Indian Copyright Act, 1957 deals with the protection of computer software but it does not have any provision to check the piracy of software on Internet. Though several important amendments were made to the Indian Penal Code, 1860, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Banker’s Books Evidence Act by Information Technology Act, 2000 but the law of copyright remained unaffected. Some relevant provisions of Indian Copyright Act, 1957 are given as below:

**Meaning of Copyright**

Section 14 of the Act provides the meaning of copyright in following words:
For the purpose of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorize the doing of any of the following acts in respect of a work or any substantial part thereof, namely-

a. In the case of a literary, dramatic or musical work not being a computer programme,-
   i. to reproduce the work in any material form including the storing of it in any medium by electronic means;
   ii. to issue copies of the work to the public not being copies already in circulation;
   iii. to perform the work in public, or communicate it to the public;
   iv. to make any cinematograph film, or sound recording in respect of the work;
   v. to make any translation of the work;
   vi. to make any adaptation of the work;
   vii. to do in relation to a translation or adaptation of work, any of the acts specified in relation to the work in sub-clause (i) to (iv).

b. In the case of a computer programme
   i. to do any of the acts specified in clause (a);
   ii. to sell or give on hire, or offer for sale or hire any copy of the computer programme, regardless of whether such copy has been sold or given on hire on earlier occasions;
c. in the case of an artistic work,-
   i. to reproduce the work in any material form including depiction in three
      dimensions of a two dimensional work or in two dimensions of a three dimensional
      work;
   ii. to communicate the work to the public;
   iii. to issue copies of the work to the public not being copies already in circulation;
   iv. to include the work in any cinematograph film;
   v. to make any adaptation of the work;
   vi. to do in relation to any adaptation of the work any of the acts specified in relation
      to the work in sub-clause (i) to (iii).

d. in the case of a cinematograph film,-
   i. to make a copy of the film including a photograph of any image forming a part
      thereof;
   ii. to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of
      whether such copy has been sold or given on hire on earlier occasions;

e. in the case of a sound recording,-
   i. to make any other sound recording embodying in it;
   ii. to sell or give on hire, or offer for sale or hire, any copy of the sound recording,
      regardless of whether such copy has been sold or given on hire on earlier
      occasions;
   iii. to communicate the sound recording to the public.

Copyright Infringement in Cyber Space

Section 51 of the Copyright Act, 1957 lays down the provisions relation to the infringement of
copyright. It does not expressly provide as to whether such infringement occurred in
cyberspace or in physical world. If we read the language of the Section 51 along with the
Section 14 of the Copyright Act, 1957 it becomes clear that reproducing any copyrighted work,
issuing copies of the work to the public or communicating the work to the public would amount
to the copyright violation under the Act.

But, in case of linking or in-lining there is no reproduction of any copyrighted work. The
reproduction takes place at the end of the user who visits the linked page via link. Let us
explain the copyright infringement in respect of linking, framing and in-lining along with the
applicability of Indian Copyright Act, 1957 to deal with these issues.
1. **Linking**

Linking means the joining of any two web pages on Internet. A link is an embedded electronic address that points to another location and takes the user there. A link may lead either to another file in the same website, or to a file on a different computer located elsewhere on the Internet. It might be possible that a numbers of links appear on a single web page. Linking may be of two types, deep linking and surface linking. In case of Surface Linking the home page of any site is linked while Deep Linking means bypassing the home page and linking to the internal pages within the web site.

Section 2(ff) of the Indian Copyright Act, 1957 defines the term “communication to public” in the following words:

“Communication to public means making any words available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member actually sees, hears or otherwise enjoys the work so made available.”

The explanation¹ to this section further provides to include any communication through satellite or cable. Therefore, this definition covers the contents of a web site on internet by virtue of expression “by any means of display”. Therefore, linking comes within the ambit of Indian copyright law. If any linking is done to the detriment of any site, its owner can take recourse to legal remedy under Indian Copyright act, 1957.

Before linking deep in to any site it is prudent to first take the permission of the owner of site. On the other hand, in order to prevent unwanted linking the creator of web site should insert a prohibition clause in its terms of use as “**do not link to this site without any express consent on the part of the copyright holder of this site.**”

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¹ **Explanation**—For the purpose of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to public.
2. **In-lining**

The term ‘In-lining’ refers to the creation of a new web page by summoning different elements from diverse pages or servers. If any user browses this composite web page, this page will direct the browser to obtain the pictures, graphics etc. from the original sources.

In case of inline linking the user may never come to know that the contents of the composite page have not been stored at the site has being visited by him. The inline linking is not covered by the Section 14 and 51 of the Indian Copyright Act, 1957 as the person employing an inline link on his site is not causing any reproduction of the copyrighted contents. But, the definition of the ‘communication to public’ as provided under section 2(ff) of the Copyright Act can be interpreted to include ‘inline linking’ by virtue of the expression ‘by any means of display’.

On the other hand Section 14(a)(vi) of the Act grants the right of adaptation only to the author of copyrighted work. By in-lining the linking site could take some elements from the linked site’s settings i.e. pictures, text, film clips etc. and create its own site. This amounts to an infringement of adaptation rights of the author.

In-lining creates moral issues also. Section 57\(^2\) of the Copyright Act, 1957 guarantees special rights of the author of any copyrighted work which is adversely affected by the practice of in-lining. Though, the Act does not expressly provides for making in-lining illegal, but any modification or mutilation to the contents of a web site without the express permission of the owner of the copyrighted material amounts to an infringement in the eye of copyright law of India.

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2. **Section 57**

(1) Independently of the author’s copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right-

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

Provided that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer programme to which clause (aa) of sub-section (1) of section 52 applies.

*Explanation* – Failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section.
Under Indian Copyright Act, 1957 the legality of framing can be tested by applying the provisions of section 51 read with section 14 of the Act. In case of framing, the framer of the other’s site neither reproduces the copyrighted content nor making copy of the same but he provides only a visiting browser with instructions to retrieve the content of that site in to framer’s website. Therefore, the framer of site can not be held liable for unauthorized copying or reproduction of copyrighted work under Indian Copyright Act but he could be trapped under section 57(1) of the Act for infringing the right to integrity of the copyright owner.

Only owner of copyrighted work is entitled to make adaptation to such work under section 14(a)(vi) of the Indian Copyright Act, 1957. This right is adversely affected by the process of framing because the framing site acquires some elements from the multimedia settings of the framed site(s) and creates its own web pages(s). Now, it is the primary responsibility of our courts to look in to the intention of the framer in order to test the legality of framing.