

IPR in Media and Entertainment industry

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Topics

Trade Marks, Copyright and other IP

Domain Name Disputes

Impact of Digital Piracy

Digital Piracy in India

Types of Software License

Software Piracy

Digital Piracy in Entertainment Industry

Graduated Response

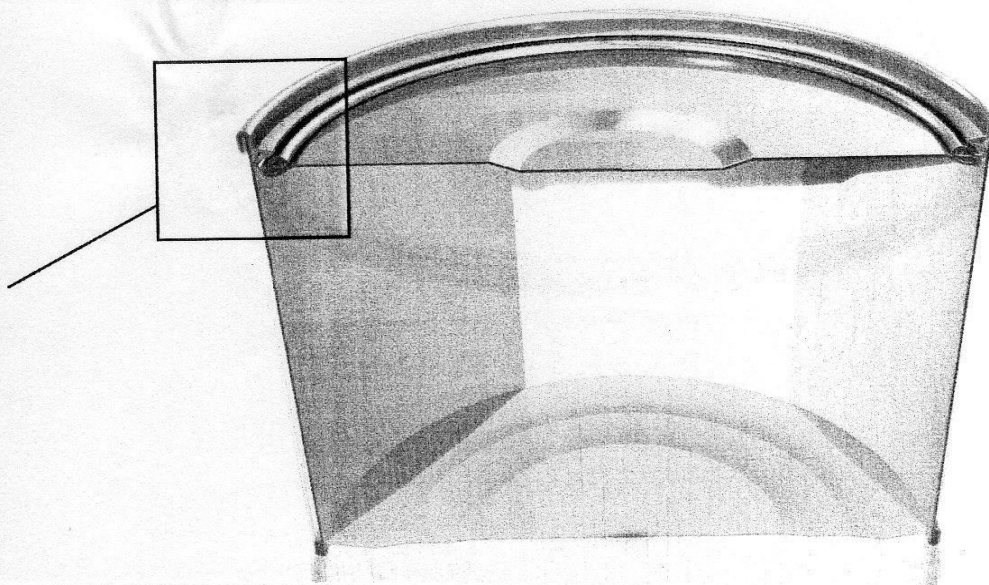
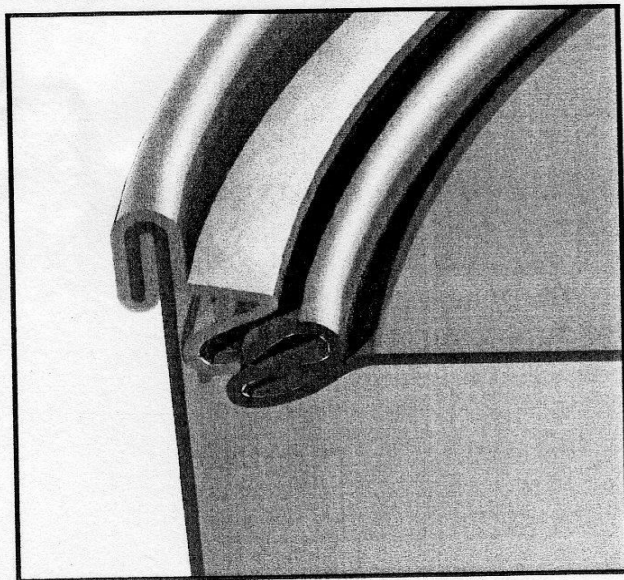


Kakumelo– Square Watermelon

- Students of the Atsumi Agricultural High School, developed a square watermelon as a specialty for the region of Atsumi which is know for its melons.
- The students after trying for 5 years succeeded in making the desired 'kakumelo' which completed registration for trademark in 2005. In January 2007 they obtained a patent.

Double-safety Can End.

