

COPYRIGHT PROTECTION AND PIRACY IN INDIA WITH SPECIAL REFERENCE TO COMPUTER SOFTWARE

¹Adv. Selwyn Dcosta, ²Dr. Vinaya Bhosale,

¹Reserach Scholar, ²Assisant Professor,

¹Law Department,

¹ Bharati Vidyapeeth [Deemed to be University] Pune, India.

Abstract: Our everyday lives are digitally connected in infinite ways. Even so, software advancements are subliminal. This valuable technology has brought about an unprecedented developmental wave, eased our daily lives and boosted the economy globally. As a fast evolving software developing market, India's economic growth too has received impetus due to this industry. Software piracy has unfortunately become a constant looming threat and has caused considerable damages over the years. Software piracy is the unlawful duplication or stealing of legally protected software for sale and monetary gain. The objective of this article to analyse what exactly software piracy is, its mechanisms, challenges, threat perception and the legal framework in place to curb the rampant piracy. This article critically examines all aspects of software piracy and find loopholes in existing anti-piracy measures. The ultimate aim of the article is to come up with constrictive suggestions to help tackle the software piracy hazard.

I. INTRODUCTION

An innovative idea is like a seed that needs immense nurturing and substantial human effort to culminate into creative expression. It is hence essential to seek to protect it through intellectual property regime or in simpler terms a copyright. A copyright is an umbrella of rights that are vested automatically to the creator of an original work of authorship – like a literary work, song, movie or software.

Copyright permits the creator the right to reproduce the work, to prepare derivative works, to distribute copies, and to perform and display the work publicly. This also means that the proprietor has executive control over the means and ways the general public would access the work. Take the analogy of a heap of sticks, wherein a single stick represents a right. The proprietor can choose to authorize or utilize the rights in any permutations. He or she can keep each stick for themselves or hand them over separately to at least one individual, or to choose to give some of the sticks to an individual while holding control over some.

The core goal of copyright is to encourage creators, via an arrangement of property rights, to continue their innovation and ensure fair compensation in return for access to their works for the general society to appreciate. The hypothesis proposes a fair gain for all involved. A creator's original innovation is safeguarded from theft by conceding select rights to them. Secondly is the all-important monetary advantage and finally the society benefits from legitimate access to such imaginative works. For clearer understanding, one can elaborate the term "work" under the Copyright Act, 1957 as something that includes an artistic work comprising of a painting, a sculpture, a drawing (including a diagram, a map, a chart or plan), an engraving, a photograph, a work of architecture or artistic craftsmanship, dramatic work, literary work (including computer programmers, tables, compilations and computer databases), musical work (including music as well as graphical notations), sound recording and cinematographic film.

All said, not every piece of work gets a walk-in access to copyright protection. It needs to meet the following three essential prerequisites in order to be eligible for copyright protection. The work must be original, creative and fixed. Let us elaborate how so. Original: Innovation is a key aspect to copyright protection. Just tweaking or unabashedly replicating an existing work will not be legitimate. The uniqueness of any work is best exhibited when freely made. That the work be novel (as in patent law) and have a spark of originality is a must.

Creative: This is a crucial but mildly flexible prerequisite where in the inventiveness of the work needs to display at least a modest quantity of innovativeness. In all its entirety not many manifestations neglect this condition of copyright protection.

Fixed: No work can be rightfully protected if there is an ambiguity attached to its execution medium. To qualify for copyright work must be fixed in a substantial mechanism of articulation because it is then that said work can legitimately have insured. An adequate shelf life and stability for work to be seen and consequently imitated, defines any work as fixed.

In the spirit of the global wave of legal congruence, India was introduced to the Copyright Act, 1957. Owing to this development India was kept abreast with trends in copyright law in a wide spectrum of fields. The information technology and satellite broadcasting industries or computer software or digital technologies have all been unified under the realm of this act. As envisaged in the Rome Convention, amendments of this legislation law also ensured protection to performer's rights [1].

