



# COPYRIGHT ENFORCEMENT TOOL KIT



**POLICE HANDBOOK**





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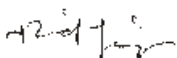
## Foreword



Copyright is a right given by law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recording s. Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Indian copyright law is one of the strongest and best in the world. Creativity being the keystone of progress no civilized society can afford to ignore the basic requirement of encouraging its growth and progress. Economic and social development of a society is directly linked to creativity. The protection provided by copyright to the creative productions of writers, artists, designers, dramatists, musicians, architects and producers of sound recording, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more, and motivates others to create. It is in this context that the enforcement of Copyright and related rights is of utmost importance for the sustainable growth of the national economy.

The Intellectual Property Rights (IPR) Division at FICCI is intensively involved with issue pertaining to protection and enforcement of Copyrights. This Copyright Enforcement Tool Kit has been developed to serve as a ready reckoner for the enforcement agencies to deal with Copyright related crimes.

I would like to thank FICCI's IPR committee members, who have provided valuable inputs for this project, and knowledge partners "Inttl Advocure" who have contributed considerably towards the development of the Copyright Enforcement Tool Kit. I also take this opportunity to thank the Economic Offences Wing, Delhi Police for their inputs and experiences which played a pivotal role in development of the Tool Kit

A handwritten signature in black ink, which appears to read "A. Didar Singh".

**Dr. A. Didar Singh**  
Secretary General  
FICCI



## Check List for Police

### I. Investigation relating to Counterfeiting or Piracy cases.

If a Complaint discloses commission of a cognizable offence related to Copyright and Trademarks following is the laid down procedure for the guidance of the investigating officer.

#### a. Admit IPR Complaints

Accept complaints from Copyright owners, their legal representatives, Power of attorney holder possessing duly legalized or Apostilled under the Hague Convention and a valid identity proof of him. Copyright registration certificates from any Berne Convention Country should be accepted as a valid certificate for Copyright ownership to file a complaint.

#### b. Record

Record the statements of the complainant or the informant in detail.

#### c. Questionnaire for the informant/complainant

- i. Whether Copyright (Video/Audio/Publishing/Performing/Broadcasting) or Trade Mark (Use/license/assignment rights) rights or licenses pertaining to the subject matter being infringed were granted to anyone?
- ii. Proof of any such license/assignment or transfer of rights shall be requisitioned. Notarized copies could also be obtained upon the willingness of the complainant to produce the certified copies at a later stage, anytime before filing of the charge sheet.
- iii. Certificates or Certified Copies from Government Authorities such as the Central Board of Film Certification are be requisitioned and the police officer shall prima facie verify if the owner of the Copyright has complied the requirements under Section 52A of the Copyright Act which requires the publisher of a video film or sound recording to display on the video film/sound recording, copy of the

Certificate granted by the Board of Film Certification, the name and address of the person who made the film/sound recording, the name and address of the owner of the copyright in such work etc.

**d. Status of Registration.**

Police officer shall ascertain the status and veracity of Trade Mark or Copyright or other IPR registration from the online database made available by the concerned department like the Trade Mark registry, through [www.ipindia.nic.in](http://www.ipindia.nic.in)

**e. Grounds to be recorded.**

Before approaching the premises to be raided or where search or seizure is to be conducted, the grounds of belief and reasons for conducting the same shall be recorded in writing.

**f. Preliminary Information.**

Do collect preliminary information about the infringer, the infringing premise/spot, the number of infringers, the nature of the premises etc., before conducting the search or seizure.

**g. Search and Seizure.**

***i. Procedure and Panch witnesses.***

Follow the rules provided under Code of Criminal Procedure, 1973 in conducting search and seizure. Secure the presence of the owner of the entity/shop/house premises, employees, neighbors and official panch witnesses at the time of conducting such search/seizure and also obtain their signatures. The description of place of offence must be mentioned in the Panchnama.

