



**4<sup>th</sup> National Moot Court Competition – 2018**

**MOOT PROPOSITION**

1. The Federal Democratic Republic of Aryavarta (hereinafter referred to as FDRA) is a multi-racial, multi-lingual, multi-cultural and multi-religious federal democratic state. FDRA's laws are in *pari materia* with that of India, save and except, FDRA has fully implemented its international obligations under Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty, and Beijing Treaty on Audiovisual Performances. Moreover, FDRA's patent office, since last ten years was following a specific guideline known as "Guidelines for Examination of Computer Related Inventions" for the examination of patent applications in the field of computer related inventions so as to foster uniformity and consistency in the examination of such applications. This guideline is a virtual replica of "Guidelines for Examination of Computer Related Inventions (CRIs)" of 2017 applicable in India.
2. SEHEJ, a non-profit company registered under the relevant provisions of Companies Act, 2013, was working for augmenting the quality of life of



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FDRA's tribal people. SEHEJ received an annual grant of 80 Lakhs FDRA Rupees from FDRA's federal government for carrying forward its activities. SEHEJ was also required to submit an annual audit report to FDRA's Ministry of Social Justice and Empowerment as a mandatory condition for the annual grant and which they always complied with.

3. Three years back volunteers of SEHEJ came across a unique tribal group known as TITANIANS. TITANIANS have mastered the art of training animals without harming them. In particular they have developed a unique training method which was capable of making monkeys perform various recreational shows as well as day-to-day household works to support individuals with disability.
4. Aakash has done Master of Engineering in Electrical Engineering and Computer Science (MEng) from Massachusetts Institute of Technology. Aakash was born and brought up in a family of public-spirited individuals. His father, an eminent lawyer, during his younger days participated in freedom-struggle. Aakash has also imbibed the public-minded spirit. He besides being a strong advocate and supporter of the Electronic Frontier Foundation was closely associated with SEHEJ and its welfare activities.



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5. Last year, during a visit to SEHEJ'S annual day program, Aakash got to know about TITANIANS. He mooted the idea of developing an artificial intelligence based training module for training monkeys in order to enable the TITANIANS community members to train their monkeys with ease and efficiency.
6. SEHEJ'S CEO was highly impressed by Aakash's idea of developing an artificial intelligence based training module and requested him to develop the module. SEHEJ arranged a visit for Aakash and his team to the village where TITANIANS were residing for generations. During this visit Aakash and his team came across Aditya, a charming and enthusiastic young tribal boy. Aditya's monkey-shows impressed Aakash and his team the most. Soon, Aakash and Aditya became good-friends. Aakash and his team after closely observing various performances of Aditya developed an artificial intelligence based training module, by the name GALAXY. GALAXY encompassed sounds (particular oral sounds that TITANIANS make to instruct the monkeys), graphics, visual recognitions and various other sensors. GALAXY had the ability to help in training the monkeys in a more scientific, engaging and technologically advanced manner. In particular, GALAXY used a facial recognition algorithm which identified and classified the most typical



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patterns used by TITANIANS to train their monkeys. GALAXY then used the principles so learned to replicate the style and generate new features for training. Notably, all cost of travel, food, stay for Aakash and his team members was borne by SEHEJ.

7. After coming back, Aakash and his team demonstrated GALAXY before the Board Members of SEHEJ. The Board Members were highly impressed by the design, performance and user-friendliness of the module. Aakash and his team members duly assigned all rights, title, interests and ownership in GALAXY to SEHEJ irrevocably and forever. After obtaining the assignment SEHEJ duly obtained copyright registration for GALAXY in FDRA. SEHEJ also secured patent in respect of GALAXY in all PCT countries through the PCT route.
8. In order to understand GALAXY's workability and efficaciousness, SEHEJ granted a non-exclusive, non-transferrable, non-alienable, non-licensable, non-assignable, revocable, royalty free user-license to Aditya.
9. Aditya started using GALAXY and soon discovered that the module was so effective that it could even train unruly and disobedient monkeys. By using GALAXY Aditya trained a monkey named Dunston. Dunston before receiving the training was known for its notorious, brutish and



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unfriendly attitude. Soon, Dunston became Aditya's first choice monkey for all shows.

