



VI : LEGAL ISSUES FOR PROFESSIONAL PRACTICE

Introduction to Intellectual Property (IP)

- Definition: Legal rights resulting from intellectual activity in the industrial, scientific, literary, and artistic fields.
- Rationale for IP Rights:
 - *To provide incentive for creativity and innovation.*
 - *To allow creators to benefit financially from their work.*
 - *To promote economic growth through technology transfer.*

Major Categories of IP

- **Industrial Property:** Includes patents for inventions, trademarks, industrial designs, and geographical indications.
- **Copyright:** Covers literary and artistic works such as novels, poems, plays, films, musical works, and computer software.
- **Sui Generis Systems:** Protection for integrated circuit layouts and plant varieties.

Copyright Law in Nepal

- Governed by: Copyright Act, 2059 (2002).
- Key Features:
 - *Protection is automatic upon creation (registration is optional but recommended).*
 - *Duration: Life of the author plus 50 years.*
 - *Economic Rights: Right to reproduce, translate, and distribute.*
 - *Moral Rights: Right to be identified as the author and prevent mutilation of work.*

Copyright Act, 2059 (2002) Key Features

- Governing Law**

Copyright in Nepal is governed by the **Copyright Act, 2059 (2002)**, along with Copyright Rules, 2061.

- Meaning of Copyright**

Copyright is the legal right given to creators to protect their original literary, artistic, musical, and scientific works from unauthorized use.

- Works Protected**

The Act protects literary works, books, computer programs, music, films, photographs, paintings, sculptures, architectural designs, databases, and audio-visual works.

- Ownership of Copyright**

The creator of a work is generally the first owner of copyright, unless the work is created under employment or contract, where ownership may belong to the employer or commissioning party.

- Rights of the Copyright Owner**

The owner has exclusive rights to reproduce, publish, distribute, perform, translate, adapt, and communicate the work to the public.

- Duration of Copyright**

Copyright generally lasts for **the lifetime of the author plus 50 years** after death. For films, photographs, and audio-visual works, protection lasts **50 years from publication**.

- Moral Rights**

Authors have moral rights, including the right to claim authorship and to object to distortion or modification of their work that harms their reputation.

- Limitations and Fair Use**

Certain uses are allowed without permission, such as use for private study, research, criticism, review, teaching, and news reporting, provided proper acknowledgment is given.

- Infringement and Penalties**

Unauthorized copying, distribution, or use of protected works is considered infringement and may result in fines, imprisonment, compensation, or confiscation of infringing materials.

- Registration and Enforcement**

Copyright registration is optional but helps in legal enforcement. The **Copyright Registrar's Office** under the Government of Nepal handles registration and disputes.

Industrial Property: Patents & Trademarks

- **Patent:** Exclusive right for an invention that is new, involves an inventive step, and is industrially applicable (Valid for 7 years, renewable twice in Nepal).
- **Trademark:** A sign capable of distinguishing the goods or services of one enterprise from those of others (Valid for 7 years, renewable).
- **Industrial Design:** Protection of the aesthetic or ornamental aspect of an object.
- **Regulatory Body:** Department of Industry (DOI).

ICT Policy 2072 (2015)

Vision: To transform Nepal into an information and knowledge-based society.

- **1. Introduction and Objective**
The ICT Policy 2072 (2015) was formulated by the Government of Nepal to promote the systematic development and use of information and communication technology for national development.
- **2. Vision of the Policy**
The policy envisions building a **knowledge-based society** through effective use of ICT to ensure good governance, economic growth, and social inclusion.
- **3. Expansion of ICT Infrastructure**
The policy emphasizes the expansion of ICT infrastructure such as broadband internet, data centers, and telecommunication services across urban and rural areas.
- **4. E-Governance and Public Service Delivery**
It promotes e-governance by digitizing government services to make them more transparent, efficient, accountable, and citizen-friendly.
- **5. Human Resource Development**
The policy focuses on developing skilled ICT manpower through education, training, research, and capacity-building programs.
- **6. ICT Industry and Innovation Promotion**
It encourages the growth of the ICT industry, software development, startups, innovation hubs, and private sector participation.
- **7. Digital Inclusion**
Special emphasis is given to bridging the digital divide by ensuring access to ICT for women, rural populations, persons with disabilities, and marginalized communities.
- **8. Cybersecurity and Legal Framework**
The policy highlights the need for cybersecurity, data protection, cyber laws, and safe digital environments to build trust in ICT systems.
- **9. Use of ICT in Key Sectors**
ICT adoption is promoted in sectors such as education, health, agriculture, banking, disaster management, and commerce to improve service quality and productivity.
- **10. International Cooperation and Standards**
The policy encourages alignment with international ICT standards and cooperation with global organizations for technology transfer and best practices.

Electronic Transaction Act (ETA) 2063

Electronic Transaction Act 2063 provides the legal foundation for secure electronic transactions and cyber crime control in Nepal.