II. WHAT IS SOFTWARE PIRACY

Software Piracy is a menace plaguing the field of digital technology, so much so that the 2018 Global Software Survey projects 37% of programming introduced on PCs as unlicensed. With the net commercial value of software piracy through the roof, it has become a dangerous game changer because if its profitability. While North America and Western Europe accounts for \$19 billion and the rest of the world profiting a whopping \$27.3 billion from the malicious practice, United States, China and India are the primary three culprits. Software piracy is the act of stealing software that is legally protected. An elaborate definition of Software Piracy or Counterfeiting is the illegal copying of software combined with unauthorized duplication of genuine trademarks and documents.

The stealing is carried out by various means like copying, distributing, modifying or selling the software. The worrisome aspect is that one doesn't need to be a programmer or talented coder to indulge in piracy. Any ordinary individual with access to computer can become a software pirate if they willing choose to ignore product laws. It becomes all the more essential to therefore analyze Software Piracy meticulously and comprehend its threat perception. Copyright laws meant to monetarily

compensate and give due credit to the people who develop software (programmers, writers, graphic artists, etc.) fall short in face of acts of piracy. This leaves copyright holders in a lurch and deprives them of their right.

There are multiple forms of Software Piracy but following are the most common occurrences:

1. Office Use Copying: In a business or work environment where every individual has a work computer, computer package system is brought into play. Here the business buys license for just one or maybe couple computers. Further based on the requirement, illicit duplicates are produced using one of the authorized projects and introduced in different computers. Unlawful duplication of programming licenses into the home computer of employees or vice versa is also particularly rampant.
2. Network Piracy: When a number of clients share a common network for their projects, Software piracy occurs unknowingly where in system client associations fail to accept it as infringement of copyright law. Here the product program is accessed by a greater number of clients than what the permit grants.
3. Internet Piracy: The internet boom has given a great impetus to the development of software piracy and its illegal usage. The Internet is an interconnected playground for transfer of a program to bulletin board systems or commercial on-line services which eventually can be downloaded or forwarded by means of electronic mail to people who may not hold a permit to utilize these.
4. Resellers: The unauthorized retailers have made a huge business selling pirated software. Their modus operandi are simple. Copy the original licensed software onto floppy discs or CD ROMs and sell them to the end users or install them in users' hardware and reap profits.
5. Hardware Sellers: Assembly computer dealers true to their name 'assemble' devices (computers) by gathering components and then sell computers to the users with software already installed. Shockingly most of these hardware suppliers are unauthorized who in majority of the cases install unlicensed virtual products into stacked personal computers. Unless a legitimate permit and programming manuals are given in the package it is safe to assume the programs as wrongfully duplicated.
6. Counterfeiting: Counterfeit or forgery products can easily fool consumers into believing that they have bought an original programme as packaging and manuals look like original. Counterfeiters take advantage of this and make a sale of fake products with a clear copyright infringement, which also put consumer devices at a higher risk of operational defects and viruses.

III. COPYRIGHT (AMENDMENT) ACT 1994 ON COMPUTER PROGRAMMES

The Copyright (Amendment) Act, 1994 has included insurance of Computer programs in its ambit. The amended Act addressed the challenges posed by digitization of works and the Internet. It deliberates the copyright holder with the extra select option to sell, copy, make available on rental or offer available to be purchased or enlist any duplicate of the computer programs whether or not such a duplicate has been sold or given on will before said events. However, it just stops short of giving the right to real proprietor (for example buyer) of said copyrighted work to sell or lease his duplicate of the work. Numerous rental organizations used The First Sale principle to buy programming programs (bundles) and offer them for momentary rentals. They brought about a sweeping generation of copyrighted works. The "First Sale" teaching, under which an authentic proprietor of a copyrighted work could additionally sell, move, rent or lease the work to another has been successfully erased by this amendment. Primarily on similar lines as the TRIPs Agreement, the 1994 Amendment is an essential step up for the Indian judiciary. A huge plus is that the latter is stringent compared to the former, which permits a buyer of a copyrighted work to sell his duplicate. TRIPs Agreement doesn't focus on the Computer program as the fundamental object of the rental hence a provision for sale of duplicate rental isn't much of an issue. A conventional rejection from encroachment permits utilization of copyrighted work for examination, analysis or private utility known as 'reasonable managing'. To achieve reasonable managing and distribution with regards to music, film or books is relatively straightforward compared to Computer programs. It is hence inevitable that copyright of software programs be more complex and distinct compared to the former. Let's take an example of a legitimate teacher or researcher who makes backup copies of software programs on their personal computer. The intent here to gain temporary security from unintentional misfortune, or intentional harm which is the true utility of the software program. The Amendment recognizes this and prohibits labelling the act as copyright encroachment. What the teacher or researcher did doesn't encroach on the rights of the content creator or his copyright. This is how the Amendment Act got rid of the 'fair dealing' concept in reference to PC programs. From a practical point, this Amendment Act is crucial because even minute progress in software or computer programs copyright counts in the long run to curb massive losses incurred by piracy and infringement. The rate of piracy and robbery and the proportion of financial loss is humongous in developing nations as opposed to the more developed countries. The size of the computer market is the key factor causing higher theft in programming. This is true for biggest data innovation markets - the United States, Japan, United Kingdom and Germany. Here the robbery rates however are generally low. Comparatively, Vietnam and Indonesia have a mind-blowing robbery rate of 99 percent and 97 percent respectively; closely followed by China at 96 percent and Korea at 70 percent. India has a considerably mellow rate of 60 percent in comparison to most Asian nations. The software piracy and programming robbery statistics in the Asia-Pacific region are overwhelming when studied from a financial standpoint. In 1996 the losses were assessed at a staggering 3.7 billion US dollars with Japan's share estimated at 1.2 billion US dollars.

