



Catching unidentified Counterfeiters and John Doe Order

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Trademark and Copyright infringement has been rampant throughout the world including in India. The Right Holders are supposed to be vigilant in taking action against the violators in

order to safe guard interest in their respective trademark or copyrights. Problem arises when the exact name and identification of the violators are not known. In such situation, how the Right holders can protect their intellectual property right, was a big problem.

By passage of time, internet also provided facility for e-commerce. The infringers, in the form of e-commerce, found another heaven to carry out their nefarious activities. These days, the world has witnessed piracy of new movies and new songs at a very large scale through the internet. Fighting against such piracy, especially when identities of the violators are not known, has been a major problem and 'John Doe'orders are well equipped to tackle such situation.

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The Judicial system has devised mechanism of John Doe orders to fight against such pirates, whose identities are not exactly known. These orders unique kind of interim injunction orders passed by a court of law against the persons/entities, whose true name, address and detail are not known to the plaintiff. In fact the John Doe orders are the injunctions orders passed by the Court of Law against the anonymous entity/entities. The unknown persons may be individual, a group, service providers, web sites etc, whose exact details are not known to the right holders. John Doe orders are in fact a mechanism devised by the Court of Law to curb out the increasing menace of theft of Intellectual Property Right by the unknown pirates. This mechanism has been proved to be very effective so far.

The John Doe orders traces its origin from the Medieval Age of British Monarchy, especially from the time when **King Edward III[2]** was ruling. During his time orders were used to be passed against the unidentified persons. It can be safely said that by passage of time, those orders issued against the unidentified persons developed and took the shape of the orders, what we normally tell them as John Doe Orders. Normally John Doe orders are issued against the males, while such orders issued against the females are termed as Jane Doe orders. In India, John Doe orders are terms as Ashok Kumar Orders, as the Indian Courts are using the term Ashok Kumar at the place of John Doe and Jane Doe.

Though there has been various instances of passed throughout the world, which were having the effect of John Doe orders. In the year 1980, the US District Court passed such John Doe Order. Billy Joel was a Musician. He formed a company titled as Billy Joel and Root Beer Rags, Ltd. Billy Joel. It was case of Billy Joel that his concerts were very famous. On account of his fame, several unknown persons were started to sell shirts bearing his name and images. He moved in the court for the issuance of an ex parte temporary restraining order prohibiting certain unnamed persons from selling merchandise bearing his name. This case came up before United States District Court, E. D. Wisconsin in the year 1980, which was known as *Billy JOEL and Root Beer Rags, Ltd., Vs Various*



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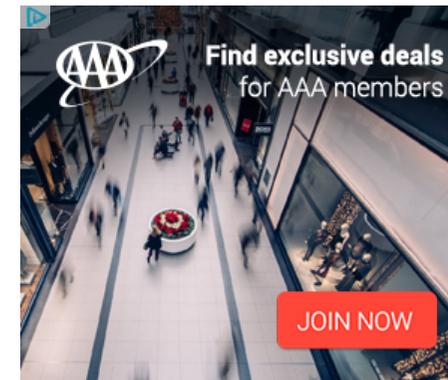
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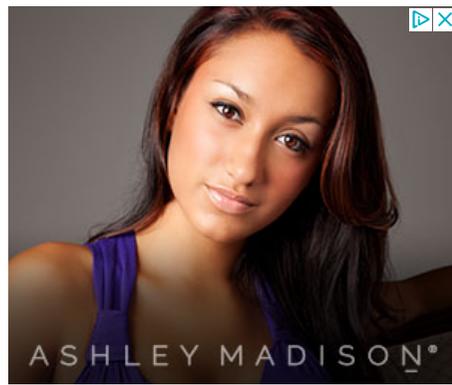
John Does, Jane Does and ABC Company case[3]. The Hon'ble District Judge while dealing with such situation, passed the injunction orders against the violators, which were unidentified. The relevant portion of the order is as under:

'I am convinced that the requested injunction should issue in the present case. Plaintiffs have demonstrated that the traditional prerequisites to injunctive relief are present in that they are faced with irreparable injury if the injunction does not issue in addition to having a strong likelihood of success on the merits. The problem of the defendants' identities is met, I believe, by the fact that copies of the summons, complaint, and restraining order itself will be served on all persons from whom Billy Joel merchandise is seized on the night of the concert. These parties will be asked to reveal their names so that they can be added as parties to the lawsuit. All parties will be informed that whether or not they reveal their names they may appear in court on July 16, 1980, to contest the seizures. Plaintiffs, meanwhile, have posted a bond to cover any damages that may be incurred. Were the injunction to be denied, plaintiffs would be without any legal means to prevent what is clearly a blatant infringement of their valid property rights. While the proposed remedy is novel, that in itself should not weigh against its adoption by this court. A court of equity is free to fashion whatever remedies will adequately protect the rights of the parties before it. It is therefore ordered that plaintiffs' motion for temporary injunctive relief is hereby granted in conformance with the attached restraining order.

