

COUNTRY REPORT: INDIA

India is an important regional economy, with a strong interest in ICT services development. The law in India has not entirely kept pace with developments in cloud computing, and some gaps exist in key areas of protection. Interestingly, a debate has begun in India about whether specific laws and regulations should be developed to enable and facilitate cloud computing.

India has not yet implemented effective privacy legislation, and this may act as a barrier to the development and use of cloud computing and may also inhibit cross-border data transfers and related trade.

India's cybercrime legislation and intellectual property legislation also require updates to conform to international

models. In particular, Indian law needs to cover modern copyright issues such as rights management information and technical protection measures. India has still not ratified the WIPO Copyright Treaty, leaving significant gaps in copyright protection. Parliament is reviewing amendments to the Copyright Act.

Some laws and standards in India are not technology neutral (e.g., electronic signatures), and these may be a barrier to interoperability.

Finally, the development of India's technology sectors is impeded by low levels of broadband and personal computer penetration.

Q INDIA	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY		
1. Are there laws or regulations governing the collection, use or other processing of personal information?	●	In 2008, India introduced new data protection provisions as part of the Information Technology Act Amendment 2008. One key provision is Section 72A (Punishment for disclosure of information in breach of lawful contract). This section makes it an offence, subject to any other legislation, where 'any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person'. Despite the limited scope of the title of Section 72A, it would appear that the offence applies to disclosures that are not necessarily a breach of contract, but are simply disclosures made without the consent of the data subject. In April 2011 the Government implemented the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011. These Rules regulate the collection, disclosure, transfer and storage of sensitive personal data. However, in August 2011 the Ministry of Communications and Information Technology confirmed that 'any body corporate providing services relating to collection, storage, dealing or handling of sensitive personal data or information under contractual obligation with any legal entity located within or outside India is exempt from the consent requirement.'
2. What is scope & coverage of privacy law?	Sectoral	The relevant provisions only apply to the private sector, not to Government.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	✘	The limited provisions are unique, and do not follow any international model.
4. Is the privacy law compatible with the Privacy Principles the APEC Privacy Framework?	✘	India is not a member of APEC. The limited provisions are unique, and do not follow any international model.

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5. Is an independent private right of action available for breaches of data privacy?	Available	The Indian Constitution does not contain a specific right to privacy, but Indian courts have interpreted some of the other provisions broadly, including the right to liberty and the right to freedom of speech. In one significant case — the Naz Foundation case — the Delhi High Court found a clear right to privacy did exist: ‘The right to privacy thus has been held to protect a ‘private space in which man may become and remain himself’. The ability to do so is exercised in accordance with individual autonomy’. Naz Foundation v Government of NCT of Delhi WP(C) No.7455/2001 (2 July 2009)
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	None	India does not have a dedicated regulator or complaints body for data protection (although one does exist for Freedom of information).
7. What is the nature of the privacy regulator?	Not Applicable	
8. Are data controllers free from registration requirements?	✓	India has no registration requirements for any parties under the Information Technology Act 2000.
9. Are cross border transfers free from registration requirements?	●	India has no registration requirements for any parties under the Information Technology Act 2000. However, there are some rules in place for the transfer of sensitive data offshore. It can only be transferred to a country where it is clear that the sensitive data will be adequately protected (Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011). Sensitive data is defined under the 2011 Rules as information relating to a data subject’s: password; financial information; health; sexual orientation; medical records and biometric information.
10. Is there a breach notification law?	✗	India does not have a data breach notification law in place, although significant rules and requirements are in place for general security, including mandatory compensation for security breaches that cause loss.
SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✓	The Information Technology Act 2000 includes provisions that enable the use of electronic signatures in most transactions. Section 5 states: Legal recognition of digital signatures. — Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the central government.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	✗	The Indian Computer Emergency Response Team (CERT-IN) <www.cert-in.org.in> was set up by the Department of Information Technology under the Information Technology Act 2000 to implement India’s filtering regime. This includes administering the prohibition against publishing obscene content and the filtering of Web sites. CERT-IN was empowered in 2003 to review complaints and act as the sole authority for issuing blocking instructions to the Department of Telecommunications. Section 67 of the Information Technology Act 2000 includes an offence of ‘Publishing of information which is obscene in electronic form’. This is a very broad provision as it covers ‘any material which is lascivious or appeals to the prurient interest’ In 2011 further draft rules — The Information Technology (Due Diligence Observed by Intermediaries Guidelines) Rules 2011 — were introduced by the Ministry of Communications and Information Technology. They require websites to remove objectionable content, including anything ‘grossly harmful’ or ‘harassing’ within 36 hours of being notified. They also require Internet-service providers and social-networking sites to bar certain types of content under terms-of-service agreements with users.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Detailed Legislation	The Information Technology Amendment Act 2008 introduces a new section 43A on ‘Compensation for failure to protect data’, which states: Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