10. Few days later, during TITANIANS' Makar Sankranti Mela, Aditya organized a grand monkey-show. Makar Sankranti Mela represented the epitome of TITANIANS' cultural expressions and their rich social history. Saumya, a U.S. citizen and a resident of FDRA, was a regular visitor of Makar Sankranti Mela. She by chance happened to watch the astounding performance of Dunston and the brilliant software-animal-human interface. It may also be noted that Aditya was standing throughout the performance and giving oral and sign instructions to Dunston intermittently when Dunston was not responding to GALAXY. Saumya video recorded the entire show.

11. Saumya is a software engineer from Carnegie Mellon University. She has also done her Ph.D. in artificial intelligence from Turing Institute. However, she has given up her lucrative career and devoted her life in developing Open Source Software for community use. When Saumya visited SEHEJ's website, she discovered that GALAXY was available for download. Any member of the public by disclosing his/her government provided social security number (known as "PRAMAAN") could



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download GALAXY after agreeing to click-wrap license terms. The license, *inter alia*, contains the following clauses:

- a) SEHEJ hereby grants to you a non- exclusive, royalty-free, non-transferrable, non-assignable, non-alienable, non-commercial license to use GALAXY strictly for your private or personal purposes.
- b) Notwithstanding anything contained in this License, you understand, agree, and undertake not to alter GALAXY in any manner whatsoever and not to put any such improved version in public domain.

SEHEJ'S website also mentioned that anyone interested to obtain a commercial license may contact SEHEJ for such grant.

12. Saumya downloaded the GALAXY but the same could not be executed in her system. When she went back to SEHEJ's website, she discovered that the GALAXY could work only on hardware platforms having AVOCADO Operating System. Saumya later downloaded GALAXY in a different laptop that has a pre-installed AVOCADO Operating System. The maker of that laptop had obtained an appropriate Original Equipment Manufacturer (OEM) License in respect of the pre-loaded version of



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AVOCADO Operating System. Saumya realizing the inherent limitation of AVOCADO- implementable GALAXY, decided to create a work-alike that could work on any platform and operating system. Saumya privately reverse engineered GALAXY and came out with a behaviorally equivalent module named TRINO. During a trial run of TRINO, Saumya discovered certain unexpected bugs. She tried her best to remove those bugs by incorporating an interface-adapter. The second version of TRINO was better than the older version but it was still having compatibility issues and other bugs.

13. Two years back Saumya developed a unique artificial intelligence, named ALL-PURPOSE, which could independently develop computer programs, remove bugs, address issues of compatibility and make programs user-friendly. Saumya put the second version of TRINO in a system that houses ALL-PURPOSE for a thorough evaluation and desired rectification. ALL-PURPOSE came out with a revised version of TRINO which Saumya renamed as BRAVO. BRAVO was not only platform independent but it could self-customize and self-learn depending upon the animal to be trained (similar to a market-available speech recognition software). BRAVO contained an in-built recognition system which could self-educate by gathering data after observing an animal for twelve hours.



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14. Saumya in her website uploaded the recorded performance of Aditya and Dunston. She through her website also made BRAVO available to members of the general public under a copy-left open-source license which allows members of the public to use, attribute and share-alike for non-commercial purpose.

15. GALEINIAN was a tribe which was known for training animals particularly Chimpanzees. Namita, a tribal girl, did her Ph.D. in human and animal consciousness from the National Institute of Mental Health and Neuro Sciences (NIMHANS) Bengaluru, India. She was working tirelessly to understand the existence of animal consciousness. She by chance visited Saumya's website and discovered the existence of BRAVO. She used BRAVO to successfully train MIKE, a chimpanzee. She was amazed to find that MIKE was performing only by looking at the screen, signal and sound interface generated from the computer without any human intervention. Namita uploaded the video in her website.

