

Ashok Kumar lends name to tool against movie piracy

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Decades after veteran actor Ashok Kumar charmed movie makers and viewers alike with his natural acting and effervescent personality, his name continues to resonate in the corridors of the entertainment industry courtesy of Ashok Kumar orders. Directed against nameless defendants, these orders are a judicially created copyright enforcement mechanism to rein in rampant piracy plaguing the entertainment sector in a world where technological innovations grant protective anonymity to specific culprits.

Legal innovation

While piracy has always been an arch-nemesis for Indian film makers, the problem is exacerbated in the digital world, where culprits who can never be identified accurately, or may be identified too late to be of any use, operate behind a veil of networks. Films, after all, have a limited shell life. And while film makers are busy securing an interim injunction, pirated content goes viral courtesy of file sharing websites and the damage is already done.

Even after a favourable order from the court, film makers are not able to control piracy effectively for the simple reason that the court order may not cover every potential violator and infringer. This is where Ashok Kumar orders, also referred as John Doe orders, come in (Ashok Kumar or John Doe being pseudonym for unknown infringers and violators). Based on the premise that "if litigating finger is directed at unknown defendants, the inability to identify him by name is a mere misnomer", these orders are usually sought in a *quia timet* action before the movie release and cover both alleged and potential violators. They are particularly instrumental in preventing movie piracy through unauthorized websites, CDs or DVDs, cable networks, etc.

While these orders are a judicially created enforcement mechanism and represent legal ingenuity to combat technological anonymity, they are not entirely without statutory basis. Order 7 rule 1 of the Civil Procedure Code, 1908 (CPC), states that a plaint should state the name, description and place of residence of the defendants "so far as they can be ascertained", whereas section 151 of CPC confers on every court inherent power to make such orders as may be necessary for the ends of justice. A combined reading of these two provisions clearly indicates that courts have the power to restrain even unknown defendants in the interests of justice.

Key judicial observations

While the trend of passing John Doe orders was started by Delhi High Court, other high courts have followed suit, albeit not as regularly. The first such order was passed by Delhi High Court in *Taj Television v Rajan Mandal* to prevent unauthorized telecast of the 2002 Football World Cup by unknown cable operators. While initially these orders were directed against cable operators, with the surge in online piracy, unknown websites also came within their ambit.

In *Star India Pvt Ltd v Haneeth Ujwal*, Delhi High Court observed that to protect exclusive rights of the plaintiff against anonymous defendants such as rogue websites, blocking complete access to the entire website, rather than just the uniform resource locators (URLs), is essential.

Issuing an Ashok Kumar order prior to the release of *Happy New Year*, Bombay High Court categorically stated that that plaintiff is entitled to take action against anyone who is found to be pirating its copyright work without having

to move the court once again, and also directed the police to assist the plaintiff in restraining defendants from violating or infringing the plaintiff's copyright.

Earlier, such orders were issued before the release of *7 Khoon Maaf*, *Gangs of Wasseypur*, *Players*, *Singham*, *Don2*, *Bodyguard*, etc.

Areas of concern

While Ashok Kumar orders may not be an impenetrable shield against piracy, they do limit it or film makers and producers would not have been queuing before the courts to secure pre-release Ashok Kumar orders. However, certain grey areas need immediate attention to ensure optimal functioning of these orders. To begin with, in the absence of judicial guidelines, there is no clarity on the scope of these orders or the circumstances that merit granting them. For instance, Madras High Court has held that in cases of online piracy, Ashok Kumar orders should be limited to blocking of specific URLs while Delhi High Court subsequently has extended such orders to entire websites.

Another area that needs attention is the implementation of these orders. Insofar as the orders are applicable against unnamed entities, their implementation must be monitored properly or they may be misused to harass harmless entities. Already there are concerns that broadly worded Ashok Kumar orders are curbing internet freedom, placing onerous responsibility for curbing piracy on internet service providers, and harming bona fide users. It's time to define the perimeters of these orders or a serious challenge to their constitutionality may be in the offing.

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