- **1. Introduction of ETA 2063**
The Electronic Transaction Act (ETA) 2063 was enacted to provide legal recognition to electronic records, digital signatures, and online transactions in Nepal.
- **2. Objective of the Act**
The main objective of ETA 2063 is to promote **e-commerce, e-governance, and secure electronic communication** while preventing cyber crimes.
- **3. Legal Recognition of Electronic Records**
The Act recognizes electronic records and digital documents as legally valid, equivalent to paper-based records.
- **4. Digital Signature and Certification**
ETA provides legal validity to **digital signatures** and establishes provisions for **certifying authorities** to ensure authenticity and integrity.
- **5. Electronic Contracts**
Contracts formed through electronic means such as email and online platforms are considered legally enforceable under the Act.
- **6. Cyber Crimes and Offences**
The Act defines cyber crimes such as hacking, unauthorized access, data damage, identity theft, and online fraud as punishable offences.
- **7. Punishment and Penalties**
ETA 2063 includes provisions for **finances, imprisonment, or both** for individuals involved in cyber offences and misuse of electronic systems.
- **8. Adjudication and Tribunal**
The Act provides for the formation of an **Information Technology Tribunal** and an Appellate Tribunal to hear cases related to electronic transactions and cyber crimes.
- **9. Government and E-Governance Support**
ETA facilitates electronic filing, online service delivery, and digital communication in government offices, supporting e-governance initiatives.
- **10. Importance of ETA 2063**
The Act plays a crucial role in ensuring **trust, security, and legal certainty** in Nepal's digital environment and ICT development

Cybercrime under ETA 2063

- Section 44: Unauthorized access to computer materials (Hacking).
- Section 47: Publication of illegal/immoral materials in electronic form (Social media regulation).
- Section 52: Computer fraud and damage to computer systems.
- Penalties: Ranges from fines (Rs. 50,000 to Rs. 200,000) and/or imprisonment (up to 5 years).

Business Registration Foundations

- Sole Proprietorship: Registered under the Private Firm Registration Act.
- Partnership: Registered under the Partnership Act.
- Company: Registered under the Companies Act, 2063 at the Office of the Company Registrar (OCR).
 - *Private Limited (Pvt. Ltd.): For-profit with limited liability (max 101 shareholders).*
 - *Public Limited: Minimum 7 shareholders, no maximum limit, can issue shares to the public.*

Business Registration Foundations in Nepal

- **1. Meaning of Business Registration**
Business registration is the legal process of formally recognizing a business entity under the laws of Nepal so that it can operate lawfully.
- **2. Purpose of Business Registration**
The main purpose is to provide **legal identity**, regulate commercial activities, protect stakeholders, and ensure government oversight.
- **3. Legal Basis**
Business registration in Nepal is governed mainly by the **Companies Act, 2063 (2006)**, **Private Firm Registration Act, 2014 (1957)**, and other sector-specific laws.
- **4. Types of Business Entities**
Businesses can be registered as **private limited companies**, **public limited companies**, **partnership firms**, **sole proprietorships**, or cooperatives.
- **5. Registration Authority**
Companies are registered at the **Office of the Company Registrar**, while sole proprietorships and partnerships are registered at local ward or district offices.
- **6. Requirement of Name Approval**
A unique business name must be approved to avoid duplication and protect business identity.
- **7. Legal Compliance**
Registered businesses must comply with tax laws, labor laws, industry regulations, and reporting requirements.
- **8. PAN and VAT Registration**
After registration, businesses must obtain a **Permanent Account Number (PAN)** and **VAT registration** (if applicable) from the Inland Revenue Department.
- **9. Rights and Responsibilities**
Registered businesses gain legal rights such as entering contracts and owning property, along with responsibilities like paying taxes and submitting annual reports.
- **10. Importance of Business Registration**
Business registration promotes **transparency**, **investor confidence**, **access to finance**, and contributes to national economic development.

Taxation and Compliance (Key Terms)

- PAN (Permanent Account Number): Required for any individual or business earning income.
- VAT (Value Added Tax): Mandatory for businesses crossing a turnover threshold (currently 50 Lakhs for goods, 20 Lakhs for services).
- Income Tax: Corporate tax rates apply to companies; progressive rates apply to individuals.
- Compliance: Submission of annual audit reports and tax clearance certificates.

Telecommunications Act 2053

Telecommunications Act 2053 provides the legal framework for the regulation, development, and safe operation of telecommunication services in Nepal.

- **1. Introduction of the Act**
The Telecommunications Act 2053 was enacted by the Government of Nepal to regulate, develop, and manage telecommunication services in the country.
- **2. Objective of the Act**
The main objective is to ensure **reliable, accessible, and efficient telecommunication services** while promoting fair competition and protecting public interest.
- **3. Establishment of Regulatory Authority**
The Act provides the legal basis for establishing the **Nepal Telecommunications Authority (NTA)** as an independent regulator of the telecom sector.
- **4. Licensing of Telecommunication Services**
No individual or organization can operate telecommunication services without obtaining a **license** from the regulatory authority.
- **5. Regulation of Operators**
The Act regulates telecommunication operators to ensure quality service, technical standards, and compliance with national policies.
- **6. Tariff and Service Control**
It empowers the authority to regulate tariffs and prevent unfair pricing or monopolistic practices in telecom services.
- **7. Protection of Consumers**
The Act includes provisions to protect consumer rights regarding service quality, pricing, and grievance handling.
- **8. Confidentiality and Security**
Telecommunication service providers must maintain the **confidentiality of communications** and ensure network security, except as required by law.
- **9. Offences and Penalties**
Unauthorized operation, misuse of telecom systems, or violation of license conditions can result in **finances, imprisonment, or both**.
- **10. Importance of the Act**
The Telecommunications Act 2053 has played a vital role in the **expansion of mobile, internet, and digital communication services** in Nepal