sell competing editions into India. India is fast approaching being a mature market with a thriving local Indian industry but would soon lose this. Every mature market that is not just a trading market has territorial copyright—India will soon become the sole exception.'*

This rationale of lack of reciprocity becomes weak given the recent US Supreme Court judgment.

Moral policing

One of the arguments against parallel trade and the imminent remainders states: *'Some book that nobody wants will be available now really cheap. This is what we mean by saying that when you open it up for books, it's not the same market (or product therein) becoming lower priced, it's a whole lot of relatively unwanted stuff that will force its way on to shelves. Before you ask why booksellers will keep unwanted books presuming there will be no demand for them, they will do so because they have no choice; that will become the default stocking pattern. Example: If a bookseller gets a whole stack of budget western (as in cowboy) novels (which by current demand does not occupy more than 3 shelves in any bookshop) which he can sell at lower price points (by perception) but that gives a much higher margin because they were throwaway (and the distributor keeps it because if he doesn't his competitors will), the bookseller will enlarge that shelf space to at least 5 shelves. That's two shelves of*

something else that he kept (because readers wanted them) now gone. Expand this over time and stores will change their stocking patterns. Yes it won't happen overnight, but all of this will add up to squeeze the small Indian writer off first, then the publisher itself will reprioritize and shrink publishing programmes leading to a conversion to what we call a trading market.'

This is not a talk about parallel trade. Publishers would act as gateway to control 'wanted' and 'unwanted books', which is actually the consumer's right. This argument challenges the basic tenets of demand and supply, consumers' love of variety and rational behaviour by consumers and producers. The submission makes a judgement on which book the consumer should want. Consumers choose to buy a product based on its subject and price. It is consumers' prerogative to decide which books they should buy. It is not rational to assert a value judgment on wanted and unwanted books. It is equally illogical to comment on the storage space of the booksellers going down to the micro-level of number of shelves. If there is demand, there would be supply, and vice versa. The storage space would be increased in the medium to long term. In any case, this should not cause foreign publishers the slightest worry. Consumers are rational and can select what to buy and what to ignore.

Threat of non-availability of books

Parallel imports will allow parallel exports and that is the true problem being faced by education publishers. An edition that is available for sale within India (or a defined and restricted territory) ensures control on sale OUTSIDE this region. However, if parallel imports are allowed ensuring that parallel exports are too, then no overseas publisher will grant rights at lower rates. This will be to protect his primary market. This is what will lead to lesser availability of books at subsidised prices in India.

No. The dynamic theory of comparative advantage would push printing jobs to countries that provide similar quality at a lower price. India, China and other developing countries might get more business. The prices of physical books would fall all over the world, and books would sell at uniform prices across the world. Foreign publishers should leave these issues to be tested over time.

E-books

The erroneous notion that when 'Increasingly the way forward is digital and in an era of e-books ruled by the Internet there will be no boundaries anyway. Therefore protection against parallel importation is anyway a short term measure once everything flows across the Internet': This is the biggest misconception going around. The freedom of the internet does not pre-suppose free content. E-books are big business in the west already (the 18-20% market share they have reached have astounded publishers) but have even stronger

territorial copyright because of DRM. Sure there will be cyberspace spoilers, just as there are pirates in the physical world, but the default position is still territorial copyright.

The subject of DRM, sales, rights and territoriality of e-books is going through intense international debate. The issues of ownership and territorial rights are not yet clear.

Investment in publishing

Publishing is a passion and hunch-based business that already functions on a cycle of swings and roundabouts where the successes also cross- subsidize the smaller, niche interest books. Even without remainders, books from the west will inevitably be sent in here at targeted 'undercut' price levels that will undermine local Indian publishing investments and therefore eventually local writing (with absolutely no justifiable long term consumer gains).

Remainders and dumping will kill the market: This is an inevitable process that will result, and will hit authors, publishers and consumers alike. Authors will be hit by loss of royalties and future opportunity; publishing will lose margins and investment power; and booksellers will (due to the indiscriminate flowing in of imports) be forced to change stocking patterns, actually reducing choice; and pricing will be a constantly fluctuating mechanism offering no certainty of best buy.

Local writing hit: It must be emphasized that it is not just authors with international editions but local Indian authors too who will bear the brunt of this as rights potential dwindle, publishing programmes shrink and publishers reduce investments in building authors.

This is not about opening up to foster competition—this is opening up to bring the identical product in, one which the copyright owner has exclusively contracted to a local publisher who has made investments, while keeping the book low priced.

We are not clear how a significant number of imported books being distributed in India, albeit at cheaper than international prices, would encourage local writing. The reality may be the other way round. International publishers may not cultivate writing by local authors if they can make profits from distributing imported titles, even though the writers may be Indians who work in India or abroad. Local publishing should necessarily add value to India's GDP for most of the publishing functions. The fact that we export more printed books than we import indicates that printing work is being outsourced to India from abroad. Local printers of books may not be under any imminent business threat when parallel imports are permitted.

On the issue of remaindering, what would stop international publishers from importing and selling in India their surplus frontlist volumes which are off the Western shelves in 3–4 month period? Why would the remaindering be done by others and not by the publishers themselves? Profit maximisation is the basic norm of economics.

Annex 1

Discussions Held With Stakeholders

1. Publishers' Representatives
2. Consumers' Representatives
3. National Council of Applied Economic Research, New Delhi
4. Delhi School of Economics, University of Delhi
5. Indian Institute of Technology, Delhi
6. Indian Institute of Technology, Madras
7. Tamil Nadu Government Dental College, Chennai
8. Voluntary Health Services, Chennai
9. Madras Medical College, Chennai
10. Institute of Financial Management and Research, Chennai
11. University of Calcutta
12. Indian Institute of Management, Calcutta
13. Ramakrishna Mission Vidyamandir, Kolkata
14. Indian Institute of Technology, Bombay
15. University of Mumbai
16. Indira Gandhi Institute of Development Research, Mumbai
17. Motion Picture Distributors Association (India) Pvt. Ltd (MPDA), Mumbai
18. Film and TV Producers Guild of India Ltd., Mumbai
19. Institute of Social and Economic Change, Bangalore
20. Mount Carmel College, Bangalore
21. Book Distributors Delhi
22. NASSCOM, Delhi

7. Concluding remarks

Human resource development is one of the fundamental factors that ensure the economic development of a country. While this requires excellent educational institutions and teachers, equally important is the availability of world-class textbooks for students at affordable prices.

The Ministry of Human Resource Development Department-Related Parliamentary Standing Committee on Human Resource Development has rightly noted that the Government must ensure that the purpose for which the copyright amendment is proposed, i.e., to protect the interests of students, is not lost sight of.

With regard to the WTO and its provisions under GATT and TRIPS, it is clear that while Most Favoured Nation (MFN) and National Treatment (NT) are two basic clauses of GATT 1994, the TRIPS Agreement does provide for each country to have its own policy on the issue of copyright.

A strong publishing sector activity adds value to knowledge as well as to the national income of a country. It provides jobs at the stages of generating ideas by authors for new books, the process of design and copyediting and the final printing. We refer to these as publishing, producing and printing (PPP). While imports of good books are important, mere distribution of imported volumes does not meet the PPP criteria. The Copyright Act should not be used to protect the distribution channels of books.

The fears of letting remaindered books in through imports and cheap books exported to other price-protected territories appear to be the two major reasons for publishers to seek protection under copyright, using the principle of national exhaustion.

How then should one proceed?

There are some hard questions that producers must answer. The questions have been raised in our observations in Section 6. Consumers also must look at the fears expressed by publishers about the likely decay of publishing activity in India and the consequent loss for Indian students and other readers.

Thus, it is of the utmost importance that serious data and evidence-based studies are undertaken to assess the real situation rather than create a sensation of life after death if the new proviso is added to Clause 2(m).

In our view, a mature publishing industry in India must mean PPP in India along with import and rational distribution regime.

We do not envisage that permitting parallel imports of printed books will have an immediate damaging effect on the publishing sector or on the economy as a whole. The impact of the effect of amending Clause 2(m) will be tested over time.

A cautious opening may be a good way to start. Acrimonious debate must give way to harmonious meetings between producers, consumers and other stakeholders. It is only through mutual understanding and healthy exchange of views that we can come to an optimal solution.

If such a meaningful exchange is not feasible, we suggest going ahead to add the new proviso to Clause 2(m) with the requisite safety valves. India must learn to manage its affairs with its own logic and on its own terms.

Appendix - I

Indian Copyright Law Amendments 2012 Publishers' Presentation to NCAER

Indian Copyright Law Amendments 2012

Publishers' Presentation to NCAER

October 9, 2012

Indian Copyright Law Amendments 2012: Publishers' Presentation to NCAER

A report done on behalf of the API (Association of Publishers of India) and supported by the FIP (Federation of Indian Publishers)

This report is a capsule summary of the presentations made to the regulatory authorities including the Hon'ble Minister Kapil Sibal.

The report is authored by Thomas Abraham (Hachette India) with input from a core committee comprising S. Seshadri (Overleaf Books), NS Krishna (Harper Collins India), Ananth Padmanabhan (Penguin India), Prashant Joshi (Pearson Education). The section on the impact on educational publishing is authored by Rohit Kumar (Elsevier India) and Vivek Mehra (Sage India); and the sections on copyright history and parallel exports by Saikrishna Rajagopal and Ameet Datta --legal counsel for the API.

Some portions of the report do not follow a linear narrative...instead for clarity (even at cost of slight repetition) certain key Q&As have been reproduced from debates held over the issue

Grateful acknowledgement is made to all members of the associations who provided the statistical data, as well as retailers like Flipkart.

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Contents

1.0 Executive Summary.....	5
2.0 Introduction: Publishing in India and the basic problems in the bill for publishing.....	6
2.1 Copyright—history until 2011	6
2.2 The Copyright Act and the 2(m) amendment.....	7
2.3 The reasons for the amendment	7
2.4 Publishing strands in India	11
2.5 Imports and reprints	11
2.6 Industry issues prevalent: remainders & infringing editions, piracy,	12
2.7 Authors as the central hub--royalties	13
2.8 Large publishers and small publishers/MNCs and Indian	14
2.9 The business at a glance--distribution, costs, margins	14
3.0 Perception vs Reality: The Bill and iterations	14
3.1 How and why the issue of parallel importation became such a hot issue.....	14
3.2 All the issues we countered and why bill was finally passed without including 2(m)--the key Q&A	15
4.0 The final reassessment.....	17
4.1 The reasons put forward in support of parallel importation...and why they're wrong.....	17
4.1.1 Remaindered Copies and Threat of Exports not being real threats.....	17
4.1.2 Educational titles in India: Accessibility, availability and threat from parallel exportation	18
4.1.3 Availability of general book titles in India	20
4.1.4 Importing foreign titles	20
4.2 The legal argument/logic: Parallel exportation	21
5.0 Annexures	23
5.1 HT article: The Death of Books	
5.2 API Letter to Hon'ble Minister Kapil Sibal	
5.3 Author as proprietor essay	
6.0 Data sets <i>sent separately as photocopies or as electronic files</i>	
6.1 Author signature campaign	
6.2 Price comparisons-- sample wide range titles of leading publishers	
6.3. International editions reprinted here/trade & textbooks	
6.4 Bookscan and flipkart data--pricing	

1.0 Executive Summary

The Copyright (Amendment) Act, 2012, [earlier called the Copyright (Amendment) Bill 2010] was passed by both houses of Parliament in May 2012. The deliberations around sections of the Act were somewhat controversial, both in its early stages (largely in relation to views and responses from the music and film industry) as well as in the last stages (responses from the publishing industry).

The publishing industry response centred around the proposed introduction of a provision designated as Section 2 (m) to the 2010 Bill (as it was referred to then) the effect of which would have been to legalise parallel importation. No direct stakeholder from the industry including publishers, impacted authors and booksellers had been consulted in the formulation or incorporation of the provision in the 2010 Bill. The backlash therefore was considerable and further to a series of submissions, presentations and finally meetings with the representatives across the publishing industry as well as protests from authors, the provision was dropped.

This paper in capsule form outlines all the stages and arguments pertaining to Section 2(m) and will provide in detail the reasons why parallel importation should not be allowed, supported by empirical data.

2.0 Introduction: Publishing in India and the basic problems in the bill for publishing

India is the third largest publishing nation hub in the world today after the US and UK. There are over 17,000 publishers in India, and given the regional spread of English medium education, it is estimated that over half of them deal with English language publishing.

Educational publishing has always been the central part of the publishing industry. The presence of overseas publishers and/or the local licences with local publishers has meant India has access to state of the art scholarship at affordable prices for over a hundred years.

The history of trade publishing in India since 1945 is also one of increasing independence, increasing maturity and increasing Indian content. From about 98:2 ratio in the forties, we have seen a growth that has created the current 75:25 ratio (75% being imports and 25% being local publishing) for trade books. Leisure reading apart, trade publishing has contributed to literature (Amitav Ghosh, Anita Desai are part of the school syllabus today), to the cultural fabric of the Indian nation state as well as knitting the country together—through books that travel all over and taking translations from Indian languages to other regions. This growth has happened only because of the current book industry structure—the most fundamental basis of which is territorial copyright.

