

ANALYSIS OF LAWS REGARDING SOFTWARE PIRACY UNDER COPYRIGHT LAW

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INTRODUCTION

If someone works hard on something new which is not plagiarised like a new art or research work that analysis a problem from a fresh perspective, then he wants to protect it like a child from copying of his handiwork. Piracy has been going on since time immemorial in different ways and the way people react to it, has modified over time. But even in the past and today, piracy is seen as illegal and will continue to be seen as such in the future. There have been new forms of piracy since the advent of information technology. Software piracy is the unsanctioned use of software which is illegal in its nature. It can also be using one user software by two or more persons. In India, an act of software piracy can be tried under our Copyright Act, either in civil or criminal laws. If a person is convicted of software copyright infringement, then he can be sentenced for a term which is at least for seven days and the max jail period is for three years; fines can start from fifty thousand and end to two lakh rupees. Copyright Act has all India's rules and regulations regarding software piracy protection. Content producers must follow the norms and procedures laid out in this Act to protect themselves against virtual pirates.

In the olden days, if someone attacked others and looted their wealth, then they were called pirates and that illegal and exploitive act was called piracy when someone looted or raided the property of someone else. This was usually done at sea where most of the trading and business was conducted in the past centuries.

Today though, when someone's copyrighted or trademarked content is stolen and illegally distributed or sold at lower price by another person, then that act is called piracy.

But these two things are similar because just like how a pirate would loot someone's goods and deprive him of his rightful profits, just like that a pirate in today's digital world obstructs lawful gains of the producer.

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There are many kinds of software piracy. The most common of them is counterfeiting, where a duplicate of the actual product is made at a lower quality and is either sold for a much cheaper price at a black market or is distributed freely. Mostly, this is done through the medium of compact discs i.e. CDs. On the other hand, there is also the option of internet piracy which is very safe for the offender as it gives him a shield of anonymity. Here also, by using CDs, paid online software are downloaded. Sometimes, the file itself is put on an internet website where hundreds of viewers download it. They are also given away by the method of auctions where the highest bidder gets the much-coveted software. Internet piracy is also done by peer-to-peer servers where the wrongdoer transfers the file to the potential customer.

If a person himself makes pirated software, then it is called end-user piracy, as he did not get any permit to make that particular software. And even if he just enhances an already illegal software, then also it comes under end user piracy. The offender who does end user piracy purchases just one license of a software and he makes dozens and hundreds of them himself and puts it inside different computers. This is also a grievous act. If a license for a specific server is taken which demands only a certain number of devices on its server, but the pirate offender exceeds the amount, then that activity is termed as a client & server overuse and commonly called as overuse piracy. If a company or a business puts illegal software which were procured by piracy in its devices just to make those devices lucrative and to make good business, then it is called hard disk loading.

SOFTWARE PIRACY

The most popular type of software piracy is done for films. It is illegally acquired, copied, reproduced and sold far and wide. These people do not have the license nor authority to do such acts. Nowadays, in the golden age of information technology, this has become very easy. These movies are easily distributed through the route of websites. Thus, when a new and popularly awaited film releases, many people visit these sites in the hope that the movie is uploaded on these movie-watching or downloading sites.

Software, recently, on all the sites has been made a one-user-one device agreement. Hence, sharing that software with friends and family or putting its link on the internet for everyone to download is illegal and shouldn't be done under any circumstances. Although online piracy is new as that practice started after the advent of the internet, it has still

come a long way in a short span of time. All kinds of software content today, like movies, tv shows, games and music are downloadable for free through the Torrent service which stores bits of data on different devices when the user downloads the file, then it is assembled and stored on the consumer's laptop. Thus, it becomes challenging to find out where the pieces of information are stored and it cannot be tracked down. Sometimes, movies are pirated by recording on phone cameras in theatres, and there are devoted websites and apps with many ads on these places. They even do add-ins on hardware storage for piracy purposes. Thus, piracy is leaving behind no evidence and is becoming more vicious day by day. Even the process of uploading those movies has become more complex and evolved. Pirates pit their files on torrent and store them online not to get caught red-handed. When the user requests the data, a large number of seeders i.e the pirates who put the data in small portions send their data which is put together algorithmically and sent to the customer. But recently, the pirates store their data offline due to bans on pirated files online by the government of India.

Although it is a global and worldwide problem, there is no coded statutory international law on software piracy that prohibits every form of this online piracy. There is only the law on the physical piracy which was looting by pirates on ships. But this physical kind is virtually irrelevant now in the modern age and there is a need of the hour for proper laws and changes on the international level.

Content creators use copyright remedy to protect their work. The one who has copyrighted his work is only allowed to remake and sell his work on his own consent. But copyright does not directly prevent piracy from happening. It just gives protection and right to the copyright holder to sue the pirates if they pirate his work. He can follow legal proceedings against the offender if his right is infringed. Copyrighters take timely measures now and then to protect their work and to sue the pirates by technology and legal ways. Prior permission to record needs to be taken from the creator, otherwise it is called video piracy. The Indian government has by law, ordered the internet service providers to ban certain websites like YTS websites, the Pirate Bay website and the many different kinds of torrent websites. These sites are automatically by default blocked when you visit them, if they violate copyright laws and the government orders their ban. But still, a new method of visiting these sites, is done by users, that is through the use of Virtual Private Networks (VPNs).

The Indian government set up the Copyright Act in 1957 to handle all the disputes relating to the breach of copyright protection². This is the law of copyright infringement protection throughout India. Protection is given under this act on books, dramas, music, art, films and recordings.³ Protection is divided in two categories under this act. The first is economic rights where the owner can reproduce and distribute, and he has to be given a share in the profits if it is licensed to a third party. The second one is moral rights where it is again split in paternity and integrity rights.⁴ In paternity rights, the ownership is given to only the copyright holder and to prevent others from owning the work. In integrity rights, the work is prevented from being distorted or altered or any work which can damage the reputation of the copyright holder.

India has a lot of local film and serial content which is watched by the general public, hence there is a lot of piracy in our country. Popular local pirate sites are filmy wrap, Tamil rockers, etc. The punishment for piracy has been amended recently.⁵ If there is no prior permission of the producer, then recording or making a copy of a film is not allowed. The punishment is usually imprisonment, or fine or both. This punishment can also be given to those who watch pirated versions of the content. As this crime is not restricted only to the film industry and applies to all the intellectual property aspects, the punishment is also varied. The punishment is a minimum of seven days which can go on to three years. Fine is also a minimum of fifty thousand and a maximum of three lakhs. This punishment is given when a person uses a pirated program under the Copyright Act.

Under the Information Technology Act, 2000, if a person extracts information from a computer without the owner's consent, he has to pay compensation which can go up to one crore rupees. This is also applicable to stealing data.

Thus, we can see that many software piracy prevention and prosecution laws in India proceeded mainly through the Copyright Act.

² Copyright Act, 1957.

³ Sec 13 of Copyright Act, 1957

⁴ Sec 57 of Copyright Act, 1957

⁵ Cinematograph Act, 1952.