***ii. Seizure, Confiscation and Acknowledgement of articles taken into custody.***

- Police Personnel shall seize all the counterfeiting or infringing products available in the premises such as products with infringing, trade mark, false trade description, being imitations of clothing, handbags, shoes, watches, electronics, movies etc.



- In cases pertaining to software privacy, the police officer shall demand the End User License Agreement, License Key, Software serial numbers etc., from the user at the time of search and seizure.
- The police officer shall collect the landline telephone bill, electricity bill, Municipal or Panchayat door number and other documents which show the ownership/ Possession of the premises as that of the accused at the time of investigation and before filing of Charge Sheet. A copy of the driving license, Election identity card, Ration card, Pan Card, Passport or any other photo identity proof of the accused/accused(s) issued by the Central Government or State Government authority shall also be obtained before filing of the Charge Sheet.
- The police officer shall obtain copies of the licenses issued by the Municipality/Corporation to operate the shop/entity. Any rent deed/leave and license agreement shall also be obtained from the premises before filing of the Charge Sheet.
- The statements of the owner of the premises shall also be recorded under Section 161 of Code of Criminal Procedure 1973. The Police Personnel shall also obtain/seize all the bills/receipts/membership card (Video Libraries Association Membership Card)/register/book maintained at the video-audio shop.
- The police officer shall seize the stock/purchase register or records maintained at the shop/entity and record the number of infringing copies available at the said premises. All the properties or infringing products seized, which shall include the infringing copies, plates, broadcasting equipments and other accessories involved in manufacturing/producing the infringing copies including laptop or hard disk of machine on which Video/Audio was found to be installed or duplicated, dyes, plates, and all other products seized during the course of search and seizure shall

immediately after search and seizure be neatly and safely packed, sealed and produced before the magistrate as earlier as possible with no lapse of time.

- In cases where the infringer possess accessories such as desktops or servers in producing the infringing products, the investigation officer shall confiscate the entire product or remove and obtain the hard disk of such products. In case the police officer conducting the search and seizure finds it impractical to seize the entire hard disks he shall obtain the mirror images of the same which should contain all the data being used on the computer systems. Police Personnel shall take due care and caution in recovering the infringing materials from the spot.
- The police officer shall keep an account of the number of such confiscated infringing products and shall get the signature of the owner of the shop while removing it from the premises of the shop.
- Acknowledgement shall be given to the accused/owner of the premises where such search or seizure was conducted along with a copy of the panchnama together with relevant annexures. A list of seized articles should be furnished to the accused under Section 165 of Code of Criminal Procedure, 1973.

### ***iii. Safe transit to the Police station.***

The concerned officer shall take all due efforts to ascertain and obtain all the evidences/ proofs available at the premises during the time of investigation and shall bring it to the police station safely. There should be proper warehousing and storing of confiscated infringing goods at every police station.

## II. Post Search and Seizure steps.

- a. The investigation by police officers shall target and trace out the source of infringement and catch hold of all the infringers involved in the chain.
- b. The Investigation officer should get the challan or chart sheet Scrutinised by the Public Prosecutor. Inputs of rights owner as to the rights asserted, titled documents. License agreements etc., shall also be secured.
- c. The owner of the premises, the employees and others involved in the infringement or piracy shall be examined to ascertain and show that the accused is indulged in making/sale/distribution or dealing with reproduction of pirated audio or video CDs'/DVDs'.
- d. The investigating officer shall also pay due attention to the following special statutes in addition to Code of Criminal Procedure, 1973 while framing the charge sheet:
  - i. The Copyright Act, 1957;
  - ii. The Trademarks Act, 1999;
  - iii. Any other Act/ New Statute/Amendments/Rules/Delegated Legislation/Guidelines which shall come into force in this regard from time to time; and