Details of double-safety structure



Enlarged cross section with double-safety structure



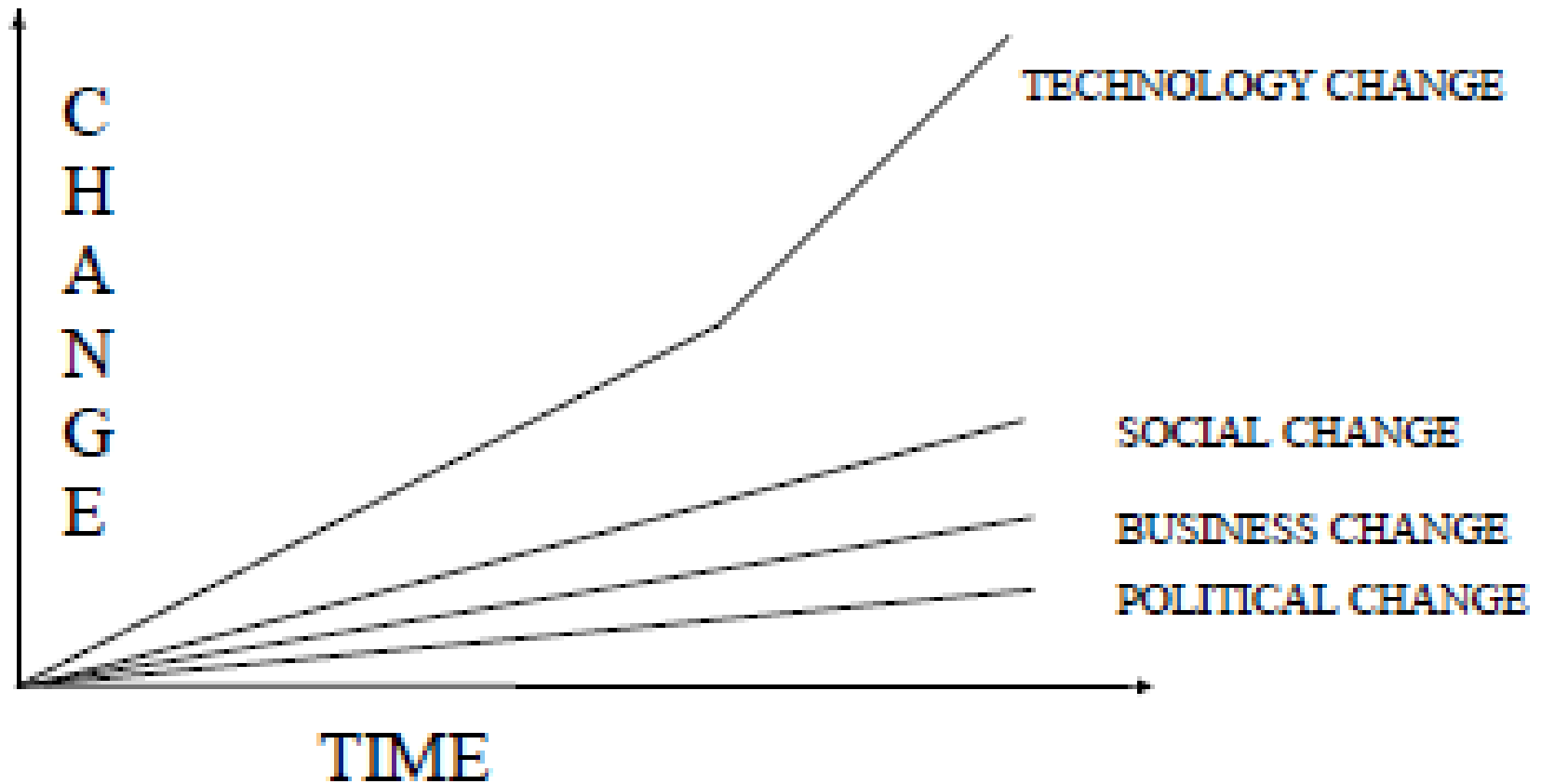
Adoption of Double-safety can End structure.

Ultra-safe mold design has led to mass-production
using any type of steel materials.