2.1 Copyright—history until 2011

Globally, the principles of copyright law, taking from both commonwealth and civil law traditions, were largely territorial. In England for example, copyright law drew from the Licensing of Press Act, 1602 and later from the Statute of Queen Anne in 1710. Gradually as technology advanced and the species of 'property' related to the creative industries changed, modified or were created, the law included these property rights within its fold and consequently expanded its scope of protection. The principles for international harmonisation of copyright law principle were established by the *Berne Convention for the Protection of Literary and Artistic Works*, 1886, ("Berne Convention") reportedly instigated by Victor Hugo. India acceded to the Berne Convention on May 29 1980. The Indian Act, i.e., the Copyright Act, 1957 was amended in 1999 to incorporate India's recognition of works created in "Convention countries" as also its own works by way of the International Copyright Order, 1999.

Even prior to the 1957 Act, India as a British dominion went by the commonwealth copyright tradition under the Imperial Copyright Acts of 1910 (extended to India in 1911) and 1914 and finally on June 4, 1957, the Indian parliament enacted the Copyright Act, 1957. The Act has since been amended 6 times (including the 2012 amendments).

The essential forms of copyright are centred around the recognition accorded to certain types of "Works" namely Literary Works, Musical Works, Artistic Works, Dramatic Works, Sound Recordings and Cinematograph Films all referred to as "Works" in the Act in India (and elsewhere with minor

variations), and the identification and grant of certain “Exclusive Rights” vested by law in such Works recognised and protected under the relevant copyright law. The “rights” which have most significance in book publishing:

- The author’s or creator’s copyright, i.e., the exclusive right to Reproduce, make Copies, communicate to the Public, Hire, Translate or Adapt, etc., the literary, dramatic or artistic work which is the intellectual property right protecting a work as (typically) a text (i.e. a “literary work”), similar to a composer’s or artist’s copyright; and,
- The edition copyright, which is the right of the publisher as an assignee or licensee, by contract (i.e., by assignment or license) to develop, promote and profit from the author’s copyright within agreed parameters (including territory, timeframe and form of publication) for an agreed consideration, including royalty.

It must be understood that copyright, whilst being harmonised to some extent under international treaties such as the Berne Convention, Universal Copyright Convention, etc., is largely territorially enforced under national statutes.

2.2 The Copyright Act and the 2(m) amendment

The current Copyright Act like most other copyright statutes across the world recognizes the territorial integrity of India—i.e., it is possible for a publisher to own exclusive rights to sell or distribute their books within India as distinct from other “territories”/ regions. The Courts in India have consistently upheld this principle including in cases of “transit” imports/ exports. The principle of territory segmentation in relation to copyright has been recognised by the Delhi High Court in the cases of *John Wiley & Sons & Ors. v. Prabhat Chander Kumar Jain & Ors. CS (OS) No.1960/2008* and *John Wiley & Sons v. International Book Stores & Ors.CS(OS) No. 2488/2008*.

The Copyright (Amendment) Bill, 2010, inter alia, proposed to amend section 2(m) of the Copyright Act, 1957, by amending the definition of an “infringing copy”. The term “infringing copy” is relevant to the Act, as the Act allows for injunctions against and seizures of infringing copies and all infringing copies are treated as being owned by the owner of copyright. This amendment stipulated that: *‘a copy of a work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy’*.

The inclusion of this provision would have meant that books published in any country could be freely made available and sold in India, without this amounting to an infringement of copyright. India’s territorial integrity would be lost, the principle of “market segmentation” ousted and it would become an open market. Simply put, the proviso sought to remove the protection that India had as a copyright territory (as understood in the print publishing business). Any book published anywhere in the world could have been sold here infringing an exclusive Indian edition—published or imported — and also potentially putting publishers in breach of their publishing agreements with affiliates and/or authors.

2.3 The reasons for the amendment

The following are the main motivating factors or reasons for the suggested provision that we could discern—

- (a) the notion that the customer will benefit from lowered prices;

- (b) the assumption that publishers price too high;
- (c) the assumption that publishers mainly transact in old editions.
- (d) that this will impact mainly imports and only foreign publishers would complain.

All of these assumptions are unfounded.

The writing community's objections (encompassing authors, publishers of every kind—small, large, Indian and foreign owned—and booksellers) in a nutshell cover:

1. *No real drop in prices*: India is already the lowest priced market in the world in each publishing segment with price mark-downs ranging from 30% to as much as 90% for educational textbook pricing. These pricing structures have evolved keeping in mind the socio-economic realities of our country. Low as these prices are, they are still vulnerable to remainders and targeted exports which undermine local industry's ability to compete.
2. *Infringing imports will still be cheaper*: One rationale for this amendment is that books from overseas are more expensive and therefore incapable of hurting local lower priced editions. This is completely untrue if one studies the dynamics of publishing. Given that the west is a 'frontlist' market (over 85% of shelf space is new books), books on an average have a shelf life of just 3-4 months. India by contrast is still largely a 'backlist' market (where established books run on longer) and it is every publisher's endeavour to create books that backlist. Publishing is a passion and hunch-based business that already functions on a cycle of swings and roundabouts where the successes also cross- subsidize the smaller, niche interest books. Even without remainders, books from the west will inevitably be sent in here at targeted 'undercut' price levels that will undermine local Indian publishing investments and therefore eventually local writing (with absolutely no justifiable long term consumer gains).
3. *Notional consumer gain*: There will be absolutely no consumer gains in the long run. While parallel importation might result in marginal spoiler pricing in the early stages, it will be seen that after this short phase of undercutting, pricing will eventually stabilize back to the price points that currently exist. But the damage done in the medium and long terms will be immense and irreversible.
4. *Remainders and dumping will kill the market*: This is an inevitable process that will result, and will hit authors, publishers and consumers alike. Authors will be hit by loss of royalties and future opportunity; publishing will lose margins and investment power; and booksellers will (due to the indiscriminate flowing in of imports) be forced to change stocking patterns, actually reducing choice; and pricing will be a constantly fluctuating mechanism offering no certainty of best buy.
5. *Unjust position for the author*: Worldwide wherever full-fledged publishing exists there is territorial copyright that respects the author as copyright holder. 2(m) or a like provision will in effect disregard the copyright owner's wishes by denying them their economic rights and actually putting them in a position of disadvantaged competition with a third party (wholesaler/importer of infringing editions)—which imagines an unjust intellectual property system.
6. *Author royalties hit*: Remainders will give authors no royalties, and targeted export sales from overseas—once legalized—will result in authors losing royalties by as much as 50%.

7. *Local writing hit*: It must be emphasized that it is not just authors with international editions but local Indian authors too who will bear the brunt of this as rights potential dwindle, publishing programmes shrink and publishers reduce investments in building authors.
8. *Current editions*: It can easily be verified that every textbook or trade book has the most current edition released here at the same time and much cheaper than the international price. The few exceptions that exist are because of:
 - a. In most Indian universities, curriculum changes do not necessarily follow edition changes. Syllabus making bodies cyclically refresh course content every third or fourth year. Hence, quite often an earlier edition still prevails within India while a newer edition has been published overseas. (two examples of mainline texts are: For a long time *Integrated Electronics* by Millman & Halkias (McGraw Hill) old edition was still used for preference. Similarly in schools in many areas the older editions of Wren & martin or Radiant Readers are still preferred to the modern editions).
 - b. The originating publisher who has licensed a particular textbook or low priced trade edition to India does so under the clear contractual understanding (because the overseas originating publisher's markets are not open markets) that these licenses enabling lower priced editions are valid for India only. However, some unscrupulous distributors "reverse export" these Indian editions, therefore damaging the original publisher's local market. Hence many western publishers require changes made to the local edition that therefore render it a different edition.
 - c. Any library can easily order/procure any book today and for over 95% of such procurements will be able to secure itself advantageous purchase terms (a fair library discount) and ensure that it gets the current edition. In some instances, libraries are held hostage by their suppliers who have their own vested interests in selling older editions (because they themselves have bought clearance stock at lower prices). Libraries can easily prevent this by insisting that suppliers (i) provide them the publisher's certificate of current edition and price, and (ii) mandating a fair library discount of 15-20% (depending on nature and scale of purchases as is prevalent the world over).
 - d. Many core texts actually have Indian adaptations which could vary from something as basic as use of metric systems and Indian weights and measures standards or to more extensive 'Indianised' content by Indian contributors (such as Indian case studies and analysis added into a marketing textbook). In such cases it is but natural that the new adapted edition will have a delay.
9. *No scarcity*: Any book anybody wants is available either locally or by procurement, and almost always (with very few exceptions) at a special price.
10. *Not about protectionism*: Competition does not exist the same way in most publishing. Unlike the consumer industries, where a Coke sold is a Pepsi not sold, a Vikram Seth sold is not an Amitav Ghosh unsold.
11. *Unanimous opposition from every stakeholder*: Publishers—Indian and foreign owned, large and small, educational and trade; booksellers—large chains and small independents; authors—international and Indian; literary agents, and overseas publishing companies are all opposing 2m. The other main stakeholder, the reader or end consumer, as we have shown will be adversely hit in the long run.

12. *No reciprocity and mature market*: The amendment would remove the level playing field. Indian publishers would not be able to sell their editions abroad, but every overseas English language market would be able to freely sell competing editions into India. India is fast approaching being a mature market with a thriving local Indian industry but would soon lose this. Every mature market that is not just a trading market has territorial copyright—India will soon become the sole exception.
13. *Cultural development impacted*: Writing and its dissemination (whether educational or trade) plays a major part in the creative and cultural development of any nation; and the ever growing stature of Indian writing (awards, festivals, a burgeoning literary tradition, cutting-edge education) will be severely hit.
14. *Cultural sensitivities*: Local publishers are bound by local laws and keep in mind cultural sensitivities, religious sentiments and Indian laws while publishing or importing a book; indiscriminate 'dumpers' are not.
15. *Forex outflows*: The standing committee report cites possible savings with reduced royalties outflow whereas the opposite would happen. Much more will flow out with payment for the massively increased imports.
16. *Ancillary industry hit*: Publishing supports a whole host of small scale businesses like typesetting, printing, proof-reading, copy editing, designing, etc—all of which will be impacted over time.
17. *Re-export a huge issue*: Currently low priced editions are created by local rights licences and reprint rights. These are granted under the sole condition that these editions stay confined to India and do not flow out to damage parent markets. The amendment leaves this window also open, and should this happen, original rights holders will be reluctant to grant rights and thereby prices will actually go up for educational editions, eventually fostering piracy.
18. Not enough consultation with stakeholders or engagement with detail; no substantiation of the assumptions that are driving the lawmaking process. Conversely, legal precedents exist here that have upheld territorial copyright; it is not clear what major lapses have been observed that necessitate proviso 2m, which far from benefitting any of the constituents involved will actually have a hugely adverse impact.
19. *The erroneous notion that when "Increasingly the way forward is digital and in an era of e-books ruled by the Internet there will be no boundaries anyway. Therefore protection against parallel importation is anyway a short term measure once everything flows across the Internet"*: This is the biggest misconception going around. The freedom of the internet does not pre-suppose free content. E-books are big business in the west already (the 18-20% market share they have reached have astounded publishers) but have even stronger territorial copyright because of DRM. Sure there will be cyberspace spoilers, just as there are pirates in the physical world, but the default position is still territorial copyright.

With no credible evidence for any of the assumptions, no clear and irrefutable benefit and looking at the severely damaging repercussions, it was our urgent and earnest request that proviso 2m be deleted from the then proposed amendments.

We were grateful that our arguments were heard and the copyright bill was finally brought into effect via notification by the Government of India on June 21, 2012 without the proposed Section 2 (m).

2.4 Publishing strands in India

Publishing in India has two broad bifurcations: educational and trade.

Educational publishing: Education has its own categories and specialisations but broadly covers school, college and higher education, and practitioner/professional. Each of these could have specialisations like STM (Science, Technology, Medicine), or HumSoc (Humanities and Social Sciences), or Reference, etc.

Trade publishing: Is the industry name for general or consumer publishing which is essentially books targeted at the lay reader and covers all categories from fiction to narrative non-fiction to business to children's books to reference.

There is some element of overlap between the two (books that begin as trade end up as prescribed texts or required reference) but most importantly the key point to remember is that the strongest commonality between the two strands of publishing is the fact that they foster in large measure the cultural development of any society/nation. The reading habit, the appreciation of language and literature, the introduction of general ideas, etc., happen through trade publishing and often make their way onto syllabi. R.K. Narayan therefore begins as a best-selling novelist before becoming the mainstay of any English literature course. *India's Struggle for Independence* (by Bipan Chandra et al.) is a thorough historiography for the lay reader, but is today the standard textbook on the subject. It is crucial that this facet of publishing is kept in mind to understand why fostering a culture of local writing is so important and why the writing community therefore took such vehement objection to 2m and parallel importation.

2.5 Imports and reprints

Subject and audience categories apart, all of publishing can be divided into either imports or reprints.

Imports: As the name suggests are physical import of books from overseas. Over 60% of average bookstore stocking and indeed book consumption in India on the trade side are imports (and to a large extent academic/professional). This is because publishers, distributors and retailers offer a wide range where titles within the range may not have sales enough to justify local print runs. In short, mass use enables local printing while the rest is available on offer as imports either through stocking (where local agents/distributors bring smaller quantities in anticipation of orders) or procurement (where a book is not found locally stocked and is specifically imported for a customer based on his order).