There was another case of copyright piracy before the English Court in the year 1985. The case was EMI Records Vs Kudhail [4], wherein injunction was sought against the unidentified defendants. The English Court of Wales passed an order against the named defendant on his own behalf and as representing all other persons engaged in the activity of which complaint is made. This case was also almost in the nature of John Doe as one known defendant was considered to be representative of other unknown defendants and the order was passed against them all.

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The John Doe orders are widely recognized throughout the world, including in India. Various Courts in India recognized the principles of JOHN DOE orders and passed such orders against various unknown persons/entities. The Indian Courts has followed the concept of 'John Doe' as followed by the Courts in UK, the US, Canada and Australia. First of John Doe kind of order was passed by the Hon'ble High Court of Delhi in case titled as **TAJ TELEVISION CASE** [5]. In this case, the Plaintiff launched 24 hour exclusive sports channel 'Ten Sports'. The channel was stated to have bagged rights to some of the major sporting events. It has been granted the exclusive rights to broadcast the World Cup Football 2002, which commenced on May 31, 2002 in Japan-Korea. The Hon'ble High Court of Delhi passed the ex-parte injunction order against such pirates, after observing as follows:

'I have carefully considered the relevant documents, averments of the application and judgments of various courts. Undoubtedly the cable operators in India have a long history of violating copyrights. A very large number of court orders are testimony to this. The cable operators are encouraged owing to the unique nature of cable piracy and the unstructured nature of the cable industry, the speed with which any trace of infringement can be erased by the cable operators, enforcement of rights in conservative nature is unlikely to effectively redress the plaintiffs' grievance. At the same time, I am of the opinion that though the court is not powerless to pass John Doe orders in India but in the facts and

circumstances of this case the directions given in succeeding paragraphs may protect the interests of the plaintiffs and meet the ends of justice.”

The said Judgment affirmed that orders can also be passed against the persons/legal entities, whose exact identity of the violators are known. But there is slight difference in the names used for such unknown persons/legal entities in India. In India, normal practice is that the term **Ashok Kumar or Rakesh Kumar** is used for the unknown persons/entities instead of John Doe. Here are details of few such John Doe orders passed by Different courts in India and action against such violators have been taken.

In another case, the plaintiff namely Ardath Tobacco Company Ltd, engaged in the business of manufacture and sale of cigarettes STATE EXPRESS 555, instituted the suit bearing CS (OS) No.141 of 2004, for restraining the defendants No. 1 to 3, vendors/ stockist of cigarettes at Calcutta and defendants No 4 to 6 the vendors/stockiest of cigarettes at Delhi from dealing in the cigarettes under the label PEACOCK but the packaging and trade dress whereof is identical or deceptively similar to that of the plaintiff's cigarettes. Besides the defendants No 1 to 6, the plaintiff sought the order in the nature of 'John Doe' as adopted by the American, English, Canadian and Austrian courts. In this case, ex parte order of injunction dated 19th February, 2004 was passed and the defendants were restrained from manufacturing, selling, stocking or dealing in cigarettes under a label, carton or packaging material deceptively similar to the label, carton and packaging material and artistic work as of the STATE EXPRESS 555 of the plaintiff. Subsequently this suit , titled as **ARDATH TOBACCO VS MUNNA BHAI**[6] was decreed on 09.01.2009 by the Hon'ble High Court of Delhi against the defendants.