INTRODUCTION

- Pre 1990: People are not connected
- 1990: Connecting People to Information
- 2000: Connecting People to People
- 2010: Everything is connected

INTRODUCTION



THE OLD WORLD



THE NEW WORLD



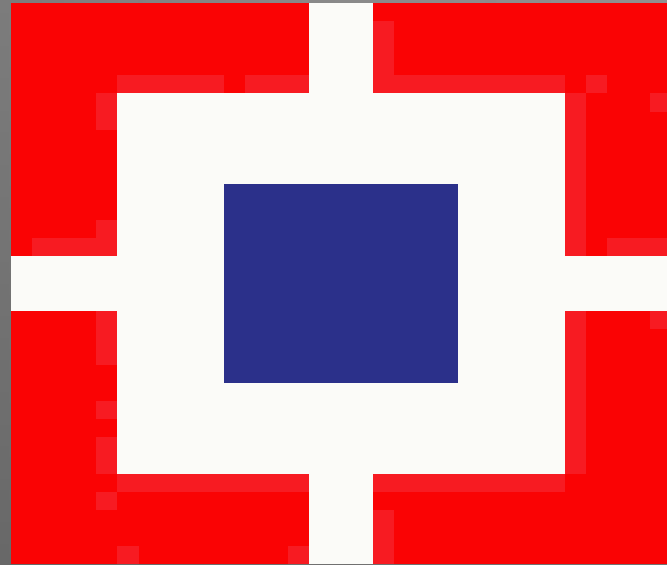




McAloo Tikki™

McAlooTikki™









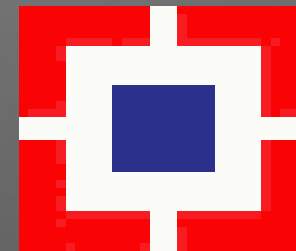
Hindustan Unilever Limited

Just do it

What is a Trade Mark?



Just do it



Life without Branding



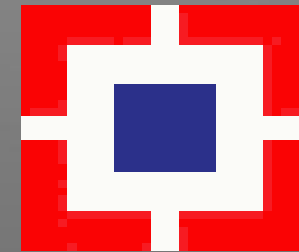
Brand Power



What is a Trade Mark?

Trade Mark is a mark capable of

- ▶ being represented graphically and
- ▶ distinguishing the goods or services of one person from those of others.

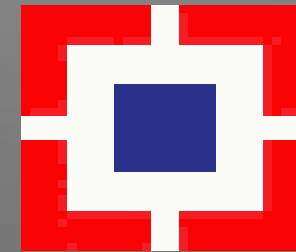


Just do it



What is a Trade Mark?

- Mark is a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.
- Trade Mark provides an identification of the source of
 - Goods or its manufacturer
 - Services or its provider

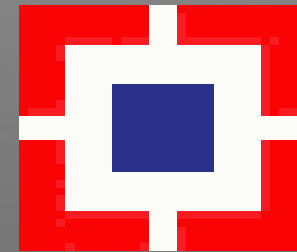


Just do it



What is a Trade Mark?

- ▶ In nutshell, TM is a "badge" of trade origin and used as a marketing tool so that customers can recognize the product/service of a particular trader.



Just do it



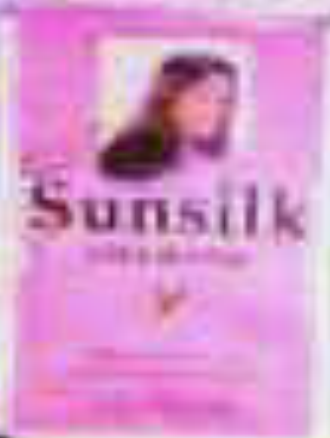
One Mark, One Source and One Proprietor

The Supreme Court of India in the case of Power Control Appliances v. Sumeet Machines Pvt Ltd 1994 (2) SC 448 : 1995 (15) PTC 165(SC) laid down that:

“It is a settled principle of law relating to trade mark that there can be only one mark, one source and one proprietor. It cannot have two origins.”

COUNTERFEIT

PASS-OFF



ORIGINAL

ORIGINAL

COPYRIGHTS

- Protects the expression of an idea in a material form rather than the idea itself.
- Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings.
- In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.

PATENT

- Patent protects idea...whereas copyright protects express of idea.
- Patent is a grant given by the Government to an inventor for having made an invention. Once granted, a patent gives the inventor the right to exclude others from making, using, selling, importing or offering for sale the invention for the duration of the patent term.
 - In India, the term of the patent is 20 years from the date of filing the Non Provisional Patent application



Industrial Designs

- An ID is the ornamental or aesthetic aspect of a useful article, which must appeal to the sense of sight and may consist of the shape and/or pattern and/or colour of article.
- An industrial design to be protectable, must be new and origin.