Reprints: Reprints happen essentially when the anticipated or confirmed demand for a title results in a minimum quantity needed for a viable print run being achieved, therefore serving both local market demand at local market pricing. It is of two kinds.

- (a) Where a local publisher acquires the publishing rights for a book for the Indian territory and locally prints/reprints it.
- (b) EPZ or EOU reprint (deemed import) where overseas publishers do not part with the publishing rights but choose to print/reprint a book (most often to enable a format/edition/price suitable for India) via accredited printers situated in the EPZ/EOU zones. EPZ/EOU printing incidentally also helps generate forex.

2.6 Industry issues prevalent: remainders & infringing editions, piracy,

Remainders are the single biggest issue confronting publishers (mainly trade but also educational) today. It was assumed by those supporting 2m that parallel importation (including remainders which was given no thought) would actually help widen range, bring down prices and bring more players into the fray. Nothing could be further from the truth.

There are three scenarios here in parallel importation (both infringing editions as well as -- Targeted 'undercut' exports, clearance of overstock/unsolds and huge bulk remainders.

Targeted 'undercut' exports: We need to say a clear no to targeted spoiler exports into India. The big brands would be hit first by this. Because you can only go so low as your cost + basic margin. We already see that now. Yes they have virtually no overheads so can go about Rs 10-15 cheaper depending on the type of book. No gain for the consumer there given the relative disadvantages.

Now let's look at the second scenario--this will be clearance but still at clearance discount levels--these books would become cheaper by Rs 15-25.

The third scenario of bulk remainders will see a tidal wave of undiscerning product. Remainder books fairs sell these by the 'room full' (called bins and bales) like we do 'raddi' by the kilo. But here you can't really choose your product. So these books are by and large picture books, or hardbacks a year down the line or a mixed bag of books that would normally see no demand here would all just come in. So, yes, this will become cheaper, but is the consumer gaining? No, because it's not a situation where increased supply is lowering price. Some book that nobody wants will be available now really cheap. This is what we mean by saying that when you open it up for books, it's not the same market (or product therein) becoming lower priced, it's a whole lot of relatively unwanted stuff that will force its way on to shelves. Before you ask why booksellers will keep unwanted books presuming there will be no demand for them, they will do so because they have no choice; that will become the default stocking pattern. Example: If a bookseller gets a whole stack of budget western (as in cowboy) novels (which by current demand does not occupy more than 3 shelves in any bookshop) which he can sell at lower price points (by perception) but that gives a much higher margin because they were throwaway (and the distributor keeps it because if he doesn't his competitors will), the bookseller will enlarge that shelf space to at least 5 shelves. That's two shelves of something else that he kept (because readers wanted them) now gone. Expand this over time and stores will change their stocking patterns. Yes it won't happen overnight, but all of this will add up to squeeze the small Indian writer off first, then the publisher itself will reprioritize and shrink publishing programmes leading to a conversion to what we call a trading market.

Piracy (counterfeiting) is already rampant here and publishers have no real recourse to enforcement--the government has not been able to clear the streets of counterfeit sellers. If that were not bad enough, publishers with 2m being will be asked to cope with 'legalized piracy'.

2.7 Authors as the central hub--royalties

In publishing (unlike the music and film industry--the whole reason for this bill being created) there has always been a tradition of the author as creator and copyright owner being the central hub. Authors have therefore as a general rule always had contracted royalties.

A creator should have the right to decide what s/he wants to do with his/her creation and should benefit from it. The edition right is thus an extension of the prime right of the artist to protect and share their property without infringement. If we regard the contractually-established edition rights as having no territorial exclusivity, then they become solely a right to distribute a printed object in a given territory. What the law will do is erode the economic right of the author to profit from their copyright as much as it will erode that of the edition rights buyer and will give the reader or bookseller no certainty that they have paid the best price for a product (what if a remainder comes in and lowers the price again!). One certain fallout of this is that the author who was planning to get designated royalties by territory will hardly get an income stream. Because royalties on remainders are near zero. Which also means we are placing authors in competition with a third-party non-holder of copyright—the remainder merchant who brings the book in against the author's wishes because the law permits him to do so—a completely unjust intellectual property system. The removal of territorial copyright would destroy that 'ongoing financial interest' by creating what is essentially a second-hand market in new books, which would be fundamentally contrary to an author's economic interest, and which to repeat the point would place them in competition with a third-party non-holder of copyright. This imagines an unjust intellectual property system.

And it is incorrect to say authors are not affected. Blanket statements have been put out in the public domain without adequate research. Authors will lose out on royalty by parallel imports. Authors are paid royalties on cover prices for local editions and on net receipts where imports are concerned. So consider the following case of a hardback published here at Rs 495. The author on a 10% standard royalty will earn Rs 49.50 per copy. The same book when sold into India to match the price (we're not yet talking remainders) will be supplied at a net price or discounts going up to 80%. So even if the net price is £2 (the higher side) then the author will earn 20p (10% of net receipts that the foreign publisher gets) which is just about Rs 15. This is the best case scenario. On remainders which are clearance sales the author gets almost zero.

Books are different. They are cultural objects unique in their individual identity. And it's not strictly speaking the same parallel. For books the same parallel won't exist. The closest parallel would be that Stephenie Meyer was successful, and somebody else also decided to cash in on the vampire craze; or one celeb diet book, gives rise to another. That's free competition. Not the same unique book brought in to the disadvantage of creator and legitimate assign and here we're back to square one--that the fundamental debate has to be clear on the basic position-- whether we begin by identifying the author as creator having the valid power to assign or not.

2.8 Large publishers and small publishers/MNCs and Indian

It is also important to have an understanding of the diversity that exists within the publishing industry particularly because the debates over 2m have seen some completely erroneous statements/assumptions being touted as fact. Yes, there are MNCs (large and small); yes, there are large Indian publishers; and yes, there are small independents. But it is important to note that given the fact that this is a content driven industry and creative content is by and large varied (wide range) and unique (each book is a unique product), and further given India's linguistic spread, there is a huge diversity present here. English language publishing is still the largest chunk and it is pertinent to note that the bill and the proviso directly impact mainly the English language industry (though there are knock-on effects for the regional language publishing industry too, as is demonstrated later).

2.9 The business at a glance--distribution, costs, margins

The business is essentially distributor driven given India's vast geography and diversity. The chain of distribution is from publisher to wholesaler/stockist/distributor to retailer (both physical and online stores).

This is a low priced industry and it is ironical that one of the reasons cited (without any data whatsoever) is that India is high priced market for books. India is indisputably the cheapest place on earth for regular priced books. All publishers publish to specific segment pricing, and relative mark-downs range as mentioned before from 30% to 90% from list prices in the west for the same book.

But with being low priced come a lot of other factors--

- publishing is a low margin business. Unlike the west where pricing is a mark up of 8-12 times from cost, in India it ranges between 2.25 to 5 times at best.
- there is very little margin left over for marketing and promotion so badly needed to vitalize any industry
- there is virtually no money left for expensive legal battles
- the wide range of products means a high inventory risk

3.0 Perception vs. Reality: The Bill and iterations

3.1 How and why the issue of parallel importation became such a hot issue

Ironically the whole process of revisiting the act and the need to revise it arose from gaps in the music and film industry (which in India are interlinked—most music is Bollywood/film soundtracks; and a huge industry), where there was a debate among songwriters, musicians, etc., who signed away copyrights to film producers for (pun intended) a song--one-time fees with no further royalties. The government commissioned a law expert (an academic, a professor of intellectual property) to look into the whole issue and come back with suggested amendments, covering not just the primary music and film but all parts of the Copyright Act.

This professor essentially had the view that copyright should mirror patents and trademarks, which follow the doctrine of international exhaustion (doctrine of first sale, where the IP owner exhausts his rights over the property after the first sale). His corresponding paper and recommendations

include a series of proposed amendments that would propose to redress various situations. However, in the bargain, various other areas have also been impacted, the bulk of which affect music, film and software. But three proposed amendments to the Copyright Act, 1957 would adversely affect the Indian publishing industry if they were to become law. They deal with: territoriality, copyright societies, and assignments. Critical amongst these is the territoriality.

Some lawyers argued on the presumption that one should always favour principles of free market competition. IP norms restrict competition and should be introduced only when the benefits outweigh the costs, i.e., absent such protection, the rate and production of IP goods would suffer, owing to threats of free riding. In the absence of concrete evidence one way or the other, the fallback position ought to favour free competition.

However, there cannot be a one size fits all law summarized by a glib presumption that advocates intangible benefits in the fact that copyright should be on par with patents or trademarks.

3.2 All the issues we countered and why bill was finally passed without including 2(m)--the key Q&A

Competition: *"What competition is being kept out?"*

No one. Everybody is already here. 'Foreign' and local co-exist and both are protesting this. Let's examine the definition of competition. In almost every industry except books (and arguably music/DVD), exclusivity in local territories might foster monopolies. So keeping Coke out perhaps protected Thums Up; and keeping the car brigade out deprived the country of current technology. No such thing happens in books. Firstly, books do not compete the same way as consumer goods (even patented ones) do. Because a Honda City bought is a Hyundai Verna not bought, and a Coke drunk is a Pepsi not drunk—a palpable loss of sale. A Vikram Seth bought is not an Amitav Ghosh not bought. A consumer may buy both and surely it's clear that one does not really compete with the other in the conventional business definition of competition. So that brings us to the key issue.

This is not about opening up to foster competition—this is opening up to bring the identical product in, one which the copyright owner has exclusively contracted to a local publisher who has made investments, while keeping the book low priced. This opening up is not an invitation to compete; it is an invitation to every jobber and remainder merchant to come in and undermine a fair structure that exists—a structure that has the author at the top of the pyramid. A nice little gift-wrapped present of our market where they have invested no effort, time or money. But a perfect safe haven now to push their books in. What we're saying is that the author doesn't matter anymore. To international authors (foreign and Indian) we are saying, "Because your book was published in the US, tough luck, you don't deserve home (your contracted exclusive edition in India) royalties—let your local edition be killed". To Indian authors with just local editions we are saying, "Tough luck, now bookshop shelves are filled with the surpluses of the west, so there's less space for you, and eventually yes, publishers won't have the money to invest in you, but guess what—we've managed to get John Grisham cheaper by Rs 20". To the local publishing industry we're saying, "Tough luck, your prices are higher, and if they can push their books in here at Rs 20 cheaper then you can just

drop the price too". Never mind that we have built a print run of thousands balancing these very needs, but cannot compete anymore; and once this situation multiplies exponentially across thousands of books (especially our revenue drivers by the 80:20 rule), we will stop building these print runs—it won't be worth doing the local edition. And when that happens, you are talking of us going the Singapore, Malaysia way—except worse, because those are high priced markets. What we will have as a low priced market is a deluge of remainders filling shelves, and targeted exports to hit the top sellers.

"Does this existing law favour foreign publishers?"

No. From the largest to the smallest everybody is opposing it. If the law makers had only bothered to ask, they would have known this.

"Is there scarcity of product? Would this law bring in a wider range?"

No, just the opposite would happen—patterns of stocking would change to reduce range as remainders flowed in. And currently any book in the world is on offer here and cheaper.

"Will it bring prices down to the benefit of societal needs?"

No, as proven by demonstrating existing patterns in price points across every common use segment.

"Are authors different from inventors who register patents?"

On an average yes! A microwave is a microwave is a microwave. A cellphone is a cellphone is a cellphone. Yes there will be patented technology differentiators but certainly not the same as each book being a unique creative object, where the creator has 'enshrined rights', or at least so the other part of this amendment (films/music) would lead us believe. So why the discrimination against book authors in terms of a complete disregard as to their interest?

"Profits are being repatriated"

It would be interesting to see how much profit has been repatriated in these 100 years. Not one publisher to the best of our knowledge has repatriated profits back—publishing does not make that much profit! But on a point of legality, either the law has given a company the right to repatriate or it has not. If it has, then it is not relevant to bring this in as an extraneous issue into a debate on copyright amendment. (Ironically the amendment will now see such an outflow of forex as multiple wholesalers set up businesses buying remainders and paying for them in forex!)

"If there is no possibility of cost arbitrage, haven't we anyway curtailed the scope for profitable parallel importers?"

The simple fact must be kept in sight, that surpluses will be dumped in here. It was not meant for this territory, and now that it's open market, it can be sent in here because its additional sale for the foreign distributor (and they can afford to undercut the local edition slightly). So are we saying that that's what we want for our consumers? Surplus stocks dumped in here, because it may be marginally cheaper. Not a very just legal system—one that will let somebody do the sowing (local publishers pay the advances, build the author, do the marketing and promotion, price low for the consumer at the cost of their margins) and allow somebody else (wholesaler/remainder merchant) to do the reaping. Or get us reciprocity before embarking on this. Every major international market where local publishing thrives operates on the principle of territorial copyright. As does India. If

there needs to be a change in law—it presumably follows from some serious lacuna that have been observed and studied. We would like to hear what they are.

Books are the cheapest here (and that's easily proved by listing each key segment and looking at the pricing here).

