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## PROTECTION OF CREATORS RIGHTS: JOHN DOE ORDER

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### INTRODUCTION

John Doe is known by different names such as Rolling Anton Pillar, Anton Pillar, Ashok Kumar order etc. It is a type of legal order used to protect the intellectual property rights of creators by providing the power to defend their work, even if the infringers identity is unknown. Simply put, it is a protective shield for creators' intellectual property rights against those who violate their rights.

The proceedings are usually ex-parte proceedings and the orders are issued for a limited period of time, bearing in mind the ambiguity of the defendants and the urgency of the matter. Accordingly, these orders have to be extended periodically.

### EMERGENCE OF JOHN DOE ORDER

The introduction and establishment of IPR prompted the Indian Courts to initiate some initiatives in copyright infringement cases. The John Doe order is one exemplary outcome of such efforts.

The idea of John Doe order dates back to the Court of Queen's Bench in the United Kingdom in the case Anton Pillar KG vs Manufacturing processes Ltd[1] where the court issues an injunction order against the unknown defendant for the purpose of preserving evidence that may be destroyed.

### ORIGIN IN INDIA

[1] *Anton Piller KG v Manufacturing Processes* Ltd [1976] Ch. 55

The concept of John Doe order has evolved with time to keep up with the complexities of the cases. John Doe orders was first originated in India in the case of Taj Television Ltd. Vs Rajan Mandal[2] where the Delhi High Court for the first time ever passed an ex-parte interim order and restrained unlicensed cable operators from unlawfully broadcasting the 2002 FIFA World Cup, thus allowing the plaintiff to search and seize equipment and devices of unknown defendants. After this order, the other courts recognized due recognition of John Doe orders in India, and followed the same trend and protected the rights of the creators of the intellectual property. A parallel adherence was reiterated in the ESPN Software v Tudu Enterprises [3]as well.

## PROCEDURE TO GET A JOHN DOE ORDER IN INDIA

One of the consequences of such efforts is the John Doe order. The John Doe order is granted under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908 (CPC)[4], read with Section 151 of the CPC [5]and Part III of Specific Relief Act, which refer to the Court's power to grant a temporary injunction, but it prevails like a permanent injunction. The statutes containing TradeMarks Act, 1999 [6]and Geographical Indications of Goods Act, 1999 [7]also contain such interim orders. There are few conditions to get a John Doe order:

1. The Plaintiff has to make the comprehensive disclosure of the rights in the work sought to be protected, how they obtained such right, earlier instances of breach and the actions taken in the same regard and their outcomes.
2. The Plaintiff must demonstrate a likelihood of infringement or reasonable likelihood of infringement.
3. The Plaintiff must make a prima facie case out in front of the court.
4. The Plaintiff has to prove to the court that if the John Order is not passed, it will cause irreparable harm and damage to the plaintiff.

Once all of the aforementioned is satisfied, a court may order a plaintiff a favourable order.

## QUIA TIMET INJUNCTIONS

Indian judiciary has realized that in numerous circumstances such orders need to be granted before the infringement take place to curb the anticipated illegal activity in the form of Quia

[2] *Taj Television Ltd. Vs Rajan Mandal* (2003) FSR 22
[3] *ESPN Software v Tudu Enterprises* (2019) SCC OnLine Del 8002
[4] Civil Procedure Code, 1908, § Order 39 Rule 1 and 2
[5] Civil Procedure Code, 1908, § 151
[6] Trade Marks Act,1999
[7] Geographical Indications of Goods Act, 1999

Timet actions. The burden of proof exists on the plaintiff is substantially higher in Quia Timet actions. This is because there is a reasonable chance that third parties (John Does) will be in a position to exploit rights that are solely plaintiff's rights.

**THE SCOPE OF JOHN DOE ORDERS**

The court has laid several rulings protecting media industry by curbing film piracy. Makers of the films Happy New Year, Bodyguard, Raaz 3 have all got John Doe orders passed for takedown of illegal activity of their works. However, John Doe orders are not confined to the case of cinematograph content alone. In Sandisk Corporation vs. Ramjee & Ors[8]., the Delhi High Court granted relief to the Plaintiff, who had filed a suit due to the widespread sale of counterfeit products, which included the exact logo and packaging used by the plaintiff. Similarly, In Ardath Tobacco Company Ltd. vs. Mr. Munna Bhai[9], the defendants were injuncted from selling counterfeit cigarettes using the plaintiff's trademark.

**CONTROVERSIES WITH JOHN DOE ORDERS**

There is much controversy surrounding about how this order should be used. The orders give a power to the authorities to act against a person/body even if not identified. They have been criticized on these grounds that they violate a provision of the Civil Procedure Code, 1908, which requires identification of the defendants. Besides, they are controversial because they are ambiguous and may be an infringement of free speech. Furthermore, the lack of a uniform legislation for Internet Service providers (ISPs) to follow in blocking websites in accordance with the John Doe orders can allow authorities to use discretionary powers and hence the potential for abuse. Thus, it is important that such orders be reserved for exceptional cases in which the impact on the constitutional rights of ISPs does not outweigh the harm to the rights of the creators of the copyrightable work: The use of orders of John Doe in the context of online piracy is a major issue that has been discussed in India.

Criticisms include for their "wider" scope that can sometimes lead to blocking of the legitimate websites that might be used for purposes other than infringing. A Division Bench of the Delhi

[8] *Sandisk Corporation vs. Ramjee & Ors* CS(OS) 3205/2014
[9] *Ardath Tobacco Company Ltd. vs. Mr. Munna Bhai* 2009 (39) PTC 208 (Del.)

High Court took cognizance of the same and in Star India v. Sujit Jha and Ors [10]ruled that blocking any pre-emptively website would not be appropriate and only certain URL links could be blocked.

## CONCLUSION

It can be concluded that the nature of John Doe Orders signifies an evolving landscape. The nascent jurisprudence of John Doe Orders in India signifies that complexities surrounding these orders will likely continue to be the subject of legal challenges. In some situations, they have proved to be successful in safeguarding IP owners' rights but yet a more robust approach is necessary. Therefore, it is crucial for the courts to take into account the rights of all the parties involved, involving the rights of creators, ISPs and the general public. Balancing the judicial decisions with the constitutional rights of ISPs is significant for the sustenance of the provisions in safeguarding the intellectual property against unknown infringers.

[10] *Star India v Sujit Jha and Ors* (CS (OS) 3702/2014)