The Plaintiff filed Suit against inter-alia unknown persons seeking permanent injunction from using the trademark **RAY BAN** sunglasses. The Suit was filed against defendant no.1 to 4, whose identities were known. While defendant no.5 to 12 were the persons, whose exact identities were not known. Vide order dated 16.04.2010, passed by the Hon'ble High Court of Delhi in this Suit titled as

Luxtottica Group Vs.Saad Nasim & Ors [7], the John Doe order against unknown persons was passed by Delhi High Court. Subsequently this suit was decreed in favour of the Plaintiff vide order dated 22.05.2014 passed in the Suit. The relevant portion of the Order is reproduced as here in below:

'A reference is made to a similar order passed by this Court in Tej Televisions Ltd. v. Rajan Mandal (2003) FSR 22. It is asserted that a 'John Doe order, the Indian version of which would be an 'Ashok Kumar' order aims at restraining not only the identified retailers who sell the infringing products but also calls to account those parties who supply spurious/ counterfeit RAY BAN sunglasses in India. After perusing the documents placed on record, the averments made in the plaint, it appears to this Court that the plaintiffs have made out a prima facie case for grant of an ad interim ex parte injunction as prayed for.

The Plaintiff namely UTV Software Communications Limited, the producer and distributor of several movies including the film **7 KHOON MAAF** filed suit against several known and unknown cable operators who telecasted pirated version of the films of the plaintiff on cable networks, violating rights of the plaintiff and causing irreparable loss and damage. The Hon'ble High Court of Delhi in order dated 04.04.2011 passed in Suit titled as **UTV Software Vs. Home Cable [8]** granted ex-parte injunction orders against such unknown cable operators. The relevant portion of the afore mentioned order is reproduced as herein below:

'26. The plaintiff has approached this court seeking protection of its valuable rights against such unwarranted, unauthorized and illegal actions of the defendants nos. 1 to 18 as well as the Mr. Ashok Kumar arrayed as defendant nos. 19 to 50 which have violated and diluted the exclusive copyright vested with the plaintiff in respect of the film '7 Khoon Maaf'. The plaintiff has expressed apprehensions that the defendants would violate the plaintiff's rights in its film.

31. In view of the foregoing, it would prima facie appear that unlicensed broadcast of the reproduction rights vested in the plaintiff by telecasting the plaintiff's films '7

Khooon Maaf”and the forthcoming film in the foregoing manner is illegal,unfair and deserves to be prohibited. Consequently, unlessinjunction as prayed for is granted by this court, the business ofthe plaintiff herein would be irreparably impacted. Balanceofconvenience and interest of justice are in favour of theplaintiff and againstthedefendants”.

The Plaintiff filed suit before the Hon’ble High Court Delhi against the unknown persons in order to protect its right in the movie **BODY GUARD**. This suit was inter-alia in nature of Qua timet action. The plaintiff filed the suit against unknown cable operators apprehending that these persons would display the movie unauthorizedly on the internet. The defendant no.10 to defendant no.30 were arrayed as ASHOK KUMAR in the suit, whose exact name and identity were unknown to the plaintiff. The Hon’ble High Court of Delhi passed order in Suit titled as**RELIANCE ENTERTAINMENT Vs.JYOTI CABLE [9]**, the Hon’ble High Court of Delhi was pleased to pass the order against the inter-alia unknown persons also. The extract of the said order is as under:

'For the forgoing reasons, defendants and other unnamed andundisclosed persons, are restrained from communicating ormaking available or distributing, or duplicating, or displaying,or releasing,or showing, or uploading, or downloading, orexhibiting, or playing and/or defraying the movie'Bodyguard”in any manner withoutproperlicense fromthe plaintiff or in any other manner which wouldviolate/infringe the plaintiff’s copyright in the saidcinematograph film Bodyguardthrough different mediums likeCD, DVD, Blue-ray disc, VCD, Cable TV, DTH, Internet services,MMS, Tapes, Conditional Access Systemor in any other likemanner. Plaintiff is permitted to publish the John Doeinjunction order passed today in the local newspapers”

The Hon’ble High Court of Madras had also occasion to deal with maintainability of such Suit. The Hon’ble High Court of Madras, vide its order passed in Suit bearing CS No.294 of 2012, titled as **VODAFONE INDIA VsR.K. PRODUCTIONS[10]** , was pleased to dismiss the application of the defendants, raising the maintainability of John Doe Suit. There by John Doe order was also

recognized by the Hon'ble High Court of Madras in the afore-mentioned suit and the extract of the said Judgment is as under:

'34. The maintainability of John Doe suit (Ashok Kumar suit) is concerned, it was rightly upheld by the Delhi High Court in ESPN Software India Private Ltd. 's case (cites supra). In view of the above, there is no necessity to entertain the applications to reject the plaints even before a trial. Hence the applications filed under Order 7 Rule 11, i.e., in A. Nos. 2417 and 2980 of 2012 in C.S. No. 208 of 2012 and A. Nos. 2425, 2427 and 2979 of 2012 in C.S. No. 294 of 2012 will stand dismissed.'

