

OFFICE OF THE ADJUDICATING OFFICER,
GOVERNMENT OF GUJARAT,
DEPARTMENT OF SCIENCE & TECHNOLOGY,
Block No: 7, 5th Floor, Sardar Bhavan,
Sachivalaya, Gandhinagar.
SPECIAL CIVIL APPLICATION NO. 11
DATE OF DECISION: 24/04/2017

IN THE MATTER OF:

M/s ARTHI SOFT, Ahmedabad.

**Through Shri Manan Thakker, Advocate for Petitioner:
Advocate & Cyber Law Consultant, 2nd floor, Asha Complex,
Bh. Navrangpura Police Station, Navrangpura,
Ahmedabad – 380 009, Gujarat.**

... PETITIONER

Vs

**Shri Jignesh Bipinkumar Shah, Ahmedabad
23, Giriraj Society, Part-2, Nr. KK Nagar Road, Ghatlodiya
Ahmedabad-380015, Gujarat.**

.....RESPONDANT 1

**Shri Ketan Bharatbhai Satvara, Ahmedabad
62/1, Tulisnagar Society, Nr. Shivam Gas Agency,
Chandlodia, Ahmedabad-382481, Gujarat.**

... RESPONDENT 2

**Shri Mayur Jayantbhai Kotadiya, Ahmedabad
BLOCK / H / 103, Pratham Residency, Nr. Puskar Bungalows,
Opp, Rajdhani Bungalows, Nikol Naroda Road,
Nikol, AHMEDABAD – 380038, Gujarat**

... RESPONDENT 3

**Ms. Rajmin H. Banker, Advocates for Respondents:
A-204, Shanti Residency, B/H Shanti Villa, Sargasan Cross Road,
Gandhinagar-382630, Gujarat.**

... RESPONDENT (1, 2 and 3)

**HON'BLE MR. DHANANJAY DWIVEDI
ADJUDICATING OFFICER UNDER
INFORMATION TECHNOLOGY ACT, 2000**

M/s Arthi soft (Petitioner) has filed this case against its ex-employees (Respondents) Jigensh Shah, Ketan Satvara and Mayur Kotadiya under section 43(a), 43(b), 43(j) and 45 for unauthorized access, data theft and code theft of its 5 game applications namely

1. Hidden Object – Christmas Carnival
2. Hidden Object
3. Hidden Alphabet



4. Girls Dress Up
 5. Christmas Dress Up.
2. Petitioner claimed that it had hired and trained respondents but respondents carried out above cyber contraventions and created huge damages of Rs.9,00,000/- to the petitioner.
3. Petitioner has submitted below evidences for cyber violations:
1. Respondent's email for returning petitioner's source code files
 2. Respondent jignesh shah's CD wherein he has agreed to return petitioner's source code files
 3. Log files of petitioner's computer from where respondents were alleged to have taken all such files
 4. Official communication of Apple Store where in Apple had removed Respondents' applications
4. Petitioner has submitted below evidences for damages:
1. Apple's report showing drastic decline in sales resulting into loss of more than \$15,000
 2. Cost of more than 1300 men hours worth more than 6,00,000 rupees for development of its game applications which respondent have earned wrongly.
5. Respondents claimed that all the allegations of the complaint as to the contravention of the provisions of Information Technology Act are fabricated, concocted and false.
6. Respondents claimed that cyber cases are filed against them because petitioner was not interested in paying their due salary. Respondents also claimed that they have developed their own similar application games without copying the code, design and database files of Petitioner.
7. Both the parties have submitted their source code, design and database files to this court for further investigation.
8. This Court has instructed CERT-IN –a Government of India's agency, to carry out comparison between two such sets of files.
9. CERT-IN in its report has concluded that 659 source code files which have been listed in the CD marked as 'CD-Source code files copied list' are available in the CD marked as CDRES (Respondent) and these are the copy of 659 files available in the CD marked as CDPET (Petitioner). Relevant extract of report of CERT-IN is given below:



"Analysis:

First, all the source code files in the two sets of CDs were processed to compute their MD5 and SHA 1 (both) hash values and the same were processed using Microsoft Excel to find the availability of the MD5 hash values of the CDRES files into the MD5 hash values of the CDPET files.

