

Software Piracy in India: A Critical Analysis

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Abstract - When everything in our life is connected to the digital world, software has become an inseparable component of our lives. Software, as a useful technology in the online world, has also contributed to economic growth. It has resulted in the creation of a vast number of jobs all over the world, as well as an economic boom. India has surpassed the United States as the world's largest software exporter. However, all countries with large software development businesses around the world are facing a big threat: piracy. Software Piracy is defined as the reproduction, distribution, or use of software without the author's express authorization. Software piracy has had a significant impact on the IT businesses, as well as the economy. Despite the fact that software piracy has been recognised and different steps have been implemented by authorities, incidents of software piracy have only decreased little. In this setting, the goal of this research paper is to understand the notion of software piracy, Issues and Challenges, as well as to analyse the existing legal framework such as the Information Technology Act of 2000, the Copyright Act of 1957, and any other connected law. The research examined the present legislative framework critically in order to identify gaps in the system and make recommendations for combating the threat of software piracy.

Index Terms - Piracy, IT Act 2000, Microsoft, software.

INTRODUCTION

The growth of IT had a variety of effects. The digitization of everything is the most significant contribution. We are thus living in a digital world, where computers and the internet are everywhere. Clearly, these systems require both hardware and software to perform properly. Software has gained a lot of popularity and relevance. It is a significant technology that has greatly aided the economy. With the development of computer-aided technology, software has truly gained significant attention, generating many jobs globally with attractive economic benefits. While the creation of software has created many professions, its replication has become very lucrative. India is a major software producer and

also a major source of pirated software. Millions of rupees are made by the pirated software market. This situation is not restricted to India; with the growth of the software business, a parallel industry is emerging worldwide: the pirated software industry. This has become a major challenge to the traditional software business, affecting revenue globally. Various governments have recognised and dealt with the threat of piracy in the software sector. The pirated industries have shaken not only the software sector but also most of the state revenue. Despite several national and international attempts, software piracy has only slightly decreased. With respect to software piracy, this research study will examine the existing legal framework, including the Information Technology Act of 2000 and the Copyright Act of 1957. The article analyses the present legal framework to identify flaws and provide solutions to combat software piracy.

RESEARCH PROBLEM

There is high degree of illegal software proliferation in the country. The end users are not aware of the legal provisions of the same and resorting to copying original software to make pirated copies and selling them at fraction of the cost.

Research objectives:

The objectives of this research paper are to:

- a) Identify the underlying reason for rampant illegal distribution of software.
- b) Potential issues around it for the user.
- c) To bring under ambit of law.

Research question:

Is the current legal framework effective to protect software piracy in India?

Hypothesis:

The researcher has assumed that the current legal framework is inadequate to prohibit the menace of rampant illegal distribution of software.

Research methodology:

The researcher has adopted doctrinal method in presenting this paper by utilising the library contents, text books and journals

Scope or limitation of study:

The study is limited to software products alone and does not cover other piracy related matters such as Video etc and covers only Indian jurisdiction.

LITERATURE REVIEW

1. Published: August 2000

The Impact of National Culture on Software Piracy
Bryan W. Husted

This article analyses the impact of economic development, income inequality, and five cultural characteristics on the rate of software piracy at the country level. The study discovers that software piracy is highly connected to GNP per capita, wealth inequality, and individualism. Implications for anti-piracy strategies and future research directions are developed.

2. Software piracy: An analysis of the origins, consequences, and prevention measures

Khadka, Ishwor (2015)

Software piracy is a severe problem that has affected software firms for decades. According to the Business Software Alliance (BSA), the global software piracy rate in 2013 was 43 percent, with the economic value of unauthorised software totalling \$62.7 billion, costing software firms millions of dollars in revenue and employment. The purpose of this study was to gain a better understanding of software piracy behaviour, how it occurs, how it impacts individuals and software firms, security risks connected with using pirated software, and potential preventive actions that might be explored to reduce piracy. To obtain data from students, the study used a quantitative research method. To that end, an online survey was administered to 46 undergraduate students at Helsinki Metropolia University of Applied Sciences and Laurea University of Applied Sciences via Google Form, and they were asked various questions about to register in the survey, students were given a link to the form via Facebook messages and emails. Importantly, the majority of respondents stated that high software pricing, pirated software being available on the

Internet, and economically disadvantaged persons being unable to afford software were the primary causes for rising software piracy.

The report provides an overview of software piracy and raises awareness about the illegal usage and distribution of software. Secondly, it is a vast and attractive area for further research.