The Hon'ble High Court of Mumbai was also not lagging behind. This matter pertained to movie **HAPPY NEW YEAR**. The plaintiff filed suit against defendant no.1 to 3 and defendant no.4 was arrayed as John Doe, as his identity was unknown. The plaintiff filed suit against infringement of copyright in HAPPY NEW YEAR. The Hon'ble High Court of Bombay, vide order passed in Suit titled as **RED CHILLIES ENTERTAINMENTS VS. HATHWAY CABLE** [11] was pleased to pass the ex-parte injunction against the unknown persons in the nature of John Doe order. The order reads as under:

'Pending the hearing and final disposal of the suit the Defendants by themselves, their servants, agents, licensees, franchisees, partners, proprietors and/or otherwise howsoever be restrained by an order of mandatory injunction of this Hon'ble Court from telecasting/ broadcasting/distributing/putting on the cable TV network/disseminating/reproducing or otherwise making available to the public, the film "Happy New Year."

STAR INDIA PVT. LTD [12]. filed Suit bearing CS(OS) No.2243 of 2014 , seeking injunction against the named and unnamed defendants' websites from illegally hosting, broadcasting, transmitting, making available for viewing and/or communicating to the public, the broadcast of the 2014 India England Series Matches in India without the plaintiffs' permission. It was claimed by the Plaintiff that the same having the Exclusive Television rights, the plaintiffs are

broadcasting and communicating the live, delayed, highlights, clips and repeat telecast of the 2014 India England Series matches in India through the Star Sports Channels of the plaintiffs. The plaintiffs, who also have the Internet and Mobile Rights for the 2014 India – England Series, are also hosting, streaming, broadcasting, retransmitting and sharing the 2014 India England Series Matches and content related thereto, on its website www.starsports.com and also as a mobile software application STARSPO RTS.COM compatible with iOS and Android platforms. In this matter the Hon'ble High Court of Delhi reaffirmed the concept of John Doe order as under:

'17. This Court has, in the past, in the case of Taj Television Vs. Rajan Mandal [2003] FSR 22, recognised that Indian Courts have the power to pass orders against such unknown 'John Doe' defendants in exercise of its inherent jurisdiction. In fact, Indian Courts have already passed restraint orders against such unknown CS(OS) No.2243/2014 Page 18 of 25 'John Doe' or 'Ashok Kumar' defendants in previous cases, which orders are filed in the present suit.'

The Hon'ble High Court of Delhi went further and granted ex-parte injunction orders against the known/unknown websites in one go. This case was one of its first kind in dealing with the case of piracy/internet counter feinting. The plaintiff has also provided the list of 107 offending websites, which was allegedly violating the right of the plaintiff. The Domain Name registrant were directed to reveal the contact and other details of the mentioned offending websites. The ex-parte injunction was granted on the following term:

'21. In light of the above, the following ad-interim orders are passed: -

(a) The defendant Nos. 1 to 31 and 52 to 70 websites, their partners, proprietors, officers, servants, employees, and all others in capacity of principal or agent acting for and on their behalf, or anyone claiming through, by or under it, and any other website identified by the plaintiffs as infringing their exclusive rights, are restrained from in any manner hosting, streaming, broadcasting, rebroadcasting, retransmitting, exhibiting, making available for viewing and downloading,

providing access to and / or communicating to the public, (including to its subscribers and users), through the internet, in any manner whatsoever, the plaintiffs' broadcast, as broadcasted / contained in its Channels Star Sports 1, Star Sports 2, Star Sports 3, Star Sports 4, Star Sports HD1 and Star Sports HD2 in relation to the 2014 India – England Cricket Series content, so as to infringe the plaintiffs' broadcast reproduction rights.”