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4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	Code of Conduct	Although the Information Technology Act 2000 contains a mandatory compensation requirement for security breaches, it does not contain any other requirements on security audits. An industry body — the National Association of Software and Services Companies (NASSCOM) <www.nasscom.in> — issues best practice security guidance, but compliance is voluntary.
5. Are there security laws and regulations requiring specific certifications for technology products?	Limited requirements	India is a Certificate Consuming Member of the Common Criteria Recognition Agreement (CCRA) <www.commoncriteriaportal.org>. There is growing interest in certifications in India, although there are no comprehensive laws or requirements in place at this stage.
CYBERCRIME		
1. Are there cybercrime laws in place?	✓	The Information Technology Act 2000 contains a range of standard computer crime provisions, many of which are applicable to cybercrimes. The Information Technology Act 2000 was also amended in 2008 to include a range of new more specific cybercrime provisions. However, many of these provisions require enabling regulations before they come into force, and the relevant ones are not yet in place.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✓	Although India is not a signatory to the Convention on Cybercrime, the core criminal provisions contained in the Information Technology Act 2000 follow the prohibitions contained in the Convention closely. Some provisions regarding international co-operation in investigations and enforcement that are present in the Convention are not present in Indian law. Also, requirements for data retention during an investigation that are contained in the Cybercrime Convention are also not present in Indian law. These inconsistencies do not detract from the general alignment between the Convention and the Information Technology Act.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers or other service providers?	Unlimited Access	Section 69 of the Information Technology Act 2000 provides the Controller of Certifying Authorities with the power to intercept any information transmitted through a computer resource, if certain criteria are satisfied. Section 69 sets out the circumstances in which a party may have to extend facilities to decrypt information: (1) If the Controller is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India , the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence, for reasons to be recorded in writing, by order, direct any agency of the Government to intercept any information transmitted through any computer resource. (2) The subscriber or any person in charge of the computer resource shall, when called upon by any agency, which has been directed under sub-section (1), extend all facilities and technical assistance to decrypt the information.
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Section 75 of the information Technology Act 2000 provides that the Act shall apply to an offence (under the Act) or contravention of the Act committed outside India if the act or conduct involves a computer, computer system or computer network located in India. Section 75. 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.
INTELLECTUAL PROPERTY RIGHTS		
1. Is the country a member of the TRIPS Agreement?	✓	India became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	●	India has not yet updated its copyright laws to fully comply with the TRIPS Agreement, although amendments have been proposed.
3. Is the country party to the WIPO Copyright Treaty?	✗	India has not signed the WIPO Copyright Treaty.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	●	India has not yet updated its copyright laws, although amendments have been proposed.

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5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✓	The Copyright Act 1957 separates out computer programs from other types of copyrighted materials. Section 14: For the purposes of this Act, 'copyright' means the exclusive right subject to the provisions of this Act, to do or authorize 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; (b) in the case of a computer programme,— (i) to do any of the acts specified in clause (a); Hence the rights set out in section 14(b) would catch posting on the Internet.
6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✓	Section 63 of Copyright Act 1957 provides for general criminal sanction for copyright infringements in general.
7. Are there laws governing ISP liability for content that infringes copyright?	ⓘ	Under the Copyright Act 1957 there are no specific provisions on ISP liability, although Section 63 makes anyone who abets copyright infringement an offender. This may only cover a very limited range of circumstances for ISPs.
8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	ⓘ	Under the Copyright Act 1957 there are no specific provisions on ISP liability, although Section 63 makes anyone who abets copyright infringement an offender. This may only cover a very limited range of circumstances for ISPs.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Not Applicable	It is unlikely that criminal sanctions would apply to ISPs unless they were found to be abetting an infringement. This would be an unusual conclusion in most circumstances.
10. Must ISPs takedown content that infringes copyright, upon notification by the right holder?	✗	There is no specific take-down requirement in India.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	✗	There are no notification requirements in place.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	No protection	There is no specific protection for cloud computing services in India There are also weaknesses and gaps in both IP law and Cybercrime law that may be relevant for cloud computing services.
INTEROPERABILITY		
1. Are there laws, regulations or policies that establish a standards setting framework for interoperability and portability of data?	✓	Standards setting process in India are governed by the Bureau of Indian Standards (BIS) Act 1986 and the BIS Rules 1987. Although ICT is not covered in detail in the rules, the BIS has established a comprehensive work program in relation to ICT standards, managed by an Electronics and Information Technology Division Council. Refer to < http://www.bis.org.in >
2. Is there a regulatory body responsible for standards development for the country?	✓	The Bureau of Indian Standards (BIS) < http://www.bis.org.in > has comprehensive management and regulatory responsibilities for standards setting in India.
INTERNATIONAL HARMONIZATION OF RULES		
1. Are e-commerce laws in place?	✓	The Information Technology Act 2000 is an omnibus law that includes provisions on e-commerce, e-signatures, cybercrime and privacy.
2. What international instruments are the e-commerce laws based on?	UNCITRAL Model Law on E-Commerce	Parts of the Information Technology Act 2000 follow the UNCITRAL Model Law on E-commerce closely. However, as the law is an omnibus law it also includes a wide range of additional technology law provisions.

