

PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

FOR

**CENTRE FOR DEVELOPMENT OF ADVANCE
COMPUTING**

By



Intellectual Property Attorneys

October 12, 2023

**K&S Partners, Intellectual Property Attorneys
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October 12, 2023
For Discussion Purposes Only

MEMORANDUM

To: Centre for Development of Advance Computing (C-DAC).
For: Mr. Rajesh K R.
From: Mr. Prashant Gupta (Partner) and Mr. Karan Singh (Associate),
Advocates
Sub: Opinion on potential copyright infringement claim against a
software tool named SMITHA
Dated: October 12, 2023

1. **BRIEF FACTS:**

- 1.1 C-DAC, in collaboration with the Central Power Research Institute (CPRI), has developed a software tool for testing and verifying smart-meter communication protocols. The said software tool is named Smart Meter Integrated Testing and Higher Analysis (SMITHA).
- 1.2 A similar software tool called Conformance Test Tools (CTT) has been developed by the Device Language Message Specification User Association (DLMS UA), a non-profit organization which develops software test tools and lays down standards for device certification, among other things.
- 1.3 SMITHA contains two functional modules – Conformance Module and Parameter Verification Modules. *Per contra* CTT contains only Conformance Module.
- 1.4 C-DAC and CPRI have developed SMITHA’s Conformance Module based on the contents of documents purchased from DLMS UA. Thus,

the Conformance Module in both software tools has similar functionalities and features. Additionally, both tools have testing protocols which are as per IEC62056 standards. However, the source code, algorithms and methodologies of SMITHA'S functional modules have been independently developed by C-DAC and CPRI.

2. **QUERIES FOR CONSIDERATION:**

2.1 **Query 4.1:** Whether use of SMITHA would amount to infringement of DLMS UA's copyright in CTT?

3. **RESPONSE TO QUERY NO. 4.1: Whether use of SMITHA would amount to infringement of DLMS UA's copyright in CTT?**

3.1 Under Section 2(o)¹ of the Copyright Act, 1957 (*"the Copyright Act"*), literary work includes computer programmes. Under Section 13(1)(a)² of the Act, copyright subsists *inter-alia* in original literary works.

3.2 The term "original" is not defined under the Act. However, the Supreme Court of India in *Eastern Book Company and Ors. v. D.B. Modak and Anr.*³ (*"Eastern Book case"*) held that *"the copyright work which comes into being should be original in the sense that by virtue of selection, co-ordination or arrangement of pre-existing data contained in the work, a work somewhat different in character is produced by the author."*

¹ 2. Interpretation.— In this Act, unless the context otherwise requires,—

(o) "literary work" includes computer programmes, tables and compilations including computer [databases];

² 13. Works in which copyright subsists.—

(1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—

(a) original literary, dramatic, musical and artistic works;

³ AIR 2008 SC 809

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- 3.3 Sections 14(a)⁴ and 14(b)⁵ set out the rights of a copyright owner in a computer programme. Among other things, an owner of copyright in the computer programme may make copies or reproduce such computer programme and communicate the same to the public.
- 3.4 Assuming that CTT is an original literary work of DLMS UA, DLMS UA is the owner of the CTT software, and can bring an action for infringement of its copyright.
- 3.5 However, there is no copyright in a concept or an idea. The copyright subsists in the expression of the idea. In other words, even though both SMITHA and CTT perform similar functions, DLMS UA cannot monopolize the concept of testing and verification of electronic devices.
- 3.6 Section 51 of the Copyright Act deals with infringement of copyright⁶.

⁴ 14. Meaning of Copyright.— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise 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 an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

⁵ 14. Meaning of Copyright.- ...

(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 commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

⁶ Section 51. When copyright infringed – Copyright in a work shall be deemed to be infringed -

(a) When any person, without a licence granted by the owner of the Copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any conditions imposed by a competent authority under this Act-

3.7 **Test of Infringement:** The Supreme Court of India in the case of **R.G. Anand v. Delux Films**⁷ (“the R.G. Anand case”), has laid down the following principles to determine infringement of copyright:

“1. There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work.

2. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable, the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

3.8 Applying the aforesaid test and on the assumption that the algorithms and source code of SMITHA’s functional modules have been developed independently by C-DAC and CPRI and not by copying or seeking inspiration from the CTT software, in our view, even if there are a few similarities in functionalities and features, DLMS UA cannot argue that

(i) Does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or ...

⁷ 1978 (4) SCC 118



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fundamental and substantial aspects of CTT have been copied. Thus, in our opinion, no copyright infringement is made out.

Warm Regards

A handwritten signature in black ink, appearing to read 'Koch' or similar, with a flourish underneath.

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