3. Measures in the Background of Piracy in India's Entertainment and Software Industries

This chapter is based on the notion that movie and software piracy is widespread in India. According to reports from India, piracy is on the rise, with clear economic effects. These reports, however, are limited to private evaluations of piracy in a country. At the federal level, there are little materials to suggest the amount of piracy. As a result, piracy in the film and software industries in India must be viewed through the lens of private endeavours. Without delving into the apparent issues regarding the methodologies used in these studies, as well as the questions of consistency in connection to the conclusions, this chapter focuses on current measures that have been examined in the film and software industries. Although these tactics have been thought to be effective in combating piracy.

4. Osmania Journal of International Business Studies is a journal dedicated to the study of international business.

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Software piracy is the copying and use of commercial software purchased by someone else. Controlling software piracy will result in an additional 44,000 new jobs, \$200 million in tax revenue, and \$3 billion in economic growth in India. The global piracy rate increased from 38% in 2007 to 41% in 2008. The global rate increased for the second year in a row as PC shipments increased faster in nations with high levels of piracy. From 2007 to 2008, the monetary worth of unlicensed software ("losses" to software providers) increased by more than \$5 billion (11%), to \$53.0 billion, however half of that increase was due to changes in currency rates. Excluding the effect of currency rates, losses increased by 5% to \$50.2 billion. The Internet, the increasing sophistication of software pirates, and the cost of software (and customers' ability to pay for it) are all elements in the complex equation.

5.All talk and no bite: Trends in copyright infringement and piracy in India

Author hyperlinks open an overlay panel Abstract by Ameen Jauhar

The Copyright Act of 1957 is a significant declaration of intellectual property rights (IPR) in Indian legislation governing this sector, as well as being consistent with the TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights. Because it is one of the most extensive and well-structured pieces of legislation in the field of intellectual property law, this Act has been appropriately referred to on numerous occasions on global forums. However, this all-encompassing, highly creditable, and well recognised legislation appears to have flaws in its practical implementation, rendering its theoretical objective partially worthless. The situation is such that India continues to project high levels of piracy, with little evidence of a downward trend.

6.Problem of Piracy Faced by Bollywood Industry

More, Hemant; Pisal, Satish

The Bollywood Industry Is Dealing with Piracy

The term Bollywood is commonly used to refer to the Hindi film industry centred in Mumbai, Maharashtra, India. It is a subset of the Indian film industry, which also contains various local film industries organised by language. Bollywood is India's major film producer and one of the world's largest film production hubs. Actually, authentic copies of films are highly expensive by nature, but pirated versions are freely available in the market at very low costs, thus many prefer to compromise on quality and buy pirated things. This, in turn, dilutes the money invested in making unique things, resulting in a surplus in the market for unique items. As a result, piracy ultimately demotivates the entertainment sector by reducing their efforts. The pirated copies could be audio files, movie video files, PC games, software, or even hardware utilities.

CONTENT ANALYSIS

What is software piracy:

A computer's software is an essential component for it to function properly. Software development companies have proliferated across the country and around the world as a result of the rise in the number of software applications needed.

Basically, it refers to the software that a computer uses to carry out the task or instructions it has been given. When you think of software, you think of lines of code that have been turned into a computer programme by computer programmers. These applications will be saved on the computer's hard drive. This is why digital gadgets' usefulness and functionality depend on software.

Despite its importance, finding software on the market is a difficult task. When purchasing a computer, it is common for the software needed to be preinstalled, but in other circumstances, you may have to go out and purchase it separately. All of us intended to utilise the computer for a specific reason, and the software we needed to do so changed accordingly. As a result, in order for the computer to function properly, the planned task must be installed with that specific programme. However, software is hard to come by, and the costs of these goods are out of reach for most people. As a result, users are turning to cheaper and more readily available pirated copies of the software. The surge of pirated software in the market was actually a result of this. Customers are always thrilled when they get a better deal, but are manufacturers happy as well? Of course not, as fewer people are purchasing their products, reducing their revenue and profit margins. This has a similar effect on the government, which sees a significant drop in tax revenue.

Basically, software programmes are programmes produced in computer code or binary code by programmers. They are designed to be used only once or twice, and only with the express permission of the producers. Copyright protection is given to literary works since software is created in code. When it comes to copyright infringement, it is appreciated that the software or computer programmes are registered, which will help prove the ownership of software in dispute as the courts will always search for registered copyright as proof.

To utilise a piece of software that has been registered for copyright protection, the copyright holder must obtain the required authorization from the copyright holder before anyone else can do so. The copyright holder's exclusive rights will be violated if the software is used without sufficient authorization, which constitutes software piracy.

The illicit reproduction or distribution of copyrighted software is known as software piracy. Copying,

downloading, distributing, selling, or installing multiple copies on personal or business computers are all viable methods of accomplishing this. As defined by Nasscom, software piracy entails unauthorised usage, reproduction, or distribution of the software without authorization from the author.

