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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**SOFTWARE COPYRIGHT INFRINGEMENT ANALYSIS**- Shubha Shree R<sup>1</sup>**ABSTRACT**

The wider impact of software copyright laws on computer software can be observed in business and civil and criminal procedures. Software copyright is currently being breached to a more significant amount as a result of software piracy. Commercial, shareware, freeware, and public domain software all involve infringements of copyright. The Indian Copyright Act of 1957 protects copyright software under section 13(1) (a)<sup>2</sup> however the Act of 1957 was amended in 1994 to add computer programs as original literary works under Section 2(o)<sup>3</sup> of the Act. Even the Information Technology Act, of 2000 under section 2(w)<sup>4</sup> deals with intermediaries or any person receiving information and data, including network services providers, cyber cafes etc, The research's primary focus will be on whether or not copyrighted software has any provisions for punishment for such infringements, whether or not cases laws have been added to it, and how these breaches occur.

Keywords: software piracy, infringements, provisions.

**INTRODUCTION**

The protection of an invention, literary work, and any other intellectually produced material from unlawful use, production, and sale by anybody other than the inventor and their licensees is known as intellectual property rights, or IPR. The patent is one of the main forms of protection. Copyright as well as trademark. In contrast, trademarks and patents are typically employed to protect copyright and are the most commonly used means of

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<sup>1</sup> Student at Reva University

<sup>2</sup> Indian Copyright Act 1957 sec13(1)(a)

<sup>3</sup> Indian Copyright Act 1957,sec2(o)

<sup>4</sup> Information Technology Act 2000,sec2(w)

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safeguarding consumers against rival businesses. merchandise such as books, music items, and computer software<sup>5</sup>.The computer industry is a dynamic one, driven by the free market system's economic motivation and rooted in creativity and invention. A company that makes software development investments to reap the rewards of those investments needs legal defence against rivals who steal its intellectual property. Legal defence is an essential encouragement for the development and monetization of software for computers.<sup>6</sup> The researcher mainly focuses on the various kinds of infringement, including the provisions for the protection of copyright software by analysing software infringement.

### CONCEPT OF SOFTWARE COPYRIGHT

Software copyright law started what appears to be a considerably longer and more challenging phase of development in 1985. The courts have begun to define the extent of protection provided by the copyright in a computer program in several judgements decided in the previous year. These cases maintain that copyright protection encompasses a program's organisational structure, as well as how it governs, operates, and regulates a computer, in addition to the literal content of the program's source code<sup>7</sup>

Copyright for software is not fundamentally distinct from other forms of copyright, because software differs from other works that can be protected by copyright (such as books, poetry, drawings, sculptures, etc.), several parts of copyright law are particular to software. Even copying a program from a disk to the memory of your computer is considered as "Copying" and is prohibited without consent<sup>8</sup>.The program that a programmer writes has a great deal of control due to copyright law, as well as the programmer's employer in the case of an employed programmer.The off-the-shelf business applications sector of the computer software industry is where copyright is most crucial. These products, as opposed to custom software programs, have a mass appeal and are simple to duplicate. Companies can prevent

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<sup>5</sup>Eric Chiang and Djeto Assane, Software Copyright Infringement Among College Students,<https://assane.faculty.unlv.edu/Copyright.pdf>> accessed 27 November

<sup>6</sup>Bhoomika Verma and Bharat Budholia, Legal Protection for Computer Softwares Copyright v. Patent

<sup>7</sup>Lee.T.Gesmer, Development in the Law of Computer Software Copyright Infringement (jstor Law Journal, 12 Aug 2023)<<https://www.jstor.org/stable/29761965>> accessed 12 Aug 2023

<sup>8</sup>Dr.R.Radhakrishnan and Dr.S.Balasubramanian, Intellectual Property Rights(1<sup>st</sup>edn, New Delhi, 2008) 215

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duplication, restrict competition, and set monopoly prices for certain products due to copyright protection.<sup>9</sup>