Cultural argument

Indian authors are primary to the cultural development of the country so they are at the forefront of this argument. Equally it is mentioned that 75% of business transacted in the Industry (trade books again) is through imports which also have exclusive territorial rights. And the 80:20 rule means that a publisher is able to subsidize the smaller titles with the successes made on the big ones. So Hachette's success for example with Stephenie Meyer and John Grisham enables it to publish a full range of scholarly Everyman classics which are barely profitable. That's the swings and roundabouts nature of publishing. So it's not just about Indian authors—it's about this law changing everything—there are clear domino-like knock-on effects for the complete cycle.

4.0 The final reassessment

4.1 The reasons put forward in support of parallel importation...and why they're wrong

4.1.1 Remaindered Copies and Threat of Exports not being real threats

Can the government not prohibit only "remaindered" copies OR even tax such copies? Or impose anti dumping penalties. In other words, we retain section 2(m) and provide a carve out from 2(m) only for "remaindered copies"?"

No. Remainders are the biggest problem but there will also be targeted exports that will undercut existing legal editions; thereby harming local authors, local industry and eventually local writing itself. Australia is not an open market. Australian copyright law merely enforces the consumer's right to get books quickly—hence the 30 day rule, which says that the copyright holder must exercise his right and publish within 30 days of publication elsewhere. Australia is not a low priced market, and territorial copyright has still been chosen as the way to go in recognition of a thriving local industry and local writing that would suffer.

"Are we worried only about Indian authors whose books get remaindered causing them to lose royalties? In which case, can we carve out an exception in section 2(m) preventing remaindered copies of Indian authors?"

It is huge. We already see a trickle because some remaindered books do come in even now—some inadvertently, some deliberately. Generally a 'cease and desist' letter serves the purpose and the inadvertent ones are withdrawn. The deliberate ones are too small in scale to take action—lawyer's

fees would be too expensive. But the day they reach critical mass, or hit high revenue items we will take action. Just as Egmont-Euro kids did when Tintin (a substantial property) was hit. Please understand the west operates on a returns (unsolds) cycle that is about 25-35%. Their pricing mark-ups can accommodate these. So bookstores who are due to pay in 60-90 days, return the unsolds back rather than pay for them. These returns form the basis of remainders.

"If your concern is that an existing publisher or distributor abroad makes extra copies to capitalise on the Indian market or pushes remaindered copies here, can't you simply tackle this through contract and take them to task, should they breach?"

Alas no. How? There are no definite benchmarks—this is a hunch based business and we'd be hit irrespective of scale. Print runs can vary depending on estimate. So whether its 3000 or 30,000 both are legitimate enough—it's a publisher's risk there. (with this law we're in effect insuring the foreign publisher's risk. Are we suggesting that we have a policing system of defined print runs—that is obviously impossible. The point is if a 5000 print run book (small by standards in the west) fails there, 2000 copies can still land up here by month three (time cycle explained above).

"Is the concern that low priced editions would be exported out of India? If true, section 2(m) cannot address it, as it relates to "imports". Exports have to be dealt with separately, as you will appreciate."

That is a concern since there seems to be debate on the legal interpretation of whether this is implied or inherent in the way 2m has been worded. Let the law be clear if this is not intended.

4.1.2 Educational titles in India: Accessibility, availability and threat from parallel importation/exportation (by Rohit sharma and Vivek Mehra)

What is the objection to parallel importation and parallel exportation from a publisher's perspective?

It will impact availability of books in India; lower availability will lead to lower choice, leading to Indian students/readers reading substandard content

Parallel imports will allow parallel exports and that is the true problem being faced by education publishers. An edition that is available for sale within India (or a defined and restricted territory) ensures control on sale OUTSIDE this region. However, if parallel imports are allowed ensuring that parallel exports are too, then no overseas publisher will grant rights at lower rates. This will be to protect his primary market. This is what will lead to lesser availability of books at subsidised prices in India. <I think we need to spell this out right at the beginning because I don't think people are seeing the connection between 'free parallel imports' and availability>

Why will it impact availability of books in India?

Publishers make available rights priced to market. Indian education can't carry original US/UK costs where a typical textbook costs upwards of INR 6000 per unit. Indian rights are typically granted to ensure availability at a price that Indian students can afford. Samples from our lists in the data sets will illustrate this information.

If a foreign book has a market of 1,000 readers or less every year in India, it is usually not printed in India; it is imported by distributors

If a foreign book has a market of 1,000+ readers, reprint rights are granted with the view that these books will be priced for Indian affordability

Where does this typically happen today?

Educational books used in higher education such as Engineering, Medicine, Arts, Humanities, Economics, Dental, Nursing and Pharmacy – essentially in every sphere of higher education.

Educational books in school education also has a number of such books being reprinted in India for much lower prices.

What typically happens today?

A number of these reprints are being illegally exported outside India to South East Asia, Africa and back to the US and Europe from where the content has originated.

So, how does the legal and regulatory framework help increase the availability of cheaper books for Indians?

Territorial copyright restrictions that officially prevent re-export of these books outside India. There are cases of High Court rulings that have prevented “rogue traders” who are doing this to maximize trading profits, but hurting the global authors and publishers who have created this content

How is this benefiting Indian consumers?

By granting reprint rights to the Indian market, the Indian consumer is being benefited by getting wider availability at cheaper prices.

There appears to be no Indian consumer who is benefiting as parallel export will only benefit consumers outside India, but hurt every other stakeholder who makes an investment to market and sell that content in those markets.

Why will parallel import actually end up reducing availability of books in India?

It will impact a number of highly specialized books that are required in libraries.

The biggest challenge for a consumer in the book business is to find the book at the time they need it. Books that don't sell in large quantities are usually not available in most bookstores as they sell out very quickly. Following demand and supply Titles that are widely used are usually more easily available. nevertheless specialist distributors do exist who hold specialist books.

However, many of these specialized education titles are very expensive, are imported and require a distributor to invest significant amounts of money to be able to ensure availability in the country.

When parallel imports start on these titles, no one will invest in the stock as they could end up holding the stock for a long time since parallel channels may initially disrupt the sales by having a few copies available, but not as many as needed. This will also lead to “rush orders” – which will require air freight – and this will in turn increase the price to the end consumer rather than reducing it. Or, it will lead to piracy which is against the copyright law in any case.

Overall, disruptive, unorganized channels that are not authorized by publishers will lead to a grey market, while not ensuring availability and protection of copyright. This grey market is quite disorganized – all you have to do is walk around any book wholesale market in the country to realize the state of how books are stocked and kept...it is a miracle that they are found – by encouraging such disorganized sectors, we are perhaps praying for more miracles rather than implementing systems that improve the supply chain of books.

4.1.3 Availability of general book titles in India

Almost all titles are available in a timely manner in India (at least the titles for which there is some demand).

Our claim is that every major book for which there is general demand is available here on the same day and cheaper. Our claim is also that there is absolutely no scarcity if the book is in print. Publishing sales works in two ways—first based on demand and supply (what we call common use) where titles are actively stocked locally. These are available off the shelf in bookstores. Second there is the 'long tail'—the rarer book, the less popular, the niche interest book. Those are not always stocked but are always available on 'procurement'. That would remain the case whether the market is opened or not. Given the sheer volume of publishing, stocked and procured will always exist as supply conditions. Currently under procurement you can still get any book still at a local price (i.e., marked down). It's still cheaper than buying off Amazon US or UK.

4.1.4 Importing foreign titles

- *Publishers have a deliberate strategy of introducing only out-dated editions into India. Given that older editions do not sell well in the western markets, they introduce them in developing country markets such as India to continue making money on such editions.*

This is completely false, because all publishers will always make more money from a new edition. Yes, surpluses are always sold off at clearance prices but within specified remits. It is only remainder merchants who try and offload these surpluses. Ironically, this is the most fundamental argument against open market and parallel importation which will only serve institutionalised proliferation of these remainders/dumped old editions.

- *Libraries do not have access to online purchases or leading distributors, such that that they can procure foreign titles without undue delay. All such colleges are likely to face a stark "availability" issue.*

This is utterly false, particularly in today's net connected world. But even in the remotest part of India there is enough of a network of sub-wholesalers, who buy from wholesalers, and any book procured can be made available.

- *Many such text books are prescribed readings for students who often have to purchase them. Not many of them can be expected to have the resources to make online purchases at prices similar to those prevailing in the West.*

This argument is particularly redundant in India today, where online companies like Flipkart deliver last mile to small towns by cash on delivery. And in terms of pricing, we've established that India is the lowest priced market in the world.

- *Section 2(m) is the need of the hour, as it will likely foster an increasing number of distributors attracted by the new business opportunities and ready to scout for and service new markets, hitherto unaddressed by leading distributors. This will in turn result in lower priced books being made available to many parts of India, including non-urban areas.*

Again, a completely erroneous supposition. Publishers, distributors and retailers have very active networks to try and maximise the reach for their own product. There will still always be a big differential between mass and niche use. But even niche use products have their own specialist distributors. For example, distributors who specialise only in books on sports, or military history, or gardening. And these niche areas and specialisations are achieved by individual enterprise and initiative. The same thing on a broader scale also applies to the larger general distributors. Common to all is a knowledge of their subject areas, their local markets and demand patterns of their constituencies. The moment you have parallel importation and the inevitable non-discerning dumping, nobody would be in a position to actually plan stocking or specific lists or be interested in serving specialised markets because they would never know when their own purchases would be undercut by remainders flowing in. And, there would be fewer avenues in terms of shelf space available to sell planned product. Therefore, the more likely scenario would be that there would be no coherent publishing and distribution, since there would be absolutely no protection. And far from more distributors entering the fray, it would just be a few remainder merchants benefitting.

4.2 The legal argument/logic: Parallel exportation

US publishers provide cutting-edge international content to Indian consumers including students at the lowest prices in the world via the Low Priced Edition (LPE) programme in India. Under this unique programme, the very latest editions of academic texts are licensed for re-print in India, not only providing Indian consumers the latest editions at affordable prices as a norm, but also enhancing the Indian publishing industry (by encouraging investment and employment).

The knowledge that India is a secure and protected market territorially, and that Low Priced Editions (LPEs) made available in India would not be leaked to developed markets enables US publishers to engage in the LPE programme. This knowledge is vital as leakage would dilute developed markets and undermine publishers' revenues in those markets.

The Indian Copyright (Amendment) Bill, 2010, however, proposes to introduce an amendment to Section 2(m) of the Copyright Act, 1957, which would result in India ceasing to be a secure market. This is because the proposed amendment would make international exhaustion of rights apply in India in the realm of copyright, and would negate the respect for territoriality enshrined in the Copyright Act.¹ In such circumstances, it is inevitable that the consequent leakage of LPEs would disincentivise publishers from

¹ Sections 19 and 30A, Copyright Act, 1957.

making them available in India at all. This would significantly disadvantage Indian consumers, and, in particular, Indian students and academics.

It may be argued, with respect to counterfeit products (such as mobile phones and medicines), that "other countries should protect themselves against goods coming in which they deem to be infringing". However, with respect to LPEs, there is no comprehensible reason why other countries (in this instance, the US) should have to protect themselves against a service such as the LPE programme which their companies voluntarily and willingly provide to help meet the peculiar socio-economic needs of an emerging economy.

From the US' point of view, if India is not willing to preserve/retain the circumstances which enable US companies to engage in the LPE programme, it will constrain them to stop the programme altogether. It is obvious that the magnitude of the implications of the proposed amendment has not been considered at all. A cost-benefit analysis of the proposed amendment would overwhelmingly favour the retention of the existing provisions which allow territorial distribution of rights.

Pertinently, if the proposed amendment were passed, it would also disadvantage trade publishers in India by making it extremely difficult for them to divide rights territorially. Further, it would not be viable to have India designated as an exclusive territory (in which less expensive Indian editions were produced) as the Indian market would not be secure.

It is therefore imperative that Section 2(m) of the Indian Copyright Act not be amended in terms of the provision proposed in the Copyright (Amendment) Bill. The copyright industries thrive on the recognition of the territorial division of rights which would be negated if the proposed amendment were to be passed, and this would severely disadvantage not only the publishing industry but also other copyright industries, almost all of which have opposed the proposed amendment.

The proposed amendment does not involve the interests of foreign industry competing against those of domestic industry. On the contrary, it involves the interests of copyright industries as a whole suffering tremendously if the proposed amendment were to become law.

