

# IPR & COPYRIGHTS: LEGAL PROTECTION OF DIGITAL CONTENT WITH SPECIAL REFERENCE TO ELECTRONIC DATABASES

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## Abstract

*The computer-based databases have made significant value addition in information products and services, and have enabled fast access to information. The growing role of databases for information access has brought to the fore questions of legal rights of the owners and users of the databases. Process of creating databases involve considerable cost and is undertaken for generating revenue, but on the other it has proved extremely useful to research and educational purposes. Increasing production of digital born databases raises legal issues relating to Copyright and intellectual property in cyberspace environment as there is no globally accepted International copyright laws that would take precedence over local laws. The article provides an overview about the legal protection of databases at national and international level. It concludes that librarians should tell their concern about its costing as well as go for national law network for academic law universities.*

## 1. Introduction

Modern society has become knowledge based society. With the advent of internet and new communication technologies the scientific and academic research approach for access of information has changed. Now most of the information is organized in the form of electronic databases. An electronic database is not only a repository of interdisciplinary knowledge, but they act as information tools that provide easy fast and accurate retrieval services. This trend of electronic database industry has raised new challenges and issues relating to all aspects of intellectual property rights and legal protection of electronic databases. Traditionally, e-databases have been protected by copyright depending on the municipal laws of states. The process of developing of databases requires considerable investment in terms of capital and human labour including gathering of information, gateway, services, vendors etc.

The need for protection of database at international level was appreciated and recognized by Berne Convention in 1886 which emphasized on minimal level of copyright protection for the member nations and adoption of "national treatment Policy".<sup>1</sup>

There are no specific guidelines for protection and use of database. In Common Law countries, copyright law which protects labour is known as 'sweat of brow' whereas in Civil Law countries copyright protects creativity. In the

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landmark decision of the Supreme Court of United States "*Feist Publication v Rural Telephone Services Co*" The Supreme Court stated that: The primary objective of copyright is not to reward the labor of authors, but "to promote the Progress of Science and useful Arts". The judgment of court of appeal revised with the view that the "white pages" of a telephone directory were not protected by copyright, that the criterion of originality was a modicum of creativity and not mere labour.<sup>2</sup>

## 2. Explanations of Electronic Database

Databases are organized collection of electronically arranged compilations of information in a systematic manner for easy and fast access of information. European Union Database Directives defines a database as follows:

*"A collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means".*

*The above definition implies that database is a collection of pre existing materials, the materials incorporated into the database are independent in nature, which have to be arranged in systematic or methodical way, and it should be accessible individually by electronic or other means.*

According to U.S. Copyright Act, a database is a "compilation". A compilation in turn is a work framed by the collection and assembling of preexisting materials or the data that are selected, coordinated or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

In India there is no specific meaning to the term database. According to S.2 (o) of Copyright Act 1957 mentions "Literary work includes computer programs, tables and compilation including computer databases".<sup>3</sup>

## 3. European Union and Database Protection Law

The European Community proposed a draft directive in 1992 for securing the investment of database industry and subsequently Database directive was adopted in 1996.<sup>4</sup> The primary objective of the directive is to provide copyright protection for the intellectual creation involved in the selection and arrangement of materials and creation of Sui Generis right. The laws of EU and US differ in their protection to databases. As a result the situation for the protection of Databases at international level is not harmonized. The EC has Database Directive for the protection of Databases whereas the rest of the world relies either on "Sweat of brow" copyright or on unfair competition, contract and Technology Protection Measures.

### **3.1 Copyright Protection**

The protection of databases is mainly divided into two major categories. One focuses on the protection provided by copyright, and second on Sui Generis rights. The EU Directive 96/9/EC deals with databases constituting the authors own intellectual creation by reason of the selection or arrangement of their contents is to be provided through copyright protection. Thus essentially the sole criterion for protection is "originality". In other words, the lawful user of database is able to re-use all the data available in database, and could rewrite content of database or interpret in their own view by acknowledging the source of original data.<sup>5</sup>