A person is committing software piracy if they make a copy of a piece of software they don't own, copy, download, share, sell, or install it without the author's permission. For the most part, the copyright is not transferred to the buyer when they acquire a piece of software. In the country of India If you don't have authorization to use a copyrighted programme, you are violating the law against piracy and the unauthorised use of copyright content. However, it is not illegal to make a backup copy of software, but any act that violates the copyright holder's exclusive rights will result in legal action being taken against the perpetrator.

What are the Reasons for piracy?

Software, an essential component for computers, is in high demand in the market. However, most software is expensive, leading to the rise of pirated software. Developed countries generally develop software products that are offered at greater prices, making them expensive for underdeveloped countries. Even a developing country like India, with a thriving software sector and ample workforce, is not immune to software piracy. Because software packages are becoming more expensive, computer users are looking for alternatives. This increased the number of pirated applications.

a) Awareness of the public:

In addition, individuals are unaware of the existence of software and related intellectual property rights. Although most governments provide software items intellectual property rights (patents or copyrights), most computer users are unaware of this. However, when purchasing software, consumers are not required to read the licence agreement in its entirety before installing the product. They also believe they own the software because they paid for it, but they are unaware that they just own the licence. They misuse the software by copying it and giving it to others. They are unaware that they are breaking the country's copyright regulations.

b) Demand for software products:

In a society where software is in high demand but not readily available, people will use copies of available software. As a result, more software is pirated. It is also vital that when everything is digitalised, the connected products are easily accessible to consumers. The lack of availability of software within national borders might lead to the movement of pirated software across borders, either offline or online.

c) Weak legal enforcement: Having a strong legal framework is necessary to combat software piracy.

In order to secure the software goods, you must be clear on what kind of liability you wish to impose for those who commit software piracy. Software piracy is viewed as copyright infringement in nearly every country, and it is punishable by both civil and criminal penalties. In order to combat software piracy, strong enforcement of copyright legislation is also necessary. The use of untrained investigators is not going to help reduce software piracy. There is always a risk of software piracy if the law is weak, hence a robust legal system must be used to combat it.

d) Gains from software piracy:

Software is a time and money intensive product. Pirates haven't invested anything, they just need to replicate and distribute it to get money. For pirates, it is an easy way to make money, resulting in an increase in software piracy. Despite the large software sector, several countries lack adequate legal protection. Some countries lack software protection laws, and those that do have insufficient enforcement mechanisms, leading to increased software piracy.

e) Legal framework of software piracy in India:

As a TRIPs signatory, India has updated its laws to provide optimum intellectual property protection. In India, software is recognised as a literary work and so protected by Copyright. The existing patent legislation is not ready to protect software, hence it is protected by the Copyright Act of 1957. TRIPs are a key international agreement that deals with the legal challenges of unauthorised commercial use of intellectual property. The TRIPs Agreement protects software copyright. Due to changes in the international legal environment, the Copyright Act was amended in 1994 to include computer programmes. The Berne Convention was extended to computer programmes

and databases. The Copyright Act of 1957 expanded the definition of “literary work” to cover computer programmes and databases. The Copyright Act defines a computer programme and provides it a distinct legal position. As with a literary work, an author of a computer programme has exclusive rights to reproduce, publish, perform, film, translate or modify their work. It also grants extra-ordinary exclusive rights, such as the right to sell or offer for sale software, and the right to rent or offer for rent software. Copyright protection for software by an individual author lasts for the lifetime of the creator and for 60 years after death. Software is protected by copyright if it is original and adequate effort is made to ensure its originality. The work must also be published first in India, or if published outside India, the author must be an Indian citizen at the time of publishing, or at the time of death. Software is protected by the Copyright Act of 1957. The Information Technology Act of 2000 contains provisions for software piracy. The IT Act of 2000 criminalises tampering with a computer program's source code and protects source codes "needed to be retained or maintained by law". The IT Act protects the source code of government computer programmes but not those of private users.

f) The 1994 revision to the Copyright Act strengthened copyright enforcement in India:

The amendment made copyright infringement a crime. So, once committed to a tangible medium, any original software work is protected by the Copyright Act, 1957. It doesn't have to be published to be protected by copyright. Anyone who infringes the exclusive right conferred under the Copyright Act, 1957 commits an offence under Section 51 of the Act and is punished under Section 63 of the Copyright Act. Sec 52 allows only one exception: a backup copy of the software for temporary protection against loss, distribution, or damage to the original copy. Further, an amendment in 1994 added Sec 63B, which punishes persons who knowingly use infringing computer software. This act carries a sentence of seven days to three years imprisonment and a fine of 50,000-2 lakh rupees. If the infringing copy of software is not utilised for financial benefit or in the course of commerce or business, the imprisonment and punishment can be reduced.

g) Remedies Against infringement of copyright in software:

Software piracy is the violation of a software's copyright. Infringement of software copyright is subject to both civil and criminal consequences.