For understanding the above mentioned technique, one file named as "CCTransitionPageTurn.h" has been chosen randomly from digital media marked as CDPET and as well as the other file in CDRES having the same hash value. Details of both these files are given below:

A File retrieved from CDPET:

S.No.	Attributes	Value
1.	Name of	CCTransitionPageTurn.h
2.	Path in the CDPET	CDPET\Hidden Objects\version 3.0\hidden objects\HiddenObject 2\ Hidden Object\libs\coccos2d\CCTransitionPageTurn.h
3.	MD5 Hash	f6f1c6a2103835d9bdbf13aac46e7b2b
4.	SHA1 Hash Value	0683ba3ad8c88fde8d28a3a042051bab755d654f

A File retrieved from CDRES having same hash value:

S.No.	Attributes	Value
1.	Name of the File	CCTransitionPageTurn.h
2.	Path in the CDRES	CDRES\Christmas Carnival 17-12-12\Hidden_Object\libs\coccos2d\CCTransitionPaeTum.h
3.	MD5 Hash Value	f6f1c6a2103835d9bdbf13aac46e7b2b
4.	SHA1 hash Value	0683ba3ad8c88fde8d28a3a042051bab755d654f

From the details provided in the above two tables it is clear that MD5 and SHA 1 hash values of the two files (file names are also same here) - one retrieved from CDPET and another retrieved from CDRES, are same. It clearly concludes that this file in CDRES is a copy of the file in CDPET and both have exactly same contents.

In the same way, MD5 hash value of source code files in CDRES have been searched into the list of MD5 hash value of source code files in CDPET using MS Excel and 659 source code files in CDRES have been found to be the copy of the 659 source code files in CDPET, having exactly same contents.



An MS Excel file 'DS&TGuj-PET-RES ListofCopiedSourceCodeFiles.xlsx' in the attached CD marked as 'CD-Source Code Files Copied List' provides the list of these files in both the CDs, clearly row-wise stating MD5, SHA 1 hash value and file name with path name of the files copied (i) by Respondents (taken from CDRES) (ii) from the Petitioner's source code files (from CDPET). The list of these files may be referred for further investigations. Each record (row) in the MS Excel file provides MD5 hash value, SHA 1 hash value and file name with path for each of the respective source code file in both the CDs. MD5 hash value of the above mentioned MS Excel file is "3D089506E2CC1185A6E1513C9899DF34" and the same has also been provided in the above mentioned attached CD in the file DS&TGuj-PET-RES ListofCopiedSourceCodeFiles.md5 for integrity verification of the MS Excel file having the list of source code files copied.

Conclusion:

On the basis of the above mentioned investigation, it is concluded that these 659 source code files, which have been listed in the CD marked as 'CD-Source Code Files Copied List', are available in the CD marked as CDRES (provided by the Respondents) and these are the copy of the 659 files available in the CD marked as CDPET (provided by the Petitioner)."

It is worth mentioning that every time, a change is made in files, howsoever minute that change be, the hash values will change. Hence a simplicity of hash value is a conclusive proof of files being exactly the same.

10. The copy of the report of CERT-IN was provided to respondents, where upon the respondents have argued that such 659 files may contain some library files which may be common in all such applications and therefore this court ordered examination of list of common files in CERT-IN Report by SEMT, DST, Govt. of Gujarat.

11. SeMT in its report concluded that based on various observations, it may be concluded that respondent project is a copy or at the very least based on the Petitioner's product. SeMT team, based on its analysis has given following findings:

- i. Only 31% of the common files belong to Development Libraries while the rest are Git Object Files and Project Media which make up 70% of the common files.
- ii. Media Files like Sound, Images and Fonts are common in both the Projects.
- iii. Project settings and breakpoint files for Xcode IDE are also the same even though the project name and user name are different.
- iv. Git object data files that use SHA1 hashes as names are also common. This can only happen if the project commits are the same.