### **3.2 Sui Generis Protection**

It prohibits the extraction or re-utilization of any database in which there has been a substantial investment in obtaining, verifying or preventing the data contents. Thus there is no requirement for creativity or originality. The right protection last fifteen years from the date the non-creative database was made. For reducing the problem of database protection, the European Union has created specific rights for databases protection to provide copyright like protection to supplement traditional copyright laws termed "Sui Generis Rights". The Sui Generis provision is defined in Article 7 of the Database Directive.<sup>6</sup> The Sui Generis right enables the makers of a database' to prevent extraction and re-utilization of the whole or of a substantial part' of the database contents, evaluated qualitatively and/or quantitatively.<sup>7</sup> The extraction means permanent or temporary transfer of all or a substantial part of the contents of the database to another medium by any means or in any form. Re-utilization mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting or online or other forms of transmission. In a landmark ruling, the European Court of Justice (ECJ)<sup>8</sup> clarified the function of the Sui Generis right of database protection. The European Court of Justice says:

*"the maker of a database can reserve exclusive access to his database to himself or reserve access to specific people. However, if he himself makes the contents of his database or a part of it accessible to the public, his Sui Generis right does not allow him to prevent third parties from consulting that base."*<sup>9</sup>

*The fact that a database can be consulted by third parties through someone who has authorization for re-utilization from the maker of the database does not, however, prevent the maker from recovering the costs of his investment. It is legitimate for the maker to charge a fee for the re-utilization of the whole or a part of his database which reflects, inter alia, the prospect of subsequent consultation and thus guarantees him a sufficient return on his investment.*

*On the other, a lawful user of a database, in other words, a user whose access to the contents of a database for the purpose of consultation results from the direct or indirect consent of the maker of the database, may be prevented by the maker, under the Sui Generis*

*right provided for by Article 7(1) of the directive, from then carrying out acts of extraction and/or re-utilization of the whole or a substantial part of the database. The consent of the maker of the database to consultation does not entail exhaustion of the Sui Generis right.*

According to the Sui Generis, the copyright protects the database for 15 years.<sup>10</sup> The protection starts from 1 January of the year following the date when the database was completed or made available. Further the term is renewed for fifteen years if any 'substantial change' is made to the database or the content of the database which constitute a substantial new investment, evaluated qualitatively or quantitatively.<sup>11</sup> The Sui Generis right is enjoyed only by the makers of databases who are citizens or habitual residents of European Community<sup>12</sup> and companies and firms which are formed according to the law of a Member State and have their registered office, central administration or principal place of business within the community.<sup>13</sup>

#### **4. United States Laws for Protection of Electronic Databases**

United States is the pioneer in enacting database protection laws. In *INS v. Associated Press*, 1918, protection of databases was restricted to the misappropriation doctrine as supported under Feist Case. A number of bills were introduced in the House of Representatives on balance of protection against access unfair misappropriation or for compulsory licensing to a database right. Besides constitutional provisions supporting free flow of information was the greatest barrier for such legislations. Databases Investment and Intellectual Property Piracy Act, 1996 (H.R. 3531) came in the House of Representatives as introduced by Howard Coble, but was not approved. The following two bills were introduced in 1990s in support of legal protection of commercial databases:

- Collection of Information Anti Piracy Act, 1998. (H.R. 2652).
- Investor Access to Information Act, 1999. (H.R. 1858).

Collection of Information Anti Piracy Act, 1998 allowed a person to collect, organize or maintain a collection of information to prevent extraction or use of a qualitative or quantitative substantial part of that collection sufficient to harm the actual or potential market for products or services incorporating the collection. The bill was rejected due to opposition by various interests like scientists, universities, libraries and internet companies.

Further the above second bill, Investor Access to Information Act, 1999 was introduced to cope with unfair competition model to prevent only competitors from copying of the contents of a database without adding values for sale in competition with first database.

#### **5. International Law Instruments on Legal Protection of Databases**

*A number of international treaties in the direction of protection of intellectual content were taken in various parts of the world. Some of measures are Berne Convention, WIPO Treaty, TRIPS and Paris Convention.*

### **5.1 Berne Convention**

The Berne Convention for the Protection of Literary and Artistic Works is the most important and oldest treaty relating to copyright protection given to original literary and artistic works. The Convention obligates member countries to establish minimum level of standards for copyright protection to follow and adoption of “national treatment policy” under which a member state must give the same protection to material copyrighted in other member states as it gives to material copyrighted under its own law. The Berne Convention was held in Paris in 1896 and revised in Berlin in 1908, completed in Berne in 1914, revised at Rome in 1928, in Brussels at 1948, in Stockholm at 1967 and in Paris at 1971, and was amended in 1979. The UK signed the treaty in 1887, but did not implement large parts of it until 100 years later with the passage of the Copyright, Designs and Patents Act of 1988. Article 2(1) of Berne Convention explains an illustrative list of the types of works protected under the Convention. The expression “literary and artistic works” is defined as “every production in the literary, scientific and artistic domain, irrespective of the mode or form of the production’s expression.” Art. 2(2) of Berne Convention provide that the member countries have to prescribe the work into categories. Articles 2bis allows Berne members to exclude certain categories of works from protection, such as legislative and administrative works, applied art, industrial models, political speeches, lectures, and public addresses. Article 2(5) of the Berne Convention states that “collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations” are protected “as such.” Thus Article imposes on Member States an obligation to protect collections of subject matter other than copyright works. However, the Convention imposes minimum obligations on States, and the application of the above rule would thus seem inapplicable, as it would result in the imposition of ceilings, as well as a normative floor.<sup>14</sup>