As tangible media to extend copyright protection, computer program code is frequently set to physical objects including read-only memory (ROM) chips, circuit boards, magnetic tapes, discs, and random-access memory (RAM) chips.<sup>10</sup>

Naturally, countries that are developing have a variety of needs for computer software applications in their businesses, hospitals, schools, and government buildings. However, they frequently require easy access to commercially available business software suites, such as word processing, spreadsheets, email, and surfing internet tools. Microsoft is the key participant in the international market for these products, which is dominated by North American and European businesses. Even in India, the off-the-shelf, packaged computer program market is mostly devoid of the software industries of developing nations<sup>11</sup>

#### INFRINGEMENT OF THE COPYRIGHTED SOFTWARE

##### Software Piracy:

Software is the most important component for a computer to operate effectively is software. The need for software has increased along with the development of information technology, which has led to the emergence of several software development firms both domestically and abroad.<sup>12</sup> Software piracy is the process of utilizing, sharing, or reproducing a software product without the express consent of its creator. Software theft is the theft of another person's original concept and work. It typically takes the following forms<sup>13</sup>:

##### End-user piracy

End-user piracy occurs when a user copies software to the hard drives of more machines than the publisher has authorized. Because end users frequently make extensive copies of the

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<sup>9</sup> Law Commission on Intellectual Property Rights, Integrating Intellectual Property Rights and Development Policy, ( Law Com 104-105, 2002)

<sup>10</sup> Bhoomika Verma and Bharat Budholia, Legal Protection for Computer Softwares Copyright v. Patent

<sup>11</sup> *Ibid*

<sup>12</sup> Faria Rahman, Online Software Piracy and Its Related Laws(2020) 02 <[https://papers.ssrn.com/sol3/.../SSRN\\_ID3648512\\_code4262701.pdf?...1](https://papers.ssrn.com/sol3/.../SSRN_ID3648512_code4262701.pdf?...1) papers.ssrn.com >>accessed on 12 Aug 2023

<sup>13</sup> Dr.R.Radhakrishnan and Dr.S.Balasubramanian, Intellectual Property Rights(1<sup>st</sup>edn, New Delhi, 2008) 223

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software they own before distributing or exchanging it, this type of software piracy may occur on a larger scale than other types. End users benefit from this even though it hurts the interests of right holders because it gives them clear economic advantages<sup>14</sup>.

#### Hard disk loading

Computers are sold with illicit copies of software already installed by computer vendors. Many machines are installed by some vendors using a single legally obtained copy. Typically, no license information or disks are included with the sale of these Systems.<sup>15</sup>

#### Internet piracy

The most recent and rapidly expanding type of software piracy. Software is made available for download on the Internet by third parties, either for free or at a cost. Pirates frequently utilize the Internet for advertising purposes to entice customers<sup>16</sup>

#### VARIOUS OTHER INFRINGEMENT

- <sup>17</sup>Use that is completely illegal, such as downloading software from a friend or the Internet when the software's license does not specifically allow it.
- Overuse, such as installing software that was purchased for one computer but used on two.
- Failure to assign a license or to relicense: If you buy used gear, not all software licenses will automatically transfer, thus you must take precautions to make sure your use is legal.
- Abuse of shareware: When software is licensed "for evaluation purposes only" or similarly, going beyond these limits is copyright infringement.
- Obtaining software illegally, for as by claiming that your company is a university to receive a discount.

