

CBI Taking The Lead Role In Fighting Software Infringement And Database Theft

“The modern thief can steal more with a computer than with a gun“

– [National Research Council, “Computers at Risk”, 1991.](#)

With the growth of e-commerce, the security of the database to prevent the improper disclosure/copying of information to unauthorized users is of utmost importance in present automated environment. These customized software’s and information’s/data organized, compiled & stored on the computer systems of the organization in the form of a huge database, tables & compilations of essential information and know-how are being developed by the organization by appointing expert staff and spending huge investment in the form of resources and therefore constitutes original literary & artistic works, therefore copyrightable within the meaning of [Section 13 of the Copyright Act, 1957](#) and the organization is the owner of such copyright within the meaning of Section 17 of the Copyright Act. Therefore, unauthorized reproduction/use and copying of the database & information from the system of the organization by the employees would be a cognizable offence by virtue of [Section 63 Copyright Act.](#)

Further, use of infringed software & database apart from the infringement of the copyright would inevitably result in diminishing the value of these works in the hand of the organization & injuriously effecting the same more particularly when such confidential/secret information is passed on to competitors and thus taking away the benefit/edge of the organization which it have because of these works over its competitors. Thus, the act is squarely covered under [Section 66 IT Act within the meaning of “hacking” and punishable](#) under it because the employees while accessing (which may be authorized or unauthorized, doesn’t matter however) to the database/software and making copies and then secretly transfer such data/software residing therein to the competitor, the act would become one of ‘hacking’ as though the data residing in the “computer resource” has not been destroyed or altered but its value has been lost or reduced as the secret data/customized software which gave a competitive edge to the organization has fallen in the hand of competitor who may use it resulting in loss to the organization.

One such case of database theft came to notice when a renowned logistics company lodged a complaint with the Cyber Cell, CBI against the database theft and infringement of customized software developed by its IT Department by none other but one of its ex-employee who was key member of the IT Development team while he was working for the complainant company and switched over to the rival company having same line of business as that of the complainant company. The complainant has also alleged that the directors of the rival company were instrumental in instigating its key employees involved in the development of proprietary software for inventory management to commit the hacking of the source/object code of the software and databases maintained at its server and join the rival company. The [brief facts disclosing the Modus Operandi adopted](#) by the accused persons and how they hacked the database are as follows:-

- An ex-employee of the complainant company working at the rival company informed the management of the complainant company that the management of rival company has been using software which is nothing but exact replica of the customized software that was being developed by the complainant company for inventory management solutions. The said employee also send an e-mail to Head IT Development Team of the complainant company, attaching the executive file of the said software for further analysis to find out the copying/duplicity of the copyrighted work.

- Earlier it was noticed by the management of the complainant company that the rival company approached some of its esteemed clients/customers like Bharti Airtel, Tata Teleservices, Reliance Telecom, Ericsson India, Motorola, Siemens, etc. and made bids at slightly lower prices than that of the complainant company. The rival company surprisingly used same methodologies, strategies as that of Complainant Company; as if they knew beforehand what complainant are up to which looked quite weird, strange.
- [About the Software](#): The software developed by the complainant company was basically inventory management software and provides complete warehousing solution applications for Telecom Industry. The software was very crucial and important to provide effective warehouse support and other value added services to the clients and gave the complainant company competitive edge over other competitors. The said software was completely designed and developed by the software development team of Complainant Company. During the development phase of the software, the source code of the software was known to the members of in-house development team. The source code of the said software was a closely guarded secret as the same was a key to the development of software and would lose its value if it falls into the hand of the competitors.
- On analysis of the [copyrighted software](#) with the software purportedly developed by the rival company, it was revealed that the literal elements of copyrighted software i.e. source code, as well as its non literal elements i.e. the structure, sequence and organization, that is to say overall organization of a program, the structure of a program's command system, the program's flow charts, the screen presentation, graphical user interface etc. has been literally copied into the software purportedly developed by the rival company.
- The striking similarities noticed between the copyrighted software and infringed software clearly lead to the conclusion that the source code of complainant software has been stolen and subsequently by making cosmetic changes, rival company were using the same software. Further, analysis of the data structure of both the software using Starlnix Software "[SQL Compare](#)" also reveals that the data structure has been copied and which also leads to conclusion that same cannot be possible without the theft of source code of copyrighted software.
- Thus, as suspected by the management of the complainant company, the conduct of the rival company in approaching its customers, submitting quotations/bidding to its customers just below price quoted by complainant, using methodologies, operations similar to complainant, using its copyrighted software for a new company which has just come into operation could not have been possible without unauthorized accessing its huge proprietary database maintained in its server. Further, the developing such methodologies, operational procedures and development of such software can only be possible by spending resources, manpower, collection of data over a long period of time and the startling fact was that the rival company has just come into operation in November 2007 and it was highly improbable that it managed the impossible with its limited resources within such a short span of time.
- Later on it was revealed that one key employee of the development team who was having dominion and control over the database of the complainant and also part of the software development team has resigned in the suspicious circumstances and joined rival company along with few other key employees and shifted the database of the complainant to rival company.