IV. SOFTWARE PIRACY-INDIAN SCENARIO

Two crucial aspects to combat unchecked software piracy is to raise awareness about the issue while simultaneously ensuring to keep a blanket check over causes for the menace and degree of its spread. National Association of Software and Service Companies (NASSCOM), a nonprofit organization is doing groundbreaking work in the field. Members of NASSCOM are Indian Co software development, software services, IT-enabled/BPO services. NASSCOM's role has primarily been to make sure that service quality and enforcement of Intellectual Property Rights have been properly implemented in the Indian software and BPO industry. The Association is actively involved in educating the end users as well law enforcement agencies about the concept of legalized software, benefits of using the same. In dire cases, they said the police to raid premises of sellers of illegal software. The second part of estimation of piracy and its extent in India is done by NASSCOM based on BSA/SPA Piracy Study Methodology. NASSCOM states that as per BSA/SPA estimate, in 1996 the revenue loss to the software companies owing to 60 per cent piracy rates was about Rs.545 crores (US \$ 151.3 million). Calculating by BSA/SPA, the total value of installed software (both legal and illegal) works out to Rs.908 crores which means only Rs.363 cores worth of legal software was

installed. These numbers are worrisome because only 21.7 percent of a domestic software is concluded to be legal buys in 1995-96 where total domestic software market was an estimated Rs.1670 crores [2].

Why Software Piracy?

Amongst all the causes the most important reason for rampant prevalence of software piracy is disparity in price of the original software compared to its pirated version. Advancements in digital technology have ensured a general ease with which a licensed software is copied. Making a secondary illegal copy onto a CD-ROM is relatively inexpensive too. In India the legal software is basically duplicated and the copies are installed in various devices. Although in India the occurrence of software counterfeiting is negligible as opposed to majority developing Asian nations, it is still a cause of concern.

From discussions with Indian distributors of imported software, it appears that the rigidity of multinational companies is also to blame for this problem. These MNCs command a blanket price for their software without considering the average purchasing power of a country. This rigidity of their licensing policies without an option of differential pricing is definitely a sore thumb for buyers of the software. In a large corporate environment too, every single work computer is expected to have a legal software of its own. The software program developing Multinationals do not provide a corporate license for use of their packaged software programme.