### **5.2 World Intellectual Property Organization Treaty (WIPO)**

The European Union in February 1996 submitted a proposal to WIPO in Geneva to establish a new non-copyright form of protection for databases based on *Sui Generis* rights legal. In May 1996 the United States submitted its own treaty proposal for consideration on database protection. WIPO in its diplomatic conference in December 1996 considered the draft of three proposed treaty for harmonizing legal framework of database protection two treaties were approved, but one treaty, on database protection was tabled.<sup>15</sup> The draft treaty combined the elements of both the European and the U.S. proposals based on firstly subject matter of protection, nature and duration of right.<sup>16</sup> The Preamble to the draft treaty consists of the following<sup>17</sup>:

*“..to establish a new form of protection for databases by granting rights adequate to enable the makers of databases to recover the investment they have made in their databases and by providing international protection in a manner as effective and uniform as possible.”*

The proposed treaty obligate, contracting the parties to protect databases which constitute “ a substantial investment in the collection, assembly, verification, organization or presentation of the content of databases”.<sup>18</sup>

Furthermore, the WIPO draft treaty defines some concepts relating to Databases. “The Database is defined as “a collection of independent works, data or other materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means.”<sup>19</sup> The maker of the databases means “the natural or legal person or persons with control and responsibility for the undertaking of a substantial investment in making a database”. The draft treaty also confers a database maker the right to “authorize or prohibit the extraction or utilization of its contents” The extraction is defined as “the permanent or temporary transfer of all or a substantial part of the content of a database to another medium by any means or in any form.” Utilization “means the making available to the public all or a substantial part of the contents of a database by any means”. A “substantial part” means any portion of the database, including an accumulation of small portions that is of qualitative significance to the value of the database”. The term of protection would have been either 15 or 25 years. The draft Treaty tabled before the WIPO Diplomatic Conference held at Geneva in December 1996 dropped out and never matured as the treaty proposal were controversial and subject to strongly criticism by almost all countries of the world especially USA.

### **5.3 Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS)**

On January 1, 1995 the TRIPS Agreement (WTO 1995) was adopted establishing the World Trade Organization. The provisions of the TRIPS Agreement cover almost all forms of IPRs. Article 10(2) of the TRIPS Agreement states:

*“Databases and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. Databases are eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations. The provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form. Furthermore, the provision clarifies that such protection shall not extend to the data or material itself, and that it shall be without prejudice to any copyright subsisting in the data or material itself.”*

TRIPS provision is broader in scope than Article 2(5) of the Berne Convention, which applies strictly to collections of literary and artistic works. In light of the dominant interpretation of the Berne Convention, which sees Article 2(5) as an explanation or clarification of the principle of protection established in Article 2(1), the criteria used in Article 10(2) of the TRIPS may be said to codify existing copyright protection. It is the compilation of data or other material, which is protected under TRIPS Agreement. It must be noted that compilation of

a subject matter of Copyright is protected under almost all the legal systems. Thus, if a data is compiled in a particular manner, the same cannot be used in a similar manner. Further, by using the words other materials the ambit of this Article has been extended to even non-data items. The compilation may be either in a machine-readable form or in some other form. The previous category includes storing of data in computers and its parallels, whereas the latter category includes storing of the data in the traditional paper mode. The storing of data property in computers and its parallels necessitates protection of the same in Information Technology law as well. This may be the reason that the Government is planning to amend the existing Information Technology Act, 2000.

## **6. Electronic Databases and Indian Law**

Indian Parliament is competent to legislate on data protection since it can be interpreted 'as any other matter not enumerated in List II and List III.' Data protection is, thus, a Central subject and only the Central Government is competent to frame legislations on issues dealing with data protection.