Geographical Indication (GI)

- It is an indication.
- It originates from a definite geographical territory.
- It is used to identify agricultural, natural or manufactured goods.
- The manufactured goods should be produced or processed or prepared in that territory.
- It should have a special quality or reputation or other characteristics.

Example of GI



Domain Names

- VacationRentals.com: \$35 million
- PrivateJet.com: \$30 million
- Insure.com: \$16 million
- Sex.com: \$14 million
- Hotels.com: \$20 million

Source: <http://www.businessinsider.in/Evolution-of-Domains-Learn-how-to-earn-by-being-a-Domainer/articleshow/54737092.cms>
(Accessed on November 14, 201)

Domain Names

- A domain name is the address of a web site (after “WWW” and before “.com”/“.in”)
- .com domain name disputes are governed by the Uniform Domain–Name Dispute–Resolution Policy (UDRP) and is overseen by World Intellectual Property Organisation (WIPO) and .in domain name disputes are governed by the .IN Dispute Resolution Policy (INDRP) and is overseen by the National Internet Exchange of India (NIXI).

IN Domain Name Dispute Resolution Policy VIS-A-VIS

Uniform Domain Name Dispute Resolution Policy

- 4 (i) The Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- “NAME” is included in INDRP

Identical or Confusingly Similar Trade Mark

- Domain name <yahooindia.com> was found identical or confusingly similar to trademark “Yahoo!”

(Yahoo! Inc. vs Akash Arora & Anr. 1999 IAD Delhi 229, 78 (1999) DLT 285)

- Domain name <cellularonechina.com> was found identical or confusingly similar to trademark “CELLULARONE”

(Cellular One Group v. Paul Brien WIPO case no. D2000-0028)

- Domain name <walmartcanada.com> was found confusingly similar to trademark “WAL-MART”

(Wal-Mart Stores Inc. v. Walmarket Canadian WIPO case no. D2000-0150.)

Identical or Confusingly Similar Trade Mark

- Specific top level domain, such as “.com”, “.in”, “.firm”, “.net” or “.travel”, does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.
- By mere addition of the word “India” or “China” or “Canada” adjacent to the Complainant's trademark and Domain Name do not alter these conclusions.

IN Domain Name Dispute Resolution Policy

VIS-A-VIS

Uniform Domain Name Dispute Resolution Policy

4 (ii) the Respondent has no rights or legitimate interests in respect of the domain name

IN Domain Name Dispute Resolution Policy VIS-A-VIS

Uniform Domain Name Dispute Resolution Policy

- 4 (iii) the Registrant's domain name has been registered or is being used in bad faith.
- Instead of “AND” ... “OR” is used in INDRP

Digital Piracy

- ▶ The most basic right of copyright holders is the right to reproduction, in any manner or form.
- ▶ In 1982, at a meeting of government experts co-organized by WIPO and UNESCO, a broad-based understanding was reached that uploading into a computer memory should be considered as an act of reproduction.

Digital Piracy

- ▶ Digital content is particularly vulnerable to piracy because making and sharing (or selling) copies is easy and inexpensive.
- ▶ Material available on the Internet is not copy left for copy... but subject to copyright. Unauthorised copying is a non-bailable offence and the Police has the right to arrest you without warrant.

Infringement of Copyright

Digital content is particularly vulnerable to piracy because making and sharing copies is very easy and inexpensive.... With the help of computers and the Internet you can create multiple copy of the original work and distribute the same to many by click of a button...hence Internet is the world's biggest copy machine.

—See “It’s the World’s Biggest Copy Machine,” PC week (January 27, 1997).

Impact of Digital Piracy

- ▶ Widespread copyright theft continues to be the most significant barrier to the development of a legitimate digital music business and creative industries including movies, publishing and television.
 - ▶ Pre-release copies of Wolverine were downloaded 100,000 times in 24 hours after a leak in April 2009.
 - ▶ In 2008, seven million copies of Batman: Dark Knight were downloaded on BitTorrent.
 - ▶ 'Kaminey' is estimated to have been downloaded over 350,000 times on BitTorrent with around two-thirds of those downloaders located in India.

