

Role and Responsibility of Internet Intermediaries under Copyright: Indian Position

WIPO-ISOC

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Dr. Raman Mittal

Associate Professor

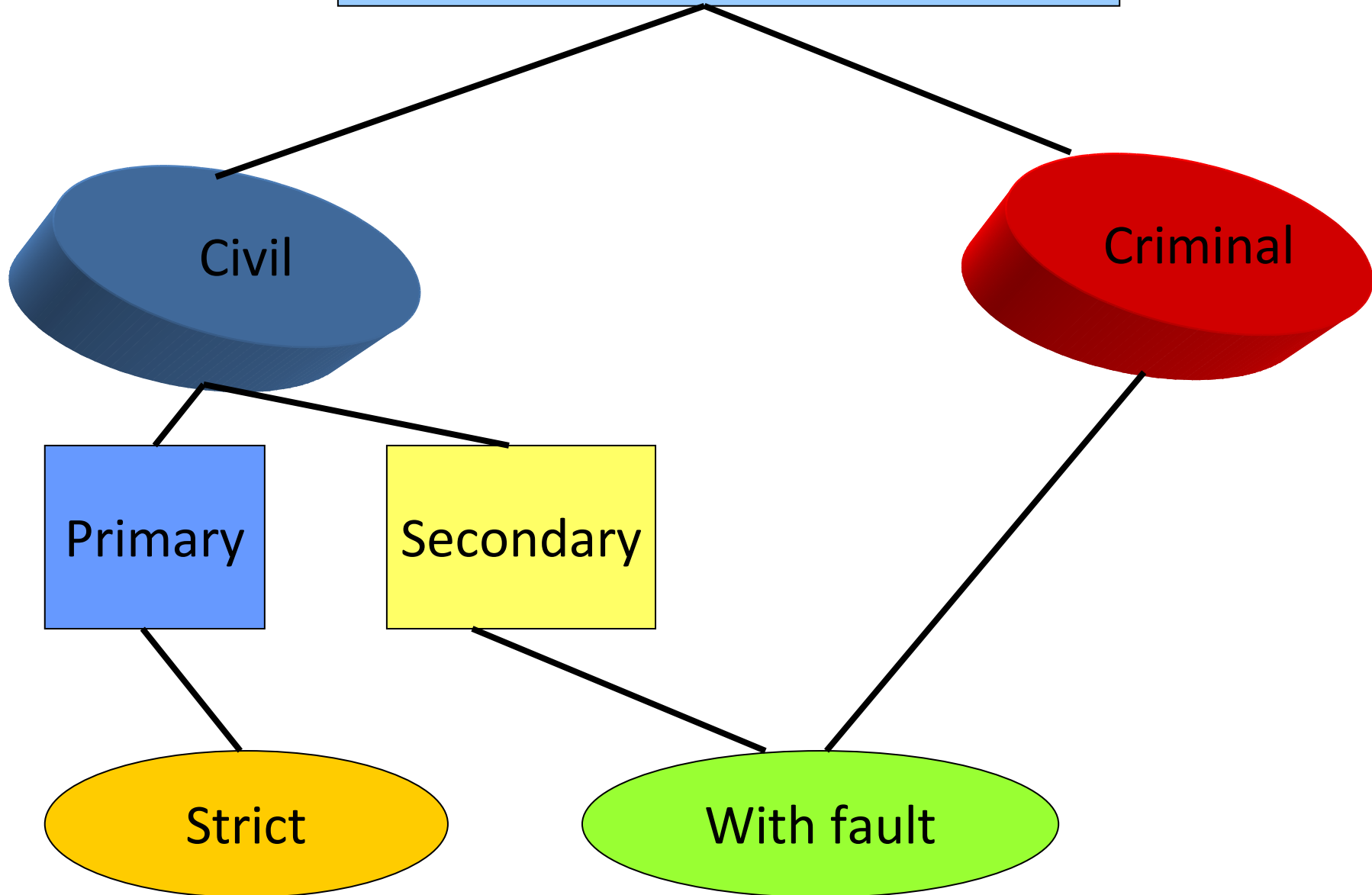
Faculty of Law

University of Delhi

Intermediary Liability for Copyright Infringement

- ✓ Liability under Copyright Act, 1957
- ✓ Liability under Information Technology Act, 2000 (IT Act)
- ✓ Interrelationship between the two statutes

