

Effectiveness of cyber laws in curbing piracy

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Abstract

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This paper looks at Cyber laws, their framing and effectiveness with regard to the ever-increasing phenomena of Cyber or Internet piracy. It examines Copyright laws that are in existence as well as copyright laws of the west and examines the efficacy of Intellectual Property Rights and how they are intrinsically interlinked with copyrights. The paper begins with a general introduction to piracy and to copyright laws and then proceeds to see whether the laws in existence today are in any way reducing or stalling incidences of piracy in India. It concludes by suggesting some concerted actions that can jointly be taken by the concerned authorities. Methodology followed is Review of Literature and also In-depth interviews.

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1. Introduction

The English word 'Pirate' comes from the Latin word, 'pirata', which essentially means "sea robber". Sea pirates have been around for thousands of years.

According to historian Adrian Johns, piracy was coined around that time by the bishop of Oxford, John Fell. This actually makes the term even older than the first formal copyright law, the Statute of Anne, passed in 1710¹.

In recent years though, piracy is synonymous with cyber piracy, which means theft of content over the Internet. For the most part, research papers, research articles and essays that deal with the subject of piracy are referring to software piracy, although any act of downloading that violates cyber or Intellectual property laws can be attributed as "piracy".

Pavan Duggal, noted cyber expert states:

The Indian copyright act was in the year 1957 and since then it has been amended different times. However Internet represents a new paradigm altogether. Primarily because internet is seen to be the biggest copying machine in the human history

Duggal has very aptly named the Internet the "biggest copying machine in human history" because ever since its invention in 1990 by Tim Berners-Lee, Netizens have not just been engaged in reading online but downloading as well.

And while it is erroneous to believe that all downloads are pirated, definitely a large part of internet activity takes place on pirated sites.

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¹ Digital piracy, Cyber safety. Nathan W. Fisk

The chart below gives us an idea of the extent of global software piracy rate

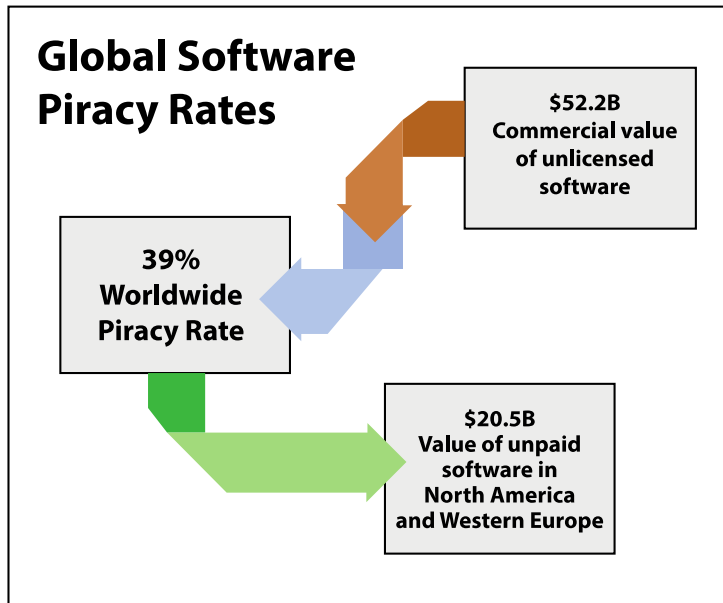


Figure 1. Global Software Piracy Rates

Source: Business Software Alliance, BSA, Global Software Survey (May 2016)