12. Copy of report of SeMT team was provided to respondents, where upon the respondents have further argued that complainant has submitted files of some untrue App id and further claimed that it appears that complainant have copied the files of



respondents because the games hidden alphabet and girls dress up is released by respondents on 1/12/2012 and 18/1/2013 respectively while the games of complainant were released on 7/5/2013 and 7/4/2013 respectively. The respondents have further alleged that the complaint is filed through M/s Arthi Soft's proprietor Siddharth Panchal, though the ownership of source code of game belongs to Mr. Sunny Sungtani. Therefore the complainant has no locus standi to file the case. Respondent have further claimed that they have developed all games on their own and have not copied any source code.

13. This court has instructed petitioner to submit evidences in response to respondent's above counter claim.

14. Petitioner has submitted Apple store records which shows that it has uploaded its following games on Apple Store on below given dates.

1. Hidden Objects – 07/10/2012
2. Hidden Alphabets – 16/09/2012
3. Ancient Hidden Objects – 10/10/2012
4. Dress up games – 19/10/2012
5. Christmas Dress up – 14/12/2012

15. Petitioner submitted that all such dates prove that first versions of aforesaid games were submitted by Petitioner to the Apple Store much earlier than those of Respondents.

16. Petitioner also produced attendance register records to convey that respondents were working for the petitioner during the months of December 2012 and January 2013 when respondents have released their games on Apple store.

17. Petitioner submitted that Source code files as per explanation given under section 43 include programming statements, designs-layouts, commands and related program analysis.

18. Perusal of the submission by petitioner and respondents and analysis of source codes given for app – products developed by the petitioner and respondents bring out following facts:-

1. Five applications namely Hidden Objects, Hidden Alphabets, Ancient Hidden Objects, Dress up games, Christmas Dress up were developed by petitioner and uploaded on app store before similar applications were uploaded by the respondents.
2. During the period that the applications were uploaded, the respondents were working as developers at Arthi Soft- the petitioner.



3. Analysis by CERT-IN as well as SeMT team brings out commonality in the source codes of app, after excluding the common library, complier files, including even few of the image files with same Hash value indicating such files being copied and used without any alteration.
4. Therefore, the source code of five applications of respondent have been derived from the source codes of five application of petitioner. Therefore, actions of respondents falls in the violations of IT Act 2000 listed in section 43 at clause (b) and clause (j).

19. While deciding for compensation to be awarded, it is necessary to take into account few factors, in light of provisions of section 47 of the IT Act.

I am inclined to acknowledge that the respondents were compelled to remove the apps from App store, voluntarily or under duress in a few months upon discovery. I also acknowledge, as I could make out from the demeanour of the respondents, during the course of the hearing, that they realize the consequences of unauthorized use of source code of other's computer programs and asset. I also noted that the respondents were retrenched from the employment upon discovery of this copying of source code. All three respondents are in age group of 25-30 and one mistake of this nature, should not be used to inflict so much pain that their motivations for a truthful and honest living gets impacted.

ORDER

20. Therefore, balancing the violation against the redemption I feel the interest of justice will suffice if following permanent restraining order with token compensatory fine is made:

- a) The three respondents are restrained permanently by themselves or thorough any legal instrument through which they may want to operate from using source code of 5 game application under contention from selling, sharing, transacting, transferring or further developing or deriving any other software product out of such codes.



b) Each of the three respondents is directed to pay Rs 20000/- each by way of compensation to the petitioner M/s Arthi Soft within a period of 20 days, in accordance with provisions of section 43 of IT Act.



(Dhananjay Dwivedi)
Adjudicating Officer under
Information Technology Act, 2000,
for the State of Gujarat.