Copyright Infringement Liability



Secondary Copyright Liability

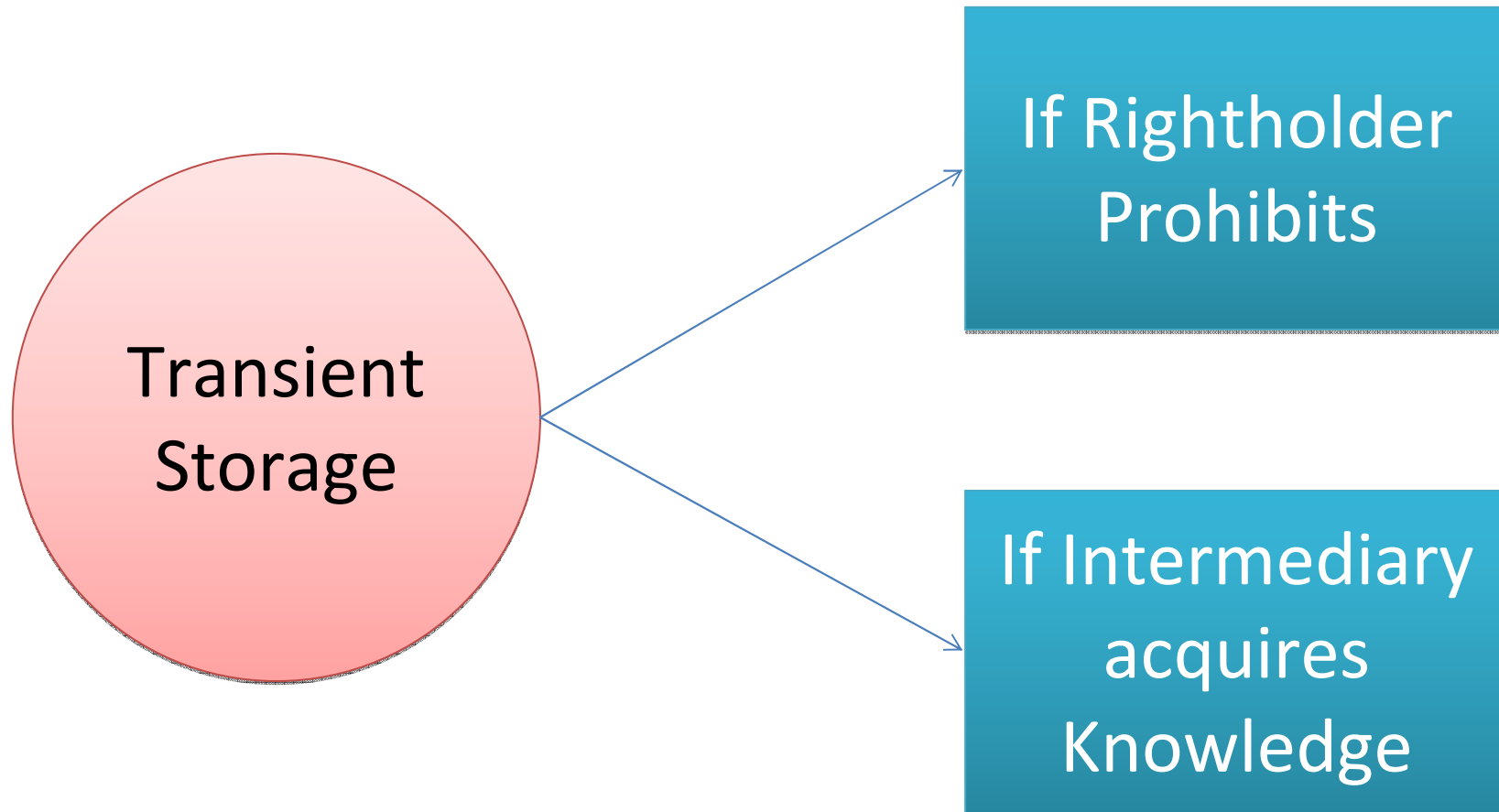
S. 51 (a)(ii): Copyright in a work shall be deemed to be infringed:

When any person, without a licence ... permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright

Criminal Liability

- Any person who knowingly infringes or abets the infringement of--
 - a. the copyright in a work, or
 - b. any other right conferred by this Act,--- shall be punishable with imprisonment [6 months to 3 years] and with fine [Rs. 50,000 to 2,00,000]