5.0 Annexures

Appendix - II

**Indian Copyright Law
Amendments 2012 Publishers'
Presentation to NCAER
Proponents of Parallel Imports**

Indian Copyright Law Amendments 2012

Presentation to NCAER

Proponents of Parallel Imports

October 8, 2012

SUBMISSION TO THE NCAER

CONTENTS

I. UNDERSTANDING THE CONCEPT OF PARALLEL IMPORTS IN A THEORETICAL FRAMEWORK.....	1
I.I. Purpose of the Copyright Act, the Principle of Exhaustion and International Law.....	1
A. Purpose and Objective of the Copyright Act.....	1
B. Doctrine of First sale and International Exhaustion of Copyrights	1
C. Parallel imports, international law and free trade.....	1
D. Property rights v intellectual property rights.....	2
I.II. INTERPRETING THE COPYRIGHT ACT AND SECTION 2(M).....	2
I.III. A COMPARATIVE ANALYSIS : COUNTRIES THAT ALLOW FOR PARALLEL IMPORTS IN COPYRIGHTED WORKS.....	3
Australia.....	3
New Zealand.....	3
Egypt.....	3
Singapore.....	3
Malaysia.....	3
II. PARALLEL IMPORTS OF COPYRIGHTED WORKS MAKES ECONOMIC SENSE FOR INDIA: AN EMPIRICAL STUDY.....	4
Negative implications.....	4
Negative Impact on Galleries.....	5
Negative Impact on Museums.....	5
Negative impact on Music enthusiasts and Theaters.....	5
Negative impact on libraries, second-hand stores and consumers.....	5
Benefits of Parallel Imports.....	6
Parallel imports will increase competition and dismantle the wasteful monopolistic practices that exist currently.....	6
Parallel imports will help publishers.....	6
Helping libraries and the print disabled.....	6
Helping all consumers.....	6
IV. CONCLUSION	6

I. UNDERSTANDING THE CONCEPT OF PARALLEL IMPORTS IN A THEORETICAL FRAMEWORK

I.I. Purpose of the Copyright Act, the Principle of Exhaustion and International Law

A. Purpose and Objective of the Copyright Act

This part of the submission will first throw light on the purpose and objectives of a copyright regime. The purpose of the copyright act will be discussed to clarify the often mistaken notion of copyrights being granted to confer complete and absolute monopoly to creators of copyrightable work. To clarify this misconception, this discussion will show that the copyright act was not created to confer complete monopoly to creators of copyrightable work and there exist inherent restrictions on their 'monopoly' rights. Thereafter, the position of law regarding parallel imports of copyrighted works in India and internationally will be discussed in detail.

As stated above, the sole purpose of the copyright act **is not to confer complete monopoly** to the creator of copyrightable work. This is evident from the existence of all sorts of **limitations that the copyright act imposes on such rights**. Among this includes, **a limitation of the length of the right** (which is limited and not indefinite), **a limitation on the scope of the right**, such as - *the copyright owner cannot prevent non-substantial copying, he cannot prevent copying of idea, he cannot prevent people from using a work for personal purposes, he also cannot prevent a singer from making a cover version*, etc. This established that any copyright regime comes baked in with exceptions and limitations.

The rhetoric employed by the publishers seems to hinge a lot **on copyright giving them absolute control over "territorial" rights. It doesn't**. If that argument were true, then nothing in the copyright act would prevent a publisher from granting a 'Delhi-specific licence' and preventing resale of a book outside of Delhi.

The copyright act is meant to encourage the production of creative works, and it cannot be seen as a means of establishing monopolies of distribution.

Having clarified the purpose and objectives of a copyright regime, it is pertinent to understand the meaning and concept of a 'parallel import'. Parallel imports can be understood as follows-"Parallel import, insofar as copyright is concerned, involves an "original" copyright product (i.e. produced by or with the permission of the copyright owner in the manufacturing country) placed on the market of one country, which is subsequently imported into a second country without the permission of the copyright owner in the second country"¹

At the outset we would like to make two important clarifications-

First, it is pertinent to **distinguish black market imports from parallel imports**.² This distinction will clarify dubious claims of parallel imports creating 'anarchy in markets'. For parallel imports **as per Sec 2(m), the sale must itself be legal**. If **the copyrighted work is bought illegally**, this will be a black market import **and not a parallel import thus not falling within the protection of Sec 2(m)**.

Second, two situations need to be distinguished- *one*, where parallel imports take place **along with** an exclusive distributor and *two*, where parallel imports take place where **exclusive**

1 CONSUMERS INTERNATIONAL, COPYRIGHT AND ACCESS TO KNOWLEDGE: POLICY RECOMMENDATIONS ON FLEXIBILITIES IN COPYRIGHT LAWS 23 (2006).

2 See Pranesh Prakash, *Why Parallel Imports of Books should be allowed*, available at <http://cis-india.org/a2k/blog/parallel-importation-of-books> (Last visited on 31 Oct 2012).

distributors do not exist. While the publishers have concentrated only on the scenario of parallel imports where exclusive distributors exist, the amendment to section 2(m) addresses both situations. Therefore, it is important to understand the difference in the two situations. The **publishers** have put forth only one situation, i.e. **where there exists both a parallel importer and an exclusive distributor in India and therefore conflicts with their interest.** However, **this amendment applies even to a situation where there exists no person in India with the license to distribute a foreign book and still parallel imports are prohibited.** So, in such a situation, there is no way a person while in India can have legal access to a copyrighted work. Therefore, this amendment is **not only addressing a situation of conflicting rights of distributor and importer but also addressing and remedying a situation where no such exclusive distributor exists.** Our submission takes into account both these situations.

Essential to understanding the concept, advantages and disadvantages of parallel imports is the need to peruse the doctrine of first sale and the concepts of national and international exhaustion of copyrights.

B. Doctrine of First sale and International Exhaustion of Copyrights

The doctrine of first sale limits a copyright owner's right of distribution as it is based on the logic that "once a copyright owner has parted with title to a particular copy embodying his work, successive possessors of the copy should not be put into trouble of having to negotiate with the owner each time they contemplate a further sale or other transfer".³ **This doctrine thus balances the right to property of an individual and the intellectual property rights of the owner of the copyright. Therefore, a copyright owner exhausts his right to distribute copies of his work upon their first legal sale.** The first sale doctrine assures the copyright owner an opportunity to **realize the full value of each copy.**⁴ Once this objective of exhaustion is clear, the question as to where the copyright owner makes his first sale (whether in India or anywhere else), should not matter as long as he had an opportunity to realize the full value of each copy. Moreover, **once he has got his reward (from first sale anywhere in the world) asking for a reward each time he sells a copy in a new territory is equal to him being paid twice over which is not necessary as he has already realized the full value of his copy on its first sale elsewhere.**⁵

C. Parallel imports, international law and free trade

In addition to this, the concept of international exhaustion of copyrights furthers **barrier-free international trade.**⁶ An argument made in favour of parallel imports of copyrighted work can be found in *The First Report (Final) to the Committee on International Trade Law on the*

³ See PAUL GOLDSTEIN, COPYRIGHT 5:107 (2nd ed., 2002).

⁴ *Id.*

⁵ See LADDIE, PRESCOTT AND VICTORIA, THE MODERN LAW OF COPYRIGHT AND DESIGN Chap 32, 1536 (3rd ed., 2000).

⁶ See Frederick M. Abbott, *First Report (Final) To The Committee on International Trade Law Of The International Law association on the subject of Parallel Importation*, 1 J. INT'L ECON. L. 607 (1998) (*hereinafter* First Report).

*subject of Parallel Importation in relation to Intellectual Property Rights*⁷. This report concluded that benefits that might flow from restricting parallel imports in copyrighted works were insufficient to justify the potential inhibition of trade.⁸ The Report further noted that developing and developed countries are better served by open markets and the operation of comparative advantage.⁹ In this regard, it is pertinent to note that **rules restricting parallel importation are non-tariff barriers to trade and can be argued to be inconsistent with the general terms, structure and spirit of the WTO and GATT 1994.**¹⁰ The argument made in the report points out to the fact that restrictions on **parallel import of copyrighted works infringe Article II and XI of the GATT 1994 and are not protected by the safeguard created for intellectual property rights under Article XX(d).**¹¹ The safeguards do not apply because **rules restricting parallel imports are not ‘necessary’ to protect national IPRs because by definition, parallel import goods are placed on markets with the consent of rights holders.**¹² Moreover, **vertical territorial allocation of distribution of copyrighted works can be achieved in a less trade restrictive way i.e. by private and intra-corporate contracts.** Also, since **Article 6 of the TRIPS does not address the question of exhaustion of rights, such an interpretation of the GATT provides a basis for reading in international exhaustion over national exhaustion.** Therefore, in the interest of free trade and economic and social welfare, parallel imports should not be prohibited. The positive and negative implications of such a restriction and its impact on the social and economic welfare of India will be examined in detail in part III of this submission.

D. Property rights v intellectual property rights

Another aspect of the doctrine of first sale is the distinction drawn between ‘property rights’ and ‘intellectual property rights’.¹³ This difference is of utmost importance and is a difference which needs to be balanced. **The property right of a person in an article he ‘owns’ gives him the freedom to deal with that article as he deems fit.** For example, once **an author sells his book, he has sold a ‘copy’ of the book and not his intellectual property right in the book.** So the **buyer is not allowed to reproduce the book, but is entitled to re-sell it as ‘sale’ is an**

⁷ For more on the report see *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Article XI:1 of GATT 1994 provides: No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or *other measures*, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party. Article II prohibition on discrimination in favor of domestically produced goods in Article XX(d) that permits Members to maintain otherwise inconsistent measures 'necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to . . . the protection of patents, trademarks and copyrights, and the prevention of deceptive practices'

¹² See First Report, *supra* n. 6, 623-33.

¹³ See generally WILLIAM F. PATRY, PATRY ON COPYRIGHTS (2008).

important aspect of his ‘ownership right’. Therefore, in pursuance of the concept of free trade and the concept of ‘ownership’ a person is entitled to sell his copy of a copyrighted work to anyone without any conditions attached. In this respect, **ownership in the copyrighted book is and should be equated to ownership in any other good. International exhaustion is consistent with this notion of ‘unconditional’ ownership.**

Section 2(m) embodies these ideas and principles and enables India to put these intelligent theories into practice. The next section will highlight the fact that the intention behind allowing parallel imports is evident in various sections of the Indian Copyright Act and how due to a series of dubious interpretations given by Indian courts, the legislature brought in an amendment to Section 2(m) to clarify the issue of parallel imports.

I.II. INTERPRETING THE COPYRIGHT ACT AND SECTION 2(M)

There is **no provision** of the Copyright Act by which the owner or licensee of copyright is given the exclusive right to import a copyrighted work into India.¹⁴ Section 51(b)(iv) does, however, make it illegal to import ‘infringing’ copies of a work. According to unamended s.2(m) of the Act, a reproduction of a literary, dramatic, musical or artistic work, a copy of a film or sound recording is an ‘infringing copy’ “if such reproduction, copy or sound recording is made or imported in contravention of the provisions of this Act”. So the current s.2(m) does not clarify matters either, because it applies only to that importation that is “in contravention of the provisions of” the Copyright Act.¹⁵ So we look to s.14 (which lays down the meaning of copyright) and is read with s.51 (which lays down what constitutes ‘infringement’ of copyright) when determining what is and what isn’t “in contravention of the provisions of” the Copyright Act.¹⁶ **Nowhere in s.14 of the Act is a right to import granted to the copyright owner.**¹⁷ However, s.14 does clearly lay down that insofar as literary, dramatic or musical works are concerned it is the copyright owner’s exclusive right “to issue copies of the work to the public not being copies already in circulation”.¹⁸ The explanation to this section goes to clarify that “for the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation.” This explanation was **added by the 1994 amendment** in order to **undo a series of erroneous interpretations** given by courts in relation to the issue of exhaustion. The 1994 amendment **brought out that the Indian Copyright Act never accepted national exhaustion** as suggested by the wrong interpretations of courts. Unfortunately, courts continue to come up with erroneous interpretations and still suggest national exhaustion. This amendment is **only required to reiterate** that the Indian Copyright Act **does not accept national exhaustion** and hence this amendment is needed to undo recent erroneous decisions which did not even consider the 1994 amendment.

¹⁴ See Pranesh Prakash, *Exhaustion: Imports, Exports and the Doctrine of First Sale in Indian Copyright Law*, MANUPATRA INTELLECTUAL PROPERTY REPORTS, Vol.1, pp. 149-160, February 2011.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

It is extremely important to take note, at this juncture, of the concern publishers have with regard to the licensee himself importing copyrighted works. To address this concern, it is important to note that **all that is required to ensure that a licensee does not import into India is a clause in the license clarifying that the right being provided includes a right to reproduce the work and issue copies in Territory X, but does not include the right to issue copies in India. Section 2(m) does not prevent a territorial license from being granted.** Section 14 contains a bundle of rights, which is applicable in all Berne-signatory countries, and can be unbundled and licensed or assigned as the copyright owner deems fit, including geographically. We would like to reiterate that section 2(m) **does not** change this position in the least.

At this point it is also pertinent to point out that **the right to issue copies under Section 14 is not limited only to copies of trade books published by those opposing this section, but extends to academic books, art, drama and musical works. Hence, interpreting this right to exhaust only nationally will adversely impact-**

- museums,
- galleries,
- libraries,
- second-hand stores(including bookstores) and
- access to educational material.

This is because, especially **with regard to educational material, instead of a right to buy books from anywhere in the world, it becomes a right to buy books if the publisher allows it into India. The copyright act is meant to encourage the production of creative works, and it cannot be seen as a means of establishing monopolies of distribution.** Moreover, the impracticality of such a restrictive interpretation will impose undue constraints on art galleries and museums, who will have to take permission of legal heirs of copyright owners! To top it off, **if such imports are restricted then most libraries, second-hand stores and consumers will be liable for copyright infringement.** Part III of this submission highlights the negative implications of prohibiting parallel imports.

Looking at the scheme of the Copyright Act, the needs and expectation of society to have access to lesser priced, more easily available and updated books and other forms of copyrighted work and the intention of the legislature suggested by an absence of an express prohibition on parallel imports, all point towards the need and necessity of reinstating the proviso to Section 2(m).

The amendment to Section 2(m)- changes in language.