*India being a large producer of intellectual content and a number of commercial databases is a member of almost all the international conventions like Berne Convention, Paris Convention, TRIPS and WIPO. Various measures were taken by Indian legislatures since British period to protect intellectual property like Patent Act 1970, Trade Marks Act 1940 (Amendment 1999), Industrial Design Act 2000, Indian Copyright Act 1957 and Information Technology Act, 2000.*

### **6.1 Indian Copyright Act**

Today, the law of copyright facilitates the legal framework not only for the protection of traditional beneficiaries of copyright like authors, composers, artists and for creation of works by the cultural industries, publishing houses but also for the databases and software's creators.<sup>20</sup> The Indian Copyright Act 1957 amended in 1994 protects databases such as 'Literary Work' though the literary work is not defined in the copyright act. However it includes tables, compilations, computer programmes including computer databases, which can be expressed in a language and written down.<sup>21</sup> Under copyright act the owner of the computer programme enjoys many exclusive rights to reproduce the work in any material form and to make any translation of the work.<sup>22</sup> The unauthorized use of material covered under copyright laws are subject to infringement of copyright law violations but there are certain exceptions to it, for example the 'fair dealing'<sup>23</sup> doctrine for the purpose of free flow of information in the society the small part of information if used for teaching and educational purpose are exempted against the action for infringement.

### 6.2 Protection of Databases under Information Technology Act, 2000

The Information Technology Act, 2000 prescribes punishment for 'cyber contraventions' under Section 43 (a) to (h) and 'cyber offences' under Sections 65-74. The former would include gaining unauthorized access, and downloading or extracting data stored in computer systems or networks, and may result in civil prosecution. The latter category covers 'serious' offences like tampering with computer source code, hacking with intent to cause damage, and breach of confidentiality and privacy, all of which would invite criminal prosecution. Any person who has secured unauthorized access to a computer system or network, or has extracted any database, or tampered with it in any way, is liable to compensate a person suffering damage thereby for an amount that can extend to Rupees 10,000,000.<sup>24</sup> The IT Act penalizes hacking,<sup>25</sup> as also the act of tampering with the computer's source code<sup>26</sup> by providing for imprisonment up to three years or fine up to Rupees 200,000 or both. Further, if a person having powers under the IT Act, breaches confidentiality and privacy by disclosing the data to another, he is punishable with two years imprisonment or fine up to INR 100,000 or both.<sup>27</sup> In all such cases of offences or contraventions, the 'network service provider' or the 'intermediary', can also be made liable for any third party information or data made available by him if it was done with his knowledge or if he did not exercise due diligence to prevent the offence.<sup>28</sup> 'Intermediary' is defined to mean anyone who receives stores or transmits a particular electronic message on behalf of another person, or who provides any service with respect to that message.<sup>29</sup> The IT Act covers offences and contraventions committed abroad as well, irrespective of the nationality of the person, as long as the computer system or network is located in India.<sup>30</sup>

*Himalaya Drug Company v. Sumit*<sup>31</sup> is the first case, in India, relating to copying of databases. The matter appeared before the Delhi High Court when the plaintiff's online herbal database was copied by the defendant, an Italian infringer onto its website. The Court issued an injunction against the infringer and in compliance with the interim order; the American service provider removed the infringing content on its own accord and furnished the complete details of the infringer, who had rented space on the website.

The Indian courts have therefore protected compilations involving minimal originality as has been held, in the case of *V.Govindan v. E.M.Gopalakrishna and Anr.*,<sup>32</sup> that "no man is entitled to steal or appropriate for himself the result of another's brain, skill or labor even in such works." In the case of *Burlington Home Shopping v. Rajnish Chibber*,<sup>33</sup> it was held that a compilation of addresses developed by anyone by devoting time, money, labour and skill though the source may be commonly situated amounts to a 'literary work' wherein the author has a copyright.

In the recent decision of the case *Eastern Book Company v. Navin J. Desai*,<sup>34</sup> question was raised regarding copyright issue in case of judgments of courts. The Delhi High court explained "It is not denied that under section 2(k) of the



Copyright Act, a work which is made or published under the direction or control of any Court, tribunal or other judicial authority in India is a Government work. Under section 52(q), the reproduction or publication of any judgment or order of a court, tribunal or other judicial authority shall not constitute infringement of copyright of the government in these works. It is thus clear that it is open to everybody to reproduce and publish the government work including the judgment/ order of a court. However, in case, a person by extensive reading, careful study and comparison and with the exercise of taste and judgment has made certain comments about judgment or has written a commentary thereon, may be such a comment and commentary is entitled to protection under the Copyright Act". The Delhi High Court has defined when the copyright work shall be deemed to be infringed. Section 51 of the Copyright Act provides "Under Section 51. When copyright infringed.-Copyright in a work shall be deemed to be infringed:

- (a) when any person without a license granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a license 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,...."