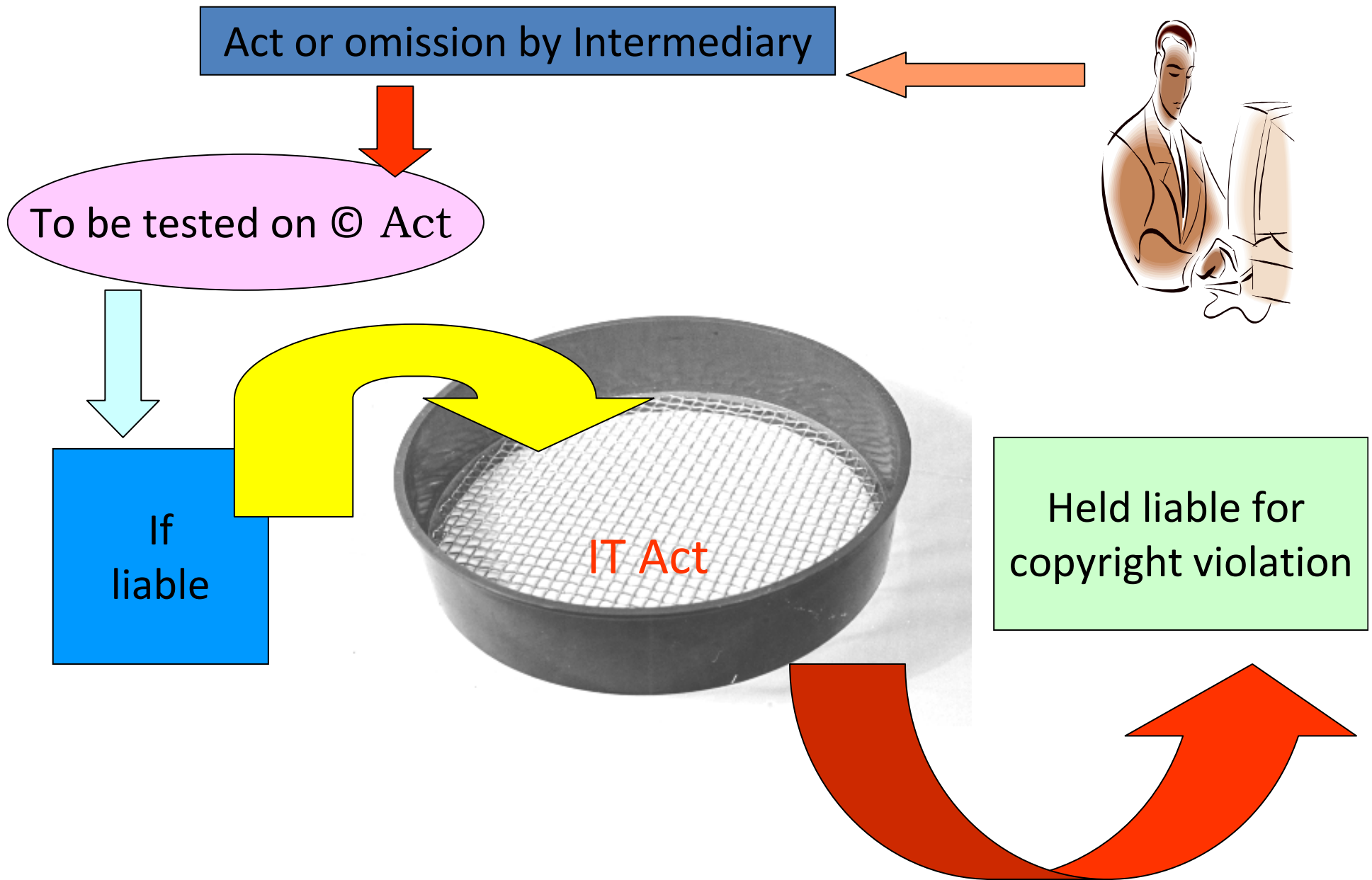
Primary Liability: Exemption granted under Copyright Amendment Bill, 2010



Notice & Take Down

1. Notice by any person
2. Take down by intermediary
3. May require a court order within 14 days
4. If no court order then take up again

- Relationship between Copyright Act and IT Act
- Some confusion in the relationship



Filtering Mechanism

'Intermediary' under IT Act

- **S. 2(w)** 'Intermediary' means any person who on behalf of another person receives, stores or transmits electronic record and includes:
 - Telecom/network/internet service providers
 - web hosting service providers
 - search engines
 - online payment/auction sites
 - online market places and cyber cafes

