

JOHN DOE: Shield became Sword

by

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ABSTRACT

The necessity to protect individual expression in a timely manner has prompted the judiciary to develop a variety of creative strategies, one of which is the use of John Doe injunctions. As the owners have always been concerned about the speed and scope by which piracy is increasing alarmingly through the internet, especially given the anonymity of IP rights infringers; these injunctions help to stop it. However, presently, its role is changing. Due to John Doe's shady implementation, they have considerably exceeded their legal scope, with the internet as the principal sufferer. The scope of 'Internet freedom' is left to the whims of these wide restrictions, endangering valid consumer interests and raising major questions about the legitimacy of indefinite crackdowns in the name of combating IP rights piracy. This article will look into the need of John Doe in shielding the creative expression of the owners and its flippantly dangerous use as a sword in curtailing the legitimate work of the internet service providers. The article shows that the laws of the country require certain reforms to guard everyone's interest/need.

About John Doe

“Such orders may be enforced against persons whose identities are unknown at the time of instituting the suit, but whose activities fall within the scope of action; if litigating finger is directed at unknown defendants, the inability to identify him by name is a mere misnomer”¹

The above-mentioned lines best describe the use of John Doe in the developing legal field of IPR. The idea behind such a remedy is that till the sword of litigation is only hanging above some identified person, the real offender is still free. It is a type of injunction granted by the courts in situations when an anonymous person is infringing on someone else intellectual property and cannot be identified at the time the suit is filed. The order acts as *Quia Timet* injunction i.e., a pre-infringement ban that protects the creator's intellectual property rights from getting harmed.² However, in the present scenario, it can be used against both known and unknown infringers. Mostly, as the defendant(s) is/are unknown and the time span is limited, John Doe orders are granted ex-parte.³ It can also be called Anton Pillar, Rolling Anton Pillar, or Ashok Kumar order. It was first passed by in the United Kingdom against the unknown defendants as an equitable remedy. The Indian courts also started to use them since the concept of Intellectual property has evolved. Its concept has changed over time to meet the needs of keeping up with unusual complications.⁴ The first John Doe order was issued by the Delhi High Court in the case of *Tej Television Ltd v Rajan Mandal*;⁵ it permitted the plaintiff to seize the devices of the unknown infringers.

Indian legal system relies on Order 39, rules 1 & 2, and section 151 of the Civil Procedure Code 1908, along with the rules of permanent injunctions of the Specific Relief Act 1963 in order to pass a John Doe order. Here, the plaintiff satisfies some conditions to get such remedy. The conditions include the three-pronged approach of claiming injunctions.⁶ To begin, the Plaintiff must prove to the Court that its legal right has been violated, citing examples of earlier breaches as well as a sporadic violation by predictable and unpredictable parties. Second, before any pre-emptive remedy can be awarded, the plaintiff must prove a prima facie case.

¹ *Tej Television Ltd v Rajan Mandal*, (2003) F.S.R. 22.

² Ajay Sharma, *John Doe Orders In India Context*, THE RMLNLU LAW REVIEW BOLG (Feb 2, 2022), <https://rmlnlulawreview.com/2017/10/25/john-doe-orders-in-indian-context/>.

³ Anonymous, *ASHOK KUMAR ORDER: THE INDIAN VERSION OF JHON DOE ORDERS*, SARIN PARTNERS, ADVOCATE & LEGAL CONSULTANTS (Mar 18, 2022) <https://sarinpartners.com/ashok-kumar-order-the-indian-version-of-john-doe-orders/>

⁴ *Supra* Note 2.

⁵ *Supra* Note 1.

⁶ Saloni Dukle, *John Doe Orders for Online Piracy: Examining the Judicial Trend in India*, 1 HNLU SBJ 47-54 (2016).

Third, the plaintiff must show that, without the proposed John Doe injunction, the infringing acts will cause economical or irreparable harm to the plaintiff.⁷ The known accused are given an opportunity to defend otherwise before being held liable. The remedy can be regarded as an advanced and judicious rights protection technique as it balances the interests of both these parties.

Need of John Doe as remedy- Advantages

John Doe Orders are meant to protect the creative thoughtful expression of an individual who has the copyright of it. Artificial intelligence and technology have not only provided a great platform for these copyright owners to showcase their expression, but it has also increased the vulnerabilities these owners experience. The risk of copyright violation and the blatant happenings of piracy has created a need for remedies like John Doe. The aspect of anonymity of the internet is used by the intellectual property rights offenders in implementing infringing activities.

Piracy has become more prevalent in numerous sectors of the media business. When a pirated version of any intellectual property is released on the internet, it attracts the general public to download it, resulting in significant financial loss to the creator. Those who circulate pirated stuff do not recompense any form of royalty to the stakeholders, nor do they pay the required duty to the government, piracy causes losses to investors.⁸ It acknowledges the short-term life of the movies, and thus, does not play “wait and watch game” in order to identify the infringers.⁹ Obtaining a John Doe injunction reduces the apprehension faced by the producers.

