



Negative equality not a defence in light of vast scale of piracy

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This recent decision of the Delhi High Court is significant for right owners who conduct anti-piracy campaigns especially in respect of unlicensed software. Symantec, Autodesk and Adobe had initiated legal proceedings against the defendants for using pirated/unlicensed copies of their software. The plaintiffs employed an investigator to discover the scale of piracy and the investigation findings were the basis for grant of an interim injunction against the defendants' unauthorised use of unlicensed software. In its recent order, the Delhi High Court found no fault with the investigative techniques employed by the plaintiffs while noting that a failure to collect sufficient evidence to establish infringement may have caused plaintiffs to fall short of satisfying the burden of proof demanded by courts. Infringers "will never, on straight questioning, give straight answers", the court proffered. It also found little merit in the defendants' plea that these investigative techniques amounted to entrapment, noting that the defendants' use of pirated software was an exercise conducted in secret and with full awareness of the illegality of their acts. The precautions adopted by the defendants to avoid detection only served to highlight their connivance. The court opined that what seemed like "picking and choosing" of persons against whom the plaintiffs pursued claims was in fact a function of the vast scale of piracy and copyright infringement, which made it untenable for rights holders to initiate proceedings against each infringer. The defendants could not therefore claim negative equality as a defence and the plaintiffs were within their rights to choose entities whose prosecution would be of substantial benefit or deterrence. The court also quelled the defendants' attempts to summon the plaintiffs' constituted attorney finding that the defendants had failed to clarify the relevance of his testimony and not provided any other reasons. *Symantec Software Solutions Pvt. Ltd. & Ors. v R. Modi & Ors.*

