



DATA SECURITY

Fighting with Data Thieves

Today, data is a corporate asset and data theft is a big threat that corporates face. **How does the Indian law provide for this? Here's an overview...**

BY PRASHANT MALI

In this era of Information Technology, data has become a corporate asset. It is vital raw-material for brick and mortar companies, BPOs, and technology and IT companies. Data has also become an important tool and weapon for corporates to capture larger market shares. Due to this, its security has become a major issue with all the industries. The theft and piracy of data is a threat, faced by all IT players, who spend millions to compile or buy data from the market; their profits depend upon the security of their data.

A major issue regarding data theft is its international character. The result of this is that different sovereignties, jurisdictions, laws and rules come into play, which again is an issue in itself.

Further, the collection of evidence in such circumstances become another issue, as investigation in three different countries, all of whom may not be on

In the United Kingdom, the latest cybercrime cost estimates released by the Cabinet Office showed annual losses of more than

\$43 billion.

good terms, is almost impossible, and the poor technical know-how of our investigating agencies adds to the woes. The lack of coordination between different investigating agencies and a not-so-sure extradition process is another headache. However, the biggest of all these issues is the lack of specific laws in the country to deal with this crime; so even if a culprit is caught, he can easily get away by picking any of the loopholes in our laws.

What Indian laws say...

The problem of data theft has emerged as one of the major cybercrimes worldwide. The UK has The Data Protection Act, 1984, though India and the US do not have specific laws to deal with just data protection. India has its Information Technology (Amendment) Act, 2008. The various sections of the ITA-Act, 2008 which deals with the problem are briefly discussed below.

SECTION 43: Clause (b) provides protection against downloading, copying or extracting data or database or information by imposing heavy civil compensation which can run into crores. The unauthorised downloading, extraction



ABOUT EXPERT

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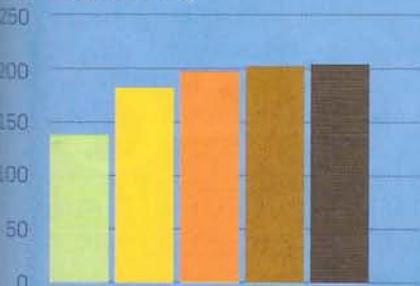
There have been at least **301 security breaches** resulting in the exposure of more than

8.2 million records in 2010

Source: ITRC

PER RECORD COST OF DATA BREACH

(Average cost per record of a data breach, 2005-2009 in \$)



and copying of data are also covered under this section. Clause (c) of this section imposes compensation for the unauthorised introduction of computer contaminants or viruses. Clause (i) provides compensation for destroying, deleting or altering any information residing on a computer or diminishing its value.

Note: Since Section 43 does talk of the exact amount of compensation, one is at the mercy of the courts and the intelligence of lawyers, as data being an intangible asset, its worth can run into millions or trillions of denominations.

SECTION 65: This provides for computer source code. If anyone knowingly or intentionally conceals, destroys, alters or causes another to do as such shall have to suffer imprisonment of up to three years or fine of up to Rs Two lakh, or both. This provides protection against tampering of computer sourced documents, i.e., copying/theft of software programmes.

SECTION 66: This section imposes the penalty of imprisonment of up to three years or fine upto Rs Five lakh or both, on the person who commits the crime of data theft.

Is data theft covered under the IPC?

Section 378 of the Indian Penal Code, 1860 defines 'Theft' as 'Whoever, intending to take dishonestly any movable property out of the possession of

any person without that person's consent, moves that property in order to such taking, is said to commit theft'.

Section 22 of the IPC defines 'movable property' as 'The words 'movable property' are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth'.

Since Section 378 only refers to 'movable property', i.e., corporeal property, and data by itself is intangible, it is not covered under this definition of 'Theft'. However, if data is stored in a medium (a CD, floppy, etc.) and such a medium is stolen, it would be covered under the definition of 'Theft', since the medium is movable property. But, if it is transmitted electronically, i.e., in an intangible form, it would not specifically constitute theft under the IPC.

Data, in its intangible form, can at best be put at par with electricity. The question whether electricity could be stolen, arose before the Supreme Court in the case 'Avtar Singh vs. State of Punjab' (AIR 1965 SC 666). Answering the question, the apex court held that electricity is not movable property, hence, is not covered under the definition of 'Theft' under Section 378 IPC. However, since Section 39 of the Electricity Act extended Section 378 IPC to apply to electricity, it became specifically covered within the meaning of theft.

The next time anyone plans to copy data or download data from their friends, clients, teachers or the employer's computer or network on a pen drive or iPod or any storage device, it would bode well to remember that it can put a person behind bars for at least three years and set them back by Rs 5 lakhs or even lead to insolvency if a compensation claim suit is also filed in a civil court, which just may run into millions. **ITNEXT**

RESOURCES

Data Security Round-Up : <http://blogs.carouselindustries.com/security/data-security-roundup-2/>