Impact of Digital Piracy

- ▶ Digital piracy is a global phenomenon which not only adversely affects the legitimate commercial rights of the copyright owners but also deprives the government of its tax revenues.
- ▶ Oxford Economics estimates losses to film piracy at £600 million and predicted that tackling the problem would create nearly 8,000 jobs and more than £150 million in tax revenues.

Impact of Digital Piracy in India

- ▶ The study--"The Effects of Counterfeiting and Piracy on India's Entertainment Industry"--prepared for USIBC by Ernst & Young India, shows as much as Rs16,000 crores are lost each year due to piracy.
- ▶ As many as 800,000 direct jobs are also lost as a result of theft and piracy, afflicting India's entertainment industry.

Digital Piracy in India

- ▶ India is among the top ten countries in the world with highest number of online piracy cases, which pose a big threat to the country's film and television industry, according to a research commissioned by the Motion Picture Distributors Association (MPDA).
- ▶ India was the fourth largest downloader behind US, Britain and Canada.

Free-to-user

- ▶ “Free-to-user” appeal of illegal file-sharing creates unfair advantage over legitimate music services.
- ▶ Although, copyright piracy is a crime but end-users under the “free-to-user” concept’s influence does not perceived it as a crime.
- ▶ This has perhaps the biggest challenge associate with digital piracy, which can be effectively countered by the graduated response mechanism.

Impact of Piracy in India

- It cost Rs. 4,000 crores, every year to companies.
- Loss of revenue to government to the tune of Rs. 900 crores, every year.

- An AC Nielsen Study

Hard Facts

- Worldwide, for every two dollars' worth of software purchased legitimately, one dollar's worth was obtained illegally.

- 2007 Global Software Piracy Study by BSA & IDC

- 90 % (or more) counterfeit and pirated goods are manufacture and distributed in Asia.

-“The investigation into the damages from counterfeits in 2002 fiscal year” by Japan Institute of Invention & Innovation

Hard Facts

- Piracy rate in 2013
 - 42 % - worldwide
 - 60 % - India

Some More Hard Facts...

- If India's PC software piracy rate were to be lowered 10 percentage points over the next four years,
 - ▣ creating an additional 43,700 jobs,
 - ▣ \$3.1 billion in local industry revenues, and
 - ▣ \$208 million in additional tax revenues for federal, regional, and local governments.
- IDC Piracy Impact Study, 2008

	UNLICENSED SOFTWARE INSTALLATION RATES				COMMERCIAL VALUE OF UNLICENSED SOFTWARE (\$M)			
	2013	2011	2009	2007	2013	2011	2009	2007
ASIA PACIFIC								
Australia	21%	23%	25%	28%	\$743	\$763	\$550	\$492
Bangladesh	87%	90%	91%	92%	\$197	\$147	\$127	\$92
Brunei	66%	67%	67%	67%	\$13	\$25	\$14	\$13
China	74%	77%	79%	82%	\$8,767	\$8,902	\$7,583	\$6,664
Hong Kong	43%	43%	47%	51%	\$316	\$232	\$218	\$224
India	60%	63%	65%	69%	\$2,911	\$2,930	\$2,003	\$2,025
Indonesia	84%	86%	86%	84%	\$1,463	\$1,467	\$886	\$411
Japan	19%	21%	21%	23%	\$1,349	\$1,875	\$1,838	\$1,791
Malaysia	54%	55%	58%	59%	\$616	\$657	\$453	\$311
New Zealand	20%	22%	22%	22%	\$78	\$99	\$63	\$55
Pakistan	85%	86%	84%	84%	\$344	\$278	\$166	\$125
Philippines	69%	70%	69%	69%	\$444	\$338	\$217	\$147
Singapore	32%	33%	35%	37%	\$344	\$255	\$197	\$159
South Korea	38%	40%	41%	43%	\$712	\$815	\$575	\$549
Sri Lanka	83%	84%	89%	90%	\$187	\$86	\$77	\$93
Taiwan	38%	37%	38%	40%	\$305	\$293	\$227	\$215
Thailand	71%	72%	75%	78%	\$869	\$852	\$694	\$468
Vietnam	81%	81%	85%	85%	\$620	\$395	\$353	\$200
Other AP	91%	91%	90%	91%	\$763	\$589	\$303	\$56
TOTAL AP	62%	60%	59%	59%	\$21,041	\$20,998	\$16,544	\$14,090

IMPORTANCE OF COPYRIGHT

- 43 percent of the software installed on personal computers around the world in 2013 was not properly licensed.
- The commercial value of these unlicensed software installations was \$62.7 billion.
- The importance of using genuine, properly licensed software will remain as important as ever — particularly as cybersecurity threats proliferate.