***An outlook on the offences, penalties and powers of police under various Intellectual Property Statutes.***

Statute	Offence	Penalty	Cognizable/ Non- Cognizable	Search & Seizure Power	Authority/ Sanction
Copyright Act, 1957	Section 63: Offence of infringement of copyright or other rights conferred by this Act.	Imprisonment: not less than 6 months to 3 years, and Fine: not less than Rs. 50,000 but may extend up to Rs. 2 lakhs.	Cognizable	Without warrant	Police officer not below the rank of sub-inspector if he is satisfied that an offence been committed under the Act.
	Section 63B: Knowing use of infringing copy of computer programme to be an offence.	Imprisonment for a term which shall not be less than seven (7) days but which may extend to three (3) years and with fine which shall not be less Rs. 50,000, but may extend to Rs.2 Lakhs. Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned	Cognizable		

		in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to Rs. 50,000.			
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*As per Section 2 (t), “plate” includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, duplicating equipment or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which Sound recording for the acoustic presentation of the work are or are intended to be made*

Indian Penal Code, 1860	Section 415: read with Section 417  415. Cheating: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything	417: Punishment for cheating- Imprisonment for 1 year or fine or both	Non-cognizable		
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	<p>which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".</p> <p>Explanation: A dishonest concealment of facts is a deception within the meaning of this section.</p>				
Trade Marks Act, 1999	Section 103: Penalty for applying false trade mark or trade descriptions	Imprisonment for six months to three years and with fine of Rs. 50,000 to 2 lakhs	Cognizable	Without warrant	Any Police officer not below the rank of Superintendent of Police or equivalent.
	Section 104: Penalty for selling goods or providing services to which false trade mark or false trade description is applied.	Imprisonment for six months to three years and with fine of Rs. 50,000 to 2 lakhs	Cognizable	Without warrant	

	<p>Proviso to Section 115 read with Rule 110 of Trade Mark Rules</p>				<p>Opinion of the registrar on the facts involved in the offence under the proviso to Section 115(4) is to be sought before conducting Search and seizure.</p>
<p>Information Technology Act, 2000</p>	<p>S. 76 Confiscation Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, which is in contravention to any of the provision of this Act, rules, orders or regulations made there under, shall be liable to</p>				
	<p>confiscation.</p> <p>Section 80 Power of police officer and other officers to enter into search.</p>			<p>Conduct without a warrant, search and seizure in any public place who is reasonably suspected of having committed or committed or about</p>	<p>Police officer not below the rank of the Deputy Superintendent of Police or an authorized</p>

				to commit any offence under the Act.	officer of the Central or State Government.
Geographical Indications of Goods Act, 1999	Section 50: Power to conduct Search and Seizure without warrant			Search and Seize without warrant.	Police officer not below the rank of the Deputy Superintendent of Police.  Prior to search and seizure, the police officer must obtain and abide by the opinion of the Registrar.
Drug and Cosmetics Act, 1940	S. 22 (cc)			Power to examine any record, register, document or any other material object found [with any person, or in place, vehicle, vessel or other conveyance, and seize	Inspector
	Section 22(c) of the Act.			Stop and search any vehicle, vessel or conveyance, which he has a reason to believe, is being used for carrying any drug or cosmetic in respect of an offence under the Act.	Inspector

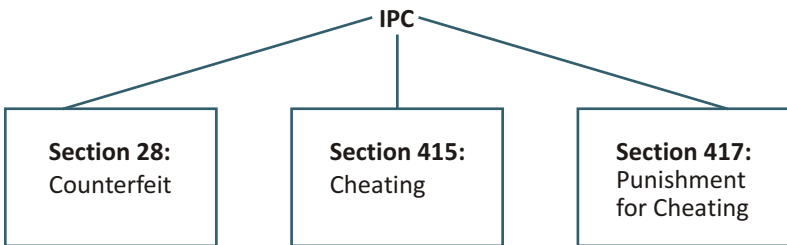


Designs Act, 2000	Section 22: Piracy of registered design, (unauthorized use/exploitation of a registered copyright in Design)	Contravener shall be liable to pay to the registered proprietor of the design a sum not exceeding Rs. 25,000 recoverable as a contract debt.			
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## POWERS OF THE POLICE OFFICERS WITH RESPECT TO SEARCH & SEIZURE UNDER VARIOUS INTELLECTUAL PROPERTY LAWS & CRIMINAL LAWS

### Criminal Law framework to deal with Counterfeiting and piracy.

- Indian Penal Code, 1860 (hereinafter, "IPC")
- The Code of Criminal Procedure, 1973 (hereinafter, "CrPC")



### Section 28

This section lays down that a person who causes one thing to resemble another thing, with an intention to deceive others, or who knows that such an act would amount to deception is said to have committed the crime of counterfeiting.