At this juncture, it is submitted that the amendment to Section 2(m), in the form of the proviso, be altered to read as follows - Provided that a copy of a work published in any country outside India **in accordance with the law of that country** [with the permission of the author of the work]¹⁹ and imported from that country shall not be deemed to be an infringing copy. Such a **change is important keeping in mind books created for persons with disabilities so that their access and availability can be increased.**

¹⁹ Omit words in bracket.

I.III. A COMPARATIVE ANALYSIS : COUNTRIES THAT ALLOW FOR PARALLEL IMPORTS IN COPYRIGHTED WORKS

The following countries allow for parallel imports –

Australia

Section 29(5) of the Australian Copyright Act 1896, parallel importation of a book is permitted if the book was first published overseas and then is not published in Australia within 30 days of first publication. The Australian Prices Surveillance Authority in its interim and final report showed evidence of how restrictions on parallel imports was taken advantage of by **foreign book publishers** to establish significantly higher prices for books exported to the Australian market as compared with books sold in other markets thus **creating market distortions in the Australian Book market.**²⁰

New Zealand

One of the core rights granted to copyright owners under Section 16(1)(b) of the Copyright Act 1994 is the exclusive right to issue copies of a work to the public (sometimes referred to as "the right of distribution"). That right is, however, subject to certain exceptions. Section 9 of the Copyright Act 1994 defines "issuing copies to the public" as the putting into circulation of copies not previously put into circulation. **Section 9(1)(d) was inserted into the Copyright Act 1994 by the Copyright (Removal of the Prohibition on Parallel Importing) Amendment Act 1998. This allows for the parallel importing of non-infringing copies of a work into New Zealand.**

Egypt

Article 147 of the Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights shows that parallel importation is allowed in Egypt. The relevant part of the Article states – ‘A copyright owner does not have the following rights- ‘The right to prevent third parties from importing..... where the copyright owner undertakes to exploit or market his work in any state or authorize a third party to do so.’ Moreover, a statement by Dr. Yehya Reda, Dr. Houssam Lofti and Mr. Samir Hamza representing Egypt on ‘The effectiveness of border measures after TRIPS’ stated that parallel imports of copyrighted works are not ban in Egypt.²¹

²⁰ Australian Prices Surveillance Authority, Inquiry Into Book Prices, Interim Report of 31 August 1989, Matter No. PI89/3, Rept. No. 24 and; Inquiry Into Book Prices, Final Report of 19 December 1989, Matter No. PI/8913, Rept. No. 25.

²¹ Availbale at <https://www.aippi.org/download/committees/147/GR147egypt.pdf>.

Singapore

In 1994 the Copyright Act of Singapore was amended in order to allow parallel imports under Sec 25(3) and in *Highway Video Pte Ltd.v Public Prosecutors and others appeals*²², the chief justice of the High Court of Singapore noted that ‘it is clear that **Parliament has clearly chosen a course of action **favouring parallel imports** save for situations where an article is not protected by the copyright laws of the country in which it is manufactured.’**

Malaysia

As a result of legislative changes and clarifications, parallel importing of copyrighted works is generally permitted in Malaysia. Under the Copyright Act 1987, as it originally stood, parallel importation was an infringing act. **The Act was, however, amended by the Copyright (Amendment) Act 1990 which removed the restrictions on parallel imports by amending Section 36(2).**

These and other countries such as *Mexico, Chile, Egypt, Cameroon, Argentina, Israel, and South Korea* follow the principle of international exhaustion of intellectual property rights and therefore approach parallel imports liberally. Looking at the number of countries that allow for such imports and observing that many of them, like India, are developing economies and net importers of IP, shows that India too must not close its doors to benefits that it can receive from parallel imports.

The empirical study that follows will highlight the enormous benefits India can receive by allowing parallel imports.

II. PARALLEL IMPORTS OF COPYRIGHTED WORKS MAKES ECONOMIC SENSE FOR INDIA: AN EMPIRICAL STUDY

This part of the submission will establish, through an empirical study of prices and availability of college books, the argument that parallel imports will indeed decrease prices of books, increase their availability and enable access to updated editions of books.

Data for 226 books that form part of the college syllabus for engineering students was collected from flipkart and amazon.

22 *Highway Video Pte Ltd.v Public Prosecutors and others appeals*, [2002] 1 SLR 129.

26% of these books that are available in India are out-dated versions. The average difference in editions available in the US and in India is of 2 editions. For example, students in the US have access to the 4th edition of ‘Mechanics of Materials’ by Stephen P. Timoshenko and James M. Gere but students in India have access only to the 2nd edition **The maximum difference in editions goes upto 7.** That means, if a student in the US is using the 7th edition of a book, a student in India is still using the 1st edition!

However, the average price at which flipkart makes these books available in India is Rs. 431, whereas the same books in the US on an average cost \$137. **This shows that these books are, on an average, about 17 times less expensive in the India than that available in the US at current exchange rate, due to the existence of parallel imports through flipkart.**

Only 9% of the books available in India were the latest editions. The average price of these books was found to be Rs. 443 in India and \$ 92 dollars in the US. **Thus, showing that these books are about 11 times less expensive in the India due to flipkart.** For example, the book ‘Digital Image Processing’ by Richard E. Woods, Rafael C. Gonzalez is available at Rs. 508 on flipkart and is the 3rd edition, and the 2nd edition of this book is available on amazon at \$ 140.1.

The remainder of the books were found to be of same **edition both in India and the US.** The average price of the same editions in India was found to be Rs. 478 and in the US \$121, thus showing that these editions are, **on a average, about 13 less expensive in India due to parallel imports.** For example, the book ‘Computer Architecture’ is available on flipkart for Rs. 449 and is the 5th edition, and the same 5th edition is available on amazon at \$89.

This analysis shows us that allowing for parallel imports will surely help decrease prices, increase availability and ensure updated versions of books.

III. IMPLICATIONS OF PROHIBITING PARALLEL IMPORTS

Prohibition of parallel imports will adversely affect India’s economic and social welfare. Several groups will be affected by the Government’s failure to include the proviso to Section 2(m). This part of the submission will first throw light on the negative impact of prohibiting parallel imports. Thereafter, the submission will highlight various positive impacts this amendment will have on India.

Negative implications

Restricting parallel imports can have a series on negative effects on a variety of groups and individuals. Ones that will be most affected are –

- Galleries
- Museums
- Music enthusiasts
- Libraries
- Theaters
- Second-hand stores (including bookstores)
- Consumers

Negative Impact on Galleries

Galleries that have bought paintings and other works of an artist will **not be able import the paintings and works without the prior permission of the artist.** If the **artist is not alive**, the gallery will have to take **permission from the estate** of the artist. This will lead to many

consequences. Given the **difficulty and delay** inherent in this whole procedure (of locating and contacting the artist/estate and then obtaining his/her permission) will **deter galleries** from buying such works. This will **in turn keep Indian art lovers and collectors away from such works**. Also, if the gallery does decide to shoulder all the trouble and import the painting, it will immediately **reflect in higher cost**. This brings out the inefficiency, impracticality and adverse effects inherent in restricting parallel imports.

Moreover, if this **clarification through the amendment is not made and due to the existing erroneous interpretation by courts on the matter of parallel imports, existing works that have already been imported will be rendered illegal and galleries will be liable to be punished for infringement**. Also, if someone has sold a piece of art not knowing that it was a parallel import, he will also be liable to be punished.

This therefore shows that **the amendment is required not only to legalize future imports but also to legalize already imported works**.

Negative Impact on Museums

Museums that wish to auction a work of historic importance or a famous work to its society, will have **to obtain permission from the estate of the artist** or creator if the work is still within the time limit for copyright protection. This will bring in all the drawbacks as pointed out above in case of galleries. This will therefore **deprive Indians access to world famous and historically famous works**.

Also, as stated above, in the absence of this amendment, existing works that have already been imported will be rendered illegal and museums will be liable to be punished for infringement.

Negative impact on Music enthusiasts and Theaters

Restricting parallel imports will adversely affect the availability and prices of music albums, plays and movies. With the existence of parallel imports prices and availability of the above will be more consumer friendly as competition will increase. Therefore, **there are higher chances of gaining quicker and cheaper access to a new music albums, movies and plays released internationally with parallel imports than without them**.

Moreover, prohibiting parallel imports will result in many music and movie dealers being **liable to be punished for copyright infringement**. This is because even if the someone (including dealers) unknowingly buys/sells a music album which was a parallel import and not legal due to the interpretations given by courts, he would have committed a copyright infringement.

Negative impact on libraries, second-hand stores and consumers

The one the most obvious negative implications of prohibiting parallel imports is that it will turn most **libraries, second-hand book-shops and many consumers into copyright infringers liable to be punished**. This situation will arise since there **is no easy way for anyone to distinguish between a copy which was imported and a copy sold by an exclusive distributor**.

In such a case, **even if someone unknowingly buys/sells a foreign edition which was not legally imported, he would have committed a copyright infringement.** This was exactly what was argued in the *amici* briefs to the US Supreme Court in the *Costco v. Omega*²³ case. The [American Library Association, the Association of College and Research Libraries and the Association of Research Libraries in Support of Petitioner](#) Library Association raised this pertinent point and argues as follows: *“By restricting the application of [the first sale doctrine] to copies manufactured in the United States, the Ninth Circuit’s decision threatens the ability of libraries to continue to lend materials in their collections. Over 200 million books in U.S. libraries have foreign publishers. Moreover, many books published by U.S. publishers were actually manufactured by printers in other countries. Although some books indicate on their copyright page where they were printed, many do not. Libraries, therefore, have no way of knowing whether these books comply with the Ninth Circuit’s rule. Without the certainty of the protection of the first sale doctrine, librarians will have to confront the difficult policy decision of whether to continue to circulate these materials in their collections in the face of potential copyright infringement liability. For future acquisitions, libraries would be able to adjust to the Ninth Circuit’s narrowing of [the first sale doctrine] only by bearing the significant cost of obtaining a “lending license” whenever they acquired a copy that was not clearly manufactured in the United States.”*

In this context, it is also significant to note the arguments put forth by the [American Association of Law Libraries, American Free Trade Association, the Electronic Frontier Foundation, Medical Library Association, and the Special Libraries Association in Support of Petitioner](#) : *“The uncertainty created by the Ninth Circuit’s holding [against parallel importation] will harm used bookstores, libraries, yard sales, out-of-print book markets, movie and video game rental markets, and innumerable other secondary markets. Owners of copyright works or goods containing copyrighted elements manufactured abroad will be unable to dispose of these products without authorization at the risk of liability under copyright law’s extensive damages provisions [...]Secondary market sellers who cannot afford to purchase this right will be unable to do business unless they are prepared to engage in lengthy and expensive litigation with an uncertain result. A wide variety of important secondary markets in copyrighted works and goods with copyrighted elements will suffer without the protection of the first sale doctrine.”*

These arguments show the extent to which criminalizing on parallel imports can affect various harmless groups.

Another issue that needs to be highlighted is the claim that **publishers** make of the inherent difference between the US and Indian book markets. They **fear that it is due to this difference parallel imports in India cannot be allowed as parallel imports will result in a deluge of remainders in the Indian bookstores.** We submit that this **fear is baseless.** The US and Indian book markets are not as different as the publishers wish them to be. Books of different prices are sold in the Indian book stores and books from the highest to the lowest priced move and are being bought. Therefore, first the fear of remainders is overdone and second if the US can manage the issue of remainders so can India.

23 *Costco v. Omega*, 541 F.3d 982 (9th Cir. 2008).

Benefits of Parallel Imports

By allowing parallel imports not only will India open itself to competition and increased efficiency but also enable higher social well-being. Also, legalizing parallel imports will bring certainty on the legality of copyrighted works that have already been imported.

Parallel imports will increase competition and dismantle the wasteful monopolistic practices that exist currently

Parallel imports will result in **more competition and thus reduced prices**. Competition will also ensure **efficiency and Indian readers will therefore be able to gain access to international releases faster**. The existing set up of obtaining licenses for distribution is burdened with all the wasteful and negative aspects of a monopoly thereby resulting in higher prices and lower access and availability of copyrighted books and works (as shown above through the empirical study). This is **benefit libraries and students as they will have access to update versions which are cheaper than what would otherwise be available**. Also, with the **international exhaustion of copyrights, the owner is able to realize the full value of his work** and hence parallel imports will not eat into his share of the pie.

Parallel imports will help publishers

Book **publishers will be benefited by parallel importation, just as they are benefited by the existence of libraries and second-hand book stores**. **Libraries and second-hand book stores help with market segmentation, providing access to people who can't afford expensive books at much lower rates, often free**. However, the existence of second-hand book stores in almost every city in India does not prevent me from buying books first hand.

Helping libraries and the print disabled

Even currently, many people buy books directly from abroad and have them shipped to India. This is especially necessary for libraries whose patrons—scholars and students—very often need access to the latest books. **Currently, libraries often buy books from abroad from Amazon, Flipkart, Alibris, etc**. Such acts, within a strict reading of the law, are not legal, since they **fall afoul of s.51(b)(iv), since the import is not for the "private and domestic use" of the libraries**. This is also of especial concern for organizations working with print-disabled individuals, since the number of books legally available domestically in formats accessible by the print-disabled is very small, and often need to be imported.

Helping all consumers

An excellent report was prepared in [2006 by Consumers International](#), in which they **studied the costs of textbooks in eleven countries, including India, by average purchasing power of each country's citizens, instead of absolute cost**. Based on that study, and a detailed investigation of international treaties on copyright and the flexibilities allowed in them, **Consumers International recommended that India should amend our law to make it clear that parallel importation of copyrighted works is legal** (on page 51 of the report).