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3. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✓	There are no tariffs or other trade barriers on the downloading of software or to the physical transfer of software. There are no other specific rules/regulations that may be construed as trade barriers, when it comes to the downloading of applications or software from foreign sources. Note, however, that requirements relating to encryption (discussed above) may act as a potential trade barrier for some mobile applications.
4. Are international standards favored over domestic standards?	✓	India prioritizes compliance with international standards.
5. Does the government participate in international standards setting process?	✓	India participates in relevant ISO and IEC standard setting processes.
PROMOTING FREE TRADE		
1. Are there any laws or policies in place that implement technology neutrality in government?	🕒	A National E-Governance Plan is in place which promotes interoperability through the establishment of common services, but does not include a detailed commitment to technology neutrality. < http://www.mit.gov.in/content/national-e-governance-plan >
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to types of software), services, standards or technologies?	🕒	Although the Indian Government has generally taken a technology neutral approach, it is important to note that the 2008 amendments to the Information Technology Act included a provision that would allow the Government to determine what modes of encryption companies and individuals may use: Section 84A: The Government may, for secure use of the electronic medium and for promotion of e-governance and e-commerce, prescribe the modes or methods for encryption. At the time of writing no rules have been issued under Section 84A.
3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to types of software), services, standards, or technologies?	✓	There are no requirements or preferred products.
4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer or service provider?	🕒	There are multiple, complex layers of Government procurement in India. Many of the state and local procurement practices do give preferences to local suppliers (although these may not necessarily be relevant to cloud computing). India is an observer, but not a member of the WTO plurilateral Agreement on Government Procurement.
INFRASTRUCTURE, STATISTICS AND INDICATORS		
1. Is there a National Broadband Plan?	<ul style="list-style-type: none"> • By 2010, 20 million broadband connections • By 2012, 75 million broadband connections (17 million DSL, 30 Million cable and 28 million wireless broadband) • By 2014, 160 million broadband connections (22 million DSL, 78 million cable and 60 million wireless broadband) 	<p>India's 2004 Broadband Policy set a target of 20 million broadband connections by 2010. However, by June 2011 there were 12.3 million broadband connections.</p> <p>In December 2010 the Telecommunications Regulatory Authority of India (TRAI) made a number of recommendations for a national broadband plan <http://www.traai.gov.in/WriteReadData/traai/upload/Recommendations/124/Rcommendation8dec10cndiv.pdf>, including:</p> <ul style="list-style-type: none"> • By 2012, 75 million broadband connections (17 million DSL, 30 Million cable and 28 million wireless broadband) • By 2014, 160 million broadband connections (22 million DSL, 78 million cable and 60 million wireless broadband) • Establishment of a National Broadband Network — with an open access optical fiber network connecting all towns with populations over 500 by 2013 • Establishment of a National Optical Fiber Agency to establish the National Broadband Network and the establishment of a State Optical Fiber Agency in every state <ul style="list-style-type: none"> – Optical fiber network would support following bandwidths by 2014: <ul style="list-style-type: none"> – 10 Mbps download speed per household in 63 Metro and large cities (FttH) – 4 Mbps download speed per household in 352 cities (FttN) – 2 Mbps download speed per household in towns and villages – Upload speed will be half of the download speed – Estimated cost is INR60,000 crore (USD 23 billion) <p>As at September 2011, the National Broadband Plan is being considered by the Indian Cabinet.</p>