Top 20 Economies in Commercial Value of Unlicensed PC Software, 2013

Country	Unlicensed Value (\$M)	Licensed Market (\$M)	Unlicensed Rate
United States	\$9,737	\$44,357	18%
China	\$8,767	\$3,080	74%
India	\$2,911	\$1,941	60%
Brazil	\$2,851	\$2,851	50%
France	\$2,685	\$4,773	36%
Russia	\$2,658	\$1,629	62%
Germany	\$2,158	\$6,834	24%
United Kingdom	\$2,019	\$6,394	24%
Italy	\$1,747	\$1,970	47%
Indonesia	\$1,463	\$279	84%
Japan	\$1,349	\$5,751	19%
Mexico	\$1,211	\$1,032	54%
Canada	\$1,089	\$3,267	25%
Spain	\$1,044	\$1,276	45%
Venezuela	\$1,030	\$140	88%
Argentina	\$950	\$427	69%
Thailand	\$869	\$355	71%
Australia	\$743	\$2,795	21%
South Korea	\$712	\$1,162	38%
Vietnam	\$620	\$145	81%

Hackers' new tool: Nude video of star sportscaster

London: A computer security site has issued a warning that hackers are mis-

using a video that has naked shots of glamorous ESPN sports reporter Erin Andrews as a lure to attack PCs. The illegally taped peephole video, showing Andrews as she disrobes, gets viewers and web surfers to download dangerous malware to their computers, reports CBS News.

The sportscaster wants the cameraman brought to justice, both for herself and to keep other victims from having to go through the same nightmare. Andrews' lawyer, Marshall Grossman, confirmed she was "surreptitiously videotaped" while "in the privacy of her hotel room".

The video went viral online and

ESPN lawyers have been scrambling to shut down websites that post links to the material.



Erin Andrews

According to sophos.com, a website that sells security software and also provides security news, it is that drive that is enabling hackers to plug in. Sophos said one version of the hack, fools surfers into clicking on what appears to be a CNN version of the video. When users hit the play button, they are presented with a pop up window warning them that their popup blocker has blocked the video player window, and they must launch another player.

Doing so doesn't play the video, but it does install a Trojan horse with which hackers can later attack the computer, says the site. ANI

Hackers had used the illegally taped **peephole video of Erin Andrews** as a lure to infect user machine with **malware**.

Times of India dated 22-07-2009 page 7

IMPORTANCE OF COPYRIGHT

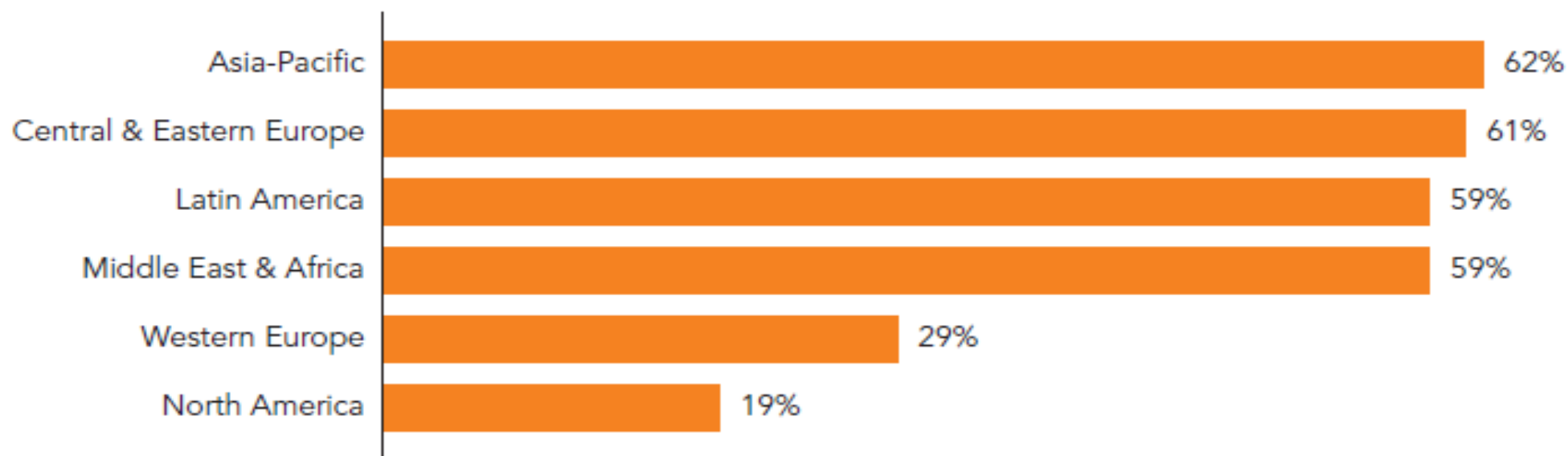
A large majority of IT managers (62 percent) cited security threats from malware as the chief reason not to use unlicensed or mis-licensed applications.

