

Understanding the Legal Aspects

It is not possible to completely eliminate software piracy, but it can be controlled by enforcing laws and generating awareness in the society

Software piracy is defined as unauthorized copying and use of software without a proper authorized license. Similarly, simultaneous use of a single user license software by multiple users or loading of a single user license software at multiple sites also amounts to software piracy. By buying a software, one only becomes a licensed user and not an owner. One can make copies of the program only for back-up purposes, but it is against the law to give copies to friends and colleagues or sell such copies to others. It is not possible to completely eliminate software piracy, but the same can be controlled by enforcing laws and generating awareness in the society.

Any copyright infringement is an unauthorized use of copyrighted material in a manner that violates copyright owner's exclusive rights such as the right to reproduce or to make derivative works that are build upon it. For electronic and audio-visual media, such unauthorized reproduction and distribution of a copyrighted work is often referred to as piracy (however there is no legal basis for the term 'piracy').

The society doesn't really treat software piracy like other kinds of theft as nothing is physically taken away. There is no immediate effect

on the inventory or productive capacity of the programmer. Only copies of the disk or other storage medium are made and the legal owner is still in possession of the software. With digital technology, perfect copies of the original can be made in no time. Most often, actual cost of creating goods is determined by the production cost of individual items. However with software, the reverse is true. The cost of producing copies is negligible compared to the cost of constructing the original. Hence, it becomes very easy and all the more attractive to make copies of an unauthorized software.

Why Licenses Matter?

By using a licensed software, it is ensured that critical updates are available when needed, products are fully supported, reliable and above all—it is legal.

There are three primary ways to legally obtain a software license :

- Purchasing a new PC equipped with OEM software and equipment.
- Purchasing products 'off the shelf' from a certified retailer.
- Signing a 'License Agreement' online.

Types of Software Piracy

End-User Piracy: End-user piracy is the unauthorized reproduction of

copies of a licensed software. Using one licensed copy to install a program on multiple computers, or acquiring academic or other restricted versions and using the same for commercial purpose also amount to end-user piracy. This type of piracy also includes both casual copying, and distribution between individuals and companies who do not strictly monitor the number of software licenses they install and do not acquire enough number of licenses to cover their software installations.

Software Counterfeiting: When illegal copies of a software are made and distributed in packaging that replicates the original manufacturer's packaging, it amounts to software counterfeiting. Counterfeit software copies come out with similar packaging, manuals, license agreements, labels, registration cards, security features and often look authentic. The intention is to directly imitate the copyrighted product. This is a more serious offence as it is done in an organized manner and the buyer is also made to believe that he is buying a genuine product.

Internet Piracy: Internet piracy is the unauthorized downloading of a software over the Internet. Any form of software piracy that involves the use of Internet either to market or distribute copyrighted software programs can be termed as Internet piracy. Many pirate websites on the Internet make software available as a free download or in exchange of uploaded programs.

Many online auction sites offer counterfeit or infringing copyright softwares. Email, IRC, News Groups and FTP could be tools which facilitate the illegal uploading or downloading of copyrighted software programs over Internet.

Hard-disk Loading: Hard-disk loading occurs when a business that sells new computers loads illegal copies of software onto hard disks to make the purchase of their machines more attractive.

Pre-installed Software Piracy: When a computer manufacturer uses one licensed copy of software and illegally installs it on more than one computer, it is called pre-installed software piracy. To avoid this type of piracy, consumers should lookout for proper license documentation when purchasing a new PC in order to ensure that they're getting what they paid for.

Client-Server Overuse: Client-server overuse occurs when a software is installed on the server for simultaneous use by several people over the network. Simply put, Client-server overuse is having more users than the number of users allowed by the license.

Legal Aspects

The amendments in the Copyright Act in 1994 included the definition of computer programs and computer databases. The Copyright (Amendment) Act 1994 clearly explains the rights of a copyright holder, position of rentals of software, rights of the user to make backup copies and the heavy punishment and fines for infringements of copyrighted software. According to Section 63 of the Act, there is a minimum jail term of six months for copyright infringement. The section also mentions about fines of upto Rs. 2,00,000 and jail term upto three years or both. Any person or company who indulges in unauthorized copying, sale, downloading or loading of software is punishable under this section.

Section 63-B of Copyright Act is applicable against those who knowingly use infringing copies of computer programs. Any person, individual or company using pirated software is liable under this section. Section 64 of the Copyright Act empowers any police officer of the rank of sub-inspector or above to seize without warrant infringing copies as well as the material that is being used for the purpose of making such copies. Those accused who are indulging in software counterfeiting are doing it in an organized manner by conspiring with each other and cheating the government, copyright owners as well as the public in particular. Hence, they are liable for prosecution under Section 120 B r/w 420 IPC.

A counterfeit product is basically a forged electronic document prepared for the purpose of cheating and it is also sold to the public as genuine. Hence, the counterfeiters are punishable under Sections 468 and 471 IPC.

The webmasters of pirate websites are punishable under Section 120B IPC r/w Section 63 of Copyright Act as they are part of the conspiracy by way of abetting copyright violations and enabling people to gain access to copyrighted software. Those people who are abetting infringement (like webmasters and illegal replicators) as well as those who are using pirated software are doing so knowing fully well that they are causing a loss or damage to the copyrighted owner. They are also diminishing the value of such software by making illegal copies. All such people are committing offences under Section 66 of the Information Technology Act, 2000 and are therefore, punishable under Section 66(2) of the Information Technology Act.

Apart from prosecution under Section 66 of the Information Technology (Amendment) Act, 2008, all the accused who are providing assistance to any person to facilitate access or those who are unauthorizedly downloading/copying/extracting software are also liable to pay damages to the affected party as per the claim decided in a court of law according

to Section 43(b) of the IT Act, 2000. The modus operandi like client-server overuse, hard-disk loading, pre-installed software and end-user piracy are generally adopted by companies or firms or by an association of individuals.

In such cases, the company/firm as well as its in-charge are liable under Section 85 of the Information Technology (Amendment) Act, 2008. The counterfeit products which are replicated and packaged abroad are illegally brought into India through various seaports and airports; hence, Section 132 of the Customs Act can be applied against such importers. It

is also suspected that these counterfeit products are being smuggled into India with active connivance of some officials of the customs department. These officials can be booked under Section 13(2) r/w 13(1)(d) of PC Act, 1988.

Hence, a case u/s 120B r/w 420, 468, 471 of IPC, u/s 63, 63B of Copyright Act 1957, u/s 66, 85 of Information Technology (Amendment) Act, 2008, u/s 13(2) r/w 13(1)(d) of PC Act 1988 and u/s 132 of Customs Act and substantive offences, therefore, can be made out against the suspects. The relevance of above mentioned sections has to be decided based on the verification.

—Advocate Prashant Mali

The author is president, Cyberlaw Consulting
mail@dindia@cybermedia.co.in

According to Section 63 of the Act, there is a minimum jail term of six months for copyright infringement. The section also mentions about fines of upto Rs. 2,00,000 and jail term upto three years or both