IV. CONCLUSION

Having established that parallel imports and the concept of international exhaustion promote free trade, adhere to the undisputed principle that ‘ownership’ of property is unconditional and benefit all the parties interested (publishers, libraries, galleries, museums, libraries, second-hand stores, theaters, music enthusiast and consumers), all that needs to be done by the Government is to add the proviso to Sec. 2(m) so that India can reap the benefits of an intelligent copyright regime. The absurdities, uncertainties and adverse effects that will be created by criminalizing such imports show that the need of the hour is to bring in this amendment to clarify the Indian position on parallel imports. Law should reflect the needs and expectations of its society and given the mischief created by the ‘license raj’ in relation to copyrighted works (including but not limited to books), it is time for the parliament to remedy this mischief and give to the people of India what they expect and need. The empirical study that was analyzed shows the glaring gap that exists between the requirement of society and the letter of the law. Given that many developing nations have adopted international exhaustion of copyrights and have benefited immensely from this, it is time for India to tread the same path. This submission concludes by urging the Government to bring in the amendment to Sec 2(m) and by noting the change in language that is required- substituting ‘permission of the author’ with ‘*made in accordance with the law of the country*’ and legalizing parallel imports in copyrighted work at the soonest.

Appendix - III

**Note on Section 2 (m) of the
Copyright (Amendment) Bill, 2010**

Appendix III

Note on Section 2 (m) of the Copyright (Amendment) Bill, 2010

Prof. N.S.Gopalakrishnan

1. India followed the principle of international exhaustion of intellectual property rights. Since importation right was not recognized in any of the IP laws in India till recently there was no need to introduce special provisions expressly recognizing international exhaustion.
2. International exhaustion facilitates movement of IP goods from one territory to another once the owner of IP sells the IP goods in the market. Once it is sold the owner of IP has no right to regulate further transfer of goods in the market.
3. Indian Copyright Act also recognized this principle. This is evident from the absence of importation right for owners of copyright. Only prohibition was import of infringing works from other territory (See section 51(b)(iv)). Once the works are sold in the market any one can import or export the works and the owner of copyright has no right to prevent the same.
4. To defeat the objectives of exhaustion of rights owners of copyright used the territorial contracts to prevent the movement of goods from one territory to another.
5. The amendment in the Copyright Act was necessitated due to the courts interpreting the contractual provisions and the provisions of Copyright Act to prevent import and export of works.
6. Section 2(m), it appears to me, was introduced to clarify that India follows the principle of international exhaustion of rights in case of copyright as well.
7. The principle of international exhaustion of right otherwise known as ‘doctrine of first sale’ separates the right (intellectual property) of the copyright holder from the right over the material goods (tangible copies of books, film, music. The digital copies are also considered as tangible since storing in a medium such as hard disk, pen drive, CD etc., is needed for enjoyment).
 - a. Once the copies are sold in the market by the owner of copyright then the copies can move freely in the market without any restrictions imposed by the owner of copyright.
 - b. This recognizes the principles of free movement of goods once legally introduced in the market without any restrictions imposed by the owner of copyright

- c. This also allows free movement of goods within and outside the territory of a country without any restriction provided the first sale of copies is legal – ie., sold with the permission of the owner of copyright (license or assignment agreement)
 - d. The copies move from one territory to another for second sale only if the copies are not available in that territory or the prices are much higher.
 - e. If the prices of copies are not that high it is not economically viable for a distributor to sell the copies in that territory importing it from another country.
 - f. To this extent international exhaustion of rights indirectly put restrictions on owner of copyright to follow differential pricing of same work in different markets depending upon market conditions.
 - g. The principle of international exhaustion never prevents or restricts the freedom of the owner of copyright to give territorial licences (licence to different persons in different territories). The owner is free to give different licences. But it puts a restriction on the licence holder to fix unreasonable price to extract undesirable profit from a territory.
 - h. If a country follows international exhaustion any restrictive term included in the license agreement on copyright preventing the free movement of copies legally sold will be binding only on the holder of licence and not to third parties who purchases the copies and re-sell the same in the territories where the restrictions on imposed. This also permits third parties to import copies from such markets.
8. Indian copyright law from the very inception recognized the principles of international exhaustion. But the Delhi High Court in *Penguin case* (AIR 1985 Del 29) interpreted the distribution right of the owner of copyright “issue of copies” in section 14 to include the right to sell copies imported from other countries.
- a. To clarify that India follow international exhaustion the Parliament in 1994 amendment section 14 and substituted the following: “to issue copies of the work to the public not being copies already in circulation”.
 - b. The 1994 amendment makes it clear that once the copies are in circulation the owner of copyright has no control over it and the copies can move freely to any territory following the principles of international exhaustion of copyright. This also permits person to import legal copies of the same book from any other territories and sell it in India.
 - c. This makes it clear that a person who purchased the copy of a book has the freedom to sell the book to any other person in any territory without the permission of the owner of copyright.

- d. This freedom included the export and import legally sold copies of works in India.
9. It is interesting to note that the 1994 Amendment also introduced for computer programme, cinematograph film and sound recording the rental rights including resale right. “To sell or give on hire or offer for sale or hire,-----, regardless of whether such copy has been sold or given on hire on earlier occasions” (See section 14(1)(b)(ii); (d)(ii) and (e)(ii)).
10. This gave an impression that exhaustion of right (both national and international) is not available for computer programme, sound recording and cinematograph film because it prevented re-sale of the copies once sold without the permission of the owner anywhere in India. The background seems to be that the Parliament wanted to introduce rental rights for these works but added resale rights also with it. This seems to be a mistake committed by the Parliament without realizing its implication. Exhaustion of rights, at least within the territory of a country, is a well accepted international norm of copyright law followed globally.
11. This mistake was corrected by the Parliament in case of computer programme in the 1999 Copyright Amendment. Section 14(1)(b)(ii) as amended in 1999 reads as follows: “to sell or give on commercial rental or offer for sale or for commercial rental any copy of computer programme”. By deleting “regardless of whether such copy has been sold or given on hire on earlier occasions” from the sub section the Parliament made it clear the intention of following the principles of exhaustion particularly international exhaustion. But unfortunately the Parliament forgot to do the same in case of cinematograph film and sound recording.
12. Without taking note of the legislative intent high courts relied on these provisions in the Copyright Act and prevented the free movement of copies particularly importation from other countries into India at cheaper price or exporting to other countries of books printed in India. (For example see *Eurokids case* of Bombay High Court in 2005; *Warner Bros case* of Delhi High Court in 2005 and *John Wiely case* of Delhi High Court in 2009).
13. The omission of the Parliament in 1999 in section 14 is rectified in the Copyright (Amendment) 2012. The resale rights for cinematograph film and sound recording was removed by deleting “regardless of whether such copy has been sold or given on hire on earlier occasions”. (See section 14(1)(d)(ii) and (c)(ii) – reads “to sell or give on commercial rental or offer for sale or commercial rental, any copy of the film/sound recording).

14. In addition to this the 2012 Amendment also introduced section 52(1)(zc) which reads as follows: “importation of copies of any literary or artistic work, such as labels, company logos or promotional or explanatory materials, that is purely incidental to other goods or products being imported lawfully”. This is considered not an infringement of the rights of the owner of literary and artistic works. This it appears is to ensure that importation of goods permitted under other IP laws such as Patent Act and Trademark Act are not defeated by using rights under the Copyright Act. This provision also makes it clear that the Parliament recognizes the policy of Government of India to follow international exhaustion in all IP laws.
15. In the above context there was no need to introduce the proviso in section 2(m). It appears that section 2(m) was inserted in the Amendment Bill to give further clarify of the legislative intent that the policy followed in the Copyright Act is international exhaustion.
16. The Amendment, it is felt, was necessitated to put an end to the distorted interpretations by the courts against the legislative intent. The courts were trying to protect the interest of publishing houses depriving the freedom of movement of goods from other territories to facilitate affordable access to copyright works to the public.
17. All the amendments in fact recognized what is generally known as “parallel import” of copies
 - a. Parallel import means importation of legitimate (as opposed to infringed - “pirated”) goods from cheaper market to countries having higher price for IP protected goods.
 - b. If the books are cheaper in the country (for example in India) when compared to other countries then it is not economically viable for a distributor to import that book from any other territory and sell it in India.
 - c. The purpose is not to prevent the enjoyment of the right of owner to sell the copies of the work in a territory, but to put adequate pressure to ensure that the prices are kept as low as possible.
 - d. India being a net importer of IP goods, the policy is adopted to help India to save scarce foreign exchange to the extent possible by regulating the pricing using market mechanism.
 - e. It is evident that this will help developing countries who have lesser purchasing capacity and owns fewer IP.
 - f. The concept applies to copyright, patent and trademarks equally.

- g. India follows the principle of international exhaustion and allows parallel import as a policy decision. This is evident from similar provisions included in Patent Act (section 107A(b)) and Trademark Act (section 30(3))
 - h. Recently the Division Bench of the Delhi High Court in *Samsung* case (October 2012) recognized this while interpreting section 30(3) of the Trademark Act 1999.
18. Internationally also India consistently argued for the freedom of countries to follow international exhaustion.
- a. The Trade Related Intellectual Property Rights (TRIPS) Article 6 permits national legislations to follow international exhaustion if it suites their domestic requirements.
 - b. India also argued for following international exhaustion while negotiating WIPO Copyright Treaty (WCT) and WIPO Performers and Phonogram Treaty (WPPT) in 1996. The same position was taken even in the recently concluded Beijing Audio visual Performers Treaty 2012.
19. Publishers heavily opposed to this amendment, arguing that it would be detrimental to their interests. According to them the prices are cheap in India and this provision will prevent territorial licensing practices. It was also advocated that this will affect the printing and distribution of low price editions of the books particularly educational books in India and also books with special pricing for India. These arguments are not correct for the following reasons:
- a. If the prices are cheap in India the publishers need not worry about this provisions since it is not going to be economically viable for anyone to import books with higher price from other countries and sell it in India.
 - b. There is no ban on territorial licence. The copyright owners can continue with the practice of territorial licensing of works. But the provisions create obligation to the licensee to keep the prices low as far as possible so that third parties will not venture for parallel import of same works from cheaper markets. It is true that this puts a check on unreasonable profit making by following the practice of differential pricing.
 - c. The low price editions books are not always the latest edition of the books. It is the out dated edition of books that are printed and sold in India as low price editions. Latest edition of books published in foreign jurisdiction are sold in India with the same price and not with any special prices. Only after a period of two or three years low price edition of these books are sold in India.

20. The publishers also claim that there is no “availability” or “accessibility” issue in India as they assert that they sell the cheapest versions in India. A study conducted on this issue revealed that:
- a. There are a number of titles for which there are no Indian editions or exclusive Indian publishers or distributors. Where online purchase is possible these books are bought at the foreign edition rate (transaction rates extra) and where purchase is made from licensees (where online purchase is impracticable as in the case of rural areas) even for more price.
 - b. As the prices are so high it is not accessible for institutions which are economically poor, especially from the rural background.
21. The real problems in not retaining the proviso in the Copyright Act, as suggested by the Amendment Bill are:
- a. It gives an impression that India is changing its stand in international fora
 - i. In the TRIPS Agreement India supported Article 6, which takes a policy of refraining from interfering with the disputes between Member countries regarding exhaustion. This policy gives freedom to Member Countries to follow national or international exhaustion
 - ii. In the WIPO Internet Treaties 1996 (WIPO Copyright Treaty, 1996 and WIPO Performers and Phonogram Treaty, 1996) India argued for retaining international exhaustion.
 - iii. This stand gets reflected in the three major IP laws of India, viz., Copyright Act, 1957, Patents Act, 1970, and The Trademarks Act, 1999
 - iv. Hence the original Bill and the Report of Standing Committee supported this provision
 - v. If the amendment suggested to Section 2 (m) is deleted it will give the impression that India is withdrawing from the policy taken in the International fora.
 - vi. There will be pressure on India on the Free Trade Agreements (currently India is negotiating FTA with EU, USA, Japan etc.) to include provisions preventing parallel import.
 - vii. This will also give an impression to other developing and least developed countries who are supporting the stand taken by India that India is now changing its stand and this will have serious impact on future international negotiations.

- viii. It may ultimately affect the TRIPS Agreement provision which allows national flexibility
 - b. It may also give the impression that parallel import is not permissible in Indian copyright law, and the courts will be tempted to undermine the amendments made in section 14 and justify the judicial decisions rejecting parallel import, which Parliament wanted to rectify.
 - c. It may affect the clear provision for parallel importing in both patent and trademark laws (as there will be similar pressure in these areas as well in the near future) which may have dire consequences on the price of medicine.
 - d. In the absence of a parallel import provision the prices of IP protected goods will definitely go high as the challenge from parallel import is absent
22. For the above reasons it is very much important that the proviso to Section 2 (m) be reintroduced at the earliest.

Appendix - IV

Availability of Readable Formats for differently Abled Persons

Appendix IV

Availability of Readable Formats for Differently Abled Persons

The Copyright (Amendment) Bill, 2012¹ was passed by the Lok Sabha on May 22, 2012, and ushered in a number of changes to the copyright regime of the country. However, one proposed change – that permitting parallel importation of books – was removed from the final draft of the Bill.