Legal protection of database is a critical issue involving various factors including copyright, commercial right and monopolies and restrictive practices. Along with other areas of law, law related to protection of database is growing at a faster rate beyond interpretation of rule of law by courts at international as well as state level. Law of protection of database is also beyond the jurisdiction of a nation as its applicability in all over the world. Copyright laws in the world limit the protection of databases which may lack originality of their contents. Much efforts have been done towards protection of databases at various levels. Berne Convention principles are laid down to protect any production of literary work. World Intellectual Property Organization treaty is also introduced for legal

coverage of databases. World Trade Organization framed TRIPS agreement in direction of protection of legal status of online databases. Besides in Europe, Sui Generis database protection issue came into existence to cope legality of databases. Two legislations, Collection of Information Anti Piracy Act, 1998 (H.R. 2652) and Investor Access to Information Act, 1999 (H.R. 1858) were introduced to protect digital information copyright and piracy. The Patent & Trademarks Office Database Conference was held on April 28, 1998 at the Brookings Institution in Washington and its proceedings were published as Patent and Trademark Office Report Recommendations as output of Database Protection and Access Issues. In India various efforts have been made in protection of digital information. Indian Copyright Act, 1957 was amended in 1994 to include protection of digital literary work in copyright law sphere. Information Technology Act 2000 was also introduced to facilitate protection of it enabled databases and other online networked architectures.

## 7. Conclusion

With the increase of digitization and preservation of data, the road is under built to protect the rights of content producers. The flow of digital information is very fast and be reached across the boundaries within a moment. Being a democratic in nature, electronic databases need international laws required to be bound by all states and all commercial as well as government database holders to protect the literary work of persons. A universally applicable treaty harmonizing laws over all States must be formulized to control the usage of copyright protected digitally stored data to prevent literary rights of original creators. The binding force must also be assigned to commensurate with local authorities for strictly applicability of such universal laws over all database maintenance agencies and the states where these databases are used.

However, to cope with the changing trends of managing information, librarians must resort the issue with active participation and safeguarding the interests of scholarly community along with the financial constraints of the library.

## Endnotes

1. The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland in 1886.
2. *Feist Publications, Inc., v. Rural Telephone Service Co.*, 499 U.S. 340 (1991)[1], commonly called just *Feist v. Rural*, was a United States Supreme Court case in which Feist had copied information from Rural's telephone listings to include in its own, after Rural had refused to license the information. Rural had sued for copyright infringement. The Court ruled that information contained in Rural's phone directory was not copyrightable, and that therefore no infringement existed.

3. Indian Copyright Act, 1957.
4. The Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases is a European Union directive in the field of copyright law, made under the internal market provisions of the Treaty of Rome. It harmonizes the treatment of databases under copyright law, and creates a new *sui generis* right for the creators of databases which do not qualify for copyright.
5. See Council Directive 96/9 of 11 March 1996 On the Legal Protection of Databases 1996 Official Journal (L 77) 20 (hereinafter the 'Database Directive')  
<http://www.columbia.edu/~mr2651/ecommerce3/2nd/statutes/Data baseDirective.pdf>.
6. See Article 7 See Council Directive 96/9 of 11 March 1996 On the Legal Protection of Databases 1996 Official Journal (L 77) 20 (hereinafter the 'Database Directive')  
<http://www.columbia.edu/~mr2651/ecommerce3/2nd/statutes/ DatabaseDirective.pdf>.
7. See Article 7(1) & 5 of Council Directive 96/9 of 11 March 1996 On the Legal Protection of Databases 1996 Official Journal (L 77) 20 (hereinafter the 'Database Directive')  
<http://www.columbia.edu/~mr2651/ecommerce3/2nd/statutes/ DatabaseDirective.pdf>.
8. Judgment of the Court (Grand Chamber) of 9 November 2004. The British Horseracing [2004] ECRI-10415.
9. British Horseracing Board v. William Hill Organization, Case C-203/02 European Court of Justice, 9th Nov. 2004.
10. Article 10(1) of The EU Database Directive: 96/9/EC states that the right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.
11. Article 10(3) of The EU Database Directive: 96/9/EC states that Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.
12. Article 11.1 of The EU Database Directive: 96/9/EC says The right provided for in Article 7 shall apply to database whose makers or right holders are nationals of a Member State or who have their habitual residence in the territory of the Community.