In terms of visits to pirated sites, US emerges as one of the high offenders with nearly 10 billion visits to streaming portals and over 3 billion to torrent sites. However, this is not surprising as the USA is the largest developed country in the world with a high degree of internet penetration. After the US, the next highest piracy rates are to be found in Europe. If we see the table below the top ten countries with high piracy rates are located in Europe:

| S.No | COUNTRY | RATE OF PIRACY |
|------|----------------------|----------------|
| 1 | LATVIA | 46.33 |
| 2 | BULGARIA | 27.43 |
| 3 | LITHUANIA | 24.54 |
| 4 | CROTIA | 22.70 |
| 5 | SPAIN | 22.19 |
| 6 | GREECE | 21.87 |
| 7 | SERBIA | IRELAND |
| 8 | ROMANIA | 19.07 |
| 9 | SWEDEN | 18.38 |
| 10 | PORTUGAL | 16.92 |
| 11 | AUSTRALIA | 16.61 |
| 12 | ISRAEL | 15.86 |
| 13 | NETHERLANDS | 15.56 |
| 14 | UKRAINE | 15.49 |
| 15 | UNITED ARAB EMIRATES | 14.60 |
| 16 | BELGIUM | 14.17 |
| 17 | BELARUS | 13.30 |
| 18 | POLAND | 12.55 |

| | | |
|----|---------------------------|-------|
| 19 | NORWAY | 12.52 |
| 20 | SINGAPORE | 12.34 |
| 21 | CANADA | 11.38 |
| 22 | RUSSIAN FEDERATION | 10.51 |
| 23 | ITALY | 9.50 |
| 24 | DENMARK | 9.32 |
| 25 | SWITZERLAND | 9.08 |
| 26 | CZECH REPUBLIC | 8.56 |
| 27 | FRANCE | 8.49 |
| 28 | HUNGARY | 8.37 |
| 29 | TURKEY | 7.99 |
| 30 | UNITED KINGDOM | 7.93 |
| 31 | ALGERIA | 7.13 |
| 32 | SAUDI ARABIA | 6.67 |
| 33 | SOUTH AFRICA | 6.65 |
| 34 | PAKISTAN | 5.66 |
| 35 | BRAZIL | 5.47 |
| 36 | CHILE | 5.15 |
| 37 | UNITED STATES OF AMERICA | 4.89 |
| 38 | PHILLIPINES | 4.89 |
| 39 | ARGENTINA | 4.81 |
| 40 | MALAYSIA | 4.77 |
| 41 | INDIA | 3.46 |
| 42 | EGYPT | 2.96 |
| 43 | BANGLADESH | 2.94 |
| 44 | TAIWAN, REPUBLIC OF CHINA | 2.91 |
| 45 | INDONESIA | 2.90 |
| 46 | THAILAND | 2.31 |
| 47 | MEXICO | 1.76 |
| 48 | GERMANY | 1.71 |
| 49 | VIETNAM | 1.33 |

Source: <https://torrentfreak.com/europe-has-the-highest-online-piracy-rates-by-far-160801/>

Piracy in any form, be it of software, movies, books or other forms of e-content is hard to contain. As technologies get more sophisticated and ephemeral, such as using a VPN number to hide internet protocols, it is becoming increasingly difficult to track usage and hits on such pirated sites too. Cyber laws do exist but most of these apply to software piracy only and they are of limited effectiveness.

2. Online Piracy Laws

In order to understand online cyber piracy laws, it is important to make a distinction between online piracy and cyber piracy. Cyber piracy per se refers to piracy of software which can be done through illegal duplication of software, sharing of physical assets such as CDs or DVDs of software, sharing of licenses or downloading software from the internet which has been “cracked” which means license restrictions on the software have been hacked into and removed. However, although this form of piracy is the most talked and written about, primarily because some of the greatest revenue losses are in this sector - it is not the only form of piracy. Apart from software piracy, unauthorized stealing and duplication of original music and of films and other audio-visual content is rampant and equally serious. In a report by Ernst and Young in 2008, the Indian film industry lost USD 959 (Rs. 4,411 Crores) million and 5,71,896 jobs on account of uncontrollable piracy. The Motion Picture Association of America (MPAA) (MPAA 2005) estimated worldwide losses of digital piracy about \$18 billion in 2005, while the Recording Industry Association of America (RIAA) reported \$12 billion yearly loss in the music industry².

That substantial losses are occurring because of piracy is a fairly well established fact. What is not clear why systems or structures are not put in place to stem this malicious practice? All creative, artistic and literary work is protected under the Copyright Act of 1957.