This proposed exception would have permitted organisations that work with promoting the welfare of people with disabilities to convert books to accessible formats without having to take the consent of the copyright owner, as long as the conversion was not done for profit.² This would have translated into more books being translated into formats such as Braille and DAISY.³ The number of books being produced in accessible formats in India is very low; having to seek the copyright owner's permission every time a not-for-profit adaptation of a work legally purchased in another jurisdiction needs to be made in an accessible format would just mitigate this problem.

Less number of books being converted in India

Consider the example of Bookshare – an “online library of digital books for people with print disabilities”⁴ – where copyrighted works are made available to those with certain disabilities, in formats that can be used by assistive devices (such as DAISY and digital Braille). There are three kinds of books available: the first are available for everyone, in the public domain; the second are from publishers who have given the permission for them to be used globally; finally, the third are from publishers who have only given the permission for the books to be used within the US. The books in the first two categories, which are available in India (and internationally), number around 70,000. On the other hand, the books that are available for US citizens, is around 5,00,000. This stark difference is underscored even more by the fact that the number of organisations⁵ working for the print disabled which convert books using their own resources is very low, and at most around 3000 books are produced annually.⁶

¹ Full text of the Bill is available at <http://164.100.24.219/BillsTexts/RSBillTexts/PassedRajyaSabha/copy-E.pdf>.

² “Updating our copyright laws”, The Hindu editorial dated June 4, 2012, available online at <http://www.thehindu.com/opinion/editorial/article3487149.ece>.

³ DAISY is the Digital Accessible Information System, which is a multimedia standard that supports the representation of text, audio, animation, and video. Producing content in the DAISY format is advantageous, since from a single source document, many accessible formats (such as Braille, large print, e-text etc) can be made very easily.

⁴ “How Bookshare Works”, available at <https://www.bookshare.org/aboutUs/howBookshareWorks>.

⁵ The full list of organisations (such as Saksham, National Association for the Blind and Samarthan) is available at the website of the Daisy Foundation. These organizations are further divided into two kinds: ones which produce and distribute the books, and the ones which merely distribute the books – so all the organisations on the list are also not producing the books in accessible formats.

⁶ The figures are as per Ms. Anubhav Mitra, who has worked with the Bookshare International project and is currently working with Saksham.

Given that the number of books being produced for those with print disabilities is so low in India, the attempt should be made to make use of ventures such as Bookshare. However, if the parallel importation of works is not permitted under the Indian copyright regime, those that are visually impaired in India cannot benefit from it.

Indian support of the proposed WIPO Treaty

India is currently giving its inputs to the drafting of the WIPO Treaty on limitations and exceptions for visually impaired persons/persons with print disabilities, in order to promote equality for its print disabled population. The proposed draft of the treaty would impose obligations on member States to permit exceptions in their domestic copyright laws in order to permit the conversion of books into accessible formats, so that persons with print disabilities can also read them.⁷ The treaty mandates that reproduction, distribution and making available of literary and artistic works for non-commercial purposes would be permitted.⁸ This would mean that someone could convert books into accessible formats aimed at the visually impaired, without having to contact the copyright owner. The treaty is also going to have a provision for the international transfer of works in such formats.⁹

India, in the treaty deliberations, has supported the right to import accessible versions. If India signs the treaty, an amendment to Section 2(m) of the Copyright Act, 1957 will anyways be mandatory, in order to fulfil the obligations under the Treaty. The insertion of Section 52(1)(zb) to the Copyright Act, 1957 (which permits conversion of works into accessible formats for the benefit of people with visual disabilities, as long as it not for a commercial purpose) has indicated the intent of the Indian Parliament to make such a provision in the Indian law. In fact, India has expressed reservations with the proposed Treaty's current restrictive language, since the recent Copyright Amendment gives broader protection than the treaty is expected to provide, and the Act has a broader understanding of "people with disabilities".¹⁰

Provisions in other jurisdictions

Internationally, there is much debate and discussion on the legality of parallel importation of copyright goods; for example, the US Supreme Court in its decision of *Costco v. Omega*¹¹ considered the question, but failed to deliver a binding precedent on the issue, after

⁷ Sai Vinod, “

Stalemate over WIPO Treaty on Copyright Exceptions for Persons with Print Disabilities”, available at <http://spicyipindia.blogspot.in/2012/08/stalemate-over-wipo-treaty-on-copyright.html>.

⁸ *Id.*

⁹ A draft of the Treaty is available at <http://www.ip-watch.org/weblog/wp-content/uploads/2012/10/SCCR-Interess-Revised-Doc-19-October.pdf>.

¹⁰ Carolina Rossi, “Treaty for the Blind: A Watered Down Agreement Moves Forward at the World Intellectual Property Organization”, available at <https://www.eff.org/deeplinks/2012/11/treaty-blind-watered-down-treaty-moves-forward-wipo>.

¹¹ Available at <http://www.scotusblog.com/case-files/cases/costco-v-omega/>.

being split 4-4 on the issue. When the US Copyright Office filled in the WIPO SCCR questionnaire, it stated¹²:

Section 602 itself contains a special set of exceptions (17 U.S.C. § 602(a)(3)(A)-(C)) which would permit individuals and authorized entities to engage in many acts of importation to meet the needs of persons with print disabilities.

More importantly, the exclusive right of distribution in 17 U.S.C. § 106(3) is subject to the limitations and exceptions contained in 17 U.S.C. §§ 107-122, including the exceptions for persons with print disabilities contained in 17 U.S.C. § 121. This means that acts of importation and exportation by “authorized entities” (as that term is defined in 17 U.S.C. § 121(d)(1)) that meet the conditions of § 121 will be exempt from § 602(a).

However, this claim has been questioned¹³, since the actual provision is more ambiguous and doesn't state explicitly that such import or export is going to be legal. India should avoid such confusion by making its stand on parallel imports be clear. The US recognises the doctrine of first sale; “under Section 109(a) of the United States’ Copyright Act of 1976, the purchaser of a legal copy of a copyrighted work is generally entitled to treat that copy in any way he likes (including sale, re-sale, destruction, gift or rent) so long as the copyright owner’s exclusive rights are not infringed.”¹⁴ Thus, American law permits the parallel importation of its copyrighted works, as long as the initial sale was lawfully made and the export does not ultimately affect the exclusive rights of the copyright owner.

An illuminating example to be considered is that of Taiwan, which banned parallel imports by amending its copyright laws. However, it has been argued that the provision has not been defined properly, and instead of furthering the stated aim of reducing piracy, has in fact merely increased the economic strength of the initial copyright owner in another jurisdiction.¹⁵

Support of the Parliamentary Standing Committee

¹² Response is available at <http://www.wipo.int/copyright/en/limitations/pdf/us.pdf>.

¹³ Krista Cox, “US provides misleading answer to WIPO questionnaire on export of accessible works under US law”, available at <http://keionline.org/node/1110>.

¹⁴ Tan Leng Cheo, “Copyright Law and Parallel Imports”, available at http://www.accountlaw-tax.com.sg/Website_tlc/ws-parallel%20import.htm.

¹⁵ See generally: Soojin Kim, “In Pursuit of Profit Maximization by Restricting Parallel Imports: The U.S. Copyright Owner and Taiwan Copyright Law”, 5(1) *Pacific Rim Law and Policy Journal* 205, available at <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/909/5PacRimLPolyJ205.pdf>.

Initially, the Parliamentary Standing Committee had expressed support for the amendment, since parallel importation would be beneficial not just to people with disabilities, but also to students who would be able to access updated editions of foreign-published titles at a cheaper rate. (When the bill was referred to the Parliamentary Standing Committee for review, it stated: “*availability of low priced books under the present regime is invariably confined to old editions. Nobody can deny the fact that the interests of students will be best protected if they have access to latest editions of the books...*”)¹⁶ While the proviso was not included, it was stated that the report of the National Council of Applied Economic Research on the effects of parallel importation in India are being awaited; the report shall be considered and an amendment introduced, if necessary.

Existing Price Differentials

The Centre for Internet and Society undertook an empirical study of prices and availability of college books (in the engineering and medical streams) to ascertain whether parallel imports would decrease the prices of books, increase their availability and enable access to updated editions of books.

Data for 226 books that form part of the college syllabus for engineering students was collected from Flipkart and Amazon.¹⁷ All of these books were found to be Indian editions. Due to the prohibition on parallel imports, 26% of the books available in India were out-dated versions and only 9% were the latest edition. Moreover, the average difference in editions available in the US and in India was of 2 editions. (For example, students in the US have access to the 4th edition of ‘Mechanics of Materials’ by Stephen P. Timoshenko and James M. Gere, but students in India have access only to the 2nd edition!). The maximum difference in editions has even gone up to 7. That means, if a student in the US is using the 8th edition of a book, a student in India is still using the 1st edition! This would definitely affect the quality of education and materials being made available to Indian students.

The average price at which Flipkart offers these books for sale in India is Rs. 431, whereas the same books in the US on an average cost \$137. This shows that these books are, on an average, about 17 more expensive in the US, at the current exchange rate. In absolute terms, the equivalent price (in Rupees) of the foreign editions was, on average, Rs. 7391 more (where the Indian edition number was less than the foreign edition number), Rs. 2068 more (where the Indian edition number was the same as the foreign edition number), and Rs. 6160 more (where the Indian edition number was more than the foreign edition number). Interestingly, in not a single case of engineering books was the price of the Indian edition

¹⁶ Shamnad Basheer, “Parallel Imports: The Unexpected Dumping of Section 2(m)”, available at <http://spicyipindia.blogspot.in/2011/09/parallel-imports-unexpected-dumping-of.html>.

¹⁷ Refer to the tables attached.

comparable to that of the foreign edition, with the latter being much more expensive in each case.

With regard to the medical books, data was collected for 196 books. Of these, 11% were outdated and only 4% of the books were of the latest edition. This again goes to show that since parallel imports are prohibited, availability of latest editions is extremely low. There were 23 instances where the latest editions of the textbooks were not available in India. There was a significant price difference in this discipline as well, with the average price difference between the equivalent price (in Rupees) and the Indian price being Rs. 3178

Out of these 196 books, 88 were imported. These 88 were of the same edition, both in India and the US. This strengthens the claim that parallel imports allow India to have access to books of the latest edition without delay. Moreover, the cost at which these books were available in India was extremely low, more than 3 times lesser than that available in the US. The average price at which Flipkart offers these books for sale in India is Rs. 1074, whereas the same books in the US on an average cost \$77. This shows that these books are, on an average, about 3 times more expensive in the US, at the current exchange rate.

Various publishers have claimed that there is no need for a provision on parallel imports, as there is adequate access to foreign works in India. Promoting Public Interest Lawyering (PPIL) made a representation to the ministry last year, stating the following figures¹⁸:

Of the total 1,554 foreign titles acquired by two leading law libraries during 2009-11, there were hardly any titles with equivalent low-priced Indian editions. Even in rare cases where such editions were available, they were never the latest ones. The librarians that P-PIL spoke to categorically stated that they were not interested in purchasing outdated editions of foreign titles.

Almost all foreign titles were available for prices equal to or higher than rates prevailing in the West. These had to be imported through websites such as Amazon or procured through leading local distributors who would place orders directly with publishers abroad. The shipping charges escalated the costs for India, and in one case, the price differential between India and the US was as high as 165%.

With the legalizing of parallel imports, more books of the latest edition will be accessible to Indians and they will also be at prices which are much lower than already existing due to increase in competition.

¹⁸ Shamnad Basheer, "Government for legalizing parallel import of copyright works; publishers oppose", available at <http://economictimes.indiatimes.com/opinion/policy/govt-for-legalising-parallel-import-of-copyright-works-publishers-oppose/articleshow/7723572.cms>.

Conclusion

Within India, parallel importation is available in other intellectual property regimes¹⁹; the right of parallel imports is present in legislation such as the Patents Act and the Trademarks Act. Thus there is no policy reason why such a provision cannot be extended to copyright works as well.

Without legal certainty on the issue of importing accessible copies, organisations that work with those with print disabilities will not venture to make any efforts for them, fearing legal reprisals and not wanting to get caught in copyright infringement suits. It is thus imperative that such parallel importation be permitted.

The National Policy for Persons with Disability has affirmed the right of people with disabilities to get access to reading and educational materials; Section 48 (iv) states as an aim “creating and making teaching/learning tools and aids such as educational toys, Braille/talking books, appropriate software, etc. to be made available and to provide incentives to expand facilities for setting up of general libraries, e-libraries, Braille-libraries and talking books libraries, resource rooms, etc.”²⁰ Permitting this proviso of parallel importation would go a long way in meeting this aim of the Policy, as well as promoting the right of people with disabilities to equality.

¹⁹ Prashant Reddy, “Customs Board issues circular allowing “parallel imports” under Patents Act and Trademarks Act”, available at <http://spicyipindia.blogspot.in/2012/05/customs-board-issues-circular-allowing.html>; Circular 13 of 2012 issued by the Central Board of Excise and Customs, available at <http://www.cbec.gov.in/customs/cs-circulars/cs-circ12/circ13-2012-cs.htm>.

²⁰ The National Disability Policy is available at <http://www.socialjustice.nic.in/nppde.php>.

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