A civil suit may be filed in civil court for any of the following remedies: -

- Permanent and temporary injunctions
- Seize and distinguish all infringing copies, including master copies;
- Statutory damages
- Legal costs

h) Criminal Remedies:

Copyright infringement is a crime that can be prosecuted by a cop. For software piracy, the criminal penalties are more severe than the civil penalties to dissuade the offender. The criminal remedies include imprisonment, fines, and the confiscation of infringing copies. The Indian Copyright Act gives software pirates both civil and criminal liability. Piracy is punishable by up to three years in prison and a two lakh fine. Using infringing computer software is penalised by a period of seven days to three years and a fine between fifty thousand and two lakh rupees.

Other elements in the Copyright Act make it a stringent rule against software copyright violations in India. Upon conviction of a copyright offence, any police officer not below the level of sub-inspector may confiscate without warrant all copies of the work and any plates used to make infringing copies of the work, wherever found, and produce them before a magistrate as soon as possible. Possession of plates, machinery, and equipment to generate infringing copies of software is likewise punishable by up to two years imprisonment and a fine

CASE LAWS

In *Microsoft Corporation v. Yogesh Popat et al.*, the Delhi High Court expressed its critical views on software piracy and awarded the plaintiff Rs 1,975 as damages Using this case as a precedent, the Delhi High Court awarded the plaintiffs Rs. 2.3 million in *Microsoft Corporation v. Kamal Wahi Microsoft*, a global leader in software development, has faced major concerns from software piracy. Microsoft Corporation filed several lawsuits alleging irreparable

harm to its IP rights and other IP rights violations worldwide. The Indian courts considered such cases when considering cases involving software piracy. In *Microsoft Corporation v. Deepak Rawal*, the Court found copyright violations of Microsoft Dos and Windows and awarded damages. The judges can have an active role in software piracy trials, but they rarely do so. The court's decisions can be used as a legal basis by other courts in future instances. The judiciary should play an active role in this process, which will boost IP rights protection in India. Software piracy will decrease.

HYPOTHESIS TESTED PROVED

From the above analysis, it is clear even though there is tight legal framework, the efficacy on the ground is ineffective most importantly, the price of the software and the lack of awareness among the customers. Hence, the original hypothesis stands proved.

SUGGESTIONS

India has robust copyright laws; however, their enforcement is a major issue. While penalties for copyright violations, including software, exist, they are not sufficiently deterrent increase the minimum sentence for copyright breaches. Above all, there must be proper implementation or enforcement. It is possible to strengthen the enforcement system by properly training concerned authorities, particularly police officials, who are key players in preventing software piracy. Most enforcement officers are unaware of the law's requirements, which can be avoided by properly teaching them. Similarly, the number of people aware of copyright laws and their infractions is decreasing. When training authorities, ensure that a suitable number of officials are trained. Another barrier to software piracy is user awareness. End users must be made aware that they do not have absolute control over how the programme is used. Increasing end-user awareness of copyright and related rules will help reduce software piracy. As the use of computers and the internet rises in our daily lives, so must the availability of software. Not only in number, but also in terms of end-user accessibility. Quality software at reasonable pricing will also help combat software piracy. Major stakeholders may reduce software piracy in numerous

ways. To eradicate software piracy, all stakeholders must work together. To combat piracy, the state's legislative, executive, and judicial branches must work jointly with the software sector.

CONCLUSION

In India, copyright law provides for fair use copying. However, with the advancement of information technology and the ongoing digitalisation, the pirated software sector has flourished. Adopting international standards into national legislation has bolstered software protection laws in India. Still, India remains a key source of pirated software. Despite India's strict copyright laws, software piracy is common. There are several reasons for this, including improper copyright enforcement, lack of public awareness of copyright laws, and lack of software quantity and pricing. Even the judiciary has started prioritising software piracy cases when they come before them. However, the judiciary must take into account the urgency of the situation while dealing with software piracy. Otherwise, piracy will increase.

Another barrier to software piracy is user awareness. End users must be made aware that they do not have absolute control over how the programme is used. Increasing end-user awareness of copyright and related rules will help reduce software piracy.

As the use of computers and the internet rises in our daily lives, so must the availability of software. Not only in number, but also in terms of end-user accessibility. Quality software at reasonable pricing will also help combat software piracy. Major stakeholders may reduce software piracy in numerous ways. To eradicate software piracy, all stakeholders must work together. To combat piracy, the state's legislative, executive, and judicial branches must work jointly with the software sector.

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