V. COPYRIGHT PIRACY AND COMPUTER SOFTWARE: INTERRELATION

Computer software is a relatively common commodity but its production is akin to that of a literary work or abstract art which requires a great skill set and erudite knowledge of programming. An individual developer can very well compose a computer program but for all pragmatic purposes, a significant majority of production is a collective endeavor. This collaboration could compromise of a medium sized group or conglomerates involved in software program development. The whole process may take months or even years to materialize into the finished software. This collective has given rise to a huge software industry that creates and distributes PC software programs worldwide. Piracy of a software can be explained in simple terms as duplication and dissemination of Computer programs without the copyright holder's authorization. The distribution chain of most developed countries for the computer programs is a well-oiled two-tiered system of wholesalers and dealers, similar to how most other industries function. As part of the supply network the major distributors make product shipments to a smaller merchant in some random nation. These merchants have stockpile of computer programs ready to be supplied on demand. As soon as orders from thousands of individual retail sellers or affiliates arrive, the product can be dispatched. Effective endorsement of the product also boosts demands for different mode of distribution, which is direct end-client delivery. The end client could be anyone from an individual user, any commercial enterprises, educational institutions or government establishments. In certain cases, the whole domestic market for programming distribution of the nation is managed by singular large vendors or their affiliates. How does the programming company work out the issue of Authorization? End users are authorized to operate a computer software by its publisher through a shrink-wrap license contained in the package itself. Yet software program copyright is infringed on with impunity causing a massive piracy issue in the software industry. As discussed above, the crucial most reason is the ease of copying the content. To add insult to the injury, a pirated version for all practical purposes looks and performs in an identical manner as the original. To gain in-depth understanding of how this piracy affects the software industry, it's imperative to clarify which are the modes or types of software piracy. The five principal types of software piracy (1) counterfeiters (2) resellers (3) mail order houses (4) bulletin boards and (5) end-user piracy. Counterfeit software is a more recent phenomenon that has plagued this industry. The most blatant software counterfeiters produce forged disks, documentation and packaging that are difficult to differentiate from the original product of the software publisher. Reseller piracy is due to violations in the software distribution channel. The distributors or dealers either make copies of legal software onto floppy disks, or the internal storage device or "hard disk" of computers that they are selling, without any authorization from the rightful publisher. Another rampant form of piracy is the unauthorized duplication of software onto diskettes, CDs, or other media and its distribution of such software by post, hence the term Mail-order piracy. In certain instances, an individual engaged in piracy copies the licensed programme or numerous software programmes onto his own computer without authorization of the copyright holder. He then proceeds to permit other users to connect to his source computer through the telephone line via modem and copy the programmes onto discs. This is usually done for monetary gains and is a blatant violation of copyright law. Such a piracy is defined as Bulletin board piracy as involves unauthorized reproduction and dissemination of software via telecommunication. Usually when a software company develops a computer program the license is designed to permit access single person or very limited number of them. However, end users have found a way around this set-up. They copy software onto hard disks of more computers than allowed by a license. This piracy happens on a wide scale compared to other types of piracy. It's akin to business model where end-users often make numerous copies of the software they possess. This is then distributed or exchanged for financial gains. Many users avail themselves of such pirated copies made from a single original software program causing considerable to the interests of the rightful owners.

VI. CONCLUSION

The piracy issue is a blazing fire burning its way through the software industry. The distressing part is that the problem is as old as the law of copyright itself yet is being brought to the fore very recently. Our policymakers and academic strata have just begun to understand how nefarious piracy is and what disastrous consequences it can cause. Even with this growing realization, India has no official data on the extent of piracy and economic loss as a result. Now that piracy is accepted as an extensive problem, it is crucial to understand why it is so wide spread. Copyright piracy is ubiquitous because of lack of awareness on copyright matters and poor enforcement of laws. Awareness about software copyright is negligible among the clientele that uses it. While buying a copyrighted product, majority of consumers choose not look at copyright notification (e.g. C or P) effectively being unaware about rightful ownership. Secondly price discrepancy plays a huge role in the preference of pirated product over original. With the former being cheaper users intentionally choose to buy it. Hypothetically Indian copyright laws are on par with global standards of the bigwig nations in Europe and America.

Not only that but prescribed punishments for violators are equally stringent. However, what little justice can law on paper bring about if not enforced to its full potential. The weak link on this chain is our enforcement mechanism. The key cogs in this enforcement wheel namely our police personnel are most of the times not fully aware of various provisions of the law. There is a lack of manpower dedicated entirely to check copyright crimes alone. More time and personnel are allocated to the usual law and

order problems and copyright related crimes ultimately take up the back seat. In conclusion, if the raging inferno of software piracy needs to be doused then both the factors need to be worked on to achieve a solution amicable to all.

[1] <https://www.mondaq.com>, Vijay Pal Dalmia.

[2] <http://copyright.gov.in/Documents/STUDY ON COPYRIGHT PIRACY IN INDIA>.