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<sup>14</sup>Faria Rahman, Online Software Piracy and Its Related Laws(2020) 05 <[https://papers.ssrn.com/sol3/.../SSRN\\_ID3648512\\_code4262701.pdf?...1papers.ssrn.com](https://papers.ssrn.com/sol3/.../SSRN_ID3648512_code4262701.pdf?...1papers.ssrn.com) >accessed on 12 Aug 2023

<sup>15</sup> Dr.R.Radhakrishnan and Dr.S.Balasubramanian, Intellectual Property Rights(1<sup>st</sup>edn, New Delhi, 2008) 223

<sup>16</sup>*Ibid*

<sup>17</sup>*Ibid*,220

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- Warez copyright infringement: A "warez" site is an Internet location where users can download illegal copies of software. The software is referred to as "a warez copy" or "a hacked copy" because its digital rights management has typically been "broken". Those who create warez copies, those who operate warez sites, and those who obtain and utilize warez copies all violate copyright.
- Hardware suppliers who sell computers with installed software but who (sometimes without the customer's knowledge) are making illegal "special offers."

## PROTECTION OF COMPUTER SOFTWARE

### Indian Copyright Act 1957

Section 63B – knowing the use of infringing copies of a computer program to be an offence

Any person who knowingly uses an illegal copy of a computer program on a computer will be punished with a term of imprisonment that must not be less than seven days but may not exceed three years, as well as a fine that must not be less than \$50,000 but may not exceed

Knowing the use of an unauthorized computer program constitutes a crime.]Any person who knowingly uses an illegal copy of a computer program on a computer will be punished with a term of imprisonment that must not be less than seven days but may not exceed three years, as well as a fine that must not be less than \$50,000 but not more than \$100,000.<sup>18</sup>

Section 51(a)(ii) – copyright in a work is deemed to be infringed

Unless he was aware and had no reason to believe that such communication to the public would be an infringement of copyright, permits for profit any location to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work<sup>19</sup>

Section 69(1) – Every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of the company's business shall be deemed to be guilty of such offence, and shall be liable to be pursued and punished accordingly:

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<sup>18</sup>Indian copyright Act 1957, Sec 63B <https://indiankanoon.org/doc/37620088/>

<sup>19</sup>Indian copyright Act 1957, Sec 51(a)(ii) <https://indiankanoon.org/doc/1038145/>

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Provided, however, that nothing in this subsection shall subject any person to punishment if the person demonstrates that the person was not responsible for the conduct at issues<sup>20</sup>.

The Indian Copyright Act of 1957 protects copyright software under section 13(1) (a)<sup>21</sup> however the Act of 1957 was amended in 1994 to add computer programs as original literary works under Section 2(o) <sup>22</sup>of the Act.

#### Information Technology Act 2000

Section 2(w) - Any person who receives, stores, transmits, or provides any service relating to a specific electronic record on behalf of another person is referred to as an "intermediary" about that record. This includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online auction sites, online markets, and cyber cafes.<sup>23</sup>

#### CONCLUSION

The ongoing development of technology and innovation, which fuels economic growth, depends on the protection of intellectual property rights. IPR infringement prevents innovators from getting paid fully for their contributions and discourages innovation<sup>24</sup>. Software copyright violation is a delicate subject with many potential legal consequences, as stated in the regulations. This is the reason that if such a circumstance arises, one must proceed with caution. Seeking expert assistance from a seasoned advocate is recommended to make the argument more compelling. By doing this, you can increase your chances of defending the matter and avoid incurring severe penalties<sup>25</sup>.

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<sup>20</sup>Indian copyright Act 1957, Sec 69(1) <https://indiankanoon.org/doc/377085/>>

<sup>21</sup> Indian Copyright Act 1957 sec13(1)(a) <https://indiankanoon.org/doc/196539054/>

<sup>22</sup> Indian Copyright Act 1957, sec 2(o) <https://indiankanoon.org/doc/797096/>>

<sup>23</sup> Information Technology Act 2000, sec 2(w) <https://indiankanoon.org/doc/1752240/>

<sup>24</sup>Eric Chiang and Djeto Assane, Software Copyright Infringement Among College Students, <https://assane.faculty.unlv.edu/Copyright.pdf>> accused 27 November

<sup>25</sup>Pankaj Tyagi, Software Copyright Infringement In India: Explained, (11 Oct 2021) <https://corpbiz.io/learning/software-copyright-infringement-in-india/>> accused 27 November

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