"Copyright is now defined as —the sole right in case of unpublished works to produce or reproduces any literary, dramatic or musical work or any substantial part of a work in any material form what so ever, provided the author is qualified to hold copyright".

The Copyright Act of 1957 was in force for many years, but when the authorities realized that this law has little or no effect on the pirateers and many of them were in fact even unaware of it, then the law was amended in June 1994, making it illegal to make or distribute copies of copyrighted software without proper or specific authorisation. It also explains clearly the rights of the copyright holder and position on software rentals. Copyright normally expires after a period of 50 years from the end of the calendar year in which the authors dies. Engravings, photographs, works of architecture, artistic craftsmanship are for a period of 50 years after the death of the author. Ownership of the copyright almost always remains with the author.

After the introduction of the TRIPS agreement, the 1994 amendment was made. This introduced many new provisions such as giving performers the right to reproduce their own audio/video recordings

(ii) a new chapter was introduced which dealt with copyright societies to promote effective administration of rights of the authors, composers and other creative

These amendments to the Copyright Act made it increasingly difficult for piracy to take place with stringent punitive measures being taken to offenders of these laws.

Sec. 63 of the Copyright Act, which deals with the offence of infringement, provides that any person who ‘knowingly’ infringes copyright or abets in the infringement of the same may be punished with imprisonment (minimum of six months and extendable to three years) and fined up to Rs.2 lakh. And according to Section 63B, there is a minimum jail term of 7 days upto 3 years and fines from Rs. 50,000 to Rs. 2,00,000 for copyright infringement.

² Al-Rafee, S., & Rouibah, K. (2010). The fight against digital piracy: An experiment. *Telematics and Informatics*, 27(3), 283–292. <https://doi.org/10.1016/j.tele.2009.12.002>

Also after a subsequent amendment in 2012, Section 64 of the Copyright Act now empowers any police officer of the rank of Sub Inspector or above to seize without warrant any infringing copies.

"Section 65A protects Technological Protection Measures (TPM) used by copyright owners against any evasion or breach. TPM is used by copyright owners to protect their rights in the copyrighted work. If someone evades or circumvents TPM in order to infringe the owner's IPR, then the person can be punished with imprisonment up to 2 years along with fine.

Section 65B of the Copyright (Amendment) Act deals with Information Rights Management (IRM). IRM protects sensitive information from unauthorised and illegal access by a person. Under the law, any unauthorised and intentional removal or alteration of IRM is a criminal offence punishable with imprisonment".³

Thus we see there is considerable deterrence to possible offenders but it appears that many are unaware of the existence of these laws, and those who are aware that such laws do exist are not aware of the substance or content of the law and its ramifications.

Says Pavan Duggal:

"... that being so, we have seen a disconnect between the IT Act and the copyright Act. And that is one grey area that we believe in which work needs to be done more although the Copyright Act has been lately amended, and some of the gaps have been sought to be addressed. But still I believe there is room for improvement".

3. Conclusion

There can be no simplistic single stroke solution in the domain of Cyberlaws. The framing as well as wording of these laws leaves much room for loopholes to be found and exploited. The evolution and proliferation of digital and enabling technologies which have made it simpler than ever to copy and replicate original work, makes the task of introducing not just sufficient, but also effective curbs on piracy, doubly difficult. Moreover the plethora of free sites that exist for music, books and almost all e-content, is leading to a dangerous assumption in the mind of the consumer that knowledge of any kind and in any format, does not need to be paid for. It appears in the mind of the pirateer that only retail market costs are taken into consideration, not the tremendous cost of time and effort that goes into the production of a good and saleable original piece of work. Creators of content, the judicial system and the central and state government need to harmoniously synchronise and pool resources if we are to frame and implement effective long-term safeguards against digital piracy. This will of course take time and may have to be broken down into several different stages, but the rewards of reinforcing such a comprehensive strategy, will make the effort well worth the while.

³ Retrieved from <https://www.myadvo.in/blog/the-legal-battle-against-online-piracy-in-india/> on 25.11.2018 at 07:14 pm.MYADVO.in