13. Article 11.2 of The EU Database Directive: 96/9/EC says that Paragraph 1 shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community; however, where such a company or firm has only its registered office in the territory of the Community, its operations must be genuinely linked on an ongoing basis with the economy of a Member State.
14. Berne Convention for the Protection of Literary and Artistic Works held on September 9, 1886 as compiled at Paris on May 4, 1896 revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979  
[http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html).
15. On December 20, 1996, the World Intellectual Property Organization (WIPO) Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions (the "WIPO Conference") adopted two Treaties, namely the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These Treaties amend the 110 year-old Berne Convention for the Protection of Literary and Artistic Works and represent the first significant step toward updating the international protection for intellectual property required to facilitate our entry into the digital world of the 21st century.
16. U.S. Copyright Office Report on Legal Protection for Databases, August, 1997 has issued a comprehensive report to Congress on the subject of legal protection for databases.
17. See WIPO, Basic Proposal for the Substantive Provisions of the Treaty on Intellectual Property in respect Databases to be considered by the Diplomatic Conference, Geneva, 2-20 December 1996. WIPO Document CRNR/DC/6.)
18. Article 1(Draft Treaty on Intellectual Property in Respect of Databases, WIPO CRNR/DC/4,(Aug. 30, 1996) ("WIPO Draft Treaty") says that This Treaty is a special agreement within the meaning of Article 20 of the Berne Convention for the Protection of Literary and Artistic Works, as regards Contracting Parties that are countries of the Union established by that Convention.
19. WIPO: Basic proposal for the substantive provisions of the treaty on certain questions concerning the protection of literary and artistic works considered by the diplomatic conference  
[http://www.wipo.int/edocs/mdocs/diplconf/en/crnr\\_dc/crnr\\_dc\\_4.pdf](http://www.wipo.int/edocs/mdocs/diplconf/en/crnr_dc/crnr_dc_4.pdf).

20. Section 13(1)(a) of Indian Copyright Act, 1957 relates to Works in which copyright subsists.- (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,- (a) original literary, dramatic, musical and artistic works.
21. Clause (i) & (X). of Indian Copyright Act.
22. Under Indian Copyright Act the term "Fair Dealing" used to describe the permitted acts.
23. Sec.52(1)(a) & (b) of Indian Copyright Act, 1957 relates to Certain acts not to be infringement of copyright. (a) a fair dealing with a literary, dramatic, musical or artistic work (b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events.
24. Section 43 of Information Technology Act, 2000 relates to Penalty for damage to computer, computer system, etc. If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network, — (a) accesses or secures access to such computer, computer system or computer network; (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium; (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network; (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network; (e) disrupts or causes disruption of any computer, computer system or computer network; (f) denies or causes the denial of access to any person authorized to access any computer, computer system or computer network by any means; (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under; (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network, he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.
25. Section 66 of Information Technology Act, 2000 relates to Hacking with computer system. (1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it

injuriously by any means, commits hack: (2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

26. Section 65 of Information Technology Act, 2000 relates to Tampering with computer source documents. Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both. Explanation.—For the purposes of this section, “computer source code” means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.
27. Section 72 of Information Technology Act, 2000 says Penalty for breach of confidentiality and privacy. Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.
28. Section 79 of Information Technology Act, 2000 says Network service providers not to be liable in certain cases. For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made there under for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. Explanation.—For the purposes of this section, — (a) “network service provider” means an intermediary; (b) “third party information” means any information dealt with by a network service provider in his capacity as an intermediary.
29. Section 2(1)(w) of Information Technology Act, 2000 says “intermediary” with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message.

30. Section 75 of Information Technology Act, 2000 says Act to apply for offence or contravention committed outside India. (1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality. (2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.
31. *Himalaya Drug Co. v. Sumit*, 2006 (32) PTC 112 (Del).
32. *V. Govindan v. E.M. Gopalakrishna and Anr.*, AIR 1955 Madras 391.
33. *Burlington Home Shopping v. Rajnish Chibber*, 1995 PTC (15) 278.
34. *Eastern Book Company v. Navin J. Desa*, (2002) 25 PTC 641 (Del) (DB).