Top IT Manager Concerns About Malware

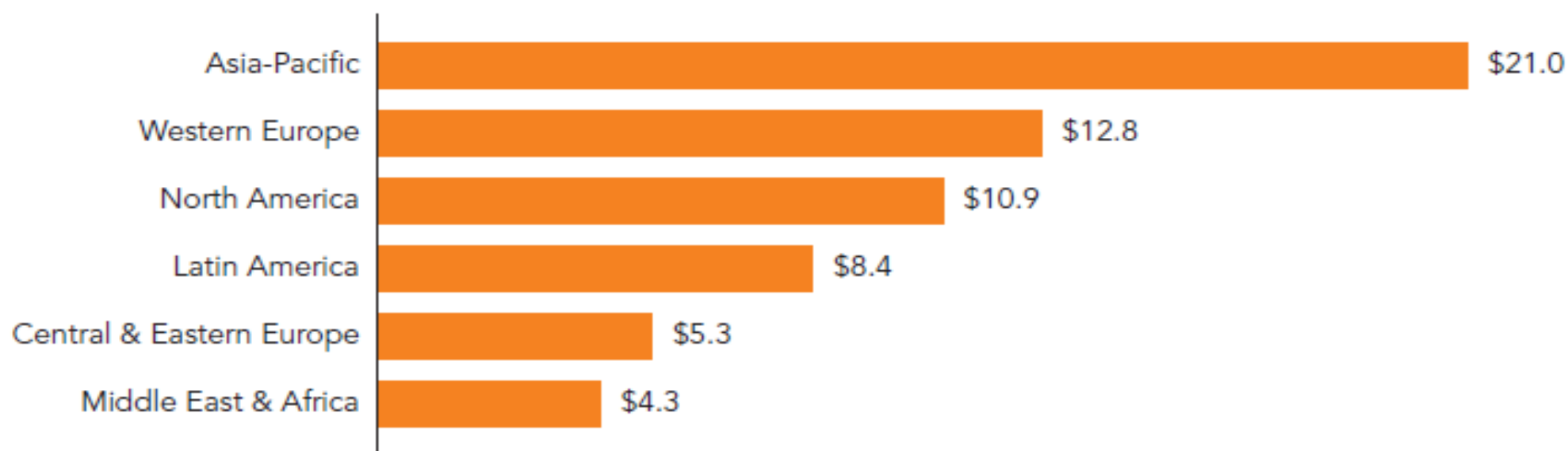


Share of IT Managers Ranking the Concern in Their Top 3

Average Rate of Unlicensed Software Use



Commercial Value of Unlicensed Software Use (in Billions)



Types of Software License

- ▶ Time-based
- ▶ User-based
- ▶ Feature-based
- ▶ Location -based
- ▶ Paid/freeware

Extract of SAP's email to its Client

It appears you are under impression that multiple logon to SAP Software does not amount to violation of the terms and conditions of the License Agreement.

If a customer purchases licenses for software licensed on a Named User basis, then the customer will need to purchase one license for every person in the customer's organization that requires access to the software.