### Section 415

This section states that a person, who, fraudulently or dishonestly deceives another and induces him/her to deliver any property to any person, or to consent that a property be retained by any person or intentionally induces the person so deceived to do or omit to do anything which he/she would not do or omit if he/she were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to have committed the offence of 'cheating'.

E.g. 'A', by putting a counterfeit mark on an article, intentionally deceives 'Z' into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces 'Z' to buy and pay for the article, 'A' cheats.

Cheating is classified as a non-cognizable, but bailable offence.

### **Section 417**

A person who is convicted for cheating shall be punished either with an imprisonment the term of which may extend to one year or with fine or with both.

#### **Case Laws:**

#### **Dina Nath Kapoor vs. State (AIR 1963 All 133)**

##### **Facts:**

The applicant was a cycle dealer of Allahabad. A search was made at his shop and four cycle frames bearing the name "Herculeans", four cycle frames bearing the trade name "Philipines", one cycle frame bearing "BSC" and three cycle seats bearing the name "Brooks" were recovered. These trade marks were not the original trade marks of the various companies but had been made subsequently. The case for the prosecution was that the trade marks were counterfeit and as the various articles were in the possession of the accused for sale he committed an offence of counterfeiting.

##### **Decision:**

The Hon'ble Court observed that a counterfeit trade mark is one by means of which resemblance to a genuine article is intended to deceive or to lead a purchaser to imagine that the counterfeit is in reality the genuine article. Therefore if a trade mark of a company is put on an article belonging to or

manufactured by that company, then the trade mark is not counterfeit. An article does not cease to be the manufacture of a particular company merely because it has become old or the trade mark on it has faded.

Reliance was placed on the case *Holland Bombay Trading Co. V. Buktair Mull* (8 Cal WN 42) where it was held that only when, it is proved that an accused person has sold or exposed or had been in possession for sale or any purpose of trade or manufacture any goods or things with a counterfeit trade mark that the onus will lie on him to show that he acted honestly and did not commit an offence.

Police Officer must record all the information in the station diary of the police station which is in accordance with Section 172 Criminal Procedure Code, 1973.

### **Cognizable Offence.**

In cases under Sec. 155 of the Criminal Procedure Code when an information is given to an officer in charge of the police station of the commission of a non-cognizable offence, he has to enter the substance of the information in a book to be kept for the purpose and refer the informant to the Magistrate but he cannot under sub-s. (2) investigate such a case without the order of a Magistrate. On receiving such an order any Police officer may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an Officer in charge of police station may exercise in a cognizable case.

### **S. 100: Persons in charge of closed place to allow search (Procedure to search)**

- Whenever any place liable to search of inspection is closed, a person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search to take place.

- The search shall be made in their presence of two witnesses.
- The occupant of the place searched, or some person in his behalf, shall, be permitted to be present during the search.
- When any person is searched under this section a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

#### **S. 102: Power of police officer to seize certain property.**

- Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances, which create suspicion of the Commission of any offence.
- Every such police officer shall report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person by making such a person execute a bond to produce the property before the Court as and when required.

#### **S. 156: Police officer's power to investigate cognizable cases.**

- Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try. This section provide suo moto powers to the Police officers.
- The proceeding undertaken by the Police officers cannot be questioned on the ground that the case was of a nature which the officer was not empowered to take suo moto action on.
- Authority: However, any Magistrate of the First class is empowered to order any investigation of a cognizable offence.

