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## Why this blocking *di*?

DNA / R Krishna / Sunday, May 27, 2012 9:15 IST

*In a bid to curb piracy, film producers are now approaching courts to block websites that host pirated content. But the court orders are so vaguely worded that users lose access to even legitimate content. **R Krishna** reports.*

The film 3 owes its popularity to thousands of netizens who watched the song ‘*Why this kolaveri di*’ on YouTube, and then recommended it to their friends on social networking sites. It is rather ironic that the same netizens were denied access to legitimate content — such as other independent films, free software, etc — on the internet, by the producers of the film.

Last week, the producers, via Copyright Labs, obtained an order from the Madras High Court against 15 internet service providers (ISPs) and five ‘Ashok Kumars’, directing them to not infringe on the film’s copyright. The result: many popular torrent sites as well as video sharing websites like Vimeo and Dailymotion were blocked by some ISPs.

The ‘Ashok Kumar’ in the order refers to unknown people who may infringe on the film’s copyright. It is the desi version of what is known as a John Doe order, used by courts in the US, UK, Canada and Australia.

### Acting against unknown offenders

According to Delhi-based advocate Apar Gupta, John Doe orders came into practice in India in the early 2000s to help producers counter cable operators airing pirated versions of recently released films on their local channels. Films normally release on Friday, and if someone had pirated the movie, producers would have to wait till Monday to file a plea in court against the offenders.

By the time the court issued the order, the pirated film would have done its damage. That’s why courts started granting producers temporary injunctions against unknown people — John Doe — who were likely to infringe on the film’s copyright. This way, producers could serve court notices without any delay.

“The internet is now being included within the scope of such orders,” says Gupta. As a result, a film producer armed with a John Doe order can ask ISPs to block access to any website that is likely to infringe upon his copyright.

“In the digital age, it takes seconds to spread pirated copies with good prints across the world. A John Doe order makes it convenient for us to serve a notice. Of course, we have to prove that (the website) has infringed copyright,” says Sanjay Tandon, vice president, music and anti-piracy, Reliance Entertainment, which started the trend by blocking torrent websites during the release of their film Singham.

### Carpet blocking websites

But according to Pranesh Prakash, programme manager, Centre for Internet & Societies, “Unlike the Calcutta High Court order in March this year, which specified the 104 websites that should be blocked, a John Doe order doesn’t mention any specific website. In some cases, the websites are being blocked without any evidence (of copyright infringement). Courts need to be informed of what people with John Doe orders are doing. We need to be specific about what can be blocked and what can’t be.”

A case in point is Vimeo, a website similar to YouTube, which has been blocked by certain ISPs. There is no

information about which particular video on Vimeo infringes upon copyright. And even if there is some such video, experts are perplexed why the entire website was blocked.

“The injunctions being granted in India are very generalised and broad. For instance, all it states is that the court is preventing defendants from transmitting copyrighted content. It doesn’t set any limitations, such as requiring the plaintiff to identify specific URLs to be blocked, instead of the whole website,” says Gupta.

However, Tandon points out, Reliance Entertainment has not been asking ISPs to block entire websites. “We are asking ISPs and websites to not allow our content to be streamed via their service. I don’t know why ISPs choose to block entire websites,” he says.

ISPs are not forthcoming in explaining why entire websites are being blocked. “Access to certain sites has been blocked by Airtel pursuant to and in compliance with court orders,” is all an Airtel spokesperson is willing to reveal.

According to Gupta, entire websites are being blocked either because copyright owners demand this, or because ISPs are trying to avoid potential liability. “The fault lies with the legislative procedure. If the ISP is afraid and blocks the entire website, it shows that our laws are not good enough to protect its interests,” says Gupta.

In either case, the present system of functioning is too ham-handed and is like using a butcher’s knife where a surgeon’s scalpel is needed. “Courts should be strict in monitoring how the plaintiff is using the John Doe order. But for things to change, we need one of those unnamed defendants to come before the court and express how the order was used against him,” adds Gupta. Will a John Doe please stand up?

### **What is happening internationally**

John Doe orders are used by courts in the US, UK, Canada and Australia. However, there are few instances abroad where they have been used to block websites. According to Apar Gupta, advocate, there is only instance in the UK where a court ordered the blocking of Pirate Bay. “But even that order was specific to Pirate Bay. In the US, they have the Digital Millennium Copyright Act wherein the copyright holder can write to the website asking them to take down content. It clearly specifies that only specific torrent files can be taken down, not the entire website. Indian laws do not go into such detail,” says Gupta.

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