Software Piracy

- ▶ Without any license or payment, whatsoever
- ▶ Violation of license terms
- ▶ Software Piracy raids
- ▶ Notice from the existing software vendor.
- ▶ Learning: buy license software or start using freeware such as linux etc.

Infringement of Copyright

Material available on the Internet is not copy left for copy... but subject to copyright. Unauthorised copying is a non-bailable offence and the Police has the right to arrest you without warrant.

Digital content is particularly vulnerable to piracy because making and sharing copies is very easy and inexpensive.... With the help of computers and the Internet you can create multiple copy of the original work and distribute the same to many by click of a button...hence Internet is the world's biggest copy machine.

–See “It’s the World’s Biggest Copy Machine,” PC week (January 27, 1997).

Emmanuel Nimley jailed for six months: recorded the latest releases on his phone and put them on a film piracy website.

Learning: Digital Piracy

1. Do not upload copyrighted materials of others (software, movies, songs, pictures content etc) without permission.
2. Do not download copyrighted material from unauthorised source. You end up downloading virus, apart from being criminally liable for unauthorised downloading and violating copyright.

Graduated Response Legislation

- ▶ Under the graduated response mechanism,
 - Internet Service Providers (ISPs) will monitor net surfing activities of its subscribers...
 - warn them about copyright infringement ...
 - if subscriber fails to comply despite of several warnings then ISPs can have right to suspend its subscriber's internet access.

Graduated Response Legislation

- ▶ Consumer surveys in different countries shows that the graduated response would effectively influence consumer behaviour while affecting only a small minority of people.
- ▶ IPSOS research, conducted in France in May 2008, found that 90 per cent of consumers would stop illegal file-sharing on receipt of a second warning from their ISP as part of a graduated response programme.
- ▶ According to a 2009 study by Entertainment Media Research, 45 per cent of consumers who downloaded music illegally would stop if a graduated response model was implemented. A further 35 per cent claimed they would probably stop.

Graduated Response Legislation

- ▶ Digital music industries of Sweden and South Korea had clocked a record growth in sales after introduction of the graduated response legislation.
- ▶ All over the World, ISPs are mandated to exercise the greater control over its subscribers but in India we had taken a contrarian approach!

IT (Amendment)Act, 2008

- ▶ The Information Technology (amendment) Act, 2008 absolves intermediaries (which include ISPs) from the various duties in order to avoid a fiasco like Baazee.com.
- ▶ Subject to certain conditions, an intermediary shall not be liable for any third party information, data, or communication link hosted by him (Section 79 of the IT Act)

- ▶ “We must stay smarter than the criminals, develop partnerships with other industries and law enforcement bodies, and embrace new technologies”
 - Iain Grant, IFPC, Head of Enforcement
- ▶ And new laws...We should bring graduated response legislation to curb digital piracy in India.

References

- ▶ See “It’s the World’s Biggest Copy Machine,” PC week (January 27, 1997).
- ▶ IFPI Digital Music Report 2008 and available at www.ifpi.org/content/library/dmr2008.pdf
- ▶ A False Bargain: The Los Angeles County Economic consequences of counterfeit Product, prepared by Gregory Freeman, Nancy D Sidhu and Michael Montoya (February 2007) and available on http://www.oit.umd.edu/PlayFair/materials/2007_piracy-study_LA.pdf
- ▶ IFPI Digital Music Report 2010 IFPI Digital Music Report 2010 and available at www.ifpi.org/content/library/DMR2010.pdf
- ▶ Piracy in India’s entertainment industry causes huge losses to economy published on [livemint.com](http://www.livemint.com) and available at <http://www.livemint.com/2008/03/31121923/Piracy-in-India8217s-entert.html>
- ▶ Online piracy: India in top 10 list published on [rediff.com](http://business.rediff.com) and available at <http://business.rediff.com/report/2009/dec/16/tech-online-piracy-india-in-top-10-list.htm>
- ▶ See the Recording Industry Association of America (RIAA)’s Webcasting FAQ
- ▶ Graduate who used iPhone to record blockbusters inside cinema is jailed for six months in landmark ruling Published on Mail Online <http://www.dailymail.co.uk/news/article-1313016/Graduate-used-iPhone-record-blockbusters-cinema-jailed-months-landmark-ruling.html>

Thank You

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