

## 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 fines, 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 **fines, 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