

Software Piracy

'**Software Piracy**' is the unauthorized/illegal copying, distribution or use of a software. It may include use of a software unauthorizedly without obtaining a proper licence from the software company or simultaneous use of single user licence or loading software on more machines, than authorized under the licence terms. According to the [Business Software Alliance](#) (BSA), about 36% of all software in current use is stolen globally.

The [Business Software Alliance](#) is the non-profit trade association created to advance the goals of the software industry and its hardware partners. It is also the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. BSA members include Adobe, Apple, Autodesk, Bentley Systems, Corel, CyberLink, Dassault Systemes SolidWorks Corporation, Embarcadero, McAfee, Microsoft, Minitab, Quark, Quest Software, Rosetta Stone, Siemens, Sybase, Symantec, and The MathWorks. BSA helps it's members fight Software Piracy !

In India, provisions as to Software Piracy are covered under Indian Copyright Act 1957, which were inserted by the Amendment Act of 1994. It now includes definition of a 'Computer Program' and defines an infringing copy as which is used without the license and/or permission granted by the owner of copyright. And further provides penal provision under Section 63B of the Act, which is titled as: 'Knowing use of infringing copy of computer programme to be an offence' and section reads as follows:

'Section 63B: Knowing use of infringing copy of computer programme to be an offence: Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable with imprisonment for a term which shall not be less than seven days but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees:

Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees.'

Further provisions of Copyright Act empower a Police Officer, on a police complaint being made, not below the rank of Sub Inspector to seize without warrant infringing copies as well as the material that is being used for the purpose of making such copies.

Alternatively as a civil action, if the Software Company has enough evidence it can proceed directly to a civil court either for an injunction against the use of infringing material or for the appointment of a local commissioner under Civil Procedure Code, who along with Copyright owner can enter the premises of the copyright violator and seize the infringing material, with an objective to preserve & produce the same before the court at a later stage. In case of 'out of court' settlement at this stage, the settlement terms are subject to the proper satisfaction of the court and are in excess of licence fees. A local commissioner fees is mostly approx 1 Lakh for carrying out the said process and court may appoint one or two lawyers as Local Commissioners.

In the famous judgment of **Time Incorporated v. Lokesh Srivastava, 2005 (30) PTC 3 (Del)**, the court said: "This Court has no hesitation in saying that the time has come when the Courts dealing with actions for infringement of trademark, copyrights, patents etc., should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity out of lust for money so that they realize that in case they are caught, they would be liable not only to reimburse the aggrieved party but would be liable to pay punitive damages also, which may spell financial disaster for them." Though otherwise, the most active company in terms of taking strict action against Software Piracy in India is Microsoft, they have been regularly following up with companies for over a decade now. And Indian Courts, specially Delhi High Court have given a well recognition to their rights by ordering for punitive damages from Rs 5 lakhs for an individual user to Rs 20 Lakhs for sale of counterfeit products by an unauthorized vendor.

In another matter of [Adobe Systems Inc. vs Sachin Naik \(2013\)](#)], Honorable Delhi High Court ordered for damages of Rs 2 Lakh against use of 33 pirated version of Adobe softwares by a company. Read the complete judgement [here](#).

Though software companies have also started introducing in-built mechanism to protect against Software Piracy, like some software:

- do not get installed unless the key is verified online like [Norton / Symantec](#) software;]
- do not run in full mode unless USB drive supplied by the vendor is available for verification like accounting software

[BUSY](#);]

- may transmit data about the user like Softwares by [Dassault Systemes](#), their [Licence Agreement](#) for the software 'SolidWorks' and other Softwares like 'Catia' contains the following kind of clause:]

1.E. Security Mechanisms

Dassault Systèmes and its affiliated companies take all legal steps to eliminate piracy of their software products. In this context, the Software may include a security mechanism that can detect the installation or use of illegal copies of the Software, and collect and transmit data about those illegal copies. Data collected will not include any customer data created with the Software. By using the Software, you consent to such detection and collection of data, as well as its transmission and use if an illegal copy is detected. DS SolidWorks also reserves the right to use a hardware lock device, license administration software, and/or a license authorization key to control access to the Software. You may not take any steps to avoid or defeat the purpose of any such measures. Use of any Software without any required lock device or authorization key provided by DS SolidWorks is prohibited.

The above clause is contained in the licence agreement which is accepted by the user at the time of installation of the software. Therefore, cannot be said to be violative of any kind of privacy as any unauthorized use empowers the software company to collect the IP address of the user, the same is being followed for Microsoft for a long time. Earlier this year, Microsoft filed a suit against an US based Verizon IP address that allegedly activated hundreds of pirated Microsoft products like Windows. News:

<http://www.afterdawn.com/news/article.cfm/2015/05/05/microsoft-sues-ip-address-that-allegedly-activated-hundreds-of-pirated-windows-products>

With the launch of Microsoft Windows 10, the Microsoft has gone soft on OS by allowing free upgrades to the existing owners of Windows 7 and Windows 8, whether it was an original installation or pirated. But it has been reported that with original Windows 10 the Microsoft may otherwise try to discourage use of pirated version of its other famous software like Microsoft Office, etc.

Though Microsoft had previously announced that previous pirated version will be counted as in-genuine, even after upgrading to Windows 10. More @ [Pirates will stay pirates, even after Windows 10 upgrade !](#)

News #1: Pithampur firm to pay \$100,000 fine for using pirated software (29 Dec 2015)

Pithampur-based textile firm Pratibha Syntex will cough up USD 100,000 (Rs 66 lakhs) to settle charges of using pirated software including that of Microsoft and Adobe.

'Pratibha Syntex has agreed to pay USD 100,000 in restitution within 30 days,' a person familiar with the development said. The settlement was reached at Los Angeles Superior Court and approved by the judge. In addition, other terms of the settlement prohibit Pratibha Syntex from using unlicensed software or reproducing any part of a copyrighted software program without the permission of the legitimate copyright holder. Also, Pratibha Syntex must draft an information technology policy statement regarding the use of licensed software and distribute this policy to all employees.

Reacting to the judgment, the Confederation of Indian Textile Industry (CITI) has issued a circular to all its members citing the Pratibha Syntex case and urged them to use genuine software for meeting their business needs.

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<http://www.hindustantimes.com/indore/pithapur-firm-to-pay-100-000-fine-for-using-pirated-software/story-jU9MPAu8zCFFbA3fXhXjBJ.html>