The plaintiff namely SOCETE DES PRODUITS NESTLE.S.A filed suit against inter-alia the unknown persons seeking the relief of permanent injunction against use of NESCAFE, RED MUG logo, NESCAFE by the defendants. The Hon'ble High Court of Delhi , vide its order passed Suit bearing C.S.(O.S.) No. 3629 of 2014 titled as **SOCETE DES PRODUITS Vs MOHD. ZAHID** [13], was pleased to pass the injunction in the nature of John Orders against the unknown person. The relevant extract of the said order is as under:

'I have heard learned counsel for the plaintiffs and also perused the plaint, application and the documents filed along with the plaint. I am satisfied that it is a fit case for grant of ex parte adinterim injunction. Accordingly, till the next date of hearing, defendant nos. 1 to 3 and unnamed and undisclosed persons arrayed as John Doe/s as defendant No. 4 onwards, their servants, agents, partners, employees, assignees, distributors, licensees and dealers are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly dealing in counterfeit NESCAFE product including its packaging bearing the impugned trade marks NESCAFE, RED MUG logo, NESCAFE or its logo or any other trade marks/logo as may be deceptively similar with the trademarks NESCAFE, RED MUG logo, NESCAFE or its logo, or device of the plaintiffs in respect of their colour combination, getup, lay out and arrangements of features, which amounts to infringement of copyright and trade mark of the plaintiff.”

SANDISK CORPORATION claiming to be world's largest dedicated provider of flash memory storage solutions under the house mark SANDISK, filed suit bearing CS(OS) 3205/2014 before the Hon'ble High Court of Delhi against the defendants , whose exact identity was not known to the plaintiff. The plaintiff

alleged that those unknown persons were selling counterfeit products with the identical name SanDisk, SanDisk Logo and with an identical packaging. It was further that large numbers of stalls were set up all across the pavements at Daryaganj to sell the counterfeit SanDisk MicroSD Memory Cards with an identical packaging, as that of the plaintiff. It was a case where the exact identity of the unknown persons could not have been known as those persons were claimed to have been selling the counter-feit products on the pavements of Daryaganj Market in Delhi. The case was titled as **SANDISK CORPORATION Vs JOHN DOE**[14] and it was filed against the unknown persons, as exact identity of not a single defendant was known. The Hon'ble High Court of Delhi, vide its order dated 17.10.2014 passed the ex-parte injunction against the unknown persons on the following term:

'I am satisfied that it is a fit case for grant of ex parte ad interim injunction. In case an injunction is not granted serious prejudice would be caused to the rights of the plaintiff. Accordingly, the unnamed and undisclosed persons arrayed as 'John Doe/s' are restrained from manufacturing, selling, offering for sale, advertising, directly or indirectly, dealing in counterfeit products, which are identical to the products bearing the plaintiff's Trade mark SanDisk and logo marks and the Red Frame logo, with identical product packaging, product get-up, colour scheme, layout, overall look and feel as that being used by the plaintiff.'

The Indian movie industry is also facing serious threat from internet piracy. The movies are being uploaded even before its release. The producers of movie GREAT GRNAD MASTI namely Balaji Motion Pictures Ltd were also very much worried of piracy of the movie on the internet. The plaintiff herein filed suit against unknown web links and sought relief against the piracy of the movie. The relief sought was very broad as list of 482 web links were given by the plaintiff. The suit was titled as **BALAJI MOTION PICTURES VERSUS BHARAT SANCHAR NIGAM** [15]. The Hon'ble High Court of Mumbai, vide its order dated 04.07.2016 was pleased to grant relief to the plaintiff on the following terms:

'14. I am satisfied that this is sufficient material for the grant of the narrowed relief that Mr. Dhond now seeks. There will, 4th July 2016 BALAJI MOTION PICTURES LTD. V BSNL P1-NMSL1940-16.DOC therefore, be an ad-interim injunction in terms of prayer clause a(iv), which reads as follows:

"(a)iv. Grant an order of temporary injunction directing the Defendants to take measures to block access to the 482 urls/web links at page 63 of the Additional Affidavit dated 4th July 2016 and/or other active urls /weblinks which contain or purport to contain, an infringing or illicit copy of the said Film "Great Grand Masti" or part thereof, upon the Plaintiffs or their authorised representatives, providing details of such infringing urls/ web links to the Defendants or upon the Senior Inspector of the Cyber Police Station, Bandra Kurla Complex notifying the Defendants about the same;"

The Hon'ble High Court of Mumbai also given liberty to approach to the Plaintiff to approach the Cyber Crime Cell in case of future offending download of the movie. Thus in this matter, the Hon'ble High Court of Mumbai was pleased to expand the scope of John Doe order. This order shows the liberal approach of the Indian Courts in handling the piracy through the internet. This order was great relief to the Indian Film Industry as the Plaintiff was also given liberty for future infringement, as the internet piracy is was a big threat to the Indian Film Industry. The Indian Courts have not only recognized the concept of John Doe order, but also applied and expanded the scope thereof. The liberty given to the Plaintiff was as under:

'15. I am making it clear that the Plaintiffs will be at liberty to move against all or any of those 482 URLs if they are found to be active. In other words, it is not expected that these links should be active today at the time when this order is passed.