16. Few months later, SEHEJ'S CEO visited the websites of Saumya and Namita. Immediately, thereafter SEHEJ through their lawyer sent a cease and desist notice to Saumya calling upon her to immediately remove BRAVO from her website. Aditya served a separate cease and desist notice to Saumya calling upon her to immediately remove the video of





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Dunston's and his performance from her website. Saumya refused to comply with the terms of the notices.

17. Aditya filed a suit for infringement of Performer's Rights in the Original Side of the High Court of GUNJANA. The trial judge ruled in favour of Aditya and directed Saumya to remove the video from her website. The trial judge also permanently enjoined Saumya from publishing, communicating, reproducing and circulating the video in future and awarded a damage of 5 Lakh FDRA Rupees to Aditya. Saumya preferred an appeal before the Division Bench of the High Court of GUNJANA. The Division Bench upheld the trial decision. Saumya appealed before the Supreme Court of FDRA. Saumya's appeal had been duly admitted and posted for final hearing.

18. SEHEJ filed a suit before the City Civil Court, GUNJANA against Saumya alleging that BRAVO infringed copyright and patent of GALAXY. In her written statement, Saumya made a counter claim for revocation of GALAXY's patent. As such the suit was transferred to the High Court of GUNJANA. The trial judge found Saumya to be responsible for patent infringement and awarded a damage of 10 Lakh FDRA Rupees to SEHEJ. With respect to the copyright claim, the trial judge found no infringement. The trial judge held that since copyright



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does not extend to ideas, procedures and methods, Saumya was not liable.

Both SEHEJ and Saumya preferred separate appeals before the Division Bench of the High Court of GUNJANA. The Division Bench heard these two appeals together and upheld the trial decision. Thereafter, both SEHEJ and Saumya preferred separate appeals before the Supreme Court of FDRA. Both the appeals were duly admitted and posted for final hearing.

19. The Supreme Court of FDRA clubbed these three appeals for final hearing. During the pendency of the appeals, Aakash has filed an application under Article 32 of the FDRA's Constitution impleading the Government of FDRA as first respondent and SEHEJ as second respondent. He contended that since SEHEJ received regular grants from the Government of FDRA, they could not have a private property right over GALAXY as that had been created by using public money. He further stated that he intended GALAXY to be used for non-commercial purposes generating rippling public benefits. He sought a writ of mandamus directing the Government of FDRA to acquire the patent and copyright for public purpose.

20. The Supreme Court of FDRA appointed Namita as an independent expert to submit her views on the issues involved. In her opinion, she has clearly



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stated that artificial intelligence could only be regarded as mere parrot that learned the facial expressions of animals and analysed them by pre-determined human made algorithms.

21. All the matters are clubbed together and posted for final hearing.

**The argument should be based only on the issue of Copyright, Patent, Performer's rights and Constitutional Law.**

While framing the issues you are required to address the following questions. However, nothing prevents you from raising other relevant issues.

1. What is the scope and extent of non-literal copyright of GALAXY? As such did Saumya infringe SEHEJ's copyright by comprehensively taking the non-literal elements?
2. What is the scope, extent and limit of copyright protection for elements and protocols required for maintaining inter-operability?
3. Did Saumya infringe Aditya's performer's right?
4. Is the invention at all patentable in FDRA? As such did Saumya infringe GALAXY's patent?
5. Can such a mandamus under Article 32 be issued directing the Government to acquire patent and copyright?



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## DISCLAIMER

- Any argument structured on the common law or statutory premise of prevention of cruelty to animals including its interface with Constitutional Law will not be entertained.
- The technical correctness of GALAXY and AI cannot be challenged.
- Any argument regarding arbitrariness under Article 14 regarding the grant being given to SEHEJ shall not be entertained.