Detrimental use of John Doe- Disadvantages

Passing such an injunction before the commencement of any infringement has proved to be dangerous for many internet service providers. The courts, nowadays, in the name of protecting the intellectual property rights of some people, take away the same rights of others. Judgments regarding John Doe are given hastily and vaguely; for instance, following a series of rulings in the films Bodyguard, Speedy Singhs, 3, and Don 2, websites have been indiscriminately blocked, even before any illegal content has been published.¹⁰ For instance, the ambiguity, as

⁷ Manisha Singh Nair & Priya Anuragini, *Digital copyright enforcement and the relevance of John Doe orders*, CBLJ, 80-81 (2014).

⁸ Supra Note 2.

⁹ Juhi Gupta, *John Doe Copyright Injunctions in India*, 18 JOIPR 351-359, (Mar 7, 2013), <http://nopr.niscair.res.in/bitstream/123456789/20289/1/JIPR%2018%284%29%20351-359.pdf>

¹⁰ Supra Note 6.

a result, broad character of the orders was only exacerbated when the Delhi High Court for the first time used the deceptively harmless word "Internet" in giving a John Doe order to the creators of Singham without the qualifier. Since that day, the term "internet" has appeared in numerous consecutive orders, with no definition provided by the courts.¹¹ It displays an extraordinary level of arbitrariness as the orders do not specify which websites have to be blocked; this raises a question regarding the grounds on which the discretion is exercised in deciding which websites to prohibit and for how long.¹² In this schism between copyright owners and internet users, the service providers place themselves in a precarious and unappealing situation. Because the copyright owners unjustly move a load of execution of the orders to the service providers, and thus, they feel pressure to comply with the Court's orders in order to avoid potential contempt of court liability.¹³ Moreover, they sacrifice the interests of these websites by blocking them entirely, and thus increasing the risk of losing business. The major goal of John Doe Orders, to identify the genuine defendants. Whenever the defendant cannot be identified, the Court must grant an interim relief to the plaintiff. As a result, the injunction is just temporary rather than permanent.¹⁴ And, blocking the whole website indefinitely is not a type of remedy that can be considered temporary. Thus, it can be said that regardless of how important John Doe orders are to copyright holders in combating internet piracy, they are being passed and executed at an unbalanced social cost by the courts.

Consumers have been directly affected by the serious censorship of their Internet rights. Lawrence Liang, who condemns the commercial motivation behind John Doe orders, noted that while producers pray for a lack of digital mobility that might result in more people flocking to cinemas to 'legitimately' witness their film, 'netizens' are deprived of their right to access and use file sharing and other websites that permits free sharing of cultural texts digitally.¹⁵ This blanket ban bars the agreeably licensed content, which was existing for the very purpose of distribution. The insufficiency of safeguards in John Doe injunctions has harmed not only blameless internet usage that is unrelated to the piracy in the discussion, but it has also harmed consumers' fair use privileges under S. 52 of the Copyright Act, 1957, by

¹¹ *Supra* Note 9.

¹² *Supra* Note 9.

¹³ *Supra* Note 6.

¹⁴ Lokesh Vyas and Anju Bajaj, *John Doe Order: A Cogent Jurisprudence Account of Judicial Endeavours?*, 3 JOIPS 29-51, <https://journalofipstudies.org/volume-iii-issue-i/>

¹⁵ *Supra* Note 9.

denying them access to content that is frequently uploaded solely for the purpose of sharing.¹⁶ It denies public legitimate freedoms without jurisdictional or executive sanction. Such usage of these injunctions may prove to be damaging our budding intellectual property rights regime.

Conclusion

John Doe orders are effective elements for protecting copyright in times of rampant internet piracy. However, these must be put to use in a way that does not jeopardise innocent users' legitimate interests. Despite the fact that these orders are easily sanctioned to the producers, no data is accessible in the public domain as to assess its true success, as well as its application in mediums other than the internet. Thus, its true effect on the IPR realm needs to be evaluated. Additionally, since these orders are issued against anonymous websites, their enforcement should not be entrusted to copyright holders or Internet service providers, rather should be monitored by a court-appointed commissioner.¹⁷ Blocking of pirating URLs instead of blocking the whole website will cater the need of both the service providers and the creators/owners. Moreover, to curb the frivolous appeals of John Doe, penal provisions for perjury could be implemented. The interest of all the involved constituencies should be considered before passing such order, as it will keep intact the public interest and help the internet service providers too. In the end, it is evident that the remedy requires additional steps/reforms to reach its ultimate objective without harming the innocent.

¹⁶ Prabhala Achal & Liang Lawrence, A *Ludicrous Ban*, TOM, (June 1, 2012), <https://open.themagazine.com/features/india/a-ludicrous-ban/>

¹⁷ *Supra* Note 6.