Exemption from Liability under IT Act, S. 79

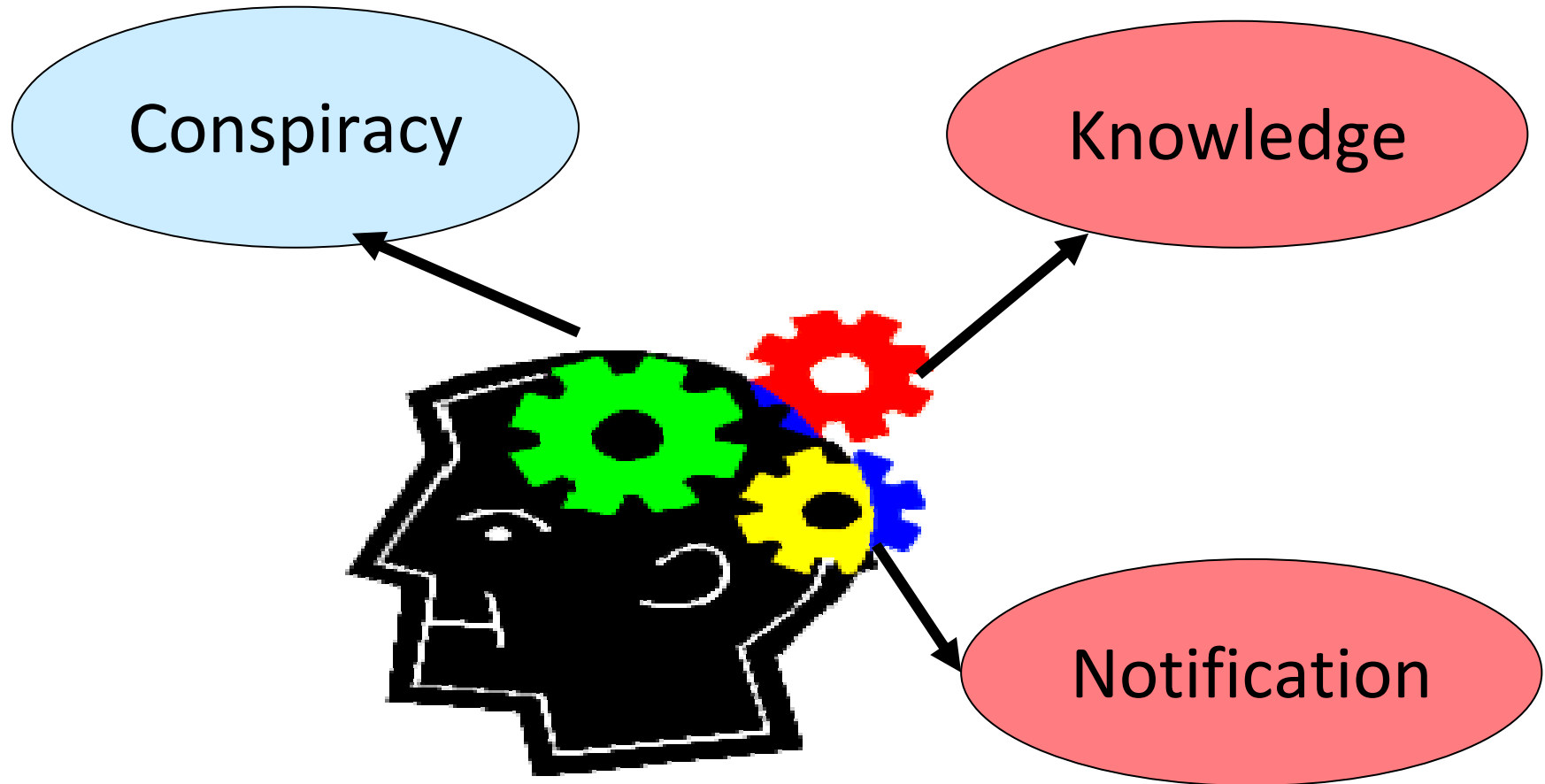
• Access Alone

or

- No initiation
- No selection of receiver
- No selection/modification of information

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Due
Diligence



No Exemption from Liability under IT Act

Due Diligence

- Transparency
- Notice to users
- Refrain from hosting unlawful/illegal material
- A notification procedure
- Removal on notification
- Assistance to Govt. authorities
- Implementing security mechanisms
- Reporting

Avnish Bajaj v. State of Delhi (2008) DLT 279

- Provides judicial guidance as to the level of due diligence expected from intermediaries
- Website failed to provide for efficient filters to screen pornographic content and it failed to introduce any operative or policy changes to prevent the listing/display/sale of the same on the portal

THANKS

mittalraman@gmail.com