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2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	No Regulation and limited public debate	There has been little public consideration of issues associated with net neutrality in India. Submissions to the Telecom Regulatory Authority of India consultation paper on the national broadband plan have nominated this as an area of future debate.
3. Base Indicators		
3.1. Population (2010)	1,224,614,327	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
3.2. Urban Population (%) (2010)	30%	[World Bank, Data Catalog, Indicators, Urban Population % (2011) < http://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS >]
3.3. Number of Households (2009)	220,584,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (2009) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
3.4. Population Density (people per square km) (2010)	394	[World Bank, Data Catalog, Indicators, Population Density (2011) < http://data.worldbank.org/indicator/EN.POP.DNST >]
3.5. Per Capita GDP (USD 2010)	\$1,265	[International Monetary Fund (IMF), World Economic Outlook Database (April 2011) < http://www.imf.org/external/pubs/ft/weo/2011/01/weodata >]
3.6. ICT expenditure as % of GDP (2008)	5%	[World Bank, Little Data Book on ICT (2009) < http://data.worldbank.org/products/data-books/little-data-book-on-info-communication-tech >]
3.7. Personal Computers (% of households) (2010)	6%	In 2010, 6.1% of households in India have personal computers. This is a 38.6% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2010) (Score is out of 10 and includes 152 countries)	2.01	India has an ICT Development Index (IDI) score of 2.01 (out of 10), resulting in a rank of 116 (out of 152 economies). The 2010 IDI for India has deteriorated from a rank of 117 since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
4.2. World Economic Forum Networked Readiness Index (2010–2011) (Score is out of 7 and includes 138 countries)	4.03	India has a Networked Readiness Index (NRI) score of 4.03 (out of 7), resulting in an overall rank of 48 (out of 152 economies) and a rank of 3 in the lower-middle income grouping of countries/economies. [World Economic Forum, The Global Information Technology Report (2010–2011) < http://www.networkedreadiness.com/gitr >]
4.3. International Connectivity Score (2011) (Score is out of 10 and includes 50 countries)	1.25	India has a Connectivity Score of 1.25 (out of 10), resulting in a rank of 21 (out of 25) in the Resource-driven grouping of countries/economies. [Nokia Siemens, Connectivity Scorecard (2011) < http://www.connectivityscorecard.org >]
4.4. IT Industry Competitiveness Index (2011) (Score is out of 100 and includes 66 countries)	41.60	India has an IT Industry Competitiveness Index Score of 41.6 (out of 100), resulting in a rank of 34 (out of 66 countries/economies included in the index). The 2011 index score is a 31.6% increase on the 2009 score. India has moved up the ranking by 10 places since 2009. [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) < http://globalindex11.bsa.org >]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2010)	91,846,075	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as Percentage of Population (2010)	8%	In 2010, 7.5% of the population in India used the Internet. This is a 70.5% increase since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]

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5.3. International Internet Bandwidth (bits per second per internet user) (2010)	5,825	India has increased its International Internet Bandwidth (per Internet user) by 105% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
5.4. International Internet Bandwidth (2010) (total gigabits per second (Gbps) per country)	535	[calculated from 8.5.3 and 8.5.1]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2010)	10,990,000	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
6.2. Fixed Broadband Subscriptions as % of households (2010)	5%	Note: this is skewed by business usage (refer to OECD comments about this) [calculated from 8.3.3. and 8.6.1.]
6.3. Fixed Broadband Subscriptions as % of population (2010)	1%	India has increased its Fixed Broadband Subscriptions (as a % of the population) by 125% since 2008. [International Telecommunication Union (ITU), Measuring the Information Society (2011) Measuring the Information Society (2011) < http://www.itu.int/ITU-D/ict/publications/idi/2011 >]
6.4. Fixed Broadband Subscriptions as % of Internet users (2010)	12%	[calculated from 8.5.1 and 8.6.1]
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2010)	752,190,000	Note: This figure may be inflated due to multiple subscriptions per head of population, but excludes dedicated mobile broadband devices (such as 3G data cards, tablets, etc) [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2011) < http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx >]
7.2. Active mobile-broadband subscriptions per 100 inhabitants (2010)	1%	India did not have any recorded Active Mobile-Broadband subscriptions in 2008 but has grown to 1% (as a % of the population) by 2010.