16. In addition, the Plaintiffs will be at liberty, without further reference to Court, but only during the time when this order is operative, to approach the Cyber Crime Cell with any other weblink or URL pointing to an individual download.

Before the Cyber Crime Cell the Plaintiffs will place such material as it has obtained verifying that download. Of course, the Cyber Crime Cell is also expected to carry out an independent assessment before acting further in the matter.”

Before the Hon'ble High Court of Kolkata, the Plaintiff namely INDIAMART INTERMESH LIMITED[16] filed Suit bearing CS No.78 of 2018 seeking injunction against the defendant no.1 to 4 from violating its right in the trademark INDIAMART by using the same as domain name. The Plaintiff further contended that the defendants are using the proprietary information/data including proprietary form, presentation, customer data base and list of suppliers for sale and advertisement of their products and thereby infringing the copyright of the Plaintiff in relation to its literary works. The Plaintiff further contended that defendant no. 5 to 26 are the impugned websites and the same are vehicles of infringement and their business model is designed and dedicated towards providing members of the public access to unauthorized contents. The plaintiff invoked the principle of John Doe order as the particulars of these offending websites were unknown. Accordingly the plaintiff sought blocking of the impugned websites. The Hon'ble Court of Kolkata was pleased to pass injunction order in favour of the plaintiff and against the offending websites. The relevant portion of the said order is as under:

'On consideration of the averments made in the petition and the materials disclosed it prima facie appears that the petitioner is the owner of the trade mark 'INDIAMART' in various forms. The petitioner also prima facie appears to be the owner of the content and other information available in its portal within the meaning of Indian Copyright Act, 1957. The infringing materials appear to be slavished imitation of the trade mark of the petitioner. The respondent nos.5 to 26 appear to be Rogue Website who are exploiting the right of the petitioner unauthorisedly and illegally. The petitioner is able to establish its proprietary right in relation to its trade mark 'INDIAMART' as also the ownership of copyright with regard to the contents as claimed in paragraph 30 of the petition. The petitioner

also disclosed its turn over at paragraph 10 of the plaint. The petitioner has stated that the petitioner is successfully providing services to more than one lakh paid clients and has received various awards which shows its immense popularity, goodwill and presence in the world market. On such consideration, there shall be an order in terms of prayers (b) and (e) of the Notice of Motion.”

The John Doe order, which was initially enforced by the British Monarchy and gradually adopted by the British, American, Canadian and Australian Court with some modification, eventually adopted by the Indian Courts also. Though the basis nature of such orders remained the same, but the Indian Courts only changed the terminology as ASHOK KUMAR. These orders were basically enforced against the unknown entities. The Courts of India not only used these orders against the unknown business persons but also the small traders , who were selling the counterfeit products on the pavements also. Such orders have been passed not only by the Hon'ble High Court of Delhi but also by various other High Courts of India. The advent of internet era witnessed rapid growth of cyber crimes, including sale of counterfeit products through the internet. Indian Film Industry also faced the problem of piracy through web sites, whose exact identities were unknown. John Doe orders proved very effective in curbing out these e-crimes through court orders.

Hon'ble High Court of Delhi and Mumbai are very much pro-active in passing such John Doe orders against such pirates and rogue websites. John Doe orders have also proved very effective in curbing out infringement through e-commercial websites. Enactment of Section 79 of the Information Technology Act 2000 can safely be considered as balancing act of the Indian Government to curb out sale of counter-feit products through the e-commercial websites and protecting the right of the Intermediaries. Recently Government of India proposed amendments in the Intermediary Guidelines Rules, 2011, made under the provision of Section 79 of the Information Technology Act, 2000. This proposed amendments sought *deployment of technology based automated tools or appropriate mechanisms, with appropriate controls, for proactively identifying and removing*

or disabling public access to unlawful information or content by the intermediary. Be that as it may, the Indian Courts have not only recognized the concept of John Doe order, but also applied and expanded the scope thereof used it as a tool not only to protect the rights of the owner of the Intellectual property rights against the unknown counterfeiters but also kept pace with fast technology and helped the Indian Film Industry against internet piracy.



ajay amitabh suman
on 04 February 2019



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