- **The database maintained by Complainant Company:** The complainant company in order to cater to the requirements of its esteemed clients maintains the specific client profile, client inventory details, inventory cost data, business strategies and methodologies etc. These enormous and valuable data which is in the nature of trade secret has been compiled by the technical staff of the complainant company on which huge amount is spent in form of salaries, other day to day expenses etc. These information & data are organized, compiled & stored on the computer systems of complainant company in the form of a huge database, tables & compilations of essential information and know-how, the access of which is granted to few key employees to whom the information is entrusted to be used for authorized purposes only. This confidential information/data base in the nature of trade secret is also original literary work. Any compromise, breach of secrecy, misuses etc. these works & information would inevitably result in diminishing the value of these works in the hand of company & injuriously affecting the same.
- The literal copying of the source code, structure, sequence and organization of the software is further conclusively established from errors found in original copyrighted software which have been also found in the data structure, text fields, description etc. inadvertently carried over in the infringed software when the software including the pertinent computer databases, information hacked from complainant system was blatantly copied by the development team of rival company headed by ex-employee in conspiracy with Managing Director of rival company.
- The aforesaid copying provides an intrinsic circumstantial evidence of ex-employee who indulged into slavish imitation of inventory detail, databases, compilations maintained on complainant's computer server which had been illegally accessed by ex-employee to unauthorisedly copy this literary, proprietary information. The striking similarities noticed in the two software could not have existed but for the fact of ex-employee having made use of our computer database.
- The Ex-employee acting under the instructions of MD of rival company copied and took away databases consisting of specific client profile, client inventory details, inventory cost data, business strategies and methodologies etc. and other software like TALLY Software and billing software containing the crucial clients information which has been used by rival company with impunity to lure or solicit the clients of the complainant to divert business from them causing major loss to them.
- The conspiracy between ex-employee and MD of rival company is further established from the fact that these methodologies, operational procedures, software and data cannot be used without the active participation of the management as they are the main beneficiaries of the wrongful gain accrued to the rival company. Thus, the ex-employee has illegally & unauthorisedly copied the confidential computerized databases, source code & other software etc. from the computer system used by him while in employment with the complainant & was contemplating to engage in competing business and misusing the same to indulge in the same business as that of the complainant company in conspiracy with the management of the rival company.
- The illegal hacking of the computer source code from the computer resource of the complainant by its Ex-employee and its misappropriation to make infringed software for rival company has diminished the value and utility of the information residing in the system of complainant company, as the same has fallen into the hands of rival who used the same along with other stolen secret

trade information, computer database to lure the clients of complainant which caused it huge losses. Thus, the accused persons have committed the offence punishable under [Section 66 of the Information Technology Act, 2000](#).

- Further, as the ex-employees were entrusted with the data by the complainant company while they were in employment which they misappropriated for their illegal gain causing corresponding loss to the complainant company, the offence u/s 408 Indian Penal Code is, also attracted. Further, the proprietary database along with source code of the software constitutes literary work within the meaning of [Section 2 \(o\) of the Copyright Act, 1957](#) & therefore copyrightable work within the meaning of Section 13 of the Copyright Act, 1957. Therefore, any illegal copying, use of the misappropriated data attracts the offence U/s Section 63 of the Copyright Act. Further, as the copyrightable source code of the complainant company has been copied to make the infringing software, it also attracts offence u/s 63 read with Section 63-B as there has been a knowing use of infringing software by the accused persons.
- The case was registered by the Cyber Cell, CBI which handles the crucial cases of database theft and software infringement. A team was constituted and a raid was conducted at the offices of the rival company situated at Delhi and NOIDA. During the raid, the CPU, hard disk, compact disk containing the infringed software/database and other incriminating documents were seized.

A Word of caution for the companies maintaining huge valuable database on its server

Organizations which maintain confidential data base need to develop robust measures to protect the same from the unauthorized use, without compromising the employee's ability to carry out his duties. In today's competitive world, if the integrity of sensitive data is compromised, the accompanying repercussions are heavy; both economical and otherwise. It is not only necessary to hire the professionals for maintaining cyber security but also to set up a mechanism for taking prompt action and to preserve the digital footprints as admissible under the law. If the valuable database is suspected to have been compromised, please take prompt action to file a police complaint in consultation with your legal counsel.

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