**S. 157. Procedure by police upon seizure of property (Post seizure of goods):**

- Whenever the seizure of property by any police officer is reported to a Magistrate, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make order.
  - i. of the disposal of such property or the delivery of such property to the person entitled to the possession thereof,
  - ii. or, regarding custody and production of such property.
- If the person so entitled is known, the Magistrate may order
  - i. the property to delivered to him on such conditions (if any) as the Magistrate thinks fit, and
  - ii. if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six ( 6) months from the date of such proclamation.

Further Section 459 of the CrPC speaks about the power of the magistrate to dispose of perishable property which is subject to speedy and natural decay.

- if the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or
- if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or
- that the value of such property is less than ten (10) rupees, the Magistrate may at any time direct it to be sold; and the provisions of Section 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

## Cases under Indian Law

- a. ***Smt. Basavva Kom Dyamangouda vs. State Of Mysore, AIR 1977 SC 1749*** The Hon'ble Supreme Court observed that the object and scheme of the various provisions of the Code appear to be that where the property which has been the subject matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary.

As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases.

The Court further observed that that there may be two stages when the property may be returned to the Owner:

In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice.

- b. **Microsoft Corporation & Anr. Vs Mr. Dhireen Gopal & Ors., 2010 (42) PTC 1 (Del)**
- Four suits had been filed by Microsoft Corporation against four different defendants alleging violation of the copyright on the ground of suspicion that the defendants were using pirated illegally copied software of the plaintiffs at their offices/work place.

### Issue:

Whether the copyright of the Plaintiffs over the software was infringed by the defendants and the seizure order be passed?

**Decision:**

The Hon'ble Delhi High Court opined as follows:

*"The technology has advanced to an extent and a mirror image of the hard disc can be obtained and preserved. The mirror images so obtained would contain all the data being used on computer systems. The appropriate method, therefore, in all such cases where the court considers appointment of Local Commissioner necessary and seizing of infringing material necessary is a direction for preparation of mirror images of the hard disc and get such mirror images sealed on the spot so that the plaintiffs are not able to use the database of the defendants either for blackmailing the defendants or for any other purpose and the sealed mirror images are produced in the court and inspected in the court by experts of the plaintiffs to find out if there was an infringement or not and if the plaintiffs finds an infringement, he should file an affidavit after showing the mirror images to that extent and the suit should be continued further, otherwise the suit should be dismissed and the defendant should be suitably compensated by the plaintiff for making false allegations, by way of awarding cost to the defendants."*

The Court ordered the investigation to take place and allowed the appointment of the local Commissioner. It further ordered that the defendants in case were found using pirated software to cease and desist from using pirated software forthwith.

- c. *Event and Entertainment Management Association v. Union of India*, 2012 (52) PTC 380 (Del)

The Hon'ble Court had made remarks on the manner in which complaints under Section 64 of the Copyright Act are dealt with. The same is discussed hereinbelow:

1. That Police, merely on the receipt of the information or a complaint from the owner of a copyright about the infringement of the copyrighted work, is not expected to straightway affect seizure.



2. Section 52 of the Copyright Act deals with 'exceptions to infringement' and enables the person against whom such complaint is made to show that one or more of the circumstances outlined in that provision exists and that therefore there is no infringement. During the preliminary inquiry by the Police, if such a defense is taken by the person against whom the complaint is made it will be incumbent on the Police to prima facie be satisfied that such defense is untenable before proceeding further with the seizure.
3. The Court further observed that the Police Officers must now both:
  - ❖ be prima facie satisfied that there is an infringement of copyright in the complaint is made, and
  - ❖ conduct a preliminary inquiry during which, if the defense of fair dealing is raised, the police officer must be satisfied that such defense is untenable.

*Thank You*

*Federation of Indian Chamber of Commerce and Industry (FICCI), as a initiative to strengthen enforcement, requests all the readers of the handbook to share any editorial or procedural inputs that must find place in this handbook.*

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